

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:00 P.M., COMMISSION CHAMBERS
JULY 22, 2014**

**SUSIE GALEA, MAYOR
JASON BALDWIN, COMMISSIONER
NADIA SIKES, COMMISSIONER
JENNY TURNBULL, COMMISSIONER
AL HERNANDEZ, COMMISSIONER**

**ROBERT RENTSCHLER, MAYOR PRO-TEM
DR. GEORGE STRAFACE, COMMISSIONER
JIM STAHLE, 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 given by Karen Pagel and the Pledge of Allegiance was led by Commissioner Baldwin.

APPROVAL OF AGENDA

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

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

PRESENTATIONS

- 1. Presentation related to water rights for the City of Alamogordo. (*Jim Brockmann, Water Attorney*)**

Mr. Jim Brockmann introduced himself and said he was asked to come to provide background and information in respect to the City's water issues in relation to some of the other regional water issues going on. He remarked that his firm began working with the City of Alamogordo about 10-15 years ago on water issues, and the primary thing they have been able to accomplish is to get the desalination permit from the State Engineer's Office. Thus, they have become familiar with the City's water system and permitting. He has been asked to give background of the basics of New Mexico Water Law, both in relation to what the City has for water rights and some of the regional issues.

From a legal perspective, he said, it starts with the State of New Mexico owning the corpus of the water right. The water users don't own the molecules of water; it is a public resource. We are allowed to use it by getting a water right through the State Engineers Office, called a User Factory Right – a right to use the water. As long as we follow the rules and regulations we can keep our water right, but the State maintains the ownership of the corpus. When states first came into the Union in the 1800's, the Federal government basically gave plenary control over the water rights to each state.

In the 1860's, 1870's and 1880's, there were a series of acts the US Supreme Court construed as providing plenary control over all waters within the state. It was up to the state to decide how to use that water right, and all the western states have a Water Administration system called Priority Appropriation; the senior right – first in time, first in right. The basic principal that guides the State of New Mexico and most western states is that, initially the Territorial Engineer handed out water rights and then later the State Engineer handed out water rights. There are exceptions to this; some uses predate statehood or even the territory and they got grandfathered in based upon use. One of the uses all the states have struggled with over time is how to integrate the federal lands and federal ownership of water rights into that state-based system. There are a couple ways this can happen. The first is any federal entities such as USFS, BLM and Bureau of Reclamation can obtain a state water right by going to the State Engineer and asking for one, just like you or I could. The City can get it, and industry can get it, farmers can get it, or a federal agency can apply to get it. The other, a more

common way such as we've seen in the news and talked about a lot, is a Federal Reserve water right. In a nutshell, there was a case in 1904 called US v. Winters out of Montana where the Federal government had carved out an Indian Reservation. Before they gave the land to the state, they said this is the reservation we are keeping aside for a federal purpose. In that case it was an Indian Reservation, but it could be a forest or BLM range lands. Whatever it is, it is a Federal Reserve, and the US Supreme Court said at that time when the Federal government withholds from the public domain a federal reservation, they impliedly reserve enough water to take care of the purposes of that reservation. It does make sense because at that time they carved out a reservation for an Indian tribe that would be worthless without water. Over time, there were a series of cases that tried to quantify in some general sense how much water was reserved for that federal purpose.

There has been recent discussion concerning US v. NM and that case was one argued in the US Supreme Court by the founder of our law firm. In that case, the Federal government (USFS) said we have a forest reserve and we need a large amount of water for everything we want to do in the forest. The State of New Mexico at that time said that is too much and wanted to keep plenary control so they could hand out additional water rights. New Mexico said the USFS claim was too big and needed to be narrowed. New Mexico and the Federal government fought this litigation up to the US Supreme Court, and what that case stood for was the Federal government does have a Federal Reserve water right as of the date with a priority as of the date that land was reserved, but it could not be for all the purposes of the forest. It was limited to the primary purposes of the forest, so that narrowed significantly the size of the water right claim. Once that water right is quantified, it gets put within the State system of administration where everything is administered by priority, and once it is reserved it falls within the system of administration. That is one way disputes can arise vis-à-vis the State or state-based water right owners in the Federal government. To sort those out, the State Engineer is the primary administrative agency that will look at that, and they will look at each of these water rights. This typically happens after adjudication where all the water rights within a stream system have been determined in court. It is an essential process in terms of administration so you know, to use the most recent example, if a rancher has a water right with a senior priority that is state based, then you have to know if there is a Federal reserve or state-based water right. Those get administered in priority, but largely it is up to the State Engineers office and the courts to sort out the validity of each of those water right claims. In that context of water rights administration are some of the disputes that arise between private waters, private water right owners, the Federal government and the State Engineers office. In this particular instance for the City of Alamogordo, what we try to do on a regular basis is pay attention to what is going on with the city surface and ground water rights. A lot of the surface water rights are located in the mountains. Are there USFS policies that could affect the City's ability to use that water right; is there anything that could challenge that water right within a priority system or try to usurp that right? The same with BLM in the Middle Rio Grande being a much more active player but not so much here. Each of the Federal agencies can have certain policies or priorities that could infringe on the City's rights, so what we try to do is be diligent to watch Federal policies taking place that might affect surface or ground water for the City of Alamogordo.

He went on to say there is a second way that private or state-based water rights can be threatened or usurped by Federal claims, and that is a whole different line of analysis than the first one he had talked about. The first one is a more typical quantification and determination of water rights within the system, but the Federal government typically comes in to a Federal Reserve water right, although it could be a state-based water right, also. The second thing that can happen is you get a whole different analysis when you bring in the Endangered Species Act. Probably the most local example of that is what is happening in the Middle Rio Grande with the Rio Grande Silvery Minnow. In that case, the Bureau of Reclamation operates a number of Federal reservoirs and there is a whole series of case laws that are way too complicated to get into for an overview tonight. There are a series of case laws that define the Endangered Species Act that requires there be a federal action before that law applies. If I have an endangered species in my back yard and the Federal government is not involved, they cannot regulate my activity. The Endangered Species Act only applies when there is a federal nexus or federal activity; then the Endangered Species Act kicks in. When you start looking, that is actually quite common and can happen with the permitting of reservoirs, reservoir operations, releases of water and storage, grazing permits, federal loans for agricultural and ranching purposes

and in a lot of places there ends up being a federal nexus. Once you have a federal nexus, the Endangered Species Act is kicking in and then there is a threatened species or endangered species, the first markers we are looking for; then, importantly, the designation of critical habitat. Once they have defined critical habitat, a lot goes into protecting that habitat and that is typically where conflicts can come in vis-à-vis state-based water rights. Going back to the example of the Middle Rio Grande, the question became, and it went to a Federal judge and then to the 10th Circuit, whether the Bureau of Reclamation could change the operation of the reservoirs and take water from the City of Albuquerque, Rio Rancho and other communities, take water from the Middle Rio Grande Conservancy District which are the farming entities, and provide that water first to the Silvery Minnow which is the endangered species. In that case, and again it is a complicated analysis that is too lengthy to go into tonight, the judge found that yes, the Endangered Species Act did trump those state-based water rights so the Middle Rio Grande Water would need to go first for the endangered species and then to the state-based water users.

Mr. Brockmann continued saying that after that ruling the parties got together and basically worked out an accommodation for everyone where reservoirs were managed in a particular way that were agreed to between the federal agencies and the private water users. At the time, Senator Domenici stepped in and in Congress put a rider into an appropriations bill to make sure the Endangered Species Act for at least a ten year period, was not going to upset the parties' arrangement they had made for how to allocate water in that particular area. In the local dispute in Otero County, that is not one our firm has directly been involved with; we don't have a client in that, so we only know generally what we had read in the newspaper and various articles about the dispute. There will be probably both of those analyses going on, looking at whether you have a state-based water right and what the water right is of the particular rancher, whether the USFS has claims either under a state-based water right or a federal reserve right. There will also be a separate analysis on endangered species and the critical habitat. Our issue that we have tried to focus on as a firm tends to be more to the City of Alamogordo, and we will be watching the Federal Register and any other documents that we can find to follow endangered species listings, to follow critical habitat, because that is the point where the City's water rights are, and he wouldn't say in jeopardy, but something we need to be diligent to make sure they aren't infringed through any of those actions. We will always have an opportunity to comment on those things once critical habitat is designated; it is published in the Federal Register and parties have an opportunity to comment on those things. There are different accommodations that can be made, but we thought given the local interest in the dispute and where Alamogordo is in terms of its present water system, it might be worth his time to come and give a bit of an overview in terms of the basic nature of the City's water rights and how these conflicts can arise, vis-à-vis the Federal government and some of the issues that are happening up in the Sacramento Mountains.

Mr. Brockmann said that is a quick overview and we could spend four or five days if anyone really wants to spend that much time. He asked for any specific questions.

Mayor Galea said she had a specific question that was left from the last meeting minutes. She asked if someone without adjudicated water, a private water right through the State Engineers office, could claim a water right through the beneficial use clause.

Mr. Brockmann said beneficial use is a concept; it is not how you obtain a right but more how you maintain a right. In other words, if you have a water right, if the State Engineer granted a permit for a water right, you maintain that right by placing it to beneficial use. If the water right was initiated before New Mexico's laws were in place and initiated under the Common Law, those water rights can be maintained through beneficial use. When the State Engineer actually looks at the establishment of a water right, he is not looking at just whether a water right has been beneficially used. They will look at a number of elements that create the water right; typically a diversion is one the State Engineer has required. Going back into the 1960's and 1970's, they required a diversion from a stream to create a water right, so it's a number of factors that will go into the creation of a water right and then the beneficial use maintains that right.

Mayor Galea said the City spent a lot of money on developing the 40 Year Water Plan. She asked Mr. Brockmann to explain how that Plan protects our water rights as an asset. He explained there is a statute under the Water Code that requires municipalities to create a 40 Year Water Plan. It is really a protection for the City because in the past with most private water users, a non-municipality, the idea with water rights was use it or lose it. You can have some periods of time of non-use and maintain a water right, but if you go long periods of time without using a water right it can be lost through concepts of forfeiture and abandonment. With the municipality there was recognition by the Legislature that a city would invest major money in infrastructure projects. We needed to acquire water rights and it took longer periods of time; we couldn't just plan for this year, next year or even five years, our planning time had to be much longer. They passed a statute that allows a municipality to acquire and hold water rights unused for up to 40 years. That becomes our 40 year planning horizon and that's the reason for the 40 Year Water Plans. Alamogordo developed a 40 Year Water Plan as part of a hearing we did on the Desalination Project, and it essentially provides a road map for the development. It looks at alternatives the City could develop over time, it looks at the City's water resources, it provide an inventory or a portfolio of our water rights with a description of how and when they can be used, it looks at our 40 year demand saying we expect our population growth to be at this level and we use so many gallons per capita. By putting all of that in there, essentially, it protects the City from having to use that water right on any kind of an immediate basis. It gives us the time to develop these resources and that is kind of the way it will be with the Desalination Project. It is being built and the City is spending a lot of money today to work on a major infrastructure project that will benefit this community for 30, 40 and 50 years. Some of those costs are being telescoped into today's dollars but it is a benefit to the community for decades to come. That 40 Year Plan is a key planning element because we developed that; internally the City Commission and City Staff provide direction on how to develop that and where their best sources are. Essentially, that document gets reviewed and accepted by the Commission and is then presented to the State Engineers Office as sort of the planning document for the City of Alamogordo.

Commissioner Straface asked how often the 40 Year Plan was renewed. Mr. Brockmann said it varies a little bit because once you get a permit there is typically a condition of approval that says to update this plan every five or ten years. When we got the approval of the Desalination Permit, the State Engineers Office asked the City to renew that plan and update it five years after that permit became final. So, he thought City Staff was in the process of updating that and in the next few months the Commission will be seeing an update that will then be provided to the State Engineers Office.

Commissioner Straface said he had said there are two ways to acquire water rights, and they are then placed in priority order. Is there an automatic process in the priority that they become first priority? Mr. Brockmann said no; it is usually based upon the initiation of the right. In the West it is not clean because of a lot of pre-Territory or pre-Statehood water use, and it goes back to old concepts of mining law that actually developed in California, where the first person who took water from the stream for mining got his water right first. The next one got the water right second and so forth, so if there wasn't water, you cut back the juniors until there was enough water for the first one or first two. That was the concept and so in New Mexico there was a good deal of pre-Territory or pre-Statehood water use. Under Common Law you would go back and see when that first use was, so if you had a water right and started using it in 1850 and I had a water right that I began using in 1855, then those became the priorities. Ultimately what the State Engineer does through the course of adjudications which unfortunately take decades to complete here, you end up with a three inch report listing all the water rights and everyone's priorities. In a typical year when there is enough flow, those priorities don't make any difference because you take your water, I take mine and everyone else takes theirs. Where the priority really kicks in is during times of drought, because if my right is junior, I'm told to shut off until you get your full right; that's where it really comes in.

Mayor Pro-Tem Rentschler thanked Mr. Brockmann for coming. He asked about the State maintaining the water rights. Mr. Brockmann told him the State Engineer administers the water rights and keeps lists of every file and defines each water right. They maintain a list of the water rights and maintain files that contain descriptions and ownership of those water rights.

Mayor Pro-Tem Rentschler said we have surface rights and other rights all around the Sacramento Mountains. He asked him if the Federal government had applied for or if they had any water rights, per say, in the Sacramento Mountains. Mr. Brockmann said he did not know. If I was a judge in that case or if we were representing a party, that is the kind of research I would be doing; looking at the water right. If you were an attorney for the Federal government, you would be looking at the legal basis for claiming either a water right or the ability to fence off a riparian area or a spring; does the authority come from the ESA, does it come from the Multiple Use Act, what is the authority for the action. On the private landowner side, I would be making sure I have my state-based water right, do I have an agreement from the State Engineer, is it a good, solid water right, is it on file, is it seniored anything that the Federal government is claiming, and what are those Federal government claims. I've been told, but I don't know this for sure, that the USFS does have a claim to a state-based water right. They had actually applied in the 1930's or 1940's to the State Engineer for a permit. Is it still a valid right?

Mayor Pro-Tem Rentschler asked if it was a particular water right or just a general. He said you talked about the water right being too broad and going to court to narrow that request made by the USFS down to the USFS's primary function which is what? Mr. Brockmann said there are two ways a Federal agency can obtain a water right. One is they can walk into the State Engineers Office just like you or me and say I want a permit to appropriate water, and that puts them on the same footing as you and me; you're first in line, they're second and I'm third. That's obtaining it through the state-based system of a permit, essentially. The other way they can obtain it that you are alluding to is a Federal Reserve water right. This is not one where they have gone to the State Engineers Office and basically said I need a permit, but instead, these are created by implication when a Federal Reserve is withdrawn from the Federal domain. That's the tricky part of those rights because they haven't gone to the State Engineers Office and said I have a million acres of forest land and I need a thousand acre feed per year of water for fish and wildlife purposes. They could do that, but instead under the Federal Reserve Water Rights Doctrine, they are saying that here are our million acres, we reserved this in (and he made up a year) 1910, and when we did that the Federal government meant to reserve so much water. Now we have to figure out how much water was intended to be reserved, because it is really a legal fiction; they didn't actually reserve the water but that piece of land is worthless without it. We are trying to figure out that Federal Reserve water right and what the quantity of water is. The priority date isn't usually as much of an issue because it is the date it was withdrawn from the Public Domain. That is the difference; the Federal government can acquire one through the State system or by a Federal Reserve water right.

Mayor Pro-Tem Rentschler asked if he knew of any recent cases in New Mexico, locally or in the Gila that involved the USFS and water rights. Mr. Brockmann said he had heard from the State Engineers Office that there is some on-going litigation over some of the lakes in the Gila, but he did not know any details about it.

Mayor Pro-Tem Rentschler said we have recently allowed the USFS to have two taps off the line coming off the Scott Able; water running towards the Rio Grande. Since we let them into our water, does that imply they have any water rights; can we cut them off at any given time? What does that do to us? We've also done it on the uphill side of the people that were using it. Does that establish a water right that we cannot cut off to them? Mr. Brockmann said what he understood generally, and he would really have to review documents, is that the City owns some water rights in Sacramento Lake; this water right runs down and had taken water to Oro Grande. For some period of years there was a lease to those water rights which should maintain the beneficial use even though it wasn't being used by the City; it was being used under a lease with the City which maintains the beneficial use of the right. It was his understanding that lease recently expired and that there is talk of an agreement to have that line maintained for the use of the water. If the USFS or BLM or anybody just taps into that line and it is the City's line with the City's water right, that should not create a water right in them, but for the City's protection I would make sure an agreement was drafted that was clear stating the water line is either the City's or if it is going to be deeded over, and any use of the water off that line remains in the ownership of the City. Simply the act of tapping into that line should not create a water right. Mayor Pro-Tem Rentschler said beneficial use will not establish a water right for the USFS, is what

you are telling me. Mr. Brockmann said you are talking about a diversion off a city owned line and putting it to beneficial use. In that instance where it is the City's water right coming through a city owned line at this point, that doesn't create a right in the USFS, under that hypothetically.

Mayor Pro-Tem Rentschler asked if he had seen any of the documents involving these taps. Mr. Brockmann replied he had not. Mayor Pro-Tem Rentschler said we can get you some. Mr. Brockmann said we met this afternoon and had some discussions about looking at some of those.

City Manager Stahle asked if a cow was a diversion. Mr. Brockmann said it was not, it was an animal. City Manager Stahle said he was aware of that but wondered if under water law it could be considered a diversion. Mr. Brockmann explained that the State Engineers Office has taken the position that there has to be a diversion from the stream, so if we had a client, I would advise them to make a diversion from the stream and not fight the State Engineers Office over that. If it went back in time, I would be in the State Engineers Office working with them to quantify that water right so that if there was another battle it was not against the State Engineers Office. Typically, working with the Engineers Office we find to be the best initial course in terms of establishing the water right and only having to fight them where we can't get the cooperation we need.

Mr. Brockmann said one other item he had mentioned to Staff this afternoon and wanted to mention to the Commission was in the past we have had a water workshop or water retreat on a Saturday morning where we spent time going over more history of the City's water rights, water use and patterns of water use. Not too long ago, the City was diverting almost 250 gallons per capita per day, and through drought and conservation ordinances, etc., there was a real push to bring that number down. The City's conservation efforts brought that number down by about 2,000 to 165, and ten years later down to about 130. Those conservation efforts were absolutely key in terms of us being able to get that Desal Permit and getting our 40 Year Plan approved. So, the State Engineer understood the efforts the City of Alamogordo went through to conserve water, and it was a big piece of the evidence we were able to present both at a State Engineer trial and in District Court, and we had a conservation plan that showed the City's efforts. It went a long ways in helping that Desalination Facility, so the 40 Year Plan, the Conservation Plan and the City's efforts were all key. If we do a water workshop at some point, he would be happy to come down any day of the week or on a weekend and be available for several hours to go through more of a history where there could be some interaction. He left it to the Commission and City Staff as to whether that would be useful.

Mayor Galea said he touched on a good point about conservation efforts. The citizens have spent a lot of tax dollars to acquire the assets for those conservation measures, especially through the re-use program of watering our parks with only re-use water. There is over \$70 million in assets alone in our water re-use system. She thought it would be beneficial for the whole commission to have a water workshop. She knew she had a lot of questions from citizens who want to better understand water plans, and she could not explain how having a Desalination Plant off LaVelle Road through a gravity fed water system would be able to reach our water filtration system in La Luz. She would like to see some charts and graphs. She felt all would find a water workshop useful, but she suggested we work with our staff and the city manager to make that happen in the future.

Commissioner Straface said he would support that.

2. Presentation of the June 30, 2014 Quarterly Report for Otero County Economic Development Council (OCEDC). (Mike Espiritu, President & CEO)

Mr. Mike Espiritu, President & CEO of the Alamogordo Chamber of Commerce gave his Power Point presentation to the Commission (in agenda book). He told them of their web site activity and explained one of their goals for this first quarter was to enhance the website. There had been 11,000 total unique visitors and 42,236 total visits for the year. It was important so many were looking at us, because the number one location source is the web site. He pointed out the marketing and industry trade shows and symposiums they had attended such as the NM Economic Development Summit in Hobbs. Another was the Industrial Asset Management Council (IAMC) which is the organization

meeting twice a year. It is made up of one third economic developers across the nation and world, one third site consultants and one third site selectors, and it is a unique organization where we are able interface with people in decision making positions. We attended two events for the Association for Unmanned Vehicle Systems International and gave a presentation on a panel at one of those events. We also attended the International Economic Development Council in June.

Mr. Espiritu said our sales mission this quarter was tied to Aerospace and he pointed out the companies. He noted one company, Silicon Forest Electronics, was a supply chain for current activities that is interested in expanding. EADS Global, which is now Air Bus, was rapidly moving towards working with unmanned systems and was hoping to expand. The leads he had from this last quarter were seven prospective recruitment opportunities from the New Mexico Partnership and 52 Industry publications. There had not been any real estate/commercial property inquiries or local community/partners. In Workforce Development, they had partnerships with Alamogordo Public Schools and NMSU-A, as well as NM/Holloman AFB USAF Wounded Warrior Intern program which helps wounded warriors, particularly from HAFB who are transitioning into professions they want to pursue. Mr. Espiritu noted current economic based job businesses: PreCheck, Inc. with 133 employees, Xerox Services with 142 employees and 50-60 new jobs by August 2014, and Western Baking Corporation with 59 part-time, on-call employees. Other activities they are involved in are NM Rural Economic Development Council which Alamogordo hosted last week, NM State Legislature Rural Economic Development Committee and Liquor Control Act Task Force whose purpose is to create changes to the state's Liquor Control Act that benefits retail opportunities in rural communities. Some others were NM State Economic Development Job Training Incentive Program (JTIP) Board meeting to award Neptune Aviation and PreCheck training funds for prospective new hires, the City Branding Initiative, and the Quarterly Military/Civic Leaders Meeting in June.

He went on to speak about the Regional Innovation Cluster Proposal. We have an amazing opportunity because the Small Business Administration (SBA) has submitted an opportunity to invest in new clusters to span new technologies, from energy and manufacturing to agriculture and advance defense technologies. There are currently 40 clusters nationally. The SBA plans to award three to four new contracts by September 30, 2014, with proposals due July 31, 2014. He explained the impacts and benefits for the City of Alamogordo and Otero County; help us leverage ongoing efforts for an integrated strategy, help us build innovative, high growth companies, forge durable public-private partnerships, create a culture of innovation through Science, Technology, Engineering and Mathematics (STEM) education, and an endorsement by the SBA that will help us attract high-tech companies in order to create high wages and high-tech jobs. He said their strategy was to continue meeting with SNMEDD/COG in order to expand current operations into the counties and provide capacity and establish a collaborative network, establish regional governance utilizing the SNMEDD/COG framework, utilize the Regional Economic Development Councils as strategic partners and service providers, and work with other service providers including Sandia National Labs, NMSU, Arrowhead Center, and the Small Business Development Centers across our region.

Mr. Espiritu said their next actions were with Emerging Technology Ventures (ETV) which is preparing a collaborative proposal and acquiring letters of support/resolutions to meet the SBA July 31, 2014 deadline. This is an important factor in helping us to achieve success with this. He said his vision was that southern NM and particularly Alamogordo and Otero County are well positioned to attracting high-tech companies. ETV is like an anchor company in a mall and it should attract more companies.

Mayor Galea knew he had been active with the Council of Governments and asked him to talk to the commission about the Fund It Program and how it will help improve rapid innovation. Mr. Espiritu explained the Fund It Program was a new one developed by the state Economic Development department. Fund It has created collaborative partners from about 14 different agencies across our state that will help to review projects in order to find ways to access capital to help projects be successful. There are different mechanisms to provide projects to that group; one is the Council of Governments and it could be us in Alamogordo. This is an opportunity that hasn't existed before where we truly have a collaboration of state agencies and other agencies to help companies get started. Fund It is also a new portal for the State where there is access to more information resources

that were scattered in the past and hard to access. It provides opportunities for companies to be successful.

Mayor Galea asked about how he is working through the Rural Economic Development Council to focus on expanding broadband technology so we can attract more data centers. He said the work on broadband is a critical piece of infrastructure in any community. One strategy they are currently working on is development of attracting data centers which require significant broadband and other needs to be successful. We have discovered that New Mexico has a broadband problem; sufficient band width to provide necessary means for projects and for the military. The broadband initiative will help find ways that we can create better broadband access for companies here and across the state of New Mexico. A provider spoke to us at the Council meeting; they are a global company that provides a lot of infrastructure needs with their own financing, a multi-billion dollar company who helps fund big infrastructure projects. This company in particular provides municipalities and states with help to achieve success in furthering their broadband capabilities.

Mayor Galea said in regard to the workforce, we need to gear that up for upcoming jobs with these companies. She was grateful he was working with the Wounded Warrior program for HAFB and the ESGR, the state level of Guard and Reserve. She said we have a number of them locally who want to work here, but can't find a job. She hoped we could bridge that gap in the future with these emerging work opportunities. She hoped Mr. Espiritu would also work with the ESGR program. Mr. Espiritu responded that the state director, Ray Badalini, was a personal colleague of his, and they have met on several occasions on how the ESGR supports the Guard and Reserve. It helps to transition the Guard and Reservists into career fields, just like the Wounded Warrior program and others to help veterans find success as they transition out of the military.

Commissioner Straface asked about the list of companies that have added employees. He wanted to know if the number of employees under Western Baking were new or existing. Mr. Espiritu told him that number is current, not new. Commissioner Straface said he was having trouble conceptually understanding the Regional Innovation Cluster (RIC) proposal. What will it do for us? Mr. Espiritu said he had Cliff Hudson here tonight and he could discuss even more what we are doing. Commissioner Straface wanted to know concrete things.

Mr. Cliff Hudson addressed the commission, explaining the program was begun by the SBA in 2009, and the effort was to reach out to the small business community. The SBA does a great job of creating training opportunities, but they saw that the connective opportunity was missing. How do you work individually with companies, help them develop their business plans, and bring them together to go after large efforts they can't obtain by themselves. That is the basis of the program, to bring a regional environment tailored to the individual companies in that region.

Mayor Galea asked him to explain how he had created a successful cluster in Detroit. Mr. Hudson said he had spent a year at the SBA setting up the RIC program for the administrator. In 2009, the auto industry was really tanking, so we were looking at what new industries we could bring there, and how we could influence and work with the small business community to help that region recover. Our first program was in Detroit and was kicked off in July of 2009. We looked at the enabling technologies the auto industry was developing such as road following, lane departure warning and some of the advanced sensor programs. We saw that robotics and unmanned systems shared those same technologies, so we brought the small and large businesses together, the educational institutions together, and then we mapped a new road map for that region using the infrastructure, the talents of that region, the workforce and the technologies, and developed an overall business plan for the community to recover from the downturn in the auto industry. We created some new partnerships and saw many new companies emerge from that effort. It is a grass-roots effort and not a top/down approach; it is connecting the community together and not duplicating. There is a wonderful amount of resources already out there, but how can you focus and integrate those for the good of the individual businesses that are in your community. There is quite a bit of focus training. One of the first things we do when a company joins the cluster is a needs assessment. It is understanding that company, setting a profile for that company, and understanding what things can help them become

successful and grow in the community. It is setting a road map for that company and targeting the resources of the cluster towards that company. Each one has an individual profile.

Commissioner Straface paraphrased that they network with large and small companies to identify future needs and then recruit businesses based on those needs. Mr. Hudson said that was an excellent synopsis.

Commissioner Straface asked him what the cost was and who pays it. Mr. Hudson told him the SBA is funding between \$500,000 and \$600,000 per year to focus on that. There is no cost to the community and it is all federal funding directed to the good of the community. Commissioner Straface asked if we were in the process of applying. Mr. Hudson told him yes, we are developing the proposal now. Commissioner Straface asked who he meant when he said 'we'. Mr. Hudson told him they are working with the EDC's and the SNMEDD. It is very important to us that this cluster come under the governance of the Council of Governments because it should be community driven. That is why we have made the proposal that the cluster be governed by the public entities. We will be a servicing organization for it, but so will the SBDC's and the EDC's.

Commissioner Straface asked if they had established a time line and a way to measure their effectiveness. Mr. Hudson said yes, in fact the SBA has a set of metrics that we will have to be reporting on; job creation, growth in individual companies, new contracts, a total of 12-14 factors being used to measure the effectiveness of the program. Commissioner Straface said he would like to see those factors sometime and Mr. Hudson said he had them in his notebook and would share when there was a break.

PUBLIC COMMENT

A. Jimmie Randall commented on the following:

1) Mr. Randall said he was bringing an old dog back to work. He had given his letter to the commission and he then read it for the audience. It was dated July 22, 2014 and said:

Notes about the culverts:

I have been in front of the City Commission for approximately 11 years trying to get the culverts removed from the City's drainage ditch to the east of Oasis Trailer Park.

Because of the flooding I have personally spent approximately \$50,000, cleaning my property and replacing the pavement that was destroyed by the flooding. The City has spent thousands cleaning up the mud and debris.

Before the culverts were put in, I collected money from the property owners on Lawrence Blvd. to buy oil to have the street double penetrated with the oil. The property owners paid for the oil, and the City did the work and the gravel on Lawrence Blvd.

Because of the flooding, Lawrence Blvd. is one big mess, and I think it is the City's responsibility to put the road back in the same condition that it was before installation of the culverts.

It has been voted on twice by the Commission to remove the culverts. Hindsight tells us that it would have been a lot easier to remove the culverts, and let the gentleman who installed the culverts file suit on the City. Now we are at a standstill regarding who is going to make the decision to do what the Judge ordered.

PLEASE, COMMISSION, MAKE A DECISION AND GET THE CULVERTS REMOVED. I HAVE BEEN FLOODED ONCE THIS YEAR.

I would also like to talk about 26th Street that was put in place by the City. It was raised approximately 15", and was not put in according to the Americans with Disabilities Act guidelines. There are no sidewalks or curb & gutter. I was told by City staff they did not have the funds for that, so now it is flooding the building at 2423 Lawrence, which is AMR. Does the City have the authority to install a road that is not compliant with the Americans with Disabilities Act?

Signed: Jimmie Randall

Mr. Randall said he would like a decision about the culverts pretty quick.

B. Eugene Downer commented on the following:

1) Mr. Downer complimented the Mayor on having rose bushes planted along the Alameda Park boundary. Mayor Galea told him that was in honor of Col. Croft (HAFB) and his work with the community. It was funded through Keep Alamogordo Beautiful (KAB) and had the help of three Boy Scout troops. Most of the work was done by City Staff who pre-dug the holes and then the Boy Scouts were able to plant the rose bushes within an hour.

2) Mr. Downer then addressed dead trees within the City park system. He noted he had appeared before the commission three times to talk about the removal of two small trees, one down the street from Mayor Pro-Tem Rentschler's residence and one in another small park. Two of our major parks, the Zoo and Alameda Park have huge, gigantic, dead trees. They are great for hanging but that is no longer legal here in New Mexico, however we could start hanging politicians in effigy if those trees are not taken down. He only wanted to come once, but had to come three times to get those two dinky trees removed, so something is not operating efficiently within the City government. Our parks are going to hell and they look like hell. He drove by Alameda Park on Saturday and there were 25 cars parked by the playground. People were out trying to find a shady place to picnic. A lot of poor people use that park, and he thought the City was discriminating against poor people by not maintaining Alameda Park. Six million dollars on a Family Fun Center, but a lot of people go to Alameda Park to have fun. It affects the visitor's opinion of the City and it looks like crap; we need to do something about it and do something immediately. We need to review the process, who is responsible for maintaining the park and who do they report to. Mr. Stahle is the Chief Executive Officer and \$45 million dollars a year, as Mr. Rentschler pointed out.....Mr. Downer didn't think the parks were getting enough of that money.

3) He thought it very important to have a twice per year review of the water systems. He was at Bonito Lake recently and saw a lot of debris and erosion, and he thought we needed to protect our rights. It looks like there is some development happening in the High Rolls area, and he thought we got water from that water shed. He has seen developers dam up the water, so he thought we need to review our rights and protect them not just for this year but for 100 years down the road. The Colorado River Compact affects millions of people in the West, and that is 100 years old. We need to protect the water for Otero County citizens of Alamogordo, and that needs an ongoing review.

C. Joel Villarreal commented on the following:

1) Mr. Villarreal wanted to make sure everyone is reminded that right now we are still in negotiations with the City of Alamogordo, and we saw there were some revisions being made to the Budget tonight. We ask you hold this in consideration when you are looking through this stuff, because we were under the impression at the last meeting that we were extremely close to coming to an agreement. We feel the proposals we've made were far within the guidelines set by the monetary parameters you had established, and were even more so at this point. He didn't know if they had an opportunity to review the Labor Management Relations Ordinance of the City of Alamogordo, but our lives are literally in your hands. This isn't like any other ordinance he is used to dealing with, but it is what it is. We would ask that because of that, no matter what happens in this deal, the ultimate decision will always come back to this commission. Because of that, we are really asking that you look at the proposals made. This wasn't something just the Union came up with, it was something both sides thought was reasonable, and we ask you hold us in consideration as you go forward.

CONSENT AGENDA (Roll Call Vote Required for items No. 6, 7, 8, 9, 10, & A-2)

3. **Approve Minutes of the June 26, 2014 Special Meeting and the July 8, 2014 Regular Meeting of the Alamogordo City Commission.** (*Renee Cantin, City Clerk*)
4. **Approve statement related to the Executive Session of July 8, 2014.** (*Renee Cantin, City Clerk*)
5. **Approve the Lodger's Tax Expenditures for Tourism & Travel.** (*Jan Wafful, CS Admin. Assistant*)

6. **Approve Resolution No. 2014-29 approving a Fund Balance Reserve Policy. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*
8. **Approve Resolution No. 2014-33 approving the DFA Quarterly Report for the period ending June 30, 2014. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*
9. **Approve Resolution No. 2014-34 supporting Emerging Technology Venture Inc.'s Regional Innovation Cluster Program Application to the United States Small Business Administration. [Roll call vote required]** *(Ruben Segura, Grants Coordinator)*
10. **Approve Resolution No. 2014-35 amending Resolution No. 2009-36 designating the signatory authorization for the City of Alamogordo to include the Assistant Finance Director. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*
11. **Approve an application for participation in the FY 2015 Community DWI Program.** *(Robert Duncan, Police Chief)*
12. **Approve the Agreement to transfer the leases located at E3-C and E8-C at the Alamogordo White Sands Regional Airport from the estate of Charles Diehl to Jacqueline and Lorena Diehl.** *(Matt McNeile, Assistant City Manager and Jim Talbert, Airport Manager)*
14. **Approve the Replat of Quail Hollow Subdivision, Lots 7-11 and Quail Hollow 2 Subdivision, Lots 2A-8A from 12 lots to 15 smaller lots.** *(Stella Rael, Planning & Zoning Coordinator)*
- A-1. **Approve the Agreement between Otero County, the City of Alamogordo and the Village of Tularosa related to Ambulance Service Dispatch Center and Dispatch Services.** *(Robert Duncan, Police Chief and Mikel Ward, Fire Chief)*
- A-2. **Consider, and act upon, Resolution No. 2014-36 approving the submission of an application to the United States Department of Transportation for financial assistance under the Small Community Air Service Development Program (SCASD) for a carrier service guarantee and/or marketing and promotion project, providing for a match. [Roll call vote required]** *(Matt McNeile, Assistant City Manager)*

Commissioner Turnbull asked to remove Item # 7 from the consent calendar. Mayor Pro-Tem Rentschler asked to remove Item #13 from the consent calendar.

Mayor Pro-Tem Rentschler moved to approve items # 3, 4, 5, 6, 8, 9, 10, 11, 12, 14, A-1, A-2 of the consent calendar. Commissioner Straface seconded the motion. Roll call was taken for items # 6, 8, 9, 10, A-2. Motion carried with a vote of 7-0-0.

ITEMS REMOVED FROM CONSENT AGENDA

7. **Approve Resolution No. 2014-30 amending the Preliminary FY 2014-2015 Budget with carry-over fund balances, and adopting the Final budget for FY 2014-2015. [Roll call vote required]** *(LeeAnn Nichols, Finance Director)*

Finance Director LeeAnn Nichols handed out a REVISED AGENDA REPORT for this item.

Commissioner Turnbull wanted to comment on the budget before we adopt it. During the budget meetings we were told no City employees were getting raises, and she wanted clarification as to whether that was still true, and if not, is that in here.

Finance Director Nichols said there are no raises in the budget, but there is an adjustment that brings all salaries and benefits to the current service level of June 30, 2014; we adopted that budget in May. The year-to-date and the estimates and projections were based on the current service level, and during the year you have vacancies and job changes which were very minimal for the whole budget. They are just adjustments that take the service level to where it is currently. The other adjustment put in was the approval by the commission during Public Hearings to put in \$750.00 per employee. It will not be appropriated or spent until the commission gives the staff approval on how they want it distributed.

Commissioner Straface said he heard her say adjustments had been made to bring our current service levels to actual, and that is a dollar cost. Ms. Nichols said total adjustments to salary and benefits were \$18,946.00, she believed. Commissioner Straface asked if this was an increase and Ms. Nichols said yes. Commissioner Straface asked if any individuals or individual positions received raises, and Finance Director Nichols said no.

City Manager Stahle said there are sufficient funds within the budget that we are recommending you adopt tonight to be able to handle the \$750.00 per employee you talked about during the budget cycle. There are also sufficient funds to cover the 1.5% increase for law enforcement that you did not take advantage of during the last fiscal year. There are sufficient funds, but there are no specific raises for individuals in a budget; that is done elsewhere. Obviously, the budget tells where the money comes from if you are going to do it.

Commissioner Straface said he was not sure he understood what the city manager just said.

City Manager Stahle stated there is nothing in this adoption of the final budget that would authorize an individual pay raise. He said you have three groups within the City – two unions APSOA & AFSCME, and the non-represented group. When the Finance Director talks about \$750.00, that amount is in there for every employee. You also need to recognize what she was talking about on the \$18,000; it really has to do with changes that occur on a regular basis when you have an organization as large as ours. There are people coming and going within the city that we have to take into account in the budget. There may be differences, for example, in pay. The replacement of one position may be paid lower than the other, or higher; there may be an employee taking family medical in place of individual medical, and that's what she was talking about with the \$18,000. He wanted it made clear that if this budget was adopted, it would not authorize any individual pay raise to anyone. It allows you some money to be able to direct us to do that, but so far, that has not been done. We will be coming to you soon, hopefully, with the AFSCME contract which he hoped would be settled to everyone's advantage. We will also be bringing forward request for direction on everybody else, the non-represented group.

Commissioner Straface asked if it would mean an increase to this budget, and City Manager Stahle told him no.

Commissioner Hernandez asked for clarification on the APSOA contract we approved at the last meeting. Is that a done deal? City Manager Stahle said no; it did not get signed by the representative for APSOA, and we will be bringing to you an update for that situation at the next meeting. Commissioner Hernandez asked if that was in here and the city manager told him the funds were in this budget, but you have to direct how it is spent

Commissioner Sikes said her question was pretty similar to Commissioner Hernandez. She asked if whatever we did tonight, we are still in negotiation with the union, and the city manager said two of them (unions). Commissioner Sikes asked if there was still a chance \$750.00 would be changed, and Finance Director Nichols said that was up to the commission; they could change the budget at any time.

Ms. Nichols said they did find some errors in the packet you had, so she had passed out corrections which she wanted to go over. We found we had only provided the pages that had the actual

differences, so she had passed out the detailed pages. In the detail she found some errors and additions, and we had missed putting some of the items on the actual recap of the budget. She said she could go over those specifically if they would like. On page six for the Internal Services, the transfer needed to be increased because there was an error in a calculation on page 7, which are the total expenditures for the adjustments made in that for Internal Services. The number on the original sheet was about \$357,000, and it should be \$499,000. When we made that change, we found we had failed to transfer the funds paying for the improvements in Capital Equipment on page 6 at the bottom, \$115,801 and the \$26,118. On page 7, the Fund 22 total (about half way down the page) was incorrect and it has been corrected. The Community Service for the State Grant, \$120,999, was not placed on the Recap as it should have been and we have corrected that. On page 10, Fund 94, the \$119,359 expenditures which are projects being carried over were left off the Recap and we have corrected that. On page 11, Fund 117, the \$704,530 was also left off the Recap and it has been corrected. On page 14, Fund 113, the \$800,000 is listed here and it is actually included in another revision under #3. This is a duplicate but was not put on the Recap so I didn't need to change that. Those are the changes.

City Manager Stahle said what she just described was some serious review time put in to what was initially put in your packets to make sure we got it right. What she just described was making it right and those were appropriate to include. Unfortunately, Kathy Gilsdorf is out or she would be here helping you understand it all. He was thankful they were caught before you adopted the budget, and we are recommending you do.

Mayor Galea had some questions. It talks about our budgeted expenditures being \$103 million dollars. Can you talk about the carry-over and that \$103 million isn't our budget this year; a large portion of that is carry-over.

Ms. Nichols explained a large portion is carry-over. Every year, when we do the preliminary budget, in the projections for the prior year which would have been FY14, the projects are not necessarily re-projected. We budget those 100% and project we are going spend 100%, and those projects not completed are carried over to the next year. In those carry-overs, the actual carry-over balances that are represented in the budget you have, the final budget after adjustments totaled \$103 million. The carry-over budgets for Programs, Project and Grants that were not completed in FY14 amounted to \$30 million dollars. Of that \$30 million in Projects carried-over, there is \$4.5 million in revenue to be collected for Projects, and this amount has been adjusted to the Revenue category.

Mayor Galea stated that \$4 million was adjusted to the Revenue category. She asked the Finance Director to talk about the ending cash balance of \$31 million dollars. She said that isn't cash on hand and wanted Finance Director Nichols to tell them what that ending cash balance is.

Ms. Nichols told them it is an estimated ending cash balance, so we would have to meet all our revenue projections, and then whatever we don't spend would be added in there. If we spent everything and collected everything we estimated, including all our GRT, we would end up with approximately \$31 million dollars. We do have required reserves on bond reserves; 1/12th on the General Fund and we have adopted a policy for operating reserves. Those would be included in there she thought before the \$31 on the end. If we made all our projections and the budget came out correctly, we would have that amount of money remaining. She wanted to point out not all that money is available for any kind of appropriations, some of it is restricted for certain uses.

Commissioner Straface said the carry-over is escrowed to complete the projects, and Finance Director Nichols said no, well, sort of. It was money appropriated in last year's budget. Because our budget is a cash budget, we have to re-budget those in the next year. Commissioner Straface said that wasn't what he was asking.

City Manager Stahle clarified that his term of escrowing was what was throwing us off. It is a lot of carry-over and you can go down that last column and see where the amounts are in each fund, so you know some of those are required by a statute and some are self-imposed for reserves. 1/12th of your

General Fund has to be available at the end of the year. We are also very aggressive in terms of trying to get a lot done, and do we realistically have the ability to get it all done. That is also reflected in here, probably unrealistically. If the moon and stars align and we get all the revenues we projected here, that is the kind of carry-forward we have. Some is mandated and some is money we need to keep available for future activities, but it is not put in escrow and is still part of your budget. You can expect a fairly large amount in future years, just like you have had fairly large amounts in prior years.

Commissioner Straface wanted to make it simple so he was clear. For example, say we have a project that was appropriated for \$100,000, and at the close-out of the year we had only spent \$50,000, and the project is not completed. The other \$50,000 is part of that carry-over and if we did not spend all of that it would roll-over into carry-over for next year. City Manager Stahle said that was correct.

Commissioner Hernandez moved to approve Resolution No. 2014-30 amending the Preliminary FY 2014-2015 Budget with carry-over fund balances, and adopting the Final budget for FY 2014-2015. Mayor Pro-Tem Rentschler seconded the motion. Roll call was taken. Motion carried with a vote of 7-0-0.

Mayor Galea said this needs to reach the DFA by July 30, 2014. How will we get that to them by that time? City Manager Stahle told her Staff would take care of that electronically. He remarked that we would make sure it got there early and verify that it had been received.

13. Approve the award of Public Works Bid No. 2014-013, to Pate Construction Inc. related to Indian Wells Road and Pecan Drive/Washington Avenue Right Turn Lanes in an amount not to exceed \$88,668.94, including NMGRT. (Jason Thomas, City Engineer and Edward Balderrama, Project Manager)

Mayor Pro-Tem Rentschler asked the City Manager if he could speak to this, and the City Manager said he would have to since he had been expecting the project manager to be here.

Mayor Pro-Tem Rentschler asked if this approval was dependant on anything or was it all ready to go. City Manager Stahle said it should be ready to go.

Mayor Pro-Tem Rentschler asked if there was a problem with the company and their licenses. City Manager Stahle said there is an issue there that he had forgotten about. There is a license requirement for the type of work we are asking to be done. This is a fairly small project in their world and they have licenses to do much larger projects that may include smaller curb and gutter kind of things. They don't have a specific license yet to do that; they have told us they are in the process of getting it, but that is something to consider and he was glad Mayor Pro-Tem Rentschler had brought it up. If you wanted to acknowledge for the record that you are giving them time to get their license, and obviously they have to in order to do the work, or you could go to bidder number two which he believed was Mesa Verde. The difference between the two is about \$6,000, but he may be off.

Commissioner Hernandez said he could not rightfully vote to issue a project to someone who isn't qualified to do that project. City Manager Stahle agreed. Commissioner Hernandez said he had worked with both of these companies and knew the latter will go against that and the project will be put on hold if we award it at this point. He said again he would not be able to rightfully award a project to someone who is not licensed to do that project.

City Manager Stahle said he thought that totally fair, and he noticed at the end of the spreadsheet showing costs that Pate was essentially \$88,000 and the other one was \$94,000, almost \$95,000. So there is a financial difference, but he respected Commissioner Hernandez's point.

Mayor Pro-Tem Rentschler said there is a point in time we thought we might do it for a lot less than this, and there was a point in time we thought about doing it in-house. He wondered what happened to the in-house part of this. It is certainly something within the capabilities of our Public Works.

City Manager Stahle said it is, but there is an opportunity cost. That means, essentially, if we spend our staff time doing this then they won't be doing other work they are assigned to do. That is your choice; you could have us do it with expenses, obviously concrete isn't cheap, but the biggest issue is the opportunity cost, taking them away from their other duties.

Mayor Pro-Tem Rentschler asked if there was anything in particular they would be taken away from or just general stuff. City Manager Stahle said he would rely on Public Works Director Cesar to answer that question, but it was general stuff.

Public Works Director Cesar said right now the Public Works Department employees have completed the work planned on Washington Ditch. His crews are paving the walking path from 10th Street to Indian Wells; they are prepping that now and will begin paving within the next couple of weeks. We are finishing up on Pontiac and from there we are shifting down a couple of blocks to do another segment. If the Commission wishes us to go in, we can rearrange our schedules but it will push back some of these projects we've had scheduled.

Mayor Pro-Tem Rentschler said you are telling me that we could do this, and do you have a cost estimate if we did it in-house, out-of-pocket costs. Public Works Director Cesar told him he had not seen the big quantities on this but historically when we use in-house forces to complete a construction project of this nature we are in the neighborhood of half to two thirds of what the contractor cost is. Basically, we don't do the work for a profit, so it is material cost and our time.

Mayor Pro-Tem Rentschler asked the Public Works Director if they had the necessary licenses to do this. Public Works Director Cesar told him that according to the city attorney we are not required to be licensed to do any of this type of work.

Mayor Pro-Tem Rentschler said he didn't think there was \$90,000 left in the fund it is coming out of. He thought there was \$78,000 left to fund this. City Manager Stahle said he didn't remember. Mayor Galea and Commissioner Hernandez said it was two funds – 118 and 109. Mayor Galea said we had talked about it being \$60,000, also. City Manager Stahle thought it was \$50,000 and Commissioner Hernandez agreed.

Mayor Pro-Tem Rentschler said he was concerned about the award, even though he felt Pate was certainly capable of this since they are doing other work within the city, as well. He was hoping it would be done in-house, and if we did it in-house, how long would it be before you guys could get to it. Would it be something you would start next month? Public Works Director Cesar said if we were asked to do this in-house, he would like to complete the walking trail.

Commissioner Straface said his concern was we are bordering on micro-management at this table, at this point. His sense was to table #13 and look at more information before making a decision. Things like cost, time lines, what we would be giving up if we moved forward with this, what would be postponed; we all need that complete picture. We need to bring back that other information and not act tonight.

Commissioner Baldwin remarked we had put our engineer on the spot when we asked what this would cost, and he ball-parked an amount of \$50,000 to \$55,000. Commissioner Baldwin had been expecting a lee-way of \$5,000 to \$10,000, but \$90,000 of the taxpayers money to re-do this intersection was something he had an issue with.

Commissioner Straface agreed and also agreed with Commissioner Hernandez when he said we shouldn't award a contract to someone who isn't licensed.

Mayor Galea was worried about the licensing process and if it was something that could be done quickly. Between Pate and the second lowest bidder Mesa Verde there was a \$6,000 difference. Would the time be short enough to quantify there being a tax savings to the tax payer of \$6,000.

City Manager Stahle said he thought the issue Commissioner Hernandez brought up was valid. If I was the next lowest bidder, I would be less than thrilled that it was awarded to someone who didn't already have their license. He viewed it as the day you give us your bid you should have your license together. He felt that was how they would look at it, too. He also concurred with the idea that we not jump fast. Getting the in-house information first makes a lot of sense. If they process their application, and it is issued by the state, not us, and they receive their license in the meantime, we will bring that to your attention the next time you are asked to act on this, which will be the next meeting. We can get the staff to look at the quantities identified and work with Edward Baldarrama who helped put these things together so that we can give you a reasonable number, and most importantly in his mind, be able to tell you realistically when we could do it with the least disruption.

Mayor Galea asked Commissioner Straface if he would like to make a motion to table this.

Commissioner Hernandez said he just applied for his state license in the last 30 days, and one of the questions is have you bid outside of your license within the last year. He has worked with Mesa Verde and knows what they do. You have to be really particular and know the laws and rules of the Licensing Act. Even if we come back in 30 days and these exact same numbers are here, they were not qualified at the time of the bid. He was guessing they were not qualified to bid this if their license is the same as his. It is a different license, but run by the same state and processes.

Mayor Pro-Tem Rentschler understood that and said it would normally be considered non-responsive. When you try another \$6,000 or up to \$94,000, that is getting there. He liked the option of knowing 1) When the contract would be complete, and 2) What additional time it would take for us to do it in-house.

Commissioner Hernandez said there is no reason to throw this out, other than the fact we are looking in-house. We can't throw the project out and re-bid it, because then Mesa Verde would say we saw their numbers and they saw our numbers. You are in a Catch 22 here; you either have to go with what you have here or go in-house. He didn't think the contractor would qualify under the Licensing Act, or that we could accept their bid.

Commissioner Straface would like to know what the impact is on other projects if we do this at this point. It's part of that ADA you bring back.

Mayor Galea said what she was hearing from the commission was we would like to explore the option of the cost in-house, and if done in-house what the timeline would be. She said the commission has already discussed that if there was going to be a bid awarded outside the city, it would be awarded to Mesa Verde for this project.

Mayor Pro-Tem Rentschler asked if two weeks from now would be enough time to table this and the city manager told him August 12th would be the next meeting and that we should be able to do that.

Mayor Pro-Tem Rentschler moved to table approval of the award of Public Works Bid No. 2014-013, to Pate Construction Inc. related to Indian Wells Road and Pecan Drive/Washington Avenue Right Turn Lanes in an amount not to exceed \$88,668.94, including NMGRT until August 12th. Commissioner Straface seconded the motion. Motion carried with a vote of 7-0-0.

Mayor Galea recessed the meeting at 8:47 and reconvened at 9:00 p.m.

UNFINISHED BUSINESS

- 15. Consider, and act upon, a waiver for El Zarape Restaurant related to their distance from a church for an application to obtain a Beer & Wine Restaurant License. (Renee Cantin, City Clerk)**

Pastor Charles Bennett from the Christian Joy Center spoke in protest of the waiver. As a ministry, it is very important to them to voice their concern, because we would definitely not like to have alcohol served that close to their facility. We are directly next to the facility. He appreciated small businesses and wanted all small businesses to succeed; they would love for this restaurant to succeed, but not at the expense of potentially harming our children as well as single mothers who are there. We all know that once you introduce alcohol into any environment, it immediately changes that environment. Our ministry in one of our other locations has experienced the loss of a child's life because of a DUI. We would strongly urge you all to not consider giving that waiver. Again, we want them to succeed, but not at that expense. Most of their business hours and our service hours are conducted at the same time. We have multiple services about four times a week and during those times we have multiple children of assorted ages in and outside of the building, and we all know that young children as well as the teenagers don't always pay attention to things going on around them. To introduce alcohol to that environment would definitely place our parishioners in a very hazardous environment, so we ask that you all strongly consider not giving that waiver. We know the regulation says it cannot be within 300 feet of any church or school but they can ask for a waiver. We are asking you all to not let that transpire because we would not want our ministry to experience anything like that again. We know the restaurant would not be responsible for anyone driving under the influence or anything of that nature. We do know that people don't always act responsibly. Pastor Bennett thanked the commission for the opportunity to register their objection.

Juan Lavarreda-Perez from Peace Tabernacle read something he found on the NM Department of Health website. 'The consequences of excessive alcohol use are severe in New Mexico. New Mexico's total alcohol-related death rate has ranked first, second or third in the U.S. since 1981, and first for the period of 1997-2007, the most recent year for which state comparison data are available. The negative consequences of excessive alcohol use in New Mexico are not limited to death, but also include domestic violence, crime, poverty and unemployment as well as chronic liver disease, motor vehicle crashes and other injuries, mental illness and a variety of other medical problems.' Mr. Lavarreda-Perez said that Peace Tabernacle realizes the tragic affect that alcohol abuse can have on the individual, their families and society as a whole. We choose to hold a biblical position based on 1Corinthians 6:12 which reads, 'All things are lawful for me, but not everything is beneficial. All things are lawful for me, but I will not be controlled by anything.' We as a church are tackling the problem of alcohol abuse within our community and within New Mexico by offering alcohol and chemical treatment series classes free of charge to the community. We offer this class at no cost on a weekly basis. As the son of a former alcoholic, having watched my grandfather die from cirrhosis, and having been a former alcoholic myself, I am painfully aware of the consequences of alcohol abuse. While the restaurant itself would not be in control of what individuals would do, it would create an environment where this would continue to happen. Seeing that New Mexico consistently leads the nation in alcohol-related deaths, he wondered why the City would consider allowing a variance for another location to continue to distribute alcohol as there are already quite a few locations where it can be obtained. We wholeheartedly support the restaurant and wish them to be successful offering quality food and outstanding service. We are not petitioning the City to make any exceptions based on our view, but to uphold what previous lawmakers saw as a safe boundary. He wanted the commission to know they had his resounding support when they decide to hold the boundary as stated in the law. We want to strive to create an environment where people can be set free from destructive influences and heal from wounds. Granting this waiver would increase the risk to former alcoholics, children, and worshipers in general of encountering intoxicated persons who may potentially interfere with or negatively impact them. It would also increase the danger of vehicular accidents within the area surrounding the church. We ask you to please not allow this waiver to go through as we feel it would create a negative environment within the surrounding area of the church. He thanked the commission.

City Clerk Cantin said as it states in the agenda report and as Mr. Perez alluded to, the State statute says no license shall be issued that is within 300 feet of any church or school, but it may be granted for a proposed license if the person has obtained a waiver from the local option district governing body. The City Commission is the local option district and has that right to waive the 300 feet within the churches if they wish, and as directed at the last meeting when it was tabled, we did get the two

churches here to give you their information, as well.

Commissioner Hernandez asked the two pastors the size of their congregations. Pastor Bennett from Christian Joy Center said it is about 100-150 adults and children, and we are continually experiencing growth numbers as well. Mr. Lavarreda-Perez said the Peace Tabernacle congregation had about 70 people. Commissioner Hernandez said the reason he asked that question was because these two people are representing more than just themselves.

Commissioner Hernandez commented that in the past we have not done this, and there are several restaurants in town serving American, Mexican, Asian and all kinds of foods that have and don't have a liquor license and they have made it. Si Senor is one who has made it for a long time without a liquor license. He felt it would be a problem if we start changing things now to allow liquor licenses within the 300 feet when we have not done so in the past.

Commissioner Straface apologized for not being at the last meeting. He asked the city manager if there was discussion in terms of the Staff's recommendations and why the recommendation was there. City Manager Stahle said he had recommended approval of it before he had heard from the churches. He said part of that was that he had forgotten that Pastor Bennett's church was immediately next door. He knew about the one to the southwest, but it was fronting a different direction. As he said at the last meeting, he felt it was important to note there are certain commercial corridors in our city that are zoned for commercial business. Restaurants have to go there; churches do not. So there is an equity issue, and he was a little surprised that the owners don't want to come up and state their case, then he said I think they do. That is the position we took last time.

Commissioner Hernandez clarified that at the last meeting he made it very clear there was a church sharing a wall with the restaurant, and the city manager agreed that he had.

Erika Jimenez from the El Zarape Restaurant spoke to the commission and said she respected whatever they had to say. She didn't think there was anything bad with serving beer there because if you think about it, it is a restaurant and not a bar. They can have control of the alcohol they consume. She said her mother was the owner but did not speak English, so she was speaking in her place. Ms. Jimenez asked if they had to get a different permit to serve beer on Sundays.

City Clerk Cantin answered there was an additional charge for Sunday sales, but it would be included in the same application. Ms. Jimenez said she has seen it more packed on Sundays, so would we be able to work something? City Clerk Cantin said the business could apply and not apply with the Sunday sales.

Mayor Galea said they had not sold beer and wine in the restaurant before and wondered how not selling alcohol would impede their business. Ms. Jimenez said we are doing good, but not as good. A lot of people are asking for it, so she thought it would be better for them in order to make their business better. Mayor Galea asked how many customers ask on an average for beer and wine, and Ms. Jimenez said all of them or about 90% of them. Mayor Galea asked how many customers they have on their busiest day, and Ms. Jimenez estimated about 120-150.

Commissioner Sikes commented she had the opportunity to eat at their restaurant and complimented them because it was very good. She said she works with the Democratic Party which has an office off Madison Ave. right around the corner. In all the time she has been to that office, she has never seen children on the sidewalk in front of the restaurant. On Sunday, she has never seen an overabundance of people except for the customers at the restaurant, so she wondered where all these people are that will be influenced by my going into that restaurant for a meal and ordering a beer. She loved the idea of restaurants being able to offer beer and wine; it is a nice compliment to a lunch or dinner for adults. In the time it takes me to eat a meal during lunch, unless she is drinking with wild abandon, she is probably not going to get inebriated. She didn't personally have a problem with the restaurant trying to expand their business by wanting to offer a beer or glass of wine to an adult customer. Ms. Jimenez agreed and asked what the hours were for the Christian Joy Center.

Pastor Bennett understood and said you may be a little more responsible than other people so we have to take those things into consideration; it would be impossible for me to just utilize myself as the rule of thumb, because everyone may not be as responsible as you are by drinking only one beer or control their alcohol intake. What happens is we do have children and single mothers who do park on that side. Though our service hours are not necessarily during your daytime hours, we do have people parking on that side of the building during the evening for classes around 6:00-7:00 p.m. on Mondays, Tuesdays and Thursdays, as well as rehearsals on Fridays and special services on Saturdays. At those times we have some children, and that is why I made the point to say all the children do not necessarily pay attention and are not as responsible, so we want to provide a safe environment for those children. They are children of our church as well as children of the City, so we don't want them potentially harmed since the possibility is there; we want to eliminate the possibility. Again, he said he wanted the restaurant to succeed and be the greatest restaurant in Alamogordo, but they did not want it to be at the potential expense of somebody being hurt in that type of environment.

City Manager Stahle asked Ms. Jimenez how long their business had been there. Ms. Jimenez told him about two months. City Manager Stahle asked Pastor Bennett how long their church had been there and was told since 2003. He asked Mr. Lavarreda-Perez how long his church had been there and was told about since about 1986. City Manager Stahle felt that was relevant, too. It was a big difference for a business to choose a location next to churches and try to get a liquor license, as compared to churches moving in next door after the business is already established. That is something you should definitely take into account.

Commissioner Hernandez said he didn't have a problem with setting precedence on something that has been established, but setting precedence on something not established, for instance a business that has been there two months, we've set precedence forever. So, anyone coming to us next will say you did it before. If it is an established business that has been there a long time I would consider it, but that is one of my biggest problems; it has not been there a long time and not established. If it wasn't setting precedence, I wouldn't have a problem with it. Setting precedence is a big risk.

Mayor Galea wanted to discuss an opportunity for a win-win. She knew that the church had events in the evenings on Monday, Tuesday, Thursday, Friday and Saturday, but perhaps there is an evening like a Sunday evening without services where the restaurant could offer beer and wine. She felt there had to be a win-win so the churches environments wouldn't be impeded by those consuming alcohol, and the restaurant would have that opportunity to serve alcohol to customers who request it. She asked the churches if there was an evening when they did not have services.

Pastor Bennett said they do not have services on Wednesday because they have another location that has services on Wednesday.

City Manager Stahle said he thought it important to recognize the State didn't issue licenses for certain days, you were either issued a license or not. He was taken aback by what the Clerk had read in terms of the commissions responsibilities in this decision. Apparently, it isn't the State who would recommend on concerning this particular variance issue, it is yours. The Clerk agreed with him. City Manager Stahle remarked the commission is the final decision maker on this one. He respected the attempt to try and find a win-win, and he agreed with Commissioner Sikes about responsible folks drinking a beer while having a meal. You are in a heck of a position.

Mayor Galea agreed the beer and wine license was just that and we couldn't restrict what days they serve alcohol, but in lieu of not receiving the license the restaurant ought to be able to bargain for at least a night or two to serve.

Mr. Lavarreda-Perez said they do have services on Wednesday, but more importantly we will now be restricted on other days to have services if our church continues to grow. We do continue to provide services to the community such as the alcohol rehabilitation classes or the emotionally healthy classes. Now we would be restricted to not having them on certain days when the business is serving

alcohol, and he did not appreciate that. He went on to state that we are increasing our risk. We aren't saying this is going to happen but we are increasing the risk and potential of something happening we would later regret.

Commissioner Turnbull said when she first read about this she was leaning one way because it was 10th Street and a business area, but after listening to Pastor Bennett she was reminded of an incident at a restaurant with her family where you were served beer or wine. She said she would have maybe one and that would mean her husband doesn't drink, or visa-versa, and that is maybe once a year. During one visit, a table next to them started having a fight. They had been in the restaurant, had been served alcohol, they started an argument and got up from their table, and brought the argument towards her family. This was a family restaurant and this does happen, so she saw this was a potential problem having this near a church. Would we do it next to a school? We would not do it next to a school where children are involved. There are people just trying to go to church or Sunday school, so now she is leaning the other way. On 10th Street the parking is horrible when you are completely sober; add a little bit of alcohol and you have just created another problem.

Commissioner Straface remarked he is biased here. He believed there is a reason the state provided a 300 foot limit and that was for the protection of and in the best interests of society. When you start talking about our community and the impact of alcohol and drugs in this community, he thought we had to be very careful with this. He was not supportive of the waiver and thought we needed to honor what the state is. He supported what Ms. Turnbull and specifically what Mr. Hernandez said. The precedent would really cause us issues down the road.

Mr. Santiago Villabiscencio spoke to the commission saying he has been here for 73 years. He has seen things approved that were not kosher. He didn't know these people but he has seen exceptions, and Margo's was one of them on 7th Street, who complained because they weren't given the permit. Albertson's came across the street and Walgreen's; they got the liquor license right away. Margo's moved to 1st Street and were told they couldn't have a liquor license, but they got it. Now we have Wal-Mart with a liquor license, so we've had exceptions all the time he has been here. Precedence? We can't even count the numbers that the commissions have set prior. Even when he was a younger man he saw things done over and over and over. We can't really say we are afraid to set precedence because it has been done. We can't say we'll allow a liquor license in a certain place because it has been done. The Rocket Bowling Alley, the multi-million dollar Family Rec. Center, what happened to it? Again, they allowed liquor to be sold. Now we have package stores all over the place that we didn't have before. Exceptions and precedence have been set. We can't say this one we can do but that one we can't do. It has already been done.

Commissioner Hernandez said that for clarification, those liquor licenses he was talking about are outside of the 300 foot range. When Margo's applied for their liquor license they were within the 300 foot range, and when they moved they were outside the 300 foot range. It's the same thing with Albertson's; their location was further back so they were within the 300 foot range, and when Walgreen's re-built their building they were outside the 300 foot range, so there is no precedence.

Mayor Galea stated she also was considering the venue off 10th Street which is a commercial corridor, but agreeing with Commissioner Hernandez and Commissioner Straface she thought we should uphold the 300 foot boundary. It is there to protect the environment of the long established churches. **Commissioner Straface moved to deny the waiver for El Zarape Restaurant related to their distance from a church for an application to obtain a Beer & Wine Restaurant License request. Commissioner Turnbull seconded the motion. Motion carried with a vote of 7-0-0.**

NEW BUSINESS

16. **Discussion, and possible action, related to a Request for Lien Relief for 1105 E. 8th Street. (Martha Mendez, Requester)**

Mrs. Martha Mendez presented her item. She said she had these three liens at the time she rented her home and moved to Las Cruces from 2001 – 2010. She rented her home to certain individuals

that she trusted and had the money to open their utilities. She left them under her name and didn't know that if they did not pay she would be responsible. She remarked that she is a disabled person who lives on disability. She applied for Habitat to remodel her home, and that is how she found out about these liens. She came to see if the commission would drop them.

Mayor Galea thanked her and said there was a member from Habitat here, too. Mrs. Mendez said yes, and this person had said she would not be able to remodel her home with a lien on it. They did a title search and found these liens. She remarked that she had the paperwork, but the Mayor told her the commission copies of this paperwork.

City Attorney Thies pointed out the dates the liens were filed; one was eleven years old and two were six years old. The statute of limitations prohibits us from foreclosing on these liens after four years. Essentially, there is no recourse for the City at this time to recover that money.

Mayor Galea clarified they were beyond the statutory authority after the four year term, so there wouldn't be a reason for the commission to not give abatement. The city attorney agreed.

Commissioner Hernandez said it was his understanding we could not go back and collect these, and the city manager told him that was correct.

Commissioner Hernandez moved to approve the release of the liens for 1105 E. 8th Street. Commissioner Sikes seconded the motion.

Commissioner Sikes said we can go ahead and grant the abatement, but are we going to go through the process of removing the liens? Otherwise it makes no sense.

City Attorney Thies told the commissioners that we would. Statutorily, Staff has only one way to release a lien and that is if it is paid. Anytime a lien of utility charges comes to the commission, they have the authority to waive those liens, and once you do so or elect not to recover then we will file a release of the liens.

Commissioner Sikes said we will file the release of liens and when you go re-apply to have the work done by Habitat, the liens won't show up and you will be able to get the work done. Is that correct? Mrs. Mendez said that was correct. The lady from Habitat will need something as soon as tomorrow so she could do the application and have it done quicker.

Mayor Galea asked City Attorney Thies depending on the vote, would there be a letter from the office of the city manager or city attorney that would signify the process we will go through for the release of the liens? He told her he would prepare a release of lien that then goes to the county clerk for recording, and we could provide Habitat a copy of that so they know it is being processed. Once we get the recorded copy back, we would provide them with a copy of the recorded version.

Commissioner Straface asked what the statutory limitation was. City Attorney Thies said it's four years from the date the lien is filed.

Commissioner Straface questioned why we are here if that is the case. Why do we not have some procedure that says when it passes four years we automatically release the lien. City Attorney Thies said this is all a creature of state statute, and state statute does not give staff the authority to release liens. It only gives authority to release liens if paid.

Commissioner Straface said we have to wait for each individual to come forward and make that request, and City Attorney Thies said yes. In the past, the city elected not to pursue these liens, which are normally unpaid utility charges and weed abatement or trash removal. We've changed that policy so that we are a little more aggressive and prior to the expiration of the four year period, we try to collect it and will file foreclosure proceedings if they do not pay. Past commissions elected not to legally pursue these liens even though we went through the effort of filing them.

Commissioner Straface asked if a person with a lien was prevented from getting future service. City Attorney Thies said we will carry that on our books. Two individuals incurred these charges so if they came in to file a request for utility charges we would tell them they would have to pay the charges first and service would not be allowed until it was cleared up.

Commissioner Straface requested with commission support that we review that policy and think about how we could make this more operable for our people. Mayor Galea asked if anyone would object to that, and no one did. She said it was the consensus of the commission that policy come back for review.

Commissioner Hernandez clarified for the audience that the total amount originally due was around \$718.00, but because of administrative fees, filing fees and interest the amount was now \$2,237.00.

Mayor Galea said tonight the motion will be removal of the lien with the total amount of \$2,237.36.

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

Mayor Galea said that letter will go out to the county clerk and the city attorney will also provide a letter to Mrs. Mendez to give to Habitat for Humanity.

17. **Consider, and act upon, Resolution No. 2014-31 adopting an Infrastructure Capital Improvement Plan (ICIP) and identifying the top five (5) recommended projects for Fiscal Years 2016-2020. [Roll call vote required] (Sue Ashe, Finance & Accounts Project Analyst)**

Sue Ashe, Accounts Projects Analyst addressed the commission. She said we had a good turnout of 20 people this time at the Public Meeting whereas last year we only had five attend. Mayor Galea asked if there was anything she wanted to point out to the commission before adoption. Ms. Ashe told them that at the meeting they talked about Quality of Life, Economic Development and Safety and Wellness, and that is how we decided which to recommend.

Commissioner Turnbull asked if the Washington Park Amphitheater was number 1 since it was first on the list. Ms. Ash told her that was correct, but you did not have to leave it like that. Commissioner Turnbull said she had wondered if they could be switched around.

Mayor Galea said we can re prioritize this list if we wish to. She wondered about the projects not on this list that were recommended by community members. How would community members get their items on the list for ICIP. For example, she knew Commissioner Sikes and herself had talked about a Veterans Memorial which would also be a Community Center. How would a project like that end up on this list?

City Manager Stahle said you can put it on the list, it's your list. This is a recommendation from Staff after having listened to the community. We have identified the more long term needs and there are some expensive projects on this list. Don't forget the focus tonight is really 2016, so we are talking about what can be recommended to the legislative process for funding through that. If it isn't on this list, it will not qualify for grants or anything else. The purpose of asking you to prioritize the Top Five is to go after legislative funding of the items. New Mexico is unique in that the legislature has the ability to plug in money for your particular projects. You won't always get them all, but it gives you an opportunity to ask your legislators for that assistance which they can put into a bill at the end of the legislative session. They have told us to only give them our Top Five, but you still have to have an ICIP list with everything you can think of on it. For example, if you want to put that Memorial on it, we certainly can add it and if you want it in your Top Five you could do that, too. He didn't know what the cost would be or where it would be put. Staff has a sheet that explains the who, what, where, when, and how on every one of the projects.

Commissioner Turnbull said she had gone around to all the Fire Stations with Chief Ward and she was not aware there was only one person at each station. She asked if something could be done about that. City Manager Stahle said that was a staffing issue that is completely different. This is capital stuff, the building and hardware they need. There is one on our list of Top Five for the rehab of Fire Station 7.

Commissioner Turnbull said that since we can't get any more people out there, she would like to see the Fire Station moved up based on Quality of Life; if you had a fire, would someone be able to come and put it out.

Mayor Galea repeated Commissioner Turnbull would like to move the Fire Station up higher on the priority list and asked if she would like it at number 1. Commissioner Turnbull said yes.

Commissioner Baldwin wanted them left in the order they are in.

Commissioner Sikes said during the course of the year, the Commission had the pleasure and opportunity to see a lot of presentations. One of those presentations a while back was presented by Chief McElderry who proposed having a Veterans Memorial in Alamogordo. She got to go to Tularosa on Memorial Day and see their Veterans Memorial. We are a community with an inordinate number of people who are affiliated or retired from the military and this got a response from the community. Because she wanted to carry the flag for Chief McElderry, she had gone ahead and put that on the list. Based on the list as it stands, she did not want to move it into the Top Five but wanted it on the list. She and the Mayor recently went to Albuquerque for a CDBG hearing and during that hearing one of the questions asked was what position is your project on the ICIP list. Fortunately for us, Grants Coordinator Segura was able to answer that question very eloquently. Had it not been right up there, our request for a half million dollars would have looked a little impotent. Why are you asking for money from us when you as a city don't feel it is very important. Commissioner Sikes wanted a Veterans Memorial of some sort, a price she didn't even know, a plan she hadn't even thought about. She would like it on the list so the community could consider it at some point.

City Manager Stahle said we already have locations at White Sands Blvd. and 10th Street – Founders Park and the Airborne Memorial. He asked if Commissioner Sikes was wanting something more broad, and she said it would encompass all veterans. She said Founders Park was for the founders of Alamogordo and the Airborne Memorial was for people affiliated with the airborne in the military. There are veterans from every branch who talk about the possibility of this. It doesn't have to be anything elaborate, just a flag on a flag pole that is lighted and has a plaque is all they are looking for. Sue Ashe said she would need to turn in a form that has to have the amount and the plan. Commissioner Sikes asked where Chief McElderry's presentation was.

Mayor Galea said he turned in a presentation using a model used by Tularosa that would cost \$300,000, but she and Commissioner Sikes were also talking about a Community Center that would be a place for the community to use for other reasons. She said the Sheffield building next to Founders Park could be used as a community center and utilized by many groups; it would be about \$600,000.

Commissioner Hernandez said that building had been sold. He went on to say when you look at the Paratroopers Park, it was all done by them and the City just had something to do with the front entrance. There is a lot more pride in it when done that way. A building is a whole different thing costing hundreds of thousands of dollars. As a start, he thought you needed to find a location with a fun area and area for the building; do the park first and the building later. There is a lot more pride when they do it themselves.

Commissioner Straface asked what the deadline was to have this submitted. Sue Ashe told him it had to be sent to the State by September 3rd. Commissioner Straface said a point of order in his mind was he assumed positive intent. Our staff came together, looked at these requests and said this is their best judgment at this point in time. He recommended we adopt as presented and then give

direction at the next round to include information on the Veterans Memorial so they could come forward with an appropriate plan. He said the staff did their best thinking given what they had and he supported that.

Harv Hamilton addressed the commission. He asked to have the list read and Mayor Galea stated the list was 1) Washington Park Amphitheater Restoration at \$300,000, 2) Public Safety Equipment – PD Software at \$255,000, 3) Fire Station 7 Improvements at \$490,000, 4) Reclaimed Water Storage Pond Renovation at \$300,000, and 5) Facilities for ADA Compliance at \$300,000. Mr. Hamilton remarked when you were talking about the list none of us knew what was on the list, so what was the point of us being here.

City Manager Stahle said the list has 66 items on it and you just read the Top Five recommended by the staff. He wanted that made clear because the commission can tweak the list any way you want. As Commissioner Straface pointed out, we did our best to put together these recommendations. He said there is a lot of other stuff to be done and we are not oblivious to that. He reminded everyone we have the F4-Phantom proposed for the park where the Airborne Memorial is. It will be added if we are successful in getting that static display. Mayor Galea said we don't know if we are getting it just yet and City Manager Stahle said that is correct.

Mayor Galea stated there are 66 total items on our list so far that add up to \$99,829,360.00. These are needed capital improvements within the community with a variety of reasons for being on the list.

Mayor Pro-Tem Rentschler moved to approve the resolution with the entire ICIP list including the Top Five and move Fire Station 7 Improvements to the Number 1 spot. Commissioner Turnbull seconded the motion. Motion carried with a vote of 6-1-0. Commissioner Baldwin voted nay.

18. Consider, and act upon, the first publication of Ordinance No. 1468 amending the Alamogordo Code of Ordinances to add a new section in Chapter 24 concerning vehicle forfeiture. (Stephen Thies, City Attorney and Mikel Ward, Fire Chief)

City Attorney Thies gave an overview of the ordinance. He said it can be divided into three segments; the first segment amends our current ordinance dealing with junk vehicles on private property and abandoned vehicles found on public property; the second segment enacts the new provision providing for potential forfeitures if someone is arrested and convicted of DWI; the third segment deals with the creation of an impound lot necessary if we implement changes to the ordinance. One of the problems we have encountered in the past is that even though we have the ability to cite someone for junk/inoperable vehicles on private property, we have no tools if the individual who is cited elects to ignore the citation. They might go to court and pay the fine but the vehicle continues to remain on the property. This provision would allow us, if the person doesn't remove the property, to go onto the property and tow it to our impound lot. The other aspect of this ordinance deals with an abandoned vehicle on public property – streets, parks or whatever. Currently, the time frame takes about two weeks to get this vehicle removed, and this ordinance shortens the time. After 72 hours we will send the owner, based on motor vehicle records, notice the vehicle has to be moved in seven days. Once the seven days have expired and the vehicle is still no public property, we will remove it to the impound lot. There are a number of mechanism notice provisions in the revised ordinance. If the vehicle is found on private property the person will be given 30 days to remove it, and on public property they are give seven days. The owner in both circumstances has the right to challenge prior to that expiration period by going to Municipal Court to explain to the judge why the City shouldn't be able to remove the vehicle. There are some exceptions to removal of the vehicle from private property - if it is a business that might be building vehicles, a licensed business and, someone who is restoring the vehicle. Currently we allow for a restoration permit which is good for 60 days. This ordinance would extend that to 18 months and they pay a \$60.00 fee. They can keep it on their front lawn or wherever while they restore it. If the vehicle is a valuable one and a person finds the need to store it outside, they can cover it with a form fitting vehicle cover that will comply with the city code. Behind a fence where you can't see it from the street or sidewalk would not violate the city code.

City Attorney Thies next talked about the impound lot. If the above changes are made we will need someplace to take the vehicles. Whether it is towed from private property, public property or forfeited, the owner will have a 48 hour notice that the vehicle has been impounded and they need to retrieve it and pay the impound fees. If the person doesn't come within 48 days, we will follow state statute regarding how we go about disposing of the vehicle. State statute says that after a 48 hour notice, if the fee has not been paid and the vehicle picked up then we give them another 10 days. If they don't come at that time, they are given notice that after 20 days the City will sell it at a public auction. State statute adds that if the vehicle is registered to someone from New Mexico, they are given 14 more days which adds up to almost 50 total days before we dispose of the vehicle. If it is registered to someone out of state, they are given 40 days to deal with the issue.

He next addressed the vehicle forfeiture section. This will allow the City to seek forfeiture of a vehicle if someone is arrested while driving intoxicated or if they are driving with a revoked/cancelled license because of a prior DWI conviction. The person is arrested and given a notice, then the owner of the vehicle may request a hearing in which they challenge the forfeiture. It will be done by a hearing officer and if that officer finds probable cause for that person to have been arrested for DWI, the City will file appropriate paperwork with the District Court to start the process. If the person is acquitted of the charges, we can't forfeit the vehicle; if it is the first time they have been arrested and convicted for DWI they can get an interlock device and then the vehicle would not be subject to forfeiture. The ordinance also contains provisions if the person is arrested for DWI and is driving someone else's vehicle. The innocent owner has a process to go through so their vehicle would not be subject to forfeiture. City Attorney Thies said Fire Chief Ward was here to answer questions concerning junk and inoperable vehicles found on private property. The city attorney remarked that it was surprising how many cases are dealt with on an annual basis.

Fire Chief Ward said the previous commission had tasked his department with cleaning this up and finding a way to enforce the provisions of the Code. He wanted to make it equal, fair and enforceable for everyone.

Commissioner Straface noted he did not need to see the presentation, and the question he had was how Chief Ward's staffing levels would be impacted by this. Fire Chief Ward said we are tasked with accomplishing this goal already, and the scope of what we need to do is made more specific and provides more opportunity for the citizen.

Mayor Pro-Tem Rentschler asked if this is a big problem for the city, and Fire Chief Ward said there is quite a bit. Mayor Pro-Tem Rentschler was concerned about the private property issue. 72 hours for a wrecked or disabled vehicle was a problem for him; could you cover a wrecked vehicle. Fire Chief Ward said yes, we are clarifying that section specifically. Currently the law is vague in terms of enforcement and he gave the example that if your vehicle registration expires tonight and you've not renewed it, the current code says you will be issued a notice tomorrow morning. We are trying to clean up what should be enforced and what the intent of the previous commission was, what we should be enforcing and how we can enforce it. Specifically to your question, we are providing a mechanism for a place they need to store the vehicle that would be an overall good appearance for the neighborhood. It doesn't include a blue tarp from Wal-Mart with cinder blocks on it. It has to be a form fitting cover that is secured appropriately, behind an opaque fence or located within structure in the back yard. It makes it broader for the citizen and narrower in what we enforce while providing a mechanism to make it look better.

Commissioner Sikes addressed something the Mayor Pro-Tem had said. Her original intent in asking the city attorney to look into this was she had received a couple of complaints that she felt absolutely needed to be addressed based on the way the ordinance was written. For example, a gentleman in her neighborhood called her one day very irate because someone had abandoned a vehicle that looked like a Volkswagen bus with its shell removed, plywood on the back, and it didn't have a cover over the driver and passenger seats. It had been abandoned in front of his house and he didn't want it there. Our ordinance precluded us from doing anything about it for about two weeks. How would you like to have the Beverly Hillbillies vehicle parked in front of your house for two weeks with no available recourse. Another constituent had a person get a DWI in front of their home and the vehicle

was left at the corner of Juniper and 10th in front of Tiffany Owens grandmother's house. We had no facility to remove it based on the way the ordinance was written. The original intent of this was to allow us to remove vehicles from public property if they don't belong to you. She didn't think the intent of the ordinance is to harass you with your own personal property. If you are parked in front of your house and the inspection sticker expires, she didn't think anyone would do anything to harass you. You will be allowed the opportunity to get an inspection sticker. If you are working on an antique vehicle on your property, now you have the opportunity to get a permit to do that for 18 months. If you can't finish it in 18 months, she suspected you would have the opportunity to renew the permit. We can't have it both ways; we can either clean up the city because that is what we keep talking about, or we can't. There are 37 code enforcement districts in Alamogordo. Yesterday she asked one of the Code Enforcement officers to randomly go through and tell her how many vehicle violations he could find. In three districts we found 12 violations just since the beginning of the year. It is an issue and she didn't think we were infringing on personal property rights. If you, as my neighbor, have a different idea how you think your front yard should look, and you think it looks really good with rusted cars on blocks, you are infringing on my personal property rights. You are affecting my property values and infringing on my rights. For somebody who has infringed on my rights to claim his/her personal property rights are being violated is being unfair. She felt this ordinance would allow us to do some things with regard to time for people who don't want vehicles in front of their homes that aren't theirs, and it also allows us to begin cleaning up some of the blight and eyesores around the city.

Mayor Galea said to the Fire Chief that she would be interested in his presentation. She thought Commissioner Sikes had provided hardy examples of challenges you see every day.

Commissioner Hernandez said he knew we had tackled some of the clean up stuff in the past, but one of the things we have to look at is that we are level, because he was in violation of the ordinance. His neighbor is in violation of other ordinances, and which is worse. If I'm going to be cited for this, than this has to be the same thing and we have to have the same ability so if this person does not clean up their weeds then we will go in and do what we have to do. It has to be equal or you will have a mess on your hands.

Mayor Pro-Tem Rentschler said the examples given about public property he agreed with. If you have a DUI in front of your house or the Beverly Hillbillies have left their car in front of your house..... As a guy who owns a '67 Chevrolet Chevelle station wagon that I've had for a number of years although it is fortunately not in the city, it is near and dear to my heart and one of these days I'm going to make it run. I can understand those who want to keep that, especially when we talk about discrimination against poor people. A lot of times, if you are a poor person and have wrecked your car which you are planning to fix, you are working to get it fixed. He thought this adversely affects.....

Commissioner Sikes interrupted to say she thought this ordinance takes that into consideration. It will allow you to love your car for as long as you want, but we ask you just keep the tires inflated, maybe keep it in the backyard where no one can see it, maybe keep it in your driveway with a nice cover on it. Mayor Pro-Tem Rentschler asked her if we were going to go after people who park in their front lawn, too. Commissioner Sikes said that driving around before tonight she noticed we don't seem to have a problem with people parking their cars in their front yard; they are in the front yard in every neighborhood in town. You can find a boat, an RV or a car parked in the front yard.

Fire Chief Ward said two things covered in this specifically created a distinction between public and private property and changing the time lines for those; lining up the private property with the rest of the private property violations so there is one process for every owner, regardless of the violation. Changing from the 72 hour violation on the street to a 15 day and then a notice for people on private property is what we tried to cover.

Lora Nelson, Code Enforcement Manager gave the presentation regarding changes to this ordinance. Originally, we were looking at beautification of the City, improving the marketability of our major economic development areas, and fair and equitable enforcement in what we do. She showed pictures of some examples of what would fall under this ordinance and showed the areas of change

to the ordinance. Currently, we do not have clear language under Outdoor Automotive Storage of an abandoned vehicle; who is the owner of a car vs. owner of property and private property vs. public property. It is the same with the motor vehicle; the definition is too broad, so we found ourselves coming up short in enforcement on certain items. We have had issues with removal of heavy equipment, race cars and other things where a registration may not be required. We wanted to adequately address that in the changes. We need an expanded definition of 'not visible from the right-of-way or surrounding property'. Ms. Nelson then showed more slides of commercial vehicles in neighborhoods and what the current ordinance covered or not. We are looking at keeping the same enforcement time on the permits, but want to change from the 60 day time period to an 18 month period. She wanted to provide opportunities for hobbyists and storage requirements for safety and health. We require you to secure your building but not your vehicle. She then explained the current issues for enforcement such as changing the Department of Public Safety language, clarify public roadway vs. private property, and providing clear requirements for the notice period or removal process. Slides were shown of inoperable vehicles on public property. She showed the violation statistics for 2013 and how there was an increase in the current year.

Ms. Nelson explained what is done presently to get people to comply. They have been working with other agencies such as the United Way who will come and remove a vehicle for free. She noted that most of the time we aren't getting a lot of cooperation. In the new ordinance there will be a wider definition of the term motor vehicle, we've added new sections for antique and special interest vehicles, better methods for enforcement on vacant or abandoned property, address not only inoperable vehicles, but also the storage of the parts, and provide for an easier to understand process with Code and PD sharing a similar process. The definitions for 'abandoned', 'dismantled or partially dismantled', and 'wrecked' had been revised or added, as well as the definitions for 'antique auto', 'motor vehicle' and 'special interest vehicle'. Basically, the requirements will say it will be declared a nuisance for any of these kinds of vehicles to be in public view on your property. Exceptions are businesses licensed to do this type of work. She went through the updated requirements for abandoned, wrecked or dismantled vehicles, vehicle covers, vehicle restorations and their parts. Ms. Nelson showed a slide of the current process vs. the proposed process. The process itself was listed and explained for both private and public property.

Fire Chief Ward pointed out that the first section of the presentation showed current ordinances the commission had asked his department to enforce. It is restrictive and we are not adding any new restrictions; we are simply clarifying enforcement of and the process surrounding the enforcement of. We are not restricting anyone from owning an antique to fix up, we are providing it has to be in a garage, stored behind a solid opaque fence, stored under a cover, or you have to have a permit. This is in response to your request to help make the city more beautiful.

Mayor Galea thanked them for preparing the presentation. She said the commission talks often about economic development and this would be a way to improve that by improving property values and providing more public safety as well as beautification. She agreed it was important to protect private property rights, but she didn't see any encroachment on that at all.

Commissioner Hernandez saw one problem because he falls under it. He has a 1983, 31 year old vehicle, that belonged to his grandfather. There is an issue with the title being in both his dad's and his name, and he has made it clear concerning the issue with his father and himself. The truck is sitting in his driveway, it's not licensed and there's nothing wrong with it. The paint is going away because of the sun hitting it, so he would be in violation of the ordinance. He felt it was violating his rights because it falls under this ordinance. If you drive by his house and see the white truck sitting in his driveway you won't think anything of it, but it is in violation of the ordinance.

Mayor Galea asked Commissioner Hernandez if it would be too much of a challenge to put it in the backyard, in a fenced area or buy a vehicle cover so it would not be in violation. Commissioner Hernandez told her you would have to deal with my dad. Mayor Galea asked if his dad would prohibit him from putting a cover on the vehicle and he said there may be a problem with him calling that man over there because I've done something with it. Commissioner Hernandez said this is one of the issues that can happen like that.

Commissioner Turnbull added she falls under this as well. There's a blue truck parked on the side of the house in the gravel parking area, but it's inoperable because it needs a starter.

Fire Chief Ward said this is exactly the problem we are trying to address as we move through the community to address individual problems. Currently, you both fall under the requirements for us to issue a notice, and 15 days from now we would tow your vehicle at the city's expense. The most common is for instance, we ran into a single mother whose vehicle had a broken radiator; she could not afford to get a new radiator. Her options were to find a garage to store it, build a fence to put it behind, buy a cover she can't afford, or come down to the City and get a permit for \$60.00. All this while she tries saving to purchase a radiator to put in her car that takes her to and from work and to pick up her kids. It puts us in a difficult position; what do we say to a single mother who can't afford the fix or a community member who is having a family issue or a community member who doesn't know what to do with their vehicle. Do we enforce or not enforce, while someone who doesn't have a hardship has to follow the code. In providing the expansion of the 18 month period, if you can't afford to do anything with it you can get an 18 month extension from the City. If you have an inspection, we come out to you in order to explain the requirements under the permit process and work with you to make sure it looks clean and presentable, and you have 18 months to resolve whatever your issue is.

Mayor Galea thought that sounded very reasonable unless anyone disagreed. Commissioner Straface said there is also an appeal process if there is a hardship or family issues and the Fire Chief agreed.

Mayor Galea understood and mentioned her parents had a car that sat in front of their house at one time, too. She knew people keep cars with the intention of using them, but understood the importance of beautifying our community within reason. She felt everyone worked very hard on this in order to try and accommodate people who might be challenged by the change. She felt the 18 month extension was very generous.

Fire Chief Ward said one of the things we noticed was that in Code Enforcement we deal a lot with those who don't respond and don't care. We have the same regulations for those who don't care and for those who do care; this cleans it up. For those who leave a car at a rental house or abandon it at home, it gives us an opportunity and mechanism to address this. For those who have a special situation or condition, we have something better than to say you only have 60 days at a dollar a day. Focusing our efforts on those who make a big difference city-wide is our intent.

Mayor Galea knew Code Enforcement works hard to clean up the community and she has heard the argument our tax dollars should not be used to clean up the community. She asked the Fire Chief about the value added in having an improved community appearance.

Fire Chief Ward hoped to be able to give them a list of the homes in the community that have and haven't been addressed. To be frank, he did not have an appreciation for the value of code enforcement in a community until he led code enforcement in this community and saw what they did. They go into a neighborhood with one terrible home. You appreciate the appearance of your yard and what you see everyday is that one yard that drives you crazy. If you happen to be on that block and are trying to sell your property, the people who are looking for a home see that one really horrible property. For the vast majority of our community, there are yards that create mosquito habitats or are unsafe and you have to really watch your kids to keep them away from these areas. We are trying to add value to the community and enhance your property value, as well as having people feel safe and comfortable in their neighborhoods.

Mayor Pro-Tem Rentschler said the proposed ordinance change says a vehicle located on public property has a 7 day notice to the owner, and he wondered if that shouldn't be 72 hours. Fire Chief Ward said once a vehicle has been on public property for 72 hours, they receive a 7 day notice. Mayor Pro-Tem Rentschler asked if that meant they are still 10 days away from getting the vehicle removed, and the Fire Chief affirmed. Mayor Pro-Tem Rentschler said he thought for public property, if a vehicle was abandoned for 72 hours it should be removed. He wasn't as lenient for someone who leaves a vehicle on the street. Fire Chief Ward said that portion of the Code is currently being

enforced by the Police Department. He said he would revisit that portion if the commission wanted him to. Mayor Pro-Tem Rentschler asked him if 72 hours was enough time.

Mayor Galea said you brought up the analogy of running out of gas. You go get gas and drive off, but what happens if they have broken down and the vehicle is no longer operable. If they don't have the money to fix it until the next paycheck, what do they do? Mayor Pro-Tem Rentschler said if it was me, he would have someone help tow it to his house instead of leaving it in front of someone else's house. If a vehicle is left in front of someone else's house, he would like to see this remedied quicker than 10 days. Mayor Galea asked how he would amend this.

Commissioner Sikes was under the impression after reading the ordinance that if the vehicle is left on public property and it doesn't belong to you, you get a 72 hour notice and then we can tow it off to the yard; at that point send the 7 day notice to whoever owns it. City Attorney Thies said the ordinance said after 72 hours we will send a notice to the owner of the vehicle saying they have 7 days to remove it from the public property. Currently, if it is on the property we send them a 15 day notice, so we are cutting the time period more than half in order to get it off public property even faster. We won't tow it until the expiration of the 7 day period. Commissioner Sikes clarified she would have to look at it for 7 days and City Attorney Thies affirmed.

Mayor Pro-Tem Rentschler said it would be 10 days. He then asked about a vehicle broken down on the highway. The State Police put a tag on it and don't leave it there for two weeks and don't send out notices; he wondered if we could do something like that. He thought that would be a better way to go as opposed to sending out notices.

City Attorney Thies said there are other provisions in the Uniform Traffic Code that state if a vehicle is found on a heavily traveled road such as White Sands Blvd., you can have it removed a lot faster. There are certain exceptions that apply to this such as on interstates the State Police can have it removed rather quickly. Not only is it a nuisance, it also presents a traffic hazard. If a vehicle breaks down in the middle of an intersection in a residential area, it can be towed quickly. Mayor Pro-Tem Rentschler said on Hwy. 54, they don't stay there very long and aren't in anyone's way.

Mayor Galea asked if there is a process that can be similar to what is done on the state highway system where Code Enforcement could place a tag on a vehicle and within 72 hours it could be towed. Fire Chief Ward said he didn't have a good answer for them. That vehicle on public property is a traffic issue and is enforced by the PD; we don't enforce that section.

Commissioner Baldwin said he didn't want to discuss it any more, but we need to discuss the DWI issue in the vehicle forfeiture section of Article IV. He thought there was a lot to this ordinance, from private property issues, public issues, DWIs, first, second and third offenses, and more complicated issues. He didn't think it would be completely hashed out tonight, but he had one question to the city attorney. One section said if it was a second DWI, the vehicle would automatically be forfeited. He said there was a provision for a second owner of the vehicle to get it back; it was 15 days before they had to come back and get the vehicle.

City Attorney Thies said he would have to look at that part, but if it is an innocent owner, they will always have the ability to get their vehicle back. Even though the ordinance says it is automatically forfeited you still have the ability to go to District Court and convince the judge that the vehicle should not be forfeited.

Mayor Galea remarked that it said you would have to pay the impound fees, and City Attorney Thies agreed, adding you would have to pay towing charges, too.

Commissioner Straface moved to approve the first publication of Ordinance No. 1468 amending the Alamogordo Code of Ordinances to add a new section in Chapter 24 concerning vehicle forfeiture with the adjustment of 72 hours instead of 10 days. Commissioner Sikes seconded the motion. Motion carried with a vote of 7-0-0.

19. **Consider, and act upon, the first publication of Ordinance No. 1472 creating new Article 7-05 in the Code of Ordinances concerning Pigeon Nuisance and Abatement.** (*Stephen Thies, City Attorney*)

City Attorney Thies said what this ordinance does is make it a public nuisance for anyone to intentionally feed or create a condition that attracts a large number of feral wild pigeons to a public or private property. It provides that in the event we receive a complaint or it is observed that someone is feeding or providing a habitat where pigeons would congregate, Code Enforcement will issue a warning for the first time. If they correct the condition, they will not be cited. If they do not and Code Enforcement goes out a second time, they will be cited with a petty misdemeanor, have to go to Municipal Court and be subject to a fine.

Mayor Pro-Tem Rentschler said this is something he does have calls on. We all know the pigeon problem in Alamogordo is increasing and this is a way to try and get a handle on it. It will be tough to enforce it, but at least it will take care of the more flagrant violations.

Mayor Galea agreed it would be challenging to enforce, but understood the purpose from a public health perspective.

Mayor Pro-Tem Rentschler moved to approve the first publication of Ordinance No. 1472 creating new Article 7-05 in the Code of Ordinances concerning Pigeon Nuisance and Abatement. Commissioner Hernandez seconded the motion. Motion carried with a vote of 6-1-0. Commissioner Straface voted nay.

20. **Appointments to Boards & Committees.** (*Susie Galea, Mayor*)

Mayor Galea announced the Boards and Committees with current vacancies and appointed Manuel Gonzales, Jr. to the Airport Advisory Board; James (Todd) Broaddus to the Parks & Recreation Board She asked the City Clerk to notify these individuals.

PUBLIC COMMENT

None

CITY MANAGER'S REPORT

None.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Pro-Tem Rentschler commented on the following:

- 1) He recently had some graffiti on his back fence and the city actually has a process for graffiti removal. They came out and removed this for him; he complimented them for the good job they did.
- 2) He used the 43WEEDS phone number to help a constituent get rid of the mosquitoes in their swimming pool. Again, they did a good job and the constituent was very happy.
- 3) He got a call from the city while he was out of town that told him he had used \$1,800 worth of water in the last two days. It was very nice of them to inform him the water meter had broken on the other side and he commended the city for that service. These three things are some good things happening in the city and he wanted everyone to be aware of them.

Commissioner Straface commented on the following:

- 1) He asked for an update from the city manager concerning the City Engineer position. City Manager Stahle said it has been published for two weeks with no applicants. Commissioner Straface asked if the City is actively recruiting, and the city manager told him we are actively doing so.

Mayor Pro-Tem Rentschler commented we are at the point where most of our major projects are behind us. He wondered if it would be prudent to consider a contract engineer instead of hiring an engineer. City Manager Stahle said he would take that under advisement and begin looking at it.

- 2) Commissioner Straface said he had heard from some community members about excessive

panhandling, especially around Wal-Mart and the Mall. He didn't know the history of this or ordinances that might apply, but he had heard from several people they were almost assaulted when they were going to Wal-Mart or the Mall. Maybe we should consider something concerning panhandling.

Mayor Galea said it's a good thing to consider since the community has a number of non-profits and faith based organizations that do provide a hot meal every day of the week excepting Sunday. She also appreciated the report from Mayor Pro-Tem Rentschler in regards to graffiti.

Commissioner Sikes commented on the following:

- 1) She said that as you may know, the mayor, Grants Coordinator Segura, herself and Kay Gomolac went to Albuquerque last week for the second CDBG meeting and were awarded the maximum amount allowed of \$500,000 for the Center of Protective Environment (COPE). She commended Grants Coordinator Segura for doing an incredible job. Since he has been here, he has doubled the amount of grants coming to the City.
- 2) She asked if we could possibly look into paving Hubbard Drive using city personnel. This is the poster child for bad streets and she really wanted to have something done.
- 3) She had a call concerning flooding of the Sahara Apartments in 2010. They were never cleaned out and someone had boarded up the windows. The neighbors living on the 2400 block of Cuba and surrounding areas should not have to deal with the smells and rodents. She realized Code Enforcement has been working on that and she thanked them. Commissioner Sikes informed the commissioners that in the future there would be a resolution for them to consider that would potentially destroy these apartments. She realized it would be costly, but we really need to do something about it. She had been out there and felt these people should not have to be dealing with the situation.

Mayor Galea commented on the following:

- 1) She said Commissioner Frank Gentile passed away recently. He served on the City Commission from 1991 to 1994. Former Mayor Don Carroll provided the eulogy at the funeral.
- 2) She attended the SNMEDD/COG meeting in Roswell and learned that because of some challenges we've had with budget reporting, they have had to administer some capital improvement funds from the state. There have been a few thousand dollars the city has had to pay so they could be our financial conduit of the funds.
- 3) She provided two State of the City budget presentations to Rotary groups. People are generally happy when we speak of things to be done as part of the maintenance budget.
- 4) The mayor met with General Rand who mentioned the DoD has their eye on the Pacific for resources because their needs have grown intensely, and we also talked about water and private property rights.
- 5) Our community welcomed Commander Kiebler to HAFB.
- 6) She was thankful for the City staff who stayed late for the community ICIP meeting.

EXECUTIVE SESSION (Roll Call Vote Required)

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

A-3. Threatened and Pending Litigation (Marietta Biscuits Co. PPA Default and Woolen vs. City of Alamogordo)

Mayor Pro-Tem Rentschler moved to recess into Executive Session to discuss Threatened and Pending Litigation (Marietta Biscuits Co. PPA Default and Woolen vs. City of Alamogordo) at 10:58 p.m. Commissioner Straface seconded the motion. Roll call vote was taken. Motion carried with a vote of 7-0-0.

RECONVENE INTO OPEN SESSION

Take any action as a result from Executive Session.

Mayor Galea reconvened the meeting at 11:31 p.m.

A-4. Consider, and act upon, any action that may be needed as a result of the Executive Session.

Mayor Pro-Tem Rentschler moved to approve accepting the Marietta Biscuits Co. offer to pay back the remaining economic development funds. Commissioner Hernandez seconded the motion. Motion carried with a vote of 7-0-0.

ADJOURNMENT

Mayor Pro-Tem Rentschler moved to adjourn at 11:32 p.m. Commissioner Baldwin seconded the motion. Motion carried with a vote of 7-0-0.



ATTEST:

City Clerk Renee L. Cantin


Mayor Susie Galea

*(Prepared by Nancy Jacobs, Deputy Clerk)
Approved at the Regular Meeting held on August 12, 2014.*