

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
MARCH 24, 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, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Brockett called the meeting to order at 7:30 p.m., and roll call was taken. Commissioner Brewer was absent. The invocation was delivered by Commissioner Cole, and the Pledge of Allegiance was led by Sam Trujillo, DPS Director.

Mayor Brockett recognized the presence of District 5 City Councilor Gil Jones from Las Cruces and Otero County Commissioner Ronnie Rardin. Commissioner Brewer will be relocating to El Paso, and since he has not served half of his term, a special election will be held for his replacement.

PRESENTATIONS

1. Presentation by Randy Rabon regarding the water rights currently owned by the Mesa Verde Ranch and how the residents of the City of Alamogordo could possibly benefit from this water.

Mr. Randy Rabon thanked the City Commission for the opportunity to speak to them about a proposal to take advantage of water on the Mesa Verde Ranch. He introduced his brothers, Tim and Jeff Rabon as well as Chris Wolf with the Daniel B. Stevens company, who is the hydrologist on the project, and Tom Brazil, who is another member of their team. They wanted to talk about the relationship of the Mesa Verde Ranch to the City of Alamogordo. It is due west of the City of Alamogordo approximately three to four miles to the easterly border. Mr. Rabon said they would be talking about how the City of Alamogordo could take advantage of the water that they have at Mesa Verde Ranch for approximately five years. They have drilled approximately eight of their wells already, and they have a need to proof up on the water to meet the obligations with the State engineer's office.

In terms of history, Mesa Verde Ranch started the process in April 2003 and retained a firm in Albuquerque to help them with their legal needs in addition to the Daniel B. Stevens Company in Albuquerque to do all of their hydrology work. On July 16, 2003, they filed the application and requested an appropriation of 970 acre-feet of water, which will represent water from approximately 15 different wells. On June 20th, 2006, the State engineer's office approved the application and broke the application that was presented into two well fields. Well field number one has an approved water source of 820 acre-feet of water rights, and well field number two has approximately 150 acre-feet of water rights. The uses that they applied for included domestic, livestock, irrigation, municipal, industrial, and commercial, and they asked for it to be used anywhere in Otero County, which was granted. They made a similar presentation a couple of years ago for the Chamber of Commerce once the water right was approved, and there were some remaining questions. The questions were was the water available and what was the TDS? This year they moved forward with drilling their exploratory wells, and they have had the opportunity to determine how much water is available as well as what the total dissolved solids are on an average basis from well field number one. They haven't been able to drill into well field number two yet, but it is scheduled. The average in well field number one is 1,600 TDS, and in well field two they are guessing it will be around 2,000 TDS, which is a little higher. One of the advantages that they have on the ranch property is that there is really no need for environmental clearances because it is all on private property. In addition, one of the things

they had done with the water right was prepare for development they have on the northwestern side of the town that they call Mesa Village. With the shortage of water in the community, they didn't want to handicap themselves in terms of the development of future phases without taking care of their problems resolving the water issue. That was one of the key points in terms of making sure they could continue with the development in Mesa Village. With that, they own all the property all the way to the well field, so right-of-way is not an issue.

Well field number one has eleven wells in it and falls in the middle of the ranch, and they have created a proposed pipeline route that would carry the water up to the north where the City has recently built an overhead water storage tank in addition to having an at-grade water storage tank and booster pump station. Their plan was to carry the water up to Mesa Village, and if they ever needed it, they could actually inject it into the City system once it was treated. The City has developed infrastructure from the proposed tank location all the way back to the reservoir, and there are some transmission lines. They have also carried some transmission lines through Mesa Village to the south along the relief route. They feel that it is a great location to install the right-of-way and pipeline from the well field.

Well field number two is on the southern end of the ranch, and it could also be tied into well field number one with a series of pumps and pumped to the proposed tank location to the north. They have already drilled exploratory wells, and they are in the process of proofing up on their water rights. They have a lot of water; it's going to amount to over a million gallons a day of water. Now, the TDS poses some problems. The treatment may need to be done, and there are a variety of options there. They have to make some decisions as to whether they will use the water on the ranch for irrigation and agricultural uses or whether it is time to come to the City to talk about a public/private partnership with the ranch as the City has a short-term need.

Their proposal is they are prepared to provide the water to the City for free. What they want to do is donate the water for five years to the City of Alamogordo. They want to put a value on it, and what could be a big benefit to the Ranch would be the tax situation that could be given as a result of donating that water to the City. The partnership that they are talking about would be creating a Joint Tenancy Agreement whereby they would both be able to use water out of the pipeline. They need it on the Ranch and for Mesa Verde Enterprises and its dust control and construction needs. There could be other folks that need it for the same purpose. In past years they have had problems with the effluent water, and because there is a shortage they can't get construction water. They try to use the City effluent, but by noon it's out. They are supplementing that with a series of wells they have, and so the byproduct of treatment could possibly be used for that purpose.

Proofing up on the water right is going to answer two questions that continue to come up--whether there is a sustainable source and what the TDS is. If for some reason it was determined that through the two well fields they could not move the 970 acre-feet of water, they would go back with their legal team and file for additional supplemental wells, which is an option that the State allows.

They would want to have some shared ownership, and they could provide the City of Alamogordo the right-of-way necessary to build the pipeline to the facilities that they were talking about. In five years, they would decide what would happen on the right-of-way and with the water usage, The City has made the statement in the past that they don't want to buy bulk water but would rather buy water rights, and Mr. Rabon said that they are also willing to sell the water rights to the City of Alamogordo. These things could be accomplished through a Joint Tenancy Agreement where the taxpayers own the infrastructure for an indefinite period of time. The private sector could have use of the right or the water in the pipeline. There could be a great partnership. There would be shared maintenance expenses, and the water would be metered with each party paying for what it takes. Somebody would also manage the facilities. Mr. Rabon said they are moving forward with the process whether or not the City wants to be a part of it, but the reason for the presentation is he thinks it's a great opportunity for the City and Mesa Verde Ranch to go to Santa Fe as Obama has provided the State of New Mexico some opportunities for stimulus money. If they have a project that makes sense, can provide jobs, and maybe bridge a gap for the City of Alamogordo, and they get together as a large group,

perhaps they can go up and secure the money necessary to build the infrastructure. It would take both parties getting together to get in front of whoever controls where the money goes to demonstrate that it is a worthy project. Mr. Rabon thinks the State engineers would be very agreeable knowing that it was going to bridge a gap to a very serious issue the City of Alamogordo has in working with Mesa Verde Ranch to try to meet each other's needs. Mr. Rabon included with the slides the water test reports on approximately eight wells demonstrating what the TDS was and the other qualities of the water. They would also be willing to sell bulk water after they get through donating the water for the first five years because they will then know what the well field can actually deliver. Payment terms could be worked out. If the City's desire at the end of the agreement is to buy the water and the infrastructure, they would be willing to entertain that. Time is of the essence.

Mayor Brockett stated that the Snake Tank Well project is undergoing an EID study, and one of the things the Chairman and he addressed on the trip to Washington was the need once the report gets to Washington for them to follow up. This may be an opportunity if things can come together to have an RO system in place with the long-term goal of ROing the snake tank water. They have never in the past had any water come to them that needed to be ROed so it made no sense to build one. Up to this point Alamogordo has never had a contingency plan for dealing with severe drought, and this could possibly provide that. Additionally, the City has always been willing to talk to anybody who has water available. The difference here is that Mesa Verde Ranch has a permit that allows for the allocation of water to a municipality, which is significant as changing the allocation or purpose of use requires going to the state engineer. It takes a while. As it currently stands, it is undetermined whether a NEPA study is going to be completed, and even after it is completed there will be a period of potentially a protest. In addition, they also are in water court, which even though they won on every point last year has been appealed. The Board of Appeals will hear that at some point. The challenge is how much water will flow through the wells during a minute and how long it will sustain itself. It probably wouldn't be needed during the entire year but perhaps during the summer. The cost obviously needs to be covered by stimulus money, and it comes down to whether or not the City Commission wishes to pursue this and give City staff direction to pursue it.

Commissioner Ferguson asked whether the water from well field one can go to optional tank two, which is south, and it can. Mayor Brockett said that one thing that would limit them with regard to the desalinization plant on La Velle Road would be the pipeline easement to get to the La Velle Road site. They may want to look at going north near the bypass. The problem with the southern location is the infrastructure required to build about four miles of pipeline, and that would accommodate only a third of the City, the southern part. Mr. Rabon said that there could be an opportunity at the national desalinization plant to take advantage of some of the water in the future as well. That is why on the slide they were showing an optional tank on the south end. If they take it to the north, there are no right-of-way issues, and there is a great opportunity to put a desalinization plant there too. Mayor Brockett said they still have a good relationship with the national desalinization plant, but he doesn't really know what their purpose is going to be in the future such as donating that plan to the City or keeping it forever as an experimental plant. They don't draw much water out of it, but it is all for experimental purposes. Regardless of the location, the City will still be able to work with them and piggyback on their technology, things of that nature. Mayor Brockett also brought up using solar to power up the RO. One of the things he has been trying to push for the last six or seven months in economic development is the importance of things like having a LEED-certified building at Mexico State and a forest service building that is green. This is another green operation if solar power is used to do it. The City has made some small steps in the use of renewables, but they are significant nonetheless because it is a start in regard to renewable projects. The snake tank wells and bringing the water down are the most significant components of the initiative to become a renewable green community.

Mayor Brockett asked City Attorney Thies what is required by the BLM in terms of a cultural study whether it goes on property up north or City property down south. City Attorney Thies said that if they would elect to utilize the site for the desalination process, they would likely have to amend the environmental impact statement to indicate that it would be an alternative site. They would have to do a cultural resource study to determine whether there are any cultural resources that need to be

addressed at that particular site. They are in the process of having that cultural resource study conducted for the site on La Velle Road. The impact statement would be delayed 60 to 90 days with the addition of this.

Commissioner Ferguson asked about how much the short-term lease for the water rights and reimbursement for the costs would be, and Mr. Rabon said that so far they have spent a little over half a million dollars. That, however, would come into play five years from now if the City decided to buy the water rights. Mr. Rabon couldn't really provide a ballpark figure per thousand cubic feet of water with a 20-year lease. Commissioner Ferguson stated that the snake tank water will cost the City roughly \$2.30 per thousand, which doesn't include legal fees and such. Building 37 miles of pipeline up to snake tank is probably going to cost about \$15 million though perhaps grants could be applied for. It's going to take a long time to get. It would seem to make sense for the City to build a pipeline to Mesa Verde Ranch and put a meter there if it will cost less than the snake tank water. Personally, he thinks they are throwing good money after bad by continuing after the snake tank water. He thinks this may be a better plan than the snake tank water. He would like to see a price figured out per thousand cubic feet, and if it is less than the amount for the snake tank water, it would be a really good deal for the City, they could get water right away, and they would not be spending as they build their water line to snake tank.

Mr. Rabon said that he is not sure what the value would wind up being per thousand, but for the first five years if they exercise the Joint Tenancy Agreement, somebody becomes a manager of that in the partnership that he was talking about and all of those numbers would be fully disclosed. They will know what all of the costs are, and at the end of five years the City will still own all of the infrastructure. It would be at that point in time that they would determine how much the water would cost. They have no desire to sell it for more than market value, and so they would come to a number that would be fair for both sides.

Mayor Pro-Tem Lujan pointed out that there is still a lot they need to look into even though the time line may be short. He commented to Commissioner Ferguson that when he got on the Commission there was a drought, and that was the number one campaign issue. He doesn't want to stop looking at any option. It's all very interesting, but they don't know what's going to happen in five years or if the water is any good at all. If it doesn't work out, and they let go of the snake tank, there aren't other options. Mr. Rabon pointed out that this is not being presented as the solution. It is only a bridge because the City has a huge need that is to some degree holding back the community. His presentation only addresses a piece of that pie, and over the next 40 years the Commission has to not only look at all of the options but start taking action on them. Alamogordo has to resolve the issue. Mr. Rabon stated that within six to nine months he thinks they could have the water up and going and being delivered into the City's system. It is a viable option that has immediate benefit, and part of the reason they want to donate it for five years is that they can take the tax benefit and the City has the opportunity to see what the performance is.

Mayor Pro-Tem Lujan said that he likes the idea of getting the green into it because he thinks it would better their chances of getting the money because of what the State is trying to do.

Commissioner Cole said that he believes it bears some type of investigation, and he thinks that the Commission ought to work with staff one way or another on looking into it. He suggested that they say, yes, they are interested in it tonight and then working with the interim city manager they get a team together to see what they can develop with it. Commissioner Cole thought they should move on it as quickly as possible.

Mayor Brockett said that the joint tenancy agreement is something that the State engineer approved in a similar situation in eastern New Mexico, and the State engineer is making sense slowly but surely of some water laws that have been tangled up every which way. Mayor Brockett went on to say that obtaining bulk water is the way he would want to go because they don't want to ruin their chances with snake tank with the State engineer's office by trying to buy the water now. To him the importance is that it would sustain Alamogordo during a drought and would be a contingency plan. In

2006, they sat down and discussed what it takes to get water to the City of Alamogordo. It has changed a lot since then, and the State engineer's goal is to close basins and limit outside sources from obtaining water in basins in the State of New Mexico within the next 18 months, which protects the basin. City Attorney Thies said it is already a closed basin as he understands it, but they would also be looking at water moving within the basin.

Commissioner Cole suggested that they work together to see what they can develop so that the water would be available to the City without jeopardizing what is taking place with the State engineer. Mayor Brockett pointed out that they are looking at it from an altitude of 40,000 feet.

Commissioner Ledford thanked Mr. Rabon for being there. He expressed appreciation for their interest and concern but stated that he had a lot of questions and a lot of interest in it. Commissioner Ledford asked how long they had left to put in their application for beneficial use, and Mr. Rabon said they would have to have the exploratory wells developed and that information presented to the State by June of 2009. They have to have it to beneficial use June of 2010, and they have to tell them what the water is going to be used for. On the map two test wells are shown for well field number one, but they have results on eight. There are no wells currently drilled in well field two though they are moving in that direction. Mr. Jeff Rabon stated that there are maps available that show the approximate TDS throughout the basin. Commissioner Ledford asked how deep the wells are in well field one, and Mr. Rabon stated that the first well they drilled was a production well and they went 800 feet. They then determined that 300 feet would suffice. The other seven are about 300 feet. Commissioner Ledford asked if they have been run for a length of time to see how they held up, and Mr. Rabon said they have pumped them dry and let them build back up to see what they would sustain for a 24-hour period.

Commissioner Ledford said that there are a lot of legal issues, and in fact a lot of information has come out at the meeting that he wasn't even aware of. One of the issues is they need to talk to their legal staff because the City has a 40-year plan, which includes the snake tank build. He did agree that it would be nice to have alternatives, but they have looked at it before and had issues because of what that may or may not do to their application. Commissioner Ledford said that he would have to make sure that it wouldn't hurt their application because the State has been clear that if the City does something, it needs to be careful. The City has been approved for what the State feels is sufficient for its 40-year plan. In theory then, the City doesn't need the water. However, personally he doesn't agree with the State on a lot of the issues and it would be nice to have the water available, especially if they can do it economically. Dealing with private enterprise requires due diligence and being a little bit more careful to make sure it is the right thing for all of the citizens. They would have to look at the economics of it to see what it would do to their total cost of project. Number two, they need to find out what the total mix does when the wells are close by as far as the hydrology. A lot of water rights have been cut back, but water rights are nothing. Wet water is what the City needs, which is what the Rabons have. In addition, water is important, but there are only so many dollars. There are a lot of unanswered questions in terms of how this would all come together, whether it is best for everyone and if they can take advantage of it while protecting their northern application. Doing something short-term with the option of buying later might be attractive, but they need to get the legal implications tied down with respect to the State engineer and their application. The Commission needs to have more discussions.

Mr. Rabon commented that part of the reason he was at the meeting was to ensure that every member of the Commission was informed about what they are proposing because it is communication that is going to make it become a reality. All of the discussion is important, but sooner or later if Alamogordo is going to be a viable community that is going to send a message to the rest of the world that says they are taking care of the problems, it is time to take action. Again, it is not a long-term solution, but he thought the State engineer would be very interested in the option knowing that it would buy both parties time in working through the issues. Mr. Rabon said that nobody loses from the deal as far as he could see, but they can't sit and wait hoping that someone else fixes the problem. Commissioner Ledford said that he wanted to be clear that they need to have some of these

discussions and ask the right questions. Mr. Rabon agreed but stated that they do need to move forward quickly.

Mayor Brockett stated that prior to the meeting the water report has been presented to the Commission at every meeting. Nothing has been done behind Commissioner Ledford's back, and what is being discussed is what has been discussed with the Water Committee. It isn't the time to move forward on purchasing water rights, as it is only a plan B and not a solution. It is the time for due diligence. The goal of the Commission has been to own water rights, and to lease the water would be a short-term solution.

Commissioner Cole asked based on what the State engineer said if they were in violation of what they accomplished with him because the statement was that Alamogordo has enough water rights. Commissioner Cole stated that the Water Committee was appointed as a Committee by the former mayor to work as a committee, which is what they have been doing.

Commissioner Griggs commented that the State engineer awarded them water rights from snake tank. Right now they are on appeal in the court system, and whether the City will wind up with the amount that was awarded they will have to wait and see because the Court may or may not change that. Commissioner Griggs also clarified that the City has not since he has been on the Commission for nine years rationed water. They have gone on the water conservation program to minimize usage, but they have not rationed. Those words are sometimes tossed around as being the same, but they have very different meanings. He also wanted everybody to know that the City in the last several years hasn't sat on its hands in regards to water. In conjunction with the Air Force, the City redid the Bonita pipeline, and it deepened and worked over the golf course well to provide additional water. It also reworked the Prather well so it did provide additional water. It has not, however, had the opportunity to provide this amount of water because it hasn't been available. Something the Rabons should be commended for is when they got the approval of the water rights from the State engineer, they approved them for municipal use anywhere in Otero County. What they have run into before is having to change the type and place of use, which is governed by the State engineer. The water rights on Mesa Verde Ranch appear to be usable immediately because they wouldn't have to go through the process with the State engineer. What is driving it now is the opportunity to obtain stimulus money to build the infrastructure, but Commissioner Griggs didn't know how to get from point A to point B to make that a reality. A lot of people have indicated that if they could operate like El Paso that would be great, but the laws in Texas are very different from the laws in New Mexico making the acquisition of water rights far more difficult and far more time-consuming. Snake tank has been a ridiculously long process, and the State needs to improve the process for communities like Alamogordo to have access to water. He believes they should pursue this opportunity looking at what the City can do to buy the water rights. Buying bulk water is a short-term, inefficient thing for the City to do, but that doesn't mean there isn't a way to take advantage of this opportunity. Alamogordo is going to someday be bigger than it is, and hopefully someday the City can use all of the water that it currently has available to it as well as all of the water rights. Those kinds of things make a community a place that people want to be. The City is moving ahead in the best way that it can. Staff needs to look into this opportunity to see where the City needs to go, but Commissioner Griggs' personal belief is that they need to buy the water rights.

Mr. Rabon commented that the need for action is driven in part by the fact that there is some stimulus money out there if they could unite. Another reason is they have to finish their exploratory wells and put a plan together for beneficial use. That plan is going to be a lot different than what they are talking about with pipelines to booster pump stations that the City has. Before they spend money, they need to determine what the best use is going to end up being, and that is where the City comes in as an option and an opportunity.

Mayor Pro-Tem Lujan stated that he did not have a meeting with the Rabons regarding this, and one of his first questions regarding this opportunity was how it would affect what is being done with the State engineer. That said, as afraid as he is of losing what they have with the State, he is just as

afraid of passing up this opportunity and the State continuing to take its time leaving the City with nothing.

Mayor Brockett said that what he was hearing was that they direct the staff to move forward with discussion to find out the answers to the questions that have been asked.

Mr. Rabon said that they are excited about it, and they look at it as a great opportunity in which they would love to partner with the City. They have a huge vested interest in Alamogordo and seeing it be everything that it can be.

Commissioner Cole asked if the first of May would be too soon to have a report back, and Mayor Brockett said that he couldn't say how long it would take. They agreed to have a report of some type in May though that would be a fairly aggressive time frame.

Mayor Brockett recessed the meeting at 8:49. The meeting reconvened at 8:58 p.m.

2. Presentation by Joe Hardin from Z-Trans regarding the Regional Transit District Taxing Authority

Mr. Hardin thanked the Commission for allowing him the opportunity to speak. He stated that he was going to briefly talk about Z-Trans, and Z-Trans has been fortunate to see stimulus money coming their way. They are looking at upgrades with video surveillance, shelters, signage and replacement buses. Mr. Hardin stated that he is passionate about public transportation, and he has seen the need in the community for transit as in all rural communities. They are competing with cities like LA, Chicago and even Albuquerque for the dollars, but rural transit is a quick-growing segment, as there is a need for it. That has been brought out by past needs assessment studies and also with current. Mr. Hardin introduced the Transportation Committee chair and Representative Vaughn. Mr. Hardin stated that he was not there in support of the RTD, as it is made up of government entities and they are non-profit and not part of the RTD though they can contract with it just like they do with the City, County, State and Tribe. Mr. Hardin was appointed by the City to represent the City and County at board meetings or at any workshops. He was there to give information to the City and County, and he said they are there to provide public transportation with whoever can help them do that. An RTD can be valuable, but they need to base findings on an open mind based on the service plan that is now being worked on with the financial plan. That is before the RTD board accepts it and begins service.

Mr. Tom Murphy, NPO Officer for the Southwestern Regional Transit District, then gave the RTD presentation to bring everybody up to date on what the RTD is, what they have done to date and what the next steps are. The South Central RTD is made up of the City of Alamogordo and other cities, towns, villages and counties within the south central part of New Mexico. The District was created pursuant to the State RTD Act of 2003 prior to which there was no mechanism in state law that allowed the creation of such a district. Between 2003 and 2006 they convened organizing committees throughout the region to really draft bylaws and go to each of the organizations. A Resolution of Intent to Join was passed, which committed the City of Alamogordo to joining the RTD. With the Resolutions of Intent, they went to the State Transportation Committee and received certification as an RTD in November of 2006. As an RTD under that RTD Act, the District exists as a distinct political subdivision in the State meaning that it has bonding authority in addition to the authority to request that counties place GRT questions on their ballots. At this point there is no RTD staff, and it is supported jointly by the South Central Council of Governments that acts as the fiscal organization and by his organization, Las Cruces NPO, which is providing planning support. Once a service and financial plan is adopted, they anticipate that an RTD would likely stand on its own.

The RTD contracted with A&R consulting out of Houston in May of last year to develop the service and financial plan. They delivered an existing conditions report later on that summer and held 10 public meetings throughout the region in October to get public input. A web site was developed, and they went on-line in December of 2008. Last month they had a workshop at the regular RTD board meeting to give the consultant some final direction in developing the draft service and financial plan.

Mr. Murphy showed a slide of the RTD web site, and all of the documents that are relevant to the RTD are placed on the web site. In terms of deliverables out of the service and financial plan, they have asked them to look at opportunities for coordinating the current transit services--opportunity, for instance, to coordinate between Z-Trans and Roadrunner Transit in Las Cruces. They have conducted stakeholder interviews and a telephone survey to provide an idea of what people's attitudes were as far as supporting an RTD. Also, it was requested by the Board that they conduct a rail feasibility study to look at the potential of rail mostly in the El Paso/Las Cruces corridor but also toward Albuquerque.

The top two priorities that came out of the workshop in February were to have near-term commuter service between Las Cruces and El Paso and also to support rural transit throughout the district similar to many of the things that Z-Trans does. A third priority was to augment existing transit services in the region, which would be more along the lines of supporting something like Z-Trans within the City of Alamogordo proper.

In terms of next steps, they expect delivery of the draft service and financial plan at the May 21st board meeting, and then they will go into a final round of public involvement in May and June, likely 10 more meetings throughout the region, to hear public comment on the draft plan. Then, they will take comments back and turn things over quickly to have a final plan for Board adoption at the August board meeting.

The question has been raised in terms of what if they don't like the plan. The RTD-enabling legislation and the RTD bylaws allow a member to withdraw from the district within 60 days of the adoption of that service and financial plan with essentially no questions asked, no commitment. The Commission would have to pass a Resolution and forward it to the RTD chair. At this point no request has been recommended, much less forwarded to the board, much less approved by the Board for a tax increase. The District has the authority to ask the voters to go anywhere from a sixteenth of a cent to a half a cent. All three counties combined would be able to raise \$5.423 million in 2010. Otero County would have the potential for raising \$1.087 million, and all of that money would be eligible, local match, to apply towards federal funding that is coming into the area. Mr. Murphy provided the breakdown of where that \$1.087 million would come from.

The telephone survey regarding voter support for a small increase in GRT indicated that very likely and somewhat likely are over the 50% mark. In Alamogordo, 34% said they would be very likely to support it and 26% would be somewhat likely, which is a combined 60% of the voters that would view that as favorable.

Gil Jones, Las Cruces City Councilor and Chair of the South Central Regional Transit District, clarified that with respect to the potential for an upcoming RTD tax referendum, there is no upcoming agenda or timeline for the issue. The board as a policy authority has not discussed putting an issue before voters on a tax measure. They held a workshop with the public, members of the board and their consultant, and they talked about many issues, one of which was the tax-funding issue on the RTD and the risk of approaching the public about a tax issue without the proper timing. They agreed that it would be suicide to ask the public for an increase in tax to fund an RTD system right now, especially with nothing more than a draft study in hand. They also discussed the need to demonstrate a success story before talking about further funding mechanisms. Mr. Jones said that they need to start discussing transportation challenges before the gun is to their head figuratively speaking. Transportation and energy costs are intertwined, and the issues need to be discussed before oil goes back to \$100/barrel. They need to start planning today. It's a long process, and in this kind of planning environment they can also talk about planning for funding opportunities. Perhaps in the future there will be a State Transportation Fund, which would also provide a funding mechanism. Mr. Jones also made it clear that he has never lobbied for a change in the rules that pertain to the RTD and its authority. Perhaps, however, the Board needs to revisit the rules and look at something regarding membership. It is his opinion that they don't want members who don't feel comfortable being a member of the RTD. It is an important issue that needs to be addressed from a policy

standpoint. He did ask the Commission to continue to support the RTD at least until they get to the difficult funding question. This is a three-stage process. Stage number one is to ask what is going to be done about regional transportation challenges. Stage number two, which came out of the study and workshop, is to find out what works, test the waters, demonstrate demand, and conduct pilot projects. Stage three is the funding mechanism, but it is just one of the three pieces.

Mayor Brockett stated that Mr. Jones had clarified for him that they had not yet established a funding mechanism or if they wanted to impose a tax. His question was whether a city or county would still be obligated to pay if a tax referendum is voted down. Mr. Murphy stated that individual jurisdictions need to have their attorneys give an opinion on that.

Mayor Brockett stated that there are things they need to find out more about including the feasibility of trans benefitting Alamogordo with its geographic location and surrounding areas. Mr. Jones stated that they recognize and appreciate the challenge and gravity of the question that Mayor Brockett raised, and he committed that as a Board they would discuss it such that if it's appropriate to make a bylaw change that would protect Alamogordo as concretely as possible from that risk, that's what they have to do. They don't want to trap anyone, and they want to give everybody the rights they deserve.

Mr. Hardin stated that he has been involved in the process since before this RTD was even thought of, and sitting in on the work groups, the number one question is tax and the number two question is if they will come in and take over the system. They want to see the best transit system in the City and County that is possible. If they stay in the RTD, he would like to see it extend to Cloudcroft and possibly beyond. They are coordinating their system now with Lincoln County Transit, which is very good in terms of a seamless system. When gas prices came down, their ridership stayed up, which says they are doing something right.

Commissioner Ledford asked how many covered shelters they were thinking about putting in, and Mr. Hardin said the maximum number is probably 20 though that depends on how much stimulus they get because they have to build in the manufacturing cost, delivery cost and installation cost. It will be up to the RTD to maintain those shelters.

Commissioner Ferguson asked if they would be putting advertising on the benches, and Mr. Hardin said they have looked at it but no decisions have been made. One of the things they want is safety, and if they start putting advertising on the shelters, something could happen in one of the shelters and it wouldn't be seen. Commissioner Ferguson said he thinks they ought to stay informed, and if the voters are going to pay the tax, they want to make sure they get their fair share.

Mayor Pro-Tem Lujan clarified that he is the representative of the City, and he supports the RTD and doesn't see anything bad about it except for the law that was passed under their noses as they were getting started. As long as the cities with more voters get to decide the fate of Alamogordo and smaller cities, he will never support it no matter how great the deal is. Mayor Pro-Tem Lujan said that as long as that law is there, he will not go to the meetings and he will not support it. If the Commission wishes, they could elect another representative. Mr. Hardin said that the reason he wants representation for the City is he does not have voting power when it comes to anything financial. One reason he came in front of the commission with information is because they are getting to the end of the process and when it comes to voting they do need representation whether they stay in the district or not.

Mayor Brockett stated that it would behoove them to get a report from City Attorney Thies regarding his opinion on those issues.

Commissioner Cole asked what City Attorney Thies would be giving his opinion about, and it would be about the State law that was passed that Mayor Pro-Tem Lujan had brought up. Commissioner Cole said that if the community turns down the tax and has to pay it because other government

agencies pass it, then he would not support it either. There is no way they should put another tax on the people if they are not in favor of it.

Mr. Jones said that he looks at it first in terms of transportation and secondly what they will do about funding. He certainly understands the concern that a vote in Las Cruces will bind the people of Alamogordo to some kind of bond obligation that the RTD might enter into. He would like to look at solving or eliminating that threat. Mayor Brockett clarified whether an opt out would allow them to opt out before they get into the tax, and Mr. Jones said that is what they would look at. He then clarified that they have not approved a plan and there will be a 60-day opt out if that's what they choose to do. The key thing that came out of the workshops is that it would be reckless to ask for a tax increment of the state if they didn't complete other steps first. Certainly, they will talk about how they can protect the right of Alamogordo's citizens to not pay for something that the people do not vote for.

Mayor Brockett thanked them for the presentation, and he then recognized Gloria Vaughn and welcomed her back from Santa Fe.

3. Presentation by Joylyn Marcouris regarding the support of Earth Hour.

Mrs. Marcouris thanked the Commission for the opportunity to speak regarding Earth Hour, and she asked them to think globally regarding warming and climate change. She provided a brief overview of Earth Hour, which was started in Australia, and will take place March 28th at 8:30 at night local time. If individuals want to draw attention to the idea of climate change and the need for concern and interest in it, during that hour they should turn off as much electricity as they are able to in their homes, businesses or anything that is open at that time. She thought if the Commission could publish it and be aware of it, that would make a difference.

Mayor Brockett said that certainly it would be an individual choice, and the media was present at the meeting. He thought the word would get out that way, and he encouraged Ms. Marcouris to contact radio show hosts to get the word out as well.

PUBLIC HEARINGS:

4. Public hearing to consider a temporary structure special permit for Vision Ford Lincoln Mercury Inc., from June 11 to June 16, 2009 [SP-2009-0124(A) at Margo's Mexican Food, 504 East First Street].

Recommendation: Approve the special permit from June 11 to June 16, 2009, with the finding that it will not be detrimental to surrounding properties.

Commissioner Griggs made a motion to approve the special permit from June 11 to June 16, 2009, with the finding that it would not be detrimental to surrounding properties. Mayor Protem Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

CALL OF THE CONSENT CALENDAR:

MINUTES:

5. Minutes of March 9, 2009 Regular Meeting.

Recommendation: Approve the minutes.

ORDINANCES AND RESOLUTIONS

10. Consider Resolution No. 2009-06 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed on March 24, 2009.

Recommendation: Approve the resolution.

OTHER BUSINESS

12. IFB Bid No. 2009-04, Digital Sign

Recommendation: Award the bid to Commercial Sign Art, Incl. in the amount of \$31,565.00, Option 1 and Alternate 1, including NMGRT.

13. Consider award of IFB No. 2009-05, Miscellaneous Foods, Dairy Products & Items for the Alamogordo Senior Center Nutrition Program.

Recommendation: Award to Prices Creameries, six (6) items for an estimated total of \$9,712.98. Award to Ben E. Keith, one hundred twenty-five (125) items for an estimated total of \$39,795.51. Award to U.S. Foods thirty-five (35) items for an estimated total of \$14,656.32. Award to Shamrock one hundred seventy-three (173) items for an estimated total of \$43,495.47. (*Bid amount estimated total of \$107,660.28 is based on bid quantities.)

14. IFB Bid No. 2009-06, 2009 Pickup 4X2 Extended Cab with Hot/Cold Lowboy.

Recommendation: Award the IFB to Vision Ford, Inc. in the amount of \$28,804.00.

15. Consider approval of Change Order No. 1, PW Bid No. 2008-011, Replace Well 6.

Recommendation: Approval Change Order No. 1, in the amount of \$24,733.67, including NMGRT, to Severn Trent.

16. Accept the Canvass of Returns for the March 10, 2009 Special G.O. Bond Election.

Recommendation: Accept the canvass as presented.

Commissioner Ledford made a motion to approve Items 5, 10, 12, 13, 14, 15, and 16 of the Consent Calendar. Mayor Pro-tem Lujan seconded the motion. A roll call vote was taken because of Item 10, and all voted "aye." The motion carried with a vote of 6-0-0.

CONTRACTS AND AGREEMENTS:

6. Consider approval of a Joint Powers Agreement with New Mexico Game and Fish to stock Bonito Lake with game fish.

Recommendation: Approve the Joint Powers Agreement.

Mayor Brockett read the item and particulars of the Joint Powers Agreement.

Commissioner Ledford commented that he thought part of the funds were to help offset the operating costs, and he wanted to know if they were looking at capital outlay with the extra money. Public Works Director Cesar is going to get estimates on what type of capital outlay it would take to run electricity and make RV pads. Commissioner Ledford pointed out that because of the operating budget issues he would like to know how quickly they could get it to generate revenue, and that is their goal.

City Attorney Thies pointed out that the effective date would run from April 1st of each year and end on November 30th of that same year. Commissioner Ledford asked if they were going to aggressively stock the lake to make sure there are adequate fish, and Mr. Mike Sloan, Chief of Fisheries, indicated that they currently have plans to stock the lake. They have just been waiting to finalize the agreement.

Commissioner Ferguson made a motion to approve the Joint Powers Agreement with New Mexico Game and Fish to stock Bonito Lake with game fish. Mayor Pro-tem Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

PLANNING ITEMS

7. Public hearing to consider a variance to reduce the required distance between the main building (house) and the accessory building (storage building) for Daryle Christense. [Case V-09-0530(A), 1218 Post Avenue]

Recommendation: Approve the reduction of the required distance between the main building and the accessory building variance from 10 feet to 7 feet.

Mr. Marc South, City Planner reiterated their recommendation and provided some specifics on how the shed was installed. He also showed some pictures and explained that the Fire Department has no problem with it and there were no protests.

Commissioner Cole made a motion to approve the reduction of the required distance between the main building and the accessory building variance from 10 feet to 7 feet. Commissioner Ferguson seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

Mayor Brockett recessed the meeting at 9:57, and reconvened it after a five-minute break.

CONTRACTS AND AGREEMENTS

8. Advertising benches on City Right-of-Way.

Recommendation: Allow bench agreements to end in May 2009.

Sam Trujillo, Director of Alamogordo DPS, explained that the City currently has contract agreements with three private companies for the placement of advertising benches on the City's right-of way. The companies sell advertising space on the benches and pay the City a portion of those proceeds. The contracts are due to expire in May of 2009. The Code Department enforces violation of the City's Ordinance but have not historically enforced violations of contracts, which are considered civil matters, but depending on the decision the Commission makes, they may be asked to take over that responsibility if it is legal to do so.

In February of 2009, the City Clerk's office received a contract request from a private company identified as Mi Casa, and the contract is for advertising benches, which is due to expire in May of 2009. Since that time they have been in contact with the other two contractors who have expressed a desire to continue with the contracts. A number of concerns have been raised about the advertising benches, and he wanted to fully inform the City Commission before a policy decision was made as to whether or not to approve future contracts for such benches on City rights-of-way.

Currently, there are 11 City ordinances that address issues with the City rights-of-way. In general, the purpose of having a right-of-way is for the City to be able to use that area for a distribution of services, cable, water lines, sewer lines, electricity, telephone, things of that nature. Out of the eleven City Ordinances, there are two Ordinances that directly relate to the discussion, Ordinance 24-01-

120, which is the use of public ways, and according to that Ordinance the City right-of-way is intended to be for vehicle and pedestrian use. It specifically prohibits commercial activities like advertising signs. However, in section E there is an exemption to the Ordinance, which would allow advertising benches pursuant to a lease agreement with the City--basically laws saying you cannot have advertisement on City right-of-way. Then in the law it gives an exemption if there is a contract between the City and a private contractor for advertising.

In late 2008, the exemptions were moved to chapter three of the Municipal Code, which basically allowed DPS code enforcement officers the authority to enforce the section, and enforcement is for violation of the law. If somebody puts advertising in a City right-of-way, the code enforcement officers can enforce that violation as of the end of 2008. The remedy, again, for contract violations is through termination of the contract through civil court or breach of contract. In 1999, the City entered into a five-year contract agreement for advertising benches with Joe Ferguson and JGMNP. In 2000, the City entered into a five-year contract agreement for advertising benches with Pinnacle, and in 2005 the City Commission discussed various concerns with advertising benches and the contract that existed at that time. The Commission decided to synchronize all the contracts by extending those scheduled to expire with the longest existing contract at that particular time and then let the next Commission, this one, make the policy decision. In 2006, Mi Casa took over the Joe Ferguson contract, and again all contracts are due to expire in May of 2009.

The contracts basically require the contractor to pay the City \$10 per bench and \$10 of the gross sum received for advertising space. According to Finance, the City has had some difficulty in obtaining payments from various contractors at various times throughout the contract period. The City has received \$5,466 in revenue in 2008, and there is a concern about the City's costs for billing, legal, correspondence, phone calls, removal of the advertising benches by the Street Department and ultimately the enforcement, which they believe would exceed the dollar amount that the City is currently receiving.

Not every bench has been a problem, and the City hasn't had problems with every contractor. That said, the City has had a problem with some of the benches not being maintained in good condition. Director Trujillo showed pictures of several benches. They have had problems with some benches that are interfering with the Americans with Disabilities Act also, such as the one by Lowe's grocery store. Director Trujillo showed additional examples and explained that they have also had a problem with conflicting purposes of advertisement and convenience for pedestrians.

Director Trujillo went on to say that if a bench is on private property, it's the responsibility of the property owner. Director Trujillo said that he has had the opportunity to meet with the contractors, and it was very beneficial. The contractors did point out some benefits to the City in terms of revenue, low cost for advertising for local businesses, and places to sit at bus stops. The question is whether the purpose of the benches is for advertising or the convenience of the public. They did advise the contractors that staff was not supporting the continuation of existing contracts and would be making recommendations to the Commission, and the contractors were present at the meeting. Staff believes the purpose of the benches should be convenience for the public, and they recommend that the City only allow quality-built benches installed by the City or pursuant to City specifications at specific, limited locations where there is a high volume of pedestrian traffic.

Director Trujillo went on to say that City staff does not recommend putting advertisements on City right-of-way for various reasons, which Director Trujillo listed. If the Commission wants to allow advertising on City property, then City staff recommended that they separate advertisement from the benches. Mayor Brockett asked what is out-of-bounds for advertising, and as far as the contracts are concerned, Director Trujillo said there should be certain restrictions though if the City allows advertisement, the City couldn't have restrictions that would violate Freedom of Speech.

If the City allows advertisement on City property and separates advertisement from benches, new contracts would have to be entered in to, which would allow that, and they would have to change the Ordinance.

Staff recommendation is to allow the current contracts to expire and deny any further request of advertisement on the City right-of-way. If the Commission wants to continue to allow advertisement on benches, staff would ask that it be limited to the type of benches previously described such as the ones being looked at by Z-Trans. In addition, staff recommends that they limit the number of benches to specific locations where there is an actual need as far as pedestrians are concerned.

Commissioner Ledford asked for clarification on why staff wants the contracts to expire and why they feel they're not good for pedestrians though he feels that some policies should be established to determine location and mandate upkeep. Director Trujillo reiterated that they feel it's not good to allow advertisement on City property. Their belief is that the City shouldn't get involved in that process at all unless they get out of the advertising business and just provide benches. Commissioner Ledford pointed out that the way the City pays for a lot of things is through the gross receipts tax, and that comes from small businesses. He believes it needs to be worked on so it can be enforced and done properly.

Mr. Jim Mack from Mi Casa signs pointed out that there are not many avenues for small businesses to advertise, as they are all quite expensive. In fact, their benches are one of the most inexpensive ways of advertising out there. They haven't raised prices in the last three years and prior to that they were pretty consistent as well. Additionally, the City gets part of that revenue. The benches also provide an opportunity for organizations, groups and events to get the word out inexpensively. They would love to have more of their benches at bus stops as well, and if the contract is right, there shouldn't be a need for much police enforcement, which would benefit the City. They all want to make the City look nice, and Mr. Mack said they could do a better job of that. In addition, they have gone beyond the contract in terms of providing benches to City organizations. Mr. Mack also pointed out that if they let the customer advertise on City right-of-way without regulation it will likely get pretty wild, and there are other ways to address the problems without simply eliminating the benches.

Richard with Pinnacle Media also addressed the Commission as one of the contractors, and he has been a contractor with the City of Alamogordo for close to ten years, which has been a very good relationship. He couldn't recall any real issue over those ten years. He didn't believe taking a snapshot was a fair representation as maintenance and upkeep is an ongoing process and part of the business. He has had clients for over ten years on his benches, and that is how advantageous it has been for small businesses though they don't advertise alcohol, cigarettes or political campaigns. He also self governs in terms of not advertising competing businesses in front of other businesses just out of courtesy. He is also a contractor with the City of El Paso and other municipalities, and their record is very good with all of those municipalities. In the contracts with other municipalities, they are allowed ten days to make necessary repairs to benches before they are fined by the City. It is in their best interest to address repairs as soon as possible, and the best way to regulate the business is to set the requirements in the actual agreement.

Jim Lynch stated that he started in the business 42 years ago in Alamogordo. He has never really had any complaints though occasionally he has been asked to move a bench, which he has always done immediately. The contract that is currently in place, in fact, is the one that he wrote up. One thing he noticed in driving around was how many people use the benches, and though he would love to provide the types of benches that Director Trujillo referenced they would not be able to do so and survive. He believes that they can compromise on the issues to reach an agreeable outcome for all parties.

Mayor Brockett made the point that ADA is the law of the land, and if any benches are violating that, they need to go immediately. It is an unfunded mandate from the federal government, and they have made a commitment in Alamogordo to provide clear pathways. There are benches that need repair, and there are problems with some of the benches in terms of line of sight. Mayor Brockett does believe that they can construct a contract that would address all of the necessary issues. He isn't ready to get rid of the benches, but there isn't a whole lot of time to get the contract put together and put in place prior to May 28th.

Commissioner Ferguson stated that he had a contract with the City at one time, and always went to the City first and got permission to put them in particular locations. There are some that are in violation of the contract where benches can't be within 50 feet of each other. In addition, the revenue is based on the percentage of the rental. The contract says \$10 a year plus 10% of the rental. Commissioner Ferguson said he believes it ought to be changed. If there were \$200 benches and the City charged the company \$5 a month per bench whether it had an ad on it or not for use of City property, the City would know exactly what it should be paid, and the City would get \$12,000 a year in revenue. Commissioner Ferguson also said that he hasn't heard any complaints. He doesn't want to see these three companies put out of business plus others and the loss of revenue and gross receipts tax that would result. He thinks they can all work together and come up with a plan that works for everybody.

Mayor Pro-tem Lujan agreed with the first option presented by Director Trujillo. He doesn't like the idea of them being on City property, and there's a whole list of reasons why. That said, he doesn't want to put the companies out of business, but the benches should look better. He also thinks if the City is providing services to the public, they need to provide the benches as well. It's one package.

Commissioner Griggs said he thinks they need to extend the contracts for a short period of time, and in that time they should figure out what terms they want to set. They need to go out on RFP for a specific number of vendors, and a specific number of locations. If they only identified 100 locations, it may be that only one vendor would be used to cover those locations. A contract extension would allow time to talk about the issues and provide an opportunity for businesses.

Commissioner Cole asked if when Commissioner Griggs mentioned only one vendor if he had some things in mind that he would suggest changing. Commissioner Griggs said that any time they issue an RFP, they are usually looking at one vendor. If there are enough locations, it may be reasonable to have more than one vendor.

Director Trujillo stated that it is not a personal issue with him, and he has let the contractors know that. If it is the Commission's decision to continue with advertisement, however, there are alternatives they can implement that may be workable, in particular the RFP. It could include technical standards that would be required for the benches, but a concern is that it would be cost-prohibitive. If the Commission decides to continue with the benches, staff will need some direction as to whether the priority is for the advertisement or the pedestrian because that will impact the contracts. They also do believe that the cost should be consistent with what the City's cost is for having the benches. Commissioner Ferguson stated that the reason he proposed \$5 a month is it would be consistent and the City would know exactly how much it will be getting.

Director Trujillo stated that the enforcement is difficult unless it is put into an Ordinance because it is a breach of the contract and not a violation of code. The remedy is to eliminate the contract. If they go the RFP route, that will limit the number of vendors utilized, and depending on whether the priority is advertisement or pedestrian use, that will dictate the numbers allowed and the positions they will be placed in.

Mayor Brockett said that clearly there are too many benches, and having the benches in certain areas or side by side violates the contracts. Ultimately, he thinks it will come down to an RFP, and that is likely to end up with one vendor. There are too many benches and too many in disrepair, and there are also issues with violating ADA requirements and blocking the line of sight of vehicles. Clearly, the purpose for the benches is advertising, but that has to meshed with the quality of the bench in terms of timeframes for getting benches repaired and things of that nature. Mayor Brockett suggested that perhaps Director Trujillo needs to go back to the drawing board and come back with additional ideas.

Commissioner Ledford commented that he would think they should limit the number of benches to 120 to 150, and he could see having an RFP with two successful bids for 50 or 60 pieces. The

quality does need to be addressed, and he thinks they should look at sites that would be pedestrian friendly but also appropriate for advertising. If it gets out of control, however, the City has the unilateral ability to terminate the contracts or let them expire. The City also needs to be able to enforce the contract if the benches are not kept up.

Mayor Pro-tem Lujan said that he agreed with what Commissioner Ledford said except that he didn't think they should limit the locations to 120. As long as they aren't in inappropriate areas and they are put in areas where people will use them and they look decent, the more the better. Either don't allow them on City property or find as many locations as possible.

Mayor Brockett suggested that Director Trujillo come up with a plan and then come back to present that to the Commission.

Director Sam Trujillo said that one of the things they requested was that DPS take over the responsibility, and he will sit down with the city manager, city attorney and contractors to work these things out.

Commissioner Cole said that he got a request from residents at Foothills Park, and they requested more benches there.

Director Trujillo underscored that there will be two different types of benches in the City, those put in at the bus stops and those put in by the contractors.

Mayor Brockett recessed the meeting at 11:16 p.m., and it was reconvened at 11:23 p.m.

ORDINANCES AND RESOLUTIONS:

9. Consider Ordinance No. 1351 amending Section 28-03-085 of the Code regarding water service calls during business hours and Section 28-03-120 regarding the testing of meters.

Recommendation: Approve the Ordinance for first publication.

Ms. Katie Josselyn, Utility Billing Supervisor, explained that she was there representing the Customer Service Department, and they were proposing two amendments to the Utility Ordinance. One pertains to an ancillary charge, and the other pertains to a charge that is imposed for testing meters. The charges were initially instituted as a means of reimbursement for the City when the services were provided, and they believe the charges need to be updated to cover the current costs of providing those services. They would like to declare their business hours as being 8:00 a.m. to 4:30 p.m. When customers come in all the way up until 5:00 to make payment when they have been cut off for non-payment, staff is sent out to turn the water back on, and that creates a situation of overtime. Changing the declared business hours, would give an additional window to address these situations without it going into overtime. With regard to testing meters, they would also like to put in wording that allows them to recoup whatever the City is charged.

Commissioner Cole asked if they would still be open until 5:00, and that is the case. Customers would still have the option of the City going out to take care of these situations, but after 4:30, they will be charged the after hours charge. The overtime starts at 5:00.

Mayor Pro-tem Lujan asked for clarification on how they handle the situation when someone comes in at 4:35. Ms. Josselyn said they would like to set the standard to 4:30. If they come in after 4:30, they will be charged the after hours fee.

Commissioner Griggs asked if Section 1.2 should be changed to read "service calls during the hours of 8:00 to 4:30," instead of using the words "regular business hours," as that is a contradiction. City Attorney Thies said that would make it more clear, and the general perception is that regular business hours are 8:00 to 5:00.

Commissioner Ferguson agreed that it would sound better.

Commissioner Cole made a motion to approve Ordinance No. 1351 amending Section 28-03-085 of the Code regarding water service calls during business hours and Section 28-03-120 regarding the testing of meters. Amending the section removing regular business hours in section 1.2 Commissioner Ferguson seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0/

OTHER BUSINESS:

11. Discussion and direction on proposed actions for structure located at 523 N. White Sands Blvd.

Recommendation: Provide direction to staff.

Mayor Brockett explained that this is the historic pink building located on White Sands Boulevard. Mr. Threadgill, Community Development Director, stated that it is not a historic building in that it is not on the historic register. They did make notification to the owner who lives in California via registered mail, and they did make delivery the day before based on results from the U.S. Postal Service. The owner has not really had time to let the City know what the plans for that building are, and the letter does give them ten days in which to respond. Because of the way the building sits on the property, right up against the sidewalk, they would like to close the sidewalk because they believe there is a possibility that the front portico and columns could collapse. Ultimately, they believe that it would be prudent to have a structural engineer examine the building to find out if it can be saved.

Mayor Brockett asked what pedestrians would do if they blocked the sidewalk, and Mr. Threadgill said that ideally they would cross the street and use the sidewalk on the other side. Knowing human nature, they will likely just go around whatever blockage is put in place and continue on their way. The building is unsecured. There is evidence of people living in there off and on, and it is probably a fire hazard. The building has issues other than just the front, and the quickest action would be to block off the sidewalk and await the owner's response. The owner has photographs of the building and the citations detailing what is wrong with the building, and they won't be clueless as to what the condition is. Mayor Brockett asked DPS to check on the building as much as possible.

Commissioner Ferguson asked if they don't do anything if the City has to condemn it, or if there is some other action by which the City can say it is unsafe and has to be torn down. Mr. Threadgill said the City would have to determine whether it is really safe to keep the building where it is. City Attorney Thies said that the City would have to retain the services of a structural engineer to make a determination that it's a dangerous building. That recommendation would have to be brought to the Commission, and the City would have to go to Court to enforce that finding. The City would ask the Court presumably to demolish the building.

Mr. Joe Bailey, Fire Commander at DPS, said that he also inspected the building, and it appeared to him that there are homeless and transient people living in there. It seemed that they were using a portion of it for a bathroom, and because of the stench, you can hardly go in it. There have been a lot of fires in the downtown recently, and he has some concern that this building could burn as well.

If the building official makes a finding on imminent danger, the City would have the ability to board it up. That is probably a prudent step to take.

17. Appointments to Boards and Committees.

Mayor Brockett appointed Reynaldo Chavez, Jr. to the Public Library Board, and he asked the clerk to notify him of this appointment.

UNSCHEDULED COMMUNICATION**A. Commissioner Cole**

Commissioner Cole requested something in writing as to what will happen with the bridge and the old IGA property. Mr. McNeile will prepare a memo. The bond failed, and staff is awaiting direction from the Commission.

B. Commissioner Griggs

Every so often there are comments about the golf course that are not always great, and the Sun Country PGA section recognized the Desert Lakes golf course with an award that honored the facility because it demonstrated the highest level of promoting and encouraging the growth of the game.

C. Interim City Manager McNeile

The reservoir will be completed shortly, and Ms. Nichols handed out a memo to the Commission regarding the financing for the infrastructure project and road project. The RFPs went out, and the New Mexico Finance Authority was selected as giving the City the best deal. The City's first reading on the Ordinance to approve the loan is expected on April 14th with the final approval on May 12th. Loan closing and money available for the project is expected on or about June 19th. This is the first half of the financing to get started on the 13 projects that were approved by the Commission last year.

D. Mayor Brockett

The Mountain View Trailer Park has been cleared of the burned-out trailers and loose debris. There are weeds starting to pop up, and Code Enforcement will notify the owner to have that corrected. Mayor Brockett commended Mr. Baker for getting that taken care of.

Secondly, Alamogordo has the opportunity to become a sister city with German City that has tornadoes flying nearby. He has asked Mr. McNeile to start looking at the sister city concept with a community in Germany that has the tornadoes.

In following up on Commissioner Cole's comments, after the bond he asked Matt and Stephen to visit with Michael Shyne who is the trustee for the Sheldon estate as to what his intent might be in regard to the library. Mr. Shyne is more than willing to take the building back at this time. Mayor Brockett requested that a resolution to deed the property back to the Sheldon Trust be included in the next meeting agenda.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened and pending litigation (PSAP) and Collective bargaining negotiations (AFSCME and APSOA).

ADJOURNMENT.

Mayor Pro-tem Lujan made a motion to adjourn into Executive Session at 11:46 p.m. to discuss threatened and pending litigation (PSAP) and Collective bargaining negotiations (AFSCME and APSOA). Commissioner Ledford seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

/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 April 14, 2009.