

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
JUNE 14, 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. Dotti West, and the Pledge of Allegiance was led by Mayor Pro-Tem Ron Griggs.

PRESENTATION:

1. Presentation by members of the Airport Advisory Board regarding the Alamogordo-White Sands Regional Airport.

Mr. Barry Burke was present to speak on behalf of Board Chairman Jim Talbert, who was not able to attend the meeting. Mr. Burke said he was not here to present anything, nor to discuss or answer questions. Mr. Talbert had asked him to thank the Commission for the rapid response to the materials he had submitted. He had also asked the Commissioners to contact him by e-mail so that he could arrange to meet with any or all of them to answer any questions they had of him.

Mayor Carroll said the Commission appreciated the input from the Airport Advisory Board. It appeared that most of the people in the audience present tonight were here on the Airport issue. Hopefully they were all aware that the City was in a situation where it had been contacted by the FAA who had indicated that they had some problems in the way the City had been conducting business at the Airport, and that we had not been following the Grant assurances we had signed onto over the years. We were in the process of evaluating and trying to come into compliance with those requirements. Keeping in mind that we had entered into good faith agreements with tenants out at the Airport, what we needed to do was to find a way to come into compliance with our assurances to the Federal Government so that we did not jeopardize future funding for the Airport. At the same time, we needed to be fair to the people that were currently lessees or conducting business out there and to make sure that in the future we conducted the business out there in compliance with not only our own Ordinances, but also with those requirements of the FAA. The Airport Advisory Board had submitted some recommendations of changes to the Ordinance, changes to policy, and some boilerplate Lease Agreements. Staff was still in the process of reviewing those, and the Commission had not received all the staff comments yet. There may be some issues that we felt like we needed to visit with the FAA on to make sure that whatever changes we made or were in compliance with, what they said the requirements were was the way we needed to do business at the Airport. He had a conversation several months ago with some folks from the FAA and they indicated that they would be sending some correspondence to him outlining their concerns. Apparently they had sent it all over town. He had yet to receive anything, but he did have a copy of something that came from somebody from the FAA. He did not know whether this was in fact the issue that he'd discussed with them

on the phone, or whether this was what he'd asked them to provide. He'd not had the opportunity to go through it. He was somewhat concerned that the FAA would choose to make this available by fax or e-mail to other people prior to his even receiving it. However, he would discuss that with the FAA and try and ascertain why they felt it was important to share it with others before they sent it to him.

Mayor Carroll said where we were in this right now was that staff would be reviewing what was provided by the Airport Advisory Board, and if there were issues we felt needed to be further discussed with them or the FAA, we would do that. It took us a considerable amount of time to get into the problems that we currently had out at the Airport. We had addressed the immediate safety concerns that were raised, and we were working to address the long term concerns. He would like to say that we would be ready in two weeks or four weeks to take action on all of this, but he didn't believe that we would be. If we were going to do this, we needed to take the time to do it right. He wanted to assure everyone who had a lease at the Airport or who did business at the Airport that our intent was to operate the Airport in the best way we could in compliance with the rules and regulations and in a way that was fair to everyone who was out there at the Airport today or who would be coming out there in the future. With the large number of people present, he didn't know what the expectations were of what we were going to do tonight, but the presentation had been made. He didn't know whether all the Commissioners had read it. He'd read through it. He was certainly not an expert on the Airport, and there were a lot of things in here which he needed to leave to people with a whole lot more knowledge than he had. However, he did see a number of areas in here that he certainly had some questions about which he would like to have answered. He would wait for staff to finish their evaluations and their comments to see whether their questions were the same as his, or whether his were just questions that were of little or no concern. That was where he felt we were at the present time on the operations of the Airport. We asked for everyone's indulgence to give us the time and to work with us because this needed to be a cooperative effort. There were different interests involved with people that had hangars, people who did business, the City's interest, and the FAA's interest. We needed to figure out a way to combine all of them and make sure that whatever we came up with as a solution to this was in keeping with the assurances that we had given to the Federal Government. There was a tremendous amount of future funding at stake in this if we did not satisfy with the FAA. We may not totally agree with what the FAA wanted done, but they were the ones who would have the final say as to whether or not we continued to get funding to help us improve the Airport. We were going to be working with them and hopefully with everyone present tonight, and with staff to address the concerns that had been raised and to solve all of the issues that were available out there.

Commissioner Cole agreed with the Mayor. How could the City staff stay in contact on a regular basis on reviewing the document that was turned in last week and also conveying any information that would be worthwhile and keep everyone informed of what was going on in a reasonable timeline? This had been going on for sometime and it kept building because it wasn't being solved. He thought there needed to be some communication continuously with at least Mr. Talbert and the Advisory Board and what progress was taking place. As he'd mentioned today, he really felt staff needed to burn some midnight oil and try to come to a conclusion working with the Federal Government. It would be slow, but would at least keep everybody informed. With everybody here tonight, it showed a great interest and they needed to know what was going on.

Mr. McCourt said he had previously addressed this to the Director over this area that any and all correspondence which went out or concerned the Airport, the FAA, or any other party, needed to be copied to the Airport Advisory Board to keep them up to date on what was going on. He

envisioned that staff would sit down and do some reviews on these. He had burned some midnight oil trying to get this reviewed and read. He was certainly far from an expert in this area. He had spent quite a bit of time and he didn't get it all done. He thought it was going to take some more time. When you were revising a whole section of your City Code, you were well versed to take time to make sure you actually understood what you were doing. That was what we were doing here—we were taking a chapter in our City Code and basically rewriting the entire section. We went through a similar process on our subdivision rules and regulations. We didn't try and hurry that and we didn't have an outside source breathing down our neck. So he felt we had to work with all the other parties and keep them involved while doing this review, and make sure we understood their concerns also. We needed to take into consideration all of the concerns of all of the parties that were involved in this as we went through.

Commissioner Cole said notwithstanding the Federal Government's involvement, and possibly the State's, he tended to feel that two to four weeks was a reasonable amount of time to study the document presented to the staff by the Advisory Board and get a formal reply back to them. In the intervening time, staff could study this and if there were questions, they could contact Mr. Talbert like he'd requested, and maybe there could be discussion there that would move it on that side also. There needed to be something worked out for the Advisory Board and those they represented so that we could solve this problem and not have the continual contention going on that we had at the moment.

Mr. McCourt said we had sent to the FAA a relatively minor proposed revision to our City Code regarding self-fueling out there. We had been following up on that on a weekly basis with the FAA to try and get some answer back. That was a relatively simple item that came from the Airport Advisory Board that staff supported that we had sent into the FAA which we didn't even think was a complex issue. We had sent it in and were following up and trying to get their answer. He couldn't say how fast the FAA would move on this. They were a large bureaucracy and tended to take a considerable amount of time to consider items. Part of that was because when they did things, then at least within the region that they made the determination, that was going to be applied everywhere in the region. So they tended to be very cautious in making their decisions. Even the letter the Mayor received had an awful lot of hedging in it as he read through it. He hadn't seen that letter until very late this afternoon when it was provided by a citizen.

Mayor Carroll said let's correct that—he did not receive a letter. He had no communication from the FAA. He had a copy of a fax that was purported to come from the FAA, but he had not received anything directly. Mr. McCourt said that was correct, and the Mayor had actually received that letter from him. He had received that letter from a citizen who had stopped by this afternoon.

Mayor Carroll said this had turned out to be a contentious issue. It didn't need to be. There was enough blame to go around as to why we got to where it was contentious. He didn't think it needed to continue to be contentious. He thought everyone was aware that we had a problem we needed to work out and we needed to solve. He did not want to set an arbitrary deadline to do something and turn out that we had done it wrong and we were in worse shape than we were had we not done anything. He thought if everyone would understand that we were attempting to work it out and we were attempting to do it right, that it didn't need to be contentious anymore. Some of the problems that arose, he felt everyone would agree, had to do with miscommunication or no communication. He felt we had reestablished the communication. So if it was contentious in the past, there was no reason that it needed to continue that way if everyone would work together in good faith to solve what was a community problem. This

wasn't an Airport problem, but was a community problem because Airport users were not the only ones that had a stake in the Airport. The whole community had a stake in it, so we needed to make sure that whatever we did, we did right and that it benefited not only the people who utilized the Airport, but all the citizens of Alamogordo. And we needed to not only solve today's problem, but to make sure that we set a course to where future Commissions, users, and tenants were not going to find themselves in the same quandary that we were in today. We could sit around and try to point the blame as to who did what and why we got where we were, but it served no useful purpose. We had a problem we needed to solve, and if we all worked together, then we could get it solved. He was not really interested in trying to set some arbitrary deadline that we were going to solve this by. While this was an important issue, it was not the only thing the City had to do. There were other things that had to be done as far as the City was concerned. He was sure staff and the Commission would spend whatever time they could or was necessary to do it, but it was not something that he saw was going to be solved in two weeks or four weeks, so he was reluctant to set an arbitrary deadline. He would prefer to say that we would all work as expeditiously as we could to get everything done as quick as we could.

Commissioner Cole felt that was a fair decision. First, he hadn't blamed anybody, but had just said this had been an ongoing problem. He would like staff to stay in continuous communication with Chairman Jim Talbert, and then he could relay the information to the Advisory Board. He agreed it was important to the community and that there had been miscommunication. He was asking that there be continuous communication, even weekly, such as a memo to Mr. Talbert. Something had to start as action, and it hadn't started yet. Instead, it was every side trying to win for themselves and nothing else. He would like to see some solution to that problem so that we could have a solution to the Airport problem. He was asking staff to work that out with the Advisory Board, if the Commission agreed. Mayor Carroll said as the City Manager had stated, it was his intention to keep the Airport Advisory Board apprised of everything that was transpiring as far as the Airport and whatever changes we were contemplating making out there.

Commissioner Ledford said this was not the only important issue we had, but lately it had been pretty important because this was where he received most of his calls. He felt Commissioner Cole was correct in the communication area in that when we didn't do something because we weren't ready, then perhaps we needed a weekly memo saying we weren't ready or where we were at on something just to let the Advisory Board know. Most of the calls he received were about where we were, what was going on, and that they hadn't heard anything. He thought that was the issue and the problem. We needed to take the time to work it out, but he didn't want it to sit unilaterally causing problems or issues, because there were issues and problems out there. He didn't know if staff could work on a situation where we could be more calm about what we were doing until we figured out what the FAA wanted, how we approached it, and try to keep the peace out there. This had been like the O.K. Corral, and he was tired of getting calls. As we were working through this, did we have any leases that were coming up for renewal, and if so, how were we going to handle those in the meantime? Mr. McCourt said yes. We had one lease which was due to expire at the end of this month. We also had three assignments that we were working on which appeared to have occurred without the City's prior approval, and which we were working on to get cleaned up. Since the FAA had indicated that they had a disapproval of our current leasing document, we had been looking for a leasing document which would be acceptable to them and to get all those issues addressed. He wanted to be really clear that it was our intent to make arrangements so that those leases didn't expire unintentionally. If we got into negotiations and couldn't reach a solution, we would look for some type of extension basis until we could finish the negotiations. Commissioner Ledford said that would be his point,

particularly when talking about the end of the month. Would the extension be not a new lease because we hadn't adopted one, but rather an extension based on the same terms as before? Mr. McCourt said that was an item which he and the City Attorney had just scheduled a meeting for this Friday. That was the first time they would both be able to get together at the same time to try and figure this out.

Mayor Carroll said if the concern was a weekly memo, the City Manager needed to draft a weekly memo to the Commission and to the Airport Advisory Board indicating what progress, if any, or what new developments had transpired during the week in regard to all the issues at the Airport. Mr. McCourt said he would do that.

Mayor Pro-Tem Griggs felt one distinction between what we were doing at the Airport and what we did on the Subdivision Ordinance, was that the Subdivision Ordinance was reworked due a lot to a joint committee composed of community people, as well as City people. Maybe we were at that point where perhaps we may need certain individuals who wanted to participate that were not members of the Advisory Board, as well as staff. Then they could schedule weekly or bi-weekly meetings and everybody would know what was going on. It was successful with the Subdivision Ordinance, even though it spread out a little bit over time and took longer than he personally wanted. However, if everybody was in the loop and everybody was participating, then maybe that time frame, whether it would be two weeks or three months, would be something which everyone understood the issues on and why we were doing what we were doing. So he would suggest that we see if we could consider that.

Mayor Carroll said that was ultimately where we would probably wind up. The difference was, of course, that there was a third party that we had to satisfy, and that third party was the FAA. At this point the Airport Advisory Board had made their recommendations. Staff was in the process of reviewing their recommendations, and there may be questions which the FAA would be able to answer. At the point where both sides had stated what they thought they wanted to do, he felt it was very appropriate to sit down and see if there were areas of disagreement, what those areas were, and if there was some common ground that worked for the City, worked for the overall benefit of the citizens, worked for the users of the Airport, and was satisfactory to the requirements of the Federal Government. Mayor Pro-Tem Griggs agreed, but he felt it would be best for us to come up with what we felt we needed, and then submit it to the Federal Government as a joint effort. Mayor Carroll said, again, once the staff was in a position to say they had gone through all of the recommendations and which areas they agreed with and which areas we needed to sit down and talk about, we could do that. Then hopefully we didn't have to wait until we were all the way through it to involve the FAA to make sure that whatever we came up with and that we could agree on, would also be acceptable to the Federal Government.

Commissioner Cooper said in looking at the situation, this issue was workable and was doable. We all had to get on the same page in the playbook together. Everybody who had concerns and who was associated with the Airport and the inner workings of the Airport, should be here. He was looking throughout the audience and he saw noticeably absent was the Airport Manager. He felt under the circumstances that he should be here, and if there was something he would like to say on the presentation, then he should be here. Mr. McCourt said the Airport Manager was an hourly employee, and he specifically didn't want to pay the overtime. His director was here, the Director of Public Works, who oversaw that operation, as well as the City Attorney who was also deeply involved in it. Commissioner Cooper said then let him answer. Commissioner Cole asked if the Airport Manager couldn't change his schedule? Mr. McCourt said he could, and we did at times. Commissioner Cole thought he could change it to be here then.

Mayor Carroll asked if it was a concern of the Commission that somehow the Airport Manager would not be wanting to work out the problems that existed at the Airport and to reach a solution? There wasn't going to be any action taken tonight—it was a presentation, and the presentation by Mr. Burke basically was that they gave us this proposal, and they'd like us to work with them. Commissioner Cooper said that was true, but if you were an Airport Manager and were going to manage the Airport, then for a meeting like this, at all cost he should be here. Mayor Carroll said we would have him at the next meeting. Commissioner Cooper asked about Public Works Director Jose Miramontes, who the Airport Manager worked under? Mayor Carroll said he was present—what would he like for him to comment on? Did Mr. Miramontes have any comment? Mr. Miramontes said no, he did not.

Mayor Carroll thanked everyone for their interest, and we would work to solve the problems.

Mr. Dan Krupovage said he had purchased a hangar a year ago and he had never received any kind of lease. He'd talked to the City and they told him they couldn't do anything for him. He couldn't get any return calls for anything. He had money tied up at the bank because of this. Mr. McCourt asked the City Attorney if this was one of the three assignments that we were working on? Mr. McDaniel said yes, he thought so. Mr. Krupovage said that was what he meant—nobody knew anything. Mayor Carroll asked Mr. Krupovage to give his contact number to the City Clerk, and someone would call him in the morning. Mr. Krupovage said he'd heard that before. Commissioner Ledford asked if he had called here before and didn't get to talk to anybody? Mr. Krupovage said his wife had called, but did not receive a return call. Commissioner Ledford asked who she had called for? Mr. Krupovage said Mr. McCourt. Mr. McCourt said he had received calls and he did return them, and he even had them logged in his telephone log. Mayor Carroll said, again, if he would leave his number with the City Clerk, someone would contact him in the morning and set up some time frame to address his problem.

Mr. James Fambrough, Executive Hangar Rentals, said the Mayor had spoken of miscommunications and things of that nature, and it was pointed out that the Airport Manager was not here. He couldn't tell them how many times he'd made phone calls and tried contacting him through the City of Alamogordo, and he was never around to solve issues. One of the members of his staff met with the Airport Manager, and at one point he told them, and it wasn't a request, that they needed a safety and fire inspection. So they arranged it through the City Fire Marshal and had it all set up for the 27th of this month. Then one of his hangar tenants happened to ask the Airport Manager about it, and this was a gentleman who he trusted and knew, and he said that the Airport Manager had stated that we were persecuting our tenants and that the fire thing was all on them, when they were requested by the Airport Manager to make these inspections and to make their hangars publicly viewable to the Fire Marshal. The Airport Manager had been dishonest with him and he also felt he had been dishonest with the City Manager, because he'd spoken with the City Manager on the phone. He did not tolerate dishonesty in his business dealings. If he had a dishonest tenant, then he went through a legal 30-day process. If you were not storing aircraft in that hangar, you were out in thirty days. That was what was legally required. He had done everything to come up to what the City of Alamogordo had asked him to do. They'd asked him to make it available, he'd made the appointment, and then the Airport Manager went behind his back, behind his employee's back, and behind his hangar tenant's back, and said something that was completely ludicrous—that he would schedule a fire and safety inspection without being requested to and that he was out to persecute his own tenants. He thought he would let the Commission know of this action and what happened. Besides just the one staff person, she also had a friend with her who witnessed the Airport Manager saying this to them. Therefore, at this point and since the Airport

Manager was a part time paid employee who never seemed to be around, he would ask the City Manager and the Mayor for his resignation because he was not doing his job.

Mayor Carroll said we would attempt to address all the issues as expeditiously as we could.

The Commission recessed at 8:04 p.m., and reconvened at 8:14 p.m.

PUBLIC HEARING:

2. Public hearing to reconsider 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, 2005, with the finding that it will not be detrimental to surrounding properties.

Mayor Carroll said this item was on the last agenda, and we had taken no action on it, and now the petitioner had asked for reconsideration. What we were being asked to approve was a permit for a temporary structure, a tent. Obviously the intent of the petitioners was to have the tent so they could sell fireworks at that location. He understood that the sale of the fireworks and the tent were two separate items. With the permission of the landowner and a permit issued by the City Clerk, they could in fact sell fireworks from a table out there in the parking lot. The tent obviously was a better way to do it. They could sell them from inside the store and on the property, and what we were being asked to consider was the placement of a tent on that property.

Mr. Jimmy Nevarez, Phantom Fireworks, was present. Mr. Nevarez said last year when they set up on White Sands Boulevard, which location they were not using this year because it was now a car lot, the City had asked him to clear the weeds. He had cleared that whole lot to make a more presentable piece of property for the City. He would like the Commission to keep in mind that they did whatever they could everywhere they went to make their location better than it was to begin with. Also, there was a protest from Barbara Zabriskie, who was one of the people petitioning not to allow the tent. She had since forwarded him a letter, which he had forwarded to the City Planner, recanting her first letter. She was more upset that people were contacting her than she was about the fireworks. Also, he felt there was some confusion about the fireworks that were allowed in the County, so he didn't feel that the people who got the letter and who protested truly understood what we were trying to solve there.

Commissioner Cooper felt there was no problem in putting this tent up, especially since it was located down and away in the northwest corner. Did the City Planner have any problem with this? Ms. Few said no, and this was a compromised location with Public Safety and the Fire Bureau.

Commissioner Cooper moved to 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, 2005, with the finding that it will not be detrimental to surrounding properties). Seconded by Commissioner Cole.

Commissioner Robertson said he'd gone over and walked around, because his concern from the last meeting was that it would be set up too close to that service station. They had very little room there. There was not that much room between the service station and the street on the

west side of the station to put this tent. Not counting the distance of the tent's length, standing on the street west of there, when that breeze blew—that service station was very busy and the gas fumes were horrible. He could not believe that they would be selling fireworks there and that some of those kids were not going to be shooting some of them off. With those gas fumes blowing across there, he felt like it was very much a fire hazard. If this was under normal circumstances on any lot where it was not around the service station, he would have no problem with it. But when it was that close to that service station, and when you actually stepped it off and saw how close it was, you really didn't realize just how close it was. He wouldn't support this because of that.

Mayor Pro-Tem Griggs said Commissioner Robertson had commented that this was a busy gas station. It was a very busy location. The fireworks booth would only increase that amount of business which that part of the parking lot received. He didn't think he had the same worries regarding the gas fumes or kids shooting off the fireworks, but he was concerned that there could be an accident either involving two cars or a car and a person, and he couldn't support it for that reason.

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

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 the Regular Meeting of May 24, 2005.

Recommendation: Approve the minutes.

5. Resolution No. 2005-19 requesting the New Mexico Department of Finance and Administration approve revised budget figures for certain line items in the City's budget for FY 2004-2005.

Recommendation: Approve the Resolution.

6. Resolution No. 2005-20 supporting the work of the White Sands Missile Range (WSMR) Community Response Team and urging the Department of Defense Base Realignment and Closure Commission to reconsider the realignment of the WSMR Army Research Laboratory activities.

Recommendation: Approve the Resolution.

7. Resolution No. 2005-21 supporting the work of the Keep Cannon Initiative and urging the Department of Defense Base Realignment and Closure Commission to reconsider the closure of Cannon Air Force Base.

Recommendation: Approve the Resolution.

9. Award of RFP No. 2005-003 for the City's Annual Financial and Compliance Audit of the fiscal operations for fiscal year ending June 30, 2005 and Lodger's Tax.

Recommendation: Award the contract for year 1 of 3 to Hinkle & Landers, P.C.

10. Statement regarding the Executive Session of May 24, 2005.

Recommendation: Approve the statement.

Commissioner Cooper moved to approve item Nos. 3, 5, 6, 7, 9, and 10. Seconded by Commissioner Cole. All voted "aye". The motion carried by a roll call vote of 7-0-0.

PLANNING ITEMS:

4. Consideration of the final plat of WAGNER ESTATES, REPLAT D, for two (2) lots located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, for Grisak and Reese [Case S-05-0875(A), Diver's Cove and South Florida Avenue].

Recommendation: Approve the final plat of WAGNER ESTATES, REPLAT D, with dedication of right-of-way for Florida Avenue, a Waiver of Protest Agreement, and with an Avigation Easement.

Mayor Carroll said he understood the reason this came before the City Commission was because with the right-of-way dedication, that it was not something which could be handled as a summary item by the City Manager. Mr. McCourt said that was correct; otherwise he would have approved it. Mayor Carroll clarified that the right-of-way and all of the documents were taken care of. Mr. McCourt said that was correct.

Commissioner Cooper moved to approve Case S-05-0875(A) located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction (with dedication of right-of-way for Florida Avenue, a Waiver of Protest Agreement, and with an Avigation Easement). Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

8. Outdoor Watering Schedule.

Recommendation: Ratify the City Manager's decision to allow watering three days per week as permitted by Section 28-03-33 of the *Code of Ordinances*.

Mr. McCourt said this year our water supplies were much more abundant than they had been for about seven years now. Our reservoirs were in better shape and we hadn't had to pump our wells all winter. He didn't know what was going to happen next year or if the July rains were going to come on schedule. His feeling was that the citizens had worked very hard when we needed to conserve water, and that we should give them the opportunity to use the water if they wished when it was available. He did want to make one small change to his agenda report. Since the report was written, we had received additional input from our contractor who ran the water treatment plant, and they had asked us to delay the implementation of this until July 1st because they had some technical problems dealing with turbidity. Also, we didn't have that new

pipeline quite in service yet. We were anticipating it would be accomplished fairly quickly, but they had asked us to delay it because of delivery problems from our main reservoirs to the City until July 1st.

Commissioner Cooper said as per his conversation with the City Manager, his feelings on this was that we maintain the two-day schedule as was right now. He felt we should at least wait until the middle of July to see which way things were going to happen—whether we were going to get the rainfall or not, because it was getting awful hot and dry. He would much rather delay it two or three more weeks and then see where we were, rather than to implement the three-day and then have to back off the end of July or August.

Commissioner Moncada said when we did go to the three days, who got to water on which days? Mr. McCourt said the addresses which ended in odd numbers would be able to water on Sunday, Wednesday, and Friday. For addresses which ended in even numbers, they would be able to water on Tuesday, Thursday, and Saturday. Monday would continue to be a no watering day. The hours would not change and all the other rules would stay in effect, as they were a normal part of our summer watering schedule.

Commissioner Cooper asked about the delay. Mr. McCourt said we had been requested by our contractor for some technical reasons dealing with turbidity. Also, on the main pipeline which we were replacing, the ditch was dug, the pipe was there, and they were finishing cataloging the archaeological information. As soon as they did that, the pipe could go into the ditch, we could sanitize it, and we could greatly increase our capacity to bring water into the City.

Public Works Director Jose Miramontes said we had two issues that impacted what we wanted to do, and he'd asked the Manager, Dennis Wing, from Severn Trent to attend this meeting to answer any questions. Basically, it revolved around the fact that we didn't have enough pipe capacity until this pipeline was built. Second, earlier this year we'd had some significant rainfalls in the mountains, and we'd introduced a more than usual amount of dirt into the big reservoirs. As the Commission would recall, he'd addressed that problem and he'd mentioned that turbidity would become a problem and that was why we were having to pump more of the wells for a short period of time. We continued to have some problems with turbidity, and Mr. Wing was going to call on some of his experts to see if they could assist him in trying to clean it up. We had met all the State and Federal requirements, but one of the big concerns was that if we exceeded the turbidity limits, then we would have to issue a City-wide boil water alert and he didn't think any of us wanted to see that.

Mr. McCourt said one of his concerns about this was that we didn't know if the July rains were going to come. He'd noticed it starting to cloud up in the afternoons, so maybe that was a good sign that we would see more of a normal period of time. He also didn't want to give the impression that this drought was over and everything was fine. It would take awhile to recover from the draught and we were going to need quite a few wet years before we got our ground water aquifers back where we'd been accustomed to them being.

Commissioner Robertson didn't believe we were going to have that much to worry about because as long as we had this tier system in place, he didn't feel that many people would be watering that third day because they didn't want to go into the second tier. Many people were working tremendously good to keep away from that, so he didn't feel we would have any problem with this third day of watering.

Mayor Carroll said the recommendation from the City Manager was to at least hold off until the first of July, and we had another meeting scheduled between now and then. So if it was the Commission's desire to ratify his decision to allow that to start happening July 1st, then if something changed between now and then, he could certainly back away from that recommendation at the next meeting.

Mr. Miramontes pointed out that turbidity was measured by a unit called an "NTU", and it was basically the cloudiness of the water. The minimum limit of that was .3, and we'd never had any problems with it. However, when we were running the plant, it tended to peak around .2, so we were about two-thirds of the way. So if all of a sudden we had to try and produce more water, we may get to that .3, and we only had a 36-hour window if we exceeded that limit. Then we would have no choice but to issue the boil water advisory which would alert everyone.

Mayor Carroll said if it was the desire of the Commission to consider the three-day per week watering, he felt that was something the City Manager would need to take into account when July 1st came around if there was still a concern. He felt what the City Manager was asking for was the concurrence of the City Commission to allow him to do that should he so choose to on July 1st. If we ratified his decision or intent, it did not mean that he had to follow through with it. Mr. McCourt said he could cut us back, but the Ordinance wasn't clear that he could "uncut" us back. Commissioner Robertson asked if this required a motion? Mayor Carroll said yes.

Commissioner Robertson moved to ratify the outdoor water schedule (to allow watering three days per week as permitted by Section 28-03-33 of the Code of Ordinances). Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a vote of 7-0-0.

Mr. McCourt said he still wanted to encourage people to conserve water as it was a very valuable resource. This was not a signal that we had it coming out of our ears, and he hoped people would continue to conserve.

11. Appointments to Boards and Committees.

Alamogordo Promotion Board. One (1) vacancy – At-Large Representative.

Alamogordo Disability Council. Four (4) vacancies.

Mayor Carroll reappointed Mr. Jeffrey Gaede, Mrs. Peggy Cowgill, and Mr. Ed Grabman, and he appointed Mrs. Georgia E. Qualls to fill the four vacancies.

Planning and Zoning Commission. One (1) vacancy.

All remaining vacancies were rescheduled.

UNSCHEDULED COMMUNICATIONS:

A. Comments by Mr. Jorge Barbosa, 2215 Garcia Street, regarding noncompliant zoning issues.

Mr. Barbosa said he lived at 2215 Garcia Street, and he had an issue because twenty-five years ago he put two trailers there, and now the City was trying to force him to pay \$450 to rezone his lot because it was in Zone "A". It was Collins Tract 14, and that zone was trailers and houses

and a park all mixed. He asked the City why only him and his lot, and he didn't think it was fair. Twenty-five or thirty years ago the City Manager or City Inspector weren't doing their jobs, and now they wanted to force him to pay \$450, which he didn't think was right. All the lots around him were mixed trailers and houses.

Mayor Carroll said obviously the Commission wasn't aware of what his concern was, but if he'd been working with staff, then hopefully staff could shed some light on it. Community Development Director Brian McGuire said the situation was that we had some noncompliant use in one whole block. In the block on which he lived, there was a mixture of single family dwellings and trailer houses. It was zoned only for single family dwellings. We discovered it and were trying to bring it into compliant use. The fee for taking this before Planning and Zoning was \$450. Staff met with Mr. Barbosa and gave him the packet, and that seemed to be the best way to do it. We either did that or we had a large number of mobile homes in there which were noncompliant and would need to be removed. So we'd met with Mr. Barbosa and informed him on what he needed to do to petition the City Commission to change the zoning.

Mayor Carroll asked if this qualified as existing, nonconforming? Mr. McGuire said he believed it was such a mixture of it that it did not. Mayor Carroll asked if this was the only piece of property we were talking about in that whole area? Mr. McGuire said there was more than one lot in noncompliance. Mayor Carroll asked if there were a number of lots? Mr. Barbosa said there were ten lots, ten trailers in there. Mayor Carroll asked if we were going to all ten property owners? Mr. Barbosa said no, just him. Mr. McGuire said, though, that Mr. Barbosa and his family members owned all of the properties there. Mr. Barbosa said on Sleepy Hollow, but not on Garcia Street. Mr. McGuire said as far as the City was concerned, the person petitioning for the change of use was the one who came in and petitioned for rezoning. Mr. Barbosa said he hadn't asked for rezoning. The Inspector went over and saw the trailer there, and said it wasn't supposed to be there because it was Zone "A" for houses only. But there was a trailer, a trailer, a house, a trailer, a trailer, a house, etc. It was all mixed.

Mayor Carroll thought we needed to see if this was an instance where there were numerous properties out of compliance, then rather than trying to single out just one property owner, we needed to figure out how to address the whole area. Mr. Barbosa said he'd been there for thirty-five years. If it came to this, would the City make them move all the trailers? Mayor Carroll didn't feel that was the intent—the intent was to bring it into compliance. Mr. Barbosa asked how the City would force them to pay when those trailers had been there for years? Why at this point of twenty-five to thirty years did the City have to decide that the property owners now owed the City money? Mayor Carroll said it appeared that Mr. Barbosa's was not the only piece of property out there, so we probably needed to address it in a broader scope.

Commissioner Robertson asked if Mr. Barbosa had stated that there were two trailers on a single lot? Mr. Barbosa said yes. Commissioner Robertson said they were out of compliance. Commissioner Moncada said that was what the argument was here. Commissioner Robertson asked if he thought he should be able to have the two trailers on the one lot? Commissioner Moncada said he'd had them there for so many years. Mr. McGuire said this was an example of what we ran into everyday. On probably every other agenda, we had noncompliant use, and our attempt was to work with the homeowners. We'd discovered the two trailers on the one lot, and the lot he had them on was large enough that if he divided it into two lots, we could remove that noncompliant part of it. Commissioner Robertson asked if there were two trailers on the other lots that were out of compliance? Mr. McGuire said no—for all the rest of them, there was just one.

Mayor Carroll said we had a combination of “mis-zoning”, plus the fact that regardless what the zoning was, Mr. Barbosa was in a situation where no matter what we zoned it, he would not be in compliance without dividing the lots. So we were talking about a couple of things, and let’s see if we can address all the issues at one time. Mr. McGuire said when we left the last meeting, he understood that since we were taking in the whole block, being this street as well as the one on the other side of it and since they were all his family members, staff figured that would be spread amongst the family members and the burden of it would not fall on one person. He didn’t know if it was the City’s role to contact all the rest of the noncompliant folks and have them divvy up their portion of the money. Mayor Carroll said let’s see if we can figure out how all these people got into noncompliance and what we needed to do to solve it for the whole block. Mr. McGuire said staff did look back, but could not find any evidence of blocking permits or anything that was ever done back then. Mr. Barbosa said in those years you didn’t have to ask the City for permission to park a trailer, but only had to get a blocking permit, which you could get through the people you hired to moved the trailer in. Mayor Carroll said he understood, but now that we had identified a situation which was not in compliance, we needed to bring it into compliance. Therefore, we needed to figure out the most equitable and best way to do that. So staff would work with him and the other property owners out there to figure out how to solve the problem.

Commissioner Cole said we needed to give it a lot of thought before we went back to something that had existed for twenty-five years, and then charge somebody \$400. That didn’t sound right, and we needed City staff to really investigate it.

Commissioner Moncada said she had talked to the City Planner about this before, and perhaps what we needed to do was somehow take in the whole block so that everybody would be in compliance, and still help Mr. Barbosa out with his problem. Perhaps when Mr. Barbosa got back together with Ms. Few and Mr. McGuire, they could explain a little more as to what we were trying to do for him. Mayor Carroll said let’s figure out the scope of the problem and how we can address it.

Mr. Barbosa said those trailers were his mother-in-law’s, and she was 70 years old and the rent on them was her income as she didn’t qualify for Social Security. He’d tried to rent it out, and the City had told him no because he needed to wait until the City made a decision. It had already been over three months. He could not be supporting his mother-in-law. Mayor Carroll said we would see if we could expedite the solution to this.

Mayor Pro-Tem Griggs said he’d talked to Mr. Barbosa, and he’d advised him that he needed to come before the Commission to make us aware of it because staff only had limited means at their disposal to solve this problem. Now with the direction from the Commission, perhaps it could be pursued a little differently and we’ll see if we can correct the problem.

B. Comments by Mr. Johnny Horton, Jon-Tel Septic/Johnny’s Johns, regarding port-a-potties.

Mr. Johnny Horton, owner of Jon-Tel Septic and Johnny’s Johns, said over the last two years we’d had a major problem here in the City with the sanitation. He’d talked with Pat Vandergriff, Brian McGuire, and Lora Nelson, and never received any calls back. They got promises that something would be done, and the problem was that in the older days the City would enforce a toilet on every job site. Nowadays, it was down to one-third on every job site. He had a sheet with some counts, as well as the Municipal Code. Mayor Carroll said if the Code required one for every lot, then that was what we ought to be enforcing. Mr. Horton said this had become a

real problem for his company, as they'd had to start handing out locks, people were turning his toilets over and knocking the doors off of them. Each toilet cost him about \$500, plus the equipment. It was really all about the sanitation for these employees who were working. We weren't even into the OSHA specifications because there were so few that were delegated out.

Mayor Carroll said it appeared there were lots of houses under construction, and not a toilet for each one. In looking at what Mr. Horton had provided, the Code did not seem to require one for every lot. There maybe something someplace else that decided how many toilet facilities there needed to be per the number of people working on each job. Mr. Horton said the industry standard was one toilet would service ten people for one week. All these houses were being built now, and he was in these construction zones all the time. There would find sixty people on one toilet, and that made it a little hard for him to keep the units clean—it was impossible. He'd talked with the City staff about this all the time, and they were always going to do something. But nothing ever was done, and he still had the ongoing problem every week. He'd done a count two months ago by driving through all the subdivisions, and there were 77 new home starts with 30 toilets out there. That was the number of toilets between the two portable toilet companies, and not just his. On June 3, 2005, there were 94 new home starts, and 33 toilets. So we were backing up even more. It became a feuding problem for him because one contractor rented them and the other contractors wouldn't pay their share. Everyone piled into the toilets and it had come to the point where he almost didn't want to be in it anymore because it had become such a hassle. His company did the majority of the business here, and they did a good job at it and worked pretty hard at it. So he'd like to see the City come up with something better than what was going on. At one time it was enforced to where the contractor was required to have a toilet, or they didn't get the Building Permit. Suddenly that kind of drifted off, so how could you enforce it today and not tomorrow?

Commissioner Robertson said most of these subdivisions were in the County, so could we control those areas? Mr. Horton said the City was controlling everything else. Commissioner Robertson said we had an Inspector on them, but he wasn't sure we could control that. Mayor Carroll said if we issued the Building Permit, then we had some control. Mr. Horton said his company paid 15 cents per gallon for every gallon that came out of these into the City. They also paid gross receipts tax on every toilet. Mayor Carroll said he understood. This was more a matter of sanitation and safety than it was of revenue.

Mayor Carroll said if we didn't have a policy, we needed to establish one. If we did have a policy, then we needed to enforce it. Mr. McGuire said one of the things the building community would say if they were sitting here, was that if they were a contractor and they were building two houses side by side, why should they have to maintain two port-a-potties for their crews. We did have the ability to enforce it, and he understood Mr. Horton had also contacted the State on this. Mr. Horton said he'd talked to OSHA on it, and their ruling was twenty employees per employer, per toilet. And we weren't even meeting that. Mr. McGuire said his understanding was that the State had been reluctant to come down. Mr. Horton said they hadn't asked the State to come in, but he could have filed a complaint.

Mayor Carroll said this was the first the Commission had heard about it. If we didn't have a policy, we would establish one. Whatever we came up with would hopefully take care of the potential sanitation problems, and if we were going to have a policy, then we needed to enforce it. Mr. Horton said he would just like it fair across the board for everyone. There were a lot of people who rented these things, and then they had to fight with everybody else up and down the block and it wasn't a very even playing field.

C. Comments by Mayor Pro-Tem Griggs regarding recognition of Alamogordo native Bart Bryant; recognition of Miss New Mexico; and addressing low water crossing areas in town (i.e., Hamilton Road/Tres Lagos/Eagle Drive).

Mayor Pro-Tem Griggs said about two weeks ago, a guy from Alamogordo named "Bart Bryant" won a second tier major. He'd played in high school with Bart's brother.

Mayor Pro-Tem Griggs said this past weekend, a gal from Las Vegas named "Ana Romero" was named Miss New Mexico.

Mayor Pro-Tem Griggs said at the intersection of Hamilton Road, Tres Lagos, and Eagle Drive, there was a gentleman who lived on the south side of Tres Lagos at Hamilton, who had an issue with flooding after the last rain. That man believed the flooding was caused by the ditch behind his house, and the City believed the flooding was more caused by the water coming down Eagle Drive. City staff was taking steps to address the issue of water as it came down Eagle Drive so that if there was another rain storm, his property would be protected in that way. We had a low water crossing in the City of Alamogordo which was south of the intersection of Hamilton Road and Eagle Drive. He didn't know if there were any others in town, but that one created a safety issue for the City, as well as danger for citizens of the City and County. It again highlighted our need to work on funding for arterial roadways. Hamilton Road would be one, South Florida, Martin Luther King Boulevard, and North Scenic Drive. There were several roadways, and that was just something he'd talked about and which we needed to come up with a plan on a way to fund the building of some sort of arterials. They were not going away, but were going to get more and more traffic. We certainly wanted to avoid somebody in this instance from being washed into the arroyo. He felt the odds were slim, but it certainly could happen.

D. Comments by City Manager regarding water report; and "All America City" awards contest.

Mr. McCourt said the Commission had received the water report which compared to the one from the last Commission Meeting. Also, there was a report in there from Mr. Miramontes on the water situation.

Mr. McCourt reminded the Commission that next week our City was a finalist in the "All America City" awards contest. He would be attending that and would be out of the office from Wednesday through Friday. Assistant City Manager Matt McNeile would be Acting City Manager during that time. Mayor Carroll added that he, Commissioner Cooper, and Commissioner Moncada would also be attending that event.

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 8:55 p.m.

Mr. McCourt noted that we had a new staff person and she was in attendance this evening. Our new Manager at the Public Housing Authority was Alicia Rios, and she had been with the City for about a week now.

“The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of June 14, 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 28, 2005.