

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
7:30 P.M., COMMISSION CHAMBERS  
JUNE 28, 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 Mr. Fred Shearer, and the Pledge of Allegiance was led by Commissioner Inez Moncada.

**PUBLIC HEARING:**

1. Public Hearing to consider Ordinance No. 1230 for rezoning to District "C-3" (Business) requested by John Price [Case Z-05-0643(A), S. Scenic at Ocotillo].

*Recommendation:* With a finding that the rezoning will not grant a discriminatory benefit to the land owner, and/or harm neighboring properties or the community welfare, approve Ordinance No. 1230 to amend the official zoning map of the City of Alamogordo, to change the zoning of subject property to the more restrictive classification of District "C-1" and to approve the Ordinance for final publication for Case Z-05-0643(A).

Mayor Carroll said normally this item would have been heard by the Planning and Zoning Commission prior to coming before the City Commission for final action. At the time this was scheduled to be heard by the Planning and Zoning Commission, they did not have a quorum. So the City Commission at this point was substituting for Planning and Zoning, and this would be a Public Hearing on these issues. Normally when Planning and Zoning heard these items, the people who spoke were all sworn in, so was it a requirement for the City Commission to do that also? Mr. McDaniel said yes, and the Clerk was empowered to administer oaths.

Mayor Carroll stated that this was a Public Hearing. Was the petitioner or his representative present? Mr. Patrick Vandergriff with Vandergriff Code Consulting Services was present, and sworn in.

Mr. Vandergriff said he was present on behalf of Mr. Price, who was also present if there were any questions of him. He would ask the Commission to actually consider a considerably more restrictive consideration than what was in the recommendation. Mr. Price had owned this property from before it was even in the City limits, and originally his intent was to try and utilize all the properties he had remaining either for his own good or for the good of his family. In this regard, he had a piece of property someone had recommended to him to request in a "C" zoning area. In the beginning his intent was to build a two-family dwelling unit in that location, but he would now prefer the "R" zoning designation which would bring it to a two-family dwelling district. The purpose behind that was that there was considerable concern from the neighborhood that regardless of whether the intent was to build duplexes or not, that there were a lot of things that were allowed in commercial zoning which they would not like to see in their

neighborhood. Single family dwelling below the water tower where it sat would have very, very little value, if any. A duplex had the value of an income operation, and would be limited in size in order to comply with the requirements of the Environment Department regarding septic tanks. Additionally, they would have to comply with all the requirements for that residential zone as far as setbacks, percentage for yard area, and all of those issues. So any design that did not or could not comply with that due to the size of the lot would have to come back to the City Commission for variances at that time before construction. So Mr. Price was simply looking for a residential use. It was not large enough for mobile homes, which was what was located just the other side of the tank. The best reasonable allowable use was for that of a duplex because it had little value as a single family residential property.

Mayor Carroll asked, then, if they were amending their request from "C-3" to "R-3"? Mr. McDaniel clarified that under the new Ordinance, "R-3" was for duplexes, and "R-2" was for townhouses. Mr. Vandergriff said Mr. Price would be looking for the "R-3" for duplex.

Commissioner Cooper asked if that would be beneficial for everybody concerned in the area? Mr. Vandergriff said he certainly would see that there could be no harm caused to the area in relation to other developments that were right there and adjacent immediately to it. Also, it would be of the absolute best possible for his client. Commissioner Cooper agreed that the angle of the property would not make it conducive to single residential. Mr. Vandergriff said that was correct, and it was an odd-shaped piece of property to begin with. Basically, it would create two relatively small housing units within one structure, like a two-bedroom type unit on each side. That would be all that it would be able to accommodate. In actuality, his client had made an offer on several occasions to trade the property with the City. He sat on it for about ten years, hoping to either do that or to do something else because there were some water lines that ran across one corner, and things of that nature. However, he also wanted to be able to develop it and to get into a money-making situation if such a trade never materialized. He didn't want to be sitting on it another ten years. Commissioner Cooper felt a duplex would be palatable to the other people who lived in the area. He saw no fault in that. Mr. Vandergriff said their intent was to try and make it more palatable. The intent from the very beginning was a duplex, so it probably created a very large stir that need not have been created.

Mayor Carroll said there were a large number of protests to the "C-3" zoning. Since this was a Public Hearing, at this time he would ask that since the request had been changed from "C-3" to "R-3" which would be either a single family dwelling or a two-family dwelling, was there anyone present who wanted to speak in opposition to the rezoning from "R-1" to "R-3"?

Mr. Charlie Tallman was sworn in. Mr. Tallman said he had been selected to represent the following friends and neighbors in a unified protest of Case No. Z-05-0643(A): Sam and Molly Miller, Lewis and Evelyn Flowers, Ted and Margaret Schultz, Jim and Diane Turner, Bertis and Virginia Olson, Mrs. Edwina Danley, Elwood and Margaret Lowe, Gene and Margaret Whitehead, Joe and Rae Keeney, Dick and Nola Jones, and Mr. Randy Burroughs.

Mr. Tallman thanked the Commission for their time and consideration of the potential impact as a result of rezoning the property outlined in this case. They were assembled to strongly protest the changing of zoning of said property, by changing the residential area District "R-1", single family dwelling, to commercial district "C-3" business, or a more restrictive classification. If approved, it would approve numerous undesirable results. As a residential area, children played on scooters, bicycles, and played basketball in this immediate area. The traffic had already increased, creating a dangerous environment for these children. There was a four-way stop at the corner of Ocotillo Drive and S. Canyon Place. The stop signs on Ocotillo Drive had

been removed, and traffic now moved in excess of the speed limit. S. Scenic Drive was a two-lane street. As traffic turned off of S. Scenic Drive onto Ocotillo Drive, a single lane street, drivers accelerated around a slight curve to a high rate of speed before reaching S. Canyon Place. As they turned from S. Scenic Drive, the curve provided a blind spot and a driver's view was blocked from children at play and cars entering Ocotillo Drive from S. Canyon Place. Drivers at that point had little or no reaction time to a child on a bicycle or chasing a basketball rolling across Ocotillo Drive. Additionally, elderly people lived on Ocotillo Drive adjacent to the property outlined in this case. They had lived there for years, could barely get around, and were exposed to the traffic hazard when walking to their mailbox or anywhere on the front of their property. At the corner of Ocotillo Drive and S. Canyon Place, there was a children's school bus stop. The school bus ran three times per day during the school year. One of the school buses was for handicapped children. Who best knew the hazards outlined above than the residents in this immediate area. The above problems already existed, but it was obvious to the most casual observer that the addition of a retail business or a multi-family unit on the property outlined in this case would greatly increase these hazards. They appreciated the notification letter allowing them to respond with their concerns. They believed that accident prevention was more important than reviewing statistics after an injury or a fatal accident to determine the magnitude of the problem. Unfortunately, we lived in a society that was prone to file a lawsuit without hesitation, creating a seedbed for many additional costly and unnecessary problems. Increased traffic in a location may be viewed by some as a business opportunity. However, rezoning this particular part of the City of Alamogordo would create a hazard for the residents and a less desirable area to live, and would create yet more traffic, litter, noise, and congestion, resulting in the loss of property values. Southern New Mexico and Alamogordo were growing. However, there was a huge difference between advanced infrastructure planning to accommodate growth, and spot development. Through long term action planning and aggressively seeking State and Federal Grants, placing modern well-thought out infrastructure in place and then allowing growth to follow, would result in fewer problems generated as opposed to spot development. They were long term residents of the City of Alamogordo, tax payers, and registered voters. They strongly protested the approval of adoption of Ordinance No. 1230 to amend the official zoning map.

Mr. Tallman said they came not to merely outline the negative results of the proposed rezoning of said property, but they also came prepared with a recommendation. In the best interest of the citizens of Alamogordo and in the spirit of keeping Alamogordo beautiful, they made the following recommendations: 1) Recommend the City of Alamogordo disapprove the petition of Ordinance No. 1230 to amend the official zoning map and adopt comprehensive plan to the City of Alamogordo, to change the zoning to District "C-3 – Business" or a more restrictive classification, which if approved, would allow the property to be used/developed for retail business and/or multi-family or duplex dwelling, plus or minus .865 acre; 2) Recommend the City of Alamogordo purchase the property outlined in this case; and 3) Recommend the City of Alamogordo establish a mini-City park with landscaping and park benches for use by all citizens in the City of Alamogordo. Currently the Alamogordo High School students ran along the front of this property. Daily joggers, bicyclists, and residents all over Alamogordo used S. Scenic Drive as an exercise area. A mini-City park would allow a rest area coupled with added beauty to the City of Alamogordo. All of the above outlined negative results of rezoning would be eliminated. As taxpayers, property owners, and long term residents of the City of Alamogordo, they respectfully appreciated the Commission's strongest consideration and disapproval of the proposed Ordinance.

Commissioner Cooper said he was going to mention a park area. However, on behalf of the people that lived there, would it behoove them to purchase that piece of property from Mr. Price

and develop their own park? Because if the City did that, then it would have to generate more taxes to maintain the park and insure the activities there. If the residents did it, then we wouldn't have to worry about increases of taxes, unless they were prepared to take the entire tax burden for that particular park in that area, rather than putting the burden of the taxes on the rest of the citizens. Mr. Tallman said obviously he could not speak for the entire neighborhood. His first blush on that would be that a number of the people he named off were retirees and were on a fixed budget, and they had no money to upkeep a City park. Commissioner Cooper said it wouldn't be a City park, but would be their park. Mr. Tallman said the funding was not there. Second, regardless of what took place, their taxes would probably increase. Nothing to do with this case, but along that same Ocotillo Drive and Panorama Drive, for ten years they'd watched patchwork done to Ocotillo Drive. It was inappropriate money spent. So if they were watching their tax dollars do that, why should they trust additional tax dollars to go somewhere else? They were watching paving on streets that did not need to be repaved, and there were streets that needed paving worse. Commissioner Cooper said he did know that the process was being taken to upgrade Panorama and Ocotillo.

Commissioner Robertson said under the "R-3" which the Commission was considering, there would be no commercial on that property. He didn't understand their thinking behind the idea that a duplex would increase the traffic that much. It seemed like a park would increase the traffic a lot more than a duplex. Mr. Tallman said when they were talking about a park, it was traffic that already existed—joggers and bicyclists. Commissioner Robertson said he didn't understand why the traffic would increase with a duplex. If it was already zoned for a single family, they were only putting one more residence on there. Mr. Tallman said when this letter came out to them; it was described as "C-3", and not as "R-2" or "R-3". Commissioner Robertson asked if they were against the "R-3" zoning? Mr. Tallman said he couldn't speak for the entire group on that. That was something they would have to decide as a group. Commissioner Robertson asked if he personally was against the "R-3" for just a single duplex unit? Mr. Tallman said he personally was not opposed to that.

Commissioner Cole said he'd met with both parties more than once. Was changing it tonight as requested a proper type of procedure, because this group had not been able to get back together to decide. He knew there was a large number of people who had an interest in this decision. Mayor Carroll said yes it was proper for the Commission to either grant or deny the rezoning request, or the amended request since it was a more restrictive zoning than what was originally applied for. So it was something proper which the Commission could certainly address tonight if they decided.

Mr. Vandergriff said the situation was such that had he gotten involved prior to 3:00 this afternoon, he would have tried calling all of these people to try and explain what we were looking at tonight and try to work with them. But the simple fact was that what Mr. Tallman was dealing with was what he saw as the potentials of the proposal at hand. Even going down to the "C" recommendation which was a staff recommendation for multi-family, would have still not allowed anything larger than basically two 2-unit duplexes on the property because the simple fact was that there would be no way to accommodate the sewage requirements. Now, on the other hand, at some date 25 years down the line if there was a sewer main run up through there that they could connect to, it would give them a lot of options on then expanding and putting more units in on that one piece of property. Under the position we were looking at right here now, basically it would consist of two driveways and actually probably less vehicles than the standard single family dwelling houses. As we knew, most single family residences tended to gather many cars when there were kids driving, etc. But these units would probably house a single Airman or a young Master Sergeant who may have his car and his wife's car only. So

that was the reason they wanted to bring it forward and to show that there would be no impact. If anything, it would probably be a better degree of traffic safety in the fact that all of those Mesquite and brush there now would be cleared off into a residential style lot. It would be in far better shape and far better kept than it was presently, and a lot better visibility on the corner. Then probably on the other corner of Ocotillo, it might be a good idea to ask them to trim that back and give about a 30 foot clear site triangle on that corner to make sure people saw it better for the children and so forth. The reason Mr. Price had come back with this proposal was because it was all he intended to do anyway. So this had really been carried to a level that it didn't need to be carried to, and it had created a public uproar. He felt one answer to it would be to find out from the people present in the audience today on whether they had an objection to the duplex maximum ideal. If they didn't, then he suspected the other neighbors would feel that way also. The requirement of standard of law was that for people who wanted to protest, just like the person who applied, they also had to appear. He had seen applications fail because the applicant failed to show up to defend himself, and he'd seen protests fail because the protesters failed to show up. In this case, there were a number of people who protested within the audience, and he felt if we could get a feel for an understanding that they would not object to that type of restriction, which was a very tight one, then the City could operate. And the City could always put in a more restrictive zone than that requested without violating any legal stance.

Commissioner Moncada said she did feel that the protest was quite high—higher than most of our protests. She would like to hear from the people in the audience to see if they would change their idea of thinking with what we now had proposed. Perhaps that would make it a little easier on the Commission to decide on how to vote on this. Mr. Vandergriff said that was his recommendation because it was a very important issue, and there was enough people here that they could get a feel for it.

Mayor Carroll asked if there were people here in the audience this evening that were in opposition to a rezoning to "R-3", which would allow a duplex on the property and nothing more than that?

Ms. Nola Jones was sworn in. Ms. Jones said she was not really objecting to it—this was the first time they'd heard about it. They were not exactly sure what the requirements were, and this was what she had been talking to Mr. McCourt about today. She had told him that the Commissioners didn't really know what the property looked like and what a lot of the situation was unless you were out there. The Price family had never lived out there, but all these people here tonight did. The traffic had been increasing, and they had been very upset about the fact that it was going to be business rezoning. They were really upset because they felt the Commission had not been informed of their concerns because it was recommended with only one person who said it was the recommendation, and it hadn't even gone before Planning and Zoning. Now that they were doing it differently, they were all hoping that the Commission had thought it through enough so that they could say it would be alright for a residential area with a lot of different traffic problems already. Also, there was a potential for even more because of Alamo Canyon Road and the proposed construction of all of those homes. They also had a fire station up there. A lot of these things were not brought out before. They had no objection to a duplex, but the Commission was going to have to make sure that it would fly. They would need to adjust all sorts of things, and she understood that the septic tanks could not be adjusted because it was New Mexico regulations. She didn't imagine they would have any objection to that, but was there something which said that would be the only thing? Was there a timeline or anything like that, or any mention about cleaning it up? Mayor Carroll said if the rezoning to "R-3" was approved, there was not any timeline which we required the property owner to actually

build the duplex in. But in the "R-3" zoning classification, that was the maximum use he could make of that property—either a single family residence or a two-unit duplex. Normally this would have gone before the Planning and Zoning Commission and all of this would have been sorted out at that time. Unfortunately there was not a quorum present and the way the system worked, it then came to the City Commission who was also in essence sitting as the Planning and Zoning Commission. The way that the rezoning request went in was confusing because the original request was for a duplex, but the zoning request was for zoning which would have allowed much more than that. That was what he believed prompted the concern from the neighbors. So now that the request had been scaled back to the zoning which was appropriate for a duplex, he felt it was something which would not harm the neighborhood and which would still allow the owner to utilize his property in a cost effective manner. Ms. Jones said that was what it seemed like. Tonight was the first they'd heard about this, so she wanted to make sure that the Commissioners knew what they were objecting to. Mayor Carroll said yes, they had seen the package and letters of protest. He'd gone out and looked at the property, and personally he felt a duplex would not be harmful to the neighborhood. A 7-Eleven or something like that would have been a totally different situation. If the Commission approved the "R-3", then there would not be any commercial use of that property, and it would be limited to no more than a duplex on it.

Ms. Jones said they could have certain variances on that property, but would they have to come back to the Commission for approval? Mayor Carroll said yes. If the Commission rezoned it to "R-3", at such time as the property owner wanted to construct a duplex or a single family residence, he would have to submit a building plan and it would have to be approved. Any variances to the existing Building Codes would have to come back before the Commission for approval. Ms. Jones said right now there were weeds there, and then there were asphalt shingles which had been dumped there. Was there something the City had which would apply to that? Mayor Carroll said it didn't matter what the zoning was; if that sort of refuge was on a piece of private property, then the owner needed to clean it up. It didn't matter whether it was "R-1" or "R-3". He wasn't necessarily looking for that, but he did some vegetation growth out there, although he didn't know if it was a whole lot worse than some of the surrounding vacant land there. He suspected if the property owner was allowed to build his duplex, then that would all be cleaned off and become an attractive addition to the neighborhood. Ms. Jones said she hoped so, and she suspected that would probably be satisfactory to everyone, but she couldn't speak for everyone. Their main objection was to a commercial zoning. Mayor Carroll said he understood, and that request had been withdrawn.

**Commissioner Cooper moved to deny the rezoning to "C-3", but approve rezoning to "R-3" with a finding that the rezoning to "R-3" will not grant a discriminatory benefit to the land owner, and/or harm neighboring properties or the community welfare, and to approve Ordinance No. 1230 as restated to amend the official zoning map of the City of Alamogordo, to change the zoning of subject property to "R-3", and to approve the Ordinance for final publication for Case Z-05-0643(A). Seconded by Commissioner Cole.**

Mayor Pro-Tem Griggs said they were talking about a single duplex on this. The lot size was substantially larger, and at some point in time if the sewer became available, they could have potentially more than one duplex. The lot size was about 35,000 square feet, and could certainly have potential for more than one. Mayor Carroll clarified that "R-3" did not allow for more than one unit. Mr. Vandergriff said what would have to happen at that point was a subdivision, which would then be advertised and so forth. The shape of the lot probably would not lend itself to that. Also, additionally, basically about one-third of the lot was cut off by three waterlines that were running across that property at the moment from the tank to the City's

water system. They kept pointing out that didn't have an easement, but they were working on that. The point was that without coming back as a subdivision or some other form that would be required to come up as a Public Hearing, there would be no way to ever put more than two units on that property. So if that chance ever arose, the owners in the area would be aware that they were talking about doing a subdivision, and he suspected they would see the same crowd again. He personally didn't like to see the same crowd more than once. Mayor Pro-Tem Griggs said the point he was trying to make was that was a potential. If we wanted to tonight, he supposed we could limit it to one duplex or limit its ability to be subdivided. He was right about the septic tank, but it may not be that way forever. He just wanted people to understand that we had 35,000 square feet of a lot that could be subdivided for more tracts. If it was not going to be really doable, that was okay. But he just wanted to bring it up because he felt we could take care of it tonight, to where we wouldn't have an issue to ever come before us again at all. Mr. McDaniel said they could put something in, but as of right now, the fact that it was one lot and it was "R-3" meant that it got to have one duplex and not more than that. Basically if it was still "R-1", the same thing would apply if somebody wanted to have more than one single family home on it.

Mr. McCourt said it appeared that this could come in under the minor subdivision rules, which would preclude the necessary hearings and so on. So he felt the Mayor Pro-Tem's comments were well placed, because in theory there could be a subdivision there. Second, he just wanted to clarify the motion as it was before them. The Commission would be authorizing staff to modify Ordinance No. 1230, and in every place where it indicated "C-1", that would be changed to "R-3". Mayor Carroll said that was correct.

Mr. John Price was sworn in. Mr. Price said he had twins that he needed to get out of his house, so let's do this. Mr. Vandergriff said Mr. Price had no objection whatever to the proposed criteria the Commission put on it. Commissioner Cooper clarified it would be restricted to the duplex in "R-3". Mr. Vandergriff said it was technically unfeasible to deal with it with the waterlines where they were at the present time, so however the Commission chose to deal with that was fine. Commissioner Cooper said let's go with the original motion on the floor.

Commissioner Moncada said generally when the protest was this high, she generally didn't vote for it. However, since most of the people in the audience seemed to agree with "R-3", she would vote in favor of that. She hadn't heard anybody reject that.

Mr. McCourt requested a moment to converse with the Public Works Director.

The Commission recessed at 8:11 p.m., and reconvened at 8:20 p.m.

Mayor Carroll said there appeared to be some difference of opinion. There was no confusion that there were some existing City waterlines which ran through a portion of that property. The question at this point was whether the City had the proper easements across the property. It was his understanding that the petitioner was willing to grant the easements we needed for the existing waterlines in the event that the easement did not already exist. Also, if the easement did not already exist, then the City would bare the cost of whatever surveying and legal procedures would be required to get the proper easement. He would ask that the maker of the motion and the second of the motion condition the approval on the granting of the necessary easements to the City.

**Commissioner Cooper amended his motion to deny the rezoning to "C-3", but approve rezoning to "R-3" with a finding that the rezoning to "R-3" will not grant a discriminatory**

benefit to the land owner, and/or harm neighboring properties or the community welfare, and to approve Ordinance No. 1230 as restated to amend the official zoning map of the City of Alamogordo, to change the zoning of subject property to "R-3", and to approve the Ordinance for final publication for Case Z-05-0643(A), conditioned on the granting of the necessary easements to the City. Seconded by Commissioner Cole. All voted "aye". The motion carried by a roll call vote of 7-0-0.

**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.

2. Minutes of Regular Meeting of June 14, 2005.

*Recommendation:* Approve the minutes.

3. Agreements with the Alamogordo Chamber of Commerce:

A) Facility maintenance, overhead and operational expenses of the Aubrey L. Dunn, Sr. Visitors Center.

*Recommendation:* Approve the Agreement.

B) Promotional services of the Aubrey L. Dunn, Sr. Visitors Center.

*Recommendation:* Approve the Agreement.

4. Courtesy Bench Agreements:

A) Joseph Ferguson.

*Recommendation:* Approve the Agreement.

B) Pinnacle Media, L.L.C.

*Recommendation:* Approve the Agreement.

8. Resolution No. 2005-22 writing off outstanding accounts deemed as uncollectible in Utility Billing/Library/Miscellaneous Accounts Receivable.

*Recommendation:* Approve the Resolution.

9. Resolution No. 2005-23 requesting the DFA, State of NM, approve revised budget figures for certain line items in the City's budget for FY 2004-2005.

*Recommendation:* Approve the Resolution.

12. "Resident Parking Only" sign for Mr. Benito Lizardo, 808 Virginia Avenue.

*Recommendation:* Approve the sign.

14. Award of RFP and Bid:

- A) RFP No. 2005-002, Geotechnical Engineering Services for various Public Works projects.

*Recommendation:* Award to Quality Control Engineering, Inc.

- B) Public Works Bid No. 2005-002, Alamogordo Senior Center and Civic Center Fire Suppression System.

*Recommendation:* Award to Casteel Automatic Fire Protection, Inc. in the amount of \$136,802.74, inclusive of NMGRT.

15. Statement regarding the Executive Session of June 14, 2005.

*Recommendation:* Approve the statement.

Item Nos. 5 and 13 were removed from the Consent Calendar.

**Commissioner Cooper moved to approve Consent Calendar items 2, 3(A), 3(B), 4(A), 4(B), 8, 9, 12, 14(A), 14(B), and 15. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0.**

**CONTRACTS AND AGREEMENTS:**

5. Lease Agreement with Sunny Summers Trust d/b/a Pottery And Moore (Elwood Lowe) for the property at 2005 North White Sands Boulevard.

*Recommendation:* Approve the Agreement.

Mayor Carroll said the Commission had received a revised Lease Agreement in their packet, and the only revision was to correct a couple of spelling errors on page 3.

Commissioner Robertson said when we originally approved this, we put in there that there needed to be some handicap utilities put in there for the bathrooms, and none were ever put in. The rental mobile bathrooms did have such a thing, and he thought Mr. Lowe was to put one of those in. However, he didn't have any kind of facilities there at all. Mayor Carroll said he was thinking that there was a port-a-potty there. Commissioner Robertson said there was, but it was not handicapped accessible. Community Development Director Brian McGuire clarified that was correct. Commissioner Robertson asked why it wasn't handicapped?

Mayor Carroll said he knew that had been mentioned at the time the Commission originally talked about this, but he was not sure whether we had made it a requirement. Commissioner Robertson thought we did because we had talked about the portables that did have it, and he believed Mr. Lowe had agreed to get a portable handicapped unit. There was not one out there now. Commissioner Cooper said the one that was out there now was so far back that it would even be hard pressed for anyone who was able bodied to get to it.

Mr. McGuire said they did follow up to make sure the port-a-potty was there, and then had also looked at the Commission minutes and did not see where it had been made a requirement.

Therefore, he had no way of enforcing it at that time. Commissioner Robertson thought if they would go back to the minutes, they would find where it was one of the requirements for the lease. Commissioner Cooper said Mr. Lowe was not to use the facilities at all, including electrical. Also, the existing restrooms were supposed to remain welded shut, and a port-a-potty would be put over there and it would be handicapped accessible. Mr. McGuire said he would visit with Mr. Lowe in the morning and make sure he got a handicapped accessible port-a-potty there.

Mr. McCourt felt it would be appropriate to clearly stipulate that in the motion, that it needed to be a handicapped port-a-potty. Mayor Carroll said we were just now getting around to a Lease Agreement on something which we had talked about in February. Was there a problem with tabling this item and making sure that the property was in fact equipped as the Commission had indicated it needed to be? Also, if necessary, that could be put into the Lease Agreement. Commissioner Cooper believed that would be appropriate. Mayor Carroll said we had gone this long without the formal lease, so he didn't know that another two weeks was going to make that much difference.

**Commissioner Robertson moved to table this for two weeks until we could get the appropriate changes in the Lease (to resolve the issue of handicapped accessibility to the restroom facilities on the property). Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a vote of 7-0-0.**

6. Amendment to Lease Agreement with Charles Diehl for Hangar "W" at the Alamogordo-White Sands Regional Airport.

*Recommendation:* Approve the Agreement.

Mr. McDaniel said back in May we sent Mr. Diehl a bill for next year's rent on his hangar, and he sent us back a letter saying that he realized his lease was expiring as of the end of June, which somehow or other had been missed. Otherwise, we would have been trying to figure out a way to start negotiating a lease. But he did bring that to staff's attention. Because of the involvement of FAA and some of the problems that they had noted and had told us we had to fix, and the fact that we did not have all the information necessary to fix those problems at this point, we proposed a couple of alternatives to the FAA. One had been previously discussed with the Commission, for a month-to-month lease. The other possibility was a one-year lease. He had e-mailed the FAA Compliance Officer, and told him we needed to do one of these, and which would they prefer. The Compliance Officer had replied that he would rather we did the month-to-month lease under the conditions of the old lease, as long as it was clearly understood by everybody that this was a patch and the City still had to fix its lease situation out there. He had said fine, that was how we would do it. So he had sat down with Mr. Diehl and his Attorney, and had pounded out a lease. He thought everyone was in agreement with it. He felt it was the fairest way to go for everyone because it preserved everybody's rights essentially. It just froze us at the status quo until we had the necessary information from FAA and from market surveys of rents and such to actually start overhauling the leasing situation out at the Airport to where we could treat everybody the same, and at the same time also be making enough money to where FAA felt we were running it as a serious business. The FAA had indicated that they sort of had qualms about that, and that they didn't feel we were charging enough rent. Mr. Diehl and his Attorney were present tonight if there were any questions of them. It would be his recommendation that the Commission approve the lease as written. He felt it protected everybody's rights in this matter and allowed us to go forward.

Commissioner Cooper said leases were between two parties. Was the FAA going to be a third party in the agreements between the City and the lessees? Mr. McDaniel said that was correct, and that was the situation we got into when we applied for a Federal Grant to pave the runway, extend the runway, and buy land for runways. You had to sign a Federal Grant Assurance which gave the Feds veto power over our business practices to a great extent. If this were the Golf Course or something that didn't involve Federal money, we could set fees where we wanted to. But because it did involve Federal Grants, we had to keep the FAA happy too. Commissioner Cooper asked if the FAA was going to set the fee rates? Mr. McDaniel said no, but they would tell us when they felt we were being unreasonable. They had said that they did not want to quote us a figure which we had to charge. However, they did want us to survey the market, which we would be doing over the next several months—being the market of New Mexico and immediately surrounding areas like Arizona and West Texas. They wanted us to come up with a figure we could justify to them as being market-driven, saying that it was a market rate and what we were proposing to charge. Commissioner Cooper thought that had been done, and surveys had been put out. We had talked to Las Cruces, Hobbs, Taos, Gallup, and Reno, Nevada. Mr. McDaniel said there had been some that had been talked to, but it was far from being a comprehensive survey. Primarily it was a survey of rentals charged for hangar space where we had an active controversy between us and the aircraft donors as to whether those were City hangars or whether they belonged to the aircraft donors and they were merely renting bare land from us. The FAA had indicated that they could see the logic of the aircraft donors' point, but they did want us to be working toward eventually owning the hangars and not having it be bare land lease forever. That was an area we would be working on. Commissioner Cooper said he'd like to have some explanation because this was so confusing and it kept going on and on and on. Commissioner Ledford asked what this had to do with the item tonight? Mr. McDaniel said with regard to Mr. Diehl, all we were doing was freezing everybody for another year. Commissioner Ledford asked why we were having this debate then? What did he want to do? Mr. McDaniel said he was just answering questions. Commissioner Cooper said he did know what he was doing. His question was why we would have a third party involved in a lease between the City of Alamogordo and Mr. Diehl, and Mr. McDaniel explained that the FAA had to be the third party to help set the fees.

Ms. Maryella Porter, Attorney for the Airport tenants, said she felt what Mr. McDaniel was trying to say was that every step we'd taken, whether in favor of the City or in favor of her clients at the moment, had been with the guide to a sense of the FAA. The FAA had pretty much said generally that they wanted uniformity, and that was the most important thing. Going back to Mr. Diehl, until we found a solution to the lease and tried to make everyone happy, which was going to be very difficult, but to the extent that it could be accepted, then the FAA made a strong suggestion. That it be month-to-month and to not make it look like a holdover. But until we reached the point that we had come to terms with this lease and we could offer Mr. Diehl a viable lease, then we could move forward. As far as the comment of how this third party had to do with the setting of rates, in all honesty they had nothing to do with the setting of rates. And Mr. Ed Chambers had pretty much stated that in his e-mail. As far as rates were concerned and what the City charged per square footage for hangars, was up to the market and how the City found the solution or how much the City would price in comparison to a Category 1 or a Class 1 airport as opposed to a Category 4 or Class 4. It was up to the outlining market. The main premise was as long as the City of Alamogordo could have this Airport be as self-sustaining as possible.

Mayor Carroll said this proposed extension was on a month-to-month, not to exceed one year. There had been no change in the existing rate Mr. Diehl was paying. Mr. McDaniel said what he was getting was exactly what we mistakenly billed him for thinking we were applying one

year's CPI and charging him for 2005-2006. In other words, just as if his lease had originally run to next June, which was the same thing the other tenants were paying. Mayor Carroll said at some point in time when we completed the fair market value surveys of either bare land or land with a structure on it, then on whatever new contract we might offer Mr. Diehl, he could expect that he would no longer be able to lease or rent that piece of property for what he was currently paying. Was everyone understanding that we could not continue to lease the property indefinitely at the same rate we were charging now? Mr. McDaniel didn't think that the aircraft owners agreed that it needed to go up, but they recognized that we were going to be surveying the market and we were going to be proposing that any lease renewals be at a market rate. They would probably have substantial arguments with us as to whose market rate.

Ms. Porter said in all honesty, a lot of the hangar tenants were paying much less than Mr. Diehl because the lease they had was still current. They still had ten or more years on their lease, so of course they were paying less than Mr. Diehl. Mayor Carroll said again, one of the concerns of the FAA as he understood it, was that in many cases in addition to the leases not being uniform, we were probably not charging what the market rate should be for some of these leases. It was his understanding that was part of what we needed to adjust, address, and figure out some way to determine what that fair market value was and how we could get from where we were today to where we needed to be over time. Ms. Porter said that was correct. Mayor Carroll said there had been a lot of miscommunication in this whole thing. He was hoping that as we moved through it, everyone understood where we needed to go and to not have unrealistic expectations that we could continue to just change the dates on these things and move on because we were probably not going to be able to do that. Ms. Porter said a lot of the tenants were aware of that. Also, a lot of the tenants were not opposed to entering into a new Lease Agreement, as long as the City used the magical number "30" years. Mayor Carroll didn't know that the FAA had indicated that they had any problem with a lease of that length. Ms. Porter said they did not. Mayor Carroll said that was typically what the leases had been in the past. Ms. Porter said up to 60 years. Mayor Carroll said they may have some concern about 60 years. He knew some of our Congressional delegation didn't think 60 years was near long enough and they would like 75 or 100, but that was not a battle we wanted to get into the middle of.

Mr. Diehl said as long as we were all charged the same rate, then he felt okay. But when his rate was raised and on one else's, then he got heartburn. Mayor Carroll said that was one of the issues which needed to be addressed. We were trying to take these one item at a time, and his just happened to be the top lease on the pile. Mr. Diehl said he had paid more than anyone else for ten years. Ms. Porter said at the moment she and Mr. McDaniel were working to come up with a lease which would make the FAA happy and make the tenants happy. Hopefully in due time the Commission would get a copy of that lease.

Commissioner Cole asked for an approximate timeline and not "in due time". Mr. McDaniel said he expected that the sort of survey we were going to want to do was going to take the rest of the summer. Then we may be able to hash out language. We had already done a considerable amount of hashing out language toward a new lease because for a while we thought we were going to have to write a new lease in order to keep the FAA happy. So we were pushing for tonight to actually have a new lease. But when they said they would actually prefer if we just kept the old lease on a month-to-month basis, we were relieved. Commissioner Cole said his time was set at September 1<sup>st</sup>. Where was the lease the Airport committee presented to the Commission two weeks ago? Ms. Porter said she had a copy of that lease and she had incorporated terminology of that lease in various leases that were not in the original lease given to her by Mr. McDaniel. She had incorporated stuff which wasn't repetitious and things that

made sense and flowed with the current lease. Commissioner Cole said via e-mails and phone calls, and personal meetings, he knew that the Airport committee wanted a deadline of tonight, which was unreasonable. He didn't think it was unreasonable. Now they were looking at a deadline two months from now. His opinion was every time he came to a Commission Meeting, it was extended a little more into the future. He'd heard good remarks about the working relationship between Mr. McDaniel and Ms. Porter. But he would like to tie this down, so was September 1<sup>st</sup> too short or too long, and could they have it earlier? Ms. Porter said actually there was a lease out there, and the only thing which was holding us up was the market survey, because there was a lease. Commissioner Cole asked if that lease was available to look at? Ms. Porter said yes—Mr. McDaniel had a copy of it which they had both worked on. So if the Airport Advisory Board needs a copy, they could get it from Mr. McDaniel. Commissioner Cole said he wasn't going to speak for the committee tonight, but he knew at least some of them had stated to him that they would like to see what was in it or what had been changed. Ms. Porter said they were more than welcome. Mr. McDaniel pointed out that Ms. Porter had been working on Mr. Diehl's lease, but a lot of her bill was being paid by another Airport tenant. There were a number of Airport tenants who had gone to Mr. Hakanson's firm, and Ms. Porter was working to try and come up with a lease which would be acceptable to the Airport tenants. So it was not just a matter of one guy, but they were working toward coming up with a lease which would be fair to everybody. They also needed to come up with a market survey to get an idea of what rental rates were reasonable for this neighborhood and our market. Then we would send a copy to FAA. Whether FAA would ever respond was another question, but hopefully at least they wouldn't respond with a scream of indignation. Mayor Carroll clarified at this point if we were circulating leases, please stamp "DRAFT" on it so that no one came back later and tried to use it. Let's make sure that until we got to the final one, that everything which got circulated and was still a work in progress got marked "DRAFT".

Commissioner Cooper said he had one question about the other lease which was presented to him in regard to Mr. Diehl and the 11 cents per square foot. He read that lease over, and half of that stuff should not be in there. He knew Mr. Diehl had turned it down, so was that the end of that lease? Ms. Porter said yes. Mr. McDaniel said we had substituted what was in the Commission's packets for that proposal. Commissioner Cooper said it was a crazy proposal. Mr. McDaniel said that proposal was starting to be modeled off the idea of a new lease. We took the CPI from 1992 which was when the Commission had set the rate at 8 cents. Commissioner Cooper said the rates were set in 2002. Mr. McDaniel said no, in 1992. Commissioner Cooper said in 1992 it was set at 4 cents, and in 2002 it was set at 8 cents. Mr. McDaniel said it was his understanding that in 1992 it was 8 cents. It wasn't until 2002 that the Commission actually put a CPI modifier on the 8 cents so that it would go up instead of requiring continuing action by the Commission. The problem was that because that modifier wasn't put on until 2002, it resulted in Mr. Diehl's rent being 8.6 cents per square foot, which the FAA considered patently unreasonable. The 11 cents was what you would get if you applied the CPI since 1992. There had been a 37 percent CPI increase, and that was exactly 11 cents. That was why that figure was used, but Mr. Diehl understandably had said, "Wait—everyone else is getting their CPI from 2002". That was his kick with that, and he didn't blame him. Since we were doing a month-to-month extension of an existing lease, it was reasonable that he pay the same rent he would have paid if he had one more year on his existing lease.

Commissioner Cole asked why we had to continue to send everything to the FAA? He thought a lot of this had happened because we had involved the FAA and he didn't think it was necessary. He didn't know, but it sure sounded like that to him. Second, he didn't know why the owners of the aircraft hangars had to employ an Attorney if we already had an Attorney who could sort this out, and they had to pay above and beyond it. He didn't understand this "they vs.

us” and the Attorney. Ms. Porter said she agreed. Commissioner Cole said he didn’t understand it. He got so many e-mails and he talked to Jim Talbert today. He did not understand some of the e-mails he got, and he was not an Airport expert. But he didn’t understand what was going on. He thought he was reasonably smart where he could be able to read sentences and understand the content. Then he got another e-mail giving him minutes of a selected meeting. He didn’t understand what was going on in all of this. Then here tonight we got two different Attorneys—one representing the people at the Airport committee, and then our Attorney, and we heard it was going to take a long time yet to come to some type of answer. He didn’t understand that type of thinking.

Mr. McCourt said when the City decided to build an Airport, they accepted 90 percent Federal money to do that, 5 percent State money, and the local economy put in 5 percent. To get that 90 percent, we agreed to certain conditions. We agreed to abide by them and to build them into every lease that we had. That was why the FAA needed to be involved. We received a letter dated June 13<sup>th</sup>, as well as having received a visitation back in February from the FAA, which he was able to attend part of, but not all of. Mayor Carroll pointed out that Commissioner Cole was at that meeting. Commissioner Cole agreed. Mr. McCourt said the FAA had indicated at that time that they felt we were out of compliance. The June 13<sup>th</sup> letter was the first time they had actually laid out where they felt we were out of compliance so that we could begin to address their concerns. He understood from the February meeting that essentially what they said was that we could at least count on *none* of our projects coming to the surface for funding from the Federal government. He understood that they had verbally said and threatened to require us to repay the past money which had been put into the Airport. That was why the people of the United States who had put up 90 percent of the cost of improving that Airport had a voice in how it was operated. That was why the people of the State of New Mexico who put up 5 percent of the cost had a voice in how we operated it. We, the City of Alamogordo acting for the people of Alamogordo, agreed to comply by those requirements. Now, figuring out what they were was not that simple. As was mentioned, the June 13<sup>th</sup> letter seemed to say very clearly that we were not operating the Airport in an economically feasible manner. It seemed to say that very clearly. So then we got an e-mail back from the representative from the FAA who stated that they were not going to tell us what that meant. So we asked what a rental rate was, and they said that was up to us, but they were telling us we weren’t economically feasible. So his question was how they made that determination.

Commissioner Cole asked how this whole problem originated in the beginning that we were in these circumstances, and each Commission Meeting we kept saying it would take more time? He didn’t understand the length of time it took, and why it originated. He read these same e-mails and letters. The way Ed Chambers’ e-mail sounded to him, it was up to the City government to make these decisions. Ms. Porter said that was right. Mr. McCourt said at the same time, though, the FAA was saying that we weren’t doing what was economically feasible. So how did we figure that out? How did we get them to open the purse strings? We talked about improvements at the Airport like extension of runways, paving of crossed runways, and those types of items which were upgrading the existing facilities. But it was more than that. Included in that capital funding package was overlays on the runways, just like our streets deteriorated and fell apart unless there was maintenance done on them such as crack-sealing. Those were extremely expensive projects at the Airport. They put up that money too—they put up 90 percent, with the State putting up 5 percent and the City putting up the other 5 percent. That was capital money, and they were also putting all that up. We weren’t getting that money either, so what was going to happen when the runway started falling apart if the Feds weren’t opening up the purse strings? Commissioner Cole said he didn’t know, but he also didn’t know how we got where we were at. Mayor Carroll said it took us a lot of years to get there, and there

was no sense going back trying to revisit all the history of everything that happened. We were at a point in time where we had a problem and we needed to work together to solve it, and that was what we were trying to do. So to just continue and sit there and say, "I don't understand how we got here"—it didn't matter how we got here, we were here. Ms. Porter said actually we were finding the solution. We also had this lease which required only what fair market value was—everything else was set, and all we needed was that.

Commissioner Robertson clarified that we were receiving public funds for that Airport. The Feds said we had to charge an equal amount to all the surrounding areas to be equal with them to receive the public funds like they did. Commissioner Cooper said no, absolutely not. Mayor Carroll said we had to charge an amount which was reasonable for the City of Alamogordo in relationship to our Airport, and not exactly like other Airports because each one was different. But we had to be charging something which was representative of the market value of the property at the Airport. Commissioner Robertson clarified that we couldn't charge 8 cents if everybody around us was charging 15 cents or 30 cents. That way they figured we were giving away public funds, and if we were going to do that, then they wouldn't give us anymore. Mr. McCourt said there were quite a few more requirements too, as far as treating people fairly and equitably at the Airport. Those were also requirements we all signed onto, and any pricing structure had to accommodate those.

Mr. Jim Talbert, Airport Advisory Board, said the problem was exactly what was happening now, and that was why it was pertinent, and that was that each individual was negotiating their own lease. That was why it was essential that we came up with some kind of boilerplate lease where everybody was operating off of a central lease. They didn't have to be the same, and the word "same" could get you in trouble because they didn't have to be absolutely identical. The FAA did allow variances based on location of the Airport, type of Airport, and how convenient you were to taxiways, etc. But they did have to be an essentially equivalent lease. What had happened in the past was that each individual had negotiated their own lease and then the FAA looked at them and saw that each one was getting different deals. It wasn't necessarily that one was getting charged more or less, because one may get a more attractive location than another. He'd discussed this with various people up in Santa Fe and Albuquerque, and that was exactly what they said. The City could charge different rates based on the location, but the key was that the central part of the lease had to be equitable. That was where we had gotten into trouble, because we had so many different leases out there that had all been negotiated by individuals. So what Ms. Porter and the Airport Advisory Board had been trying to work on was to come up with a single lease which could be modified to fit each situation. That was where we were headed, and he hoped it would be a solution to the problem. The other thing he wanted to bring up was that when we did our survey, it was important to realize that if you took an Airport, such as Las Cruces, it had a much better instrument landing system than Alamogordo did. So it was a more desirable Airport. It had three runways and was not sitting in the middle of restricted airspace making flying in and out very difficult—it was a more desirable Airport. So when the survey was done, you had to take into account that we didn't have a control tower. We didn't have approach control one day out of the week. We were really limited, so that did lower the value of the property simply because of the lack of accessibility to our Airport. Because of our location, it was going to affect us. Mayor Carroll said that was why it was going to take some time to do this survey—because it was not as simple as calling the Airport Manager and asking how much they charged. Ms. Porter said exactly. Mayor Carroll said we needed to make sure we were comparing something similar as best we could. The survey numbers we saw originally was basically from a call to the Airport Manager and writing down the number they charged. It needed to be explored in a little more detail than the initial numbers we had received from the few Airports we called. Were they really compatible?

Commissioner Ledford said the City was working with the Airport hangar lessees with the Attorney that represented them. They were working it out and making progress. Were they communicating with the FAA to make sure we were going fast enough? Was everybody happy? Mr. McDaniel said as to whether everybody would be happy, he didn't know. Commissioner Ledford clarified that we were making progress, though. Mr. McDaniel said we were making very good progress. Between us we were happy. We were keeping the FAA informed and giving them monthly progress reports, and tomorrow he would write them a new one with a copy of this lease if approved tonight. He e-mailed them last week and told them he was going to wait until after Tuesday's meeting so hopefully he could provide them with a copy of a lease. Whether everybody in FAA thought we were moving fast enough, he didn't know. However, we were going to move as fast as we could. This wasn't the only thing we had to do, as we still had water suits and other things out there that he had to spend time on. But he was going to gather this information as fast as he could. He was probably going to ask Mr. McCourt or the Commission for permission to recruit some sort of Airport appraiser to help us with these comparables because in a real sense it was very much like appraising a house. Commissioner Ledford said he understood all that. He just wanted to verify that things were moving forward and everybody was happy. Mr. McDaniel said we were moving forward. Commissioner Ledford asked if we'd received a weekly report? Mr. McCourt said yes; it had been distributed in the Commissioner's mailboxes. Mr. McDaniel said he would provide a copy of the monthly report we provided to FAA. Commissioner Ledford felt we needed to take as much time as we needed to get this right. His point was that he didn't care how long it took. Everybody was cool and we were making progress. We needed to make sure FAA, the tenants, and the Attorneys were happy.

Mr. Diehl said this whole Airport problem dated back to 1959. The City had always written the leases in different ways, and he was told that we always made the leases different. That was not good. Mayor Carroll said that was the way it was done, but we were not doing it that way anymore. Mr. Diehl recommended that we not push the panic button here, but get it right. Mayor Carroll said that was absolutely correct. Mr. Diehl said when he was on the Airport Board, they'd tried to write a standard lease, and the City did nothing about it. That was back in 1996. Ms. Porter said the reason she was here was because when Mr. McDaniel was faced with water issues and he called her asking if she could inquire to certain issues regarding the Airport, they were working together to try and expedite this. Mayor Carroll said we appreciated that. Mr. McDaniel felt it was important that the taxpayers had somebody who understood the problems of Grant compliance, and at the same time the tenants had somebody whose ear they had as to what their concerns were. It was a good idea that there be two lawyers. Two heads were better than one, and having somewhat different viewpoints helped us to accommodate everybody. He wanted to point out that Mr. Diehl had asked Ms. Porter why the lease she was working on for him really only applied to commercial tenants, and the reason was because we were going to try to make one lease that applied to everybody. Then they could attach a business plan which said either it was not a business or it was, and how they were going to report their gross receipts tax, etc.

Mr. McCourt said everyone may recall from the June 13<sup>th</sup> letter that they gave the City 30 days to come up with a plan to address all of these. What that meant was that we had to have that plan put together and ready for the Commission by the first meeting in July. It would take time to assemble that since he was not in agreement with several of the statements the FAA had made in that letter.

**Commissioner Cooper moved to approve the extension of the Charles Diehl lease on a month-to-month. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.**

7. Amendment to the Employment Agreement with City Manager Pat McCourt.

*Recommendation:* Approve the amendments and direct the City Attorney to prepare the Agreement.

Mayor Carroll said as required by the City Manager's contract, the Commission was required to do a yearly evaluation of his performance. We had done that and this was the appropriate time if we were going to make any changes to his Employment Agreement. We had discussed a change in that contract.

**Mayor Pro-Tem Griggs moved to increase the City Manager's base salary by 3.3 percent, to be effective the first pay period in July.**

Mayor Carroll clarified that amount turned out to basically be the COLA increase.

**Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.**

Mayor Carroll directed the City Attorney to draft the appropriate document to make that change.

**OTHER BUSINESS:**

10. Governor Richardson's Investment Partnership (GRIP) 2 Program.

*Recommendation:* Provide direction to City staff and identify the three most critical transportation projects.

Mayor Carroll said the Commission had a list of suggested projects in their agenda books. There were five projects listed, and the request which had come down as part of the Governor's program was for us to identify what we felt were the top three we would like to forward on at this time.

Mr. McGuire said Mayor Pro-Tem Griggs had requested that the fifth project be added to this list, which was Martin Luther King/Florida Loop. This was a large project, and there was apparently new money for the State, and this might be a very good place to go about getting it funded and the rest of these could still remain on our legislative request. They essentially knew what the costs on the rest of these projects were, so he'd taken the liberty of having an engineering firm take a quick look at the fifth project. It appeared the cost would be about \$5.2 million to build it all the way around. The largest portion would be about \$3 million to go across the arroyo. The entire project would take it from Desert Lakes Road clear south to Martin Luther King Drive, which would be constructed all the way to the Union Pacific railroad lines.

Commissioner Cole asked why project No. 5 was not Scenic instead of Florida Loop? Mr. McGuire said because Scenic did not exist anymore. The Commission's action said that the old Scenic Drive was south. Mr. McCourt said we hadn't chosen the route yet for extending Martin Luther King up to Scenic Drive where the Alamo Water Tank was. This particular proposal was to go essentially from U.S. 54 up to Florida, and then finish bringing Florida to Martin Luther

King Drive. That was all we were talking about here. He felt where everyone was a little confused was because we had also talked about the extension of Martin Luther King Drive all the way up to the Alamo water tank. Commissioner Cole asked why we were not coming around that tank onto South Scenic? Mr. McCourt said the reason that was not in here at all at this time was because we had conducted the Public Hearings for that, but the Commission needed to meet to look at those alternatives and select which one, if any, they wished to pursue.

Mayor Pro-Tem Griggs said last week when we were notified of some of this stuff, he had called Mr. McGuire and Mr. McNeile to talk about a little of this to try and figure out what it was. Was it new monies or a different approach with old monies? He wanted to try and figure out what was going on because he didn't want to shortchange ourselves by not going after a project which would be something the community needed that the Governor was looking at trying to find. His thought process on Florida and Martin Luther King Boulevard was to right now just take Florida, loop it, and it ran into Martin Luther King Boulevard. This other stuff developing South Scenic was going to have to really occur later, but his thought process was that we take it and look at funding to run it all the way to Highway 70 per the Master Plan comprehensive road plan. If that was what this program was trying to do, we could go after that and after N. Scenic to finish our loop even though the Scenic part of the loop on the south end was questionable if it ever got finished. But the main drag on Florida, tying into Ocotillo and going over could be. But he wanted to be sure that when we talked about this and submitted it to the Governor, that we submit stuff we thought he would actually be looking at and willing to help us fund.

Commissioner Cole said he had just wondered why we didn't go around to South Scenic, and he knew there was quite a bit of controversy by property owners out there. Could this money be used on First Street to go clear on over to Scenic Drive to replace, repair, and improve First Street?

Mayor Carroll said no, and let's back up on this a little bit. The RPO's were Regional Planning Organizations which made recommendations to the State Transportation Department, and this money was put into what was called the "STIP" (State Transportation Improvement Plan), which was the five-year plan for highway and road constructions in the State of New Mexico. It was not new money; it was a prioritization of transportation needs in the community which would be funded as part of the Transportation Department's annual program. Typically those monies were not provided for things like the ADA—they were for major thoroughfares. The Martin Luther King loop would be one which qualified, and North Scenic would qualify. In fact, we had submitted the North Scenic Extension to the RPO probably about four or five years ago, and it was not one which made the cut. Just because you put them down didn't mean you were ever going to get them funded. We were still going to have to compete within the Regional Planning Organization area for placement and recommendations to the Transportation Department. This was really nothing new. The Governor had just put his name on it this time, but it was the same process we had gone through on an annual basis with the RPO out of Roswell.

Commissioner Cole said he was not disagreeing, and he had just asked for suggestions. What he was thinking was that if Scenic went all the way around the City north and south, and since First Street was a main thoroughfare and was in need of repair and since part of it connected to the Relief Route, why could it not be continued from White Sands onto Scenic? That was why he was thinking about First Street and the South Loop of Scenic. He had no problem with Mayor Pro-Tem Griggs's idea, but he just had some suggestions in his mind and wondered why First Street was not a main arterial street. Mayor Carroll said it was on the list. Commissioner Cole said but not clear to Scenic. Mayor Carroll said it didn't say. It was listed as First Street to the Relief Route, and didn't say where the other end of it started. Commissioner Cole said he

just figured it was starting at White Sands. Mayor Carroll said if we were going to put it in there, we could put it starting anywhere. Commissioner Cole said the way he read that, and maybe he jumped to a conclusion, it was starting on White Sands because normally that was where we had been talking about the Relief Route.

Mr. McCourt said Commissioner Cole's vision of what we were proposing here was correct. We were talking about First Street essentially from the tracks going west to the Relief Route. First Street from White Sands to Scenic was in our maintenance program. As he recalled, it was in the next year's funding. That was why you saw our crews out there now doing some of the base repairs where the road underneath had failed. That road was on our list along with Ocotillo and Juniper. But that was part of our overall maintenance program. In his opinion, he would not recommend taking that off of our list and counting on this money. Our experience had been that this money was often much less than we requested, and very frequently didn't show up at all. First Street was an extremely heavily used road, and he did not feel it would be in the best interest of the City to take it off of our maintenance program in hopes that we would receive this. We would essentially reduce our chances even further, and then when it did come up, the State would say we didn't need it then and we wouldn't get any of it.

Commissioner Robertson asked if this funding was for the City, the County, or was it a joint thing? Mayor Carroll said let's be clear that there was no funding—there was no guarantee. Commissioner Robertson asked if we were asking just for the City? Mayor Carroll said yes, this would be for City needs, projects for the City. Again, all we were doing was prioritizing, and as this process moved forward, we would need to put in a plan, about 3 inches of paperwork, and preliminary design work. There were a lot of things which needed to go in with these applications.

Commissioner Robertson said on South Florida, from Panorama to Desert Lakes Road, what time frame were we looking at for bringing that area into the City? Mr. McGuire said we had a petition for annexation in front of us now. We hoped to have that before Planning and Zoning in their August meeting so it could come to the Commission as early as August. However, it might be September because there was such a large number of land owners out there. Commissioner Robertson said if we were going to bring this into the City, he wouldn't object to the South Scenic/Panorama project, because he believed that we should ask for this money to do things in the City, and that street would be in the City at that time. However, he would oppose the North Scenic Drive Extension entirely because we were not even planning on bringing that into the City limits—that was in the County. Mayor Carroll said part of it was in the County, but a lot was in the City. Commissioner Robertson said the biggest part was in the County.

Mayor Carroll said to keep in mind that when these projects went through the RPO process and unless there was a lot of politics involved and unless it became a critical thing somewhere, they would go into the State Transportation Improvement Plan. That STIP was a rolling five-year plan, so if they picked it up tomorrow, it would be six years out. Commissioner Robertson said he understood, but he felt it would be a lot more apt to get the funding for something in the City rather than in the County. For instance, the extension of Alamotero Road needed to be done just as bad as any of them, and that was in the City limits. Mr. McGuire said the first four projects on the list were the first four priorities which the Commission gave staff already for legislative purposes. Commissioner Robertson said he realized that, and he had objected at that time also. Mr. McGuire said this fifth project was a new one, and all staff was asking was if the Commission wished to add it to the list and put it someplace on the list. Commissioner

Robertson said he just believed that we ought to ask for funding on projects in the City and not in the County.

Commissioner Cooper said to him this was nothing more than a wish list. Mayor Carroll said we could say that South Florida was in the County. However, it was partially in the County, but it connected two portions of the City. Commissioner Robertson said right, and we were going through the process of bringing it into the City, and that was why he did not object to it. But as far as Martin Luther King Boulevard, he objected to that because all of it was in the County. Mr. McCourt said we apparently hadn't clearly stipulated where these roads were. The North Scenic project was in the City from the college going north past the hospital. Then there was a section from there... Commissioner Robertson agreed that we needed to maintain that particular street because it was there and was a beautiful street, even though part of it was in the County. But for future funding, he felt we needed to stick within the City limits, and Martin Luther King Boulevard was not even in there. Mr. McCourt said as Martin Luther King Boulevard was planned to go westward from Highway 54 over to 70, would be totally within the City. Commissioner Robertson said that was not what we were asking for here. Mr. McCourt believed what was proposed right here on Martin Luther King Boulevard, was to go from 54 east over the existing section, which was in the City, and continue across the south side of the new Nelson subdivision, and continue eastward to where it would intersect with South Florida. South Florida also needed to be extended southward from where it currently ended just south of Desert Lakes Road, and be tied into Martin Luther King Boulevard. So that created a new junction point where we would then look at picking one of the routes that had been under discussion, assuming the Commission wanted to pick any of the routes, to further extend Martin Luther King Boulevard. Now this whole section would be through the County, extended east and north to tie in up at the Alamo Canyon water tank. That whole section was in the County, but that was not being requested here. Commissioner Robertson said from 54 all the way up to Florida, that would be in the County. Mr. McCourt said no, it would all be in the City, with the exception of a small section by the BLM land which was not in the City yet. Mr. McGuire said he had a set of maps from Molzen-Corbin which showed the exact route we were talking about. He was having some copies made for the Commission now. The portion of this route which went along the south side of the Nelson subdivision had half of the road in the City limits. We had not annexed the south half yet, and that continued to the east until you hit the BLM land, which then went out of the City limits, and then South Florida came down.

Commissioner Robertson asked if there were any plans within the next five years, to take that into the City? Mr. McGuire said at this time the City limits extended south of that point, and he had not had any proposal for that land to come in. However, we were getting interest on South Florida where it went from Desert Lakes down to the BLM land. Commissioner Robertson said what this map showed from 54 up to Florida, was that it was all in the County. The City limits were right at the back side of the housing project there. Mr. McGuire said actually that was not right. The new City limits came down Hamilton Road and then took in half of that road back in behind where Birdie Loop took off. So it was partially in the County.

Mayor Pro-Tem Griggs thought when we annexed part of the BLM, we didn't just annex Nelson's stuff. Mr. McGuire said his understanding was that we could only annex that portion which he had purchased. He wasn't sure and would have to research it. Mayor Pro-Tem Griggs said Commissioner Robertson was correct and partially not quite correct. The north half of Martin Luther King Boulevard was in the City. The southerly side of it was in the County because the road straddled the City limits. His thought in this whole thing was that if we were going to go fight for money for some of this stuff, we needed to look at this loop to see if it was something we wanted to continue. We knew it was part of the plan to bring Florida south and

loop it into Martin Luther King Boulevard. We didn't know exactly—the Mayor may be absolutely right about the way this was going to work, was the way it had worked in the past. But with the Governor trying to jump in the middle of it and calling it his deal, it may or may not work exactly that way. Should we ask for more funding or just tie it down to the continuation of South Florida, which were the three priorities we gave the Governor before? Should we extend those or should we not? It looked to him like it would be reasonable and a smart thing to do to ask him and try to sell it. If we got it, we were ahead. If we didn't, we were nowhere any worse than we were currently. And this was one of the major traffic collector arterials that we needed to build. The City Manager was right in that it wouldn't be bad to get it from 54. He felt it would be better to propose to get it all the way from Highway 70 or from Airport Road, because that was where it was proposed in the Master Plan. If we could get it, we could. If we couldn't, then we couldn't.

Commissioner Robertson said he didn't mind doing it; in fact he would love to do it. But he just had a problem with trying to do arterial streets that were in the County. To try to sell something like that would be impossible.

Mayor Carroll said as Mayor Pro-Tem Griggs said, the north half of the road was in the City. He felt the reality was that if it was going to get done, the City was going to have to be the one to push it because there was no County development to speak of out there which would encourage the County to want to do that road. He felt it was an expensive enough project and one which would take long enough to get, if it passed mustard, into the long range State plan, that it was one we ought to put in there. For South Florida, we had talked about continuing to ask for that. For First Street to the Relief Route, we still had several million dollars worth of work which needed to be done out there. He would also like to see the first stage of North Scenic go, but if we were limited to three, his suggestion would be Nos. 1, 2, and 5.

Mayor Pro-Tem Griggs said he didn't necessarily disagree with that, but what if Nos. 1 and 5 were combined? Then North Scenic could be one project, as well as First Street to the Relief Route. There was nothing which said we couldn't combine some of these roadways.

Commissioner Robertson said someone made a comment a while ago that we normally didn't ever get what we asked for. What if we did combine those, and get enough out of the two combinations to do at least one of them? Mayor Carroll said that sounded fine. Commissioner Robertson asked if that would possibly work? Mayor Carroll said yes—take South Florida all the way around to Highway 54. We could tie it into Martin Luther King Boulevard and take it around to 54, and call it one project. Then we could put First Street to the Relief Route in, and also put in the North Scenic Drive Extension. Commissioner Robertson thought we might have a better chance of getting something like that than we would the other way. Mayor Pro-Tem Griggs thought it made the project somewhat sellable because we would be completing the loop. Commissioner Robertson thought it sounded better that way than separately.

Mayor Carroll clarified that we would combine project Nos. 1 and 5. It would be the improvement of South Florida from the Fire Station around to where it joined with the Martin Luther King Boulevard extension, and tied into Highway 54. Then No. 2 would be First Street to the Relief Route, and No. 3 would be the North Scenic Drive Extension. Commissioner Cooper felt that would work.

Commissioner Cole said going back to No. 2, why couldn't they say Scenic and First Street to the Relief Route? Mayor Carroll said as the City Manager stated, First Street from Scenic to White Sands was in our maintenance program, and that street wouldn't wait for the number of

years it would probably take if we were going to get any funding for it. Commissioner Cole asked if we could put this in here the way we had it in our maintenance plan? Mr. McCourt said we could certainly put it in here, but we were going to have it done before this thing ever even came to any possible funding source. Mayor Carroll said it was not just enough to write it down on a piece of paper. We would have to have it in some detail exactly what it was we planned to do. Building the road from White Sands to the Relief Route was one thing, but he didn't think we could try to sell it as a project, and then resurface the rest of it to Scenic Drive. Mr. McCourt said as he understood these projects, the State wanted to see some bricks and mortar type things—some new construction and expansion of roadways. Commissioner Cooper clarified that was what we would get in combining Nos. 1 and 5.

Mayor Carroll clarified the consensus of the Commission was to combine Nos. 1 and 5, and add Nos. 2 and 3 as our list of priorities.

11. Consider increasing the Livingston Associates' engineering contract for Public Works Bid No. 2003-014, Green Reservoir to La Luz Filter Plant 30-Inch Water Transmission Pipeline.

*Recommendation:* Approve increasing the contract by \$134,505.00 (includes NMGR).T).

Mr. McCourt said so everyone would know, Livingston was not getting this increase. SWCA was the archaeological people on this contract, and this was totally a result of running into the skeletal remains as we'd tried to put in the pipeline. Every time we ran into any remains, we had to do a recovery system to preserve them and catalog them. And that was totally what this was about. Mr. McGuire said to put into perspective the amount of effort on this, we had ten archaeologists out there, and they'd been there since before the first of June. The field effort was less than one-third of the effort which had to happen with these ancient remains. They had to curate the remains, contact all of the tribes known in this area, and then offer those remains to those folks.

Commissioner Ledford asked if this was something we had to pay for out of our funds? Mr. McGuire said yes. Commissioner Ledford asked if there were any funds available through the State or an archaeological society? Mr. McGuire said no. Commissioner Ledford asked what fund this was coming from? Mr. McCourt said Fund 49, which was for water projects outside the City. It was preserving our cultural history.

Mayor Carroll said we'd run into some of this group yesterday at the Airport, and they seemed like they had pretty well wrapped it up. The only thing he understood they needed to resolve was the one hand bone, and as to whether that was plus or minus 50 years old. If it was over 50, it went to the archaeologists. If it was under 50, it became a crime scene. Mr. McGuire said he'd talked to the archaeologists this morning, and they were planning on being out of there by Friday. This budget request here only had to do with the recovery of the human remains. There were still some features in there that he didn't have a budget figure for, which he would have to come back to the Commission on later. Then that meant we could start putting pipe in the ground, unless it was determined to be a crime scene and the OMI required us to keep it open longer.

Mr. Gary Meisner asked if we were running into bones as we ran this pipeline? Mayor Carroll said yes. Mr. Meisner said it sounded like an awful lot of money. Was there anyway to survey where they were going to run this pipeline before they did it? Mayor Carroll said we did. Mr. Meisner asked if we were still running into them? Mayor Carroll said we had no way to know

until we went in and disturbed the earth as to what was under it. Mr. Meisner asked if they shouldn't have a general idea of how the land was laid out if they took an aerial—the surface of the land? Mayor Carroll said some of these bones were 10,000 years old, so it was not something you would see by looking at the surface. Mr. Meisner said he'd come up with this idea because he was looking at some property out toward Highway 82 to purchase and a realtor told him he had all of his land surveyed by an archaeologist before anybody tried to build anything on it because of the potential of running into something. Mayor Carroll said that was basically a walk through on the surface to see if they could locate any arrowheads.

Mr. McCourt said we had an archaeologist look at the routing and we had ground radar done on this before we went through here. It was an extremely large site. We looked at re-routing the line around it. We tried to pack this line in right on top of the existing lines because we knew that land had already been disturbed and so we shouldn't disturb anything new. We tried to come up with every possible solution we could. The thought was that we might run into one or two human remains, but we had run into ten. He was sorry, but it was just what had happened. We had tried to take the reasonable steps to plan it and avoid, but it just didn't work.

Commissioner Cooper said we didn't have much choice on this, did we? Mayor Carroll said not much.

**Commissioner Cooper moved to approve increasing the Livingston Associates' engineering contract for Public Works Bid No. 2003-014, Green Reservoir to La Luz Filter Plant 30-Inch Water Transmission Pipeline, by \$134,505.00 (includes NMGRT). Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.**

13. Change Order No. 1 for Stewart Brothers Drilling's contract for Public Works Bid No. 2004-007, Alamogordo Regional Water Supply Project – Test Wells.

*Recommendation:* Approve Change Order No. 1 in the amount of \$58,713.90 (includes NMGRT).

Mr. McCourt said this was one of the test wells we had drilled up north. We had run into a fault that absorbed massive amounts of drilling mud, so we had to go in and case it. That was the bad news, and that was why we had the Change Order in. The good news was that we got a really good price when we bid he wells, so we were still in under budget.

Commissioner Robertson said that was why he'd pulled this item—he only wanted to know what it was for. Commissioner Cooper clarified that this increase still brought us in under budget. Mr. McCourt said yes, it did.

Commissioner Ledford asked what risk Steward Brothers assumed? Mr. McGuire said the contract was silent on this issue. One of the things the City Attorney had pointed out was that in future contracts of this nature with drilling, we had to have some sort of contract clause in there where the City shared 50/50 or whatever it was. But at this point the contract was silent on that fact and it was our opinion that the entire cost of this unforeseen problem underneath the ground had to be absorbed by us as the owner.

**Commissioner Robertson moved to approve Change Order No. 1 for Stewart Brothers Drilling's contract for Public Works Bid No. 2004-007, Alamogordo Regional Water Supply Project – Test Wells, in the amount of \$58,713.90 (includes NMGRT). Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.**

16. Appointments to Boards and Committees.

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

*Planning and Zoning Commission.* One vacancy.

No appointments were made, and all remaining vacancies were rescheduled.

**UNSCHEDULED COMMUNICATIONS:**

A. Comments by Commissioner Cole regarding park on South Scenic Drive; trash removal in the Sun Street alleys due to closing of alleys for ADA compliance upgrades; and repair to two cuts in the pavement on Sunbeam Avenue due to waterline maintenance.

Commissioner Cole said he'd received a phone call this afternoon from some of the walkers on South Scenic Drive. Where were we at on that little park going up there? Mr. McGuire said we'd received and approved the drawings in concept from Mr. Martinez. He and Mr. McNeile had reviewed the drawings and they would do nicely. Now Mr. Martinez had gone back to his draftsman to give us construction drawings, and he planned on proceeding. He had stated that it was something he expected to have done in the near future. We did not get a timeframe on it. He would ask Mr. Martinez for a timeline and get back on that.

Commissioner Cole said regarding the alleys in the Sun Streets area, he'd received about 15 phone calls. Southwest Disposal had also contacted him, and they were going to start at 6:00 a.m. trying to empty those containers in the alleys. Would there be somebody from the City to follow up on that tomorrow and make sure it took place? Mr. McCourt said this concerned part of our street maintenance program. As part of that, we were fixing the alley entrances to make sure they were ADA compliant. So to do that, they had to close the alley. Then we had the large 300 gallon trash containers in the alleys. This project required two pours, one for the curb and one for the sidewalk, and it took a week to cure the concrete so it was strong enough to hold the weight of the concrete truck. What we had talked with the trash company about was phasing that, and there was an understanding that we would do a third of it. Then while that was curing, we would start the next third and then the first third would be done. Then we would do the third piece. When the contractor got out there, they decided it was in their best interest to do all the demolition and tear out all the entrances at once, therefore shutting down all nine of the alleyways. That then resulted in the garbage trucks not being able to get in to make their pickups, which were scheduled for today, plus they didn't have enough individual roll-off containers for the houses to use while we were getting the alleys fixed. He did meet with staff from our Engineering Department and talked with Southwest Disposal. We'd resolved it and had it back on schedule so that they were doing the third/third/third type program. Southwest Disposal had assured us they would go in tomorrow morning and back into the alleys that they didn't have drive-through access on and do the pickups on the 300 gallon cans, so they would be emptied. Staff would follow up on that tomorrow.

Commissioner Cole said he had also received phone calls today regarding the two water meter repairs on Sunbeam. Those repairs were over three weeks old now and were still sitting there. Did the Public Works Director have any idea when that would be finished? Mr. Miramontes said he was not aware of it, but would check on it tomorrow. Commissioner Cole said there were two cuts in the street, and they were at least three weeks old.

B. Comments by Commissioner Cooper regarding "All-America Cities" contest.

Commissioner Cooper said a group from Alamogordo had gone to Atlanta, Georgia as winners, and we'd come back winners. We were one of 20 second place winners. We did Alamogordo proud, and he felt the citizens of Alamogordo should be proud. Out of all of the cities and communities throughout the United States, we were chosen as one of 30, which was something to brag about. He hoped the citizens of Alamogordo were aware of that and the fact that we were moving on.

C. Comments by Commissioner Robertson regarding commercial businesses hauling to the landfill and/or Convenience Center and being charged.

Commissioner Robertson said he would like a little clarification from the Commission. What did we deem commercial businesses? Did that mean businesses that held a business license in town as far as commercial businesses? He had an ulterior motive for asking this question because Roger Simmons owned ERA Simmons Real Estate, and he owned a rental house here in town which had nothing to do with the real estate office at all. He had some renters move out the other day, and they left it pretty dirty. Commissioner Robertson said he knew, because some of his own renters did the same thing, and it happened pretty often. Mr. Simmons had loaded the trash into his pickup and took it on out to our landfill. Since he had ERA on his nametag, they had charged him to dump out there. He was a resident here in Alamogordo and owned property here. The staff told him it was because he owned a commercial business. A homeowner was not a commercial business. Mayor Carroll said maybe he was also a property management firm. Commissioner Robertson said this was a personal home of his. They were property managers, but this was his personal home. Mayor Carroll said he didn't want to cast any aspersions on Mr. Simmons, but... Commissioner Robertson said he'd pulled the regulations, and it stated that all citizens of the City could dump free, except for commercial businesses. He wanted to know if they qualified a man that owned a house which he was renting as a commercial business? Mayor Carroll thought not, but again, when you showed up in a vehicle that was marked as a business... Commissioner Robertson said the vehicle wasn't marked—it was on his shirt with his logo on it. Mayor Carroll said he was identified by his shirt as some sort of business. Commissioner Robertson said if he covered his little name tag up, then would he have to pay out there? Mayor Carroll said if he was renting one house, he would say no. Commissioner Robertson said he had just the one house. Commissioner Cooper asked Commissioner Robertson how many rental houses he had? Commissioner Robertson said two, but they were not within the City limits.

Mayor Pro-Tem Griggs said in looking at the rules and regulations of the Convenience Center, it stated that City residents could dump free. City residents dumping construction debris were required to show a permit, and local contractors could use the facility to dump construction debris, but they had to pay. In reading all of that, it didn't appear to say that if a business, such as Alamo Title wanted to dump—they were a business. But this didn't say a business; it said a "contractor". We'd had a couple little things like that pop up, and whatever we wanted to do we could. We just may want to be a little more clear to where the guys out there understood, or we understood so that we could better answer questions such as the one Mr. Simmons was posing. One of our goals out there was to make sure the community put their waste out there, and not somewhere we didn't want them to take it. He understood the contractor's part, and felt it was certainly appropriate. But in Mr. Simmons' case, even if he was the property manager and that was all he was, was it wrong to say he shouldn't go throw it away? Commissioner Robertson said they were still paying the fees when they paid their water bills. Mayor Pro-Tem Griggs felt we needed to look at this to be sure it said what we meant it to say.

Mayor Carroll said he hadn't had a chance to go through it, but it just seemed that if he was a property owner, then he shouldn't have to pay. But again, if he was doing it as a commercial enterprise, say managing 15 or 20 properties, he didn't know whether they should pay. Commissioner Robertson said his point was that all of those properties were actually paying the garbage rates, where a contractor was not. Mayor Carroll said you could make the same argument that a homeowner paid the garbage fees, but if they hired "Joe's Yard Care" to come in and cut down their trees and he hauled them off to the dump, they would charge him because he was a commercial business. They wouldn't charge him anything if he hauled it himself, but when he hired someone else to haul it, then they got charged. It appeared like it may be enough of a gray area to where we ought to look into it to see if we could establish it. Commissioner Robertson said this wasn't the first time, as there had been various times it had come up in the past. Mayor Carroll said maybe it was something we needed to look into to see if there was a simple way to address it, though he suspected there was not.

D. Comments by City Manager regarding water report; upcoming vacation; and proposed annexation regulations for subdivisions located at the edge of our community.

Mr. McCourt said the Commission had received the water report, as well as a memorandum to himself from the Public Works Director, and the recommendation was to permit going to three-day a week watering as of July 1<sup>st</sup>. Tonight we'd heard about the additional problems we'd had in getting that new waterline on line, so it may be necessary to run our wells a little more in order to satisfy our supply. Even though we had water in the reservoirs, until we got that new pipeline in, we could not flow the water through it.

Mr. McCourt said he would miss the next Commission Meeting as it was his annual fishing trip to Missouri. Assistant City Manager Matt McNeile would be in charge during his absence.

Mr. McCourt said one of the items he'd received input that the Commission was interested in, was on this question concerning the future annexation areas and when we were going to allow waivers on subdivisions. This was one of the big questions on that whole annexation down on South Florida because many of those subdivisions were not up to standards and had wells and septic tanks. They were concerned about coming in and having to then hook into the sewer system and the water system. Staff was preparing a proposal for the Commission to consider to declare an area that the subdivisions would have to meet all the requirements on, whether they were in the City or out. That would include hooking into the water and sewer, building the full roads, and so on. These would be areas normally very closely associated with the fringes of our community. Commissioner Cole asked if it would include any of that subdivision out there in the Michael Shyne area? Mr. McCourt said he didn't know where that area was. Commissioner Robertson said it was not—Michael Shyne was way up on Canyon Road. Mr. McCourt said the Commission could anticipate seeing on their agenda for the first meeting in July a proposal on areas to be included which we would require full development to full City standards.

Mayor Carroll said on the water report, it appeared Bonito was still flowing very well. However, it seemed as though our spring flows had not come back. Mr. Miramontes said that was correct, as the flume was declining.

E. Comments by Mayor Carroll regarding "All-America Cities" contest; and information regarding the upcoming New Mexico Municipal League Annual Conference".

Mayor Carroll said he would like to echo what Commissioner Cooper was saying about our trip to Atlanta, Georgia. He felt everyone had done very well. We would have some formal recognition for the people that participated in that at the start of the next Commission Meeting. Hopefully by that time we would have a DVD of parts of our presentation to the Judges which we could show. He felt we couldn't say enough about the effort and the work which Maureen Schmittle put into this whole project. Also, Joan Griggs was the one who basically choreographed our whole exercise, and it turned out very well. It was a shame that she was not able to go along to be a part of it, but hopefully she would be able to see the DVD and be impressed with what she had created.

Mayor Carroll said he had received a letter from the Mayor of Roswell inviting us to the New Mexico Municipal League Annual Conference which was going to be held in Roswell on August 30 to September 2, 2005. As part of that, they would be having a tour on Tuesday, August 30<sup>th</sup> to give everyone a taste of Roswell culture and a history of the famous "incident" that occurred in 1947. We would be getting some registration information from the Municipal League later in the month of July. But if anyone was interested in the Annual Conference, now would be a good time to put those dates on your calendar.

**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 10:08 p.m.**

*"The Governing Body of the City of Alamogordo, New Mexico, hereby states that its regularly scheduled meeting of June 28, 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*

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Mayor Donald E. Carroll

ATTEST:

*/s/Angie Rahn-Broyles*

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City Clerk Angie J. Rahn-Broyles

(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of July 12, 2005.