

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
JULY 10, 2007**

**MAYOR DON CARROLL
MAYOR PRO-TEM RON GRIGGS
COMMISSIONER INEZ MONCADA
COMMISSIONER ED COLE
COMMISSIONER MARION LEDFORD**

**COMMISSIONER CHRIS LUJAN
COMMISSIONER STEVE BROCKETT
ASSISTANT CITY MANAGER MATT McNEILE
CITY ATTORNEY WILLIAM BROGAN
CITY CLERK RENEE CANTIN**

CALL MEETING TO ORDER, ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Don Carroll called the meeting to order at 7:32 p.m., and the roll call was taken. All of the commissioners were present. The invocation was given by Reverend Steven Trout followed by the posting of the colors by the Alamogordo High School Air Force Junior ROTC. The pledge of allegiance was led by Assistant City Manager Matt McNeile.

Mayor Carroll thanked the Air Force Junior ROTC for posting the colors and for marching in the Fourth of July parade.

PUBLIC HEARINGS:

1. Public hearing to consider a temporary structure special permit for Vision Ford Lincoln Mercury Inc. (SP-2007-0116(A)) at Lowe's Pay-N-Save, 675 E. Tenth Street

Recommendation: Approve the special permit for August 2, 2007 through August 6, 2007, with the finding that it will not be detrimental to surrounding properties.

Mayor Carroll read the item and asked whether anyone was present to speak for or against the issuance of the special permit. He also noted that the Commission had received one protest letter from a neighboring property owner regarding this item.

Commissioner Cole made a motion to approve the special permit for August 2, 2007 through August 6, 2007, with the finding that it will not be detrimental to surrounding properties. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

CALL OF THE CONSENT CALENDAR:

MINUTES:

2. Minutes of June 26, 2007 Regular Meeting.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

3. Otero County Economic Development Council (OCEDC) agreements.

A) Approval of an agreement with OCEDC for marketing expenses.

Recommendation: Approve the agreement.

B) Approval of an agreement with OCEDC for operating expenses.

Recommendation: Approve the agreement.

ORDINANCES AND RESOLUTIONS:

5. Consider Ordinance No. 1299 amending the Extraterritorial Jurisdiction for building inspections.

Recommendation: Approve the ordinance for final publication.

6. Consider Resolution No. 2007-26 Adopt the City of Alamogordo Five Year Comprehensive Park and Recreation Master Plan as its official plan for the next five years, for the growth and development of parks, recreation, and open space opportunities in Alamogordo, and be included in the associated technical appendices for the City of Alamogordo Comprehensive Master Plan.

Recommendation: Approve the resolution.

7. Consider Resolution No. 2007-28 to accept a CDBG grant agreement.

Recommendation: Approve the resolution.

8. Consider Resolution No. 2007-33 writing off outstanding accounts deemed as uncollectible in Utility Billing/Library/Miscellaneous Accounts Receivable.

Recommendation: Approve the resolution.

9. Consider Resolution No. 2007-34 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures for FY 2006-2007.

Recommendation: Approve the resolution.

10. Consider approval of Resolution No. 2007-39 authorizing the Mayor to sign a grant agreement with the New Mexico Environment Department in the amount of \$150,000 (no match required) to plan, design and construct water and wastewater system improvements (reclaimed water distribution), including looping the system.

Recommendation: Approve the resolution.

11. Consider approval of Resolution No. 2007-40 authorizing the Mayor to sign a grant agreement with the New Mexico Environment Department in the amount of \$50,100 (no match required) to plan, design and construct water and wastewater system improvements (reclaimed water distribution), including looping the system.

Recommendation: Approve the resolution.

OTHER BUSINESS:

12. Statement regarding the Executive Session of June 26, 2007.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve items 2, 3A, 3B, 5, 6, 7, 8, 9, 10, 11, & 12 of the Consent Calendar. Commissioner Brockett seconded the motion. A roll call vote was taken because of Items 5, 6, 7, 8, 9, 10, & 11. All voted "aye," and the motion carried

with a vote of 7-0-0.

Mayor Carroll took the opportunity to note that the City had received a certified Economic Development Community Award from the New Mexico Economic Development Department stating that Alamogordo is a community that is ready and has met the requirements that the State has for communities to be considered economic-development-friendly. He publicly thanked Ed Carr and the Otero County Economic Development Council for their work in obtaining the certification and pointed out that while it is the City that is certified, it was OCEDC that did the work to make the recognition possible.

CONTRACTS AND AGREEMENTS:

4. Request from Michael Shyne for land swapping – Parcel in La Luz near treatment plant for Lot on 10th Street.

Recommendation: Deny the request to remove the Parcel of land from City Ownership.

Mayor Carroll read the item and explained that Assistant City Manager McNeile would be showing some slides to better show the land that was being discussed.

Mr. Michael Shyne passed out a letter and asked that the Commission let him provide a little bit of background. He went on to explain that before July 28th of 2006 he was asked by the Historical Society to attend a meeting to discuss the possibility of the City acquiring the land that he owns next to the new Historical Society building, the former Plaza Bar Building, to use for public parking. It was clear that the City had not budgeted the money to purchase the property, and so the other option was a land exchange. Mr. Shyne said that he had visited with Matt Anderson who was in charge of real estate. They had looked at different properties, and ultimately what he decided on was a slightly different arrangement than what they had originally intended. He would be willing to donate his land to the City if the City would be willing to donate a piece of surplus real estate that the City owns at the mouth of La Luz Canyon to the County specifically for use by the Shooting Range. He met with both the City and County Managers, and at that time they felt it was a doable deal subject to Mr. Shyne putting together an agreement, which he had done a couple of weeks later. Since that time, the County approved the agreement such that if they received the property, they would commit it to be used for that purpose. Mr. Shyne stated that his purpose in appearing before the Commission at this meeting was to ask the City to consider donating its property to the County. He would in turn simultaneously donate his land to the City.

Mr. Shyne suggested that the City has the property for one primary reason though there are other benefits to holding it, and he stated that it was necessary, as he talked to Mayor Carroll in the interim during the year-long process, to make sure that the City's donation would not just be an unrestricted donation but there would be a number of restrictions placed on it. The paper Mr. Shyne handed out very briefly outlined the five key rights that the City would be maintaining with respect to the property. The way the agreement was structured, the City would be donating the land but retaining the property rights. Mr. Shyne stated that it was truly a situation in which the City would get to have its cake and eat it too. The City would retain any and all existing water rights, and it would also be retaining a blanket easement over the entire piece of property for present and future water lines and any other water-related equipment. One of the concerns that City Manager McCourt had expressed in terms of getting rid of the property was that he did not want it subdivided with a lot of wells and septic tanks placed within it. The City would be conveying that with a specific deed restriction prohibiting that the property be subdivided and sold or transferred to the public in any other way. The City would be restricting it to one domestic well for bathrooms and maybe the possibility of a kitchen for use by the shooting range. In addition, the 86 acres would be restricted to one septic tank for use by the shooting range.

Mr. Shyne further explained that the restrictions placed on the deed in which the City would convey the property to the County would allow the City to retain all of the rights that it would need or may be

concerned about in the future while at the same time the City would donate the land in exchange for which it would receive a donation from Mr. Shyne of the parking lot on 10th Street.

Commissioner Ledford asked for clarification regarding the use of the property as a shooting range, and Mr. Shyne elaborated in explaining that the property is close to houses so it really wouldn't be suitable for live ranges. That said, there are a number of other shooting range activities that Mr. Shyne felt it would accommodate such as hunter safety training in which young hunters are trained in such things as climbing over barbed-wire fences with a gun while not doing something that would cause the gun to discharge. It is also perfect for archery, and another event is Airsoft in which one shoots plastic balls out of guns that appear to be real for all kinds of training. Mr. Shyne made the point that these types of uses would not create safety issues next to the homes in that community. Commissioner Ledford then stated that the water pipeline is on the north side, and he wouldn't want any issues regarding that. He asked Mr. Shyne if any discussion had taken place with the property owners in the neighborhood, in terms of its use but Mr. Shyne made the point that the use of the property would be such that all safety measures would be taken into consideration particularly as the County is not going to use it for something that would endanger the neighbors. The shooting range has demonstrated exemplary safety, and he stated that the individuals that manage the shooting range would be equally cautious in activities that would take place on the property in question.

Mr. Shyne stated also that with regard to the maps, the property labeled "Otero County Hospital Association" would likely ultimately also be received by the County for shooting range activities. The whole area could become an interesting and attractive recreational area for all kinds of activities that would attract a lot of individuals. Commissioner Ledford said that he didn't know why the hospital even had property at that location as it is particularly rough terrain. His concerns, however, are regarding the City's transmission lines as well as the properties on either side in terms of having any problems or issues with those things.

Commissioner Brockett stated that there is no question that the Tularosa Basin Historical Society selected the most prestigious commercial structure in the City for its museum. The parking lot is not accessible, however, going east on Tenth Street, and the only way it could be entered from Tenth Street currently would be if one were to go west. Commissioner Brockett also pointed out that there is a Commissioner who currently works in the Plaza, and that Commissioner has expressed that it is difficult to get in and out of that parking lot. Commissioner Brockett then made reference to the agenda for the meeting that used the words, "can be worked out." He asked if Director Jim Bird could elaborate on entering and exiting the property in addition to where they might be on any plans to use it for a parking space.

Director Bird stated that he had conducted some research regarding the property, as they were attempting to anticipate any problems that could occur if traffic were to be going in and out. Director Bird stated that Tenth and White Sands is in the top five of the accident intersections in the community, and there are approximately 20,680 vehicles on average that pass that intersection in a day. In front of the lot on Tenth Street, there are close to 11,500 vehicles that pass by every day. There is a lot of congestion. If there were eastbound traffic, as was brought up earlier, it would come off of White Sands and head up Tenth Street. If somebody wanted to turn into the parking lot, it could cause vehicles to back up while they waited for a chance to cross the street, which could back traffic up into Tenth Street. That said, they would definitely not want anybody to have access to the parking lot from the eastbound lanes. Director Bird stated that if they were to allow only vehicles that are westbound on Tenth Street to enter the parking lot, the exit down the alley to Eleventh Street would have to be reconfigured so that the vehicles exiting the alley could have a clear line of view to the left or right when they came out. Mr. Shyne asked how many spaces on Eleventh Street would have to be reconfigured, and the recommendation from Director Bird was that at least two or three car places be eliminated so there would be adequate view before entering into the traffic. Commissioner Brockett asked if he agreed that the access to the alley going east and west from New York to White Sands is nearly impossible to navigate, and Director Bird concurred that if that were allowed, it would likely be the cause of quite a few accidents.

Commissioner Brockett asked Assistant City Manager McNeile if they had looked into what issues, challenges or costs might be related to the paving, but they had not done an engineering study on even a ballpark figure in terms of how much that would cost to this point. It will cost roughly \$100,000 to pave the dirt parking lot in front of the Recreation Center though the property is slightly smaller. Mr. Shyne asked how much the parking lot paving is per square yard, but Assistant City Manager McNeile did not have that information. Mr. Shyne stated that he does not believe that it would exceed \$20 per square yard, which would be about \$2.20 per square foot. There are 12,000 square feet so he made the comment that he doesn't believe the figures are accurate in terms of saying that paving the parking lot would cost \$100,000 particularly as the surface is already concrete. The \$100,000 was a cost estimate with regard to the rec center, but no estimate has been done regarding the property in question.

Commissioner Brockett asked how many spaces there would be, but Dr. Rick Miller, president of the Tularosa Basin Historical Society, did not have that information. He explained that they had hoped to be able to use the whole area for outside displays including restoring what used to be a service station type display as that is what was originally in the parking lot. They would also like the property to match in terms of the landscaping at Founder's Park and Airborne Park across the street. That is what they had hoped for as they hoped not to have to worry about parking in that area. Commissioner Brockett asked if the integrity of the building would remain Southwestern in style, and Dr. Miller stated that would be the case with colors that would go along the Founder's Park area in terms of utilizing a rust color and a terra-cotta-type color. Commissioner Brockett asked if when people go to look at Founder's Park they normally park on Ninth and White Sands, but that was not confirmed. Commissioner Brockett then asked for Commissioner Moncada's perspective in terms of pulling in and leaving work in the afternoon. She stated that she has an Avalanche truck, which makes it a bit more difficult, but the alley she has to go down has two dumpsters. One has to be sure to pull in and out in a very straight manner to avoid scratching the sides of the vehicle. The dumpsters can't be placed in the alley going east and west because it's too narrow. In addition, there is no way for a vehicle to make a left or right-hand turn to get into the alleys to go east and west because it is just way too narrow.

A question was raised as to whether the dumpsters would be kept as the City would be taking over both sections of the building. In addition, where would the trash be taken? One suggestion was that a parking space against the alley could be used for the dumpsters. Commissioner Moncada said they were told that the current location for the dumpsters is the only place they will fit. Dr. Miller made the point that the museum doesn't generate very much trash, and so they could perhaps use a small dumpster like a household uses. Commissioner Moncada said that may be the case, but the other business does generate a lot of trash and so they would need the larger dumpster.

Commissioner Brockett asked if the City's insurance liability would include the drive from Eleventh Street into the alley, as that would be the main access for people heading through town. Of course, the maintenance of the parking lot would become the City's responsibility just as it is at the Chamber of Commerce and where the existing museum is.

Mayor Carroll made the point that there is no doubt that utilizing the piece of property would be a challenge, and it may be that the lot would not accommodate anywhere near the number of parking spaces as they are currently laid out in the plan. He made the point that the reality is that unless the lot is restricted to museum parking and there was some way to enforce it, it would become a parking lot for the downtown area for the people that work at the County and the other various offices. Dr. Miller said they actually weren't trying to claim it as their own. They were just hoping to benefit from it. Mayor Carroll went on to say that no matter what the configuration ultimately would be, all of them pose some problems, but he doesn't know that they would be insurmountable. The question becomes whether the City is interested in acquiring that piece of property.

Commissioner Ledford asked if they could use it for parking now, but the current owner has roped it off. Certainly the owner could open that up at any time. He went on to make the point that Mr. Shyne would like the property for the benefit of the shooting range. He asked if the property were simply

used by them whether Mr. Shyne would be satisfied with that rather than deeding it, but that will not work for him. He is not interested in a deed for a week. If he is deeding the property to the City, then it is fair and appropriate to him that the City in turn deed it to the County. If that is not the case, then the property could be developed commercially, which he made the point would also bring traffic on to and off of the property. Commissioner Ledford made the point that he is trying to figure out the benefit to the City of doing this in taking a chance in terms of jeopardizing the use of it. Mr. Shyne stated that the use of the rights the City would be retaining would be as good as if the City still owned the property. Commissioner Ledford reiterated his concern that if the City were to deed the property, it would seem to him that something could come along at some point in the future that would jeopardize some of the ownership rights. He asked City Attorney Brogan if the City could get a transfer deed retaining rights that are as protected and assured as if the City owned the property, but City Attorney Bill Brogan said that could not be done as there is no way to write a contract that would anticipate all future problems because things change. Mr. Shyne stated that most of the problems the City has had in terms of people refusing to honor conditions that were placed on properties arose because the properties went from owner to owner. The beauty of this situation, as Mr. Shyne pointed out, is that the property would go to the County and no one else.

Commissioner Brockett asked City Attorney Brogan if he was comfortable with the County's perspective on the issue and the agreements as they had been drawn up. However, he is not comfortable with it because in his opinion, there is no reason for the City to give up its ownership and there is no advantage to entering in to this agreement. The contracts as presented to the City had some rather serious problems that could conceivably be worked out with the documents, but there was no way to provide adequate protection for the City's interests. Commissioner Brockett asked how wide of a structure Mr. Shyne would propose commercially, and he stated it would be a structure about one-fourth of the area of the property, about 3,000 square feet. There would be parking and a drive on one side and parking behind the property. Commissioner Ledford asked Mr. Shyne if he was interested in any other property as he had looked at others. He was not, and Commissioner Ledford said that in most situations he would agree with Mr. Shyne's assessment that the property is unusable terrain making it perfect for the uses that are being discussed. He said that he could not agree because of the water situation. Mr. Shyne suggested that perhaps if City Attorney Brogan had some different wording, they could discuss that.

Commissioner Cole asked if the land would have to have an appraised value if it were being donated through the County, and City Attorney Brogan indicated that would be the case though it had not been done to this point. The acreage of the properties was clarified, and Commissioner Ledford pointed out that his only concern was the particular property that the City would be giving up. Mr. Shyne said that his real intent is not for the City to give up any right that would hurt the City in the future. He explained that when the Public Service Company of New Mexico gets easements across private property to run lines, they are simply easements. They are not deed restrictions as deed restrictions are the strongest restrictions that can be placed. What the City would be getting would be as strong as it could retain. Mr. Shyne made the point that the County would be more reliable than property owner after property owner, and that would be the City's insurance policy in this situation. His point was that the County would not be doing anything to damage the City's use of the property in ways it would need to run the City.

Commissioner Moncada said that she thinks the parking could work if it were made such that there would only be parallel parking in certain areas and then a circle would be made back out to Tenth Street. She does have a problem in that she feels if the City is going to be trading property the City should be picking the lot to trade.

Commissioner Brockett said, however, that Mr. Shyne has every right to be a part of that process as well as he would be giving up a commercial piece of property in the downtown area. It would need to be a win/win, and Commissioner Brockett stated that he agrees with Commissioner Ledford in that he doesn't see this as a win/win, which is what it boils down to. Commissioner Brockett asked Dr. Miller if this did not go through if they would be requesting signage for the closest City parking lot to indicate museum parking. Commissioner Brockett said that he could not support this Item. Dr. Miller

said that they have not talked very much about where people are going to park because they thought this would work out, but now they may need to look into that.

Commissioner Moncada asked if they could apply for grant money to purchase the land directly from Mr. Shyne, but they had not asked him about buying it. As long as they had been dealing with the possibility of ending up with the Plaza, within a week of Dr. Miller finding that out, he had spoken with Mr. Shyne about the parking lot, which was all that had ever been talked about. Commissioner Brockett asked if any thought had been given to procuring funding for the parking lot next to the museum, but Dr. Miller said that the State had been told in their application that a deal was being negotiated whereby the property would be donated to the City for parking. Commissioner Brockett asked how difficult it would be to go back and get more funding at this point, but Dr. Miller explained that he didn't think that would be necessary. They had received \$125,000 for this year that they could use to bring the building up to code.

Commissioner Lujan said he was still trying to figure out how Mr. Shyne would be benefiting in this, and Mr. Shyne said it is not an equal deal because the City would be receiving something, the County would be receiving something but he would be giving up and not receiving anything. Commissioner Lujan made the point that Mr. Shyne has been pushing it and wants to do the deal and so must be expecting to benefit in some way. Commissioner Lujan said that he could see how they could make this work, but his problem is that the City would not be retaining all of the rights to the property that it may need at some point in the future. Mr. Shyne said that he has been in real estate for a long time and because the terrain of the property is so vertical, the County might stare at the property for two years. Then one day they might figure out a great way to take advantage of it and utilize it. They aren't going to come and lease a piece of property that is so hard to use, however. If they received it for free, though, ultimately the County would come up with a good use for it probably about the time that something would be worked out with the hospital so that it would be used on conjunction with that. Mr. Shyne said he believes the Commission is being fed less-than-accurate information because between two government agencies, restrictions can be drawn that would preserve any uses the City would need in the future and still allow the County to own the property. Commissioner Lujan made the point that they could not know right now what they may need it for in the future. Mr. Shyne said that they could word the documents in such a way that the City's rights would be protected, and he has been trying to sit down with City Counsel for two months to work through it. He hasn't been given that chance, however.

Mr. Shyne said he is really neutral on this issue, and if the City doesn't want to do it, that is fine with him. In fact, his financial statement stays \$150,000 better than if he donated it. He believes, however, that people have to have places to shoot their guns, to practice hunting, to go and train their kids to do that type of stuff, and this land would fit into a bigger picture that he could imagine.

Commissioner Lujan said that when City Manager McCourt had spoken to him about the lease alternative, he doesn't believe he was talking about charging the County. Mr. Shyne said he is not going to deed his land without the City deeding something back. It is not equal for him to deed his land and the City to give a lease back, as that is not fair. Dr. Miller asked if Mr. Shyne might be willing to consider another piece of property, and Mr. Shyne said he would be willing to look at the properties again and consider it.

Arthur Alterson, Community Development Director, stated that the Community Development Department is certainly willing to do whatever the elected officials of the community would like them to do, as they have no overriding need to manage the property. They have many, many projects that are in all types of different states of completion, and this certainly would not be high on his list as a project. Mr. Alterson said that if Mr. Shyne could put a commercial structure on the property, that to him would be the best use for the property, not a parking lot. Mr. Alterson said his vision for Tenth Street is a commercial street with businesses on it, not parking lots, not-for-profits, and Parks.

Commissioner Ledford said that they do have to have parking, and maybe there would be other types of property. Mr. Shyne suggested that he and Commissioner Ledford sit down with a real estate person and discuss the properties that might be available.

Mayor Pro-Tem Griggs said that one of the things to address is that he has a building on New York, and there is very limited parking. There is very limited parking downtown in general, and that is not going to go away. He went on to further the point that the property could be divided based on the hillside, the area above and the area below, but he doesn't think that the property would ever be usable for a shooting range. Mayor Pro-Tem Griggs did say, however, that he thought there could be ways to make it tradable property such that the City could keep the property that it needed. Mr. Shyne said that he was not interested in acquiring the property. He was not interested in owning any part of the property as it just doesn't interest him for his goals. Mayor Pro-Tem Griggs just could not see using the property in the context of a shooting range. Mr. Shyne reiterated that he is willing to look at the City's list of available property.

Commissioner Brockett made a motion to deny the request to remove the parcel of land from city ownership. Commissioner Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

Mayor Pro-Tem Griggs expressed his appreciation for Mr. Shyne's willingness to look at other properties in an effort to find a property that would work in terms of addressing the needs of the Historical Society in a way that would be in the best interest of everybody.

Mayor Carroll recessed the meeting at 8:44 p.m. and reconvened the meeting at 8:53 p.m.

OTHER BUSINESS:

13. Update requested by Commissioner Brockett regarding the Mountain View Trailer Park.

Recommendation: None.

Commissioner Brockett commented that before the recent article came out regarding this situation, City Manager McCourt, Chief Bird, City Attorney Brogan and Mayor Pro-Tem Griggs had discussed the item. They also found out that some of the information in the article was not entirely correct. He made the point that it seems every two or three months they re-visit this issue with good reason. As Commissioner Brockett understands it, the City has two paths to follow. One is to go through the legal process of abatement, which the City is presently doing. If the City takes the course of addressing it through weed abatement, when the rains come, they will have to re-do the weed abatement every few weeks. The City would be spending an inordinate amount of money and time to have the properties inspected while at the same time setting the City's crew back. City Attorney Bill Brogan said that the City is right now doing as much as it can. Miss Nelson has sent out letters demanding that the trailers be closed up, which will ultimately open the door for the Commission to follow what is being referred to as a condemnation procedure. Unfortunately, City Attorney Brogan explained that the International Property Maintenance Code uses the term "condemnation" in a way that is different from the New Mexico Statute in which it refers to a building that is not habitable. That makes it confusing. That said, the next step if or when the property owner does not respond to the letter would be to come before the Commission asking that a resolution be issued demanding that the property be secured at which time Miss. Nelson's group or somebody else will secure the property. The contracting would go through the Community Development Department.

Commissioner Brockett asked for clarification as to whether the determination was that arson had caused the recent fire and not firecrackers setting weeds on fire. Director Jim Bird said that they had sent their arson team in, and it appeared that fireworks sat inside one of the bedrooms of the trailer and had burnt through the floor then catching the vegetation on fire. It is, however, still being investigated.

Commissioner Ledford said that an article he had read made reference to the fact that the City could be doing more, and he asked for clarification as to whether the City was doing something with the weeds. Director Bird said that they have not done anything abatement-wise because in another similar situation, the property owner is suing the City because of going on his property without his permission. The property owner has said directly that he doesn't want any city personnel on his property. City Attorney Brogan said that he believes the City has the authority under its ordinance to go on the property to abate the nuisance. That said, the attorney for the Department of Public Safety has recommended that the City not go down the abatement path while going down the criminal prosecution path. The interpretation is that it would be in violation of a court order. The property owner is to appear in Municipal Court next Wednesday on additional charges that have been filed with regard to the overgrowth on the property.

Director Bird believes they could go on the property in an emergency situation to abate the problem, but that is an interpretation as to what would constitute an emergency, and an issue that has been brought up is that abatement would have to be done repeatedly. Commissioner Brockett asked if he was correct in saying that they could not then go in proactively to lock and board up each unit, but it was pointed out that those issues are being addressed by Building Code. Director Bird is just working on the weed abatement and the fire hazard. Commissioner Brockett expressed his opinion as to where the problems stemmed from in terms of the raw sewage that threatened to compromise the City's water supply. Lora Nelson, Building and Zoning Manager, then reiterated that they had mailed a ten-day notice to the property owner requesting that the property be secured by way of fixing the windows and doors, boarding them up or repairing them. Ms. Nelson stated that if she understands it correctly, if he does not do that, once the ten-day notice has expired the City would have the right to hire a contractor to go on the property and start boarding up the trailers. The City would, however, have to bear the cost of doing that and would likely have to do it repeatedly as individuals go in and tear down what is boarded up.

Mayor Pro-Tem Griggs stated that right now there is a lot of growth of weeds, trash and other different things, but the City is not comfortable with it being an emergency, which is why action is not being taken. His question was when would the City reach a point where it feels action is warranted and necessary? Mayor Pro-Tem Griggs wanted some recommendation or clarification as to when that might be. Director Bird said they have looked at it, and they have also gotten an estimate on what it would cost to have the weeds and trash abated. He couldn't say when in his opinion it would become an emergency, but they will be able to at some time go in and do the weed abatement. There are other undeveloped properties in the City that if they are more than an acre in size they only have to trim the weeds to within ten feet of the sidewalk. If the status of this property is determined then to constitute an emergency because of the growth, the point was made that it would only be right to address the other properties as well.

City Attorney Brogan said that he believes a vote by the City Commission to encourage the code enforcement officer to find that immediate measures are required to alleviate the unlawful growth or accumulation of weeds might go some distance in helping the property owner with his decision. However, Ms. Ehler, attorney for DPS, believes it would be better not to move forward on that yet. City Attorney Brogan said that he believes the City has exercised the steps that are required under the normal method. He believes that where he and Attorney Ehler ended in terms of their conversation was that City Attorney Brogan was going to ask the Commission what their pleasure was on this item.

Mayor Carroll asked if the notification that the owner had been sent addresses the abatement issues, but it was to address the issues of securing the property. Director Bird's opinion was to allow two more weeks and at that time get another estimate for having the property abated. They could then get a contractor and schedule a time to have the property cleared. Commissioner Ledford asked if the property owner or his representation has shown up in court, and he did show up the last time represented by Miguel Garcia from John Hackinson's office. Mr. Won appeared and pled not guilty on the second set of charges, but Miguel had not entered an appearance yet so City Attorney Brogan didn't know if he would appear or not. Commissioner Ledford asked if the suggestion was that they

wait until the next meeting to take emergency action, but City Attorney Brogan clarified that they have given Mr. Won plenty of notification and wouldn't need to wait and conduct emergency action. Director Bird said that Ms. Ehler's opinion was that to move forward might jeopardize some of the criminal charges against Mr. Won. Commissioner Ledford asked City Attorney Brogan if his opinion was that they should wait. City Attorney Brogan expressed that they have differing opinions.

Commissioner Moncada asked for clarification as to what Mr. Won was going to court for, and that was explained along with the process in which Mr. Won still could appeal a decision and then it could be months before a decision is rendered.

Commissioner Brockett made the point that the other side of the discussion is the City's duty to maintain a safe and healthy environment for its citizens by addressing the weed situation and even more so the appliances there that children could get into. His thinking was that City Attorney Brogan, City Manager McCourt, Ms. Nelson, Director Bird and Attorney Ehler should meet to come up with a recommendation for the next City Commission meeting.

Director Bird expressed that he was more comfortable after the discussion with going in and doing the abatement on the property. He doesn't think the court proceedings next week will have an impact on the situation, and he can have his personnel begin the process tomorrow to abate the property. The issue will, however, come up, and it will have to be addressed at that time.

Commissioners Ledford and Brockett asked for more details on other properties there are in this situation, and Director Bird explained that there are some other properties but not such that there are a lot of structures like this one. There are some that are big lots with weeds and growth that need to be taken care of, but nothing quite as bad as this one. Commissioner Brockett provided the example of 616 S. White Sands Blvd.

Mayor Carroll made the point that if the decision is made to go in and abate, it would still be several weeks before that would happen so there would be time to find out the outcome of the Municipal Court action. City Attorney Brogan clarified that the trial is July 18th, and the charges this time around are unlawful growth of weeds, accumulation of garbage, refuse and debris, and permitting dangerous containers without removing attached doors, hinges, lids or latches. Assuming he is found guilty, the Court would give Mr. Won some period of time to correct the situation.

Mayor Carroll asked what the justification would be for not giving Mr. Won the time the Court may allow him to justify putting a lien on the property if the City goes in and abates the property. City Attorney Brogan pointed out that is a valid observation. The previous charges against Mr. Won were that he did work without a building permit, he was maintaining a public nuisance, and he was committing conduct offensive to the public wellbeing. They were based on the cesspool that he maintained in the middle of the trailer park, and they dealt with the leaky plumbing and the fact that he tried to fix the plumbing without getting a permit. They were for entirely different charges. If the City does the abatement and Mr. Won is found guilty, the City in effect limits the punishment that the Court can assess against him. On the other hand, the City had already given him time to take action. Mayor Carroll asked City Attorney Brogan if the Ordinance indicates one of two paths—either taking it through the court system or the City abating it and putting a lien on the property but not both. City Attorney Brogan said he had discussed that with Ms. Ehler, and they could not find the "either/or" language. Commissioner Lujan expressed his opinion in support of allowing the Court process to proceed to see what ensues.

Commissioner Ledford expressed concern that the lien may not hold if they go in and do the abatement prior to the Court action, but at least they would have addressed the safety issue. He would like to let the Court decide, but if they give the property owner 90 days, he believes the City Commission will have to look at it again.

Mayor Pro-Tem Griggs suggested getting an update at the Commission meeting in two weeks as to what took place at the trial, and then making a decision as to how to proceed and when.

Commissioner Ledford concurred with that suggestion, and Mayor Carroll reiterated putting the item on the next agenda as a potential action item.

- 13A. Consider rescheduling the August 28, 2007 Regular City Commission Meeting to be held on Monday, August 27, 2007 due to the New Mexico Municipal League Annual Conference.

Recommendation: Approve the request to reschedule the meeting.

Mayor Carroll read the item and provided a brief background regarding the rescheduling.

Commissioner Brockett made a motion to approve rescheduling the August 28, 2007 meeting to be held on Monday, August 27, 2007. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted “aye.” The motion carried with a vote of 7-0-0.

14. Notification of Boards and Committees.

Mayor Carroll announced the following openings:

Community Development Advisory Committee	1 vacancy
Housing Authority Board	1 vacancy

Mayor Carroll asked that anyone interested in serving in these roles notify the clerk.

UNSCHEDULED COMMUNICATIONS:

1. **Michael Shyne**

Mr. Shyne addressed the City Commission regarding the way the City addresses weeds in the case of “normal” violations. He stated that he received a notice and spoke to the policeman whereas they used to just call him up and let him know if there was a problem and it was fixed quickly. Now, he is threatened with being put in jail. He also received a note with a property code number, which is meaningless, and he would suggest that they use addresses. The second issue is the properties that are owned by the City, and Mr. Shyne suggested that the City should live up to its own standards. He made reference to a property by the Alaska baseball fields that needs work.

Mayor Carroll said he does think they should be more customer friendly, and he agreed that threats are not acceptable. He also agreed that the notices should have the appropriate information on them in terms of addresses.

2. **Ed Carr**

Mr. Carr reminded the Commission that the next morning General Goldfein would be making a presentation about his vision for Holloman Air Force Base.

3. **Greg Kahlstorf**

Mr. Kahlstorf apologized to the Commission about a scheduling miscommunication regarding their intention to have an open house at the airport the previous morning. They did meet with the Airport Advisory Board, and they are intending to schedule the event at such a time when they can invite members of the community to come out, look at the aircraft and perhaps take some test flights. Due to promotion schedules with the radio and newspapers, they weren't able to arrange that, and some showed up and there was nobody there. He apologized for that and said they would be scheduling something one of the next two Saturdays. He invited everyone to attend.

4. **Assistant City Manager McNeile**

Mr. McNeile provided the water report and explained that in terms of storage, it is about the same as last year. The repair to the East Reservoir was completed yesterday. Bonito Lake is full, and the wells are currently being run.

5. Mayor Carroll

Mayor Carroll thanked General Goldfein for being the Grand Marshal at the Fourth of July Parade, and he thanked the Honor Guard from Holloman as well as the High School Air Force Junior ROTC in addition to Matt McNeile and his staff for a nice Fourth of July parade.

EXECUTIVE SESSION: Recess into Executive Session to discuss threatened and pending litigation (Sunbaked Biscuits, Inc., Office of the State Engineer & Won).

Commissioner Brockett made a motion to go into Executive Session to discuss threatened and pending litigation (Sunbaked Biscuits, Inc., Office of the State Engineer & Won) at 9:40 p.m. Commissioner Moncada seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

OPEN SESSION:

Commissioner Brockett made a motion that the City Commission come out of Executive Session and back into open session for the purpose of conducting business in accordance with what was discussed during Executive Session at 11:07 p.m. Commissioner Cole seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

15. Action if any from the Executive Session.

Recommendation: Need a motion to approve any action taken on any posted items discussed in Executive Session. If no decisions were made the following statement should be read: The matters discussed in the closed meeting were limited only to threatened and pending litigation (Sunbaked Biscuits, Inc., Office of the State Engineer & Won) as specified in the posting of the closed meeting.

Commissioner Brockett made a motion to authorize the Mayor to sign the settlement agreement between Office of the State Engineer and the City, and sign the revised agreement between the City of Alamogordo and the Village of Tularosa, and that the matters discussed in closed meeting were limited only to threatened and pending litigation (Sunbaked Biscuits, Inc., Office of the State Engineer & Won) as specified in the posting of the closed meeting. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

ADJOURNMENT.

Commissioner Brockett made a motion to adjourn at 11:11 p.m. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

/s/Donald E. Carroll

(SEAL)

Mayor Donald E. Carroll

ATTEST:

/s/Reneé L. Cantin

City Clerk Reneé L. Cantin
(Prepared by Ubiquis Reporting)

Approved at Regular meeting held on July 24, 2007.