

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
AUGUST 9, 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 Commissioner Ed Cole, and the Pledge of Allegiance was led by Commissioner Don Cooper.

PRESENTATIONS:

1. Presentation of plaque to Mr. Paul Burnett for years of service on the Community Development Advisory Committee.

Mayor Carroll presented a plaque to Mr. Burnett for his service on the Community Development Advisory Committee.

Commissioner Cole said Mr. Burnett had also been active in the local Habitat for Humanity, but would be leaving because of a move to Los Lunas. He stated that Mr. Burnett would be sorely missed, and wished him the best of luck in his move.

2. Presentation of Proclamation to Danielle Delone and Amanda Wiley for "Miss Alamogordo/Miss Otero County Day".

Mayor Carroll presented the Proclamation to Ms. Delone naming Wednesday, August 10, 2005 as "Miss Alamogordo/Miss Otero County Day". (Ms. Wiley was not able to attend). Mayor Carroll said as the Proclamation stated, these young ladies had earned great pride and recognition for themselves and our community, and they would be great representatives for Alamogordo and Otero County, and he wished them great success in their future endeavors.

CALL OF THE CONSENT CALENDAR:

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

3. Minutes of July 26, 2005 Regular Meeting.

Recommendation: Approve the minutes.

12. Resolution No. 2005-29 accepting a grant offered by the New Mexico Energy, Minerals, and Natural Resources Division (NMEMNRD) for the development of Abbott Trail.

Recommendation: Approve the Resolution.

13. Change of access road for Mitzi Brownfield, Co-Trustee, A.D. Brownfield, Jr. Trust.

Recommendation: Approve the change.

17. Award of Bids:

- A. Bid No. 2005-06, Miscellaneous foods, dairy products, and items for the Alamogordo Senior Center Nutrition Program.

Recommendation: Award as follows: One hundred forty-six (146) items to Ben E. Keith for an estimated total of \$35,434.26; One hundred twenty-three (123) items to Shamrock Foods Company for an estimated total of \$32,163.37; Nine (9) items to Farmers Dairies for an estimated total of \$8,780.00; and Sixty-eight (68) items to US Food Service for an estimated total of \$19,718.07.

Items 9, 15, and 17(B) were removed from the Consent Calendar.

Commissioner Cooper moved to approve items 3, 12, 13, and 17(A) on the Consent Calendar. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0.

PLANNING ITEMS:

4. Consideration of the final plat of ALAMO BLOCKS, BLOCKS 1 AND 2, REPLAT C, SUBDIVISION for two (2) lots located within the City of Alamogordo for CAP II – 10th/White Sands, LLC, and Walgreen Hastings Company [Case S-05-0888(A), 895 & 923 N. White Sands Boulevard and 120 & 150 E. Tenth Street].

Recommendation: Approve the final plat of ALAMO BLOCKS, BLOCKS 1 AND 2, REPLAT C, SUBDIVISION, Case S-05-0888(A), located within the City of Alamogordo, with variances on alleys and public land dedication, and with a Subdivider's Contract.

Mr. McCourt said this land was currently located on the southwest corner of 10th and White Sands. The old Taco Bell lot was being combined into make one large lot on the property, and it was being separated out from where the grocery store and existing Walgreen's were. Currently there was a sewer line which went diagonally across the property from approximately the corner of 10th and White Sands towards the southwest. That would be relocated as part of this project, and Walgreen's was anticipating construction of a new freestanding store on the center of this lot. There were site plans in the agenda packet, but the Commission was not being asked to approve them this evening. Only the subdivision was what was being requested tonight, which was the combining and realignment of those lots and the approval of the new easement for the sewer line which the developer would be moving.

Commissioner Cole asked if the plot plan referred to what was going to happen to the current structure which was there? Mr. McCourt said no. Commissioner Robertson asked if the current structure was on one of these lots? Mr. McCourt said the current structure was on the southern edge. Mayor Carroll said it was basically where the old Taco Bell was. Mr. McCourt said the existing structure would be gone. We would be creating a new lot and new utility easement.

Commissioner Cooper moved to approve the final plat of ALAMO BLOCKS, BLOCKS 1 AND 2, REPLAT C, SUBDIVISION, Case S-05-0888(A), located within the City of Alamogordo, with variances on alleys and public land dedication, and with a Subdivider's Contract. Seconded by Commissioner Robertson.

Mr. Jeff Wood, Bohannon-Huston, said there were a couple of concerns the City had, and he'd worked them out with City Engineer Dean Hunt and City Planner Sharon Few.

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

5. Consideration of Resolution No. 2005-27 lifting the moratorium on outside City water sales within the water service boundary as identified in the approved Comprehensive Plan, and also adopting a utility extension area [Case M-05-0324(A)].

Recommendation: Approve the Resolution.

Mayor Carroll suggested that we briefly discuss this, and then table the item to allow for public input on the item because there may be some people who felt they weren't adequately notified. By discussing it this evening and then tabling it to a future meeting, it would allow anyone who had concerns to voice them.

Mr. McCourt said currently the City had a moratorium on any outside the City water hookups, and we did not allow them to hook into our water system. This had created some situations where we had development in very close proximity to the City that did not have the full range of services available. When those areas then actually joined the City and were right to come into the City, we were faced with a situation where we had properties without adequate roads or water pressure for fire fighting purposes. We were proposing that in a restricted area around the City, that we require any development to meet the full set of our subdivision standards and requirements, which would include water and sewer. We would propose that they also have solid waste pickup to be billed through our regular billing service for water and sewer. They would not necessarily have to come into the City at the time the development occurred, but at a future time it would make it much easier for them to be incorporated into the City structure.

Mayor Pro-Tem Griggs said conceptually he didn't have an issue with this. He was a little concerned about the approaches we'd taken with rural residential subdivisions and how we wanted to address that stuff. Did we really want to create those zoning issues and then set that up a little differently? The way this looked to him, we were heading down the road that if we had a large lot subdivision proposed, that subdivision would have to meet standards which we had not been requiring of certain rural type subdivisions right now with curb, gutter, water, and sewer. As we went forward with this, he would like to see us look at those types of subdivisions and be sure what kinds of requirements we wanted to really place on them.

Mayor Carroll agreed. He felt that as we moved forward with this, that was something we needed to get a better definition of. We were in the process of redoing our zoning classifications to allow for some of those subdivisions. He suspected as we moved forward either within the current City limits or in the extraterritorial zone, that those were something we would probably have to address on a case-by-case basis unless we had some defined definitions in place which actually said what became rural residential, and how big did a lot have to be before we may or may not have to individually sewer them. The State had just changed the regulations on septic tanks. In some cases, those new standards may be adequate for large

lot subdivisions, depending on their location and what their potential may or may not be to pollute groundwater. We did need to address that, but this was something we needed to get out to the building community and public not only within the City of Alamogordo, but also to those who may be contemplating development within our extraterritorial zone. They needed to be made aware that we were going to start requiring a higher level of infrastructure than what we'd done in the past.

Commissioner Robertson said he realized this covered a lot of our five-mile jurisdiction. It would take an awful lot of water if we put this whole area under City water given our water shortage. His main concern was that we had quite a few people out on N. Florida and out west of town off of McDonald Avenue, as well as two or three other areas, where if we pulled that moratorium off, there were a bunch of them who would want to put water meters in pretty quick so they could get on City water. Had staff estimated how many new meters we would be putting on as soon as we did this? Mr. McCourt said there had been temporary lifting of the moratorium in the past, and we hadn't found that had occurred, even though we'd had people on waiting lists. We hadn't found them coming in and wanting to get onto City water. However, there undoubtedly would be some. Commissioner Robertson said if this was lifted, he could see a lot of different areas of the community where there would be eight or ten of them up a road wanting to run their own line up through it. Had staff given thought to how many we would increase by doing this? Mr. McCourt said no. We would anticipate that most of it would be in new development which occurred. Mayor Carroll said even within these areas, currently it may not be economical, desirable, or possibly even feasible to hook onto the existing City water system. What we were saying was that they had the option to do that or to provide an alternative. Commissioner Robertson asked if we would have the higher water rates for them, like we currently had for outside the City? Mayor Carroll said that would be the plan because there were other factors which went into financing the water and sewer system, other than just the rates. Commissioner Robertson said he wanted to set this aside tonight until we could get some more input on it.

Mayor Carroll felt it was important that the building community and people who may be thinking about developing their property, be aware that we were going to require a higher level of infrastructure. So we needed to get that input in order that no one could come along later and say "nobody told me".

Commissioner Moncada asked if we currently had people on the moratorium list? Mr. McCourt said yes, through the City Clerk's office. Commissioner Moncada asked if everyone was going to be notified through that list? Mr. McCourt said they became aware of it when we publicized it and discussed it. It was the same as when we passed any of our Resolutions. In the past we had lifted that moratorium on a couple of occasions, and he didn't remember that we ever had anybody on the list when it was lifted, who actually came in and took advantage of it when they found out what was involved to do that. Commissioner Moncada said Commissioner Robertson had stated that he was worried about these people wanting to come onto the system and where we would get the water supply from. She assumed that if we were approving these subdivisions right outside the City limits like we had at recent meetings, we would be facing the same kind of problem there. Commissioner Robertson said maybe the question should have been asked at the last meeting too.

Mayor Carroll said this Resolution did not require them to connect to City water or sewer services. What it would require was that they provide a level of service, perhaps through a community water system, to guarantee fire protection and those sorts of things. Therefore when they reached the point where it did come into the City, because we were assuming that at some point in time they would, that they did in fact meet City standards and that the taxpayers were

not burdened with the expense of bringing some of these things up to our existing standards. Commissioner Moncada said being that these were out of City limits, such as the one we approved at the last Commission meeting, what was the water rates we charged them? Mr. McCourt said that subdivision was actually anticipating being annexed into the City. But out-of-City residents were charged twice the rate of in-City residents. That was because our water system was subsidized by both a City property tax and also through a gross receipts tax which helped support it. So the City residents got the benefit of those taxes helping keep the rates down versus the non-citizens did not.

Mr. McCourt said he would like to clarify that this did not include our five-mile radius. It was a much smaller area than that. Commissioner Robertson said it was still covering quite an area. Mr. McCourt said it was, but much of this area was actually developed with large size lots. Those were usually being currently served by individual well systems, so we didn't envision those folks changing over unless they had some sort of problem.

Commissioner Cooper said this basically gave the developer an option on whether or not to hook up. It was not mandatory. Community Services Director Brian McGuire said the parameters on that map were essentially the same boundaries we had used for the Sewer Master Plan study. Those boundaries were drawn by a citizens committee who met with staff, and they felt it was an area that within the next 15 to 20 years the City might expand to. This wasn't just pulled out of the air by an independent group of City staff, but they had met with a group of realtors and developers and set the boundaries for the sewer plan. Staff then assumed that we would use the same boundaries for the water.

Mayor Carroll said even though this was on as a Resolution for approval tonight, he would strongly urge that we table this to let potentially affected people have an opportunity to learn about it and comment on it.

Commissioner Cooper moved to table this item to allow for input from the general public. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

6. Consideration of Resolution No. 2005-28 amending the Comprehensive Plan and Traffic Plan regarding Dr. Martin Luther King Jr. Drive/South Scenic Drive Extensions [Case M-05-0325(A)].

Recommendation: Approve the Resolution.

Mr. McCourt said we had a Special Meeting on July 19th to consider the S. Scenic Extension and what we had anticipated doing. He had passed out a map tonight which more clearly indicated the results of that meeting and the Commission's decision on what they wanted to do in the southern part of town concerning planning corridors and road development.

Mayor Carroll said basically this took what had originally shown up in the Master Plan as the S. Scenic Extension coming down and coming around, and basically said that now the plan was for the major thoroughfare to be down S. Florida to where it would connect to Martin Luther King Boulevard, over to the highway, and ultimately west out toward Highway 70.

Commissioner Cole asked what the yellow coded areas were on the map. Mr. McCourt said they were areas we anticipated would need development of arterial type roads to carry traffic in the future. Commissioner Cole said he felt like we were boxing the City in for the area of S.

Scenic Drive and S. Canyon Road and that area. He didn't know if there was a solution, but it was just a statement of his concern.

Commissioner Robertson agreed with Commissioner Cole. We had adopted it this way because the County had released S. Canyon Road back to a previous owner for a gated community after the County had been spending public funds on that road for a long time. Then all of a sudden they gave it back to the people, and he didn't believe they could do that. He would still like this to be looked into because he still believed that S. Scenic Drive should come down and connect to Canyon Road and circle all the way around. If we did this and boxed ourselves in, the further it went, the longer it was, and the harder it was going to be to go back and get this gated community out of the plans. He would like this to be looked into, and he hated to close this tonight because he felt like if we did, then we'll never get that road and it will always be blocked in.

Mayor Carroll said events had kind of forced us to this position, but if circumstances were to change in the future, we could always go back again and amend the plan. Commissioner Robertson said the problem was the longer it went, 15 years down the road if we tried to get rid of the gated community, the Commission at that time would have some major problems. Mayor Carroll said in addition to that, he understood that even if we were to utilize S. Canyon Road, there was some area out there which was BLM land that was declared a special management area where we could run into problems trying to even put in a road to connect to S. Canyon. Mr. McGuire said he had a map which showed that area. Commissioner Robertson asked if we'd ever sat down with them and talked about it in extent to see what we could do to get a right-of-way in through there? Mr. McGuire said they had told him that they would have to amend that special management area, and then we would have to make an application to them for a right-of-way through there. They would then have to do an environmental assessment. We could request it, but they did not say that it would be successful. Commissioner Robertson said with the amount of time we were looking at, it was going to be that long before we'd ever put that street in anyway. So why didn't we proceed under those conditions, and also check and see about the legality of what the County had done. A few years from now we were going to want a road around there.

Mayor Carroll said what we were proposing to do was to amend our plan to reflect the current situation. That was not to say if that situation were to change, that we couldn't go back and amend it to reflect something in the future. He also understood that on part of the BLM land we would be looking at to connect to, the BLM was also in negotiation for some potential land swap on some other properties in Otero County. What we were doing now was just to update a plan to reflect where we were at this time. Commissioner Robertson said he realized that, but if we dropped the ball tonight on this thing, he couldn't foresee anywhere in the near future where it would ever go back and anyone would try to rectify this problem.

Commissioner Cole said particularly in the Las Cruces area and in Dona Ana County, he knew it was a lengthy process, but they had worked out their differences with the BLM on water rights. His concern was that we had boxed this area, either by boxing the City in or else we couldn't do anything about it. He was concerned that if we approved this tonight, that we would be reinforcing that decision. Consequently, he had a hard time supporting this. Was the only thing we were voting on what we had decided at the July 19th meeting? Mr. McCourt said staff understood that we would be changing our Traffic Plan, which was a component of our Comprehensive Plan. That was then used as a planning document so that as development occurred, we could attempt to make sure that we had reserved the necessary rights-of-way and corridors that were needed. That was a policy decision on the part of the Commission, so as

development occurred further east from here up towards Alamo Canyon, we would not be looking to reserve rights-of-way or secure rights-of-way for a major roadway through there. Commissioner Cole asked if he was saying that staff would not be looking at the extension of S. Scenic? Mr. McCourt said that was correct. Commissioner Cole said he could not support that, then. Mr. McCourt said Martin Luther King Boulevard would end slightly east of Florida, but it would not be planned to extend it all the way up in any manner to where the Alamo water tanks were.

Commissioner Cooper said basically we were pretty well boxed in, literally, to force our hand to use Florida to loop around the City to connect into Martin Luther King Boulevard, and that was it. We were going to have to do that because if we waited, then somebody else might come along and throw another obstacle in our way. He felt we should move on this right now.

Mr. Gerald Langwell, area resident, said he would like to see a map of where S. Scenic was supposed to go through. They had an awful dangerous water problem out there now. Mayor Pro-Tem Griggs said what had occurred right at the moment was that the initial plan was to loop S. Scenic around from where it stopped up by the water tanks and Ocotillo, and swing around and tie into become Martin Luther King Boulevard, and then run onto the west. When it was first planned, it was several hundred yards south of where it would be today. Today Martin Luther King Boulevard which was S. Scenic, was at the southerly end of the new subdivision which was going in down behind Mr. Langwell's property. What this Resolution was saying was that because of certain things which had occurred, S. Scenic would not be developed. The arterial which would be developed was S. Florida, meaning S. Florida would continue out, run into Martin Luther King Boulevard, and turn to the west. No longer was S. Scenic being looked at as developed from the City's point of view as a major arterial. Mr. Langwell thought eventually it might be a good idea to bring it out. Mayor Pro-Tem Griggs said it certainly might be, and it certainly could be developed privately, and not by the City, as well.

City Planner Sharon Few said the Master Plan also, with the development and designation of the roads, allowed staff to say we needed right-of-way reserved when plans were coming in. Without it being in the plan, we could not require it. We'd had many occasions in the past where it was deemed to be a great idea, but the developer accurately said it was not in the plan and so the City could not require it. It was not a matter of who was going to fund the development.

Commissioner Cole said he didn't see why the motion had to be such that the S. Scenic Extension was no longer going to be part of a plan. We were boxing in that section of the community. He had no problem with this, but he did have a problem if it did say that we weren't going to do anything in that area. Then people were right in saying that it was a "road to nowhere". The point he was trying to argue was why we had to say that S. Scenic in the future might not exist as a loop around. But if we said tonight that was not a possibility, then that locked it out. Mayor Carroll said we weren't saying it wasn't a possibility. What we were saying was that at this point in time that was not part of the plan we were looking for on behalf of the City. The reasons were numerous—the BLM and the designation of special areas of concern. The things that had transpired from the point in time when that first portion of S. Scenic was built until now basically said that it was probably no longer a workable viable plan for the City to do that. So in essence what we were saying was that at this point in time the City did not anticipate providing infrastructure which would go east from S. Florida to the mountain—that would remain in the County, or if it came in the City it would remain strictly absolutely rural residential. Based on the size of the development or lack of development out there, there was not going to be enough population density to warrant that kind of an investment in infrastructure.

Commissioner Cole asked what location he was speaking of when he said east of S. Florida? Mayor Carroll said he was talking about where the old transportation plan showed S. Scenic looping around. S. Scenic would no longer loop around. It would basically stop where it stops now.

Mr. McCourt said this issue first surfaced about a year ago when a subdivision came in up on Canyon Road—the Nelson subdivision outside the City. At that time staff recommended disapproval because we needed the right-of-way for the extension of Scenic Drive through the subdivision. The Commission had a fairly lengthy discussion and debate on it and finally decided that we would not require the reserving of the right-of-way. The Commission then instructed staff to look at this entire Traffic Plan out in this part of the community, which we then hired Molzen-Corbin to hold some public hearings on. They did that, and it culminated in them bringing those results and a couple scenarios back to the Commission at the July 19th meeting. At that time there again was a lengthy discussion and debate, with a great deal of participation by members of the public that were in attendance. There was discussion of the ownership of the land out there, and of the BLM land and its being restricted for development due to the Prickly Poppy Cactus. Staff understood that the Commission determined that we were not ever going to be able to get the extension from up around the Alamo Tanks and around there. What staff wanted to do was to look at working on Ocotillo and doing the upgrades we could accomplish there to carry traffic, look at extending Martin Luther King Boulevard eastward to Florida or slightly past, and then using Florida and Hamilton as north-south corridors on the east side of the tracks. Based on that, staff had prepared the proposed map. If that was not the intent of the Commission and if staff had misunderstood them, then the thing to do was not to approve this proposed Resolution tonight. That would then leave the Comprehensive Plan as it currently existed, which showed a loop up to the Alamo Tanks and down to Martin Luther King Boulevard. Staff would then continue to use that as its policy document when we were looking at development out in that area. That didn't address Commissioner Robertson's concern, which was really a separate question which would be properly raised under Unscheduled Communication where the Commission may want to direct staff to at least do some initial reviews on that and come back with some background information. The Commission may then decide if we wanted to institute some action challenging the County's decision.

Commissioner Robertson said really he had no problem with what we were trying to pass tonight. He thought why he and Commissioner Cole were so upset was because we were taking somebody else's word that we couldn't do the project. We were not looking into it ourselves and were not finding out for sure what we could do. The Mayor had also made a comment earlier that the BLM was possibly involved in a deal to trade their land for other land, and maybe it was a subdivider fixing to subdivide. If so, we needed some major streets up through there. He didn't think we should be taking the County's word for it that it was a done deal, and that we couldn't do what we wanted to. He agreed we ought to go ahead and pass this tonight, but he felt staff needed to check into this to see exactly where we stood on the gated community, and also on BLM. Mr. McGuire read from a statement from the BLM, which said that there would be no new realty actions or rights-of-way in the existing "AC-EC". New realty actions would be subject to protective stipulations in the expansion area. Rights-of-way would be excluded from the expansion area. Excluded meant that no rights-of-way would be granted unless mandated by law. So when he had talked to BLM, they stated that this land exchange they were talking about had to be part and passed by Congress. Mr. McCourt said the area of land exchange they were talking about did not include this protected escarpment area—it was adjacent and west of it.

Commissioner Cole said he knew exceptions were made by BLM, and they saw that in the newspaper. It may take several years, but we could include the possibility of S. Scenic being extended. He didn't want to vote on this tonight and say that S. Scenic was out the window. He agreed with Commissioner Robertson, but he was more concerned that S. Scenic was left as an option. He didn't want to forget S. Scenic just because we approve this tonight. He had a problem after the July 19th meeting that he'd talked to the City Manager and one of the other Commissioners. He would like to see at least the possibility of S. Scenic sometime in the future and not closing the door tonight. He knew it would be expensive. He had no problem with this proposed plan tonight, but he would still like to see S. Scenic left as a possibility. If it was voted down tonight, then it was out the window. He strongly disagreed with Mr. McGuire because he knew that BLM compromised with communities. So leave it there as an option.

Mayor Pro-Tem Griggs said in looking at map No. 7 which was attached to the Comprehensive Plan, it looked like the way development had occurred out in the S. Scenic loop, the area particularly in the easterly part was no longer practical because there were things in the way. Ocotillo was shown on map No. 7 as a corridor, but it was no longer shown on the proposed map, and he didn't think that had changed. Ms. Few said she understood that what was adopted on the 19th was the alternative which listed Ocotillo for development. So it took it out of the yellow and put it totally in the green. It took it out of the status as a study corridor and put it in as needing to be a corridor. It was the same with S. Florida south of Desert Lakes Road and Martin Luther King Boulevard.

Mayor Carroll said at the July 19th meeting the Commission had taken no formal vote. He believed that toward the end of the meeting, he'd stated that we needed to proceed on what we needed to do in taking S. Florida down to Martin Luther King Boulevard. We also needed to do a cursory check as to whether or not we were able to go east to Alamo Canyon Road and either put it back on the table or completely eliminate it and move on. So what kind of a check did we want to make, or how involved did we want to get in trying to decide whether we could take the road down from S. Scenic to Alamo Canyon and the rest of it. We didn't have to take any action tonight if the Commission desired. He thought staff had gone away from the meeting on the 19th with the understanding that they were going to look at it, the Commission got the report, and the report seemed to indicate that we were not likely going to be able to do that. So if we didn't want to take any action and leave the map exactly the way it was, then we were certainly free to do that.

Mr. John Garst, citizen, agreed with Commissioner Cole. He thought that in 20 years the City would regret not taking Scenic south. He urged to put the two comments together and put in there the recently granted Supreme Court decision, and take the land south. The City had the rules first, so why didn't they use the right of eminent domain just given by the Supreme Court again and take it back? Mayor Carroll said that was a whole other issue.

Commissioner Cooper said he'd looked back in the minutes and he concurred with the Mayor's statement that the only viable option at the present time was to loop S. Florida over, and Commissioner Robertson also agreed to that. Commissioner Robertson said he did agree that we needed to do that tonight. But he also thought it ought to be brought up at a later date to go ahead and continue investigating this other part.

Mr. McCourt said the current plan which was in effect right now directed staff to continue with the development of Martin Luther King Boulevard and S. Florida. So the Commission didn't have to do anything to direct staff to do that, because staff was already doing that and would continue. What was before the Commission tonight was to amend the plan by deleting a

section of the future S. Scenic. If the Commission didn't want to do that, but wanted staff to continue and try to make a connection from the end of the current S. Scenic around so it connected towards Florida and Martin Luther King Boulevard, then the action was to do nothing. Then staff would continue to work on it because it would remain part of our current Comprehensive Plan and we would continue to work to accomplish that Plan. Commissioner Robertson clarified that if we did nothing tonight, we were still on the road to S. Florida. Mr. McCourt said yes. We would continue to work on Martin Luther King Boulevard and S. Florida regardless if the Commission did anything tonight, as that was in the current Plan. This proposal tonight was what he thought came out of the July 19th meeting, which was to delete the section of roadway from Alamo Tanks around to Florida. If the Commission didn't want to do that, then the action was to do nothing tonight and staff would continue with the current Comprehensive Plan.

Commissioner Cole said he would sure like to do nothing tonight. Mayor Carroll said that was always an easy option. Commissioner Cole said it may be an easy option, but he didn't want to lose S. Scenic. Commissioner Cooper said we were going to lose it whether we liked it or not. The problem right now and the reason we were at this discussion was the fact that we didn't do anything before and that was what got us into this situation now.

Mayor Carroll said unless there was a motion and second to approve this Resolution, we would take no action and would move on.

Commissioner Cooper moved to approve Resolution No. 2005-28 amending the Comprehensive Plan and Traffic Plan regarding Dr. Martin Luther King Boulevard/South Scenic Drive Extensions. Seconded by Mayor Pro-Tem Griggs. Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, and Commissioner Ledford voted "aye". Mayor Carroll, Commissioner Cole, and Commissioner Robertson voted "nay". The motion carried by a roll call vote of 4-3-0.

CONTRACTS AND AGREEMENTS:

7. Agreement with the County of Dickens, Texas, for housing of City prisoners at the Dickens County Jail.

Recommendation: Approve the Agreement.

Mr. McCourt said part of what the City had to do was to arrange for incarceration of prisoners that had to serve time when they were coming under the Municipal Court system. Currently and historically, we'd always had a contract with Otero County and full use of their detention center. Their detention center had become full and the cost of operation had become quite high, so we were looking for other options on how we could economically perform this function for the City. One of the options we'd explored was to enter into an agreement with the County of Dickens, Texas for housing municipal prisoners. This would not stop us from using the Otero County detention center, and we were also in the process of negotiating an agreement with them. We would anticipate we would use this agreement in the case where we had people serving extended terms, certainly more than a week. They would be transported from Alamogordo to Dickens County, would serve their time there, and then brought back and released here in Alamogordo. We anticipated continuing to use the Otero County detention facility, as we had short time prisoners we needed to incarcerate for short periods of time. The cost of using the Dickens County facility was quite a bit less expensive than the Otero County facility. We had notified Otero County that we were looking at this option, and they had indicated to him that

there was no problem. Staff had gone and visited the Dickens County facility, and actually Otero County used them for their overflow prisoners as well. It was a good facility.

Mayor Carroll asked if the County sent any of our City prisoners there currently? DPS Chief Sam Trujillo said yes, they did. Mayor Carroll clarified that on the ones they were charging us \$80 per day, they were sending them there for \$38. Chief Trujillo said currently they were charging us \$70, and they sent them there for \$38 per day. So we were taking the middle man out of the situation.

Commissioner Ledford asked if this was something outside the contract with Otero County? Chief Trujillo said we currently had a contract which was in existence which required us to pay \$70 per prisoner, per day. We had negotiated a new contract which was before the County Attorney right now, and he expected it on the next Commission meeting. Commissioner Ledford asked if in the new contract it had the language which okayed this? Mayor Carroll said we didn't need the County's okay. Chief Trujillo said no. Basically it stated that if we used Otero County detention, they would charge us \$80 per person, per day.

Mr. McCourt asked where Dickens County was? Chief Trujillo said it was in Spur, Texas. It was about an hour away from Lubbock, Texas, and about six hours from here. They had agreed to do all of the transport. Commissioner Ledford asked where they picked them up? Chief Trujillo said from the Otero County detention. Commissioner Ledford clarified that we had days of cost while waiting for transportation. Chief Trujillo said that was correct. All of our short term prisoners, the ones arrested in the middle of the night and who waited for court arraignment, would still be charged to the City of Alamogordo. We anticipated that if they were sentenced to more than seven days, then those were the ones who would be transported to Dickens County. Commissioner Ledford asked if our current budget did not include this savings? Chief Trujillo said that was correct. We anticipated costs of about \$350,000 if we continued to use Otero County detention for the rest of the year. What we anticipated with the \$38 per prisoner per day was based off of historical figures from January to June, so we estimated there would be a savings of about \$155,000 to the City.

Commissioner Cooper said basically we would be sending the long term prisoners to Spur, which would open up the Otero County detention to accommodate the short term. Chief Trujillo said yes. In some cases it would not change the number of prisoners at the Otero County detention because some of them were already being transferred to Dickens County.

Commissioner Robertson said there were 96 prisoners from January to June which could have been sent down there. That was over \$4,000 per day we could have saved by having prisoners down there. Chief Trujillo said we estimated that over the past six months, we could have seen a savings of about \$59,000 if we'd had this contract with Dickens in place.

Commissioner Cooper moved that we approve the Agreement with Dickens County, Texas to house prisoners. Seconded by Commissioner Robertson.

Commissioner Ledford clarified that the County was aware of this and they were okay with it. Mr. McCourt said what he'd stated was that they didn't voice any objections. Commissioner Ledford said with the overcrowding they should feel better about that anyway. He couldn't imagine losing \$300,000. Commissioner Robertson said he didn't believe they had a choice. Commissioner Ledford said he didn't know what had taken us so long to save \$300,000. Chief Trujillo said staff did have a meeting with Otero County when we were negotiating the contract that was in existence now, and we'd had discussion specifically about if we were to try and find

another location to house the prisoners. Their concern was more on the overcrowding at the detention facility than the financial impact. Commissioner Ledford clarified that this had not really interrupted negotiations with the new contract. Chief Trujillo said it had not.

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

Commissioner Robertson said we'd had a request by the court that if approved tonight, if we could get the agreement signed right away. They had four prisoners they wanted to send out first thing in the morning to Spur, Texas. Mayor Carroll said if the paperwork was here, he would sign it.

8. Cancellation of Memorandum of Understanding Agreement with Otero County concerning Emergency Management Services.

Recommendation: Cancel the Agreement.

Mr. McCourt said Mayor Carroll and Commissioner Moncada were on the Commission in 1998 when the County did not wish to continue to provide emergency management services in the County or anywhere. At that time there was about a 50 percent Grant to help finance that, and the City felt it was a valuable service and picked it up to provide the service County-wide. The Grants were now long gone. We had been providing the service, developing plans, running disaster drills, and acquiring equipment so we could respond to emergency situations. A couple months ago apparently the County decided they wanted to be the emergency management agency again, and they had the right to do that as they were the primary agency to do it. So they'd passed a Resolution saying they wanted to be the emergency management agency, but had forgotten to tell us they were doing it. So this was just to say we understood they were doing it again, and we were not going to do it in the County. We were going to continue to work on developing plans in emergency management within the City of Alamogordo.

Commissioner Cooper moved that we cancel the Memorandum of Understanding Agreement with Otero County concerning Emergency Management Services. Seconded by Commissioner Robertson.

Mayor Carroll said since the County walked off from it once and had now decided that they wanted to do it again, he would hope they would understand that we were not going to be responsible for things in the County. Also, we may not be agreeable and willing, if they decided they no longer wanted to do it again for whatever reason, to take it on again. Hopefully they understood that. Chief Trujillo said we'd had discussion with them. We were concerned because they were one person deep, and if something were to happen to that individual as far as their employment was concerned, we didn't know what would happen and if it would fall back to the City. We still intended to continue with emergency management operations for the City, but the services for the County would be provided by them.

Mr. Paul Banse, citizen, said since we were withdrawing from this, was the County going to come and say that the City was in the County and needed its financial support? Mayor Carroll said basically we were not withdrawing, but they were taking it back because they did have authority to do that. Mr. McCourt said they could certainly request that we contribute towards emergency management within the County, but there was no legal obligation of the City to do that. We were going to continue to provide the service within the City limits. However, they may make the request for funds. Mayor Carroll said it would depend on what type of services

they were providing within the City, and at this point and in the past, there had been none. Mr. Banse said basically, he didn't want to see us pay for anything.

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

9. Agreement with Alamogordo Evening Lions Club regarding the building/land located at the north end of Alameda Park.

Recommendation: Approve the Agreement.

Mayor Carroll said the Commission had a revised lease agreement in their packets.

Commissioner Robertson said he was questioning the amount they were paying for rent of the building. For the past few months we'd been battling about the rent we were charging for public property to another entity. We'd been half-way accused of giving away public funds because we weren't charging enough rent. This was for a building that was 933 square feet at \$100 per year. That was .009 cents per month. He felt that was ridiculous for a rental fee on a building. Commissioner Cooper said the Lions Club was a service organization within the City, and they'd been there since 1976. Commissioner Robertson said we were still giving away public funds to a private entity. Commissioner Cooper said what would we use that building for? Commissioner Moncada said we did that with the Airport, only a lot worse. Commissioner Robertson said that was what he was talking about where we were accused of giving away public funds because we were not charging enough rent for a like-building to a like-building. Mayor Carroll said that was because there were Federal dollars involved. Commissioner Robertson said right, but we were still under the same assumption here. We were giving away public funds because we were not charging the rentals compared to another like building. Mr. McDaniel clarified that DPS Legal Advisor Becky Ehler was telling him that the Lions had actually built that building, and what we rented them was the land. They had put up the building. Commissioner Robertson asked if that was on another one of these 30-year leases? If so, they were at the end of their 30 years.

Mayor Carroll clarified that this was not unlike the agreement we had with the Girl Scouts for the Scout Hut on Oregon. Again, the Lions had actually constructed the building on our property. Commissioner Robertson asked if this was going to be another one of these leases that was going to be out of control at one time or another? How long of a lease was that for in order for this amount of money to build the building? Mr. McCourt said we had a 90-day cancellation on this lease. Commissioner Robertson said that wasn't what he'd asked. In the original lease to lease them the property to build the building on, how long was that lease for to give them the options of knocking off income tax or whatever to pay for this building? How long was that lease for to stay at this amount of rental? Mr. McCourt said actually we'd raised the rental from \$10 per year to \$100 per year.

Mayor Carroll said the actual agreement probably went back 40 or 50 years. Commissioner Robertson said it stated that they'd had it since 1976. Mayor Carroll said that was the last lease, so he didn't know how long the original lease was for or how many times this lease had come before City Commissions in the past. Commissioner Robertson said it stated that they'd had the building since 1976, and the last lease was in 1996. How long was that lease for, for that amount of money until such time...did the building revert back to the City, or what happened to it? Mr. McCourt said there was no reversion of the structure that he was aware of.

Commissioner Cooper said they'd been there since dirt, so we might as well as go ahead with the lease agreement. He couldn't think of anything else that building would be useful for. They'd been in there for so long, and they'd taken good care of it. They kept everything nice and tidy around it, and it was a plus for that area over on Alameda Park.

Commissioner Cooper moved to approve the Agreement with Alamogordo Evening Lions Club regarding the building/land located at the north end of Alameda Park. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 7-0-0.

ORDINANCES AND RESOLUTIONS:

10. Ordinance No. 1243 amending Section 18-02-030 of the Code of Ordinances concerning the salary of the Municipal Judge.

Recommendation: Approve the Ordinance for first publication.

Mayor Carroll said the salary of the Municipal Judge had not been increased since 1998, and this would not impact the current office holder, as it would not become effective until after the next election for the Municipal Judge. So the current Judge would not benefit under this, but it would be something for whoever might be elected as Judge in the 2006 election.

Commissioner Cole asked if it was in the next budget year? Mr. McCourt said no, it would actually be in the current budget year and would ultimately require some minor adjustment to the budget. Mayor Carroll said it would affect three months out of the current budget year. Commissioner Cole asked where the money was generated from? Mr. McCourt said the money came from the General Fund of the City.

Commissioner Cooper moved to approve Ordinance No. 1243 amending Section 18-02-030 of the Code of Ordinances concerning the salary of the Municipal Judge for first publication. Seconded by Commissioner Cole. All voted "aye". The motion carried by a vote of 7-0-0.

11. Ordinance No. 1245 amending the 2004 Uniform Traffic Ordinance.

Recommendation: Approve the Ordinance for first publication.

Mr. McCourt said this was to bring our Municipal Code in line with the changes in the State law.

Commissioner Cooper moved to approve Ordinance No. 1245 amending the 2004 Uniform Traffic Ordinance for first publication. Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

14. Voting delegate and alternate delegate for the New Mexico Municipal League Annual Conference Business Meeting being held August 31 through September 2, 2005 in Roswell, NM.

Recommendation: Select a voting delegate and alternate.

Mayor Carroll said in the past, the Mayor had been the voting delegate and the Mayor Pro-Tem or another Commissioner who was planning to attend, had been the alternate. He would not be able to attend the conference this year, so he would suggest that Mayor Pro-Tem Griggs be selected the voting delegate, and Commissioner Ledford be selected as the alternate.

Commissioner Cooper moved to appoint Mayor Pro-Tem Griggs as the voting delegate, and Commissioner Ledford as the alternate. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

15. Investment Report for the quarter ended June 30, 2005.

Recommendation: Accept the report.

Commissioner Robertson said he was curious about the State Investment Pool. Three years ago when he first came on the Commission, we had approximately \$18 million in there. How much did we put in that thing each year that we kept increasing? Mayor Carroll said we put the majority of the liquid funds we had in there because it did give us good liquidity and a reasonable rate of return. Finance Director LeeAnn Nichols said the majority of that difference between the \$18 and \$25 million was due to bond funds. The '02 Gross Receipts Tax Bond, the '04 Gross Receipts Tax Bond, and the '04 Water and Sewer Bond. Commissioner Robertson said he was just curious as to how that had increased from \$18 million to \$25 million. Ms. Nichols said it was basically the bond proceeds.

Commissioner Cooper moved to approve the Investment Report for the quarter ended June 30, 2005. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

16. Public Works Bid No. 2005-011, Golf Course Clubhouse.

Recommendation: Provide direction to City staff.

Mayor Carroll said at the last meeting, the direction provided to City staff was to attempt to negotiate with the low bidder. The indication was that it would be back in time for us to make a decision at this meeting. Apparently those negotiations had not moved as rapidly as anticipated, and now they were looking at the next meeting before they would have a recommendation and a price to the City as to whether or not they could do the project for the amount of money we had budgeted.

Commissioner Robertson said today he'd talked to a gentleman from Construction Industries, and he'd explained to him in detail on how this had come about, and that we'd had one construction company protest another because of a lack of naming subcontractors. That gentleman had stated that under the conditions and the way it was done, it was totally illegal for us to award this contract to White Sands Construction Company. If we had awarded it to Lane Plumbing Company, that was fine. However, we could not award the electrical to Lane Plumbing or to Mr. Moore because he was not licensed to be an electrician. If he'd been a licensed electrician, then they could have used a second sub under there. But under those conditions, it was totally illegal to use White Sands as the prime contractor on this. Mayor Carroll said that appeared to conflict with some other information we'd been given, but if he would get that information to the City Attorney, we could look into it. We were certainly not interested in doing something which did not pass legal scrutiny, but the last indication we had was that we could in fact still award the bid. If we needed to get something in writing from

Construction Industries one way or another between now and then, fine. Commissioner Robertson said they hadn't come up with any figures like they said they would and they hadn't complied like they said they would. Since he was a no bidder on the voting to take this back to the Architect and to re-bid it, he would like to bring it up again for a vote to re-bid it.

Commissioner Robertson moved that we bring this back up to vote to go back to the Architect for a redesign and for a re-bid. Seconded by Commissioner Cole.

Commissioner Robertson said this would send it back to the Architect to be redesigned to where they could bid down to our figures, and then it would go back out for re-bid. Under the conditions right now with what White Sands Construction was wanting to do, it was changing the building tremendously to where it would probably need to go back out for re-bid anyway.

Commissioner Moncada asked if we had to pay the Architect again to redesign it? What would we be telling our Architect on how to change this building? Mayor Carroll said we would be telling him to make whatever changes he needed to, in consultation with us, to get a price down that was within our budget. Commissioner Moncada said it seemed like when we had discussions with our Architect, they knew what we wanted. It was made clear. To her it seemed that they designed something a little more expensive. Mayor Carroll said they worked with us on what we wanted and they said we could do it for that price. It turned out we couldn't, so if we were going to re-bid it, we needed to change the project somehow or another to fit the budget. He understood that the Architect was required to continue to work with us until we got a satisfactory bid.

Mayor Pro-Tem Griggs said when we discussed this last time, we'd talked about substantial change. Tonight Commissioner Robertson had made the statement that this was a substantial change. Mr. McGuire obviously didn't feel it was a substantial change, so from a staff standpoint, what were we basing that on? Were we saying the change was not substantial enough where we had to go out to re-bid? Mr. McGuire said as he'd stated in his memo, when we were negotiating with Mr. Crimmins, we made those ten different changes. We felt all of those were changes which could be made without—our threshold was whether we would have to have another engineering stamp on the plans and if they could be handled by addendum to our current specifications. That was the threshold they were trying to stay within which they felt was reasonable. They were not doing a major redesign of the building and did not change the footprint of the building and the footprint of the footings. They had removed one portion of it which they felt they could do without having to re-compute the structural engineering of the rafters and the ceiling joists. Mr. McCourt asked if he was referring to the August 4th memo? Mr. McGuire said yes, which he'd sent to the City Manager and which the Commission was provided a copy of. They were trying to have those changes they'd suggested which they believed they could handle by just addendums to the current specifications. Beyond that, if they were going to lower the rafters or lower the roof, they felt it would constitute a redesign and they'd have to go back out. That was part of our good faith with White Sands Construction, that we were considering these options. It was not just the City and White Sands, but we also had Joe Moore from Molzen-Corbin present, and it was his opinion also.

Mayor Pro-Tem Griggs clarified that what we were using as the criteria of substantial change or not was whether or not it would need to be re-stamped by the Engineer. Mr. McGuire said right. If it would take re-computation or re-stamping by an Engineer or an Architect, was the threshold for substantial or non-substantial.

Commissioner Moncada said one of the proposed changes was to eliminate the conference room and kitchen fixtures. What was the purpose of having a kitchen if you didn't have fixtures in it? Mr. McGuire said they were not eliminating the fixtures. The design committee said they wanted to have a standard size commercial kitchen in there, where before they had basically what he would consider a snack bar or fry cook kind of kitchen. So they'd looked for modules in that whole Golf Course Club House which could be scaled back, and one of the things they could scale back was the size of the coolers and freezers and range, etc. So they were not eliminating the kitchen, but just downsizing it. That was why they thought they could modify that specification. Commissioner Moncada asked for a comparison of how big the previous kitchen was to what they were proposing now. Mr. McGuire said we didn't know what White Sands was going to come back to us with a proposal on. An example would be that we did not have walk-in freezers and walk-in cold rooms in the old Club House, but did have that in the current design. These were large insulated structures which you could walk into. With a scaled-back kitchen, you could do commercial grade reach-in coolers and freezers. He understood that the size of the cooking surfaces on the stoves would be smaller. Commissioner Moncada asked about the conference room. Mr. McGuire said the conference room was being considered at 50 percent. One of the things White Sands was having to look at was how much of the conference room they could remove without having to re-compute the roof joists. That was the reason it was taking the extra time. They had originally come to staff and said they could eliminate the conference room and just rough-in the kitchen in order to save the money we needed, and he had told them no because we needed a functioning Golf Course Club House. When we demolished the old Club House, it had the 19th Hole, and we needed to have that again. We felt we could reduce the Club House and still maintain the level of serviceability that we had before. That was the goal we had while working with White Sands.

Commissioner Robertson said this was designed so that we could actually lease the 19th Hole out and the City could make more money to help put the Golf Course in the black. Mr. McGuire said that was correct. Under item No. 10, "re-examine the electrical service", was where we had them design a dual electrical service in there so that if we changed the contract with the current Pro and the City were to take over the 19th Hole, we would have the ability to run that and have the utilities be separate. All through the design of this Club House, one of the things that had happened was that people wanted to increase the size of the kitchen and the size of the public area for dining and for meetings. It turned out that was one of the most expensive parts of the building. So in our negotiations, that was one of the places that White Sands recommended we could save some funds on. Commissioner Robertson said if we cut that out, though, it was not very likely that we could really make that much off of the 19th Hole. Also, he hadn't seen anything in here on what was going to happen to the gross receipts taxes. Was that still going to be tacked on after the \$1.8 million? Mr. McGuire said no; the \$1.8 million in the budget had to include the gross receipts taxes. It actually took approximately \$290,000 off the price in order to get it down so that the total price and gross receipts taxes combined would meet that \$1.8 million. Commissioner Robertson said if we had to redesign this, could it be redesigned to still have the square footage and still have the capability of the 19th Hole doing what we wanted it to do, and get it down to our cost? Mr. McGuire said if we went back to redesign, he didn't know exactly what it would be, but he foresaw a much smaller footprint. He would see us reducing the square footage and those types of things, but he guessed we would still keep the same concept that we were negotiating on now to at least replace what we removed when we demolished the building. We may not have the money to do the expansion in the kitchen area and the conference area that we had wished because we didn't have the funds for it. Commissioner Robertson said if it was redesigned, they wouldn't be putting all load bearing walls on the inside of it, which was very expensive. Mr. McGuire said there would be other options we would have if the Commission directed to go back to re-bid.

Mayor Carroll said when this came up at the last meeting, we voted on whether to go back out to bid or renegotiate. He voted to go out to bid, and he was on the short end of that vote. He was still not comfortable with what he'd seen here. He'd voiced his concerns at the last meeting that he didn't think they could get there without a substantial change either to the quantity or the quality of the product. But having lost that vote and having the Commission at that point in time saying to negotiate, he was willing to let those negotiations go forward. He thought that was what the Commission said it wanted to do. If the Commission wanted to change its mind, then it certainly could do that. He would probably have a very hard time in voting if this turned out to be the final product. However, he wouldn't support the motion tonight because the Commission previously said to negotiate. He thought the contractor was doing that in good faith, so he felt it was not fair to not let those negotiations run their course. Commissioner Robertson said he wanted to remind the Mayor that Construction Industries said we could not award this contract. Mayor Carroll said we'd heard that discussion both ways... Commissioner Robertson said to remember that Mr. Burroughs was hired by White Sands, so he was going to say whatever he needed to get it done. Mayor Carroll said if there was another authority which told us that was the Construction Industries' final decision on it, that was something else. Again, the Commission had the opportunity last time to just go out to re-bid it, but they chose not to. So at this point in time he would say we needed to let the negotiations run their course. He didn't think they would be successful or that he would be able to support them even if they came back with a number, but he felt the good faith part of it required us to at least continue with what we said we were going to do the last time.

Commissioner Ledford said according to the minutes from the last meeting, it said that Mr. Burroughs had suggested a way for the City to protect itself on that was for the Commission to direct staff to continue to negotiate with White Sands in good faith for the next seven days to determine whether or not they could reach those numbers, and that they were satisfactory to the City. His understanding was that was to be done within seven days, which was last Tuesday. It'd already been two weeks and all we had was "we think we're there with the proposed changes, but with no numbers". So actually we were asking for additional time to get to the numbers, which was not what we'd agreed to at the last meeting. But he could probably support that in the sense that it beat the heck out of trying to re-bid and taking another six months. His concern was that it appeared there were some fairly substantial changes. He felt half of a meeting room was pretty substantial. He didn't know what it took to get a required stamp, but he guaranteed the spirit of intent on his discussion was that we could take a coat of paint out or change the color or whatever, and we were all concerned on whether we could cut this \$400,000 or \$500,000. He didn't think it was ever thought that cutting the size of the building was part of the deal. Since they were proposing that, he felt it was pretty substantial. Now we were setting the standard that if it didn't have to have an Engineer's stamp, it was not substantial. That was just a standard Mr. McGuire had come up with, and not what the Commission talked about. From the way he'd read all 41 pages of these minutes, if there was a substantial change, then we may not want to do this. So if we went through this negotiation for the next two weeks and got to the numbers by the next meeting, then he was not sure where he would stand compared to where he was last time because he felt there could be substantial change. He agreed with the Mayor that perhaps we ought to go ahead in good faith and negotiate it, except that we were adding more time. In good faith we gave them two weeks instead of one, and now they were asking for two more. However, his concern was that if we got to the price we needed to be at, he wasn't sure if that met the definition of "not a substantial change". His problem was if we addressed that now because if we got to the money we needed to get to, had we decided tonight that the recommendations of change were not substantial? Was that what we were trying to say? Mayor Carroll said that was not what he was saying. He

thought each individual Commissioner would have to decide for themselves if we wanted to continue negotiation, what they determined to be substantial change in either the quantity or quality of the product. Commissioner Ledford said his concern was that he didn't want to waste White Sands' time if we thought tonight that this was substantial. It seemed more substantial than what he was expecting in the change. Mr. McGuire said he recognized that. All he was attempting to do was to describe what we were using as our own staff definition for what was substantial, and we felt we hadn't crossed that threshold yet. Commissioner Ledford said he didn't know if there even was a standard for what substantial change was, but he could say that everyone else in Construction Industries would disagree.

Commissioner Ledford asked how many square feet half the meeting room was? Mr. McGuire said he didn't know. The 10,000 square foot building was the footprint of the whole building. Commissioner Ledford said he didn't care if it was a conference room or a closet—if it was 20 percent of the building. Mr. McGuire said he believed it was less than that. Commissioner Ledford said 18 percent, but how much was it? Mr. McGuire said he did not have that exact figure. Commissioner Ledford said his concern was that if we were going to okay the negotiations, in all fairness to White Sands, if they came back with the right number, were we okay with it? It did say in the minutes that we still had the right to change our mind because we may think it was substantial change. He was asking the other Commissioners if we thought we were there already? By definition from staff of a substantial change, did we agree with them?

Commissioner Robertson didn't believe they could make the changes. If they took one-quarter of the money, a half million dollars, off of this project, then something had to go which was going to be major.

Commissioner Cooper said he was real uncomfortable with a lot of these changes. They were talking about putting asphalt instead of concrete drainage in, and then in a year or two down the road we would have to pull that asphalt out and put concrete in there. Regarding the kitchen and storeroom modification, the additional space available in the kitchen would be modified, and basically we would wind up with the same sized kitchen as we had in the old building. So we weren't gaining anything. It wasn't adequate to start with. They were talking about modifying the bar area as well. This would require reconfiguring the entire inside of the building.

Mr. Dennis Crimmins, White Sands Construction, said the Commission was right that they could not change this building for a half million dollars by changing a coat of paint or changing the floor tile. What he would say, though, was that the City was not going to put it back out to re-bid without cutting considerable square footage and without re-modifying the complete building and bringing in more money. That was not going to happen. They were looking at items they could change and hopefully bring it within the budget. They didn't know if they could, but they were trying. They came to a meeting in which the City had set the date—his company hadn't set the date. They brought it in under the budget the way they felt they could. They negotiated with the City and everyone figured out areas each one felt they could live without. White Sands did feel some were substantial changes and started working on them; however, the City couldn't give them that change and then say "how much is it?", and have his company throw something from the hip and give a price. That was not going to happen as it took time to negotiate. If he was hearing from the Commission now that even if we came to a price that it was going to be enough of a change where they wouldn't vote for it anyway, then he agreed that the negotiations should be cancelled. His company wasn't here for their health either. They were here to build the City a building which the City had already tried twice to do, and they couldn't. Now they were going to go out a third time? And there was no guarantee it could be done this time. From the discussion of what he was hearing here today, nobody wanted to give away

anything. The City was wanting a building for \$1.8 million which was a \$2.5 million building and they couldn't get it. Every week the cost was going up in this State. He was doing everything he could to bring it in at the right price with the help of Mr. McGuire and his staff, and he felt they could. But it was not going to come by a change of paint and a change of carpet. It was going to take some substantial changes. As far as the CID, he'd checked with them too. As a GB98, he had the right to bid any project in the State of New Mexico, and that included the electrical portion of it. If an electrician did not bid him, that did not say he could not bid the project. Mr. (Doug) Moore had a GB98, and not just a plumbing license. He had the right also to bid the electrical portion of this contract. He had case histories and they had provided all that to the City. The only next step was to take it to court and find out. That issue aside, they had done everything they could. He understood it had been two weeks. They met with the City when the City asked them to. They came in with the price the City asked them to, and it wasn't accepted. That was fine, and his company didn't think it would be. They felt there were ways everyone could work together and make it work, but it took input from the City too.

Commissioner Cooper agreed. We were not going to get there and put up a building and start cutting on it right from the get-go. If we were going to do it, we needed to do it right. In the long run it was going to save us a lot of money. To put blacktop down in a drainage area where you should have concrete... Mr. Crimmins said that was never a discussion. The asphalt was going on paths where 99 percent of all golf courses had asphalt. This was in the outer areas and not in a drainage area. One area they made perfectly clear had to be kept in concrete was a drainage area. The areas where the concrete was proposed to be removed was a request from the City saying they were areas where they would rather have asphalt instead of concrete. Commissioner Cooper said the proposal read, "...eliminate concrete in the area surrounding the building where asphalt and other surfaces could be substituted for concrete and still provide the needed drainage". But it wouldn't hold up as long as concrete would. Mr. Crimmins said the Golf Pro had an area out there right now where he was having them cut out the concrete and put in asphalt because the concrete was cracked and the water was draining into it, and it couldn't be patched like hot mix. For most golf courses, they had hot mix on their trails. Commissioner Cooper said they weren't going to be able to build this building for \$1.8 million. Mr. Crimmins said they would not be able to build the building on which they bid for \$1.8 million, and they never said they could. Commissioner Cooper said once they started eliminating everything, they were back to square one. Mr. Crimmins said the City also could not put this building out for re-bid and get it built for \$1.8 million either. Commissioner Cooper said absolutely not.

Mayor Carroll agreed, and said it would take a major change. But the difference was that if we were going to do that as a major change, we would have a lot more flexibility in what we had now, instead of having White Sands tinker around the edges without making substantial changes. That became the problem. What we may need to do was instead of designing a building we thought we could build for \$1.8 million, instead design something which we thought we could build for \$1.4 million which was considerably different than what we had now. But that was part of the concern some of us had the last time. To get there it was going to require substantial changes, probably so substantial that the project needed to be re-bid. He was not supportive of what had been proposed to negotiate, but all he was saying here tonight was that the Commission voted last time to continue to negotiate. He didn't think they could get there. If the Commission changed its mind, then all he would do was vote to honor what the Commission said they'd do the last time. But he didn't think he could support whatever they came up with, because from what he'd seen here, it was too substantial of a change from what we'd started with. If White Sands wanted to continue to negotiate, he would support that. If they just wanted to pull the plug, that may be the easiest solution all the way around. Mr. Crimmins said he didn't

want the Commission to sit here and think they could build that building the way it was designed for \$1.8 million. There would be changes and modifications to this building—there had to be. There was no way it could be built without that. What he didn't want to do was to go back and ask a lot of people to help negotiate a contract, which they'd been spending their time and money on for four weeks now, trying to save the City time and money to get where they wanted, and then come back here and have the Commission vote against it because they felt it was too different than what they'd started with. Mayor Carroll said the sense he got from the Commission tonight was that was where they were already at. Mr. Crimmins said exactly.

Commissioner Ledford said at the last meeting it was pretty clear that White Sands had already done a lot of work and it was pretty close, and that White Sands' representative had agreed that within a week they would have the cost numbers. He understood they needed to negotiate and were asking for more time. Tonight they were saying that it was unreasonable for the Commission not to expect that it would take longer, but we had a deal. The deal was they'd done enough work to where they could come up with cost numbers. He would rather negotiate and get to where we needed to be in the interest of saving time and money too. He voted for giving White Sands that additional time. His opinion was that we didn't get there. Now he'd heard Mr. Crimmins say that it would take substantial change, and Mr. McGuire and his staff said it wasn't substantial. So now he was scared again that we were back to having substantial changes. What upset him more than anything was that when we put this out to bid the first time, \$1.8 million was the number. We'd paid a heck of a lot of money to come up with something which was a good number. Obviously it wasn't because the contractor said we were off a half million dollars. He didn't understand why we paid all this money to come up with estimates that were a half million dollars off. He knew staff understood he was upset with that. We relied on professionals to come up with a number and a project that matched, and that didn't happen—twice. It apparently was not happening still, so we may have to go a third time. We probably had lost a half million dollars just in the increase of costs and inflation since this thing started that it would be less of a building for the \$1.8 million, no doubt about it. White Sands was fighting right now with trying to get down to that number without substantial change. His concern was that we were seeing a substantial change, and the Commission thought that if it was a substantial change, that we may want to re-bid. That was what was bothering him. He was all in favor of getting where we needed to be, and what was a substantial change was really kind of unclear. And now he was concerned that it was becoming substantial. It just seemed to him that we were past where negotiations would be effective.

Commissioner Robertson said he appreciated Mr. Crimmins coming in and being so honest tonight. That was one of the reasons he was so adamant about sending this to re-bid. There was a drastic change. If you took a half million dollars off a building like this, everyone knew it was too much of a change and it took away from the original bid. We had five bidders who originally bid this thing the second time. They didn't get a chance to bid on the changes if we negotiated and took all this stuff out of the building. So he felt it was really unfair to the other contractors who bid this to get it pulled down that much. He really believed we needed to go back and get the building redone and let all the contractors have a chance at re-bidding this thing to get it down to even the \$1.4 million the Mayor was talking about. He felt that would be the only fair way. It may take a little longer, but it would save a lot of White Sands' time and effort and their subcontractors' time and effort if they would just wait until we came out with the new blueprints. Mr. Crimmins would probably agree with him on this. Mr. Crimmins said he wasn't going to disagree, but he was going to make a couple statements on it. He wanted everyone to keep in mind that his bid was over \$100,000 lower, and they were also the low bid the first time too when only two bidders bid it. So he believed they had earned their right to negotiate it. Commissioner Robertson said if the building hadn't changed very drastically, he

wouldn't have said anything and he would have been more than happy to work with White Sands. However, changing it this much was too much to leave it an "as is" building. Mr. Crimmins said right, and he wasn't disagreeing with that. But what he was saying was that he didn't want to continue negotiating if he was going to spend the time in getting to the price they were supposed to, and then have the Commission say it was substantially changed and they didn't want him to do the work anyway. Mayor Carroll thought that was where we were going to be. Commissioner Cooper said they'd negotiated for two weeks, and how close were they? Mr. Crimmins said he wanted to bring that up. They'd met the City when the City had asked them to. They didn't set the date—the City did. When they went into that negotiation, they had the amount of money out of the bid that they were asked to have out. Commissioner Robertson said the Commission had never heard those figures. Mr. Crimmins said they had it out. The numbers were out, and the items they had out were what Mr. McGuire and Mr. (Joe) Moore said were not acceptable, which would have been to anybody's standards substantial changes. He thought he'd heard one of them tonight, which was that the kitchen would be a framed kitchen and there would be no fixtures in the kitchen. It would be that what was in the old kitchen would be moved over and used. So it would have been substantial.

Commissioner Ledford said if we went to re-bid and redesigned this thing, what was the difference going to be between that and where we were to start with? Were we smarter now than we were six months ago about doing a redesign to where we could get a number that the contractors could come in close too? Mr. McGuire said one of things which was different than where we were three months ago, was that we'd looked at this in a level of detail which we hadn't done before. We now knew what the market was more than we did three months ago. When we went out for the first bid, it was literally a shot in the dark. We had two Commission members that were on that committee who set the goals for designing this building, and we weren't going to be able to meet those for redesign. Mayor Carroll said they designed a Cadillac this time, and needed to design a Chevrolet the next time. Commissioner Ledford said we'd paid a heck of a lot of money to have that number right. That was his problem. Were we smart enough now to where we could go back for redesign, because we did understand the market, that it would be a legitimate attempt to get to where we needed to be without substantial change again. Mr. McGuire said if he was asking for a guarantee that the next time the bid would come in with the money we had, he could not give that. We would make substantial modification of the structure and the footprint and square footage to get us to the point where we thought we could do that. We were a lot smarter about that than we were before and he felt we could get closer, but he could not predict the marketplace.

Mayor Pro-Tem Griggs said the last time we'd talked about it with Mr. Burroughs that we needed to be certain we could get by doing this without making substantial changes. Mr. McGuire had indicated that substantial change was one thing—none of us had a definition of what substantial change was. He didn't want us to tell Mr. Crimmins to work on this for another two weeks, and then we look at it again and say it was substantial change. So if it was substantial change tonight, it was bound to be substantial change two weeks from now. So if the Commission felt it was substantial change tonight, then we better just quit wasting everybody's time. It was not right to the public nor to Mr. Crimmins. If this Commission believed the change was substantial enough, then we needed to just do something else. He would love to see us get to the number, but he didn't want to see us get there and then tell White Sands they couldn't do it. He was really concerned the last time because he wanted Mr. Burroughs to understand that just getting the building to \$1.8 million didn't mean the other bidders couldn't come back and tell us that if they'd known about these changes, that they could have bid it for \$1.6 million. It put us in a very odd spot. He was kind of torn tonight because he would like to get it done, but he was afraid there was no sense beating Mr. Crimmins about the

head and shoulders to do it. Mr. Crimmins said this was the second time he'd heard about the other bidders. They couldn't get it down to the price on the actual bid, so he was not worried whether they came back and said anything. His company beat them twice now, and they had the right to negotiate. The City's Charter allowed them to negotiate. So the other bidders could do anything they wanted, but the plain fact of the matter was that if his company got it to \$1.8 million, there were going to be substantial changes. We had always known that. The flip to that was that the Commission was going to put this thing out to re-bid and they were going to do substantial changes, and they had no guarantee they were going to bring it into budget. So the Commission was telling him not to negotiate it with substantial changes, but they were going to redesign it for substantial changes with no guarantee that they would be able to get it at the right price. So the City would be spending another six months' worth of time and the time of all the bidders bidding on it, and they still were sitting in the same position as six months ago when it was decided through staff meetings that substantial changes needed to be made then. There were changes after that, but not nearly enough to bring it in within budget.

Mayor Pro-Tem Griggs said we pounded on this substantial change issue at the last meeting. There was never from anyone representing Mr. Crimmins' company, a statement that a substantial change would be required. That was a fact. Those statements were not made because we wanted to give White Sands the chance to do that. Now he was saying that substantial changes were needed. We were spending taxpayers' money, so we needed to do the right thing. Mr. Crimmins said again, and again, and again. Mayor Pro-Tem Griggs said he knew that, but we needed to make all of our actions seeming to be above and beyond and in the best interest of the community. If Mr. Crimmins believed that substantial changes needed to be made and we said that substantial changes couldn't be made, then he didn't see how we could get this done.

Commissioner Moncada said she had also voted to re-bid this at the last meeting. White Sands' representatives told us that they were very close to having solid figures for us if we only gave them a chance. The other Commissioners chose to give them a chance, but now what she was hearing from Mr. Crimmins was that it would be changed quite a bit. She saw from the memo that there were a lot of changes, and in all fairness, she felt it should go out to another bid.

Mayor Carroll said he'd indicated that he would support what the Commission did the last meeting to allow them to negotiate. He also said that in all likelihood he would not vote the changes that were made. So rather than just postpone this thing, we probably just needed to pull the plug on it because that was where the Commission was going to be. Even though White Sands may come within the dollar number, based on what had been presented and the comments tonight, this Commission was probably not going to approve it. He didn't think it was fair to string Mr. Crimmins out another two weeks with any kind of elusion that this project was going to go forward.

Commissioner Cooper said he was very uncomfortable with some of these changes, and he just couldn't live with it. In all sincerity he felt we should just stop the negotiations and take another hard look at it, and then send it out for another bid. Mayor Carroll said that was the motion and second on the floor.

Commissioner Ledford asked Mr. McGuire how long he thought it would take to get this redesigned and out to bid? Mr. McGuire said at least six weeks before we would have it back out to bid. The plans for this were 30 or 40 pages, and the specifications book was very thick. He would have to verify with our contractor on when he could do this for sure, as he couldn't demand that from him.

Commissioner Cooper asked what Mr. Crimmins' initial low bid was? Mr. McGuire said \$2.195 million. That was \$120,000 below the next lowest bid, and it did not include gross receipts taxes.

Mayor Carroll said in fairness to Mr. Crimmins, it was time to pull the plug because it didn't appear the Commission would accept it, no matter what he brought to us.

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

Mayor Carroll said there was some concern at the last meeting when we heard from Mr. Crimmins' representatives, and it was not a unanimous vote to negotiate. We were sorry for any misunderstanding between his representatives and what the Commission thought they were going to get. Hopefully we could redesign something, and White Sands would not be soured enough to where they wouldn't bid a future project.

Mr. McCourt clarified that the Commission wanted staff to prepare a re-bid. That meant that we had to reject all the bids which were previously submitted. Was it clear to the Commission that staff would be doing that? Mayor Carroll said yes.

17. Award of Bids:

B. Bid No. 2005-07, Miscellaneous Screen Printed Shirts.

Recommendation: Award to Winner's Circle, the overall low bidder.

Commissioner Robertson asked what all the T-shirts were for? Mr. McCourt believed these were primarily in the Recreation Department. They used them for their different programs, such as Bidy Basketball, Fun Runs, etc. Most of these programs had fees attached for participation. Most of them were kids' programs, and they got a T-shirt as part of their participation.

Commissioner Robertson moved to accept Bid No. 2005-07. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

18. Notification of vacancies on Boards and Committees.

Community Development Advisory Committee. One vacancy.

Mayor's Committee on Aging. One vacancy.

No appointments were made, and all vacancies were rescheduled.

SCHEDULED COMMUNICATIONS FROM THE PUBLIC:

19. Request of Mrs. Tobie McLarty, 1424 Lindberg Avenue, for a full abatement of her outstanding water bill.

Recommendation: Deny the request.

Mayor Carroll said the Commission had received the packet of information indicating that Ms. McLarty was before the Commission previously and we had agreed to some water leak abatement to her bill and an agreement that we would test the water meter for its accuracy. That was done and apparently the results came back and said the water meter was within specifications for the meter.

Ms. McLarty said even though the meter did test correctly, she felt whatever problem it had was reset when the City employee was there at her house that day. When she called the Water Department the day of the meter reading and asked to have her meter tested, she was told at that time it was very expensive. She didn't want to go down that road, and also, her consumption was below average for Alamogordo as we had discussed before. She believed if the meter had been pulled at that time on that day as her initial instinct was to do, then maybe whatever problem it had would have been detected. It was possible that at some point the wrong number flipped forward, the wrong decimal flipped forward, or two numbers flipped forward. We were talking about water usage of 210,000 gallons, which was nearly a quarter of a million gallons of water in one month's time from one meter reading. Her prior reading for the month of January was substantially lower, even for normal standards, because this was a February bill. They weren't watering grass or washing cars in the driveway. She was working 12 to 14 hours per day, and her military husband was working 12-hour shifts. She had a stack of laundry in her garage when the meter man came because they weren't even keeping up with laundry because nobody was home on a regular basis because of their occupations. She could not believe that it was even feasible that 210,000 gallons could go through her meter and be used at her home without any kind of noticeable impact. She would have noticed a decrease in water pressure. From the beginning, her position had been that this water was not used and there was some sort of problem which had taken place. That was why she was asking for the abatement. She did believe there was a problem with the meter, and maybe it wasn't something which was mechanically noticeable by a test where she assumed they just ran water through it to see how fast it clicked along. Maybe when they reset everything, it just reset the problem itself. Or else it may have been a spontaneous thing where if something clicked together and the wrong digit changed, it might not be capable of being duplicated. A quarter of a million gallons of water was an amazing amount of water—210,000 gallons of water.

Commissioner Cooper asked if she had a water softener? Ms. McLarty said she did, and she had provided in the backup that Culligan had stated that the water softener could not have been responsible for more than half of the consumption. Even if it had run nonstop, which they did not believe had happened, it would be 2 ½ gallons per minute, whereas this usage would be closer to five gallons per minute. Also, that would be if this happened the second after her meter was read the month before and stopped spontaneously when we reset everything. The other problem with the theory on the water softener was that it came with her house which they'd bought in 2001. They had never used it—it never worked. They put salt in it the day they moved into the house, and the salt was still in it when they repaired it. When the Culligan man came out, he had said that by her husband unplugging the timer, it did nothing because the timer did not work in the first place. So unplugging a non-functioning problem would not have stopped the problems and her next month's bill would also be bad. So the Culligan people did not think it was the water softener.

Mayor Carroll said what the Commission had granted the last time was under the leak abatement policy, even though there was no evidence that she had a leak. Ms. McLarty said the abatement from the last time was not guaranteed to her. Mayor Carroll said it was. Ms. McLarty said it was not her understanding that was given. Even after the meter was tested, she understood that she would have to wait and possibly submit something further. Mayor Carroll

said the abatement was authorized, and also the Commission had taken it one step further to offer her the option to test the meter and if it proved to be defective, that we would readdress it. The meter did not prove to be defective, so in some respects we had actually stretched the leak abatement policy for her particular circumstance because the water did in fact go through the meter because the meter was turning at the time it was read. Ms. McLarty said her issue with the meter turning at the time it was read was that for all the City employee knew, she was doing laundry or dishes or taking a shower, and when he knocked on the door, he told her the meter was running too fast. She understood the meter reading came back and said it was okay, but she would certainly think that for him to take the time to knock on her door when he was reading everyone's meter on the street, must have been a signal that he recognized with the meter that it was running faster than average because he had no reason to believe that she wasn't using water. Mayor Carroll said the meter couldn't read any faster than what the water was going through. So it was the amount of water flowing through it that would have alerted the meter reader. Ms. McLarty said the area she lived in was not known for its high water pressure. So whether her hose was running or her shower was running, her meter ran about the same speed.

Commissioner Robertson said they all ran the same speed. What the Mayor was talking about was that the meter had run a high volume of water through the meter at that time, and that was why he was alerting her to the fact that she had been using an awful lot of water and he thought, therefore, that she may have a water leak somewhere. Ms. McLarty said the wording he did use at the time was that it was running fast.

Mr. Armando Ortega, Water Billing Supervisor, said actually what had alerted the meter reader was the water consumed during the period. The hand held did alert him, and therefore he was instructed to go to the door, and that was what he did. It had nothing to do with how fast it was running at that particular time, but the fact that it was running.

Mayor Carroll said we had addressed this at a previous meeting, and at that time the Commission chose not to do anything other than the standard abatement and agreed to look at it again if the meter tested as a defective meter, which it did not. Ms. McLarty said she was also asking for a tier abatement and not just a full abatement. Mayor Carroll said he did bring that up prior to the vote and he had asked the Commission if they wanted to change the policy, that they needed to do it before they voted on her abatement, and they chose not to do that. Ms. McLarty asked if she was to understand that in a prior situation there was a problem with someone else's meter—a recent request the City had received. Mayor Carroll said that was a case where it could be shown that it was simply one digit flipping once—that the meter readings were such that that was a very plausible explanation. In Ms. McLarty's case there was no indication that the numbers, the consumption, or anything else lined up in that way.

Mr. Ortega said the other difference in the two was that there was actually water running through Ms. McLarty's meter at the time it was read. He thought she was referring to Ms. Seitz' case, and there was no water running at the time the City read the meter, which was another significant difference. Ms. McLarty said her contention was still that if it switched, if another digit out of sequence happened to flip, such as taking the digit to the left with it as it slipped or two digits down, it may not be something which was capable of being duplicated. Mayor Carroll said our system of abatement was not set up to just say that anytime there was something we didn't understand, it must be the meter even though it checked good. Ms. McLarty said what she had a problem reconciling was that she heard from the last meeting that several of the Commissioners didn't believe the water was actually consumed, and several of them felt maybe the water softener couldn't have been responsible. And if they took the water softener out of the loop, there wasn't anyway that the water could have been consumed. She was hoping that

without being able to explain where the water went, that maybe that would default that the meter must have had some other problem that was not detectable with just a standard test. Mayor Carroll said or that the water was used. Mr. Gale McCowsky, audience member, asked if he was basically saying it was Ms. McLarty's fault? Mayor Carroll said no. He was saying she could have used the water with or without the water softener. Mr. McCowsky said that even mechanical items could fail at anytime in its lifetime and it might not be repeatable again in that item's lifetime. Mayor Carroll said, though, that we could not have a policy which stated that anytime somebody got a large water bill it was because the meter did something strange. Mr. McCowsky agreed, but said, then, that it had to be looked at realistically—210,000 gallons of water! She didn't have a pool, and even people with pools didn't use that much. She had no grass in the front or back yard. His principle was that with that much water there would be an obvious sign of a leak or a plumbing problem or water pressure decrease in the neighborhood. That was an immense amount of water for one house to use in a very small neighborhood.

Ms. McLarty said she was not asking for the policy to be reset. She was just asking for somebody to come forward and say that if the water usage could not be explained in such an extreme case... In the Seitz situation, if they couldn't explain a \$400 bill, she certainly couldn't understand how they could explain a \$1,500 bill. Her position was just that in an extreme situation where you were looking at the numbers and they had to ask how 210,000 gallons of water could have even gone through there, that was when she would like to believe that there was additional recourse besides just the stated policy. That was why she had come back tonight. Nobody she had talked to could understand 210,000 gallons of water because it was just such an immense amount of water. It was a huge number and was not explainable with the water softener. There was no way to explain where the water went, how it was used, and how it wasn't noticed, especially given her prior usage of the water and her strict following of the water schedule. It was not feasible this had happened without it being some sort of mechanical error.

Commissioner Ledford said nobody wanted to assess this kind of bill because it was a lot of money, and therefore, you set a policy. He agreed this was a lot of water and was unusual. What we did in an unusual case was the leak abatement policy, and that was what we had done. We did have a policy for these situations, and that was what we had passed on. So it was not like we weren't doing something. We did have an abatement policy, and it was 50 percent. If she wanted to argue this was not a very good policy, she had the right to do that. If she wanted to argue that we needed to do something different, then she had the right to do that. But we did have a policy just for her case. In fact, because of her case we were maybe thinking about something else. The tier punishment was pretty severe, and we were probably all thinking about something to where in a situation like this the Tier 1 would be more appropriate because we knew she wasn't selling water or doing something weird. But what the policy was at the time it happened was "x", and so she did get relief because of an unusual situation. We then went on to get the meter checked out, because if there was something wrong with it, then she deserved a better deal. Well, it didn't. Mechanics weren't 100 percent perfect, so it could have been a weird deal, but nobody really knew. However, because of these weird deals we had an abatement policy, and that was what Ms. McLarty had gotten. So maybe we could do a better one, but we weren't there yet.

Commissioner Robertson asked how many months the \$767 was for? Mr. Ortega said that was for one month. Commissioner Robertson said when we gave this relief the last time, he understood that we were going to drop it down to the monthly average bill she had, plus the garbage. He never expected for it to come back as a \$767 bill for that one month of water. Mr. Ortega said actually the garbage was the same flat rate. She was still charged the garbage on top of the abated amount. Commissioner Robertson said he realized that, but still it wouldn't

take it to \$767. How much of a percentage did we give her on the abatement? Mr. Ortega said our policy granted half the difference between the actual and an average water bill. Mayor Carroll said we had abated the bill \$731 plus \$36 tax. Commissioner Robertson said it just hadn't dawned on him that it would wind up being this much. Mr. Ortega said she had the option to turn in a request for the abatement. That was the amount she still could get if she did request the abatement. She hadn't been granted it, but she had been given the opportunity to turn the letter in and request it. Commissioner Robertson said if she took it, was her water bill going to be the \$767? Mr. Ortega said yes. Ms. McLarty said at least some of the Commission didn't believe that she had actually used the water. Commissioner Robertson said we had to go by policy. We'd had these before us before, and for the majority of them, the people weren't home. How did we know somebody didn't go off and leave the water faucet running in the bathroom, or the water hose running in the back yard? No mud. But what if the commode had been hung for several days and nobody fixed it. Nobody knew what had happened, so we had to take into consideration that we needed to go by policy. If this was the full abatement we could give, then this was all we could do.

Ms. McLarty said that would be the abatement she would get if she hadn't come to the Commission. She felt that the City Commission's position here was that they could do more than just policy in situations which were extreme. She didn't consider a \$400 bill extreme. She did consider a \$1,500 bill extreme. If her bill had been \$400 and the City said it might have been her water softener, she would have paid it. Back in November her water heater had gone out, and she knew the bottom had rusted out on it, so she paid her higher water bill which was from that. But she could not believe that 210,000 gallons of water went through that home, and that was where her problem was with just sticking to the policy. If she thought she had used the water, she would be happy to take the abatement. In a situation this extreme, the average abatement policy wouldn't really help her because she was still going to end up with an \$800 bill.

Mayor Carroll said many communities had no abatement policy at all. If it went through the meter, the customer paid for it no matter what. While ours had some weaknesses to it, this was the policy we currently had in place. He didn't know that we were in a position to change it at this point. We had the option previously to do that, and the Commission chose not to.

Mayor Pro-Tem Griggs said one of the things we'd discussed was whether the tier situation was equitable for conditions like this. He'd made the motion to table it so we could look at the policy and see if it was equitable, and the Commission did not support that. Ms. McLarty said she felt they thought she was attacking the tier system, and she was not because she felt the tier system in general was a good policy. Mayor Pro-Tem Griggs said he didn't know what the Commission's reasoning was, but they just decided they didn't think that was a good change in the policy. He personally thought that was something we needed to be looking into and addressing. He didn't know that they would be willing to do it tonight, and he didn't know that it could change anything. It was something we hadn't seen, basically, except with Ms. McLarty. We saw this big issue with water because she was in Tier 5 and it got expensive. Someone called him the other day about a guy putting water in his water truck. He used that water to take out to the Base for construction crews to use. His bill had to be pretty doggone substantial as well, but he was paying it because he was using it. But Ms. McLarty didn't think she'd used the water, and he sympathized with her. He didn't know that there was a desire on the Commission to do anything other than what they had done. He felt we needed to look at the policy and make changes in it because he felt it was inequitable in situations like this one. Our water billing wasn't designed to particularly penalize people. Surcharges were, but not the tier system. That

was a policy change we needed to look at, but he didn't think the Commission was going in that direction this evening.

Mayor Carroll said the minutes from the last meeting did indicate that the motion was to consider her soft water system as a leak and apply the standard water leak policy to the request, and the Commission had voted unanimously on that. She couldn't have gotten the same thing without coming to the Commission because there was no sign of a leak. So that was where we granted some relief, by allowing the water softener to qualify as a leak. Unless the Commission wanted to do otherwise, she could move forward with the abatement. If need be, staff would work with her on an over time payment plan.

Mayor Pro-Tem Griggs moved that we charge Ms. McLarty on her water use in Tier 1 numbers for the amount of water she used. Seconded by Commissioner Moncada.

Commissioner Moncada asked what that turned out to be? Mayor Carroll said it would be considerably less. Ms. McLarty said she believed it would be approximately \$427. Mayor Carroll asked if we were in a position to change the policy at this point in time? Mr. McCourt said staff was preparing policy considerations for the Commission to look at. We usually did that in conjunction with a review of the rates each Fall, and that was when it was planned to be brought forward before the Commission. Commissioner Moncada said she had seconded the motion only for discussion purposes. She felt we would be opening a can of worms because we hadn't offered it to anybody else who had that problem. Mayor Carroll said this was an after-the-fact policy change, and that became the problem. Ms. McLarty said on the flip side, she was not given full abatement so it was a compromise and certainly a starting point. Finance Director LeeAnn Nichols said we would have to go back to the others if the policy was changed on this. Commissioner Cooper asked if we would be violating our own Ordinance? Mayor Carroll said it became a murky area if we went back after the fact and started doing that, because we would be opening ourselves up to everyone who had paid under the policy. Ms. McLarty said there had been some situations in the past where the Commission had done full abatement. There were two in recent history, as well as the gentleman overseas. Mayor Carroll said those were totally different circumstances. Ms. McLarty said under every case there were circumstances that would just be different. Commissioner Cooper said those two cases were actually a criminal act on the people because water had been stolen from them and they had no control over that.

Mayor Carroll called for the vote on the motion. **Mayor Pro-Tem Griggs voted "aye". Mayor Carroll, Commissioner Moncada, Commissioner Cooper, Commissioner Cole, Commissioner Robertson, and Commissioner Ledford voted "nay". The motion failed by a vote of 1-6-0.**

Mayor Carroll said at this point the standard leak abatement policy was the best we could offer. Mr. McCourt directed Mr. Ortega to work with Ms. McLarty so we could get what we needed to get it in force and get the abatement onto the books, and also make sure she was aware of our other programs where we could try and work with her to try and fit it into her budget.

UNSCHEDULED COMMUNICATIONS:

- A. Comments by City Manager regarding Law Water Conference; Congressman Pierce visiting Alamogordo; water report; and Airport issues update.

Mr. McCourt said on August 15th and 16th he would be at a Law Water Conference in Santa Fe. Assistant City Manager Matt McNeile would be in charge during his absence.

Mr. McCourt said on August 15th Congressman Pierce would be in town. He would be at the Civic Center from 9:30 a.m. until 11:00 a.m.

Mr. McCourt said the water situation was okay. He anticipated we would be cutting back on the flows from Bonito, not because we had reached a dangerous point, but because we needed to make sure we had enough water there so when the Air Force started taking theirs this Fall, they could get their necessary amounts. We anticipated we would start reducing our takes out of Bonito and start using our well fields more. Commissioner Robertson asked if the Air Force had started taking it yet? Mr. McCourt said for Bonito Lake, they normally took their flows in the winter months which started in October. They had not been taking water this summer. They did stay on a little later than normal this year, but they had not been taking for quite awhile now. We anticipated we would start reducing our flows out of Bonito to make sure we had a sufficient supply so the Air Force could get their allocation this Fall. That would mean we would have to start turning on more of the wells. Well No. 7 was still down, and we were working to bring it on line.

Mr. McCourt said he had continued to work on the Airport issue. He had continued to give the Commission reports, and staff had also had some meetings with the Airport Board. He was happy to report that the problem at the Café, with the assistance of Commissioner Cooper, had been brought current. They were in operation and we hoped to be able to keep that situation current.

B. Comments by Mayor Carroll regarding audit of Library operations; and absence from next City Commission Meeting.

Mayor Carroll said he appreciated the audit which Mr. Ron Jeske had done for the Library operations. It was very informative.

Mayor Carroll said he would not be at the next City Commission Meeting as he would be on vacation. He would be back around the first part of September.

Commissioner Cooper moved to adjourn. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0. The Meeting was adjourned at 10:20 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Angie Rahn-Broyles

City Clerk Angie J. Rahn-Broyles
(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of August 23, 2005.