

CITY COMMISSION
CITY OF TRUTH OR CONSEQUENCES, NEW MEXICO
Tuesday, November 9, 2010

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, November 9, 2010 at 6:00 P.M.

PRESIDING OFFICER: The meeting was called to order by Mayor Montgomery who presided and Mary B. Penner, City Clerk acted as Secretary of the meeting.

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

Hon. Lori S. Montgomery, Mayor
Hon. Evelyn B. Renfro, Mayor Pro-tem
Hon. Steve Green, Commissioner
Hon. Frances Luna, Commissioner
Hon. Freddie Torres, Commissioner

Also present:

Dave Weiser, City Manager
Jay Rubin, City Attorney
Mary B. Penner, City Clerk

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

CEREMONY: Mayor Montgomery called for fifteen seconds of Silent Meditation.
Commissioner Luna called for the Pledge of Allegiance.

APPROVAL OF AGENDA: Mayor Montgomery called for approval of the Agenda as submitted.
“Commissioner Green moved approval of the Agenda as presented.”

Seconded by Commissioners Luna/Renfro.
Motion carried unanimously.

RESPONSE TO PUBLIC COMMENT: None.

COMMENTS FROM THE PUBLIC: Ms. Luetisha Potter came before the Commission with comments.
City Manager Weiser stated the project that Ms. Potter addressed was proposed to the Public Arts Board last night, and that this will be brought to them with a recommendation at their next commission meeting on 11/23/10.

Ms. Aerial Dougherty came before the Commission with comments, and provided information for the record.

Mr. Brad Grower came before the Commission with comments.

Ms. Eve Elting came before the Commission with comments.

Mr. Ronald Fenn came before the Commission with comments, and provided information for the record.

Mr. Gerald Trumbull came before the Commission with comments.

Mr. Scott McKenzie came before the Commission with comments.

CONSENT
CALENDAR:

Mayor Montgomery stated they have two items under the Consent Calendar – Minutes of the City Commission Meeting – Regular – October 26, 2010 and Accounts Payable – October 2010.

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

Seconded by Commissioner Renfro.
Motion carried unanimously.

DRAFT
MINUTES:

None.

BOARD
COMMITTEE
REPORTS:

& None.

PUBLIC
HEARINGS:

Mayor Montgomery stated before they get started with the Public Hearing City Attorney Rubin would like to address the Commission.

Commissioner Luna stated they heard comments earlier regarding her potential conflict of interest, and stated it was addressed this morning and asked City Attorney to relay the conversation they had.

City Attorney stated anytime he is asked to address any issues of conflict of interest, and that there is always two points that he wants to consider...the first one actually is set forth in the State Statutes 10-16-4...It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing his own financial interest or financial position.

He stated this statute actually has been very narrowly interpreted by the courts...the key word in the statute is the word **directly**... another words if it were to have a conflict of interest...it can't...it's not enough should a person may have some in-direct interest of how a vote will turn out...the word **directly** is part of the statute so to look at tonight's situation unless it can be shown that Commissioner Luna would directly benefit from the vote itself on the issue that is before them then under the statute she would not have a conflict of interest, now the second part actually is a bit more interesting because this actually deals with appearances of impropriety, and what he always tries and tells the Commissioners, and when he is able to address some of the boards is that...a little bit more complicated...I tell the Commissioners that even if they know that they can serve in an unbiased manner...if they know that there is an appearance that they perceive that they don't think they can do this in an unbiased manner...I always tell them to take the safe way out, and they should recuse themselves, but again this is actually...there is no statute about this, and it is really up to the individual commissioner, and I don't prescribe until someone really whether they have an appearance or not...and Commissioner Luna you and I spoke about it, and thinks she wants to address everybody, and why she feels there is really not an appearance problem at this point.

Commissioner Luna indicated she researched the matter since our phone call this morning...and Texas Realty Braxton Merritt has advertised with the Sierra County Sentinel since 2005, and stated that advertising was something that she did not personally sell, and she does not even know who the people from Braxton Merritt are in this group right now...so the advertising furthermore is regarding the purchase of homes, and that they have never advertised to sell homes, subdivide or anything of the like...with that said I'm sorry but the assumption that she would vote in favor of someone who advertises with my family's business is as ridiculous as the assumption that I would vote against someone who does not...both assumptions are incorrect...I will not recuse myself but instead I will do what all my fellow commissioners here tonight will do...I will hear the facts...I will weigh them, and I will make a fair decision in the best interest of all concerned, and I also want to make it known that I am not a shareholder of Braxton Merritt...and that is all I have, and thanked them.

Mayor Montgomery stated before they get into the public hearing...they will follow the Battershell Procedures this evening, and that there is a certain way they will precede on these matters, and will allow testimony only regarding the issue at hand.

Commissioner Green...Madam Mayor a question of privilege, and that he would like to go back at what Jay said...this has been very nicely put...very muddy process of getting to where they are right now with this application, and his concern is about process and procedure and protecting the City, and would like to go back where he talks about directly enhancing a financial interest, and the only way from what he understands...a newspaper makes money is through advertising...the more advertising they have the better financially they are off...the same is true the opposite way, and he concurs with Commissioner Luna, and doesn't believe her vote is for sale from a quarter of a page ad...that is not the issue...the issue is that there is an arms-length transaction with someone who advertises in a newspaper, and someone who takes a salary from that newspaper contingent upon the advertising revenue that comes in, and if you feel if they had to go to court, and he can defend that statement that you initially made then I concur with you and that's the end of it, however if he feels that there is a direct relationship...a cause of relationship if you will then I would just ask that maybe it be reconsidered...that's my question.

City Attorney Rubin stated I don't think the issue is necessarily whether Mr. Merritt is advertising with the Sentinel...I think it is actually more the trenchant is...will the outcome of tonight's vote will that particular outcome directly enhance Commissioner Luna's financial position...that is what I think the test here according to the statute.

Commissioner Luna...I'm going to be very frank...the amount that Braxton Merritt is minimal, and I'm sure Braxton Merritt is in the group somewhere, but I don't care whether they advertise with me tomorrow or yesterday honestly...that is not going to enhance or affect my note this evening...I am able to separate the two.

Commissioner Green – and I don't question that...

Commissioner Luna – and one thing somebody told me when I was running for this office was me seating on this commission was going to cost me advertising, and if that's the case so be it...I don't care if I'm in business because right now I'm sitting on the Commission representing my constituents not my business.

Commissioner Green – and I applaud that...I just want to make sure

that the City is not exposing itself for another potential problem in the courts.

Commissioner Luna – and I will testify in court to that all day long.

City Attorney Rubin – actually Commissioner Luna I'm basing it on what you said...I'm assuming...is my assumption correct that regardless of what decision the commission makes is that going to affect your financial position.

Commissioner Luna – I don't think Braxton Merritt is going to come and advertise their subdivision...from her understanding they already have other homes for sale they don't advertise that now...they advertise purchasing homes...that's not what we are talking about...we're not here to discuss whether they can buy a house.

City Attorney Rubin – and when I made these comments I was opening it up for the Commission, but if anybody else has any questions or comments about that I appreciate Commissioner Green's comments.

Commissioner Green – I just want to make sure the City is protected.

Commissioner Luna – and I understand the concern...I do understand that, however really it is a minimal amount...it's not going to make me or break me...if they call tomorrow and canceled...I'm not going to close the doors.

Commissioner Green – I don't think they're talking about the size of the revenue screen...I think we're talking about the connectivity between the...

Commissioner Luna – just as Commissioner Torres said...they go to his bar...Commissioner Torres could even pick them out of the crowd right now apparently...I don't even know who these people are.

Commissioner Luna – there is people who don't even advertise with them does that mean I have to recuse myself because they don't advertise with me and they could be.

Commissioner Green – if Jay feels that the City is covered. and if someone should decide that they're not happy with the ruling of Jay's position and he feels he can defend it then I say let's move forward.

City Attorney Rubin – I do feel that way.

Mayor Montgomery stated as I was trying to explain to the public on how they are going to proceed there is a certain order on the presentations so they will hear from staff first then the proponents, and then the opponents...as people step up to the microphone they will be sworn in, and they will hear their testimony based on the matter that's at hand and that's the only thing. And stated they have a lot of people in the audience, and she would ask that they keep their comments brief, and sure there will be duplication which is fine.

City Attorney Rubin stated he gave everyone a copy of 15-A, and understands what they are talking about here is the subdivision variance, and that section sets forth what defines that.

Mayor Montgomery swore in City Manager Weiser.

City Manager Weiser stated the parcel in question is approximately 2.25 parcel southwest of the intersection of Joffre and Gold, and

indicated the neighborhood is primarily made up of single family residential structures and is mostly built out, and the subject property has presently one single family residence, and the proposal was to divide this 2.25 acres into 6 lots allowing for 5 new structures, and stated the zoning on the property within the land use plan is R-3 which would allow up to 32 dwelling units on this parcel. He stated the original proposal was to use the 15-15 of our subdivision code called the alternate summary procedure, and stated there is two pathways they can take, and after several public hearings they realized that the alternate summary procedure was not the correct way to go it did not...the two pathways did not meet the proposal.

City Attorney Rubin stated he was not sure if the Mayor announced that people have the right to question...

Mayor Montgomery – no I did not, but she will open it up for cross examination.

City Manager Weiser stated because of this review and the time frames that were involved in the procedures he directed the building official to not charge the applicant for the preliminary plat fee as they already paid for the fee on the alternate summary procedure. He stated he and the fire chief met with the applicant's representative on site to review the proposal...the issue of the street width was the main topic of their discussion, and stated at that time they discussed the adequacy of the 27' road width, and the existing road width is about 21' wide, and when they discussed adding the additional 6' there was concerns with only an additional 6', and if there was parking on the west side of Gold that would actually be a smaller street with additional cars, and presently there is few or any cars parked on that side of Gold Street, and stated it was agreed that the City would post the street no parking on that side to allow more space for emergency vehicles.

He stated subsequently the fire chief did provide a letter which was included in their packet where he recommended that Gold Street be widened to 34', and city standard is 36' on new plats, and the technical revenue committee met to discuss the project which included members from the electric department, solid waste, water, sewer, police, and stated the fire chief was out of town and could not be at the meeting.

City Manager Weiser stated during that time the electric department requested that all electrical service be provided from street frontage on the north and east sides of the property, and not from the easement on the west side, and solid waste felt that the 27' width and no parking around Gold provided accurate space as they were able to pick up the garbage presently on the 21' roadway...water and wastewater had no issues with the proposed plat, and streets were asked to provide an additional request if the applicant paid for the man power to widen the road would the City provide the material, and they declined that request.

He stated the proposed preliminary plat contained two variance requests...the first was a variance from the street width of 36' down to 27', and staff report to the Planning & Zoning Board went through the criteria set for variances, and the Planning & Zoning Board approved this variance on the grounds that the proposed street width improved traffic flow, and more closely matched the existing roadways.

City Manager Weiser stated the second variance was for the requirement to build sidewalks, and indicated the neighborhood has no sidewalks at the present, and the staff report recommended

approval of the variance, and the Planning & Zoning Commission approved the variance to the sidewalk to keep the plat more in tune with the rest of the neighborhood, and after reviewing the original proposal, and the preliminary plat, and with the two variance requests the Planning & Zoning Board voted to approve the two variance requests, and voted to approve the preliminary plat as the majority felt would fit in with the neighborhood much better than the alternative.

Mayor Montgomery stated so there is no question by anybody in the public would you please state your name and title for the record.

David Weiser City Manager for the City of Truth or Consequences.

Mayor Montgomery asked if there were any questions from the Commission from Mr. Weiser.

Commissioner Green stated that several documents from the Planning & Zoning minutes where it indicates there were several written concerns that were submitted, and were not included in their packets for their review, and that the Commission should have all the information before making intelligent and fair decisions.

Commissioner Luna asked what the alternate subdivision fee was, and they waived the \$1,300 fee because they let them apply under the wrong process.

City Manager Weiser stated he didn't recall what the fee was.

Commissioner Luna also questioned...why the City felt that it was okay to widen the road only to 27' vs. going to even the less than City code of 34' as recommended by the fire chief.

City Manager Weiser stated when the proposal was first made for 27' which was when he and the fire chief met with the representative of the proponent on the site that was what was proposed was 27', and stated the chief felt at that time that with the no parking that would be adequate because it is more space than what he has today.

The Commission also questioned not enforcing the six-inch lines for the fire hydrant.

City Manager Weiser stated because there is a four-inch line in place now.

Mayor Montgomery asked if any of the proponents had questions for Mr. Weiser.

City Attorney Rubin suggested a show of hands of the proponents and the opponents.

Mayor Montgomery asked for a show of hands of the proponents that are for the project with a showing of 2, and asked for a show of hands of the opponents with a showing of 22.

Mr. Anthony Gutierrez representative for Braxton Merritt came before the Commission to clarify the fees paid for the first process they went through, and stated from memory they paid over \$200.00 for that, and stated the fee was waived, and that it was substantially greater, and asked if he could remember when they started this process it was before the existing building inspector, and that they actually tried to start the process in August, and thinks that is one of the things Mr. Weiser was getting at is there were some major roadblocks getting the project going because of delays and other

issues.

City Manager Weiser stated he was not here before March 8th, and that it was on going before he arrived here.

Ms. Eve Elting, 212 S. Silver came before the Commission and questioned copies of applications of variance applications.

City Manager Weiser stated the variance application that was applied for was for the street, and does not know on the second one.

Ms. Elting also questioned the copy of the letter from the fire chief not distributed, and can he explain the justification from the technical-review committee, and why was the PUAB circumvented, and that they have a process in place, and that code stipulates that it must go to the PUAB before going to P & Z.

City Manager Weiser stated he does not know why it did not go to the Public Utility Advisory Board prior to that, and stated they were not extending utilities on to the property within the right-of-way, and they were extending them from the right-of-way to the individual properties. And stated the letter from the fire chief would be provided when they brought this before the City Commission for approval or denial or for the case on the appeal.

Mayor Montgomery asked for proponent's presentation.

Mr. Anthony Gutierrez owner of Center Lines Services, LLC from Las Cruces, New Mexico came before the Commission, and was sworn in by Mayor Montgomery. He stated what their goal is to develop something that would fit in with the neighborhood, and stated they did ratios on the number of manufactured homes to actual site built homes, and that they would like to improve that ratio so there would be more site built homes, and to raise the value in the neighborhood.

Commissioner Luna asked if a variance for the sidewalks was submitted, and Mr. Gutierrez stated they filled out two variance requests and they faxed them back, as well as the new application when they changed the process.

Commissioner Luna also asked if they widen the street to 27' now what do they lose by having to widen it to the recommended 34' or city code 36' are you losing lots are they going to have another variance for setbacks.

Mr. Gutierrez stated one the issues for it is that parking is going to be required on the properties, and that parking requires a substantial amount of space that you cannot use.

Commissioner Luna – but if it is 36 you are not going to have to require parking on property...they would be able to park on the street.

Mr. Gutierrez – there is not much frontage there, and if you line cars up along that road you cannot support all the dwelling units in there.

Commissioner Green referred to July 6th minutes...two things about fire and road width, and his confusion is that has gone from 26' to 27' with a letter from Chief Tooley recommending he is not happy going away from the code...and recommending it be widened to 34', and he views one of the responsibilities of this board is to look out for the safety, health and welfare of the people living there now, and asked is there any reason why he is not comfortable with Chief

Tooley's recommendation of 34'.

Mr. Gutierrez stated one of the reasons is they didn't approach it initially as they received the letter after they met with him, and stated his sentiments in the letter were not expressed in the meeting out in the field with himself and Mr. Weiser, and that the process had already started.

Commissioner Renfro stated he heard her concern on the 4' line...water line vs. the 6'.

Mr. Gutierrez – one of the comments...this has never been brought up, but the engineer and I entertained this, and they were wondering because it is such a short distance...all the utility services are now will happen on Gold right in front of the lots on the frontage, but one of the other things they entertained about doing that was if they...any utility project if they go in and replace a section of active line then they have to shut services down and notify the neighborhood, and they have to make sure they do it in a way that it is not going to pollute...because when they open up existing lines there is pollutants that are released from the line of the pipe, and when they do that they have to flush it and treat it with chlorine, and indicated it is a very expensive procedure, and not one that is solely by them, and that it is something that can affect the whole neighborhood...anything that is attached to that line, and one of the comments...they think it would cost more for the City to put it in now than it would to replace it if they were going to replace the whole line, as well the engineer made the comment that it is very unlikely for a municipality to go in and replace the line on an existing a very long existing neighborhood...what typically happened is the out skirts of the City when they go on with new development then you can make those changes without causing such a repercussion to everybody else. He stated one of the major of water lines is when they work on one piece it breaks because of changes in pressure...joints that have been sitting there for a long time, and that it is kind of a toss-up...it could save you money in the future or cost you a lot of money when they change it to 6", and does not think it is a huge cost burden for them.

Mayor Montgomery stated from an engineering stand point what does putting the 6" line on that piece of property do for them.

Mr. Gutierrez – nothing.

Mayor Montgomery – that's what I thought so it merely complies with the regs. on that property.

Mr. Gutierrez – it does really comply with the regs. because they don't have a 6" line from a 6" line, and it can actually generate other problems by design.

Commissioner Torres – what does Andy Alvarez say?

City Manager Weiser stated when they discussed it he didn't have any issues from his stand point of leaving the 4" line.

Commissioner Green stated on the letter that Sandy Jones sent to the City Manager did they copy Mr. Gutierrez and Mr. Merritt of his concerns.

Commissioner Green asked Mr. Gutierrez did they receive a copy of the letter from Sandy Jones a member of the PRC addressed to Dave Weiser, dated September 14th.

Mr. Gutierrez – no.

Commissioner Green stated there were 5 questions that residents had posed to him, and stated he is just going to deal with the hydrant question...what are the consequences of attaching a hydrant to a 4" line...one obvious consequences is reduction of water flow for the fire department when using that particular hydrant or any other on the same line...how serious reduction available water would depend on the fire flow requirements of any structures served by the hydrant...also of importance is the issue of failing to meet the NFPA standard from the perspective of ISO community ratings...a reduction in the size of water mains serving areas of the City would lead to a possible lowering of the ISO classification insurance companies use the ISO rating to determine insurance premiums for homeowners and businesses NMPRC uses the ISO rating for distribution of fire funds for all NM fire departments...a lower ISO rating will reduce fire funds to local fire department. The ISO is independent of the State of NM, it can and does routinely conduct rate class determination.

He stated he wanted to let them know that position from one PRC Commissioner does exist, and I will be asking Chief Tooley to expound on that.

Mayor Montgomery stated she would open it up for cross examination from the staff.

Mayor Montgomery stated she would open it up for the opponents to cross exam Mr. Gutierrez.

Ms. Elting asked Mr. Gutierrez if these were the same plans that were submitted in 2008.

Mr. Gutierrez stated no, and thinks it was a summary plat, and that his company did a survey, and that application was filled out and fees were paid, and stated they did everything they were asked to do.

Mr. Brad Grower questioned the number of lots, and noticed he consistently said that none of the variances that he has requested...none of the city code that he does not want to have to comply with would break this project, and that it is financially economically feasible...if it follows all the requests required by law so I'm curious as to why they are even here having this discussion on these requests.

Mr. Gutierrez – I don't think I said that...I think I said that they went for it for specific reasons they went for those variance requests, and I cannot speak for whether or not it will break it from a financial stand point...when they asked me the question about why they don't widen it to the full 36'...it will cost a lot of money, and that is an issue when they are only doing a 5 lot addition to what is existing there... it's not a huge money maker of a project, and so they do try to save money on certain regs.

Mr. Grower – so there is financial concerns regarding actually putting in the necessary infrastructure as required by city code.

Mr. Gutierrez – yes there is and I believe it's in the minutes from several of the meetings.

Mr. Grower – then I don't understand how use of an engineering firm could look at our city code and know in advance that those existed, and those were requirements in this municipality, and then move forward on a project with the full knowledge that those were gonna be required...if those were significant enough to cause financial difficulty...this just reminds me so much of Mr. Neal...I can't help

it...I mean you knew what...

Mr. Gutierrez – I don't know who Mr. Neal is...

Mayor Montgomery – do you have a question Mr. Grower.

Mr. Grower – I just asked him.

Mr. Gutierrez – I don't know what you want me to answer honestly.

Mr. Grower – if you knew in advance that the requirements of city code for infrastructure on the subdivision that you submitted was significant enough to cause economic problems...why did you follow through.

Mr. Gutierrez – they had met with the previous building inspector, and they have done it in different municipalities, and stated our code does not stipulate well for it at all...and it is called a conforming subdivision, and they go on the intent to subdivide the way that the existing neighborhood is subdivided, and to fit and conform with what is already there, and they thought they could do that reasonably well and actually improve the area...so from my stand point it didn't seem like a bad decision, and stated they have done these under actually much larger restrictions in Las Cruces and Alamogordo, but their code has a facility for it, and at the time they've gone through starting with Chris Nobes, and have gone through several different building inspectors that fill that position. He stated he was not aware the codes were available on line until the second commission meeting in this process and that it just one of the things I've dealt with doing business in different counties...and you learn as you go.

Mr. Fenn stated knowing that can they guarantee that no one will ever park in a no parking zone if they put it in that area, and can they guarantee that no one will be parking there in the event of an emergency.

Mr. Gutierrez – no.

Ms. Joyce Hudgens asked if they sent in a sidewalk application.

Mr. Gutierrez replied he filled out two variance applications...one was for roadway width, and the other one was for sidewalks.

Mayor Montgomery stated that was asked by Commissioner Luna on whether they sent in two variance applications, and he stated yes for the record.

Ms. Hudgens – would you happen to have a copy of those?

Mr. Gutierrez – no...we signed them and they faxed them and sent them back to Charlie Friberg.

Ms. Aerial Doughery – you said something about the property would be...there is some word I don't remember exactly the word you used but would be in better shape if they did this development...what is the problem in particular about the property now.

Mr. Gutierrez – there is an un-addressed drainage problem and old historic...I wouldn't call it historic...it was actually a problem caused by the subdivision of what was there...of the surrounding properties, and stated when subdivisions were being platted back then there weren't concerns with drainage, and stated there is some water that comes off Gold & Joffre from that intersection...most of the water right now is being drained off the property because there is a lot of

surface area there, and it just goes down that hill and ends up going through that concrete channel...so they tried to address that.

Ms. Dougherty – and of the 2.25 approximately acres how much of that is steep grade...what percentage of that is steep grade.

Mr. Gutierrez – I don't know.

Ms. Dougherty – isn't that kinda of a critical part of the plat layout and how they position houses, and how they direct the drainage and inter-relationship along the lot, and then the bottom lot that will be kept.

Mr. Gutierrez – yeah and they paid a professional engineer to make those addresses.

Ms. Dougherty – you couldn't make...knowing that statistic of relationship of hill to more or less flat land would be a useful piece of information.

Mr. Gutierrez – I think it's useful for a professional, and they hired that professional to do that job for us.

Ms. Dougherty – is that data anywhere in all this material.

Mr. Gutierrez – it's on the plat...it's on the construction documents, and you can see on the grading plan where those areas are.

Ms. Dougherty – okay.

Ms. Hudgens – asked the date they submitted their application for sidewalk and streets.

Mr. Gutierrez – I can't remember...it was at the end of summer I believe...somewhere before the Commission meeting where those were approved or accepted.

Mayor Montgomery asked for anymore proponents presentations, and stated then they would move on with the opponent's presentation.

Mr. Byron Stevens came before the Commission and Mayor Montgomery swore in Mr. Stevens. He indicated his property is below the level of Joffre, and below the level of the development under consideration, and expressed his concerns about drainage.

Commissioner Luna asked if his property was below the level of the street when he bought it, or did you do that so you could ground set your home.

Mr. Stevens stated from Gold the property slants all the way down to Magnolia, and indicated my property being adjacent when it's graded to curb level... I'm down below it, and that there is a big berm that is precluded from the rain coming in...well that berm was taken out...there is a tremendous amount of water that comes down that street...plus the water will come on to the property itself.

Someone from the audience – it was on the property when he bought it...he did not do a thing to it.

Commissioner Green stated there was a letter sent by Merry Jo Fahl who is with Sierra Soil & Water Conservation District talking about the very issues, and evidently Ms. Hudgens stopped by her office and discussed the proposed estates, and asked if saw a copy of this letter.

Mr. Stevens – no I didn't...perhaps other members of the opposition did.

Mayor Montgomery – there is a berm that is there right now.

Mr. Stevens – yes facing just off the curb on Joffre, and it runs the whole front.

Mayor Montgomery – and it protects your property completely, and you don't have run into your property right now.

Mr. Stevens – yes it gets by that berm...and where my property starts the water can run in, and it has and washed out part of my drive, but since they put asphalt in and I'm not worried about that. I am worried about water run off when the berm is gone, and when we have a cloud burst it can run under my house.

Mayor Montgomery – and you mentioned something about a retaining wall.

Mr. Stevens – yea I suggested that...some kind of retaining wall maybe even a small...

Mayor Montgomery stated she would open it up for cross examination from staff.

City Manager Weiser – none from me.

Mayor Montgomery asked if the proponents had any questions.

Mr. Gutierrez showed the grading plans to Mr. Stevens, and asked if he felt he could make an informed decision not knowing the way the grading plan was designed.

Mr. Stevens stated he has lived there for 5 years, and he has witnessed what has taken place in modest rain fall, and they do have cloud bursts, and 1 ½% doesn't mean a thing.

Mr. Gutierrez – asked do you feel like you are comfortable then saying if it stays the way that it is you're protected.

Mr. Stevens – no.

Ms. Eve Elting came before the Commission and Mayor Montgomery swore her in.

Ms. Elting stated she would like to draw their attention to the 2 documents, and asked if they had them, and suggested that the letter from Ms. Fahl indicated that she does suggest that there are potential problems with the drainage, and that she had questions about the water flowing directly on to Mr. Stevens property, and that she has questions about the capacity, and questions about the retaining wall, and that she is available for further consultation. She asked if they had the maps.

She stated the second issue is from the Natural Resources Conservation Service and showed a map, and that it relates to this piece of property, and indicated that this land is graded somewhat limited...it's either good somewhat limited or very limited. And that green suggests good...so that's adequate for any kind of development, but red is considered very limited, and indicates that the soil has one or more features that are unfavorable for this specified use...the limitations generally cannot be overcome without major soil reclamation...special design or expensive installation

procedures...poor performance and high maintenance can be expected...things like cracks in people homes, water in the basement, and stated despite the fact that this whole area is 2.25 acres...this is the area they are talking about developing...so it is significantly smaller.

She stated throughout this process they have made repeated requests to the City for receipts, copies of variances and records. And stated there is no variance application.

Ms. Elting stated they are going to primarily focus on the two major issues...the overall sub-development which after much discussion has been labeled a preliminary plat, and the variances...one regarding the ADA sidewalks, and the other regarding the street width.

She stated in 11-14-2 of the code regarding single family developments... a minimum lot required is 4,500 sq. ft., and stated she had an engineer calculate the square footage of 2 of the lots, and both of them are under 4,500 sq. ft., one is 3,920 sq. ft., and the other is 3,652, and that one of their major complaints is this is a small piece of property that they are talking about putting 5 homes on...on a block that currently has 5 homes, so by developing 1 little piece of land they will be doubling the concentration of buildings on that block.

Mayor Montgomery stated she will open it up for questions from the Commission.

Commissioner Green asked...the points that you are making right now were these points made at the P & Z Commission meetings or are these points that in retrospect when you step backwards...it's like...I wish we would of said this then, and you're saying them now.

Ms. Elting – these were made over and over and over again.

Commissioner Luna – you spoke about the view that if they develop the land there would be a loss of view...was that Mr. Stevens property...

Ms. Elting – no it is Delphine Motrose? And the Weeks.

Commissioner Luna – obviously you have a notebook...anywhere in there did you see a view protection ordinance.

Ms. Elting – there is not a view protection ordinance.

Commissioner Luna – okay.

Ms. Elting – but with that being said I think that part of P & Z...it's not just zoning it is also planning...and has everyone been to see this piece of property...it is the last remaining piece of property like that up on that ridge.

Mayor Montgomery – you referenced the letter from Merry Jo Fahl, and knows she has presented things here on behalf...but is she an engineer?

Ms. Elting – I don't believe so.

Mayor Montgomery – what happens with the parking now on the roads...do people park on the roads now.

Ms. Elting – people park on Joffre...you cannot park on Gold...I mean if you park...although they do...people do actually park...

Mayor Montgomery – so what happens with the fire and ambulances when those people are parking on the street...?

Ms. Elting – it is potentially a problem.

Mayor Montgomery – so there is a problem now.

Ms. Elting – correct.

Mayor Montgomery – and I appreciate the comment about it's the last...so are you saying no one should be entitled to develop.

Ms. Elting – no that is the first thing I said...was I don't think they would be here if the plan were 1 or 2 single family homes to be put on to that piece of property...but the idea of having 3 trailers, and 2 homes cramped into a small space...it sounds great 2 acres...it is not 2 acres...I don't actually know how it was calculated...I expected a formal presentation of maps as they have seen before.

Mayor Montgomery – so what about an apartment complex.

Ms. Elting – I don't think we would favor that either.

Mayor Montgomery – okay.

Ms. Elting – and they've been threatened with that.

Mayor Montgomery stated she would open it up for cross examination from staff.

City Manager Weiser – nothing from me.

Mayor Montgomery – proponents do you have cross examination.

Mr. Gutierrez – in reference to the noticing that there is no a view regulation in the codes...are you happy with the way the codes exist now...do you believe they protect your best interest.

Ms. Elting – I think potentially they do protect some of our interest...I would like to see a view protection code...I would like to see some codes about housing, and how it can be constructed, and what should be allowed...and that doesn't exist...there is lots of room for improvement.

Mr. Gutierrez – so there is room for improvement in the code.

Ms. Elting – sure.

Mr. Gutierrez – do you believe things like this bring out that evidence that it needs to be better.

Ms. Elting – not necessarily...I think that there are ways to use this code to improve our City.

Mr. Gutierrez – do you know where this code was derived from.

Ms. Elting – no I don't.

Mr. Gutierrez – can you explain what evidence you used to come to the conclusion that this development is higher density than the surrounding neighborhood.

Ms. Elting – I walk the streets everyday...there are currently 5 homes, and you're gonna put 5 more right there that would double

the density.

Mr. Gutierrez – and you're aware that the property goes further back than the end of the intersection of Gold & Joffre.

Ms. Elting – yes I am.

Mr. Gutierrez – in reference to fairness and the trailer park...who said this property was going to be a trailer park.

Ms. Elting – you did.

Mr. Gutierrez – when did I say it was a trailer park?

Ms. Elting – meeting 2.

Mr. Gutierrez – meeting 2 a trailer park...I said those words...a trailer park.

Ms. Elting – someone else can answer that they were at all the meetings.

Mr. Gutierrez – you would be happy if the property was developed with 1 home on it.

Ms. Elting – I would be...I certainly would not fight 1 home...I mean I'd like to have 1 home on that property.

Mr. Gutierrez – are you aware that even putting 1 home on there that most of the property would be re-graded.

Ms. Elting – I understand that.

Mr. Gutierrez – so is your comment about re-grading the property is actually valid.

Ms. Elting – I think it is valid...if I were going to build a house there I would want to know what would be the consequences of me doing that re-grading...I would want to know if I were to build a house, and maybe have a garage or a kids playhouse that it was not going to crack, fall down the hill, and cause damage to those down below me...so yes I would spend the money to at least do that.

Mr. Gutierrez – would you hire an engineer to do it for you.

Ms. Elting – yes I would.

Braxton Merritt stated she mentioned that they had been threatened...have I ever spoken to you before or met you.

Ms. Elting – no.

Braxton Merritt – have I ever threatened you.

Ms. Elting – no.

Braxton Merritt – could you be more specific about who threatened you.

Ms. Elting – could you remind me in what context I said that.

Braxton Merritt – that you were threatened that someone was going to build apartments.

Ms. Elting – oh that’s actually true...Billy Howell said that if you guys...you shouldn’t really fight this because it could be a lot worse, and they could build apartments...so it had nothing to do with you, but yes that is what they were told to more than one of them.

Braxton Merritt – and who is Billy Howell?

Eve Elting – he is head of the P & Z...no you did not threaten us.

Kathleen Kysinski Weeks came before the Commission and Mayor Montgomery swore her in. And stated she was going to read findings and facts, and indicated if these findings of facts were discussed it was a cursory manner...not in the manner delineated above, and stated the final decision was just based on the variance request.

She referred to the municipal code 12-2-2G regarding preliminary plats states...findings of fact for recommendations and decisions in considering all requests...the Planning & Zoning Commission shall review applicable plans and determine whether the requests will...1) impair an adequate supply of light and air to adjacent property, 2) and increase the traffic in public streets, 3)increase the danger of fire or endanger the public safety, 4)deter the orderly and phased growth and development of the community, 5)unreasonably impair established property values within the surrounding area, 6)in any other respect impair the public health safety in general welfare of the City, or 7) constitute a spot zone, and therefore adversely affect adjacent property values. And stated the Planning & Zoning Commission shall review each of the above listed factors and accord each factor of the necessary weight on a case by case basis and making its determination...this was not done, and stated they will speak individually to numbers 2-6 and will in our opinion if the Planning & Zoning Commission had adequately, and fairly analyzed the facts and considered the experts i.e., Public Utilities, Fire Chief opinions...they could have not granted this subdivision. #2 – Unreasonably increased the traffic in public streets by doubling the density of homes on one block from 5 to 10 by having one driveway to access 5 lots...traffic will undoubtedly be increased on Silver, Joffre as people approach from the East, and down Gold as they approach from the West, and taken in conjunction with the granting of the street width variance to be discussed later this only compounds the issue of increased traffic in a tight space and a very awkward turn. #3 – Increase the danger of fire or endanger the public safety...there are 2 major issues here...the width of the street, and then the misrepresentation in disregarding of the fire chief’s opinion and concerns. In a letter to the City Manager dated 9/14 Sandy Jones response to the question will the possible ramifications of the City ignoring the letter from the City Fire Chief, and he stated “it is my opinion that ignoring the width requirement of the street, and the minimum size of the water main could have serious ramifications for the City especially if a fire were to cause major loss of property or even lives, a letter on file from the fire chief pointing out the problems could make the cities legal position even more precarious.” #4 – Detour the orderly and phrase growth and development of the community...the purpose of maintaining city codes is simple is intended to provide for the improvements and upgrading of the city in a manner that remains wholly consistent with all possibly applicable State and Federal Laws...any granting of a variance or wholesale approval of a new development must satisfy the inherent moral imperative which requires that such an action may only serve to improve the adjacent neighborhood...this issue of being 5 homes closely compacted with 3 of those being old trailers is something which almost everyone can agree does not constitute appropriate phased development or an improvement in any neighborhood. And stated Mr. Howell cited this at the last P & Z meeting regarding

another development...interestingly didn't seem to be an issue when the Braxton Merritt development was under consideration. #5 – Unreasonably impairs established property values within the surrounding area, and stated they have all talked to real estate agents here unanimously and unequivocally have said that a development such as the one proposed who decrease property values. They all know that a trailer adds no value and does not appreciate...it depreciates over time. #6) – In any other respect impair the public health, safety and general welfare of the City lack of sidewalks impairs public safety which will be further addressed subsequently...again due to required alteration of the land that would be required to complete this development there is a strong possibility that with a heavy rainfall adjacent properties could suffer irreparable damage, and that a fire could jeopardize not only homes but residents and our firefighters...additionally if the surrounding properties are any indication the addition of 5 tightly packed homes...houses brings a possibility of 5-15 dogs...maybe more.

Mayor Montgomery asked if there were any questions from the Commission.

Commissioner Green stated in the light of fairness and you mentioned old trailers...do you know for a fact...

Ms. Weeks – no not for a fact...we're just assuming the worst...I'm assuming the worst.

Commissioner Green – so that was just a statement but not necessary in fact that Mr. Braxton Merritt is going to put old repos...I just wanted to clarify that.

Commissioner Luna...Ms. Weeks you spoke in some great detail about the property values...if the homes that are to be placed on that 1, 3, 5, 15 were site built homes, and not manufactured homes would they...increase your property value...how would you feel about that then.

Ms. Weeks – I'm thinking if they had 1 or 2 nice homes...I myself would love to have that property, but I couldn't afford it and just put 1 house right there in the middle.

Commissioner Luna – improvements that increase your property value you are not against.

Ms. Weeks – maybe just 1 or 2...I would say.

Commissioner Luna – and I hate to ask this question...the house you live in now I take it is not a mobile manufactured or modular home...I take it is a site built house.

Ms. Weeks – no I live in a mobile home, and my husband built a nice addition next to it, and my mom's house next door.

Commissioner Luna – there was a comment about the depreciating and not having any values so I was presuming you had a negative outlook on...

Ms. Weeks – I mean eventually someday maybe if I wanted to sell or something...

Mayor Montgomery stated when you queried all the real estate agents in town...which I guess is what your statement was...was there a comment about impairing property values only related to mobile homes.

Ms. Weeks – I'm not sure Madam Mayor...I can't give you a real clear answer on that.

Mayor Montgomery – I think your statement was that you talked to all the real estate agents and every one of them told us that this project is going to impair our property values...that's not quote for quote, but I think that's kinda what you said.

Ms. Weeks – that's the jest of it.

Mayor Montgomery – they told you that any development in that area is going to devalue your property?

Ms. Weeks – mobile homes...older mobile homes.

Mayor Montgomery – okay so they're talking about if old mobile homes are brought in that's going to devalue your property.

Ms. Weeks – correct.

Mayor Montgomery – okay I just clarification on that.

Mayor Montgomery stated she would open it up for the proponents.

City Manager Weiser – do I get to ask a question? Stated you were reading from chapter 12 of the city code.

Ms. Weeks – I don't...I can't tell you what chapter that was...I'd have to have the code...the findings of facts.

Ms. Elting in the background – it was 15.

City Manager Weiser – because I didn't...reading chapter 15 variances I didn't read I didn't see what you had down, and I addressed in my staff report when the variances were discussed what those findings were...were you at that meeting? I can't remember if it was August or September.

Ms. Weeks – was it one of the P & Z's...I'm sure.

Mayor Montgomery – now I will open it up for the proponents for questions.

Mr. Gutierrez – did you talk to realtors or did Eve?

Ms. Weeks – Eve did.

Mayor Montgomery – okay so you have no personal...you had no personal conversation with realtors.

Ms. Weeks – no ma'am...no.

Mayor Montgomery – okay.

Mr. Gutierrez – you made statements that the drainage will be either un-improved or made worse by the development, and what evidence do you have to show that...other than just personal opinion.

Ms. Weeks – I don't know that information at the point of my head, but there is other people who are going to speak and expound on that and give you all that information.

Mr. Gutierrez – are there any other engineers that are going to address that topic?

Ms. Weeks – would you like to have them address the topic.

Mr. Gutierrez – yea.

Ms. Weeks – not tonight maybe another time.

Mr. Gutierrez – is there a noise ordinance?

Ms. Weeks – I don't know.

Mr. Merritt – do you recall when the whole process got started with this that I came by your house and knocked on your door.

Ms. Weeks – yea it was about a half or two weeks after my mom passed away, and if I recall I said my husband wasn't home and he would be the one to talk to about that.

Mr. Merritt – but do you recall we did discuss me thinking about doing something with the property and that we were pushing for that.

Ms. Weeks – yes, but I wasn't sure about what I thought when I first looked at that plan, and studying it I thought it was just 3 lots right there.

Mr. Merritt – do you recall the first thing I pointed out to you was that you were going to probably be the one that got the view blocked worse than anyone else.

Ms. Weeks – yea I do.

Mr. Merritt – what is the age of the mobile home you live in.

Ms. Weeks – 1990.

Mr. Merritt – okay and didn't you tell me you used to live in the one next door.

Ms. Weeks – no that was my mom's house.

Mr. Merritt – okay...is that site built or is it a mobile home.

Ms. Weeks – site built.

Mr. Merritt – okay...and your husband is in the fire department.

Ms. Weeks – yes.

Mr. Merritt – do you know or could you tell what kind of relationship he has with the fire chief. Is it strictly business...what I'm getting at...are there functions that they go to.

Ms. Week – I tend to be more recluse...I don't usually get out to much.

Mayor Montgomery – okay let's focus on the actual...

Ms. Weeks – very professional.

Mr. Merritt – I guess what has been asked of me...was if I had any kind of business relationship, or any kind of personal relationship with people on the P & Z...I guess people with the City, and that would be my next question regarding...when the City Manager and Anthony met the fire chief out at the property at looked it over...apparently it wasn't a problem...so my question is...is there

potentially any reason why he may be influenced after the fact to change his mind based on having some kind of personal relationship. Mayor Montgomery – you know Mr. Merritt...don't answer that (directed to Ms. Weeks) okay what I'm going to ask is that I am going to call the chief up and let you ask him that personally.

Ms. Susan Lynch came before the Commission and Mayor Montgomery swore her in.

She stated she was going to address the variances...as you all know very well that before recommending approval of variances following finding of facts must be assured, and indicated these finds go from the city zoning administrator to the planning and zoning committee, and then to you all.

Ms. Lynch stated they feel that the positive findings of fact for the development are not quite accurate. She stated the first required findings of fact is that granting a variance shall not constitute a grant of special privilege inconsistent with the limitations on other properties in the area of notice. And stated they have a huge area of notice, and they believe that Mr. Merritt has been granted special privilege through this process.

She indicated most of what had been previously discussed regarding issues for this process not being done correctly, incomplete information, or documentation not being turned in a timely manner, and also about fees that have been waived by the City. She also brought up that green poly carts had been approved to service this development. Another concern mentioned was the width of the street, sidewalks, and codes not being upheld regarding notice on property, and the granting of variances.

Ms. Lynch stated she also spoke to several realtors who all said and agreed that the development as proposed would decrease the desirability and profitability of our homes. And also stated at one of the meetings that they are in a recession or something close to that, and that lots of people don't have money, and that the lots will be pricey and who in the world would buy them...and also because they are all jammed together...it's really not attractive. She stated Mr. Merritt came back and said that if it was left vacant for 2 months he would bring in trailers...and there was a question asked as to what kind of trailers...and he said he would make sure that they were fairly nice trailers, but the truth is that single-wide trailers which is what they would require can't be brought into Sierra County...so the only kinds of trailers that can go there are older ones...and yes some maybe still very nice...at least that is what she was told...code wise.

She also referred to that 5 structures squeezed onto the lots seems excessive, noise pollution, light pollution, traffic and human pollution increases.

Mayor Montgomery opened it up for questions from the Commission.

Commissioner Green – to follow up on your last paragraph...are you eluding to an existing regulation, or code, or law that's in T or C's code book or Sierra County code in whether you can't bring in new trailers...I've never heard of that before...so.

Ms. Lynch – I will tell you it's hear say on my part, but I was told several times by different people, and I cannot quote to you...but perhaps someone else can answer that.

Commissioner Green – okay.

Ms. Lynch – but it seems kinda reasonable. And stated she would like to say something about property value...I live in a really old trailer...it's a 1965...it's a Vintage...I don't think you can get any older.

Mayor Montgomery – and the comment you made on what the realtors were talking about...the recession that they don't think anybody is going to buy anything anyway.

Ms. Lynch – they didn't say that I said that.

Mayor Montgomery stated she would open it up for staff.

City Manager Weiser – no questions.

Mayor Montgomery stated she would open it up for the proponents.

Mr. Gutierrez – you made a reference about the city dumpsters, and I'm bringing this up in the issue of fairness keeps getting brought up, and I think one of the things I want to ask you that may clear this up hopefully...Are you aware that half...nearly half of Gold Street right now including the dumpsters, and anything on the West end of Gold is on Mr. Merritt's property.

Ms. Lynch – there is only 1 dumpster.

Mr. Gutierrez – I know...anything the mailboxes...anything that's on that side of the street right now is on Mr. Merritt's property...do you think that is fair?

Ms. Lynch – I don't think anything is very fair.

Mr. Gutierrez – okay. Were you aware that encroachment on Gold is one of the reasons that the agreement was even brought up for the variance...nearly half of Gold Street is on Mr. Merritt's property...it was installed there as an encroachment...there was never an easement made or granted for that improvement, and so that is one of the reasons that they requested the variance because it seemed like it was in fairness that if he is giving up a substantial amount of property to widen the road...do you think that is unfair.

Ms. Lynch – I think that is why he didn't put it on the paper like that...there is nothing about widening the street.

Mr. Gutierrez – we did exactly what Charlie asked them to do.

Ms. Lynch – so it was very hard for us to know then.

Mr. Gutierrez – yea I guess so. Do you think the fire chief's letter makes all neighborhoods with 4" lines a potential public safety hazard in T or C?

Ms. Lynch – did I mention 4" lines.

Mr. Gutierrez – well that's the problem is 4" lines.

Ms. Lynch – I only brought up street width...

Mr. Gutierrez – okay...okay because Silver is as wide as Gold right now. If the subdivision is denied do you think the neighborhood will be improved and safer with a narrow road the way it exists now?

Ms. Lynch – it will be just like it is.

Mr. Gutierrez – so it will be less safe or safer.

Ms. Lynch – it will be the same as it is right now....it won't be less or more.

Mr. Gutierrez – do you believe it would be safer if it's approved.

Ms. Lynch – it will be just like it is right now.

Mr. Gutierrez – if it's wider.

Ms. Lynch – oh...if it was widened...if you widened without a development going in.

Mr. Gutierrez – if it was widened with the development would it be safer...than it is now.

Ms. Lynch – it would be safer.

Mr. Merritt – stated this is a request for a subdivision just to subdivide the land...anything on it at this point...can you tell me when I said that after 2 months I would put mobile homes.

Ms. Lynch – it was either the 2nd or 3rd meeting. And I got up and stated that I was concerned that you would make lots...you would clear the land, and put in a lot, and no one would buy them because they were going to be too expensive, and all jammed together, and you got up and said that within 2 months-time if nothing had sold you would bring in trailers...you may not have called them trailers...but mobile homes you would bring in.

Mr. Merritt – so I wouldn't be able to put a stick house on it if the land wasn't subdivided.

Ms. Lynch- you wouldn't be able to put a stick house on it...

Mr. Merritt – I believe that is what I heard you say.

Ms. Lynch – no...I don't know what you're able to do...it's just that you said that in 2-months-time...that you would bring in trailers.

Ms. Sandra K. Cushman 900 Joffre came before the Commission and the Mayor swore her in.

Stated she just went through 2 months-time time trying to get her mailbox moved off his property. And stated she would also like to have the street widened.

Mayor Montgomery opened it open for questions from the Commission.

No questions.

Question from staff. No questions.

Questions from proponents.

Mr. Gutierrez – when were you asked to move the mailbox?

Ms. Cushman – I did it on my own.

Mr. Merritt – do you believe if the road were widened to any extent it would make it easier for you?

Ms. Cushman – I think it would make it a lot nicer for the whole neighborhood if the City would widen Gold, Silver & Joffre.

Mr. Merritt – I agree thanks.

Mr. Neil Weeks 802 E. Joffre came before the Commission and Mayor Montgomery swore him in.

He stated the project has been flawed from the beginning, and that the first Planning & Zoning meeting the developer submitted plans no up to city code, and admitted he did not know what the city codes were. And stated they were told by the owner of the property that he told his people that he didn't know what the cost was he wanted it done correctly.

Mr. Weeks stated at the Planning & Zoning meeting that the City Manager first got involved with he stood up as a proponent for the developer, and requested that the variances he was asking for be voted on without any public comment.

He stated at the last Planning & Zoning meeting the same thing happened the City Manager stood up and spoke as he were an agent for the developer adding the waiver to the application fee...in adding the waivers to the application fees granted to the developer...it just doesn't look right, and indicated this looks very unethical. And stated the City Manager should not be on side or the other, and that he should be looking out for what is best for the City.

Mr. Weeks stated he does not fault the Planning & Zoning Commission for the length of this process...the fault lies with the lack of preparation in not following city codes by the developer. And stated he wholly endorses the fire chief's recommendation for the street width, and hydrant location, and as a firefighter he can attest to the need of every inch of roadway in the event of an emergency situation. And at the last Planning & Zoning meeting these recommendations appeared to be totally ignored.

He stated the basic issue is profits...nowhere in the city code does it say that a variance...that a variance can be granted to keep the developers profit margins high, and indicated at the beginning of this process the developer said...you wanted to do it right, and stated that's all he has been asking for...to follow the city codes.

Mr. Weeks stated he is not against profit...but profit at the cost of the safety at his neighborhood is wrong, and people that don't live in his neighborhood, and probably never will were making major decisions about his neighborhood.

Mayor Montgomery opened it up for questions from the Commission.

Commissioner Luna – 27 feet that has been recommended...if you add the width of a 6' car and then the...if you take the 27'...if you take the 27' a car usually parks they have 18 inches from the curb to park legally so that takes you to 34 feet in width...my question is if they do make covenants on their subdivision that people cannot park on that road what would equate the 6 or 7 feet are you comfortable as a firefighter, and a resident of that neighborhood in the fact that a fire truck, and an ambulance, and a police car would have room to park.

Mr. Weeks – no.

Commissioner Luna – is every road you as a firefighter go on 34 or 36 feet.

Mr. Weeks – no.

Commissioner Luna – is there still a way to get a fire line to a fire...a water hose to a fire.

Mr. Weeks – yes there is but you have to realize when they operate these trucks...they have lines going every which way...doors are open...the truck maybe legally 8'wide by Federal DOT...but they have apparatus sticking out every which way, and they need the room to operate, move and get around the trucks.

Commissioner Luna – okay. My second question regarding 4 and 6" lines...can you name one place where there is a 6" line in T or C currently?

Mr. Weeks – there are 8" lines downtown.

Commissioner Luna – okay in residential areas.

Mr. Weeks – in residential areas...off the top of my head you would have to refer to the fire chief.

Commissioner Luna – do you feel that a 4" is adequate to fight any fire you have been on in a residential area. Do you feel your home is inadequately protected because there is a 4" line there now...maybe that's a better question?

Mr. Weeks – actually no because we have fire hydrants...within the mandatory 650'. So they have water on the truck and can drop a line from the fire hydrant.

Commissioner Luna – where is the fire hydrant in relation to the property?

Mr. Weeks – it's actually in the alley on 2nd Street in between Silver & Gold.

Mayor Montgomery – where did the statement come from that...it's not the City's goal to keep the profit margins high.

Mr. Weeks – I didn't say that.

Mayor Montgomery – did I miss hear that.

Commissioner Luna – no.

Mayor Montgomery – you did state that. Commissioner Renfro stated – you did say that.

Mayor Montgomery – stated you said it should not be the City's goal to keep the profit margins high for the developer.

Mr. Weeks – no. I said nowhere in the city code does it say that the variance can be granted to keep the developers margin high.

Mayor Montgomery – okay. So are stating that someone said that or...

Mr. Weeks – I'm saying that...I've looked through the code myself...I cannot find it...

Questions from staff.

City Manager – no ma'am.

Questions from proponents.

Mr. Gutierrez – are you aware as part of the agreement for the approval of the subdivision that the hydrants are to be installed at the corner of Gold & Joffre.

Mr. Weeks – Yes I am.

Mr. Gutierrez – why didn't you make Ms. Luna aware of that?

Mr. Weeks – what are you talking about?

Mr. Gutierrez – you told her a fire hydrant was 650' away.

Mr. Weeks – she asked where the nearest one is at the moment...that's the way I understood the question.

Mr. Gutierrez – I mean I think everybody wants to know where a fire hydrant will be as far as...she asked about the development.

Mr. Weeks – that's not my understanding of the question...my understanding of the question was where the nearest fire hydrant is at the moment.

Mr. Gutierrez – there will be a fire hydrant...

Mr. Weeks – I now where the fire hydrant will be yes.

Mr. Gutierrez – and you are aware that was agreed to improve the neighborhood...correct.

Mr. Weeks – yes.

Mr. Gutierrez – because there are homes that...are you aware that there are homes at the corner of Gold & Joffre that are not within the minimum distance of the fire hydrant right now.

Mr. Weeks – that's correct.

Mr. Gutierrez – and by adding this fire hydrant that will be accomplished.

Mr. Weeks – but if it's not up to ISO standards then...

Mr. Gutierrez – the one that services now aren't up to ISO standards is it?

Mr. Weeks – I'm not an expert on that...I don't know where all the 6" lines are in the City.

Mr. Gutierrez – okay. I think that was brought up in the Commission meetings, and that question was actually answered and it was on a 4" line.

Mr. Weeks – but those were grandfathered many years ago...from my understanding those were grandfathered in many years ago, and according to the...from what I have read from the city code it says that a fire hydrant needs to be hooked to a 6" line.

Mr. Merritt – do you believe that widening the street to an extent would make it easier to get a fire engine down the street.

Mr. Weeks – depending on how many house are on there.

Mr. Merritt – for you to drive down the street.

Mr. Weeks – yea because it depends on traffic and how many people are actually living there...how many people need to egress.

Mr. Merritt – so how many vehicles are on the street.

Mr. Weeks – what happens if they have to evacuate everybody?

Mr. Merritt – so if it's wider than the existing street...you don't think it would make it any easier to evacuate people?

Mr. Weeks – if they can't get by the fire trucks...I don't see how we can get anybody out.

Mr. Merritt – okay. If I were to build a 34' tall structure...I don't recall as to what they said the maximum height was...32 would that block your view.

Mr. Weeks – yes.

Mr. Merritt – if I were to build a one-story stick built home would that block your view?

Mr. Weeks – No.

Mr. Merritt – no...okay.

Ms. Jane Green came before the Commission and was sworn in by Mayor Montgomery.

Stated the experience has been really difficult, and stated she attended the planning meetings, and what she experienced that it was incredibly hard to know what was true and what wasn't true, and that it was hard to get information. And stated there is a requirement that Planning & Zoning...give a statement in writing has a decision on any development, and that be available in writing, and they were told it was okay with them.

Questions from the Commission.

Mayor Montgomery asked if she owned a home or land.

Ms. Green – a home.

Questions from staff – no questions.

Questions from proponents – no questions.

Mr. Jacob Summers 154 S, Magnolia came before the Commission and was sworn in by Mayor Montgomery.

He stated it is clearly established that certain privileges have been granted to the proponent by public officials and public employees, and the exceptions granted in order to satisfy the demand of this proponent had unduly necessitated the total disregard of established policy and procedure as provided for in city code. And indicated it is also established that public employees have failed multiple instances to abide by the requirements established in the proper procedures as provided for in city code.

Mr. Summers stated such behavior would warrant reprimand, but as a pattern of behavior clearly warrant close scrutiny for members of the Commission and possible termination of employment for those failed

to be in contempt of city code in the conduct of their official duties.

He stated it is further established that the?? Inaudible approval of the proposed variance requests would adversely affect the health, safety, quality of life, and property values of those neighbors directly adjacent as well as those future residents within the proposed subdivision. And to?? Inaudible the basic standards of city code in order to facilitate the needs of one individual create adverse effects upon those who should be protected prior to construction by proper?? Inaudible by city officials. And stated the facts that have been submitted as evidence require this Commission to respond in a well reason manner to the abuses of process which have resulted in the disenfranchisement of the ?? Inaudible who have expressed unanimous opposition to the proposals on the proponent.

He stated rather than operating under the assumption that such a development may create good and improvement...one should observe that the requirements of law, and then proceed with too haste to enforce city code while protecting the best interest of the community in the same process.

Questions from the Commission.

Questions from staff.

City Manager Weiser – I thought I heard you say that there were privileges granted to Mr. Merritt at his request...very first part of your statement.

Mr. Summers – yes.

City Manager Weiser – and what were those?

Mr. Summer – well I believe that those that have been reviewed tonight in terms of the variances...those have been pointed out. In many cases...the dumpsters...it's all been presented prior to my coming up here.

Mr. Gutierrez – you used the statement that the conclusions that you came to had been firmly established by whom.

Mr. Summers – we feel it has been established with our presentation, and worked on by many people for a long time...I actually live in the neighborhood and I agree with all that has happened here.

Mr. Gutierrez – you used the word unanimous, and stated they notified over 47 people in a 300' radius...and there are not 47 people here I don't think...I don't think it's unanimous. Is it unanimous?

Mr. Summers – no.

Mr. Merritt – have I ever met you or do we know each other.

Mr. Summer – we did meet you did come and talk to me when you first came to the neighborhood...you came to my home.

Mr. Merritt – would it surprise you if I told you I knew you better than anyone on the P & Z that voted for it, or anyone that potentially granted me special privileges.

Mr. Summer – yes.

Mr. Merritt – well it's not true.

Mr. Summer – I spoke with you for 5 minutes.

Mr. Merritt – the point I'm making is I never met someone on the P & Z before. It was clearly stated that what I intend to do is lower the values of the neighborhood and that numerous realtors...real estate agents felt that it would devalue the properties in the area.

Mr. Summer – yes.

Mr. Merritt – do you agree with that.

Mr. Summer – absolutely.

Mr. Merritt – have you spoken to realtors.

Mr. Summer – I have not. I have only spoken to a friend of mine who is a former realtor...she feels the same way.

Mr. Merritt – do you think...you said you live on Magnolia.

Mr. Summer – yes.

Mr. Merritt – okay. I own a property on Magnolia and two homes on Riverside directly below and part of the project, and I'm a real estate broker, and I have been in the business for close to 20 years, do you think I would lose something to intentionally harm the value of my properties.

Mr. Summer – is your property in this area directly associated with the development.

Mr. Merritt – yes sir...I actually own 2 homes and 1 mobile home that's within the area...I have received letters from myself basically.

Mr. Summer – well apparently you don't believe that it would devalue your home. I feel it would devalue the entire neighborhood.

Mr. Merritt – okay thank you.

Mr. Bradley Grower came before the Commission and was sworn in by Mayor Montgomery.

He stated in all the previous meetings that he has attended there has not been 1 proponent that has stood up in support of this proposed development who wasn't directly related in a financial manner. He thinks it's fairly clear that there is a group of dedicated people who did their diligence that was missing in this process, and if this Commission is to weigh this, and deliberate over a period of time...I'm sure you will come to a well reason decision...if you're decision is forth coming tonight so that you can move on to item H-1 than I will be extremely disappointed in the level of diligence that is shown.

Questions from Commission – no questions.

Questions from staff – no questions.

Mr. Gutierrez – no questions.

Mr. Merritt – no questions.

Mr. Ronald Fenn came before the Commission and was sworn in by Mayor Montgomery.

Mr. Fenn's comments were about several signages all over town in regards to Mr. Merritt's signs "**cash for houses**".

Mayor Montgomery asked that he focus on the property in question.

Mr. Fenn stated this is another situation where in another development, and that he is going to turn it into a billboard for propagating his business and creating an eyesore in the neighborhood as in many other neighborhoods, and believing that allowing this activity to go on in our City code opens them up to every person who has an interest in some kind of business to put signs on their lawns advertising their wares, and everything else not in commercial areas even...these are residential areas. And also has to question the quality of workmanship that he saw done at the Dakota Apartments...and that they need to take a look and see what a poor job that was done...it did not improve the neighborhood.

Questions from Commission.

Mayor Montgomery – so your statements are referring to a different piece of property...so are you stating that your assumption would be that this developer would do exactly the same thing in this area as he is doing elsewhere.

Mr. Fenn – well there is no reason to believe that it wouldn't happen...the evidence is there.

Mayor Montgomery – that's why I asked the question.

Questions from staff – no questions.

Mr. Gutierrez – you're going to take this the wrong way but what do you think the difference between the apartments on Foch, and this development is.

Mr. Fenn – I have no idea what the difference is...all I know...

Mr. Gutierrez – are there homes on the upper part of this development right now.

Mr. Fenn – on the development that you are talking about...the proposed development...there is one house that I know of.

Mr. Gutierrez – on the upper part that they are adding the new lots on.

Mr. Fenn – that's it.

Mr. Gutierrez – are you sure about that?

Mr. Fenn – well no I'm not sure...I'm just talking about what I see in general all over the town.

Mr. Gutierrez – in reference to this development though.

Mr. Merritt – no questions.

Ms. Joyce Hudgens came before the Commission and Mayor Montgomery swore her in.

She stated the things that are wrong that had been done wrong is when they have a preliminary plat...when you okay it for the next process it should go through the Public Utility Board and it has not, and stated it should have gone to the Public Utility Board before P &

Z passed it to the City or to the next step...this was never done, and the other thing...you fill out an application to do something in this town...you need an application you need a fee, and there is a process...in this instance they are supposed to send out certified letters...the certified letters were sent out they were never paid for...the applications for the variances one for sidewalk it was filled out improperly it was never paid for the sidewalks it was never received, and have requested from the City several times they couldn't be found, and that she was given a staff report that was supposed to be sufficient for a variance application. She stated her greatest concern on these fees that are being waived...not only is the City missing out, but the money is coming out of our pockets by them paying city taxes, and my greatest concern is the not following city code...not following the steps...all you have to do is read the code it tells you step by step what you should be doing...whether you're the developer...whether you are the City or the homeowners in the area.

Ms. Hudgens stated this has been ignored over and over again...we started out here fighting for this land...for the land use and our concerns on there...it is too congested...it has a 30' drainage utility easement...it goes down and makes a right hand angle to a 20' drainage easement which runs into a 5' easement. She stated even Sierra Soil was concerned about it, and indicated she turned it in to P & Z and the developer was aware of it...they never got a terrain management plan...we've not gotten the requirements of the city code, and stated when you turn in your application it is supposed to go to all of the city...to the sewer, water, utility, and parties interested that has something to do with the subdivision in this city, and that they are supposed to get information on this to be built and they are supposed to in writing reply back with their concerns...this was not done...if this was done properly the fire chief would not have been humiliated in the first place, and has been insinuated that they turned him to us.

She stated she has never talked to Mr. Tooley until after the meeting she had with the City Manager informing them before the meeting of requirements of variances...was told to him, and to the building manager the requirement of a variance before they ever had the meeting, but yet he went ahead...he said no, no it's taken care of until they went to P & Z, and they were informed once again by P & Z of the city requirements, and this is what they have been fighting...we wanted to fight for the land and the concern...the congestion...you guys might have driven by our property that they have been fighting for, but they didn't see that land because they don't know where that easement goes...they don't know where that water is...you don't know the cut in that it makes...didn't anybody tell you there is going to be one entrance to the driveway for all these homes and that it's going to over this easement.

Ms. Hudgens stated there is a lot of things they haven't seen in there...the other thing they are going to do...there is lot 1, 2, 3 there is a 30' easement, and over on the edge of the mountain...slopes whatever you want to call it...lot 5 there going to have over 7' of fill dirt going in there...there going to have 2 retaining walls...a 2' and a 3'...do you think in our rain that's gonna hold that, and who owns the homes below that...Mr. Merritt, but he's not concerned because it's his property, but he also wants this subdivision to go through...it's not his concern because he's gonna sell it and he's gonna be gone...my concern is if they had to go through this process this far this hard just fighting for the enforcement of the code can you imagine let alone the land because they...Mr. Merritt said he would not build a one story house...he was initially gonna build a two story house...he said no, no I won't...that was ignored, and every process

and every little inch they thought they made have been ignored in this process, and that it is serious and boring to you guys, but they have fought for months, and they don't have enough time to tell them everything that has been done and this is truly their concern.

Question from Commission.

Commissioner Luna – stated she know she requested this from all the letters to you and from you...this is the application for the road width...at the bottom there is a notation it says page 2 of 2...in all of your requesting's did she get page 1 of 1, because they heard testimony I think it was Eve said there was a notice from Charlie that there was no need for a street variance...here's my point...could and I hate to even think this...could the street variance have been...I mean the sidewalk variance been faxed over with this and it had been page 1, or was there a cover sheet that was page 1, because nowhere in the stuff they have is there 1 of 2, and so I'm asking obviously in your mountains of paperwork if you recall seeing it, or did it get discarded by city staff...god I hope not.

Ms. Hudgens – I have the same thing you do, and I have several requests here, and the first time I didn't get it, and in all three requests that I had to the City for sidewalks I was never ever given an application for a sidewalk, but one of the last requests I made for a variance...for the sidewalk I was given a copy of the 2nd staff report which had the City Manager's variance facts of finding on there, and that was the assumption from Charlie...that's what he was calling an application for a sidewalk.

Commissioner Luna – so we don't know if page 1 of 2 was the sidewalk variance as Braxton Merritt had said they faxed both of them at the same time or if it was a cover sheet.

Ms. Hudgens – if you notice at the top of that did you see the date that was...

Commissioner Luna – yes 9/3/10.

Ms. Hudgens – and the meeting was that Tuesday, and when you fill out your variance you pay your fee...you send out certified letters first.

Mayor Montgomery – I guess my question or my statement...I certainly hope that your statement about us not considering this to be a concern, and they just want to hurry up through this process...I hope that isn't your true feeling, and if it is I hope that the Commission hasn't said anything this evening to give you or anybody in the audiences that feeling...I'm concerned about that comment.

Ms. Hudgens – I'm sorry...when I said that tonight because of the late hour and they have been so great sitting here and listening to all of this...it's all new to you and all old to us...it's hard for us to start over and give it to you because we know it so well, but to make it clear to you guys...it's hard.

Mayor Montgomery – and that's why...

Ms. Hudgens – our impression of the hurry up of the push through has been through Planning & Zoning...we got there, and then they get a technical review committee that comes in there and just seems like to fast track everything when it's in the code that this process should have been done, and if that would have been done there would have been no reason for a technical review committee...except to dot

some i's and cross some t's...that's great if you follow your codes first, but not to take the place of your codes, and not to push it through...that's where they felt pushed through.

Mayor Montgomery – okay I just want a clarification on that point.

Questions from staff – No questions.

Mr. Gutierrez – where do you live?

Ms. Hudgens – on Magnolia and I'm not giving out the address as last time I did it was all over the newspaper. You know where I live.

Mr. Gutierrez – I really don't know. I'm interested in geographically around the project...where you live.

Ms. Hudgens – I live on the west side of your project.

Mr. Gutierrez – on the west side of Magnolia down towards Riverside or up on the top?

Ms. Hudgens – up on the top for now.

Mr. Gutierrez – that was my only question I just wanted to know...I have everybody else in my head. Do you want the property to be developed different than the zoning code specifies.

Ms. Hudgens – different than the zoning code...what code is that?

Mr. Gutierrez – the zoning code for the property for R-3. The density that it specifies.

Ms. Hudgens – that's kind of fishy there...they say it's R-3...it is R-3 up on top but down below us is RR-1...so it's a combination of the two.

Mr. Gutierrez – on the top...I think the area we're all concerned with is the top.

Ms. Hudgens – okay R-3.

Mr. Gutierrez – do you want it to be developed different than the zoning code specifies.

Ms. Hudgens – I want a lot of things but it's not going to happen...what I would like to see...honestly I don't want any development because I would like something between me and that street over there...I don't mind the development but what gets me is on that corner there is two homes and then Mr. Stevens, and you want to put 5 with a 30' drainage easement, so I guess yes...I'd want to see something different I think you're over-crowding it and build it up for it to slide down.

Mr. Gutierrez – so yes okay. Do you know there is a process for changing the zoning code in T or C?

Ms. Hudgens – yea and I never had a problem until you showed up.

Mr. Gutierrez – okay.

Mr. Merritt – I may have misheard you but I thought you said that I didn't care about the drainage because it would only drain down and destroy my property below.

Ms. Hudgens – I believe it was one of our first...yes it was the first meeting when you stood up and talked, and they were concerned about the flow of water coming down after you came in and leveled off the property and all the bushes and cleaned it off we were concerned about the water run-off, and you said all I can remember is the end of what you said...you said if anybody would have a problem I should and I don't because I own the two homes down there...that sticks in the back of my head.

Mr. Merritt – I think the comment was I should be more concerned than anyone about the drainage...because...

Ms. Hudgens – that could possibly be it.

Mr. Merritt – and it is over a three thousand square foot home so yes I do have a lot to lose if it's not done properly...so I do care and I believe you did make a comment that I only own the homes below...there is a property, and I don't believe there here tonight, but they share the drainage at the bottom with me...do you know if they are here to oppose.

Ms. Hudgens – no I don't think she has ever opposed it, and I talked to her about that and I asked her if she was going to come to the meeting and if she had any concerns about it, and she said no because Braxton said that he would take care of it.

Mr. Merritt – and did she express...we had a pretty heavy monsoon season this year...did she express any issues with drainage during that.

Ms. Hudgens – I didn't talk...

Mayor Montgomery – I'm not a judge but I'm going to pretend I am, and I think that you're trying to ask her a question of someone that is not here that can give you the answer...so I don't think it's appropriate that would be third party hear say.

Mr. Merritt – okay but you did say that neighbor has never been here to oppose.

Ms. Hudgens – she came to a P & Z meeting, and they asked for proponents or opponents and she stood up and said I don't know who I am...she says I just wanna ask two questions.

Mayor Montgomery stated she will move on to the Public Presentation portion, and asked if there was anyone who would like to make a presentation, and called on Fire Chief Tooley.

Chief Paul Tooley with the Truth or Consequences Fire Department came before the Commission, and was sworn in by Mayor Montgomery.

Mayor Montgomery asked if Chief Tooley could clarify the document provided to the Commission.

Chief Tooley stated the letter is stating what the city code is, and that they fall under the Uniform Fire Code and NFPA, and that is basically what that letter states is what their own city code is, and stated what they do with it right now they will live with what is down there if that is what it is going to be, but from NFPA and Uniform Fire Code that's what it states.

He stated there are a lot of streets in town a lot of hydrants in town that probably don't meet city code, and this is what they recommend

that the street go to, and if they are going to put a hydrant down at the end.

Questions from Commission.

Commissioner Renfro – since there is an existing 4 inch line...

Mr. Tooley – that I don't know...I believe Magnolia...the hydrants that come up Magnolia Street I think are on 4 inch, but I have no idea what's in that area.

Commissioner Renfro – our understanding is...is that it is an existing 4" line...so if the developer was required to put in a 6" line...it's not going to do any good...right.

Mr. Tooley – it's still going to be a 4".

Commissioner Renfro – would it still be better to go along with that and require the 6" even though it's not going to in case the City later on...

Mr. Tooley – there is no hydrant there now at the end of that block, and thinks the nearest one over on Magnolia, and one on 2nd & Silver I believe...so having a hydrant there is going to be better than not having one.

Commissioner Renfro – okay.

Mr. Tooley – and having the street wider than it is now is going to be better than what it is now. And stated when they look at this from ISO which they get rated...that's how they get their fire funds, and stated everything in the City from water pressure to our dispatch time, and how many personnel show up our training to everything they do is how they receive their state funding.

Commissioner Renfro – and how much of a penalty do you...

Mr. Tooley – couldn't tell you, because a lot of times they will come in and look at different areas of the City and look at various things, and they either meet them or they don't, and based on that huge calculation is how they get their ISO rating as a fire department, and then the State Fire Marshal takes that rating and that's how they disperse fire funds for the City.

Commissioner Green – NFPA...does every city automatically fall under that jurisdiction or is something that the City has to adopt a resolution.

Mr. Tooley – the City adopted it.

City Attorney Rubin – our city codes adopted that group of law.

Mr. Tooley – that group of law and any subsequent laws that may come out under NFPA...usually every year there is a new version of NFPA, and based on that the City in past has adopted the Uniform Fire Code as well as NFPA.

Commissioner Green – so in essence...any subsequent change that...basically any change that is not what is mandated for them right now would be dumbing down the code, and has a potential to be dilatory as to health, welfare, safety and litigation.

Mr. Tooley – well I think it would be about the code. In a real world it does not work...it's not a perfect world so from that standpoint if

they did then they wouldn't be Class 5 in the middle they would be a Class 1 with ISO, so based on that there is a lot of things that go into how a fire department is rated, and based on that being volunteer they strive to be better because if there ISO rating is higher everybody's insurance premiums are lower.

Commissioner Green – is there a requirement that the fire department notify an entity when a new subdivision is coming in being developed being built, or is it they just show up and they randomly do tests and that's how they rate them.

Mr. Tooley – it's basically rated I think anything that goes inside the City if a person is going to buy a building or structure inside T or C, and whatever insurance company that they may be dealing with they look that up to see what the ISO rating is, and that is basically how they determine the premiums for that person...so a lot of it is based on the ISO itself.

Commissioner Luna – so we are already dinged for our 4" water lines as it is now?

Mr. Tooley – the idea of course is as a municipal fire department is to have available water when you need it, and the City maintains those water mains...puts the hydrants on there...it's their responsibility but you're the ones that have to use that so whatever is there is what they use...if they can always make it better then they always try to do that because it just makes our job easier and makes everybody's lives better.

Commissioner Luna – and as you said we don't live in a perfect world, and they strive to be by the code but is it not in theory impossible to put in a new fire hydrant with a 6" main there without it creating and I believe the codes says...unexpected or exorbitant cost to the City and then...

Mr. Tooley – and that I don't know and where they would be getting off whatever main...I mean I don't know if they are going to have to tap in over on Magnolia or run further east...I have no idea.

Commissioner Luna – because as Commissioner Renfro said we can attach a 6" to the 4" but it still...

Mr. Tooley – if it's not a loop system it depends on...a lot of times if it's a loop system it gets water from both sides being looped so the pressure comes in from both sides...if it's on a dead end and you have a 4" coming down, and then you have a half mile of 6" and then you put your hydrant you still have a 4" because that is all you're going to be able to get to it, but if it's a loop system then you're gonna be able to get more pressure even if it is a 4", but there again I mean we have stuff in downtown T or C that is 8" and have a ton of pressure there, and they have some areas that are of some concerns and they try to get those to the City to say hey...what can they do in this area, and they may not be able to do anything for a while, but at the same time...I look at this from all the hydrants that they have because our responsibility is the City of T or C so they have to make sure they have plenty, and if they don't have a hydrant there then that's why they carry a lot of line so they can try to lay a hydrant wherever they are at...whatever they can get out of it.

Commissioner Luna – hindsight being golden...why didn't you tell Braxton Merrit when you met with them at site...

Mr. Tooley – they discussed a lot of things as to the width of the street...I don't even know what it is now, and Joffre is nothing but an

old goat trail through town anyway. If it is going to stay 24 then it is what it is, so no matter what happens they still have to live with whatever it is, so if they can't get it to where it needs to go it is still going to be there tomorrow. And my recommendation would be to widen the street...I did not know what the NFPA requirements were for the actual street, or what the city code was standing out in the weeds...if it was 27' or 29 or 36, so based on that let's go back and look and say hey...I'm always going to recommend what I believe from city code and NFPA but it's not a perfect world.

Mayor Montgomery – so I guess based on that last statement then...why would you even meet with them in the first place...let me clarify that...the reason...if you're meeting with a developer, and you are out there and talking off the top of your heads...both sides, and someone says oh well this is what we're proposing, and you say oh well that's cool, and then they use that as a premise to take that to Planning & Zoning but then your letter...and I understand the reason for your letter...your letter is going to meet the intent of the code, and it always will...it will never be anything different because you're never going to put your opinion in a letter, so why would ever meet with anybody...

Mr. Tooley – and I think a lot of that and this goes back to just the City itself...when things like this come about and in the planning stage...I think all parties need to be involved because the fire department is always the last one that gets kicked in the teeth at the end of the deal because all of a sudden...the horse is out of the barn, and now we are going...

Mayor Montgomery – one of the statements from Commissioner Jones is in there...it says reduction in the size of the water main serving the areas of the City could lead to the possible lowering of the ISO classification...is the opposite truth.

Mr. Tooley – yes.

Mayor Montgomery – so you get extra credit for the 8" lines downtown.

Mr. Tooley – it's all based on fire load in a certain area.

Mayor Montgomery – is commercial supposed to be 6" or...

Mr. Tooley – most of the commercial in downtown T or C is 8.

Mayor Montgomery – correct but is it supposed to be 8?

Mr. Tooley – it can be whatever we want it to be...but I think 6 is minimum based on the codes so I know for a fact the last time they had an ISO rating they had some issues up on the north end of town on Date Street because of the load size of a building...the system wasn't looped at the time and technically by the ISO calculations they did not have enough water flow.

Questions from staff – none.

Mr. Gutierrez - in our meetings with utility department and you mentioned that you are always the last one to get involved.

Mr. Tooley – I think a lot of that has to do with how they are...we operate as a volunteer so there is no really business place for us and sometimes we get left out in the shuffle.

Mr. Gutierrez – do you recall me trying to get a hold of you on your

cell phone that one day before the first commission meeting.

Mr. Tooley – I think the only time was when they met at the property.

Mr. Gutierrez – that was about two weeks later and we tried to get together. And according to the utility department and they met with them there is a loop...are you aware that the 4" line is on a loop?

Mr. Tooley – I heard that through the grape vine that it was a 4" on the loop.

Mr. Gutierrez – they did discuss that and I wanted you to know that, and you do think widening the street from what it is now and putting a fire hydrant in would be an improvement at the west end now.

Mr. Tooley – of course it's going to be an improvement, and I'm going back to saying wait a minute from NFPA and city code I'm gonna recommend that the street needs to be that wide, but there again I mean Joffre Street like I said is 21' there, and you make the corner and it's 21'.

Mr. Gutierrez – it even gets narrower.

Mr. Tooley – so that whole part of Joffre, and they have some other streets in town...you got to be a Billy goat.

Mr. Merritt – I guess we discussed the positive impacts that could be made by adding a fire hydrant and widening the road whether it be however many feet or however many inches on the fire hydrant...if this subdivision were to not go through, and more density was added to the property and to the neighborhood would that have a negative impact.

Mr. Tooley – well I think it's a negative impact there just because of the location for us to get into Joffre so any improvements...I mean all you're going to do is add more fire road that's there, so when we do pre-fire planning and talk about certain areas of town we know where they have to hook up...we know the best way to try and get there.

Mr. Merritt – so therefore from a fire department stand point subdividing the property and therefore being required to widen the street and have the fire hydrant is more beneficial to the neighborhood than not subdividing and adding...

Mr. Tooley – it's going to be more beneficial for what we do.

Mr. Merritt – okay.

Any opponents to question Chief Tooley.

Ms. Elting – if there were a fire in that subdivision can you envision where your truck would park...and what if you needed to reach one of the house in the middle of Joffre how would that work?

Mr. Tooley - usually when we show up it's a brigade so they are going to block everything...we'll get there anyway so a lot of that is usually up to the officers when they arrive on the scene is to stage the trucks and try to make sure they can get...our biggest fear a lot of times is they'll have all their equipment tied up on the scene and all of a sudden they'll have another fire call right in the middle of it.

Ms. Elting – can you envision a fire truck being there and let's say somebody's in the house and you have to get an ambulance there and

get that out of the egress...one driveway for 5 houses...

Mr. Tooley – they deal with this all the time and usually a lot of that they try to do in pre-fire plan but a lot of times it's by the seat of your pants when you show up because we have a major catastrophe going we got to do whatever they can to save lives and for the property, and without looking and not knowing I can't give you a definite answer to that.

Mr. Elting – I could be wrong but I feel like you're saying well I'll take what I can get because you feel like that's all that you're gonna get...as opposed to standing up for really what you think is most beneficial...I guess that's my question.

Mr. Tooley - a lot of this has to do with when they sit in the fire service is we always want what is best for the community, but they know a lot of times I mean my recommendation is always going to be by either the NFPA and the city fire code...that's my responsibility as fire chief, so whatever happens...happens and no matter what we can complain about it all day long but they still have to live with it...we're still going to respond at 2:00 o'clock in the morning when the page goes off.

Kathleen Sloan – Mr. Gutierrez I think you said something that a 27' wide street would be allowable in a shorter street.

Mr. Gutierrez – when I looked over before that would be right and I think I have those sheets which had lengths of streets because these conditions exist a lot in infill subdivisions, and NFPA makes an account for in-fills...you're code does not...you don't have any delineation between home subdivision, and an infill subdivision something that's going in around...improved areas...now NFPA does, and it's actually 26' in width.

Mr. Tooley – and that's as long as nobody else is parked there.

Mr. Gutierrez – yea exactly and when we presented that we actually...the idea of no parking.

Kathleen Sloan – so the 27' wide would meet NFPA, but our city code does not allow for that infill exception.

Mr. Tooley – with this street there is a way out it's the other side of Joffre as it makes the turn. So from city code...I mean Joffre Street by city code doesn't meet city code. My recommendation was...city code says 36. I can live with 34 and city code says a hydrant needs to be hooked to a 6".

Kathleen Sloan – you were really combining city code with the NFPA.

Mr. Tooley – NFPA basically once it's adopted because city code.

Kathleen Sloan – but you didn't quote the 27' that he called out of other city codes.

Mr. Tooley – right...NFPA is a humongous library and when you read that it goes from this section to this section and so forth, and there is a lot of research you would have to go back and look and a lot of avenues in NFPA that allow you to determine the width of those streets.

Kathleen Sloan – so could you quote NFPA and not city code and allow for 27'wide.

Mr. Tooley – yea I’m sure there is probably a provision there that you could look at and say hey can we get by with 27’...we’re getting by with 21.

Kathleen Sloan – can you just use NFPA code and not be breaking NFPA code if it were 27’ wide.

Mr. Tooley – it’s very possible just depending how you look at it...how you interpret that.

Mayor Montgomery – and I think the answer...and not to answer his question for him, but the answer is that’s why you have the variance process. You’re not going to be able to cite every single NFPA because there is lots of things in NFPA that allow you for grandfathering certain things in and NFPA changes every so often, and so you may be under one code when you start, and you are never going to be able to get to the current code because you’ll never be able to keep up.

Kathleen Sloan – but tonight is the first time we have heard that there is an NFPA code to allow 27’.

Mr. Tooley – my deal was I gave a recommendation.

Mr. Merritt – the 92 year old gentleman that was here earlier and left and shares the property next to mine...when I met with him in person he expressed to him a concern about fire danger from the growth that is on my property...assuming nothing is done with my property as far as building or subdividing or road widening or anything like that...is my property safer if it’s graded and cleared of the brush and growth.

Mr. Tooley – from a fire point of view yes.

Mr. Weeks – what is the fire danger now of the brush that is on there. Is it a potential hazard or...

Mr. Tooley – Well...there is a weed ordinance...there’s a ton of things and a lot of that is brought to our attention based on complaints...we’re not everywhere all the time, so based on that without looking at it I couldn’t say, but there is a bunch of them in town.

No other questions and the public hearing was closed.

Mayor Montgomery stated before they move on with the agenda I am going to make a statement normally which I never do. And indicated there have been numerous things brought to our attention tonight on both sides, and let me apologize to both sides and not having all the information. She stated they have all the background information now...now they just need the paperwork to put the background information together. She would propose that each of the individual commissioners get information to the City Manager on what information they would like to see before they take this matter under consideration.

“Mayor Montgomery moved that they direct the City Manager to get information from each commissioner on what they need before they can make a valid decision, and that they table the rest of the agenda until next Tuesday.”

City Attorney Rubin stated he would like to address the ordinance the Proposed Ordinance – Amending Section 7-35 Pertaining to Default/Penalties for Business Registration Fees that is on the agenda as he would like to get the publication process started tonight.

Seconded by Commissioner Green.

Commissioner Luna stated do they need to have a special meeting...I mean table this for a special meeting next Tuesday, or can this wait until our meeting the following Tuesday...our regular scheduled meeting the following Tuesday to obtain additional information, and have time to review it.

“Mayor Montgomery moved to amend her motion to have the exact information excluding H-5 for their next scheduled meeting on the 23rd.”

Seconded by Commissioner Green.
Motion carried unanimously.

City Attorney Rubin stated they discussed this a couple of months ago, and if they can get this for publication tonight it can come back for their first meeting in December, and if adopted can go into effect before the end of the year.

He stated after they met last time and took into consideration what their wishes were, and stated he did some research, and has some good news and some bad news, and the bad news is by statute they are limited to a late fee of \$10.00, and there was some discussion that they could perhaps some late fees that could be graduated the longer a person is late...the more the fee could be, but unfortunately according to state statute it \$10.00 is all they are allowed to charge.

Mr. Rubin stated the good news however is he did some research and included in the last sentence of the ordinance is that there are some provisions in the state statutes which would be helpful to us, and for example if it turns out that they are frustrated that there is someone who is operating without a registration, and have not paid for and continue to do this there are other actions they can take besides having him file a criminal complaint, and can instruct him to file a lawsuit in District Court and have the persons business stopped, and stated there are other options that they have. He stated he made this very simple and instead of having a specific charge if the case is referred to him what would happen, and that the City Clerk goes through the process of sending three reminder letters out before it goes to him, and that he would just file the charge in Municipal Court, and at the judge’s discretion feels that a fine would be appropriate that is something he can ask for.

“Commissioner Luna moved that they go to publication for the proposed ordinance for business registration fees amending section 7-35.”

Seconded by Commissioners Renfro/Green.
Motion carried unanimously.

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

APPROVAL: PASSED AND APPROVED this _____ day of _____, 2010, on motion duly made by Commissioner _____, seconded by Commissioner _____, and carried.

LORI S. MONTGOMERY, MAYOR

ATTEST:

MARY B. PENNER, CITY CLERK