

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
MAY 24, 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 7:30 p.m. The Invocation was given by Rev. Rick Steele, and the Pledge of Allegiance was led by Assistant City Manager Matt McNeile.

PUBLIC HEARINGS:

1. Public Hearing to consider a special permit for a temporary structure for Alamo Motorsport, Inc. [Case SP-05-0110(A), 801 S. White Sands Boulevard].

Recommendation: Approve the special permit for Case SP-05-0110(A) to allow the placement of a temporary structure (tent) at 801 S. White Sands Boulevard from June 20 through July 6, 2005, with the finding that it will not be detrimental to surrounding properties.

Mayor Carroll said the purpose behind the tent was to allow them to sell fireworks.

Commissioner Cole moved for approval (to approve the special permit for Case SP-05-0110(A) to allow the placement of a temporary structure (tent) at 801 S. White Sands Boulevard from June 20 through July 6, 2005, with the finding that it will not be detrimental to surrounding properties). Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 7-0-0.

2. Public Hearing to consider a special permit for a temporary structure for Venus Canova, Ltd. (dba Lowe's Supermarket) [Case SP-05-0111(A), 675 E. Tenth Street].

Recommendation: Approve the special permit for Case SP-05-0111(A) to allow the placement of a temporary structure (tent) at 675 E. Tenth Street from June 20 through July 6, 2004, with the finding that it will not be detrimental to surrounding properties.

Mayor Carroll said again this was an application to allow them to sell fireworks. We had received some protests on this request. There was one listed in the packet, and two additional protests received as well.

Commissioner Cooper moved to accept their request to sell fireworks as well. The motion died for lack of a second.

Jimmy Navarrez, Phantom Fireworks, said last year they had run two locations in Alamogordo, and one of them located on White Sands Boulevard was now occupied by a used car dealership. That was the purpose for moving this location to the Lowe's Supermarket. He

understood the petitioners were concerned with safety, and that was why they only carried the safer fireworks, and not the aerials and ground audibles which were sold outside the City limits. Also, they had paid over \$10,000 to employees over the last three years, and over \$3,000 in taxes. That was not a significant amount, but they were trying to keep the other fireworks from coming into the City. They no longer ran their own stands in the County since they did get permission for the two locations last year.

Commissioner Robertson said the only problem he had was that this would be sitting right next to a gas station. He knew they weren't supposed to be selling the fireworks that only went so high in the air, but it seemed that around his house every person had something that would go 200 feet in the air. You only had to be 15 feet away from a gas station, and he was concerned that somebody would set some of those high flying suckers off into the gas station. Mr. Navarrez said the requirements were 50 feet from a gas station, and the requirements to light them were 150 feet away from their stand. So people technically or legally couldn't light them within 150 feet of their stand. If they weren't located there, they could go and light it on the parking lot 50 feet away from the gas station. So by them being there, they required patrons to be further away, by law, than if they weren't located there. Commissioner Robertson said, however, those bottle rockets and those sorts of things flew a lot further than 150 feet, so he would definitely be opposed on this one. Mr. Navarrez said that was exactly why they didn't sell any of those kinds of items. Mayor Carroll said the Fire Chief did visit with the Manager at Lowe's and agreed that the northwest corner of the parking lot would be the best place for the sales tent.

City Planner Sharon Few said there had been an agreement for it to be moved. The issue tonight was not the sale of the fireworks tonight, but of the tent. The fireworks sale was a separate approval process which would come to the Commission at the next meeting. Mayor Carroll asked if the sale of the fireworks permit also came to us? Ms. Few said this was for the tent only. She did not handle the fireworks sale. That was through the Clerk's office, and by approving the tent it did not necessarily approve the fireworks. Mayor Carroll said he was not clear then whether or not the permit to allow the sale of fireworks was something which came before the Commission also, or whether that was something which the Clerk could in fact issue. Commissioner Robertson asked if we had just approved the tent under item No. 1, and not the fireworks also? Ms. Few said yes.

Mayor Pro-Tem Griggs said in the past anytime we approved it, it seemed like that was it and he did not remember it ever coming back to us. Ms. Few said this was a permit for the tent only.

Commissioner Cole said one of the protests was from a local organization which he felt the Commission should try to support, and that was why he could not support this item tonight. He did not realize that it was just the tent structure, but was not for the approval of the fireworks. Mayor Carroll said he was unclear on this, and he was sure the Deputy City Clerks had not had this come up before, unless the Attorney could clarify it. Mr. McDaniel said he couldn't tell them off the top of his head. Personnel Manager Betsy Keller said it was an internal approval. Mayor Carroll clarified that it was not something which normally came before the City Commission then.

Commissioner Cooper said he was basing his motion on the temporary structure of the tent. He also felt that DPS had pretty much said this was well within their realm of expertise so that the sale would not be detrimental to the area. DPS Capt. Jim Bird said they did have some concern with it and had spoken with the vendor and Lowe's, and they had agreed to move it closer to Indiana and Eleventh Street, across from the State Police building. That in effect increased the

distance from when they had it on the Tenth Street side of the parking lot. Mayor Carroll asked if there was still a concern, though, even at that location on the lot? Capt. Bird said no because no one was allowed to even light any fireworks within 150 feet of a place where they were sold, so that would put them well outside the area. They'd have to go across Tenth Street or down towards New York, or somewhere quite a distance away. Mayor Carroll clarified that if they were selling them inside the store, then we would not even be having this discussion. Ms. Few said if they were selling them inside, we would not be having the discussion. If Lowe's was selling them outside in a tent, we wouldn't be having it either. It was because it was in a tent from a third party vendor. If Lowe's was conducting the sale themselves, it could have been done administratively and it would not be before the Commission. The tent was the whole issue. Capt. Bird clarified that St. John's Church was the ones who had submitted the protest about the fireworks being too close to the gas station.

Mayor Pro-Tem Griggs said these guys had done their job and had looked at the danger which may be associated with the fireworks in relation to the gas station, and he tended to believe that was probably pretty well taken care of. However, the gas station located on that lot was pretty doggone busy. When you added this in there as well, it would probably create even more traffic there. His concern was that it would create an opportunity for minor fender benders or whatever because they happened nearly everyday at the gas station already. He was concerned about it from that angle, and that was the one which kind of bothered him.

Mayor Carroll said we had a motion and unless there was a second, there would be no action and the temporary structure permit would not be granted.

Again, the motion died for lack of a second.

CALL OF THE CONSENT CALENDAR:

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

3. Minutes of Special Meeting of April 27, 2005; Special Budget Meetings of May 2, 3, 4, and 5, 2005; and Regular Meeting of May 10, 2005.

Recommendation: Approve the minutes.

5. Consideration of the final plat of NORTHGATE CENTER SUBDIVISION for five (5) lots located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, for Norma Bryant [Case S-05-0874(A), U.S. Highway 82].

Recommendation: Approve the final plat of NORTHGATE CENTER SUBDIVISION, Case S-05-0874(A), located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, with variances (on alleys, on public land dedication, drainage plans with the building permit, and on the construction of utilities to City standards).

7. Joint Powers Agreement with Otero County for ambulance operations.

Recommendation: Approve the Agreement.

12. Special Permit for the Yucca Council of the White Sands District of the Boy Scouts of America to discharge BB guns and perform archery during the Cub Scout Day Camp at the New Mexico School for the Blind and Visually Impaired from June 6 through 10, 2005.

Recommendation: Approve the Special Permit.

Item Nos. 6, 8, and 11 were removed from the Consent Calendar.

Commissioner Cooper moved to approve items 3, 5, 7, and 12 on the Consent Calendar. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

PLANNING ITEMS:

4. Consideration of Ordinance No. 1241 for rezoning to District "R-3" (Two Family Dwelling) requested by Billy D. Wade [Case Z-05-0642(A), 1902 N. Florida Avenue].

Recommendation: As the request will constitute spot zoning and will not conform to the adopted Master Plan, deny Case Z-05-0642(A) to amend the official zoning map of the City of Alamogordo and to change the zoning of subject property to District "R-3".

Mayor Carroll said this item came before Planning and Zoning and they had a split vote of 2-2 on a motion to deny.

Mr. Jerry Mooney was present to represent Mr. Billy D. Wade. They had requested this special spot zoning on this property to make best utilization of the property. There was an addition to 1902 Florida which was done in 1995. The addition converted a workshop to a two bedroom/one bath mother-in-law dwelling. It was done with some permit. The permit called for hanging cabinets and doing certain other work like replastering, stuccoing, etc. In 1999 additional permits were issued to run gas lines and add a gas meter. That was approved and it was inspected. Also, to run electric meters, which was also done and inspected. Mr. Wade bought this property in 2003. When it was discovered it was zoned for single family, they set out to do what they thought would correct the zoning. In defense of this, when they were at the Planning and Zoning meeting, several issues were brought up, and one was that the R-1 zoning was done to limit the access of traffic onto Florida because it was very narrow from Fifteen Street up to Indian Wells. That being the case, he could accept it. However, there were currently four additional duplex units located within a quarter mile. The addresses of those units were 1803 A and B, 1801 A and B, 1702 A and B, and also 1812 and 1812 ½. These were all multiple family dwellings right there on Florida, three being duplex units and one being a conversion. Additionally, directly across the street sort of catty cornered of Florida and Lovers Lane was a daycare center. To his best estimate, that day care center took care of about 30 to 40 children. There were ten vehicles parked there in the vacant lot next door that either accessed off of Florida or off of the alleys that came in from the west side. What they were trying to do was to bring Mr. Wade's property into compliance so that it was not being used illegally and so that they could meet the criteria. So they were asking for this spot rezoning. He understood that there may not be provisions for this, but he would ask the City's help in trying to figure this thing out.

Mayor Carroll said while it was true that we were not anxious to have a lot of curb cuts on Florida because of the traffic, that area was not zoned single family residential because of that.

That area had been single family residential for a long, long time. Florida was redone approximately twenty years ago and the off street parking was eliminated. At the time the building was modified, was it also added onto? Mr. Mooney said no. The permit did not indicate that there was any addition, but that it was the conversion of an existing structure. The conversion called for replaster, stucco, fur-out walls and cabinets, and that was done by permit. The next permits were to run gas lines and for electric approval. Gas lines required City approval, and that was done in 1999.

Ms. Few said a point of clarification was that the permit in question which was issued in 1995 was for a residential remodel, not a change of occupancy or a conversion. No inspections were ever called for in 1995. The property was not inspected. Not only did we not know if the work was done to City Code, we didn't know what was done. On the permit it noted furring out walls, plastering, and hanging of cabinets. Those were the only things that were noted on the permit in 1995 for this property. There was a 1999 plumbing mechanical permit that did receive an inspection for a mercury test, but no inspections by the City. A re-roof of a residence in 2001, and again no inspections were called for. There was no detail that this was going to be done on anything other than the main structure. Additionally, City utilities listed only one residential unit on this property. Therefore, since the conversion occurred, they had been operating without benefit of paying the City the extra fee for the second unit. It was not an issue of the number of meters, but was the number of services and there should be a second solid waste fee charged every month and paid to the City for that unit. Currently the Code Enforcement department was automated. Although we'd always had the system of only a one-year permit being issued, the system that was on the computer now automatically brought up any permit which was coming up on the year anniversary of the issuance date which hadn't been closed out and finalized. At that time a report would be issued by the computer, printed out by the department, and a physical inspection of the site would be done by the Code members to determine what, if anything, had been done, whether it was in compliance, and whether the permit should be closed out, removed, continued, or notices posted on it. Community Development Director Brian McGuire said it appeared that the person who actually converted it did not do full disclosure to Mr. Wade, and he may have civil issues over that. Staff's view was that this was so blatant that we could not support it.

Commissioner Ledford said if you had gas and electric in your house and you wanted to put both of those in your garage or shop, could you do that and still be single family? Ms. Few said yes. Commissioner Ledford said that didn't make a zoning change requirement. Were the properties that Mr. Mooney had listed as duplexes all under R-1 zoning? Ms. Few said there were four between Catalina and Lovers Lane on the east side of Florida Avenue, and they had been in place and in use for over 25 years. Commissioner Ledford clarified those were not given spot zoning issuance. Ms. Few said neither the 1997 nor the current Master Plan were adopted, nor was the Traffic Plan. The daycare center was operating in an R-4, but that was a nonprofit corporation which could legally operate at that location. Commissioner Ledford asked if they could have family members live in the back living quarters, but they just could not rent it out to another separate family? Ms. Few said actually it should not be used as any type of living quarters because even the setbacks for an accessory building were different for a non-habituated accessory building than they were for a residential unit. The setbacks on this did not comply with anything. Many homes may have a room such as an office that they may occasionally convert for the night so someone could sleep in it, but we did not have any provisions for even "mother-in-law apartments" as separate entities in the single family district. Mr. McGuire said our other concern was that because no inspection was done, we did not know the quality of the work and there was no certificate of occupancy required.

Commissioner Robertson asked if when they paid their bills, did they go into the second tier on the water? If there were two houses being lived in, it seemed like they would be using a lot more water. Ms. Few said she had not checked on that. They were paying a flat rate for their water, but she did not know what their charges were. In the reviewable history of the water service, they had never been authorized for more than one residence. She did not know the actual consumption, but if this was approved, there would be options available for the amount of water or the rate of service. Commissioner Robertson said he knew what spot zoning was, but he kind of had a problem with this one because in the 1700 block of Florida there was R-4 and R-3. In the 1800 block, the biggest part of it was R-4. How close together did you have to have property to get it out of spot zoning? We were only a block away here. Ms. Few said technically spot zoning was on non-contiguous property, which didn't abut and did not touch it. Commissioner Robertson said in other words every time we approved some of this in town, it was spot zoning. Ms. Few said sometimes, yes. And sometimes the Commission made a decision from all the information it received which might be contrary to what staff recommended. Commissioner Robertson said a few weeks ago we'd approved basically the same thing, but they hadn't been built yet for James Dinsmore in the 1700 block. We kind of wrapped around that because there was other in the neighborhood. It wasn't together but yet we excused that, and he didn't see any problem in excusing this one. They were only 300 feet apart. If we'd passed spot zoning other places because there were only three or four houses between them, then he didn't see much difference in this. He would say go ahead and let him have this, but make him put in a water meter to comply with City. He didn't think it was this gentleman's fault that all this had taken place. He purchased it in 2003, and it was all done in 1995. When we'd passed Mr. Dinsmore's case, we'd discussed that Florida was getting to be one of the older parts of town and all those older houses were being converted to commercial property. Florida was a prime example of that. Ms. Few said staff had recommended against Mr. Dinsmore's zoning, but the Commission did pass it.

Commissioner Cooper said that was supposed to be those efficiency apartments anyway, and they were supposed to lock in like a mini motel with the parking in the rear. But with this case there had been no inspection on the secondary dwelling. Ms. Few said that was correct, other than the one mercury test. Commissioner Cooper said in other words, that would put us in an awkward position. Mr. Mooney asked what would be procedure to ask the City Engineer's office to come out and inspect it? Would there be a problem? Commissioner Ledford said it wouldn't meet setbacks, so they'd have to apply for a variance. Mr. Mooney said there were variances on the setbacks already. Ms. Few said no, there weren't.

Mayor Carroll said he personally had more concerns with it than just whether or not it had been built to Code. The fact that there was no access to it except through an alley... Mr. Mooney said actually they didn't have to use the alley access. The front access could be used for both buildings. All they had to do was to put a fence across the back and they wouldn't have to worry about access to the alley. There was a single driveway where two cars could park side by side next to the house on the north side. Mayor Pro-Tem Griggs said when he was out there today he thought that might be accurate. He couldn't really tell that two cars would fit there, but he could tell that cars could potentially get to the back house through that back yard. Mr. Mooney presented the plat map to the Commission, showing the driveway and back fence line. Mr. Mooney said all Mr. Wade would have to do was to get a variance with the people next door—an easement to allow two cars to park there. Mayor Carroll asked if there was anyone currently living in the back unit? Mr. Mooney said currently that unit was vacant. It had not been rented.

Commissioner Cole asked what was the difference of what the Commission approved on the Dinsmore case and what we were being asked to approve tonight? Was there any difference in

the request? When he drove over there today, and when he had driven to see the previous request a few months ago, they seemed like similar requests. Was he thinking correctly on that? Ms. Few said in her professional opinion, both cases may be asking for the same zoning. However, the one just north of Sixteenth Street was being done with proper setbacks prior to construction. This one tonight was after the fact, it was an illegal non-conforming use, it was spot zoning, and the property and unit in question did not meet setback requirements for the proposed use. Commissioner Cole said he was going from memory and from what he'd seen earlier today, he couldn't see two cars going on the north side. Even if they got an easement, it would be awful close going to that back apartment. It seemed to him you'd almost have to make a semi-circle or else come in through the alley.

Mr. Billy Wade said two cars could get in there, because when he lived in the house he would park his motor home right beside the house and drive his car right to the very back of it. It was not a freeway, but there was plenty of room to get two cars in there side by side. Mayor Pro-Tem Griggs asked if the garage was directly attached to the little apartment? Mr. Mooney said yes. Mayor Pro-Tem Griggs clarified, though, that there was no access to the apartment from the garage. Mr. Mooney said that was correct. Mayor Pro-Tem Griggs said one of the things he'd noticed and Mr. Mooney had also noted, was the fact that there were other properties in the area that had two living areas. He did see the one which was one house away to the south. Obviously if this one was zoned wrong, then that one was too. That didn't mean that we could make this one right anyway. If we wanted to talk about Dinsmore just a tad more, he felt R-4 was across the street and we were able to make it work a little bit better than we could this. This one was almost more accurate if you looked at the one across the street from the Post Office. That one was a home being converted to a business that was in the middle of the block. We may have a precedent there, but we had an Attorney come in here and say it wasn't really spot zoning. He couldn't remember exactly what the reasons were that it wasn't exactly spot zoning, and this one certainly appeared to be more spot zoning than that was. If we were to say we'd approve this zoning change, if we did that then we'd also need to grant some sort of variances to the back setbacks and different things as well to make it indeed legal. He didn't know where we could even stand on that. We hadn't looked at it to be sure there were no Code violations, and we couldn't necessarily tear out some of the walls to see if the electrical was right. He didn't know what liability the City faced. Should we do that and then what if there was a fire at the home caused by an electrical short?

Commissioner Robertson asked how close to the property lines was this sitting? Mr. Mooney said the setback on the north side was 30 inches, but it should in fact be 60 inches. With regard to inspections, he was not a contractor, but he felt if an inspector came out and pulled the electrical panel, he would see the wiring where it went in and be able to determine the gauge of wire used and to determine the safety there. The mercury test said there were no gas leaks, and that was done. He felt an inspection by the City would at least take a majority of that issue away. With regard to paying a sewer bill for each unit, he didn't think Mr. Wade would have the slightest problem with that. Many of Mr. Wade's water bills had been in Tier 2. A great deal of the time the property was rented, and the young man who had rented it had deployed to Iraq soon after he'd moved in, and he was gone for a year. But he kept the property and had all his personal possessions there. No one lived in it, but at least it was looked after and taken care of by a property manager during that period of time. So those things all being considered, it was well taken care of. He would like to get this problem resolved because if we didn't, then Mr. Wade had a piece of property which was illegally in use and he certainly didn't want to do that. He would like to get it in compliance. It was not done by him. There may be a problem that he did not do due diligence in buying the property and certainly he could take civil action against the person who did all of this, but we all knew that "he said-she said" court cases very seldom

were satisfactory to anyone. And in the meantime, the property still existed and there were other properties along there that were the same way. He asked the Commission to please take a hard look at this and give it their consideration.

Commissioner Cooper said he would have to yield to the expertise and the professionalism of Ms. Few, and he would have to go along with her feelings. If she felt it would be proper to okay this, all well and good. However, if she didn't then he would have to yield to her professionalism. Mr. Mooney said the City Planning and Zoning Commission was split on it.

Commissioner Cole said the City had approve a similar variance across from the Post Office, and there were other cases where changes involved variables. But we had approved two at the request of the property owner, so he was having a hard time tonight justifying denying what he felt was a somewhat similar situation. He was having a hard time justifying saying yes to two of them, and no to this one. That was his thinking tonight on why he would approve it. Mayor Carroll said this was a question of where someone had essentially built a second house on the lot on a single family lot and had been using it as rental property without the benefit of paying for an additional water hookup or sewer charge. The waste collection wouldn't have been an issue, because the City wasn't paying anymore for waste collection because it was based on the number of water meters. However, we were being asked after the fact to do a lot of things to legitimize something which was illegal—not just non-conforming, but illegal. Commissioner Cole thought Mr. Mooney had said they would correct the connections. Mayor Carroll said he didn't know what all it would take or if we were even able to make the arrangement of the two units on that lot legal. Mr. Mooney said he guessed he was missing the argument because the garage or workshop structure was built at the same time the original house was. So as far as no variance being on it, it had been there ever since the house was built, and the house was built probably in the 1950's. It was a conversion of that, but was not an actual addition. They were not asking the City to determine if two structures were safe, but were asking that the one be looked at. Certainly Mr. Wade would feel better if they could have an electrician come out and make sure that place was safe. They would not want to have somebody living in a property that was unsafe. He could take them up and down Florida and show properties that were unsafe and should be condemned which people were currently living in.

Mayor Pro-Tem Griggs said when talking about setbacks, if it was a garage or workshop, he thought those kinds of buildings could sit right against the back fence. They did not have the same issue that a living quarters would, so that may be why there wasn't any variances at the time. But if the Commission decided we wanted to change the zoning, it looked like we would also need to look at what the owner needed to do to make the property usable in the state it was in. There would need to be inspections on the electrical, preparation of a variance for the back, and possibly other things. He didn't know whether changing the zoning was step one. Perhaps we needed to go back and look to see if we could do any of those other things before we finalized changing the zoning or considered it. Perhaps we needed to consider tabling this tonight until we could get more information and address it then.

Mr. McGuire said Code compliance of that structure was a whole lot more complex than just opening up an electrical service box. We had no knowledge before of that ever being a structure to be lived in. We didn't know what the inside partitions were, what the plumbing was, whether the internal wiring was compliant, or any of those kinds of things. So to say that all we would have to do was to open up a box to see what kind of wiring was in there was really simplifying the issue. To be able to perform inspections like that, we would have to have access to interior walls, to look at fire blocks, framing, etc. If the Commission wanted staff to take the

steps to make sure it was a structure that was currently safe to occupy, they would need to take it to that level and extent to look at it.

Mayor Pro-Tem Griggs said if the Commission did say okay to all of this stuff, what liability was the City accepting by doing that, knowing what Mr. McGuire just said? Mr. McDaniel felt we could be accepting some because as Mr. McGuire had pointed out, short of destroying the place, it was not really possible at this point to do an adequate inspection of things like fire blocking, which were required in residences but not necessarily in garages. In a garage you didn't even have to put up sheetrock, let alone any fire blocking. So how did you know he didn't just have his studs running floor to ceiling with no fire blocks and that he just slapped some sheetrock on? You didn't know what kind of wiring he had. In a garage people frequently would run extension cords. If someone covered something like that over with sheetrock, then you would have a real problem. He wouldn't feel comfortable with it.

Commissioner Cole said if he hadn't come in tonight, this problem wouldn't be in front of the Commission, and he could have gone ahead and did what he'd been doing over the past few years. Could he not? Mayor Carroll said absent some other way that the City would have been made aware of it, that was correct. Commissioner Cole said he was being up front with the Commission by coming in and trying to correct a problem. Mayor Carroll said that appeared to be the case.

Mayor Pro-Tem Griggs said he was very sympathetic toward the petitioner, but he also didn't know that he could say he was willing to put the citizens of Alamogordo through potential causes of action or action to be responsible even in a small way for something that might happen to that property. He didn't think he could support this because of what the City Attorney had just told us. He appreciated what they were doing because it was the right thing. It may have jumped up and kind of bit them a little bit, but they were doing the right thing. We had other areas right there that were having the same issue he had—two houses away, for example. He just could not support exposing the City and the public through the City to any sort of legal problems because we accepted this particular case.

Commissioner Moncada said she could understand what Mr. Wade was trying to do and she appreciated that. What she felt we should do was perhaps table this and maybe Mr. Wade could go back to the previous owners to see if they had any kind of paperwork on who did the electrical on the apartment at that time. That may clear some things out for us as Commissioners. Commissioner Robertson said he would go along with that, but he would like the City staff to go out there and actually physically inspect the building. If we cut Mr. Wade off short, he was losing a tremendous amount of money on this thing. In fact, with the amount of money he could be losing, if he, himself, owned it then he'd go out ask where the City wanted him to knock the hole to find the fire block. Perhaps we could table this thing right now, and give him the next two weeks for staff to get out there and inspect it. Mr. Wade could go with staff and find out what they needed to find out and also what we had so that the Commission would know what we were voting on.

Mr. Wade said regarding the electrical, the power company would not even put a meter in until the electrical had been inspected by an electrical inspector. He knew there was fire block in the walls because this place only had one door in it, which he didn't like and so he had put another door in. When they took that wall out, all the framing was according to specs in that section. He hadn't torn out any other walls. Commissioner Moncada said that was why she felt we needed to table this—so that staff could go over there and work with it, and so it could be researched to find the owner that did the work. Mr. Wade said he didn't think the people he'd bought it from

had lied about the zoning—he thought they just didn't know. It was his stupidity and not theirs. He should have done more research on it before he purchased it. Mayor Carroll asked if the property was currently listed for sale? Mr. Wade said it was, but not anymore. Because of this zoning business, he'd lost a sale on it already. He wanted to get this cleared away before he sold it.

Commissioner Cooper asked if that structure was built as a residence, or was it another type of building that was converted into a residence? Mr. Wade said he could not answer that. The only thing he'd been able to come up with was that it and the house were built at the same time. He knew it used to be a garage, and he knew so because on the backside where they took the garage door down, you could see where they had plastered it in.

Commissioner Ledford said even if we did inspect it, and he hated to go through all that work, and even if they got it up to Code, it still did not change the issue of spot zoning. He was trying to figure out how to get past that. On the spot zoning, he understood there were properties down the street that were commercial. Was it right that those areas were rezoned commercial before we came up with the Master Plan and dealt with issues of spot zoning? We had a combination of this same kind of problem probably all over town. So he would say within two blocks of a lot of residential areas there was going to be a business. That didn't change the definition of spot zoning just because there was a business a block or two down the road. There were single family houses on both sides of this one, and was that what made this fit the definition of spot zoning? Ms. Few said no. Commissioner Ledford said even if it was within Code, we would have to give variances on setbacks and the like. Even if we got past that, were we going to now go ahead and approve spot zoning? Ms. Few said if the Commission approved this, it would be spot zoning because there was no adjacent zoning other than single family surrounding this property. A point of clarification was that the properties down the block between Lovers Lane and Catalina which were in use, were not commercial properties but were multi-family residential properties. Commissioner Ledford clarified that was all Mr. Wade was requesting. Ms. Few said we had documentation of the pre-existing non-conforming uses in town. At the time the original Zoning Ordinance went into effect in 1950, it was incorporated with the approval of that Zoning Ordinance. This property was not one of those. When the previous Master Plan was adopted, it showed this area as single family use. The current Master Plan that was just adopted a few years ago by the City Commission showed this area for single family use, and not multi-family; not two family and not townhouse. Commissioner Ledford said when we issued a permit in 1995 and 1999, were we not required to do an inspection? Ms. Few said inspections were called for. The contractor called and said he was ready to do it. There were people who took out permits, and for whatever reason, did not proceed with them. Commissioner Ledford asked if that would be because they knew they were not in compliance? Ms. Few said no—it could be because they just decided they weren't going to do the work. But our system now guaranteed ultimately that someone was going to go out and look at the property. This property owner was a licensed contractor, so saying they didn't know that they should call for inspections—it was the homeowner who was the licensed contractor who did the work who pulled the permit. Commissioner Ledford said he probably knew the rules. Ms. Few said she would hope so, holding a license in the State of New Mexico and a Business Registration with the City. Commissioner Ledford said that was the prior ownership. The new problem was the owners before this, and it was unfortunate.

Commissioner Robertson said going back to his former contracting days, wasn't there something that stated if you called in for an inspection and they weren't there within a certain number of hours, you could go ahead and cover it up? Ms. Few said no. Commissioner Robertson said there was—they had to be there within 48 or 72 hours, and if they weren't there

to inspect, then the builder could go ahead and cover it up to keep from holding the job up. Mr. McGuire said to his knowledge that didn't exist. If it did, then those buildings inspected by the State would never get inspected. On our buildings when we asked for an inspection from the State, the State would get to it when they could. We had no choice but to wait because the contractor could not proceed without the inspection occurring. Otherwise we would not get the Certificate of Occupancy. Commissioner Robertson said for years if he called and they were not there within 48 hours, then he would cover it up and there was nothing they could do about it.

Ms. Few said Mr. Mooney or Mr. Wade had stated that the accessory building was built at the same time as the house. It appeared they were built in the 1950's or maybe early 1960's. The Building Codes for an accessory building and a residential structure were different at that time—the requirements as our City Attorney noted. For a conversion, though, the Code requirements for a residential unit in 1995 would have been substantially different than the Code requirements in 1956. Mayor Pro-Tem Griggs said to go back to the issue Commissioner Ledford raised on spot zoning regardless if everything was brought up to Code, would we still consider it spot zoning if Mr. Wade could get the four lots to the south between him and Lovers Lane—would we still look at this the same way, or would we look at it differently? Ms. Few said we would probably look at it differently. As on Hawaii if one side of that whole block had come in, we would have looked at it differently. It was also recommended that like zoning be facing.

Commissioner Robertson thought there only had to be a lot between the two of them, and it was spot zoning. Ms. Few said technically, yes. Commissioner Robertson clarified that we spot zoned all the time. Ms. Few said we didn't do it all the time, but there was frequency that it was done. Commissioner Robertson asked what would be the problem if this building was inspected and if it met all of our City Codes, in putting it into R-4? Ms. Few said they were asking for R-3, and she would defer to the City Attorney on that. Her job was to provide the Commission as the decision makers with the best information and a professional position. So if they needed anymore information, please let her know and she would be more than happy to provide it, even if we had to table the issue. Mayor Carroll thought it was the desire of the Commission to see if we could find some way to accommodate what was a bad situation. But at some point he felt we needed a little clearer definition of spot zoning, because as he understood it, the governing body did in fact have the ability to spot zone. It was a legal predicament we could put ourselves in if we did spot zoning without some justification or some reason in the record.

Mayor Pro-Tem Griggs move to table this item for tonight and give staff and Mr. Mooney (and Mr. Wade) time to look at the property and see if there were any mechanisms in place to make it conforming, and then maybe even consider the approach to get the other four lots to join in with a potential rezoning. Seconded by Commissioner Cooper. All voted “aye”. The motion carried by a vote of 7-0-0.

The Commission recessed at 8:38 p.m., and reconvened at 8:50 p.m.

6. Consideration of the final plat of CAMINO DE PAZ SUBDIVISION for five (5) lots located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, for William W. Pattison, et al. [Case S-05-0870(A), N. Scenic Drive].

Recommendation: Approve the final plat of CAMINO DE PAZ SUBDIVISION, Case S-05-0870(A), located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, with variances (on public land dedication, on alleys, and on the

construction of streets and utilities to City standards), with dedicated paved streets, and with private wells and septic tank systems.

Mayor Carroll said he'd had some discussion with the City Planner and Mayor Pro-Tem on this issue. He didn't know what we could or wanted to do with this particular subdivision, but it brought up the issue that we needed to formulate some sort of a long range plan as to how we wanted to start addressing these subdivisions within the extra-territorial zoning that were in all likelihood within a period of time going to be a part of the City. Right now we routinely waived public land dedication and just about everything else in these. We didn't have a policy on how to address these and there were going to be more and more coming up. He was not advocating that we make this particular one the test case, but he brought it up just to put us on notice that there were going to be more of them. We were getting closer and closer to the existing City limits with some of these, and we were continually waiving things that may at some point in the future come back and cause some expense to the taxpayers of the City. We needed to be aware of that.

Commissioner Cooper said he understood the Mayor's concern and we did need to get a handle on that. This item was to approve the final plat, and if we approved it then it would go before the County for their approval. Mayor Carroll said that was normally the way it worked. We had concurrent jurisdiction, but generally ours was a little more stringent in some areas than theirs.

Commissioner Cooper moved to approve this (the final plat of CAMINO DE PAZ SUBDIVISION, Case S-05-0870(A), located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, with variances (on public land dedication, on alleys, and on the construction of streets and utilities to City standards), with dedicated paved streets, and with private wells and septic tank systems).

Commissioner Cooper said as the Mayor had stated, there would be more of these subdivisions so we did need to get a handle on it.

Seconded by Mayor Pro-Tem Griggs.

Commissioner Robertson clarified that there was no land dedication on this. Mayor Carroll said no—we routinely waived the land dedication for outside the City subdivisions. Commissioner Robertson said sooner or later we were going to take N. Scenic into the City, and when we did, it was an area where we had no land dedicated for parks, recreation, or anything. Mayor Carroll said that was right, and that was why he'd brought it up. We had no policy at this point in time which would allow us to require it. Mayor Pro-Tem Griggs said this property was relatively close to Griggs Field, so there was access to a park type land. But when we redid the Subdivision Ordinance, we redid it to address the dedication of public land in two ways—both as either 5 percent or up to 5 percent, or cash in lieu. We had since asked the City Attorney what his opinion was on the cash in lieu or on the land dedication outside the City, and he felt like that was definitely within our authority to do it. Whether we did it on this particular one or not, we needed to start looking at those, and maybe more stringently on those within the utility extension area. We knew those were the most likely to jump into the City in the near future. We had just gone through discussions on ADA and whether or not this sort of subdivision would be ADA compliant if it came into the City. One of the things we were in the process of was adjusting or adding to the Zoning Ordinance to create rural residential zoning, which these properties probably would fit into. He didn't know if rural residential would be exempt in some way from ADA, so potentially this thing went in, we approved it, and then later when it came into the City, we would have to make it ADA compliant. That meant we would have to go in and

provide sidewalks or some sort of access for disabled individuals. Those were the things we needed to get a handle on. Maybe we would need to require things differently, such as cash in lieu if we didn't think we needed a park. But we needed to start addressing these things, or when the time came to address them when they wanted to come into the City, the property owners would be faced with an expense that they weren't aware would be facing them.

Commissioner Cole said he had called and talked to Ms. Few on this. What would happen if the City were to disapprove this, would it still go to the County Commissioners, or was it a dead issue? Mayor Carroll said it needed concurrent approval. Commissioner Cole said if we didn't approve it tonight, wouldn't that more or less kill it? Mayor Carroll said yes, but we would have to have some reason to justify why. Commissioner Cole said right, but he wanted to clarify that it needed our approval. So if the City did approve this, who was responsible at the County level for ADA requirements? Mayor Carroll said no one. Commissioner Cole thought the County government should also have to follow ADA regulations. Mayor Carroll said they were not proposing to put anything in or to develop anything. He suspected that on one acre lots there were no ADA requirements. Commissioner Cole said he was thinking about things such as roads and streets. Mayor Carroll said he didn't know that they were planning a level of improvements, other than putting a road in, which would not trigger anything ADA accessible to adjoining properties. Commissioner Cole said it was getting pretty close to the hospital complex. Commissioner Robertson said the problem was that the roads they would put in would not be like the streets we build. They would be tar and gravel just to give the public right-of-way. Mayor Carroll said no, we were requiring that the street be put in paved. Mr. Klad Zimmerle, Alamotero Survey Associates, said it would be a 24 foot paved surface, with four foot paved shoulders, for a total of 28 feet wide. Commissioner Cole clarified there would be no curbs, so it wouldn't have to be ADA accessible.

Mayor Carroll said his point in bringing this up was not to make this the test case, but just to indicate that we were going to see more and more of these.

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

Commissioner Robertson asked if we could get staff to look into the Codes on this. This piece of property was almost like being in town, and anything that close to town that was going to be getting on our water and sewer, we needed to have a little more control over than what we were here. Mr. Zimmerle said Las Cruces and Dona Ana County had an extra-territorial jurisdiction board which was a governmental entity that was between the City and between the County. It was its own governing board that had its own governing rules. The City took care of the City, the County took care of the County, and this melting zone was its own Board. It would address these issues of annexation, sidewalks, ADA, etc. He would recommend that we go to something like that. It may relieve both the County Commission and the City Commission of a lot of heartaches and decisions to be made at that interim level. Mayor Carroll said he would have to give that some thought because he thought there had been entities that had done that, and they had opened up another set of problems.

Mayor Carroll said what the City needed to do was to have some policies in place that allowed us to address it, and right now we did not. Commissioner Robertson said that was why he was asking staff to look into this.

OTHER BUSINESS:

8. Award of Public Works Bid No. 2005-012, First Street to Relief Route Concrete Box Culvert.

Recommendation: Award to Moore & Cowart Contractors, Inc. in the amount of \$126,151.47, inclusive of NMGRT.

Commissioner Robertson said we didn't have the money to build First Street yet, so why were we putting this culvert in? Mayor Carroll said we were moving west as we got the money. Mr. McGuire said plain and simple—we would lose \$55,000 of Grant if we did not spend it before the end of this fiscal year. This was a structure which was part of the expanded plan for the new realignment of First Street. It was on City property, so we didn't have any problem with land owners.

Commissioner Robertson moved to award Public Works Bid No. 2005-012 (to Moore & Cowart Contractors, Inc. in the amount of \$126,151.47, inclusive of NMGRT). Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

9. Tenth Street Water Tower.

Recommendation: Provide direction to City staff.

Mayor Carroll said out of the 2002 gross receipts tax bond refunding, we had originally set aside an amount of money to refurbish the water tower. We had an engineering study done, and it indicated that the tower was in fact still structurally sound and that it was optional whether or not it needed to be repainted, or "coated". In any event, when the money was initially set aside, it was with the intent that we were going to use it to recoat the tower. Since then there had been a proposal made by Dr. Dave Townsend and the Historical Preservation Committee, not only to address the coating of the tower, but also some other improvements they wanted to make in connection with it. His suggestion would be that if it was the desire of the Commission to move forward with this project, that we put the tower work out to bid, and depending on the bid, if there were additional monies left that we could look into addressing some of the other proposed improvements the committee had recommended.

Dr. Townsend said at the City Commission Meeting of January 12, 2005, the Historic Preservation Committee had made a recommendation concerning the tower and the area around it. There were seven specific recommendations that were attached to that. When they brought it to the Commission, at the Commission's request for them to look at that area, he thought the Historic Recognition Committee realized that the money might not be there to do the whole thing. These recommendations could be taken separately, and did not have to all be done at the same time. Central to the recommendation, though, was the recoating of the tower. Once that was done, then the rest of this could be done as monies became available. The committee very much encouraged the Commission to move ahead with the recoating.

Commissioner Cooper said he understood that wasn't the original tower, which had actually been made out of wood. However, it was replaced with the present one and we looked upon it as a historic site. Dr. Townsend said there were earlier towers, and the wooden one had been further south than where the present one was. We'd had the discussion before, and he would again make the point at which something became historic. If you tried to isolate two buildings which had come to symbolize Alamogordo in the minds of most citizens and the hundreds of pictures taken of the area, it would be that tower and the Bissentine Tower at the corner of Tenth and New York. This water tower had historic perception. It was structurally sound and

did not need to be refurbished, but the appearance of the tower was certainly deteriorating. He'd gone back and looked at some of the pictures taken of the tower during the Centennial in 1998. Seven years ago it looked a hundred times worse. It was simply becoming a rust tower and not black, so he was not sure how much longer we could put off doing a coating job on it and still have it be the symbol that we would like an all-American city to be. Commissioner Cooper said he was a historian of sorts too, and he believed in preservation because he belonged to a preservation organization. They believed in preserving what you could, although they also believed that if you refurbished something, then it was no longer a historic site and had no historic value. So if it was recoated, then the historic value was gone, and it was just one of symbolism. Dr. Townsend said he did not agree that by recoating it would remove its historicity. It remained a symbol, but it also had its own historic value—it had been there fifty years. That may not be the long range of history, but we did not destroy the historicity.

Commissioner Cole said he wasn't saying it shouldn't be coated or anything like that, but what was the Engineer's report? Mr. McGuire said they had looked at it structurally because we didn't want to put any money into something that was going to require us to do a whole lot of further things to prepare it. They said it was structurally sound. We'd even asked them if it could be moved because it presently sat on railroad property and they could arbitrarily change the rent on us. It was all of those things. When he'd asked them if it had to be painted, they had said no because things would rust in this country, but it was not being structurally affected. At some point in the future it would have to be painted, but they did not make a recommendation to paint it or not to paint it. It was structurally sound in its current condition.

Commissioner Moncada believed the tower would remain historical if we were to paint it. When you changed something on a historic building, such as changing a window, then you lost the enthusiasm of it being historical. In this situation we weren't going to change anything about the tower, other than to put a coat of paint on it. She was not too sure that now was the right time, being that the report we'd received stated it was still in pretty good condition. Of course it would improve the looks, but she would still like it to remain as was.

Mayor Carroll said while it was still structurally sound, over time the rust would take a toll and that was the purpose of coating it—to take care of the rust problem. If you owned a piece of property that you had been successful in getting on the Historic Register, was not one of the commitments that you maintain that piece of property? Dr. Townsend said he was no expert in this, but he had worked with people to get properties on the State and National Historic Registers. There was a lot of misunderstanding about what could and could not be done to the property, but basically it must be kept up in appearance. You could not make an addition to it which would totally disrupt the historicity of that particular structure. Certainly putting a coat of paint on the tower was going to help us preserve it. He could show them the pictures from seven years ago which indicated there had been tremendous rust development on it. In spite of the exchange with Commissioner Cooper about the historicity of it, there was the appearance of it and it was one of those things which people saw and related to Alamogordo.

Mayor Carroll said it was one of what kind of image we wanted to project. We'd been kicking this item around now for about three years. It had been the subject of a lot of calls on the local call-in show, mainly by people that didn't even live in the City but who seemed to be the ones that had the strongest opinion on how we ought to conduct business here in the City. There was a group of people who wanted to see it coated, some who didn't want to see it coated, and probably a group of the vast majority that didn't care. But the Commission was going to be criticized no matter what decision we made, and he felt the time had come to make a decision one way or the other and move onto other things.

Commissioner Robertson clarified that the piece of property the tower was sitting on was owned by the railroad, and we were leasing from them. How long of a lease did we have on that? Mayor Carroll said as long as we paid the rent, he guessed it would continue. Commissioner Robertson asked if it was something that if the railroad decided it was in the way, they could just come move it, or did we actually have a lease that we could hold them to? Public Works Director Jose Miramontes said there was no set term, and we simply paid on a yearly basis. Commissioner Robertson said basically we didn't have a lease with them, then. Mr. Miramontes said that was correct. Mayor Carroll said we had a year-to-year lease. The railroad had absolutely no use at all for that property, and we had attempted in the past to buy the property from them. If we continued to be persistent, at some point in time we would find somebody in the railroad hierarchy who would say, "why not?", and we would get title to it. Mr. Miramontes said that should be our goal because they kept increasing the yearly payment. Commissioner Cooper asked what that payment was now? Mr. Miramontes said it was getting close to \$2,000.

Commissioner Robertson asked if we'd gotten a figure one time of \$75,000 to paint the tower? Mayor Carroll said no, we'd never gotten a figure. That was a dart board estimate, and that was all it was. Commissioner Robertson thought the money we'd set aside was basically to do the engineering work on the study. Mayor Carroll said no, we set the amount of money aside, and it was just an estimate. Then we said before we proceeded with it, we needed to make sure it was structurally sound, and that was as far as we'd gotten. Staff had prepared an RFP for the work, and they were asking us to make the decision to either move forward with the RFP and go out for bid and see exactly what it was going to cost to coat it, or to forget the whole thing and move on.

Mayor Pro-Tem Griggs said he didn't think the water tower was particularly historic, but he believed it had historical significance to the City. People thought of the onion top building and the water tower, and they may even think more of the water tower building. But also, one of the things we had was that we owned the water tower and had a lease on the property. We were asking people now to take better care of their property through weed cleanup and all that. We, ourselves, had a water tower, and we needed to maintain it. We needed to coat it because it was ours to take care of. If it was your house, you would take care of it. If we wanted to ask people to take care of their property, we needed to take care of our property first. This was the City's property and the City needed to take care of it. He felt the time had come to go ahead and coat the water tower.

Commissioner Robertson said he would agree 100 percent, except the Engineer said it didn't need to be painted yet. Mayor Pro-Tem Griggs said he had stated that it didn't need to be painted to maintain its structural integrity. But it needed to be painted to maintain its appearance.

Mrs. Nola Jones said she thought in the budget hearings they had stated it was \$65,000 to paint it. Mayor Carroll said that was the estimate that had been used. We wouldn't know the exact price until we put it out to bid. Mrs. Jones said she also thought they were saying that the budget was very tight this year and they were having a real problem with some things. They did say the City needed to clean up its own property with the weeds, but we did have a lot of things that really needed to be done so maybe this was one which could be tabled for another year until we had more money. Mayor Carroll said this was money which had been set aside for this purpose. So if we spent it on something else, there was not going to be money come along to replace it. So we either did it with the money we'd set aside and do it now, or we didn't do it and spend the money for something else. Also, this money had some restrictions on it because it

was money raised through a bond issue. Therefore, we were limited somewhat in the scope of the things we could spend the money on. Mrs. Jones said at the budget meetings the Commission had stated they needed some additional money for some paving on Scenic, and they had mentioned taking it away from a park. To her, taking it away from a park or taking it away from painting a water tower seemed like no choice. Mayor Carroll said we did find an alternate funding source for what we needed to do on Scenic. Mrs. Jones said this was a different subject, but she was still very upset about the contractor for the flood control project tearing up the streets... Mayor Carroll said it was off the subject, and suggested Mrs. Jones bring the item up later under Unscheduled Communications.

Mayor Pro-Tem Griggs moved that we proceed with bids to determine whether or not we can coat the water tower. Seconded by Commissioner Moncada.

Commissioner Ledford clarified that if we did it, we didn't have to accept the bid. We'd heard it would cost \$65,000, and also the figure of \$35,000 came up. If it came in at \$65,000, we could decide at the time that we didn't want to do it. Mayor Carroll said yes. The bid could come back to where it was completely out of the ball park, and then we would be faced with the decision of coming up with a lot more money. Commissioner Ledford said his point was that if people gave us a bid and it came within budget, we could still turn it down. There was the perception of what the budget was which nobody knew. Mayor Carroll said the original amount budgeted was \$75,000. Some of that money had been spent for the engineering study, so whatever money was left in that account was what was available to coat the water tower.

Commissioner Robertson clarified that the way the motion was made, if we passed this, that meant we were going to do it. He thought it would be appropriate to get the bids first before we decided we should do it. Commissioner Ledford said that was his question, and the Mayor had stated that we could deny it later. Mayor Carroll said the motion was to proceed with the coating of the water tower. Commissioner Robertson said he didn't like that wording. He thought the motion should be to go ahead and get the appraisal of what it was going to cost to do it, and then we could proceed from there. Mayor Carroll said people were not interested in doing business with the City or anyone else if they were just out shopping for prices and they had no... Commissioner Robertson said there was no way he would vote for it under those conditions.

Commissioner Cole said we always went out for bids and we could come back and say yes or no on it. Mayor Carroll said the Commission could always reject the bids. However, if we were going to go out for bids—we were either going out for bids or for an estimate. When you went out for a bid, the expectation was that there was a good faith effort on the part of the customer that he was going to proceed with the job. Commissioner Robertson said, however, when you went out for bids on an RFP, those were generally awarded also. Commissioner Cole said it wasn't for the Golf Course. Commissioner Robertson said if it was within the realm of the estimate. Mr. Miramontes said if all the Commission wanted was an estimate, there were companies that specialized in this type of work. It was highly specialized and staff could get an estimate. But if we went out and asked for bids, then the expectations from these contractors was that we would follow through with it. Otherwise, it cost money for them to put these things together. Mayor Carroll thought our experience lately on estimates was not that good. We already had an estimate, which was \$75,000. So the intent was to go out and solicit bids to recoat the water tower. We always reserved the right to reject all bids. If it came in over and above the amount of money we had allocated and we didn't choose or were not able to add money to it, then we would reject the bid. But the anticipation of the people that were willing to do business with the City was that if we had an amount of money set aside to do a project, then

if it came in under that amount and they met all the specifications, was that they would get the job. Mayor Pro-Tem Griggs said the fact remained, he supposed, that even if it came in at \$20,000, the Commission could still reject the bid. Mayor Carroll said we could. Mayor Pro-Tem Griggs said, though, that was not very good faith.

Mayor Carroll called for the vote on the motion. **Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cole, and Commissioner Ledford voted “aye”. Commissioner Cooper and Commissioner Robertson voted “nay”. The motion carried by a vote of 5-2-0.**

Dr. Townsend felt the Commission had taken a very positive and central step. He did hope they kept in their files somewhere the entire recommendation of the Historic Recognition Committee, and as monies became available, to try and develop that whole area.

10. Sale of City-owned property:

A) Tract 1 - a tract of vacant land located in Lincoln County, NM, in the S½ SE¼ of Section 9, N½ NE¼ of Section 16, T10S, R13E, NMPM, ±7.999 acres.

Recommendation: Approve the sale of the property to Mr. Robert H. Frazier, the highest bidder, in the amount of \$203,456.00.

Commissioner Robertson asked what the property had appraised for? Mayor Carroll said in 2001 it appraised for approximately \$111,986.00. Commissioner Robertson asked about Tract 2. Mayor Carroll said that was a different appraisal and a different bid. Commissioner Robertson said his problem was that we had two pieces of property sitting there basically side by side. One of them was 34 acres, and the other was nearly 8 acres, and there was a tremendous amount of difference per acre on this stuff. Mr. Miramontes said the big difference was in the terrain. Parcel B was a mountain. Commissioner Robertson said people liked to buy mountains. Mr. Miramontes said it would be hard to develop it in order to build anything on it. The other parcel—Parcel A—was relatively flat down by the creek. Commissioner Robertson said they were both in the mountains. Mayor Carroll said apparently one was a more marketable piece of property. Commissioner Cooper said we'd look at this about four or five years ago.

Mr. Keith Kessler, Bonito Lake Manager, said the intermittent Bonito Creek ran through the eight acres. That was the reason the market for that type of property was so much higher in the Lincoln County area. Commissioner Robertson asked if the creek was really getting that much water from the lake? Mr. Kessler said it was right now. Commissioner Robertson said generally there was not. Mr. Kessler said that was why he'd called it an intermittent creek.

Mr. Frazier said that eight acres abutted where he had a house. He had two acres and had that house since 1982. He'd tried to buy this property from the City since the early to mid nineties. He had just now been able to put a bid on it. He just wanted a little more breathing room up there—he'd paid too much for his home. Commissioner Robertson said he didn't have any problem in selling the property, but was just questioning the difference in the values up there. In Cloudcroft it didn't matter the size of the hill, you would pay top dollar for it. He was actually paying more for the eight acres than the next gentleman was for the 34 acres. Mayor Carroll said if he kept talking, he would talk both of the bidders right out of their bids. Commissioner Robertson said he was just asking dumb questions because it didn't stand logical to him. Mr.

Frazier said he didn't bid on the 34 acres which was actually across the highway from him. He didn't know if there was a buildable site on it.

Commissioner Cooper moved to accept the offer on this piece of property (to Mr. Robert H. Frazier, the highest bidder, in the amount of \$203,456.00). Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

B) Tract 2 - a tract of vacant land located in Lincoln County, NM, in the S½ SE¼ of Section 9, T10S, R13E, NMPM, ±34.331 acres.

Recommendation: Approve the sale of the property to Kenneth D. and Mary Lou Bloom, the sole bidders, in the amount of \$160,000.00.

Mayor Carroll said this property was appraised in 2001 for approximately \$76,000.

Commissioner Cole moved to approve the sale of the property to Kenneth D. and Mary Lou Bloom, the sole bidders, in the amount of \$160,000. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 7-0-0.

Commissioner Cooper said that mountain kind of reminded him of about 40 years ago when he bought five acres in Antelope Valley in California—straight up.

11. Waiver of permit fee for the 4th of July fireworks display.

Recommendation: Approve the Waiver.

Commissioner Robertson said he had pulled this item from the Consent Calendar because he was thinking about items 10 (A) and (B).

Commissioner Cole moved to approve the Waiver. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

13. Appointments to Boards and Committees.

Alamogordo Promotion Board: Three (3) vacancies – 1 At-Large; 1 Tourism; and 1 Lodging. (The three vacancies are due to expiring terms. The current members are not eligible for reappointment because they have served at least two 2-year terms).

Mayor Carroll appointed Ms. Beverly Coble as the Tourist Representative, and Mr. Kaushik "Charlie" H. Bhakta as the Lodging Representative.

UNSCHEDULED COMMUNICATIONS:

A. Comments by Mrs. Nola Jones regarding Canyon Road, First Street, S. Scenic Drive, and Ocotillo Road.

Mrs. Jones said on Canyon Road there was a lot of dirt when they were going across there, down that road, up First Street, and then over to S. Scenic. They did not cover their "things" that well. We had a local contractor, the Rabon Brothers, who had always been very, very careful. But this group was not as careful and the dirt was thrown all around and it had not been picked up. Also, where they dug in there it was unsightly. Now on Ocotillo it was almost

impassable. It was bad before, but almost impassable now. On each side there were weeds which did not show that there was a drop-off, and it was very dangerous. It was getting worse and she was afraid it would get even more hazardous. Also, when she asked about it, she was told it was a public road. However, if a private person like herself went out there with lugs on her tractor and drove on it, she thought she would be cited for it. But these trucks had just ruined the roads and it was okay because it was a public road. It seemed like there should be something which somebody could do about it. Mayor Carroll said this had been an ongoing problem with this particular project. As had been stated, it was the Corps of Engineers' project. They were the ones who'd hired the contractors, and we had limited ability to control the project. We could address the weed situation. We'd continually tried to work with the contractor and their subcontractors regarding the hauling of the dirt, and we would continue our efforts along those lines. If the weed problem posed a potential hazard, that we could address. Mrs. Jones said she had talked to Commissioner Cole a long time ago about that, and now it was getting even worse. Ocotillo Road was not great in the first place, and going across there was terribly hazardous now. There were school buses going across there too. Mayor Carroll said after this project was done, in our street maintenance program two years out, it was scheduled to resurface Ocotillo Road. Mrs. Jones said right now it was impassable. Mayor Carroll said there was no sense in resurfacing it now. Mrs. Jones said what she was saying was that the contractor or somebody should fix it so it was not impassable. Mayor Carroll said we would continue our efforts to work with the contractor on that. Mrs. Jones said she certainly hoped so.

B. Comments by Commissioner Robertson regarding bonding people out at the Police Station building as opposed to the County Jail location.

Commissioner Robertson said he'd been approached by a couple of the bonding companies about what they felt was a major problem, and he tended to agree with them. They had a problem between the City and the jailhouse in bonding people out. If they got called for a bond, they had to go to the City Police Department, out to the jail, and then back to the City Police Department. What they would like to do and which they felt would save the City some money, was to bond these prisoners out down at the Police Department—which they already did periodically. They said the biggest part of their bonding was from the City of Alamogordo. Also, he understood it was up to the Police Officer whether they bonded them out at the jail or at the Police Department. Once an Officer arrested a person and took them out to the jail, it cost the City \$70 no matter if he spent the night or not. What they were requesting was for the Officers to call them directly from the Police Department to where they could actually bond them out there instead of having to go to the jail.

Mayor Carroll said he was a little confused. He didn't think the Police Department was the one who set the bonds. DPS Capt. Jim Bird said the bond was set by the Judge. Mayor Carroll said you either posted a bond with the court or you went to jail. Capt. Bird said once they arrested a person on a Municipal Warrant for failure to appear in court, there was a \$200 bond on it. The reason they had to go to DPS was because they were the maintainer of the records. Municipal Court Warrants had to be maintained by their department, along with the Release Orders. At night, their Dispatchers were trained as clerks to take the payment for these. Commissioner Robertson said their question was why they couldn't just bond them out at DPS instead of having to go to the jailhouse, making two trips, plus it automatically cost the City \$70 to just check them in. Capt. Bird said when they arrested someone, they didn't know who would have the capability to bond out or not. These people had to get a hold of a bondsman and make arrangements—some were 10 percent and some were cash only. Commissioner Robertson said he understood, but a lot of them started calling bondsmen as soon as they go to DPS. A lot of time the bondsmen would have to wait until DPS actually got them to the jail before they

would let them bond out. Capt. Bird said if it was on a Magistrate, a District Court, or a State warrant, DPS didn't have any control over that. Commissioner Robertson said they were talking mainly about the Municipal Courts right here in town. Capt. Bird said he would need to talk to DPS Administrative Manager Mary Gilsdorf to see if there was a different way to change the system. Commissioner Robertson said if DPS would look into that, he'd appreciate it because it would make it a lot easier on the bondsmen, and also it would save the City some money. According to what they told him, the biggest part of the people they bonded out were from the Municipal Judge. They said they could bond them out at DPS actually easier than they could at the jail. Capt. Bird said that depended on circumstances. Commissioner Robertson said he was sure some of them would have to go out to the jail. Capt. Bird said it was common for a low bond to release a person on their own recognizance, as the Officers had the ability for bonds under \$1,000. But after \$1,000, the Judges told them that was a signal that they wanted this person to go to jail. So DPS had to take them to jail, and then they needed to contact a bondsman and make arrangements, the bondsman had to go pay DPS, and then go to the jail to get the prisoner released.

Commissioner Robertson asked if it would be out of the ordinary to get their standard procedure changed around so that these people could actually be bonded out at DPS? Capt. Bird said he would have to research it because he didn't know if it was by Statute. As long as DPS had those records, they would have to make the trip to the jail, and then back to pick up the Release Order from DPS. He didn't know if it was a Statute which required the records to be maintained at DPS. He believed in order to alleviate the trip to the Police Department, it would mean that those records would have to be maintained at Detention. Commissioner Robertson said they were just wanting to be able to bond them out down here, and then they wouldn't have to make the two trips. Most of them already had the bonds set, and in most cases they would then call the bondsman who would then have to wait an hour or two before the prisoner ever even got them to the jail. In essence they could go right down to DPS and bond them right out there. Capt. Bird said sometimes that was done. If DPS knew the person was going to be able to arrange bond and the bondsman was coming, they would sit there and hold them and never take them to jail, as long as the knew the bondsman was coming right away. But sometimes because of call load, they didn't have the opportunity to be able to sit there with them. Commissioner Robertson said maybe if they could just work a little closer with the bondsmen, they could save the City some money. Capt. Bird said if he'd tell the bondsmen to talk to either he or Ms. Gilsdorf, they would see what they could work out. Commissioner Robertson said he knew they had talked to Judge Lee, but it was to no avail. Capt. Bird said they could always talk to them, but he didn't know what he might be able to do.

C. Comments by Assistant City Manager regarding water report.

Mr. McNeile said we were at 91 percent capacity in our reservoirs, which was about the same as we were last year. Mr. Miramontes had reported that Bonito Lake was full and Holloman was still taking water.

D. Comments by Mayor Carroll regarding appreciation to Community Services and Parks and Recreation staff.

Mayor Carroll passed along appreciation to the Parks and Recreation folks, as well as the Community Services folks, for all they did for the Day in the Park Armed Forces Day celebration at Washington Park. At the same time they were setting up and helping with the Gus Macker Tournament, and both events were very successful. He requested Mr. McNeile to pass along

thanks and congratulations for a job well done to all the staff involved this weekend in those events.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss limited personnel matters, and threatened and/or pending litigation and/or acquisition of water rights.

Commissioner Cooper moved to adjourn into Executive Session to discuss limited personnel matters, and threatened and/or pending litigation and/or acquisition of water rights. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0. The Meeting was adjourned at 9:47 p.m.

"The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of May 24, 2005 was called into executive session and the matters discussed in the closed meeting were limited only to those specified in the motion for closure."

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Angie Rahn-Broyles

City Clerk Angie J. Rahn-Broyles
(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of June 14, 2005.