

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
MAY 25, 2010**

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

**JOSH RARDIN, COMMISSIONER
AARON RANCE, COMMISSIONER
MATT MCNEILE, ASSISTANT CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
RENEE CANTIN, CITY CLERK**

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. Invocation was given by Pastor Vaden Gilloth. The Pledge of Allegiance was led by Mr. McNeile.

APPROVAL OF AGENDA

Mayor Pro-Tem Cole moved to approve the agenda. Commissioner Rentschler seconded the motion. Motion carried with a vote of 7-0-0.

PRESENTATIONS

- 1. Presentation on Axio Power, and a proposed plan to develop a Large Solar Energy Facility on City owned land at the Old Landfill and adjacent to the Wastewater Treatment Plant.** *(Kyle Cherrick, Project Development Associate, Axio Power, Presenter)*

Mayor Griggs read agenda report and asked Mr. Kyle Cherrick to come forward to give his presentation.

Mr. Cherrick began by saying he as a Development Chairman of Axio Power and he wanted to start off by thanking the Commission for allowing him to make this presentation and a special thanks to City Attorney Thies for getting everything lined up for this meeting. He said we are here to make a proposal that Axio Power is making to lease certain city owned property for solar generation purposes. He began to go over his slide show presentation and asked the Commission to stop him at any time if they had any questions. Tonight he will talk about the Company Overview, Axio Team Solar Projects, Axio Team Wind Projects that some of our sister companies have done, Management Team, Benefits of PV, Project Genesis of how we got here, Alamogordo Project Overview being the landfill project, Holloman Project Overview which is closer to the Airport and EPC/Technology Supply. The company was founded with one specific mission and that was to accelerate the adoption of utility scale solar power. In 2007, the founders developed a company and received some funding in order to pursue this goal. We have a North American project development focus to start projects throughout the US and into Canada. We are funded by a group called Greenlight Energy Resources and we are happy to have them as our lead investor. They were a former wind development group who sold off their portfolio of wind projects and focused on solar energy. Since that time, they have reinvested their revenues into a series of other solar companies. To date we have build 6 MW of solar projects that represent \$30 million in solar and \$700 million in wind facilities. We have offices in San Juan Capistrano, CA, Poughkeepsie, NY, Erie PA, and Kingston, Ontario, Canada. Some projects that we have recently completed are a 901kW facility on a roof top of a Fetzer Vineyards bottling facility in northern CA; the partners there were PG&E, SunPower, and Renewable Ventures and it became operational in November of 2006. The Fort Carson Landfill project, in Colorado Springs, CO is a 2 MW system build on approximately 15 acres and uses Fixed ground mount, first solar modules; the partners were Xcel Energy, WAPA, Conergy and Morgan Stanley and became operational in January 2008. The Gap Inc. Distribution Center located in Fresno, Ca is a 1.1 MW system that is ground mounted 1-x tracking and SunPower; the partners are PG&E, SunPower, and Renewable Ventures and became operational in October 2008. On the wind side, we have the

Nerefco in the Netherlands there is a 150 MW system at the oil refinery there and it uses Nordex turbines; the partner on this project is Texaco and became operational in 2002. One of the most renowned projects in the US is the Steel Winds plant in NY, it is a 200 MW system located in Brownfield, NY and uses clipper turbines; the partner is First Wind and went operational in 2007. In Valero, Texas, we have a 50 MW facility at the oil refinery there and use GE turbines; the partner is Valero Oil and went operational in 2009. As far as the Management Team goes, the founders are Tim Derrick and Kevin Christy. They were working for a company called 3 Phases Energy Services and they chose to spin out of that company and pursue utility scale projects. Paul Curran and Tim Ryan head up our east coast operations, Rob Miller is our Canadian representative and Barnaby Olson heads up the west coast operations. We are very excited because we have recently been awarded 90 MW of contracts for solar power in Canada in the past few months. Those are nine separate 10 MW solar projects. Unlike other types of solar technologies, we have been proven as a reliable technology, the production follows the peak demand, especially in the Southwest, the ability to site inside load centers, rapid deployment, no emissions and no water usage or fuel costs. A brief summary of how we got there, we are very pleased to be working with the Otero County Economic Development Council and they have been a great help to us. He first met Mr. Mike Espiritu at the Solar Power International out in Anaheim, CA back in October 2009. Due to that discussion, Axio Power came to Alamogordo in January 2010, we had discussions between OCEDC, the City and Axio Power in March 2010 and we are here tonight to make a formal proposal to the City Commission. As far as the Alamogordo Solar project goes, he wanted to start with an executive summary. We are proposing a 10 MW project that will be located at the Landfill. We think it is good to have an urban site that does not have a huge alternative use, and that makes it perfect for solar power. As far as infilling, urban solar generation eliminates the need for new transmission infrastructure. As far as permitting, solar is a friendly urban neighbor with few moving parts, no emissions, no noise and no water use. There are some tax credits that can be taken advantage of for property located in a New Mexico Tax Credit zone indicating an economically-distressed area. He added the project map slide that shows the vicinity of the proposed project site in relation to the City to show a little of what is proposed. The characteristics for the Alamogordo Site is a city-owned close landfill site, approximately 193 acres across three sites in close proximity to substations owned by PNM, Tri-State and Otero Electric Cooperative substations. Axio is proposing to lease the site from the City and there will be a 5 year development team who will conduct interconnection studies, permitting and power marketing. A 35 year operating team will deal with power sales to utilities. There is the option for three 10 year extensions and after 30 years, the Project will produce 80+% of the original electricity production and will be a valuable long term asset in the community. As an overview of the Alamogordo interconnection/transmission project, the interconnection point will be at the PNM 115/12.5kV "Alamogordo" substation or we will tap onto the local 12.5kV lines. By connecting at the 12.5kV and serving the local load, the project avoids costly upgrades to the transmission network. Progress to date, we are in preliminary discussions with PNM Interconnections Department and have had positive feedback. The project will serve the local electricity load for the City of Alamogordo and the interconnection applications will be filed with the required land agreement. The Holloman Solar project will be a 12.5kV bus bar of the EPE and is a fixed-tilt thin film solar PV. Some of the highlights are that the thin film PV is a great airport buffer due to its low reflectivity, solar is a friendly urban neighbor with few moving parts, no emissions, no noise and no water use and it is a great tax credit. Some of the characteristics of the Holloman site are that it is city-owned airport buffer land approximately 200 acres in size and is two miles east of El Paso Electric's "Holloman" 115/12kV substation. Axio is proposing to lease the site from the City and there will be a 5 year development team who will conduct interconnection studies, permitting and power marketing. A 35 year operating team that will deal with power sales to utilities. There is the option for three 10 year extensions and after 30 years, the Project will produce 80+% of the original electricity production and will be a valuable long term asset in the community. An overview of the Holloman Interconnect/transmission project is that the connection point will be the El Paso Electric 115/12.5kV "Holloman" substation and by connecting at the 12.5kV and serving the local load, the project avoids costly upgrades to the transmission network. Progress to date, we are in the preliminary discussions with El Paso Electric Interconnections Department and have had positive feedback, the project will serve the local load at Holloman Air Force Base and the interconnection application is to be filed with the required land agreement. The EPC/Supply modules background is

that the thin film technologies are still being evaluated. In May 2009, a Memorandum of Understanding was made with Sharp Solar USA and the module costs fell as much as 30 percent in 2009. Mounting are on a fixed time at a 25 degree slope. The Inverters are SitCon Power Systems AE-500-60-PV-500 kVA inverters which combining 2-4 inverters in parallel to connect to a single 1-2 MW commercial medium voltage transformer. The proposed system engineering, procurement and construction will be that Axio is to procure, design and engineer services for modules, mounting, inverters, combiners, and monitoring and communications hardware. The remaining balance of systems to be supplied by subcontractors and Axio is to retain a large general contractor to build the system. The project design and configuration will be a typical single post driven-pile rack with a 1 MW block array layout. It will utilize sustainable land use, have no concrete foundations, the installation is easy, and it efficiently uses the land, has central inverters and is approximately 6.7 acres /MW. The modules and inverters will be Sharp Amorphous Silicon Thin Film Modules. Sharp has produced 2 GW in its history; a-SI line has a capacity of 160 MW, scaling to 1GW, its superior performance in low light and in the summer heat, and it has a higher overall energy yield compared to c-SI PV. SatCon Power Systems AE-500-60-PV 500 kVA Inverters are widely used and proven commercially, they are manufactured in Burlington, Ontario and are currently in numerous large-scale PV project in North America. In also briefly explained how the inverter worked. Finally, as far as job creation is concerned, the recent solar job creation study estimates that 20 manufacturing job-years and 13 installation job-years are created for each Megawatt power (MWP) of solar panels installed. The Majority of jobs created are white-color or highly-skilled craft labor engineers, assemblers, sales representatives and installers. Statistics show that for every job created by the PV industry, between 1.8 and 2.8 jobs are created in other segments of the economy. He thanked the Commission for their time and asked if anyone had any questions.

Mayor Griggs said solar panels and what they can do are very exciting to him and extremely interesting. He then asked if anyone had any question of Mr. Cherrick.

Commissioner Ledford asked how risky their contract is when selling energy. For example, what is the risk or how does this work with as far as the 35 year life. How does it work when shipping it to the buyer? Mr. Cherrick explained that generally, most utilities will take out a formal RFP and we are very comfortable in privacy loans. That is how a majority of our projects go into contract negotiations with utilities. We would do that after we hit a certain amount of security and getting site control and having studies done. Those agreements would help with the running of the facility and the upgrade of equipment to operate the facility. Any purchase agreement that we would make would lay out all the terms of the agreement, but basically, they are going to buy the power, pay us for the electrodes and we will meter the amount and base a fee on that output.

Commissioner Ledford asked if the life of the contract was enough to improve the cost and make a profit up front. Mr. Cherrick stated it was, but it is not always up front. Sometime they will have to take a loan from the bank and build the project and look for investors. Once it is built, and the funds are secured, there is no longer a debt.

Commissioner Rance asked what the design build time is from start to finish. Mr. Cherrick explained in the Southwest region, it could be anywhere from 18 to 25 months. Once we have the contract, we go out for the preliminary engineering plans, final engineering inspection, and design, go out for bid and then start construction right after that. The total construction period for a 10 MW system may be four to six months.

Commissioner Rance then asked if they were selling the consumption of energy to PNM for use wherever they sell their product. Mr. Cherrick explained that primarily for PNM, we are looking to serve their needs. We don't think that this power is going to be exported at all, but rather used in the state. PNM is fairly local and so the energy should be used in New Mexico to serve the public.

Commissioner Rentschler asked if what they will be producing will be renewable energy, just like any other solar plant. Mr. Cherrick stated they sell brown power, which produces electrons, and they can be sold separately, but generally we sell them as a lot. Commissioner Rentschler then asked if they

are only going to be selling to PNM or to El Paso Electric as well. Mr. Cherrick stated the separate projects would be for the separate companies.

Commissioner Rentschler asked if they are looking into changing the renewable market in New Mexico and what is happening with PNM. Mr. Cherrick stated they were. Commissioner Rentschler then asked if they have looked at trading them on the commodities market at all. Mr. Cherrick stated they have a relationship with some parties that are looking to do some innovative things with the energy. He said they are opened to looking in every avenue to educate people about renewable energies.

Mayor Griggs asked if there were any additional questions. Hearing none, he thanked Mr. Cherrick for his presentation.

2. Presentation of the Year End Report for the Mayor's Youth Advisory Council. (Elizabeth Frasier, President, Youth Advisory Council, Presenter)

Mayor Griggs read the agenda report and asked Ms. Elizabeth Frasier, President to give the presentation.

President Elizabeth Frasier gave an update on the 2009-2010 Year for the Mayor's Youth Advisory Council. She began by saying the current officers are President, Elizabeth Frasier, Vice President, Daniel Frasier, Secretary, Katie O'Brien, Treasurer, Kyle Strother, Historian, Jason Kruse, Public Relations/Media Director, Emma Shaw, and Activities/Event Director, Tyler Lampi. The Mission Statement of the AMYAC is to have an active voice in advising the City Commission and the community on various youth issues in order to involve people in a more positive and enjoyable community. Meetings that they have held during the 2009-2010 school year were October 26th, 2009, December 7th, 2009, December 14th, 2009, March 29th, 2010, April 5th, 2010, April 19th, 2010 and May 3rd, 2010. Activities and Events for the 2009-2010 school year were an Awards Ceremony to the members by the Optimist Club for Youth Appreciation Week on November 8th, 2009, a Teen Football Event held on December 6th, 2009, Christmas tree pick up on January 2nd, 2010, Easter in the Park trash pick up on April 3rd, 2010, Surfing into Summer on April 14th, 2010 and Recruitment at Earth Day at the Alameda Zoo. Some fundraising events held this year for the Teen Football Event that brought in approximately \$112.50; sponsors for this event were Desert DJ's Teen Events, Desert Sun Motors, HSC, and Baja Broadband, the Christmas tree pick up and the Easter in the Park trash pick up which each brought in \$250. Total money earned for the 2009-2010 year was \$361.26 and the balance as of May 25, 2010 is \$499.19. The money earned will be used for the Santa Fe trip to the Capital, buy T-Shirts next year, and other various events through the year. The End of Year party was held on Saturday, May 22nd, 2010 at the Alameda Park. Some upcoming events are the 4th of July fundraising event at Griggs Field, we begin recruitment when the 2010-2011 school year begins, Election for next years officers will be in September, the Teen Football event will be in November, the Santa Fe trip to the capital will be in late January or early February of 2011, trash pick up for Easter in the Park and the April 2011 recruitment at the Surfing into Summer Event. AMYAC would like to request the City Commission to consider including improvements to the Recreation Center Slide as one of the top five items on the Capital Improvement Plan. AMYAC plans to attend any I.C.I.P. Public Hearings and Meetings where they might make this project more known to the Community. She then thanked the Commission and the Adult Advisors for their continued support and for allowing the Youth of our Community have a voice.

Mayor Griggs thanked Ms. Frasier for her presentation and said one of the things that the Youth Council has been trying to get its arms around is what it is they need and want to do for the City and for the City Commission. They have consciously made the effort to look at the I.C.I.P. to see if there are projects in that or any projects they might bring to the City Commission that are important to the young people in our community. He thinks the Youth Council has made an excellent choice and he thinks it is something that will be beneficial to everyone. He thinks the Council needs to go in the direction of the things they see that can be helpful to the community as a whole, but primarily to the youth. Some of the things that the older members of the community see, is not always what the

youth see as needing to be improved. That is why we rely on the council to bring these issues to our attention. He thinks it is a real good deal that the Youth Council has agreed to "Save the A", that could be a really good deal for our community and for the Mayors Youth Advisory Council.

Commissioner Rentschler thanked Ms. Frasier and said he thinks it is really important for us to hear what you have to say. Back when we were in high school, we had things like the Teen Center and it seemed like there was more for the youth to do back then than there is today. Anything we can do to make the youth's quality of life better and to help assist their peers stay in school, we are opened to hearing. He is also glad they are involved in "Save the A". In former years, the graduating class would paint the "A" on an annual basis, so he is glad to see that it is being taken care of again.

Mayor Griggs thanked Ms. Frasier again and said he is glad she is taking the time to run this organization as well.

CONSENT AGENDA (Roll Call Vote Required for an Ordinance or Resolution)

Item # 5 was removed from the consent calendar.

3. **Approve Minutes of the May 11, 2010 Regular Meeting and May 17, 2010 Special Meeting of the Alamogordo City Commission.** *(Renee Cantin, City Clerk)*
4. **Approve statement related to the Executive Session of May 11, 2010.** *(Renee Cantin, City Clerk)*
6. **Approve a Special Fireworks Display Permit for the 4th of July Fireworks Display at the New Mexico Museum of Space History and grant a waiver of the permit fee.** *(Renee Cantin, City Clerk)*
7. **Approve an application for participation in the 2010 Community DWI Program.** *(Sam Trujillo, DPS Director)*
8. **Approve a Bulk Water Sales Agreement with FNF New Mexico, LLC.** *(Mark Threadgill, Community Development Director)*

Commissioner Ledford moved to approve items # 3, 4, 6, 7, & 8 of the consent calendar. Commissioner Rardin seconded the motion. Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

5. **Approve an extension to the Concession Agreement with amendments to Shooters, Inc. for the Willie Estrada Memorial Civic Center and Alameda Park Zoo Governmental Liquor Licenses.** *(Stephen Thies, City Attorney)*

Mayor Griggs read the agenda report and said this item was removed from the Consent Agenda and turned the floor over to Commissioner Rance.

Commissioner Rance asked Mr. McNeile and City Attorney Thies for a somewhat detailed explanation that we can put out to the public as to why we have one particular vendor dispensing and not allowing other licensed individuals to serve at these City entities.

City Attorney Thies explained that it is likely due to the Liquor Laws in the State of New Mexico and how strictly they are regulated as to who can dispense liquor. The City, prior to about a year ago, if someone wanted to have a wedding, dance or any other type of event at the Civic Center, they had to go to one of the individuals that had an appropriate business license and contract with them. They would have to file an application with the State to temporarily move their liquor license from their

normal establishment to the Civic Center. There was an associated cost with that and it was not cost prohibited for these individuals to have liquor at these events. We decided to get a Municipal Liquor Dispenser License for both the Civic Center and the Zoo. Once we were able to obtain that license, we needed someone who was licensed to dispense liquor at those two locations. We went out for an RFP and Mr. French was the only one who responded to that RFP and at that time we entered into a one year contract with him because at that time, we really didn't know how it was going to work and we wanted to ensure it would be profitable for Mr. French and profitable for the City. After the one year period, we made some tweaks to the agreement. Before, he would reimburse us for the annual cost of the liquor license and pay us a percentage of the gross liquor sales revenue that he received.

When we amended the agreement, we increased the percentage and Mr. French will no longer pay the annual registration fee to us. There were only about a dozen events at the Civic Center, so we did not make a whole lot of money, but the City made some money and he is assuming Mr. French made some money, because he is willing to try this for another year. We did not make any money at the Zoo and neither did Mr. French, but he is willing to give that another try as well.

Commissioner Rance thanked City Attorney Thies for his explanation. One of the reasons this was brought to his attention is because we are in a heavy wine area and several of the local rotary clubs have been producing the wine festival. One of the challenges that they see with this is that if that event is at the Zoo, and he thinks that is a great place to have it, they would have to have Mr. French serve the wine, and that is contradictory to the process of the local wine vendors. He just wanted to ask if there is something that we can do to change it just for that venue.

City Attorney Thies stated they have tried when that same issue came up last fall. The City Clerk contacted the State and in order to do that, we would have no other option than to give up our municipal license at the Zoo in order for us to allow them to come in and serve wine at that location for that event.

Mr. McNeile added that they do have an additional municipal license at the Golf Course, which we do have a separate vendor for. As City Attorney Thies mentioned, the reason we got the Municipal Liquor License was to be more customer service friendly for weddings, dances and events at both locations.

Commissioner Rentschler asked if we have any kind of financial breakdown on what we made last year on our 10 percent. Mr. McNeile stated he looked it up today and we made a little over \$1,800 from the 10 percent. Commissioner Rentschler said so we make \$2,700 instead but we pay for the liquor license which is \$3,900. Mr. McNeile clarified that the liquor license is \$1,400 per location. In addition, to the 10 percent, this last year we charged an \$800 fee for mobilization. We did make an additional \$1,600 on that from events.

Commissioner Rentschler said the other problem he has is that he has been talking with some of the people involved with some of the gun shows and they are forbidden from holding their event at the Civic Center because of the liquor license and he doesn't think that is very customer friendly. City Attorney Thies explained that the issue there is that the State Statute restricts fire arms in licensed liquor premises. The Civic Center has been deemed a licensed liquor premises and in order for a fire arm to come onto that site and not violate the criminal code, it must be inoperable, meaning essentially taken apart and we would also have to have some type of security to ensure they are not reassembling the firearm. Provided that it meets those two requirements, a firearm can be at the Civic Center. Gun shows can still be held there, it is just that they would have to meet those two requirements.

Commissioner Rentschler reiterated that he doesn't think we are being very friendly to this kind of business and it looks to him like the City of Alamogordo and Otero County should figure out a way to include them. Right now we are excluding them to the fact that they are going to Tularosa and having a much smaller event and we could be bringing in a lot more vendors. This would help the Lodgers Tax, and Gross Receipts Tax on everything they sell. He thinks it exceeds what we are talking about making on a liquor license. He doesn't think we should exclude these types of events.

There should be a way to figure out, when there is no liquor on the premises. City Attorney Thies clarified that there is always liquor on the premises and that is why there is this requirement. Commissioner Rentschler asked why they just don't take it out. City Attorney Thies stated they can't. The inventory of the liquor for the site has to remain on the premises. There is a locked facility where the inventory is kept for each site. The Civic Center has a separate inventory and so does the Zoo.

Commissioner Rentschler asked if there is a locked facility at the zoo. City Attorney Thies explained that there is a facility at the zoo for the storage of the liquor, which is per the requirement of the State Law. The inventory has to be kept on the site. Commissioner Rentschler asked if this is whether we are using it or not. City Attorney Thies confirmed this and reiterated that it is the requirement of State Law. You cannot bring liquor from anywhere else, they have to order the inventory and keep the inventory at the Civic Center or the Zoo.

Commissioner Rentschler asked if there may be a way to work around it. Everyone brings their gun to a gun show, and we are not talking about all the vendors, just about half of them. City Attorney Thies explained as long as they are inoperable, they can bring them onto the site but we would have to have someone there to ensure they remain inoperable. Those are the two requirements they would have to meet, other than that; they can rent the Civic Center.

Commissioner Rentschler asked if a representative from the city needs to ensure they remain inoperable. City Attorney Thies clarified that they would have to hire someone that would walk around and ensure that there are no operable firearms coming into the establishment and to ensure they remain inoperable while they are on the property. Commissioner Rentschler asked if it was possible to have these events at the Civic Center provided the firearms are inoperable. City Attorney Thies confirmed this.

Commissioner Rentschler said right now, these people that have approached him are pretty upset about this. They think we are driving them out. Mr. McNeile understood that they were upset because these two additional requirements are more than what they are used to providing, the security and the guns. He understands that the guns are usually inoperable at a gun show. Commissioner Rentschler thought they always provided their own security and he knows people they have hired as security. Mr. McNeile agreed and said there are two security companies here in town that are normally hired for events at the Civic Center, they would just have to contact one of those companies and hire them.

Commissioner Rentschler asked if they were in agreement that they can have these events at the Civic Center. City Attorney Thies said yes and added that when the fairgrounds elected to not allow gun shows to be held there, we had some individuals contact the manager of the Civic Center and inquired about their ability to hold the gun shows there and that is when we looked into this issue about the fact that it is a licensed liquor premise. In order to allow them to have the gun shows there, we would have to have them comply with the State Statute.

Commissioner Rentschler said he doesn't understand why they had the impression they couldn't have their gun show there. City Attorney Thies added it was also cleared with the state as well. We went to them and asked them if we can have gun shows at the Civic Center because it is an established licensed liquor establishment and they said as long as they meet the requirements outlined by State Statute.

Commissioner Rentschler said when these people approach us again, and he hopes he can convince them to come back, he thinks we need to try and be business friendly towards them. He believes that it is an event that brings money into Alamogordo.

Mayor Griggs asked City Attorney Thies if this is something we should look into as to how other communities handle it. At the Albuquerque Convention Center, he believes they have alcohol at that facility and that they have gun shows there as well. Maybe we can speak with someone there and

see what type of issues they have and see how they handle it. This could also be something that our local legislatures could help us with, as a way to pass some type of amendment to the existing law and allow something like this to occur. City Attorney Thies stated it is always an approach, if the current legislation is not working, change it.

Commissioner Rardin asked City Attorney Thies what is the legislature's ideas of a gun being inoperable. Is it just removing the rounds or disabling it completely. City Attorney Thies said he would have to refer to Chief Trujillo about that. He thinks removing a bolt or something like that.

Commissioner Rardin asked Chief Trujillo if removing a round would make the gun inoperable. Chief Trujillo believed what they are referring to as inoperable is that the gun cannot be readily available to fire. They would have to take the pin out and it would have to be locked in some fashion or they can take the bolt off. Just taking the rounds out does not make it inoperable. Commissioner Rardin stated that is most likely what they are griping about, it would be a hassle to remove those parts.

Commissioner Rentschler asked if they put a zip tie through to the bolt, so the bolt will not be able to make contact, will that make it inoperable. Chief Trujillo said he believes that may work. Commissioner Rentschler said that is typically what he sees. Chief Trujillo reiterated that a gun just being unloaded is not going to work; they would have to do something to the weapon. The only other alternative is to not allow it to be a liquor establishment. If it is not a liquor establishment, those rules do not apply.

Mayor Griggs asked if a trigger lock would make the gun inoperable. Chief Trujillo stated he would have to check on that, he is not sure at this time.

Mayor Pro-Tem Cole asked how can they have the gun show in Tularosa under similar conditions but they can't have it in Alamogordo, is it due to the size of the community? Chief Trujillo said what we are talking about here is that the Civic Center has a liquor license so by definition, it became a licensed liquor establishment. If there is a licensed liquor establishment, there are regulations on having weapons at the facility.

Mayor Pro-Tem Cole said this is just because the Civic Center has a license. Chief Trujillo clarified it is because they have a liquor license. Right now it is considered a licensed liquor establishment and once it received that designation, there were some State Statutes that came into play concerning that establishment that does not allow weapons there.

Mayor Pro-Tem Cole asked if the gun show was moved to a school auditorium, which does not have a liquor license, can they have it there. Chief Trujillo said no because there are some additional laws concerning bringing weapons onto school property.

Commissioner Rentschler asked since the zoo has a liquor license, can they have one in Alameda Park. City Attorney Thies said they could and added that it was the issue that arose last year when the rotary club wanted to have their wine festival at the zoo. Because the zoo is the licensed premise, they could not have the wine festival there but they had to move it into the park because it is not defined in the license premises.

Commissioner Rentschler asked for the people that want to come in for the wine festival, are they dispensing liquor under their licenses. City Attorney Thies stated it is not on a licensed premise, it was outside of the licensed premise. Commissioner Rentschler said he understands that, what he is asking is if they are able to have that type of dispense in Alameda Park by people who are not a part of our liquor establishment, does that mean that we need to have a liquor license or can we bring them in as needed. City Attorney Thies explained that the wine people have their own special license that they are allowed to use to go to these events and dispense and serve wine that they manufacture. Commissioner Rentschler asked if it then becomes a temporary liquor establishment. City Attorney Thies confirmed this. Commissioner Rentschler then asked if we could do something like that at the zoo and the Civic Center. City Attorney Thies stated we had to have a licensed

dispenser, similar to the prior dispensers that would come in to those places and serve.

Commissioner Rentschler clarified that these wine people came in and established a temporary liquor establishment. Can we not do something like that at the zoo and the Civic Center? City Attorney Thies explained that the cost associated with getting a temporary permit has to be passed on to the people who want to use those facilities and so it was pricing us out of the market. When they paid the fee that the state would require for the temporary liquor license, they said they could go someplace else and have liquor a lot cheaper than what we could provide.

Mayor Griggs asked if there were any further questions. Hearing none, he asked for a motion to approve this item. There was no motion. Mayor Griggs stated that absent a motion on this item, the contract will have to continue as is. City Attorney Thies clarified that the contract would expire. Mayor Griggs said the contract did expire. City Attorney Thies explained that we have the option to extend the contract for one year. If the contract is not approved, he will advise the contractor that we are not going to extend it.

Mayor Griggs clarified that absent a motion to extend it, the contract is done. City Attorney Thies added that assuming it is approved, we will need to file this with the state. They will need to know that we have a contractor that will be dispensing liquor for us.

Commissioner Ledford moved to approve the extension to the Concession Agreement with amendments to Shooters, Inc. for the Willie Estrada Memorial Civic Center and Alameda Park Zoo Governmental Liquor Licenses. Mayor Pro-Tem Cole seconded the motion. Motion carried with a vote of 7-0-0.

PUBLIC HEARINGS

9. Hold a Public Hearing and consider Resolution No. 2010-14 adopting the Fiscal Year 2010-2011 Preliminary Budget. (LeeAnn Nichols, Finance Director)

Mayor Griggs read the agenda report and turned the floor over to Ms. Nichols.

Mrs. Nichols said she handed out a new revised copy of the resolution; it includes all of the adjustments that we made during the workshop. The very last one, which would be item #9, she was instructed to move the modular building lease from where it was budgeted but she will need to find a better place to put that. Since the modular lease is expected to be shared between Public Works and Community Development, she put it under the transportation line item and split the cost with engineering.

Mayor Pro-Tem Cole asked what modular building she was referring to; he doesn't recall that from the budget hearings. Mrs. Nichols explained that during the budget workshops, we discussed a modular building that was put in for an annual lease for the reorganization for the Community Development and Public Works.

Mrs. Nichols asked if the Commission would like her to run through the changes. Mayor Griggs asked what the pleasure of the Commission is, would we like her to run through these. Mayor Pro-Tem Cole said he didn't think it was necessary after spending a week on this.

Mayor Pro-Tem Cole moved to approve Resolution No. 2010-14 adopting the Fiscal Year 2010-2011 Preliminary Budget. Commissioner Rance seconded the motion.

Commissioner Rardin asked on the deal with OCEDC, the outside firm that looks at the books, he thinks they are from Albuquerque, which firm is that. Commissioner Ledford stated he is not sure.

Commissioner Rardin said he had asked to have an audit done of the past year of the funds that have been spent, where they went and all that. He wanted to know how the Commission felt on that. He explained that the things he looked at, he was not really impressed with and he feels they should do some sort of audit to see where all the money went.

Mayor Griggs said he doesn't have any issues with an audit personally, but he would rather see if the finance department could do some sort of audit of their expenditures and trying not to bring someone else in to do that. Commissioner Rardin agreed and said if we do the entire audit in-house, it would not cost us anything.

Mayor Griggs asked if anyone else had anything to add. He does not think OCEDC has any issues with that and he doesn't expect them to. He thinks it is something we can look into and get done.

Mayor Pro-Tem Cole asked Mrs. Nichols if OCEDC gave reports to the finance department. Mrs. Nichols confirmed this and said she gets the same reports that the Commission gets. Mayor Pro-Tem Cole asked if that would be the same thing.

Commissioner Rardin said he would like to see them go a little deeper. He looked at the P&L and had some questions on their financials. He feels if we did an audit, he could get them answered. Mayor Pro-Tem Cole asked if he had talked to Mrs. Nichols about doing an audit. Commissioner Rardin said he did not.

Commissioner Ledford said he thought we had gone over the report, but if Commissioner Rardin has some questions he could have asked. He then asked Mrs. Nichols if she had looked at their expenditures. Mrs. Nichols said she looked at the P&L that Mike Espiritu sent over and he also sent over some additional information on the marketing, but from those, he cannot answer Commissioner Rardin's questions. She does have notes from the budget hearings.

Commissioner Ledford asked if she could answer the questions based on those notes. He then asked Commissioner Rardin if he knows what he wants on his audit, what questions he wants. Commissioner Rardin stated he will get his list of questions from his office and he will give it to Mrs. Nichols to look into.

Mayor Griggs asked if there was any other discussion. Hearing none, he asked for a roll call vote.

Roll call vote was taken. Motion carried with a vote of 7-0-0.

10. Hold a Public Hearing and consider Temporary Structure Permit for Planet Fireworks to conduct the sale of fireworks from June 20, 2010 to July 5, 2010. *(Mark Threadgill, Community Development Director)*

Mayor Griggs read the agenda report and turned the floor over to Mr. Jimmy Nevarez from Planet Fireworks.

Mr. Nevarez introduced himself and said we have not had a location here for about five years; he sold his company previous to that. We had a location here in town under Phantom Fireworks for about five years. He is now on his own and has started his own business and is applying for a permit to sell fireworks in the city. It will be in the Wal-Mart parking lot and they are the same fireworks that Wal-Mart sells in their store. We do go a little bit further and sell the same items they are allowed to sell in Albuquerque. He has to submit a list of those items to Albuquerque every year and they cannot go any higher than 10 feet. Albuquerque is a little more stringent than the State Statue required.

Mayor Griggs asked Chief Trujillo is our city ordinances require the same restrictions that Mr. Nevarez is describing as well. Chief Trujillo said that is correct, we have a city ordinance dealing with illegal fireworks and the requirement is that they cannot go higher than 10 feet or be louder than a

pop-cap pistol. DPS department does inspections and so once the facility goes up, we will be out there for an inspection to ensure they are legal within the City of Alamogordo.

Mayor Pro-Tem Cole said in the past years, we have had fireworks sold outside the city limits, is this company different than those in the past. Chief Trujillo stated we do have companies that do sell fireworks right outside the city limits that some of those fireworks are illegal inside the city limits. On this particular vendor, he does not know of any experience outside the city limits.

Mayor Griggs asked if there were any questions from the Commission. Hearing none, he asked for a motion on this item.

Commissioner Rardin moved to approve the Temporary Structure Permit for Planet Fireworks to conduct the sale of fireworks from June 20, 2010 to July 5, 2010. Commissioner Ferguson seconded the motion. Motion carried with a vote of 7-0-0.

Recessed at 8:37 p.m. and reconvened at 8:47 p.m.

UNFINISHED BUSINESS

11. **(MOTION TO TABLE ORDINANCE TO JUNE 8, 2010) Consider, and act upon, the final publication of Ordinance No. 1373, approving a Local Economic Development Project for secured financial assistance proposed by Premier Pellets, LLC. (Stephen Thies, City Attorney)**

Mayor Griggs read the agenda report and said the recommendation from staff is to table this item and bring it back on June 8th. He then turned the floor over the City Attorney Thies.

City Attorney Thies explained that the reason we are making the recommendation to table this matter until June 8th is because in the ordinance you will notice that part of what will be approved is the Project Agreement. The Project Agreement kind of puts the nuts and bolts of what we are going to do and what Premier Pellets would do as part of this Economic Development Project. He prepared the Project Agreement and sent it to them and they came back just after the agenda was prepared with a counter proposal. Because of this, we do not have an agreement on the terms of the Project Agreement at this time. By tabling this, it will give staff a couple of weeks to discuss the terms of the Project Agreement with Premier Pellets and to come to some type of an agreement. He spoke to the consultant who Premier Pellets hired to negotiate this agreement on their behalf and he suggested possibly getting a committee of two or three Commission members be appointed that together with staff would meet with this individual and any of their members to come to some type of agreement. He believes everyone should have received a revised draft of the Project Agreement, and there are two primary issues that we need to address. One issue is the amount of credit they would receive for creating and maintaining a job and the second issue is the adequacy of the security they are willing to give to secure their performance under the terms of the Project Agreement. In the Project Agreement that he prepared and sent to them, indicated they would get an annual credit of \$2,106 per position that they created annually and maintained that position annually. This would be for a period of 10 years, and during that time, they would need to create upwards to 14 jobs in order to pay back the \$241,000 incentive that we would be providing. The structure of the project is that we give them the money and in return they create and maintain those jobs, they get a credit to offset the amount of money they owe. At the end of the project term, if they created sufficient jobs, they conceptually can offset the entire amount of money that we gave them. They would get the credit of \$2,106 for each position they created in the time table or job creation table in the Project Agreement. It basically states in a period of 10 years, they would have to create nine jobs in the first year and maintain those same nine jobs in the second year and would have to increase the numbers of jobs in the succeeding years until they have created enough jobs over the 10 years to forgive their entire obligation. Normally, how we do this, in order to ensure the entity has created the jobs to get the credits is that we get their quarterly statements that are filed with the State and look at the number of

employees they had on the payroll at the time, look at their gross payroll and do simple division. In this case, they would have to pay their employee \$9.00 an hour, which works out to be \$18,720 a year. We divide that total into the numbers of their gross salary and see if they met their job creation obligations and if they didn't, they would not get the full credit. Instead of the \$2,106 per employee, they are proposing \$5,355 and they are not proposing to have a term of 10 years, they are proposing a term of 5 years. With a \$5,300 job credit and assuming they created those positions, they would payback their obligations. Another issue associated with that job credit is that they would simply create the job with no obligations and pay a gross salary of \$18,720. Conceptually, they could create a position and hire a person in a week, if that person quits or gets fired, they would still get credit for the entire year because they had created that position. That is contrary to the whole intent of this program and that is to create jobs and put money in someone's pockets so they in turn spend the money in our economy. If that person is not working and not getting paid, it is not going to expand our economy. This would be our fourth project; the \$5,300 is the most we would have ever given to any entity under this economic development project. The first project we did was 1-800-Flowers, we essentially gave them around \$750 per position they created. The next project we did was Sunbaked Biscuits, they proposed to pay \$9.00 per hour and they received a credit of around \$2,700.65 per position. Of course they were creating several hundred positions and not just the nine positions. The last project we did was with PreCheck and they received a credit of around \$1,200 per position and they are actually creating hundreds of positions and had agreed to pay an hourly wage of \$13.50. The other issue that we need to address is the amount of security that they are going to give. Both the state law and our local economic development ordinance require that we get some type of security to secure their performance. As he indicated at the end of the term, they may not have paid back the incentive they received by the creation of jobs and they would owe us some money at that time, or they could shut down operations during the term of the project and they would then be obligated to pay that money back. We need some type of security in the event they have no money to repay the incentive that we have given. Initially, in the Project Agreement that he prepared, it requested that we take what is called a purchase line security interest in the biomass dryer that they would be purchasing. The purchase line security interest essentially says that we gave the money to purchase this certain item and in the event of default, we would take that item and sell to help offset any amount of money they may owe us. Because the biomass dryer is only going to cost around \$120,000 and we will be giving them \$241,000 in incentives, normally we would want a little more collateral than \$.50 on the dollar, so he asked for a mortgage against their property. They came back and said they would give us a security interest in the biomass dryer, but that is it, we are not going to give you any additional collateral and that is the other issue that needs to be addressed.

Commissioner Rance asked City Attorney Thies if he will be able to work through this in two weeks. City Attorney Thies is very hopeful that they can. Commissioner Rance then asked if during those two weeks, we are trying to set up a two or three person commission. City Attorney Thies said if that is the route the Commission wishes to take, you would meet with staff along with a representative from Premier Pellets.

Commissioner Rentschler asked City Attorney Thies if he believes that we are bound by the precedence of the state law on this and that the idea of setting up a committee would really do us any good. Are we going to negotiate this? City Attorney Thies said short of having an economic development policy where we are saying that if they create one job, they pay \$10 an hour, and to that person they will get a credit equal to a set sum, we can negotiate. He has sat down with a couple of Commissioners and we came up with the \$2,106, by developing a formula where we plugged in the hourly rate they will be paying to these individuals and used some other factors. If the Commission adopted this formula in the future and decide to use this formula for every economic development project, then when someone comes to us we can tell them the amount of credit they get is dependent on the number of jobs they create and how much they will pay that individual and that we are not going to negotiate the amount of credit. Until that time, we can negotiate any amount of credit that we want. The Commission will have to determine whether we are getting enough in return for the money that we are giving to them.

Commissioner Rentschler asked City Attorney Thies if he believed that he could get it all worked out

within two weeks or are we giving it our best shot and they are turning us down. City Attorney Thies believes that we made a very fair offer to them and is consistent with prior agreements that we have with the other three entities.

Commissioner Rentschler asked if we move to approve the ordinance as it was originally written, would they accept it, do they have the opportunity to reject it or what would they do. City Attorney Thies said basic contract laws state that we made an offer to them and they rejected the offer and counter proposed and we have not necessarily rejected that counter offer. He indicated to them that it is unacceptable, but that is not a formal position. If we reinstated our offer with the original terms and said take it or leave it; if you want the \$241,000 in economic incentives, you will have to create nine jobs and pay them \$18,720 a year. They won't get any credits unless they pay them a full time salary and they provide us adequate security. You could deem the amount of security as 100 percent of the money we give, that is what they would have to provide.

Commissioner Rentschler asked in their counter are they proposing that if they create a job and someone one quits or they don't need it anymore, do they get credit for it. City Attorney Thies said yes, they would get credit for that entire year. As long as they create the position that pays \$9.00 an hour, there is no obligation that they need to engage or employ that individual for 2,080 hours. How it works is, you are going to have people quitting during the term of this project and they may pay someone else more than \$9.00 an hour and there will be overtime, so it kind of averages out. We don't look at the quarterly statements and look at each individual got to determine if each individual made, in this case, \$9.00 an hour and worked 2,080 hours. We would just average it out. They may only have 8 ½ credits, because they created 8 ½ positions based on these numbers.

Commissioner Rance said if the Mayor should so desire, he would be happy to be part of that committee. He thinks we need more than two weeks. He is not into the job thing, this is simple math, and it needs to go with Full Time Employed (FTE), 2,080 hours a year, not a job. City Attorney Thies said essentially, that is how it is, it is an FTE.

Mayor Pro-Tem Cole said he questions starting a practice of co-mingling Commissioners with staff on projects. He thinks one Commissioner would be okay, but not two. He thinks that it would be better for Staff to work with the company and make a presentation to the Commission. He is afraid if we start this practice, we may be doing it in the future in other areas. We have staff to do that type of work. That is not to say that Commissioners can not attend and give their input, but he hates to start making a precedent of staff and Commissioners working together on this type of thing.

Mayor Griggs stated that he knows of one committee that was set up and that is the Water Committee. The Water Committee has looked into a variety of things and brought them back to the Commission. He wouldn't view this dissimilar to Water Committee, but he doesn't have any feelings one way or the other on how it should be looked at or addressed but he is not sure that it can be worked out within two weeks. There are some issues with what Premier Pellets have attempted to do with this contract other than what the City Attorney has talked about. He is not sure we will get anywhere in two weeks or four weeks. If we try to bring it back within two weeks, it puts pressure for someone to get it done quickly, but he would support that. As far as Commissioners on the committee, he believes that is up to the Commission to decide. If some of the Commissioners wish to be on the Committee to be involved with the discussions, he thinks it would be a good idea. He then asked what the pleasure of the Commission would be. If we motion to table the ordinance, that is going to eliminate any discussion. He thinks they should determine if they wish to have any Commissioners as a part of any negotiations and then vote to table the ordinance for two weeks. In the mean time, either Staff or Staff and Commissioners can work to resolve the issues. The motion could be to table the ordinance with the provision that Staff and two Commissioners work towards solving the issue. He then asked if anyone had any thoughts on that.

Commissioner Rardin said he thinks it should be two or three Commissioners. Mayor Griggs said it is harder to get three Commissioners together and so it may be easier to get two.

Commissioner Ferguson moved to table the ordinance to the June 8, 2010 meeting with the provision that staff and two Commissioners work to resolve the issues and bring it back to the Commission at the next Commission Meeting. Commissioner Rardin seconded the motion. Motion carried with a vote of 4-3-0. Commissioner Rentschler, Mayor Pro-Tem Cole, and Commissioner Rance voted nay.

Mayor Griggs asked if there were any volunteers to serve on the committee with staff. Commissioner Ferguson and Commissioner Rardin volunteered to work with staff on this item. Mayor Griggs thanked both Commissioners.

NEW BUSINESS

12. **Consider, and act upon, the first publication of Ordinance No. 1374 imposing a moratorium on the construction, erection, placement, reconstruction, enlargement or expansion of towers within the City of Alamogordo and the development and use of property for such purposes.** (*Josh Rardin, City Commissioner, and Stephen Thies, City Attorney*)

Mayor Griggs read the agenda report and turned the floor over to City Attorney Thies.

City Attorney Thies began by saying currently the city has no ordinance that regulates antennas or towers; and when he says antennas or towers, he is talking about something that is taller than 30 or 40 feet in height. As a result of not having an ordinance, if someone wanted to build an antenna or tower in the city, they would simply have to locate a parcel that is zoned commercial and begin construction. If they were putting a building adjacent to the tower, they would need to get a building permit and will likely have to get an electrical permit as well, but we would have literally no say over the tower. If the commercially zoned property happened to be in the middle of a residential zone or surrounded by residential properties, they would end up with a 60, 70, or 80 foot tower in their neighborhood. Currently, the only restriction we have in place is our Airport Zoning Ordinance and that puts a ceiling on how tall the towers can be. Some of the towers can go up to 150 feet before they would encroach into that zone and then they would have to get FAA approval. Occasionally this issue comes to light when people inquire about building towers within the city. No one has pushed this issue, but recently Commissioner Rardin has been contacted by a few people in his district who have informed him that someone has been inquiring about building a tower in his district. Commissioner Rardin contacted staff and asked what we could do about this. Staff suggested that we could put a moratorium on any construction of a tower in order to allow sufficient time for staff to look at this issue, develop a tower ordinance and bring it before the Commission for their consideration. We are requesting that the Commission place a moratorium on the construction of any of these types of towers in order to allow staff to develop such an ordinance.

Mayor Griggs said he is aware of, not this particular issue, but another issue concerning a potential tower that has been brought into the Community Development department to discuss. It is an increase in height of the tower located at the radio station near the high school. He is not sure that he wants to get in the way of that particular issue, as there is an existing tower located there. He may be able to support this if it deals with new construction or new placement of towers. He believes that is the issue that Commissioner Rardin is concerned with at the moment. The radio station needs to replace their tower because they have had them get knocked down due to winds and he would rather deal with that situation differently and he would not want to stop that replacement for six months. City Attorney Thies stated this particular ordinance would not become effective until it is passed and published, which would be around the middle to the end of July. We could look at this issue that was referenced and see how it could be addressed, assuming they do not have the tower reconstructed by that time. Mayor Griggs added that we also had a tower blown down, up on Longs Peak, and we had one blown down out by La Luz, which affects the operation of local businesses. He thinks we need to be careful that we do not infringe on someone's ability to do business. City Attorney Thies said they could look at those issues.

Commissioner Rardin asked if there is any way to put a condition into the ordinance concerning the wind knocking over an existing tower. City Attorney Thies stated an existing tower would be grandfathered in. There are issues about a nonconforming use, if it is destroyed, whether they can rebuild it. We could draft the ordinance that says the nonconforming use could be looked at and that we comply with any ordinance we drafted, in that they are appropriately zoned and have sufficient setbacks and other additional information we want to impose.

Commissioner Rentschler asked when it comes to putting up these towers, any of these towers have to have a New Mexico building permit associated with it and an engineering set of drawings and plans to go along with that. He then asked if we are looking at the safety of these towers or are we looking at the aesthetics of them. City Attorney Thies explained that the Tower Ordinance would look at both issues. With the safety aspect, normally in a Tower Ordinance you would require them to have engineered plans. Commissioner Rentschler interrupted and said New Mexico requires that already. His point is he doesn't know that there is a reason to look at safety. City Attorney Thies added that there's also the setback issue. Conceptually you could require them to build something that does not look like a tower; it could look like a 60 foot palm tree or something like that; you could get rather restrictive in what you impose. You would look at ascetics, setback issues, traditional zoning issues, where you do or don't want them located, and the engineering aspects of them, whether or not it was properly designed so it will not fall over during the high wind days. Commissioner Rentschler believes if they have the proper stands on them, they should withstand the high winds. City Attorney Thies reiterated that we would just require an engineer to issue a certificate saying it has the proper base. That is really all this ordinance would be saying is that if they want their tower approved, they will have to bring in a certification from an engineer saying it passes the requirements.

Commissioner Rentschler asked if we are after the ham operator. City Attorney Thies said no, the ham operators are generally exempted from this because their towers are shorter than the regulated height. Commissioner Rentschler asked what the regulated height would be, are we talking about 40 feet. City Attorney Thies said in the draft of the Moratorium Ordinance, it references 40 feet, it could be a little lower or a little higher but generally he believes 40 feet is about the height that you would start trying to regulate them. Normally, the height regulation in a zoning ordinance is that you restrict things that are over four stories or roughly 40 feet.

Commissioner Rentschler asked if we are looking at a six month moratorium, is it going to take six months. City Attorney Thies said no, the ordinance could conceptually come back before the Commission in July. Commissioner Rentschler said so we are looking at about 60 days. City Attorney Thies said it will be more like 90 days but if it is fast tracked, it could be 60 days. With these ordinances you don't have to start from scratch, there is enough model ordinances out there that we would simply need to change the name of the city and tweak it a little and it is ready to go.

Commissioner Rentschler asked if there is any body in particular that we are targeting with this ordinance. City Attorney Thies said there is not.

Mayor Griggs said if we propose and go to a moratorium, he would like to see the moratorium only on the construction, erection and placement of new towers and not the replacement of existing towers at their existing locations.

Commissioner Ledford asked if we could restrict the building of towers all over the city. City Attorney Thies said yes if they are over 40 feet high.

Mayor Pro-Tem Cole said he is aware of the tower that Mayor Griggs is speaking of over by the high school. There is one up on the south side of Thunder Road, and he does not know all about it, are they putting another one up there, either supplementing it or complementing it; does anyone know who that tower belongs to, is it the State Police. Does anyone know? Commissioner Rardin reiterated that as long as the tower is not over 40 feet, this won't affect that. Mayor Pro-Tem Cole

said he is not sure if the one up there now is under or over 40 feet.

Commissioner Ledford asked Mayor Griggs if this issue concerns having a tower over 40 feet in a residential area. Mayor Griggs said he believed that is the concern. Commissioner Ledford thinks it is dealing with more than just that. He thinks putting a tower in a residential area is not a good thing for the residents. Commissioner Rardin agreed and said we have a lot of areas within the City of Alamogordo, where we have commercial lots that have been there for 50 years that are right in the middle of residential areas. City Attorney Thies added that is the biggest issue.

Commissioner Ledford said that makes sense and he would hate to see that happen. City Attorney Thies said one of the requirements of the ordinance would be a co-location requirement. Instead of allowing a bunch of providers to throw up their own tower, they would need to look at existing locations and see if there is capacity on those locations before they could construct a tower on a new location. This could also open up a new source of revenue for us; we only have one above ground water tower and sometimes municipalities have gotten into the business of leasing space for wireless providers on their towers.

Mr. John Garst is a citizen of Alamogordo and he wanted to ask, because he doesn't understand, why you need to have an ordinance on towers. He has had a tower for many years. Mayor Griggs said laws are passed every day because a need arises and the governing body believes that an ordinance needs to be enacted, right or wrong. We have a lot of laws that are not necessarily the best, and all this talks about a moratorium on new construction for a period of time so we can look at whether or not an ordinance needs to be drafted. If and when that ordinance is drafted, we will look at whether or not we agree with it. This will just slow things down and allows us to determine where towers should be or should not be placed. He doesn't have any concerns about placement, but he does have some concerns about the reconstruction part of this proposal.

Commissioner Rentschler said he would like to address that if we did have someone who has construction plans during this moratorium period, if they continue or come to us and ask to continue, could they do that. He does really not want to see us running off cell towers, but he wouldn't want a 150 foot tower in his back yard either. He doesn't want to affect the ham community either. Commissioner Rardin asked what the standard size of a ham operator's radio tower. City Attorney Thies believed they are generally around 25 feet in height. Commissioner Rardin said generally this will not affect those operators. They can continue to have those towers as long as they are not over 40 feet. This would only address towers over 40 feet. City Attorney Thies clarified that the ham operators towers could possibly be regulated if they put a 25 foot tower on top of their house. Commissioner Rardin said if the standard ham tower is 50 feet, we could always bump that figure to 50 feet so it will not affect those people. He just wanted to address a restriction on someone coming in and building a WI-FI tower or cell phone tower in a residential area in front of someone's house so that when they look out the front door every day they do not see a cell tower and a little building. Until we rewrite our zoning laws, he wants to give people some rules they will have to abide by since those rules are a little loose right now and they don't address this.

Mayor Griggs asked Rocio Dominguez, Building & Zoning Coordinator to address this issue. Ms. Dominguez stated that as we are speaking, Verizon Wireless is looking at various locations in town to place a new tower. They are actually talking to us about maybe placing it on top of one of the water tanks that we have or the water tower that we have. The radio station and where the towers fell down in La Luz, have come in and talked with us about replacing them. They do not have plans ready to submit yet, because we would already be reviewing them. To comment on what City Attorney Thies was saying, all the towers need to have an engineer seal before it is approved. It is not approved without a seal.

Commissioner Rentschler wanted to know if the construction can go through without an engineers stamp. Ms. Dominguez reiterated that it needs to have the engineers stamp before it is approved. The design of the tower also has a capacity on weight. That is put there by a registered engineer, structural engineer or an architect, and that name and seal needs to be there. The capacity they

have, no more than that weight can go in there. Two companies have come in to talk with planning and zoning, Verizon Wireless, who wants to place a new tower and the radio station that wants to replace the tower that was blown down by the wind.

Commissioner Rardin asked if the tower the radio station wants to rebuild applies to us since it is in La Luz. Ms. Dominguez said they actually want to rebuild it where they have the existing one near the high school.

Mayor Griggs asked what everyone was thinking because the issue is a moratorium on the building of towers, and he believes the number is 50 feet in height. Is everyone willing to stop Verizon and the radio station? City Attorney Thies clarified that this would not stop them until the moratorium becomes effective, and it would become effective after you approve it. It would have to be published; we would skip a meeting and come back before you for your final consideration at that time. We would then publish the ordinance again and it would become effective at that time. Essentially, they have a window where they could start construction, and they would not be affected by this.

Commissioner Rentschler asked why we don't just work on the ordinance and forget the moratorium.

City Attorney Thies said we could bring an ordinance to the Commission. Our city planner is out for a few days but we could possibly bring the ordinance before you on June 8th. We would take it to Planning and Zoning next week.

Mayor Griggs asked what the pleasure of the Commission is.

Commissioner Rentschler moved to approve drafting an ordinance that would regulate the construction of towers within the city limits. Commissioner Ledford seconded the motion.

Mr. John Garst suggested that if you are going to have to do it, do it in terms of the Zoning Code.

Motion failed with a vote of 3-4-0. Mayor Pro-Tem Cole, Commissioner Ferguson, Commissioner Rardin, and Commissioner Rance voted nay.

Mayor Griggs said now we are back to the original discussion. Commissioner Ledford asked what we made the motion on. Mayor Griggs stated they made a motion to draft an ordinance and not to impose a moratorium.

Commissioner Rardin moved to approve preparing an ordinance that imposes a moratorium on the construction, erection, placement, enlargement or expansion of towers within the City of Alamogordo and the development and use of property for such purposes, leaving out reconstruction.

City Attorney Thies said he would have an issue exempting reconstruction; if you are going to put a moratorium on something, unless you have some facts to justify why a potentially non conforming use should be allowed to be reconstructed. You want to avoid exempting them at that time. He does not believe that anything is going to get reconstructed within 90 days and he thinks a better approach would be to address reconstruction in the eventual ordinance and not allow them to proceed.

Mayor Griggs said we have a motion to publish for first publication, or a draft for first publication, an ordinance to impose a moratorium on the construction, erection, placement, reconstruction, enlargement or expansion of towers with the City of Alamogordo. He asked if there was a second to that motion.

Commissioner Rance seconded the motion.

Mayor Griggs asked if there was any additional discussion.

Commissioner Rentschler asked if this would stop Verizon from erecting a tower. City Attorney Thies stated they could still work with staff towards that, assuming they are planning on locating it here. Verizon is not the new kid on the block and they have dealt with these tower ordinances and he would suspect that other than the zoning issues, they already would have complied with anything we would require of them in this ordinance. Commissioner Rentschler said what he would not want to see us do is have Verizon to say they don't want to put the tower here because of this ordinance.

Commissioner Ledford thought Verizon had already begun the process. City Attorney Thies said their big issue is the location of the site. Once they identify the site, they would then move forward. When they start the process, they look around to find sites and they like to strategically locate those to get the best reception. So once they identify those sites, they will move forward from there. This ordinance would limit their ability to identifying a lot of sites because they do not know what type of zoning regulations we would be imposing on them. These are rather canned types of ordinances and what we would impose is not very different than what most of the municipalities that have enacted these ordinances.

Commissioner Rentschler said so "Good old business friendly Alamogordo" is going to say not only no, but maybe. Is that what we are going to do to them? Commissioner Rance doesn't suspect the true intent of Commissioner Rardin's proposal is to hurt Alamogordo. We all want locations by Verizon to be put on the water tanks or the water tower, but he doesn't think we want it to go into a city park and he thinks that is what City Attorney Thies is trying to say. Ultimately, the way it is worded, and if it is worded properly, we will all be extremely happy with it because nobody wants to look out their back door and see an unsightly tower.

Commissioner Ledford asked what about the moratorium. City Attorney Thies explained that the moratorium would be for 90 days. Commissioner Ledford asked if Verizon would be put on hold. City Attorney Thies explained that they could still proceed, it just limits when they are looking at potential sites. If they identify a site now that is zoned C-3, we know right away that could locate on that site without any restrictions. We may limit their ability to locate a tower on C-3. Commissioner Ledford said he agrees with what they are doing, he just doesn't understand how we are getting there. City Attorney Thies said for example, if a C-3 lot was surrounded by residential property, it could be limited. Commissioner Ledford said the top of the water tower is not surrounded by residential property.

Mayor Griggs said what we have is a motion to draft an ordinance which creates a moratorium. The City Attorney will bring us back an ordinance in two or four weeks and if approved, will start the first publication to start a moratorium. After that, it will come back for final publication that will set the moratorium. The timeline is lengthened by the time it takes to initiate an ordinance that prepares that moratorium. What the Commission proposed is that we go ahead and draft an ordinance which speeds the process up, where the moratorium slows the process down.

Mayor Pro-Tem Cole asked if this means the radio station cannot go ahead and build that tower if they have not already built it. City Attorney Thies explained that once the moratorium becomes effective, they would not be able to rebuild the tower. Prior to the moratorium becoming effective, they could rebuild it.

Mayor Pro-Tem Cole said maybe he made a mistake, but there wasn't any type of direction at that time, speaking for myself only, we told them to go ahead as long as they met everything that was on the books at the moment. Mayor Griggs explained that if they get in and get it addressed prior to the ordinance being enacted, they are not subject to the moratorium. If we enact the moratorium, they are still not affected by it until such time that it goes into effect and that will not happen for another six weeks, plus or minus.

Commissioner Rardin asked if we have City Attorney Thies go ahead and draft an ordinance, we could conceivably have the first publication at the next regular meeting. Mayor Griggs said that is

correct. Commissioner Rardin said if we did away with the moratorium, we would basically be giving these tower builders rules to go by, which they presently don't have. Mayor Griggs confirmed this as well and added that the moratorium slows the process down. If the moratorium was a resolution, that would be one thing, but a moratorium is an ordinance.

City Attorney Thies said we could have an ordinance prepared and the Commission could be considering and by the time this ordinance comes back for final consideration; at that time if the Commission found it expectable, you would just not approve the moratorium and start the process of approving the tower ordinance.

Commissioner Rardin asked City Attorney Thies if he could have the ordinance back to them within two weeks so they can make the motion to approve for first publication, he would be for that.

Mayor Griggs said he believes that we have a motion on the floor right now is a motion for the moratorium. He wants to vote on the motion for the moratorium and if that motion fails, we will go back to the motion for the ordinance.

Motion failed with a vote of 2-5-0. Mayor Pro-Tem Cole, Commissioner Ferguson, Commissioner Ledford, Commissioner Rentschler, and Mayor Griggs voted nay.

Mayor Griggs said the motion fails. Now we are back to the fact that we need to ask the City Attorney to bring us an ordinance at the next meeting, proposing the tower ordinance because the moratorium is scratched. He then asked the City Attorney to bring that back to them at the next meeting.

Commissioner Ledford mentioned that the Attorney is already bringing back an ordinance on Premiere Pellets and now we are asking him to bring this back as well. He then asked the City Attorney Thies if he could do that. City Attorney Thies said he has a draft ordinance prepared.

Mayor Griggs said he doesn't think we need another motion on this; he thinks they are pretty well set and we know where we are going.

13. Discussion, and possible action, on the Public Land Dedication/Development Agreement dated March 9, 2005. (Doug Nelson, Tool Box, LLC, presenter)

Mayor Griggs read the agenda item and turned the floor over to Mr. McNeile.

Mr. McNeile said that Mr. Doug Nelson wishes to address the Commission regarding some issues with Palo Duro, Phase I, which involves the master plan approval as well as the public land dedication.

Doug Nelson, Tool Box, LLC, began by saying he thanked the Commission and staff for their time tonight. He sincerely apologized for his tardiness on this issue; this goes back five years in trying to close out this contract with the City of Alamogordo. The plan he is presenting tonight is the master plan for the Palo Duro Subdivision that needs approval per this contract. On this master plan, there are two pieces of property that he will be giving to the city and this should fulfill his requirement for the public land dedication under the subdivision ordinance. Piece one will be a 20 foot drainage easement on the north side of the property and piece two will be a 60 foot easement for Dr. Martin Luther King Drive. He would like to start with a short history on Palo Duro and the approval process back in 2005. His preliminary plat that was submitted to the city in our initial negotiations on the subdivision did not have the drainage easement and did not have the road dedication, dedicated on there as Dr. Martin Luther King Drive. The city asked that these properties be dedicated on the plat and given to the City of Alamogordo. The City of Alamogordo needed additional drainage property for maintenance of the ditch and according to staff; the property south of the subdivision was dedicated as a future arterial road on the 2000 Comprehensive Plan. These properties were then requested to be included on the plat and they were. On the public sites of the open space

requirement, under the subdivision ordinance, he proposed to the city at the time a small pocket park be placed within the subdivision. This park along with the land given for drainage and roads, he believes combined; it meets the requirement for the public land dedication. The drainage pond in the southwest corner was intended to be a dual purpose as a drainage pond and as a park but the City Manager at the time and staff did not want any more pocket parks. They were against having any kind of pocket parks at all. A couple of you Commissioners who were on the Commission at the time remember a lot on Bernie Road that was given to the City by a developer for a future park and there were several citizens who wanted to develop it as a pocket park but the Commission voted not to do that and the lot was sold to an individual and they built a house on it. That is why there are not any parks in a large part of Alamogordo because at the time that was the standard. You develop so much property, the Subdivider gives the City of Alamogordo a lot, they sit on it for five years and they sell the lot and put the money into the General Fund. Not having the park development was not necessarily the fault of the developers as much as that was how the City wanted to do business at the time. Back in 2005, and even today, he thinks pocket parks are a good idea and that the pocket park we were proposing should have been done. That along with the drainage dedication and the road dedication should have met our requirement. Staff disagreed saying the easement was necessary for the development of property and could not be considered public land dedication. The Commission, himself and staff agreed the contract should be drawn up to deal with this issue of the public park in the near future; the subdivision was approved in conjunction with the contract that is before you tonight. His stance hasn't changed since 2005; he believes the property given should meet the requirement of the public site and open space requirement under the subdivision ordinance.

As little as two weeks ago, he believed City Staff agreed with him; they definitely agreed with him during his presentation to Planning and Zoning two months ago, that the dedication of additional roads and drainage would meet the requirements of the public sites section of the subdivision ordinance. He is unsure where City Staff stands today. At the time, they also agreed that tonight Palo Duro Unit II would be brought before the Commission, but as far as he could tell it was pulled late Friday afternoon. He was informed that item would be pulled off the agenda, and that would be about the fourth time it was pulled. He then showed a map of the two properties, the first being that grey strip that is shown on the top, which is a 20 foot drainage easement next to an existing drainage easement that sets there now. The reason he can say it is not necessarily for his construction is not part of Palo Duro that drains upon that drainage easement. There is no water from the subdivision that runs into that drainage easement. That easement was given to the city to help them maintain the existing ditch and has nothing to do with Palo Duro. The second area consists of the 60 foot dedication for Dr. Martin Luther King Drive. At the time, and staff has said to him several times, that area was indicated as a future arterial road on the Comprehensive Plan of 2000, and they mentioned that he was required to give that to the City. The problem is, and he didn't realize it then but he realizes now, that it was absolutely wrong. On the Comprehensive Plan of 2000, that the study corridor is not a future arterial road. He wasn't required to give it then, and looking back he should have fought it because it wasn't a future arterial, it was just a study corridor that possible in the next 50 years, there could be a road placed there. It was not set in stone, but it was on the Comprehensive Plan of 2000. He wanted to give the Commission a copy of the ordinance and a map of the current comprehensive plan that show what he is talking about.

Commissioner Ledford said he wants to hear staff's response to this. He always thought it was an arterial road as well, and Mr. Nelson is talking about additional drainage and he thought it was a requirement as well and he is saying it is not for his property it is for something else. Mr. Nelson confirmed that's correct. Commissioner Ledford went on to say that he actually sympathizes more than he did before. He asked if someone could explain this to him.

Mr. Nelson said that is his point, he went to a Planning and Zoning meeting on Palo Duro II and they were fine with that and understood. They said that by giving the road and the drainage easement, that it meets the requirement. He had completely forgotten about the open contract, and it was an honest mistake. He didn't remember it and not at one point did anybody from the City Staff call him and say he still had the open contract, everybody just forgot about it. There were a lot of city changes and a lot of staff changes and he understands that, but he is glad they addressed it because it needs to be addressed. They were all onboard with him and we were supposed to come for the

Commission Meeting two weeks after the Planning and Zoning meeting and the item was removed at that time because there was a change from the City Manager about who needed to give the presentation. Originally, Ms. Dominguez was going to make it, and at the last minute it was decided that Mr. Threadgill was going to make it. Mr. Threadgill did not feel comfortable making the presentation within that short period of time, so it was pulled from the agenda. Between that time and the next two weeks, it was discovered that there was this open contract, which caused another delay of two to four weeks. He met with City Staff and presented this to them and at the time they seemed to be on board with it. He asked Mr. Threadgill to present it because he has Palo Duro II that has been sitting before him for two months, please include that on the May 25 agenda and he agreed. There is a letter in tonight's packet that addresses that very thing. They informed him that it would be placed on the May 25th agenda but if there were any changes to this master plan or if there was anything not agreed to by the Commission that it would be pulled. He understands that because the contract would not have been fulfilled at that point. Somewhere between the meeting he had with them and Friday afternoon, that all changed. He received a call on Friday around 4:30 or 5:00 and they informed him that his item would not be on the agenda again. It is quite a different issue, but he doesn't understand why it is continually pulled various times and it should have been before the Commission and if there is a problem, it would be tabled. He was not given that liberty and was called at the last minute to say it was pulled. He was here about six weeks ago, Marc South, City Planner walked over to him and tells him that his item had been pulled again. He is unsure where staff stands at this time.

Mayor Griggs said the issue that we have tonight is that we have Ms. Dominguez here tonight and he is not sure how familiar she is with this project. The subdivision was never on the agenda. For Mr. Nelson's purposes, it may have been pulled, but he doesn't remember seeing it on the agenda.

Mr. Nelson explained that as far as he knew it was scheduled. He knew it had gone before Planning and Zoning and they approved it, and the next step is to come before the Commission. His next question is who all has the authority to pull an item off the agenda when it is scheduled to come before the Commission. Where does that power rest? He said if any staff member raises their hand and says they don't think something should be on the agenda, the way the policy is now, it comes off the agenda and he doesn't think that is right. That is what has happened with this subdivision issue for the past two months. They don't think it should be on there because they changed their city staff policy on who should present it. He wants to know how that has anything to do with him. He asked if the Commissioners who were on the panel back when they rewrote the subdivision ordinance, there were specific guidelines about wanting to get things approved quickly. One day we are not selling any houses and the next day we are selling 300 houses and we need to have a fluid process that would put things through quickly.

Commissioner Ledford said that is a dedication issue. He asked where we are on this. Mr. Nelson's understanding is that he has to complete this contract, which he knows is his fault. Commissioner Ledford asked if a staff member present could explain their position on this.

Ms. Dominguez said she is going to quote what was presented to the Commission in the packet provided by staff. It is the background, second page and second paragraph. It says the question may arise within the Commission as to why staff has recommended the acceptance of the Martin Luther King, Jr. Drive land dedication in connection with Palo Duro II review/approval process. We admit our error of not checking up on Palo Duro I. We had the belief that the Commission back then, when they approved Palo Duro I, that they had accepted Martin Luther King as land dedication. We didn't understand how they would also dedicate Martin Luther King for Palo Duro II as well. Back then, we recommended that Martin Luther King be approved for the land dedication and we found the contract that has that as being met. In response to Mr. Nelson's question of this not being corridor, it is. In the back of the comprehensive plan, on the very back it states that the following reports are adopted by reference as part of the Comprehensive Plan of 2000 for the City of Alamogordo. Part A is the Alamogordo comprehensive traffic studies for 1998 and it says for the Long Range Program (2009 – 2020), it shows Martin Luther King as a proposed collector. It is listed under the comprehensive plan, under the traffic study.

Commissioner Ledford asked which part of the contact was violated on Palo Duro I, was that the park.

Ms. Dominguez said it was and added there was no land dedication. Item number one of our background, it says he is required to develop a master plan of the remaining land under control and/or option and receive approval for that from the Alamogordo City Commission within six months.

That was supposed to be done in September of 2005, and it was not done. Number two stated the developer agrees to work with City Staff to identify and delineate the property to be dedicated for public land and include the same in the required master plan. Since there was no master plan, this has not been completed as well. Number three states the developer agrees to transfer to the City a fee simple deed on the public land dedication within three years. That was due in March of 2008, and that has not been completed either. Those are the three items that have not been completed from the original contract of Palo Duro I.

Commissioner Rardin asked Ms. Dominguez what we need to do to get this rolling forward. Ms. Dominguez stated Mr. Nelson has actually submitted to staff, and you should have seen it, the Warranty Deeds for Martin Luther King, Jr. Drive, Phase I and Phase II. Commissioner Rardin asked if that is all Mr. Nelson has to do to comply. Ms. Dominguez added Mr. Nelson has also submitted the master plan, which the Commission has to approve. The second part is that staff has to meet to determine what we are going to accept as the land dedication and what it is that we are going to accept as the arterial.

Commissioner Rardin asked how long that will take. Mr. Nelson said the three items in the contract is one, he will present the master plan to the City, for Palo Duro, Phase I and Phase II; Phase II is a future land development. The second item is that he will work with staff to decide what should be dedicated as a public parcel and it was accepted. He met with Mr. Threadgill and Mr. South and explained that he was presenting the 20 foot drainage easement and the 60 foot road dedication as the public land dedication. Basically, the Commission will need to make a decision, do you accept those as the public land dedication. Are the 20 foot and the 60 foot acceptable by the City as the public land dedication? The alternative is, are you going to require him to pay the three percent public land dedication or does he need to present a different master plan that requires a two acre park in which City Staff doesn't even know if they want. The problem with the park issue is that we can build them, but someone will have to pay to maintain them.

Commissioner Ledford said he believed they addressed that before. Mr. Nelson added that in the subdivision ordinance, it says that if we are going to pay the three percent, the money will then go into a park zone dedicated within the city. He is not sure what park zone we are in, but he is assuming it is the golf course area park zone. That money would have to go to some type of improvement within that park zone. His problem was then, and his problem now is on Palo Duro I, his park zone fee would be around \$10,000 and the estimate on Palo Duro II would be \$9,000. If he writes a check for \$19,000 to the City of Alamogordo, and they decide to put that money into Tierra de Suenos, it is a competitor's park. He doesn't believe that is right, he thinks it needs to benefit the people in the subdivision you are in if they are going to have a park. What he doesn't understand is the pocket park they created in Hermosa Del Sol, the City and Tool Box worked together is a nice park and he doesn't believe there is a lot of maintenance there; it has sand on the ground and metal equipment that is meant to last 25 years. They just need to spray it once a week, make sure the trash is picked up and it is a beautiful park that anyone can use. The management of the city four years ago was absolutely against those types of parks. There was a lot that was given to the City by another Subdivider, there were several citizens living by the golf course that said there is no kids' park within several miles of them, yet staff's position was that they did not want to develop that as a pocket park. Subsequently, the lot was sold and someone built a park on it. It is really a bigger picture than what is before you tonight, what are your park issues, how you want to see the City of Alamogordo handle the development of future parks. He doesn't think the case in lieu works; he doesn't think it adds an asset to the people who are actually paying for that, which are the future buyers of lots in the Palo Duro Subdivision.

Commissioner Ledford said he understands that and added that the intent was to provide parks in certain areas, it wasn't meant to put parks in your competitions back yards. The problem was certain areas have too many parks and he doesn't think we want that. He believes the intent is to still have to deal with the land dedication so there is the option of the land in lieu of as well. He understands that no one wants to see their money put into someone else's subdivision because it doesn't seem fair to them. He asked Mr. Nelson if he agrees with the three percent. Mr. Nelson said he was not, he believes that is a bigger issue. Look at the amount of property he has given to the city, he would actually like to see the back of that map because on the actual comprehensive plan, it says corridor study.

Commissioner Rance asked Mr. Nelson if he agreed to give the property. Mr. Nelson said he did. Commissioner Rance asked if he was challenging it now. Mr. Nelson said at the time he agreed with staff to give the property as long as he was given the credit for the land dedication and that is where this whole thing fell apart four years ago. It is not everyday you run into a subdivision where someone has drawn a line on a piece of paper that says this will be an arterial sometime in the future. There are really no solid plans that say that will happen anytime in the future. If you look at the comprehensive plan, you will see areas where they have arterial roads going right through the middle of subdivisions that can never be built there. One such subdivision that he built was Caneadea, he developed that subdivision in 1998. The 2000 Comprehensive Plan shows an arterial road going right through the center of that subdivision, which is obviously not going to happen. Under the ordinance, if he brought the Caneadea Subdivision before the Commission in 2001, he would have been required to provide "x" amount of feet right up the center of that subdivision, because someday we may want to connect it with Canyon Road. When negotiating with staff, and trying to be an agreeable person, because one day it may connect with South Florida, he can see that and he will give the 60 foot but he doesn't see how he should be required to give that up and not get any credit for it. That is a lot of property; it basically down sized his lots. His original submittal to the City, the preliminary plat, had him building 70 x 140 foot lots; he had to reduce the lot size to 70 x 120 foot. He went from 9,400 square feet down to 8,400 square feet. On a 9,400 square foot lot, you could get about \$3,000 or \$4,000 more a lot, and he will be able to build bigger houses in that area. He is willing to give this to the City, which means he is building 70 x 120 foot lots and most people are not going to build a 2,500 square foot building on that lot, they are going to build between 1,800 to 2,000 square foot buildings and all the economics develop around that. We are trying to make it work and trying to be nice, but staff tells us we still need to give the three percent, the public park, but we don't want it to be a pocket park. When we give this big acreage of lots, it becomes impossible to build because that requires a lot of money. We are doing a park down at Tierra de Suenos, so we already have a park in the area and they want us to give them the money so they can put it into that park.

Commissioner Ledford thinks that is a different issue and he would rather keep that separate. Said each subdivision has to have certain things like drainage. We don't make contracts for arterials, when they dedicate the land in case we ever get it done. We probably shouldn't have approved the Caneadea Subdivision if an arterial road was scheduled to go in either. Mr. Nelson explained they developed the subdivision before the comprehensive plan was completed.

Commissioner Ledford said he though we have always required Subdividers to dedicate right-of-ways for drainage or for arterials and also have them dedicate a parcel for the public parks. Is that not always the way we have done it with other subdivisions? He knows we do make exceptions at times because it is more than what we anticipated; he believes they did that with Palo Vista. He asked if Mr. Nelson feels he is giving more land than is necessary. Mr. Nelson believes he is giving away beyond that because Martin Luther King Drive is not necessary for the development of his subdivision; he didn't need it for access and he doesn't need it today. The only reason they see the top outlet on the map is because City Staff said it would be nice if we ever developed Martin Luther King, that we have an outlet there. That road will sit there until that Dr. Martin Luther King Drive is built and no one knows when that will be. He still can't find it on the five year plan and he doesn't think it is on the 10 year plan, so when it gets built is unknown.

Commissioner Ledford explained that we do get land for those reasons, even though they are not

built today. Whether or not we build it, which is a good question. Mr. Nelson added that we do have a lot of subdivisions that he was developing both sides of the property and he was going to need that for access to the property, that would be understandable, but he doesn't need it for access to the property or to develop the property. The 20 foot drainage easement really has no benefit to the subdivision; it benefits that city in its future growth and in maintaining that ditch. There was a road that was built beside the ditch that sat on that property that the City was accessing to maintain that ditch. He could say that there is no way he is giving us that 20 foot and the City would have to figure out another way to maintain that ditch, but he is a nice guy and he doesn't want to do that but he does want some credit on the public land dedication part of the ordinance.

Commissioner Ledford reiterated that typically we require a drainage easement in all of the subdivisions. He asked Mr. Nelson if he is saying he doesn't need the drainage easement. Mr. Nelson said that subdivision is not draining off into that ditch. Commissioner Ledford asked Mayor Griggs, the fact that it is not being used as part of the subdivision and he did dedicate it, is that something different than we normally do.

Mayor Griggs said for drainage, he would say no. It is not so much that the subdivision is impacted, if the city is impacted for the subdivision to go in, and the city needs access for drainage, he would say the city is obligated to require the developer to make room for the potential drainage so the city benefits. It is not always that the developer benefits. When he looks at this, when the subdivision ordinance was worked on, a lot of time went into it and a lot of it had to do with the public land dedication because we were inconsistent in the way we handled the public land dedication. We had small subdivision, which were waived; they didn't have to give land, because if they gave it, the land would be inconsequential. That land could have been 1/3 of a lot, which they could not have given. It needed to be fair to the large developers as well as the small developers, and that is how we came up with the "cash in lieu" requirement. That was a big part of the "cash in lieu" argument, not so much the park zones. When this ordinance was adopted, it was adopted with support of the building community, dealing with the "cash in lieu" and the parks. Had the building community been adamantly opposed to it, he doesn't believe we would have done it this way. He doesn't believe the ordinance allows drainage as "cash in lieu". He thinks if there is an argument on this, the argument deals with arterials and what can be done as far as arterial property goes; should we require the arterial because it is on the master plan. Regardless if it is a study corridor, as Ms. Dominguez says it is which is adopted in the traffic study, or if that road that was there prior to Martin Luther King, this was South Scenic Drive. The intersection of South Scenic and the intersection of Martin Luther King and Hamilton are there; because Martin Luther King runs west and that ran west before Palo Duro was there. The argument becomes, do we say because that is there, the arterial has to be dedicated or the subdivision can't go in there. Arterials are something that he believes need to be better defined, because he doesn't think they are defined as clearly as they need to be as far as how they are handled. When Mr. Tom Messer was putting in their subdivision, the city required him to donate the right-of-way for South Florida, and he believes that was 80 feet. Sometimes we are all over the map in what we do as far as roadways. If we were to go back and look at Bella Vista, the drainage was required for the subdivision. What was allowed for the land dedication was that the city came back in later and needed six more feet. They determined at that time that those six additional feet would count as the public land dedication. The city is not consistent in how they handle that and that is why we need to go back into the subdivision ordinance and address it again, especially on arterials, as to how that should happen. Should the Subdivider be required to donate that land or should there be some other sort of arrangement where the city buys it from him, or whatever it has to be, how we handle that arterial street. We have the opportunity to deal with that issue. We could take that as public land dedication or we could say no, it has to be dedicated to the city as part of this whole plan so we have room for Martin Luther King. At some point we are going to have to have room for that road, whether it is 5 years, 10 years, 20 years, or what have you, because it is our south loop right now. Martin Luther King will tie Florida, because there is no more South Scenic into Hamilton Road. If Martin Luther King is going to be the south loop, we will need to figure out how to deal with the issue with the land and the issue with the dedication.

Mr. Nelson mentioned if that subdivision was not proposed and the city decided to do this road,

similar to what happened on South Florida, they would have to buy that land. The land would be appraised and the city would have to buy it. On South Florida, the city paid approximately \$3 a square foot for the lots on Caneadea. Originally, the city required us to give a 50 foot dedication and we did because at the time that is all that was asked for. When they did the plans for the arterial road, they said they needed to buy an additional 10 foot width on each lot. When they did that, the city paid some people \$1,200 and paid some people \$5,000, but they bought it. The thing is that if he does not require it to access the subdivision, the city should buy it. He is giving the road to the city and thinks it should meet the land dedication rule. If they think about it, Subdividers are going to start paying attention to their lines and they are going to start developing a long way from there or it will cost them a lot of money. He thinks the city would want the community to flow through there and want people to be building against those. An additional issue would be taking that arterial road, the city does not want people to build there houses facing onto those roads because you don't want them backing out into that traffic. He thinks that would be basically what is happening on Scenic Drive. He doesn't see the problem on Scenic Drive, he thinks it is a nice street and that is how the city got that street built is by a Subdivider building on both sides of it and built the street. There are a lot of ways to work with Subdividers and not against them to get things done.

Mayor Griggs said as far as people backing onto the street, the design with arterials are that they are usually higher speed streets and you can't do that if you have cars backing onto them. If we look at South Florida, it has the potential to be a faster street, but once you cross Panorama, there are some houses that back into it which creates challenges. That is the reason we don't necessarily want people building their houses so they do not back up into those arterials. Commissioner Ledford thinks people backing into Scenic is an issue. The question is whether or not that met the land dedication requirement. Mayor Griggs agreed that it is ultimately going to be the question.

Mr. Tom Messer, Sedona Development said earlier Mayor Griggs referenced South Florida. As he recalls, similar discussions and negotiations there, we had a land dedication for part of the road, and it was only the difference between an arterial and what it was originally planned. He said there were some things we agreed on and some things we did not, but we did get some credit towards our land dedication. Mayor Griggs mentioned it was 20 out of the 80 feet, or something like that. Mr. Messer agreed, and added that when we run it out between the property lines on a regular city street, the Subdivider doesn't need that access and should be required to donate half of the street. When it is decided to call the street an arterial, the Subdivider should get credit towards the land dedication accordingly, because they are going over and above what the subdivision needed for the future needs of the city. He would encourage the Commission to keep that in mind with this particular case. In the past, developers have been given credit for donating over and above what was needed in anticipation of future growth.

Commissioner Ledford said he believes it is an arterial road and believes that is what it was intended for. He doesn't have any problem considering that as land dedication, but he does believe that we need to go back into that ordinance and make this clearer. He believes they are going to be setting precedence tonight, and he thinks they need to determine if it is in fact land dedication. The three percent dedication deals with parks, not streets. He believes we got into where we said it counts as that, and then we got into the "cash in lieu of", and we need to determine exactly how it should be. Unless Staff disagrees, he would like to see them consider this as the land dedication.

Mayor Griggs wanted to ask staff or Mr. Nelson if they know if there is enough land in Dr. Martin Luther King, that satisfies the requirement for the public land dedication, in that roadway by itself. Mr. Nelson stated the 20 foot and the 60 foot total right around 4 acres. On the master plan, we indicate that the complete subdivision would be 40 acres; therefore, we would be required to donate 2 acres. These two combined, are above and beyond what we would be required to donate.

Mayor Pro-Tem Cole is trying to remember where the playground went in at Palo Duro, he drove over there and looked at that equipment and it is nice equipment. Mr. Nelson clarified that the subdivision was actually Hermosa Del Sol, near South Florida and Panorama.

Mayor Pro-Tem Cole said on South Scenic, he was pretty firm on the pocket park that Mr. Martinez put in there and it is used by the walkers from South Scenic, especially the elderly citizens that need to stop and rest, and the women pushing their small children. He does believe in the pocket parks, when Mr. Nelson said, and he is not disagreeing or arguing against it with him, it surprised him that someone said no pocket parks would be accepted. He thinks parks are necessary to the aesthetics of a neighborhood to have these parks, if there are properly maintained. He can assure everyone that in the Abbott Street area, where the arroyo runs, he still gets questions from neighbors there as to when they are going to put the park in where the vacant lot sits. He has researched it and found out that it will never be a park because of the arroyo running somewhat southwest of there. He would like to maintain some type of park where the children can play. There are some of these drainage areas that could be used as play areas, unless there is a heavy rain, because he would not want to create any danger for those children. He thinks parks are necessary are for the youth in our neighborhoods.

Mr. Nelson said there are all types of definitions of streets. The Planning and Zoning Coordinator at the time, Sharon Few, represented to him that Martin Luther King was dedicated on the comprehensive plan, as an arterial street. On the map he presented to the Commission, it is referenced as a proposed study area. On the comprehensive plan, the definition of it is a proposed collector street. It was presented to him as an arterial road and it is not, it is either a collector street or a proposed street, but it is not stated in your comprehensive plan as an arterial road. Sharon Few and her staff told him he had to give it to the City because it was listed on the comprehensive plan as an arterial road. It is just a long term plan, and is where you someday want to see a street, but it is definitely not defined by the Commission or by staff as an arterial road. He basically thinks it is a mistake defined by staff. He thinks he should either be compensated for it or come up with an agreement that says you will take that in lieu of a park. Mayor Pro-Tem Cole asked if it could be used as a park. Mr. Nelson said it could not be used as a park, the road is there and this dedication will allow for the future enlargement of that road. In the comprehensive plan, it is called Collector D.

Commissioner Rentschler asked if there was anything in the comprehensive plan that called it a proposed arterial. Mr. Nelson said there was not, it was called Collector D. On the sheets he handed out, it is called a study corridor. A study corridor and a Collector D is not an arterial street.

Commissioner Rentschler said his point is that one way or another we are going to end up having that road. The loop around Alamogordo has been circumvented by the fact that the land was bought, but the right-of-way was not, on this road to nowhere on South Florida. We will have a loop around Alamogordo and Martin Luther King will be it and he knows this subdivision will benefit from it. The idea of this road is to go all the way down, around the jail and back to the highway and that is going to make these lots much more desirable. Mr. Nelson asked at what point that will happen. Commissioner Rentschler said he can not say at this time. Within the past year, we had hoped that we would have some stimulus money to help make that a reality, but it hasn't happened yet. If that happened tomorrow, it would be built right away because it needs to be built. Mr. Nelson said he is not disagreeing with Commissioner Rentschler, but it is the way it was presented to him at the time, that he had to give it. It is not like that is the only strip of property that is there. There are vast amounts of land to the south that the city could have acquired, but instead, they said he had to give the land. He agrees that the road needs to be there, but he wants to have a fair shake as far as the public parks donation goes. To tell him he has to give the road and he has to give the three percent isn't right. There has not been any other subdivision in the past 20 years, which someone has given 60 x 2,000 feet and not given credit for.

Commissioner Rentschler asked Mr. Nelson if he would consider 50 percent fair. Mr. Nelson said 50 percent of that would be the two acres, and he would be perfectly fine with that. He knows that everyone is afraid that by doing this, you are doing it like Bella Vista. You allowed six foot of drainage easement to count towards the credit towards the parks. He understands that the Commission is setting the standard here, to say if you are or are not going to allow it. To him, if he goes out and buys 40 acres and there is no road there, and the City says they want to put a road there someday, and he agrees to give that portion of land for that future road, he should get some

credit towards that public land dedication.

Mayor Griggs said the issue about that is that it is not addressed yet. It is not addressed in the subdivision ordinance as far as what public land dedication is. The public land dedication is for parks. It doesn't mean that we can't do something different on those, but that is the way the ordinance was written and at the time we were not addressing those roads. As developers have seen, as these issues come up, we have had to determine what works. What needs to happen is to have what works now, looked at along with all the others, but that is not going to happen. We are going to have to look at this one all by itself and then we will have to get together to determine what changes we want to make to the subdivision ordinance that addresses how we deal with arterial roads. There are a number of factors to consider when doing that.

Commissioner Rance believes Mr. Nelson has some valid points as well as Commissioner Ledford. We have done this a variety of different ways and he doesn't believe that we have set any precedence and that we can do whatever it is we think we need to do at this point. We do need to rewrite the ordinance and move forward. He appreciates the comments but also believes that we need to look out for the best interest of the City. We have talked about this for awhile now and he doesn't personally have the correct answer, because he doesn't believe that he has heard everything that Planning and Zoning has to say on this issue. Is there any way, and he knows no one wants to hear this, to table this until the next City Commission meeting so we can get more information about it.

Mayor Griggs asked Ms. Dominguez if the subdivision was ready to come before the Commission. These are the issues that approve the subdivision. Ms. Dominguez stated before Palo Duro II can come before the Commission, this issue must be resolved. Once this is resolved, we can continue with Palo Duro II. Part of the plan of Palo Duro II is the front part of Martin Luther King. Are we going to get the front part and not the back part or are we going to get the back part and not the front part. Before we can continue with Palo Duro II, we have to resolve Palo Duro I, and that is why we pulled it from the agenda. Whatever was signed in 2005 was never resolved and that is why we are here tonight. To answer a question that was asked previously, about how many acres we need, for Martin Luther King if dedicated will be 3.024 acres and the easement on the top is dedicated as .162 acres for a total lot for the entire subdivision of 40 acres. Five percent of 40 acres is two acres. If we were to accept this as public land, it is enough for the five percent. To answer another question concerning the arterial road, Chapter 22 does not say arterial, it says when additional right-of-way is required by the city for streets or easements and is not shown on the comprehensive plan or designated in the ordinance, the city shall pay the Subdivider for the current appraised value of that portion of the land as determined by an independent certificated appraiser. It does not call it an arterial, but easements or streets and in 1998, it was dedicated as a proposed corridor.

Mayor Griggs said it looks to him like the subdivision is ready to come before the Commission, and it could come before us on June 8th. This decision could be made because Mr. Nelson is showing us his master plan as part of Palo Duro I. The only issue to be resolved in Palo Duro I, and is also affects Palo Duro II, is the public land dedication. That is why phased subdivisions need to be decided before the first subdivision is finished, and then we will not have issues like this. We do have several phased subdivisions across town and these needs to be addressed. He does not want to see it put off and have an issue with it later. Commissioner Ledford asked how that gets addressed. Mr. Nelson said he didn't do what he said he would because he forgot. He thinks we do need to clear this up and he also thinks it is something the Commission needs to decide and not P&Z. He asked Mr. Nelson if he had started moving dirt out in that area yet. Mr. Nelson stated they had started moving dirt to ensure they would have enough. That is why we phase these subdivisions in and that is why our last five to seven acres are not plotted out because we have to deal with the dirt to ensure we have high enough elevations.

Commissioner Ledford said he doesn't have any problems with the land and would call it adequate public land dedication, but he just thinks it is not real clear as to the city's objective. He thinks they do want the land dedication for the parks, but he is not sure if they want to take an alternative approach to it. If that is what Mr. Nelson is offering, it is quite a bit of land and we could argue as to

whether it is required, needed or what have you. He doesn't know how long it will be before this subdivision ordinance gets to a science to where it is workable. He doesn't want to violate the ordinance, but if we accepted this as public land dedication, he would propose we do that.

Mayor Griggs preferred that we bring the subdivision to the Commission for approval on June the 8th with Mr. Nelson's plan and his indication that he wants public land dedication be Martin Luther King, whether staff is for it or not, and we come in and make that ultimate decision on that day. He asked Ms. Dominguez if Palo Duro II is ready to come before the Commission. Ms. Dominguez said basically it was, but as she said staff was waiting on Palo Duro I being resolved; because if there was a substantial change on Palo Duro I, it would also change Palo Duro II and that would have required us to go back to P&Z.

Mayor Griggs asked Ms. Dominguez if she believed that if the land dedication was going to be the deal, would it have to go back before P&Z. for their blessing. Ms. Dominguez said no, actually staff recommended to P&Z that they would recommend taking Martin Luther King Drive in lieu of the public land dedication. If the Commission decides that it is what they want to do, P&Z Commission has said they agree. She saw Palo Duro I, and they took in lieu of land and so we are going to continue with that with Palo Duro II.

Mayor Griggs asked Ms. Dominguez if she could bring Palo Duro II and the resolution of Palo Duro I, all together at the next meeting. Ms. Dominguez said she could. If they wish to table this for the next meeting, Palo Duro II is ready to go; we were basically waiting on this decision before moving forward.

If the Commission is ready to accept the master plan and to accept the easement and street in lieu of land dedication, we can also go forward. Mayor Griggs said he personally can't support the drainage as land dedication, but he can deal with the roadway differently. Ms. Dominguez said if you choose not to take the drainage as land dedication, that is only .612 acres, and both parts of Martin Luther King, Palo Duro I and Palo Duro II combined is a total of 3.024 acres. The total amount required for public land dedication is only two acres.

Mayor Pro-Tem Cole asked Mr. Nelson if there is any way there could be an accumulation of some land that can be dedicated as a pocket park of some type where children could play. He doesn't think it needs to be big, just a place where kids can ride bikes or play ball. Mr. Nelson said that would have to be something he discusses with City Staff because he is unsure as to where they stand on that. He is in agreement that pocket parks are necessary, but he is not sure that staff agrees with him. Mayor Griggs explained to Mayor Pro-Tem Cole that Mr. Nelson has done a lot of work on this on the basis that there would not be a pocket park. At this point, he does not want to make him put a pocket park in this subdivision. We need to decide if we are going to take the 3 percent cash in lieu, the roadway or what we are going to take in public land dedication. He believes we are past the time to try and take a park, he thinks that is only fair to Mr. Nelson. If there is any park, it will wind up being on the BLM land, off to the east.

Commissioner Rardin asked if they were looking for a motion to approve this tonight or do they want to table it so they can do it all at the same time. Mayor Griggs said he would rather do it next time, and he doesn't know that they have an option to do anything.

Commissioner Rentschler said he believes there is a motion on the table to accept this. Mayor Griggs said there was no motion on the table. Commissioner Ledford thought we need to decide on the land dedication tonight so they can bring the subdivision back at the next meeting.

Commissioner Rentschler moved to accept the public land dedication for Palo Duro I and Palo Duro II as the right-of-way dedicated as shown on the plat for Martin Luther King Drive. Commissioner Rardin seconded the motion.

Mr. Messer thinks they should not make the motion that says you are taking the whole road. He thinks Mr. Nelson is giving more on both sides of the road and maybe your motion should show you

are accepting an access of what would be required of him as far as the roadway. We had the same situation with South Florida because we ended up providing both sides of the roadway. Roads typically run down the property line, and if you are on one side, you usually only dedicate half. The reason he mentions that is because if someone looks at the minutes later, they will think he received credit for his land dedication for the entire width of the roadway, when some of it was required. He is also looking out for the city in future decisions.

Mayor Griggs said he understands that and hopes that City Staff is getting our comments as having a particular plan for how to deal with arterial roadways. If we want parks, we are going to have to figure out how to deal with the "cash in lieu" issue and these other issues that come up every single time.

Motion carried with a vote of 7-0-0.

14. Notification of Boards and Committees. (Ron Griggs, Mayor)

Mayor Griggs announced the vacancies and asked anyone interested in serving on one of these boards to contact the City Clerk.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Ferguson commented on the following:

- 1) Went to Hobbs to the Mayor's Conference. He talked to several Representatives and Senators and they mentioned there was a good chance there will be a Special Session in August and the discussion may be to remove the Hold Harmless Clause for municipalities.

Commissioner Rentschler commented on the following:

- 1) Asked about the street signs on Scenic, Indian Wells and First Street. He wanted to know if they would be replacing those.

Matt McNeile explained they will be getting new signs for all of the streets. It was a federal mandate that we update all of our signs and luminosity of them.

Commissioner Rentschler thought there was some debate as to whether or not they would be putting a large sign back in their places. Matt McNeile was not sure but let him know he will get back to him.

Mayor Pro-tem Cole commented on the following:

- 1) Thanked staff for coordination of meals for the budget meetings.

Mayor Griggs commented on the following:

- 1) Thanked staff for work on budget meetings and on the Armed Forces Day/Gus Macker. He believes it was handled very professionally.
- 2) The communities of Tularosa lost a very leading member of their community when Dimitrio D. Montoya passed away this past week. He was the Mayor of Tularosa for many years and was a very good friend to Alamogordo and a very fine gentleman. He is sure Tularosa and Alamogordo will miss his leadership.

EXECUTIVE SESSION (Roll Call Vote Required)

Adjourn into Closed Session in compliance with Section 10-15-1.H, NMSA 1978 (2001 Cumulative Supplement), to discuss:

- **Disposal of Real Property at the Old Landfill and adjacent to the Wastewater Treatment Plant.**

Commissioner Rardin moved to adjourn into Executive Session to discuss Disposal of Real Property at the Old Landfill and adjacent to the Wastewater Treatment Plant at 10:56 p.m. Commissioner Rentschler seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

ADJOURNMENT

/s/Mayor Ron Griggs

Mayor Ron Griggs

(SEAL)

ATTEST:

/s/ Reneé L. Cantin

City Clerk Reneé L. Cantin

*(Prepared by Marsha D. Brady, Deputy Clerk)
Approved at the Regular Meeting held on June 8, 2010.*