

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
7:30 P.M., COMMISSION CHAMBERS  
APRIL 14, 2009**

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

**COMMISSIONER - VACANT  
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**

Call Meeting to Order, Roll Call, Invocation, and Pledge of Allegiance.

Mayor Brockett called the meeting to order at 7:30 p.m. The roll Call was taken by the City Clerk and all members were present. The invocation was given by Dr. Reverend Stephen Trout, and The Pledge of Allegiance was led by Kerry Krzenski, President of the Mayor's Youth Advisory Council.

Mayor Brockett asked Department of Public Safety Director, Sam Trujillo, to step up to the podium. He explained that on or about the morning following the last regularly scheduled commission meeting, at 1 a.m. in the morning, Chief Trujillo pulled into the new garage of his new house and heard a loud thud on the back of his black undercover DPS cruiser. The City Commission presented Mr. Trujillo with a tennis ball to hang in his garage to protect his car from further incidents.

Items #6 and #15 were withdrawn from the agenda.

**PRESENTATIONS:**

1. Presentation by President Kerry Krzenski about the Mayor's Youth Advisory Council.

Mayor Brockett reintroduced Kerry Krzenski and invited her forward to make her presentation.

Ms. Krzenski introduced herself as the current President of the Alamogordo Mayor's Youth Advisory Council. She also introduced her secretary, Chelsea Ryan, who was helping with the slide show. Ms. Krzenski thanked the commission for their time and went on to explain what the council has done so far, quoting the mission statement is to have an active voice in advising the city commission and the community on various youth issues in order to involve people in a more positive and enjoyable community.

The election of officers was held on December 8, 2008. The results were President Kerry Krzenski, Vice President Leanna Terazés, Secretary Chelsea Ryan, Treasurer Baxter Petillo, Historian Jessica Shaw, Public Relations/Media Director Daniel Livingston, and Activities and Events Director, Crida Fuerta. In March 2009, treasurer Baxter Petillo resigned, and on April 1, 2009 Andrew Vallajo was voted in to take his place.

Ms. Krzenski listed the adult advisors to the youth council, including Mayor Steve Brockett, Renee Cantin, Sgt. Rick Cooper, Dream Bynum, Sharon Hodges from the Otero County Public Health Office, Jerry Lot from Alamogordo Public Schools, Sue Medina, President of Alamogordo Public Schools Board of Education, Regina Mendosa, Roy Robinson, Denise Syling, Coordinator of the Youth Empowerment Association, Rick VanOsteeen from Alamogordo High School, and Janet West, from Holloman Air Force Base Public Health.

The Youth Advisory Council took a trip to Santa Fe on February 18, 2009, to observe the legislative session. Six members of the council, along with adult advisor, Ms. Sharon Hodges attended. They toured the roundhouse and were fortunate to meet with Lieutenant Governor Diane Denish.

The first fundraising event for the Youth Advisory Council was an Applebee's Pancake Breakfast, held on Saturday, March 24, 2009, where they generated a total of \$480.95. April 10, 2009, was trash pick up in the park, and they made \$200.00. The National Guard had also donated a backpack which brought in \$45 during a raffle.

In conclusion, Ms. Krzenski wished to show her appreciation to the city commissioners of Alamogordo for voting for the existence of the Mayor's Youth Advisory Council. She explained the council has laid a foundation to grow on in the future.

Mayor Brockett stated that they had accomplished a lot for only taking office in late January. He reminded that they are the first to do this and that they have set a standard and an example for future members, and commented that the purpose of the organization was to get young people engaged in service within the community. He congratulated them for stepping up and offering their service. Ms. Cantin also recognized several other active members of the council in the audience.

### **PUBLIC HEARINGS:**

2. Public hearing for application to grant a city winery license to Dos Viejos Winery.

*Recommendation:* Approve the license.

Mayor Brockett read the item and the recommendation. He announced that this is a public hearing and asked if there were any comments or concerns from the commission or anyone in the audience, and none were offered.

**Commissioner Cole moved to approve the city winery license to Dos Viejos Winery. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-0-0.**

### **CALL OF THE CONSENT CALENDAR:** [Roll Call Vote Required - 4, 5, 10, 11, & 12]

Items on the Consent Calendar are considered routine and should not require further discussion. All items marked "CC" will be approved by a single motion unless removed at the request of a Commissioner, City staff, or a member of the public. Items removed from the Consent Calendar will be heard in the numbered sequence.

### **CALL OF THE CONSENT CALENDAR: Items #3, 4, 5, 10, 11, 12, 17, 18, 19, 20, 21, & 22.**

Roll Call vote required on items #4, 5, 10, 11, & 12.

Items #10, 20, & 21 were removed from the consent calendar.

### **MINUTES:**

- CC 3. Minutes of Minutes of March 17, 2009 Special Meeting and March 24, 2009 Regular Meeting.

*Recommendation:* Approve the minutes.

### **ORDINANCES AND RESOLUTIONS:**

- CC 4. Consider Ordinance No. 1331 granting New Mexico Gas Company, Inc. a franchise to operate in the City of Alamogordo.

*Recommendation:* Approve the ordinance for final publication. [Roll call vote required]

- CC 5. 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 final publication. [Roll call vote required]

- CC 11. Consider Resolution No. 2009-09 authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority (NMFA) for the 2008 GRT Street Capital Projects.

*Recommendation:* Approve the resolution. [Roll call vote required]

- CC 12. Consider Resolution No. 2009-10 revising the Airport Capital Improvement Plan.

*Recommendation:* Approve the resolution. [Roll call vote required]

### **OTHER BUSINESS:**

- CC 17. Award of RFP 2009-003, Data Recovery - Alamogordo Regional Water Supply Project.

*Recommendation:* Award the RFP to DMG Four Corners Research, Inc. in the amount of \$77,550.51, including NMGRT.

- CC 18. Award of RFP 2009-004, Catering Alcohol Services for the Willie Estrada Memorial Civic Center and the Alameda Park Zoo.

*Recommendation:* Award the RFP to Shooters, Inc.

- CC 19. Award of Public Works Bid. No. 2009-004, Otero/Lincoln County Regional Landfill - Cell #4 Construction.

*Recommendation:* Award the bid to Sweatt Construction, Inc. in the amount of \$354,403.36, including NMGRT.

- CC 22. Statement regarding the Executive Session of March 24, 2009.

*Recommendation:* Approve the statement.

**Commissioner Ledford moved to approve items #3, 4, 5, 11, 12, 17, 18, 19, & 22 of the consent calendar. Commissioner Griggs seconded the motion. Roll call was taken for items #4, 5, 11, & 12. Motion carried with a vote of 6-0-0.**

### **ORDINANCES AND RESOLUTIONS:**

6. Consider Ordinance No. 1352 amending and adding new sections to Article 32-01 of the Code regarding Real Property.

*Recommendation:* Approve the ordinance for first publication.

### **Withdrawn from the agenda.**

7. Consider Ordinance No. 1353 amending section 14-01-110 of the Code of Ordinances regarding the rates for solid waste collection.

*Recommendation:* Approve the ordinance for first publication.

City Attorney Steven Thies explained the contract with the municipal waste collector. He stated the contract with SW Disposal requires an increase in garbage collection fees annually, but this year will be the last time it is done by ordinance. The ordinance is being amended to provide that future fees are increased by resolution. He was not sure what the numbers will go to once the resolution is presented, but stated it would be during the first meeting of May.

Commissioner Cole wondered if it was based on a CPI, and Mr. Thies assured him that yes, it is based on CPI, all urban and consumers index.

**Commissioner Ferguson moved to approve Ordinance No. 1353 for first publication. Mayor Pro-Tem Lujan seconded the motion. Motion carried with a vote of 6-0-0.**

8. Consider Ordinance No. 1356 approving the New Mexico Finance Authority loan for the purpose of funding the water and wastewater infrastructure projects for \$5,520,673.

*Recommendation:* Approve the ordinance for first publication.

LeeAnn Nichols, Finance Director reminded the Commission this is the loan to do the understructure for the 2008 gross receipts tax. The loan is expected to close in June, and this is the first publication. Mr. Ledford was unsure about the nature of fund 109, and Ms. Nichols explained it is the fund that accounts for the 2008 ¼% GRT for street capital. The payment of the loan is not coming from fund 109, it is coming from the water and sewer rates generated. She explained this financing was the five million that was for the understructure. Mr. Ledford wanted clarification that the loan proceeds would go into 109, and Ms. Nichols confirmed that yes, the loan proceeds will go into 109 for the 7.5 million dollar loan that covers the street projects, but the 5.5 million will be in a separate fund and strictly for the understructure.

Commissioner Cole wanted to know if there was any connection between this and the recent bond issue for street improvements. Ms. Nichols explained that yes, it wasn't a bond issue, it was a bond issue through the New Mexico Finance Authority, that loan was for 7.5 million, to do the street work, based on the first half of the projects selected by the commission, from the 2008 ¼% gross receipts tax, this loan will cover the understructure of water and sewer lines to be done underneath those streets.

Brian Cesar, Public Works Director explained that the last Sunday of this month, they are going to bid for construction. The engineering is complete for the first 12 streets, all that were passed by the Commission with the exception of Hamilton, which will be in the next batch, so within the next 30 they will be back to the Commission to award that contract. They are estimating it will take a year for completion for the water and sewer lines and ADA compliance issues. Assuming the Commission blesses the bids that come in, they are looking to start construction in late June or early July.

LeeAnn Nichols, Finance Director, introduced New Mexico Finance Authority representatives, Claire Manatt, Zach, and Mark.

**Commissioner Griggs moved to approve Ordinance No. 1356 for first publication. Commissioner Ferguson seconded the motion. Motion carried with a vote of 6-0-0.**

9. Consider Resolution No. 2009-07 to recover the costs of providing an enhanced 911 system from the Enhanced 911 fund.

*Recommendation:* Approve the resolution. [Roll call vote required]

Mayor Brockett read the item.

Sam Trujillo, DPS Director, gave a background of the Public Safety Answering Point from the agenda report. Back in April of 2008, the City of Alamogordo and the County of Otero entered into a joint powers agreement to address the emergency communication needs of the community. A board was created to address public safety answering point issues and make recommendations to the city and county governing bodies. The board is made up of four city representatives, the County Sherriff, the County Emergency Manager, a representative from Tularosa, and a representative from Cloud Croft. Mr. Trujillo is currently serving as the chairman on that board. They have reviewed five options addressing emergency communications and requirements of the enhanced 911 act and have determined the best option for providing emergency communication service, and are prepared to make recommendation to both the city and county commission. It has in fact already been approved by the county commission.

The PSAP board is recommending that both commissions each support the two existing public safety answering points at Alamogordo Department of Public Safety and at the Otero County Sherriff's Department, that the city financially support the equipment and maintenance that is necessary to operate the public safety answering point at the DPS, and that the county financially support the equipment and maintenance necessary to the answering point at the Otero County Sherriff's Department. The estimated cost is \$310,000 to \$350,000 to each entity and approximately \$24,000 each in annual maintenance costs and approximately \$5,000 in annual telephone charges. The city has already budgeted the maintenance costs for the 2010 budget. The board also recommends that the two entities serve as backup service for each other, in case of short-term equipment failure and is how they are currently operating. They further recommend that the city and county each adopt a resolution in accordance with the state statute in an attempt to acquire funding from the Department of Finance and Administration for the community, through the 911 surcharge, and that the city and county seek political and legal alternatives to recover funding from the New Mexico Department of Finance Administration, in accordance with the enhanced 911 act, and that the city and county amend the joint powers agreement to more accurately reflect the board's recommendations. That agreement is still underway and will be brought before the governing bodies in the future.

Mayor Brockett inquired as to if the \$310,000-350,000 was already covered along with the \$24,000 covered for annual maintenance. Mr. Trujillo stated that approximately 18 months ago the Commission approved the purchase and it has already been obtained. It is not an additional expense, they are already in operation, using the enhanced 911. The life of the equipment is estimated at five years and it is currently in the ICIP plan.

Commissioner Ledford was wondering if the 911 surcharge would be brought back to the Commission before it is submitted to the DFA, and Mr. Trujillo explained that the resolution is attached to the agenda report, and that is what is being asked to be approved at tonight's meeting. The process is if the Commission approves the resolution, they will be sending a letter to DFA in an attempt to recover the monies through the 911 surcharge. The municipal league of 104 cities adopted a resolution that would require DFA to follow the law as written in the enhanced 911 act, and Mr. Trujillo supported that resolution.

Commissioner Ledford voiced some hesitancy in going forward with the support of that resolution, but Mr. Trujillo assured him that item number five is stating that the city and county seek both political and legal alternatives. They would still have to examine what those alternatives are. The one mentioned has already gone through the municipal league, but they would still have to examine other alternatives, and brought back before the city Commission.

Mayor Brockett explained that he does know some districts that are not happy with the changes and decisions, and some districts that are happy. His personal opinion is that each district should do what it wants, and that they have the reimbursement coming from the State of New Mexico.

**Commissioner Ferguson moved to approve Resolution No. 2009-07. Commissioner Ledford seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.**

10. Consider Resolution No. 2009-08 calling a special election to be held on Tuesday, June 23, 2009 for the purpose of electing a Commissioner for District 3.

*Recommendation:* Approve the resolution. [Roll call vote required]

Mayor Brockett announced that this was pulled from the Consent Calendar by the City Clerk and asked Renee Cantin to talk about the revision to the document.

Renee Cantin, City Clerk announced that on page one of the Election resolution under Section 1, it reads the qualified electors of the City within the boundaries of District 3 shall elect the following: a City Commissioner in District Three, One City Commissioner for a three-year term. The last sentence has been amended to read: ONE (1) City Commissioner for a term to expire in March 2012. This clarification is important so the citizens are not under the impression that the term may not expire until June 2012.

The change was made in both English and Spanish and the election calendar is ready.

**Commissioner Ferguson moved to approve Resolution No. 2009-08. Commissioner Cole seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.**

13. Consider Resolution No. 2009-11 authorizing the City Manager to Re-convey Certain Real Property Located at 1300 E. 10th Street.

*Recommendation:* Provide direction to staff. [Roll call vote required]

Mayor Brockett read the item and the background. He explained he would entertain a motion to return and re-convey the property with a quick claim deed.

**Mayor Pro-tem Lujan moved to approve Resolution No. 2009-07.**

**Commissioner Ferguson seconded the motion.** Commissioner Cole asked what the next step is once this is approved. City Attorney Thies said to have the deed signed and recorded. It has been discussed with Mr. Shyne and based on the recommendation, it was decided to move forward in this manner. **Roll call vote was taken. Motion carried with a vote of 6-0-0.**

#### **OTHER BUSINESS:**

14. LaValle and Sharon Hinton are requesting approval of a leak adjustment in excess of \$1,000. Service address is 1102 N Scenic Dr, Account 56035-3220.

*Recommendation:* Deny the request.

Katie Josselyn, Utility Billing Supervisor stated that the property owners, the Hinton's, have been absent from that property, moving almost a year ago. Their realtor and friends are watching after the property. They experienced a high bill in January 2009, the consumption was 26,800 cubic feet. Initial information regarding the issue indicated negligence. They found a water hose running into the pool in the back yard. However, the Hinton's turned in some receipts and indicated that they had a leak in their shower as well. Based on that, the policy would allow an adjustment for that bill. As they did turn in receipts showing that the leak has been repaired, that would qualify them for the adjustment.

Commissioner Ledford wanted clarification that if the issue was spilling water into the pool, they would not have qualified for the abatement, and Ms. Josselyn agreed that negligence would not qualify them, it would be negligent because it would imply that someone had turned it on and left it on. The leak abatement is being issued in light of the receipts from the fixed shower.

Armando Ortega, Customer Service Manager, explained that once they go on base rate status, they turn the water off at the meter. Once the consumption was noted, the garbage and winter quarter was added back onto the account. What deemed them negligent was they were not watering on the correct watering days.

Commissioner Griggs has a question regarding the plumber going out the second time and Mr. Ortega's communication with the Hinton's. Mr. Ortega explained to Mr. Hinton that the meter reader found a water hose running into the pool and because of that fact that they weren't able to give an abatement on the account. Several weeks later the receipts were presented from the plumber finding a problem, and that is the story Mr. Hinton is sticking to, thus the availability for abatement. The policy is that anything over \$1,000 must be approved by the City Commission.

**Commissioner Cole moved to deny the request for a leak adjustment.**

**Commissioner Ferguson seconded the motion.** Mayor Pro-tem Lujan moved for discussion asked if they did qualify for abatement or didn't, and Armando Ortega, Customer Service Manager said the initial response to deny was due to negligence, which they still support, even in light of the receipts.

Commissioner Ledford said the denial of the request was because there is no authority to approve it. Armando Ortega, Customer Service Manager said correct but also because it was felt they were negligent. They technically meet requirements of the leak abatement policy, because they turned in receipts. Commissioner Ledford stated he could not agree with denial if they met the requirements of the policy. The City Attorney agreed that the ordinance shows they have met the requirements. There is no way to prove negligence. The water should have been turned off, there would be no water running into the property. The valve at the water connection should have been turned off. There was no work order showing a request to have the water turned back on.

Kate Josselyn confirmed the property has been vacant since May 2008. Mr. Hinton had admitted he was having work done on the pool. It is reasonable to believe that it would need to be drained at that time for repairs, and then refilled.

Mayor Pro-tem Lujan agreed that it is a tricky situation. They followed everything they were supposed to do and technically found a loophole. Does that set a bad precedent? Mayor Pro-tem admitted he was on both sides on this issue.

Mayor Brockett agreed it is a damned if you do and damned if you don't situation. Whichever side you decide to go, there is good reason not to vote for that, but good reason to vote for it.

LeeAnn Nichols, Finance Director, also agreed it is a sticky situation. There are several pools in the city, and they set precedent that if they give the abatement and rebate the bill, who is to say that other people can't fill up their pool and turn in receipts from a plumber. She wondered if the rebate could be split, and then the policy changed so this problem can be somehow eliminated.

Mayor Brockett said he believed the Commission has made some deals in the past. Commissioner Ledford asked City Attorney Thies if he felt they could change the policy and tighten it up to eliminate this. Mr. Thies agreed that they could in fact look at it.

Commissioner Griggs stated that the owners did not know about the leak abatement policy. They called after getting the bill, and finding out about the leak abatement policy. Then they have the plumber go back a second time. He felt that they were indeed trying to get around the policy. He could not support giving them relief.

Mayor Pro-tem Lujan had a few additional questions and statements. The water was supposed to be turned off. The water was back on, and the hose was in the pool. He inquired as to how full the pool was and how much water was coming out of the faucet.

Mr. Ortega explained that the meter reader indicated that the water was on, and that is it. The handheld indicated a high consumption. He initiated a leak test. The water must have been running quite profusely, because he could hear the water running and could see the meter spinning. He also noticed the house was vacant, went around to the back and saw the water hose was on. He turned off the hose that was in the pool. There was further water consumption after that date of 100 cubic feet, which indicated that the problem was fixed. It was read during that cycle and for the whole month all they used was 100 cubic feet, probably from the time he read it from the time he went and turned the water off at the meter. The plumber would not confirm if a shower could cause that much consumption.

Mayor Pro-tem asked if the request was denied, how would that go about, and again it was explained by the City Attorney that this is a policy to provide with some guidance for similar situations. You don't have to abide by the policy each and every time. It is a policy, not a law. Mayor Pro-tem Lujan stated that the water was supposed to be completely off, it was flowing, that in itself indicates negligence.

**Motion to deny the request carried with a vote of 5-1-0. Commissioner Ledford voted nay.**

15. Request from Jim Randall to discuss the removal of the culverts in Flow Path 1, located behind Oasis Trailer Park.

*Recommendation:* None.

This item was withdrawn by Mr. Randall and will be added to the next agenda.

16. Approval of a letter of support for "National West Airlines".

*Recommendation:* Approve the letter of support to National West Airlines.

Mayor Brockett read the item and explained the Airport Coordinator Parker Bradley has been in contact with an entrepreneur interested in starting an airline, providing air transport from various cities in New Mexico to Las Vegas, Nevada. Within about a year from now, he expects to have the necessary investors on board to properly capitalize the project. As part of that process, he is requesting letters of support from the various cities he plans to serve. It will not affect the EAS contract with New Mexico Airlines, as National West Airlines would not be a direct competitor. National West is servicing a different route.

Parker Bradley, Airport Coordinator, explained this gentleman representing National West Airlines is in his fundraising stage. He is asking for the letter of support from the city in order to move forward with fundraising and raise additional funds from other investors. The purpose of the letter would be to state that we welcome his business, we have no objections to operating here. He is not applying for EAS funding, so as to avoid conflict. He is making it clear that he is not infringing on anybody else's turf.

Mayor Brockett commented this would be a Jetstream 41 Turbo Prop regional airliner, which Mr. Bradley confirmed seats 30 people. If he does operate in Alamogordo on his routes, because of the configuration of the aircraft, the 139 certificate may need to be reapplied for, if he does it as a publically available, regularly scheduled route. If he operates as more of a club or charter service, that would not need to be done. They could come in as a charter service and later on become a regular route and the 139 would need to be acquired, as it was when Mesa Airlines was operating.

Commissioner Ledford stated he thought they backed off the Part 139 due to the cost, as well as there is not a plane coming in out there that requires it any longer. They would have to still negotiate costs or fees to charge for landing fees to cover the costs.

Mr. Bradley explained that if he magically got the funds and wanted to operate by the end of the year, it would mostly be a matter of negotiating with the FAA and reestablishing the inspection procedures. There are some upgrades to the markings on the taxiways and runways that would have to be completed, those are scheduled for funding anyway, they aren't a huge cost. The biggest cost for most airports for 139 certification, if they are in incredibly good condition, is the truck which they already have, purchased through the Mesa arrangements, it would not be a significant burden if the scheduled improvements were not yet funded by the FAA and they were needed sooner.

**Commissioner Cole moved to approve the letter of support to National West Airlines. Mayor Pro-tem Lujan seconded the motion. Motion carried with a vote of 6-0-0.**

20. Consider approval of Change Order No. 1 on Public Works Project No. 2006-11, Westside Booster Station Project.

*Recommendation:* Approve change order in the amount of \$40,200.70, including NMGRT.

Mayor Brockett read the item and explained that Commissioner Ferguson requested that this item be pulled.

Commissioner Ferguson asked some questions of Dean Hunt, City Engineer. Firstly, for the additional piping needed for the electric towers, was the original bid done before they put the towers in? Mr. Hunt answered that at the time the project was designed and construction started, there were no towers. Since that time, PNM has come in and put in towers within their easement and as a result, the water line had to be moved. It was originally a joint easement, and there was a conflict with one of the towers that PNM put in. There was no warning or advanced knowledge that they were going to do this until they started work.

Commissioner Ferguson was inquiring as to the fencing and elevated tanks, and whose idea that was. The City Engineer, Dean Hunt, explained that for the booster station there was a contractor whose specialty it was, and the third contractor was General Hydronics, and their specialty is the piping and that type of work, the off site work. The elevation of the tank did not need to be changed, it was a sequencing issue as far as the contractor that had the fencing contract, they were ready to put up the fence, but the tank contractor was not complete in construction of the elevated tanks, so rather than put the fence up and take it down and put it back up, the decision was thus made, though it could have been coordinated better. Commissioner Ferguson agreed, it is clearly the city's fault, at a cost of \$4300, and that sort of thing needs to be carefully monitored so as not to happen again.

In regards to the valve, Mr. Hunt explained that the original concept was to fill the tank using the RO plant, but that has lagged behind, so now there is a system to fill the tank to take the contractor out of the picture. Also, the valve enables the city to take the water from the water line used to test it, and to use that to test the elevated tank, and there is over a million gallons in the water line. So rather than waste that, it will be utilized to test the elevated tank. It was thought that there would be water coming from the Reverse Osmosis plant at this time, and now the RO plant is not happening for a while, so the valve needs to be put in.

Commissioner Ferguson expressed once again that he was very unhappy with it all, it is a \$40,000 expenditure, and there is nothing to be done about it now.

Mayor Pro-tem Lujan questioned about the shared easement, inquiring that neither party never knew what the other was doing, and wondering if there really had been no communication. Mr. Hunt explained that the original concept was that the easement for that power line was granted afterwards, granted by a private party. We were the only one on that easement, and subsequent to that, the property owner granted PNM an easement, after the bid was awarded. The power line went in after. There was some interaction and communication voiced personally by City Engineer.

Mayor Pro-tem Lujan inquired as to whether there were rules or regulations regarding the easement. Perhaps there should be an agreement as to bids in the future, so as not to cost additional money down the line, and keeping informed as to what they are doing with the property. It has not been done in the past, but was suggested by Mayor Pro-tem Lujan be done to protect the city in the future.

Commissioner Ferguson explained that when the easement was obtained, it means the city has use of the property, and the owner can take the easement given to the city and give the same property to someone else, and City Engineer Hunt agreed, that there can be multiple rights in easements.

City Attorney Thies explained that generally assuming the city had the easement first, they would have first right. But then PNM moved in while the city sat on their rights and did not exercise them, now the city pays the consequence. Mayor Pro-tem Lujan again stressed the importance of future protection against legal and financial burdens, and Mr. Thies explained that one way of addressing it would be to purchase the property in the future. Another way is to acquire an exclusive easement, a utilities easement right-of-way, in which the property owner will understand that he could not convey another easement right in that same area, and in this case, of PNM now wanted to use the easement, they would have to come to the city and get permission.

**Commissioner Cole moved to approve the Change Order No. 1 on Public Works Project No. 2006-11, Westside Booster Station Project. Mayor Pro-tem Lujan seconded the motion. Motion carried with a vote of 5-1-0. Commissioner Ferguson voted nay.**

21. Approval of Temporary Alcoholic Beverage Dispenser's License for Palm Side, for an event to be held on April 18, 2009 at the Willie Estrada Memorial Civic Center.

*Recommendation:* Approve the temporary license.

Commissioner Ferguson requested this be pulled. He had a question because they just approved that Shooter's would be using the city liquor license which would save the customers money. If he has the contract, why wouldn't he be doing this job instead of Palm Side?

Mr. Matt McNeile pointed out it was just approved tonight and they aren't ready to mobilize and be ready to serve. It will take 30 to 60 days, they will be leasing the city's license and it will take a month or so to get that through.

**Commissioner Ferguson moved to approve the TABDL for Palm Side. Mayor Pro-tem Lujan seconded the motion. Motion carried with a vote of 6-0-0.**

23. Appointments to Boards and Committees.

Mayor Brockett appointed Bob Flotte and Tony Mandalia to the Alamogordo Promotion Board. He asked the clerk to notify these individuals.

#### **UNSCHEDULED COMMUNICATIONS:**

##### **A. Mr. McNeile commented on the following:**

- 1) Water report.
- 2) Last week was the Leadership Otero class and it was very successful.
- 3) Also Easter in the Park was a great success and he thanked Mayor Pro-tem Lujan for attending and helping out.
4. Commissioner Cole requested of Mr. McNeile that a PA be put out for the newspaper on the water tank refilling. Mr. McNeile confirmed that the newspaper ran a story last week, they took pictures and it was on the front page.

**EXECUTIVE SESSION:** Adjourn into Executive Session to discuss threatened or pending litigation (Oasis Trailer Park); collective bargaining negotiations (APSOA & AFSCME); & purchase or acquisition of water rights (Mesa Verde)

**Mayor Pro-tem Lujan moved to adjourn into Executive Session to discuss threatened or pending litigation (Oasis Trailer Park); collective bargaining negotiations (APSOA & AFSCME); & purchase or acquisition of water rights (Mesa Verde) at 8:58 p.m. Commissioner Ferguson seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.**

**ADJOURNMENT.**

*/s/Mayor Steve Brockett*

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Mayor Steve Brockett

(SEAL)

ATTEST:

*/s/Reneé L. Cantin*

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City Clerk Reneé L. Cantin

*(Prepared by Ubiquis Reporting)  
Approved at the Regular Meeting held on April 28, 2009.*