

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
AUGUST 26, 2008**

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

**COMMISSIONER ERIC BREWER
COMMISSIONER JOE FERGUSON
INTERIM CITY MANAGER MATT McNEILE
CITY ATTORNEY STEPHEN THIES
CITY CLERK RENEE CANTIN**

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

Mayor Steve Brockett called the meeting to order at 7:30 p.m. Roll call was taken, and Commissioner Griggs was absent. The Invocation was given by Pastor Vaden Gilloth, and the Pledge of Allegiance was led by Commissioner Cole.

PUBLIC HEARINGS:

1. Public Hearing for Application to grant City Winery License to:
 - A) Matheson Wine Company

Recommendation: Approve the application for a city winery license.

Mayor Steve Brockett read the item and recommendation. He announced this is a public hearing and asked if anyone had comments to make.

Commissioner Cole moved to approve the application for a city winery license to Matheson Wine Company.

Commissioner Brewer seconded the motion. Motion carried with a vote of 6-0-0.

CALL OF THE CONSENT CALENDAR: Items #2, 7, 8, & 9.

MINUTES:

2. Minutes of August 11, 2008 Regular Meeting.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

7. Consider approval of assignment of lease for area E6-B from James Fambrough to Brent Kass.

Recommendation: Approve the assignment of lease.

ORDINANCES AND RESOLUTIONS:

8. Consider approval of Resolution No. 2008-34 authorizing the Mayor to sign a grant agreement from the New Mexico Department of Transportation (NMDOT) for a Capital Cooperative Agreement Certification Project in the amount of \$150,000 for a capital outlay project: ST-7635(224) CN C8S299 to construct handicapped-accessible routes citywide that comply with the provisions of the Americans with Disabilities Act of 1990 in Alamogordo in Otero County.

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

OTHER BUSINESS:

9. RFP 2008-011, FY2009 Street Maintenance Program, understructure engineering.

Recommendation: Award the RFP to Engineers, Inc., for an estimated amount of \$665,000.00, including NMGR.

Commissioner Ledford moved to approve items 2, 7, 8, & 9 of the consent calendar. Commissioner Ferguson seconded the motion. Roll call was taken for item 8 and all voted "aye." Motion carried with a vote of 6-0-0.

PLANNING ITEMS:

3. Consider the final plat of SILVERADO SUBDIVISION for Western Bank & Tierra de Sueños Inc. [Case No. S-08-0987(A), 2293 S. Florida Ave. - Eastside of S. Florida Ave. between Caneadea Loop and Desert Lakes Road].

Recommendation: Staff recommends against approval until landfill closure plan is approved by NMED and completed.

Withdrawn by the petitioner.

4. Public hearing to consider a variance to reduce the required front yard setback of 25 feet to 20 feet for the proposed single family dwelling subdivision Silverado (47 lots). [Case No. V-2008-0522(A); owner: Western Bank; developer: Tierra de Sueños Inc.; location: 2293 S. Florida Ave. - Eastside of S. Florida Ave. between Caneadea Loop and Desert Lakes Road].

Recommendation: Staff recommends denial of the variance request until landfill closure plan is approved and subdivision approved.

Withdrawn by the petitioner.

5. Consider Ordinance No. 1342 rezoning for 2400 Eddy Drive to MH-1, Manufactured Housing Subdivision District, from M-2, Industrial District, requested by Martha Rodriguez. [Case No. Z-08-0685(A), located in the west side of town at Eddy Drive and Alamotero Lane.]

Recommendation: Deny the ordinance for first publication.

Mayor Brockett read the item and the recommendation.

Mr. South, City Planner, made a correction stating this was in the west side of town and not the east side as noted in the Agenda. He stated city water and sewer were not currently available at this location; however, there was an already-permitted well located at this site. Most of the land was currently zoned M-2. Staff is recommending against approval on this item. He reviewed the slides with the Commission. Mr. South pointed out the property was not located at the edge of the M-2 area, but was right in the middle of it. He stated there was a risk of future problems with the whole area if this were approved because a residence was put right in the middle of the M-2 zone. He further indicated that at the Planning & Zoning meeting wells and sewage were expressed concerns and that Mrs. Rodriguez, at that meeting, contended that someone at the City told them they could build a house on the property. After researching the issue, no evidence of that affirmation was found.

Mayor Brockett asked if Mrs. Rodriguez or a representative were present. Nobody came forward.

Commissioner Ledford asked if the applicant was made aware prior to purchasing the property that the mobile home had to be moved.

Mayor Pro-tem Lujan stated the applicant did not know that and she was not aware of the zoning. Mr. South stated that under oath Mrs. Rodriguez told the Planning & Zoning Commission that the previous owners had been told by the City of Alamogordo that they could not have a mobile home on the site.

Mayor Pro-tem Lujan explained he has spoken with the Mrs. Rodriguez and she was not aware of this information. She was currently trying to sell the property because of these issues.

Commissioner Cole moved to deny Ordinance No. 1342 for first publication. Mayor Pro-tem Lujan seconded the motion. A vote was taken, and all voted "aye." Motion carried with a vote of 6-0-0.

6. Public hearing to consider an off-street parking variance for Paul D. Jackson [Case No. V-2008-0524(A); location: 2253 1st Street. - Eastside of E. 1st St. between Moonglow St. and Constellation Dr.]

Recommendation: Approve the off-street parking variance.

Mayor Brockett read the item and the recommendation.

Mr. South, City Planner, indicated the future intent is to apply for a summary plat and then a small office building would go at the northeast corner of the front part of the lot. Planned parking will have three-to-one parking coverage. He noted parking would not be an issue during the normal course of business.

Commissioner Ferguson moved to approve the off-street parking variance. Commissioner Ledford seconded the motion. A vote was taken, and all voted "aye." Motion carried with a vote of 6-0-0.

OTHER BUSINESS:

10. Award of Request for Qualifications for Underwriter and Underwriter's Discount Bid for financing of the Street Capital, and Flood Control projects.

Recommendation: Award the request for qualifications to the New Mexico Finance Authority.

Mayor Brockett read the item and the recommendation.

Commissioner Ferguson asked if this was for the Gross Receipts Tax that was just passed for the streets being done now.

Mayor Brockett answered in the affirmative.

Commissioner McNeile stated it went out to six different lending institutions that responded to the RFQ and New Mexico Finance Authority was the most responsive.

Commissioner Ledford moved to award the request for qualifications for Underwriter's Discount bid to the New Mexico Finance Authority. Mayor Pro-tem Lujan seconded the motion. A vote was taken, and all voted "aye." Motion carried with a vote of 6-0-0.

11. Petition filed to create a special assessment district by residents of Cotton and Lawndale Avenues.

Recommendation: Provide direction to staff.

Mayor Brockett read the item and the recommendation.

Dr. Jeremy Horne stated he was the instigator of this petition and that he spoke a couple of weeks ago on this issue. Two issues were raised, the primary one dealing with the septic tank systems; and, the second issue had to do with the roads. As a member of the American Association of the Advancement of Science and with respect to the septic tanks, he expressed concern about antimicrobial resistance and the contamination of ground water, reciting many researched sources for his concern. With regard to the roads, he stated a lot of dust was kicked up by cars driving along these roads and there was concern with the health implications. He asked that the Commission seriously consider the petition.

Mayor Brockett thanked Dr. Horne. He asked Mr. Thies to explain how an assessment situation worked.

City Attorney Thies explained that the boundaries of this special assessment district encompassed the lots located between 12th Street and 11th Street and Cottonwood and Lawndale Avenues. He indicated that plans and specifications would need to be developed to make the requested improvements. He further noted that a hearing would need to be held on the plans and specifications once cost estimates were prepared. Determination would then be made as to whether or not the special assessment district should move forward. The next decision to be considered was whether the City would pay the entire costs of the specified improvements or if assessment of some or all of the costs be reverted back to the property owners. He noted that If any of the property owners objected to the assessment they had the right to challenge that assessment. He explained the assessment challenge could proceed at the same time the improvements were undertaken. City Attorney Thies explained in more detail the financial obligations of the City if this petition was accepted, as well as how it would affect the property owners. He stated assuming everyone paid the assessment throughout the determined period of time the City would not lose any money. He stated the assessment would be similar to any other property tax. He noted a procedure should be in place for delinquent payees whereby the property would be reassessed in an effort to recover the assessment and this could come from new owners after sale of the property.

Commissioner Ledford asked if this would affect any bonding capacity as far as what was being done now.

City Attorney Thies responded if the City didn't bond for it there would be no effect.

Commissioner Ledford stated he understood the petition was asked before the special assessment.

Dr. Horne asked to read the submitted petition verbatim, which he proceeded to do. He brought up other issues, including home sales within the special assessment district and possible rebates for home owners/builders.

City Attorney Thies stated there would be no rebate, but a latecomer's agreement could be formed to try to recover costs.

Dr. Horne clarified the two sets of costs included the basic infrastructure of the line itself and then the homeowners tapping into that line.

City Attorney Thies indicated homeowners would incur the costs of hook up to the sanitary system and construction of the system with the possible use of private contractors.

Dr. Horne stated it would have to do with the homeowner's property itself, but not the basic infrastructure of the public infrastructure.

City Attorney Thies clarified it's all public infrastructure and some of it benefits the property owners and other portions benefit other properties.

According to what he has read in state law, Dr. Horne stated that if a line were put in all homeowners would be obligated to tap into it.

City Attorney Thies stated if its available they cannot build a septic system.

Commissioner Ledford asked if the City had any special assessment districts now.

City Attorney Thies said he didn't believe the City did.

Commissioner Ledford stated this was a good way for improvements to be done and questioned why the City would not do this.

City Attorney Thies responded that the costs of making the improvements would not increase the value of the property by an equal amount. If someone were to challenge that the City could potentially end up paying for a portion of the costs. He stated the engineer did a rough calculation, which showed each partial would be assessed approximately \$20,000-\$25,000. Most of the parcels did not have that tax valuation assigned. It concludes a doubling of the property value. City Attorney Thies further stated the restriction on the special assessment was that a determination had to be made about the amount being assessed on the property increased the property value by an equal amount.

Commissioner Ledford asked how the infrastructure costs would be handled.

City Attorney Thies responded the City would bear the costs.

Mayor Brockett asked Dr. Horne if there was anyone from the neighborhood present at tonight's meeting. He asked if they knew about the information provided by the City Attorney.

Dr. Horne stated he didn't know of anybody else attending. He was not sure what the other property owners knew, but he requested a written report so he could digest the information and then proceed to inform his neighbors.

Mayor Brockett stated it would behoove the petitioners to have a meeting with City Staff on these issues before moving forward. He urged Dr. Horne to set up appointments to meet with the Interim City Manager Matt McNeile, Brian Cesar and/or the City Attorney.

Although Dr. Horne agreed with the Mayor, he said there was reluctance by the petitioners to meet. He offered to be a representative of the petitioners.

Commissioner Ledford asked what percentage this petition represented.

Dr. Horne stated approximately 80%.

Commissioner Ledford stated he believed the petition signers didn't know what they signed because there were a lot of technical issues involved with a special assessment district. He noted that a copy of the minutes, which was public information, would provide a good summary of the issues.

Dr. Horne asked if it was possible to get an electronic copy of the minutes so he could review the information and put it into report form.

Mayor Pro-tem Lujan stated he was not sure if the residents would be pro or con on this issue. He asked for numbers.

City Attorney Thies stated the City Engineer did do some rough cost calculations. He indicated property owners that equal 66-2/3 of value of the property in the assessment district was needed. With the 21 properties and 15 signatures that might not equal 66-2/3 of the property value.

Mayor Pro-tem Lujan stated he wanted numbers with the residents' participation and without. He further stated with or without their participation this was something that needed to happen because if houses were being built out there services needed to be provided by the City.

Mark Threadgill, Community Development Director, stated he had rough figures based on current information for sanitary, sewer, water, and streets, including curb and gutter in that area was approximately \$795,000, which was rounded up to \$800,000. This figure was then divided by the 26 lots in that particular area which came to approximately \$30,600 per lot.

Mayor Pro-tem Lujan asked if this included the lots being sold currently with nothing on them.

Mr. Threadgill reiterated it included the 26 lots between Cotton and Lawndale between 11th and 12th Streets.

Commissioner Ferguson stated he was against having septic tanks in the City unless there was a way to control the condition of the tanks. He brought up the septic tank problems that Rio Dulce was having and their clean-up efforts. He expressed great concern about possible leaching into the aquifer. He stated that if these septic tank issues were not taken care of, the City will incur more costs to remedy the situation just like Rio Dulce.

Dr. Horne suggested working with the university to gather scientific data.

Matt McNeile stated the City was required to have a water quality report each year. This is available at the City Manager's office and on line.

Brian Cesar, Public Works Director, stated the microbiological testing was done at the two service water plants. He further noted that water quality testing was conducted at each of the City's well sites with samples pulled on a quarterly basis by the State of New Mexico. This process included testing for heavy metals, VOCs, everything that one could think of. That report is available on line and it is in the City yard.

Dr. Horne requested further information.

Mayor Brockett thanked Dr. Horne for attending the meeting and presenting his concerns.

12. Appointments to Boards and Committees.

Mayor Brockett appointed Paul Vigneault to the Senior Volunteer Programs Advisory Council. Mayor Brockett asked the clerk to notify Mr. Vigneault.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

13. Request from Mike Renzetti to discuss the Ninth St. bridge repair, access, or detour.

Mike Renzetti stated he was a business owner on Ninth St. He submitted a letter that listed seven other businesses on the east side of Washington. He asked if the City had funds to utilize the temporary bridge on Scenic Dr.

Mayor Brockett asked Mr. McNeile or Mr. Cesar to provide background information on why the bridge was closed and what it would take to fix it.

Brian Cesar, Public Works Director, stated just prior to the latest street-surfacing project, one of the recently-completed streets was Ninth Street from Florida to Washington. Some time in the past there was a weight restriction placed on the bridge structure of ten tons. Public Works evaluated the structure condition and felt the weight restriction was not appropriate. The New Mexico Department of

Transportation was contacted and their evaluation on June 24th recommended closing the bridge to all traffic. The structure was closed at that time. It would cost approximately \$20,000 to do the work associated with replacing that bridge. A restructure would cost approximately \$150,000. The City did set aside money for that structure because the issue was not apparent until after the budgetary process. Public Works is recommending that the City review the 2004 Gross Receipts Tax and if the Commission wishes to replace that structure to use that funding and scale back on the 2004 Street Project; to complete the section from Indian Wells to Fairgrounds on Florida and not complete 24th Street.

Mayor Brockett asked Mr. Renzetti if he has spoken to the businesses directly affected and about their input.

Mr. Renzetti stated he has spoken to the businesses listed in his letter. He stated the business owners expressed surprise that nothing was established to address the replacement of the bridge.

Mayor Brockett indicated he spoke to Diane and Jimmy at ProLube. He stated he went to two other businesses on the list, but the owners were not present. He stated they did not think it affected their business. Mayor Brockett pointed out that Mr. Renzetti was the only one acting as a representative of these businesses.

Mr. Renzetti stated he has watched his own traffic, as well as their traffic on a daily basis and it's down considerably.

Mayor Brockett asked the other Commissioners if they have heard anything from any businesses.

Mr. Renzetti stated he spoke with someone in administration at the Fire Department who indicated the bridge at Ninth Street was needed as an emergency access during special events on Tenth Street.

Mayor Brockett stated there has been discussion about having a special meeting in September to determine a bond expiring a year from this month. It's possible that election to roll over could be held in March. Items to be discussed will be the existing Library. Suggestion has been made of creating a true mall from Tenth Street all the way to Mountain View. Mayor Brockett asked the Commission for their input.

Mr. McNeile stated the temporary bridge was planned to span the arroyo located east of the Griggs Field parking lot.

Mayor Brockett asked if this had been planned prior to the bridge being shut down.

Mr. McNeile said this was planned for two years. He indicated the City was holding off on the bridge project because plans to start the Fairground Road Project from Florida to the hospital were going to be implemented. He was unsure about the funding for the Fairground Road Project.

Mayor Brockett stated he discussed this yesterday with Commissioner Cole. He stated he preferred to discuss this issue during the bond meeting in September.

Commissioner Cole suggested giving it to the flood control contractor's asking them if they could do the job. He was not in favor of closing Ninth Street, noting that he and the Mayor disagreed on that. He wanted to see the bridge fixed permanently and not temporarily, as soon as possible, noting it was a waste of \$20,000 to improvise to make it fit.

Mayor Pro-tem Lujan asked Mr. Renzetti about his business losses and the impact on his business. He also asked if other businesses gave fiscal impact numbers to Mr. Renzetti.

Mr. Renzetti stated he has had no income for two months since it's been closed down. He stated had he not had other resources he would have closed down. He stated the other businesses traffic is

way down. Mr. Renzetti said he put his house up for sale last month as a direct result of loss of business.

Mayor Pro-tem Lujan reiterated they needed specific numbers to see exactly what kind of impact the Ninth Street Bridge has had on the businesses. He stated he thought the business impact was 20% of their income.

Mayor Brockett asked Chief Trujillo if any analysis has been done on extra traffic since the bridge has been out.

Sam Trujillo, DPS Director, stated they have not done a traffic study on the effects of Ninth Street. The City Traffic Engineer would need to make that analysis. He stated his belief was, just from his experience with Ninth Street, that it should be operational. He noted Ninth Street was one of the major thoroughfares through the center of Town.

Mayor Brockett stated although he did not agree with Commissioner Cole's statements, he agreed that should the bridge be fixed it should be a permanent fix.

Commissioner Ledford stated he did not want to spend the money on a permanent fix if Ninth Street was going to be closed. He noted he had a hard time believing the closing of the bridge caused much business loss. He stated they should not proceed in doing anything until the determination of the Ninth Street project was made.

Commissioner Brewer concurred with Commissioner Ledford

Mayor Pro-tem Lujan stated in between now and the September meeting it would be a good idea to research other ways of paying for this. He asked that Staff be directed to look into this.

Mr. Renzetti asked if they could use a detour through the City Hall parking lot.

City Attorney Thies stated when Ninth Street was closed traffic has flowed through City Hall parking lot. Access is allowed to Washington from Oregon Avenue.

Mr. Renzetti expressed gratitude for listening to his concerns. He stated he was surprised that Commissioner Ledford was surprised about the traffic on Ninth Street.

UNSCHEDULED COMMUNICATIONS:

A. Mr. McNeile commented on the following:

1) Water report

Mr. McNeile stated Mr. Cesar provided a water report noting water was still a little muddy to take from Bonito. Everything else looked good.

Mayor Brockett asked for a time frame on when that might happen.

Brian Cesar, Public Works Director, responded three more weeks.

2) Tarps

Brian Cesar, Public Works Director, stated the insurance will not cover the tarps. They will request through the State and the Federal Government possible reimbursement for those covers. Estimates are being obtained for the replacements.

Mayor Pro-tem Lujan asked what can be done to prevent this from happening again.

Brian Cesar, Public Works Director, stated they were going to revise the specs on the next bid.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened and pending litigation (Labor issues & PSAP), and limited personnel matters (City Manager).

Mayor Pro-tem Lujan moved to adjourn into the Executive Session at 8:48 p.m. to discuss threatened and pending litigation (Labor issues & PSAP), and limited personnel matters (City Manager). Commissioner Ferguson seconded the motion. Roll call vote was taken. Motion carried with a vote of 6-0-0.

ADJOURNMENT.

/s/Steve Brockett

Mayor Steve Brockett

(SEAL)

ATTEST:

/s/Reneé L. Cantin

City Clerk Reneé L. Cantin

*(Prepared by Ubiquis Reporting)
Approved at the Regular Meeting held on September 9, 2008.*