

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
APRIL 28, 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

Mayor Brockett called the meeting to order at 7:30 p.m. Roll call was taken by the City Clerk. The Invocation was delivered by Pastor Richard Hicks, and the Pledge of Allegiance was led by Renee Cantin, City Clerk.

Mayor Brockett asked Alexis Duprey to come forward. Miss Duprey, a local resident of Alamogordo, won the Title of Miss Teen New Mexico, and she commented on the pageant and her future plans. Mayor Brockett read and presented a proclamation to Miss Duprey.

PRESENTATIONS:

1. Presentation by Mike Espiritu for Otero County Economic Development (OCEDC).

Mr. Espiritu, Executive Director for OCEDC, began by introducing Rebecca Price. She does a lot of research in working with prospective clients and does a lot of the leg work in their office.

OCEDC's mission is to create a robust economic environment for Otero County by recruiting, retaining, and assisting in the expansion of business and industrial opportunities. Their vision is to lead the community in the creation of jobs by improving educational opportunities that enhance workforce development; growing and enhancing retail opportunities; assisting with community infrastructure improvements; and advocating quality of life issues.

Mr. Espiritu went on to show the partnerships that OCEDC maintains in order to make it a better organization, help develop leads and best practices and foster relationships with those activities that can help OCEDC in the future. Mr. Espiritu has been nominated for the New Mexico Partnership, which is the contracted arm by the State of New Mexico Economic Development Department to create and generate leads.

Last year Alamogordo was re-certified as a certified community. It was not an easy process, but it allows Alamogordo to receive prospective recruitment opportunities and vie for state incentives. OCEDC also applied for and received a grant for cooperative advertising for \$5,500 from NMEDD. In addition, last year OCEDC brought Premier Pellets, LLC on board, which is an organization that will create over 50 jobs. They also qualify for some incentives from the State and other entities.

Pre-Check has relocated to its corporate headquarters, and the Governor has worked for funding to build out the other half of their building, which will create over 100 new jobs. These are high wage jobs, which will be good for the community. With regard to the film industry, there is a new web site, which is www.filmotero.com, and it's getting heavy traffic. A number of commercials are also being filmed in the community.

OCEDC is busy advocating with state and federal legislators about things that affect City and County priorities. They also speak with them about State incentives so they will continue to pass legislation that will help bring in companies to Otero County. Career Technical Education is a new program that is all about workforce development for the young people in Alamogordo and Otero County. It is a big step forward for Otero County. OCEDC is often asked to speak at the counsel meetings of other

communities to talk about economic development. Contact is also being maintained with 1-800 Flowers, PreCheck and Marietta, and Flowers is the highest producing site for their entire organization. Marietta is back in business today. They're here for good. They cranked up the ovens last Thursday and are in full production. They've hired a full crew, and they are running a full day shift. They already have most of the contracts back and one extremely large contract for 21 truckloads of cookies. They plan on two full shifts six days a week, and they have potential for 400 jobs.

In terms of goals, it is important for OCEDC to identify and respond to specific targets of opportunity that will help the community and county. Those may include aerospace and future combat systems, alternative and renewable energies, manufacturing industries, film industry and retail opportunities. OCEDC will also assist in workforce development and target a robust marketing strategy, which will include web site development, print and publication media, DVDs for military/relocation and trade show attendance to advertise and publicize Alamogordo. Quality of life is an important factor of economic development. It's important to create jobs, but it is essential to have activities that are good for people.

Mr. Espiritu then reviewed how OCEDC is funded. The current economic development gross receipts tax is 1/8th of 1% and is the piece that is used locally to create incentives for job creation for industry. That will sunset in December of 2010, and they will likely see an extension to the sunset. The other source of funding is private contributors, which include corporate sponsors and private sponsorships. These are organizations in the town and county that support economic development and want to see the community grow.

Economic development is highly competitive and is often a dual-edged sword. Care has to be given to not attracting companies that would significantly detract from existing businesses to the point that they may be unsuccessful.

OCEDC is built on the shoulders of people in the community that believe in the growth of Alamogordo, and realizing how important economic development is especially in these times, OCEDC ensures that it takes the best advantage of doing what's right for the communities while ensuring that dollars are spent wisely.

Mayor Brockett asked Mr. Espiritu if he would still play a dual role as chamber head and as OCEDC head, and that is the case at this point, which while it is not necessarily a conflict of interest because of Mr. Espiritu's high integrity and honesty may be a conflict of purpose between the two entities. Mr. Espiritu said that OCEDC is about bringing industry, creating jobs and bringing economic stimulus to the community. The Chamber of Commerce retains it and helps it grow and develop so they are successful for many years to come—a great marriage and partnership. The Chamber picks up where OCEDC leaves off.

Mayor Brockett read a section of the 1996 Alamogordo Strategic Plan and asked Mr. Espiritu for his analysis of whether they have moved forward. Mr. Espiritu said he believes they are moving forward though perhaps they have not been successful in all cases. They have targets of opportunity and goals by which to achieve their objectives in specified areas, which are derived from activities that appear to best support the community (for instance, aerospace and future combat systems as well as renewable energy). One of their goals this year is to get out into the public to make them more aware of what OCEDC is doing, which will make individuals more a part of the economic development of the community.

Mayor Brockett asked Mr. Espiritu if he was satisfied with the communication that OCEDC has had with the governing body, and Mr. Espiritu stated that he was not. He, however, views it as his responsibility to visit with the Commission at least on a quarterly basis to provide updates on prospective clients in addition to providing an open forum where the public can hear exactly what OCEDC is doing. Mayor Brockett stated that he also takes responsibility on behalf of the City Commission for that communication.

Mayor Brockett asked Mr. Espiritu if OCEDC goes out and actively looks for opportunities or if most of the information it gets is provided from the State. Mr. Espiritu said that they do both. They push information out to organizations that are looking at possible expansion sites through things such as the *Trade Expansion Magazine*. They have also contacted organizations via trade shows with the partnership with the state to try to develop leads. Mr. Espiritu pointed out that one problem with renewables can be their need for water.

Mayor Brockett expressed his concern as to whether they have a clear, concise vision regarding economic development and a strategy in place that involves all of the players. He expressed his desire to work with OCEDC to expand business but also retain and even expand existing businesses. At the next regularly scheduled meeting, a discussion about economic development will be put on the agenda. His feeling is that OCEDC needs to continue to be a part of economic development, and Mayor Brockett expressed that in addition he feels the City and County need to work closer together. Parameters need to be in place, and a multitude of issues need to be addressed. He commended Mr. Espiritu's presentation as a strong start in getting dialog going to come up with answers.

Commissioner Cole complemented Mr. Espiritu on the Chamber dinner at which he spoke. It was very educational, and he commended Mr. Espiritu for a job well done. He asked, in addition, if OCEDC still holds their lunch meetings and whether Commissioners could be included in those meetings again.

Mayor Brockett commented that one of the things he wants to address in two weeks is why there is no representation on the Executive Board of OCEDC by a City governing official. Mr. Espiritu explained that they have two meetings. The Executive Board of Directors meets every month, and then the full Board meets every other month, which includes the other directors as nominated and voted on by all the members of economic development. The City is entitled to and has a position and a seat at the full board meeting, but not at the Executive Board.

Commissioner Cole agreed that it is beneficial for the commissioners to know what is going on. Commissioner Cole also asked when the commissioners would be updated on Marietta. Mr. Espiritu said that he thinks they will be working on communication with the Daily News in addition to written communication for the commissioners.

With regards to the tax, Commissioner Cole expressed his strong opinion that the three-year sunset clause ought to be the max. Voters ought to have a chance to vote on tax issues. Mr. Espiritu said that the Board of Directors did meet and discuss the tax election. They didn't decide on a length of time but did decide on a continuation of the sunset, not an elimination of the sunset. Commissioner Cole pointed out that if it is extended to infinity it ceases to be a sunset clause.

Commissioner Griggs reiterated that he is the Commission's representative on the OCEDC Board, and that Board does meet quarterly. After the first quarterly meeting he was able to attend, he sent an e-mail to everyone about what went on. For the second meeting he was out of town, and Commissioner Griggs has not yet reported to the Commission on the last meeting. Quarterly reporting from OCEDC may be a better means to communicate to the Commission. Then, not only does the Commission get to hear it, but the public gets to hear it as well.

The tax was initially passed with a five-year sunset provision. Then they attempted to remove the sunset provision, which was what failed. As it comes up now, it will be a renewal of the tax because the tax will expire. One of the things that Commissioner Griggs wanted to point out was that OCEDC has been in existence for years and years going back to when Larry Schulze was in charge. He wasn't as successful as he would have liked because it seemed like everybody that Alamogordo competed with had something to offer the companies that Alamogordo didn't have. Companies coming from other parts of the world are not necessarily as appreciative of quality of life considerations especially when they can go to other cities that appear similar. What they appreciate is some sort of financial incentive. Once the tax was passed, and Alamogordo was able to offer some kind of an incentive, companies came. OCEDC has been quite successful for the community. It is through meetings and presentations that OCEDC gets its message out to more people, which is

important because there are misconceptions out there in the community. The way to combat those is to get the message out. Commissioner Griggs said that he is surprised that the Mayor has not been allowed to attend the Executive Committee meetings because he thought that Mayor Carroll attended all of the Executive Committee meetings for OCEDC, the Committee of 50 and the Chamber of Commerce. OCEDC has performed a valuable service, and it continues to do so. Commissioner Griggs expressed his appreciation and support for OCEDC, and he does think it is a good idea for them to come before the Commission on a quarterly basis to update them on what is going on with economic development in Alamogordo.

Commissioner Ledford suggested that OCEDC could formalize the goals, visions and strategy report that the Commission has looked at and evaluated. That could be brought before the Commission. In the last ten years a lot of businesses have come to town in connection with OCEDC, and it has had a lot to do with presenting something that appeals to them. Something that has to be dealt with is the fact that net income per capita is low compared to a lot of communities around Alamogordo. That makes it difficult, but creating jobs is very important and bringing in those businesses. Something that has been talked about is the retail side, and it is difficult to address retail with incentives because of state law. Doing a retail study could be helpful to see what could be done as far as bringing in other types of retail. A lot of retail comes to Alamogordo because it is economically viable to do so, but until you have businesses that create expendable income, it will be tough to get another grocery store or a certain kind of restaurant. It is difficult in a small community to be successful without criticism. There are a lot of misconceptions, and one of them has to do with the conflict of budgets and economic issues. It is difficult to hire or recruit quality leaders for Chambers of Commerce and Economic Development Counsels without paying them a decent salary. Mr. Espiritu has done a good job of wearing both hats, but it could get to the point where Alamogordo needs two people. With regard to the sunset, one reason that three years is difficult is because the incentives that are offered are tough to do in a three-year fashion. A big goal is to create jobs, and with the successful businesses that have come in, Alamogordo has offered incentives, which are typically over a period of time. 1/8th of 1% doesn't create a whole lot of dollars, which is perhaps why five years came up. It would give enough time to create a fund that would allow Alamogordo to offer proper incentives. Without those incentives, it would be difficult. Commissioner Ledford does sit on the Executive Committee as a private contributor because he believes very strongly in it, and everything that is done in the Executive Committee does go before the full board for decision and approval.

Mr. Espiritu stated that the full board consists of 15 directors, but anyone that is a member of OCEDC that's a contributor is also invited to the board meetings, which is 25 to 30 individuals. Commissioner Ledford also stressed the need for communication.

CALL OF THE CONSENT CALENDAR:

MINUTES:

2. Minutes of April 7, 2009 Special Meeting and April 14, 2009 Regular Meeting.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

4. Approval of assignment of Land Lease and Commercial Permit for Area E3-B formerly Area J from Ralph "Jac" Curry to the Paragon Foundation.

Recommendation: Approve the airport lease and commercial permit assignment.

5. Approval of a professional services contract with Alamogordo Public Schools (APS).

Recommendation: Approve the agreement.

6. Approval of an application for participation in the 2009 Community DWI Program.

Recommendation: Approve the application.

7. Approval of a Grant Amendment #1 to CDBG project #08-C-NR-I-04-G-41, to extend the length of the contract agreement through Dec. 31, 2009.

Recommendation: Approve the amendment to the agreement.

ORDINANCES AND RESOLUTIONS:

13. Consider Resolution No. 2009-18 increasing the leisure service fees for the Recreation Center and Civic Center.

Recommendation: Approve the resolution.

OTHER BUSINESS:

19. Approval of Temporary Alcoholic Beverage Dispenser's Licenses for Palm Side, to be at the Willie Estrada Memorial Civic Center for May 16 (Wedding) & May 23 (Graduation Party).

Recommendation: Approve the temporary licenses.

20. Statement regarding the Executive Session of April 14, 2009.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve items 2, 4, 5, 6, 7, 13, 19, and 20 of the Consent Calendar. Commissioner Cole seconded the motion. A roll call vote was taken because of Item 13. All voted "aye." The motion carried with a vote of 6-0-0.

PLANNING ITEMS:

3. Consider Ordinance No. 1354 rezoning for Part of 1445 US Highway 70 West to C-3, Business District, from R-1, Single Family Dwelling District, requested by Brewer Oil Company. [Case # Z-08-0687(A), located at the south side US Highway 70 West between Collins Avenue and Sierra Vista Court].

Recommendation: Planning & Zoning recommends approving the ordinance for first publication.

Mayor Brockett read the item and recommendation, and Mr. South, City Planner, explained that this is a request for re-zoning from the oil company. Staff recommends approval, and Mr. South provided a visual depiction of the area. It is presently zoned R-1, and they are requesting that it be made C-3 to tie in with the rest of their property. Mr. South pointed out that when the zoning re-write is through, they would be bringing proposals to the Commission because this condition runs up and down that part of 70, below the Relief Route Bridge, and it runs along the north part of 70 as well. At one time in the past the Commission made the decision to re-zone the area that runs 300 feet back off of U.S. 70 to C3, which was a reasonable thing to do except that it ended up with split zoning for all the lots, which is unfortunately illegal in the State of New Mexico. They will need to be rationalized back out to either be made C3 or something else. The alternative is to do it in mass, which is what they are going to propose after the Zoning Code revisions are done.

Commissioner Cole asked if they could do it without the consent or approval of the property owners, and Mr. South said that technically they could though the property owner would have the right to be involved in it. There are commercial businesses sitting on the front 300 feet of the lots, and the parts that are generally left residential are sitting behind them. The only access is through the parking lots of the businesses in the front. Mr. South said they would be negotiating with them to try to come up with reasonable solutions to the problems going forward.

Commissioner Ledford made a motion to approve Ordinance No. 1354 for first publication. Commissioner Griggs seconded the motion. A vote was taken, and all voted “aye.” The motion carried with a vote of 6-0-0.

CONTRACTS AND AGREEMENTS:

8. Consideration of three capital outlay grants for the purpose of constructing a new library.

Recommendation: Provide direction to staff.

Mayor Brockett explained that at the present time the City of Alamogordo has three existing capital outlay grants that are specifically authorized for new construction for a new library. They cannot currently be used for renovation or extension of the current building. In light of the results of the recent election, one suggestion has been that the Commission request re-authorization before the next regular session in January of 2010 of the State legislature to use the grants for the renovation of the current building. If it is requested, there is no guarantee that it will be approved. Ultimately, if it is the Commission's desire to pursue new construction, a stand-alone building could be constructed with the funds, which would fit the legislative language in the mandate. The three grants total approximately \$1.2 million, but some funding has already been used for architectural design. The total balance remaining for the project is \$1,117,904.59. However, there is still a remaining encumbrance out of that balance for Studio Southwest Architects of \$429,345.87. There are no pending invoices because design needs thus far have been completed. Consideration needs to be given as to whether they should keep the money or make the request.

Commissioner Ledford asked what the encumbrance means, and it means that the money is allocated for that particular vendor. If the City doesn't use that vendor, the money can be unencumbered and the money can be put towards the balance. It was based on the estimated cost of building a new building. Mark Threadgill stated they have paid out everything they're going to pay to the contractor at this point, and the entire amount could be deobligated. There are many options available. Approximately \$1.5 million is available.

Commissioner Cole asked Mr. McNeile what the probability is that the State would say yes if the request were made to use the money to renovate the present building. Mr. McNeile said they have no idea, but what they are asking for is to go one of two ways—ask the legislature to reauthorize it to be used for the existing building or begin the process of constructing a new facility that is not connected with the existing facility. There is always the possibility that the State could just take the money away, but they would ask someone to carry it for Alamogordo in the legislature. It's not an administrative decision; it would have to go back before the legislative body. Commissioner Cole said that his thinking was they should present the request to the legislature to apply the money to the existing building as opposed to a new building. They would have to ask someone in the legislature to reauthorize the three grants and change the language from building new to improving or renovating the existing building.

Mayor Pro-Tem Lujan said that what he thought Commissioner Cole was asking was whether they could hold off on deciding to use it and ask whether it could be used for reconstruction or not or whether it would have to be turned back immediately and then request having it back for the existing building, which would be taking the chance of losing it altogether or getting the permission.

Mr. McNeile explained that each of the grants is a separate agreement, and each expires at a different date. One might expire next year, and one might expire in 2012, one in 2013. What they would do is say let's take these three separate grants and change the language from build new to renovate the existing building.

Commissioner Ferguson pointed out that the State has already frozen salaries, reduced salaries, reduced the amount that is going to the employee pension funds and cut hours for state employees. If they find out that the money is going to be available to the state, they are likely to take it back. He

thinks they should have a branch library put in, and now is the time to do it since they have the money.

Mayor Pro-tem Lujan wanted to know how much more it would cost to run a new facility and whether the City has the funds to keep the building going after it's built.

Mayor Brockett pointed out that they just voted to close the library one day to save jobs. Looking at another structure, his inclination would be to go with requesting that the money be reauthorized. It would be tough, but they could come up with figures on what the cost would be to maintain a new building.

Commissioner Griggs pointed out that when they put this issue out on the new bond, they were hopeful that whether they remodeled the old building or built a new building they would be able to reauthorize the money through the legislature and have 3.5 million plus the 1.5 million to increase the amount of money available to remodel. A branch library is a good idea, but it would come with additional costs, which makes it a very difficult proposition in times like this. Normally, the legislature wouldn't have particular issues with reauthorizing by making changes in a bill to remodel instead of construct new. This isn't exactly normal times, and there is a risk of losing the money. But regardless, issues need to be addressed on the current building. He suggested that they ask Gloria Vaughn or one of the legislators to take it back and change the language in the grants to allow the existing facility to be remodeled.

Commissioner Griggs made a motion to provide direction to staff to look into the purpose of remodeling the existing building. Commissioner Ledford seconded the motion. A vote was taken and the motion carried with a vote of 5-1-0. Commissioner Ferguson voted nay.

The meeting was recessed at 8: 52 p.m. and reconvened at 9: 02 p.m.

ORDINANCES AND RESOLUTIONS:

9. Consider Ordinance No. 1355 creating an Airport Advertising Permit and a General Short-Term Commercial/Government Permit for the Airport.

Recommendation: Approve the ordinance for first publication.

This Item was withdrawn from the agenda.

10. Consider Ordinance No. 1357 approving a Local Economic Development Project for Secured Financial Assistance Proposed by PreCheck, Inc.

Recommendation: Approve the ordinance for first publication.

City Attorney Thies explained that this Ordinance is intended to start the ball rolling so that they can eventually come back with a project agreement when the ordinance is presented to the Commission for final consideration and hopefully adoption. The project agreement would be with Pre-Check whereby the City would be receiving \$400,000 from the Economic Development Branch of the State of New Mexico. In turn, the City would be giving the \$400,000 to Pre-Check. Conceptually, it would be used to create some additional positions. Provided they create the additional ten positions over the next ten years, they would not have to re-pay the \$400,000. The details have yet to be developed, and they intend to have that done so that they can bring the final project agreement back before the Commission in the second meeting in May. This is being done in an effort to expedite the process so that the money can be gotten to Pre-Check so they start the work on their facility. The sooner they get that done, the sooner they can start relocating employees or otherwise hiring local residents to fill positions. For every job they create, they would get a credit applied to the \$400,000. City Attorney Thies said that the City does have an existing agreement with them whereby Pre-Check is able to receive a total of \$675,000 over a ten-year period. It is his understanding that once Pre-Check completes they would be able to meet the job requirements of that original agreement. The

City has to receive some type of consideration in return for giving Pre-Check the money, but there is some leeway or the City to in a sense think outside of the box but the City always has to quantify the amount of money it gets, what it is getting in return and convert that to a dollar amount in order to offset their obligation.

Mayor Brockett asked if there is anything they can do in terms of educational scholarships and things of that nature if they aren't able to meet the job creation requirement, and that is a possibility. The City would have to quantify the return it gets and the amount of economic impact to the community. The difficulty would be quantifying how much money would be pumped into the local economy if they gave scholarship to an individual and that individual was then to remain in the community and attend school locally. That has to be done in a little more than three weeks.

Commissioner Cole asked if this was similar to when Governor Richardson gave the money to Marietta, and that is correct in that it was a capital outlay of \$200,000 to purchase a new oven, outfit it and create additional jobs once the new oven was up and running.

Mayor Brockett commented that he is uncomfortable doing this before they have everything in place, but he would support it. He would leave no stone unturned in terms of finding out what could be brought into the picture.

Commissioner Cole made a motion to approve Ordinance No. 1357 for first publication. Commissioner Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

11. Consider Resolution No. 2009-14 adopting the Infrastructure Capital Improvement Plan (ICIP) for FY 2011– FY 2015.

Recommendation: Approve the resolution.

Mark Threadgill explained that this is the annual approval of the ICIP. They are asking that the Commission approve the projects on the list, and they'll be having a Town Hall meeting in May to ask the public to give their top five projects. They will come back to the Commission at the May 26th meeting for the Commission to make the final determination as to what the top five priorities for the ICIP would be for the coming year. They broke the available projects into the categories of infrastructure, quality of life and public safety projects, and they have done a fairly decent job of spreading out the ten projects into those three basic categories.

Commissioner Ledford asked if the projects on the list were in any particular order, and they were not. Commissioner Cole made the point that the community has already approved the wastewater plant bond issue, and Mr. Threadgill explained that there is 6.5 million on the bond issue for a \$15 million plant. This is more money to add to it.

Commissioner Ledford made a motion to approve Resolution No. 2009-14 adopting the Infrastructure Capital Improvement Plan (ICIP). Commissioner Cole seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

ORDINANCES AND RESOLUTIONS:

12. Consider Resolution No. 2009-15 increasing the fee to recover impounded animals.

Recommendation: Approve the resolution.

Mayor Pro-Tem Lujan explained that he pulled this from the Consent Calendar because there have been times when people have asked to be given some leniency in paying a fee because they didn't know they had to pay that fee. A lot of times a Commissioner will say, well, I didn't know you had to pay that fee either, and I'm a Commissioner. He thinks a reason for that is that they get passed on the Consent Calendar, and in light of that any time a fee is going to be raised he thinks that it should

be explicitly pointed out and not done on the Consent Calendar. This is almost doubled and goes into effect in three days. He also asked if this is going to be for when people bring in their animals and they don't want them anymore.

Captain Kelly Wallis, DPS explained that the fee addresses the voluntary owner impounds of animals. When people have pets and for whatever reason they can't keep them anymore, they bring the animal down to Animal Control, and if there are no issues the animal is put up for adoption. Typically that is done as soon as possible because when it's an owner impound they're not waiting for somebody to reclaim the animal. The fee currently is \$10, and it's been that amount since at least 1995. This is basically just an adjustment.

Mayor Pro-tem Lujan said that he is kind of forced to support this because of the way the budget is right now, but the problem he has is the ones that are bringing in the animals are the good deed doers. They're trying to do it right, bring it in, pay the fee and say here is the animal. If that is raised too high, especially more than what it costs the City, they'll just start letting the animals loose, let them go somewhere, take their colors off. First, the City would have to take the time and labor cost to catch the animal and bring it in, and in that instance the City wouldn't get anything.

Commissioner Griggs made the point that as a Resolution it could be changed. It could be a month or 60 days before it goes into effect. This is just trying to update the fee to at least allow for recouping one day of the cost. It doesn't even allow for the City to cover its cost when the animal stays more than one day. They certainly don't want to discourage people from doing the right thing, but the City has to try and meet some costs so that the city isn't spending too much money.

Mayor Pro-Tem Lujan asked that the paper include the change in the fee.

Commissioner Ledford made a motion to approve Resolution No. 2009-15. Mayor Pro-tem Lujan seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

OTHER BUSINESS:

14. Request from Antonia Solorio for residence at 1116 Brooks.

Recommendation: Approve the request.

Mayor Brockett explained that the customer responded to staff regarding a collection letter that she had received for the account. A final bill on a tenants account for the property had become delinquent, and staff informed the customer of the State statute that holds a homeowner responsible for the unpaid utility bill. The customer at that point did not agree and requested that it be placed on the agenda to speak with the Commission. Staff proceeded with the collection process unaware that the customer had submitted a letter to the Commission for review. The process included placing a lien on the property and charges of \$218. Since then a resolution regarding the past due amount has been accomplished. Staff feels that because the customer was attempting to resolve the issue the lien and charges should be removed.

Katie Josselyn, Utility Billy Supervisor, went on to say that they are requesting to be able to release the lien that they had placed on the property. The customer was concurrently trying to work on the issue, and they were unaware of that.

Commissioner Cole said that he didn't understand because the owner owed the City \$218 because of the lien. The house was sold. The customer paid the \$218, and now she is coming back and wants the City to turn around give her the \$218 back.

Ms. Josselyn said that's not exactly the case. The customer had a tenant at the property, and she actually still owns the property. The balance that the tenant left as a final bill was about \$248, and the City tried to collect from the tenant first. Then it goes to the owner, and that is when she got involved.

In that time period the owner came in and was asking why she was responsible for the bill when it was the tenant that had used the water. They went through the State statute with her, and she had submitted the letter to go to Commission. The owner is not trying to sell the home. She is trying to resolve the account.

Commissioner Cole said that the problem he is having is three of the last four meetings they have had customers come in and the Commission has had to make a decision in terms of refunding money in the area of water operation.

City Attorney Thies explained that every time a lien is filed the City has a \$200 administrative fee and a \$18 recording fee to file the lien with the County Clerk. That is what this individual is requesting be waived so the lien can be discharged. Statutorily, the only way it can be discharged is if it is paid or the Commission agrees to forgive the amount of the lien.

Commissioner Ferguson asked why it was not on the Commission agenda in terms of the request from the customer, and Ms. Josselyn explained that it had come in time for the last meeting and when staff saw it they contacted the customer to have her come in. They went over it with her and were able to resolve it. The issue has been resolved without her having to come before the Commission.

Commissioner Ledford made a motion to approve the request. 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.

15. Revoking permission to install and maintain culverts in City easement (Oasis Trailer Park).

Recommendation: Revoke permission to use drainage easement, order the removal of the culverts installed within the easement, and authorize appropriate legal action.

Mayor Brockett explained that the City possesses a drainage channel easement that runs through the Oasis Mobile Home Park, through the entire depth of the park in a north/south direction. In 1997, the owner of the mobile home park filed an application to expand the park. In conjunction with the expansion, the park owner sought permission to install two large culverts in the drainage channel in order to allow access to the part of the mobile home park on the East side of the drainage channel. During the review process, the City engineer noted the potential for culverts to cause backwater problem. The City eventually approved the expansion project. In 2007, an adjacent property commenced legal action against the mobile home park owner alleging that the culverts were causing the drainage channel to overflow and flood his property. In April of 2008, both parties appeared before the commission requesting that the City investigate its responsibility for the increased flooding. The City did investigate the matter and concluded that the City had no liability in part due to the fact that the culverts constitute private improvements installed to benefit a private property owner. Upon reaching this conclusion, staff attempted to work out a reasonable compromise with the park owner to resolve the issue. Those efforts have been unsuccessful. Staff is now recommending that the city order the mobile home park owner to remove the culverts from the drainage easement within a reasonable time. The original permission given to the mobile home park owner to install the culverts in the drainage easement amounts to nothing more than a mere license to use the City's easement. Such a license is revokable at the will or pleasure of the City. Staff is further requesting that if the mobile home park owner fails to do so, staff is given authorization to commence appropriate legal action.

John R. Hakinson, who represents Tony Alvillar, addressed the Commission. He stated that first and foremost there were easements granted on the property. He believes the letter the City issued on April 28th, 2009, was built on a false premise. The right-of-way or easement gives one the right to use the property of another. The City doesn't own the property. When the drainage channel was constructed it was done so to carry a certain capacity, and that is no longer the case. The City has increased it on a number of occasions, and additional waters have been sent down that channel. Mr. Hakinson stated that Mayor Pro-Tem Lujan had stated that when it flooded the water was coming from the north and the northwest, but Mayor Pro-Tem Lujan said that he had corrected himself. As far

as the water that is being tunneled down to the other property, it is coming from the ditch. Mr. Alvillar owns the property. There is an easement for the City to use for drainage and other matters, but the drainage ditch was not designed to carry the water that is now channeled into that ditch. The easement was prepared at a time when the amount of water was much less, and that was 31 years ago. The water that is being channeled by the City into that ditch is the problem. With regard to the bridge, it was built to the specifications of the City, and there is no other access to that property. With a permissive easement, Mr. Hakinson does not believe that the City has the authority to remove the bridge, and a civil suit between the parties has been dismissed. Now it seems the City has stepped into the place of Mr. Randall to pursue the same matter, and to him smacks of a violation of the Anti-Donation Clause particularly based on the argument made in the meeting of September 23rd, 2008. The bridge is not the primary problem. Additional drainage capacity is a problem, and continuing trespass of City water on the property of Mr. Alvillar is a problem. Lack of proper drainage on Lawrence Boulevard is a problem. What happened recently is there was a Dry Canyon Drainage Master Plan, and yet none of the affected parties have seen it. The reason that Mr. Alvillar and Mr. Randall and his attorney were all present was that both parties believe that the City has the obligation if it doesn't like the culvert to address the correct problem. The problem is the channeling of the water and if the City takes out the bridge, the City needs to replace the bridge.

City Attorney Thies clarified that the residents on the East side do have an alternative access. When the property was sub-divided by Mr. Alvillar, he reserved an easement that allows access from the Southeast corner of the lot. Mr. Hakinson stated that it is an easement for emergency vehicles only, and City Attorney Thies disagreed.

Mayor Pro-tem Lujan asked if they had the photographic evidence, but Mr. Hakinson stated that they didn't bring them because they are evidentiary though they could make copies.

Commissioner Ferguson asked why they don't let Mr. Alvillar take the easement back, and then he's going to have to fix the problem because his property is causing the flooding. Mr. Hakinson wanted to know what the City would do with all of the water it is collecting in Dry Canyon and running into the channel. Mr. Hakinson said that based on Commissioner Ferguson's premise the City would have a continuing trespass on the property, which would create significant liability.

Mr. Hakinson said the problem is the tumbleweeds that gather in the ditches and start to back up at the culvert. Mr. Alvillar stated that since the last meeting, the culvert has been cleaned out by the City. The City workers had to remove all of the silt, and it was north of Mr. Alvillar's property. The water overflowed off the banks of the ditch onto his property. He provided Mr. Randall a tour and showed him that the problem is not the culvert but the additional water that is flowing down the ditch and creating the problems. The same problem exists on 24th Street, and in fact he feels that the culverts have diverted some of the problem. If the culverts are removed, he feels the flooding on 24th Street will be worse.

Mayor Pro-tem Lujan stated that he knows they have had talks about this, but this may be the first time that all of the parties are present. He thinks they need to take the opportunity to discuss the problem in depth.

Mr. Jim Randall, a property owner stated that he owns the property that gets flooded, and he has been flooded since 1997, which is when the culverts were put in. According to his pictures, if you look at the road on Lawrence where the water comes out of the trailer park it has worn the road completely off on the West side of Lawrence. Every time it rains, at the culverts the water comes down Mr. Alvillar's Road, down Lawrence and onto his property. It's going to cost money to build an additional access to the property, but it also cost him money every time it floods. If Mr. Alvillar would be responsible for cleaning up his property every time at the rate of about \$750, he can keep his culverts. He dropped the suit because he was spending too much money on attorneys. He believed Mr. Hakinson was incorrect in his assessment of what the problem was.

Commissioner Ledford wanted to know what the City's assessment was. City Attorney Thies stated that the City has not done anything to the drainage district up stream that would divert additional water into the drainage channel.

Mr. Threadgill stated that the one study that was referred to, the Dry Canyon Master Plan, is in progress. They have sent it back to the consultants, and they expect something back next month as a final. That is why no one has seen it yet. It hasn't been completed. Once it is completed, it will be available to look at.

City Attorney Thies stated that there are older studies that have been done, one by a property owner, and one done by the Corps of Engineers of that entire area indicating where the water originates and where it's being drained through what channels. Commissioner Ledford said that the reality is it floods, and it appears that the culverts do plug up and the water comes over the ditch lines, goes through Mr. Alvillar's property and down to Mr. Randall's. It also comes from the north onto Mr. Randall's property. If the culverts weren't there, he doesn't think there would be nearly the flooding problem with either property.

Mr. Brian Cesar explained that every time that they have had their City crews out and he has been present a number of times, the culvert plugs, but the debris is coming down from Dry Canyon. As it comes into the City limits, there is flooding at Scenic by the German school. There is flooding on Fairgrounds, and the smaller culverts behind the Oasis Park will also plug up, overflow and eventually hit Lawrence Avenue. There has also been flooding on 24th Street.

Mayor Pro-tem Lujan said that even if the culverts are taken out, he doesn't think that the problem will be solved. He drew a depiction of the properties and what the problem seems to be. They need to find a way to rechannel the water and slow it down.

City Attorney Thies stated that they do have a plan to solve the problem, and it's called the North Diversion Channel Project. The total project is over \$55 million, and once they find that money the problem will be solved once and for all.

Mayor Pro-Tem Lujan said that he has a hard time with saying the culverts have to be taken out when the City gave them approval and said go ahead, it's safe. Things change, but that is hard to take. It seems like the problem is really between Mr. Randall and Mr. Alvillar, and he's not sure how the City got brought into it.

Mr. Randall reiterated that he didn't have a problem until the culverts were put in. Commissioner Griggs pointed out that in the last five years they have had some very large rains in Alamogordo. It seems like it has moved up the Mountain. The City Commission understands that it has issues with some of the drainage ditches, and debris becomes the problem. He doesn't know the answer because if they take out the culverts, it will be worse down to the South. The stuff that now gets hung up in those culverts will then get hung up in 24th Street and flood that. The ultimate solution is the Corps of Engineers' project up to the North, which is not there yet. Between now and then, he would like to find a way to solve the problem. If they can't find a way to solve it, the City Commission may have to make a decision that is not in the best interest of one of the parties.

Mr. Alvillar said they have been cooperative. They have talked to many commissioners and invited them to see the problem. What happened was they had gotten a letter from City Attorney Thies asking for a private meeting. Mr. Thies directed them to remove the culverts, and the situation has deteriorated from that point.

Mr. Cesar clarified that the Dry Canyon Study is not just to address the problem on Lawrence, but it is to take care of the flooding that takes place on Fairgrounds and on Florida. They are looking at utilizing detention ponds, and they are expecting the study in the very near future. The study will tell what would happen if they install a detention pond behind the fairgrounds.

Mayor Brockett asked what short-term fix could be put in until a long-term solution is provided and if Mr. Alvillar's idea of creating speed bumps would be helpful. City Attorney Thies suggested that if they want to consider any particular options, they should speak with the City engineer to see what additional affects rerouting the water could have and whether it is feasible or not. Commissioner Ledford suggested that the property owners get together with the City engineer to see if some kind of temporary diversion would be helpful. Commissioner Griggs stated that they are still likely going to be left with who is going to pay to remove the culverts. He agreed that the first step is to sit down with the City engineer and decide with the property owners what is worth trying while they are waiting for the final solution. One of the ways they worked on Abbott Ditch was with jersey barriers and tires.

Mayor Pro-tem Lujan agreed that the best idea is for the involved parties to sit down with the City engineer and try to figure out a solution.

City Attorney Thies suggested that they table taking action on this Item until the City Commission meeting in May, and that they have discussions with the City engineer and see what they can come up with in the next four weeks.

Mayor Pro-tem Lujan made a motion to table the Item. Commissioner Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 5-1-0. Commissioner Cole voted nay.

16. Permit applications for new appropriations of water.

Recommendation: Approve submittal of permits to the Office of the State Engineer.

Mayor Brockett read the agenda explanation.

Commissioner Ferguson made a motion to approve the submittal of permits to the Office of the State Engineer. Commissioner Griggs seconded the motion. A vote was taken, and all voted "aye. The motion carried with a vote of 5-0-0.

(Mayor Pro-tem Lujan was out of the room; he returned at 10:50 p.m.)

17. Request of Eliza Fernandez to release a Utility Lien placed on her property located at 1203 Desert Eve Drive.

Recommendation: Approve the release of utility lien.

Mayor Brockett read the agenda explanation. Ms. Fernandez made a correction to the agenda in that she has not paid the outstanding balance or the lien that has been placed against her property.

Mayor Brockett asked if a title check took place, and City Attorney Thies explained that Utility Billing would send the unpaid utility account over to Legal to have a lien filed. They would check to see who the current property owner was, but they never retained proof that they did that. The new process is that when Utility Billing sends an unpaid utility account over to legal to have a lien filed, they check the property records and retain a copy of those records indicating who the property owner is at that date. If the property owner is someone different than the individual who incurred the charges, the City then sends the notice to the current property owner advising them that there is the potential for a lien to be filed. State statute does allow the City to file a lien against property when a prior property owner incurred the utility account.

Ms. Fernandez explained that when she purchased the property, no one explained that there was a lien on the property.

Commissioner Griggs made the comment that when service was disconnected and reinstated the City would have known there was an unpaid utility bill. Commissioner Griggs asked why that wasn't

rectified before water was reconnected. City Attorney Thies said he didn't know what the process would be in that situation.

Ms. Fernandez said that when the title search was done on the home in September of 2006, there was no lien against the property. It was put against the property in March of 2007.

City Attorney Thies explained the lien process and stated that a lien is not effective until someone files it at the county.

Commissioner Ferguson said that he didn't understand how if they cut off the water because it was unpaid and then she came in and wanted to connect to the same place, that we didn't say we're not connecting the water at this address. City Attorney Thies said they couldn't withhold service from an individual because of someone else's unpaid utility account. A lien can be filed against the property.

City Attorney Thies said that one of the problems that is encountered is that generally when a person buys a property, they have the water connected after they have already closed. Then the individual loses the ability to have money withheld at the closing from the seller to pay the unpaid utility charge.

Mayor Brockett said that these types of cases need to be addressed on an individual basis. Staff doesn't have the legal authority to discharge the lien; the Commission has the authority to discharge the lien. Commissioner Ledford wanted to make sure that it was not a violation of the Anti-Donation Clause, but City Attorney Thies explained the breakdown of the outstanding balance.

Commissioner Ferguson made a motion to abate the administration fee and filing fee and pay the water bill outright. Commissioner Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

Commissioner Griggs expressed his hope that staff is reviewing these types of situations to see how they can be avoided. It could be that the process could be changed to where title companies could contact the municipality to see if there are any liens against a property prior to closing. They are not accustomed to doing that.

18. Award of IFB No. 2009-07, Zoo Animal Feed.

Recommendation: Award the IFB to Sanders and Danley Feed Store in an estimated amount of \$23,517.56.

Mayor Pro-Tem Lujan pulled this item because there was a discrepancy between the agenda and the pamphlet in the amount.

Mayor Pro-tem Lujan made a motion to approve the award of IFB No. 2009-07, Zoo Animal Feed in the amount of \$21,161.90. Commissioner Ferguson seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

21. Appointments to Boards and Committees.

No appointments at this time.

UNSCHEDULED COMMUNICATIONS:

A. Commissioner Griggs

Commissioner Griggs commented that Shelby Miller and Margaret Burch passed away recently. They are individuals that made an impact on individual and communities and will be missed.

B. Matt McNeile commented on the following

Interim City Manager Matt McNeile stated that this morning they reached a tentative agreement with AFSCME, and they are grateful for that. The water report indicates that they are at 99% capacity.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened or pending litigation (Tim Keelin, et al. v. City of Alamogordo); & disposal of real property rights (Public Housing).

Commissioner Griggs made a motion to adjourn into Executive Session to discuss threatened or pending litigation (Tim Keelin, et al. v. City of Alamogordo); & disposal of real property rights (Public Housing) at 11:13 p.m. Mayor Pro-tem Lujan seconded the motion. A roll call vote was taken, and all voted “aye.” The motion carried with a vote of 6-0-0.

ADJOURNMENT.

/s/Mayor Steve Brockett

Mayor Steve Brockett

(SEAL)

ATTEST:

/s/Reneé L. Cantin

City Clerk Reneé L. Cantin

*(Prepared by Ubiquis Reporting)
Approved at the Regular Meeting held on May 12, 2009.*