

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
2:00 P.M., COMMISSION CHAMBERS
WEDNESDAY, APRIL 27, 2005**

**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 2:00 p.m. Commissioner Inez Moncada and Commissioner John Robertson were absent.

1. City Staff will report on what is being proposed in order to comply with the Americans with Disabilities Act (ADA) requirements relating to streets.

Recommendation: The City needs to follow the requirements of the ADA.

Mr. McCourt said the ADA is a Federal law which was enacted in 1990. The purpose was to make sure that all of the citizens in our country had equal access to the facilities offered. This was a very broad law, and the City previously had done many of the things necessary to bring it into compliance. What had really triggered the latest round of concern was in regard to the major funding source which the citizens had approved for us to get to work on our roads. When we reconstructed the streets, it triggered the requirements under the ADA. That basically meant that we needed to make the facilities ADA compliant, and sidewalks were considered part of the facilities. Pursuant to a lawsuit filed by Old Sacramento, California, a Court Order was issued which forced that municipality to comply with a timeline for meeting compliance on a project, and also, that sidewalks were considered part of the required facilities to be made ADA compliant. Basically, the Federal government enacted requirements that had to be put into effect, but did not give municipalities any money to go along with it. Under City Statutes, individual property owners were responsible for both construction and maintenance of the sidewalks in front of their property. Where staff felt this mandate would unfairly burden certain individuals was on corner lots because of the required curb cuts. Therefore, staff felt that those types of costs should not be placed on the individual property owners, but rather spread out over the entire community. Therefore, that cost had been included in our project updates. Also, there were many driveways which had a six inch drop from the back of the sidewalk to the front where it abutted to the street and curb, and it created a fairly steep cross-slope. Rather than place that cost on the individual property owner, we were recommending that cost be borne by the general population when we did the street improvements. An alley was the property of the City, so when there was a required alley cut, we took care of the cost on that. This had increased the costs to the paving projects considerably from our original estimates. Initially we hoped to be able to totally retrofit the streets, but given the large number of driveways on a lot of these streets, it had driven the costs up substantially. Staff felt they had arrived at a solution which continued our path in improving the community and making it more accessible for all citizens. Essentially that involved the whole community taking care of the curb cuts and driveway cuts, as he had just discussed, and the individual property owners were responsible for the sidewalk in front of their property. The other portion of what we were doing, was rather

than completing the whole project, we were creating corridors throughout the community. All of the corners were being done so that there was always the ability to move from one side of the street to the other, but we were building corridors down one side of the street so that it was accessible and usable. He had received a question from Mayor Carroll on whether we were being consistent on which side of the street we were building the corridors on, and the answer was no because we hadn't thought about that. That was an excellent point and one we should build into our planning process so that we were consistently working on the same side of the road. What would occur when we came back around to reconstruct these roads, which would admittedly be quite a period of time, was that we would then complete the other side of the street under the same policy.

Community Development Director Brian McGuire and Project Manager Edward Balderrama gave an example of a cost estimate from the latest project bids. Mr. Balderrama said driveway ramps were running about \$93 per square yard, and the average ramp was about 16 square yards. So it was approximately \$1,600 for each corner ramp. Mr. McGuire said even with us going down just one corridor, about 30 to 40 percent of the cost of the project was tied to these improvements. That just lessened the amount of pavement coverage we would be able to do. To be clear, in the future we would only engineer a corridor on one side of the project. Commissioner Ledford said we had laid out a plan of what streets we were going to do when. Had that plan changed? Mr. McCourt said we had successfully incorporated the two main streets into the first phase, and were able to get all of the local streets we had planned into the second phase. He and Public Works Director Jose Miramontes had looked at the next round which again had to do with major streets. We would not have enough money and had removed Airport Road and 24th Street from White Sands to Florida. The remainder of the streets would still get accomplished in that round.

Mayor Carroll asked if it was safe to assume that we weren't issuing any Building Permits or subdivision plans that didn't require the curb cuts, sidewalks, and everything else to be totally ADA compliant. Mr. McGuire said that was correct. Staff had just met with the Builders Association recently, and they had agreed that in the future they would put in the curb cuts on the corners. That would be part of the subdivision costs, and that cost would not go to the homeowner who purchased a corner lot. Mayor Carroll said hopefully we weren't just asking them to cooperate, but were mandating when they were put in that it would be done that way. Mr. McGuire said they were informed that it would be a requirement, and they had all agreed that it was reasonable.

Mayor Carroll said since we now had a long term funding source for street work and we knew these requirements were going to be there and that we were going to be doing street work as far into the future as anyone could see, would it be more cost effective to continue to bid out curb cuts and driveways and alleyways on each individual project or would it be more beneficial to obtain the capability of doing that work in-house over time? Mr. Miramontes said at this stage we were not staffed to do that. We did have a concrete crew who was kept pretty busy with the routine stuff. Mayor Carroll said he was talking about staffing a different crew that was totally devoted to working ahead of all of the street projects that needed to be done, doing curb cuts, alleyway cuts, and driveway ramps. Mr. Miramontes said he would personally be against that and would recommend that it be contracted out. He felt it was probably a toss-up cost wise, and the flexibility a contractor brought to a job was much better than doing it in-house. Mayor Carroll said if the costs were comparable, then it was better to have it in the private sector.

Commissioner Ledford asked what other communities in New Mexico were doing. Mr. Miramontes said they were all faced with the very same things because it was a Federal law

that affected all of us. Commissioner Ledford said doing a major improvement like Cutler from curb to curb on a street benefited everybody. Was it the fact that it was a major improvement that required us to become ADA compliant? Mr. McGuire said yes. We had received a letter from the Justice Department advising us that the Cutler improvements were considered major improvements and would require ADA compliancy. Commissioner Ledford said what bothered him was that we had an election on this bond money, and these ADA costs were not a part of the election discussion. He felt that seemed really unfair to the public, but did agree with the City Manager and would rather see the public at large bare these costs rather than individuals. Mr. McGuire reiterated that the cost of concrete and doing the ramps was about 30 plus percent of the total project cost. He had asked both of the engineering firms that did work for us if they were doing this in other communities, and they had said yes. Commissioner Ledford asked if we had evaluated other forms of street repair besides the Cutler process. Mr. McCourt said yes, and one of the changes in the next phase for local streets was some seal coat type of work being done. That kept down the costs and at this time we wouldn't be required to go in and do the ADA work. Of course, someday we would have to do the major improvements on them. Mayor Carroll said we could chip seal, but the public and the Commission were not too overjoyed with that process. Mr. McCourt said although it did slow the process of deterioration, at some point in time we would still have to go in and do a major reconstruction. Commissioner Ledford said the purpose of this election was a goal to try to get to the end to where we would have some good streets in this community. The original plan required a lot of years to achieve that, so for sure now we probably couldn't even predict when we would meet that goal. What did we tell a citizen who voted for this on when their street would get done? He had the original list before these costs were included, but were we going to come up with a real long term plan to cover all of these streets? Mr. McCourt said we would get all of the streets done. Forgetting the ADA for a minute, just the cost of concrete, oil, steel, and other materials had been going up tremendously, as well as labor costs too. If we put the projections out for ten years' worth of work on specific streets and if the costs rose faster than the income levels rose, in just a couple years it could set us back on our plan. We did have a long term priority list, but were trying not to get too far out in front of us. Also, there were other types of pavement treatments which we hadn't been doing, such as sand seals, crack seals, and chip seals. Those were very good types of preventive maintenance steps, were much cheaper than what we had been doing, and they would extend the life of a road considerably. We were going to have to start taking some of this money to keep those in shape. We needed to build a preventive maintenance program which was not just Cutler and overlay methods, but which also incorporated these other types of surface maintenance programs. That would upset people who saw a fairly decent street receiving surface maintenance when their street was falling apart. But that was the only way we were going to catch up and stay caught up.

Mr. McGuire reiterated that when a new home was built, the homeowner was required to install the sidewalks before the City issued their Certificate of Occupancy. Mayor Carroll pointed out that in our Subdivision Ordinances it stated that when a particular block was occupied by a certain percentage, that the developer was required to put in the rest of the sidewalk. Mr. McGuire said when installing alley ramps and our own sidewalks, the City was putting in rolled curbs so as to minimize the amount of work being done there and the slopes coming in. Mayor Carroll said that also had an impact on drainage since we used the streets as major drainage now. Mr. McGuire said staff felt the curbs would still carry the drainage. Mr. McCourt said we had also been putting in requests with our Legislators to help us on the corridor process, and of course we had received some funding. We were very conscious of trying to get our community more accessible and in building pathways, especially to get to major locations and facilities within our community. Mayor Carroll said there were a number of curb cuts which had been put

in during the past. Of course the Code kept changing, so some of those may need to be torn out and redone.

Commissioner Ledford asked how we were going to make sure that the homeowners built their sections of sidewalk and how would the financing work? Mr. McCourt said we notified the property owners that they needed to do the upgrades, and they were then permitted to arrange their own financing. Mr. McGuire said the letters he sent out gave them six months to comply, and our Ordinance stated that if they did not comply that the City would go in and do it under contract and then lien the property. The letter included the required standards and specifications, as well as a copy of the Ordinance which covered the process we would follow if they failed to do the upgrades. Commissioner Ledford asked how we handled it—did we send them a list of contractors? Mr. McGuire said we, as a City, could not tell property owners who to contract with. We did inform them, however, that they could also do the work themselves. Commissioner Ledford said he was concerned that someone would have six months to do this, and we would call them a week before it was due, and they still would not have it done. Mr. Miramontes said he saw a real problem with timing. The Ordinance provided that the burden for sidewalk repair and replacement was solely on the property owner. However, the curb, gutter, and sidewalk really needed to all be poured at the same time because they really did go hand in hand. When the property owners delayed making the sidewalk repairs, it caused a problem. Mayor Carroll felt a potential solution would be giving enough prior notice that this needed to be done. They would be notified that they had a certain timeframe to do the work themselves, but if it was not completed by a certain date, then the City would incorporate it into the overall project and bill the property owner. Mr. Miramontes said that was when the property owners would turn to their Commissioners, and that was why the Commissioners needed to be really informed on this. Commissioner Ledford asked how a lien would get paid if the property owner didn't take care of this billing. Mayor Carroll said when the property changed hands. Commissioner Ledford asked how much money we were going to be out because we had a bunch of liens out there. Mayor Carroll said another thing we could do was to put it on their water bill on a monthly basis.

Commissioner Cooper said people were required to replace or repair their sidewalks, but that did not come under the mandate from the Federal government—that was us and it was our policy. Mr. Miramontes said it was, but for whatever reasons in the past, it had not been enforced. It was especially evident in the older neighborhoods.

Mayor Pro-Tem Griggs felt staff needed to look at the policy, even if it took some Ordinance changes to address it. He realized that we did need to provide for everyone in the community, but these ADA upgrades were doggone expensive. If about 30 to 40 percent of the project was for us to fix driveways and curb cuts, it was very expensive and our community needed to know that. We needed to get that information out to the public. We were even pulling Airport Road out of the plan, which he found interesting because Airport Road was in his District and this was the first time he'd heard about it. Commissioner Ledford said 24th Street was in his District. Mayor Pro-Tem Griggs said those were the decisions somebody was having to make because of the exorbitant cost of coming into compliance. He didn't know if there was an answer other than what we were looking at. This was a big deal and the thing he felt was so important was that the community and City of Alamogordo knew that this was what we were having to do—that we were unable potentially to advance our street program as rapidly as we would like to because we had these other issues which we had to incorporate into our street program.

Mayor Carroll said the prep work and the actual projects were far enough down the road that we ought to be able to have plenty of time to notify the individual property owners that were going to

be potentially impacted, so that everyone had plenty of time. If they were willing to do the upgrades on their own, that was fine. However, we could not delay a project or have one that once finished would still have unfinished sidewalks in it because a property owner either chose not to do it or did not have the financial resources at the time to do it. We may wind up on some having to up front it, whether we did it through a property tax lien or putting it on a water bill. Perhaps we could even do a City-wide assessment district to cover it and there would be assessments for property owners whose property was affected. Mr. Miramontes said a lot of this concrete work required for these projects required engineering. We were going to need considerable lead time to prepare the engineering for these projects so that we could determine what needed to be done, and then inform the public.

Mayor Pro-Tem Griggs asked if it wouldn't be better if we just did this as part of the contract instead of trying to get someone to fix the sidewalk beforehand. Mr. McCourt said we could install it as a part of the cost of the project. However, when we bought our houses, we paid the cost of having a sidewalk installed in front of our house. Now we were looking at other people's property, and they hadn't paid that cost. Mayor Pro-Tem Griggs said he wasn't saying that we pay for it, but that we do the work and recover the cost in some manner. Mayor Carroll said the object was to get the job done and have the property owner do it in a timely manner. If they were not able or willing to do that, there needed to be a provision where we could go in and do it as part of the project and find some way to recover the costs. Mr. McCourt said that meant, though, that we up fronted the money and didn't get it recovered until a later date. In this latest project we just let, it was over \$200,000 more in costs that would have been incurred, and we would not have had enough money to do the streets we'd promised. Mayor Carroll said but where were we if they didn't do it? Now we had a project we'd put a half million or a million dollars into, and it still was not ADA compliant. How did we address that? Mr. McCourt said we were going to have to go back and do enforcement. Commissioner Cooper asked if we spelled out the specifications when we sent these letters out to the people. Mr. McGuire said yes. We attached the technical specs from the City's standards regarding sidewalks. As we walked through the projects during the engineering phase, staff also made of point of talking to as many homeowners as we could to let them know what would be coming.

Mayor Carroll felt at this point we needed staff to come back with a proposal on what Ordinances we needed to do or how we should have a policy which dictated how we would get the property owner's responsibility accomplished as part of the project. Commissioner Ledford wanted to know how we were going to communicate this to the people. He wasn't talking about just sending it out in the quarterly newsletter. We needed to send it out on the water bills, as well as any other means we could.

Commissioner Ledford asked what the approximate cost would be to a resident who had to put in a sidewalk to make it ADA compliant. Mr. Balderrama said the City paid approximately \$75 per square yard. Commissioner Ledford said he knew a lot of people wouldn't have the money to pay for this, so the City was going to have to front the money. Mr. McGuire said a five foot wide sidewalk about 50 feet long would run approximately \$1,500. Many times the City's costs varied so much because some driveways were much larger than others.

Mayor Carroll said if we got into requiring people to install or repair sidewalks, he could envision a block or two that came to the City and said they didn't want their street done—that they just couldn't afford it so leave their street alone. Those may be the streets that we wound up chip-sealing.

Mr. McCourt reconfirmed that the broad policy as we had discussed tonight was okay with the Commission. What they were asking of staff was to make sure we had developed some more specifics on how people would be notified, how we were going to make sure we got compliance, how we would fund it if the City had to fulfill the compliance, and how we would recover the funds for those costs. Also, the general public would be taking care of the curb cuts on the corners and the driveways. Mr. McGuire said he would get the Commission a copy of the letter staff was currently using. He was understanding that the Commission wished them to also spell out property owner options for getting the sidewalks repaired in that letter. Mr. McCourt said he understood this was a difficult process and we would like to move forward more rapidly. Eventually our community would be much more accessible and usable by all of the citizens. Mayor Carroll said if nothing else, it may make people a little more aware that the people they sent to Santa Fe and Washington did impact our lives. The ADA was probably a very much needed and well meant program, but like a lot of Federal projects, it had in some areas just kind of spun out of control with the unfunded mandates. Mr. McCourt said, of course, this was not a unique area in that we had unfunded mandates in many areas which we had to deal with.

The Meeting was adjourned at 3:05 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Angie Rahn-Broyles

City Clerk Angie J. Rahn-Broyles
(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of May 24, 2005.