

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
DECEMBER 18, 2003**

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

**COMMISSIONER JOHN ROBERTSON
COMMISSIONER MARION LEDFORD
CITY MANAGER PAT McCOURT
CITY ATTORNEY KEN MCDANIEL
CHIEF CLERK ANGIE RAHN-BROYLES**

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

The Meeting was called to order at 7:30 p.m. Mayor Pro-Tem Ron Griggs was absent. The invocation was given by Rev. Richard Hicks, and Colors were presented by the Alamogordo Junior Air Force ROTC, and the Pledge of Allegiance was led by Mayor Don Carroll.

Mayor Carroll made note that Alamogordo had lost a prominent citizen with the death earlier this week of Dr. Fredrick Coulston. Dr. Coulston through his Coulston Foundation was not only a major employer in the City of Alamogordo for many years, but through his foundation and his pioneering work in primate research, had done a lot for cures of diseases that plagued mankind. Mayor Carroll said Dr. Coulston will be missed and extended deepest sympathies to his family and his many friends.

CALL OF THE CONSENT CALENDAR:

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

Items Nos. 2, 3, and 17, were removed from the Consent Calendar.

1. Minutes of Regular Meeting of December 9, 2003.

Recommendation: Approve the minutes.

4. Consideration of Ordinance No. 1192 for rezoning to District "F" (Industrial) requested by Durrett Limited Partnership. [Case Z-03-0625(A), Airport Road]

Recommendation: Approve to change the zoning of subject property to District "F" with the condition that the zoning be limited to non-residential use, and to approve the ordinance on such for final publication. [Roll call vote required]

6. Consideration of a 2.4:1 off-street parking variance for Alamogordo Brewing Company. [Case V-03-0467(A), 817 and 819 N. Scenic Drive]

Recommendation: Approval of the 2.4:1 off-street parking variance with the conditions that within six (6) months of approval 1) a solid wall or fence be constructed on the southern property line and 2) that the property be replatted into one lot.

(NOTE: Item No. 6 was reconsidered later in the meeting)

8. Consideration of the final plat of Cottonwood Heights Subdivision, Unit 5, for fifty-nine (59) lots located within the City of Alamogordo for OHHO Ltd. [Case S-03-0800(A); N. Scenic Drive]

Recommendation: Approve the revised final plat with the requirements that all staff concerns (including street and utility plans) be addressed on the revised plans, with variance on the installation and construction of some alleys, and on the requirement of setback lines being on the plat, and with a Subdivider's Contract.

9. Consideration of the final plat of Cottonwood Heights Subdivision, Unit 6, for eighty-three (83) lots located within the City of Alamogordo for OHHO Ltd. [Case S-03-0801(A); N. Scenic Drive]

Recommendation: Approve the revised final plat with the requirements that all staff concerns (including street and utility plans) be addressed on the revised plans, with a variance on the requirement of setback lines being on the plat, and with a Subdivider's Contract.

10. Consideration of the final plat of North Park Subdivision, Unit 5, for forty-six (46) lots located within the City of Alamogordo for Michael Drunzer [Case S-03-0798(A); Robert H. Bradley Drive at Sequoia]

Recommendation: Approve the final plat with the required plat corrections, with variances on the requirement of alleys and the on requirement of setbacks on the plat, without a bridge crossing to Dooley, and with a Subdivider's Contract.

11. Consideration of the final plat of North Park Subdivision, Unit 6, for fifty-seven (57) lots located within the City of Alamogordo for Michael Drunzer et al [Case S-03-0799(A); Robert H. Bradley at Sequoia]

Recommendation: Approve the final plat with the required plat correction, with receipt of the rezoning application, with variances on the requirement of alleys and the on requirement of setbacks on the plat, without a bridge crossing to Dooley, and with a Subdivider's Contract.

12. Consideration of the final plat of Rath Tara Estates Subdivision, Phase 4, for twenty-four (24) lots located within the City of Alamogordo for C.J. Dugan [Case S-03-0802(A); Burnage Lane]

Recommendation: Approve the final plat with the required plat corrections, with a variance on the construction and installation of alleys, with an Avigation Easement and with a Subdivider's Contract.

13. Consideration of the final plat of Rath Tara Estates Subdivision, Phase 5, for twenty-one (21) lots located within the City of Alamogordo for C.J. Dugan [Case S-03-0803(A); Dublin Lane]

Recommendation: Approve the final plat with the required plat corrections, with a variance on the construction and installation of alleys, with an Avigation Easement and with a Subdivider's Contract.

14. Resolution No. 2003-40 adopting the City of Alamogordo Natural Hazard Mitigation Plan.

Recommendation: Approve the Resolution. [Roll call vote required]

15. Resolution No. 2003-42 adopting the Local Emergency Operations Plan and Reaffirming the City of Alamogordo's desire to continue Civil Emergency Preparedness.

Recommendation: Approve the Resolution. [Roll call vote required]

16. Approve budget allocation of up to \$40,000 for cash match for the 2004 Community Development Block Grant application.

Recommendation: Approve the allocation.

Commissioner Cooper moved to approve the Consent Calendar (Item Nos. 1,4,6,8,9,10,11,12,13,14,15,16). Seconded by Commissioner Cole. All voted "aye." Motion carried by a roll call vote of 6-0-0.

2. Consideration of Ordinance No. 1191 for rezoning to District "E" (Light Industrial) requested by The Durrett Family Trust. [Case Z-03-0624(A), Mayflower Road]

Recommendation: Approve to change the zoning of subject property to District "E" with the conditions that the zoning be limited to non-residential use (e.g. single family, two-family, or multi-family dwelling units either site constructed or manufactured) and that Mayflower Road be improved by the applicant to the eastern edge of the lot being developed, to approve the amendment of the future

land use scenario of the comprehensive plan to reflect light industrial zoning, and to approve the ordinance on such for final publication. [Roll call vote required]

City Manager Pat McCourt said Mayflower Road runs off of LaVelle Rd and is parallel to the railroad spur that goes out to Holloman. In most ways we are in agreement with the party choosing to build here; however, there has been some disagreement regarding the paving of the road and the legality whether a right-of-way exists in that area. Planning and Zoning has been working on that and has more information. Mr. McCourt also added that supplemental information was sent by the petitioner and believed each Commissioner has received a copy of those documents prior to the meeting for review.

Ms. Lisa Durrett stated she is appearing as the attorney for the Durrett Family Trust. Also present is Cindy Newdorf attorney in-fact for the Durrett Family Trust. The bulk of the package that was sent to you consists of objections or requests to withdraw the recommendation of paving of Mayflower Road. The issue of street improvement for which asphalt paving from LaVelle to the eastern edge of the crematory property has been recommended. That's the distance of approximately 450 feet; we are requesting the requirement be eliminated.

Our position is as follows: Unlawful to pave it and the City has absolutely no authority to require such. The road falls within the portion condemned in 1954 by the U.S. government which covers the railroad spur to Holloman. It was a public road prior to condemnation. Paragraph 3 of the condemnation states, preceding the property or estate which was taken subject to any existing easement or public road, and in that event no greater use may be had without specific permission from the U.S. government. By law you cannot increase the burden on a servient estate, meaning that you cannot make an easement broader than what is given. What existed was a public dirt road. By law likewise, you cannot obtain a prescriptive easement as was suggested at the Planning and Zoning Meeting. Meaning, acquiring the 'Right to Use' something by usage without an objection over a period of time. Hence, cannot obtain a prescriptive easement against any sovereignty, meaning against the U.S. government, the State, County, and Municipality. The history of this land has been outlined and that property has never left sovereignty possession, either the U.S. or the State of New Mexico. As a matter of law, the City has no authority or right to impose a paving requirement.

We've gone through months of getting a five year special permit to run water and sewer lines down Mayflower. I was advised today that the easement is almost ready and that the City is seeking dedication to that road. It has been suggested that the City is going to acquire title to the road from the government and at that time the City will require us to have it paved. Our response to that would be that it is an unreasonable and an unduly burdensome requirement. This little business will serve two local funeral homes for cremations. It will be operated by an independent contractor and will not be open to the public. It is a much needed operation here in Alamogordo and will cut the cost to the customers in our

community. Presently, all cremations are done out of town. Asphalt paving just from LaVelle to the east side of the crematory property, 450 feet, according to the specs provided, will be \$25,000, at a minimum. This small company just does not have it. All available funding is going into the business. After some investigation, it has been recommended that we use asphalt paving which is the most costly in terms of paving. Yet in high traffic density, chip seal is being implemented by the City and County. Going west on La Velle, the opposite direction of our property, there are two residents and three businesses, one which is a mobile home park. The road runs on out to a new subdivision which means there is higher density traffic there and they just have a dirt road and no paving required for those areas. East of LaVelle, the crematory property will be the only business. In conclusion, we urge and request that to impose an additional \$25,000 bill on a small business for paving a road, which is an unnecessary, burdensome requirement, be withdrawn and applications for rezoning and special permit be approved.

Commissioner Cooper said he would be in agreement for rezoning. Mayor Carroll reiterated that what Ms. Durrett is saying is she would like the rezoning; however, without the additional cost of a road. Commissioner Cooper stated he has been on that road and as it stands, other than a little bit of dust and low density of traffic, paving would not be necessary.

Jose Miramontes said that as the person who will be maintaining this road, I would like to see this road paved. By allowing the road to develop without paving would be a burden to the taxpayers. It is not just the dust but also the mud when it rains; it is a real problem to maintain. Commissioner Robertson asked if Public Works is maintaining the road to the west of LaVelle. Jose commented, technically the City is not; however, from time to time they do go out there due to complaints. Commissioner Robertson also commented why would we do the east side if the west side road isn't being done? Jose stated, one way or another we will end up paying for cleanup.

Mr. McCourt illustrated on a wall map the concerns of some staff members. Essentially there is one access to this whole area. Eventually this will be developed and we will have one small access from the public safety standpoint. That will not work, we will need this area developed so it may provide accurate service in this area. The City is concerned about the right-of-way and use of access to the entire property.

Ms. Few pointed out that it is a publicly dedicated road and the City does have documentation. In 1910, it was accepted and declared a public road by the County Commission. Dedication stands because it was prior to the condemnation by the Air Force. The property has been in public holding all during this time, hence, the dedication remains and it is a dedicated public road. The Air Force did a condemnation; however, the dedication was already in place and it remains so. They have contacted the City and they were the ones that offered to do a further dedication and they were also looking for documentation of acceptance of a

section line road, which this road is. Specific questions about the statutes and such might be better addressed by our City Attorney.

City Attorney McDaniel said what we have for 1910 is a declaration by the County making it a public road. At that time they would be acting under a statute which is on section lines, that all they have to do is to declare it and not have to condemn it. Twenty years later the New Mexico Supreme Court came along and said that you can't actually do that unless it's still in Federal hands. The only land that is remaining in Federal hands at the time you dedicated it can be taken without a condemnation proceeding. What that means is, as to the section the petitioners are on, since the court case did not come along until 20 years later and presumably it was actually used as a public road, it would have been too late for anyone to challenge it. It probably is a public road to the south of the section line, and legislation says at least 40 feet which would be twenty feet on each side of the section line. As to the north, that would also be twenty feet. The petitioner has made the argument that since the section to the north was a school section it could not have an automatic dedication, due to the Federal statute, it states that the land is not reserved for public use. The Air Force is willing to give us this piece of road. The Commission has the authority to tell them you have to make the following improvements at such time as the City has clear right-of-way. The question is, how much improvement is a reasonable improvement to require.

Commissioner Robertson said his suggestion is to go ahead and pass it tonight and not require a road at this time. However, when we do acquire the road, we can meet with the Durrett family and the rest of the residents that are affected and we can then determine where the burden lies with the residents and the Durrett family.

Mayor Carroll said the City Manager is saying that may be the case today; however, somewhere in the future that may not be the case. Whether it's our road or the Air Force's road, in any event, it does not make sense to require them to pave it at this time. Nevertheless, at some point in time it may make sense to have them pave their portion of the road. Mayor Carroll suggested that if it is agreeable to the petitioner and the Commission, the petitioner can sign a Waiver of Protest. That way if at some future time should there be an improvement district in that area that would include this road; they would participate in paving their share of the road. Each property owner will be accessed as to what they will be required to pay.

Commissioner Cole asked when a new subdivision is built are they responsible for the roads. Mayor Carroll stated in a subdivision they are. Commissioner Cole asked is there any similarity to this type of development in a subdivision other than a compromise; right now listening to Mr. Miramontes, the City is going to be responsible for those roads. I believe we are already responsible for similar roads throughout the City, but will we be setting a precedent for the future if a developer wants to come in and piecemeal a subdivision and not improve the

road to hardtop. Mayor Carroll answered this is somewhat different than a subdivision. The City has gotten into problems in the past where we allow things to happen without requiring any paving, such as in the Airport Blocks. Hopefully, future Commissions will require property owners to pave the whole road, if and when the site starts to develop. We need some insurance to go back to the property owner and require them to add the improvements that were waived prior.

Commissioner Cooper moved to approve the rezoning from "A" to District "E" (Light Industrial), with the requirement of a Waiver of Protest, for future improvement of the Road, be signed. Seconded by Commissioner Robertson. All voted "aye." Motion carried by a roll call vote of 6-0-0.

Consideration of a special land use permit for crematory services requested by The Durrett Family Trust [Case SP-03-0106(A); Mayflower Road]

Recommendation: With a finding of no detriment, approve the permanent special land use permit for crematory services, with the condition that within one year of City approval Mayflower Road be paved to City requirements to the eastern edge of the lot being used by the business.

NOTE: Recommendation was read by Mayor Carroll, "With a finding of no detriment, approve the permanent special land use permits for crematory services." The other half of this recommendation was addressed in item 2 regarding the paving of the road.

Commissioner Robertson asks to have this item pulled as well, as other people would like to comment on this item.

Carl Fields came forward speaking on concerns regarding the crematory. Stating that his wife's family ran a cemetery for generations and crematories do put off an odor. Mr. Fields also stressed the restaurants down in the southwest part of town may end up losing business because of the odor of crematory.

Lenora Fields a resident spoke totally against the crematory. She also stressed that her family worked in the business and that crematories do put out an odor. She stated how other businesses will be affected and if she has to, she will go out and get a petition from the restaurants.

Ms. Lisa Durrett said the cremation unit was selected from Matthews Cremation Division and it is the best, the finest in use today. An exhaust cooling system cools the exhaust gases before they are discharged into the stack and out to the atmosphere. A very desirable feature that ensures against thermal pollution and obnoxious odors associated with hot gases. Ms. Durrett continued to explain what the company's specs were on the crematory unit. Mayor Carroll asked if a state permit is needed to run the unit. Ms. Durrett stated you do need to be

licensed and how to receive a license. Also, Matthews Cremation Division would show proper set up and attend the first cremation. So, it is both State licensed and guided by the company itself.

Commissioner Cooper pointed out there are quite a few crematories basically in downtown cities and there has been no complaints about them because of the new technology that is out there. Commissioner Robertson agrees with Commissioner Cooper. He reiterated with the new technology they have on crematories and on the blast furnace you can't smell it. They burn the drugs out here on a weekly basis and the public isn't aware of the burning. I have no problem with it.

Pete Guerrero spoke out against the crematory. Commissioner Ledford added he also researched the technology that Commissioner Robertson has spoken about and he found out there has been many improvements made and odor should not be an issue. Should someone complain to the State about the odor, would they come out and check on it? Ms. Durrett stated she could not answer that question. Commissioner Ledford asked what the statutes about odors are or does someone call the State? Mayor Carroll replied if it was under the State, he didn't know of any local jurisdiction to regulate odor. Mr. Vandergriff stated that the complaint would be investigated by Trano Practice Bureau and they would down and investigate it. They will be investigating it in accordance whether the owners and operators were following the procedures that are required in order to properly perform the cremation. Basically we would turn the odor complaint over to the Environmental Department, which would most likely be handled by the Air Quality Bureau.

Commissioner Moncada said that burning could be done in the early or late hours; hence, not leaving an odor during eating time. Mayor Carroll stated at this point we are anticipating a problem that may or may not be there. If in fact there is a problem, we can remedy it through the State Air Quality Board or as it was suggested, working with the proprietor of the operation. We are speculating there will be an obnoxious odor and at this point we really don't know that.

Commissioner Cole moved to approve the special land use permit for crematory services requested by The Durrett Family Trust. Seconded by Commissioner Cooper. All voted "aye." Motion carried by a vote of 6-0-0.

5. Consideration of Ordinance No. 1193 for rezoning to District "D" (Business) requested by Lisa K. Durrett [Case Z-03-0626(A), 2402-2412 Cornell Avenue]

Recommendation: Approve to change the zoning of subject property to the more restrictive classification of District "C", and to approve the ordinance on such for final publication. [Roll call vote required]

Mayor Carroll said the petitioner states the property under our current "C" zoning will not allow them to construct the building they want. There has been some protest by the neighbors who have indicated that their concern of rezoning to "D" would allow for retail businesses to come in and disturb their quality of life in that neighborhood. Mayor Carroll suggested that if the Commission is in any way agreeable to approving this, we might consider approving a conditional "D2", with the condition there will be no retail allowed. My understanding from the City Planner is that it would allow for basically everything that is allowed in "C" zoning and would also allow the petitioner to operate their proposed business.

Ms. Lisa Durrett said at the Planning and Zoning Meeting she had an opportunity to thoroughly read the letters of protest and critically examine the Alamogordo Ordinances and the allowed usages with respect to the various districts. I can see the following fears or objections: (1) Retail zoning will not fit with existing area, (2) Retail business would increase traffic, (3) Cornell Rd. is narrow and increased traffic could present a danger to children, (4) Fear of possible change in business operations from offices to an auto repair shop, to a 24 hr. restaurant with heavy all day traffic and possible all night and related noise. (5) Devaluation of property (6) inadequate water supply lines and (7) destruction of views. This pretty much sums up the objections which I have been made aware of and with all due respect to those community members, I would like to alleviate some of these concerns and agree with some of these concerns. I feel some of the objections are not well founded. It is my understanding that the City plans to open up 25th Street into the hospital area. With the opening of 25th Street there will be increased traffic, even if there are more residences developed, especially if they are multi-family residences. If family dwellings are built across the street on Cornell this would disrupt the views of the owners on the next street. Views being cut off by the family dwellings would be far greater than any building we would build on our property. We have a two acre parcel with plenty of room for set back. I would certainly agree the street in that area needs to be widened and improved for safety concerns. I realize now that I was not specific enough when we decided to apply for this group rezoning of different parcel properties; which is the basis for much of the concerns here.

The idea that we have decided on is to build a Meeting Center. We can utilize the hospital catering service and also make this Meeting Center available to rent out to the public. We have no exact plans and certainly no plan of intent to start building. As to the regulations, District "D" specifically includes a Meeting Center under use regulations A12. It has been stated that "D2" regulation would include such but use D2H refers to "clubs or lodges, non-profit fraternity or a religious association" and that concerns me. Obviously, it states it is not for profit and obviously ours would be for profit. Under that specific language our Meeting Center permit could be denied. Under District "C", there is a provision similar to that in "D2" stating that such a lodge or meeting place cannot be carried on as a business; that's specific language prohibiting the Meeting Center. Under strict

construction or reading of the regulations, only District "D" use A12 would cover our plan and allow the Meeting Center.

Ms. Durrett stated the Mayor suggested that we incorporate a stipulation of no retail in conjunction with the approval of rezoning. But I would ask that the approval be to District "D" which would cover the meeting place, and include the stipulation that there would be no retail.

Commissioner Cooper made a motion to approve the rezoning to District "D" with the condition there be no retail allowed. Seconded by Commissioner Robertson.

Commissioner Cole asked what would happen if 25th Street went through and what would happen to the existing properties? Mr. McCourt stated that 25th Street is planned to be extended through there as part of the hospital developmental plan and that will be done in the future.

Commissioner Cole commented on the Comprehensive Plan for that area and if we have a copy of the Plan. He also asked for some background on it to make a decision? It was explained by Mr. McCourt that the Comprehensive Plan gives a generalized picture of land use in particular areas and in that particular area it is right on the edge between high density residential and offices, commercial and retailing. Commissioner Cole had a concern regarding the consideration that is not given to residents and their interests.

Robert Tyrrell stated he lives in the affected area and that Ms. Durrett stated her intent was to make money. Mr. Tyrrell was concerned that if a deed was granted to Ms. Durrett, she may end up selling the property and not telling what may go in there afterwards. Without any kind of restrictions anything could end up there. I am sure she would not like to have a business next to her house. I don't feel because she is motivated by money, that she really cares what happens to our neighborhood. Neighbors who sent letters in also agree with me. We all oppose any kind of change in the current zoning. We don't want it to happen and we don't trust what may happen in the future.

Rocina Jarzomkowske came forward. Her mother owns the property on 2400 Tulane and her sister owns the property on Cornell Ave at the other end. We have discussed earlier at this meeting there is an access road that will take place on 25th Street that has not yet been approved. I believe that has been denied by the community. Therefore, at this time there are no plans for that access road to go in from 25th Street. It may be in future planning but it has not yet been approved. The other concern is the current issue for the plans that Ms. Durrett could sell and the business changes. Currently, my mother has an apartment building behind her home that was supposed to be a residential area and there is nothing but problems at that apartment building. Police have driven to this

residence on many occasions and it actually brought the area property value down due to the way it is being maintained.

Ms. Jarzomkowske said Ms. Durrett brought forth a meeting center that would be beneficial to the hospital for conferences and also to the City in general; however, the hospital does have conference rooms which was built into their planning. If a conference center goes up at that point, it will in fact take away business from the area restaurants that are now accommodating other businesses or facilities. So, I don't actually feel that it's going to bring anything but profit to Ms. Durrett. Our position is we want to prevent anything else that is going up that is stated here today and will change in the future. And again, Ms. Durrett does not live in that area. She will not be the one now or in the future that is going to have to respond to any problems or any other issues that may occur, including when it comes time to selling property, if in fact those residents try to do so. And if something to this nature or worse were to change hands of ownership, it could devalue the property and it would be difficult to sell property at market prices.

James Nutt said he resides at 2410 Tulane and lived in the area for 24 years. Our concerns have been stated and I would like to reiterate that our only assurance as homeowners is the zoning of the City. If we start to change that, we have nothing left.

Mayor Carroll asked Ms. Few if the usage in District "D" is a lot broader than "D2". By conditioning this rezoning with no retail, would that in fact not also negate most of the other, if not all the other, usages that are currently listed as permissible in "D" zoning? Ms. Few replied it would eliminate a great number of them; however, in the "D2" District there are additional restrictions imposed within the ordinances to any use of the property. For example, in "D2" all activity has to be within a closed building, there can be no intermittent, flashing lights, and no noise broadcasting beyond the building. There are additional restrictions in the neighborhood business zoning that would not be in place in "D" zoning. Mayor Carroll asked if there is some disagreement as to whether or not the use that the petitioner asked for would be allowable in "D2" because Ms. Durrett seems to believe the meeting center would not be allowed. Ms. Few explained that in the applicant's petition and presentation before the Planning Commission there was no discussion of an office center until we received a supplemental document which was transmitted to the Commissioners. This was well after the public hearing and the opportunity for examination and comparison with the ordinances. A meeting hall does not seem out of line with the "D2" activity.

Commissioner Ledford asked what would work best, "D" with a restriction of no retail, or "D2" and include the meeting center. Ms. Few pointed out that any type of condition can be put on any zoning by the Commission. Mr. McCourt stated that a "D" zone would allow activity and noise outside the structures and a "D2" zone would prohibit that.

Commissioner Robertson said Ms. Jarzomkowske was confident that 25th Street was not part of the hospital route. Mr. McCourt replied that the planning for 25th Street is in place for it to go east of Cornell to the drainage ditch. In the development plan there has been no final design or road dedication done, but it is in their development plan and will connect over to Medical Center Drive.

Ms. Jarzomkowske responded that you do not have the approval for that access road that leads to the hospital in your hands at this moment. It may have been in their plans; however, if it was that important at the time they built the hospital it would have been incorporated at that time for emergency routes and it was not. The hospital has been there well over a year and you do not see an access road at this point. You do not have an approval in your hands for that access road, therefore, we request you not approve it at this time until you get an access plan. We ask the petitioner to hold off at this time. Please consider it in your proposal. We citizens live there and have invested much money.

Mayor Carroll asked if we have the authority to condition only allowing the uses that are permitted on "C", plus the meeting facility that is being proposed by the petitioner. Can we put that kind of restriction on a "D" zone? Ms. Few stated she believes there is a provision in the ordinances for that and she is 99% positive the Commission can place any restriction on any zoning.

Ms. Durrett pointed out that one of her application was for "D", although "D2" would be acceptable upon hearing the rejections and getting more particular and reading these regulations more critically. As an attorney, what our best idea was for the use of the premises, a meeting center, would be excluded because they require a no profit and our facility would be for profit. We have not had the opportunity to look at a "C" zoning with expanded use.

Commissioner Cole asked if Ms. Durrett could possibly go back to the table and accomplish what she wanted and at the same time protect what the homeowners have spoken about this evening.

Commissioner Moncada replied at this point I have to go with the residents, unless Ms. Durrett could come up with other language because it is totally confusing. We can table this if the petitioner agrees. Ms. Few said there is a 35 day time limitation. Mayor Carroll asked Ms. Durrett if she would agree to table this item until next meeting. Ms. Durrett was in agreement.

Commissioner Moncada made a motion to table this item. Seconded by Commissioner Cole. All voted "aye." Motion carried by a vote of 6-0-0.

Mayor Carroll recessed the meeting for a ten minute break. Mayor Carroll brought the meeting back to order at 9:25 p.m.

Mr. McCourt pointed out that Item No. 6 had been approved under the Consent Calendar but because of the way the recommendation was stated and granted, it needed to be reconsidered.

Commissioner Cooper made a motion to reconsider Item 6. Commissioner Moncada seconded the motion. All voted "aye." Motion carried by a vote of 6-0-0.

6. Consideration of a 2.4:1 off-street parking variance for Alamogordo Brewing Company. [Case V-03-0467(A), 817 and 819 N. Scenic Drive]

Recommendation: Approval of the 2.4:1 off-street parking variance with the conditions that within six (6) months of approval 1) a solid wall or fence be constructed on the southern property line and 2) that the property be replatted into one lot.

Mayor Carroll said the problem is where the recommendation was to place the retaining wall. The south parking lot would create a traffic hazard and people would have no alternative but to make a U-turn and go back through the property. The concern is with customers coming out of the business and utilizing the alley way as a thoroughfare.

Ms. Few said the alley that is being recommended for a one-way consideration is the east/west alley between Bonnell into Scenic on the south side of the property. It is recommended one-way off of Bonnell from west to east only. That would allow traffic to come in either from Scenic or from Bonnell to go south between Scenic and Bonnell on the alley. It will not allow traffic to continue to the west on that alley.

Commissioner Ledford asked what happens if 2.4:1 was not approved? Mayor Carroll commented they probably would have to tear down part of their building. Ms Few replied they would have to open up their patio where the glass windows are. Commissioner Ledford asked why they were getting a variance after it's all built, how does that work? Mr. Vandergriff pointed out that during the process of construction the question of square footage on parking came up a couple of times. When the porch was built on, it was open space; but then all of a sudden the windows had been put in and it became internal space. That front porch was basically what was creating the square footage that created the problem. At the time we notified them that before a Certificate of Occupancy could be issued they would be required to apply for a variance; which quite frankly has been really typical for 30 years. Commissioner Ledford replied what do you mean typical? Typical meaning that individuals do things they aren't supposed to be doing. Mr. Vandergriff said yes, and people often do things they aren't supposed to do and I don't want to determine whether it's deliberant or not. The typical solution to those problems over the last 20-30 years has been for them to apply for variances and basically legalized the situation. Right or wrong, if the Commission

was to turn it down I would be discussing with them in the morning which portion of the building they would want to remove and recreate it back into a porch.

Commissioner Ledford inquired when someone receives a permit doesn't the City have inspections to ensure these kind of things don't happen? We have inspections at various stages; however, the way the stages fell upon this permit, by the time we came to inspect, the porch was enclosed space. Commissioner Ledford added he doesn't know how this could happen if a person is driving by and saw it. Mr. Vandergriff pointed out that one the contractor was notified for the need of a variance several months ago.

Mr. Vandergriff said he was going to propose some changes to the ordinances because if we are dealing with a situation like this one, there are very few ways to penalize someone who violates the ordinance. Basically, our maximum fine would be \$500, if we want to take them to court. The only other alternative would be for the Commission to say we don't want to grant a variance so we're going to tear part of it down or open it back up. I intend to propose a change in the fee structure to ensure that people won't want to request a variance after the fact. Mr. Vandergriff added we try to serve people, to help business operate, to make sure things are safe and that is the reason for the ordinance to start with. We are trying to actually work with these people, but actually I think working with them is to try and prepare something with those individuals who might deliberately step over the bounds. I believe the fee structure for the variance after the fact is probably where we would deal with it. Certainly, the Commission could probably deal with it in other ways and direction.

Commissioner Ledford replied he doesn't have a problem with the variance, he was just curious about the timing and wanted a clarification on it. Mr. Vandergriff stated the contractor was well aware of the timing. We told him he couldn't get through until he applied for this variance and so they came in and applied for it. Mr. Brian McGuire added they plan on having this back to the Commission by the February agenda. We need to draw the line somewhere and say no more and we have to create a process that allows us to do this in an orderly way. That everybody is notified in advance that we are not going to give these variances any more and we felt this was not the time or place to do this; so we will come before you with a plan to remedy this for the future. We have historically granted these and we have no choice but to come before you with this request.

Commissioner Cole moved to approve with a wall on the North end of south lot, access to alley from rear is blocked, and also replatted into one lot. Second by Commissioner Cooper All voted "aye." Motion carried by a vote of 6-0-0.

7. Consideration of Ordinance No. 1194 consenting to the annexation of 21.999 acres of land requested by N2, Inc. [Case A-03-0058(A)]

Recommendation: Approve the ordinance consenting to the annexation of 21.999 acres of land in Section 32, T16S, R10E, NMPM, to the City of Alamogordo for first publication.

**Commissioner Cole made a motion to approve for first publication.
Seconded by Commissioner Moncada.**

Commissioner Robertson asked if this item can be set aside tonight and not have a first publication. He would like staff to have time to look at the property adjacent to it and see about taking it into the City limits. Mayor Carroll said he didn't have a problem looking into that but do you know of any other property owners that would be willing to annex in nor are we talking about forcing annexation?

Mr. Doug Nelson from N² Inc. said you probably would have people who want to annex into the City, but their single biggest fear is for them to sign a Waiver of Protest. If the City decides to improve the road in front of their property, they would be forced with a tax burden on a piece of property that has not generated any income in the last 100 years, and they can't see any generated income in the foreseeable future. You will have success in annexing property in that area if you do away with the Waiver of Protest.

Commissioner Robertson said we are looking at paving that road from Ocotillo all the way down to Desert Lake Road and we need to do something to get that entire road inside the City limits. Mayor Carroll stated we can still approve this for first publication and look into what Commissioner Robertson is suggesting.

Mr. McCourt said that provided we want to leverage in more area, we would have to re-publish and notify the public what the Commission is going to do. Mayor Carroll stated he had no problem trying to address some of the dilemmas that have confronted us over the past in that area regarding the City/County. We might possibly table this rather than to vote against the ordinance and then give Staff time to look at the possibility of leverage property that could be brought in as part of this annexation.

Mr. Nelson said you are asking me to withdraw my plans so that you can fight with all of your neighbors for the next year and the property may or may not be annexed into the City. By that time, I may not be interested in developing that piece of property anymore and you are losing a piece of property that you could have put into the City. I don't know why Commissioner Robertson wants to slow the process down. I agree the City should look into annexing other properties in the area, but I don't think you should combine the two issues at this time.

Ms. Few stated we have looked at leveraging and part of the problem with leveraging is the acreages surrounding. We would be taking part of a person's property or we would be creating a land lock situation; an island of County zoning totally surrounded by City. We are very close to that issue on Florida Ave. We

once had the opportunity to take the entire west side of Florida and it was not successful. Because of the acreage we have at hand under petition and our limitations at doing leveraging, it will be a very awkward. We had numerous meetings with Mr. Nelson and his surveyor and we looked at all sorts of configurations.

Commissioner Ledford said he doesn't see the need to table this. Commissioner Robertson pointed out the City has been discussing paving the street and before paving can take place the City needs to have that section in City limits. Mayor Carroll said there is some question whether or not we own the whole road now. Even though it goes through property that is not the City's, it was stated that it is the grey area.

Mayor Carroll said there was a motion and a second on the floor to approve for first publication. **All voted "aye." Motion carried by a vote of 6-0-0.**

17. Award of Bids:

a. Bid No. 2003-22, Copper Reseters.

Recommendation: Award to Morrison Supply for an estimated total of \$25,056.00, not including NMGRT.

b. Bid No. 2003-23, Gas Convection Ovens & Refrigerator for Alamo Senior Center.

Recommendation: Award to National Restaurant Supply Company for a total of \$16,521.30.

Mayor Carroll noted that Commissioner Robertson asked to have this item removed. Commissioner Robertson said he thought they had discussed this award before as far as funding. Mr. McCourt said he could not say, but was sure it was in the budget.

Commissioner Robertson moved to approve Item 17a and 17b. Seconded by Commissioner Cooper. All voted "aye." Motion carried by a vote of 6-0-0.

18. Appointments to Boards and Committees.

Mayor Carroll reappointed Ms. Mary Work to the Cemetery Board.

UNSCHEDULED COMMUNICATIONS:

A. Proposal relating to Golf Course Improvements presented to the Commissioner for consideration.

Raymond Ham said he was soliciting on behalf of the Golf Committee and handed out a report to each Commissioner. Mr. Ham made it clear he was not here to complain, criticize, or ask for money. The Golf Committee is requesting approval of a plan along with a time line. They could make improvements to golf course and with these improvements could have tournaments, like the State tournament we had here previously which brought revenue to Alamogordo.

Mayor Carroll stated the one important detail that is missing out of the report is cost. Where would the money come from? Mr. McCourt said he did look over the report briefly but had not had the chance to talk to Mr. McNeile.

Mr. Ham said they are willing to work with the City and request, if it would be possible, to have a response by Feb 15th. Commissioner Ledford asked what cost would we have to come up with. Mr. Ham commented that some work can be done by City and some by us. Mr. McCourt responded we can have it incorporated in our budget. Mayor Carroll thanked Mr. Ham for his input and the staff will address it hopefully having the opportunity and money to make improvements.

B. Mr. Brian McGuire gave an update on the status of the South Scenic railroad crossing and the "Quiet Zone".

Mr. McGuire said they found out there is a signal to activate and they were able to locate a Mr. Gonzales from the Signal Department. The railroad will activate the signal by January 1st and they will also activate the signal which will allow the engineers to blow their whistle. City crews will be paving from Highway 54 through the intersection across the railroad tracks and 30 feet beyond it. Commissioner Robertson asked if it was set up for quiet zone. The quiet zone is a different issue and I will get to that. He said he received a call from Mr. Jim Marshall who is the Manager of Industrial and Public Projects and he told me he would answer my letter regarding the Desert Lakes crossing. What he needed from us was something agreed to some time ago and that was to close down the "dump road" railroad crossing which is behind Checker Auto. Then the railroad would provide to the City a right-of-way for a private business and our access from First Street down along the west side of their right-of-way. We should hold off on our request until the Federal Railroad Commission (FRC) completes their regulations, then proceed with requesting them to establish the no-whistle zone. That still leaves the State of New Mexico law that will need to be changed. That would remove the barriers at the Federal level and it will then be a local political issue.

C. Comments by City Manager McCourt regarding the following:

1). Two employees, Greg Garcia and Christina Mather, of the Code Enforcement Department received a letter from a citizen complimenting them for their work.

2) An update on the water supply which is being watched and monitored very closely. We are resting our wells. A memo went out regarding the recovering on our different wells. Bonito Lake is 15 feet below the spillway--we need snow. Commissioner Robertson asked if Capitan and Carrizozo are drawing water off that line. Mr. McCourt explained that Capitan is not. We had an emergency agreement that went back to 1989 where we agreed to help Capitan. About two years ago, the State Engineer called up and asked about the emergency so we called Capitan and ended the emergency agreement. He said he did send a letter to the State Engineer's Office stating that Capitan is disconnected from the Bonito line.

3). Mr. McCourt announced his recent accomplishment as being the third recognized, certified City Manager in New Mexico.

D. Mayor Carroll mentioned a report he had received from DFA closing out the CDBG project and the fact that Maureen Schmittle had been recognized for the great job she had done on the project. Mr. McCourt said he also found out that Maureen is the only person in the State this gentleman has ever recognized. Mayor Carroll commented that it is more reason to recognize her.

E. Mayor Carroll and all City Commissioners wished everyone a Merry Christmas and Happy New Year.

The meeting was adjourned at 10:20 p.m. into executive session. Commissioner Cooper moved to adjourn into Executive Session to discuss acquisition of water rights. Seconded by Commissioner Robertson. All voted "aye." Motion carried by a roll call vote of 6-0-0.

"The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of December 18, 2003 was called into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure."

/s/ Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/ Angie J. Rahn-Broyles

City Clerk Angie J. Rahn-Broyles

(SEAL)

(Prepared by Deputy Clerk Karen Groves)

Approved at the City Commission Regular Meeting of January 13, 2004.



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