

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
SEPTEMBER 28, 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 and Roll Call.

The Meeting was called to order at 7:30 p.m. The Invocation was given by Rev. Richard Hicks, and the Pledge of Allegiance was led by Commissioner Marion Ledford.

PRESENTATIONS:

1. Presentation by CMSgt. (ret) Larry Cortright of the Community Task Force.

Mr. Cortright said the Community Action Task Force was a group of volunteers who had gotten together to try and help the City enforce the code of standards for cleanliness, health, and safety within the community. This had come about from a conversation with the head of Code Enforcement and the trouble the employees had with keeping up with all the things which needed to be done, and it was asked if volunteers could be of any assistance. Volunteers were solicited, they met, and were given training about the Codes and how to interpret them. The volunteers were then sent out into various districts to canvass them, and then they reported back to Code Enforcement so the individuals could be identified through mail on the violations which the volunteers had found. They even had one volunteer who had been assigned at Code Enforcement to help with data entry as they were quite overwhelmed. The volunteers had come up with several hundred violations, some severe and others not so severe. After a period of thirty days, the volunteers then went back out and re-inspected. Most of these violations were pretty simple, such as weeds and trash, but they just detracted from our community. Their conclusion was that volunteers were not the answer. They were not empowered to go onto the people's property, and often times the people were smart enough to back the vehicle into their property so that the volunteers could not determine whether it was currently registered. The property was identified, and they had to let Code Enforcement take it from there. Also, as a secondary responsibility within Code Enforcement, trash and cleanup was not necessarily ignored, but fell to the back of the ladder of their responsibility. Their primary responsibility was building enforcement and things of that nature. They'd now come up with a solution they would like the City to consider. Las Cruces had faced the same problem. They requested Alamogordo to consider adopting Las Cruces' solution within our community.

Mr. Cortright introduced Officer Vincent Perez of the Las Cruces Code Enforcement office. Officer Perez said in 1975 Las Cruces started its Codes Department, starting with two officers when the City was about 25,000 to 35,000 in population. Now they were up to 12 officers with a population of 76,000 people. They enforced a varied amount of offenses, including weeds, trash, inoperable vehicles, noxious odors, unlawful connections in the case of water and/or electric connections, unlisted addresses, building permits, building licenses, littering, noise, graffiti, watering, yard sales and their signs, traffic and sidewalk obstructions, the Smoking

Ordinance, and the Lighting Ordinance. Recent additions to their job included looking after ADA parking and making sure the vehicles had the proper stickers. They also, in a limited sense, handled traffic citations such as parking on sidewalks, blocking driveways, unregistered vehicles on the street, etc. Their City Ordinances were petty misdemeanors and carried a fine of up to \$500 or 90 days in jail, except for the traffic offenses which could range anywhere from \$91 to \$161 depending on the offense. They were proactive and went out and generated their calls. They talked to people and sometimes gave citations right on the spot. If necessary, they gave the people a little more time and they let them know they would be back to make sure the offense had been complied with, and if not, they would be issued a citation. So they understood the situation beforehand. The only exception was inoperable vehicles because they had to give the person a certain amount of time to get the vehicle up and running, off the street, or off the private property. They worked very closely with other departments in the City, including Streets, Parks, the Fire Department, and the Traffic Department of the Police Department. They were a conduit for a lot of things that went on in the City. They were even a conduit for the State Environment Department. They may receive a call from someone who claimed to have gotten sick from a restaurant, and they would make a visit to the proprietor of the restaurant and call in the State to do an inspection on the property. They also investigated hazardous spills or even mobile vendors.

Officer Perez said for the 2001-2002 Fiscal Year there were 10 officers, and each officer had his own district which he served. So he got to know the people, and also the condition of the district. That gave him an idea so if anything changed, then he would be able to address it very quickly. For that fiscal year, they had fielded 18,491 offenses. They had a 78 to 82 percent compliance rate. So they did get quite a bit of compliance from the citizens, and that was because most citizens wanted to do what was right. They'd issued 908 citations, which was about 5 percent of the total. For the current fiscal year, they were looking at somewhere between 33,000 and 35,000 offenses that they would be looking into, and they were going to look at upping the compliance ratio. They had 12 officers now and certainly could use four more because of the City growing. They received on-the-job training, but they also went to parts of the Police Academy. So they were trained in recognizing meth labs, defensive tactics, and in other areas in order to serve the citizens of the City of Las Cruces.

Officer Perez said they'd instituted a couple of new programs in their office in recent years, including one called "Teen Chore". That worked with the District Court system, and the juveniles that came through the courts and had community service assigned to them. They were sent to his department, and on the weekends they went out and cleaned up disabled and elderly people's yards. It kept the neighborhoods clean and also took care of a necessary problem that perhaps some of these elderly people were not able to address themselves. They had a graffiti cleanup task force which worked with the adult probation and also with R.S.V.P. The R.S.V.P. workers would take a City vehicle to go out and take snapshots of graffiti, mark the location, and download it into a computer. The adult probationers were then taken out to these locations and were assigned to painting over all of the graffiti. So in a very short time they were able to care for the graffiti in their City, very quickly and without a lot of fuss. They also had a bike rally program which taught the young children bike safety. They were serving a purpose for the community, the community saw them all the time, and they were able to communicate with them, and they received a lot of information from people in their areas just by being a part of these special situations.

Officer Perez said he'd brought along a brochure which they were going to be putting in the utility bills. It was called "Codes Awareness" and outlined some of the things which the citizens might not be aware of. They wanted to educate people so that they would be aware of the

Ordinances when his people went to their door. With the increased population, they could always use more men and women on their crew to care for the increased City business. Whether they got that or not, they were prepared as Codes Officers to serve their citizens to promote the health, safety, economic growth, and development of their community.

Mayor Carroll thanked Officer Perez for taking his own time to meet with us tonight and give some insight as to what was going on in Las Cruces. Were they sworn officers as a part of the Police Department? Officer Perez said yes; however, they did not carry firearms. Mayor Carroll asked if he had any idea what his department's budget was and what percentage of the General Fund budget for Las Cruces that represented? Officer Perez said he did not. Mayor Carroll said that was a question he would ask the City Manager to explore.

Commissioner Ledford asked if Las Cruces had used volunteers in the past, and how did that work? Officer Perez said yes. The R.S.V.P. workers were volunteers and they were seen by the citizens when they went out and took the pictures of the graffiti. Commissioner Ledford clarified that they had the same limitations as our volunteers where they couldn't go onto the private property, and so they reported back to the Codes Division to follow up. Officer Perez said that was correct. Commissioner Ledford said he'd figured up that for 35,000 citations between 12 officers, it came to 14 citations per day on a 200-day year. That was a lot of citations per officer. Officer Perez said not all of those were citations. Some were just communication with the householder, giving them the opportunity to correct the offense. Their Codes were written so that they could give a citation right on the spot, but in some cases they gave the person an amount of time to correct the situation and then followed up by coming back in a specified amount of time to check on whether it had been corrected or not. The person knew that after that period of time they could get a citation, but there were some instances where the property was in such bad condition that it warranted a citation on the spot. Commissioner Ledford said with a 75 percent compliance rate, how did the citizens of Las Cruces look upon them as an agency? Were they well supported by the community, and were they well received? Officer Perez felt they were well received. They were going to get people that were a little upset about how they did things and why they were doing it, and sometimes they were called "Nazi's". But they didn't take it personally, and they just did their job. Whatever things were said against them, there were certainly several people that said things for them. They got that more often, especially when they went out into the community and did the community work for them. When they went out, they took their trailer which had their logo on it, and they'd even had people offer them food or drink because they were in the area.

Commissioner Robertson asked what type of fines were assessed for people who didn't take care of their weeds? Officer Perez said it was up to \$500, and once it got into the court then the Judge would make the determination. Commissioner Robertson asked how the Judges in their courts reacted to these types of citations, as he'd heard some of the Judges kind of frowned on them. Officer Perez said their Judge who they dealt with on a regular basis was very amenable to them. She knew what the officers did for a living and she knew it was necessary, and therefore she worked with them. She was not too far from putting the hammer down on some people by giving them the fine, or even the fine and the time. Commissioner Robertson asked if the funding coming back to the City from these fines was enough to cover the 12 of their salaries, or how did that work? Officer Perez said the fines went back into the General Fund, so they worked off of a budget. Commissioner Robertson asked if the citations that were paid was enough to cover the salaries of the 12 officers? Officer Perez said he was not sure of that as he was not privy to that information. Mayor Carroll said Officer Perez had indicated that they had only written about 900 actual citations, so he would suspect it probably did not cover the cost of the program.

Commissioner Ledford said if someone was cited at \$500 for not cleaning their weeds, did that money go to someone else to go clean the weeds? Officer Perez said if they went to court and the court assessed that \$500 fine and they still didn't want to clean up, his department could re-file on them again. So each day was a new offense. His department did not just go out and clean up the weeds for them. There was also a jail time which could be set of 90 days in jail. So if it got to that point, the Judge would see the pattern and she would take action to put them in jail. Commissioner Ledford asked if there had ever been anyone put in jail for not taking care of weeds? Officer Perez said yes.

Mayor Carroll said we appreciated the volunteers who had signed on and who were helping the City in our efforts. It was not that we didn't understand that there were some areas of the community that could be in better shape. In our case, it was as much a question of the financial resources to do what Las Cruces was doing. At a meeting last week we had increased a position in the Code Enforcement Department. We had broken out the Code Enforcement duties to where now we had people who were specifically assigned to Building Codes and building inspections and some that were strictly Code Enforcement, and we had increased the funding for that department. Maybe we could learn from Las Cruces as to how they were able to do things in a much shorter time frame than what we appeared to be able to do in requiring compliance, whether it was coordination with existing Ordinances or with the Municipal Court. In spite of the shortcomings and the things the volunteers had seen in our community that they felt were in violation of a current Ordinance or were unsightly, the City of Alamogordo through the Keep Alamogordo Beautiful operation had won numerous State and National awards. So it was not like this was not basically a very clean and attractive community. The volunteers didn't necessarily see the overall picture. He was not saying that there wasn't room for improvement, but compared to a lot of other communities, Alamogordo was a very attractive community or we would not be winning the State and National awards we won. Again, we would take the information provided and look in a little closer at what Las Cruces did. Some of what they had concentrated in one department, we had spread over the responsibility of several departments within the City and it may be something we may want to consider consolidating. He would ask the City Manager and department heads to look into what they did at Las Cruces and see if there was something we could learn from them. He appreciated all of the efforts all the volunteers made in helping to improve our community. He hoped they would not lose heart and would continue to work and help us to make Alamogordo a very clean and safe community.

CALL OF THE CONSENT CALENDAR:

2. Minutes of Regular Meeting of September 14, 2004.

Recommendation: Approve the minutes.

4. Consideration of a seven foot (7') rear yard variance for Richard Osborne [Case V-04-0473(A), 2505 Jeane Court].

Recommendation: Approve the seven foot (7') rear yard setback variance with the condition that the patio remain open on three (3) sides and never be enclosed for Case V-04-0473(A).

5. Consideration of a special land use permit for a micro-brewery for Billy Weiman/Wayne Scott. [Case SP-04-0109(A), 1004 N. White Sands Boulevard].

Recommendation: With a finding of "no detriment", approve the special land use permit for Case SP-04-0109(A) for a micro-brewery/brew pub with the following conditions: 1) that the production capacity not exceed 7 BBL per batch, 2) that either a beer and wine license or a dispenser license from the State of New Mexico be maintained with the brew pub operation, and 3) that the brewery by-products be approved by the Public Works Department prior to discharge into the City's sanitary sewer system.

12. Agreements with Otero County for the following:

A) Transportation of Seniors and La Luz Home Delivered Meals.

Recommendation: Approve the Agreements.

B) Library Services.

Recommendation: Approve the Agreement.

C) Retired Senior Volunteer Program.

Recommendation: Approve the Agreement.

13. Resolution No. 2004-43 approving the intent to support a "Green", LEED (Leadership in Energy & Environmental Design) Certified Alamogordo Public Library Building Project.

Recommendation: Approve the Resolution.

17. "Resident Parking Only" Sign for Mrs. Carolyn Louis-Garcia, 708 Delaware Avenue.

Recommendation: Approve the sign.

18. Statement regarding the Executive Session of September 14, 2004.

Recommendation: Approve the statement.

19. Award of Public Works Bid No. 2004-007, 25th Street Water Line Replacement and Street Rehab.

Recommendation: Award to General Hydronics, Inc. in the amount of \$449,771.71, inclusive of NMGRT.

Item Nos. 6, 8, 9, 10, 11, 14, 15, and 16 were removed from the Consent Calendar.

Commissioner Cooper moved to approve Consent Calendar items 2, 4, 5, 12(A), 12(B), 12(C), 13, 17, 18, and 19. Seconded by Commissioner Cole. All voted "aye". The motion carried by a roll call vote of 7-0-0.

PLANNING ITEMS:

3. Consideration of a four foot (4') side yard variance for Richard Boss [Case V-04-0472(A), 405 Sunshine Avenue].

Recommendation: Approve the four foot (4') side yard variance with the condition that the cover never be enclosed and remain open on three (3) sides for Case V-04-0472(A).

Mayor Carroll asked for clarification as to how our potential action on this item might conflict or work with item No. 6, which was an Ordinance pertaining to porches and carports. Mr. McCourt said item No. 6 was an attempt to amend our current Ordinance as to address situations which now required an entire variance procedure prior to being able to put up a carport or a porch within certain setback areas that are laid out in the Zoning Code. That would not preclude an applicant from coming in and still requiring a setback variance. What it did do was to establish some rules under which they would be able to essentially get a Building Permit without going through the entire variance process. This item (No. 3) was a request for a variance from a side yard setback. As staff prepared the common items they would be addressing in item No. 6, one of their major concerns was looking at it from a public safety standpoint and the ability to access around the structures, and creating a clear zone or a "doughnut" around each of the structures. This item (No. 3) would not be allowed without going through a variance process even if the other Ordinance was in place. This would still require a variance procedure and would require it to come forward because it was moving into the side yard setback, and that was an area we were concerned about having items placed within it because it inhibited the ability of fire and police or other emergency responders to get around the building. So this item would still need to be considered with or without Ordinance No. 1218. The proposal under item No. 6 would not allow this item as an exemption from the variance proceedings.

Mr. McCourt said this particular item was protested, and that was why it was not on the Consent Calendar directly. This property was up in Sunrise Heights. There may be some deed restrictions. The Commission did not enforce deed restrictions, as they were covenants between the home owners and became civil matters between them. This was a request for a variance from our side yard setbacks, and had been protested by two of the parties in the neighborhood.

Mayor Carroll asked if there was anyone present to speak either for or against the request for this variance? Mr. Richard Boss said he was the requester of the variance. There was a 14 foot area from the side of his house to the property line. They'd paved it with concrete and parked a 14 foot trailer there with two ATVs on it, and sometimes he parked a 1999 Ford F250 there. The vehicles were there all of the time for the most part. All the vehicles had current licenses on them. They wanted to cover these vehicles and to do that he would need to set five upright poles to support the awning, which would put him within one foot of his neighbor's property line. He'd spoken to the immediate neighbor, and he had no objection to it. As far as the vehicles, they were all operable in accordance with the Ordinances, so he couldn't imagine them interfering in any way with emergency personnel. The carport would be open on three sides.

Commissioner Ledford asked how high the covering was? Mr. Boss said it would be attached to the house at approximately 8 feet, and then would slope downward. Commissioner Ledford asked if the cover would come in front of the property? Mr. Boss said it would just be on that north side, and would not come any further forward than the front fascia on the house.

Commissioner Cole asked which items would be under the carport? Mr. Boss said a 14 foot trailer which carried two ATVs. As far as deed restrictions, he had reviewed them and he could park vehicles in three different garages; they could have a double garage, a triple garage, or a double garage with an awning. Mayor Carroll said restrictive covenants in the deeds were not

an area the City would get involved in. That would be between the Homeowners Association and the individual homeowner.

Mayor Pro-Tem Griggs asked if this structure would be attached in any way to the fence which encircled the back yard? Mr. Boss said no. Mayor Pro-Tem Griggs said one of the requirements was that it be unenclosed on three sides. The back fence was five foot high. It was not attached to the fence, but it would be somewhat enclosed on the back because of that.

Commissioner Cole moved for approval of the four foot (4') side yard variance for Richard Boss. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 7-0-0.

6. Consideration of Ordinance No. 1218 amending Section 29-04-060 of the Code of Ordinances of the City of Alamogordo, New Mexico, relating to porches and carports [Case M-04-0313(A)].

Recommendation: Approve the Ordinance amending Section 29-04-060, of the Code of Ordinances of the City of Alamogordo, New Mexico, in Case M-04-0313(A), relating to porches and carports for first publication.

Mr. McCourt said this was an attempt to amend our Codes to allow what had traditionally been allowed. Currently it required a variance procedure in order to put these carports into the setback areas that were set out in our Zoning Code. What had happened was that traditionally it was a lengthy process. This would still require a Building Permit if the person wished to put in a carport, but now they also had to go through a variance procedure which could be a fairly lengthy process. To the best of anybody's recollection, everyone of these had always been approved. So what staff looked for was if we wanted to set up a section of the Code which would allow the individuals to come in and get a Building Permit and intrude into the front and side yard setbacks and still preserve the access around the structures for public safety purposes. Staff was looking to develop a clear zone around the structures through which emergency personnel could respond to fires, to hostage situations, etc. In writing the Ordinances, we'd attempted to say that in particular with the front and rear yard setbacks, that as long as they did not exceed one-third of the width of the property and that there was a ten foot distance between any structure, that they would be allowed. They would still have to comply with the setback requirements of the zoning district that it was located in or the Building Code, whichever was more restrictive. So the Building Code may in fact prohibit them. A carport located in the front of the structure and consisting of less than one-third of the width of the property, may have a roof line that extended to the front property line. The front property was not the curb, but was normally back off the curb a distance and would not go over the sidewalk. A carport located in the front of a structure greater than one-third of the width shall have the same setback requirements as a solid structure. Therefore, if it was more than one-third of the width they did not get a waiver under this Ordinance. An automatic condition that would automatically be set up was that it not be enclosed on three sides. It must meet the current Building Codes, so they still had to get a Building Permit. Also, staff was concerned that it not create a traffic hazard, and that would be picked up under the Building Codes because they required a site plan and it would be detected at that time.

Mayor Carroll said he saw an awful lot of carports around town. Did we have any number of Building Permits that corresponded to the number of carports that had been constructed over the last year? Mr. McCourt said he did not have the answer to that question. Mayor Carroll said he suspected that most of them had gone up without the benefit of any kind of Building Permit.

Mr. McCourt said they may have, and in some cases we may have put such a burden on being able to do this, that the people may have felt they should circumvent the law. What we were trying to do now was to create a situation where it in fact became easier and we could ensure that the Building Permits were issued. Mayor Carroll thought it might be appropriate within this Ordinance to indicate that even though these restrictions were fairly lenient that a Building Permit was still required to put one of these structures up. He thought that a lot of people and also those that were out selling them, were either under the impression or just disregarding what they felt was a need to get a Building Permit. Either they didn't care or they didn't understand they needed one.

Commissioner Robertson said this was one of his pet projects, and up until three months ago the City did not have a permit for this type of structure. He went through the City Manager and the Building Codes Department, and they came up with a Building Permit for this about three months ago. Up until then there was no Building Permit.

Commissioner Cooper said at one of his previous homes he'd had a carport built. It had to be attached and angled to run five feet from the common line over in order to pass Code at that time. Yet if he'd run it parallel to the house, then he wouldn't have been able to put it up because then he wouldn't come within that five feet from the common line. Mr. McCourt said this didn't allow intrusion into side yards, but it only allowed construction into the front yard and rear yard setback areas. It didn't allow side yard. If you wished something into the side yard, you would still have to go through the variance process.

Mayor Pro-Tem Griggs said this Ordinance talked about a ten foot setback between the carport and any structure. Was that in the adjacent structure of the next door property, could it be structures on the actual property, or was it both properties? Then they talked about the width being less than one-third of the lot size. Lot size was and could be substantially larger than the structure or lot frontage, so it could be that maybe we needed to look at size of the structure versus lot size. For some of the properties in the older part of town, the front of the lot was either right on top of the sidewalk or the sidewalk was on the property. Therefore, it might be best to clarify that and be sure that it didn't overhang any existing sidewalks. In new developments the sidewalks were usually in the street right away, but for the older developments the sidewalks were back from the street. It would be good to clarify that. Also, there were a couple of typos in the Ordinance. Those were the things that concerned him. When they talked about "unenclosed", some of these metal ones had a roof line that came down the side. Perhaps we needed to be better on our definition of unenclosed.

Commissioner Ledford asked if it was possible that the carport could come out to the front of the property line which meant it could border the sidewalk? Mr. McCourt said yes. Commissioner Ledford asked if that would be a hazard for somebody walking or riding down the sidewalk because they could run into a pole? Commissioner Robertson said a car normally sat behind the carport, so it shouldn't hinder it anyway because the car would be sitting there. Commissioner Ledford said it seemed that if a carport was extended to a sidewalk, then it could be a hazard. Commissioner Robertson thought it should be at least 12 inches from the sidewalk. Mr. McCourt said in theory they could go right up to their property line, which could be immediately adjacent to their sidewalk, and in theory somebody could run into that just as in theory they could currently run into a fence that went up to the property line. So that same situation existed now with fencing. Mayor Pro-Tem Griggs said the intention may be that the roof line was the only thing that came to the property line, but it wasn't specifically clear and didn't mean that it couldn't have a support post right there as well. Mr. McCourt said most of them required a support post, but it was still on the people's private property.

Mayor Carroll said he had a question on item (b) and the side yard setback. He thought he understood what we were trying to accomplish, but the way this read it stated, "unless there is a ten foot setback between the carport and any structure". Would not any structure be the house that it was attached to? Mr. McCourt said the carport would not necessarily have to be attached as it could be freestanding. Mayor Carroll said then you couldn't put it on the side because it was within ten foot of the house to the side of you. Mr. McCourt said it couldn't be within ten foot, but it could be sitting there. For example, if you wanted to put a carport in your back yard, we were looking for this clear zone between that and the house so that we could move personnel and equipment around. Mayor Carroll said what this was saying, though, was that you could not put one on the side of your house, period. And that was what we had just issued a variance to allow under item No. 3. Mr. McCourt said a variance could still be issued, just not under this procedure. He suspected the staff recommendation would be not to do it. Mayor Carroll asked if we weren't getting right back to what had prompted this Ordinance—that we never refuse any of them? So why were we setting ourselves up for more variances because we had passed an Ordinance that required a variance. Mr. McCourt suspected that from a staff position, our policy would change and we would be not as receptive to carports in side yards. We did not have a City Ordinance which prohibited people from parking vehicles, putting up swing sets, or trampolines, etc. in side yards. Mayor Carroll said from a practical matter, he would say that the majority of at least the older homes in the City did not have enough side yard setback. Most lots were designed to where you had a five foot yard setback and nothing more than that. Mr. McCourt said his was a new house, and it wouldn't have enough room to put something on the side.

Commissioner Robertson believed the Mayor had something here on this ten foot setback from any structure, because most of the people that wanted these portable carports were wanting to set them up in the driveway up against their house. Mr. McCourt said that was for a rear or front setback, which was okay. Commissioner Robertson said this Ordinance didn't really state that. Mr. McCourt said the Ordinance stated that carports were allowed in either the front or the rear. Commissioner Robertson asked if they had to be ten foot away from the house? Mr. McCourt said no. It was only when they got into the side setback that they had to be ten feet away. City Planner Sharon Few said if they were unattached, then by Building Code they should be ten feet from any other structure. Mr. McCourt said that was a Code question we would have to ask.

Commissioner Moncada said she was having a little bit of a problem on item (b). If you went anywhere in her district, there wouldn't be ten feet to the side. In fact, at her house her carport maybe had five feet at the most. If you tried to put a carport on any of the houses down her block, there was no way they could have ten feet because the houses weren't built like that. What was happening here, was that we weren't going to allow anybody to have a carport, where some of them could have one. Mr. McCourt said this was a permissive Ordinance; it allowed people to do more than they could do now. It didn't take anything away, but allowed people to do more than they could now. You could still get a side carport as you could now, which was to come in under the variance procedure.

Mr. McDaniel thought what the Commission was worried about wasn't exactly the case because if you currently only had five foot yard setbacks in your district, then that meant you couldn't invade that five feet. It didn't make you come in ten feet if the setback for the house was only five. It said you couldn't go farther to the side than the house would be allowed to go unless you were separated from the house, in other words, front or back by ten feet. You could put a garage or a carport smack all the way to the back corner of your lot if you had a big back yard

and it could go over to the side, assuming it was at least ten feet from the house. If you moved it up to where it was right next to the house, then it had to be as far from the side yard as the house was required to be. If that was five feet in your neighborhood, then it was five feet.

Mr. McCourt said many of our homes were on relatively small lots and we didn't have much side yard, but there were certainly homes that were on much larger lots where there was quite a bit of side yard that hadn't been built into. This would not prohibit that as long as there was a setback distance between the house and the structure.

Commissioner Ledford asked if staff was taking the position that they would not allow side yard variances in the future, even though we just did tonight? Mayor Carroll said no, it would have to come to the Commission. Mr. McCourt said it very well may be resisted by staff on the building into these small side yard setbacks. If you had a big side yard setback, what difference did it make because you would still have room to get around it. When Public Safety reviewed this, they would be looking at their ability to respond to emergency situations at the structure. Commissioner Ledford said Public Safety didn't look at issuing Building Permits. Ms. Few said they looked at the variances. Additionally, there was a provision in our Code that protected people in the older section of town with the extremely narrow lots, that provided for lots of record prior to the adoption of the initial Code which was in 1950. It stated that even if the size of the lot was insufficient to provide the setbacks, the single family dwelling could be put on any lot regardless. That would include carports, not necessarily on the side, but on the property.

Mayor Carroll suggested that this be run for first publication. It needed to be run through spell check, and also, he felt there needed to be some language which indicated that Building Permits were required for these types of structures as well as for something which would be attached to the house.

Mayor Pro-Tem Griggs said he was still concerned with the one-third of the lot versus maybe one-third of the structure. Just like on Mr. Boss's house, he was fourteen feet from the lot line with his house. Ms. Few said it was side yard. Mayor Pro-Tem Griggs said nevertheless, we were talking about someone having the ability to build a structure which was one-third the size of your lot width-wise. So if he had a house which was 50 feet wide sitting on a lot that was 80 feet wide, then theoretically he could have a carport that was one-third the width of his lot. He felt like that could give someone a lot of carport in front of their house. Ms. Few said she was not the original author of this Ordinance, but she would guarantee that the reason the lot width was chosen over the structure width was because the lot width was static and was not subject to interpretation at a later date because additions had been put on or such. The lot width wasn't going to change without a full platting procedure. Mayor Pro-Tem Griggs said nevertheless, he felt a vast majority of the time we were dealing with these carports like Commissioner Robertson was talking about for somebody that wanted to put a carport out from in front of their garage or house and not somebody that wanted to go over this way or over that way.

Mr. McDaniel said when he looked at this, he looked at it from a standpoint of the Zoning and Building Codes being designed to maintain an attractive appearance and allow light and air and circulation. If they were to make it one-third of the width of the house, then his own garage would be in violation. He had a two-car garage and the entire width of his house was probably 45 feet and the garage was 20 feet of that. His lot was 70 feet wide, which would allow him a carport the width of his garage. If somebody chose to have a very large lot and build a modest size house, why should they be penalized on the size of the carport they could build just because they built a small house? Mayor Pro-Tem Griggs said because it probably looked inappropriate.

Ms. Few said the minimum-sized lot width for anything other than townhouses and trailer lots was 60 feet. So we were talking a 20 foot width on a carport. Mayor Carroll said that was about the minimum you could have if you had a two-car garage. Mayor Pro-Tem Griggs said that was correct. Ms. Few thought this was looking to be able to get two in and probably coincide with extending out from a garage. Mayor Pro-Tem Griggs said most of the time it would be someone bringing one out from the garage, so maybe the numbers would work just fine.

Commissioner Cole said he had a completely different reading of item No. 3 we'd just approved, and item No. 6. He thought we were trying to define where variances of carports or decks would not have to always come to the City Commission. Mayor Carroll said that was correct. Commissioner Cole said as he was listening, he felt this was not solving that problem. Mayor Carroll said it solved a majority of them where we were talking about front yard carports or rear yard carports. It would not have kept the Boss's application from having to come before the Commission for a variance. With or without this Ordinance, they would have had to come for a variance. Commissioner Cole clarified this was not solving the side yard carport problem. Mayor Carroll said no, because those would be very few and far between. What this ten foot side yard issue would mainly address was rear yard type structures, for either carports or garages in the back yard. If somebody wanted to build a carport on the side of their house between their house and the side yard, they would still have to come for a variance. That was not going to change with or without this Ordinance. Commissioner Cole said we had previously approved a patio extension for a home out at the Golf Course, and how would that case have related to this Ordinance? Mayor Pro-Tem Griggs said that was an extension of the patio roof, and he didn't know if that would be covered under this particular Ordinance. Ms. Few said an open unenclosed porch would be allowed in the front yard. A rear patio had to have the same rear setbacks as the enclosed structure, because most of them over time became enclosed. Because we were having so many variances on people trying to enclose their rear patios and because they hadn't been governed by setback standards before, staff was requested to put in an Ordinance that established that open patios had the same setback requirement in the rear yard as the enclosed structure. We had done that about twenty years ago.

Commissioner Robertson said if the Boss's had left the five foot setback on their property and instead of asking for fourteen feet, they had only asked for thirteen foot, then would they have only had to be issued a Building Permit and could they still put the carport in? Ms. Few said no. They only had fourteen feet, so if they had asked for a nine foot, we could have issued a Building Permit. Commissioner Robertson clarified that as long as they left the five feet, we could have issued a Building Permit and they could have put the carport in. Ms. Few said yes. Commissioner Robertson clarified that if they hadn't had the raise in their sidewalk, they would not have needed the variance because they could have made it narrower. Mayor Carroll said that sidewalk was included in the fourteen feet from the house.

Commissioner Ledford said some subdivisions didn't allow for carports in their restrictive covenants. If we were to issue a permit, did we in our permitting process qualify that in anyway? A citizen might think if the permit was issued, that they were legal when actually they wouldn't be. Ms. Few said under State law we could not enforce their deed restrictions, and we did not keep track of them. Morally we may care, but job-wise we couldn't. We had to issue from our adopted Ordinances. A good example would be a restrictive covenant saying a 30 foot setback had to be observed, and our Ordinance said 25 feet. If they came in with a Building Permit and everything else met Code standards, we had to issue the permit.

Commissioner Robertson moved for approval of Ordinance No. 1218 for first publication. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

The Commission recessed at 8:45 p.m., and reconvened at 8:50 p.m.

7. Consideration of Ordinance No. 1220 for rezoning to District "C" (Multi-family Dwelling) requested by Kenneth Pearce [Case Z-04-0633(A), 1312 N. New York Avenue].

Recommendation: Approve Case Z-04-0633(A) to amend the official zoning map of the City of Alamogordo, to change the zoning of subject property to District "C" with the condition that the zoning be limited to only residential use at a maximum of four (4) attached dwelling units and that all structures on the property comply with the applicable building and fire codes, and to approve the Ordinance on such for final publication.

Mayor Carroll said this was a fairly heavily protested item, but the Commission had received a letter from the Attorney representing the protestant that they had no objection as long as the rezoning was restricted to the four-family utilization.

Mayor Carroll said the request was to rezone it to "C", which would be putting it in an area which was predominantly "B". Could we not just rather than rezone it to "C", instead allow it to continue in its current existing nonconforming use and leave the zoning the way it was? Mr. McCourt said there was some question about grandfathering, and he thought this was an attempt to very clearly clarify the situation. Ms. Few said this use of a four-plex was not documented in the 1950 Ordinance, along with other nonconforming uses that continue to this date in that block. It was not clear exactly when the property was converted to a four-plex, and this was the cleanest method we could find to legitimize the use and bring it into some type of compliance so that the current property owners could sell and the subsequent property owners could enjoy the continued use.

Commissioner Robertson asked what the zoning around it was? Ms. Few said two-family. This area would be prime for going into a multi-family zone. There was a business zone to the west, but the one property owner who protested in the area just didn't want the multi-family in there. Commissioner Robertson asked if there was some commercial businesses in this block? Ms. Few said not in this block. There wasn't anything commercial north of 13th Street.

Commissioner Moncada asked if everything had been brought up to Code since their fire? Ms. Few said she had documentation from Fire Services that all Code requirements had been addressed.

Commissioner Cole moved for approval of the rezoning to District "C" requested by Kenneth Pearce, with the conditions as outlined in the recommendation by staff. Seconded by Commissioner Cooper.

Mayor Carroll asked if there was anyone present to speak either for or against this item? There was no response.

Mayor Carroll called for the vote on the motion. **All voted "aye". The motion carried by a roll call vote of 7-0-0.**

8. Consideration of Ordinance No. 1221 for rezoning to District "E" (Light Industrial) requested by Tool Belt Ltd. [Case Z-04-0634(A), 1600 E. First Street].

Recommendation: Approve Case Z-04-0634(A) to amend the official zoning map of the City of Alamogordo, to change the zoning of subject property to District "E" (Light Industrial) with the condition that the zoning be limited to commercial retail activities and to the manufacture of roof trusses, to amend the comprehensive plan, and to approve the Ordinance on such for final publication.

Mayor Carroll said he'd asked to have this item removed from the Consent Calendar. In visiting with the petitioner, his concern was whether or not there would be any noticeable change in what was being conducted on the current premises if we were to allow this rezoning to occur. The petitioner had indicated that it would not be anything more than something which would be done on the existing premises now. It wouldn't be an addition to the premises out in front of the building or anything like that. So he had no concern at this point over approving the rezoning.

Commissioner Cooper moved to approve the rezoning to District "E" with the conditions as stipulated. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a roll call vote of 7-0-0.

9. Consideration of Ordinance No. 1223 consenting to the annexation of 157.030 acres of land requested by Tool Box, Inc. [Case A-04-0062(A)].

Recommendation: Approve the Ordinance consenting to the annexation of 157.030 acres of land in Section 6, T17S, R10E, NMPM, Case A-04-0062(A), to the City of Alamogordo for first publication.

Mayor Carroll said this was a request for the annexation by the City to work with the property owner to leverage some BLM land into the City. He was assuming that the BLM would have no position on this one way or another. Mr. McCourt said that was correct to the best of his knowledge.

Commissioner Cooper moved to accept consideration of Ordinance No. 1223 consenting to the annexation of 157.030 acres of land requested by Tool Box, Inc., for first publication. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

10. Consideration of the final plat of LA LUZ CROSSROADS SUBDIVISION for twenty-three (23) lots located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, for Donald Burton [Case S-04-0838(A), Gravel Pit at Laborcita Canyon Roads].

Recommendation: Approve the final plat of LA LUZ CROSSROADS SUBDIVISION, Case S-04-0838(A), located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, with variances on the construction and installation of alleys, on the installation of utilities (water and sewer), on the construction of streets to City standards (dedication, curb, gutter, sidewalk, and paving), on the dedication of public land, and from Section 22-01-140(b)(1) relating to drainage plans.

Mayor Carroll said his concern was not so much whether or not a subdivision was put in there, but what impact 23 additional wells may have on the City's well field, and were we in fact just

approving 23 more land owners who were in a position to protest anything that we wanted to do on our wells and our well field. Mr. McCourt said we did have Well No. 5 in this immediate vicinity. Well No. 5 was on our list to be redone in the short term future. He knew of no circumstance where we didn't get protests when we went to do items on our well field, whether it was re-drilling them, replacing wells, etc. We frequently were cited as the cause for wells in that area going dry, so he felt the concern was well based on historical information and what had occurred in that area. We also had Well Nos. 2 and 3 which were a little further south from this location, and a large part of our well field was on the other side of Highway 82. Mayor Carroll clarified this was down gradient from our wells. Mr. McCourt said it was, and it appeared it was in the immediate vicinity of the La Luz Channel. Mayor Carroll said probably the impact of the septic tanks would not be a problem to our wells. Again, his concern was whether we would merely be adding 23 more protestants to a list.

Mayor Carroll asked if we had any mechanism to approve this conditioned on their not protesting anything that we wanted to do with our well once they'd put in their wells? Mr. McDaniel thought if the Commission wanted to avoid having those protests, they needed to disapprove the subdivision. There was space in the Statutes for considering what the water situation was. This particular subdivision bordered the east section line of Section 26. Section 25 which was immediately to the east was part of the State Engineer's critical management area where they were limiting any new domestic wells to half an acre foot instead of three acre feet and where they were not granting any regular well permits non-domestic. From his conversation with the Las Cruces office of the State Engineer this afternoon, there were pending well applications in that particular cell which may actually put that cell to the point of full appropriation to where another non-domestic well could not be drilled. That would mean that all of the water was appropriated, which meant essentially that if domestic wells came in, they were taking water that had already been appropriated by somebody else. So this was a problem. In this particular township and range, Section 26 was the area of the subdivision. The six sections above it were critical management areas, and the section immediately to the east was a critical management area. This was an area which was extremely close, if it was not already fully incorporated, and there were already applications in to appropriate more water there. People had applications pending. If the Commission did approve it, then as soon as those lots were sold off the people could come in as of right and put domestic wells in there. Mayor Carroll said, then, that we were talking about the potential for another 70 acre feet of water depletion from that. Mr. McDaniel said that was correct.

Mayor Pro-Tem Griggs asked if we knew if this particular property had a water right associated with it that was not a domestic water right? Mr. McDaniel said the subdivision application indicated that it was all going to be individual wells. It was not being supplied by the subdivider.

Mayor Carroll asked if there was anyone present to speak for the applicant? Mr. Klad Zimmerle, Otero Land Surveys, said this application was going through full State review. He wished to read a letter from the Office of the State Engineer into the record: "The Office of the State Engineer has reviewed the proposal for the La Luz Crossroads Subdivision pursuant to Otero County regulations. This office has concluded that the developer's water supply plan complies with the regulations. In accordance, a positive opinion is hereby issued."

Mr. Zimmerle clarified that the applicant had received a positive opinion from the State Engineer. In his disclosure statement that went along with the sale of every lot, there was a report from the Otero County Four-Year Water Plan which specifically stated three separate scenarios. They all involved the La Luz Well Field. This was developed by Schumaker, etc. In here they had located the subdivision within the plume that was affected by the La Luz Well

Field. It showed the potential drop to the local water table because of Alamogordo utilizing these well fields. This was all disclosed to the owner. The possible drop to the water table based on Alamogordo taking water was all brought forth to these people. That was the reason for the disclosure. The State Engineer had approved it, and there were several well logs around which showed there was available water in this area. The average depth for water was 275 feet minimum, 420 feet maximum, and average 340 feet. The production in the area was up to 20 gallons per minute per well. There was available water in the Canyon outlet. A lot of this water was going only at a 200 foot depth, and he believed the City's straw was at about 1,000 feet. As Alamogordo increased practicing conservation, this table wasn't going to drop as much. Through the City's conservation and covering of the tanks, they were eliminating a lot of the drop by conservation. This subdivision would limit the size yard that these people could irrigate. Their yard was limited to 2,400 square feet. Most of the lots were in excess of 4 acres; they had lots that were 1.2 acres and lots that were 8 acres. The yards were limited. The water consumption and water preservation was going to be there.

Commissioner Ledford said nothing Mr. Zimmerle said had addressed what Mayor Carroll said, and that was that these people could still file protests. That was what they did no matter what their conservation was. That was the whole point. This Commission was trying to protect the water needs of the City, and if we had a well issue with Well No. 5, that was sure going to cause some problems because we would have to deal with it.

Mayor Pro-Tem Griggs asked if what Mr. Zimmerle was saying was that the State Engineer was leaning toward approving these domestic wells? Mr. Zimmerle said yes. Mayor Carroll asked if he'd issued a permit yet? Mr. Zimmerle said one had been applied for. The State Engineer had been told what the demand would be, and he didn't see a problem with that being accomplished. Mayor Carroll clarified, though, that he had not yet issued a permit. Commissioner Robertson said under the conditions that our Attorney said, the ones applied for may bring the full amount of water allotment for that area. Mr. Zimmerle said Mr. McDaniel had talked to the Las Cruces office, and he and Mr. Burton had gone to the Santa Fe office. Mr. McDaniel said what he was told was these sections right around this land were already fully appropriated in the part of the critical management area. This one, in their opinion, was close and there were applications in. They didn't know without further study if the applications that were in were granted. One of them may be Mr. Zimmerle's application--he wasn't sure. But the Engineer's office didn't know if those were granted whether that would put it to full appropriation and closed off to any regular appropriation. The problem was that when you had, as this subdivision did, a provision for individual domestic wells, they couldn't stop them from poking individual holes in. If they turned it into a critical management area, they could limit them to half an acre foot per hole, as opposed to three acre feet. But right now it was not a critical management area and did not have that official label. The label we had now up in La Luz/Fresnal Canyon where we'd had so much trouble with Mr. Warnock protesting everything we did up there, was that they'd turned it into a critical management area and from now forward anybody who poked a domestic hole in the ground got half an acre foot instead of three. But that still didn't stop them from doing that and taking that half an acre foot. The Legislature had been very remiss in doing anything about over-appropriation by domestic wells. Up until 1997 the County had to get an opinion from the State Engineer as to water, and it had to go under those section numbers. After July 1, 1997, that became optional and he was assuming that Otero County did not require it. The question was, being how the City also had a duty to make sure there was a water supply and being how the City was the entity that got the flack not only for the water it did use but would also get the demands for water service if those wells did go dry, did we want to be as lax as Otero County in saying we weren't going to require. We had the same sort of duties with regard to making sure people had ingress and egress, had water,

had access to utilities, etc. If we wanted, we could certainly use that standard to say they had to have water permitted by the State Engineer and not just rely on the fact that they could just go out and poke a hole in the ground regardless of whether something had been fully appropriated. That was a policy decision for the Commission. It was awful close to our well. Mr. Zimmerle said a mile or so. Commissioner Ledford said it was within the distance of a protest area. Mr. Zimmerle said they would find that pretty much all the way down to Triple T.

Mayor Carroll said we understood that the people there would protest. His concern was whether we were just adding 23 more names to the protest list we had to address by approving 23 more wells in the area where we had a well and where they could be impacted by some potential action that we might take on our existing well. Mr. Zimmerle said these people had been very well advised in the disclosure that this potential was there. Mr. McCourt said, though, that didn't stop them from protesting. It only alerted them that maybe they better make sure they protested. Mr. Zimmerle asked if the City was looking for Waiver of Protest Agreements on this? Mayor Carroll said he would be a little more comfortable if we didn't have the concern that we were just adding more potential protestants to anything we might do out there. Mr. Zimmerle said that would be done in the entire extra-territorial jurisdiction. He really did need to know if this was going to be a precedent. Mayor Carroll said he didn't know; he was just expressing his individual concern. He didn't know what anyone else wanted to do.

Mr. Zimmerle felt they had disclosed to the property owners that the potential was there through research that their water may drop. Protesting was going to happen anyway. There were nine domestic wells in Section 26. Currently the State Engineer allowed a domestic well by permit for three acre feet.

Commissioner Cole said he was reluctant to approve this because of the water situation we were continually facing. He would prefer to not approve this tonight.

Commissioner Robertson said that was his main concern. Right now we had a critical situation on two sides of this, and this one could go into that situation at any time. Our well was only a mile away. His concern was if we put these in and let them start pumping all these domestic wells, our water may go down a lot faster. Mr. Zimmerle said to remember the difference in the depth. The domestic wells were limited to about 250 to 300 feet. Commissioner Robertson said he would be opposed because this was just too close to too many areas that were already having a lot of problem. Mayor Carroll thought the potential impact would be that we would draw down their wells, but then that brought us back to anything that we wanted to do, they were going to protest it.

Mr. Zimmerle said if this item could be tabled until the next meeting, then he would get with the developer and potentially with the staff in the auspices of looking at something that may relieve the protests. Mayor Carroll said that would satisfy his concerns. Mr. Zimmerle said they had the State Engineer's approval. Mr. McCourt said all that meant was that they could go ahead and drill domestic wells. Commissioner Robertson said he would like to see the permits before this was approved.

Mayor Carroll said because the subdivision had 20 or more parcels, any one of which was less than 2 acres, then the State Engineer did have to issue a permit. Mr. Zimmerle stated he had not yet issued any permit, but had indicated that he would. Mayor Carroll asked if the County had a policy that said without that permit they wouldn't approve? The Statutes said they may elect not to. Mr. Zimmerle said no; they had taken the option that if the State Engineer had reviewed it and it met the Ordinance, then it was acceptable. Mayor Carroll clarified that was

whether the State Engineer issued a permit or not. Mr. Zimmerle said that was correct. That was not required, but was done away with as of 1997. That was up until the date of approval of the final County subdivision regulations. Mayor Carroll said the way he was reading this was that on or after that date the State Engineer had to approve it, but in the event that he didn't, the County Commission may still issue the permit.

Mr. McDaniel said the case before July 1, 1997, essentially was that in subdivisions of this type, the subdivider had to provide the water. He had to have a State-permitted well to do it. Then on July 1, 1997, apparently subdividers got enough power in the State Legislature to do away with that and make it optional. The question was if it was still a standard that the City had the power to impose. Mr. Zimmerle said this subdivision would use about 69 acre feet of water, and the State Engineer had reviewed that usage and demand on the system and had determined that it was sufficient in quantity to fulfill the maximum annual water requirement of the subdivision. Mayor Carroll asked if he had issued a permit? Mr. Zimmerle said no, and that wouldn't be done until the first person moved onto the property.

Commissioner Ledford asked how long it took Mr. Zimmerle to get that letter from the State Engineer when he had asked for it? Mr. Zimmerle said he could get one tomorrow. Commissioner Ledford said that was what he thought, so it was a pretty worthless letter. Mr. Zimmerle said the information presented with the disclosure was very detailed, and normally it took about three shots at the State Engineer to get a positive opinion. Commissioner Ledford asked if he could deny this type of request? Mr. Zimmerle said yes and you couldn't drill a domestic well. Mr. McCourt said, though, that the disclosure didn't mean anything and did not provide any protection to the City at all. Mr. Zimmerle said the disclosure was required by State law. Mr. McCourt said, though, that it didn't provide any protection to the City of Alamogordo and our users.

Mayor Carroll said he had voiced his concern, and also with some clarification on the permit. This said that after 1997 you could go to the State Engineer and request a permit, but the County could approve it with or without a permit. His concern was to make sure that the State Engineer in fact issued a permit. Mr. Zimmerle said in the development of a subdivision that was based on wells and septic tanks, the purchaser of the property would apply to the State Engineer for a permit for that lot to dig a well, per lot—three acre feet in this particular area. Mayor Pro-Tem Griggs wasn't sure if there was a distinction between a permit that the State Engineer would give the subdivider or one he would give to individual property owners. Mayor Carroll thought this Statute was talking about a community water system for this subdivision. The way we got around that was we didn't have a community water system, and everybody drilled wells. Again, that was part of the potential problem.

Commissioner Cooper moved to table this item. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

11. Consideration of the final plat of LAS ALTURAS SUBDIVISION for thirty-seven (37) lots located within the City of Alamogordo for Tierra de Suenos, Inc. [Case S-04-0839(A), 2500 and 2600 E. Tenth Street].

Recommendation: Approve the final plat of LAS ALTURAS SUBDIVISION, Case S-04-0839(A), located within the City of Alamogordo, with a variance on the dedication of public land, with a Subdivider's Contract, and with required plat corrections.

Mayor Carroll said he had some concerns with trash collection within the subdivision, and in speaking with the developer, they had indicated that they understood the concern. There was one small cul de sac in the plan, and the developer had indicated that there would be designated areas on either side of that for the poly carts to be set so that the trash collection could proceed. That answered the concern he had.

Commissioner Cooper moved to accept consideration of the final plat of Las Alturas Subdivision for thirty-seven (37) lots located within the City of Alamogordo for Tierra de Suenos, Inc. Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a vote of 7-0-0.

Mayor Carroll felt this subdivision would be a very attractive addition to that area.

ORDINANCES AND RESOLUTIONS:

14. Resolution No. 2004-44 requesting the Department of Finance & Administration, State of New Mexico, approve revised budget figures for certain line items in the City's budget for FY 2004-2005.

Recommendation: Approve the Resolution.

Mr. McCourt said the Commission had received a revised Agenda Report on this. Staff had incorporated the items which were discussed at the Special Meeting of September 23rd into this particular item. The initial Agenda Report had been prepared before that meeting.

Commissioner Moncada asked for clarification on page 5, No. 61 of the Plan. Exactly what entailed that quiet zone for \$30,000? Mr. McCourt said currently the Federal government required zones where now the railroad was required to blow their horn a certain distance before each crossing as they approached it. There were some regulations under consideration with specific physical barriers established where you could get that requirement waived, and therefore, the train could go through town without blowing its whistle. Assuming those regulations became finalized and assuming the City then applied, staff felt we would have to put some of these physical barriers up in order to create this quiet zone within the City. So this amount of money was to purchase those physical barriers that would be required. Commissioner Moncada clarified that it was not for a study. Mr. McCourt said no. The barriers were probably the concrete ones, and what they did was to restrict the car's ability to drive around the end of the barrier. It held them in their lane so when the arms on the crossing were down, they couldn't drive around it. If the regulations were approved, then the train no longer had to blow its whistle as it approached those crossings. Commissioner Moncada thought the blowing of the whistle was a safety issue. Mayor Carroll said this was an option that would still provide safety at the crossing without the necessity of blowing the whistle.

Commissioner Moncada thought the direction on the underpass was that we were not going to include it until we got the feedback from the Railroad on the information we had requested. Mr. McCourt said his understanding was that we were not to proceed with that study until we had received written verification from the Railroad that they would in fact permit us to potentially develop an underpass there. Mayor Carroll said the intent was to encumber the money but not to spend it until such time as we got the letter of confirmation from the Railroad. So if we didn't get the letter, the money didn't get spent. On the quiet zone, the proposed legislation may not happen or could in fact have such conditions that we couldn't meet them. In that case, the money wouldn't be spent either.

Commissioner Cooper moved to approve Resolution No. 2004-44 requesting the Department of Finance & Administration, State of New Mexico, approve revised budget figures for certain line items in the City's budget for FY 2004-2005. Seconded by Commissioner Cole. All voted "aye". The motion carried by a roll call vote of 7-0-0.

15. Resolution No. 2004-45 amending the City of Alamogordo's FY2005-FY2009 Infrastructure Capital Improvement Plan (ICIP).

Recommendation: Approve the Resolution.

Commissioner Robertson said the way he read this item, it seemed that this was going to be pushed up for us actually to do next year. He knew why we brought the three items up and where we were going, but from the way he read it he felt it was a mandatory thing next year for us to do it. Mr. McCourt said in order to submit under the Governor's capital program, the items had to be listed on our ICIP and they had to be listed current. If they were not, then they wouldn't be considered for funding. We did have these items listed, but some were listed in future years in phases. So that had been compressed in. There was no other source of funding for these. Commissioner Robertson asked if it had to be pushed up on the ICIP for next year to get the funding in January? Mr. McCourt said in order to make it through the hurdles on the Governor's capital program, we had to do this.

Commissioner Robertson moved that we accept Resolution No. 2004-45 amending the City of Alamogordo's FY2005-FY2009 Infrastructure Capital Improvement Plan (ICIP). Seconded by Commissioner Cooper. All voted "aye". The motion carried by a roll call vote of 7-0-0.

OTHER BUSINESS:

16. Refund of water charges in the amount of \$ 452.75 to customer for what City Staff has determined to be from a faulty meter [Mr. George Lovering, 2507 Stanford].

Recommendation: Approve the refund.

Commissioner Robertson said it seemed funny to him that we had squabbled over these water bills, but on this one he wanted to know why we were going to do it. We didn't know if the property owner could have left a commode running for the month, or perhaps they could have left a water hose running outside. However, just because the bill went sky-high one month, we were going to pay it for them? Mr. McCourt said when this was detected, staff immediately approached the gentleman concerning it. There was no obvious use of the water on the exterior of the building. As Commissioner Robertson had suggested, there was a possibility that a commode could have been running for an extended period of time. The property owner had indicated that wasn't the case. The City was very stingy with these and we got ourselves crossways with a lot of people. He could recall only one other circumstance where we brought a case like this to the Commission where it appeared to the staff that we had a faulty meter. We had no other explanation on this one. Commissioner Cooper said if the staff had determined it was a faulty meter, then we had to go with that. Commissioner Robertson said they hadn't, though. Mr. McCourt said we were not able to prove it was a faulty meter, but there was just no other explanation. Commissioner Robertson said around here it could rain an inch one day, and by the next day you wouldn't even be able to tell it had rained. Possibly he had left a water hose running, and by the time the City staff got out there, it wouldn't show.

Mr. George Lovering said there was 85,000 gallons of water he was charged for. That was a big commode or a big hose. For the twelve years he'd lived at this residence, he'd done nothing different this month than any other. For whatever reason his bill had gone sky-high and then it dropped right back to where it was. There was no way he used 85,000 gallons of water. His grass was barely alive, his neighbor's grass was dead, and he had no grass in his back yard. Where would 85,000 gallons of water go?

Mayor Carroll asked if he was home during this month? Mr. Lovering said he was.

Commissioner Ledford asked if a faulty meter could be faulty one month, and not the next? Mr. McCourt said the meter was no longer there because it was actually pulled and calibrated. Mr. Lovering said they'd only run 140 gallons of water through it. He'd asked if they could take the meter back to where it was read before up to that point. He felt one of the digits on the outside had flipped when it shouldn't have, because it was a seven and all of a sudden it became an eight. They only ran 140 gallons through it, which he could have done with his hose and put in a 55 gallon barrel. That was doing nothing to try and recreate the problem the meter had. With this amount of water, he could have filled his neighbor's swimming pool six times.

Commissioner Ledford asked if the meter had been replaced? Mr. McCourt said yes. Commissioner Ledford asked if the water level had now gone back down? Mr. Lovering said yes. Mr. McCourt said staff had no way of addressing these without them coming before the Commission. There was no detectable leak which could be determined in this case, so this was the only method staff had to attempt to bring relief in this particular case. Mr. Lovering said he did have a small leak in December, and his bill had jumped up \$8, but he had fixed that.

Commissioner Ledford said typically when we'd had these issues, there were water leaks or whatever and we made the property owner pay it because we knew there was an issue. It wasn't their fault, but they did use the water. In this case, however, we didn't have that issue. There was no evidence that the water was used.

Commissioner Cooper moved that we approve this refund of water charges in the amount of \$452.75 to the customer. Seconded by Commissioner Cole.

Mayor Carroll said in this report, it stated that the billing for the month was \$452.75 for the water use. Were we not charging him for what his normal water use would have been for the month? Finance Director LeeAnn Nichols said we were. This \$452.75 was for the amount over and above his normal bill.

Mayor Carroll called for the vote on the motion. **All voted "aye". The motion carried by a vote of 7-0-0.**

20. Appointments to Boards and Committees.

Airport Advisory Board. Three vacancies.

Mayor Carroll reappointed Mr. Jim Talbert, and appointed Mr. Harry Phillips and Mr. Rick Carrier to fill the vacancies.

Parks and Recreation Board. Three vacancies.

Mayor Carroll said he would hold off on reappointing the nominees as they would be serving their third and fourth terms if reappointed. He would like to get some new members on the Board if possible, and he encouraged any interested applicants to get their application into the City Clerk's Office.

Senior Volunteer Programs Advisory Council. Seven vacancies.

Mayor Carroll reappointed Mrs. L. Marie Wuersching, Mr. Paul Vigneault, Mrs. Judy Allen, Mrs. Ginette Leonhardi, Mrs. Elaine Albertson, and Mrs. Sharon Herrmann.

All remaining vacancies were rescheduled.

UNSCHEDULED COMMUNICATIONS:

A. Comments by Commissioner Cooper regarding a recent Grant received by NMSU-A.

Commissioner Cooper said he was at a press conference at NMSU-A, and they had received a Grant under Title V to the tune of \$4.3 million. They would be building a new building and zeroing in on teaching film making. That was really good news for the City of Alamogordo.

B. Comments by City Manager regarding the water report; the water application at the State Engineer's Office; and an Economic Development Grant for the development of the business park.

Mr. McCourt said regarding the water report, we were running more wells. The Bonito flows had been reduced, and the Air Force was taking their share of the Bonito water at this time. The reservoir levels had dropped considerably but appeared to be stabilizing with the cooler, wet weather. We were getting close to the concerned area, but he did not feel any additional steps were necessary at this time.

Mr. McCourt said he had attended a meeting with the Mayor last week, and they confirmed again with the State Engineer that we could anticipate a decision before the end of October on our application for approximately 25 miles north of town.

Mr. McCourt said we received information yesterday and today that the City will be receiving a Grant for \$350,000 for economic development, for the development of the business park out by the Airport. They were due to come out and make a formal award on October 13th at 9:00 a.m. at the Chamber of Commerce building. It would be nice if the Commission members could attend.

C. Comments by Community Development Director Brian McGuire regarding the sewer project; and the Environmental Impact Statement public meetings.

Mr. McGuire said the large transmission had been completed, as well as the eight inch line down Eighth Street. We were starting to move north up Eddy Drive towards Tenth Street. We were having to collapse the old line as we went along, and then would put the eight inch line in the trench so as not to create two trenches. We would be closing Tenth Street west of the tracks for two weeks starting next week. Progress had slowed down considerably once they'd turned up Eddy Drive because of all the water lines and fiber optic lines in there. They'd hoped to be able to put the new line in the old 21 inch line that was underneath there, but this was an 8 inch line and must maintain a 4 percent grade, and they just couldn't do it. So they would have

to dig it up and collapse the line. When going through this old line, we were running into more existing infrastructure, which slowed the progress down.

Mr. McGuire said on October 5th and 6th, were the two initial Environmental Impact Statement public meetings. The meeting on October 5th would be at 6:00 p.m. at the Estrada Center; and the meeting on October 6th would be at the Senior Center in Tularosa.

Commissioner Cole asked if digging the new trench on Eddy Drive would require this to get into the contingency fund? Mr. McGuire said no. Everything we were doing so far was planned for in the original bid. As a matter of fact, at a couple of places we had planned to grout, we instead were able to get onto the property and dig the line up and collapse it, which was a much cheaper option than pumping slurry down into it and grouting it that way. At this point we had still not touched the contingency fund. As far as the progress on the line, we expected to be getting it up near the area of the Space Hall's project building within three week's time. This new line was staying in the old pathway trench wherever possible so that we didn't have to dig new trenches. Commissioner Robertson asked if they were going back towards Fifth Street? Mr. McGuire said they had to collapse that because of the potential for cavities under the ground. However, we were keeping the pipe under the railroad at Fifth Street open so we could use it in the future as a sleeve for putting water lines or anything through there. When we went under Tenth Street, we would also be putting in a 20 inch sleeve so that we could run recycled water lines and that sort of thing through it. It would be above the sewer line.

D. Additional comments by City Manager regarding a donated fountain at the Zoo; and a dispute regarding the City's swimming pool.

Mr. McCourt said there was a donation of a fountain in the Zoo, and it was now completed. The exhibit wasn't fully completed, but the fountain was.

Mr. McCourt said there was a dispute going on between two different groups that used our swimming pool. Staff was working on resolving that and would be giving the Commission an update shortly.

E. Comments by Mayor Carroll regarding an upcoming visit by Governor Bill Richardson.

Mayor Carroll said Governor Richardson would be visiting Alamogordo on Thursday. He would be at the State Police headquarters from 9:15 to 10:00 a.m. He planned to hold a press conference where he would be explaining some of his DWI initiative legislation which he hoped to get passed in the next Legislative Session.

Commissioner Cooper moved to adjourn. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0. The Meeting was adjourned at 9:55 p.m.

/s/ Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/ Angie J. Rahn-Broyles

City Clerk Angie J. Rahn-Broyles
(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of October 12, 2004.