

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
MAY 23, 2006**

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

**COMMISSIONER CHRIS LUJAN
COMMISSIONER STEVE BROCKETT
CITY MANAGER PAT McCOURT
INTERIM CITY ATTORNEY REBECCA EHLER
CITY CLERK RENÉE CANTIN**

CALL MEETING TO ORDER, ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Don Carroll called the meeting to order at 7:30 p.m., and all of the Commissioners were present. The Invocation was given by Commissioner Cole, and the Pledge of Allegiance was led by Commissioner Brockett.

Mayor Carroll brought attention to the passing away of Ms. Rivas Abbott, wife of George Abbott. Mrs. Abbott and her husband had been active community leaders for many, many years. Mr. Charlie Herrell also passed away last week. He was a well-known builder and developer as well as a former City Commissioner. Mayor Carroll extended condolences to their friends and relatives.

Mr. Arthur Alterson presented the Heritage Preservation Award to the Mayors and Commissioners from the Cultural Affairs Department of the State of New Mexico and the Cultural Properties Review Committee. The award is in the category of heritage organization for enabling and assisting in the archeological recovery of cultural remains during installation of the water line. It recognizes the outstanding efforts made to engage the public by making information learned from the project review available to the media for interpretive display. It was Mr. Alterson's pleasure to attend the awards ceremony this past Friday in Santa Fe, and he presented the award. Mayor Carroll thanked Mr. Alterson for representing the City at the meeting.

CALL OF THE CONSENT CALENDAR:

MINUTES:

1. Minutes of May 9, 2006 Regular Meeting.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

8. Approval of Professional Services Contract with the Alamogordo Public Schools (APS).

Recommendation: Approve the contract.

9. Approval of Professional Services Contract with New Mexico School for the Blind and Visually Impaired.

Recommendation: Approve the contract.

ORDINANCES AND RESOLUTIONS:

10. Consider Resolution No. 2006-37 declaring the intent of the City to reimburse itself, in regards to expenses on the Alamogordo Westside Infrastructure Improvements Project - Phase 1C, with the proceeds of a loan agreement with the New Mexico Finance Authority.

Recommendation: Approve the resolution. [Roll Call Vote Required]

11. Consider Resolution No. 2006-38 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed on May 23, 2006.

Recommendation: Approve the resolution. [Roll Call Vote Required]

12. Consider Ordinance No. 1272 – authorizing the City to enter into a loan agreement with the New Mexico Finance Authority.

Recommendation: Approve the ordinance for final publication. [Roll Call Vote Required]

13. Consider Ordinance No. 1271 allowing animals to roam freely in animal parks.

Recommendation: Approve the ordinance for final publication. [Roll Call Vote Required]

OTHER BUSINESS:

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

Recommendation: Approve the waiver.

15. Award of Public Works Bid No. 2006-009. ADA Improvements on Juniper Drive and First Street.

Recommendation: Award to General Hydronics, Inc. in the amount of \$178,199.95 (includes NMGRT).

16. Change order No. 1, Public Works Bid No. 2005-11, Alamogordo Desert Lakes Golf Course Club House

Recommendation: Approve the change order in the amount of \$10,630.12 (includes NMGRT)

17. Award of RFP No. 2006-003 for the City's Annual Financial and Compliance Audit of the fiscal operations for fiscal year ending June 30, 2006 and Lodger's Tax.

Recommendation: Award the contract to Hinkle & Landers, P.C.

18. Approval to grant the City Manager the authority to sign grant and construction contracts for the Airport Apron Rehab Project

Recommendation: Approve the request.

Commissioner Ledford made a motion to approve items 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 on the Consent Calendar. Seconded by Commissioner Brockett. A roll call vote was taken because of items 10, 11, 12 and 13. All voted "aye." The motion carried by a vote of 7-0-0.

PLANNING ITEMS:

2. Consider Resolution No. 2006-23 amending the Alamogordo Comprehensive Plan 2000 and the 1998 Alamogordo Comprehensive Traffic Study which require the future extension of Desert Lakes Road east from Florida Avenue requested by Tierra de Suenos, Inc. [Case M-06-0327(A)].

Recommendation: Deny the resolution.

Mr. Tom French was at the meeting to represent Tierra de Suenos. He put up a map and passed out smaller maps for all of the Commissioners. He then turned the floor over to Michael Shyne, who is the president of the corporation that represents the Southern Canyon Road Property Owner's Association.

Mr. Michael Shyne explained the reference points on the map. In addition, he explained that 1/2 mile south of Ocotillo Road on Canyon Road is the beginning of over 400 acres of land, for which something very unique was done over 25 years ago. In the late 1970's, a number of property owners placed restrictive covenants on their properties. There are lots of subdivisions with restrictive covenants such as the golf course subdivisions, but that is one owner taking his or her property, putting covenants on that property, and subdividing it. This was different. They got together a number of neighboring owners who had common interests who all lived well out of town at that time and put the same restrictive covenants on their properties. One of the things that was done was to require that there be no random clearing of the land and that only the home site be cleared. It was an effort to preserve the native flora and fauna. The covenant that is most relevant to this meeting is the density covenant. The minimum lot size in the 425 acres is 2.5 acres. To put that into perspective, the subdivisions around the golf course average about four lots per acre. If the lot were 2.5 acres, 10 golf course subdivision homes and lots could be put into that one single minimum-sized lot in the South Canyon Road gated community neighborhood. The importance of that is that some day if the 425 acres is completely developed, completely subdivided to the maximum, there will still only be one-tenth the residential density that there would be per acre in the bulk of the subdivisions in Alamogordo because of the carefully thought out restriction that was placed on that property in 1979.

The consideration before the Commission is to amend the City's 1999 Traffic Master Plan, which shows Desert Lakes Road being extended from its current eastern terminus at South Florida Avenue East along the south side of the 80-acre gravel pit up to the property that now forms the South Canyon Road neighborhood. The importance of arterial roads is to allow ingress and egress to the neighborhoods that they serve. When there is significant density as those subdivisions build out, there will be hundreds and hundreds of homes with two or three cars each that will be accessing the roads, which is the purpose of the arterials. In the specified 425 acres just outside of the City limits of Alamogordo, there will never be that density, and so the extension of Desert Lakes Road would serve no purpose for all of that acreage that forms the southeast edge of Alamogordo. For that reason, Mr. Shyne said he has come to ask the Commission to allow the Master Plan to be amended to eliminate the easterly extension of Desert Lakes Road east of Florida Avenue. He is before the Commission to explain what has been done with this property that is so unique. Mr. Shyne underscored that he has been involved in real estate in Alamogordo for 33 years, and he knows of no spot in the entirety of Otero County where property owners got together and did what they did in 1979. It was a unique achievement then, and now its value is even more obvious. Some day the area could be developed out to 2.5-acre home sites; today with 425 acres there are only 25 homes. The average area per home is very large. Mr. Shyne went on to further explain the property lines and private easements as represented on the map that was passed out. He also said that the properties are served by their own private wells so they are not in need of City water in any way.

Commissioner Ledford asked if Mr. Shyne was saying that he didn't expect any other development besides theirs. He specified a particular area with 40 acres of frontage. Mr. Shyne explained that it's not 40 acres of frontage but rather about 14. Mr. Shyne said that of course he can't really say what will happen around their area except that the rather massive property, 425 acres, has restrictive covenants that define the density. Commissioner Ledford went on to ask about fire safety. Mr. Shyne pointed out on the map where their access is and where they are installing a gate that is designed for emergency vehicles in particular. Commissioner Ledford pointed out that there is a fire station two minutes from that property. Mr. Shyne said that is true but that the property is in the County and not in the City.

Commissioner Moncada asked if the street being discussed would be the only street to go in and out of the property. Mr. Shyne said that is correct. He pointed out the access on the map, South Canyon Road. He went on to point out that the gate would be located about 110 feet south of the north line because a 100-foot diameter turn circle has already been installed before one gets to the gate in the event that a semi drives down that road and realizes that's not where they want to be. There's plenty of room for a semi, a fire truck or any other large vehicle to turn around at the end of the road before they get to the gate. There is no other street on that property that is open to a thoroughfare. If there was some need for an emergency vehicle to get in from some other direction, there are probably a couple of ways to do that. However, there is no other street that is publicly open to thoroughfare. Commissioner Moncada further explained that her questions relate to an event taking place in which the street for some reason or other would be closed. Mr. Shyne said there would be a way for people to get in. For instance, he has a Ford truck that could push some rocks aside that are blocking ways to drive in. The gated community was originally initiated because they had some problems in that area where some dangerous things took place. They wanted to bring an end to that, and that's the reason the gated approach was chosen.

Mayor Carroll asked if the road he is talking about is the road that was County-maintained that they gave away. Mr. Shyne said he actually owned the road, and he gave the County an easement. Three other gentlemen had interests as well, and they signed to give the County an easement as well. The County never actually owned it. It was not the case that the streets were dedicated streets, meaning the City owned the streets. The County did maintain the roads for a number of years. They installed it and maintained it, and they tax the property owners even though they no longer maintain the road.

Mayor Pro-Tem Ron Griggs asked if there would be roughly 160 to 180 homes if the land were fully developed. Mr. Shyne said it is 425 divided by 2.5, which would be close to that. Mayor Pro-Tem Griggs also asked how they were set up as far as the Board of Directors of the corporation that had been set up being the ones to make decisions in terms of what the procedure would be if the property owners at some later date decided that they wanted a different access. Mr. Shyne said that he believes the property owners would have to unanimously vote to compromise the gated community. Mayor Pro-Tem Griggs said that in theory that would compromise it, but looking at it another way, it would just be another entrance to the property. The City's purpose in developing the Master Plan is to provide for future events and make those things possible. One of the concerns he has about removing this from the Master Plan is that there are plenty of examples in Alamogordo of where things were either removed from the Master Plan or never put in such as roads that don't line up, etcetera. He said he doesn't know that he wants to take the road off the Master Plan not knowing how it will develop over time. The property owners would be big players in how it develops regardless of what happens. He pointed out there are potentially 160 to 170 houses versus 25. Those property owners' ideas could be different from the current thinking, and he would hate to compromise that situation or the City of Alamogordo.

Mr. Shyne said he understands those thoughts, but pointed out that the City got a lot of publicity many years ago with the road to nowhere, which actually had planning behind it that was arguably wise at one time. Unfortunately, when that road was planned, the City made the plan but did not fund the plan. Consequently, no land was ever acquired to allow that to be built. As the town developed and people built on property, it was prevented from going forward. This situation would truly be, however, a road to nowhere. Mayor Pro-Tem Griggs pointed out that Desert Lakes Road is classified as a collector, and he pointed out that Pecan, for instance, goes North and stops. There is some discussion about at some point taking Pecan further North to tie into Fairgrounds Road and go north from there. Just because it doesn't today doesn't mean it's not going to later just as in this community.

Mr. Shyne said he only hopes that whoever chooses to fill in the gravel pit and develop it has either zero assets or an enormous amount because there will be settling as never seen before. Mayor Pro-Tem Griggs said he doesn't know about the pit itself, but there is property close to Florida and

property in the back. Mr. Shyne said he is right that something will definitely happen along Florida, but it has wonderful access for a quarter of a mile. Mr. Shyne said the main thing is there are a number of cases around the City where things have changed, but there is nowhere in the City that has a similar project as has been created with this 425-acre gated community on South Canyon Road. That's what makes this street unique and the extension purposeless in the long-term.

Commissioner Cole asked why the corporation wouldn't want to develop a street to get out from the west side of the property south of the gravel pit. Mr. Shyne said they are completely satisfied with what they have, and he really believes that the people living in that area want privacy and not to be part of a thoroughfare. He is quite certain that they have no interest in creating a road through that area.

Stacy Dutton said they own the property at the end of Turquoise Drive. She made reference to the map and stated there is currently no one next to them. The people who own it do not plan on building and would not have it subdivided. The entire property is owned by about 50 different people. If the Desert Lakes Road goes through, a nuisance will be created. She is not necessarily for any more development, but why build a road to have access that will potentially go nowhere and will actually cause more trouble for the City. She said she is for a Master Plan, but she doesn't understand a need for the road or easement. She also said that she did have a fire about two years ago, and they had no trouble getting to her house.

Mr. French said he wanted to continue with a couple of thoughts regarding why he feels the Master Traffic Plan should be further amended. The City of Alamogordo has voted to amend the Master Plan in that area on several occasions. One of them was last year when the City eliminated the South Scenic extension that would have ultimately tied into Martin Luther King Drive. The City Commission decided not to pursue that, which was a major amendment to the Traffic Plan significantly changing the way that whole area should be looked at. Mr. French went on to point out that this is going to become a very valuable commodity in the future because it is rural residential. These property owners have, in effect, come up with a rural residential, which in addition is gated for privacy. It is going to be a very valuable place to live if it is left the way it is. Another difference between this community and others is that it is not within the growth path of the City. If it were on the North or West side of the City, the conversation would be different because common sense would say that sooner or later the City would grow through it. The map highlights that the City is not growing through the development to anywhere.

Mr. French pointed out on the map where the land is BLM, and most are aware that though it is not impossible for BLM to get rid of land, their charter is to protect the property. It is designated as the Sacramento Escarpment Area, and it is also called an area of critical environmental concern because there is an endangered species of the Sacramento prickly poppy there. Not only are there the BLM regulations that are preventing future development in that area, but there is also environmental law, the Endangered Species Act saying that area will not be substantially changed. In the 1998 Comprehensive Traffic Plan, the City Commission removed the South Scenic extension that extends from South Scenic on around to connect with the Florida and Martin Luther King Drive intersection. It still shows that there is a North/South equivalent of Washington Avenue. In the 1990 plan, Washington extended all the way through over to Ocotillo, and that was deleted between the 1990 and the 1998 plans. Mr. French's contention is that there is no reason to have an arterial north/south through that area to carry traffic through. There is not density in there to justify it.

In order for the City to go through the property, a couple of things would have to happen. First of all, the City would have to prove that there is a public benefit and a public use in order to conduct a "taking" of that property. Then there will be a dogfight because not only would a street be taken, but the security that the property owners have created would be taken as well. That security has a value attached to it, and his guess is that the property owners think it's a lot higher than the City thinks. Mr. French pointed out also that what it will look like when it is developed is what it looks like right now. The comprehensive plan of 2000 actually shows the area as already being developed. They recognize that it is different than what is thought of as normal residential development. He said that

his interest in it is that he and Jim are the owners of the El Dorado Community. The Master Plan has been approved through P&Z, and it is contingent upon them resolving the road issue. He said that the roadway is a waste of money, a waste of his property and a waste of potentially his money to install it as well as the property owners of the gravel pit. The purpose of the road extension would be to serve the 425-acre community that doesn't need it and doesn't want it.

Mayor Carroll asked about the piece of BLM land that is cited on the map as being subject to trade. There is another section that is East of El Dorado that is not part of the area of critical concern. Mr. French said that is correct. Mayor Carroll said that though they have indicated that BLM typically holds on to land, there is nothing that indicates that the land could not be acquired by either the City or an individual for development. Mr. French said that is correct, and they are making provisions to access that through El Dorado.

Mayor Carroll said he appreciates to some extent Mr. Shyne's argument that his 400+ acres is never going to change although if it becomes as valuable as has been indicated, that could happen. However, a case may be made to end at the gated subdivision, but Mayor Carroll doesn't see the case that says it should be ended at Florida because there is the potential for BLM land to be acquired and developed in the future as well as the gravel pit property. His concern with taking it out of the Master Plan is that he has been part of the Commissions that have made mistakes and allowed opportunities to slip away because either there was no plan or there was a plan and it wasn't followed. Mayor Carroll said they may be doing a disservice to future Commissions and future citizens of the City. He doesn't have a time frame in mind as to when Desert Lakes going east would be built, but he is very hesitant to just say it will be taken out because it doesn't meet with their plans.

Mr. French said that the reason the 70 BLM acres are marked differently is because they don't want to mislead the Commission. On their BLM maps it does not show that area as part of the area of critical management. He doesn't believe that it is, which is why it was marked differently. His guess is that it could be looked at differently in the future than the part that is marked as an area of environmental concern. The part to the south is to the best of their ability to guess the part that is subject to the trade that is in Congress. He went on to say that generally he agrees with Mayor Carroll. He wouldn't stand up and say that arbitrarily any time a developer comes in front of the Commission they should agree to remove a road. The Commission needs to use their good judgment.

Mr. Shyne asked if the developers of El Dorado are committing to design and develop the street system in El Dorado so that an access will be dedicated to the BLM land so that it will have an access. Mr. French said that the plan that P&Z tentatively approved shows that access.

Mayor Carroll said that the recommendation from staff has been not to change the Master Plan. He asked City Manager McCourt to elaborate on the rationale behind that. City Manager McCourt said he would let Mr. Alterson present the City's position.

Commissioner Cole asked if he understood correctly that there will be east and west streets running up to the specially marked BLM land and if something were to happen where it would become public property, they could go to the gated community. Mr. French said that is correct in that in the design of El Dorado there is an outlet to the east. The Comprehensive Plan to date shows that the area being discussed is outside of the area serviceable by the City's utilities.

Commissioner Cole said that they should make sure everyone understands that Ocotillo Lane is different than Ocotillo Road. Ocotillo Road runs east and west. Ocotillo Lane runs north and south. He specified on the map where these road provide service.

Commissioner Cole asked if the request is denied if it is Mr. French's property that would be taken for the easement. Mr. French said that the City Staff has proposed that it is split between his property and the gravel pit. If it were extended straight and not turned, it would not even be on his property but would be solely on the gravel pit. The City Staff has recommended that a slight turn be put in the

road so that it would be split. If it were extended, approval would have to be received from BLM as far as an easement to continue that straight, or there would have to be another turn in the road. There is drainage that also runs down the property line so in order to extend Desert Lakes to the east, both the road and the drainage easement would have to be taken into consideration.

Sharon Few, City Planner, said that it appears that once again County residents are dictating City policy particularly in the southern area. In terms of a history and civics lesson regarding restrictive and protective covenants, municipalities and counties cannot enforce them. They are civil litigation that have to occur after the fact. Most restrictive and protective covenants also incorporate provisions for amendments so that at some time they can be changed and often are so that density can increase. The issue is not a subdivision outside of the City. It is the dedication of a roadway for a subdivision inside the City and development. The Master Plan and the Traffic Study show Desert Lakes Road extending to the East from Florida Avenue. As has been pointed out, in the past the City has not followed its own plan. Since the adoption of the new Master Plan, the Traffic Study, the Sewer Plan, the Airport Plan, and other plans that the City has that are all technical appendices to the Comprehensive Plan, the Commission, management and staff have been striving fervently to follow with a cohesive development for the community. Ms. Few went on to say that Mr. Shyne was an owner of the property that the French's are now looking at developing. When he presented his subdivision plans, City Staff said they had to have the extension of Desert Lakes Road to the East. Mr. Shyne refused to do that extension and abandoned his plans for the subdivision of the property that the French's are now pursuing. The City is not planning to go into the gated community, but if the road does go through, it would be available should those residents want to connect at some time in the future. Ms. Few cited a resolution that was done in 2005 amending the Desert Lakes Road development, eliminating the extension of South Scenic and allowing for future development of Florida Avenue. As the engineering staff has proposed for Desert Lakes Road, an approximate 15 feet of right-of-way would be required off of their subdivision.

As far as the gravel pit development, Ms. Few pointed out that in a recent visit to San Antonio she saw one of the most prestigious areas of that community, which is called The Quarry that indeed was a great big quarry. It now has a very exclusive shopping area, a golf course, and rather expensive housing looking over it. There are a lot of corporations and developers that specialize in reconstruction of quarry areas. She pointed out that Mr. French's subdivision is proposing approximately 190 lots. That's 190 lots with two to three cars per lot dumping onto Florida Avenue, which would be a burden on that street. If something were to occur such as an accident, access to fire and emergency service operations would be detrimentally affected. Ms. Few went on to explain making reference to the map what land development is possible and probable. She said that it is part of the road system, and Staff would strongly support and request that it be left in place.

Commissioner Ledford asked how far east they are talking about as far as the Master Plan. Ms. Few said they are talking about the eastern edge of the French's property. Commissioner Ledford asked if they went part-way with Desert Lakes if that would eliminate any of the big issues rather than going east of the property. Ms. Few said the plan is to have Desert Lakes continue to the east and ultimately connect to a North/South system. Ms. Few said that the issue in actuality is for Mr. French's subdivision because the City has the opportunity to get the right-of-way with this development. Commissioner Ledford said that in order to connect a north/south route, another north/south road would have to be put in. Mr. French's development involves approximately 190 homes. The only way out of there is to go from Canyon to Ocotillo.

There seem to be two issues involved in this discussion. One is the issue of the Master Plan, and the second is whether or not any property should be requested from the French brothers as far as road right-of-way. However, Ms. Few said the issue being addressed is the Master Plan. It was brought up that one of the disadvantages is that the Commission does not have Mr. French's subdivision to look at to see what kind of issues the roadway causes to him. In order for Desert Lakes to get to Mr. French's property, it has to bend to get there. It is possible that in the design of these things one could initially start with the roadway on the gravel pit and coming a little bit to the

south as one goes to pick up a little bit of roadway right-of-way from Mr. French that is actually going to be unused because it is drainage.

Ms. Few said that she is not a civil engineer, and she would defer to what the City's civil engineer and traffic engineer has indicated. His recommendation is that the roadway be turned slightly to the south and that it be split basically between the gravel pit property and Mr. French's property. Mr. French is proposing a drainage way on the northern side of the subdivision, and so an additional 15-feet would be required for the right-of-way. This has been pointed out in initial meetings between Mr. French, his engineer and City staff though it has not been included in any of the plans by Mr. French.

City Manager McCourt asked if Public Safety had reviewed and signed off on these things as far as being able to provide public safety. Ms. Few said they want the road on the north side. City Manager McCourt also pointed out that if he recalls correctly, when something is in the Master Plan a right-of-way is then designed that the City would like to acquire. However, that does not necessarily match the paved road because there are other things that occur in the right-of-way such as drainage, utility easements, electric, phone, etcetera. He pointed out that the actual pavement could sit on one side or the other of the corridor of right-of-way. The discussion tonight is whether the City wants a corridor that extends further to the east from the current intersection of Desert Lakes and South Florida road to grant access not only for a road but also for other types of easements that may be necessary. Ms. Few said that Public Safety, Public Works and Engineering have all indicated that they want this and that under State law an adopted Comprehensive Plan does have the force of law. For the City not to require it of the developers, requires an amendment.

City Manager McCourt said that what is being said is that the City feels there should be a corridor there. Whether that entire corridor should be provided half by Mr. French and half by the property owners to the North or in some other way is a separate question. Ms. Few agreed with Mr. McCourt.

Mr. Arthur Alterson said that if he understands the concerns of the City Engineer correctly, part of this issue is that traffic acts very much like water except that it can also flow up hill. Part of the issue is with the potential for improvement on Ocotillo to handle all of the flows that come from the east side of the City going west or the other way around. While he agrees and it is within the comprehensive plan that there should be a north/south connector winding up with Washington to the North, part of the City Engineer's concern is that without the east/west connector along Desert Lakes that Ocotillo has to carry much too much traffic going east and west. The only way to relieve that without the South Scenic go-around, which has been eliminated, is not so much to cut through the gated community's property, which the City is not trying to violate at all, but to have some access road north/south that can then switch over and go west/east.

Mayor Pro-Tem Griggs asked Mr. French how many entrances the subdivision would have off of South Florida. Mr. French said there are two. Secondly, he asked if Desert Lakes were to be extended when they get to the point where the gravel pit is on one side and the water drainage on the other, if all of the right-of-way was kept on the gravel pit property except for that one little spot if he would be willing to work with the City to provide sufficient right-of-way going through where the water drainage is, which would make the roadway wide enough to get by the pit. Mr. French said certainly if the Commission votes against him, he will work to resolve the issues. Mr. French explained that drainage is also a consideration in that area.

Mayor Pro-Tem Griggs said that he is concerned about giving up the right for a road to be there. Mr. French said that he wanted to talk about the north/south right-of-way that Ms. Few mentioned. There are really problems in talking about a north/south road in there because of the homes that already have been constructed or are planned to be constructed. There is no room for a road unless the City is prepared to purchase homes that are just now being built to be torn down to put in a road. In addition, he commented that the road as an arterial doesn't necessarily carry traffic to or from anywhere. Lastly, there does not need to be a road going up the north side of El Dorado for El Dorado. That is not the purpose of Desert Lakes. The purpose of Desert Lakes would be to serve that area. The traffic ends up on Florida whether they go to the north and turn or go straight west to

Florida. Everyone has agreed on the fact that Florida is sub-standard. The South Florida upgrades and extensions are the highest on the City's list, and that is going to be done.

Commissioner Ledford said this is the exact same thing that happened to South Scenic. He wanted to know how one is supposed to go north through those lots. Mr. Shyne said that there is something else that needs to be considered which is when talking about extending Desert Lakes east to go north that means one is going north on the edge of the gravel pit. From Stacy Dutton's west boundary only about 10 to 20 horizontal feet exists before the 40-foot drop off into the gravel pit. A road will not be put north along the easterly edge of the gravel pit. There isn't adequate land there. An enormous amount of money would have to be spent building up that land, and maybe money would be better spent elsewhere. The road the City needs to give its attention to is on the plan for development. It's just that the City knows that it's going to be more expensive than the City would like, and they are trying to avoid it. It cannot be avoided. Panorama/Ocotillo have to be developed, and the City is eventually going to have to address that. There is some embarrassment because even the City's water tank was installed too close to that roadway. Mr. Shyne said the City should be spending its time and the tax payers' money on developing Ocotillo Road rather than trying to find alternatives that might bleed off 10% of the traffic that it should be handling when it is properly developed.

Commissioner Lujan asked if he is correct in saying that if the City does not get permission for the easement then the City would come south and build the road on Mr. French's property, then back north and east instead of going straight through. Ms. Few said that there's the possibility of coming south, and with what they have seen around the City with transfers of BLM land it is very probable that it would be turned over for private development. Commissioner Lujan went to the map to get clarification on what would be done in this situation. Commissioner Moncada also asked for further clarification.

Ms. Few cited Resolution 2005-28. The continuation straight to the north on Ocotillo has been blocked by Los Lomas. The City Commission approved that subdivision with Public Works' request for a north/south easement.

City Manager McCourt asked if there is a fairly strong probability that the BLM land that is not within the escarpment district could turn into private developable land in the future. Ms. Few indicated that is correct. City Manager McCourt went on to ask if Desert Lakes Road was extended to the east if a road could conceivably be extended along the western boundary of the north area and whether that road could then go diagonally across the large square over to where the blue line is. Ms. Few said she believes it could but she didn't know of any staff discussion regarding the specific tract that City Manager McCourt cited. Ms. Few said that Public Works has indicated that for utilities there is going to have to be connection for pressure and volume through the area in some way.

[A break was taken, and the meeting reconvened at 9:20 p.m..]

Mr. French said that the Commission has heard a lot of information. No one is really disputing facts. There are differing opinions on how to move forward certainly, but he asked for a vote on his request to remove it from the Master Plan. He wants them to consider his request because so many things have happened that have changed the Master Traffic Plan in this area such that the street simply is no longer warranted. It borders on ridiculous to think that brand new homes will be torn down so the street can go to the north. The BLM told him they are done with the land-trading business. It is too expensive for the BLM to do trades for what they consider small pieces of property. They would consider trading it to municipalities if everything is right. However, it is enormously expensive for them because they have layers and layers of law that they have to comply with. The traffic plan from El Dorado will go out on to South Florida regardless of whether it is to the north and then along Desert Lakes Road, whether it be to the north or to the south. There are engineered plans on providing utilities to the area, mainly water pressure that is being provided by an extension of the water line that is being put in as part of Los Lomas.

Commissioner Cole made a motion to approve Resolution No. 2006-23 amending the Alamogordo Comprehensive Plan 2000 and the 1998 Alamogordo Comprehensive Traffic Study which require the future extension of Desert Lakes Road east from Florida Avenue requested by Tierra de Suenos, Inc. Seconded by Commissioner Brockett.

Commissioner Moncada commented that she does not feel comfortable with this because she doesn't have enough information.

A roll call vote was taken. Mayor Don Carroll, Mayor Pro-Tem Ron Griggs, Commissioner Moncada and Commissioner Marion Ledford voted "nay." Commissioner Ed Cole, Commissioner Chris Lujan, and Commissioner Steve Brockett voted "aye." The motion failed by a vote of 4-3-0. The resolution is denied.

Mayor Pro-Tem Griggs asked that staff and the developer work together to be sure the alignment of the road is not based on fairness but on the best location of the street, which does not include taking right-of-way from El Dorado on the far western side of the subdivision.

3. Consider the final plat of CANYON PARQUE SUBDIVISION for Teresa Ham [Case S-05-0886(A), S. Canyon Road].

Recommendation: Approve the final plat with a Subdivider's Contract, payment of fees in lieu of land dedication, and minor plat corrections.

Mayor Carroll said the revised agenda report for Item 3 is to clarify that a sentence was removed from the paragraph. Commissioner Cole asked if this would be on the City water system. City Manager McCourt said that it would be. Commissioner Cole asked what the timeframe is for development. Ms. Few said that it would be within two years. Commissioner Cole said the question that is asked continuously is what the rationale is for continuing to approve subdivisions when there is an ongoing water crisis.

City Manager McCourt said that as he understands it, the City is in a drought situation, and the supplies have dropped dramatically in the last few years. This is about the ninth year of the situation. If the City was at the point it was nine years ago there would be no problems and more than sufficient water. The City Commission has always respected the private property rights and the ability of individuals to develop their property. The City is not willing to take away the private property rights or ability of somebody to develop their land because of the current short-term water problem. Short-term solutions are being worked on, and several have been implemented with several more in the works to bring additional water supplies on-line and into use by the City. Unless direction is received otherwise, it is their understanding that the Commission continues to respect the right of people to be able to develop their private property.

Mayor Carroll said just for clarification that the two years that Ms. Few was talking about would be to complete the infrastructure. That's not two years to build out and have all 158 lots occupied.

Commissioner Cole said he is not arguing any of those points, but the question is asked and has to be explained in terms of personal property rights to build a home. It has to be considered what would be done to the economy if homes were not built. The point Commissioner Cole was making is there is a rationale for approving the subdivisions. It is not that new homes are being approved to be built and immediately connected to the water system.

Klad Zimmerle said he would be happy to attempt to answer any questions.

Mayor Pro-Tem Ron Griggs made a motion to approve the final plat of CANYON PARQUE SUBDIVISION for Teresa Ham. Seconded by Commissioner Moncada. A vote was taken. All voted "aye," and the motion carried.

4. Consideration of Ordinance 1259 rezoning to District "R-1" (Single Family Dwelling) requested by Herrell Realty, Inc. [Case Z-05-0653(A), 4160 N. Scenic Drive].

Recommendation: Approve the ordinance for final adoption with the condition that the developer provide a noise attenuating barrier (i.e. block wall) on the west side of this property.

Mr. Zimmerle said that they do not have any problem with the request, and a wall will be built to shield the area from UPS, lighting, and noise. Mayor Carroll said he believes it to be an eight-foot block fence. City Manager McCourt said it is an eight-foot block fence with an appropriate foundation under it. There is an alley on the west side of the subdivision, and the alley would be open. The eight-foot fence will be the back fence of the individual properties. It may be restricted as to whether there will be access through the fence for residents to get to the alley. The covenants will determine that.

Commissioner Lujan asked if there are meters on the back of the houses. Mr. Zimmerle said it is new right now. Normally with underground utilities, the electric and gas are put in front of the houses in the streets and easements provided there. The meters are then set on the corners of the front of the house for access by the readers. Commissioner Lujan asked whether there are complaints or anything from the backyards about dogs or anything with an eight-foot wall and police having to go back there and see over the walls. Commissioner Lujan thought it was going to be on their side of the alley. Mr. Zimmerle said that fire trucks would not be able to navigate between two cinderblock walls twenty feet apart.

Mayor Carroll asked for further clarification because he wasn't sure what was envisioned when the noise barrier item came up. Ms. Few said it was at the west property line of the tract so there would be a corridor established actually no different from a lot of other subdivisions where there are cinder block walls on both sides. There are commercial establishments to the west, and there has been fear expressed regarding residential development going in that would then start residents complaining about the commercial activity. The wall is being proposed for the protection of the established businesses.

Commissioner Lujan asked for clarification again as to whether the recommendation is for two separate walls or for the eight-foot wall to be on the property line.

Ms. Few said it is the west property line, but two walls with the alley between them. City Manager McCourt said that was his question as to what was being clearly put forth as the understanding of both the City and developer. If it's the City's desire to have a wall that is separate from the back fences of the lots, then it would be wise to clarify that at this point.

Commissioner Lujan pointed out that if there is only one wall built on the property line and if all of these are sold and it's out of the hands of the developers, if it's not enough to keep the noise down or in, whose job is it to put a wall up? Is it the City's?

Mr. Zimmerle said that his understanding was that they had to provide an eight-foot noise-attenuating barrier between the residences and the businesses whether on the resident's side of the alley or on the business side of the alley.

Mayor Pro-Tem Griggs asked if they were talking about one fence or a fence on each side of the alley. Mayor Carroll said that obviously it loses a lot of its sound barrier qualities if it has wrought iron gates every 60 feet or whatever the width of the lot is down the whole north side. Mr. Zimmerle said he thought there would be major noise attenuation. There would be one three-foot to four-foot gate. The primary portion of the barrier is still there.

Mayor Pro-Tem Griggs said the recommendation from P & Z was that the developer provide an eight-foot wall on the west side of the property. Mr. Zimmerle said he did not understand that, and that it

was his mistake. Mayor Pro-Tem Griggs said obviously with two walls there would be a little more noise removal, but he questioned whether there is a reason they wouldn't want an eight-foot back fence. The only reason he could think of would be public safety and anyone in the alley being able to see what's going on in the back yard. It's still kind of hard with a six-foot fence. He asked Sam Trujillo to speak to the size of the fence and what that would do.

Mr. Sam Trujillo said their concern would be in the evacuation or rescue type of situation. The neighbors themselves would be concerned about the noise from commercial development, and that's what brought about the suggestion that the eight-foot fence would cut down on the noise level.

Commissioner Ledford said if he understood Mr. Trujillo correctly, if they got complaints in a residential area from a commercially zoned area, there is nothing that can be done about it except to say that the noise is beyond whatever measurement of noise it's supposed to be. Does a semi truck idling all night long meet that definition? Mr. Trujillo said if the regular course of business involves semi trucks, refrigeration units and things like that, it would be permitted with the zoning. With things such as blaring music, they could step in, but if it is occurring with the regular course of business, they could not shut them off.

Commissioner Lujan said he has spoken with some of the residents, and they said that the trucks alone are very loud. UPS is quite a distance away, and that is just as loud as the trucks. He went on to say that when this came before the Commission the last time and was given back because of the corrections on the ditch, he thought they had talked about the problems and it was going to be discussed with the developer. Mr. Zimmerle said it was his understanding that it would be put on the residential property line. He feels that one eight-foot wall on the rear yard line would attenuate the majority of the noise pollution and the light pollution, and the gates would be there to allow for public safety.

Commissioner Lujan showed on the map the close proximity of the houses that would be closest to the noise problem. Mayor Pro-Tem Griggs said that would be an issue at some point in time when an individual sees the house being built and decides whether or not he wants to buy it knowing where it is since it would sit directly against an eight-foot high fence backing up to the truck stop or UPS. Commissioner Ledford pointed out that the developer is the same one as the one who owns the truck stop.

Mayor Carroll said he recalls that the land is fairly flat and an eight-foot fence would be eight-foot on either side. Mr. Zimmerle said he feels that the eight-foot on the yard side would suffice for the barrier, and the gates would provide the access for public safety.

Ms. Few said that one of the issues with the eight-foot wall is that it would be constructed as a solid wall on the west boundary line, and this was brought up in both of the planning commission meetings. If it is put on the east side of the alley with the individual lots, there is a problem with construction timing with the homes rather than with the development. With the complaints received in December about noise, the double wall is felt to be a good idea. Most rear walls of the residential units are currently not built at eight feet. This one would be.

Mayor Carroll said he thinks there needs to be some clarification. The P & Z recommendation was on the west side of the property. He asked if the alley is part of the property. Mr. Alterson said that the alley is part of the subdivision. Mayor Carroll said that the recommendation by P & Z would seem to indicate that they envisioned or they were recommending a separate wall from the back fence of the individual lots. The City would take over the maintenance. City Manager McCourt said that it was his understanding that it would become a City owned and maintained fence. That appears to be acceptable to the developer.

Commissioner Moncada asked if there are two fences, one on either side of the alley. City Manager McCourt said there is no requirement that the individual property owners build a rear fence. Though there may be two fences, there is not a requirement that there be two fences. Mayor Pro-Tem Griggs

asked whether the City would want to take over and maintain an eight-foot fence that is 1300 to 1400 feet long. Commissioner Lujan said that he agrees that some people might want to look at what they're buying before they do it, but people will buy it. If the fence isn't built now, once the subdivision is built, Chief Trujillo and his officers will get a million calls and have to go out there for calls on noise every night. The City will have to end up building a fence and maintaining it anyway. Mayor Pro-Tem Ron Griggs disagreed and said he doesn't think there is going to be a requirement for the City to build a fence.

Mr. Zimmerle offered the suggestion that the barrier wall of the private property be an eight-foot block, noise-attenuating wall. The gates into the alley would be panel-type gates constructed with an arch such that the hole would essentially be sealed. That way it would be on private property. The property owners would be responsible for the maintenance. The gate and arch would be a requirement of the covenants, and that would block that hole. Mayor Carroll said the issue Ms. Few raised is whether the fence would be built all at one time or as each individual lot is sold off. Mr. Zimmerle said he believes it would probably be built up front by the developer.

Mayor Pro-Tem Griggs said that he thinks if it is approved as one fence it would have to be built by the developer. Ms. Few said that restrictive covenants as noted earlier in the day cannot be enforced by a municipality even on a building permit. If the fence requirement is going to be on the east side of the alley, she suggested that it be put in additionally as a deed restriction on item number seven, which is the subdivision of the property, because wall construction design can change from property owner to property owner if it is to be something that the City can enforce that is going to maintain the integrity of noise attenuation and protect the business from the residential wrath. These businesses were established outside of the City. They were annexed in, and it is a budding commercial property. Now the City is proposing to put single family right up against that. A deed restriction has a lot more force. If it is in restrictive covenants, the City cannot enforce that in its building permit issuance.

Mr. Zimmerle said that the developer will build the wall on the property line so that the City does not have to maintain and take care of the wall. If somebody wants to access the alley, there would be essentially an arched opening with a panel-type gate that would block the hole in a sense. It would be built up front so that there would not be multiple contractors with different brick styles, etcetera.

Mayor Pro-Tem Ron Griggs made a motion to approve Ordinance 1259 re-zoning to District R1 with the condition that the developer provide a noise-attenuating barrier block wall on the East side property line. Such fence will be built at the same time by the same contractor along with the gates being installed at the time of construction. Seconded by Commissioner Ledford. A roll call vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

5. Consider a five foot (5') front setback variance for Herrell Realty, Inc. [Case V-06-0494(A), 4160 N. Scenic Drive].

Recommendation: Deny the variance.

Mr. Zimmerle said they have been before the Commission several times over the last few years with this variance request. It was brought up with North Park Five, North Park Six and Cottonwood Heights Five Phase I/Phase II. They have shown that there is adequate room between the back of the sidewalk and the front of the homes to be able to park several compact cars and even a full-length crew cab Silverado long-bed. If the Commission toured some of the subdivisions, they would see that it is more than adequate, and there is room left over. Not all owners will build at the twenty-foot area. Some will stagger back, and again it's shown that it's working well. The lots are 108-foot deep, and this would allow for additional rear yard building space. Something that has to be addressed in the rear yards is that the setback is measured to the outside of the porch and not to the structure, which gives a little bit of a waste of space that could be absorbed.

Mayor Carroll asked if some of the subdivisions that Mr. Zimmerle mentioned had side access garages. Mr. Zimmerle said they all had direct front access. The only one with side access is Sedona. Mayor Pro-Tem Griggs pointed out some that had been done that were straight in.

Commissioner Ledford asked why the variance is being denied. Ms. Few said they had been granted by the Commission over staff's recommendation for denial. The standards for granting a variance in the ordinances that the City adopted state that there has to be special circumstances and not just a general wholesale relief from a standard. These are for personal gain of the developer. There are no special circumstances, and it does not meet the standard adopted by the City Commission in its ordinances for granting a variance, which is why staff is recommending denial. Ms. Few said that on the subdivisions that have been granted variances with assurance from the applicant that builders would stagger homes for more varied architectural interest on the street, they are a straight line up at the twenty.

Mayor Pro-Tem Griggs said that one of the arguments about this has always been it gives more backyard for people to recreate in or play in. He's not sure he buys that argument either because usually it allows the house to be a little bit bigger. As far as a practical matter, he doesn't see an issue with this. As the zoning ordinance is rewritten, the setbacks need to be dealt with perhaps a little bit differently than the property line. A variety of things might be done, but it needs to be looked at. Maybe the width of the street determines the width of the setback.

Mayor Pro-Tem Ron Griggs made a motion to approve the five-foot front setback variance for Herrell Realty, Inc. [Case V-06-0494(A), 4160 N. Scenic Drive]. Seconded by Commissioner Brockett.

Commissioner Moncada asked for clarification as to whether if someone has a big truck that would block some of the sidewalk. Mr. Zimmerle showed some pictures, and with a 19-foot vehicle there is still an additional five feet from the rear of the property to the back of the side walk to the property line. The vehicles would not be blocking the sidewalk.

A vote was taken, and the motion carried by a vote of 6-1-0. Mayor Carroll voted "nay."

6. Consider final plat of CIELO VISTA RANCH SUBDIVISION for Mesa Verde Ranch Partnership, LLC [Case S-06-0912(A), Chihuahua Road at Wildcat Road].

Recommendation: Approve the final plat.

City Manager McCourt noted that there was a new plat from the one originally received in the packets. The major difference was the designation of a drainage easement through an already-established drainage ditch on the property. Margaret Dubbin from Gunaji & Associates said that is correct.

This subdivision is outside of the City so the City has concurrent jurisdiction with the County. It has gone to the County and been approved.

Commissioner Cole made a motion to approve the final plat. Seconded by Commissioner Lujan. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

7. Consider final plat of **COTTONWOOD WEST SUBDIVISION, REPLAT B**, for Herrell Realty, Inc. [Case S-05-0910(A), 4100, 4130 and 4160 N. Scenic Drive].

Recommendation: With rezoning of the property (Case Z-05-0653(A), Item #4), approve the final plat for Case S-05-0910(A).

Mayor Carroll said that the original recommendation in the revised agenda report is with the rezoning of the property in item #4, which the Commission did to approve the final plat for Case S050910A.

They still had recommended denial of Item #5, and that variance was granted as well. This is the final plat, and apparently all outstanding issues have been resolved.

Mayor Pro-Tem Griggs asked Ms. Few if the plat would be the appropriate place to note the fence issue, and she said that a requirement of deed restrictions with the subdivision approval would be appropriate. It could be on the plat as well. It could be included in the subdivider's contract, but that has already been signed by Mr. Herrell.

Mr. Zimmerle said the developer is going to build the wall after the pads are built prior to the lots being sold. It could be on the subdivider's contract. He doesn't see any need to have it on the plat, and a deed restriction as discussed before is unenforceable.

Mayor Pro-Tem Griggs made a motion to approve the final plat of Cottonwood West Subdivision, Replat B with the inclusion of the items discussed. Seconded by Commissioner Lujan.

Mr. Alterson asked if the language on the plat would alert potential buyers that they are going to be responsible for maintaining the wall, and Mayor Carroll said it is understood.

A vote was taken, and all voted "aye." The motion carried unanimously.

PLANNING ITEMS:

19. Approval of the Boilerplate Commercial Lease and the Land Lease application by the AAUA.

Recommendation: Approve the lease extension request.

Mr. Dunsche explained that his concern on the land lease deadline was resolved with the City Manager. The applicants had to apply for their lease by the original deadline, which was the 31st of May, to have their leases converted. The question that a lot of the AAUA members had was whether they had to have a lease in effect by that time. The answer is no, and that is not an issue.

He thanked the City staff for working with them to create a commercial lease boilerplate creating a fair and non-discriminatory method at the airport for attracting businesses and people to develop the airport. They are pretty much in agreement with all of the items of the lease except for the terms, which the AAUA feels are not in accordance with being fair and non-discriminatory. Previous leases were given ten-year terms with options to renew. The current lease that is being proposed is a five-year term, which was negotiated from a one-year term, but they feel that is not enough. They would prefer to see something with less verbiage that is much simpler such that it would attract businesses to the area. They would like to see businesses come in for at least ten years and then apply and get another ten-year extension two more times for a thirty-year lease in much the same way they had argued for the land leases. They feel it would be the best way of showing people that they're serious about attracting business to Alamogordo. A five-year with one-year extensions coupled with some of the terminology is not in the best interest of attracting people to enter into a lease with the City. All of the other items as far as default and compliance with state and regulatory concerns they agree with. It's just simply the terms that are the issue. The AAUA is uncomfortable with the leases as they are now. There are individuals who would like to apply for commercial leases but are waiting to see how this will be resolved.

City Manager McCourt said that he does have copies if the Commission would care to look at them. The reason the term "commercial lease" is utilized is that the City Code in Section 4-04010A uses that term. What is actually being discussed is a business license, the ability to have and operate a business on the airport. This is a considerably more complex business license than what is done in the general business licensing process. In that process the City attempts to gather some very basic information on a business so that the owners can be contacted and the City can know who they are. In this particular case, there are quite a few more requirements that need to be complied with as far

as promises to the FAA under various grant agreements and being able to control the property at the airport. They do want to promote business at the airport, and what they have been told is an impediment to business is when people acquire a permit to do commercial activity at the airport and then don't do it. Other potential businesses find out that that's available, and they are then reluctant to come forward with the necessary action. They want the ability to make sure they know what's going on at the airport, and be able to review it on a timely basis. As Mr. Dunsche mentioned, the original draft said they would basically renew the business license because of the City code requirements of a commercial lease as its regulating activity and not the land use. The land use is done by the lease that has previously been approved. What is being regulated here is activity, and that's why it's more like a business license. The lease term creates a misnomer. They feel it is appropriate for the City staff to review what sort of business activity is actually going on at the airport.

They think it's reasonable to require that on a frequent basis to see if the activity is actually taking place. The reason the initial term was moved up to five years was it was pointed out that if a business is started with multiple activities it could take a few years to really get those established so that perhaps more time should be given up front to look at that.

Paragraph B then talks about the additional terms that Mr. Dunsche also mentioned, which again gives the right for five one-year additional extensions. That would now be ten years of extensions that would be granted. Paragraph C goes even further in saying that a commercial operator who has a lease from the City Commission for land or facilities or has an approved sub-lease can continue to do their business and get extensions on their lease as long as they continue their facility, land lease or sub-lease. Basically, as long as they keep doing the business they said they were going to do at the airport, they're going to keep giving them permission to do it. The City wants to review it to make sure they know what's going on and they can keep track of what's going on, which is a very normal practice that takes place city-wide every year. A one-year term is not unreasonable. It is incumbent on the City to be able to manage and control the property.

Mr. Dunsche said the City already has a requirement for an annual business license that must be applied for. The lease requires that certain reports be turned in, and it also has requirements for inspections by the City. If the City Manager or Airport Manager wish to do that, they already have complete power to do so.

City Manager McCourt said the difficulty would arise when something is not being done as proposed and how that would be changed. Mr. Dunsche said there is an extensive section on default, and City Manager McCourt pointed out that a default takes an extensive period of time. If an activity is occurring at the airport, and the City moves to default in order to stop the activity, it could take a very extensive period of time to be fulfilled. The City has to tell them what the default is, and they then have 30 days to correct the default at which time in theory the City can then take steps to cancel the lease. In actuality, when it's fought, it can become a multi-year task getting through the default process. Plus it can be a very expensive task.

Commissioner Lujan asked if they are on the one-year extension and they default whether going through the process is going to take a couple of years anyway. City Manager McCourt said if they're in a one-year review process, it can be changed at the end of the year and the license not be renewed allowing the City to effectively control its property.

Mayor Carroll said that what the City is looking for in the commercial lease is the assurance and ability to make sure that whatever service it is that a business said they would provide is in fact being provided not so much to keep them from doing something. One of the biggest concerns may be whether the tax revenues are being paid from the business. A circumstance in which the City Commission might feel the need to respond in an expedient manner would be for instance if somebody gets a commercial lease to do filming. It is going to be done in a hanger, and hypothetically speaking if it turns out that the filming is going to be pornographic movies, the City Commission might feel the need to take timely action on that. It is reasonable that the City be able to review and take timely action. Commissioner Ledford asked if that couldn't be done without relating it

to a term. City Manager McCourt said the City would have to go through the default process to end the agreement.

Mr. Dunsche said he is asking the City Commission to review the lease that is being presented by the City Manager. Several leases have been suggested, and this is the lease being presented by the City Manager in the name of the AAUA. They agree with almost all of the provisions except for the term. They would like to have an attractive term to attract business. The way it reads now, an owner has a five-year chance to make the business run. Then they get five times to renew the lease, but three months prior to every one-year renewal another proof of insurance has to be submitted to the City along with possessions of required permit and the complete licenses along with the fees and charges as permitted by the City Commission. Mr. Dunsche said it does not sound business friendly.

If the City wants businesses to come, they should make it easy. Come here. Follow the rules. A ten-year lease will be granted, and if the City likes what is being done because they're going to check on it every year with the other methods that are already in place, another ten-year extension can be given and even another. The idea is the longer the business provides income to the City the greater the benefit to the City. City Manager McCourt said that is the exact reason why there is no problem with the one-year extension because the City has no reason to end the agreement as long as it's being run properly, they're paying their bills and doing the job out there with aviation-related businesses.

No action is being requested at this meeting. Mr. Dunsche would like the City Commissions to review it, give it some thought, and they'll come back and request a vote at a later time. They feel that to give a one-year or five-year lease now is not fair and is discriminatory for all newcomers without adding a benefit for the City.

Mayor Carroll said he understands the five-year initial term and he understands the one-year. He questioned why the five one-year extensions are in there. City Manager McCourt said they wanted some assurance that they could get at least up to ten years so the first two terms give more rights to the potential lessee than the third term. Mr. Dunsche said their request is a ten-year initial lease with two ten-year extensions for a thirty-year lease just as it was for the land leases. Then AAUA feels that is best for starting and running a business. That would not necessarily tie into the land leases. They are separate entities and completely separate documents.

Mayor Pro-Tem Griggs said about three weeks ago he looked at what was drafted and compared it to the old Las Cruces form. It was basically identical. The Las Cruces one was one-year terms everywhere through it, and the statement was made when the discussions started that the group would be happy to live with what was in the Las Cruces agreement. Mr. Dunsche said the intent of that was to show that they had a standard lease that treated all people who came to the City fairly with the same options, and the AAUA is very much in favor of that. They are looking for a standardized form that says this is what you're going to get when you come to Alamogordo. They don't want every businessman to have to come to the City Staff to negotiate a separate lease. They believe a longer-term lease is in the best interest of the City. Mayor Pro-Tem Griggs said if the City decides to create a standard form lease there may be some sitting out there that are different, and they would have to be honored until they expired.

Mike Hanes said he wanted to explain why the current lease is very inconvenient and not an attractive thing to have to every nine months come in and do another lease. Businesses are tied to the City in three different ways, and they don't want to be inconvenienced with a fourth one. They are simply asking for more time on the commercial leases because they don't want to come every nine months to the City to fill out paperwork. It is silly, and it is not attractive to bring other business in. The City is watching the businesses 24 hours a day. The businesses would just like a little convenience in not coming into the City every nine months for a lease on a piece of property that they are trying to make some money for the City with.

Mariella Porter pointed out that Term B does say that for the five one-year extensions the business owner has to come in three months prior to the expiration. In addition, will there be a processing fee every nine months when an individual goes in to renew their lease?

City Manager McCourt said it's not every nine months. It's every twelve months. Very frequently it takes three months to complete, and in fact in many cases it takes longer than three months because people forget to follow through.

Mayor Carroll said they would take the opportunity to look at it, consider it and visit with the City Manager about it.

City Manager deviated at this point to mention something that is in his report. It was brought to his attention that some of the self-fuelers at the airport may not understand the requirement to pay the fuel flowage fee. It was suggested that City Manager McCourt provide notification to some of the individuals at the airport about the fuel flowage fee and the need to have that paid by the self-fuelers. He has prepared a draft letter to convey that information to those individuals at the airport to the best of their ability. The City Attorney has confirmed that it is in compliance with the existing City code as it is written.

20. Approval of the PreCheck lease agreement at the Willie Estrada Memorial Civic Center

Recommendation: Approve the lease agreement.

City Manager McCourt said that PreCheck is a new industrial firm that is relocating to the Alamogordo community. They have a relatively short timeline in which they want to start up operations. It was originally hoped that they could have a building up and constructed prior to June 30th. Though the City has gotten everything done that they needed to, it appears that actually getting the building and utilities up and established to start data operations prior to June 30th, which is hurricane season, which was their concern, is not going to be feasible. They are still moving along quite rapidly. They have requested that they be allowed to rent two rooms in the Sergeant Willie Estrada Memorial Civic Center. It would be the two rooms on the southwest corner that are closed off. They are not normally used for other events and are isolated from the other activities. It would not restrict the City's ability to have other events go on there. There would still be other rooms that would be continually available to groups and individuals for rental and use. No difficulty or interference is anticipated with the other types of activities that occur. They think they will be able to move in as early as late September though it may take longer, even up to the end of December. The rate is acceptable. They have signed off on the lease, and staff would recommend going forward with it.

Commissioner Cole made a motion to approve the office rental lease agreement for the Willie Estrada Memorial Civic Center with PreCheck. Seconded by Commissioner Lujan. A vote was taken, and all voted "aye." The motion carried unanimously by a vote of 7-0-0.

21. Appointments to Boards and Committees.

Mayor Carroll appointed Cynthia Morrison to the Community Development Advisory Committee. There is still one vacancy on the Mayor's Committee on Aging. Mayor Carroll asked that anyone interested contact him or the Clerk's office. .

UNSCHEDULED COMMUNICATIONS:

1. Peter Estrada

Mr. Estrada expressed that they had reserved the Memorial Center for a family reunion in September, and they were wondering whether the lease agreement would interfere with that. City Manager McCourt assured them that it wouldn't, and they are happy about that.

2. Mayor Pro-Tem Ron Griggs

Mayor Pro-Tem Griggs said that on Item #19 the recommendation was to approve the lease extension request. Mayor Carroll confirmed that Mr. Dunsche indicated they were comfortable with May 31st.

2. City Manager McCourt

The water report indicates that Bonito Lake is 22 1/4 feet below the spillway, which is a big concern heading into the summer season. They are operating the wells and have the Mountain View well that has been drilled. They are in the process of testing that to get additional water supplies on line this summer. The golf course well is being hooked into the system.

Saturday in the Park and Armed Forces Day went extremely well as they were combined with Gus Macker this year at Washington Park.

3. Mayor Carroll

Mayor Carroll congratulated Matt McNeile and the recreation and parks folks along with DPS and all of the staff that was at the Saturday in the Park all day. They did a great job. He also congratulated Steve Deal and the staff at the zoo. They recently obtained re-accreditation of the zoo and are still one of only three accredited zoos in the State of New Mexico. He also congratulated the Department of Public Safety on the crime stats that showed the City ranked one of the safest in the state if not the nation in communities that match in size during 2005. He asked Chief Trujillo to pass on appreciation to his people for that.

EXECUTIVE SESSION: No Executive Session was necessary.

Commissioner Ed Cole made a motion to adjourn the meeting. Seconded by Commissioner Marion Ledford. All voted "aye." The motion carried by a vote of 7-0-0. The Meeting was adjourned at 10:53 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Renee Cantin

City Clerk Renee Cantin

(SEAL)

(Prepared by Ubiquis Reporting)
Approved at the June 13, 2006 Regular Meeting.