

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
TUESDAY, MARCH 25, 2003**

**MAYOR DON CARROLL
MAYOR PRO-TEM RON GRIGGS
COMMISSIONER INEZ MONCADA
COMMISSIONER DON COOPER
COMMISSIONER ED COLE**

**COMMISSIONER JOHN ROBERTSON
COMMISSIONER MARION LEDFORD
CITY MANAGER PAT McCOURT
CITY ATTORNEY WILLIAM KIRSCHNER
CHIEF DEPUTY CLK BETSY KIDWELL**

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

The Meeting was called to order at 7:30 p.m. The Invocation was given by Rev. James Ethington, and the Pledge of Allegiance was led by Mayor Pro-Tem Griggs.

Mayor Carroll asked that we keep the servicemen and women from Holloman who are deployed in the Middle East in our thoughts and prayers. He added our thoughts and prayers are with the soldiers from Ft. Bliss who are POWs in this war, especially Specialist Joseph Hudson, the young man from Alamogordo, and his family.

PRESENTATIONS:

1. Presentation by the Committee on Historic Recognition, and adoption of Resolution No. 2003-10 accepting a bronze bas relief entitled Early Times – Otero County, New Mexico, and declaring March 29, 2003 as "Ranch and Farm Heritage Day".

Recommendation: Approve and present the Resolution. [Roll Call Vote Required]

Dr. Dave Townsend, chairperson of the Committee on Historic Recognition, explained the background on the Resolution. He said they recommend the acceptance of the bas-relief. He stated that it also has the recommendation of the Art Subcommittee. He noted that the History Subcommittee recommends that the subject of the piece, rural life in Otero County, is worthy of recognition. He stated that the explanation sections of the resolution emphasize the point that we do not often recognize the elements that make our way of life the way it is. He added that much of that way of life is based on rural factors coming out of ranching, farming, mining, railroading, timbering, and the related industries. He said it is a very distinctive way of life often summed up by what is called "The Code of the West."

Dr. Townsend said that they asked for a resolution accepting the bronze piece commissioned by the Otero Cowbells, the Otero County Cattleman's

Association, and the Otero County Farm and Livestock Bureau. He added that this is the piece they would suggest to the Commission. He asked that this Commission go on record as thanking the sponsoring groups for the piece. He added that they ask that March 29, 2003 be designated by the Commission as Ranch and Farm Heritage Day in Alamogordo and that a ceremony of recognition and acceptance of the bronze bas-relief entitled Early Times - Otero County, New Mexico be planned for that day.

Ms. Maude Rathgeber, who headed the committee that was formed from the sponsoring groups, and Ms. Ernie-Lee Miller, the artist were present and honored. Dr. Townsend also noted that the resolution was accompanied by an article by R.L. Posey. He said it was good justification for recognition of a rural way of life as being part of our heritage.

Commissioner Cooper and Dr. Townsend discussed the success of Founders Park. Commissioner Robertson commented on the beauty of the piece Ms. Miller created. Dr. Townsend noted that if the Commission accepts the piece it should be in place by Thursday.

Commissioner Cooper moved to adopt Resolution 2003-10. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

Mayor Carroll presented copies of Resolution 2003-10 to Dr. Townsend for him to distribute. He added that he has seen the bas-relief and as usual, Ms. Miller has done an outstanding job on the piece. He thanked Ms. Miller, Dr. Townsend, and the Historic Recognition Committee for their contributions to our community.

Dr. Townsend said they have planned the ceremony for Saturday, March 29, 2003 at 2:00 p.m. at Founders Park. There is a reception to follow at the Otero County Courthouse. He noted that Ms. Rathgeber was in charge of this and if anyone had questions, they could talk to her.

CALL OF THE CONSENT CALENDAR: [Roll Call Vote Required -Items 5 & 8]

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 Meetings of March 11, 2003.

Recommendation: Approve the minutes.

5. Ordinance No. 1172 amending Article 17-08 of the Code of Ordinances prohibiting aggressive solicitation.

Recommendation: Final adoption of Ordinance. [Roll Call Vote Required]

8. Resolution No. 2003-08 requesting the NM Department of Finance and Administration approve revised budget figures for certain line items in the City's budget for Fiscal Year 2002-2003.

Recommendation: Approve the Resolution. [Roll Call Vote Required]

9. Application for participation in the 2003 Law Enforcement Protection Funds

Recommendation: Approve the application.

10. Award of Bid No. 2003-06, PVC Pipe and Fittings.

Recommendation: Award to Sierra Irrigation for \$17,903.29 estimated.

11. Statement regarding the Executive Session of March 11, 2003.

Recommendation: Approve the statement.

13. Issue Warranty Deed to Otero County.

Recommendation: Approve the Warranty Deed.

Item Nos. 4, 6, and 7 were removed from the Consent Calendar.

Commissioner Cooper moved to accept items 2, 5, 8, 9, 10, 11, and 13. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

3. Request of S. Thomas Overstreet et al for amendment to Subdivider's Contract on FOOTHILLS SUBDIVISION, UNIT 3. [Case S-02-0767 (A), S. Scenic Drive].

Recommendation: Deny revision of the Subdivider's Contract.

This item was withdrawn from the agenda before this evening's meeting. Mayor Carroll explained the appropriate paperwork had been executed without any amendments on this issue.

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

Recommendation: Approve the contract. [Withdrawn from 2/11/03 agenda]

Commissioner Robertson asked to have this item removed. He asked if we were going to continue to fund this item at the same amount year after year. He noted that this was the second year and we were allowing them over \$70,000 for their operation. Mr. McCourt explained that this contract is for the current year, but we are a little behind in getting it approved. He added that he has informed them that it will be less next year based on budget cuts. Mayor Carroll noted it was reduced to approximately \$54,000. Mr. McCourt said that is slightly above the amount that we provided them for the first year for this service. He explained that for the current year, this is the amount we have approved, but for next year's budget that starts July 1, 2003, we have informed Zia we will be reducing the amount of the agreement.

Mayor Carroll said he noted that while Zia does carry insurance that holds us harmless for liability, they are not able to obtain insurance that would reimburse us for any out of pocket legal expenses in responding to any possible suit. He asked if we had an opportunity to contact our insurance carrier to see if this would have any impact on the City's coverage. Mr. McCourt replied he had not had an opportunity to make that contact. Mr. Kirschner said the question came up for the first time today. He said we would need to submit it to our insurance company. He said the liability is covered, but the question is to what extent will the City have to pay attorney's fees for actions, which the City had no part. He said that where the City is negligent itself we are covered through our own insurance. He explained that this is America and you can be sued even if you have not done anything. He said that if we were not dismissed out then there would be a question of liability on the City's part and our insurance should kick in. Mr. McCourt noted that would be after our \$5,000 deductible. Mr. Kirschner said that was right.

Commissioner Robertson asked again if this would be an ongoing situation where the City would have to support the project. Mayor Carroll explained that the idea is that the transit would become self-supporting, but in reality, it probably will not. He said that for it to be functional there is going to have to be some subsidy from local government. He said this is true in most communities with public transportation systems in New Mexico. Mr. McCourt noted that there was some legislation proposed this year for mass transit districts. Mayor Carroll said he believes it passed, but is not sure if the Governor signed it. He said he understands that would allow local governments, city and county, to go together and fund a local transit system. He explained that they would set up a joint authority that would have taxing authority. He said it was basically promoted by communities in the northern part of the State like Los Alamos, Albuquerque, and Santa Fe. He questioned whether it would work in Otero County or Lincoln County. He added that if the Governor does sign it we would have that option.

Commissioner Cole asked Mr. Richard Barbaras, Zia Therapy Center, if he was able to explore the insurance question with his attorney, Mr. Overstreet. Mr.

Barbaras came forward and said he did and Mr. Overstreet said the same thing as the City's attorney.

Commissioner Cooper moved to approve the contract. Commissioner Cole seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

Mr. Barbaras thanked the Commission. Mayor Carroll thanked Zia for the service that they provide. He said it has been positive and has shown that there was a need in the community for this service. He said hopefully it will continue and at some time become more self-sufficient. Mr. Barbaras informed everyone that they have been awarded funding from the Transportation Department to expand to Tularosa starting in October. He said it will be done in such a way that the people from Tularosa will be able to meet the bus at the mall and go wherever they need to go in Alamogordo. Mayor Carroll clarified that the funds provided by the City of Alamogordo would not be used to subsidize this transportation. Mr. Barbaras confirmed this. He noted that the County has been approached and is looking at providing matching funds, and the Village of Tularosa would be approached. He said they both in principle agreed when they submitted the application to the Transportation Department that they would provide the funding. He stated that Zia is looking at a large system funded by several different players.

6. Ordinance No. 1173 amending Article 17-08 of the Code of Ordinances regarding licensing of nonresident and itinerant peddlers and solicitors.

Recommendation: Final adoption of Ordinance. [Roll Call Vote Required]

Commissioner Robertson asked to have this item pulled for Peter Schmidt, Dairy Queen owner. Mr. Schmidt explained that he did not see the logic in raising the price for licensing of itinerant vendors. He said he sees about 7 different vendors that come into town every year that pay this fee. He said he does not know if they pay all their state taxes. He said he hopes they do. He does not understand why they should have to pay an exorbitant amount. He thinks the rate is high. He said there is a man here tonight who lived in San Antonio who started out selling sunglasses on his lot and has now become a resident of our community. Mr. Schmidt said he travels all over the state selling sunglasses. He referred to the lady who owns the business Yanelli's and one other business on Tenth Street. He said she comes down and sells on his lot and sells all over the state. He said she has to get a separate license for selling on his lot.

Mayor Carroll responded that this ordinance includes a provision for local businesses that their regular business license will apply. He said part of the rationale is to somewhat level the playing field for people who are just passing through our community and people who have established a business here, and also to account for the additional enforcement or checking on these businesses.

Mr. McCourt confirmed these statements. He said the ordinance has a provision that if they have a permanent base here in the community that would satisfy the requirements of being a local business. He said the concern was with vendors coming through town who do not have a fixed base. He explained that we do not know if they have a sales license, we have to check each time, and we have to follow up when there are consumer complaints.

Mayor Pro-Tem Griggs noted this ordinance was brought up 3 years ago and has been reworked since then. He said the ordinance is modeled after one in Farmington which charges different license fees for lots of different types of businesses. He noted the concern had been that we have people coming through that compete with our local people who pay property taxes. He reviewed the rationale of the additional fees. He suggested we look at charging \$50.00 the first time a vendor comes to town and reducing the amount for subsequent visits. Commissioner Robertson clarified that we are not charging \$50.00 each time, that it is \$50.00 for a month. He noted that someone could be set up here for four weekends for the \$50.00. Mr. Schmidt said he understands this, but it is only \$35.00 for a business here. He said he thinks it should be reduced considerably for subsequent visits in a year. He asked if someone who is a local resident, but they are selling throughout the state without a permanent building here could buy a regular business registration to sell on his corner for a year. Mayor Carroll replied they could if his property was their permanent business location. Mr. Schmidt asked if he stated that they are going to be there as a permanent business location, all though they may not be there every weekend, would this apply. Mr. McCourt explained that they need a permanent business location, which could conceivably be in their home if they got a permit. Commissioner Robertson said he thinks Mr. Schmidt is thinking that they could use his corner as their permanent business location and will only have to pay \$35.00 per year for the license. Mr. Schmidt confirmed this. Mayor Carroll clarified that would not be legitimate and that is what this ordinance is trying to address. Mr. McCourt clarified someone with a local residence could get a home occupational license and then their residence could become their permanent business location. Commissioner Robertson asked if we were telling Mr. Schmidt they could use his address for their permanent business address. Mr. McCourt replied no. Mr. Schmidt asked the Commission take the reduced rate for subsequent visits into consideration. He said some people like to come 4 or 5 times a year and they are selling unique products. Mayor Carroll said he has seen some vendors along White Sands selling products that were not unique.

Commissioner Moncada recommended \$50.00 for the first time and \$25.00 for subsequent visits. Mayor Carroll suggested we adopt the ordinance and then look at modifying it if there is a large negative impact. Mr. Schmidt said he deals with about 7 different ones. He said some may come once or twice a year and others come more often. Mayor Carroll said we may want to do something different with someone who comes 10 to 12 times per year. Commissioner

Moncada asked how long it would be before the item came back and considered how many times vendors might be charged the fee by then.

Commissioner Cooper said he has talked to some of these people. He said one of them only came once a year and the other one told him he would not be back, but if there were any problems they could take it back to a local store who sold the same product and they would gladly exchange it for him. He said they also told him the reason they could sell stuff this cheap is that they do not have any overhead. He noted that he saw the shoe person set up by Golden West Pawn Shop about 3 weeks ago and does not know if he had a license. He said he wants to protect our local merchant. He stated that these peddlers do not charge taxes and there is no way to control them. He asked Mr. Schmidt if his liability insurance would cover him if someone got hurt shopping at one of these peddlers on his property. Mr. Schmidt replied that it would.

Mayor Carroll asked Mr. Kirschner how much latitude we had to change the ordinance since it was for final publication. Mr. Kirschner replied we could make the change Commissioner Moncada was referring to without going back for first publication.

Commissioner Cole asked Mr. McCourt how much work would have to be done on subsequent visits if we already have it on file. Mr. McCourt replied we would have to go through everything each time. He explained you have to check their Gross Receipts Tax license, fill out the forms, track them down, and the police still have to check on them and make sure they got a license in case they forget.

Commissioner Robertson said he agrees with Commissioner Cooper about these vendors having no overhead and not paying taxes to us. He asked Mr. Schmidt if they paid a fee to him for setting up on his property. Mr. Schmidt replied they do. Commissioner Robertson said they have a little overhead of some type then, but he thinks we should pass the ordinance and objects to bringing it back up to change it. He said it seems to him we are doing that a lot lately and that is foolish. Mayor Carroll clarified that we could pass it as written or amend it before passing it. Commissioner Robertson said we should take care of the option now and not have to redo the ordinance. Mayor Carroll said that is fine, we just need a motion, a second, and a passing vote.

Commissioner Cooper asked about someone setting up at one location and then a few months later coming back to another location. Mr. McCourt explained that under this ordinance they would have to procure a license for each 30-day period, but could set up at different sites within the city during the 30 days. Commissioner Cooper said it took us over 2 years to get rid of one stand that was set up on a temporary basis.

Mr. Schmidt told everyone that they are going to have a pro-troop rally every Saturday from 12 till 2 and invited everyone down before excusing himself. Mayor Carroll commended Mr. Schmidt for providing his location to do this.

Mr. Stuart Goris, a member of the audience who moved here March 3, 2003, came forward. He said he considers himself a mobile retailer. He believes he is contributing something to each community he goes to. He said prior to taking this business he worked for 4 years with the Small Business Lobby working with small business owners. He said he knows their concerns. He said running a small business is not easy and he does not know if he could do it in a fixed location dealing with all the problems they have to deal with. He explained that is why he does it this way. He wants to own his own business and he enjoys what he does. He said he believes he brings unique products and service to the community.

Mr. Goris said that as a mobile retailer he experiences this issue in each community he goes to. He said it varies from city to city. He stated that every town has its own way of approaching people like him. He said he thinks they appear to be shadowy figures that do not have roots or contribute to the community and who compete with local vendors. He said in many cases that might be true. He said now that he is a resident this may not apply to him, but he still thinks he needs to tell the Commission what he has experienced.

Mr. Goris said that he calls the city office and finds out what the regulations are, what the license will cost, and if there are any business owners who may rent him a space. He said he tries to do things within the regulations and be part of lessening the workload of the city staff. He said that licenses in this state range in price. He thanked the Commission for establishing the \$35 per year fee here. He said it made him feel welcomed. He explained that he does not have the problems of a fixed business owner. However, he does have other problems like the insecurities of traveling from town to town, the costs of travel like hotel rooms, eating out at restaurants, buying food at stores, and replacing his tires. He said he recently did a front-end alignment and bought a new tire here in Alamogordo when he was traveling. He said his costs do not stop just because he is traveling. He added that they do spend money or he would not have the package of receipts that he comes home with.

Mr. Goris said what he hears happening here is much like gun regulation. You hear of people shooting people with guns so let's pass more laws to make guns illegal. He said that what he thinks we are attempting to do is pass a higher cost to someone like him who abides by the law and spends money for the license and tries to do it right, and we are not addressing the real problem. He thinks it is that we do not have enough enforcement. He said people come in on the weekends and do not buy licenses because they know we do not have enforcement. He suggested we have a code inspector to work on the weekend who has the authority to shut these people down. He said that he thinks a

business license should be a business license. He added that he does not think increasing the fees is going to hit the problem area because those people do not care about coming in to get their license anyway. He said this ordinance would actually discourage them even further. He offered to assist in anyway he could. He added that in all the times he has been here, no one has ever asked to see his license. He questioned if the cost of regulating him was more than any other business and referred to the expenses with fixed locations such as fire inspections, health inspections, and building codes. Commissioner Cooper replied that we do have enforcement. Mr. Goris said our code enforcement people are good and he has read that they do a great job, but said they need attention there.

Mr. Goris thanked the Commission again for the \$35 per year fee. He said it does not make him feel targeted as an unwanted like some towns do. He referred to Hobbs who charges \$250 for 2 weeks. He said that sends the message that they do not want them there. He told the Commission that if that is the message they want to send then the Commission should increase the price so they will not come in. He asked the Commission why they should treat the peddlers as second class businesses or a different standard.

Commissioner Cooper asked if Ruidoso had an ordinance that prohibited this all together. Mr. Goris said that is correct. He said Ruidoso Downs does allow it. He referred to Las Cruces who charges \$35 for a total of 40 days at one location or so. He explained that it is the location that is licensed. Roswell's regulations include terms like medicine peddler. He said he sees town struggling with this issue across the country. He said if business owners are concerned about peddlers selling teddy bears, they should look right down the street to Wal-Mart. He noted that it is not the little guy that is going to put a small business owner out of business, it is the big corporations that come into town that put their prices at whatever level it takes so the small competition cannot survive. Commissioner Cooper said all these things together have a dire effect on the economy. Mayor Carroll said tonight is our struggle and we are not unique or alone in trying to address the problem.

Commissioner Robertson asked if there was anything in our ordinance or code that says someone cannot rent a corner of their property to someone like Mr. Goris. Mr. McCourt replied someone could sublet it. Commissioner Robertson said the way we are fixing to pass this would allow them to do that and then the peddlers would only pay \$35 per year. He suggested we wait and review the ordinance more.

Commissioner Ledford asked Mr. Goris about the City of Hobbs. Commissioner Ledford said it seems we are still going to be a lot cheaper than they are. He said compared to other communities it sounds like it is pretty reasonable. He asked Mr. Schmidt if he gets something that proves they have the license from these peddlers who rent his lot. Mr. Schmidt replied he does. Commissioner Ledford

said this is probably why we do not check Mr. Goris because we trust Mr. Schmidt. Captain Jim Bird said they are enforcing this, but they try not to intrude on the business. They contact the dispatcher who contacts the City Clerk's office to find out if they have gotten the license. If the Clerk's office does not show anything, then the officer will go to the vendor and ask to see their license. Mr. Goris added that they are supposed to have their license posted. Mr. Schmidt said he has called in people that did not have a license and the police did check up on them.

Commissioner Cooper asked what merchandise Mr. Goris sold. Mr. Goris replied he sells sunglasses and cell phone accessories. Commissioner Ledford said he does not think it is our intent to keep peddlers out of town, but to bring parity between peddlers and other types of permanent businesses plus the costs of the regulations and enforcement we have. He said the issue is how much we want to charge.

Commissioner Robertson moved to table the item. The motion died for lack of a second.

Commissioner Cooper said that people who live here and pay taxes and own property here are paying additional taxes and providing additional revenue to the City versus peddlers. He added that the peddlers are getting the benefit of the people that live here.

Commissioner Moncada recommended that we charge \$50.00 for the first time and \$25.00 for subsequent visits. Commissioner Cole agreed we should charge less for subsequent visits. He said he has no problem with \$25.00 for subsequent visits.

Mr. McCourt offered to draft some language for the Commission to debate and asked we take a break in order for Mr. Kirschner time to do this.

The meeting recessed at 8:33 p.m. and was reconvened at 8:43 p.m.

Commissioner Moncada suggested the ordinance be amended to reflect \$50 for the first 30-day license of the calendar year and \$25 for any subsequent 30-day license during the calendar year.

Commissioner Moncada moved to amend the ordinance with the recommended change. Commissioner Cole seconded the motion. Commissioner Cooper voted "nay" to amend the ordinance. All others voted "aye." The motion to amend carried by a vote of 6-1-0.

Mayor Carroll said we now have an amended ordinance before us for consideration.

Mayor Pro-Tem Griggs moved to approve the ordinance as amended.
Commissioner Moncada seconded the motion.

Commissioner Robertson recommended we change Page 3, Section 5, Number 1 where it says "permanent business location." He does not think a peddler should be able to come in and get any individual to give their home address for their permanent work address and then only pay \$35 a year for a permit.

He added that a change was needed on Page 2 in the exemptions, Item A regarding minors. He said that they should have to at least register with the City of Alamogordo. He does not see why they do not have to pay a small fee. He said that a lot of people come in here and sell their items and do not register. Then we get people coming in complaining about problems with the items and they have no where to go to settle the problems. Mayor Carroll said this item was set up to make sure that we are not requiring junior high school kids who are out raising money for the track team or Girl Scouts selling cookies to pay a fee. He stressed this item is for donations and fundraising type activities. Captain Jim Bird said we do not have a problem with the kids selling Girl Scout cookies or raising money for shop class. He explained it is vendors selling larger items like stereos and furniture that they have had problems with, but as far as he knows they have not been minors. Mr. Kirschner explained that minors should not be selling products because it is not legal to contract with a minor and minors do not have title to property. He said they cannot own it, so they cannot sell it. Commissioner Robertson asked Captain Bird if he thought it was a good idea for minors to register with City Hall. Captain Bird said if they are operating a business out on the streets, they should. He said the door to door sales by Girl Scouts and fundraising groups should not because he does not see a problem with those groups. Mayor Carroll noted that if someone is acting on behalf of someone who is over 18, they do not qualify for the exemption. Mr. Kirschner explained that the contracts of a minor are voidable. He said he thinks this is an issue that does not come up because people are wiser and if the police see a minor out selling property, they will ask questions. Mayor Carroll said he does not believe this particular section has posed a problem to us.

Mr. McCourt referred to Commissioner Robertson's first suggested change regarding the definition of a permanent business location. Mr. McCourt suggested that he would write a rule regarding the interpretation of a permanent business location and bring it back at the next meeting.

The vote was taken on the above motion to adopt Ordinance 1173 as amended. All voted "aye." The motion carried by a roll call vote of 7-0-0.

7. Ordinance No. 1175 amending Section 28-03-035 of the Code of Ordinances regarding surcharges on water usage during Stage 2 and 3 water rationing.

Recommendation: Final adoption of Ordinance. [Roll Call Vote Required]

Mayor Carroll asked to have this item pulled. He said there was one change to this item that was provided to the Commission tonight. He explained that it was a change to the wording from "base" to "commodity" regarding the rate that would be doubled. He said this is how we all understood it, it was just a matter of wording.

Commissioner Cole moved to accept the amendment to Ordinance 1175. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a vote of 7-0-0.

Commissioner Cole moved to adopt Ordinance 1175 as amended. Commissioner Cooper seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

12. Change Order No. 1 for Renovation of Lake No. 5 and Aeration Systems at Desert Lakes Golf Course.

Recommendation: Approve the change order for \$14,352.19.

Commissioner Cole moved to approve Change Order No. 1. Commissioner Robertson seconded the motion.

Commissioner Cooper asked if this had anything to do with the waterfall. Mayor Pro-Tem Griggs replied that it does not.

Mayor Carroll suggested we take the \$624 difference out of the line item called "Convention/ Clubhouse/Other" instead of from the one called "Pool Cover." Mr. McCourt affirmed.

Commissioner Cole said he spoke to Margie Gary today. He asked why doesn't the change come out of the projected budget, which is \$184,000. Mr. McCourt explained they are short \$624. Commissioner Cole asked if this was over the \$184,000. Mr. McCourt replied affirmatively and said that is why we need the additional \$624. Commissioner Cole clarified that the \$184,000 has been encumbered. Mr. McCourt replied it had been. Commissioner Cole said that answered his questions. He did not think it had all been encumbered.

The vote was taken on the above motion. All voted "aye." The motion carried by a vote of 7-0-0.

14. Appointments to Boards and Committees.

No appointments were made. All vacancies were rescheduled.

SCHEDULED COMMUNICATIONS FROM THE CITY COMMISSION:

15. Mayor Pro-Tem Griggs - Land for a potential Conference/Convention Center.

Mayor Pro-Tem Griggs referred to this item which was brought up several commission meetings ago. He said the Tays family is willing to donate the land for the City to use to build a convention/conference/community center. He noted that there were some conditions for the City to receive the donation. The City would have to begin extending Indian Wells Road to the site within 5 years from the date we sign the agreement and begin building the actual facility within 7 years from the date of the agreement. He explained that if the City does not meet their requirements there is no penalty to the city; the land would just revert to the Tays brothers. He said however, if the City should have built the road and then could not build the conference center, the roadway would remain within the City. He added that the Tays brothers would be required to put the property within the City limits once this project was all done. He reminded that the last time this was discussed it was a 3-3-tie vote, so it could not pass. He said he asked Mr. Kirschner to review the documentation to see if this would be proper and workable. Mayor Pro-Tem Griggs explained that Mr. Kirschner has attached an agreement that was initially drawn up by then City Attorney Rebecca Ehler. He said that agreement does not conform exactly with the terms we agreed to in the later letter with the Tays brothers. He said that Pat Tays did write a letter to the editor, which was in last night's paper. He said that letter was unsolicited, but said that Mr. Tays and his family are excited to donate this property. He said they realize that the City may never do anything out there. Mayor Pro-Tem Griggs said he thinks it is an excellent opportunity for the community should we decide that we could do this. He stated that no one is standing to benefit from this particular deal. He said the Tays brothers would get access to their property to the south if we should build a road. However, if they should build out there the City benefits due to the increased property taxes and the gross receipts taxes on the building. He stressed his recommendation that the Commission reconsider this matter.

Commissioner Cooper asked if the author of the letter to the editor was Melvin Tays' son. Mayor Pro-Tem Griggs affirmed that he was. Commissioner Cooper said the letter said he remembers when White Sands Boulevard and the road to El Paso was gravel. Mayor Carroll said he does not quite think it was gravel. Commissioner Cooper said that is what he thought.

Commissioner Cooper asked if there was any restrictive covenants on the property. Mayor Pro-Tem Griggs replied it was mostly in the county so there would not be any. He said that he thinks they bought it directly from the State. He said they donated most of the land to the college. Commissioner Cooper said he recalls when BLM started selling off the land at the side of the mountain and people took advantage of it. Mayor Pro-Tem Griggs said this land borders US

Forest Service land so there is not likely to be anything behind it. Mayor Pro-Tem Griggs said that no matter where a conference center goes, it would benefit the City, but personally, he thinks this is the best location of them all. Commissioner Cooper said this is the fourth time or greater that a conference center has been considered. He said he can live with the concept of a conference center. He added that at this time he does not want to get into a tar baby deal where we are stuck. He said knowing that if the economy does not pick up and we can back out of the deal down the road he can go with it. Mayor Pro-Tem Griggs said that was the whole intent.

Commissioner Ledford said the conference center is something the community needs to look forward to. He said he is not sure if he can support a conference center right now. He understands that this is looking forward to securing a location for a conference center 5 years from now. He stressed his number one goal is the water situation right now. He said a lot of things can happen in 5 years. He added that this town needs to look at a little vision for a change and this is for 5 years down the road. He thinks it is an excellent location. He said he has 65 people working for his CPA firm and they cannot hold a large conference here because there really is no facility to do that. He said this could provide an opportunity for doing that assuming the community grows. He stated the only way the community will grow is if we take care of the water problem. He hopes we take care of this water issue in the next five years and then he would support a conference center. He appreciates Mayor Pro-Tem Griggs for taking the initiative to secure this land.

Commissioner Cole said he too, appreciates Mayor Pro-Tem Griggs for his work on this item. He personally has studied the item in depth. He said he took the agreement to an attorney and had him read it. Mayor Pro-Tem Griggs asked what the attorney thought. Commissioner Cole replied he had his comments here. Mayor Pro-Tem Griggs asked which agreement he took. Commissioner Cole said he talked to Mr. Kirschner about that and that leads to one of his questions. He asked why the changes in the agreement. Mayor Pro-Tem Griggs explained that he thought that the agreement that was originated by then City Attorney Becky Ehler was not sufficient to protect the interests of the City of Alamogordo. He said it did not conform as well with the second letter that the Tays brothers agreed to and signed. He said they needed to make those changes to conform with the letter and to better protect the City. Commissioner Cole asked about the City's protection for four years on the street construction. He then asked if the cost of \$675,000 was the correct price for the street, sewer, and water line construction based on City Engineering estimates. Mr. McCourt said he would believe that would be an accurate estimate. Commissioner Robertson asked if that would be a correct figure four years from now. Mr. McCourt replied it would quite likely be higher four years from now. Commissioner Cole said he divided that out and came up with about \$33,000 per acre if we go with 20 acres. He asked again about the protection for four years until we get to the infrastructure of the street. Mayor Pro-Tem Griggs clarified that

the agreement requires the City to start the building of the extension of Indian Wells Road to the site within five years of the signing. He informed Commissioner Cole that initially there was some discussion about four years, but that is one of the changes made in the Tays brothers' letter. Commissioner Cole asked why should the City pay for that road infrastructure when we require subdividers to do their own. He said if he reads this correctly (the agreement), the road belongs to the Tays brothers if the City backs out after building the road. Mayor Pro-Tem Griggs corrected and stated the road would belong to the City. Commissioner Cole asked how we would get the \$675,000 back if developers go in there. Mayor Pro-Tem Griggs said we probably would never get the money back if we built the road and did not build the conference center. He said the only thing we would be doing is facilitating the Tays brothers to develop the property to the south.

Commissioner Robertson asked if Michael Shyne was going to pay his portion of the street passing by his property. Mayor Pro-Tem Griggs said that Michael Shyne has indicated he would donate his right-of-way to the City to build the road. He said he has not indicated any willingness to pay a portion of the roadway. Commissioner Robertson said by this map it looks like Mr. Shyne is not donating anything because the street already comes up there and is not next to his right-of-way. Mayor Pro-Tem Griggs replied that he does not believe the street exists through Mr. Shyne's property, it is just drawn that it does.

Commissioner Cole said he checked the conference/convention centers in Albuquerque and Carlsbad on the Internet. He said he also checked out Las Cruces. The deal has been signed by the House and the Senate, but not the Governor yet. He said they are looking at a 80,000 square foot conference center at \$20 million, plus \$300,000 a year for operational expenses. He recommended that the City government contract for an unbiased analysis by a third party to see if the conference/convention center would be advisable for the community. He said this is similar what we did with the library project. He noted we need to get on the ballot quickly with the library issue or return it to the owner. He asked why we could not put a question on the same ballot about whether the voters would like to have a conference center. Mayor Carroll said he thinks Commissioner Cole hit the key point on having an analysis done to see if a conference center would be needed and supported here and what location would be best. He said the key point being it does need to be done at some point. Mayor Carroll said it is premature to be going on a ballot to ask people if they want to pay for a conference center when it may turn out that a conference center is not something this community can support.

Commissioner Cole listed his current priorities. He questioned Fund 108 and asked how much has been encumbered on current projects. He asked Mr. McCourt to explain the \$1.2 million for conference/clubhouse/other to him. He questioned if this was all the money left over from the document they have discussed at meetings. Mr. McCourt replied affirmatively. He added that all the

other items are specific items and amounts that the Commission has approved. Commissioner Cole asked if "other" was put in there because it was all the remaining money. Mr. McCourt replied that is all the money remaining from the bond money that the Commission has not yet appropriated. Commissioner Cole asked about the waterfall at the golf course. He asked if we already projected to spend \$180,000 on the lake improvement. Mr. McCourt replied that is what is indicated. Commissioner Cole asked if that included a sprinkler system. Mr. McCourt said that is why we just increased the dollar amount by \$624 to cover the sprinkler system. Commissioner Cole asked if the lake would be greater in depth and have the waterfall when it is finished. Mr. McCourt replied that was not correct. He stated that the waterfall has not been budgeted nor any funds appropriated anywhere in the City's budget for it. Mayor Pro-Tem Griggs said he talked to Grant Dalpes and the cost estimate for the waterfall was close to \$50,000. Commissioner Moncada said we are getting off track.

Commissioner Cole asked if there was any pending litigation on this property. Mayor Pro-Tem Griggs explained the property is held by Indian Wells Properties, which is owned by all three Tays brothers. There are questions amongst them about who has rights and so forth. He explained the agreement for the donation. He said we have a commitment from all three brothers to protect the City from one of them saying something and then there being a problem with one of the others. Commissioner Robertson asked if we had this in writing. Mr. McCourt clarified that we have three separate identical letters, but each is signed by one of the brothers indicating they are in agreement with this donation. Mayor Pro-Tem Griggs added they are all excited about the opportunity to donate this property.

Commissioner Cooper asked if some of the property had been sold off. Mayor Pro-Tem Griggs replied they sold off some lots that he believes are across Scenic, but that is about it.

Commissioner Robertson asked Mr. Kirschner about our liability for breaking a promise in the contract. Mr. Kirschner said we are not promising to do anything. Commissioner Robertson said he still has some concerns. He asked about the Tays Center. He said he made some calls and found that the Tays Center has never been approached to have a convention in it. He questioned accepting this property under these conditions because the time frame is the same time while we are working on our RO project. He discussed the expenses of building a conference center, the road, a pumping station, and a water tank while doing the RO project. He questioned the need of a conference center and said he does not believe we need a conference center. He asked why we would spend the money and do a feasibility study when we know this project might be a dud because we have an RO system going on at the same time.

Commissioner Cole said we have 5 years that no money will be spent and then the Commission that exists at that time can make a decision on what they want

to spend funds on. He stated that all we are doing is accepting the donation with the conditions listed in here, no money is spent, and we are not going to lose anything. Commissioner Robertson said feasibility study would cost funds and would have to be done before 5 years. Mayor Carroll stated we do not even have to do that, we do not have to do anything.

The meeting was recessed at 9:40 p.m. and reconvened at 9:45 p.m.

Mayor Carroll said he thinks the votes are here to accept the donation and move on.

Mayor Pro-Tem Griggs moved to accept the donation pursuant to the terms in the letter dated 01/15/2003. Commissioner Moncada seconded the motion.

Commissioner Cole clarified that the motion was merely to accept the donation of the land. Mayor Pro-Tem Griggs affirmed that was the intent of his motion.

The vote was taken on the above motion. All voted "aye." The motion carried by a vote of 7-0-0.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

Mr. John Hakanson requests to discuss the Fireworks Ordinance.

Mr. John Hakanson thanked the Commission for allowing him to address them regarding this issue. He went through the procedures for annexation. He said there are three requirements. He stated the requirements: 1. By petition owners seek the annexation of territory contiguous to the municipality; 2. Is signed by a the owner of a majority of the acreage in the contiguous territory; and 3. Is accompanied by a map showing the external boundaries and other minor details. He said the procedure was not properly followed, but that argument is for another day. He said, as he understands the annexation procedure, the real estate comes into the City as a residential property with "A" zoning. He quoted a letter from the City sent to the property owners within the territory proposed to be annexed. He read, "this annexation will not require any change to the current use of your land." He stated that the truth of the matter is it does change the current business practices under the current use of the land. His clients as stated earlier have no objection if the non-conforming use of the property was recognized by the City for all property owners, not some of the property owners. He added that the State of New Mexico and Otero County allow the business of his client. He said they pay their ad valorem and gross receipts taxes. He noted that the Commission was considering amending the ordinance to allow the existing business to continue with their current products. He said he has a copy of what was presented to the Commission at the last meeting along with a copy of the minutes from the last meeting. He said that when reading the minutes it seemed that the Commission based its opinion on broad based national facts based upon

fear under the guise of public safety. He said there was absolutely no local facts to show that the increase in one July out of a number of years was directly attributable to illegal fireworks. He said that members of the Commission asked what was the data locally and there was one response that in July of one year there had been more calls. He stressed that there is no evidence these additional calls were due to illegal fireworks.

Mr. Hakanson said of the six options presented to the Commission, his clients would ask the Commission to consider Option 4 or a combination of Options 4 and 6. He said there second request would be for Option 2. He continued that in the past the Commission has made exceptions for businesses that are in violation of some other City ordinance when annexed into the City to remain a viable business. He noted he is still accumulating the facts on this. He stated that the Commission has a duty of fundamental fairness to all as a governing body. He added they cannot be selective, cannot have disparate treatment, and must treat all businesses equally. He stressed that without good facts and without proper procedure he thinks the City needs to revisit the requirements for annexation and that we are creating disparate treatment amongst the property owners you are annexing, but also on past record. He thanked the Commission for the opportunity to address them.

Commissioner Cooper asked about the 5-mile extraterritorial jurisdiction. Mr. Kirschner replied that we can zone in the 5-mile extraterritorial jurisdiction and it is his understanding that we do not exercise that zoning authority at this point. Mr. Hakanson replied he has researched this extensively and the City has no extra territorial authority by agreement with the County other than on subdivision approval. Mr. McCourt added that we also exercise extra territorial on building codes by contract with the County.

UNSCHEDULED COMMUNICATIONS:

A. John Hakanson discussed a front footage tax to improve roadways.

Mr. Hakanson told the Commission that about 35 years ago he was fortunate enough to work with the Luna County Commission in regard to setting up a method to improve subdivision roads within the County and to defray cost of maintenance to the County. He said it has been in effect since 1972. He explained that the political subdivision had the right or opportunity to impose upon the property owner a front footage tax for the maintenance of the roads up to \$1.00 per foot. He said that they chose the \$1.00 amount. He referred to a corner lot that was 75 x 150 feet and said it would have an assessment of \$150 a year. He explained that you go to the longest dimension on corner lots. He said he does not know how many miles of road are within City limits, but they may want to consider a foot-frontage tax on lots within the City limits that are not on State highways. He said there have been twenty cuts on his street in the time he has lived there. He said this could be used to get matching dollars in here to

improve the infrastructure particularly the roads. Commissioner Cooper said he has a lot of windows in the front of his house and last time we brought that up there were a lot of rocks in front of them.

Mayor Carroll said we would have to check our legal authority to do so. He said if it is under a tax, we do not have the ability to do anything other than what the State legislature allows. Mayor Carroll noted that special assessment districts are different.

Mr. McCourt noted that we do have a gross receipts tax avenue, but it is closing some time soon. Mayor Carroll noted it is three years before the window closes. Mayor Pro-Tem Griggs asked if it included the City of Deming as well. Mr. Hakanson replied it was only in Luna County. Mayor Pro-Tem Griggs suggested there may be different rules that govern counties. Mr. Kirschner said the question would be whether we are denied the ability to do this by State statute since we are a home ruled city. Mayor Carroll said we are denied the ability to tax anything other than what has been allowed by the State legislature. He added that it is an intriguing thought. Commissioner Robertson asked what Mr. Hakanson had called it first beside a tax. Mr. Hakanson replied he called it an assessment.

B. Commissioner Cole discussed Fund 108 for street improvements and the upcoming water meeting.

Commissioner Cole asked Mr. McCourt why we do not have anything encumbered out of Fund 108 for street maintenance. Mr. McCourt replied that we had certain things we could use that money for. Commissioner Cole recalled what had previously been discussed regarding this funding and agreed. He told the other members that he had already gotten a parking sticker if anyone wanted to ride with him to attend the water meeting in Las Cruces on Friday. Mayor Carroll said he would attend with him.

C. Commissioner Cooper commented on the pro-troop rallies being held.

Commissioner Cooper praised the people who showed support for our troops and invited everyone to join them every Saturday from 10 a.m. to 2 p.m. on First Street and White Sands. He said hopefully this (the war) will end shortly and we will get them home safely.

D. Commissioner Robertson commented on Ms. Hudson, the mother of Specialist Joseph Hudson, POW.

Commissioner Robertson said he has been asked by several people if the City was going to do anything for the mother of Joseph Hudson, who is a POW in Iraq. He asked if we could at the very least send her a formal letter from the City. Mayor Carroll said he received several calls from national media wanting him to put them in contact with her. He said he declined to do that because he did not

know how to do that and he understood that she had all the media attention and visitors she wanted to deal with at the time. Commissioner Robertson said that is right. He added she is not even staying at her house right now. Mayor Carroll said he felt a letter would be very appropriate and would do that.

E. Mayor Pro-Tem Griggs reported on his trip to Washington for SPIRIT.

Mayor Pro-Tem Griggs told everyone that he spent part of last week on behalf of SPIRIT. They are the group pushing for funding to widen Highway 54 from Tularosa to Wichita, Kansas. He said they met with several staffers from our congressional delegations. He noted that he is in the process of doing a brief memo to let them know what happened. He said he did have the chance to meet with Congressman Pearce directly. He said he took the opportunity to talk to him about water and the ability to fund a plant. Dan Alpert who works for Senator Bingaman gave him a memo dealing with the essential air service. He said that Dan is concerned that is going to be targeted once again. He said the amount that they give now might have to be subsidized by the City so that not all of it is funded by the Federal government.

F. Mr. McCourt briefed the Commission on the water report, an award on the City's budget, capital funding received, and the upcoming desalinization project meeting.

Mr. McCourt gave the water report. He told the Commission that the reservoirs are at about 96% and we are floating around at that level. He said Holloman is taking water and the Bonito pipeline is flowing.

Mr. McCourt informed everyone that he received a copy of a letter from the State of New Mexico Department of Finance and Administration regarding another award the City has won for our annual budget. He said it is a certificate of merit on our budget and we have won these consistently for the last few years. He said it will be awarded on April 1, 2003 up in Albuquerque. He asked that anyone interested in attending let him know.

Mr. McCourt told the members that he passed out 1 page of a 58-page summary of capital improvements that were passed by the House and Senate. He said that the last he heard they were awaiting the Governor's signature. He said we did well. He said we did get funding for some projects. He noted that we requested \$150,000 to assist in putting an addition on to the Senior Center building for use as an exercise/fitness room, and they put \$125,000 towards the project. He said we asked for varying amounts of money to assist us on the First Street widening and realignment. He said we are looking at doing that in phases. Our delegation was able to put \$196,400 for that project. He said they were able to assist us in a lesser manner on a couple of other minor projects on streets and water lines. He said he will send out an appreciation letter to our delegation for all of this.

Mr. McCourt referred to the water meeting mentioned by Commissioner Cole on Friday in Las Cruces. He said that has to do with desalinization project being constructed out on LaVelle Road.

Commissioner Robertson clarified our requested amounts versus the received amounts in the capital improvements summary. Mr. McCourt affirmed this for Commissioner Robertson.

G. Mayor Carroll congratulated the finance department on again being recognized for a superior budget.

Mayor Carroll congratulated the Finance Department for being recognized for a superior budget. He said he hoped some of our Commission would be able to attend the awards presentation, however, he would not be able to due to prior commitments.

Mayor Carroll informed everyone that he attended a meeting this morning with the South Central Mountain R.C. and D. Council. He said they voted to work with the Forest Service to develop a proposal to do some forest thinning above Bonito Lake. He explained that the area is under the Smoky Bear Ranger District, but that the area is a great fire risk. He said he did commit that the City would work with both the R.C. and D. Council and the Forest Service to help anyway we could to get that area thinned out. He said these tend to be long term things because of getting a proposal together, getting funding, and doing an environment impact, along with the rest of the work. He said there is a recognition by these parties that this is certainly an area at risk for fires. Commissioner Robertson asked if that bid for clearing the 350 acres around Bonito Lake ever went back out. Mr. McCourt said we have been discussing that in house. Mayor Carroll said the proposal we got said they would take the 9-inch and bigger trees and leave the smaller ones. He said that is the opposite of what we want. Commissioner Robertson asked if we were going to rebid that. Mr. McCourt said staff is working on this and devising a plan so we can knock down the fire hazards within Bonito. Commissioner Robertson asked if this was something that could be worked out with these people Mayor Carroll is working with. Mayor Carroll said primarily what they are interested in is the forest land above our property. He said we can certainly work with them about our property. Commissioner Robertson said they are trying to protect Ruidoso too. Mayor Carroll said we need to work with them anyway we can.

Mayor Carroll said he understands there is some renewed interest in the Biomass plant that was discussed about 6 months to a year ago. Mr. McCourt replied that we have continued to try and work with the parties. He said they set up meeting for Monday and then they cancelled it. Mr. McCourt said they are working up in Raton to try and develop a facility there. He said this is taking up most of their time and attention right now. Mayor Carroll said he understands the Legislature passed and the Governor signed some legislation that provides a tax

incentive for Biomass-type projects. He noted that is why there may be renewed interest on this one as well as the one in Raton.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss acquisition of water rights and collective bargaining strategy.

Commissioner Cooper moved to adjourn into executive session. Commissioner Robertson seconded the motion. All voted "aye." The motion carried by a roll call vote of 7-0-0.

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 March 25, 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

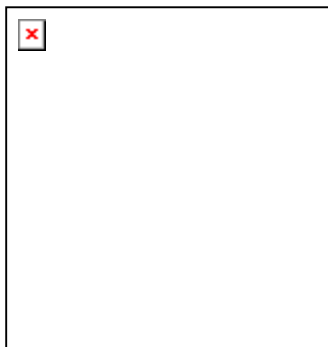
ATTEST:

Chief Deputy Clerk Betsy C. Kidwell

(SEAL)

(Prepared by Chief Deputy Clerk Betsy C, Kidwell)

Approved at the City Commission Regular Meeting of 04/08/2003.



[City Of Alamogordo Home Page](#)

[Table Of Contents](#)

[Return to City Clerk Home Page](#)

[Return to 2003 minutes page](#)