

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
FEBRUARY 11, 2003**

MAYOR DON CARROLL

COMMISSIONER ED COLE

MAYOR PRO-TEM RON GRIGGS

COMMISSIONER JOHN ROBERTSON

COMMISSIONER INEZ MONCADA

CITY MANAGER PAT McCOURT

COMMISSIONER DON COOPER

CITY ATTORNEY WILLIAM KIRSCHNER

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 Ms. Dottie West and the Pledge of Allegiance was led by Commissioner Cole. Mayor Carroll asked everyone to join him in a moment of silence in memory of the astronauts who perished on Space Shuttle Columbia recently.

1. Nomination of appointee to fill the vacant position of District One City Commissioner.

Mayor Carroll explained that the Charter spells out a procedure that the Commission needs to follow in the appointment process to fill a vacant position. He said the first part is for Commissioners to make nominations for someone to fill that position. He said as a nomination is made it takes a majority vote of the current Commission to approve that nomination. He said the final vote on the nominations will be taken at the next City Commission meeting. Mayor Carroll opened the floor for nominations from the Commissioners.

Commissioner Cole nominated Marion Ledford. Mayor Carroll called for a vote on all those in favor of the nomination. Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, and Commissioner Cole voted "aye."

Commissioner Robertson and Commissioner Cooper voted "nay." The nomination carried by a vote of 4-2-0.

Mayor Carroll asked if there were any other nominations. No one commented. He stated that if not, nominations were closed. He said the final vote on Marion Ledford to fill the District One vacancy will be held at the next Commission meeting.

CALL OF THE CONSENT CALENDAR:

Items on the Consent Calendar are considered routine and should not require further discussion. All items marked "CC" will be approved by a single motion 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 Regular Meeting of January 28, 2003 and Special Meetings of January 23 and February 4, 2003.

Recommendation: Approve the minutes.

3. Temporary Construction Easement agreement from Mr. Norm Arnold for the Alamogordo Flood Control Project – South Channel Phase 2.

Recommendation: Approve the agreement.

4. Concession Lease Agreement with Mr. Ron Walton d/b/a Tropical Sno.

Recommendation: Approve the agreement.

9. Statement regarding the Executive Session of January 28, 2003.

Recommendation: Approve the statement.

10. Award of Bids:

A) Bid No. 2003-02 Miscellaneous Food/Dairy Products for the Senior Center Nutrition Program.

Recommendation: Award to Ben E. Keith, 44 items for an estimated total of \$6,067.95; Award to U.S. Food Service, 37 items for an estimated total of \$8,563.74; Award to Farmers Dairies, 6 items for an estimated total of \$6,434.00; Award to Shamrock Food Co., 80 items for an estimated total of \$18,466.91; and Award to Southwest Distributing, 68 items for an estimated total of \$12,861.67.

B) PW Bid No. 2003-004, South Florida Avenue Improvements.

Recommendation: Reject all bids received because they exceed the budgeted amount for the project.

11. Award of Proposals:

A) Proposal from GPL, Inc. to provide a certified survey of the La Luz/Fresnal Canyon Pipeline System and consideration of the necessary budget revision.

Recommendation: Approve the proposal in the amount of \$47,840.63 (includes NMGRT), and approve a budget revision for \$50,000.00.

B) RFP/CPM No. 2002-04 Engineering Design Services/Construction for Renovation of Lake No. 5 and Installation of Lake Aeration Systems for selected lakes and consideration of the necessary budget revision.

Recommendation: Award to Williams & Gill Golf Course Architects and approve a budget revision for \$30,000.00.

12. Change Order No. 1 for Oregon Park Tennis & Basketball Court Resurfacing.

Recommendation: Approve the change order in the amount of \$22,538.25 (includes NMGRT).

14. Continuation of the low flow toilet water conservation program.

Recommendation: Approve continuation of the program.

Mayor Carroll pointed out that there was a revised copy of the lease agreement provided tonight for Item Number 4. He said the only changes are that it now spells out the various percentages the vendor would pay under the terms of the lease and it now has a termination clause.

Commissioner Cooper moved to accept Items 2, 3, 4, 9, 10, 11, 12, and 14 on the Consent Calendar. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a vote of 6-0-0.

CONTRACTS AND AGREEMENTS:

5. Contract with Zia Therapy Center for public transportation services.

This item was withdrawn from the agenda. It was rescheduled for the February 25, 2003 meeting.

ORDINANCES AND RESOLUTIONS:

6. Ordinance No. 1169 amending Chapter 28 of the Code of Ordinances regarding water conservation and water rationing.

Recommendation: Final adoption of the Ordinance as amended. [Roll Call Vote Required – Tabled from 01/28/03 Regular Mtg.]

Mayor Carroll asked Mr. McCourt to lead them through the changes to the ordinance as discussed at the last meeting. Mr. McCourt stated that the first change was on Page 4, Paragraph 1 of the proposed ordinance under Water Rationing. He said there is a sentence added that reads "restrictions contained in each stage will be effective in all subsequent stages unless explicitly or implicitly repealed." He said that was from a comment we received at the last meeting that this was unclear.

Mr. McCourt explained that the second change was on Page 5, Item 4. He read the current version and then the proposed version. Currently it read that no swimming pools shall be filled with treated water and swimming pools that were filled before Stage 1 rationing went into effect may have water added to make up the losses through evaporation or splashing. Water loss through draining or leaks in the pool may not be made up during Stage 1 rationing. The proposed language reads as follows: No swimming pool that is empty or less than 75% full shall be filled with treated water. Swimming pools that were filled before Stage 1 rationing went into effect and are at least 75% full may have water added to make up the losses through evaporation or splashing. Such water maybe added during the time that the homeowner is entitled to water his or her lawn. Water loss during draining or through leaks in the pool may only be made up during Stage 1 rationing when the business or resident has received a permit from the city manager or his or her designee allowing such water use. Such permit is to be granted when the water loss resulted from a pool repair, which was reasonable and necessary to preserve water in the long term.

Mr. McCourt said the third change is on the bottom of Page 6, Item 5. He noted this is now in Stage 2 rationing. It currently reads: No water shall be used to wash any vehicle including fundraising car washes at commercial businesses except at places of business where autos are washed on every business day by attendants, automatic equipment or self-service. He stated that the proposed ordinance reads: No water shall be used to wash any vehicle except at places of business where autos are washed on every business day by attendants, automatic equipment, or self-service.

Mr. McCourt moved to Page 7, Item 6. He said it was deleted from this area and moved to Stage 3 rationing. It reads "No swimming pools will be filled with treated water and no treated water shall be added to any swimming pool. Indoor pools used for medical or rehabilitation purposes shall be exempt from this section. The public pool at the Family Recreation Center shall be exempt from this section."

Mr. McCourt explained that in Stage 3 on the bottom of Page 7, Item 5 we have the same statement regarding washing vehicles. He noted that we

excluded the same phrase and added that they are limited to 10 hours a day.

Mr. McCourt said these are the changes that Staff has put in since the January 28 meeting. Mayor Carroll said that he thinks the one on Page 5 having to do with swimming pools under Stage 1 water rationing will probably have the most discussion. He said he did not recall that this was the thrust of the discussion having to deal with swimming pools under Stage 1 rationing. He asked if any of the other Commissioners remembered it this way or some other way. Mayor Pro-Tem Griggs said the way he remembered it in Stage 1 was that you could fill and top off a swimming pool in Stage 1 with treated water. He said in Stage 2 there was the inability to fill a new pool with treated water. He said he recalls you could not even top it off in Stage 3. Mayor Carroll agreed that it was clear in Stage 3 that all outside watering was prohibited, including swimming pools. Mr. McCourt clarified that Item 4 should essentially be moved to Stage 2 rationing. Mayor Pro-Tem Griggs and Commissioner Robertson replied affirmatively. Mr. McCourt asked Mr. Kirschner to do that and to leave Item 4 as reserved so we would not have to renumber the rest of the items.

Mayor Carroll asked if there were any other changes that anyone remembered differently or had different views on the treatment of swimming pools under Stage 1 and Stage 2 rationing. Mayor Pro-Tem Griggs said that there is one thing on swimming pools that he thinks deserves to be discussed. He said in talking with the people who install pools for a living he learned that the gallons of water that go into a particular pool range from 7,500 to about 15,000. He said they informed him that based on the number of pools they install a year between the two of them there is about 300,000 gallons of water used for pools. Mayor Pro-Tem Griggs said if you throw in someone else installing pools we might have 500,000 gallons used for filling pools initially. He said he thinks there is probably a big misconception among the community that swimming pools use a whole lot more water. He wanted to point out this was the actual usage on new swimming pools.

Robert M. Doughty, II came forward representing Mr. and Mrs. Messer and Mr. and Mrs. Anderson, pool business owners. He stated that he was again asking the Commission to delete from this Ordinance Stage 1 and Stage 2 Section 3 Paragraph 1A4 that applies to swimming pools. He said he appreciates what they have done. He continued that he is here to point out that again we have singled out one water using business for requiring them in Stage 1 and Stage 2 water rationing not to use treated water provided by the City of Alamogordo. He said he thinks there was discussion about using a well to provide them non-treated water. He referred to the discussion regarding getting the well usable at the last meeting and said that we probably found it was cost prohibitive. He asked if it was fair to all

concerned that they would single out this business in Stage 1 and 2 rationing. He said that last week the Mayor said that we are just going to be forced into Stage 3 rationing quicker. Mr. Doughty continued saying that may be the case, but if we are going to address how a particular business will move you into Stage 3 rationing we should consider every business that uses water in the City of Alamogordo. He said they told us last time that they had no quarrel with the way the ordinance was written in regard to Stage 3 rationing. He said the simple way to make this ordinance fair to all concerned is to take Paragraph 4 on Page 5 out of this ordinance and let his clients conduct their business the same way every other water user is going to conduct their business until we get to Stage 3 water rationing. He said his clients would like to address the Commission personally. Mayor Carroll replied that the recommendation that was just made was to take the Paragraph 4 on Page 5 out so there would be no restriction in Stage 1. Mr. Doughty replied that the recommendation was to move it from Stage 1 to Stage 2. Mayor Carroll replied that this means there is no prohibition on pools under Stage 1, which is one of the things Mr. Doughty had asked for. He noted to Mr. Doughty that he had already achieved half of what he had asked for. Mr. Doughty rebutted that there is no other business other than perhaps a landscaper, that would want to put more than 15% of somebody's yard in under Stage 2 water rationing, that the Commission is prohibiting from having any Alamogordo water.

Mr. Ed Carr, Executive Director of the Chamber of Commerce came forward and addressed the Commission that they feel it is a fairness issue to single out one Chamber business for extra special attention in this area. He said they think it should be an issue of fairness where each business should be treated the same with water. He stated he would like the record to show that the Chamber really supports the pool builders in this area and they would like to see it applied evenly across the board and pool builders be taken out of the issue.

Mayor Carroll said as one individual Commissioner he is not going to back down on Stage 3, but he would be agreeable to allow people who own pools or who want to fill pools to do anything they want with their water during the hours of the day that they are allowed to water. Commissioner Cooper said he would go along with that because if it is the people's water, we should let them decide how they want to use it during the allowed time. Mayor Carroll stated that the more non-essential water that gets used in Stage 2 just pushes us to Stage 3 sooner. Commissioner Robertson said if we do that, we will have to go a little further. He referred to Item 5 on Page 6, which limits washing vehicles except at commercial businesses where autos are washed on every normal business day. He said that allowing citizens to use the water as they wish means they should be able to wash their cars out in their driveways on their day and time to water. Mayor Carroll said that the argument that is being brought forth is that we are

singling out one particular business. He said when we do not allow anyone to wash their car, everyone is being treated equally and no one is being singled out. He said that if we set this up where no one makes a sacrifice we will run out of water. Commissioner Moncada said she feels that we have gone through the ordinance and tried to be fair. She said the restaurants are doing it year round by not serving water except upon request. She said she as an individual is sacrificing. She stated that she does not see where a pool owner cannot sacrifice. She thinks this is the best ordinance we have come up with so far to try to accommodate everybody. Commissioner Cooper said he will not be a part of something that is going to see two businesses go out of business. He said that is what we will be doing if we do not allow these people to continue on with their business. He stated that if an individual wants to use their water to put into a pool that is up to them.

Commissioner Cole asked Mr. McCourt what the regulations were regarding the construction of pools. Mr. McCourt replied that there is nothing in the ordinance that prohibits the construction of swimming pools at anytime. He said what does happen is that under Stage 2 and 3 they could not use treated water to fill the pool. Commissioner Cole asked if they construct a new pool could they still fill the pool under the watering hours allowed. Mr. McCourt replied they could not under Stage 2 as it is currently proposed, but they could under Stage 1. Mr. McCourt said they can fill pools anytime with water other than treated water. Commissioner Cole asked if the pool business could do something like Oasis, the business firm that fills up their tanker, pays a fee, and sells the water. Mr. McCourt said that they cannot use the water to fill pools. Commissioner Cole asked him to clarify that Oasis could not use the water to fill pools. Mr. McCourt replied that is correct, they cannot use it to fill pools. He said when we questioned them, they provided documentation that they were getting that water from a well source outside of our City system. Commissioner Cole said he was trying to figure out a way swimming pool businesses could still build pools and fill them and still maintain the integrity of our Stages 1, 2, and 3. Mr. McCourt replied they can build pools and the water used to fill the pool goes through the individual household meter. Commissioner Cole said the hours it could be done would be limited though. Mr. McCourt replied that is prohibited from 8 a.m. to 8 p.m. Commissioner Robertson said we are not cutting them off from filling the pools. He said it is only treated water that they are restricted from using. He reminded everyone that we had offered them a well to fill the swimming pools. He said he spoke with Mr. Sanders who owns Oasis and he said he would love to fill these pools for them. He said he knows it would be at a cheaper rate than what he is hauling right now because that water comes from La Luz. He said he knows Mr. Sanders would come down on his rate some. Commissioner Robertson said he explained the situation to Mr. Sanders and he said he would work with the pool businesses.

Commissioner Robertson said he thinks we are not restricting Mr. Anderson at all because the restriction is only on pools over 1,120 gallons. Mr. McCourt said he believes that is how a pool is defined. He said it is a certain volume. Mr. Kirschner said it does not deal with hot tubs. Mr. McCourt said he believes Mr. Anderson's pools are larger in size than that so he would be affected. Mr. Anderson said he would be happy to answer any questions. Commissioner Cooper said it is up to the pool owner to see to getting it filled on their watering day and time. Mr. Anderson said most of the pools both he and Mr. Messer sell are over the 1,100 gallons. He said the plastic wading pools that are sold by Wal-Mart and K-Mart are the size pools that he would like to have the opportunity to continue selling. He said the only prohibition is on the pool industry. He said it is not on new car washes. He said we have a new one going up on Tenth Street. He added that he is pro-industry and pro-development, but he does have a problem that when we are short on water and we continue to issue building permits, this is what will force us into Stage 2 and Stage 3. He thinks there are other issues. He thanked Mayor Pro-Tem Griggs and Ed Carr for their comments. He informed the Commission that the German community is probably 75% of his business. He said he would like to keep our welcome mat open for them. They spend a lot of dollars in our community. They move here to enjoy nice beautiful weather, flying weather as well. He added they want to enjoy a backyard and a garden they could not have back home due to inclement weather. Mr. Anderson said we are going to lose some of these folks. He said he knows of some we have already lost that will be commuting from Las Cruces. He asked the Commission if we can afford to lose a valuable asset to our community. He said he speaks tonight on behalf of many of the pool owners in town and not just as a businessperson. He said it is a quality of life issue. He said we are picking on the future of Alamogordo and the Commission has the leverage to make it right. He said the only thing he sees excluded in Stage 2 is pools. He said when we get to Stage 3, he is not going to encourage anybody to put in a pool. He questioned that maybe we become a city without water because we do not plan properly. He said he does not know. He said there are other issues besides his business that are at stake. He added that there is no prohibition on restaurants, car washes, or new development centers. He said he is glad to see the new development centers on the north end of town, but pointed out that they are going to affect some of the locally owned folks. He said they will have garden centers. He pondered if they will keep their trees looking good watering only one day a week. He asked if they and Wal-Mart were on the same plan as the rest of the citizenry of Alamogordo. He said he respects the big guys as he was in management with Wal-Mart for 13 years, but there is a lot of empty locally owned businesses that cannot conduct their business. He stated it is not just because of electrical rates. He referred to his business on First Street. He said they have 68 businesses and only 3 meters. If they go from a monthly bill of \$700 to \$5,000, he wonders who is going to pay that bill. He said it is

not just his business he is worried about, but the future of the town he grew up in and that he loves.

Commissioner Cooper asked Mr. Anderson when he did a majority of the business of installing pools. Mr. Anderson said it is based on the weather because they are usually using a stretch vinyl liner and they need warm temperatures to install them properly. He said we need to develop our water resources. He added that the harsh water we already have is being cleaned up through filtration in a pool. He said that his pool installations go from about now until July usually. Mayor Carroll replied that would be during the time there would be no restrictions. Mr. Anderson replied that is true for him, but Mr. Messer does a different design of pool and his business is more year round. Mr. Anderson said that pool water is generally good in a pool for about 7 years. He said that if you divide 7,000 - 8,000 gallons over that time it is not much more than 1,000 gallons a year. He added that the car wash industry is not required to truck in their water. He said if he is required to, they (the car washes) could truck it in and have storage tanks. He thinks it is a splendid idea, but what is good for one, should be good for all. Commissioner Cooper said he believes we addressed nurseries and businesses like that. He recalls that we allow them to water anytime so they can sell them. Mr. Anderson read a section about newly seeded lawns from the ordinance. He asked if the garden centers were required to only water once a week. Commissioner Cooper replied they were not. Mr. McCourt replied that there is a clause in there that allows them to water on a daily basis. Mayor Carroll said we can go on and on about making this fair to everyone, but if we are going to have a water conservation ordinance that does not inconvenience anyone we are not going anywhere with it. He said we are trying not to harshly single out any one industry, but we are going to wind up inconveniencing everyone.

Commissioner Robertson commented that we are not really restricting much of anything in Stage 1. He said in fact, Stage 1 is more lenient than we have it right now. He said there are only 2 items that are different from Stage 2. He questioned whether we even need Stage 1. He suggested we start with what is Stage 2 now and move swimming pools to Stage 3. Mr. McCourt replied that Stage 1 as it is now constructed has 2 provisions. He explained that there is a reduction in the number of days you can water from 3 days to 2 days a week. He added that there was provisions that deal with new plantings, eliminating fund-raising car washes, and washing down of decks and other impervious surfaces. Commissioner Cooper said he thinks when we start looking at Stage 3 that is when common sense kicks in and everyone will realize we are in a position to where we all have to bite the bullet. Mr. McCourt said part of the goal was to avoid getting to Stage 3 and that is why we used some of these to be educational and start tightening down early. He said if we wait until we get to Stage 3, he guarantees we are going to run out of water because 20 days is not enough

time to get it done. Mayor Pro-Tem Griggs referred to a table he had passed out dealing with the surcharges. He said that currently in Stage 2 there are surcharges. They are \$1.00 in Tier 2 and \$1.50 in the higher tiers. He recommended they consider revising that to where the water commodity charge in Tier 3 is \$2.00, to having the surcharge match that amount. He explained further saying the commodity charge in Tier 4 is \$3.30 and the surcharge should be \$3.30. He said this would be true for each tier. He said by the time we get to these higher charges we are down to one day a week watering so a lot of people are not going to be watering. He said this could theoretically slow it down a little more. He reminded everyone that the surcharge was the only thing that was particularly effective in slowing down the use of water. He said that if he did his math right, a bill for 7,000 cubic feet last year would be about the same. He added that it is expensive, but this way we are not telling someone not to build a pool. He said we are telling the citizen not to build a pool because the cost to put the water in it is going to be too high that particular month. Commissioner Robertson said he agrees with Mayor Pro-Tem Griggs on this. He asked if we are going to go back to a 3 day a week watering schedule. Mr. McCourt replied that we have retained a 1-day a week watering schedule since September. He said this is one of the factors that has been very beneficial in keeping our consumption down and allowing us to get our reservoirs built up. He pointed out that we have seen reductions in the sale of water versus the year prior when we had unlimited watering. He said the reductions have diminished tremendously as you would expect in the wintertime because people are not watering much in any case. He added that there has been less watering this winter though than there was last winter.

Mr. McCourt told Mr. Anderson they could always use untreated water to fill pools. Mr. Anderson replied that his average customer buying a \$1,000 pool cannot spend \$600 to fill it. He told everyone that his business is off 85% over the last 3 years. He thanked the Commission for their attention.

Mr. Noel Marsh asked if we had used the City utility records to identify the high users or if we had arbitrarily singled out swimming pools and car washes. He asked if anyone had looked at the water used by the hospital and if they were subject to any economies during these 3 phrases of rationing. Mayor Carroll replied they would be subject to surcharges. Mr. Marsh clarified that they would be subject to surcharges, but not economies in consumption. Mayor Carroll reiterated it would be through surcharges. Mr. Marsh recommended we look at higher water users. He commented on the water being wasted on Indian Wells by the automatic sprinklers. Commissioner Cooper rebutted that is not potable water, but the City's wastewater that we are using on Indian Wells.

Mayor Carroll asked the other Commissioners if they supported the idea of allowing people to use water to fill swimming pools in Stage 2 during the

allowed watering times. Commissioner Cooper said he would go along with that. Mayor Pro-Tem Griggs said that if he thought they used millions of gallons of water he would oppose it, but he does not think they do so he would support it. He pointed out the restrictions on time during Stage 2. Mr. McCourt suggested they drop the paragraph that was moved into Stage 2. He added it would be prudent to revisit Mayor Pro-Tem Griggs' idea on surcharges. Mayor Carroll said he would be amenable to revisiting the surcharges because he does not think the rates would be enough to encourage conservation. He asked Mr. Kirschner if we were to substantially increase the surcharges in this ordinance for final publication would it be significant enough to require republication. Mr. Kirschner replied that he thought it would seem to be a significant change. Mayor Carroll suggested they pass the Ordinance as proposed and then amend it at the next meeting to add surcharges. Mr. Kirschner agreed.

Mr. Ed Kimber, a member of the audience, asked if there was anyway for the City to check or enforce the allowance of swimming pools to be filled during those hours or days. Mayor Carroll replied only to the extent that we can check anybody watering their grass at the same time. Mr. Kimber said the problem is you do not see people filling their pools. Mayor Carroll agreed saying it is easy to see someone watering their front yard, but it is difficult to see someone watering in their backyard. He added that we hope people would be responsible enough to obey the law. Mr. McCourt pointed out that the hours we would be looking for people violating the ordinance is when we have quite a bit of our workforce on the site. He said what we really want to do is add language that says they can fill the swimming pools, but only during the prescribed dates and times. He asked if we want to put that in Stage 1 and Stage 2. Mayor Carroll replied affirmatively. Mr. McCourt noted that if we put it in Stage 1 it would carry over to Stage 2. Commissioner Moncada clarified that we were moving Paragraph 4 out of Stage 1 and into Stage 2. Mr. McCourt said that we are adding the language that swimming pools can be filled with treated water on the days and times when watering is allowed for that property.

Commissioner Cole moved to approve the Ordinance with amendments for final adoption. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a roll call vote of 6-0-0.

The meeting was recessed at 8:40 p.m. and reconvened at 8:55 p.m.

7. Ordinance No. 1172 amending Article 17-08 of the Code of Ordinances prohibiting aggressive solicitation by peddlers and solicitors.

Recommendation: Approve the Ordinance for first publication.

Mr. McCourt said that this is in line with several comments we have had stating our Solicitation Ordinance was not sufficiently strong. He stressed that this would not have an affect on the people who sit on the park benches or the sidewalk with a sign that says something like "Homeless, please help me." This has no affect on them because that is not aggressive solicitation. He told the Commission if that was their goal, this Ordinance does not touch that. He explained that there is a clause that addresses when someone aggressively harasses or threatens somebody to try to get them to provide some type of assistance. He said it also redefines peddlers. He stated that this comes from a question that has come up a few times regarding businesses that come in on short term and set up shop out of a van or trailer. He said it changes the fee for those types of businesses to \$50 per month from \$35 a year. He pointed out that it does not prohibit vendors from doing business. He said it just increases the cost for that type of activity. Commissioner Robertson said the State has a very strong law, the Green River Law, where people cannot solicit. He said it does not matter if the City wants to allow it or not. He added this law has been around for years. Mr. McCourt said that he has heard that phrase before in reference to peddlers, solicitors, and door-to-door salespersons. Commissioner Robertson said that part of the law says if they have an office here in town doing business then they can canvass, but if they do not have an office they cannot under the Green River law. Mr. McCourt replied that some of those laws were struck down under the Interstate Commerce Clause. Mayor Carroll said he thinks the Green River law may have been one that was. Mr. McCourt said as he remembers it came out of a community in Kentucky and what was upheld was that you could post your property for no solicitors. Therefore, they could not enter your property or come up to your door and solicit. He referred the question to Mr. Kirschner, City Attorney, saying he is probably a lot more familiar with it. Mr. Kirschner stated he has been looking for more information, but he could not find a particular law on the books in New Mexico right now. He said whether there was or was not such a law, we could still adopt an ordinance. He explained that we cannot burden interstate commerce. He said we can pass a regulation that is reasonably related to a public health, safety, and welfare issue. He noted that the issue does concerns public health, safety, and welfare by protecting the citizens from being abused by people who are come and go. Mr. Kirschner said the additional investigation by the City to make sure we have information in case someone has a problem with the vendor justifies the increased fee. He said if businesses have a permanent location we could distinguish between those businesses and ones that do not. He pointed out that this is not included in this ordinance. All peddlers are treated the same. He said he was asked today about other house-to-house salespersons like the Schwann's representatives. It would appear that those people would be considered peddlers by the ordinance we have today, and they would have to pay the higher fees.

Mayor Carroll asked if we would be able to limit that to an individual or business that had a permanent address within the City limits of Alamogordo. Mr. Kirschner replied that he did not think so. Mayor Carroll said he thinks the motivation behind this is the concern over the guy who shows up in a truck and spreads out sunglasses, tennis shoes, or something. The vendor is required to have a business registration, which would in turn give him a permanent location on his New Mexico business registration. Mayor Carroll said we are trying to discourage or better regulate the people coming in from out of town. He said we are trying to do two different things at once with this ordinance. He said one of the things is addressing panhandling and the other is transient businesses. Mr. Kirschner noted that this was the combination of two efforts. He said he started these as two separate projects, but after discussions with Mr. McCourt it was combined into one effort. He said they could be separated out again. Commissioner Cooper said that he recalls there being an ordinance proposed three times that was voted down because they were violating free enterprise. Mayor Carroll said he thinks the intent was to make it a little more costly to the transient businesses because of the additional cost to the City to track and regulate them. He said this ordinance as proposed has accomplished that, but also includes some local businesses that are in fact fixed businesses here because of the way it is written as far as the fees. He wants us to figure out a way to separate the two types of businesses. Mayor Pro-Tem Griggs said he agrees with Mayor Carroll and recalls Commissioner Cooper bringing an ordinance before the Commission. He said there was concern in that ordinance that it might impact the ability of the landowner to lease or rent out their property to an itinerant peddler. He said that Farmington has an ordinance that is broader than this one and has a variety of fees for different businesses. He expressed the importance of realizing that citizens will not have an easy means of remedying problems with defective product purchases from the itinerant vendors. He said we should do our best to protect the public. He suggested we look at the ordinance in that light while protecting legitimate businesses in our community. Mr. Kirschner said that we might add something to the ordinance that requires these peddlers to appoint a local agent for process of service so if someone does have a problem with the product they have a local avenue to file legal claims against the vendor. Commissioner Cooper said that he got a sales pitch from a furniture peddler one time that told him to take the product back to Sun City Furniture because they sold the same things and would be more than happy to take care of it for him.

Mayor Carroll stated that there are some problems with the peddler/solicitation part of the ordinance. He asked if anyone had problems with the aggressive solicitation portion of the ordinance. Commissioner Cole asked how you define aggressive behavior and who would define the behavior as aggressive. Mr. McCourt replied that we have put that in the

definitions. Commissioner Cole said he understands, but still wondered who would decide that the behavior was aggressive if we got a complaint that a person had been aggressive. Mr. McCourt replied that they would have to testify. Commissioner Cole clarified that the matter would go to court. Mr. McCourt replied affirmatively.

Mayor Carroll said he thinks the aggressive solicitation could stand by itself without defining peddlers or solicitors. Mr. Kirschner replied that is correct. Mayor Carroll suggested we break the sections down where they are more of a stand-alone thing so we do not have bits and pieces of both of them in the same one. He suggested that aggressive solicitation be separated where it has nothing to do with whether or not you have a business license. Mr. Kirschner explained the layout of the ordinance if we were to do this.

Mr. Kirschner explained the section of the ordinance regarding what constituted prima facie evidence that the person did intend to inflict fear upon a reasonable person. Commissioner Robertson referred to the definitions in the ordinance and the issuance of a license by the City for Commercial Solicitation. Mayor Carroll said this is why he suggested we separate the two issues.

Mayor Carroll suggested we consider tabling this item, have it brought back in two separate sections, and direct Mr. Kirschner to come up with language that will allow us to control the itinerant peddler without punishing businesses that are here in the community. Commissioner Robertson recommended booth licensing. Commissioner Cole asked if there was a distinction between a peddler and a solicitor. Mr. Kirschner replied that a solicitor goes around requesting payments or orders and a peddler has goods to sell on hand.

Commissioner Robertson moved to table this item and to direct the City Attorney to redraft two ordinances to address the issues as discussed. Commissioner Cooper seconded the motion. All voted "aye." The motion to table carried by a vote of 6-0-0.

Commissioner Moncada suggested that we encourage the public to give gift certificates to the people standing on the corners asking for money instead of giving them cash. She said word would get around that in Alamogordo you do not get cash, but get gift certificates. She added if the trend snowballed it might get them off the streets. Commissioner Cooper said they sell the gift certificates like they sell food stamps. Commissioner Moncada said there maybe a way it would be only good for them such as issuing it in their name. She thinks it is a good plan if we could get some people together to look at it. Mayor Carroll said there are some groups that

help the transients who might be willing to put something together. Commissioner Moncada stated she would like to see this.

8. Ordinance No. 1174 amending Article 14-01 of the Code of Ordinances adjusting the solid waste collection rates based on the CPI-U.

Recommendation: Approve the Ordinance for first publication.

Mayor Carroll asked if the "U" stood for utilities or users. Mr. McCourt replied it stands for Urban users. Commissioner Cooper asked if this item is pretty much automatic. Mayor Carroll replied that the contract calls for us to adjust it on an annual basis and that is all we are doing. Commissioner Moncada asked if the solid waste collection company set the increase. Mayor Carroll said we negotiated the contract with the automatic adjustment for cost of living over the life of the contract. Mr. McCourt said we went out on Request For Proposal a year ago and solicited for solid waste haulers to take care of the residential business for trash collection. He said we awarded the contract to Southwest Disposal. He stated that there is a provision in the contract for an annual escalation based on the consumer price index for urban users. He explained that they have come in and requested the rates be adjusted on an annual basis. We collect the money through our billing system. He said there is a little differential between what we pay Southwest Disposal and what we charge. He explained that we pay the tipping fees down at the landfill for the residential customers so we collect that money through this fee structure also. He said our solid waste program is totally supported by the fee structure.

Commissioner Cole moved to approve Ordinance 1174 with any mathematical corrections for first publication. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a vote of 6-0-0.

OTHER BUSINESS:

13. Land for a potential Conference/Convention Center.

Recommendation: Provide direction to Staff.

Mayor Pro-Tem Griggs explained that a year ago the Commission discussed the possibility of obtaining land up near the Space Hall of Fame for the potential of building a convention/conference/civic center. He stated that they made contact with the Tays family at that time. He explained there are 3 brothers who do not often get along. He said we did not get a response. He wrote them again early this year and did get a response from all 3 of them. They all agreed to donate 20 acres of land south of the Space

Hall to the City to build a convention/conference/civic center. He noted that there were some requirements with it. One of the requirements was that the City would commence to building Indian Wells Road to the site of the conference center within 5 years. Within 7 years from the date of the agreement the City would be required to commence the building of the actual building to be used for that purpose was another requirement. Mayor Pro-Tem Griggs stated that there are no other strings attached. He said the donation is free. He stated that if we do not do anything we just have to turn around and give the property back. He said it provides us with what he thinks is one of the premier locations in the community for a conference center if the community feels we need one. He pointed out that it creates no obligation on the City to do anything. He said we would need to direct the City Attorney to draft a donation agreement. He noted that there was one in their agenda packet this evening, but it was based on earlier information and is no longer accurate. He informed everyone that we have a local surveyor who will survey the property and the right of way at no charge. He reiterated that there would be little to no expense to the City to get the deal worked out. He stated that he believes it is an excellent opportunity for the City.

Commissioner Cooper referred to something he was reading that said we would commence the building of a two-lane street with curb, gutter, and sidewalk within 4 years of the agreement. He said the clock starts ticking the day we accept the land. Mayor Pro-Tem Griggs replied that was from an earlier draft, but the clock does start ticking from the day the donation agreement is signed. He said that letter was not accepted; it was the one that says 5 and 7 years that was accepted.

Commissioner Robertson asked Mr. Kirschner how binding this agreement was to the City. He asked if there was anything they could do if we accepted this and then did not comply. Mr. Kirschner replied that as he understands it we would get a conditional deed of gift. He explained that we will get a deed that will be conditional. The property will belong to us until one of the conditions is not met; at which time it will revert to the owner. He said we are not signing any kind of an agreement to do anything. He said they are giving it to us on these conditions. If we fulfill the conditions the gift becomes permanent and vested in the City. If we do not fulfill the conditions, it is not permanent. He said if we did the roadway and did not do the building, we would get the roadway, as he understands it. Mayor Pro-Tem Griggs agreed. Mr. Kirschner said he does not see where the City would actually commit in anyway to do anything.

Commissioner Moncada asked if the City would pay taxes on this property. Mr. Kirschner said the property would belong to us immediately so it would be exempt. He said there would be no taxes collected on it by the County. He explained that if it reverted to the owners, they would get it back and it

would become taxable to them. He said it would come off the tax rolls because as far as he knows we do not pay taxes on real estate. Commissioner Moncada said the beauty of this is that when the hospital made their plans, they included a motel there as she recalls. She asked the other members if they remember that. Mayor Carroll said he does not recall, but the hospital does have some very long-range plans. She said they also have some kind of homes for patients who regularly need treatment planned there. She thinks this, in addition to the Tays Center being there, would draw other events like tournaments, rotary, and all sorts of functions that could happen there. She thinks it is a plus.

Mayor Carroll said he does not see a downside in us pursuing this. He said the best thing is we could end up with a conference or convention center up there, and the worst thing that could happen is we did not do anything and they got the land back. Mayor Pro-Tem Griggs said if he saw a downside to this he would let everyone know what it is, but he does not see one. He sees it as a remarkable opportunity and a very generous gift. He estimated the value of the land between \$4,000 - \$10,000 per acre and said it is prime real estate for this type of venture.

Mayor Carroll asked the Commission if they wanted to direct Staff to pursue the acquisition of the property under the terms outlined or did we want to see about changing the terms if we were not comfortable with them. He said he had a concern or two with the initial draft, but that is not what we need to send to them.

Mayor Pro-Tem Griggs moved to direct Staff to acquire the land. Commissioner Moncada seconded the motion.

Commissioner Cooper asked what the tax was on the land. Commissioner Robertson told him there was none to us. Mayor Pro-Tem Griggs said the taxes on the property that he owns just south of the hospital is about \$230 a year and it is about 22 to 24 acres. He said that would be a cost or reduction in some revenues. He said he believes a majority of this land is in the County, but some of it might be in the City. Commissioner Cooper said that when we took possession of the IGA building it represented about \$17,000 in taxes. Mayor Carroll noted that is commercial property in the City though. Commissioner Robertson said he went to the County recently and someone told him that Michael Shyne just bought a piece of property down from here, but about the same height on the mountain. He was told that Mr. Shyne gave \$20,000 for an 80-acre tract.

The vote was taken on the above motion. Mayor Carroll, Mayor Pro-Tem Griggs, and Commissioner Moncada voted "aye." Commissioner Robertson, Commissioner Cooper, and Commissioner Cole voted "nay." The motion failed by a vote of 3-3-0.

15. Appointments to Boards and Committees.

Airport Zoning Board. One vacancy.

Community Development Advisory Committee. Two vacancies.

Parks and Recreation Board. Two vacancies.

No appointments were made. All vacancies were rescheduled.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

16. Mr. Esmael Sanchez, Jr. – concern with school buses using Maryland Avenue and other streets for easy access to the bus yard.

Mr. Esmael Sanchez, Jr. came forward and said he represents a group of people who live on Virginia Street, Second Street, and Maryland. He noted that he has signatures from the residents. He said they are concerned about the buses using their streets as easy access to get back to the bus yard across First Street. He explained it is not just one bus, but it is a lot of buses every morning from 5 to 6:00 a.m. He asked if there was anything that prevented these buses from going around city blocks. Mayor Carroll replied there was nothing he was aware of that prevented this. Mr. Sanchez said he has talked to the superintendent of the schools, Dr. Phillip Knight. Mr. Sanchez said that Dr. Knight asked him if there were any pick ups or drop offs in that area. He replied there was not any at all, they are just using the route to get easy access back into the bus yard across First Street because they have no other way to get back in there. Mr. Sanchez played a tape for the Commission that demonstrated the noise created by the bus traffic. He stated that it begins at 6:00 a.m. and continues until 9:00 a.m. every morning and then starts again at 3:00 p.m. until about 4:30 p.m. He said he has counted 35 buses in the yard. He stressed that this is very irritating for a lot of the elderly people that live on the block. He reiterated that he has signatures from everyone that lives on the block. He said what he would like to do is see if they can get the buses to change their route. He would like us to see if we could get a different route for the buses to get back into the bus yard.

Mayor Carroll asked Mr. Sanchez if he had addressed his concerns with the bus company. Mr. Sanchez replied that he had a couple years ago. He referred to when his father use to like to sit out on the porch and drink coffee in the morning, but he could not because of the fumes. Mr. Sanchez said it is not just his father. He is representing these people and referred to the ones he had signatures from. He said that the response from the bus company was more or less it is not their problem. He said when the bus yard was put there they should have thought about a way to get back into

the bus yard instead of just using their block. He said it is very irritating and it is not right.

Commissioner Robertson asked Mr. Sanchez if the street was a narrow street. Mr. Sanchez replied affirmatively. Commissioner Robertson then asked him if they parked cars on both sides of the street. Mr. Sanchez replied they could. Commissioner Robertson asked if another car could get by the bus when it was coming through the street. Mr. Sanchez replied they could not. Commissioner Robertson said he had this concern in other areas as well.

Commissioner Moncada said she realizes the problem they are facing because she lives in that district. She explained that in order for the buses to get into their yard they turn on Virginia and then turn on to Second Street, which is not very wide, and then back on to Maryland and there they get the stop light which makes it easier for them and a lot safer to turn into their yard. She said there is no other way that a bus could go into that yard if it is coming from this side of town. She said the only other way would be to take Tenth, get White Sands and then go on to First Street into the yard. She said she could hear these buses on New York Street so it is very loud. She does not know what the solution to the problem is. She said she has spoken to our chief of police and maybe he could share some light on this.

Mayor Carroll asked DPS Director Chief Sam Trujillo if there was a reasonable solution so that we can direct the buses to take another route without just moving the problem to someone else's street. Chief Trujillo said he does not dispute the noises or traffic. He said he himself lives within three houses of a school and knows about buses traveling around the schools. He said what we are talking about is the buses taking a route to hit the light. He said this is something he would recommend that the buses go to, a protected intersection. He explained that if they try to make the turn in a median there would be many accidents, especially on First Street. He said that we do not have a City Ordinance right now that prohibits buses from driving down residential streets. He said that Maryland has been increasing traffic over the last couple of years because of the light at First Street. He said he does not have a ready solution to stop this from happening. The only thing he said he could think of is if the bus company made an agreement themselves and said we are not going to drive this route, we are going to drive down Florida and go down White Sands or something like that. Chief Trujillo said it will take the buses from this area, but will push them into other areas. He said that potentially this same issue could be all over Alamogordo. He said everywhere there is a school you have noise from the buses. Mayor Carroll replied that obviously school buses have to go somewhere, but if this is a narrow street and it poses a potential traffic hazard or traffic flow problems maybe we could address it from that standpoint. Chief Trujillo agreed, but noted that the

amount of traffic on the side street from east to west was not that significant.

Commissioner Robertson asked if there was anyway they could reroute where they would go down Florida to First Street. Mr. Sanchez replied they could not. He looked at it and if they come down First Street the median is not letting them access the bus yard. Mr. McCourt said that there is island medians and limited turning on First Street because of the heavy traffic flow. He said this particular intersection is an extremely busy intersection. He said Commissioner Moncada talked to him about the possibility of cutting that island to allow a south turn off First Street directly into the yard. He said he does not believe that would be a safe maneuver in the close proximity to the intersection. He said it is the school buses that are westbound on First Street that are making this maneuver. Mayor Carroll suggested that the City talk to the bus company to see if there is some kind of a workable alternative that would address the citizens' concerns and the safety for the buses as a first step. He said it may take the buses out of their way a little bit, but if they are agreeable to trying to find a solution it would be better than the City having to impose one on them.

Chief Trujillo clarified when Mr. Sanchez had last talked to the bus company. Mr. Sanchez said the last time was about 3 or 4 months ago. Commissioner Robertson asked if there was anyway to come into the backside of that yard. Chief Trujillo replied that it was not possible unless you come on private property like Wal-Mart or the Granada Center. Commissioner Cooper noted that if you cut into the median you alter the traffic flow. Chief Trujillo did not recommend that be done because it is too close to the intersection. He said they could certainly talk to the bus company and let them know what the concerns are around that area. Mayor Carroll asked Chief Trujillo to see if the bus company has a suggestion that may work for them and alleviate the concerns. Mayor Carroll reiterated that if something could be worked out that was agreeable to everyone it would be better than the City trying to impose a solution on them.

Mr. Sanchez said that when people work at night like the lady across the street from him and then those buses start going it is a big problem. He told the Commission that he has 60 minutes of the noise recorded and it is noise pollution. Mayor Carroll said that part of the solution maybe to break the route down differently in the morning versus returning to the yard. Mr. Sanchez said the buses are not as bad in the afternoon as they are in the morning. Mayor Carroll said maybe the morning bus traffic could be directed another way. He said he can see coming back why they would feel that is necessary, but he is not sure that they could not reach some accommodation in the morning to keep them from going in that direction. Chief Trujillo said that what he would like to be careful with is that this is happening all over town. He said that we have schools in residential areas

and there is a lot of bus traffic going through there. He said potentially the problem Mr. Sanchez is having is happening at those locations also. He said he can talk to the business owners and let them know what the concerns are. Mayor Carroll asked that he see if they have a suggestion or willingness to solve the concern.

Commissioner Cooper referred to an alleyway that comes behind the shopping center. He said maybe we could work out somehow the buses could use it. Chief Trujillo said he does not want to get into a position where he is dictating to the business how they are going to be operating with their neighbors. He said he would rather talk to them and let them know what the concerns are and put them in connection with Mr. Sanchez. Mr. Sanchez said they are using that block as easy access and do not care what the residents are going through. Mayor Carroll said it maybe that his concerns have not been fully appreciated by the bus company. He said he thinks that if the City visits with them, it may highlight the fact that more than just the neighbors are concerned about the situation. Mr. Sanchez said they would like to see a change. Mayor Carroll asked Chief Trujillo to visit with them and see if there is something that could be done. Mr. Sanchez asked if there was a way he could find out how the situation is going to be handled. Chief Trujillo told the Commission that he could work with Mr. Sanchez. Mayor Carroll told Mr. Sanchez to give Chief Trujillo an opportunity to visit with the bus company and then Chief Trujillo could get into contact with Mr. Sanchez. Mayor Carroll asked Chief Trujillo also let the Commission know what the result of the visit is and what the solution is.

Mr. Sanchez told the Commission that he had a lengthy conversation with DPS Captain Jim Bird. He told them that he had told Captain Bird that Maryland Street is just as bad as Tenth Street and First Street if not worse because of the speeding that happens on that street. Mr. Sanchez said that Captain Bird told him they could not really do anything right now to slow down the speed limit because those cars are going over 25 miles per hour. Mr. Sanchez stated that something needs to be done about the speeding because cars are going 40 to 50 miles per hour. He said the police cannot sit there and get these people because the police are too visible in that area. Chief Trujillo stated that Maryland Street has had a history since the light was installed at First Street in 1998. He explained this created the avenue for people to travel down Maryland. Chief Trujillo explained that Maryland is a wider street. He said a lot of people take Maryland from Tenth Street over to Wal-Mart. In the area of safety, he said he would recommend that people take that route because they are going to hit the protected intersection compared to a side street. He said they did receive complaints on speeding. He confirmed that the speed limit on Maryland is 25 miles per hour. He noted that on most streets in Alamogordo it is 30 miles per hour. He said they did do some enforcement over a period of time, but they did

not see a significant increase in citations on that particular block. He agreed with Mr. Sanchez that it is pretty easy to see the police when they are there which would slow the traffic down. Chief Trujillo said that they got with Engineering and conducted a study. He explained that they put devices in the street to see how much traffic was actually occurring. The average speed during the study was 24 miles per hour he said. We did not have a specific speed problem in that area at that time. He noted that it is a residential area and speed looks a lot faster going down Maryland than it does going down Tenth Street.

Mayor Carroll told Mr. Sanchez that we would attempt to address his concerns. He said that Chief Trujillo would be in contact with him. Mr. Sanchez thanked the Commission for listening.

UNSCHEDULED COMMUNICATIONS:

A. Commissioner Robertson commented about the Senior Citizen Center.

Commissioner Robertson expressed his concerns that he had heard that the Senior Citizen Center was considering closing on Saturday. Mr. McCourt told him that he had not received anything on this nor had he discussed it with Mr. McNeile, the Community Services Director.

B. Mayor Carroll commented about the vacancy on the Commission and his recent meeting with the ambulance committee.

Mayor Carroll said that we had a number of people that expressed an interest on filling the vacancy in District 1. He said he thinks this is good and hopes the people who expressed their interest and took the trouble to apply will keep that interest through next March when the next election happens. He noted that seat along with three others will be up for election. He said he does not think it is too good for our system of government when too many offices are filled with people running unopposed. He thinks it is important that people have a choice when it comes to electing people to represent them.

Mayor Carroll informed everyone that he met as the City's representative on the ambulance committee with the County and Chief Trujillo. He said that he reported almost a year ago that we had discussions with the County and the Sheriff's Office on dispatch. He said that the volume of ambulance calls was starting to have potentially a negative impact on our ability to respond to other things. He said they had discussed who would do the dispatch. He explained that the City was doing most of it anyway so the negotiations were that the City would continue to do the dispatch, but we would obtain a different frequency for the ambulance and staff it with additional people. He said the cost would be shared between the City, the

County, and the Village of Tularosa. They came up with an agreement at the meeting. He noted it will entail additional costs and additional staffing at the Department of Public Safety, but some of the costs will be offset by cash contributions from the County and the Village of Tularosa. He said he wanted everyone to be aware of this so when the budget hearing comes up they will have additional costs and additional staff shown as a result of this issue.

C. Mr. McCourt made comments regarding Municipal Day, additional dispatch staff and gave the water report update.

Mr. McCourt reminded everyone that next Friday was Municipal Day in Santa Fe. He said there are some other meetings planned and everyone was going up on Thursday. He said they will get briefings concerning legislation during the day and then meet with Legislators for lunch. He noted that Mayor Carroll, Brian McGuire, and himself sit on the Municipal League Board and they have a meeting on Friday afternoon. He said they will return late Friday.

Mr. McCourt said the additional staffing at dispatch will be an unusual event because we basically have told the departments that we are not going to have new positions next year. He said that he understands this is a negotiated situation and will be an exception to that.

Mr. McCourt told the Commission that he had passed out a water report to them telling them where we were as of and since January 28, 2003. He said we have continued to fill our reservoirs and we do have two wells running at this time. He said this is to help us to make sure that our reservoirs are full when we hit the summer season. He noted that the Bonito line came back on and now has gone off. He said that they discovered there were 5 leaks in the new line they just built. He said they have taken it down to get those fixed and in service. He said that we feel good about the fact they are getting it done during the winter and we do not find this out in the middle of summer.

Mr. McCourt updated the Commission on the well rehabilitation program. He said that we finished rehabilitating wells number 2, 3, 4, 5, and 6. He said we cleaned these wells, acidized them, and lowered some of the pumps. The pump in well 2 was lowered 51 feet; the pump in well 3 was lowered 63 feet; the pump in well 4 was lowered 42 feet; the pump in well 5 was unable to be lowered; and the pump in well 6 was lowered 100 feet. He added that we have not completed well 7 yet. He said part of the surcharge money was used for this particular purpose. He said so far we have spent \$157,623 on wells 2, 3, 4, 5, and 6. He said that we estimate the bill on well 7 to be approximately \$25,000. He explained that we believe these wells will be in much better shape for next summer. Commissioner Cole clarified that

this money was coming from the surcharges. Mr. McCourt replied affirmatively and reminded that the Commission permitted them to use \$150,000 of the surcharge money for this project. He said that we are taking the other money out of maintenance fees because we feel it is important that we have the wells in the best shape we can have them in going into next season.

Mr. McCourt informed everyone that we have finished getting the cover on the north reservoir and it is in the process of filling at this time. He said we now have all 3 of the surface reservoirs covered.

D. John Garst commented on trains carrying hazardous cargo through town.

John Garst referred to a rail accident in a southern city in Illinois this last week. He told the Commission that he knows several people at Dow, which is one of biggest manufacturers of vinyl chloride. He said that they believed that vinyl chloride had no threshold to cancer at one time. He said they did find the threshold, but it is so close to zero. He suggested we take a serious look at the rules and regulations regarding Union Pacific to do something about the rails going through that carry truly hazardous substances because the entire town is pretty much east of the tracks. He said our prevailing winds are from the west. He said this could be a disaster in the making. He added that the trains do go pretty fast through there, but that in itself is not what bothers him. It is what is in the train that bothers him. He reiterated that it is a potential disaster in the making. Mayor Carroll said that we do have an emergency management team. Mr. Garst said that he presumed we did either locally or through Holloman. Mayor Carroll replied that we do have a group made up of folks from Holloman, the County, and the City to prepare contingency plans that meet on an on going basis. Mr. Garst asked if there was a plan to evacuate the whole basin because that is what this would have entailed. Mayor Carroll said we do have an agency that attempts to address those possible concerns. Commissioner Cooper added that in the last three years they put in all new rails, including the rail beds all the way through here so they are in great shape. Mayor Carroll said the point is still well taken because there is always that potential. Mr. Garst said maybe we should at least talk with the emergency management team relevant to what a given train is carrying. Mayor Carroll said they will make a point to mention that to our emergency planning personnel and thanked Mr. Garst.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened or pending litigation.

Commissioner Cooper moved to adjourn into Executive Session to discuss threatened litigation. Commissioner Robertson seconded the motion. All voted

"aye." The motion carried by a roll call vote of 6-0-0. The Meeting was adjourned at 10:23 p.m.

The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of February 11, 2003 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 Betsy C, Kidwell)

Approved at the City Commission Regular Meeting of 02/25/2003.



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