

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION JOINT SESSION SPECIAL MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
3:00 P.M., CITY COMMISSION CHAMBERS
WEDNESDAY, APRIL 9, 2003**

MAYOR DON CARROLL

COMMISSIONER JOHN ROBERTSON

MAYOR PRO-TEM RON GRIGGS

COMMISSIONER MARION LEDFORD

COMMISSIONER INEZ MONCADA

CITY MANAGER PAT MCCOURT

COMMISSIONER DON COOPER

CITY ATTORNEY WILLIAM KIRSCHNER

COMMISSIONER ED COLE

CHIEF DEPUTY CLERK BETSY KIDWELL

Call Meeting to Order and Roll Call. Mayor Pro-Tem Griggs and City Attorney William Kirschner were absent. County Commissioners Clarissa McGinn and Mike Nivison were also in attendance. Commissioner Robertson arrived immediately following roll call.

1. Discussion with the Army Corp of Engineers regarding the flood control project.

Mayor Carroll introduced Lieutenant Colonel Dana Hurst, the commander for the Albuquerque District of the Army Corp of Engineers. Lieutenant Colonel Hurst thanked the Commission for the opportunity to speak to them. He explained that he is the District Engineer for the Albuquerque District. He referred to the February meeting the Corp had with the Commission. He said Kris Shafer, the Project Manager for the Alamogordo Flood Control Project, had briefed the City on the status of the project at that time. Lieutenant Colonel Hurst said there were issues raised and the Corp was asked to examine these issues in detail and get back with the City. He stated that is what they are here to do today.

Lieutenant Colonel Hurst introduced the project team members. He introduced Kris Shafer, the Project Manager. He said Kris is going to be leaving for about a

year because he was selected to serve in Washington, D.C. on the appropriations subcommittee staff. He introduced Ben Alanis, the interim Project Manager since Kris is leaving. Lieutenant Colonel Hurst also introduced Judd Lee, Hydraulic Engineer, Bet Lotosky, Project Manager for Flood Plain Management Services and who works with FEMA, and Todd Roddy, Counsel for real estate issues.

Lieutenant Colonel Hurst said that after he reviewed the tape of the last meeting (February 11, 2003) they had with the Commission he came up with four questions that were asked by the Commissioners to be answered. He referred to an easel that had the questions written on it. They were:

1. Are residences and businesses removed from the 100-year flood plain as indicated in the general reevaluation report and will this result in not being required to pay FEMA flood insurance premiums? What is the process to incorporate the new flood protection in new FEMA maps?

2. Does the north diversion channel induce additional flooding upon properties of Red Arroyo?

3. If the project were modified with a detention basin in addition to the north diversion channel, would it provide the same level of protection to the residents as the channel alone?

4. What are the procedures and process for studying the benefits and costs of the detention basin as part of the project?

Lieutenant Colonel Hurst said they would answer these four questions. He also referred to two maps they brought with them entitled the 100-Year Post Project Floodplain and the 100-Year Pre-Project Floodplain. (Copies of these maps are not part of the meeting backup because the only copies available were the wall size poster board displays the Corp refers to.) He said these maps depict the areas for the benefit to cost ratio that the Corp used. He stated that they are not the FEMA flood insurance premium maps, which will be developed later. He added that they do represent an approximate area of what will, in fact be taken out of the 100-year flood plain, and hence those residents will not be required to pay FEMA insurance. He stated that if you look at a specific house on the map towards the edge where it is highlighted in green or not highlighted in green, the boundaries may shift, but it is fairly representative of what the FEMA flood insurance maps will be when those are produced. He said that Bet Lotosky would cover this during her discussion. Lieutenant Colonel Hurst turned the program over to Kris Shafer and Ben Alanis.

Kris Shafer said that following the February 11, 2003 meeting they went back and reviewed the questions that came up out of that meeting. He said he believes they summarized them with the four questions that the Colonel went

through. He said the thing on everyone's mind was the first question asking, "Are properties going to be removed from the 100-year FEMA floodplain if the north diversion channel is constructed?" He asked the Commission to recall from the February 11 meeting that he talked about risk and uncertain analyses and statistical analyses, which they use to assess the performance of the structure. He said he believes he indicated that there were some questions whether this particular analysis applied to channels. He said as far as they know it has only been applied to levies. He said they entered into some fairly detailed discussions with Jim Orwatt, who is with Region VI FEMA out of Denton, Texas. Mr. Shafer said they got him on the line and went through a review of their own work. Mr. Shafer continued that they have determined without question that the north diversion channel will remove approximately 1,500 properties out of the floodplain. He stated this is consistent with the maps we have been seeing all along in their report. He referred to the poster board maps and said what they have done is take those maps and blow them up, and that is what we are seeing here. He noted that what it came down to was the criteria applied when constructing a levy is not the same when you are constructing a channel, which is an incised feature. He said that therefore, the statistical analysis was not applicable to the channel itself. He said this was confirmed by FEMA and they agree with the Corp's methodology. He said they breathed a big sigh of relief on this one.

Mr. Shafer referred to the second question, "Does the north diversion channel induce flooding on Red Arroyo?" He said as he stated during the February 11 meeting, in his mind there is no question that the north diversion channel will increase the depth of flooding in an area along Red Arroyo, which already gets flooded. He said whether that is considered a Fifth Amendment taking is still unknown by the Corp. He said that if we were to proceed with the north diversion channel they would do that analysis and make that determination.

Mr. Shafer referred to the third questions saying it seemed to be prevalent during the last meeting, which asked, "Will the detention basin offer comparable protection as the north diversion channel?" He said it is clear amongst the Corp team in Albuquerque that the detention basin would offer comparable flood protection. He added that they also feel that the detention basin would remove approximately the same number of properties from the FEMA designated 100-year floodplain as the channel.

Mr. Shafer continued to question four, "If we do indeed wish to switch to a detention basin, what kind of process do we have to go through?" He said during the February 11 meeting he iterated that their higher authority is requesting that they do a fairly detailed planning level study to ensure the detention basin is still worthy of Federal interest and a viable alternative after reviewing some array of alternatives. He said he believes he presented us with a cost estimate for that process of about \$1.3 million. Mr. Shafer said they believe that estimate is fairly conservative and they made the assumption in accordance with their higher

authority, that they probably would have to seek some sort of congressional authorization to make that switch.

Mr. Shafer said this is the overview of the four questions, but they want to go through in more detail each one of the questions with the team. He asked that questions be held until they finished their presentation.

Mr. Shafer asked Bet Lotosky to review the background on question number 1. Ms. Lotosky explained that she works with flood plain management at the Corp of Engineers. She stated that it is her job to work with the project manager and with FEMA to take their hydraulic analysis and submit it to FEMA on behalf of the City to revise the City's flood insurance rate maps. She referred to the first question and said, "Yes, it will" reduce the floodplains. She said you could see between the two maps that the floodplains do indeed go down because of the project. She said that she thinks we asked at a previous meeting if the Corp coordinated with FEMA. She said they did. She explained that we are in Region VI with FEMA and they contacted Jim Orwatt, FEMA project manager and talked to him about what they are doing. Ms. Lotosky added that the analysis they submit to reduce the floodplains has to go through a fairly extensive technical evaluation. She said that FEMA contracts with a firm called PBS&J to review what they have done. She said the Corp has contacted Joe Martinenza at PBS&J and told them what they are doing. She said they are coordinating this as they go and what the Corp has done so far works for them.

Ms. Lotosky said one thing she thought had come up was if they could certify to FEMA that the North Channel will contain the 100-year flood plain and then reduce the floodplain and then reduce the flood insurance. She said, "Yes, the only thing FEMA needs from them to certify it is for the Corp to say it contains the 100-year floodplain." She said they have done that and they can do that so as far as FEMA is concerned they have certified that it will contain the 100-year flood.

Ms. Lotosky then reviewed the process they go through with FEMA. She said that our existing flood insurance rate maps would be in effect until the Corp makes these changes. She explained that FEMA does not revise our insurance rate map until a project is complete. She noted that in this case we do not want to wait ten years to start that process. She explained that what FEMA has them do is a conditional letter of map revision. She said they call it a CLOMR (pronounced CLOMAR). She stated that this process could start almost immediately. She said that the CLOMR is FEMA's way of reviewing a project, certifying that it will meet the minimum of the national flood insurance program, and they comment that if we build that project as we said we are going to do it, then they can come back and revise their flood insurance rate maps. She said this is the process the Corp is going to get started. She said before they issue any such comment they are going to go through a technical evaluation of the Corp's work. She added they are going to start submitting that now. She said it can be a rather lengthy process, but the advantage of the CLOMR is that they can start it now so that

when the project is completed they do not have to go through that hoop then. She said upon completion of the CLOMR, FEMA will issue a statement saying that the firm will be revised if the project is completed as the Corp said it will be. She said that the Corp will submit the as built drawings and the operation and maintenance manual as they complete phases to prove that it was built as they said it will be built.

Ms. Lotosky said one thing about our project is it is going to be built in phases. She said they talked to FEMA about this and they are going to coordinate with them so we do not have to wait for it all to be built. She said some of these projects are stand alone so they can get the CLOMR process started for these. She said FEMA can look at that, but she does not know if they will revise the entire City maps as each phase is done. She said they may issue a letter that says these areas are not out of the floodplain and then when everything is done they will print us up a map. She said they will do this in the process so we will not have to wait.

Ms. Lotosky explained that the floodplains on their maps today may not be exactly the same as the final firm. She said these are a pretty good representation, but the floodplains they do are during the planning process. She said in order to get FEMA's evaluation and review of it they are going to have to do a lot more detail. She said they are going to want them to look at every bridge and culvert along that flow path. She said there are several flow paths in town. They will do that as part of there analysis. She said they will also add base flood elevations. We will need that on our FEMA maps. She stated there is quite a bit more detail you have to go through and that is why the floodplains will change slightly before our final map is published.

Mr. Shafer then turned the presentation over to Todd Rodey who is one of their attorneys. He said they want Mr. Rodey to talk about the induced flooding on Red Arroyo. Mr. Shafer said the Corp does recognize the fact that the North Channel will end up putting water out into that arroyo a little quicker than under existing conditions and therefore we will see a little bit of an increase in the floodplain. He said he wants Mr. Rodey to address the process for analyzing whether that constitutes a Fifth Amendment taking.

Mr. Rodey said he is the real estate attorney for the Corp. He explained the process he will be doing when he gets the data concerning the flood level numbers. He said he will be applying those with existing case law to make a takings analysis or determination to determine if there is a Fifth Amendment taking of property for which the government will owe just compensation. He stressed that the duty for doing this is the Fifth Amendment, which states the government shall not take property without just compensation. He said it is not driven by any NEPA requirements.

Mr. Rodey said that generally the way it works is that when the Corp does a flood control project they take a look at what their footprint is going to be. He explained the analysis process in a project that is relatively easy to determine the effects. He then explained that is not the case in these non-constant, induced flooding cases, as we potentially have here. He explained that requires a certain analysis as laid out by federal cases. He said there are three main criteria. They are: Is it inevitable that this flood will occur; will it reoccur; and, third and most important, what is the frequency that the event will happen again. He reviewed the factors involved in each criteria. He said there is a very tough burden on the landowner when they sue the government. The issue cannot be speculative and it has to be real in nature.

Mr. Shafer moved to question number 3. He said the Albuquerque district felt it would be a win-win situation in dealing with question number 2 by switching to a detention basin in lieu of the channel. He said question number 2 then becomes moot. He said it has been the determination of their higher authority that the Corp undergo a planning study that will cost about \$1.3 million to adequately address the detention basin and determine it is in the federal interest. He said they do not see any relief to that process. He said one of the questions that arose during the February 11 meeting was whether or not the City could seek some assistance in perhaps waiving that requirement through its delegation. He said that all though he should not comment he does think that is probably a viable avenue. He said the other question that came up that he believes is salient while addressing this question was what would the cost be if we did not have to do the planning study. He said they would probably spend the same amount of engineering and design money as they would if they were starting now on the channel. He said they feel it would be about equal either way they go if they are able to go without the planning study. Mr. Shafer said that also answers question 4. He said there are a lot of pros to switching, yet there are some obstacles they need a little help with.

Mayor Carroll thanked the presenters for the information. He said he thinks it is pretty much the consensus of the Commission that the detention basin will accomplish what we are trying to accomplish and will not adversely impact anyone in the Red Arroyo area. He said that is the position the city would like to pursue. He stated that if we need to go to our federal delegation to have them intercede in this process we are willing to do that. He said the Corp has not engineered the north channel or what all the potential impacts would be in the Red Arroyo area. He said that we do not know what legal and other costs we might get into, such as land acquired. He said it may turn out to be more cost effective to go with the detention basis.

County Commissioner Mike Nivison thanked the Commission for hosting this meeting. He said this is the same kind of comments he is getting. He said everyone is more comfortable with the detention basin. He said as far as talking to our Senators, he would fully support that approach.

County Commissioner Clarissa McGinn echoed her support of the detention basin.

Commissioner Cooper clarified that approximately 1,500 pieces of property would be brought out of the floodplain. He asked if these 1,500 pieces of property are all in the City limits or if some were out in the Red Arroyo area or other areas in the County. Mr. Shafer said in essence it pretty much fell within the City limits. Ben Alanis said part of the floodplain was removed in an area on the other side. He said he does not know if it is in the county or not. He referred to the area on the map.

Commissioner Robertson asked why the channel was not taken further east of Alamogordo. Mr. Shafer said years ago the big ditch started at Marble Canyon and ran all the way around the City. Mr. Alanis showed everyone where the big ditch ran. Mr. Shafer said that the City voted against the big ditch several times and asked the Corp to look at another way to lay the project out. He said these three smaller projects are what they broke it down into. He said they looked at a feature that would take out another area that he referred to on the map. He stated they were not able to economically justify that feature and could not establish a federal interest in proceeding with that piece.

Commissioner Robertson asked how many pieces of property are still in the floodplain. Mr. Alanis replied that he vaguely recalls from 1998 that about three-quarters of the structures are removed from the floodplain. He said the 1,500 is approximately half of them if he remembers correctly.

Commissioner Cole stated he supports the detention proposal strongly. A show of hands from the audience showed an unanimous support for the detention basin. There were no hands shown for the channel.

Mayor Carroll said if we need to intercede with our legislative delegation to shift the process without having to start from square one again, we will pursue it.

Brief discussions were held regarding the drainage system of the detention basin, the funding for the project, flood insurance and claims and financial institutions, and on how the detention basin would be built.

Mayor Carroll asked if they could prepare a letter from their office to the City indicating that the detention basin is a viable alternative to the diversion channel. Mr. Shafer replied absolutely.

Mayor Carroll replied that would be helpful for us to proceed.

Commissioner Cooper asked what the projected completion date was for everything in the project. Mr. Shafer replied that they would start on the north side in 2008.

A brief discussion on the modifications and when they would be public record was held.

Mayor Carroll thanked Mr. Shafer and the Army Corp of Engineers. He wished Mr. Shafer well in Washington, D.C.

Lieutenant Colonel Hurst thanked everyone for the opportunity to make the presentation.

The meeting was adjourned at 4:10 p.m.

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 April 22, 2003



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