

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
AUGUST 22, 2000**

MAYOR DON CARROLL

COMMISSIONER DON COOPER

MAYOR PRO-TEM JOHN VAN DOREN

COMMISSIONER ED COLE

COMMISSIONER INEZ MONCADA

CITY MANAGER PAT McCOURT

COMMISSIONER RON GRIGGS

CITY ATTORNEY REBECCA EHLER

COMMISSIONER STEPHEN EASLEY

CITY CLERK ANGIE RAHN

Call Meeting to Order, Roll Call, Invocation, and Pledge of Allegiance.

The Meeting was called to order at 7:30 p.m. The Invocation was given by Rev. Scott Ruthven, and the Pledge of Allegiance was led by Commissioner Ed Cole.

PRESENTATIONS:

1. Presentation by the Committee on Historic Recognition, and adoption of Resolution No. 2000-32 accepting a bronze bas relief for the Hispanic Pioneers, declaring September 23, 2000 as "Hispanic Pioneer Recognition Day", and declaring the month of September as "Hispanic Recognition Month" in Alamogordo.

Recommendation: Approve the Resolution.

Dr. David Townsend, Chairman of the Committee on Historic Recognition, said they again came before the Commission with a recommendation for their consideration of Resolution No. 2000-32. This particular recognition involved some real hard work by a lot of people to bring it to the point of coming to the Commission for acceptance. The Historic Recognition Committee was usually

represented by the Chair of its History Subcommittee and the Art Subcommittee. He introduced June Harwell, Chair of the History Subcommittee. The Chairman of the Art Subcommittee was Mike Julian, who was not able to be present tonight. In the backup material was Mr. Julian's recommendation to the Commission. The Subcommittee which had done the bulk of the work on this was the Committee for Recognition of Hispanic Pioneers of the Tularosa Basin. That committee was chaired by Jim Myagishima, and many other members of that Committee were present tonight as well. The historic justification for this piece was written by Cynthia Reidlinger, and if they had questions about the historic justification she was present to answer them. The piece they were asking the Commission to place in Founders Park was a very handsome one. Each of them had a sketch of it, and it would be in the bronze bas relief form they had used before.

Dr. Townsend said the Resolution had five prayers to it. They were asking the City Commission to accept the recommendation of the Historic Recognition Committee. They were asking the City Commission to accept the bronze bas relief entitled "Las Entradas". They were asking the City Commission to express its gratitude to this group that had really made this thing happen, and they were asking further that September 23, 2000 be designated by the Commission as "Hispanic Pioneer Recognition Day" in Alamogordo. On that day they would plan the usual ceremony by which they brought these into the park with proper presentations, etc. They were asking further that the month of September 2000 be designated as "Hispanic Recognition Month" in Alamogordo in recognition of the unique contribution to our culture made by Hispanic peoples. It was the recommendation of the Historic Recognition Committee that this Resolution be passed.

Mayor Carroll thought that was certainly appropriate and would be a wonderful addition to Founders Park to help celebrate the history of our community.

Commissioner Cooper moved that we accept the Resolution. Seconded by Mayor Pro-Tem Van Doren. All voted "aye". The motion carried by a roll call vote of 7-0-0.

Mr. Myagishima invited everyone to purchase a fund raiser ticket which was for a dance with food and guest speakers this Saturday evening at 6:00 p.m. Mayor Carroll said he would like to publicly thank Mr. Myagishima for the effort he'd put forward on this. He knew the committee had all worked hard, but also that Mr. Myagishima was the driving force behind raising the funds to make this happen. He felt the community owed him a debt of thanks.

1A. Presentation to the Blue Angels softball team.

Mayor Carroll said he would like to recognize one of the sports teams from the City of Alamogordo which had done quite a feat in recognition for Alamogordo.

He requested the players and coaches from the Blue Angels softball team to gather around their trophy for being crowned ASA 18 & Under Class B Western National Champions, and a Proclamation was read which named Tuesday, August 22, 2000 as "Blue Angels Day" in Alamogordo. Coach Ronnie Reyes thanked the girls for playing so hard, and also thanked Alamogordo for all of their support.

Call of the Consent Calendar:

Items on the Consent Calendar are considered routine and should not require further discussion. A single motion will approve all items marked "CC" unless removed at the request of a Commissioner, City staff, or a member of the public. Items removed from the Consent Calendar will be heard in the numbered sequence.

2. Minutes of Special Meeting of July 26, and Regular Meeting of August 8, 2000.

Recommendation: Approve the minutes.

3. Ordinance No. 1098 consenting to the annexation of 6.075 acres of land requested by Terry D. Messer et al. [Case A-00-0050(A)]; Ocotillo Drive]

Recommendation: Approve the Ordinance consenting to the annexation of 6.075 acres of land in Section 32, T16S, R10E, NMPM, Case A-00-0050(A), to the City of Alamogordo for final publication.

4. Ordinance No. 1099 consenting to the annexation of 5.388 acres of land requested by Tierra de Suenos, Inc. [Case A-00-0051(A); Desert Lakes Road]

Recommendation: Approve the Ordinance consenting to the annexation of 5.388 acres of land in Section 31, T16S, R10E, NMPM, Case A-00-0051(A), to the City of Alamogordo for final publication.

6. Resolution No. 2000-33 revising the Annual Budget for Fiscal Year 2000-2001 and requesting written approval from the Local Government Division of the NM Department of Finance and Administration for the unaudited carryover balances computed on August 22, 2000.

Recommendation: Approve the Resolution revising the Annual Budget for Fiscal Year 2000-2001, and request approval from the Local Government Division of the Department of Finance and Administration, State of New Mexico.

7. Acceptance of Canvass of Returns for the August 15, 2000 Special Election.

Recommendation: Accept the Canvass as presented.

8. "Resident Parking Only" sign for 1212 Michigan Avenue.

Recommendation: Approve the placement of one sign for the property upon the applicant's payment of the \$50 fee.

9. Award of Bids:

A. Bid No. 2000-15, Gate Valves.

Recommendation: Award to Alamo Pipe & Supply, of Alamogordo, for an estimated total of \$46,855.43.

B. PW Bid No. 98-008-B, 1998 CDBG Phase III Shower Unit Rehabilitation.

Recommendation: Approve the bid from Cherokee Enterprises to rehabilitate seven (7) shower units at the Plaza Hacienda Housing Complex in the amount of \$2,322.32 (includes GRT) for each unit.

C. PW Bid No. 2000-002, Crockett Springs Waterline Replacement.

Recommendation: Award to Cherokee Enterprises, Inc. in the amount of \$211,648.48 (including NMGRT).

D. PW Bid No. 2000-007, Lower Ocotillo Waterline.

Recommendation: Award to General Hydronics, Inc. in the amount of \$270,918.61 (including NMGRT).

Item No. 9(E) was removed from the Consent Calendar.

Commissioner Cole moved to approve the Consent Calendar, item Nos. 2, 3, 4, 6, 7, 8, and 9(A through D). Seconded by Commissioner Easley. All voted "aye". The motion carried by a roll call vote of 7-0-0.

ORDINANCES AND RESOLUTIONS:

5. Ordinance No. 1100 authorizing Revenue Bonds for the Flood Control Project.

Recommendation: Approve the Ordinance for first publication.

Mayor Carroll said they had all received a revised Ordinance. Ms. Ehler said the language "and declaring an emergency" had been removed from the title of the Ordinance, as well as from about two other places throughout the Ordinance. It was not necessary to declare an emergency in this case. Also, on the title for Section 10 on page 16, it originally said "payment and presentation of bonds for parent", and it should instead say "payment and presentation of bonds for payment". On page 22, which was the sample form of Bond, there was an area

under the caption material in the blanks for interest rate, maturity dates and cusip numbers. Where the body of it started on the fourth line after the words "set forth" they had left out a blank to put the identify of the assignor if the Bonds were assigned. Two lines further down in the sixth line, it stated "the sum of unpaid principal amount at an interest rate on"; they had left out the money amount and the words "to pay to said sources". Further down, five lines from the bottom, there was a blank for thousand dollars; that was inadvertently put in there and didn't belong there at all. The sentence made no sense in the original version. In the revised version it said, "Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the record date.". The two other places where the emergency language was taken out was on page 43 for the summary of publication, and on page 45 in the synopsis of Sections 30 through 37.

Commissioner Cole moved (to approve the Ordinance for first publication). Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

9(E). Award of Bid No. 2000-13, Chlorinating Tablets and Brominating Tablets.

Award Item 1 (Chlorinating Tablets) to Pool Pro, of Edgewood, NM, for an estimated total of \$5,396.40; and Award Item 2 (Brominating Tablets) to Alamo Pipe and Supply for an estimated total of \$26,613.36.

Mr. McCourt said he would like to explain about the local bidding preference on this item. There was no problem with the bid, but just so the public and everyone was aware, they did have a local bidding preference for companies that were basically here in town. When they were within 10 percent of the bid, they were given an opportunity to match the lowest bid. They had elected to do that in this case to match the lowest bid. That was an effort on the part of the City to help promote our local businesses without harming the taxpayers.

Commissioner Easley moved we accept item 9(E) (to award Item 1 (Chlorinating Tablets) to Pool Pro, of Edgewood, NM, for an estimated total of \$5,396.40; and Award Item 2 (Brominating Tablets) to Alamo Pipe and Supply for an estimated total of \$26,613.36). Seconded by Commissioner Griggs. All voted "aye". The motion carried by a vote of 7-0-0.

10. Appointments to Boards and Committees.

Community Development Advisory Committee: Two vacancies.

Senior Volunteer Programs Advisory Council: One vacancy (Senior Companion Rep position open).

Parks and Recreation Board. One vacancy.

Mayor's Committee on Aging. One vacancy.

Mayor's Committee for People with Disabilities. One vacancy.

No appointments were made, and all remaining vacancies were rescheduled.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

11. Request of Mr. Clemens Kuhlig regarding the Oregon Tennis Courts.

Mr. Kuhlig said the reason he authored this petition was because many of them felt there were a lot of disruptions on the Oregon tennis courts ever since teaching for profit had been allowed. He also had questions about booking reports he'd had for the last three months, and particularly the one from last night. This was why they had asked the City Commission to investigate this problem. Mayor Carroll clarified that the Commissioners had already received copies of the petition. Mr. Kuhlig said under item No. 10 it stated that instructors were only charged \$5 for court use; he clarified that was per hour. He knew John Pendon, the High School tennis coach, and when he had a summer program he was charged a 60/40 split. In other words, for the money he earned he had to pay the City 60 percent if he charged for private lessons. This year there was a girl there teaching for the City, and one of the parents wanted her to teach for profit; she had said she would have to charge \$20 per hour. To his knowledge she would have to pay 60 percent of that to the City. Now this one instructor who they had a problem with, was only charged \$5 per hour. He thought that was not enough. Plus according to the booking reports, most of the time he only paid for one hour's time on the court and he used the court for as much as three to four hours, and sometimes longer.

Mr. Kuhlig read from the booking report of last night; "21 August, 4:30 p.m., 1 hour, tennis court for private lessons, \$5; 21 August, 6:00 p.m., 1 hour, tennis court for private lessons". In fact, the instructor was on that court from 3:30 to 7:45 p.m. The witnesses were Darrell and Joy Gallent, himself, and Emilio Otero, Security Guard. They called up the Parks Department a number of times that this was not what was on the booking report. They could not get through to Tammie Reynolds. They were asking that this be stopped. Mr. Otero came down and he said he had no authority because they could not get a hold of Tammie Reynolds. It wound up that they could not do anything about it, but they would like this type of thing to stop. If he owned a business, he would love one that he paid \$5 an hour for with no overhead; everything was free, including court maintenance. The lights were not free, but he didn't think that the \$5 per hour covered that cost. He

thought a reasonable charge should be made. Also, the four south courts (courts 1 through 4) were the best surfaced and the most popular. The other four courts (courts 5 through 8), which were the north courts, were not but they were certainly adequate to teach on. Mr. John Pendon and Mr. Barton taught there, and they taught there for free. It was good enough for them to teach on. The excuses he received was that someone would get injured on them. He was 63 years old and if he tripped on a crack and fell down and broke his arm or leg or whatever, he would have to go to a hospital. He certainly couldn't afford the doctors, being on a fixed income. He would have to drive himself to the VA Hospital in El Paso. So he had just as much right to use courts 1, 2, 3, and 4, as did anybody else. He and the people on the petition believed that this should not be turned into a private thing; it was not a private club for profit. Everyone should be free to use these courts because the taxpayers paid for them. They were all taxpayers and there should be no one--no matter how much or how little money...they should be available to use and on a free first come basis. He'd played tennis for a lot of years. Even at the University of Rhode Island and the University of Connecticut, there was never a conflict; no one ever said they had to get off the court. Everyone understood when the team used it, for example, when the Alamogordo High School team used it. They understood that; it was their court and they had a certain amount of time, and then when they left the court could be used again. That was the same way anyplace else he'd ever been. He'd never seen a public facility used as a private club, ever. In a private tennis club, certainly, but certainly not on a public tennis court funded by taxpayers.

Mayor Carroll said he would like to comment and give what was his understanding of the process. Because of the limited number of courts and the demand they had on those courts, the City required people who wanted a specific time to utilize those courts to apply and sign up and get a permit for that period of time. For just someone who wanted to play on there, there was no charge. This matter had come before the Commission before from complaints that people were charging others to give them lessons. The permit process was still the same, but what they had done was institute that if they were charging someone for lessons, then there was a fee. Other than the time that it was permitted, whether for individual play, team play, or for somebody charging, then it was first come, first served. If he was incorrect on that, then either the City Manager or City Recreation Director could correct him. Mr. McCourt said he would like the Recreation Director to work on it as he was much more familiar with it. There were a couple courts that were kept available and not allowed to be reserved at all times, just so that people that showed up would always have some courts available. But the others were available. Also, on item 10 when Mr. Kuhlig was told that a 60/40 split would be the case, was that since February 2000? Mr. Kuhlig said no, that was prior. Mr. McCourt clarified that was prior to the existing policies being put into effect.

Mr. Matt McNeile, Parks and Recreation Director, said courts 2 and 4 were always open for first come, first served play. They had one instructor who had abided by the Resolution who had the Business Registration and necessary insurance, and who had permitted through his department. Mr. Kuhlig said he had just read last night's booking report, and his argument with that was why he didn't pay for the full time. Last night he was booked for 2 hours, yet used it for 4 hours and 15 minutes. Mr. McNeile said their permitting and reservation system hitched on the honor basis. It was supposed to be a self-policed type of thing. Mr. Kuhlig said in his opinion and that of the others, it was not working. Mr. McCourt asked Mr. Kuhlig if he was indicating that the instructor had those courts booked for giving lessons and in fact was giving lessons at those times and wasn't charged for them? Mr. Kuhlig said that was correct. Mr. McNeile said the instructor had them booked at 4:30 for one hour and then from 6:00 to 7:00 p.m. In between those times there was a group that had a permit for that court which the instructor had to be playing with. Mr. McCourt said he could play, but he just couldn't give lessons without booking. Mr. McNeile said that was his understanding of what had happened last night.

An unidentified lady said she was present last night at the court. She was at the lessons from 6:00 to 7:00, and she was playing with the group from 7:00 to 7:45 p.m. She wanted to set the record straight that it was just recreation.

Mayor Carroll said at this point he would ask Mr. Kuhlig what it was that he was asking the City to do? Mr. Kuhlig said they were asking the City to investigate the problems they constantly had down there. He was sure there were other people that were going to speak tonight, which were in the petition. Mayor Carroll said anyone was free to reserve a court for any time an hour at a time, and the reservations were on a first come, first served basis. If Mr. Kuhlig would like to reserve a court for an hour of time, he could certainly do that as well as Mr. Kennedy. The difference would be since Mr. Kennedy had indicated that he was doing it for profit, he was going to be charged where Mr. Kuhlig would not. Mr. Kuhlig said if he was charged for the full time he used it. What he was saying was that before this started, these courts were open. There were no reservations for anyone, and it was a first come, first served basis. There were 8 courts, and plenty to be used. Why not have the first come, first served basis system in place? Mayor Carroll said as he understood it, the complaint before was because it was on a first come, first served basis; that this individual was monopolizing the courts. So was Mr. Kuhlig suggesting that they go back to that? Mr. Kuhlig said it was still monopolizing the courts. When court 1 was used for profit, they could not use court 2. It was impossible and anyone who played tennis would understand that. When they had many students they were teaching, the balls flew all over the place, so in theory the two courts were both out.

Mr. McCourt said if that was a concern, they would certainly address it to the Recreation Department and to the Parks and Recreation Advisory Board to look at that question.

Commissioner Easley asked how long someone could presently get on a court and play? Mr. Kuhlig said the sign said an hour and a half, if it was busy. That was tennis etiquette. Commissioner Easley said if somebody else came up and the hour was up, then they were pretty much obligated to get off the court. Mr. Kuhlig said the sign said an hour and a half, which was more than...any place he'd ever been before, it had been an hour. Commissioner Easley asked if they got off the courts when an hour was up if somebody else came up and wanted to play? Mr. Kuhlig said he'd never seen the courts that crowded before, except for special events like tournaments. Commissioner Easley thought the issue they were talking about was some kind of a shortage of tennis courts because they were being monopolized by people who shouldn't, yet he was hearing there were plenty of courts to play on and they could go play anytime. He didn't get it. Mr. Kuhlig said they would like the four south courts, 1 through 4, to be left open for anyone that wanted to play. Commissioner Easley asked which four courts were the good ones? Mr. Kuhlig said the south courts. Commissioner Easley clarified that they wanted to reserve for everybody the four good courts, for open play first come, first served all the time because they were the better courts. They also wanted to reserve the not better courts for people who wanted to reserve a time. Mr. Kuhlig said that was correct. Commissioner Easley clarified that even though they didn't want to teach, if they just wanted to reserve a time, they would still be stuck on the not good courts. He asked Mr. Kuhlig to explain his rationale on why the courts should be set up like that. Mr. Kuhlig said it had a better surface. Commissioner Easley said he understood that, but what he needed was the rationale on why they wanted to reserve the good ones for one use, and the not so good ones for other types of use? Could someone reserve a good court if they just wanted to play and not teach? Right now someone could call and make a reservation for free on six of the eight courts if they wanted to. So could they make a reservation on one of the good courts if they just wanted to play and not teach under his theory? Mr. Kuhlig said their contention was that the good courts should be left open at all times. Commissioner Easley confirmed that no one could reserve one of the good courts for any purpose and all reservations would be on the not as good courts. What was the rationale for deciding that they should only have reservations on the not as good courts versus the good courts? Mr. Kuhlig said the rationale was that courts 7 and 8 should be reserved for teaching because they really didn't need a good surface for that. He understood that sometimes the ball hit a crack, but on the good courts that did not happen. Presently everyone taught on the good courts.

Commissioner Moncada thought what Mr. Kuhlig was saying was that when teaching the balls would go to the other courts a lot more than if someone was just playing. In a way she could understand what he was saying about having all the lessons taught in one section, and then just leave the other ones open to just the general public. Was that correct? Mr. Kuhlig said yes.

Mayor Carroll asked if they were saying that the solution was no teaching on courts 1, 2, 3, and 4? Mr. Kuhlig said yes. Mayor Carroll clarified whether it was

profit or not and whether they had scheduled it or not? Mr. Kuhlig said that was correct. They should be free and open, but with no teaching. Mayor Carroll asked if he had a problem if somebody wanted to teach for profit on one of the other courts? Mr. Kuhlig said if that was what the City wanted, then fine. Personally he didn't like it. Mayor Carroll said he was not sure the City was in a position to really regulate whether somebody was teaching for profit or not, but that was beside the point.

Mr. Lee Morton, citizen, said at the time this issue was first brought up as a complaint, he happened to chair the Parks and Recreation Department, along with Mr. McCourt. He thought he could answer Commissioner Easley's questions. They had set up, and it was agreeable with the High School coach, with the Alamogordo Tennis Association (ATA), and apparently with Mr. Kuhlig also, that there would be a rotation system put in place for teaching. Just because someone was teaching for profit, they should not be penalized to the not so good courts all the time, but that there would be a rotation system. For instance, if someone were to teach Monday through Friday, then on Monday and Wednesday he could have courts 1 and 3, and on the other days he could have courts 7 and 8. He would rotate as would the reservations people. That was agreeable to the ATA, to the instructor Mr. Kennedy, and everybody. As far as he had been informed, that had been in place ever since. He asked if the rotation schedule had been put in place by Tammie Reynolds from the Recreation Department? Various audience members responded that it was not in place. Mr. Morton said he was informed that it was, and if it wasn't, then he would agree that it should be put in place because that was the finding of the committee. As far as Mr. Kennedy teaching, he felt he should be allowed to. He had certainly taken the necessary steps with the insurance, the City Business Registration, and he had agreed to paid the City whatever they asked of him that day. He must tell the Commission on a personal basis that he felt there was a personal vendetta going on against Mr. Kennedy and he felt it was unfounded. He saw no reason for this man to be criticized or anything else for doing what he did for a living. They had golf professionals that taught on the City's golf course; why couldn't they have a tennis professional teaching when he was doing his part for the City and he was doing his part to make sure that everything was right. If rotation wasn't being done, then he would suggest that it be done because four courts were good and four courts were bad. But as far as saying "no teaching on certain courts", that would not be fair to the instructor nor would it be fair to those people who registered and used the courts.

Commissioner Cooper said he had played some tennis with someone who was very good, but he remembered when he wasn't so good and he played on the raggedy courts. But as he got better he had to graduate up to a better court, and he went all the way up into clay courts. As a student progressed he was going to have to progress along with that court to accommodate what he had already learned. So if they were going to start on a not so good court and they got good enough to play on a good court, then why should that student be penalized and

the instructor be penalized. The instructor could bring these people up so they could start playing on good courts and could get better. Mr. Kuhlig said on the other hand, why should he be penalized while someone else was making a profit while using public funds? This was not a vendetta and he objected to that vehemently.

Mayor Carroll said it appeared that obviously they had competing interests and concerns out there that the Commission all thought were addressed and resolved. If it appeared that the agreement entered into with all the parties was not being followed, then maybe the next step was to go back with what was originally agreed to by everyone concerned on the rotating courts and give that a chance to work.

Mr. McCourt suggested this go back to the Parks and Recreation Board; that was who should be recommending the policy to the Commission and who they should be getting a recommendation from. That was where this came from. Mayor Carroll said he didn't have a problem with doing that either.

Ms. Becky Dodson said the instructor was abiding by the rules; the lessons were rotated. She had taken lessons on the back court and was happy to. The problem she found was with the little kids. She had children taking lessons and she wanted them on that front court. She wanted them to be in the shade during the long hot months. If they could fix the courts up at the other end and get some shade over there, then they'd be happy to move down there. It was her six year old that she didn't want out there; she didn't see any reason for it. The instructor, Mr. Kennedy, was abiding by the schedule and they were rotating where half the week they were down on the other courts. It was just the kids out there, and she didn't understand why they couldn't encourage the kids to learn this great game. They didn't have a private facility to go to. This was all they had.

Mr. Mike Burns said he'd moved here about four years ago and at that time there were plenty of tennis courts. Three years and three months ago Glen Kennedy came to town and he was the very first person that Mr. Kennedy threw off the courts saying that he had exclusive use of the tennis courts. One thing the Commission should understand was that the first four courts had a wall they could hit against. It was the only place you could play solo against the wall for some practice if you didn't have a partner to play with. If Mr. Kennedy had one court, there were so many balls that the other court could not be used, so he was in effect using both courts for his lessons. Before Mr. Kennedy ever had a chance to get recognition from the Commission, he did this for two years without paying a dime to the City--throwing people off saying that he had exclusive use of the courts. He had asked Mr. Kennedy by whose authority he was being thrown off the court, and Mr. Kennedy had given him a name. He went right home and called that person who said she'd never spoken to Mr. Kennedy. That was the kind of behavior that Mr. Kennedy had, in his opinion, gone with from the beginning. He apparently didn't understand the idea of court courtesy. This had

become divisive, and Mr. Kennedy was absolutely as loud as he could possibly be, and discourteous to the folks playing on the next courts. They couldn't hardly play in the mornings with Mr. Kennedy doing lessons on the next courts. Finally, Mr. Kennedy did agree to certain hours, but he realized there was no way to monitor him. Right now he was also teaching from 7:00 a.m. to noon daily without any monitoring whatsoever; he was not paying a dime for those courts. This had upset him from the very beginning because he felt Mr. Kennedy was abrogating his civil rights. Those were public courts and yet Mr. Kennedy was coming on saying he had exclusive use and that he had the right to throw him off of a public court. He thought this was an issue for the ACLU, frankly. Mr. Kennedy had no right to deny him access to a public facility. If they did agree that this was a public facility, he didn't see how Mr. Kennedy could continue to do this. The Commission had given Mr. Kennedy the recognition to teach, but he must be monitored because he knew that he wasn't. He taught from 7 a.m. to noon each day when he wasn't supposed to be. They could see this for themselves if they'd just show up. He would like for someone to come down sometime and see the kind of discourtesy they were talking about. It was virtually impossible to play when Mr. Kennedy was on the adjacent courts. He was as loud and obnoxious as he could possibly be. It was wrong; he was not paying for his time. And Mr. Kennedy had gotten away with it for two years and three months after he (Mr. Burns) and others were thrown off the courts, without paying a dime. Mr. Burns said he was a Recreation Therapist, so could he go up to the Washington Street shelters and teach leisure counseling for free, and charge \$5 an hour? Could any lawyer or doctor in this town do the same thing on public property with no overhead or charge at all? That was what Mr. Kennedy did.

Mr. Darrell Gallent, ATA member, said there was a point made a while ago that Mr. Kennedy was honoring his agreement and paying the \$5 per hour. He would like to know how that \$5 figure was arrived at? He knew a point was made that the Golf Pro had to pay a certain fee, and although he didn't know what the golfers paid, he would pretty much guarantee that they were paying a lot more than \$5 per hour to golf instructors. The average for most tennis instructors in other cities, including El Paso, Las Cruces, etc., most of them were paying \$15, \$20, or even \$30 per hour in order to use public court facilities. Could anyone tell him where the \$5 per hour fee was arrived at? Mr. McCourt said they didn't have a number to start with, and that was the number which came up out of the group that met. If his recommendation was that the fee be raised, he would suggest he send that to the Recreation Committee. Mr. Gallent thought it would make more sense to not charge him a flat fee, but a percentage of his earnings. If he was making \$100 per hour... Mr. McCourt said that was discussed in the committee, but then they got into a whole big auditing question of Mr. Kennedy's books and so on. So it was felt for ease of tracking, that it was easier to do it on the court use time. Mr. Gallent thought it would make sense to determine Mr. Kennedy's normal hourly fee and then base the agreement on his hourly fee. He was using public facilities. Mr. McCourt thought the question became that the City didn't care what Mr. Kennedy was doing in his business, but what the City cared about

was the courts it owned. If the recommendation was to increase the hourly use fee, then that was certainly appropriate and should be sent through the Recreation Committee who then made recommendations to the City Commission on all the areas where fees were charged within the Recreation Department. Mr. Gallent said if a fee was agreed upon, whether \$5 an hour or more, what type of system was in place to monitor that Mr. Kennedy was actually paying his fees? He had a booking report showing the times he did pay and charges he was charged by the City. This gentleman here had admitted a few minutes ago that the times he was allowed to play yesterday was for one hour from 4:30 p.m. to 5:30 p.m. and then from 6:00 p.m. to 7:00 p.m. Mr. Gallent said he was on the court himself at 3:00 p.m. yesterday, and Mr. Kennedy walked on the court at 3:30 precisely with four students and a basket of balls. He was obviously instructing, and he was there from 3:30 p.m. until 7:45 p.m. last night. They might have been playing for fun, but from 3:30 p.m. until 4:30 p.m. he was definitely instructing and he was not charged by the City; the booking report did not charge him. He knew the comment had been made that Mr. Kuhlig had a vendetta against Mr. Kennedy, but he knew Mr. Kuhlig and that he did not. It was just that Mr. Kennedy could be very arrogant and he had no tennis etiquette. That was a problem he personally had against Mr. Kennedy. He didn't care if Mr. Kennedy had an agreement with the City and if he wanted to pay the City for instruction, that was fine. He did agree that courts 1 through 4 should not be allowed for tennis instruction. If there was going to be any paid tennis instruction, then he felt it should be on courts 7 and 8. Courts 1 through 4 had a wall where a single individual could hit against the wall, and that couldn't be done on courts 5 through 8. So if courts 1 through 4 were taken and booked, then if someone wanted to go out and just hit against the wall, they couldn't do it as long as there was instructing going on. What he would like to know was what was being done to monitor this and to make sure that Mr. Kennedy was paying the amount agreed upon to the City? Mr. McCourt said any monitoring would be taking place through the Recreation Department. Mr. McNeile said he gave their department the schedule of permits he would like, which was just like they did for softball, baseball, or football fields. Everything was based on the honor system. It was up to Mr. Kennedy to call them if it rained and he had a scheduled lesson which didn't take place. They in turn billed Mr. Kennedy on a monthly basis for the permits he took out through the Parks and Recreation Department.

Mr. Gallent said on June 30th of this year he, his wife, and two other people were playing tennis on court No. 3, and Mr. Kennedy and his students were on courts No. 1 and No. 2. According to the booking report they were giving a tennis camp. They went out on court No. 3 and started playing because it was not occupied and there were no students or instructors on the court, and there were no signs posted which said they could not play on that court. They started playing at about 7:00 p.m. About ten or fifteen minutes later Mr. Kennedy and ten to fifteen of his students walked over and told them that they had to leave the court because he claimed he had the court reserved for a tennis camp. Mr. Gallant said that was fine and he asked Mr. Kennedy to show him the permit which said he had

authorization to take the court. He came back a little while later with a blank document which did say he had the court reserved, but there were no signatures by anyone from the City, and it was something he could have typed up on his own computer. Mr. Kennedy was very rude and arrogant and his students physically walked on the court and completely prevented them from playing tennis. They completely took the court over without permission; they just took the court over so he and his group were not allowed to play tennis that day. He never produced any document which showed any permit to use the court. Later on they received the booking report, and for that day it said he had a tennis camp but that he was not charged anything. If he was supposed to pay \$5 per hour, why was he not charged for any of those days that he was using courts 3 and 4 for the tennis camp? Mr. McNeile said he understood for that particular time that as part of the tennis camp there was free play. There was no instruction going on and just like any other citizen, Mr. Kennedy could get a permit for the court. Mr. Gallant asked if he could book it for the whole day? Because he had that court reserved for pretty much the whole day. So if he wanted to call tomorrow and book the court for the whole day--if he called and said he wanted the court for all of September and October, were they going to let him have the court the whole time? Mr. McNeile said yes. If he wanted it for all of next year would they give him that also? His point was that there were only eight courts, and only four good courts. There had to be a limit to how much Mr. Kennedy could use them. He was on the court for about six hours yesterday.

Mayor Carroll said he understood there was a lot of divergence of interest and opinion of what was right, wrong, working, or not. They weren't going to solve that here tonight. He thought the City Manager's suggestion was that this go back to the Parks and Recreation Advisory Board for reconsideration of some system that they may be able to make work. There was obviously a divergence of opinion as to what should be allowed and what shouldn't be allowed on the courts. He was not a tennis player so he was not in a position to speak on how he thought it might be able to work. They were certainly not going to solve it here tonight either pro or con. He would suggest that they go back to the Parks and Recreation Advisory Board and have them revisit this issue. Mr. Gallant said to look at it this way; if any of them went out to play golf and there was an instructor who took every one of the 18 holes available for all day long and they had to sit and wait and wait...maybe the Commission could understand their position. This group here tonight all enjoyed tennis and this was totally disrupted. He'd been playing tennis for about 25 years and he had lived in several different cities around the country and he had never in his life had an incident where he'd come across someone like Mr. Kennedy that just absolutely felt like he owned those courts and that they were his and if anyone tried to step in line, he didn't like it. That was the feeling he got when Mr. Kennedy was on the court--that he felt like he owned them and that he had a right to do with them whatever he wanted to. If he wanted to utilize a court like he did, then he needed to go out and buy his own private court and then he could teach all day long. Let him pay the \$100,000 to build his own court.

Mayor Carroll asked if any of the Commissioners had any different feelings, other than that this should go back to the Advisory Board to see if it could be worked out, because he didn't see how they were going to solve it sitting here this evening.

Commissioner Moncada felt it should go back before the Board, but she also would like to have somebody from their group on the Board. Mayor Carroll said they were not on the Board and the Board was already filled, but he thought whenever they had this meeting to discuss it that all viewpoints should be heard and all sides should be represented at that time. Commissioner Moncada said someone needed to be present from the tennis group in order to voice their opinion also.

Commissioner Easley thought a lot of those concerns could probably be worked out. Clearly monitoring any instructor who taught there was going to be a difficult job. He would urge Mr. McNeile to consider going to a flat monthly fee for instructors and that way they wouldn't have to monitor the number of hours that were actually used, charged or billed. Mr. Gallant felt whatever fee was agreed upon, that it should be a fair fee. He felt \$5 an hour was not fair at all for someone who was profiting on publicly funded facilities. His tax dollars were going to help pay the electric bills on those courts. Commissioner Easley said his too, and when they had the meeting, that point could be brought up. He felt they also needed to make some sort of provision so that if people did have a reservation they had to be able to show their documentation for it; no reservation-no court. They had to produce City documentation, and if they couldn't, then no court. Mr. Gallant said that was a good point. Yesterday they'd asked the Parks Security to come down to find out if Mr. Kennedy did have a permit because the Parks and Recreation Department had said he was allowed on the court only from 4:30 to 5:30 and then from 6:00 to 7:00. He had explained to the Department that he'd been on the court since 3:30 the day before. The security guard went out and looked at the documentation, and Mr. Kennedy still did not have any documentation that gave him a permit to be on the court at that time. If someone was going to instruct, then they needed to have something in writing on their possession so that if someone wanted to check it, they should have it on their position while they were instructing. Commissioner Easley said it was also possible if everyone could agree, that they could make certain teaching time zones of the day between certain hours. It was sort of like at the pool where they had certain free swim times, certain no kid swims times, etc. He supposed that if they made all the kids get out of the pool they infringed upon their civil rights, but he didn't really see it that way. He supposed in order to make everybody play nice and share the sandbox, they might have to make some kind of provisions like that for teaching times and non-teaching times. But, those who were not involved in teaching or taking lessons had to honor the teaching times as well. That may require that during those teaching times that the good courts were going to be involved in teaching as well. Those were the kinds of compromises

they could probably work out. He hoped they all went to the meetings and made all their points clear.

Mr. McNeile said they would hold a Special Meeting to discuss this. Mayor Carroll asked that they make sure the major people involved were notified, and they could notify others to be at that meeting. Hopefully as Commissioner Easley said, everyone would come up with some positive suggestions as to how to accommodate everyone's concerns and everyone's desire on the use of limited facilities.

Commissioner Cooper said he was totally in agreement that it go back to Parks and Recreation. When the recommendations came out, everyone was going to have to abide by them. After all, this was a public facility and everyone was entitled to use it. He also would recommend some tighter reins out there too.

Mayor Carroll said that was the approach they would take and hopefully they would be able to work something out. The Parks Department would call a Special Meeting.

Mr. Grady Nicholson, President of the ATA, said he wouldn't belabor what was going on; the Commission had made the right decision to go back and look at what was going on. He had sent all of the Commission a letter regarding this meeting. Only two or three quick points from that letter were that the north courts needed resurfacing. That needed to appear in a budget very soon to get that done for the four north courts. Also, he thought if they would limit teaching to the north two courts, Nos. 7 and 8, it would eliminate a lot of the problems. They needed to go back and get everybody in on this. Mr. Kuhlig was a member of the ATA, but he was not actually expressing what most of the ATA felt. The way he read Mr. Kuhlig's petition was that he was really jumping on the City for not setting up the right rules. He thought Parks and Recreation had set up the right rules, but that they were just not being enforced correctly, and if they wanted his honest opinion, he did feel there was some cheating going on. But he did feel the Commission had made the right decision.

Mr. Kuhlig said regarding this lady saying that she liked the shade for her children, if they were tennis players and were going to USTA events, they would have to ask the tournament director to play in the shade at 100 degree heat, so they could eliminate that one. He had just as much right to use shady courts because he had to stay out of the sun for medical reasons. So he had just as much right. The last thing he would like to emphasize was that there had been cheating going on, and they wanted it stopped. If it said someone could use the court for an hour and in fact it was used for four hours, then in his opinion that was defrauding the taxpayers of Alamogordo.

UNSCHEDULED COMMUNICATIONS:

A. Comments by Mr. Bill Pieper regarding signage in his neighborhood and monitoring of speed on North Scenic Drive.

Mr. Pieper, 3600 Rosewood Lane, said there were approximately 380 German people in his neighborhood that didn't know what the heck they were doing. He'd lived in this town for 40 years off and on and he thought it was high time somebody would show some action to help these people and their children. They had a lot of small children. The two neighbors of his had three children each, and the oldest one was 7. They were running back and forth across the street without looking for an automobile, etc. To date they'd had two or three very narrow escapes. Evidently the Germans didn't supervise their children like Americans did. So he was here to plead for a posted speed limit in various sections of that court. They were going to put in approximately 80 more residences behind him, and the German School was there so it was high time that something was done to control these people and to give them some support. He felt they felt kind of abused. They had no lights in that community--there was one light. These kids were running around after school and were free to go wherever they wanted. Some of them rode their bicycles through the dark of the night, which was asking for a lot of trouble. He had talked to Commissioner Cooper on this very subject. Of course, since they had the main thoroughfare, there was a lot of speeding going on there which was not being controlled. He thought there should be somebody named to produce some papers published and distributed to the houses to tell these 380 plus people there that they weren't out in open spaces; they had to pay attention to what they were doing. He'd lived there a year and they would like to get along.

Mayor Carroll requested DPS to take a look in that area to see if there was additional signage that needed to be put up for traffic control for speed limits or children playing. That brought a good point not only for this neighborhood, but also for all the schools to have the DPS Officers reinforce the safety guidelines that the young people should be aware of. Mr. Pieper said they would have a lot of foot traffic since the German School was right there. Mayor Carroll thought when that school opened that the City would want the DPS folks to go and visit with them also and make sure that they emphasize the importance of walking where they should and be careful when they crossed the street.

B. Comments by Commissioner Cole regarding Desert Foothills Park, and the Recycling Center.

Commissioner Cole expressed to the Parks and Recreation Department about the new benches which had been put up in Desert Foothills Park. Several families were using them, as well as for the elderly that walked out there. Also, the portable restrooms and speed bumps had been put in up there. He was sure that had slowed down the traffic some to where it wasn't a safety factor.

Commissioner Cole said the recycling signs had been up for four to six weeks. He felt it made a cleaner area, particularly around the Heights School since the signs had been put up. Also, from the people on Sundown regarding the berm that had been taken down and smoothed out, they really appreciated it and he wanted to thank the City Manager.

C. Comments by Commissioner Cooper regarding the area near Rosewood Lane.

Commissioner Cooper said once the school was opened there, there would be a high influx of young people, especially around North Florida which was the main thoroughfare. There were speeders on Scenic as well, but DPS had been starting to get over into that area. It was unfortunate they didn't have sidewalks in that area, but down on Florida there was an area where they could go out with safety. Hopefully the majority of those students would be bussed out of the area. That had been a concern of his because he saw those young people out there playing and having a good time, but he also thought that a little more parental supervision might go a long way too.

D. Comments by City Manager regarding water situation.

Mr. McCourt said as of this morning they were at 43 percent of our capacity in the reservoirs, and that translated into about 77 million gallons. They actually had come up a little bit in the last few days as the weather cooled off some. They were continuing to monitor that very closely. They thought they'd make it through alright. The weather seemed to be cooling off and they had been getting a spattering of rain. It had been an exceptionally dry year.

E. Comments by Mayor Carroll regarding thanks to voters for approving the Gross Receipts Tax; New Mexico Municipal League (NMML) Delegates at Annual Conference; and clarification of statements made at last meeting regarding the painting of the water tower.

Mayor Carroll said he would like to thank the voters that took the time to come out and vote on this economic development Gross Receipts Tax. He felt they'd given a valuable tool for the future development of the community. He'd like to also take the opportunity to thank the media, both print and broadcast, for the coverage they gave this issue. He thought that was very key in getting the amount of turnout they got for the election. He personally thanked Mr. Gaylon Parker from the "Alamogordo Daily News". Both the print and broadcast media had done a lot to help publicize the election and the issue.

Mayor Carroll said next week was the Municipal League Annual Conference, and in the past as was for the Officers in the League, Alamogordo was entitled to a voting delegate and an alternate. In the past the Mayor had been the delegate and the Mayor Pro-Tem would be the alternate. Since Mayor Pro-Tem Van

Doren was not attending the conference this year, if the Commission had no problem, he would be the voting delegate and he would ask that Commissioner Moncada be the alternate since she was familiar with the process.

Mayor Carroll said he wanted to apologize and clarify a comment he'd made at the last meeting in response to an item that Commissioner Moncada had brought up. When she indicated the request to paint the water tower, he was thinking water tanks which were much lower to the ground. He would have to really think hard and long about any changes to the water tower on Tenth Street. Possibly a mural might be acceptable, but he didn't know that he would be supportive of "Home of the Tigers" and basketballs and footballs designating when they won District and State Championships. However he did understand that there was going to be a group on one of their future agendas to discuss that item. He just wanted to clarify that.

Commissioner Moncada said someone had brought it to her attention later on that perhaps that was a historical site and they couldn't do anything with it anyway. Mayor Carroll said to the best of his knowledge the water tower had no historic status; however, it was in an area where they were trying to have a somewhat historical ambiance. He wanted to clarify that if he sounded like he was in favor of that request, that he really wasn't at this point.

Mr. McCourt said that item was scheduled for the next meeting, which was September 12th.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss pending litigation, and disposition of real property.

Mayor Pro-Tem Van Doren moved to adjourn into Executive Session to discuss pending litigation, and disposition of real property. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a roll call vote of 7-0-0. The Meeting was adjourned at 9:00 p.m.

The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of August 22, 2000 was adjourned into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure.

Mayor Donald E. Carroll

ATTEST:

City Clerk Angie J. Rahn

(SEAL)

(Prepared by Chief Deputy Clerk Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of September 12, 2000.



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