

REGULAR CITY COUNCIL MEETING

November 2, 2009

6:00 P.M.

Mayor Ronnie Torres called the Regular Meeting of the Belen City Council to order at 6:00 P.M.
Roll call taken by Audrey D. Torres, Procurement Specialist.

PRESENT:

Ronnie Torres, Mayor
David Lopez, Councilor
Terese Ulivarri, Councilor
Rudy Jaramillo, Councilor
Wayne Gallegos, Mayor Pro-Tem

CITY STAFF:

Audrey Torres, Procurement Specialist
Mike Chavez, Chief of Police
Manny Garcia, Fire Chief
Michael Steininger, Finance Director

OTHERS:

Norman McDonald, City Attorney
Brent Ruffner, VCNB
Jerah Cordova, Our Tomorrow
Gilbert Tabet, Circle T
Robert Power, Citizen
David Christie, Citizen
N. Rostische, Meadow Lake
Albert Carrillo, Jarales Road
Clark Metcalf, Rio Communities
Alice Metcalf, Rio Communities
Mike Wood and Mary, VC County
John Moran and Sue, VC County
Kenneth Griego, VC County
Derek Williams, VC County
P. Rael, County Commission
Lydia Pero, Los Lunas
P. Paul Ortega, Our Tomorrow
Dianne and Helen Mattson, Our Tomorrow
Ashlee Montoya, BHS
Bridgette Chavez, BHS

PLEDGE OF ALLEGIANCE:

Mayor Ronnie Torres asked Mike Wood to lead the pledge of allegiance.

APPROVAL OF AGENDA:

Mayor Ronnie Torres requested approval of tonight's agenda Councilor Rudy Jaramillo moved to approve the agenda. Councilor David Lopez seconds the motion, motion carried.

APPROVAL OF MINUTES:

Regular Meeting: October 19, 2009

Mayor Ronnie Torres requested approval of minutes for October 19, 2009. Councilor Terese Ulivarri moved to approve the minutes. Mayor Pro-Tem Wayne Gallegos seconds the motion, motion carried.

CITIZENS PETITIONS:

Mayor Torres read the next agenda item referring to citizen petitions and asked if there were any citizen petitions.

Manny Garcia: reported on application for the fire station and construction grant and they were not approved. There was only one department in the state that received funding in Sandoval County. In communications with Senator Udall's office in reference to the 2011 appropriations and referred to a copy of a handout, a copy of which is attached hereto and made an integral part of these minutes by reference, he has also been communicating with the City Manager, Sally G. Garley and she has instructed the office to complete the application and submit under the City of Belen for a new fire station. He will be working on that and the deadline is not until the end of November so he will have time to work on it. Councilor Terese Ulivarri offered to assist Fire Chief Manny Garcia with the application.

Another application he will be working closer to the middle of November is a SAFER grant, staffing for adequate fire and emergency response personnel. This is a three to five year plan allows the jurisdiction to hire firefighters at a certain percentage covered by the grant. For example the first year would be a 70 30 percent by example so the City would have to come up with thirty percent of the grant and FEMA would come up with the remainder and staggers to 60 40 then 50 50, 30 70 and by the fifth year we would have to encumber the entire expense. He tries to keep his grant application simple and yet informative as he did not want them to have to read ten pages.

Mr. Wood: Thanked the members of the City and the City Council for conducting the meeting for the citizens he continued saying: "as a citizen of Valencia county and a member of the hospital advisory board I would like to inform those present as to the hospital that 76% of the

voters approved in November 2006. Over 5 million dollars of taxpayer money has thus far been collected and the hospital is still on hold pending the outcome of a lawsuit against the County Commissioners represented by Valencia County Commissioner Rael's very good friend and legal associate. An appeal by the judge's decision was filed in March of this year by Valencia County Commissioner Rael's very good friend and legal associate as of today the appeal has gone to a panel of judges and a decision on the appeal should be given within the next ten to 21 days. If the panel rules against Valencia County Commissioner Rael's very good friend and legal associate it should open the way for bonds to be sold and sometime thereafter we should see a hospital being constructed at the site that has already been approved by the commission. Once the hospital is built there will be enough new money brought into and spent in this County do generate an adequate tax money for the County to also carefully plan and promptly construct or add to the jail facilities, this without any new no end gross receipts tax.

Jail Director Derek Williams has in the past informed Commissioners about the Jail issues, he works with a problem he did not create however at the present time it would be a very bad idea to put the jail as a priority in front of a very much needed hospital. Many Valencia County taxpayers are paying taxes for this hospital that should have been in operation over a year ago. We cannot be foolish. Let's get what we are paying for first and then we can consider what to do about our jail. Mayor Torres and City Council Members thanks again for supporting the hospital as you have in the past that will bring growth to Belen and help the majority of people that have never even seen the inside of a jail. Thank you."

Sue Moran: "there will be others presenting to you about the need to improve the Valencia County Prison Facility some speakers will be asking you to vote in favor of a 1/8 of 1% tax increase. Doesn't sound like much, does it, but it amounts to over a million dollars a year. What some speakers may not tell you is that the tax is never ending, has no end date and the tax can be used for any purpose, landscaping, cable TV.

Now to be fair I want to give you a few examples of what Commissioner Rael has done for you so far. He has spearheaded the effort to push this Gross Receipts tax forward by trampling on your right to vote on the issue. He has said "if people don't like it let them gather the signatures necessary to bring it to a vote". A challenge the people have met. He has put roadblock after roadblock up to prevent a hospital in Valencia County. He has said that it would be close to impossible to give the people back the mil levy money which currently amounts to over five million dollars. Isn't it amazing how easy it was to collect the tax from us yet it is seemingly impossible to return those funds to us. Everyone has been affected by these tough economic times we have all had to give up some extras we have had to dig deeper into our pockets to pay our bills. Should we pass a tax that improves prisons ahead of improving services in our own back yard? Bringing businesses to our communities and having a hospital will create jobs resulting in increased gross receipts which could then be used to improve the prison facilities. Regardless of any of this voters should vote no on any tax that has no end date and no limits on its use. Thank you to those who signed the petition to bring this choice to the voters and thank you for your time.

Clarke Metcalf: "it is pretty much on the same theme but I might as well read the speech any way. One of the arguments used by the plaintiffs against the hospital was that the voters didn't know what they were voting for. In the issue of the correctional facility gross receipts tax here is

a case where the voters certainly don't know what they are voting for because the crucial information is being withheld from them. Nothing on the ballot and nothing in the ordinance itself tells the public that this tax has no ending date. Although the previous tax, the one that this would replace, had a sunset date of December 31, 2009 it was in Section 6 of the ordinance, the new ordinance has no Section 6. It is obvious that this omission is deliberate on the part of the three commissioners that voted to impose the tax without a public referendum; this is probably why they were in such a hurry to get approval. This action for us to petition campaign by the county residents is a cost to the county of thousands of dollars. This is cheap though considering if the tax is approved the county will be stealing about a million dollars a year from the citizens after the prison improvements have been completed and paid for. The correctional facility improvements are badly needed as the current conditions are desperate, but the improvements are not going to take 50 60 or even 100 years. We are told that the tax can be amended to add a sunset date after it has passed. But the reputation of the current County Commission is so stained that no one believes the three commissioners are going to do it and pass up the opportunity to help themselves to our tax dollars. If we can get a commitment here and now from the Commission Chairman, for the public record, that he will entertain a motion to sunset this correctional facility gross receipts tax once the cost of improvements have been determined that would help a lot. That is if the people believe you. No one objects to the prison improvements but no one wants to be systematically robbed afterwards. The three commissioners tried to take away our right to vote now they are trying to take our hard earned money and that of our children and that of our grandchildren. I hope that the residents when they receive their ballots in the mail will not simply throw them away in disgust the only way that the Clerk can know the voters are against this tax is if they get their marked ballots back. The people who favor the tax will be sure to return their ballots. Those who signed the petition for the right to vote should exercise that right."

Mayor Ronnie Torres asked if there was anyone else with a citizen petition, there was only one citizen stood and Mayor Ronnie Torres asked if it was pertaining to the same thing she said it was but it was short.

Mrs. Clarke Metcalf: "thank you Councilors-I am quoting to an article titled "Peralta tackling its own road repairs" which appeared in the October 24th edition of the News Bulletin. Commissioner Donald Holiday spoke regarding the County Correctional Facility gross receipts tax. The article states that he voiced his support for the tax he said that the jail expansion will alleviate the need to farm out inmates, and this is the important part: "potentially provide the county with a source of income", what he didn't explain is that this "source of income" is money that will be available to be used in any way they choose since this tax has no sunset date, but is to continue to forever to the tune of nearly one million dollars per year. They can pay for the detention center expansion and have the rest of the money to play with for years to come. The taxpayers won't have one word to say about how it is used. For this reason the people of Valencia County need to vote no. Thank you very much."

Mayor Ronnie Torres asked if there was anyone else with a citizen petition if not he closed the citizen petitions.

***PRESENTATION ON SPECIAL MAIL OUT ELECTION FOR GROSS RECEIPTS:
Warden Derek Williams, Kenneth Griego, Commissioner Pete Rael:***

Mayor Ronnie Torres read the next agenda item in reference to a presentation on special mail out election for gross receipts as presented by Warden Derek Williams, Kenneth Griego and Commissioner Pete Rael. Warden Derek Williams approached the podium and introduced himself as the Warden for the Valencia County Detention Center. He continued saying in part “I want to try to go over, I want to wrap this up as briefly as I can I just want to go over a couple of factors with respect to the GRT tax, the special election that is coming up. When I get done with this I ask everyone to do a couple of things, one is to keep an open mind, certainly I don’t want anyone to just get the ballot and make a decision on the past I want them to sit down and make a decision on the facts that are involved in this tax before they make a vote. Me myself I in between a rock and a hard place I have some very serious problems and I need the tools necessary from the members of the public the voters, the commission, city council and anyone else in the community to help me, get me to what I need to do my job. I am basically a carpenter without wood right now. I want to start of with right now there has been some misconceptions about the tax, it has nothing to do with the property tax that was one point I wanted to make. Number two is this is the statute 7-20 F-3 which I am going to read the definition because the statute is very specific on what the money can be used for and myself nor the commission or anyone else can change the scope for what that can be used for without breaking state law: “for the purpose of operating, maintaining, constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial correctional or a county correctional facility on a grounds of judicial correctional or county correctional facility including inquiring or improving parking lots, landscaping or any combination of that”. This tax has been in place for over a decade.

Back in 1997 ACLU filed a federal suit against the County Commissioners for conditions at the detention center, that suit was stopped in the order that the commission did something to build a new facility to remedy the problems that the ACLU brought to their attention. In 1999 towards the start of 2000 a new facility was built, that facility I have been running since 2005. And since 2005 I can sit here and attest that facility has been grossly overcrowded. Those are problems not just for me and the people that I have in custody but they are problems for this City Council and for all other members in the county. When a tort claim comes up and it is brought up against me and the county commission for conditions contributed to overcrowding that money has to come from the general fund. If that money is not there it has to come from the taxpayers so this tax allows for 1/8th of a cent of gross receipts tax to contribute towards a revenue to contribute towards the revenue to, and that is the only financial revenue I have available to me other than taking money from the general fund to try to expand and prevent the problems and litigations in the future. That tax does sunset in December and if it is not passed then I have no other options and I continue shipping the excess prisoners, I have, out of the county. There are two county jails in the State of New Mexico that have opened the doors to house our prisoners that is Santa Fe County and Cibola County and the fee for that is excessive to say the least.”

Mayor Pro Tem Wayne Gallegos asked if this was a tax that is already in place and not an additional tax he was advised by Mr. Williams that was correct.

Councilor Terese Ulivarri asked if it was an omission on someone’s part or was it intentional that there was not a sunset clause on this tax vote. She was advised by Mr. Williams, it was his

understanding the way the law is written it does not have sunset language in there. Initially a sunset was put in and that is how it all started however when the ordinance was drawn up it was omitted as one of the members of the commission did come out and say to vote for it to be a continued tax. Councilor Terese Ulivarri wanted more clarification on the sunset clause as Mr. Williams said prior it in the statues you cannot have a sunset clause. Mr. Williams clarified there was no “language” about a sunset date in the statutes. Councilor Terese Ulivarri advised then it is possible to have the sunset clause in the ordinance, Mr. Williams advised yes.

Mr. Kenneth Griego said “the whole idea is to try to get enough money to pay for the additions, renovations. Councilor Terese Ulivarri said she understood but what happens after the construction is completed and renovations are done. Mr. Griego advised the Commission should end the tax. Mayor Ronnie Torres asked if that would be the desire of the commission now, if that is what it is, but what if there is a new commission and they decide to keep the tax is there anything that can be put in to assure the taxpayer. Mr. Griego said “the ballot is already out and that can not be modified. An ordinance can be put into place if it is passed and language in that can be very clear that a sunset clause would be added to it and it would expire at the end of that term or whatever.” Mayor Ronnie Torres asked if that could be done prior to the election. Mr. Griego advised it was his understanding it would have to be done after because it was already decided what was set on the ballot so not until after the vote has been made and it is passed then at that point the ordinance can be created.

Councilor Rudy Jaramillo sympathized with the County however he stated it is hard especially in these rough economic times to tax the people and the funding is never used for what it was intended for as example the hospital, where is the guarantee and when is it going to stop. If the ordinance is in place after the election and then it is decided to go ahead and continue it when will any of it ever end where is the guarantee to the people there is none.

Councilor David Lopez mentioned it is hard for the citizens when they are without medical care and the prisoners have good medical attention for the average Joe on the street that is a hard pill to swallow. The citizens are fed up with getting taxation without representation if you will. On the flip side no one wants riff raff in their neighborhood and it comes with a cost whether we realize it or not if they are incarcerated it is a cost if they are out vandalizing in the streets it is still a cost. The state right now is also broke and they are scraping revenue from everywhere they are raising taxes.

Mayor Ronnie Torres his concern is that there is not a stop to the tax if there was a dollar amount written in the tax then it would be a guarantee to the public, in speaking to Commissioner Rael, is there a way or is it too late to pass something to assure the public the tax would stop.

Commissioner Rael said “the tax is open ended which means the ordinance can be repealed at any time by the County Commission and stopped right in its tracks and there is a reason for that. We are working without specific numbers other than 4 or 5 million to expand the facility to have what we project in future growth maybe 5 or 10 years we are not exact on what is going to be needed. The tax would have to be in place beyond the terms of the current commissioners, if the current ones are re-elected, for an additional 5 or 6 years or so. We do not know what the needs are going to be then. This one that is in existence now is the same tax, it is not a property tax to be absolutely clear, it is a sales tax on non food items when you go to the store it does not affect your real estate at all. The first one was in place for ten years and will expires at the end of

December of this year and at that time they thought ten years was plenty of time to be able to build house and almost indefinitely but it was not the case it was not true because the county grew a little bit faster and all of a sudden we are overcrowded.

I have a little presentation and I will get into that. (unable to transcribe interference static) There is an unknown out there we don't know how long this tax is going to go if we thought we could do it in, and we don't know how much it is going to raise because the economy tanked this was all considered after the economy tanked so we don't know if it is going to raise nine hundred thousand, eight hundred thousand a year one million one point five we just don't know that. So it was left open ended at the suggestion as matter of fact on this particular point by Commissioner Gentry from right across the river. He indicated "why don't we just leave it open ended" even though he may resisting at times it was his idea and everybody agreed to leave it open ended in order to make certain that we leave future commissions the option as to what they need to do with that and it can be cut off at any time. The day after the, at this point it can be redone the election has to be done it is mandated by law in the form that it is today but it can be amended if it passes. If it doesn't pass then there is nothing to amend then we have to start all over again. But the answer is there is a very good reason to leave it open ended. It is not mandatory for an eternity it's whatever we need, lets' see what we need and when we get there, you know the taxpayers are out there and they are watching. Whatever county commission is in place at that time if there is ample money at that time and the first ten years was not enough and we are going to be going into the future at least another five six or maybe ten we don't know that.

That is the problem with this open ended tax. You hear it is a tax that is going to tax our children, grand children, great grandchildren that is absolutely untrue we are going to use it as needed for the jail and that is the best answer that I can give you. And it was done intentionally because we didn't know what we had what we were working with and we still don't know. I can ask anybody here "how long do you think it should last" and nobody will know the answer to that question."

Kenny Griego advised it is very clear that the jail is overcrowded and we are transporting them at a much higher cost to other facilities. The women's facility is known and has been called by a number of people as a "dungeon" because of the condition it is in now. It was proposed to use the juvenile detention center for the prisoners, which is out of the question, because of the standards required for housing prisoners and the facility is out dated. He wanted to point out the tax is a "continuation" of a tax that we are already paying now it is not a property tax and there is no "increase" in taxation.

PUBLIC HEARING ON THE ISSUANCE OF A RESTAURANT LIQUOR LICENSE (BEER AND WINE ONLY) APPLICATION #608597 FOR PETE'S CAFÉ, 105 N 1ST STREET, BELEN, NEW MEXICO 87002: Audrey Torres, Procurement Specialist

Mayor Ronnie Torres read the next agenda item and opened the public hearing in reference to the issuance of a restaurant liquor license (beer and wine only) for Pete's Café located at 105 North First Street as presented by Audrey Torres, Procurement Specialist who advised an application was received from the NM Regulation and Licensing Department, Alcohol and Gaming Division. This public hearing is a formality for the application and a recommendation needs to

be sent back to the department, additionally all of the fees have been paid and we stand for any questions or comments.

Mayor Ronnie Torres asked Theresa Padilla why we are going through with this application since they already have one. Mrs. Padilla advised her mother was the sole owner of the restaurant and the liquor license is not transferable so they had to re-apply.

Mayor Ronnie Torres asked if there were any questions or comments from the audience. There were not questions or comments at this time.

ACTION ITEMS:

APPROVAL OR DISAPPROVAL OF A RESTAURANT LIQUOR LICENSE (BEER AND WINE ONLY) APPLICATION #608597 FOR PETE’S CAFÉ, 105 N 1ST STREET, BELEN, NEW MEXICO 87002: Audrey Torres, Procurement Specialist

Mayor Ronnie Torres read the next agenda item referring to approval or disapproval of a restaurant Liquor License (Beer and Wine only). Councilor Terese Ulivarri congratulated Theresa on their sixty year anniversary and with that moved to approve as presented. Mayor Pro-Tem Wayne Gallegos, seconds the motion, motion carries.

LAND EXCHANGE AGREEMENT BETWEEN THE CITY OF BELEN AND VALENCIA COUNTY: Michael Steininger, Finance Director:

Mayor Torres read the next agenda item referring to land exchange agreement between the City of Belen and Valencia County as presented by Michael Steininger, Finance Director who advised he was presenting before the Council on behalf of the City Manager, Sally G. Garley, a revised land exchange agreement, DFA had originally rejected the last one due to some wording and some dollar amounts, and unless our Council corrects me, most of the change on this was primarily because of the dollar value involved and the county perspective this had to go before the board of finance is that correct, referring the question to City Attorney Norm Mc Donald.

Mr. McDonald advised that was part of it the other part of it was the DFA was concerned about language in the former draft that might impose contingent future liabilities on either the City or the County that are not currently funded this year. Things like warranties for problems in the future or test results or even the fact that there was going to be exchange for warranty deeds and the DFA said “no you have to exchange quit claim deeds” because if you give a warranty deed to the County for the property they are receiving from the City and if the County gets a warranty deed to the City on the property we are receiving from the County then you are warranting good title. And they can come up in the future that there is going to be some type of breach of

warranty claim which is a potential liability to either governmental entity that is not funded for presently and all of that concern caused for four different changes from the previous draft to the present draft.

Councilor Terese Ulivarri asked then we are okay with trading property for property, question posed to Finance Director Michael Steininger who advised it was his understanding we are trading a piece of property located next to the Valencia County landfill in exchange for property over on Aragon next to I25. Councilor Terese Ulivarri asked if the County had already approved this. City Attorney Norm McDonald advised the County had already approved it in the new form, the City will approve it then it will get the required signatures and go back to the County so they can send it to DFA.

Councilor Terese Ulivarri moved to approve. Councilor Rudy Jaramillo, seconds the motion, motion carries.

INFORMATIONAL ITEMS:

COMMUNICATIONS FROM CITY COUNCIL:

Student Liaison Ashley Montoya: advised they are selling Luminarias and they are five dollars a dozen and ten dollars for setup. There will be a sock hop on November the 13 at the high school cafeteria.

Student Liaison Bridgette Chavez: advised staters are beginning a food drive and they will place a box at City Hall.

Councilor David Lopez: said “I coached the junior wrestling and we are starting our year tomorrow at six at the junior high and that is starting up again. Glad to see the people form the community out and about voicing their opinions. It is really horrible when you hear the words “raising taxes” but it discuss me also but I don’t see any other way to get funding. This state, I think the governor was proposing releasing prisoners early to help save money but they are just passing the buck. This past legislative session everybody is arguing it is just a band aid they are just postponing the inevitable towards the future. I think it is going to get bad before it gets any better.

Councilor Terese Ulivarri: said “I attended a Rio Metro Meeting and I do have something to report. First of all, you might have seen in the news, the rail runner now has a heart start defibulators on the train so that everyone has gone through the training and that is a cool thing to have. For peace of mind it is there. Another thing is that they put in a grant and received it Belen and Sandoval 550 are going to get photo voltaic lights for the parking lot. We are going to save about ten thousand dollars a year for lighting throughout the system. Another thing is they also received a grant for bike lockers, a lot of people. They are running out of room on the train to put bikes so there are lockers to put your bike. Belen is going to get ten lockers.

I attended a masquerade ball for the Valencia County Victims for domestic Violence, I dressed up as a mad chef no one knew who I was until they introduced me and blew my cover I was having a lot of fun with that one. It was a lot of fun they raised a lot of money for the shelter and they were actually, it was their anniversary week, and that was the thing.

I also attended the family dinner at the park there were a lot of things going on but there was not a lot of attendance people missed out on a nice opportunity to take your families out and have a good time. They had a lot of nice stuff, rock climbing wall and a DJ was going and Dora the Explorer and Sponge Bob was there with a lot of nice things going on but there were not a lot of families and that was too bad.

Football team is doing “Fantastically” as a matter of fact right now the volleyball team is playing the first round for qualifying for state here in Belen.

Mayor Ronnie Torres: said “in case no one has noticed Christmas Decorations are going up and no we are not crazy we are setting them up early because we have to have everything done by thanksgiving weekend for our festival and it takes a long time. By the time they set them up and then they have to go back and check them and it never fails every time they put them up it knocks a breaker somewhere or we have to re-wire and we have to get an electrician in so we get them fixed so we have everything ready to go for our big party on the Saturday after thanksgiving. We have not lost our minds we are just getting things done so that we have them done on time.

Mayor Pro-Tem Wayne Gallegos: said “speak for yourself we have not lost our minds, this weekend was a nice weekend nice weather and there was a nice event south of town and people came to town from north and south it was a mud bog. It was sponsored by Sanchez demolition with an activity out there. What is nice about when there are different events over at the Sanchez property over in the Bosque area, you draw a lot of people from different places and they really like where the event was and they liked the area and we just happen to have a beautiful day on Saturday. People came from up north Santa Fe, Espanola, Las Vegas and down south and of course our local people too that went really well.

Veterans Day next week and we have celebrated the whole month on several organizations that I belong to so to all the veterans on this month thank you. Also I attended a senior board meeting it was mostly budget and we had a representative that works with the older American program out of Santa Fe. We are doing fine here in Belen and Valencia County, there was another village up north that wanted more information and wanted to make sure that the rules are being followed on how to run their centers so they were brought in and explained to. All programs are hurting and that is another one that we need to keep an eye on.

Councilor Rudy Jaramillo: said “again congratulations to our football team they beat Volcano Vista that was a big time game a lot of people there. They have another game this Friday at home and it is the last game unless we hit the State playoffs but this is the last district home game. It is good to support them not just football but all the sports.

Halloween I did not hear that anything bad was happening and it seems like everyone was out and about early I didn’t hear anything.

We had a Chamber of Commerce board of directors meeting and they are getting ready to get the new elected board directors, I think they are trying to look at three that really want to get onto the board of directors, the chamber is doing well. The chamber is doing some good things for our businesses. January will be the installation banquet.

ADJOURNMENT:

Mayor Ronnie Torres asked for a motion to adjourn tonight's meeting.

Mayor Pro-Tem Wayne Gallegos moved to adjourn this meeting. Councilor David Lopez seconds the motion, motion carried.

/ss
Ronnie Torres, Mayor

ATTEST:

/ss
Sally G. Garley, City Manager