

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION REGULAR MEETING MINUTES  
MUNICIPAL BUILDING, 1376 E. NINTH STREET  
7:30 P.M., COMMISSION CHAMBERS  
SEPTEMBER 27, 2005**

**MAYOR DON CARROLL  
MAYOR PRO-TEM RON GRIGGS  
COMMISSIONER INEZ MONCADA  
COMMISSIONER ED COLE  
COMMISSIONER DON COOPER**

**COMMISSIONER JOHN ROBERTSON  
COMMISSIONER MARION LEDFORD  
CITY MANAGER PAT McCOURT  
CITY ATTORNEY KEN McDANIEL  
CITY CLERK ANGIE RAHN-BROYLES**

Call Meeting to Order and Roll Call.

The Meeting was called to order at 7:30 p.m. The Invocation was given by Rev. Rick Steele, and the Pledge of Allegiance was led by Commissioner Ed Cole. Commissioner John Robertson participated telephonically until 7:55 p.m.

Mayor Carroll thanked the High School Air Force Junior ROTC for the posting of the colors and for the flag-raising ceremony at City Hall for the POW-MIA Remembrance Day. The turnout for that day was small, but the Commission hopes to make it an annual event.

Mayor Carroll mentioned that Item #10 has been withdrawn at the request of the petitioner.

**PRESENTATIONS:**

1. Presentation by Ms. Mariella Porter, on behalf of the airport users, regarding pending airport matters.

Mayor Carroll introduced Ms. Mariella Porter, who gave a presentation on behalf of the airport users regarding pending airport matters. Ms. Porter said that she knew the Commission had many crucial and important matters to attend, but was thankful for a moment to address other issues. Ms. Porter introduced Kevin Dunshee, the president of the Alamogordo Airport Users Association.

Mr. Dunshee explained that the Alamogordo Airport Users Association is a chartered group of individuals who have a direct interest in the well-being and future of the Alamogordo airport. Members are airport users, business owners, leaseholders, sub-lesers and individual citizens who wish to mutually agreeable leases with the City of Alamogordo to use portions of the airport for profit, transportation or recreation. Members have a vested interest in the future of this airport. The primary reason the association was formed, even though an Alamogordo Airport Advisory Board already existed, was because the group felt its interests were not being heard when addressed by the members of the advisory board. The association is not trying to place blame, but simply to provide a unified input and assistance in developing a long-term solution for sustainable growth at the airport.

The council has requested from the City Attorney that a solution to the airport leases be resolved by September 1, 2005. The date has passed without any solicitation for feedback from users of the airport, and now members do not know what progress is being made. They provided input and have received neither feedback nor results. It appears that the City government requires additional assistance in these matters. The association has enlisted the

support of Ms. Porter, an Attorney from John R. Hakanson with expertise in aviation contracts, and is contemplating hiring her to resolve this issue with the City. Ms. Porter will present a proposed land lease for review by the Council and members of the City government. Ms. Porter, the City government Attorney and the association have done a great deal of work to provide a land lease that is fair, non-discriminatory, and in complete compliance with all FAA concerns and grant assurances. Most important, it will allow members to continue their business while providing the City of Alamogordo with the required control of airport property and generating funds. Through cooperation, all parties can make the airport a friendlier place in which the City can generate income and attract new business.

Therefore, the Association is requesting that the Commission review the proposed land lease. Mr. Dunshee asked that if the Commission has any concerns, they have the City Attorney meet and confer with the Association's aviation lawyer and allow comment and input from the association. The association would then like the Commission to vote and approve this proposed land lease at the next council meeting and have the City Manager put the land lease into effect. This will resolve any concerns over meeting guidelines to qualify for federal funding. At future council meetings, the association will propose leases for commercial operations and businesses operating at the airport, as well necessary changes in the City ordinances. In this same manner, the association, working with the City commission, will ensure that the City of Alamogordo is able to meet state and federal requirements and thus ensure the future of the community's airport.

Alamogordo is not a high-use, self-sustaining airport. Rather, it is a small airport used primarily by other government agencies, occasional travelers and individual aircraft owners. It is wedged between the mountains and restricted military air space, and not in any FAA navigational routes. It is only a destination for residents of Alamogordo, a few businesses and a very few private individuals who visit. To make the airport more sustainable, it must become friendlier to attract new business. Putting these new leases in place will start the process that will ensure the future of the airport.

Ms. Porter assured that the meeting was one of good faith, and the City Commissioners will not be taken out of the loop in any way. She then handed out copies of the proposed land lease to all the Commissioners and asked that at the next meeting, if possible, she could introduce the proposed commercial lease that has been drafted and get approval on that. Ms. Porter said that everyone is brethren of Alamogordo, whether they were born there or moved in, as she did, and everyone wants to see the airport become an economic generator for the community, whether in revenue for government or revenue for individuals using the airport. She also welcomed questions or comments so everyone can come to a solution. Ms. Porter stated that the members of the Alamogordo Airport Users Association want closure. There is no reason to have to take the issue this far, or to recruit two Attorneys to resolve it. Although Ms. Porter and Mr. McDaniel have been working together, but everyone should see the product and offer input.

Mayor Carroll said that he understands there is a large group of airport leaseholders and interested people, and that the commission appreciates the presentation and the input. The Commission has been working to resolve the issues that are at hand to be fair to the interests of the City and the leaseholders and to pass muster with the FAA, who, for better or worse, is a third party in the situation. He assured that the Commission will review it, and the City Attorney and Manager will review it if they have not already done so. They will also be happy to meet with members of the airport advisory board and any representatives from the airport Users association. They can set up as many meetings that are beneficial or necessary. The Commission will look at the land lease to make sure it is satisfactory, and they will do the same

with the commercial lease and the rules and regulations. However, Mayor Carroll did not guarantee that action would take place at the next meeting. But he pledged that the City and the commission would work with all the interested parties to resolve the problem as quickly as possible. If that means setting up meetings between now and the next commission meeting to see if it is possible, they are willing to do that. The commitment has been made to review the matter, contact the other parties and resolve it in a way that suits everyone involved. The mayor thought the airport advisory board and the users association were in contact and in consultation with one another, but if that's not the case, then the commission will resolve that.

Mike Haymes commented that this is exactly what was said in June; Commissioner Cole, the City Manager and the City Attorney had agreed to a deadline of September 1 to get this done, and it is now September 27. Mayor Carroll said that he reviewed the minutes of the meeting after reading Mr. Haymes' statement in the paper, and while the matter was discussed, he had said at least twice that he was reluctant to set an arbitrary date to resolve it, so there was no date set. However, the commission has been working in good faith with the airport advisory board and the FAA, and now it will work with the user's association as well to resolve it as soon as possible. Mr. Haymes noted that the City Attorney stood with Ms. Porter at the prior meeting and promised all the Commissioners that he would be in touch with her up to the September 1 deadline. But he has not done that. She has contacted him twice and visited his office once, with no response. He said that the City Commissioners should be incensed at what has happened, and that Ms. Porter has been very nice about it.

**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.

William Dean Terrell, Cherokee Enterprises, requested that Item #17A be removed from the Consent Calendar.

Consent Calendar included the following items:

2. Minutes of Regular Meeting of September 13, 2005.

*Recommendation:* Approve the minutes.

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

*Recommendation:* Approve the revised Agreement.

14. Resolution No. 2005-31 requesting the DFA, State of NM, approve revised budget figures for certain line items in the City's budget for FY 2005-2006.

*Recommendation:* Approve the Resolution. [Roll Call Vote Required]

15. Resolution No. 2005-33 approving and accepting the New Mexico Department of Transportation (NMDOT) Capital Cooperative Agreement Certification Projects as follows: \$30,000 for ADA on Tenth Street, Florida Avenue, and Cuba Avenue; \$507,143 for First Street; \$75,000 for South Florida extension & widening.

*Recommendation:* Approve the Resolution. [Roll Call Vote Required]

16. Change Order No. 1 for Public Works Bid No. 2004-010, North Florida Storm Drainage Project.

*Recommendation:* Approve the change order.

17. Award of Bids:

- B) Public Works Bid No. 2005-016, Alamogordo Regional Water Supply Project - Test Well No. 5.

*Recommendation:* Award to Henkle Drilling & Supply Co, Inc. in the amount of \$374,845.01, inclusive of NMGR (Otero County).

- C) Bid No. 2005-11, Meter Cans.

*Recommendation:* Award Item 1 to Morrison Supply for an estimated total of \$24,962.50, and award Items 2, 3, and 4 to Alamogordo Winnelson for an estimated total of \$5,915.00.

**Commissioner Cooper moved to accept Items 2, 12, 14, 15, 16, 17B and 17C. Mayor Pro-tem Griggs seconded. All voted "aye". The motion carried by a roll call vote of 7-0-0.**

**Commissioner Robertson did not participate telephonically after this point.**

**PLANNING ITEMS:**

3. Consideration of a six foot (6') curb cut variance for Charles A. Isleib, III [Case V-05-0483(A), 609 Sunrise Avenue].

*Recommendation:* Approve the curb cut variance.

**Commissioner Cole moved for approval of the six foot (6') curb cut variance for Charles A. Isleib, III. Seconded by Commissioner Moncada. All voted "aye". The motion carried by a vote of 6-0-0, with the conditions as required by the planning and zoning approval.** Val Isleib acknowledged that the action cannot move forward until it is shown to be ADA compliant.

4. Consideration of Ordinance No. 1249 for rezoning to District "R-1" (Single Family Dwelling) requested by Perry Rust [Case Z-05-0644(A), 900-912 Twenty-Sixth Street].

*Recommendation:* Approve Case Z-05-0644(A) to amend the official zoning map of the City of Alamogordo to change the zoning of subject property and to approve the Ordinance for final adoption.

Mayor Carroll said one of the issues brought forth in the documentation is the concern for flooding in the area; culverts will be required when the driveways are constructed. Klad Zimmerle, representing Perry Rust, commented that dual driveways would be constructed so there is a single culvert per 2 lots. They will match the level of improvements that currently exist. Mayor Pro-Tem Griggs added that he has been to the site and believes that the culverts

will fill up during the next heavy rainfall. He does not know what precautions will be taken to make sure these homes are not flooded. The Commission recently began dealing with an ordinance that will require subdivisions outside the City to bring their properties up to City development standards as they come to approval. Smaller lots would require curb and gutter, which did not seem to be present near the properties. A nearby culvert has been silted up, but he expressed concern that a curb and gutter are not required to protect from flood. A flood would come down Twenty-Sixth Street.

Mr. Zimmerle said that the present bar ditch was constructed and built by the City. There are three culverts in each crossing, as well as a large ditch that is concrete reinforced. When building permits are issued, elevation certificates will accompany them. The houses will be elevated above the base flood elevation in those areas. This complies with City requirements, insurance requirements and FEMA requirements.

Mayor Carroll understands that Mayor Pro-Tem Griggs is requesting a waiver of protest, which has been done in the past. But these are houses for people with low or limited income, but he is concerned that Habitat for Humanity may eventually set residents up for an assessment on property that they will not be able to cover. Mr. Zimmerle replied that when double penetration was put in with the ditches and culverts, the majority of people were able to come up with the assessment. Mayor Carroll hoped that if the motion is carried, that Habitat for Humanity would take into consideration that the more compliant people can be to current or future standards, the less potential burden they'll put on the people they're trying to help with these houses.

**Commissioner Cole moved to approve the rezoning, and Commissioner Cooper seconded. All voted "aye". The motion carried by a roll call vote of 6-0-0.**

5. Consideration of a five foot (5') lot width variance for Perry Rust [Case V-05-0484(A), 900-912 Twenty-Sixth Street].

*Recommendation:* As the minimum setbacks will be maintained and the resulting lots will exceed the required square footage, approve the lot width variance.

Mayor Pro-Tem Griggs wondered if there were any additional measures that could be taken, given the potential for flood in that area, and what they would cost. The City will require sites of some distance to resolve the flooding issue, but the area has been flooded before. In the past, the flood washes out of the breach and out of the old reservoir and comes across the City yard and over to the property. He said that if the staff feels comfortable that this would not become an issue, then he would support it, but he sees it as an issue and doesn't know how else they will be addressed. Mayor Carroll replied that at the time that the building permits are issued, the builders will have to assure that they are taking the appropriate steps to protect the properties.

Jose Miramontes, Public Works Director, mentioned that the drainage channel is a short-term measure, not a permanent solution. It is helpful for small storms, but it needs to be developed properly. The City has been looking forward to coming up with a long-term plan that will be extensive and might take a while to get built. Mayor Carroll said that Habitat for Humanity and the property owners need to be aware of that and make sure to inform the people that are going to live in these houses. Mr. Miramontes also noted that during one of the two most recent floods at the north end of Pecan Street, relatively large culvert structures, one of which was made of concrete, were washed away, so the potential for flooding is great. The buildings will be built to FEMA standards, but additional measures should be taken. Commissioner Cole asked if building could go beyond the FEMA standards if they are not enough, and Mr. Zimmerle replied

that the building standards are good, but they could go higher if necessary. Mayor Carroll said that a study is taking place to examine the flood control issue for the area, but nothing in the ordinances requires anything beyond the current elevation standards.

**Commissioner Cooper moved for approval of the five foot (5') lot width variance. Commissioner Cole seconded. All voted "aye". The motion carried by a vote of 6-0-0.**

6. Consideration of Ordinance No. 1250 rezoning to District "C-1" (Neighborhood Business) requested by David Flores [Case Z-05-0645(A), 1322 E. Ninth Street].

*Recommendation:* Approve Case Z-05-0645(A) to amend the official zoning map of the City of Alamogordo to change the zoning of subject property, to amend the Comprehensive Plan, and to approve the Ordinance for final adoption. [Roll Call Vote Required]

**Commissioner Cooper moved to approve Ordinance No. 1250 rezoning to District "C-1" as requested by David Flores. Commissioner Moncada seconded. All voted "aye". The motion carried by a roll call vote of 6-0-0.**

7. Consideration of an off-street parking variance for David Flores [Case V-05-0485(A), 1322 E. Ninth Street].

*Recommendation:* Approve the off-street parking variance for Case V-05-0485(A), with the condition that if on-street parking becomes a problem for the adjacent resident that the applicant of this request pays for the installation of a Resident Parking sign.

Mayor Carroll does not have a concern with the on-street parking request, but he does have a concern that if the parking variance is approved, this does not commit a future commission to approve a resident parking sign for the adjacent neighbor. It needs to be stated that the condition, that the applicant pay for the installation of the sign, does not guarantee that a neighbor would be able to make the same request of a future commission because public parking lies within a close proximity to the applicant's place of business. The complaint was not because customers were parking in front of the neighbor's residence, but rather, that customers were parking in their driveway. Mr. Flores said that there is an empty lot near the house on Ninth and Oregon, and the owner of the empty lot is the one voicing concerns. Mayor Carroll said that if drivers are parking on private property, they are subject to a complaint and enforcement by the Department of Public Safety to tow the vehicle and issue citations. If in fact that is happening, Mayor Carroll suggested that Mr. Flores let his customers know that parking is not allowed in that area. Mr. Flores said that he is already doing that, but some customers were under the impression that it was. He also noted that there is an apartment complex nearby, and some of those residents might be parking there at night in order to avoid parking in the alley. If that is a problem for the property owner, there may be ways to address the situation.

To Commissioner Cole's question about who makes the decision that there is a parking problem, such as excessive parking on the street for a business, and who makes the decision to remedy the problem, Mayor Carroll pointed out that the request is for an exception from the normal 3:1 off-street parking ratio, which would bring the number to 2.47:1. If a decision were being made at the meeting, the Commission would determine that the 2.47:1 ratio would be sufficient for this type of business and it did not perceive that it would be a problem to park in people's yards or block their access to parking in front of their own houses. If that is not the case, then residents could (and probably would) go in front of the Commission and request a resident-only parking permit. At that point, then it would be up to the commission to decide

whether that request was warranted. Commissioner Cole set up an example; if he lived on that street and felt that there was excessive parking in front of his home and did not like it, he should be able to call DPS or the City's services to resolve the issue, rather than try to resolve it during the Commission meeting. Mayor Carroll replied that, even though the parking space may be in front of one's house, that does not inhibit someone else from parking there. The ordinances are set up in order to eliminate that issue for parking generated by businesses in the area, which is why the 3:1 parking ratio has been established as the adequate amount of off-street parking, the 2.47:1 ratio for this particular business will only result in one additional parking space, so the variance is not large.

Commissioner Moncada notes that the property is a specialty shop, so there will not be a great deal of parking, as a grocery store might. People who park there might have an appointment, stay for a certain time and then leave, and then someone else will take that same spot. She does not see a significant problem because of the type of business it is. Commissioner Cole asked whether the City has a time limit for "residential parking only" signs. Mayor Carroll said that the City evaluates those signs on an annual basis to see if the conditions that were in effect at the time the permit was issued are still present. There have been cases where the conditions are no longer applicable and the sign was removed. In other words, a "residential parking only" sign will not be put in place, but if necessary, residents could petition to apply for one. The Mayor's concern is that, even though the businessperson pays for the sign if his neighbor applies for one, a future Commission might automatically guarantee a subsequent similar request.

**Commissioner Cooper moved for the approval of the off-street parking variance for David Flores. Commissioner Moncada seconded. All voted "aye". The motion carried by a vote of 6-0-0.**

8. Consideration of a five foot (5') front setback variance for Sedona Development, Inc. [Case V-05-0486(A), Sedona Ridge Estates, Phases 4 and 5].

*Recommendation:* Approve the five foot (5') front setback variance to only allow a twenty foot (20') front setback for the living area and for side entrance garages of homes for Case V-05-0486(A).

Klad Zimmerle, representing Sedona Development, stated that the request is to keep this unit consistent with phases 1-3. This setback is more strict and stringent than the other twenty foot (20') setbacks that have been approved. This is for living areas only and side entrance garages only.

**Commissioner Cooper moved for the approval of five foot (5') front yard setback variance for Sedona Development. Commissioner Cole seconded. All voted "aye". The motion carried by a vote of 6-0-0.**

9. Consideration of Ordinance No. 1251 for rezoning to District "C-3" (Business) requested by CAP II – 10<sup>th</sup>/White Sands, LLC [Case Z-05-0646(A), East Tenth at White Sands].

*Recommendation:* Approve Case Z-05-0646(A) to amend the official zoning map of the City of Alamogordo to change the zoning of subject property and to approve the Ordinance for final adoption.

Commissioner Cooper wanted to get the corner straightened out so that downtown can be an attractive area and get rid of the "eyesore". Commissioner Cole said that there appears to be a left turn coming out onto White Sands, which is close to the corner. Sharon Few, City Planner, replied that the site plan presented at the meeting was not the one that was amended and negotiated with staff. Only a right hand turn off of White Sands will be allowed into the property and one driveway on Tenth Street. Mayor Carroll added that any curb cuts off of White Sands Blvd. have to be in concurrence with the state transportation department. There will be curb cut for that right hand turn, but in only. Commissioner Cole asked whether there will be an actual cut to the property for the right hand turn where 2-3 cars could potentially be backed up, to which Mayor Carroll said there would be.

**Commissioner Cooper moved to approve Ordinance 1251. Mayor Pro-Tem Griggs seconded. All voted "aye". The motion carried by a roll call vote of 6-0-0.**

10. Consideration of the final plat of WESTWOOD SUBDIVISION, UNIT 1, REPLAT A for four (4) lots located within the City of Alamogordo for Clifton McDonald [Case S-05-0889(A), McDonald Road].

*Recommendation:* Approve the final plat of WESTWOOD SUBDIVISION, UNIT 1, REPLAT A, Case S-05-0889(A), located within the City of Alamogordo with the requirement that the plat be corrected and all staff concerns be addressed prior to the release of the plat for filing and with a Subdivider's Contract.

**Item withdrawn by Mr. Clifton McDonald.**

11. Consideration of Ordinance No. 1247 annexing 295 acres of land owned by Ben Boldt, Harlo Dynek, and Tierra de Suenos, Inc., et al. [Case A-04-0061(A), South Florida Avenue].

*Recommendation:* Approve the Ordinance for first publication.

City Manager McCourt said that the City has followed all the standard procedures for annexation of this property. Commissioners have in their files the list of all the property owners involved in that area. He believed that most of the owners on that list had no comment, but City Planner Few said some verbal objections had been received, but nothing in writing. That was from 14 property owners representing 16% of the property. City Manager McCourt then said that during the budget hearing, when participants discussed this annexation with the City Commission, some people had appeared and said they would not object as long as the Commission created a grandfather clause for those who have water and sewage taken care of on their lots. In Section 2 of the draft, it says that it protects those people; in those properties, individual wells and septic tank systems legally approved, installed and in operation prior to the date of this annexation will be exempt from the other requirements of the City of Alamogordo requiring connection to City utilities, especially sanitary sewers, for the life of the existing systems. The parties are in compliance with that.

Malcolm Yox, owner of the Two Divers Cove property, said that on August 30, he received a call at home from a gentleman who said that a petition was out to annex his property to the City of Alamogordo. When asked if he would agree to that, Mr. Yox said no, and the gentleman said, "Thank you, goodbye". Mr. Yox was still on the phone because he did not know what the man was talking about. Mr. Yox then called a couple of neighbors and asked them if they had heard anything about this annex. They said they had received a call from the gentleman, and when

Mr. Yox asked what it was all about, the neighbor said they really didn't know. Mr. Yox researched it and got a hold of the actual petition, and he noted that the petition was signed on August 1, whereas he got the call on August 30, with no explanation whatsoever of what was going on. Mr. Yox said he hoped that was constructive for the record. He also said it was very late because it was close to the first meeting in which it was going to be discussed, and so there was no opportunity for preparation. After Mr. Yox looked at it, he pretty much agreed with it. He bought the property five years ago, and he realized at that time that it was difficult to ask the County to be coming in through the City to get to the County, and for the City to be going around the county to get to the City, so eventually this was going to happen. Constructively, Mr. Yox would like to make the following recommendation; he has studied and done research in asking people, and his understanding is that those owners are not going to be getting the services of the City, and yet they are going to be taxed by the City. Therefore, his thought was for the City to say something such as "Mr. Yox, you are providing your own water and the maintenance of that equipment, and you are providing your own sewer and the maintenance of that equipment. These are items that are offered to the residents of the City for the taxes that they pay. We will offer to appraise your home as we would appraise any home in the City, and until such a time as we are going to be allowed and able to give you all of the advantages of being in the City, we will give you a discount on your taxes."

When Mr. Yox asked if that sounded reasonable, Mayor Carroll replied that it may sound reasonable, but it's not something that the Commission is in a position to do. While water and sewer may not immediately be available, and Mayor Carroll is not sure whether either is available for Mr. Yox. By being in the City, he is also provided with police and fire protection that the City does not provide at this current time, so that is one of the additional benefits that he would get by being in the City and for whatever additional property taxes may be involved on Mr. Yox's property. Mr. Yox said he is now entitled to the City protection from the station that is located nearby on South Florida. That was the first telephone call he made when he moved into the house, as to whether they would respond to an emergency. Mayor Carroll agreed, but also said that Mr. Yox was not legally entitled to response by City fire or police by virtue of being in the county, even though the City has mutual agreements and would make every attempt to respond anywhere they could or where it was needed. There are advantages to Mr. Yox by being in the City as well as advantages to the City by having Mr. Yox's property in it. Mayor Carroll also apologized if Mr. Yox's experience with whoever contacted him from the City was not what he expected it to be, and maybe the City needs to work on that customer skill a little better. Mr. Yox had no other questions, but commented that it was good to be in the City and is pleased to do that. He understands after this evening how difficult the Commission's job is, and he was surprised to see the editor of the paper recruiting for them the other day. Mayor Carroll replied that as elected officials, when they read that, they are never sure whether they are recruiting for them or trying to replace them.

Lee Minjarez has property as described in the annexation petition on the tract of land that is depicted. He said he has to be a parrot and repeat what Mr. Yox has just described. He is at the meeting primarily to listen, because he also received a call from a gentleman by the name of Anderson. He had no idea who he was; he only identified himself as Anderson and said, "Mr. Minjarez, there is a petition to annex your property. Would you like to sign this petition?" Mr. Minjarez said no. That was all he knew. Mr. Minjarez does not subscribe to the local newspaper, but he does listen to the radio talk shows, and he had a neighbor who came over a week ago and inquired as to what he was going to do about the matter. He asked, "What matter?" and the neighbor explained it to him as thoroughly as he possible could. Mr. Minjarez said that until the City Manager described something about grandfathering, he knew nothing about it. He had received nothing in the mail, and he had seen nothing other than the items on the agenda, so he would like to have something presented to him that he can read, because he doesn't know any of the details, or whether to agree or disagree. He would even be happy if someone said "This is the procedure and the process we are

following.” He simply wants to be able to research it and to know what it is that the Commission is attempting to do, what procedures they are following and what authority they have. It’s not that Mr. Minjarez opposes it; he doesn’t know whether to oppose it or not. He would like to receive something from somebody that allows him to read and understand so that he can say “aye” or “nay”. He said he had the opportunity because he came to the facility to pick up something for the meeting. He had the opportunity to meet the Anderson person; he turned out to be Matt Anderson, and he told him personally that he did not appreciate his call or the way it was conducted, because it could have been more thorough. Mr. Minjarez hopes that that it more constructive, but he also wanted to know if there was some way to receive something that describes what he needs to research in order to understand that matter. He said he cannot talk to the Commission intelligently and he would like to come back sometime, in a month or so. But he would like to receive something or be told where to go to get this.

Mayor Carroll said that the Commission has had a petition by the owners of properties that are contiguous to the City limits in the amount of the entire areas that the City is contemplating annexing, around 60%. When the Commission gets a petition for annexation where they can utilize the requested property and leverage additional properties that are contiguous and bring those in at the same time, that’s what the Commission attempts to do so that they are able to fill in some of the gaps within the City limits where there are small pockets of county within the City. As part of this request by various property owners to come into the City, the Commission is attempting to square up and make some of those areas that are basically islands of county in the City, part of the City. A request was made by 61% of the owners of the outlined area for the Commission to take them into the City, and the Commission is utilizing that request under the authority granted by state statute to leverage that amount of acreage into some others to bring that area into the City at the same time. The City Planner can show what is being annexed in, where Mr. Minjarez’s property fits in and why it’s in the best interest of the City to include his property as part of this annexation.

Mr. Minjarez asked whether that 61% number represents 61% of the owners or 61% of the land mass. Mayor Carroll said that it represents 61% of the landmass. So if owner A owns 1,000 acres and the rest own only 25 acres, that carries; it counts towards the majority. City Planner Few then outlined for Mr. Minjarez which properties are being discussed. As she pointed out, the area in gray is already in the City, to give a perspective of current City limits. The white area is outside the City. The proposed annexation is the gold colored area. The hatching occurs in properties that have signed the petition for annexation. The largest property owners are Country Club Estates, the Tierra del Suenos and the Las Lomas subdivision area proposed. With either of these large annexations, pockets of county land would be created within the City. If the Country Club Estates area was brought in, the areas south and east of Florida Avenue would be county land within the City. If the Las Lomas subdivision was brought in, everything west of Florida Avenue would be county land locked in the City, along with the properties on the east side, north of Caneadea subdivision and south of the Tool Box subdivision. These are the areas that the Commission has affirmed petitions signed at this time.

City Planner Few explained that the advantages of coming into the City include the availability of water. Although the City would not be required to do the installation, there is water available to all properties, and the property owner would be responsible for the expense, but right now they cannot even hook up. Sewer lines are coming to all the areas, some of them through the subdivision activities. Fire insurance rates, just by being annexed to the City, would go down because of the fire rating of the City, and property tax increases would run approximately \$100 annually on a \$40,000 valuation. Ms. Few also said that she was told by realtors in the area that any change in the insurance rate would even out on the valuation property tax increase.

Mr. Minjarez said that the Commission indicated at the beginning of the session if there had been any written or verbal opposition or positive to this. He hasn’t had the opportunity to provide anything

verbally or in writing because he did not know what was going on. He understands the situation a little better, and grandfathering was mentioned, as was the availability of these services in the future. He wants to understand it so he can feel comfortable or uncomfortable. Mayor Carroll commented that the annexation ordinance is for first publication, which means that it will come back to the commission for final adoption. That's one of the reasons that the Commission does these in a two-stage process; it will be a legally published notice in the paper, and people can be made aware of it. It is Mayor Carroll's understanding that there is no legal requirement to notify people of this. City Planner Few concurred; there is no requirement other than the publication of the ordinance for individual notification of property owners. However, Mayor Carroll said that they do in fact attempt to get the word out. This was discussed during the budget meetings last May, so some people are aware of it while others are not. Between now and the final adoption, people will have the opportunity to make whatever additional comments they wish. The grandfathering of existing water and sewer connections to properties that are coming in came up during the discussions in May. One of the concerns of some of the property owners that have not commented one way or the other was that they didn't want to be forced to come into the City and be forced to hook up to the City's existing water and sewer, although it might be beneficial. The Commission has put a clause in the ordinance that says that if owners currently have their own water and septic systems, then they will not be required to hook up to the City's system for the life of their current system. The owner would just pay property taxes. Mayor Carroll noted that owners may find it beneficial, depending on the quality of water or age of the septic system, to avail themselves of the City's systems. Mr. Minjarez said that City Planner Few handed him her card, so if he contacts her, she can present him with the materials or information that he could review in order to better understand or make a decision, whether he is for or against the property being annexed.

City Planner Few has already prepared copies of the annexation ordinance and vicinity maps. She will make sure these are at the front desk tomorrow morning so that, in the event she is not in the office, the front desk staff can pass them out to anyone. Commissioner Ledford said to Ms. Few that he understands that when property is annexed, people sign the petition, and the property owners that are in the leveraged part of the property are not required to be notified, but wonders if the Commission is required to call owners and ask them if they want to sign the petition. City Planner Few said owners are called or sent written notice; in this case it was one or the other. If it was a local property owner and they could get a phone number, they attempted to contact them first by phone. There were a number of people who, when contacted by Mr. Anderson, immediately started asking questions and did receive copies of the annexation ordinance, vicinity maps, information on utility connections and property tax information. Commissioner Ledford asked whether the Commission issued written notification by policy to property owners about the annexation. Ms. Few said they do not. He also asked if it was normal policy for the caller to hang up before the owner can ask any questions. Ms. Few said it is not; she thought it was a first-time miscommunication, to which Commissioner Ledford said maybe the caller should be more elaborate about what the phone call is about. Ms. Few said that as a result of many of the phone calls, either Mr. Anderson and Ms. Few, or Ms. Few herself, went to the property owners, visited with them and gave them copies, or various people came in and they spent time with them.

Commissioner Ledford said that in some cases, communication was not as good as it should have been. Mayor Carroll replied that Mr. Anderson is a new employee, and this was the second annexation that he worked on, and he's been helping City Planner Few. The Mayor then said that the Commission would be happy to meet with groups of homeowners and provide more information, and Ms. Few said that they have met with groups of area residents out at Fire Station 5, where City Manager McCourt officiated, and that is the reason for some of the wording in the current Ordinance. Additionally, the Commission has received a recommendation of a new annexation property owner booklet that would be sent out to people, which will answer some of the questions pertaining to when or if someone is annexed and what that would mean for property owners. Kat Brabson made the

suggestion. Malcolm Yox said he might have misled the Commission. He said no to the man who called him, but Mr. Yox would say no to anything until he knows what it's about.

Ann Yvette Garcia, property owner at Four Divers Cove, said that when she got a phone call from Mr. Anderson, she said no; she objected to the annexation. However, she was part of the previous request for an annexation, which was a couple of years ago. On that one, owners actually received written notification; they received something in the mail that said they were going to hold the hearing, and there was a bigger turnout because more people were notified. This time there was no notification until a week before the planning meeting. Ms Garcia does object to the annexation. She said that the Commission is telling people that they're going to get City services, but Ms. Garcia doesn't need City services. She has a sheriff's department that will respond, she has a well, and she has a septic tank, so she feels that the Commission wants her to pay increased taxes for services she's not going to get. If she wants the services, not only does she have to pay additional taxes, but she has to pay to bring the services to her house, and she objects to that. Mayor Carroll said that he understands that not everyone is interested in coming in, but the way the system is set up and the system works, the City is allowed to bring people in over their objections. Ms. Garcia said she understood that, and that it was unfortunate that only 10 out of 37 property owners actually signed the petition. It's unfortunate that those 10 property owners own 60% of the land because that means that they're speaking on behalf of the rest of the owners, so unfortunately, once again the little guy loses out.

Mayor Carroll said that the ordinance is for first publication, and it will come back in two meetings for final adoption if approved for first publication. **Commissioner Cooper moved to approve Ordinance No. 1247 annexing 295 acres of land owned by Ben Boldt, Harlo Dynek, and Tierra de Suenos, Inc. Mayor Pro-Tem Griggs seconded the motion. All voted "aye". The motion carried by a vote of 6-0-0.**

### **ORDINANCES AND RESOLUTIONS:**

13. Resolution No. 2005-25 enacting fees for certain vaccinations and dangerous dogs.

*Recommendation:* Approve the Resolution.

Mayor Carroll asked the acting City Attorney if she could give him guidance on the definition of dangerous and potentially dangerous dogs, specifically who makes the decision and whether the decision has already been made. City Attorney Ehler said that the legislature sort of made it, enacting the dangerous dog act in the last legislation. They define a dangerous dog as a dog that has caused serious injury to a person or a domestic animal. A potentially dangerous dog is a dog that may be assumed to pose a threat to public safety as demonstrated by certain behaviors, such as causing injury to a person or domestic animal that is less severe than a serious injury; chasing a person or domestic animal in an aggressive manner without provocation; acting in a highly aggressive manner within a fenced yard or enclosure and appearing to be able to get out of that yard or enclosure. It is not a breed-specific definition; the Commission is not singling out any specific breed of animal as dangerous or potentially dangerous. Ms. Ehler also added that it was on Governor Richardson's insistence that the law not be breed-specific.

Mayor Carroll said that this law would raise the fees for vaccinations and registration for the dangerous or potentially dangerous dog license. Commissioner Moncada asked whether a dog has to act this way before it becomes dangerous, to which Mayor Carroll said yes. Commissioner Moncada asked if she could refute the claim that a dog is dangerous, and Mayor Carroll explained that it has to be a demonstrated action on the part of the animal. City Attorney

Ehler said that if animal control officers determine that the animal is dangerous or potentially dangerous, then they can seize it and notify the owner that they believe the animal is dangerous or potentially dangerous. If the owner contests that, they have 14 days to file in district court. Both sides would then present evidence. If the court determines that the animal is dangerous or potentially dangerous, and the owner wants to keep the animal, then there is a series of conditions they must satisfy, and the City has to check and make sure that the owner has satisfied them. That is the reason for the \$100 fee, to keep the dangerous or potentially dangerous animal. Mayor Carroll explained that it is cost recovery, but there is not judging or pre-judging of any particular animal. City Attorney Ehler added that if a dangerous or potentially dangerous dog goes three years licensed without an incident, then the owner can petition to have that designation taken off their dog and not have to pay the annual fee thereafter.

**Commissioner Cooper moved to accept Resolution No. 2005-25 enacting fees for certain vaccinations and dangerous dogs. Mayor Pro-Tem Griggs seconded the motion. All voted "aye". The motion carried by a roll call vote of 6-0-0.**

**OTHER BUSINESS:**

17. Award of Bids:

A) Public Works Bid No. 2005-015, Abbott Ditch Improvements, Phase II.

*Recommendation:* Award to Star Paving Co. in the amount of \$273,449.96, inclusive of NMGRT.

William Dean Terrell, Cherokee Enterprises, said that in the bid documents, there are several guidelines that the bidders must follow. The bid documents give the City the option to more or less do what they please, but in Section 17, there is a section that Star Pavement did not provide a knowledge of bid addendum, for which Mr. Terrell had sent a bid protest letter and he does not know what the outcome of that was. Acting City Manager McGuire said that he thought that Mr. Terrell had received a response. When the City received his letter of protest, the Commission met with the engineering consulting firm that had signed the project and reviewed the bids to provide a recommendation. The firm pointed out that Star Paving had not acknowledged an addendum to the contract that they did not feel was a material issue because all the addendum did was extend the opening of the bid by one day. Therefore, they said they felt it was a non-material recommendation and they recommended that Star Paving be approved for it, which the City followed. Mr. McGuire said he would provide Mr. Terrell with a copy of the letter that the engineers provided.

Mr. Terrell said he understood that the acknowledgement of the addendum is not a price item, but when these jobs are bid, they are pretty hectic and there is a long list of things that have to be done. He has bid low on some jobs and been disqualified because of technical violations. He personally thinks that if people are going to stand by these rules, they need to stand by them. If they're not, then they're not. He understood that it's the City's call, but he wanted to voice his opinion on that. There were four bidders on the job, and Mr. Terrell and Mesa Verde were within \$1,800 of each other. He said he would almost rather see the job go out to rebid, but he said he knew that Star Paving's bid was close to the City's bid. He said he just wanted to bring this to the Commission's attention, and maybe they could write the specs a little differently. Mayor Carroll said that this is one of the reasons why, when a consultant is hired on these jobs, and when these issues come up, that they solicit their guidance as to whether or not they feel it is material or not. In this case, they felt it was not a material concern and there was no reason to

reject the low bid. The Mayor said that Mr. McGuire would provide a copy of the correspondence between the City and the consultant.

Commissioner Cole said that acting City Manager McGuire and all the Commissioners are aware of Star Paving Co. because of the job at Florida and First Street. Mr. Cole had driven there, and he said he didn't know if the job was completed, but if it is, there are still defects there, in the right hand lane if driving north. He said he hopes he's being fair, but Star Paving, who might be the low bidder, has not been fair with the City, nor have they been fair in the amount of time taken to complete the project. This has been stated by Mr. McGuire in City commission meetings, and now the City is giving them a bid job without completion, in his observation not as a layperson but as a City commissioner who has a stewardship of how monies are spent on behalf of the City. He said this concerns him; he knew nothing about the other gentleman and Cherokee in the bidding, or his comments, but he knew the bids were close. Commissioner Cole also said that it brought to mind the golf clubhouse and all the problems the City had with that, and now he has just noticed a memo in his box. He has not read it or studied it, and so he doesn't know for sure where the City is on it, but Commissioner Cole said he would not support Star Paving's bid on the project when the City has a job that is not completed satisfactorily. This is Commissioner Cole's observation, and he can drive anyone over there and show them the spots if one is driving north in that lane. It can't be done in the other lane unless one wants to take their lives in their hands. He will not support Star Paving for the job. Mayor Carroll asked Commissioner Cole to drive him out there so they could look at the First and Florida project, where Mr. Cole does not feel it has been completed satisfactorily.

Mr. McGuire said that the final payment was made to Star Paving in the matter of First and Florida on August 31, and the record had just been reviewed today. But that does not mean that the City has accepted that job as being satisfactorily completed; rather, they still have a one-year warranty on that project. He said that the City is meeting with them tomorrow because they have protested what the City is requiring them to do. Mayor Carroll said he understood Commissioner Cole's frustration, and Star Paving hasn't always performed the way the City would prefer them to perform. They are more than \$120,000 low on this particular project, and when talking about stewardship, \$120,000 is a lot of money. The Mayor said he agreed with those concerns. Star has done other jobs for the City, and the company hasn't always been the best performer, but they continue to be eligible to bid jobs for the City, and until someone tells them they cannot bid, he doesn't know how the City is going to say they cannot accept them if they are the low bidder.

Mayor Pro-Tem Griggs, who says he agrees, asked if any steps had been taken to make sure that something like a First and Florida doesn't happen again. He asked if there were inspections. He said that \$100,000 is a lot of money, but there is a pricing and quality issue. Mayor Carroll wanted to know if there is a quality assurance measure to assure that when the City contracts with a company, they are in fact meeting the standards set forth in the contract agreement. He said he believed that systems are in place to provide due diligence. Commissioner Ledford asked if Star Paving is on notice because of what's been going on, or if the City is going to look at it more closely. He said he understands that there are procedures, but those procedures have failed. Mr. McGuire replied that their intention is to meet with them in a pre-construction conference and go over the standards and what the City expected from them in an effort to assure that they understand what they bid and what the City expects for that amount of money. Mr. McGuire asked for the decision letter from the consulting firm because he has been accused personally of not being very favorable to them, so he wanted an outside firm to look at the issue and evaluate the bid, which is why the City contacted Molzen Corbin. They

could find no substantive reason not to make that recommendation. The City has their choice of what to do, but Mr. McGuire said he could not recommend.

Mayor Carroll said he was not trying to apologize for Star, but in many instances of public works jobs there are problems with the job that need to be corrected. That's one of the reasons why the City requires a bid bond and why it requires a warranty. In the case of First and Florida, the job was not done according to the specs, and Star was asked to come back and redo it. Mr. McGuire said he agreed with that, and he knew that people make mistakes that they need to remedy, but he said that his concern, and maybe Commissioner Cole's as well, was their approach to it and how they behaved to remedy the problem. But he also agreed with Mayor Pro-Tem Griggs, that for \$100,000 it should work. Mayor Carroll commented that, as pointed out earlier in the meeting, the City is not always as customer-friendly as it should be, and that goes to the people the City is doing business with as well.

Commissioner Cole said that he was trying to reconstruct his conversation with Mr. McGuire, and when he made some observations, Mr. McGuire was very thorough. When Mr. McGuire spoke to Star about the work that Commissioner Cole thought was defective, he had said in so many words that they were protesting his observations and they did not need to go back and repair what was taking place. Mr. McGuire recalled the same things. When referring to First and Florida and the dissatisfaction with the paving job, where the pavement was unraveling and creating large portions of the new paving job where the aggregate was not holding together, they disputed that at first. They resisted doing anything, and the City has had several conversations about that. In fact, they went to the bonding company and convinced them to make the necessary repairs. It was not a smooth relationship on First and Florida, and he is not apologizing for Star, but he pointed out that the Abbott ditch on the east side of Scenic was completed by Star in a satisfactory manner.

Commissioner Cole reminded Mr. McGuire that he had come back and provided Star's observations and what they said they would do, indicating that what should be done would not be done. Instead, they would do a lesser type of job and not the whole area that looked like it was defective. Thus they reduced the areas they repaired. Mr. McGuire replied that that was their original request. The City received a written response from the owner of the company, saying they did not want to repair the whole project, only certain parts where there was clear evidence that it was unraveling, and the City told the company that was an unsatisfactory solution. They wanted the entire project redone, and Star ended up doing that. But Mr. McGuire said Commissioner Cole was correct; they had originally said they would not do that. In order to complete the project satisfactorily, Star took the entire area that they had paved originally, milled off 2.5 inches, put a new 2.5 inches of asphalt down and put a 5/8 OGFC seal over the top of that. The seal was to assure that all of the seams were filled and would make the project more weatherproof. Mayor Carroll suggested making a motion and seconding. But Commissioner Cole said that he recalled Mr. McGuire telling him about that, that Star went in and resurfaced the whole project.

Mayor Pro-Tem Griggs said that one question that could relate to this and any number of other projects is, when there is a bidder that the City has issues with, whether there is a way to let the bidder know that their bids will not be accepted. City Attorney Ehler said there is a statutory procedure to debar a contractor. Once the bidder has been debarred, they cannot bid on any projects for three years. After that time, if they want to bid on projects, they must petition and show that they have corrected any problems that were there before. She said it is a cumbersome procedure, and she had seen it done once in Chaves County, but not anywhere else in the state during her tenure. Mayor Pro-Tem Griggs said it might require more than what

arose during the Florida Street project with Star to debar them from other projects. Ms. Ehler replied that if the City had resorted to their bonding company and they had wholly refused to perform or made any attempt to satisfy the City, then that might have worked. But the job was in fact corrected, and their willingness to work at it would not suffice.

**Commissioner Cooper moved to award Public Works Bid No. 2005-015, Abbott Ditch Improvements, Phase II. Mayor Pro-Tem Griggs seconded. The motion carried by a vote of 5-1-0, with Commissioner Cole voting “nay”.**

18. Notification of vacancies on Boards and Committees.

Mayor Carroll said there are vacancies on three committees. If anyone knows of anyone who is interested in serving, they should contact the City Clerk.

**UNSCHEDULED COMMUNICATIONS:**

Acting City Manager Brian McGuire said that the water situation looked very favorably compared to last year.

**Commissioner Cooper moved to adjourn. Seconded by Commissioner Ledford. All voted “aye”. The motion carried by a vote of 6-0-0. The Meeting was adjourned at 9:15 p.m.**

*/s/Donald E. Carroll*

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Mayor Donald E. Carroll

ATTEST:

*/s/Angie Rahn-Broyles*

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City Clerk Angie J. Rahn-Broyles

(SEAL)

(Prepared by Ubiquis Reporting)

Approved at the City Commission Regular Meeting of October 11, 2005.