

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
FEBRUARY 10, 2009**

**MAYOR STEVE BROCKETT
MAYOR PRO-TEM CHRIS LUJAN
COMMISSIONER RON GRIGGS
COMMISSIONER ED COLE
COMMISSIONER MARION LEDFORD**

**COMMISSIONER ERIC BREWER
COMMISSIONER JOE FERGUSON
INTERIM CITY MANAGER MATT McNEILE
CITY ATTORNEY STEPHEN THIES
CITY CLERK RENEE CANTIN**

CALL MEETING TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor Brockett called the meeting to order at 7:40 p.m. Roll call was taken, and all of the Commissioners were present. The invocation was given by Mrs. Dottie West, and the Pledge of Allegiance was led by City Commissioner Ed Cole.

Mayor Brockett noted the passing of James Vaughn, the husband of District 51 State Representative Gloria Vaughn. A memorial service will be scheduled for March following the legislative session. On behalf of all elected officials present at the meeting, Mayor Brockett expressed that they are all better for having the support of their spouses and significant others. He stated that Jim's support of Representative Vaughn during her more than one decade of public service was indicative of his strong character and commitment to his wife as a husband and as a man. He joined with the community and Commission in expressing their deepest and sympathies and condolences to Representative Vaughn, her family and friends.

Mayor Brockett also congratulated Cameron Stern, the Deputy Clerk/Records and Archives Clerk who has earned the prestigious Certified Municipal Clerk designation from the International Institute of Municipal Clerks. The CMC designation program is designed to enhance the job performance of the clerk in small and large municipalities. To earn the designation, a municipal clerk/deputy clerk must attend extensive education programs. The program has been in existence since 1970 and has helped thousands of clerks in various municipalities. City Clerk Renee Cantin also has a CMC designation, and Mayor Brockett commended Ms. Cantin for her leadership in the City Clerk's Office. Renee Cantin, City Clerk, presented the certificate to Cameron Stern.

PRESENTATIONS:

1. Presentation by Brian Cesar, Public Works Director, regarding the concrete box culvert located on 9th Street at Washington.

Recommendation: None.

Mr. Brian Cesar reported that on June 24th they received a recommendation from the New Mexico Department of Transportation to close the 9th Street Bridge, and at that point a report was provided to the Commission, a copy of which Mr. Cesar referenced. They estimated that a replacement structure was going to cost \$150,000, and that is not in the budget this fiscal year. One of the options they had considered was to take some of the 2004 Gross Receipts Tax Money and use that to offset the project and take care of the structure at 9th Street. In August, a business owner from 9th Street addressed the Commission wanting to know the status of the structure, and at that time, it was decided to include the 9th Street structure as one of the items for the upcoming G.O. Bond. In the event that that item doesn't pass, they will be meeting regarding the budget, and it is one of the items that Public Works will be requesting for budgeting. If the G.O. Bond passes or they secure the capital monies to replace it, the actual construction would take approximately 30 days after being ordered by the Commission. One of the things that had been brought up was using the temporary structure that was used on Scenic after the flooding, and they could place that structure in place of the 9th Street box culvert. When the temporary bridge was installed on Scenic, it cost the City approximately

\$20,000 for concrete work, paving, etcetera. To put the structure on 9th Street would cost additional monies because it was not designed for 9th Street, and they would have to go back to the manufacturer to insure that it would be appropriate for use on 9th Street.

Mayor Brockett asked if the portion of the bond passes, approximately when work could begin, and Mr. Cesar explained it would depend on how quickly they could secure the bond financing, which could take up to three to six months. A best guess estimate for beginning work might be October or November if everything goes well. If the bond does not pass, they come before the Commission in April for approval for the next year's budget, and July 1st is the start of the new fiscal year. There is usually 30 to 60 days before capital monies can be extended. It would likely be around the same time frame.

Commissioner Griggs asked if the bridge was substantially wider than the ditch, and it is. It would require quite a bit of work to get it ready. It wouldn't be a permanent fix. It would be temporary, and it would seem that a better approach would be for the bond to pass and finance a new structure.

Commissioner Cole asked Ms. Nichols for clarification on whether she had stated previously that if the City spent any money prior to the bond passing, that the City could not be reimbursed from the bond issue, and that was correct. The City could be reimbursed for expenditures before the bond issues was done, but the timeline is 60 days prior to the bond being adopted. Commissioner Cole pointed out that with either scenario there would still be a major lapse of time before anything could be done. It was his feeling that it was a fire/safety emergency to some degree to have that bridge out, and it is a semi-emergency to the people in the general area that have businesses that are suffering because of that bridge being out. The City needs to take steps to go ahead and do something with the bridge.

Ms. Nichols thought they could do a resolution once the G.O. bond was issued allowing the City to reimburse itself for something that was spent 60 days prior to the bond being issued. City Attorney Thies explained that the bond would pass with the passage of the Ordinance authorizing the issuance of the bond, and they would back up 60 days from that period. Any expenditures before that would not be reimbursable out of the bond proceeds. If the election question passes on the tenth, once it's determined that it did pass, the Commission could order Public Works or Community Development to prepare plans, but if they had already incurred some expenditures for hiring an engineer, that money would not be reimbursed. If the project was \$150,000 and the City incurred \$15,000 in engineer's fees, those would be unreimbursable unless they are incurred within the 60-day timeframe of the bond being passed. It would not be reimbursable until the look back period where the City could seek reimbursement for the expenditure. City Attorney Thies will look at the state statute to see what the earliest time period would be that they could seek reimbursement.

Commissioner Ledford pointed out that they have talked about it a number of different times, and the answer is always to wait to see if the bond passes. He didn't know that a decision had been made as to whether they would repair 9th Street. Mayor Brockett thought that in putting 9th Street on the bond issue, they took away any option of creating a true mall from 10th Street all the way to Mountainview. Mayor Brockett reiterated that they shouldn't do anything until the bond is passed.

Commissioner Griggs pointed out that the bond as written included the 9th Street Bridge, and it is the Commission's intent to use money from that bond if it passes to do the 9th Street bridge. It becomes incumbent upon the City attorney to get the exact meaning of the bond ordinance or the state statute on how that money could be utilized. It seemed to him that if it had been identified, it was not going to be taken away and put toward something else. Either it will be used to specifically pay the contractor or the City will be reimbursed from where it got the money to do it.

Commissioner Ferguson pointed out that it wasn't only the repair of the bridge that was included in the 9th Street bond question. They could use money from somewhere else to repair the bridge if they need to do it quicker. They don't have to use the bond money for that.

Mayor Brockett agreed that if the public decides they want to get that repaired during the election, then they do need to look into getting it done as quickly as possible. City Attorney Thies said they have a meeting in 13 days, and he would have an answer at that time.

Commissioner Ferguson pointed out that if the voters vote it down, they may be indicating that they don't want the bridge fixed, and that is something the Commission has to think about. Mayor Brockett said that one of the interesting things to think about is what if the library bond passes and the road doesn't, or what if the road passes and the library doesn't? They will have to look at what is passed and come up with a plan. Commissioner Ferguson didn't think they should go ahead and spend any money, but he thought they should wait at least until the bond is voted on.

Mayor Brockett asked what the \$20,000 cost included, and it does not include taking the temporary bridge out if they have to remove it to do a permanent structure. Commissioner Cole asked for clarification if 9th Street was included on the bond issue, and City Attorney Thies clarified that a number of street projects were lumped together. In asking for voter approval to spend money for identified projects, it doesn't mean that the City has to undertake one of those identified projects. It just means if it's approved those are the only projects the money could be used on.

2. Presentation by Brian Cesar, Public Works Director, to discuss the potential of developing a "class A lake" to accommodate a private fishery at Bonito Lake.

Recommendation: None.

Mr. Brian Cesar provided the Commission with a brief history and explained that in 1986 the City entered into a 10-year lease agreement with the New Mexico Department of Game and Fish. The City received \$1 in compensation for the initial lease, and in 1997 the City entered another ten-year agreement with the New Mexico Department of Game and Fish. The City received a lump sum payment of \$88,000. The City was in negotiations with the New Mexico Department of Game and Fish, which ended in April of 2008. At that time, the negotiations broke down, and what they offered the City was no payment to the City of Alamogordo. Their responsibility was to stock the lake, and that was where their responsibilities ended. At that time, the staff was directed to look at the possibility of creating a private fishery at Bonita Lake. In discussions with Game and Fish, they were looking at possibly of up to \$100,000 in initial capital that would need to be expended at Bonita Lake in the process of obtaining a Class A permit. That would go toward installing two fish barriers to prevent fish from going downstream and entering the private lake. To not do that would mean a violation of the Anti-Donation Clause. In the past, Game and Fish has spent approximately \$50,000 a year in stocking the lake. The City's estimates are closer to \$65,000 with today's prices. Mr. Cesar stated that there are approximately 60 to 80,000 angler days a year at Bonita lake, and the \$5 figure is not set in stone but was to give an idea of what could be charged for fishing for a day at the lake. The City would have some additional expense for patrolling the lake.

Mayor Brockett asked what the down side would be of having a Class A permit by the state. He asked if the State could block the City's efforts to do it, and Mr. Cesar stated that they could. Mayor Brockett asked what would happen at Bonita Lake if the application for the permit were stalled, and Mr. Cesar said that a date had not been sent. City Attorney Thies is going to Santa Fe to meet with the state engineer, and they plan on meeting with the new director of Game and Fish who is very anxious to re-open negotiations with the City. If an agreement is not reached, the campgrounds could still be opened, but the City would have to reach an agreement because since the negotiations stopped back in April, Game and Fish has been stocking the lake but the City hasn't been receiving a payment. The City could enter into a one-year agreement, and the Lake could remain open. Mayor Brockett referred to a quote that was attributed to him saying, "Making a profit is cool," but what he meant to say is government making a profit is quite a concept.

Mr. Matt McNeile stated that with additional revenue streams, which are all conceptual at this point, they would like to upgrade the camping area to perhaps include some RV pads with electricity, which would be a big draw. They would also have a control gate where money would be collected. There

are other capital improvements that the City has not been able to do to this point including food concessions and beverage concessions just because there hasn't been a revenue stream. The \$100,000 that Mr. Cesar referred to includes the two fish barriers and the check-in station, but it does not include RV pads and electric hook-ups though there is already a waste holding tank.

Mayor Brockett asked what the deadline is with Game and Fish, and Mr. Cesar said that they need an answer in the very near future. The fishing season opens April 1st, and if Bonita Lake is going to continue to be stocked by New Mexico Game and Fish, they need to know. City Attorney Thies said that they could strike an agreement with Game and Fish where they would agree to restock it and somehow the City would get some of the revenue they are currently getting from selling fishing licenses. If the City puts on the table that it wants to build an RV park on its property, they wouldn't likely object to that. City Attorney Thies didn't see why they would object to expanding the food and beverage services. Their primary objective is to keep Bonita Lake open to the public so when they send out brochures for the fishing season it is identified as a lake that people can go and fish at if they buy a state license.

Commissioner Ledford asked what contractual time period they were negotiating about, and the last period was for ten years. It could be done a year at a time, however, or five or ten years. Commissioner Ledford asked why they didn't just charge the entrance fee and be done with it. City Attorney Thies said that is why they could strike a compromise with Game and Fish where there would be an understanding that the City was going to charge people for access to Bonita Lake whether for camping, hiking or fishing.

Commissioner Cole asked if the lake belongs to the City, which it does, and he wanted to know if there would have to be environmental studies done. Mr. Cesar said there would not though there would be permits required from the Corps of Engineers and the New Mexico Environment Department. Commissioner Cole said that it seems every time the City wants to do something of that type the City has to get some type of environmental study, and he wanted to know why the state couldn't build a barrier and make those changes. No environmental study would be needed because it is City-owned property.

Commissioner Griggs said that he thought it was an opportunity that they should research further regarding what could be done even in terms of outsourcing the arrangement. One thing that came to his mind was the state sells fishing licenses, and they charge something for those, which allows individuals to fish anywhere in the state. He wanted to know what the State charges and if they add a \$5 fee how reasonable that is when people are used to getting a fishing license and going as often as they want. Mr. Cesar said that a resident spends \$35 for a fishing license, and a non-resident spends \$65. He cited another area where the fee to fish is \$18 a day, and there is a six-fish limit.

Commissioner Ferguson asked why they should have to put a barrier in and why they couldn't tell Fish and Game they didn't want the fish and to put a barrier in to keep the fish from coming into the lake. That cannot happen if the City wants its permit approved. He thought \$5 was way too little, and he thought it could be a good deal for the City. Mayor Brockett pointed out that it would be a long-term project, and things are worth considering for the future, including the idea of outsourcing.

City Attorney Thies said they were hoping to finalize plans when they are at the State Capital Days on the 25th with Game and Fish. Mayor Brockett commented on how nice it is at Bonita Lake, and he didn't want to rush the issue. He thinks Game and Fish has to realize that the City can take what it has now and make it better, which could include stocking the lake as well as other things. They key is to make long-term plans.

Commissioner Ledford asked how the state would take it if the City just did a one-year contract, and City Attorney Thies stated that based on their conversation 8 to 10 days ago, if they were at least given a one year reprieve they would find that favorable. He thought they should continue negotiations. It could be a big investment, and it sounds good. But if they're going to do it long-term, they need to do it right. He thought they should let Fish and Game know what they are thinking, and

Commissioner Griggs said that it is quite possible that the state has already printed their brochures. It might be a really good idea to set it up on a one-year deal and then look at making a final decision by the same time next fishing season.

Mayor Brockett supported the idea that a year would give them more time to look over the issues.

CALL OF THE CONSENT CALENDAR

MINUTES

3. Minutes of January 27, 2009 Regular Meeting and January 20, 2009 Work Session.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

4. Approval of airport commercial permit for Exile Aviation, operated by Dayton Chase Rabon, Area W4-A.

Recommendation: Approve the airport commercial permit..

5. Approval of an Amendment to the NM Aging & Long-Term Services Department for the Nutrition Service Incentive Program (NSIP).

Recommendation: Approve the amendment to the agreement.

OTHER BUSINESS:

8. Appointment of Board Members to Otero/Lincoln County Solid Waste Authority.

Recommendation: Approve the appointment of the current City Manager.

9. Statement regarding the Executive Session of January 27, 2009.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve the Consent Calendar including Items 3, 4, 5, 8 and 9. Mayor Pro-tem Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

6. The Bureau of Reclamation is requesting approval of a leak adjustment in excess of \$1,000 for service address at 500 La Velle Rd, Account #70175-34562.

Recommendation: Deny the request.

John Walp, facility manager for the Bureau of Reclamation for the Desalination Plant on La Velle Road, stated that they felt it was their responsibility as a government agency to request an adjustment. They had talked to the City Water Utility but they could not approve any adjustment over \$1,000. Their explanation was that they would take into consideration the normal usage and calculate the bill based on that. He stated that he understood it is a sizeable bill, and he cannot in good conscience request an adjustment to the lowest tier. He requested that they adjust the bill down one tier.

Commissioner Ledford asked for clarification on the adjustment that they were asking for, and the water bill is tier five at \$12,600. He was asking to reduce that basically to tier four for a total of

\$8,370. Mayor Brockett said he didn't think they had negotiated charges before, and Commissioner Ledford asked what the amount would be if that were applied. The total amount of the bill was \$13,577.06, and application of the current abatement policy would mean they would pay less than that. Mr. Walp said they are going to seek reimbursement from the general construction contractor. Commissioner Ferguson asked Mr. Walp if they did not apply the leak abatement policy if they would go after reimbursement for the full amount, and that is the case.

Mayor Brockett said that what matters to him is consistency in the application of the policy. Commissioner Ledford asked if the consumer has to take the leak abatement policy, and that is not the case. Commissioner Ledford asked if he wants to pay more why they would not accept that. Mr. Walp said that if they apply the leak abatement policy, the bill would go from \$13,577 to \$2,880, which he did not feel was reasonable. City Attorney Thies said they could distinguish the decision in terms of avoiding setting precedence because they would still be paying for all of the consumption. It is just that he is paying for a portion of the consumption at a lower rate. Commissioner Griggs said that they have a policy in place to address issues like this, but by negotiating the Commission would open itself up to negotiating the number up or down, even though in this instance it's up. He thought they should apply the appropriate policy.

Armando Ortega stated that he felt they needed to look at the current policy and address commercial accounts separately from residential accounts.

Commissioner Ledford asked what happened to the water, and Mr. Walp said it was on the weekend and it was a two-inch line. The water ran down the drainage channel.

Mayor Pro-tem Lujan stated that he felt Mr. Walp had thought through the issues, and because the policy allows for them to handle it this way, they should take the negotiated figure. He didn't feel the citizens should pay.

Mr. Ortega also stated that they have never had a customer come in who had recourse against someone else.

Mayor Pro-tem Lujan made a motion to approve charging the customer for tier five consumption at a tier four rate. Commissioner Ferguson seconded the motion. Commissioner Griggs voted nay. Commissioner Brewer voted nay. Mayor Brockett voted nay. The motion carried with a vote of 4-3-0.

7. IFB Bid No. 2009-03, Dry Barrel Fire Hydrants

Recommendation: Award the bid to Good Water Co. Head office in Las Cruces, NM. Branch Office Capitan, NM for a total of \$20,821.00.

Mr. Matt McNeile asked Ms. Teresa Palkki, the purchasing manager, to address questions raised by Mayor Brockett regarding Good Water Co. She did get a W-9 from Good Water Co., and Commissioner Ledford stated that he thinks when a business in New Mexico does business with the City of Alamogordo, they need to be in good standing with the State of New Mexico and submit a CRS number. City Attorney Thies said that requirement could be put in RFPs. Good Water Co. did submit a CRS number.

Commissioner Ferguson made a motion to approve the IFB Bid No. 2009-03, Dry Barrel Fire Hydrants. Commissioner Cole seconded the motion. A voted was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

10. Appointments to Boards and Committees.

Mayor Brockett appointed Esther L. Leete to the Senior Volunteer Programs Advisory Council and Rhonda Alterson and Barbara J. Westhead to the Mayor's Committee on Aging. Mayor Brockett asked if the clerk would notify them.

UNSCHEDULED COMMUNICATIONS:

A. Irvin Maschaud

Mr. Maschaud stated that he read the article pertaining to the new arrangements at Bonito Lake, and he spoke in favor of that. Regarding the fees, however, paying the fees for parking and an extra \$5 for a day to fish would be more than they could afford to spend. He had heard that the State Department was opposed to stocking the lake if individuals have to pay \$5 a day to park.

B. Lynn Seeds

Ms. Seeds commented on Bonita Lake as well and stated that she was there during the holidays last year parked at the private campground below Bonito Lake. They drove up to the lake, and it was packed. It's first come, first served at the campground, but there is no parking once you get to the lake. If one wants to just go fishing, it is quite a walk. She also felt that a bait shop and a concession would make a lot of money.

C. Mr. McNeile

Mr. McNeile had presented the Commission with a white paper on House Bill 40 and the potential impacts it has on municipalities throughout the State of New Mexico as it relates to condemnation of properties, water rights and annexation of property. They Mayor asked them to prepare a letter to the sponsor of the bill, and he asked the Commission to look at the letter and direct any questions regarding that to either himself or City Attorney Thies. They did not know when it would be heard.

EXECUTIVE SESSION

Adjourn into Executive Session to discuss threatened and pending litigation (Oasis Trailer Park).

Mayor Pro-Tem Lujan made a motion to adjourn into Executive Session to discuss threatened and pending litigation (Oasis Trailer Park) at 9:05 p.m. Commissioner Brewer seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

ADJOURNMENT

/s/Mayor Steve Brockett

Mayor Steve Brockett

(SEAL)

ATTEST:

/s/Reneé L. Cantin

City Clerk Reneé L. Cantin

(Prepared by Ubiquis Reporting)

Approved at the Regular Meeting held on February 23, 2009