

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
7:30 P.M., COMMISSION CHAMBERS  
FEBRUARY 12, 2002**

**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**

**CHF DPTY CLK TERESA GUTIERREZ**

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

The Meeting was called to order at 7:35 p.m. The Invocation was given by Rev. Dottie West, and the Pledge of Allegiance was led by Commissioner Ron Griggs.

**PRESENTATIONS:**

1. Presentation by Mr. Larry Monroy, 808 Delaware, regarding the following:

**A. Request to keep his "Resident Parking Only" sign located at 808 Delaware Avenue.**

Recommendation: Take action to either allow Mr. Monroy to keep his sign, or to have the sign removed.

Mr. Larry Monroy said his property was zoned commercial and there were only two residents on his street, one at 800 and his at 808 Delaware. There was a restaurant and supply business across from him, a restaurant on the corner, and Home Furniture beside him. He only had an indentation for a driveway which was

made by the City when they widened Delaware over twenty years ago. He needed the sign because it was the only place he could park.

Mayor Carroll said the Commission had received some backup which indicated that Mr. Monroy's sign was placed there in 1978. When the City reviewed these signs, it was not the intent to just go in and take out the signs for no reason. However, they did want to make sure that there was still some justification for the signs. He had no problem in allowing Mr. Monroy to keep his sign.

Commissioner Easley clarified that Mr. Monroy had no off-street parking. He had no problem with this sign remaining either.

Commissioner Moncada said Mr. Monroy was also very close to Immaculate Conception Church, which also took up a lot of parking on Sundays. Mr. Monroy said he'd even seen people park as far down as the Ink Well parking lot.

Commissioner Cooper moved to continue the "Resident Parking Only" sign at 808 Delaware. Seconded by Mayor Pro-Tem Van Doren. All voted "aye". The motion carried by a vote of 7-0-0.

## **B. Problem with an excessive amount of cats running loose in his neighborhood.**

Mr. Monroy said on any given day he had counted anywhere from 10 to 20 cats running loose in the area. They came from across the street into his yard and into his neighbor's yard. They'd even found dead cats. They came from 805 Delaware where the man fed them. They couldn't be his pets because he had at least 20 of them. Over two months ago he'd talked to someone from Animal Control when they came to pick up a dead cat. The Officer told him he was aware of the problem. Tonight he got a call from Officer Thompson, who stated that he would bring some traps out tomorrow. He requested that Animal Control get rid of the problem, or that the resident at 805 Delaware be made to restrain his cats.

Mayor Carroll said he understood this problem existed a number of years ago, and the Animal Humane Society had gotten involved. There were some members from that organization present tonight, and he requested they give a little history of what worked the last time this problem got out of hand.

Ms. Linda Rardin and Ms. Debbie Engle, members of the Humane Society, said in March and April of 2000, they'd worked with the owner of these cats. They'd trapped 22 cats at that time, and found out that 19 of the 22 were infected with feline HIV. Those cats were all put down. He actually got three of his cats back with shots and they were spayed. They spent between \$700 to \$800 on that project, and they'd brought it up to the City who actually stepped in and acknowledged the problem with them. They felt it was a good control at the time

with only three left, but obviously it wasn't. Ms. Engle said the City advised them that they had explained to the owner of Alfredo's that if he fed these animals, then they were his. With that responsibility he had to get their shots and have them City-tagged. They also gave him a year to clean up the property behind there so there wouldn't be mice to attract the cats. None of that had been done, and the resident was still feeding them. None of the three cats they'd put back were alive today.

Mayor Carroll said it appeared that solution was less than satisfactory as it had cost the organization a lot of money and the problem was back as bad as it ever was.

Commissioner Cooper said he had a similar problem when he lived on Russell Court. Animal Control gave him a trap, and within two days he'd trapped 23 cats. He took them all to Animal Control, and as a result it eliminated the cat population in that area and to this day they were not having any problems anymore.

Mayor Carroll said initially the trapping may be required to get the cats there now, but also our Code Enforcement people and our Animal Control people needed to visit again with the individual. If he committed to do certain things a year ago and still had not done them, then it was time to revisit that. If necessary, it was possible under our Ordinances to cite individuals into court if they were violating them. While there was no set number of animals an individual could have, they could not constitute a nuisance, disturbance, or health hazard to others.

Mr. Monroy requested traps for himself as well as his neighbor.

## **2. Presentation by Mr. Tony Bransford, DWI Offenders Supervision Program.**

Mr. Tony Bransford, Otero County DWI Program Coordinator, said this program had been in existence since 1996, and had served Magistrate Court, Tularosa Municipal Court, and up until May 22, 2001, Alamogordo Municipal Court. They'd assisted Lincoln County Courts in Ruidoso and Carrizozo. Effective this month they'd also be providing their services to the Mescalero Tribal Courts and to the 12th Judicial Courts. They did referrals for DWI school, alcohol screens, monitored community service, and provided intense supervision for DWI offenders. They assisted clients in finding treatment providers anywhere in the United States as long as the offense was committed in Otero County. They monitored the aforementioned to assure client contact with the agency they were referred to. They had notification procedures for each court as to how noncompliance was handled. Some they notified by fax or telephone and others by written correspondence; it was a Judge's call on how they did this. He believed Judge Barber had said the reason he no longer desired these services was due to the turnaround time on alcohol screens. It was true they could not

meet the time frame desired because they had other Judges they worked with and first come, first served. His time frame for sentencing was shorter than all the other courts, and consequently, he agreed with that. However, Judge Barber was satisfied with their service until May 2001, and now why the sudden change? Judge Barber also no longer desired these services due to the fact that they'd changed the court appearance procedures in April. Prior to that, a Court Clerk would notify him if they had a DWI offender appearing before Judge Barber. One of their supervision officers would arrive at 9:00 a.m. for court, sit through the other hearings and when a DWI case was heard and the individual pled guilty, they would accomplish the paperwork referring the individual to his agency for an alcohol screen. While still in the courtroom, a date was given for the screen and that way a return date could be made for the scheduled meeting. The reason his organization changed their procedures was to use their time more efficiently. This was with the court's approval. The new procedure seemed to be working efficiently. The Court Clerks would contact his office the morning there was a DWI offense to be heard, they would get a tentative screening date and could schedule the individual back for his sentencing. Upon entering a guilty plea, the individual would be referred to his office for a screening appointment. They had to make contact that day, and his office would notify the courts of the same. Once a client was screened, a staff member would appear at the time of sentencing to refer the individual to the appropriate agencies. There were times when his staff could not meet the deadline of the court for various reasons, and therefore, a new return date would be agreed upon. The reason he was offering this information was because he noticed that the City had hired a new DWI Supervision Officer. He could not see spending taxpayers' money when that service was offered free of charge with the Otero County DWI Supervision Program.

Commissioner Cooper asked Mr. Bransford's turn around time, and the suggested turnaround time by Judge Barber. Mr. Bransford said Judge Barber wanted immediate turnaround time. He wanted the offender to appear for his hearing on one day, have the screening done immediately, and return the following day. His office couldn't offer that service. His turnaround time depended on the number of offenders.

Mayor Carroll said it sounded like Judge Barber was trying to speed up his court process. When Mr. Bransford said his office offered this at no cost, he understood that the DWI screening fee was placed on the offender. So it was a question of whether the fee went to his office, or whether it stayed in Mr. Bransford's office. Mr. Bransford said if Judge Barber wanted to screen his people, that was fine because his office couldn't offer that turnaround time. What his office would like was the ability to supervise his people in order to collect the data and report it to the Department of Health in Santa Fe. The only way to collect this data was with the completion of an ADE Needs Survey, which was a State-mandated tool for all courts participating in the program.

Mayor Carroll said there was obviously a separation of powers issue here between the Executive Branch of government and the Judicial Branch. He had not had an opportunity to visit with Judge Barber, but he suspected that the Municipal Court would be happy to provide whatever data they'd accumulated along those lines to help Mr. Bransford with the statistical information he needed. Mr. Bransford said that was offered, but he could not report that data to Santa Fe by just copying it. The only way Santa Fe could collect that data was through the Needs Survey where the answers were punched in, maintained on a disk, and sent to Santa Fe. Mayor Carroll asked if this was the only Municipal Court in the State that did it themselves? Mr. Bransford said he was not concerned about any other Municipal Courts; he would just like to capture the data for Otero County. Mr. McCourt said he'd visited with the Judge today. He was confident that if the data needed to be collected and it was required by State Statute, then our Court would do that.

Commissioner Cole said in budget meetings, the Judge said he anticipated a new position to be filled. Was that the position they approved at the last meeting? Mayor Carroll said yes. Commissioner Cole said he'd anticipated this increase several months in advance, and he must have had good reasons for it. Mayor Carroll clarified that Judge Barber felt the program would be self-supporting, but rather than go in and hire someone to start it, he wanted to do a trial run to see whether that was the case and he therefore contracted it out for a period of time with a temp service. When he came back for the budget adjustment, he indicated that his trial program had been successful and he anticipated that the fees generated by this individual were sufficient to cover the cost of the position. As he understood it, there would be other duties for this individual, so it would be another person in the Municipal Court office that would have some amount of time which could be devoted to other court activities besides just monitoring the testing and the screening. Although Mr. Bransford was pointing out that his organization had the capability of providing the service, apparently our Municipal Court felt they could provide it in-house more effectively and efficiently than what Mr. Bransford's office could. They'd authorized the Judge to fill the position, so unless he changed his mind he felt it was pretty well set.

Commissioner Easley said the Commission had operated in good faith to approve this position twice now based solely on representations from Judge Barber. They had no other input, and he had no reason to think he in anyway mischaracterized or misled them on these things. This was not an action item tonight, and in three weeks Judge Barber would not be the Judge one way or the other. Therefore, he would propose that they actually just defer discussion on this until they had a new Judge who could discuss with them what his wish and desire might be.

Commissioner Griggs asked if the position had been placed on the City's payroll yet? Personnel Manager Brian McGuire said the position had been filled, and he believed the effective date was next Monday. They would be on a probationary

status for six months. Commissioner Cooper felt they should forego that position until the new Judge was seated. Mr. McCourt said this wasn't a personnel question. There was a separation of powers clause. The Legislative body did control the purse strings of the City; however, once they'd appropriated money to the Judicial budget, they had pretty much a free hand to decide how to use it, and it was not easy to unilaterally withdraw it. He didn't believe the Commission had the authority to prevent the Judge from filling this position. Mr. McGuire said the State Grant money for this position ran out at the end of February, and that was the reason for filling it at this time.

Commissioner Easley felt it would be better to let this sit at least another three weeks until we got a new Judge. Perhaps the new Judge would be entirely happy with the current arrangement, or if not, then they may need to look at some alternative arrangement. Mayor Carroll said he was sure the new Municipal Judge would be more than willing to sit down with Mr. Bransford and discuss this and make sure the community got the best service it could for the lowest price.

### **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.

### **3. Minutes of Regular Meeting of January 22, 2002.**

Recommendation: Approve the minutes.

### **7. Ordinance No. 1135 amending Rezoning Ordinance No. 1125 for the New Mexico State Armory Board.**

Recommendation: Final adoption of the Ordinance.

### **8. Statement regarding the Executive Session of January 22, 2002.**

Recommendation: Approve the following statement and authorize it to be included in the minutes of January 22, 2002: "The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of January 22, 2002 was adjourned into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure."

### **Item No. 6 was removed from the Consent Calendar.**

Mayor Pro-Tem Van Doren moved to approve Consent Calendar items 3, 7, and 8. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a roll call vote of 7-0-0.

## PLANNING ITEMS:

### **4. Consideration of preliminary and final plat of Fambrough Subdivision, for five (5) lots located within the City of Alamogordo, for The Fambrough Estate.**

[Case S-02-0730(A); 451 Michel Street, 600 & 700 Municipal Avenue and 2250 and 2300 US Highway 54 South]

Recommendation: Approve the preliminary and final plat of Fambrough Subdivision, Case S-02-0730(A), located within the City of Alamogordo, with variances on the construction and installation of alleys, on the installation of utilities (water and sewer), on the construction of streets to City standards (curb, gutter, sidewalk, and paving), and from Section 22-01-140(b)(1) relating to drainage plans, with a deferral on the dedication of public land, with a Waiver of Protest Agreement and an Avigation Easement.

Mr. McCourt said the Estate was trying to be settled, and so a piece of property was being divided up among the heirs. There had been a couple questions asked concerning this which he had passed onto the Planner. Regarding the deferral of dedication, if the acreage was secured at this time, it was a larger block than receiving three smaller blocks if it were received at a later time. Because this was a summary procedure, it did not go to Planning and Zoning. City Planner Sharon Few said regarding the drainage easement, the reason it was not being continued to the west across lots 1 and 2 on the plat was because this was the area of the subdivision that was currently vacant. Not knowing exactly where development would occur in the future, staff had requested a plat notation which would identify that with any future development and re-subdivision, continuation of a dedicated easement would be required. The Engineering Department had felt this was the best course of action to leave the flow as it naturally was on these two lots and then channel it at the time of development. Mayor Carroll said the concern was not on what she'd just said, but on what was in the report where the recommendation was to allow reporting with the individual Building Permit which put them right back to the same problem they'd talked about a couple of meetings ago in the Golf Course area. It was one thing to provide a drainage report with a subdivision, but when they said they were going to put it down to the individual lot--they weren't solving the drainage problem if they didn't tie it to something bigger than an individual Building Permit. Ms. Few said as such since there was no new development planned, that was one of the reasons staff was recommending deferral.

Mr. Klad Zimmerle, Burke and Associates, said there were five heirs who would each be receiving a portion of this. These were large parcel tracts of 20.6 acres and so on. They were not going to be developed at this point in time as a subdivision. They were not going to move a single mobile home onto the 20 acres and live in it. They hoped to be able to sell the large parcel. At that time that parcel would have to come through the full review process of the City, through Planning and Zoning, through the Commission, and with full review by all of staff and Engineering. That was when the streets would be platted, when the

drainage study would be done, and when all of the development items would be addressed. Mayor Carroll said he did not want the Commission to do something tonight and waive or give away something they were going to regret. In reading this background report, there were three rezoning requests in process for this property now. If the drainage was going to be addressed as part of an overall development, that was fine. His concern was he didn't want to see it put off and they would just worry about it with each individual Building Permit. Mr. Zimmerle agreed. This land had potential to develop into single family lots. At that time streets would be platted, utilities would be extended, and that was when the development would occur and when the drainage would be addressed. Mayor Carroll said that was fine. He wanted to make sure they were all talking about the same thing because the recommendation talked in individual Building Permits, which made him uncomfortable. As long as everyone understood that at some point early on in that development process there had to be accommodations for drainage, that solved his question on that.

Ms. Few said on the variance relating to drainage plans, they could condition individual Building Permits or any further development on any lot. Lots 1 and 2 were each in excess of 20 acres, for example. Mayor Carroll said as long as it got addressed. He didn't know if they started out with 20 acres of land and they built one house on it, that they really needed to have a drainage report of what the impact of that house was going to be. Whatever system they used had to be comparable with the amount of development.

Commissioner Easley asked if the dedicated land would end up in summary being approximately the same amount once it was parceled here as opposed to what it was right now? Mr. McCourt said if they took their dedication on the gross acreage now, they got approximately a 3 1/2 acre piece of property, which then started to be usable as a neighborhood park or for other purposes, whereas if they divided that by five, now they had about .7 of an acre that was scattered out, which lots were not really usable for development of a neighborhood park or other municipal purpose. Mr. Zimmerle said there were 80 acres immediately adjacent to this property which the City owned and had been developing as a park. Another 3-acre piece next to the Walker Complex wouldn't have that much impact. The Fambroughs had given an additional 20 foot strip of right-of-way for Municipal Avenue along the entire south side of the property. This only worked out to be 6/10th's of an acre. It was not the full 5 percent--the full 5 percent was not required.

Commissioner Cole said he was still concerned every time public land dedication came up, some way or another the City Commission wound up losing on this. This would be the same thing here again. Mr. Zimmerle said the procedure they were having to address was a summary subdivision. It was kicked up to the City Commission because there was a request for public land dedication for street right-of-way for Municipal Avenue. They were giving 6/10th's of an acre to widen a 40 foot street to a 60 foot street. The 5 percent number was a maximum

number; the City could ask for no more than 5 percent--only up to 5 percent. They had given land to the City from this property for the benefit of the street system. Commissioner Cole thought in most developments streets were provided by the developer and now they were trying to trade that off as public land dedication. Mr. Zimmerle said a developer would go in and develop all the lots, sell them, and then try and make a profit. The Fambrough Subdivision was not a development. There was no developing going on. If any future division of these large parcels occurred, it would have to come back before full staff review, Planning and Zoning, and the City Commission to be platted into residential lots. This was not a development, but the division of an estate. Mayor Carroll said they were not asking to be relieved of the dedication of public land--they were asking that the dedication of public land be deferred until such time as the development occurred. Commissioner Cole thought if the land was broken up to the five heirs, then it would be a lesser amount. Mr. Zimmerle said the gross acreage would still total the same. They would be smaller parcels unless the developer attempted to get them consolidated in one area. Commissioner Cooper clarified they had a piece of land at 72 acres to be divided equally among the five heirs, and then at a later date if one or all five decided to develop their own parcels or to sell it, then they had the perfect right to do so. Mr. Zimmerle said that was correct.

Commissioner Easley asked if there was anything which restrained the Commission from asking the Trust to go ahead and dedicate three acres of land as a block right now? Mr. Zimmerle said technically, no. Commissioner Easley said his concern was that in the two years he'd been on the Commission, they had repeatedly done this every time it came up. If there was a dedication of land, they almost always waived it because the parcels were so small and piddly that they couldn't do anything with them. They'd carved and carved and then the amount of calculated land available was so small that everyone said to just forget it. Here was an opportunity to make a piece of land which would not be too small to actually use, yet they were about to chuck that away by offering to carve this into five tracts, which would then produce five piddly pieces of land which were too small to do anything with as a public dedication. Mr. Zimmerle said he didn't believe it would be of benefit to the City in that there was already a large amount of land set aside for recreation at the Walker Complex. Commissioner Easley said there was a constant demand on the City's recreational facilities to increase and expand them to have enough practice fields. He doubted the City was done improving the Walker Fields. He doubted they would be unable to find a use for three acres there at some point in the future. He was certain that if they didn't do the three acres that the City would then have no use for it at all because it would belong to the Fambrough Trust and their heirs and they would do with it whatever they needed to as well.

Commissioner Cooper felt the street right-of-way was a better deal because at least they'd get some utilization out of it. If they had two or three acres off to the side, what would they do with it? Mayor Carroll said the petitioners were not

asking to be relieved from the obligation, but were asking to defer it. While the obligation may be for three acres, he was not sure under the Statute that the City got to pick the three acres it wanted. It may or may not be in the City's best long term interest to pursue the three acres at this point. When the first parcel came back for any type of development would be the time he would recommend the dedication. Whatever got developed, the developer had better be aware of the City's desire to acquire the whole thing, and they would remember that it was 72 acres and not a piece here and a piece there. Commissioner Cole felt that three acres for a satellite station for fire or police in that area would be ideal. He felt they needed to get this tied down fairly clear for the record keeping in the future.

Mr. Zimmerle said the Fambroughs had just had a family meeting and they were willing to give the City the three acres now. They would get it picked, and he would have it platted. Mayor Carroll said that seemed to satisfy the Commission's concerns.

Commissioner Griggs said in the fact that this was not a development, he was uncomfortable with this type of approach to things. It seemed like they were taking advantage of a situation, and it bothered him because of this specific instance. He was glad the Fambroughs were willing to do it, but it was not something that he thought he would have supported. But if they were willing to give the land, then that would suit him.

Mayor Carroll said obviously on behalf of the City he would be willing to accept it, but in fairness to the Fambroughs there needed to be something in there which said that now that the City had the land, we weren't just going to turn around and sell it someone. The City should not just make a profit off of something which we required that they give to us.

Mr. Zimmerle read the Ordinance which stated, "The Planning Commission may require the dedication with the reservation of such an area. In the cases of parks, the City shall develop the park within a reasonable time after it's been completed". Ms. Ehler felt that needed to be put into context. The part before that was talking about when a proposed park, playground, school, or other public use was shown on a general community or Master Plan, and then if what was shown on the Master Plan would be a park, then the City was required to develop in a reasonable amount of time.

Mr. McCourt said every time a development came forward, they looked at the dedication provision. Since the Fambroughs had indicated that they were dedicating this piece of land at this time, when they sold this off and a new subdivider came in, then he felt that person would not necessarily have to give an additional dedication of land at that time. That should be documented somehow in this process.

Commissioner Easley suggested tabling this item until the next meeting, which would give them a chance to draw out the plat. It may be that we didn't want the property after all if we saw where they planned to put the three acres. Mr. Zimmerle said there were some time constraints involved. He would recommend a strip of land adjacent to the Walker Ballfield Complex. There was 1,320 feet of frontage on the Walker Complex, and this would expand it. Ms. Few said three acres would come out to be roughly a 100 foot strip. Mr. Zimmerle said they would prefer to continue on with this tonight.

Commissioner Cooper moved to approve the preliminary and final plat of Fambrough Subdivision, Case S-02-0730(A), located within the City of Alamogordo, with variances on the construction and installation of alleys, on the installation of utilities (water and sewer), on the construction of streets to City standards (curb, gutter, sidewalk, and paving), and from Section 22-01-140(b)(1) relating to drainage plans, with a Waiver of Protest Agreement and an Avigation Easement, and to include the elements discussed of public land dedication of a three-acre strip of land adjacent to Walker Complex (on the west side of the subdivision). Seconded by Commissioner Griggs. All voted "aye". The motion carried by a vote of 7-0-0.

## **CONTRACTS AND AGREEMENTS:**

### **5. Lease Agreement with the Alamogordo Model Aviators and the Rio Grande Soaring Association for a tract of land in the Griggs Sports Complex.**

Recommendation: Approve the Agreement with both associations, and void the Agreement approved on January 22, 2002 with the Alamogordo Model Aviators.

Mr. McCourt said this piece of land was also used by the Rio Grande Soaring Association, so the two groups had joined together in leasing it jointly.

Mr. Maurice Morgan, President of the Alamogordo Model Aviators, and Mr. Mike Hawkins, President of the Rio Grande Soaring Association, were both present.

Mr. Morgan said this increase did represent a drain on their income. They provided forms of recreation to the public. They usually had a fluctuating membership, anywhere from 8 to 30 members. The events they sponsored ordinarily almost depleted any money they had available from membership fees. Although they felt an increase in the Lease was justified, they felt that a 50 percent increase would be more appropriate.

Mr. Hawkins questioned why the Commission was raising the Lease fee when their nonprofit club brought tourist dollars into our area. The fly-ins were growing at a steady rate, and they brought in people from all over the nation. The winner on these fly-ins was the City and its merchants. When these participants left the

fly-ins, they would go back home and spread the good word about Alamogordo. The \$100 Lease was a fair price, but for them to keep the momentum going, that \$100 could be crucial. He requested the Commission either lower the Lease amount, or leave it at \$1.00.

Mr. McCourt said in the State of New Mexico they had the Anti-Donation Clause. Actually, the City was supposed to charge fair market rent for the property. There were other alternatives, such as working on a permit basis rather than a Lease. One of the advantages of this was that it did lock it in at this fee, and permit fees could change over time. It would lock it in for up to eight years under this Lease. Mayor Pro-Tem Van Doren asked what the permit cost would be compared to a leasing cost? Commissioner Moncada said when they put a fee on a project, was it because they actually had personnel from the Recreation Department go and set up? Parks and Recreation Manager Matt McNeile said yes. For this land, in the past they'd hauled bleachers over there and made sure everything was watered down. Mayor Carroll said there should be some reasonable relationship for the value of the use of the land. There was never anything magic about the \$1.00, nor about the \$100.00. He did think we needed to arrive at some number which was more than what we were currently charging. This was not the only Lease that was going to be scrutinized when it came up.

Mayor Pro-Tem Van Doren asked what would be the favor of a Lease over a permit? Mr. McCourt said the primary one would be the cost. The advantage of this was that the \$100.00 was set for each year for the term of the Lease which could run up to eight years. They didn't have variable costs and the fees may change with different events. They didn't know necessarily how many events or times they may use it, which was the risk side from their standpoint. The positive side was that it was a fixed amount. Mayor Pro-Tem Van Doren asked if the Lease meant that it was "their" property. Mr. McCourt said no; as it was written it was very restrictive on the rights they had of use. Mayor Carroll said it basically would cost the City more to permit it every time they wanted to use it than it would to just lease it to them.

Mayor Pro-Tem Van Doren said about every weekend the kids in his neighborhood were over at this strip of land flying their putt-putts. He didn't want those kids to be told they couldn't use it. Mr. Morgan said absolutely not.

Commissioner Easley said he was comfortable with the cost put on this Lease. At the last meeting it was pointed out that the City charged \$60 for a permit to use the Pavilion in Washington Park for just one day. He didn't think they would want to go the permitting route if that was the kind of prices they would have. He felt \$100 was really a fair and reasonable price.

Commissioner Griggs said he was the one that originally brought this up, and to him it was as much an equity issue as anything else. If they charged other groups, then they needed to charge these two groups as well. The Lease didn't

necessarily give exclusive rights, but it did give priority rights which would not keep others from using the land when the two groups were not. Ms. Ehler said the Lease also required that the Parks and Recreation Manager be given a 60-day prior notice on any major event, which was for scheduling and coordination purposes.

Mr. Tommy West, Vice President of the Rio Grande Soaring Association, said as the future went along, would the City let them know if another event was going to happen? Mr. McCourt said paragraph 5 covered that particular item. Mayor Carroll said that notification should work both ways for both the groups and the City. The event coordination needed to be a two-way street.

Commissioner Cooper asked if their insurance covered just the members? Mr. Morgan said if they were holding an event, it would cover the participants as well as their members. It would cover the field as long as a member of their group was using it.

Commissioner Griggs moved to approve the Lease Agreement with the Alamogordo Model Aviators and the Rio Grande Soaring Association for this tract of land, as written (and to void the Agreement approved on January 22, 2002). Seconded by Mayor Pro-Tem Van Doren.

Mayor Carroll said the Lease Agreement did provide for a fee of \$100 per year, and how the two organizations divided that up was between them.

Mayor Carroll called for the vote of the motion. All voted "aye". The motion carried by a vote of 7-0-0.

The Commission recessed at 9:03 p.m., and reconvened at 9:13 p.m.

## **6. Concessions Lease with Tropical Sno.**

Recommendation: Approve the Lease Agreement.

Commissioner Easley said he had a concern which he'd addressed to the City Manager, and also to Parks and Recreation Manager Matt McNeile, and to which Mr. McNeile had put a memo out on. He questioned the procedure used to determine who would get the five-year Lease. There were two proposals, one from Mr. Flores and one from Mr. Walton. He had a copy of Mr. Flores' proposal, but Mr. Walton's proposal was not in the packet. The only thing he had to compare was both of the menus, and they were pretty much the same. Mr. Flores was higher on some items and lower on others, and vice versa. One thing that did catch his attention was how they determined who would come up in the end with the proposal. Mr. McNeile had explained in his memo that they had a panel of people who were set up to read the proposals and score them, the scores were summed, and from that they chose the highest scoring group, which

was Tropical Sno. The criteria to evaluate these proposals included length of term proposed, amount of concession stands the vendor wanted to contract, menu items and pricing, amount of staff proposed to work at each concession stand, and previous retail food experience. He imagined all those factors were addressed by both responders. The one thing which was not on their list, though, was the return to the City. By that, he meant how much the City was getting out of this. They were providing an opportunity for someone to use City-built, City-owned facilities to generate revenue. Apparently it was going to be a significant amount of revenue over the course of 2002 and the other four out-years as well. In exchange for allowing them to run the concessions stands in our ball parks, the City would get some portion of that net revenue back. In the contract, Mr. Walton agreed to pay the City 15 percent of the gross amount of the concession goods sold on a daily basis. However, Mr. Flores had proposed to provide 15 percent in 2002, and then 16, 17, 18, and 19 percent for the out years. Was Mr. Walton's proposal equivalent to that as well? Did he also propose an increasing scale of return, or was he a flat 15 percent for the five years? Mr. McNeile explained that the City's proposal explained that we wanted 15 percent. Commissioner Easley said based on historical data, the City expected to receive approximately \$16,000 in 2002. That would suggest that at 15 percent we expected the concession stands would generate roughly \$100,000 per year in sales. The truth was, we didn't actually know; all we really knew was based on the candy and pop the City had sold at the ball parks. The estimate would be the same whether it was Mr. Walton or Mr. Flores. However, what he could say was that in the fifth year of the contract, whatever the actual dollar revenue would be in that year, the City would get more back from Mr. Flores than from Mr. Walton. Mr. Flores offered a better scale of splitting the gross to the City than did Mr. Walton. Mr. Walton met what they'd asked for, and Mr. Flores exceeded that. To him, that was a fairly significant criterion for determining who they were going to let this \$100,000 per year contract to.

Purchasing Manager Veronica Ortega said that wasn't a criteria that was thought of at the time. It was a criteria they used which Parks and Recreation had come up with, and the City agreed to accept 15 percent of the gross. Commissioner Easley said if they had substantially equivalent proposals and if the scores suggested that, then why would not the amount of returned dollars to the City then be a tie-breaking point? Ms. Ortega said it wasn't the criteria on this RFP. Commissioner Easley asked why it wouldn't be when the Commission spent so much time looking for dollars? They had just asked the Model Aviators and Soaring Association to generate \$100 per year to help cover the cost of those facilities, and now they were asking for somebody to get to use City-owned facilities to do \$100,000 worth of revenue. He didn't care if Mr. Walton did it or if Mr. Flores did it, but he wondered why that return percent would not be a criterion since clearly in looking at the facts before him they were likely to get more money back from Mr. Flores' proposal than from Mr. Walton's. Ms. Ortega said rating from the members of the panel was an opinion, and that was not a part of their criteria. It was an oversight and perhaps the Commission would want

them to go back and include it. Commissioner Easley said they weren't entirely asking for an opinion, but actually asking them to evaluate the facts. He wasn't trying to criticize them, but he thought this was an important issue which needed to be addressed. Maybe it would be less so if they found that the guy who was offering more money was vastly unqualified. Ms. Ortega said in order for them to consider that, they would need to go out again because that was not part of the criteria that was listed. Commissioner Easley said he would either ask to table this tonight, or else he would not support it because he believed that was an important issue which should not have been overlooked.

Ms. Tammie Reynolds, Parks and Recreation Department, said they had started from ground zero on this one and kind of built it. They had set their goal at 15 percent, which was a lot more than what the City was bringing in by running it. When they set up the criteria, the 15 percent was already in the contract and that was why it wasn't included as one of the criteria. Perhaps that was their mistake. In talking with Mr. Walton and Mr. Flores, Mr. Walton was a very well established businessman here in town that worked at many different areas and had successful stands in town. The ballfields' busiest months were in the summer season, and the City never had the facilities nor space to have freezers to be able to sell the ice cream and slushy products. Also, Mr. Walton was going to sell sports memorabilia as part of his business. So when they were looking at bumper stickers from \$2 all the way to a sporting helmet at \$60, the City was getting 15 percent of that on top of the food sales. She believed the money was going to be there more so than it was from Mr. Flores. Commissioner Easley said perhaps they could have asked for a minimum of 15 percent, as opposed to just setting it at 15 percent. They really didn't know how many helmets Mr. Walton would sell, so it became just a wishful thinking point. Maybe it would be better to do this for one year, as opposed to five years. He didn't think it was the right thing to do to not consider the return to the City from this event which the City made possible. We needed to be careful when we had people who made money on our facilities to make sure that we tried to do as well as we could for the citizens who had already paid for those facilities.

Commissioner Cooper pointed out that Mr. Walton lived within the City limits and paid taxes here in the City, and that Mr. Flores lived in Tularosa.

Mayor Carroll said he had no problem with the successful bidder. He understood exactly where Commissioner Easley was coming from; however, we set the ground rules for these individuals to bid and they did so accordingly. In the future they may want to consider the percentage, but he didn't know that he was in favor of going back and starting over because they thought of something after the fact which may or may not make a difference. Unless there was more to this agreement than what they had before them, he saw no way out of this agreement for either party for five years. Ms. Ehler said she and Ms. Reynolds had discussed it while drafting the document, but neither was quite sure why it didn't get into the final draft. Mr. Walton said he had questioned that as well, and he felt

there needed to be a little more language there. He did want the five years because in one year he felt like he would barely be getting started. His contention was, and he believed he could fulfill it, that he should raise the gross at a minimum of \$15,000 all the way up to \$25,000 to the City.

Mr. McCourt suggested that at a minimum they table this to formulate the language on the causes for termination and method for termination before the five-year time period. Commissioner Moncada asked if that would mean this was awarded to Tropical Sno, or would it come back again for further consideration? Mr. McCourt said the award would still need to be made. He was just suggesting that the contract contain the type of terminology the Mayor had suggested. Mayor Carroll said it would not be his intent to do anything other than to add termination language acceptable to both parties as part of the lease agreement.

Mayor Pro-Tem Van Doren moved that we table the Concessions Lease with Tropical Sno until such time that we can get proper wording put into the contract. Seconded by Commissioner Cole. All voted "aye". The motion carried by a vote of 7-0-0.

Mr. McCourt said he was sure staff would get the item back by the next meeting.

## **OTHER BUSINESS:**

### **9. Relief from Water Leaks Policy.**

Recommendation: Approve the revised policy.

Mr. McCourt said when the Commission had reviewed the water and sewer rate provisions for adjustment, also included in the backup was a policy which revised the existing policy to grant relief when there was a water leak on the people's property. That meant the water had actually passed onto the person's property and the leak was their responsibility. The Commission had approved a policy in the 1980's which granted a limited amount of relief to help people out. The staff had recommended an update of that policy through that attachment. They did send the Ordinances for publication and they ultimately were adopted. However, what staff was unclear of was whether the attachment was ever actually adopted. Staff would ask if this policy was acceptable, to approve it by minute action.

Commissioner Cole moved to approve the Relief from Water Leaks Policy. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

### **10. Tertiary treatment at the Wastewater Treatment Plant.**

Recommendation: Approve the project for construction.

Mr. McCourt said this was a project staff had been working on for several years to improve the quality of our reclaimed water. It was one step in the upgrading of the entire reclaimed system. There was a sand filter system where the water would filter down through the sand which acted as a mesh, and collected total suspended solids (TSS). They used that technology at our water treatment plant, but there were new standards coming out of that. If you used reclaimed water for irrigation purposes, it required a higher set of standards that would be required as far as total suspended solids. The cost to put on sand filters for the reclaimed water was well over \$1 million in capital costs plus considerable operating costs. Staff had been trying to find a less expensive method to meet the new requirements. They thought they had found another percolating-type system at about half the cost, but in the end they found that system was going to cost close to the same amount as the sand filter. Therefore, staff felt if the two were going to cost virtually the same, then they needed to go with something they knew worked--that being the sand filter. They would just have to start phasing it. At that time, U.S. Filter also came forth and presented a third option, which was included in their packets tonight. It was basically a centrifuge that pushed the reclaimed water through a series of filters and cleaned out the larger total suspended solids, so they would have a cleaner reclaimed water. Staff was cautious whether this would work for our purposes and cautious whether we were getting an economic cost on it. We'd checked references and did get verification that the system worked well and the operating costs were lower than running traditional sand filters. Staff also looked to see what other similar type mechanisms might be on the market to do this, and found a similar type of device at \$141,000, which was a considerable savings. There were provisions in place in the contract to hire U.S. Filter to do this project. From staff's standpoint, they felt they had exercised due diligence on securing the lowest cost option. This was one of our capital improvements projects scheduled for the current fiscal year. It would fit within the budget they had projected.

Commissioner Cole asked what type of warranty they would have once the plant was 100 percent operational? Mr. Chuck Voltz, West Regional Manager of the Engineering and Construction Division for U.S. Filter, said the work as outlined in their contract would be warranted for one year for all parts and labor, for the complete project to include design and construction activities. As part of their performance guarantee, they'd also identified that this filter would provide the City with requirements for TSS and turbidity. They would do a performance test on the filter once it was installed, and would identify that testing procedure to the City prior to testing to make sure they approved. The results would then be provided to the City. Mr. McCourt said the water coming through the Wastewater Treatment Plant did have some variance in the summer, but not significantly. They had a pretty steady flow into the plant and the quality of the water going in remained fairly constant. That was because of our extremely high residential base and low industry.

Mayor Carroll said Commissioner Cole's concern was that we were buying something that was going to pass more than a one-time test. Where was it in this contract which stated that at the end of twelve months when it was tested again it was still going to be meeting the spec that it met the first day? Mr. Voltz said if the unit ran for a full year and saw all the seasonal changes and met compliance. Mayor Carroll thought he'd heard Mr. Voltz say that once installed U.S. Filter would run a test and if it passed, then it was okay. Over this period of one year, were they going to do periodic tests to make sure that each time they tested it, that it did in fact meet the standards? Mr. Voltz said the warranty and guarantee was not only over the construction, but also over the performance of the system. Mayor Carroll asked if there were provisions on how often they would test? Mr. Voltz said they guaranteed that the unit would meet a certain level of TSS and a certain level of turbidity, the same at the end of the year as at the beginning, no matter how often tested. Mr. McCourt said they needed to be doing the continual testing anyway, because they needed to be sending reports to the State on the quality of our reclaimed water. Mr. Carlos Salas, U.S. Filter, said part of their permit required that they test the effluent weekly.

Commissioner Cooper asked if this would reduce or eliminate the odor of the water? Mr. Salas said it would bring it down, but part of the problem was still with the algae growth at the Golf Course. Mr. McCourt said this was one piece of a total upgrade to the reclaimed water system. The odor problems at the Golf Course would be occurring if they were putting well water in there or had streams there because they were a product of the water sitting for an extended period. At the lower depths they ran out of oxygen and then the ponds turned over time, which was what brought that water to the surface and produced the odors. The solution at the Golf Course which they were trying was the bubbler system which would keep those lower depths oxygenated. There were also some holding tanks on the system, and the long term plan on the reclaimed water was that these holding tanks would actually become covered or sealed from sunlight to minimize the algae production in them. The algae then produced solids in the water which then got dissolved and eaten and which could turn into odor producing bacteria. Another portion of the long range plan was to create a loop system so they could keep this water moving throughout the system so they didn't get water which stood in a pipe for an extended period of time. They'd seen a significant reduction in the odor problem just because they'd expanded the system and were moving more water through it. What had been suggested was, first, they had to meet this requirement if they were going to continue to use reclaimed water. Second, if they reduced the TSS, that meant there was less food there in the water for the bacteria to work on, which should have some result in reducing the potential odor problem.

Commissioner Cole moved for approval of this (tertiary) treatment at the Wastewater Treatment Plant. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

## **11. Special Meeting on water issues.**

Recommendation: Schedule a Special Meeting.

Mayor Carroll said the purpose of this meeting was to bring everyone up to the same level of education and knowledge on where the City was with the current desalinization project. Prior to going much further than they'd already gone in this process, the Commission needed to make some real strategic policy decisions as to exactly what our ultimate goal was with the desalinization project. The Commission would hopefully be able to make some policy decisions and provide guidance to the staff and our consultants as to how we wished to proceed.

The Commission scheduled the Special Meeting for Wednesday, February 20, 2002, at 6:00 p.m. in the Commission Chambers.

Commissioner Cole felt it might be beneficial to invite David Goodrum, District Manager from ECO Resources, designer of the Horizon City plant, to attend our meeting. Mayor Carroll said this was an open meeting and anyone was welcome to attend, but he felt we were a long way from being able to provide anybody enough information for them to put together any kind of coherent proposal. If Mr. Goodrum wanted to come and listen to where the City thought it wanted to go with this project, fine. He just felt that it was way too premature for him to be worrying about making a proposal to build us a plant. Mr. McCourt said he'd be glad to send him a notice of the meeting to inform him of that.

Mr. McCourt said there was at least one action item for the Special Meeting. They may recall that our consultant, Mr. Stokes, had some recommendations to the Commission where he felt they should be taking some action to protect our water rights up in the Canyons. He asked the Commission to be looking at those and see if they wished to provide direction to the staff on following those. Also, there may be additional items which Commissioners would like to see on the agenda. If so, he would need those fairly soon so that the agenda could be published.

Commissioner Cole reiterated that he'd like to see Mr. Goodrum invited to this meeting. Mayor Carroll said the City Manager could invite him and let him decide whether or not he wanted to attend.

## **12. Appointments to Boards and Committees.**

Community Development Advisory Committee. Three vacancies.

Senior Volunteer Programs Advisory Council. One vacancy (At-Large position available). Mayor Carroll reappointed Mr. Wayne O. Mattson to fill the vacancy.

Airport Zoning Board. One vacancy.

Parks and Recreation Board. Two vacancies.

Planning and Zoning Commission. One vacancy.

Public Housing Authority Board. Once vacancy (Resident Representative position). Mayor Carroll reappointed Mr. Eugene G. Everett to fill the vacancy.

All remaining vacancies were rescheduled.

## **UNSCHEDULED COMMUNICATIONS:**

### **A. Comments by Ms. Nola Jones regarding Commissioners needing a raise; and importance of registering to vote and voting.**

Ms. Nola Jones said she wanted to go on record that she thought the Commissioners needed a raise. There was no way that people should be required to give up their time and their knowledge to do this just as a public servant. She spoke on this not only for herself, but also for some other people who were teachers. Teachers were supposed to do this from the goodness of their hearts and they didn't need a raise. That was not true either, but she did believe and she wanted to go on record that she wasn't the only one that believed the Commissioners needed a raise and they were not being selfish about it. Also, the County Commissioners could set their own salaries, so it seemed that they didn't have anything to complain about at all, and they didn't even want to have five County Commissioners and divide up the money. She did feel the City Commissioners needed a raise. They had to give up a lot of things, and when she worked and had a family, she knew there were lots of times when she was required to be some place where she would still not be able to be with the family. The Commissioners were not only doing that, but they had to be here. She was listening to the Irish Tenors at the Flickinger Center one night, and she thought, "Gee whiz, this is so nice, but the City Commissioners have to sit there and be at a City Commission Meeting". She thought that was too bad and at least they could have gotten compensated a little bit more for it.

Ms. Jones said she was at the Martin Luther King Rally and while there she felt that it was because people voted that they could have things like this. They were also getting people that were interested when they were still young enough, before they said, "Why should I bother to vote", and the same old thing. She and Susie Rossman had talked that they needed to get voters registered because they were having an election. She asked Richard Coltharp for some publicity for voting. From that, the "Alamogordo Daily News" wrote up a very nice article and included some nice photographs. She set up at the Library and it was a very visible thing and a nice experience. The people all felt good about it. Last Sunday there was another registration drive, and people showed up because they'd read about it in the paper. She felt this was just a really nice thing. She felt voting was important, having different candidates was important, and raises were important.

Commissioner Griggs thanked Ms. Jones for her comments. He believed the raise would help our community over time, attract candidates to the office, and hopefully they would have many more candidates, and very capable candidates as well.

**B. Comments by City Manager regarding water update; employee completing 30 years of service; and memo to CC regarding draft letter to the County.**

Mr. McCourt said at this time the reservoirs were up to 71.5 percent of their total capacity. We had been fortunate with the wet, cool weather and did get some increase in the incoming flows. The Bonito line had broken again, which was not unusual. When the line had a break and went down, was depressurized, and then as it was brought up and began to be pressurized again, it sometimes became very difficult to get it stabilized again. This was the second one since the major break from two weeks ago. They had two wells on at this time.

Mr. McCourt said City employee Helen Viscarra, she had just completed 30 years with the City. If they saw her, they may want to congratulate her on her service.

Mr. McCourt said he had mentioned to the Commission that he'd had some qualms about the letter to the County Commission. He'd tried to capture that in a memo and had stuck it in their mailboxes, as well as the revised draft of what we would be sending to the County. He asked the Commission to please look at it and give him any feedback they felt was appropriate on it.

**C. Comments by Mayor regarding commendation to two employees on successful Grant; E-mail from a user of the Rec Center complimenting staff and the pool.**

Mayor Carroll said they'd all received a copy of an e-mail to the City Manager commending two employees for their initiative in getting the City some Grant money approved, which wasn't expected to have been approved. It saved the City about \$6,400. Those employees were Mary Gilsdorf and Doyle Syling.

Mayor Carroll said they'd also received an e-mail from a user of the Family Recreation Center complimenting the City and the staff on the swimming pool. They felt Alamogordo had the cleanest and best temperature-controlled water, in addition to the most pleasant facility and a very good staff. He asked Mr. McNeile to pass that message on to his people at the Recreation Center.

Mayor Pro-Tem Van Doren moved to adjourn. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 7-0-0. The Meeting was adjourned at 10:15 p.m.

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**Mayor Donald E. Carroll**

**ATTEST:**

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**City Clerk Angie J. Rahn**

**(SEAL)**

**(Prepared by Chief Deputy Clerk Teresa Y. Gutierrez)**

**Approved at the City Commission Regular Meeting of February 26, 2002.**



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