

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:00 P.M., COMMISSION CHAMBERS
MAY 14, 2013**

**SUSIE GALEA, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
ROBERT RENTSCHLER, COMMISSIONER
JOSH RARDIN, COMMISSIONER**

**AL HERNANDEZ, MAYOR PRO-TEM
JIM TALBERT, COMMISSIONER
MATT McNEILE, INTERIM CITY MANAGER
STEPHEN THIES, CITY ATTORNEY
RENEE CANTIN, CITY CLERK**

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

Mayor Galea called the meeting to order at 7:00 p.m. Roll Call was taken by the City Clerk. Clerk Cantin announced there was a quorum present. Invocation was led by Pastor James Forney and the Pledge of Allegiance was led by Commissioner Nadia Sikes.

APPROVAL OF AGENDA

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

PUBLIC COMMENT

1) Gloria Stone addressed the Commission. She thanked Commissioner Sikes and the Mayor for responding to her. She didn't think it was nice that no other Commissioner had responded. She had received a 'No Parking' notice from the City. She explained her 84 year old father comes over frequently to have meals. She also has grandchildren and other family members who come over often and there is not another place for them to park. She did not want a 'No Parking' zone on her street and didn't think any of the Commissioners would either.

2) Steven R. Stone addressed the Commission. He told them he knew the widening of Juniper was in the works and there were a lot of people against it. Mr. Stone said it did not matter one way or the other to him, but he is definitely against the 'No Parking' on Juniper. He thought it might be retaliation against those who opposed the project and he thought it was bad legislation. He thought it would be worse than what they started with. Some people on the street were for or against the widening of Juniper but all the residents were against the 'No Parking' zone. It will not help those who live on the street.

Mayor Galea said the widening of Juniper was still moving forward and they were waiting on the report from the engineering study in order to see what the parameters would be.

Mr. Stone asked when the 'No Parking' work would begin and she told him the painting should have begun this week. Public Works Director Cesar told them it had been brought to his attention state statute stated that because of the size of the roadway, the City could not put in a 'No Parking' zone. They could not restrict parking all the time but state statute will allow for the City to install 'No Parking from 8:00a.m. to 5:00p.m. Monday – Friday'. He said we would have to change our ordinance to allow for no parking at any time. The curb line painting is optional and we will not be painting the curb at this time.

3) Harv Hamilton told the Commission he lived at 1104 Juniper Drive. He read his presentation and said a few moments before the last commission meeting on April 23, 2013, the City Utilities Director told him that shoulders included gutters and some of the roadway asphalt. The figures on this chart are the present dimensions on Juniper: 42' between sidewalks and 30' between curbs. According to the minutes of your March 12, 2013 meeting, the Juniper Widening Project Manager briefed you that

widening would permit two 12' traffic lanes and two 6.5' shoulders; sidewalks would be reconstructed and that raising the street on one side may mitigate the access to steep driveways. The minutes do not include anything about curbs and gutters which together are presently 2' wide on both sides of the street. The minutes do indicate the roadway asphalt would be increased to 37'. So if curb and gutter dimensions are not changed: (he pointed out on a diagram)

37' of asphalt = $2 \times 12 + 2 \times 6.5$ The asphalt takes up both lanes and the shoulders.

4' for curbs and gutters

1' for striping or sidewalks

42' which is the present distance between sidewalks.

If on the other hand, the street is not widened and one side parking allowed, and if one of the gutters is included in a traffic lane, each traffic lane need only be 7" narrower than the ones that I sited before.

Mayor Galea interrupted to say he had about 30 seconds left to speak. He said he would turn in the letter he was reading from and quit. The Mayor told him he was welcome to give a presentation which would be more than three minutes.

4) Tiffanie Owen thanked the Commission for the opportunity to speak to them. She has learned from her occupational therapy college work that they are taught to advocate for people with disabilities and in need of services. She recently had a project where they walked around the campus and looked for the Americans with Disabilities Act of 1990 (ADA) compliance violations. She has had the opportunity to meet her neighbors and found there are many on their street who are disabled, including a four year old boy who barely leaves the house. She wondered if the no parking zone would be in violation of these regulations because there would not be any access to specially equipped vehicles or regular vehicles.

City Attorney Thies told her ADA does not mandate convenient access; it only mandates we create an accessible route. It is conceivable people could park on another street as long as they had an accessible route from one public facility to another. We are not required to make every household or business accessible in the City.

Tiffanie Owen disagreed with that. She thought with ADA you are supposed to make sure there are reasonable accommodations for anyone that might have a disability. Expecting someone to push a wheelchair for several blocks or carry a child for several blocks might be asking a lot of several people on our street.

5) Diana Trunzo of 1207 Juniper Dr. spoke next. She has lived in Alamogordo for 28 years and is a 19 year resident of Juniper Drive and District 3. She said Commissioner Rentschler represents District 3, lives in District 3 and more importantly lives on the unaffected section of Juniper Drive. Should this project come to fruition, our district commissioner has left the residents of the affected part of Juniper Drive and hundreds of Alamogordo residents in complete confusion as to why he is still proceeding with this project when we have clearly disproved all his reasons why he is proceeding with this project.

He hadn't even done a feasibility study prior to your vote. The true cost of the project was not revealed and she thought it still hasn't been revealed. Commissioner Rentschler stated on December 20, 2012 that essentially he was annoyed he had to drive from his home on the unaffected section of Juniper to our section of Juniper because there were some parked cars in front of his home. She wondered what our district commissioner's real reason was that he had chosen to ignore the residents in his district as well as their supporters. Since we have proven all his arguments are without basis, he leaves us no other recourse than to believe this project is his own personal agenda and not in the best interests of those in his district nor the residents of Alamogordo. Even though some commissioners may have stated they believe they may not have to take any of our property, we have been advised you don't have to just take part of our property to be required to compensate us. It was her understanding that even if you are not physically taking any part of our property you are still diminishing the best use and enjoyment of our homes and property, as well as diminishing our property values. In addition, when the proposed no parking ban is denying us access to public facilities, of which a public road is a public facility, the citizens on residential streets with similar

situations and circumstances are not denied; but we are. Compensation for our loss in her opinion would be a valid legal argument. A case law example for the takings clause would be the 2012 decision of the US Supreme Court in the Arkansas Game and Fish Commission vs. the United States. Mayor Galea interrupted to tell her she had 15 seconds more. She peacefully appealed and implored the Commissioners to bring Commissioner Rentschler's Juniper project up for a re-vote especially since you have learned so much more than when it was first brought to you and voted on without the affected resident's knowledge or input nor any valid studies. You are also keenly aware of how the residents feel about this project. Please do not let one commissioner's personal agenda drag you down with him in this matter and have this unnecessary project debate go on for years or possibly be drug through the courts. The residents of the affected section of Juniper who oppose this project and the parking ban and the hundreds and hundreds of our supporters are not going away. She asked Commissioner Galea if she could tell Commissioner Rentschler to tell the confused and affected residents and our supporters and possibly confused commissioners as well what the real reason was that he is pushing this project despite his stand on this project being disproved. The residents in his district strongly oppose this possible compensation requirement and the millions of dollars spent that are desperately needed elsewhere.

Mayor Galea said there are seven minutes left in this time. She asked for comment from the Commission, but there was none.

CONSENT AGENDA (Roll Call Vote Required for items No. 3 & 4)

1. **Approve Minutes of the April 23, 2013 Regular Meeting of the Alamogordo City Commission.** (*Renee Cantin, City Clerk*)
2. **Approve statement related to the Executive Session of April 23, 2013.** (*Renee Cantin, City Clerk*)
3. **Approve Resolution No. 2013-15 approving the Preliminary Budget for FY 2013-2014. [Roll call vote required]** (*Kenneth Johnson, Finance Director and Kathy Gilsdorf, Budget Analyst*)
5. **Approve the application for participation in the FY2014 Community DWI Program.** (*Robert Duncan, Police Chief*)
6. **Approve Change Order No. 3 for PW Bid No. 2011-11 to RMCI, Inc. related to the Water Reclamation Facility Upgrade Phase 1 project in the amount of \$113,309.25 including NMGRT.** (*Nancy Beshaler, Project Manager*)
7. **Approve the award of IFB 2013-010 "Re-Bid LED Inside Lighting Fixtures - Public Library", to Consolidated Electric Distribution in the amount of 24,500.00.** (*Matt McNeile, Interim City Manager*)
8. **Approve the award of RFQ No. 2013-01 related to Engineering Design Services for Washington Avenue / First Street Re-Alignment, to Hunt Engineering, LLC.** (*Edward Balderrama, Project Manager*)
9. **Approve the request from the United Way of Otero County to allow the Convenience Center to be open to all for the Day of Caring Community Clean Up on September 6, 2013.** (*Warren Robinson and Rufino Gonzalez*)
10. **Approve the expenditures of Lodger's Tax Money as recommended by the Promotions Board.** (*Jan Wafful or Bob Flotte, Promotions Board Chairman*)

Item # 4 was removed from the consent calendar by Commissioner Rardin.

Commissioner Hernandez moved to approve items # 1, 2, 3, 5, 6, 7, 8, 9, & 10 of the consent calendar. Commissioner Rentschler seconded the motion. Roll call was taken for item #3. Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

- 4. Approve the final publication of Ordinance No. 1438 amending Sections 29-03-030 and 29-04-050 of the Code of Ordinances pertaining to accessory buildings. [Roll call vote required] (Stephen Thies, City Attorney)**

City Attorney Thies explained this issue was brought to the attention of Staff several months ago about disagreement over interpretation of a particular section of the City Code. This would allow an accessory building to be built within a certain setback requirement. The biggest issue is on the rear lot line. Previous interpretations were that an accessory building may not be built on a rear lot line if it was of any other material than concrete. Now a building may be constructed on a rear lot line regardless of the building material used. The issue of any building being built on or near a lot line is the accessibility for Fire. It is presumed there are alleys in the backyard and in case of an emergency they would have access through the alleys.

Commissioner Rardin moved to approve the final publication of Ordinance No. 1438 amending Sections 29-03-030 and 29-04-050 of the Code of Ordinances pertaining to accessory buildings. Mayor Pro-Tem Hernandez seconded the motion.

Commissioner Rardin asked the City Attorney if we had changed R-1 to match what our accessory building will be. City Attorney Thies said yes and in Section 1 of the Ordinance it comes out of the R-1. He didn't have the fire draft in front of him, but it pulled out the language about accessory building. Now accessory buildings would be addressed by the accessory building found in 29-04-050. There are particular provisions of the city code being amended by this ordinance. One is to remove the accessory building reference in the R-1 district and the second is to allow for different setbacks for accessory buildings.

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

UNFINISHED BUSINESS

- 11. Consider, and act upon, the first publication of Ordinance No. 1435 related to use of cell phones in vehicles. (Michelle Reeves, Assistant City Attorney)**

Commissioner Sikes moved to approve the ordinance. Commissioner Talbert seconded the motion.

Mayor Pro-Tem Hernandez saw a lot of problems with this ordinance. He felt the biggest problem was letting emergency workers use their cell phones during emergency situations. He also felt if he was presumed to be using his cell phone, according to this ordinance he would be presumed to be guilty and would have to prove himself innocent.

Commissioner Rentschler had an article from Consumer Reports which said 39 States had banned cell phone use. Commissioner Sikes interrupted to say there are now 40 states because Texas just passed this. He continued saying there are only 10 that have cell phone use; it's texting they have banned. He read a part of the article. 'Other states are resisting because legislatures say the ban infringes on personal freedom. Research on their effectiveness is mixed. In 2010 the Insurance Institute on Highway Safety assessed several states with a hand-held and texting ban and found accidents had not declined after they were passed. In certain states, in fact, insurance claims increased. Some of that is attributed to drivers moving the phone down to their lap to avoid being

seen by police. This exasperates the problem because it results to a person's eyes being off the road for a longer period of time.' He said our legislature tried doing this last year and couldn't, so he felt we should let them take the lead. He felt it would be unenforceable. People could be simply listening to music or waving it around. He felt it would simply clog up our courts.

Mayor Galea asked him if she understood him to say he was in favor of no texting while driving but not in favor of hands-free. Commissioner Rentschler told her he was not in favor of this ordinance as written.

Mayor Pro-Tem Hernandez said one other item that's important is not the actual use of the cell phone and the distraction, it's the conversation. He said he had talked to people and asked them how many times they had been in a conversation on the cell phone, on a hands-free device, or talking to someone next to them and found they had passed their destination without realizing it. It isn't the use of the cell phone, it's the conversation. He said we already have an ordinance for distracted driving. He didn't have a problem with the texting only ordinance, but he couldn't support this ordinance as is. It's not the use of the cell phone or radio, it's the conversation.

Commissioner Rardin asked Police Chief Duncan or City Attorney Thies if under the current ordinance, if a person is texting or talking and weaving all over the road can DPS pull you over for distracted or careless driving. City Attorney Thies responded if an officer observed those facts he could currently cite someone under another provision of the same ordinance. It is illegal to drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle. The officer would have to testify that the person was engaged in the activity of talking on the cell phone or texting and that they were driving in an unsafe manner. Weaving would be considered an unsafe manner. Commissioner Rardin said so even if they are eating a hamburger and weaving all over the road we have an ordinance in the books to address that. It is essentially not being enforced but would address this. City Attorney Thies said yes.

Commissioner Talbert agreed with Mayor Pro-Tem Hernandez in Number 3 and Number C. He didn't like them before and still does not like them. He felt if we were going to say no cell phones it should be just that – no cell phones - not no cell phones under certain circumstances. He is correct in saying presumption shouldn't be there. Mayor Galea agrees with both on the presumption, but felt emergency responders should be able to use their cell phones in an emergency situation.

Mayor Pro-Tem Hernandez moved to amend the motion to include only texting.

City Attorney Thies said if you amend the ordinance to prohibit just texting while driving, in the new subsection of paragraph 6 you would simply delete the phrase 'while using a cellular telephone' and delete the last phrase in that same sentence 'or for engaging in a call'. Under definitions you would delete the first definition 'cellular telephone' and delete the second and third ones because it would render that no longer necessary to have a hands-free device exception. You would leave the one definition 'text-based communication' in the definitions, and it would depend if you want to leave the exceptions provisions and the presumption provision. That would effectively make texting while driving illegal and not specify what device you are using. Mayor Galea said amending the motion to include only texting while driving would facilitate all those changes. City Attorney Thies said yes.

Commissioner Sikes seconded the motion.

Commissioner Rardin asked about the how you would decipher whether one is texting or dialing the phone. He felt this would be too hard to call and felt this ordinance would be unenforceable. Commissioner Rentschler said the same thing with pushing the buttons on a GPS.

Mayor Pro-Tem Hernandez is trying to get a happy medium, and said again he has an issue with anyone texting while driving. For instance, when someone is dialing it doesn't take long but if texting it takes longer and sometimes the use of both hands. He felt an officer could see this.

Commissioner Rentschler said we have an amendment to this ordinance. Mayor Galea clarified saying the original motion was to approve the ordinance with the amendment only texting while driving. Should the amendment pass, it would make the original motion moot.

Commissioner Rentschler said we need to vote on this ordinance first. He mentioned the confusion last time they voted on this. Mayor Galea said you vote on the amendment and then the original motion. She said if the amendment should pass we will not vote on the original motion. Commissioner Rentschler asked if this means the ordinance would come back to them again.

City Attorney Thies clarified by saying you are voting on the amendment and if it passes you have to vote on the original motion as amended. If the motion to amend fails you have to vote on the original motion to approve the ordinance. If the ordinance as amended or in its original form passes, it would have to come back to the first meeting in June for final consideration and passage.

Mayor Galea asked for public comment on this.

1) Mr. Paul Sanchez was heartened by the amendment out there today. He said one thing not brought up was that in the definition of section 1, paragraph 6a, use of a cell phone definition is 'engaging in a call' as talking into, listening or dialing on a hand-held mobile telephone. Mr. Sanchez said that means if the original motion stays, even if you are using a hands-free device you could not dial it. The second thing he brought up was if you are distracted driving how could the police give you a ticket. He just saw this happen a few weeks ago. An individual was turning into a business and the car behind them had stopped to let them turn in. Behind the second car was a young man on a motor scooter who was texting or something on his cell phone coming off of that light. He never saw the second car had stopped so he ran into the back of that car. Mr. Sanchez stopped to assist and saw the motor scooter driver was using his cell phone while he was lying on the ground. Mr. Sanchez later found out this young man had been cited by the police for using his cell phone, but Mr. Sanchez said since that ordinance does not exist it must have been for distracted driving. So, his point was the ordinance exists and the one you are discussing is there. He didn't see any need for another ordinance since we already have it.

2) Pam Lee told the Commission she has listened to this discussion before and there seemed to be a lot of technicality involved. She said that is why we have laws that are more general like against distracted driving. She noted she was opposed to both the motion and amendment discussed. Ms. Lee explained she didn't believe this City needed this law because we don't have a law like this in the State. We are not like Albuquerque where people drive for many miles; we are a city but are more of a rural area. That means there are people constantly driving through our town. What is going to happen to those driving down White Sands who don't have to worry about texting or being on their cell phones, because there is not a state law opposing that. We will be pulling people over constantly unless we have signs everywhere stating precisely what they can't do. She is as opposed to texting and cell phone use in cars as anyone. This amazes her and makes her angry to see people doing it. She did not believe we should pass laws just to make people feel good and just because there are 40 other states that have it.

3) John Garst said some of the points he was going to make have been dealt with. He spoke about the presumption issue and asked how it ever got in there. It presumes one is guilty unless they can prove their innocence. It defies common sense and our whole legal system. He had sent each Commissioner an email with a link to the ACLU in Northern California demanding warrants be used to access the cell phones. You might want to think about that. He also included an article from a USA Today saying the texting issues were not that well enforced.

Commissioner Sikes said we may not have a state statute mandating a prohibition of texting or talking on a cell phone. Cities like Albuquerque, Santa Fe and Las Cruces have passed those ordinances and she would venture to say more people go through those cities than go through Alamogordo. What they have done to conquer the confusion of not being able to talk on their cell phones is they have put up signs and people have paid attention to them. For years, you have not been able to use

a cell phone on a military installation, and people have handled that ok. In a way, this is a feel good bill because she would feel good if we had a law prohibiting texting in Alamogordo. From all she has spoken to about this, they feel good about it, too. So go ahead and accuse me of doing 'feel good' ordinances, but she thought people would feel pretty good about saving a life. As far as the ACLU suit alluded to by the previous speaker, it has nothing to do with this particular type of ordinance. The cell phone was confiscated by the person who has filed that law suit with the ACLU because they were trying to prove something else. It was not a texting ban they were pulled over for. We keep having conversations on unenforceability and it is kind of like running a stop sign or a red light. Unless you are observed running the stop sign or red light, you are not going to get a ticket. If observed and you get ticketed, there is no reason for the police to search your cell phone or see what kind of texts you did. There won't be any constitutional rights violated because you have been observed. She felt like this has caused so much consternation she had to comment. We don't have the state statute, but states are passing one after another. Consumer Report says it hasn't effectively stopped texting, but she knows plenty of parents out there who would love to say to their kid that it is against the law so don't do it.

Mayor Galea commented she is in favor of no texting while driving. Anything to make our streets safer for everyone's use. Even though this is not a state law it would be enforceable in the City of Alamogordo. She is in favor of a no texting while driving ordinance.

Commissioner Rardin asked for clarification from the city attorney saying if this amendment passes it would be the first publication again and would have to come back in about 30 days for final. City Attorney Thies said it would be approximately 30 days. Commissioner Rardin asked if we could change the ordinance, and City Attorney Thies said he was sure the City Clerk's preference would be to make any changes now instead when it comes back for the second reading and final publication. Commissioner Rardin said essentially the amendment made tonight is what we had last time. City Attorney Thies said it is fairly close. Commissioner Rentschler said for clarification one more time, we pass the ordinance first and then vote on the amendment. City Attorney Thies told him you have already approved the amendment to the original ordinance, now the original ordinance as amended is before you for consideration. Commissioner Rentschler asked if we are going to approve or disapprove this ordinance first. City Attorney Thies said you will vote on the amendment first and then vote on the ordinance as amended or as originally presented to you.

Mayor Galea said we first have a motion brought by Commissioner Sikes and Commissioner Talbert to approve for the first publication of Ordinance No. 1435 related to use of cell phones in vehicles. Then we have the amendment by Mayor Pro-Tem Hernandez and Commissioner Sikes to amend the motion to include only texting while driving.

Roll call vote was taken by the Clerk for the amendment. Motion failed with a vote of 3-4-0. Commissioner Baldwin, Commissioner Rentschler, Commissioner Rardin, and Commissioner Talbert voted nay.

Roll call vote was taken by the Clerk for the original motion. Motion failed with a vote of 1-6-0. Mayor Pro-Tem Hernandez, Commissioner Baldwin, Commissioner Rentschler, Commissioner Rardin, Commissioner Talbert and Mayor Galea voted nay.

Commissioner Rardin stated he voted no because we are adding another ordinance to the books that will not be enforced. He originally was on the same side and agrees with the intent, but felt it wouldn't be enforced. Commissioner Sikes told him that sounded like an indictment against our DPS. Commissioner Rardin read the distracted driving ordinance and said it covers this.

Commissioner Talbert voted against it because he was in favor of it but he did not like the presumption and number 3 concerning emergency vehicles. If we are going to say no cell phones we should say no cell phones. He also did not like the excuses people would come up with every time. He wished those two statements had not been there so he could have voted for it.

Commissioner Sikes said the State of New Mexico already recognized that texting or talking on a cell phone is a dangerous thing to do while driving. School bus drivers and truck drivers are prohibited from doing this. We just finished up a week long series of budget meetings and one of the ways we could have looked at this is it would be a way to generate some revenue so we could give City employees a raise. Commissioner Baldwin commented he was sure DPS was not in the revenue business. Commissioner Sikes said we do what we have to do.

NEW BUSINESS

- 12. Consider, and act upon, the first publication of Ordinance No. 1441 adopting the revisions of the Uniform Traffic Ordinance through July 2012. (Stephen Thies, City Attorney)**

City Attorney Thies stated the State develops the Uniform Traffic Code, and any municipality seeking to enforce traffic violations and send them to Municipal Court needs to adopt the Uniform Traffic Code. Occasionally, changes are made to this code and if the municipality wishes to make similar changes to it's Traffic Code it must amend it's ordinance. The Uniform Traffic Code is not set forth in full in our ordinance but is adopted by reference. The last change to the Uniform Traffic Code was the provision where it deleted the requirement bicycles use a path and not the street if there is a dedicated bicycle path. That is why this ordinance is before you for consideration. You may elect to continue to keep this in the Traffic Code or elect to be consistent with state statutes and delete it.

Commissioner Rentschler said what this actually involves is if we have a bicycle path and we do not have a dedicated bicycle path. City Attorney Thies said previously if someone was riding in the street they would be sited for that. This says bicyclists can ride in the street or the bicycle path. Commissioner Rentschler asked if they need to stay to one side or the other and City Attorney Thies said they must follow other traffic requirements. Commissioner Rentschler felt we should go along with the State and he supported this.

Commissioner Rentschler moved to approve the first publication of Ordinance No. 1441 adopting the revisions of the Uniform Traffic Ordinance through July 2012. Commissioner Rardin seconded the motion.

Commissioner Rardin clarified this is to remove this, and Commissioner Rentschler confirmed saying it will protect the bicyclist when they have to go into a traffic lane when trying to avoid something in the bicycle path. Mayor Galea added many times the bike paths are not clear.

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

- 13. Consider, and act upon, the acquisition of the real property located at 2105 Pecan Drive, 1400/1402 Indian Wells Road, 2008 Washington Avenue and 2016 Pecan Drive. (Stephen Thies, City Attorney)**

City Attorney Thies indicated there was a change to be made subsequent to the preparation of the Agenda Report. In the report he had indicated we had received three signed purchase agreements back from the property owners. The fourth property owner (1400/1402 Indian Wells Road) returned the signed purchase agreement yesterday morning so we have all four signed purchase agreements. These had been posted on their computers, but he would go over the purchase prices if they needed him to. One correction is that 2016 Pecan should read 2106 Pecan Drive. 2016 Pecan is a vacant lot north of Indian Wells owned by Destiny Horizon LLC. That is the one Bonnie Deeds and her husband own north of the Convenience Store, and we are purchasing. Instead of 2016 Pecan it should be 2106 Pecan Drive.

Mayor Pro-Tem Hernandez moved to approve the acquisition of the real property located at 2105 Pecan Drive, 1400/1402 Indian Wells Road, 2008 Washington Avenue and 2106 Pecan Drive. Commissioner Rardin seconded the motion.

Commissioner Rardin asked where we are going to pull the funding to do this. City Attorney Thies stated it would likely be from the project funding related to the project. Generally, internally, we look at the but for rule, but for the project we would not be acquiring this property. As a result, we will be looking toward the project funding for the acquisition of the property. Commissioner Rardin asked if we have enough funding available to purchase the property and complete the project. City Attorney Thies couldn't say definitely that we do. We will look at the project budget and will have a better idea once the construction bids have come in. We will look at those bids and the demolition costs as well as two residential houses to be demolished and a commercial structure to be demolished. Once that has been done we will make an assessment to see if there are sufficient funds to budget the property. If not, we will look elsewhere.

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

- 14. Consider, and act upon, a request to vacate an easement consisting of approximately 7,500 square feet located immediately south of and adjacent to 829 S. White Sands Blvd to MDDC, Inc. (Stephen Thies, City Attorney)**

City Attorney Thies said this item is related to a previous item you approved in January. He referred to the aerial photo and pointed out the green strip of property. In January the Commission agreed to vacate a portion of that easement 150' deep from White Sands to the back side of the property just north of that marked 829. In return for the vacation of that easement, the person acquiring the easement agreed to pay \$22,000 that we put into the property acquisition fund for acquisitions of rights-of-way in the future. That individual has come back and is looking at constructing a Buffalo Wild Wings on that location. Given some issues, he has determined there is a need for additional property and has requested the City to vacate an additional 150' to make it 300' total in depth. He has agreed to contribute \$22,000 for our property acquisition fund. This particular easement was presented to the P&Z Commission in early January or December. There is a 'No Need' for the easement and staff is requesting the Commission approve to vacate the easement on the condition the individual makes a payment of \$22,000.

Commissioner Rardin moved to approve the request to vacate an easement consisting of approximately 7,500 square feet located immediately south of and adjacent to 829 S. White Sands Blvd to MDDC, Inc. Mayor Pro-Tem Hernandez seconded the motion.

Commissioner Baldwin asked where the price for the easement goes and City Attorney Thies told him it goes in the property acquisition fund. This fund has money in it from the sale of property and when we need to buy properties we generally use that fund. This would be for acquisition of easements, rights-of-way, and other property we might need to acquire.

Commissioner Rentschler asked about the old ditch that runs through there. Is this easement included in this? City Attorney Thies said no. That easement was granted to the County in the late 1950's and is their easement to vacate or do whatever they so choose. They have essentially deeded it to this company and have told them it is now theirs and if they want to build something on it they need to figure out the legalities of doing so.

Commissioner Rentschler asked the City Attorney if there was still drainage running through there. City Attorney Thies said there is some surface area drainage that flows, but because of the Army Corp of Engineers' project it rendered that ditch unnecessary to address the major drainage. There is a small trailer park located to the east that drains water into that ditch. We have met with the developer and he is working on a drainage plan that would address the water coming from the east and across his property. His plan is not to close the culvert under White Sands and will instead put intakes or something along those lines on the east side of White Sands to allow the water to go under White Sands. He is addressing getting the water from the backside of his property to those intakes to allow it to flow to the west.

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

15. Discussion, and possible action, related to an update on the Atari Game issue at the Landfill. (Josh Rardin, Commissioner)

Commissioner Rardin had added this item on the agenda because he had received a call from Joe Lewandowski saying the Commission had directed staff to get this done in 2011. Commissioner Rardin asked why this was still on the attorney's desk and not done yet.

City Attorney Thies responded that's not true, we have been working on it. At that time, there was a draft letter based on the action taken by the Commission to authorize staff to enter into negotiations with this particular company to allow them to excavate the old landfill and try to find Atari games buried there. That letter was sent to them in December of 2011. We didn't hear anything from them until another company came to us and indicated they wanted to dig up the Atari games. At that time, the original company contacted us and voiced their opposition to us discussing with the additional company. We eventually did not enter into an agreement with this other company and we didn't hear from this company again until about a year later when they approached Interim City Manager Bob Carter indicating they wanted to move forward. They were given a 45 day extension to what was essentially a non-binding agreement. We didn't hear anything from this company until about a month and a half ago. City Attorney Thies said he began working on a use/access agreement at that time and presented it to them. He has not heard back on that agreement.

Commissioner Rardin said if he remembers right we gave them 10 months or a year to get it done before we would give any other entity a shot. City Attorney Thies said that's not correct. What was approved was to authorize staff to enter into negotiations with the company as to the terms of final agreement. That final agreement would have given them the exclusive right to enter the property and dig it up for a specified period of time, which was either six or nine months. No such agreement was ever negotiated or entered into. It was simply a letter letting them know the Commission had authorized staff to enter into negotiations with the company and it requested them to contact us. We heard nothing from them until they heard we were discussing it with another company.

Commissioner Rardin asked where we were on this right now. City Attorney Thies said a location/use agreement has been sent to them and he is waiting to hear back from them. Commissioner Rardin asked him once that was done how long would be looked at before it is completed and ready for them to do their move. City Attorney Thies said that's up to them. The agreement, based on their inaction in the past, has been structured where when they return the agreement to us signed it would be presented to the Commission. If they find the terms acceptable and approve the agreement, the company has six months to do whatever they think needs to be done out there.

Commissioner Rardin said it's appalling that I hear it was approved in 2011 and it's still setting there. He said it won't put Alamogordo on the map but it would be neat to see a movie about Alamogordo and something that happened here. He asked if anyone in the audience wanted to speak on this.

Joe Lewandowski said there were a few facts not correct for whatever reason. He presented a binder of every email and correspondence related to this project and offered it to anyone who might like to look at it. He asked Commissioner Rardin if he had passed out the order of events, and he said everyone got a copy. Mr. Lewandowski said this started in August 2011 and has been going on for some time. It is the number one urban legend in the gaming industry and he has personal experience with it because at the time he was buying out the company that allowed this to happen. The games did occur out there and there is a whole group of people who say it never happened and another group who say it has. Discovery Channel and other film companies have contacted me as well as NYU and Alabama State professors. He encouraged the Commissioners to log Atari dump and see what happens. It is one of the areas best kept secrets and people say it never happened, but it did. When you blog Alamogordo you will see Trinity Site, Col. Strapp – fastest man on earth, Ham the chimpanzee buried at the Space Hall of Fame, the Space Shuttle landing here in 1982, and the Atari dump. He just finished an interview from Spain and there is a music video about this. The problem is this all happened exactly 30 years ago in September of 1983. There are at least nine truckloads of

games and game systems out there. Discovery Channel is covering this as part of the Strangest Things that had Gone into Dumps. We are up there with the mobsters in Chicago who went into landfills. Two brand new Cadillacs were found at the Fresh Kill landfill in New York City and everyone wonders who may have been in the trunks. Google Earth has also contacted us to do the keyhole system (when you click here you can take a visual tour of an area). The Atari site is the number one thing they want to put in there. The reason it is such a big story is that back during that time Pong was the first game and then the Atari 2600 system came out. In 1978-1979 Atari skyrocketed to 82 with over \$384 million in sales per year and today \$1.4 billion in sales. In late 1982 the company tanked. They tried to salvage it with ET which was the first game named after a movie. They paid Steven Spielberg \$20 million for the rights to the ET name. If you look this up you will find ET was a flop and when that happened the company went down to \$38 million in sales the following year. Anyone in our age group remembers this and thought the gaming industry was a fad. One year later Nintendo and Mario Brothers came out and now we know what's happened. The gaming industry is now bigger than the movie industry. The importance of this story is that gaming seemed to die then re-grew to what it is today. Atari denied it ever happened and the inventor of the ET game denied it ever happened. There are other people such as myself who watched the backdoors of the semi's open and they were full of the games. These were not defective games as Atari claimed, but games still in the packages and ready to go. Twenty-nine semi trucks were supposed to go into the dump, but the City Commission met on a Saturday and stopped it because it was El Paso trash and not Alamogordo trash. Nine semi trucks made it into the landfill before they stopped this. Some people call it the Atari tomb because they put concrete over it after they dumped the games.

Mr. Lewandowski outlined the order of events concerning the issue tonight. It began with talking about the film in August of 2011; contacting Mayor Griggs and Jan Wafful in September 2011; worked with staff and the environmental department to see if this could feasibly be done in September-November 2011; NMED Solid Waste Bureau gave written permission to proceed in October 2011; Information provided to Matt McNeille in November 2011; project submitted to City Commission (Commissioner Rentschler and Commissioner Rardin were there) and receiving approval in December 2011 with a letter of intent issued by the City of Alamogordo to the company stating terms of a nine month window for the company to secure financing. It was also stated the City of Alamogordo could not enter into an agreement with any other company during that time. In May or June of 2012 the other company began talking to the City and it had only been six months since our agreement was begun. In July 7, 2012 the company contacted the City and wanted to know what was going on; July 23, 2012 a letter was sent from the company asking about the nine month promise. At that point, Mr. Lewandowski had contacted City Attorney Thies and Assistant City Manager McNeille and addressed a letter to them on August 8, 2012 asking what was going on. They were basically told the other company had been decided on and given to without going back to the City Commission, as far as he knew. He did not receive any responses from his letter. When Interim City Manager Carter came in, Mr. Lewandowski visited with him and he started the process again asking for a 45 day extension in order to resolve the issue. A contract or agreement was not ever sent for negotiation. In December 2012 he received an email from City Attorney Thies explaining his company should send a draft agreement. The problem is there had been one sent months before and he said he had the emails to prove that. An agreement was sent electronically and as hard copy in January 2013. April 1, 2013 he had a phone conference with City Attorney Thies and Interim City Manager Carter and the film company in California and he was promised an agreement would be sent by April 5, 2013. He said none was ever sent. April 9, 2013 he was still asking what was going on, and on April 10, 2013 there was a phone conference between the company, Interim City Manager Carter and City Attorney Thies. On May 6, 2013 City Attorney Thies sent an access agreement to the company. The access agreement gives the company access to the landfill and to dig up whatever they want with it and have total rights to everything that goes on related to the story. The other agreement he pointed out was in the Commissioners' agenda packet and was much longer. There were a lot of things offered in this agreement and he named these things. There are issues about making sure the City is responsible for the landfill and is in control of the situation. This was originally said in the initial meetings of September/November of 2011 and it was made clear by City Attorney Thies the City needed to control the situation because if anything goes wrong the City needs to know. It allowed for the City crews to do the digging and the environmental consultant (himself) would work for the City to

protect the City.

Mayor Galea asked if he was not in agreement with the access agreement, what would he like the Commission to do. Mr. Lewandowski said he would like to see the City consider the agreement in your packets and to get it done. There has been a lot of contact back and forth and issues going on over a 16-17 month period.

Commissioner Rardin asked Mr. Lewandowski how long it would take to finish this up. Mr. Lewandowski said that agreement had been reviewed and approved by the company. Commissioner Rardin asked which one he meant and he told them it was the one in the agenda packets. Commissioner Rardin asked if the City Attorney had a copy of that agreement and Mr. Lewandowski said he did provide him one on January 30th. Commissioner Rardin asked if it would be possible to have this back to the Commission in two weeks in order to get this done.

City Attorney Thies said the terms of this transaction as originally discussed are no longer feasible for the City. The access agreement gives this company what they essentially want – access to the property and the right to excavate the property. There are provisions in the access agreement addressing environmental and other concerns and other issues identified over the course of our dealings with this company to protect the interests. We no longer have the ability and time to devote to sending City staff out there for several weeks at a time to dig it up. The company has been given the right to dig it up and must comply with whatever the State regulations require them to do when they excavate and rebury it. They've returned the agreement and provided a security deposit to hold us harmless in the event they do not do it and we have to do it. They will have access to the property for six months to accomplish what they want. They have what they want and we are simply waiting to hear back from them.

Commissioner Rardin asked the City Attorney if the City staff had time back then to do this, but they don't now? Mayor Galea told him it is no longer in our budget. Commissioner Rardin said this was directed by the Commission in 2011 and it shouldn't have to come back before a new Commission almost two years later to get it done. He said again this should get done and not be directed more than once. Mayor Galea said it hasn't been entirely on Staff's desk; it has been a back and forth between the company. She asked the City Attorney where we go from here.

City Attorney Thies said he has sent the access agreement and is waiting to hear their comments as to whether the terms are acceptable.

Commissioner Rardin asked if it wouldn't be better for the City to have our staff go out there. City Attorney Thies said no. Based on the interaction with this company he didn't think they had the financial wherewithal to pull this off and if we send our staff out there for three-four weeks and incur considerable expense, he questioned whether we would ever get repaid for those expenses. Without money up front, we would be left holding the bag. Commissioner Rardin asked if that is why we have drug the process out and City Attorney Thies said the process has gone on for a considerable amount of time through both parties' actions. This company hasn't contacted us. The letter sent to them after it came before the Commission in 2011 set terms that said this provides the backbone of an eventual agreement. It wasn't ever a binding agreement on the part of the City, but an instruction to them to contact him to start negotiating an agreement. We heard nothing from them during that period until we were approached by another company several months later who indicated they were interested in excavating the site.

Commissioner Rardin said he simply wanted to see this done. City Attorney Thies said it is done now and in their hands and he is waiting for a response back from them.

Joe Lewandowski said the budget is in the agreement and the company is paying for everything so it isn't an issue of the City of Alamogordo's budget being impacted because you are getting paid penny for penny back. Commissioner Renstschler asked him if the money was up front or paid back. He said they could put it up front if you wanted. He didn't see why City Attorney Thies thought the

company was not trustworthy. They have had over \$30 million in sales just over the last six months. He had investigated the company himself in order to protect the City of Alamogordo.

City Attorney Thies said during Mr. Carter and his telephone conversation with the company about a week ago, we requested a \$50,000 escrow deposit for the cost to cover us in the event this company did not do what they were required to do. They balked at providing the \$50,000 and we reduced it to \$25,000. If you look at the project budget, the potential costs could exceed that \$25,000, but we agreed to accept the \$25,000 up front to protect us. If this is a \$30 million company he didn't think \$25,000 up front would be a hindrance to starting this project. Mayor Galea asked if they had agreed to this and were paying up front. City Attorney Thies said he had not heard back from them.

Mayor Galea thought it seemed City Staff were moving forward with this and it did not need to come back to Commission on a future agenda unless you needed follow-up. Commissioner Rardin said it will have to come back to us when the City Attorney and these guys come to an agreement since it is a policy issue.

Commissioner Baldwin said since this is new to a lot of us with exception of the two commissioners, he would like to see it come back to us. There are a lot of ways we need to protect the City of Alamogordo, and he could see that we would have to have a final say on this.

Commissioner Rardin asked if two weeks was long enough – the May 28th meeting. City Attorney Thies said as soon as he receives a red line or signed copy back from the company it will be put on the agenda.

Commissioner Baldwin said he had played this game and it was horrible.

Commissioner Sikes asked that if only nine trucks made it here, why isn't the company looking for the other 21. Joe Lewandowski said that is the other mystery and no one knows where they ended up. She asked if he had taken pictures on the night he was there and he said he had. He removed them from the book because he was the solid waste company who beat the blue dumpster guys who used to be in town. Commissioner Sikes asked why they had come here to begin with. He said it was basically the solid waste regs. in New Mexico and the oversight of the landfill by the City Commission was virtually nil. It was an easy place to sneak in and dump. There were supposed to be security guards there to keep people from finding out. The way it got out was there was some city staff, whose names he did not reveal, who acquired some of those at the same time. The first day there were no security guards at the landfill when it occurred. He said BFI and Atari had this little deal going. When it didn't happen, they were all over Alamogordo and kids were taking crates of them to Gibson's to sell. The manager of Gibson's called the police department and then it was found they were getting them from the landfill. The City Commission met on a Saturday to shut it down because at that time the landfill had issues about whether it was full or not and there was trash coming from El Paso.

Mayor Galea asked if there are any other comments or questions

Joe Lewandowski told the Commission they would not be poking holes all over the landfill because they know exactly where it is based upon old photos.

Mayor Galea asked City Attorney Thies if we needed to approve an agreement tonight or will we need to wait until it comes back to Commission. City Attorney Thies said the draft agreement will be presented once it's received from the company.

Commissioner Rardin said so it will be on the next meeting if the company returns the agreement. Mayor Galea asked City Clerk Cantin when the deadline was for placing an agenda item on May 28th meeting. She told her next Tuesday, May 21st.

16. Discussion, and possible action, on the use of Robert's Rules of Order during Commission meetings according to the Rules of Conduct. (Josh Rardin, Commissioner)

Commissioner Rardin told the Commission basically Robert's Rules of Order got added to the Commission on a vote by former Commissioner Cole one or so years ago because certain members of the Commission did not like it. In the past, the Commission has simply used it as a guideline but hasn't followed it to a 'T'. He felt it has created a lot of confusion in the meetings and so he would rather use the Municipal League's version which is simpler.

Mayor Galea would like to start with discussion. She understood Robert's Rules of Order, but since not everyone was well versed in this, she did not want to appear as a bully chair. She gave the example, that according to Robert's Rules one should not hold the floor more than twice per agenda item. Also, once a person has made a motion they may not make an amendment to the motion. She has been relaxed with this because she did not want to appear as a bully chair. Commissioner Rardin asked why it had been changed. There were certain commissioners who didn't like the way a vote went and a former commissioner asked to change his vote at the next meeting. That's when this came about. Commissioner Rentschler said if you recall a commissioner got confused and went to the City Manager's office the next day and asked to change his vote, and the City Manager approved it.

Commissioner Sikes asked what the differences were between the Municipal League's rules of order and Robert's Rules. City Clerk Cantin said she would look into that, but believed it was general parliamentary procedure the League might have on their website. It involves some of Robert's Rules but is general parliamentary procedure which is a little bit different. Commissioner Rardin said it was written by the League Attorney.

Mayor Galea said it would still be the same as now where the Mayor entertains a motion prior to discussion. An item must be brought to the floor prior to discussion because there would be nothing to discuss without the motion. Commissioner Rardin said many times people's minds change during discussion and we end up with motions, amendments and more amendments and don't know what we are voting on.

Mayor Galea asked City Attorney Thies if a motion would still be required prior to discussion. He told her he thought that was true. He said it has been quite some time since he has read this version but it essentially deals with basic procedures such as when a motion should be brought, seconds to the motion, etc. It does not go into laying things on the table, how long they are on the table, if it falls off the table and goes away permanently. It doesn't go into as much detail as Robert's Rules. You don't need the more detailed rules such as Robert's Rule to conduct your business.

Commissioner Sikes said she serves on quite a few boards and appreciates the order of the meeting when conducted under a standard group of rules. She is familiar with Robert's Rules and applauds how Mayor Galea handles meetings. If we were to change the rules, it would be kind of silly. Everyone uses these rules to conduct a meeting.

Commissioner Rardin said the meetings were orderly prior to the adoption of Robert's Rules. We didn't have the rules governing us, and we didn't need them. He would like to repeal these rules.

Mayor Galea said we could conduct a workshop on the Rules of Order, both Robert's Rules of Order and the Municipal League Rules of Order. She told Commissioner Rardin it sounded like he would like her to be more relaxed as the Chair. Commissioner Rardin doesn't understand why we need to make a motion before discussion which causes confusion.

Commissioner Sikes asked how the discussion would have evolved differently on the cell phone issue if we didn't have rules. He said instead of making a motion right off the bat and then having someone amend it, the amendment would have been stated in the original motion. Mayor Galea said we would still have to follow parliamentary procedure. Commissioner Rardin said that was the way we have always done it.

Commissioner Baldwin said he liked the way it is, but doesn't really care either way. He asked for a copy of the League's Rules of Order so he could make a decision either way. City Clerk Cantin said she would take care of this.

Mayor Galea thought an orderly meeting helped us get out of a meeting before midnight like has happened before. She noted there would be no action taken on this tonight.

17. Notification of vacancies on Boards & Committees. *(Susie Galea, Mayor)*

Mayor Galea announced the Boards and Committees with current vacancies and the fact there were no nominations so no appointments would be made tonight.

Commissioner Rardin asked why we don't disband these committees since no one wants to serve on them.

Mayor Galea said the Airport Zoning Board was very important and named why. City Attorney Thies told him there are supposed to be five members of which one is from the County and one from the City since not all the airport property is in the City limits. They don't meet often and their primary purpose is to look at airport zoning ordinances. Once an ordinance is enacted it is fairly static. He went on to explain the importance of what this board does.

Mayor Galea asked who would help her to recruit. City Attorney Thies said we follow state statute. Commissioner Rardin asked what would happen if something came up tomorrow and we didn't have a quorum and City Attorney Thies told him we would have to find someone to serve.

City Clerk Cantin said there are some boards that are required as part of funding such as the Senior Advisory Programs Board. We are having a hard time finding anyone for the Disability Council who make decisions concerned with ADA. She said she would attach a list to the email she will be sending the Commissioners.

Commissioner Sikes asked how we seek people to serve and the Mayor said word of mouth. City Clerk Cantin said it is in the City Profile, the Annual Report and in the newspaper. We try to announce them as much as possible.

PUBLIC COMMENT *(Continued if needed)*

1) Paul Sanchez spoke told the Commission saying that in regard to the Rules of Order issue, he said the Agenda Book didn't list the League option and he would have liked to see this in advance.

2) Andrew Baker commented on Boards & Committees. He said he noticed that because of the size and nearness of HAFB, it might be a good idea to get someone from the base on the Airport Board. What affects them does affect us and visa versa.

3) Paul Langer said the last time he wanted to know if a plane was going to crash, he called a private repair shop at the airport and was given a number at HAFB to call. They did identify the plane. Every board he has been on while at the base had civilians on it. He told the Mayor he would be a volunteer at large and she could call on him anytime. He felt like the Mayor needed a body guard. He told Commissioner Rardin he has been here for 13 years and really likes it. He thinks things are in gear now because the old fogies like himself are stepping aside, but he told Commissioner Rardin he was too young to become one of them. He asked if he was a veteran and he said no.

4) Theta Harshey introduced herself saying she still lives at 1109 Juniper and she's still mad. She asked the Commission how they ever came up with posting the time from 8:00a.m. to 5:00 p.m. Mayor Galea asked if she would prefer a different time. Commissioner Baldwin said he thought it had been said this was a state ordinance.

Commissioner Rentschler said that traffic studies showed about 2,000 cars a day are on that street during those times. Ms. Harshey said 2,000 cars a day? She thought they are just there to see the signs the citizens have posted on their street.

Public Works Director Cesar said a few Commission meetings ago we talked about no parking and that we had signs in stock saying 8:00a.m.-5:00p.m. Monday-Friday. We found we couldn't put signs saying 'No Parking' so we decided to go with the 8-5 signs in stock. If the Commission decides to do different days or times, he will have to bring it back to the next meeting. Mayor Galea said she would like to have the times come back on the next agenda and have public input. Commissioner Rardin would like to have a Town Hall meeting.

Commissioner Rentschler said we are going to have a Town Hall meeting as soon as the design comes back. Theta Harshey asked him if he was going to take it into consideration of us then. Commissioner Rentschler said we brought it to you in December and the reason the no parking signs have come up at all is because you guys voted overwhelmingly to put them in. Everyone sitting out there that morning with the exception of one or two wanted no parking signs.

Theta Harshey said you asked for us to give some ideas or options. We had only an hour's time. She said she appreciated them giving some time to have some input into this that has such an effect on us on a daily basis. She told Commissioner Rentschler he could come to his home on another route without coming down their route.

Mayor Galea asked the Commission about a Public Hearing concerning this and to discuss the proposal for acquiring property for a parking space on 10th Street. Commissioner Rentschler said if the road is widened there won't be a problem.

5) Harv Hamilton said there was one person who offered to paint the street or pay for the paint. Today you can see there was no overwhelming vote. A Park-In instead of a Sit-In today reflected that. He told Commissioner Rentschler for him to say that was ridiculous. Commissioner Rentschler asked him if he remembered the lady standing up to ask if that was what they wanted and then it was voted on. He went on to say that at the Town Hall meeting there were 12 residences represented by 29 people, 29% of the houses on there, and those houses here said they would rather have no parking than to have the street widened. That was the consensus. He said when it comes to Juniper and everyone says it just happened, he reminded everyone there have been traffic counts taken on that street since 1998. In 1998 there were 2,600 cars a day on that road. What Juniper is all about is this, when the first house was built, 10th Street didn't go any further than that. There wasn't any McKinley Channel Bridge. You could drive up Juniper and that first subdivision was Juniper to Aspen and it was very quiet. When the city put that together they gave it wide easements in case the road ever needed to be widened. Those are city right-of-ways. Mr. Hamilton said they may be right-of-ways, but a retired city employee who was the street sweeper for the town told him where he bought on Crescent was kind of a guard for Juniper and Buena Vista School in case of flooding. They didn't fill in between 15th and 18th. Commissioner Rentschler said when they built the rest of Juniper they made the road wide enough to park a car and pass. Indian Wells is built double and Juniper went all the way to Indian Wells and then the town grew.

Tiffanie Owen said she has tried to be calm and he has her shaking. How can you sit here and look at your neighbors who have to continue to waste their time and energy trying to prove to you the concept in your mind is untrue. You refer to the College and the Hospital now in the area. They have been there for years and she didn't see why college students would use Juniper. They use Scenic and Indian Wells and so does the Hospital. She noted her mom did have a heart attack for the first time and said this is what you have done to your neighbors. She said she had not slept last night in anticipation of this meeting.

Mayor Galea asked her to use decorum when speaking and address comments to her. Commissioner Rentschler said that it was alright for her to speak to him.

Ms. Owen went on to address the traffic study. When the traffic study, or lack there of, was first discussed at the December 20th meeting which we attended, some people were dreaming. She said it was her 94 year old grandmother who volunteered to paint the curb. She said that jokingly to make the point she could save the Commission a million dollars by doing this. When this letter came to us stating the curbs would be painted, she had called Nancy Beshaler to ask what was going on. She told me that I had asked for this. Who, Ms. Owen said, would ask for this? Who would ask for no place for their families and friends to park when visiting their home?

Commissioner Rentschler responded the traffic studies have been done and this was the second Commission to approve them. They were lost, but they have been found and we had traffic counts originally from four years ago. City Attorney Thies said there was one from 1998 and a second in 2011. We could not locate a paper copy, but when he had ordered additional traffic studies it was determined the old one was still in the memory of the counter, so we downloaded a copy of it. Commissioner Rentschler said this has been going on for a long time. He promised her he had walked her street twice and had visited with Shelly, who is gone now, for an hour and she told him it was probably about time.

Tiffanie Owen thought she would strongly disagree with that now. Commissioner Rentschler said he was astonished when she brought him over to Mr. Hamilton's and had changed 180 degrees. What it comes down to is the 18 trees, he felt. Ms. Owen said they were sad about losing their trees and she said there were two trees in front of his house and it is the only house between 15th Street and Aspen with trees to shade your home and keep your utility bills low, but you want to cut down every one else's trees on the street. Commissioner Rentschler said portions of trees were growing on the city right-of-ways and when he had been asked if the city could reimburse for those trees, he said they probably could. Tiffanie said property values will decrease because the traffic will speed up, children will be less safe and the trees will be gone so utility bills go up. Now you want to take away parking. All of those things affect our property values and that is the number one concern. He agreed with her but the solution is being driven by the residents who live there. Ms. Owen referred back to the meeting on December 20th. He had said and Ms. Beshaler had told her the residents asked for this and it is written on comment forms. If so, maybe two or three wrote that down as an alternative to wrecking our street. What we did vote for was a 100% vote of no. We did not want the widening and that has been completely ignored. Why have the words of a joking 94 year old woman carried more weight than all of the residents who showed up that night five days before Christmas and with very little warning, and you asked our opinion and we said we do not want this.

Commissioner Rentschler said it was obvious he couldn't make sense with her or argue with her because he saw Nancy Beshaler stand up there and ask if they would consider 'No Parking' and everyone raised their hands. Ms. Owen said it was as an alternative to widening.

Mayor Galea said we will be here all night and we do appreciate the public comment for this item. We cannot bring it back up on the agenda until one of those who voted for the project brings is back as a project.

Tiffanie appreciated that opinions of our neighborhood that were not documented on December 20th are being documented at this meeting. She guaranteed that the residents who have met repeatedly to discuss this and have shown up here to show you we do not approve of this project are still not in favor of this project. We have not changed since December 20th and we won't.

Commissioner Rentschler says it comes down to the traffic counts. Ms. Owen said we have asked repeatedly for traffic studies and she understood that at the last meeting it was reported there were 900 cars going one way and 700 going the other way. By her math that adds up to 1,600, not 2,000. 2,000 cars means more than one care per minute 24 hours a day, and we don't see that. Commissioner Rentschler said it all happens during school time and at the end of the day. She said 7:45-8:15a.m. and maybe 3:15pm are when you might see a little bit of congestion. She and her family sat there all day today and saw very little traffic. Even with the 2,000 car claim, we don't see it. We would have trouble getting out of our driveways if there were that many cars, and we would have

been the first to bring this to your attention. You didn't hear a peep out of us because there isn't a problem. Commissioner Rentschler told her he had heard a peep out of the rest of the residents of his district to the north and northeast. Ms. Owen said she had not seen a record of any emails or phone calls that back this up. Commissioner Rentschler said that's fine and that's her opinion. She said she would rather have proof.

Mayor Galea thanked her for her comments and said nothing could be done until someone who voted in favor opposes it. She said the Staff will host a Public Hearing in regard to 'No Parking' and the parking times. Ms. Owen asked if a Public Hearing would be like the meeting in December and was told no. Ms. Owen asked if notes and minutes would be taken at a public hearing and was told yes.

6) Gloria Stone explained she was very emotional. Her brother has moved in with her and she goes to Albuquerque with him every week so he can get high doses of chemo. She has lost her mother and her father comes to eat meals at her house. Today, because of the yellow curb, she packed him up and took him to someone who is not a family member because he doesn't have the strength to walk five blocks. She asked if any Commissioner would want this on their street and be ok with it. She realized we have a severe speeding problem all hours of the day. She said nine of her vehicles had been hit and one drunk driver broadsided and totaled her daughter's new car. She said there is definitely a speeding problem and she has run to the street corner to pick up a child and then call 911 because he was hit by a car. The widening issue was not what she cared about. Her grandchildren going to college, her girls who come over to eat lunch or her brother having to be packed up and moved out today because you are going to paint my curb where I have bought and paid for my home, there is no justice and this is unconstitutional.

Mayor Galea asked the City Manager about the Juniper traffic study and whether it included speed limits. He told her it didn't and he said the information is simply traffic counts. He said DPS can put up a portable radar unit to track the speed.

Diana Trunzo spoke about the 30 mph speed limit. She said the limit on the divided section of Juniper is 30 and on ours is still 30. People fly through on our street. The problem isn't the parking, it is the speeding. 14th and Indiana has this problem and all these residential streets have this problem. The only thing is Mr. Rentschler doesn't live on their street, he lives on ours.

CITY MANAGER'S REPORT

1) Assistant City Manager McNeile invited everyone to the 36th Annual Armed Forces Day Celebration this Saturday and Sunday at Washington Park. There will be a lot of non-profit and commercial vendors there selling food and crafts. There will also be live entertainment. There are over 200 teams signed up for the GusMacker 3 on 3 Basketball Tournament. This brings a lot of out-of-town people to our city.

2) He said tomorrow evening will be the first night game for the White Sands Pupfish and he hoped one of the Commissioners would throw out the first pitch. It will begin at 6:00p.m., so he invited all seven of the Commissioners to come at 5:45p.m. The season started today and 24 out of the next 26 games will be at home. All night games are at 6:00p.m.

Mayor Galea asked Assistant City Manager McNeile when the no parking signs would be going up. Public Works Director Cesar said the signs are scheduled to go up today and active on the 17th. Mayor Galea said we will have a Public Hearing first, and he said he would postpone putting up the signs.

Commissioner Sikes said the curbs are not being painted, correct? He said that is correct. Assistant City Manager McNeile said that's why we would have a Public Hearing and when the date and time have been established we will advertise that.

Mayor Galea repeated that the curbs will not be painted and the signs will not go up until there is a Public Hearing to get public input to establish the agreed upon signs showing no parking times. She said it could be less restrictive than the 8:00a.m. – 5:00p.m. times.

Commissioner Sikes asked if the Public Meeting would only be to determine times for the no parking signs or would the public be able to bring alternate suggestions of what to do to alleviate some of their pain? Can we talk about other things besides the times on the no parking signs?

Commissioner Rentschler told her that until such time as the design is complete, he thought it should be limited to only that so as to avoid the same stuff we had here tonight. Until we have that study in front of us.....Someone from the audience interrupted him and Mayor Galea told them the Public Comment time was over. She said through our City Attorney and City Clerk we will have a Public Hearing in regards to no parking signs. We should be able to hear about the preliminary design study at the first meeting in July.

Commissioner Rardin asked Public Works Director Cesar if we could also look at putting a reduced speed limit up. He said it could be part of the Hearing process. Commissioner Rentschler said we would have DPS do a study.

Mayor Galea directed DPS to do a study on Juniper to determine whether it's an appropriate speed limit.

Commissioner Rardin said we did a traffic study in 1998 and asked for a copy of that and for all these guys. City Attorney Thies said you need to make a records request to do that. Commissioner Rardin asked if we have the copy of the 2011 study. City Attorney Thies said he doesn't pay attention to the numbers, he just follows the study.

Commissioner Baldwin noted someone in the audience asked where to make a public records request and they were told to go to the City Clerk's office to do this.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Pro-Tem Hernandez commented on the following:

1) He remarked that we have an election in March, and he said this is the second time he has done this and he doesn't know why he did it a second time. He was disappointed that people come and bash us when they don't know half of what is going on. He felt everyone up here makes a decision based on the information given them. A lot of that information is not always out there for the public to see. He makes his decisions on that information and does his homework, and didn't think he had ever made a decision just based on emotion. He encouraged anyone to run for upcoming open positions and see what it is like to sit up here and be judged by people not understanding everything that's going on. He had spoken to a lot of people out here and had spoken about the no parking signs, and you come up here and tell something different than what was discussed.

Commissioner Sikes commented on the following:

1) She said last Saturday, May 11th the Library had an event where over 100 people showed up to honor the 50th Anniversary of the Story Book Wall and also Maude Rathgeber who was the initiator of the Wall. She also had started the Friends of the Library and the City created a Proclamation for her. Of all the events she has attended at the Library as president of Friends of the Library this was probably one of the best events the city has had.

Commissioner Rentschler commented on the following:

1) He said he had attended an OCEDC Meeting. What that board has going on and what we hear isn't always what we get. They are doing a lot and have had four offers from call centers to bring employment to Alamogordo. The problem with them was they were looking for plug and play and we don't have an area for that. He thought we should look at this. They are looking for 500 employees and this also is a problem.

2) He also had been busy with the Regional Jet Service and had talked to the German Lt. Col. Andy Berg, Col. Eckman and the logistical guy at HAFB whose name he couldn't recall. We have talked about Regional Jet Service and it is a viable thing. HAFB is our anchor for this with about 8,500 – 8,700 inplanings a day going east to Houston. The German AF is our nugget because they are guaranteed one flight to Germany each year. He asked for a show of hands from the audience who fly on a regular basis. Later he met with the Committee of 50 and Senator Udall who talked highly of this. Commissioner Rentschler also attended a Pre-Check meeting at a residence in Alamogordo and the State Secretary of Economic Development Barella was there. He had met with OCEDC all day and was interested in what was happening with the RJS and may even help us with the American presentation in Ft. Worth. The Mike Boyd Group is the one group who makes recommendations to the airlines, and we are waiting for a response from American on this. He said it looks like it could happen and expected some movement on it in the next 30 days or so.

Mayor Galea thanked him and remarked she had been corresponding with the American Airlines Senior Management Market Development person. When Mr. Boyd is available we will be ready to meet.

Mayor Galea commented on the following:

- 1) May 2nd – Visited Bureau of Reclamations to see the zero emitting desal technology. It is new and would cost about \$4 per 1000. It's a very expensive way to save the environment, but it has a cost savings of not needing a deep well injection or large evaporation pond.
 - Also attended the National Day of Prayer event with Commissioners Sikes and Talbert
 - That evening attended the Otero/GreenTree board meeting where Chairman Rentschler conducted a productive meeting. We know that rates will have to increase to meet operating costs.
- 2) May 3rd – Visited with the SADD (Students Against Drunk Driving) group of the APS high school. I thanked the class for their efforts to prevent drunk driving and shared her personal story of riding in the backseat as a youth as her parents drank alcohol while driving. She talked them about what they can do now to prepare for future success.
 - That night there was staff picnic, and about half of the staff came and we had a good time. She thanked the sponsors that donated door prizes. The sponsors were Western Auto, O'Reiley Auto Store, Long John Silvers, Caliches, Brown Bag Deli, All About You Salon, The Beauty Shop, Papa Johns, Fun Active Golf, Plateau Espresso, Pepper's Grill, Walgreens, Chino & Brenda's Piñata's, Desert Lakes Golf, Jack Key Motor, Skydive White Sands, Dollar Boots & Jeans, Hitch-n-Post BBQ, Lowes Hardware, Inn of the Mountain Gods, Stella Vita, and Sonic.
- 3) May 4th she attend an Albuquerque based conservation class called "It's a Drought". The class and conservation incentives are funded through the base rates under the Water Authority. She learned that she use too much water at the times even when scheduling the watering. The class was free, and those attending from within the area received a \$20 rebate off their water bill. They have seen measured results of conservation efforts even while growing in population. She would like to bring the information to the next commission meeting to discuss and possibly consider offering this same class here.
- 4) May 6th – She went to the Senior Center to proclaim the month of May as Older American's Month.
- 5) May 6th – May 9th were the budget hearings involving the whole Commission. I think we should offer a Town Hall meeting to give a report of City.
- 6) May 7th - I spoke with Darron Williams from the White Sands Beautification Committee to apologize for any misunderstandings and to express my sincere apology for offending him by

limiting the presentation at 15mins. I explained that I had left 3 messages for former Mayor Steve Brockett, but received no return phone call. The Committee does not wish to make a second presentation or return to receive certificates of appreciation.

- 7) May 8th- Joined Bob Flotte for a radio show at 7:40am to talk about City projects.
 - At 11:30am I joined Bobby Martinez at Desert Sun Toyota for a fun marketing competition amongst APS gifted students. He hired a team that presented the best print ad, TV ad, and radio ad. Mr. Martinez presented a check for \$1000 to APS and will use some of the marketing ideas given to him in the competition. The winning team could also be able to bring a White Sands Blvd beautification concept to us for future adoption. They have the resources and professionalism needed to complete the task
- 8) May 10th – She was on the radio show with Marsha at 7am, joined the Chamber’s FAN Club at 8am, welcomed a La Luz Elem. class at the City pool at 9am, and attended the NMSU-A graduation ceremony with Col. Croft and also saw Commissioner Sikes there too.
 - Mayor Pro Tem Hernandez attended the Senior Volunteers Appreciation Dinner and gave a proclamation to the over 600 volunteers who serve us.
- 9) May 11th – 9am-12pm she worked with Habitat for Humanity and Lowes Hardware on a Women’s Only Build. Commissioner Sikes, also Friends of the Library President, hosted the Story Book Wall 50th anniversary and read a proclamation for her at 11am. She wasn’t able to make it to the library until 12:30, but the event was going well when she got there and everyone seemed to be enjoying themselves. Thank you to City staff for aiding so much in the success.
 - At 1:30pm she stopped in at the Plaza Pub building to see the progress. The building is looking more and more beautiful. The volunteers working to restore it are doing a great job.
- 10) May 13th – She attended the opening ceremony for the Otero County Fast Pitch season. She thought she was just there to represent the City, but was also asked to throw the first pitch and say a few words. Needless to say, I’ll admit I looked like a clown trying to make the first pitch in my dress clothes.
- 11) May 14th – She attended BI/GR at 7am and spoke at the Realtors Association at 12pm
What she learned at the BI/GR is: PNM is offering a \$10,000 grant that could aid us in a community garden as APS would like to team up to do. The DARE Picnic is this Thursday at the Zoo park (volunteer to serve lunch). Oregon Elementary tested 1st in the state and 1st in the nation in First in Math program. APS will see a \$2M revenue reduction (they plan to cut staff positions). The name for the new elementary school will be Desert Star Elementary. Heights Elementary and Academy Del Sol will be looking to fill principal positions. Friday, July 12th, there will be 500-700 military motorcyclists here hosted by the Chamber (The City should wave the reservation fee for Alameda Park 10am-2pm as it relates to service provided of economic development to the city). White Sands Nat’l monument reported that they had 47,000 visitors in the month of April. The Realtors Assoc reported there are 878 homes on the market in the county, 61 homes (53 of them new construction) in the last quarter, and they are up 56% in property value sales.
- 12) On May 24th there will be an Affordable Care Act seminar at Peppers Grill 11:30am-1pm (no host lunch).

Mayor Galea said in relation to the Commission and the Chamber of Commerce, she would like to ask Staff to organize a work session between the Commission, the Chamber of Commerce Board and OCEDC to discuss business as it pertains to the Budget. She also directed the Finance Staff to do a three year cost benefit analysis of OCEDC to show \$30,000 was the value added in services the community has received.

EXECUTIVE SESSION (Roll Call Vote Required)

Adjourn into Closed Session in compliance with Section 10-15-1.H, NMSA 1978 (2010 Cumulative Supplement), to discuss:

- **Collective Bargaining Negotiations (AFSCME).**
- **Purchase of Real Property (Section 16, T20S, R9E, NMPM)**

Commissioner Rentschler moved to adjourn into Executive Session to discuss Collective Bargaining Negotiations (AFSCME); and Purchase of Real Property (Section 16, TS20S, R9E, NMPM) at 9:37 p.m. Mayor Pro-Tem Hernandez seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

ADJOURNMENT





City Clerk Renee L. Cantin



Mayor Susie Galea

(Prepared by Nancy Jacobs, Deputy Clerk)
Approved at the Regular Meeting held on May 28th, 2013.