

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
MAY 11, 2010**

**RON GRIGGS, MAYOR
ED COLE, MAYOR PRO-TEM
MARION LEDFORD, COMMISSIONER
JOE FERGUSON, COMMISSIONER
ROBERT RENTSCHLER, COMMISSIONER**

**JOSH RARDIN, COMMISSIONER
AARON RANCE, COMMISSIONER
MARK ROATH, CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
RENEE CANTIN, CITY CLERK**

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

CALL TO ORDER, ROLL CALL, INVOCATION & PLEDGE OF ALLEGIANCE:

Mayor Griggs called the meeting to order at 7:30 p.m. Roll Call was taken by the City Clerk. Commissioner Rentschler was absent. City Clerk announced there was a quorum present. Invocation was given by Commissioner Cole. The Pledge of Allegiance was led by Commissioner Ferguson.

APPROVAL OF AGENDA:

City Manager Roath announced we do not have any changes for tonight's agenda.

PRESENTATIONS:

- 1. Presentation to Sharon Hodges and Kristi Bougteb for their significant contributions to the Safe Route to Schools Project, Phase I.** *(R. Griggs, Mayor)*

Mayor Griggs presented a plaque to Sharon Hodges. Kristi Bougteb did not attend, but Mayor Griggs asked Mrs. Hodges to pass her plaque onto her.

- 2. Presentation to the Alamogordo DPS Community Relations Department, Officer Bobby Pacheco, and Maureen Schmittle for their significant contributions to the Safe Route to Schools Project, Phase 1.** *(B. Woods, Otero County Walkability Group, Presenter)*

Sharon Hodges presented plaques to Bobby Pacheco, Retired Sgt. Ricky Cooper and Maureen Schmittle.

- 3. Presentation about the status of City infrastructure projects.** *(M. Threadgill, Community Development Director, and B. Cesar, Public Works Director)*

Mayor Griggs read the agenda item and said as most of you know, at the first meeting of each month, we have asked City Staff to update us on all the street projects, with where we are, where we are about to be. He then turned the floor over to Brian Cesar, Public Works Director.

Mr. Cesar began by saying tonight he will be giving an update on the 2008 Gross Receipts Tax Street Maintenance Projects and also the Water update. We have confirmation that Cutler will begin paving on the 19th, which is a week from Wednesday. They were scheduled to begin on the 3rd, but they ran late on a project that they were working on for Las Cruces and they have a new machine coming in from Midland Texas. He then showed a slide that indicated the eight streets that would be completed in order. They are: South Florida from Santa Cruz to Panorama, Indiana from 10th to 16th, New York from 12th to 16th, 12th from White Sands Boulevard to Florida, Maryland from 1st to 10th, Cornell from Indian Wells to 26th, College from 10th to Indian Wells and Bellamah from McKinley to Abbott. You might have noticed on Maryland, there is quite a bit of activity from our contractor, General Hydronics; they have mobilized most of their crew down to Maryland to finish off a lot of items. There were some issues they needed to address and they should be out of that area by Friday.

Mayor Griggs asked if we are sure we will be ready at that point. Mr. Cesar confirmed this and explained that is why we did Maryland at this time because it is one of the streets we have asked Cutler to go through.

Mayor Griggs asked if anyone had any questions for Mr. Cesar about the order of the streets.

Commissioner Ledford asked on South Florida, do they only do one lane at a time out there. Mr. Cesar explained that when Cutler goes through and does the actual paving, they will set up traffic control cones and when they put in the hot mix, they will be diverting traffic.

Commissioner Ledford asked if they would be closing off intersections. Mr. Cesar confirmed this and added that they will close off smaller sections. They will not be closing the entire area from Santa Cruz to Panorama all at once. They will block traffic on a section, divert it, pave that section and move onto another section.

Mayor Pro-Tem Cole asked Mr. Cesar when he said Santa Cruz; it would not be all of South Florida. Mr. Cesar explained that the way the project is listed now; it says Santa Cruz to Panorama. We are actually going to go closer to 1st Street, roughly the area of the cul-de-sac and catch the pavement at that point. Mayor Pro-Tem Cole asked if Santa Cruz was the cul-de-sac. Mr. Cesar said it was not. Santa Cruz is not the cul-de-sac, but he cannot think of the name off the top of his head but it is just past the Civic Center if you are heading south. We will catch it at that point and actually go a little bit past Panorama, up to the drainage structure right before you hit Fire Station #5. Actually, in a number of streets, we are adding sections of pavement so that we are catching good pavement.

Mayor Griggs mentioned for all the members of the audience, those streets that have been worked on to replace the water and sewer lines and all the other work, was only the preliminary work to get to where we are right now, to get it ready to pave like they did First Street a couple of years ago. We will have eight streets that will be brand new and then we will move on to get the other streets ready. We still have Hamilton to deal with and we should have money left over to continue with this project.

Mr. Cesar continued by saying it will take approximately two months to complete all those first eight streets and once Cutler is finished, we will be bringing in another company from El Paso to go out and stripe all the streets and replace all the sidewalks. There will be some temporary striping put down once Cutler finished.

Commissioner Rardin asked if we are stopping at Fairgrounds on North Florida or are we going to go a little beyond that point. Mr. Cesar explained that it is one of those streets that we will pour a little further, right around Fire Station #6, a little past Betty Dare.

Mayor Pro-Tem Cole asked if these streets were listed in the newsletter. Mr. Cesar confirmed they were listed in the last newsletter that went out. It had a date of May 3rd in there that they were due to start, but they ran into a few problems and the 19th is the earliest they could get here to begin.

Commissioner Rance asked why we divided the street up into eight and four. Mr. Cesar explained that the first eight are the streets that are completed or will be complete by the time Cutler is here. The remaining four, they just started work on 18th Street, there is still public works being done on Plainview and there is still a lot of work to be completed on North Florida.

Mr. Cesar said on the water update, we are seeing a very good water life this year. He showed a chart and mentioned that 65 percent of that water is coming from the La Luz/Fresnal area, which is made up of surface water coming from the mountains. About 25 percent is coming from Alamo Canyon, which is just to the south of Alamogordo. Roughly 8 ½ percent is coming from Bonito Lake where we are still about a foot above the spillway and the lake is full. The wells have been used about 1 ½ percent, enough to keep them primed.

Mayor Pro-Tem Cole asked about the daily water report they receive as Commissioners, what is meant by the 99 percent. Mr. Cesar explained that is the percentage of the La Luz Filter Plant. They have three reservoirs there and when they are full, they hold 180 million gallons. The 99 percent is the present capacity of the reservoir.

Mayor Pro-Tem Cole then asked the last few days it has been at 102, what does that mean. Mr. Cesar explained that was actually a problem with the metering. We have water coming into the reservoir at all times. Right now we are using a little over 4 million gallons a day and if you see it at 101 or 102 percent, we are pulling out of the reservoir but we have water coming in behind it. They really should count that as 100 just to make it easier on everyone to understand, but the way the State tracks not only the water coming in but also the water coming out; we have to meter every bit of water. That is why you will see the over 100 percent capacity; it is not really over flowing at La Luz. We are pulling it out of the reservoirs and making up that difference. Mayor Pro-Tem Cole wanted to thank Mr. Cesar and his staff for the reports they give to the Commission daily.

Mayor Griggs asked if there were any other questions of Mr. Cesar. Hearing none, he thanked Mr. Cesar for his presentation and turned the floor over to Mark Threadgill, Community Development Director.

Mr. Threadgill began by saying he will be updating them on the Community Development Projects. The Tennis Complex, all the construction work is complete; the only outstanding issue is the bleachers. They should be in within six weeks and we will be able to fully close out that project, we have made great progress here. LaVelle Road Reconstruction is substantially complete; we did the pre-final inspection on May 6th. There are a number of items on the punch list that the contractor will have to go through and clean up. There was nothing significant, just concrete, curb, sidewalks, and a few chips or patches in the pavement. He was out there this morning, and it is a greatly improved road and everyone should be happy with it.

Mayor Pro-Tem Cole asked where City Staff is working on that land off LaVelle Road, what will be going in there, is that the Balloon Park. Mr. Threadgill said it was and that he will be briefing them on that in a few minutes. He continued by saying North Scenic Improvement, Grip II project, construction is ongoing and they have had no issues up there to speak of. If you have been up there recently, all the traffic has been shifted to the new lanes and substantial completion is scheduled for August or September. We expect that the contractor might beat that timeline, but we are not willing to commit to that yet. The ARRA ADA Sidewalk project, First Street is substantially completed, they have a few touch up items to take care of there. You may have noticed on 10th Street, they just started working on Washington and 10th Street, doing ADA ramps and sidewalks. That section should be complete in roughly six to eight weeks. The Balloon Park out on LaVelle, the site has been cleared, and the installation of water supply and irrigation system has begun. The work is being completed by Park and Public Works crews and substantial completion is scheduled for July 2010. We had some dust complaints, so we had the water trucks out there watering to help hold down the dust. 9th Street Bridge, our favorite project this year, we have now gone through all the testing, including pours from the deck that were taken by both the contractor and the City, two separate labs. The results came back within one percent of each other; the concrete did not meet the 4,000psi specs. We were assured it would meet those specs after 56 days but it didn't make it. We waited a little over the 56 days and it still didn't make it, so the contractor did not meet the specs for the concrete load. We have engaged a structural engineer to evaluate the structure; their report should be back around the end of May or the first part of June. This report will tell us exactly what we have here, how sound the structure is, what the expected lifespan is, etc. In the time being, the bridge is on hold and will remain closed. He wishes he had better news, but unfortunately he does not.

Commissioner Ledford asked what the tests indicated. Mr. Threadgill stated it tested as low as 3,020psi and as high as 3,850. Commissioner Ledford asked if the cure on the last test was 3,850. Mr. Threadgill said that was one of the last tests. One of the last tests was also 3,020 or 3,050, he can't remember exactly. One of them was 25 percent under specs and that bothers him. That is why we have the structural engineer coming in to take a look at it. Just as a point of reference under the

old specifications that DOT used, we have many box culverts out in the community, the old standard used to be 3,000psi. We at least met the old standard, but what haven't been met are the design standard and the specifications in the contract for this span and that is why we have the structural engineer coming in.

Commissioner Ledford asked what the structural engineer is going to do; is he going to tell us that he will or will not accept the project. Mr. Threadgill explained that the structural engineer will look at the design, the amount of steel used, the type of design, the amount of cement or concrete used in the overall project, the vertical supports, the general type of land it is sitting on, etc. Once all these factors are reviewed, he will give us a report that will say if it will hold our projected load and the expected life span that we expect to get out of this structure. They could also come back and say the load is going to be wide and to correct that, we may need to add some additional vertical or horizontal supports. There may be a number of solutions to any problems that are out there. They may also ask us to remove the bridge.

Commissioner Rance asked approximately how many pounds it was designed to hold. Mr. Threadgill stated it should hold about 80,000 pounds. Commissioner Rance then asked at present, how many pounds it will hold. Mr. Threadgill stated at this time we do not know. He does not want to venture a guess. Since it is a mix of specs, some of it did come up to the 4,000 spec, some of it got up to 3,600 to 3,800psi, some of it is down to 3,000psi. That is one of the things that we are looking at because we have this mix; we need to know what is the strength of each of these.

Commissioner Rance asked if the critical areas that were poured, the aprons on either side, were they on the high end or the low end. Mr. Threadgill explained the critical area is actually the deck and that is at the low end. However, the deck is approximately 11 inches thick of concrete and another 10 inches of fill and four inches of asphalt. We are not talking a thin deck. We do have design specifications and it does not meet those specifications.

Mr. Threadgill continued with his presentation and said we have started our end of Fairgrounds Road, and are getting prepared for that. Gerald Champion has been in and said they will be getting back to this project now that all the planning is done for their medical complex. They are shifting back to Fairgrounds Road, so hopefully we will have more movement on that within the next month or so. Pecan Drive, this is one of the Bond Projects. We have finished the preliminary scope of work on this. It will include waterline replacement, replace median flood irrigation with sprinklers, install curb and gutter, ADA improvements, 2 intersections rebuilds and rebuild the entire road. The engineering and design are expected to be complete October 2010 and construction will begin January 2011, and that will depend on how fast we get the spec work, plans and bids back.

Mayor Pro-Tem Cole asked if we were going to water the shrubbery with the water tank. Mr. Threadgill stated they were going to install sprinkler systems in that area. Mayor Pro-Tem Cole asked if that was also part of the Juniper project. Mr. Threadgill stated this is from Indian Wells to 25th Street, this is just Pecan.

Mr. Threadgill went on and said in other projects, we are waiting to close out of the PHA GFI Outlet Update. The PHA Electrical Upgrades, we ran into some co-wired units. Some of the quad units had breaker A serving unit C and breaker B serving unit A, so we had to go out there and do some high tech testing to find out where the breakers went and we are waiting on the new schematics for that project. Waste Water Treatment Plant, we will have the final PER in late May, early June. We might see it in the May 25th meeting, but he is thinking it will actually be the first meeting in June. Phase 5 of the Flood Control Project, we are waiting for the Corp of Engineers to give us the final legal descriptions so we can acquire the right-of-ways for that. As always, anyone can get updates on the internet.

Commissioner Rardin asked if the issues with the elevation certificate on Scenic have been addressed. Mr. Threadgill said we are working on that, Commissioner Rardin is speaking of Calle de Juana, where it intersects with North Scenic. Because of the design and constraints of the right-of-way, and

the run off into Gerald Champion Regional Medical Center, the elevation difference with the existing lanes and the new lanes right now is approximately 16 inches. On the longer than average vehicles, right now they have a tendency to drag as they come out of Calle de Juana and turn left to go south on North Scenic. We hope that when the project is finished, the final lift is put on the new lanes and we have final lifts on the existing lanes and we have a taper at a median grade, that it will be reduced to something under 12 inches. There will probably always be an issue with longer than average vehicles, coming through that elevation change there and they may scrape. The engineering constraints at that particular intersection are such that it cannot be a flat median grade at that point.

Commissioner Rance asked if there is any follow up on redoing the ADA Compliance on White Sands Boulevard and 10th Street. Mr. Threadgill said there is and we have already received the replacement parts for the signals and the button posts. We are still waiting on DOT to provide us with the Purchase Order for the materials to complete the rest of the project. As soon as we get those in place, Public Works crews will be down there making the changes.

Commissioner Rance asked about redoing the ramp. Mr. Threadgill said they will be redoing the east side of 10th Street and White Sands Boulevard North and east side of 10th Street and White Sands Boulevard South. Instead of the ramps coming out onto 10th Street and have to scoot down 10th Street a little bit before you get to White Sands Boulevard, they will be able to exit right there.

Mayor Griggs asked Mr. Cesar where we stand with Hamilton Road. Mr. Cesar said at this time, Engineer's Inc. is finalizing the engineering report and we should have it by August and we will go out to bid shortly thereafter. We are finalizing the right-of-way that is going to need to be acquired and we should have that complete by the end of this month. There have been some minor issues but they are still on schedule at this time.

Commissioner Rardin asked what the final cost of Hamilton Road. Mr. Cesar said we will not actually have that until the engineering study is complete. The numbers we have been given so far is about \$3.5 to \$4 million.

Mayor Griggs stated he believes it started at about \$2.5 million, but he is not sure what this design is going to be. Mr. Cesar said we have added some drainage improvements and that has added to the cost and we are looking at \$350,000 worth of utility relocations, electrical and telephone that we didn't know about.

Commissioner Rardin asked where we are paying for this project from. Mr. Cesar stated this will come from the 2008 Gross Receipts Tax, the same money we are using to do the projects he mentioned earlier. We will go out for the second loan amount as soon as we get firm numbers from Finance. We do have some savings from this first round. Commissioner Rardin asked if the whole second round will go to Hamilton Road. Mr. Cesar said it wasn't but it will be in the neighborhood of \$2 million, the first \$7.5 million will actually be carried over from this first round of projects into the Hamilton Road project. If we don't do anything else besides Hamilton, instead of needing to go out to the New Mexico Finance Authority and ask for the \$7.5 million, we can ask for the \$2 million. If all the money is not used for this project, we can try to do additional streets.

Mayor Griggs asked Mr. Cesar if he has an idea of other projects that could be added. Mr. Cesar stated he has a list of suggestions.

City Manager Roath asked Mr. Cesar if he could explain about the signage program that he is about ready to undertake. Mr. Cesar said yes, he is waiting for one more shipment of signs to come in. We are under a federal mandate to replace all the street name signs, stop signs, etc. to meet the new retroactivity requirement. In some areas we have actually started some demolition. Up on Scenic, some of those monuments that are in the medians, those brick pyramids, if you notice they have been shifted. First Street, Scenic and Indian Wells, those will actually be removed from those median areas. The new signs coming in are much larger and the existing ones will be taken out and replaced.

City Manager Roath added this will be throughout the entire community. Mr. Cesar agreed and said we should have the last shipment of signs in by the end of May. We are going to break up the City into sections and our street and park employees will be out replacing the old signs.

Mayor Griggs asked if there were any questions. Hearing none, he thanked Mr. Cesar and Mr. Threadgill for their presentations.

CONSENT AGENDA

Mayor Griggs said he would like to remove item 8 from the Consent Agenda and asked if anyone else would like anything removed. Commissioner Rance asked to have item 10 removed as well. Mayor Griggs then asked if anyone in the audience would like to have an item removed. Hearing no other, he asked for a motion on this item.

4. **Approve Minutes of the April 27, 2010 Regular Meeting of the Alamogordo City Commission.** *(R. Cantin, City Clerk)*
5. **Approve statement related to the Executive Session of April 27, 2010.** *(R. Cantin, City Clerk)*
6. **Accept, and place on file, a Quarterly Investment Report for the period ending March 31, 2010.** *(L. Nichols, Finance Director)*
7. **Approve Resolution No. 2010-12 requesting written approval from the Local Government Division of the Department of Finance & Administration (DFA), State of New Mexico for the revised budget figures computed on May 11, 2010.** *(L. Nichols, Finance Director)*
9. **Confirm action taken on the Housing Authority Board Agenda Item #3 related to Fiscal Policy and Procedures for the HOME Owner Occupied Program.** *(M. Roath, City Manager)*

Commissioner Ledford moved to approve items # 4, 5, 6, 7, & 9 of the consent calendar. Commissioner Rardin seconded the motion. Roll call was taken for item #7. Motion carried with a vote of 6-0-0.

ITEMS REMOVED FROM CONSENT AGENDA:

8. **Approve Resolution No. 2010-13 removing uncollectible and unsecured Utility, Library, Recreation Center, Housing Authority, and other Miscellaneous Accounts from the City's Accounts Receivable.** *(L. Nichols, Finance Director)*

Mayor Griggs began by reading the agenda item and said he asked to have this item removed, not so much because of the need to write them off, but for the need to discuss some of them and try to determine what our policies and procedures are. If we just jump into the miscellaneous accounts, we have the Convenience Center that individuals owe us for, we have curb cuts that people owe us for. The question he has, on the properties where the curb cuts occurred, can we withhold their business license or put a lien on the property until we get paid. If we haven't been doing that, shouldn't we start? He then turned the floor over to City Manager Roath.

City Manager Roath asked the Finance Director to address the issue of collections and how those have been moving forward. LeeAnn Nichols, Finance Director asked if his questions were relating to the curb cutting or businesses using the Convenience Center and whether we could basically revoke their business license.

Mayor Griggs reiterated, when we have a contractor who has utilized City facilities and has not paid for over four years, is that something the Commission wants to do and can we do that. If we have been unsuccessful at having them pay, and he know this particular company is still in town, why are we allowing this company to continue to do business.

Mrs. Nichols explained, without mentioning names, some companies can file bankruptcy and open another company. One of these particular companies was one where a bankruptcy was filed, so we cannot go back and collect from that particular business. Mayor Griggs said if that is the answer for that particular company, then he understands.

Mrs. Nichols said she would have to defer to the City Attorney, whether we can make collections on these accounts. City Attorney Thies stated on the one account where it appears the individual contracted the City to do the curb cut; it would appear that we could file a lien against that particular piece of property. The one where the Contractor requested the City to do the curb cut, he is assuming that it was on behalf of the property owner, his initial reaction is that more than likely we would be able to file a lien against it, because the property benefited from the City's services. We could probably still file liens on both of those at this time. On the other issue about business registrations, he would have to look at the State Statute and see if there is anything in the Business Registration Statute that would prohibit us from withholding the renewal of a business who owes money. If it does not prohibit us from doing that, then we could amend our ordinance where we would withhold the renewal of the business registration until they paid all the outstanding fees.

Commissioner Rardin had a question on the first one of the Convenience Center and curb cuts, why do all of these have a last statement of June 30th, 2009. Does that mean we have not tried to collect these fees within the last year? Mrs. Nichols believes all of these have been turned over to the collection agency for collections. Commissioner Rardin asked if they have been trying to get them paid and they were all turned over on June 2009. Mrs. Nichols confirmed this.

Mayor Pro-Tem Cole asked about the company that filed bankruptcy, can they start all over and file bankruptcy again and start a third company. Mrs. Nichols stated she is not familiar with any of the bankruptcy laws, so she can't answer that question. She does know that once a business files bankruptcy, you can't file collections from that file.

City Attorney Thies asked if the Commission was referring to Westward Airlines. This was confirmed. He said it depends on what chapter they file the bankruptcy under. If it is Chapter 7, the debt would have been discharged, if it was under Chapter 13 or 11, we should have gotten notice and an opportunity to submit a claim and we would have been paid anywhere from \$.5 cents on the dollar to 100 percent of the dollar.

Mayor Griggs mentioned one of the items was for insurance, what is that all about. Helen Viscarra-Reno, Internal Control Analyst explained that the City had paid the employees' share of her insurance. We were unable to collect since she had left employment with the City. Mayor Griggs asked if this was a City Employee. This was confirmed by Mrs. Viscarra-Reno.

Commissioner Rance said typically, HR related issues would be separated out of the normal accounting practices from disposal fees and such. Mrs. Nichols explained that it indicates the employee's share of the insurance. The employee could have been on leave for health reasons and they didn't come back to work, but we made a payment on their behalf. We would have collected that fee from a future paycheck and were unable to do that.

City Manager Roath said in listening to the conversation, he thinks there are several things that need to be mentioned. First of all, obviously, this is an accounting effort that should we have the opportunity to collect from any of these individuals, we will continue to do so. He would think it was prudent to have the City Attorney review this list and maybe sit down with the appropriate people in Finance and follow-up to see what efforts have taken place and see what additional steps need to be taken. It is obviously a cost benefit, pursuing a \$2 or \$5 fine and spending the City Attorney's time doing that is

probably not a prudent effort. Maybe looking at some alternatives that we might have, legal recourses such as business licenses and renews, etc; look at that avenue and make some recommendations to the administrations regarding any other alternatives we might pursue. This might be worth the effort to look at. The intent is to remove these from our books, but at the same time, allow us to continue to collect and attempt to collect those outstanding fees and charges.

Mayor Griggs feels City Manager Roath is correct and he believes everybody understands that. The concern he has on some of them, he would like to see if we can avoid the issue completely.

Commissioner Rance asked if these write-offs were going to be done every year so we are not going back several years. Mrs. Nichols said according to the State Statute, they have to be four years or older, so everything we are writing off tonight is actually four years old. We do this on an annual basis so we can keep our books clean.

Mayor Griggs said the next section of these write-offs deal with utility billings. When we run down through this list there are both owners and renters and deposits that have been refunded for both as well. We see some amounts that are pretty big such as nearly \$4,000 on one and some that are \$31. With this, it is a procedural deal that may be able to be handled in dealing with title insurance companies when these sales occur. By escrowing some money, we may be able to avoid some of this happening. This is something he has discussed with the City Attorney and we are trying to come up with some means on how to look at some of these. We might be able to head most of these off if we are able to get title insurance companies to escrow funds. That is a procedure we will have to work out with them to do that. It is interesting with some of these that if we have deposits that were refunded and these people still owe us money. He does not know how that should happen, but obviously it did in some of these instances.

Mrs. Nichols stated she will check those out, but she does not believe the deposit was refunded, she thinks that column indicates that the deposit was applied to the outstanding balance. She said she would get that verified for the Commission. Mayor Griggs asked if she thought the deposit was applied to the account but they still owe us over and above that. Mrs. Nichols confirmed this.

Mayor Pro-Tem Cole said one or two of these businesses are still in operation, in looking at customer # 21593, he does business with them all the time. Why do they have such an outstanding balance? Mrs. Nichols stated he is correct, she knows that business is in place. She doesn't have that detail, but she will look it up for him.

Commissioner Rardin asked if that was when the company changed hands. There is a new owner and the name listed here is the owner that had the business way back when. Can you charge the new owner who took the business over? Mrs. Nichols reiterated that she will have that verified.

Mayor Griggs let Mayor Pro-Tem Cole know that it may be one of the deals that happen when one guy walks away from the business and we have no way to find him to recoup the fees. The next batch of write-offs is from the Library Funds and they run from \$.20 up to several hundred dollars and every one of us probably knows someone on the list. He does not know if there is a way if someone comes and turns in a book on a Friday, and it is two days late and there is a late fee, do we have a means, other than waiting for that individual to come check out another book, to get the fine paid. He believes that a lot of these individuals would pay their library fine if they knew it was there. He asked Matt McNeile, Assistant City Manager, to give an explanation on how it all works.

Commissioner Ledford asked if this is the current fine list. Mr. McNeile confirmed this and said it is our current fine listing. Commissioner Ledford then asked why we round it to \$.10, if we are going to balance the budget, why don't we make the fine higher instead of such a low amount, and then people may bet serious about their fines. His feelings are that we can't send a \$.44 stamp to collect a \$.10 fine. If a person owes \$.20, we are not going to recoup the fine.

Mr. McNeile said the pamphlet, in the middle section; it explains how the over due fine process works. He then said Bonnie Meagher, Head of Circulation has worked for the Library for a little over 19 years and she can better explain the fine process. One of the things we have talked about doing is implementing a fine schedule.

Commissioner Ledford said in the pamphlet, it says the maximum overdue fine limit is \$5.00 and then suspending their privileges after that until they are paid. How does a lost book get replaced if that person doesn't turn it in? Ms. Meagher stated we have a system in place where we try to notify them. We send a first overdue notice, a second overdue notice and a final notice. If we don't get a response by that point, we have someone send a letter and at that point, they have 15 days to clear up the matter before we turn it over to the legal department. Once it is turned over to the legal department, they send out another letter. After that point, anything under \$100, they do not pursue it further. Anything that is \$100 and over, we do file a civil suit.

Commissioner Ledford asked if the large numbers beside where it says lost is that where they lost the book. Mr. McNeile confirmed this. Commissioner Ledford then asked, who lost the book, did they lose it? Ms. Meagher said that is if the book is not returned after 28 days, so we change the status to lost.

Commissioner Ledford said so you just don't know where it is at. He thinks we need to evaluate the amount. According to your procedures, you don't send out notices until they are seven days late. \$1 is 10 days, so we could send out a notice for that. Ms. Meagher explained they don't send out notices once we get the item back. Once the items have been returned, the fine is assessed. Any lost charges or processing fees come off the account and the fine is assessed. It would be over the \$5 mark at that time, especially if it is more than the cost of the book. The fines can sit in the account, and anything over \$5 they lose their privileges.

Commissioner Ledford asked Ms. Meagher if she said they send out a letter for anything owed. Ms. Meagher explained that they send a letter when the book becomes lost. She reiterated that after seven days they get a notice, after 14 days they get a notice and at 21 days they get a notice. If after that time we still do not get a response, either we did not hear from them or they did not come in to set up a payment plan, then we send a letter that states they have 15 days to clear the matter up before we send it to legal.

Commissioner Ledford said he understood it as after seven days you send a letter, which means the book hasn't been returned. Ms. Meagher confirmed this and stated they have an automated system that calls the individual. Commissioner Ledford then said okay, after seven days they get the call, so they would have at least been notified. Ms. Meagher confirmed this as well.

Commissioner Ledford said his take on this is that we need to reevaluate the amount and procedures. He would not want to collect on the \$.20, because it is not worth it. How hard would it be to set down and experiment with this? Matt McNeile said we will have to evaluate the process. Commissioner Ledford said lets make it about \$1 per day; we will get more money out if it that way.

Mayor Pro-Tem Cole stated that he has worked at the library and at that time, if a patron owed \$.10 or \$.20 and they wanted to check out a book, you could tell them and they still wouldn't pay the fine. He worked there five years and he learned that even if they owed a fine, we would still not deny them the book because we wanted to be nice men and ladies, especially if they had their children standing around them. It is not cut and dry like that. He agrees with what Commissioner Ledford is saying, but he doesn't know how we could do that.

Mayor Griggs would like to revisit the whole thing and see whether we need to charge fines. Maybe just an automated system that asked them to please return the book, but you kept it longer than you were supposed to and you owe us \$.15. Maybe something like that would be worth implementing and it would not take a lot of staff's time and lets the person know they have a fine. He is willing to bet that there are a lot of people on the list who didn't even know they had a fine. That is the only thing he can think of that would be helpful, is to let them know they have a fine.

Ms. Meagher said they are looking into the possibility of e-mailing people to let them know of overdue fines as well. Mr. McNeile said we may also be able to add a sentence to the automated message that says their library books are overdue and give them a time limit to get them turned in. Ms. Meagher stated she called the phone messaging system that day and they told her they would not be able to add that message to the system.

Commissioner Rardin asked how many people on the list are kids below the age of 10 or 12, is it the majority of them. Ms. Meagher stated she did not do that research; she just did it as fines overdue. Commissioner Rardin said maybe you could send a message to their parents. Ms. Meagher said it is a possibility we can try. One other scenario is someone checks out a book and it is two days overdue, but they didn't realize it was overdue, and they drop it in the book drop and they are going about their merry way. If we don't tell them about their fine and they don't use the library for several years or they move away and are gone, they will never know.

Mayor Griggs would still like to see it looked at to see if there are other ways that we can address this. He believes the next bit deals with the recreation center and housing and he thinks it is pretty cut and dry. Absent anything else, he asked for a motion to approve these write-offs.

Mayor Pro-Tem Cole said he doesn't have any problem making a motion, but wanted to know what Mayor Griggs meant when he said to approve these write-offs, are you saying they don't have to pay.

Mayor Griggs explained the finance department is going to write these off. Mrs. Nichols added that we will continue to collect the money but just write them off the books. If we collect the fees, we will adjust them. We do keep records of what is owed to the City whether it is written off or not.

Commissioner Rance moved to approve Resolution No. 2010-13 removing uncollectible and unsecured Utility, Library, Recreation Center, Housing Authority, and other Miscellaneous Accounts from the City's Accounts Receivable. Commissioner Rardin seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.

10. Approve a request to waive administrative fees for a lien that was placed on the property located at the end of Hickory Road (9.2580 acres in the N1/2 of the NE 1/4 of S17-T16-R10) by John Sheffield of JLM Associates. (S. Thies, City Attorney)

Mayor Griggs read the agenda report and turned the floor over to Commissioner Rance. Commissioner Rance asked for an explanation, we put so much time and effort into the process of cleaning up the property and processing, why would we not want to get reimbursed for those administrative fees. It was \$200 that we obviously used in this process.

City Attorney Thies explained the reason we are making the recommendation to waive this particular administrative fee, this individual has agreed to help us in some beautification efforts to the adjacent property. We figure the amount of the fee is \$200 and it is more than offset by the efforts he is making to help us beautify White Sands Boulevard. Commissioner Rance said for that reason he understands. He would not agree to just write it off.

Mayor Pro-Tem Cole said he called and talked to staff on this and he agrees with Commissioner Rance's feeling. He still thinks the total amount should be paid. The reason why we developed these policies in general is so they will not have to come to the Commission all the time. We direct staff to do this and now the person would like to have the administrative fee waived and he doesn't see that, he thinks the whole amount should be charged. He spoke to staff on this and his decision is not based on what is presented here, but he doesn't support this because he thinks they should pay the whole amount.

Mayor Griggs asked if there were any additional comments. Hearing none, he asked for a motion.

Commissioner Ferguson moved to approve the request to waive administrative fees for a lien that was placed on the property located at the end of Hickory Road (9.2580 acres in the N1/2 of the NE 1/4 of S17-T16-R10) by John Sheffield of JLM Associates. Commissioner Rance seconded the motion. Motion carried with a vote of 5-1-0. Mayor Pro-Tem Cole voted nay.

PUBLIC HEARINGS

- 11. Hold a public hearing, and act upon, a variance to reduce the required distance between the front lot line to the existing accessory building for Henry & Joan Helmar. [Case V-10-0536(A), 2529 Oakmont Drive].** *(M. Threadgill, Community Development Director)*

Mayor Griggs read the agenda report and turned the floor over City Manager Roath. City Manager Roath said he will defer to Mr. Threadgill on this item but reminded Mayor Griggs that he would have to close the hearing before any action is taken on the item.

Mr. Threadgill began by saying at the last meeting; we began this public hearing on a variance request for 2529 Oakmont Drive. He doesn't want to go into the entire slide presentation as last time, but to bring everyone up to date, the problem that we discussed was the shape of the property and where the building sits on the lot. The property is an odd shape and not rectangular and the property owner placed an accessory building on what may be described as the side yard or the front yard. The problem is that the front set back for the accessory building is 55 feet. He then showed a slide that showed the 25 foot residential setback and the 55 foot setback and where the corner of the building should be. The property owner purchased the accessory building at a place before he was aware of the setback requirement. Someone came in with a complaint and it was fully investigated and found out the building was there and told the owner of the setback requirement and at that time the owner applied for a variance. He showed several pictures. The variance criteria would be that such action would not be materially detrimental to the public interest, such action will not grant a discriminatory benefit to the land owner and/or harm neighboring properties, and such actions owing to conditions peculiar to the property or neighborhood and not the result of actions of the situation of the applicant, a literal enforcement of the Code of Ordinances of the City of Alamogordo, New Mexico, and not in conflict with any other adopted code, would result in practical difficulties or unnecessary hardship. At the P&Z meeting, the Commission recommended denying the variance but staff believes that the request meets all the criteria and that the variance be granted. We had several letters of protest denying the variance request; we have two letters in support of the variance and seven letters against it. Those letters are from property owners in that area. At the last meeting, after a lot of discussion, the Commission directed that the property owner meet with some of those individuals who were protesting the placement of the building to reach an agreeable solution. He believes the property owner has met with most of the property owners that protested and they have come up with a solution and provided staff with a copy. The solution involves a wall, a cut field stone wall/fence about 6 feet tall and Emerald Green Arborvitae plants; they are a type of Cyprus plants, tall and narrow. This will provide some type of blockage in the area. With this solution, most of the property owners will no longer protest this variance.

Commissioner Ledford asked why all of the property owners were not okay with this solution. Mr. Threadgill stated he can't say because we were not involved in the meetings. The meeting was with the property owner and those that protested the variance. He cannot say but he is sure Mr. Helmar could answer that question.

Mr. Henry Helmar said he did meet with the Crispin Family, across the street, he showed them the sketch and they are in consideration, but have not gotten back with him about it. The following day, he met with Mr. Messer and Bolin and we had a discussion. They expounded on his original thought of just the greenery with the wall, which he is in agreement with. To the extent of the wall, he will let Mr. Messer explain it, but he is in agreement with it. Commissioner Ledford asked Mr. Helmar if one of the protesters was the neighbor next to you. Mr. Helmar corrected him and said they are across the street. Commissioner Ledford asked Mr. Helmar if it is the one to the right of him on the map. Mr. Helmar

explained the people who own that property do not live there, it is a rental property. Those people actually live next to Mr. Messer and he has spoken with them.

Mayor Griggs asked Mr. Helmar where Mr. Crispin's property is located on the map. Mr. Helmar indicated that property is across the street. Dr. Jun is at the bottom. Mr. Helmar reiterated that it is a rental property and they do not live there.

Tom Messer said he gave his neighbor a drawing of Mr. Helmar's proposed fence and greenery and he has not received any feedback from Dr. Jun other than the fact that he would look at it and get back with us.

Commissioner Ledford asked when he gave them the map, was it right after the last meeting. Mr. Messer stated it was right around that time period. Commissioner Ledford said he does sympathize with Mr. Helmar's situation, it is really unfortunate that it got to where it got before something had to happen. He does appreciate the work Mr. Messer is doing with the neighbors to come to a compromise. Mr. Messer said on behalf of Sedona Development, we are in agreement, this is what we worked out and he has not had any indication from the Doctor that he is opposed to this. Each neighbor can speak for themselves, but he showed then the plan.

Commissioner Ledford asked if the fence that will be placed around the building is a six foot fence. Mr. Messer stated it is a six foot block fence to match the existing fences in the subdivision. We were very pleased with the compromise.

City Manager Roath said obviously the fence is a good screening method, but how would the building be removed in the event something changes, would the fence need to be taken down. For example, in the future if the house was sold and the property owner did not want the accessory building, would they have to remove the fence in order to take the building out of there? Mr. Messer explained he had assisted someone in installing one of these buildings, not quite that large, but it would have to be lifted by crane.

Commissioner Rance said he appreciates all the parties working together to get this resolved; unfortunately, he thinks they should have followed the Planning and Zoning recommendation. He does not feel they have received all the information back from all the parties that everyone is in agreement. There is no documentation that has been presented back to us that this agreement is acceptable, so he cannot support this.

Mr. Messer added in regards to P&Z, they basically stated they would not support the variance because they believed there was no effort made to work with anyone at the time of the application. We have since worked that out and he can't speak for the P&Z Commission, but they were supporting those individuals who had protested.

Mayor Griggs asked Mr. Messer to show them on the map which properties were owned by Sedona Development. Mr. Messer indicated the properties on the map.

Gerald Hamel, resident of Sedona Ridge Estates said his biggest concern is that it is a nice neighborhood and he would like to see it stay that way. He thinks the fence, if made of cinderblock, does not match the other fences in the area. To him it would be a bigger eyesore to have the cinderblock fence. City Manager Roath believes the fence would be made of stone. Mayor Griggs clarified the sketch indicates it will be a cut field stone wall/fence

Mr. Hamel said he knows most of the other neighbors have not filed a complaint and it may be because like him, he did not know anything about this proposed variance until the City notified him. He understands Mr. Helmar is trying to help the neighborhood by doing the fence and greenery, but he wants to ensure the neighborhood stays nice. Mayor Griggs asked Mr. Threadgill to go to the map and have Mr. Hamel show which property is his. Mr. Hamel indicated he is at 2579 Oakmont.

Mayor Griggs said the item before us is to approve the variance. If we agree to do that, he thinks we also need to incorporate within the motion, the requirement on the fence and the shrubbery, but especially the fence. This is a particular issue that could have been avoided but it wasn't. The gentleman has a big investment out there but so does the neighborhood. It is important that we do our best to strike a balance or to just deny as recommended. He thinks we are at the point to make that decision and any additional comments. City Manager Roath reminded Mayor Griggs that it is a public hearing, so he will have to close the hearing before making a motion.

Commissioner Rardin asked if we make a motion to approve this, can we approve it pending this agreement being filled by building the fence. Mayor Griggs stated he believes we would have to make the motion requiring the building of the fence. He is not sure exactly how all that works, he then asked the City Attorney to explain it to them. City Attorney Thies said the State Statute allows the Commission to grant a variance with conditions, so the variance would have the condition that he also construct the cut field stone wall/fence and install the Emerald Green Arborvitae trees per the submitted plan.

Commissioner Ferguson asked the City Attorney what would happen when and if he sells the house. City Attorney Thies explained that the variance stays with the property. Commissioner Ferguson asked what happened if the new property owner decides to cut down the trees. City Attorney Thies said more than likely they would have to take the property owner to court and have them pull out the shed. That is the difficulty of granting conditions, but he would suspect it would be similar to building covenants; we would have the ability to enforce those restrictions by making the person replant trees, reconstruct the fence or pull out the shed.

Mayor Griggs stated that was one of the issues we talked about last time, as far as the shrubbery goes. The fence is the more critical of the items, but anything that can be done to help camouflage the existing building is something that should be done.

Mr. Messer added that it is Sedona Developments position that the shrubbery is a nice addition, but it is not a requirement by us. A permanent block wall is all that we are asking of Mr. Helmar.

Mayor Griggs asked if there were any other comments. **He then closed the public hearing.**

Commissioner Rardin moved to approve the variance with the requirement that a 6 foot cut field stone wall/fence will be built that surrounds and encloses the building to block it from view. Commissioner Ledford seconded the motion.

Mayor Pro-Tem Cole asked how deep that wall is. Commissioner Rardin stated it would be 18 inches thick. Mayor Griggs asked if there were any other questions or comments. Hearing none, he took a vote.

Motion carried with a vote of 5-1-0. Commissioner Rance voted nay.

Mayor Griggs let Mr. Helmar know that they have approved the variance and that it is his responsibility to fulfill the requirements they have placed upon him. He added that he would still like Mr. Helmar to try and work with some of the other neighbors in the area to show them how good a deal this is going to be.

NEW BUSINESS:

12. Appointments to Boards and Committees.

Mayor Griggs read the vacancies appointed J. Malcolm Yox to the Community Development Advisory Committee.

UNSCHEDULED COMMUNICATIONS:**A. Jim Mack commented on the following:**

- 1) Mr. Mack stated he is from Mi Casa Signs; he is one of the bench contractors here in town. For the past 20 years or so, there have been benches on White Sands Boulevard. Recently, some of their benches were taken away and they were never notified about that. It is like a no mans land out there, all these vendors are out there and no one is taking responsibility for the property. We have asked the City several times what we can do to help clean it up, but they just keep saying it is not their responsibility and they can't do it, touch it, or tell you anything. All of the sudden, all these benches disappear and now they say the City has taken responsibility for the property. He wanted to know where his rights were in this situation. No one contacted him, no one said anything to him as far as what has happened here and he thinks it is pretty bad and unfair. He understands that what they were doing was right, but he feels like they are just picking on him. The State says they want no benches on the right-of-way, but they also say no signs. There are some issues out there that need to be solved and he doesn't know if the intention is to clean up Alamogordo, or if the intention is to take his property. He wanted to come here tonight to have this matter addressed.

Mr. Roath directed Sam Trujillo, DPS Director to contact Mr. Mack to schedule a time to meet with him and go over this issue with him and report back to the Commission on the outcome.

Commissioner Rance stated Mr. Mack contacted him and he also thinks the point is that the benches were taken to the City lot. On behalf of Mr. Mack, his product is very nice and some of the benches were not so nice and he is fearful that the benches were damaged in the removal process. He asks that we do everything within our power to take care of the benches and he thinks the City has a responsibility to work with the State in dealing with the benches. He thinks there is a communications device that we could have used to inform Mr. Mack and it was not utilized. He believes Mr. Mack made a valid point that he was not notified at all and he thinks he should have been given the opportunity to remove the bench.

Mayor Griggs said the other day he was coming back from La Luz and he did see the State of New Mexico removing a campaign sign that was out by the mall. They were there with the Highway Department to remove the sign. He doesn't know if they had removed any of the benches or if we had. He let Mr. Mack know that Chief Trujillo will meet with him to let him know what had happened, why it happened and how to address it in the future. He also asked Mr. Mack to come back to the next Commission Meeting to see where this matter stands.

Donna Mack said we were under the complete understanding that White Sands Boulevard belonged to the State. We also understood that we would be advised before the removal of the benches and we were never advised. The benches are our property and cost \$250 per bench. The signs on the benches are the advertiser's signs. We have monthly agreement with these advertisers to advertise on these benches and now that the benches are removed, there is no advertisement. Not only were we affected, but the advertiser's were as well. She doesn't know where their benches are and would like to know. No one told us sorry, we made a mistake, and she doesn't think it is right. She would not like someone to come on her property and remove someone else's property.

Mayor Griggs understands and that is why he would like them to meet with Chief Trujillo and get some answers and then we can move forward from there.

CITY MANAGER'S REPORT

- 1) Washington Park Pool demolition. If you drive down Washington Avenue, you will notice we no longer have certain facilities at Washington Park. He wants to compliment Mr. Cesar and his staff. Earlier, in the CIP, we had \$100,000 to remove the facility and we had a quote at a minimum of \$74,000 from a private company to remove that facility. Mr. Cesar was able to get

the work done for less than \$10,000 and that even included hiring a company to come in to address some environmental issues in the old building. We also wanted to have it removed in time for Gus Macker.

- 2) Budget season is almost here. Monday the work shops begin at 2:00 and at 4:00 we will have the Special Meeting to adopt the Hospital Bond Ordinance. We are looking forward to a lively budget session and an opportunity to talk a little bit about next year's budget.
- 3) Mr. McNeile gave an update on Gus Macker beginning this Friday. Last year we had 212 team registered and to date we have 318. We are expecting over 1,000 people for Saturday in the Park and we will be having a fly over of an F22. Washington Street from Mountain View to First Street will be closed beginning Friday morning.

Mayor Griggs added that it is also Armed Forces Day. Matt McNeile confirmed this and said 8:00 a.m. Saturday morning is Opening Ceremonies.

Mayor Griggs mention that last year this event filled up all the hotels. If we have 100 additional teams, where are we going to put them all? Mr. McNeile stated that 43 percent are from out of town, Tularosa and Cloudcroft. We spend \$500 each year for the promotion board to advertise in Albuquerque, El Paso, and other towns. We may have to open up to camping as well because all the hotels will be filled.

REMARKS AN INQUIRIES BY THE CITY COMMISSION

A. Mayor Griggs commented on the following:

- 1) Hope everyone enjoyed Mother's Day and that you took care of your mother, wife or any other significant other, whom ever it might be.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss **Potential disposal of real property (60 acres in SW 1/4 of S12, T17S, R9E).**

Commissioner Rance moved to adjourn into Executive Session to discuss potential disposal of real property (60 acres in SW 1/4 of S12, T17S, R9E) at 9:13 p.m. Commissioner Rardin seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.

ADJOURNMENT.

/s/Mayor Ron Griggs

(SEAL)

Mayor Ron Griggs

ATTEST:

/s/ Reneé L. Cantin

City Clerk Reneé L. Cantin

*(Prepared by Marsha D. Brady, Deputy Clerk)
Approved at the Regular Meeting held on May 25, 2010.*