

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
JUNE 8, 2004**

**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 KEN McDANIEL
CITY 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. The Reverend Dotti West gave the Invocation, and Commissioner Cooper led a moment of silence for the late President Ronald Reagan, followed by the Pledge of Allegiance. Mayor Don Carroll was absent due to a family emergency.

Mayor Pro-Tem Griggs read the following statement: "In line with Commissioner Cooper and along with the nation and the world, the citizens and the City of Alamogordo mourn the death of our 40th President Ronald Reagan. Most of us here tonight experienced first hand the profound changes in our economy and a renewed spirit of hope he brought to our country. President Reagan knew that freedom was more than just a word; it was his and our birthright. He knew that free men and free women could meet any challenge and overcome any obstacle. His optimism lifted us up. He united the country and we should all learn from his example. He was the right man for the time. Our thoughts and our prayers go out to Mrs. Reagan and the family."

Mayor Pro-Tem Griggs presented proclamations declaring "Miss New Mexico Pageant Week", and "Miss New Mexico 2003, Rana Jones Day".

Ms. Ann McCullough, Director of United Way of Otero County, presented a plaque to the City employees in recognition of giving to the United Way. Mayor Pro-Tem Griggs accepted the plaque on behalf of the employees.

PRESENTATIONS:

1. Presentation by Denise Cooper, CPA/Partner from the firm of Clifford, Ross Raudenbush & Cooper, L.L.C., regarding the fiscal year 2002-2003 Annual Financial Report.

Ms. Denise Cooper presented the annual audit for June 30, 2003. She thanked the administrative staff for having done an outstanding job, and said it was reflected in the financial statements.

Commissioner Cole noted that some of the Commissioners met with Ms. Cooper and her staff before the meeting and reviewed the report.

Call of the Consent Calendar: [Roll Call Vote Required – Item Nos. 4, 6, and 7]

Item Numbers 2, 3, 4, 6, 7, and 10 were on the Consent Calendar, and none of the items were removed.

2. Minutes of Regular Meeting of May 25, 2004.

Recommendation: Approve the minutes.

3. Memorandum of Understanding with Otero County for Animal Control shelter fees.

Recommendation: Approve the Memorandum of Understanding.

4. Ordinance No. 1209 amending the delayed repeal of a Municipal Infrastructure Gross Receipts Tax.

Recommendation: Approve the Ordinance for final adoption. [Roll call vote required]

6. Resolution No. 2004-32 supporting the 2004-2005 NM Department of Tourism Litter Control and Beautification Grant.

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

7. Resolution No. 2004-33 reducing the fee charged for FEMA determination letters not issued in conjunction with a building permit.

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

10. Reallocation of funds for final payment on Bonito Pipeline Replacement Phase 7 project.

Recommendation: Reallocate \$807.95 for the Bonito Pipeline Replacement Phase 7 project to pay General Hydronics, Inc., in full.

Commissioner Cooper moved to approve the Consent Calendar including Item Numbers 2, 3, 4, 6, 7, and 10. Commissioner Robertson seconded the motion. All voted "aye." Motion carried by a vote of 6-0-0.

ORDINANCES AND RESOLUTIONS:

5. Ordinance No. 1210 amending Section 28-03-085 of the Code of Ordinances regarding ancillary charges.

Recommendation: Approve the Ordinance for first publication.

Mr. McCourt commented on the water rate review and stated that their policy was that people who connected to the water and sewer system needed to bear their fair share of the cost. He stated that the policy was set up to establish a hook-up fee, in addition to the actual cost of installation, for new people joining the system. After much discussion, they decided that it was not the appropriate way to operate the component and they should charge the cost for disconnection to anyone who wanted to unhook from the system.

Mr. McCourt said the proposed ordinance removed the current \$250.00 connection fee and put in its place a provision that if a customer wanted to disconnect from the system they would bear the cost of the disconnection.

Commissioner Robertson asked if they would need to put the backflow valves back in when they disconnect and reconnect. Mr. McCourt said they would have to do that and pay the costs when they connect to the system.

Commissioner Cole referenced Item 6 of the section and questioned how the administrative charge was figured and whether it would take the place of the \$250.00. Mr. McCourt replied that in the bold print below Item 6 there were a few alternatives offered to the individual, and depending on what option they chose, the cost would vary. He explained that when they disconnect from the system, the work done must be in accordance with City specifications, which the individual could do through a variety of ways. He stated they could hire a contractor to pull out the can, cap off the line, backfill, and restore the surface. They could contact the City maintenance crew to schedule it into their work schedule and pay the cost that the City charges,

or if the user had the ability to remove it themselves from the City water system, the City would allow that.

Commissioner Cole asked if it would be a problem if the individual doing the plumbing was not licensed. Mr. McCourt replied that they could do the work if they were the property owners; however, the City would need to inspect the work. He said there was a provision in the Ordinance for performing inspections.

Commissioner Cole asked if there was a rule of thumb on how that would be charged if the City did the work, in other words, was there a set fee. Mr. McCourt replied that there was not a set fee and it would be based on the cost of materials. Commissioner Cole said he wanted to clarify his question which was how they would work the costs if the individual did all the plumbing and the City did the inspection. Mr. McCourt replied that under Item 2 there were charges for the cost of the inspection. He explained that there were three inspections required when the lines were capped, the inspection of the compaction backfill, and the finishing of the surface restoration.

Commissioner Cole questioned if in Item 2 the \$26.00 was an hourly charge or a visit call. Mr. McCourt replied that it was for a service call. Commissioner Cole asked if that would include the inspection. Mr. McCourt replied that it would cover the inspection.

Commissioner Cole said he had asked questions at a previous City Commission meeting and wanted more clarification on the thirty-one days, in particular, when it would kick in if someone moved out of the home. Mr. McCourt replied that he was not sure to what he was referring. Mr. McCourt explained that the only time disconnection would occur was if there was a non-payment or a request by the individual to disconnect. Commissioner Cole asked what the thirty-one days was that was mentioned at a Commission meeting. Mr. McCourt replied he could not recall anything about thirty-one days. Commissioner Cole gave an example of a person moving out of a home and wanting to disconnect, he questioned if they could reconnect in thirty-one days? Mr. McCourt replied the policy put forward was for anyone who connected to the system and they would pay the base monthly fee to remain connected. He said there were provisions explaining how it worked for tenants moving.

Ms. Teresa Guilez, Utility Billing Manager, responded that the property owner would contact the City to activate the service under the property owner's name and would be billed the base rate until a tenant moved in. She explained that the thirty-one days that was being questioned had to do with existing accounts where they turned off the meter. She said those customers were allowed fifteen days, not thirty-one days, from the date they received their letter to come in and sign up for the service or the homeowner would start being billed. Commissioner Cole asked if there was an agreement in changing fifteen days to thirty-one days. Ms. Guilez replied that she did not recall that and only remembered the fifteen days. Commissioner Cole again asked for a clarification on the thirty-one days.

Mr. McCourt explained that the City sent out a letter to the people who were not receiving a monthly bill informing them that they would be billed in fifteen days unless they came in and made arrangements for disconnection. Commissioner Cole asked if a homeowner or a renter moved out and disconnected whether they could reconnect within the thirty-one days and not be charged certain fees. Mr. McCourt replied that disconnecting at that point meant they were unhooking from the system. Commissioner Cole asked what would happen if they did not want to pay for the monthly service charge for the meter. Mr. McCourt replied that they would have to disconnect.

Commissioner Cole asked if after disconnecting the City would take out everything including the meter. Mr. McCourt replied yes. Commissioner Cole questioned if someone moved back into the home whether the City would go back out and replace everything. Mr. McCourt replied it would be up to the individuals to replace it.

Commissioner Cole gave an example of a property owner who had water service and it was disconnected. He questioned if the City would go out and remove the meter? Mr. McCourt replied that the person who ordered the disconnection would pay the cost to disconnect. Commissioner Cole asked if the meter would be removed. Mr. McCourt replied that everything would be removed. Commissioner Cole asked if everything would be replaced if someone moved back into the home. Mr. McCourt replied it would.

Commissioner Cole asked if the sidewalk would be torn out and replaced. Mr. McCourt replied that it would. Commissioner Cole said that did not make sense. Mr. McCourt replied that it did make sense and explained that people would "hot wire" it if left in the ground. He then explained that they would have to service each of those accounts that continued to exist in the ground and that was a cost that everyone was paying on their water bills. He said if they had that base fee, everyone should pay their fair share. Commissioner Cole replied that he agreed.

Mr. McCourt explained that if they did not want to pay the base fee, then they needed to disconnect from the system. Commissioner Cole asked if they would take out the meter, the can, and everything. Mr. McCourt replied that everything would come out. Commissioner Cole replied that it was overkill.

Mayor Pro-Tem Griggs said the way he understood it was that an individual had an option, they could pay the monthly charge or they could disconnect from the system. He said the cost for disconnecting and the problem with disconnecting could certainly be overwhelming for someone; consequently, they would not disconnect and continue to pay the charges.

Commissioner Cole gave an example of a home that had been empty for a couple of years and he questioned why they would need to pay a monthly charge after disconnecting to everything. He said the City would tear out the sidewalk where the meter can was, replace the sidewalk and then when the person returned back to the property, they would have to tear up the section of the sidewalk to replace the can and meter, starting all over again. Mr. McCourt replied that would be correct. He said normally it would not be the City but rather a private contractor that was hired to tear up and replace the sidewalk.

Commissioner Robertson said he had never heard of the City tearing out a can when taking out a meter. Mr. McCourt replied that they had been taking cans out with some degree of regularity because the backflow devices would not fit in the existing cans. Commissioner Robertson said he could understand placing the backflow devices, but taking the meter and can out because they discontinued the service was a little ridiculous. Mr. McCourt replied that it would have to be done in any case because when they reconnected they would have to put in the backflow device.

Mayor Pro-Tem Griggs questioned whether they had to tear the can out or if it could be done without destroying the can and the sidewalk. Mr. McCourt said there might be another way to do it. Commissioner Cooper suggested welding the lid on which would make it difficult to get into.

Commissioner Ledford asked what the charge was for reconnection. Mr. McCourt replied that it would be whatever the material cost. Commissioner Ledford asked if they were charging a

\$250.00 fee. Mr. McCourt replied that he believed it was a fifteen dollar set up fee for an account. Ms. Guilez replied that it was a twenty-five dollar fee. Commissioner Ledford asked if the renter or the property owner had the authority to disconnect on property rentals. Mr. McCourt replied that it was the property owner. Mr. McCourt explained that the renter could discontinue service, which was different from disconnecting.

Commissioner Ledford asked if the renter discontinued service whether the landlord would be responsible for either continuing to pay for the service or disconnect. Ms. Guilez explained that when a renter moves out, the landlord would need to notify the City by either coming in or calling. Commissioner Ledford asked if there would be a charge to transfer the account over to the landlord. Ms. Guilez replied that there was a twenty-five dollar charge. He asked if the landlord did not pay the basic fee whether a disconnect would be authorized. Ms. Guilez replied that was correct.

Commissioner Cole stated that what was concerning him was that some of the home builders and others had spoken to him and he wanted to go through some charges. He said he went back and got a copy of the letter that went out underneath the City Manager's name to everybody and he had seen the fifteen days in there, but was still puzzled why he thought it was thirty-one days. He read through the following charges: meter charges \$80.00; backflow valve \$110.00, expansion tank \$110.00, for a total of \$300.00. He also mentioned two other fees, the application fee of \$25.00 and the deposit for homeowners of \$65.00 or \$130.00 for tenants. Commissioner Cole said that what concerned him was what they were charging the general public for connecting and disconnecting renters or rental property owners. In other words, how much it was taking to get a home back on line for people to live in.

Commissioner Cole said the philosophy was good but the cost was incorrect, and the tearing out and putting back in was really wrong. He stated that he did not quite understand where they were heading as a Commission with City Staff's recommendation. Mr. McCourt said where they were heading was to put the cost on the person that was causing the cost to be incurred rather than putting the cost on all the other ratepayers in the system. He questioned why everyone in the system should pay those costs. Commissioner Cole said he agreed with the cost to a degree and he was glad that they changed it to \$250.00; however, he disagreed with taking out the meter. Mr. McCourt said there was no way that they could monitor that without going by and looking at the meter each month. He said if they had to go by each month then those people should pay the monthly cost.

Mr. Fred Shearer said he was a landlord and one way of solving the problem was for the landlord to read the meter, write down the number after the tenant leaves, then when the meter was ready to be turned back on, both the landlord and the City could compare their numbers and if the numbers agreed the problem would be solved. There would be no expense to the landlord and no work for the City.

Mr. Michael Shyne said he thought he had a grasp on what this was all about, but then he figured it had to do with a mechanism of gradually forcing property owners to install a backflow device. He then learned that the can required for the backflow device was larger, but even after the can was installed, the City would tear out the can if someone disconnected from the system. He said the City was way out of line and the idea was absurd. He stated that Mr. Shearer had presented a simplistic concept, but the idea that the City had was absurd for the purpose of saving a water meter reader from walking down the street, picking up the cover, reading the meter, setting the cover down, and continuing to walk. He said that some people would take advantage of the system, but the City should not enslave everyone to that extreme extent to catch a few people who will take advantage of the system. He said that was too extreme and

they should look at a simple system and not do something that would financially over-burden people that could not afford it.

Mayor Pro-Tem Griggs said the main issue that concerned Mr. Shyne and Mr. Shearer was the tearing out of the can and the meter. Mr. Shyne gave an example of a tenant who was paying the water and then moved out of the house and moved to Alabama. The tenant would notify the City that they were moving and received their final reading. He asked what that would be called. Mr. McCourt replied that they would be discontinuing the service. Mr. Shyne asked when discontinuing would require disconnect. Mr. McCourt replied when either the person or the property owner ordered the disconnection to take place, or the disconnection could take place due to a delinquent account. Mr. Shyne questioned if there was not a delinquent account and the people paid their bills, and if the discontinued service took place because the tenant moved or the owner might be moving, whether that would trigger a disconnect requirement. Mr. McCourt replied it would not. Mr. Shyne asked what would trigger a disconnect requirement. Mr. McCourt replied when the owner of the property ordered a disconnect. Mr. Shyne asked why the owner would order a disconnect. Mr. McCourt said they would request a disconnect because they did not want to pay the monthly fee. Mr. Shyne stated that if the tenant moved out and was gone and they were responsible for the water so they ordered a disconnect, then the owner better step in and reconnect within how long or it would become a disconnect. Mr. McCourt replied that it would happen automatically when they set it up with the landlords. Ms. Guilez explained that the owner would either call or come in to set up the service once the tenant left. Mr. Shyne asked what if the owner did not do that. Ms. Guilez said they would go to County records to find the owner and notify them that they needed to make arrangements or the City would start billing them. Mr. Shyne asked how much they would be billed. Mr. McCourt replied that it was \$15.33 for a three quarter inch meter. Commissioner Cole asked if that was where the fifteen days came from. Ms. Guilez replied that the fifteen days was from the time the letter went out to the person.

Mr. Shyne asked if the City would tear out the water meter if the owner did not reconnect. Mr. McCourt replied that they would if they had a sufficient bill and refused to pay. Mr. Shyne asked what they considered a sufficient bill. Ms. Guilez replied \$30.66. Mr. Shyne stated that after \$30.66 worth of unpaid bills that the owner never signed up for? Mr. McCourt replied that the owner signed up when they connected their property to the City's water system. He said that was the base fee which was charged to everyone who was connected to the City's water system. Mr. Shyne stated that there were so many flaws because what the City was basically saying was that for \$30.66 the City was willing to file a lien on the property and eventually foreclose on it. He said the effort to try to make the water system economically support its self was very important; however, the City could not solve every little detail and catch every crook. He asked the Commission not to penalize all the citizens for the sake of a couple who would always evade the law.

Mayor Pro-Tem Griggs said that was not what had initially driven the Ordinance. He said it was the fact that there were approximately 1000 to 1500 meters in town that were not hooked up but the meter readers were still having to check every month. He pointed out that everybody in town who was hooked up to the system was paying a flat fee for water and sewer and then they paid an additional fee for the amount of water they used. The property owner would pay the monthly fee just to maintain connection to the system whether or not the house was rented. Mayor Pro-Tem Griggs said there had not been any particular disagreement on the Commission concerning the payment of the flat fee. Mr. Shyne said all he was asking was for them to look at it and come up with other alternatives.

Commissioner Cole asked if the property owner reconnected thirty to sixty days later, would they keep paying the \$110.00 repeatedly to reconnect. Mr. McCourt replied that if they ordered a disconnect and now thirty to sixty days later they wanted to reconnect, they would need to meet the requirements that were in the City code and that would include having a backflow device. Commissioner Cole asked they would have to pay the \$110.00 if they already had a backflow device. Mr. McCourt replied that if they already had a backflow device they would not have to pay for it again.

Commissioner Cooper stated that they would be paying fees to disconnect and then paying the same fees to reconnect. Mr. McCourt said each individual property had the choice of disconnecting or not disconnecting and paying the monthly fee.

Mr. Shyne wondered if the property owner chose to stay connected and pay the minimum fee, whether the water meter would be turned on or off. Mr. McCourt replied that the meter could be turned off. He said they needed to make certain the water was turned off because if there was a leak in the house and it went undetected, it could do major monetary damage.

Commissioner Cooper stated back in the early 1970's and early 1980's, you could not have a shut off between the house and the meter. He said that was an ordinance that was passed by the City. Mr. Shyne commented that some of the older neighborhoods were quite nice ten years ago, but as the water rates increased, people quit taking care of their lawns. He said the City was now imposing an economic burden on them by having them install the new anti backflow devices which were very expensive.

Mr. Klad Zimmerle asked the City to explore other alternatives and they might want to consider a tack weld on the lid. He said to destroy the box, pull the meter, backfill it, fill it full of concrete and then to put it back in and chip it all out was wrong. He asked the City to go through the maintenance people to see if a tack weld would work so they could pull the meter but not destroy the meter box.

Mr. Mike Nelson said he could see the \$18.00 a month charge, but did not understand why a vacant property owner who was not using any water and paying eighteen dollars a month would have to pay a \$65.00 deposit and a \$21.00 application fee. He said if they were going to pay their \$18.00 when they were not receiving anything, why were they paying \$21.00 for an application fee and a \$65.00 deposit. He asked what the deposit was for. Mr. McCourt replied that the water/sewer fees were made up into two parts; there was a base amount that was charged to everyone regardless of the use, and an administrative fee to set up the account. Mr. Nelson questioned why they were paying that for three months when they were not receiving anything. Mr. McCourt replied that they were getting something because they had to physically do that and set up the account. He explained that the \$18.00 a month was a base fee, which was charged to every user that was connected. There was an administrative fee because of the work needed to change the accounts. If they did not collect that from the person who was causing the charges to be incurred, they would still be paid by the other water users in the system and why should the other water users pay those fees. Mr. Nelson said he understood that, but could not understand why they had to pay the additional \$21.00 and why they had to pay a deposit. Mr. McCourt replied that there was a deposit required for those times when a person would go in to clean the unit and use the water and services and forget to come down and sign up for service. The deposits were required because people either forget or did not pay their bills; nevertheless, there was still a cost incurred. He said the deposit was to protect other rate users in the system so they would not have to pay the costs. Ms. Guilez pointed out that the deposit was given back. Mr. McCourt reiterated that the deposit was given back or applied to the account after a year and if the account was in good standing.

Mr. Nelson stated that there were times when the City was collecting a couple hundred dollars from a vacant property owner that was not using any water and that was what he did not understand. Mr. Nelson said the water had been disconnected. Mr. McCourt clarified that the water had been discontinued, not disconnected. He said there would still be a cost involved just by having the water system in place and available for use. Those costs would continue even if the City did not sell a drop of water and would be there until whoever wanted to use it. He said there was the base fee that was charged and then there was a variable fee that was based on the amount of water that was individually used. Mr. Nelson stated that there would be vacant property owners that were going to be upset once they found out that not only would they have to pay the City \$18.00, but also \$21.00 for an application fee, and a deposit of \$65.00 for not using any water. Mr. McCourt again pointed out that they would get their deposit back.

An unidentified person suggested that the water meter could be sealed, just like a box car seal with a steel strap through it. He said they could seal it at the time of cut off and impose a fine on the property owner if the seal was broken. If the owner wanted to use City water again, the fine would have to be paid and it could be substantial. .

Mr. Ken McDaniel, City Attorney, said there was one item that had not been mentioned and that was the "out of use" accounts where the meter was not turning. Actually, it could incur more of a cost to the City than if the meter was being used. He explained that due to the mineralization of the water, there was a very good chance that the meter could freeze up if it sat for several months and then the City would have to replace it at the City's expense. He said there was a considerable maintenance cost on those accounts even though there was not a drop of water flowing through the meter, and that was what the \$18.00 helped cover. Mr. McCourt clarified that it was \$15.33 and not \$18.00.

Mayor Pro-Tem Griggs pointed out that the item was before them for first publication, which meant that it would come back before the Commission in a month, and at that time the Commission would act on it in its final form. He said it would give the Commission time to receive input.

Commissioner Cole made a motion to table Ordinance No. 1210 for first publication. Commissioner Cooper seconded the motion. All voted "aye." Motion to table passes by a vote of 4-2-0. Commissioner Ledford and Mayor Pro-Tem Griggs voted "nay".

OTHER BUSINESS:

8. Report from the City Attorney regarding mandatory penalties for violations of Ordinances relating to trash, junk, and inoperable vehicles. [Commission requested report at meeting of May 25, 2004]
No Recommendation.

Mr. McDaniel stated that as he had been directed by the City Commission, he had done research on the item. He said there were a minority of states where the legislative bodies were held not to have the power to pass mandatory penalties, but New Mexico was not part of that minority. He said the majority of the states did hold that legislative bodies enacting laws could have mandatory penalties, and in doing so they were subject to the same constitutional standards as of any other penalties. He gave an example of if there was a mandatory penalty for jaywalking and it was greater than the penalty for DWI, you may have a due process or a cruel and unusual punishment constitutional problem. He stated that if the penalties were proportioned, then they could have them. As to whether you would want to have them that would be another question with regard to a particular type of area. For instance, if there was a

mandatory penalty for having a littered yard, and there was an old lady who was not healthy enough to clean it up by herself or could not afford to hire someone, it would create many ill feelings if she was ticketed. That was one of the reasons why those types of things were left to the discretion of the court so as to fashion a remedy that did not come down duly harsh on a person who was not willfully messing with the law and yet still have the authority to fine someone.

Commissioner Cole questioned the group of people going around town and looking at homes for trash, etc, and asked how that was working. Mr. Brian McGuire replied that he had a report for the first month where they had mailed out 1400 letters to individuals that were in violation of the litter ordinances and they followed it up with letters and inspections. In the majority cases, they had individuals complying with cleaning up their property. There had been some cases where they had over-zealous people that had sent letters to individuals that they might not consider worth the letters. He said they had followed up with those individuals with a letter of apology. He said they had been getting results and they had not taken a lot of those to court yet. For the most part, people had been cleaning up without having to cite them.

Commissioner Cole stated that he believed in the program but questioned the letter that Code had sent out. He asked if the program was based on volunteers going out and looking at the property. Mr. McGuire said that was correct. Commissioner Cole asked if City Staff or someone with authority to say that it did not meet standards was looking at the property before the letter was sent out. He asked if anyone followed up with the volunteers. Mr. McGuire replied that they did not; they followed up with the volunteers after they went out the second time and reported back that the property was still not cleaned up. A staff employee would go out to re-inspect before sending a follow-up letter. Commissioner Cole asked if they sent a staff employee out before sending the first letter. Mr. McGuire replied that they did not; it would be defeating the purpose of having the volunteers. Commissioner Cole said it sounded to him like they were delegating some type of police power.

Commissioner Cole said he agreed that they needed to clean up areas of the City. He stated that he had received three phone calls and one of the individuals who called felt the letter being sent out by Code was offensive. Mr. McGuire asked if he meant the tone of the letter. Commissioner Cole replied that he received three phone calls concerning that letter being somewhat threatening. He wondered whether they were upsetting people by having volunteers go out and look at the property and then sending letter out. He was not sure if they were creating animosity in the community by doing that. Mr. McGuire replied that it was quite possible and he would go back and look at the tone of the letter. He explained that one of the reasons the letter was rather cold and legalist was if they had to go to court, they needed to present evidence of adequate notice. So the letter needed to state what needed to be changed, the period in which to make that change, and what the consequences would be if they did not reach compliance within that time. Otherwise, the court would tell Code Enforcement that had not given the people adequate notice of the consequences of their actions. He believed that was part of the reason the letter was written the way it was; however, he would re-examine the letter and have the City Attorney review it. He stated that it was not their intent to make anyone angry, they thought they were responding to the direction that the Commission had given them, which was to enforce the litter ordinance with what resources they had, including training a group of people who volunteered.

Commissioner Cole asked if they were approving this tonight and what it would mean if they approved it. Mr. McCourt replied that there was nothing to approve, it was merely a report back to the Commission from a previous Commission meeting.

Commissioner Cooper asked if the volunteers carried identification. Mr. McGuire replied they had been trained by Code. Commissioner Cooper asked if they had identification and if they were authorized by the City to go onto private property. He commented that if some stranger came on to his property, he would want to know why they were there. Mr. McGuire replied that they did not have authorization to trespass on someone's property. He explained that the volunteers did not want to be identified due to the consequences of angry neighbors. He said the volunteers understood that they were volunteering their time to the City and to the citizens of the community to help clean it up. Mr. McGuire said he understood Commissioner Cole's position and they would look into trying something else.

Mayor Pro-Tem Griggs stated that one of the issues with this whole thing was that the City had been inundated with people complaining about junk, weeds, trash, whatever it might be. City Staff had made a diligent effort to get people to be aware of the fact that their yards are either trashy, junky or whatever it might be. He said that was their approach and the Commission was going to have to decide what they wanted. Mayor Pro-Tem Griggs said he understood Commissioner Cole's concern with sending the volunteers, but they were either going have to send the volunteers or send code enforcement or the police out to the individual homes to tell them they had not cleaned it up or send out a letter. He said he agreed that the tone of letter needed some work. If they were going to fix the problem, they were going to need a lot of people involved to get it fixed.

Commissioner Cole stated that when the person who called him wanted to know who had inspected his property and he told him it was volunteers, he questioned what right they had to inspect his property and tell the City. Mr. McGuire replied that the volunteers had been trained by City Staff to narrow the scope of certain problems so they did not have a group of vigilantes going out, if that was a concern. He stated that if the Commission wanted them to discontinue the program they would. He said it was the best they could do with the resources they had, and he felt indebted to those volunteers. Commissioner Cole replied that he was not against the volunteers; however, he had to answer to the other individuals. He said it seemed like another step of government getting more involved in people's daily affairs and getting larger and larger where they as individuals did not have any rights.

Commissioner Robertson questioned what difference it made who turned them in, if they had a messy yard, they should be reported. If the letter was not strong enough then they would not clean it up at all. He commented on a gentleman that was present at the meeting and who after several months of complaining the individual still had not cleaned their yard and that was after they were cited and had gone to court. Commissioner Cole said all he was saying was that the City should go out and double check it.

Mr. Randy Burroughs said he had been a citizen in Alamogordo for 50 years and those letters had been going out for 25 to 30 years. He used to get them when he was a landlord because his tenants were not cleaning up. He said volunteers had been reporting people for over 50 years because if there was a neighbor who had trash in his yard, the other neighbor would report him. He felt it was a very good project.

Mr. T.D. Thompson said he could not be more in agreement with Commissioner Cole and Commissioner Robertson, he too received the letter. He said he felt insulted when he received the letter and it had attached to it a 14-01-140 Outdoor Automotive Storage and 14-01-150 Outdoor Junk Storage. He said it was just a form and nothing to specify to what they were referring. It was signed by Mr. Pat Vandergriff, Chief Code Enforcement Officer, and he was threatening him in ten days with court action. He said he spoke to someone from Code and they said that volunteers were doing the inspections, they then would hand the addresses over

to a volunteer in the office, who in turn would send the letters. He said none of the staff in Code Enforcement saw the violations. Mr. Thompson said he was all for cleaning up the property, but it shouldn't be overkill like tearing out the water meter cans. He said it was overkill and thirty days would be more logical than ten days. He asked for someone to work with him on the time element. Mayor Pro-Tem Griggs requested that Mr. McGuire to work with Mr. Thompson, and Mr. McGuire replied that he would.

Ms. Linda Beavers said she received a letter and she had a problem with the tone of letter, the amount of time she had to comply, which was only ten days, the fact that they did not tell her exactly what was wrong with her yard or alley, and there should be a date of when the property was inspected.

Mr. Glynn Bolin said he felt the volunteer program was a good idea, but some common sense was needed. He reminded Mayor Pro-Tem Griggs that it had been nine months and his neighbor still had not removed the junk in his yard.

Mayor Pro-Tem Griggs stated that Mr. McGuire would clarify that letter and look at the tone of the letter.

The meeting recessed at 9:00 p.m. and reconvened at 9:20 p.m.

9. Consider various alternatives for the South Scenic Extension.

Recommendation: Select an alternate route for the South Scenic Extension other than the one shown on the Master Plan.

Mayor Pro-Tem Griggs commented that the Master Plan was a general location for the roadway and he was not sure if the Commission was ready to approve an exact location at this moment.

Mr. McCourt said that South Scenic was part of the Comprehension Plan and the next step was where to place the road specifically. He said more development was taking place on the south end of South Scenic, and they had reached a point where the general guidelines were no longer sufficient because they needed a more specific site where they were going to bring the road through in order to allow people to go forward with their developments.

Mr. McGuire said they were looking at a more specific route for the road because the current routing on the master plan was a vague line in the desert and it was impacting on a potential subdivision and on a home that someone wanted to build. He noted that there were maps in the Commissioner's book, along with three possible alternatives routes going around the water tank. He mentioned that they had met with the citizens at the meeting and had presented alternatives. One of the alternatives was that the City had failed to enforce the master plan in that area for a long time and should not start enforcing it now. A second alternative was to not extend Scenic. A third alternative route was to use the current road right-of-way for Alamo Canyon Road and the water line easement immediately to the west of the right-of-way, and take that road south across the Alamo Canyon arroyo and then proceed west across BLM land to the alignment of the current railroad crossing. He showed that route on the map. Another alternative route was to stop Scenic at its present location and improve Ocotillo/Panorama to Florida, and then utilize South Florida as the collector street. It was felt that since the City already owned the right-of-way in both of those areas, there would be less disturbance and cost.

He said a suggestion had been made for the City to remove the South Scenic extension from the master plan. It was suggested that they improve Ocotillo to Canyon Road, then use the existing right-of-way to go south across the Alamo Canyon arroyo to connect with Florida and

South Scenic at the current location on Hamilton Road. He said that alternative would also assume a narrower right-of-way than the 120 feet proposed, but would fit within a currently established road and would be a less costly alternative. Mr. McGuire commented that Ocotillo was mentioned in the master plan; however, Ocotillo did not have sufficient width for a right-of-way that would carry heavy traffic down that street. He said what they were trying to do was to free up the subdivision that wanted to proceed. He explained that development had now progressed far enough south that they had to make exact decisions where they were going to locate the road. Mr. McGuire said he did not have a particular recommendation for the Commission, but he did believe there were alternatives that would allow the building of the subdivision and the home.

Commissioner Robertson asked if they had come up with figures of what it would cost to change the routes because in one way there would be right-of-way to acquire and on Canyon Road there was no right-of-way. He said there would be bridges that would need to be built because of the canyons. Mr. McGuire stated that they had not figured costs on any of the alternatives. They were looking at solutions and a general approach. Commissioner Robertson said it was premature to decide where to place the road until they had cost figures on the different alternatives.

Commissioner Cole stated that they needed to make a decision for the homeowners so they could start building. Mayor Pro-Tem Griggs said the biggest driving force on this was the potential subdivision. He stated that from what had been presented at the meeting; Mr. Burroughs said he could build his house around the designs.

Commissioner Robertson asked what the problem would be if they left it the way it was and took the road through the subdivision. Mr. McGuire explained how the road would go through and split the properties owned by citizens. He said that was why they had asked the City to look at other alternatives.

Commissioner Ledford asked what criteria they were using to decide which route to take, other than to accommodate the building of the subdivision and the house. He stated that since he had just received the documents, he would not be able to make a decision on which way would be best. He questioned what would keep the same issue from coming up later with another subdivision if they changed the route. He wondered if something could be done in the future whereas the landowners developing a subdivision would know that the City was placing a route in that direction. Mr. McCourt replied that in the past it had been a general designation and now they were asking to become more specific. He said they were looking at routing alternatives to help accomplish long-term traffic needs of the community as it grows. Mr. McGuire stated that his goal was to satisfy the people living out in that area so they would have some idea where the road would be in the future.

Commissioner Ledford asked if they approved this whether they would eliminate the problem in the future. Mr. McCourt replied that they would not. Commissioner Ledford said the reason they had not was because they were cutting through the middle of the property. Mr. McCourt said they had tried to address that problem, but that did not mean someone would not acquire property or want to develop property out in that area that did not accommodate the design. Commissioner Ledford asked if the City could place them on notice so there would not be an issue or problem of buying property and thinking that they might be able to do it. Mr. McCourt stated that in theory, that was supposed to happen because the Comprehensive Plan was in place. He stated that once they had a more detailed plan, they could place people on notice. He said the roads needed to be developed in those areas and they should plan their developments around them.

Mr. Michael Shyne stated that it was a very complex problem and the City needed to know the cost to make decisions. It might need to be broken down into phases of costs. He said the first phase of cost was acquisition of land, the second phase of cost was construction. He said he knew the action that was being discussed, the planning, and the ultimate decisions, would affect the City in 30 to 50 years from now--much more than it affected the City today. He said it was a difficult decision, but they needed to make a decision. Mr. Shyne said he did not believe that this phase of South Scenic would be built for ten years and how the City would fund the construction that was another problem. He stated that the City should first look at the acquisition of the land.

Mr. Shyne said he wanted to set the record straight, so that the Commission could make competent decisions. He stated that the City could do all the notifications that they wanted; however, they had no control whatsoever of where someone wanted to build a home or subdivision unless the City condemned that property. He said that if the City chose that they could do it, but a citizen could actually do a reverse condemnation and force the City. He said the constitution protects people from the government trying to take property without compensation.

He said as soon as the City could fund the acquisition of the route chosen, they would need to acquire the property. He said the next step would be to determine how many pieces of private property would need to be condemned on any one alignment. He said the BLM owned most of the entire route from the end of South Scenic down to Hamilton Road. He said the City should contact the BLM as soon as possible because the acquisition cost was much more economical and it should be pursued quickly. He suggested the City notify them now that they are working on an alignment and get them ready to convey the property to the City once the City comes up with the final alignment. He recommended that the City hire a surveyor and a title company to figure out exactly what the City owned, have the roads surveyed, and then the City could make decisions. He believed that if they would look at Alamo Canyon Road, the City would find that they owned most of the right-of-way through the waterline easement and through the existing road. He said he was researching some items at the courthouse and came across another easement dated 1911 that was granted to the Alamogordo Water Company. He said that was the reason why the City needed a thorough title search of what rights they had there. He urged the City to carefully evaluate the number of private property takings because everyone would cost the City way more and more in legal fees. He encouraged the City to acquire the right-of-way.

Commissioner Cooper asked if it would be to the advantage or disadvantage of the developers to be closer or further away from the road. Mr. Shyne said that was an interesting question because generally the road would benefit the adjacent properties. However, in this case, everyone living out there had moved out there to be away from the traffic.

Mr. Brian Nelson gave a brief history of his forty acre tract of land. He stated that the City could not limit anyone if they were not willing to spend money on land. He felt it wasn't fair for the City to say they wanted to place a road here and then 40 years later the road was still not built, but the City expected them to not build and to donate the land to the City for the right-of-way. He said no matter what the City did, it was going to cost them money because nothing was done for 20 years.

Mr. Roger Sears stated how long they had lived in that area and explained why they had moved up there. He explained that the property owners living on Alamo Canyon Road had paid to have that road paved and it had enhanced their property values. He said a four-lane road through

Alamo Canyon was not feasible and could prove to be expensive. He said they enjoyed the wildlife up there and a four-lane road would ruin it all. He agreed with the suggestion that they improve South Florida because the road was almost wide enough for a four-lane road. He questioned the need for a by-pass around the City on that side and believed the use would be rather limited. He stated that using the base traffic as the reason for a by-pass was not a valid reason.

Mr. Gary Gleason stated that he lived on South Canyon Road and about four or five years ago he attended meetings at Alamogordo High School for the west relief route, and at that point in time, he saw an arch on the east side of the City depicting the relief route that was proposed. He said the west side was built and it does exactly what it was supposed to do. He believed that the one on the east side did not have a use anymore. Mr. Gleason said that in his area there were 26 families, he had personally contacted 24 of them but the other two families were in Canada. He stated that out of those 24 families, 100 percent stated that they did not want the road.

Mr. Randy Burroughs stated that he bought his property out there in 1972; and in 1989, he was going to build a home but didn't because of the City's master plan. He said he decided in 2004 to build out there and now the City has decided they're not sure what they are going to do out there. He stated that he had a concern that with the increased traffic on South Scenic, the railroad crossing at the Highway 54 intersection would soon become a hazardous area with the possibility of traffic backing up onto the railroad and along the highway, if the crossing was occupied by a train.

Mr. Brian Nelson explained that the City had already burdened his property with three easements. Two were waterline easements and other a road easement. He said he had taps on the City water because the City decided to place a waterline through his property without his permission. The City agreed to give water taps to the landowners where they placed the waterline without permission. He believed that his property should not be burdened and he did not believe it was fair for the City to want him to donate 120 feet for the road. His recommendation was for the City to go ahead and approve his subdivision and Mr. Burroughs' home.

Ms. Susan Shyne said she had lived out there for 20 years and she had seen many changes. She stated that she did not have the same views as her husband. Common sense states that it would not work and she wondered why no further work was done when they built the South Scenic extension because since then large homes had been built out there. She said Ocotillo Road was one of the most unsafe road anywhere in the area.

Mayor Pro-Tem Griggs said he was working with the Commission on looping South Florida around. He said the City needed to plan for growth in the areas surrounding the City. He questioned whether they needed a major roadway up there and whether Canyon Road was a big enough road or if it would be a Washington type street. He asked the Commission for any input.

Commissioner Ledford said he was not sure if they needed to build South Scenic. He said he did not know if it was in order to approve the building of the subdivision to go forth and Mr. Burroughs to build on his property, and then take a look at those optional routes and decide whether they would go to South Scenic or abandoned the project. Mr. McCourt stated that it was a long term plan and that particular section of the road was a long term section, it was one of the last sections that was proposed in the comp plan to be completed. He believed the Commission needed to develop the specifics to let the public know what was going on. He said

they adopted those items by ordinances and if the Commission wanted to change it, it should be done by an ordinance as well. He pointed out that Florida was in the comprehensive plan.

Commissioner Robertson made a motion to allow the developers to do the subdivision and the attorney to draw up whatever needs to be for the comprehensive plan to redirect South Scenic extension. Commissioner Cole seconded the motion. There was some discussion on how to word the motion. Mr. McCourt said he was hearing that the Commission wanted the developers to build and he was not hearing that they did not want to forego the road. Commissioner Robertson said he did not want to abandoned the concept; he wanted to leave it in there.

The City Clerk asked for clarification on the motion and it was restated as follows: **Commissioner Robertson made a motion to allow the Alamo Canyon Subdivision to move forward and proceed through the process, and look at routing the road around the subdivision. Commissioner Cole seconded the motion. All voted "aye." Motion carried by a vote of 6-0-0.**

11. Appointments to Boards and Committees.

Alamogordo Disability Council – Four vacancies
Community Development Advisory Committee – One vacancy
Senior Volunteer Programs Advisory Council – One vacancy

Mayor Pro-Tem Griggs appointed Mr. Mark Goffman, Mr. Arthur Wolford, and Mrs. Patricia Madden to the Alamogordo Disability Council. He also appointed Mr. Gaston Sanders to the Community Development Advisory Committee.

UNSCHEDULED COMMUNICATIONS:

A. Commissioner Robertson questioned why the phone in the Courtroom was constantly ringing and asked that staff look into it.

B. Comments by City Manager Pat McCourt:

1. Water report – He was feeling more confident that they would make it through the summer without more drastic controls. Bonito Lake was 12 inches below the spillway.

2. He attended a meeting in Carlsbad of the South Central Mountain RC&D where they were proposing regional water solutions. He encouraged the Commissioners to attend the next meeting which would be held in Alamogordo on July 19th at the Civic Center.

3. He is scheduled to attend a City Manager's Meeting in Albuquerque from June 16th through June 18th, and City Clerk Angie Rahn-Broyles would be in charge during his absence.

C. Comments by Mayor Pro-Tem Griggs:

1. He reminded the Commission of the Special Meeting scheduled for Wednesday, June 9th at 2 p.m. at Fire Station No. 5 for the purpose of discussing the refinancing of the bonds.

Commissioner Cooper made a motion to adjourn into executive session to discuss limited personnel matters. Commissioner Robertson seconded the motion. All voted "aye." Motion carried by a vote of 6-0-0

The meeting adjourned at 10:20 p.m.

“The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of June 8, 2004 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 Rahn-Broyles

City Clerk Angie J. Rahn-Broyles

(SEAL)

(Prepared by Deputy City Clerk Karen H. Groves)

Approved at the City Commission Regular Meeting of June 22, 2004