

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION SPECIAL MEETING MINUTES
4:00 P.M., COMMISSION CHAMBERS
NOVEMBER 20, 2006**

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

**COMMISSIONER CHRIS LUJAN
COMMISSIONER STEVE BROCKETT
ASSISTANT CITY MANAGER MATT McNEILE
CITY ATTORNEY WILLIAM BROGAN
CITY CLERK RENEE CANTIN**

CALL MEETING TO ORDER AND ROLL CALL

Mayor Don Carroll called the meeting to order at 4:15 p.m. Commissioner Brockett was absent. The members of staff that were present included Mr. Arthur Alterson and Ms. Sharon Few. Others present included Mr. Michael Shyne, Mr. Klad Zimmerle, Mr. Robert M. Doughty II and Mr. Bobby Martinez.

Call Meeting to Order & Roll Call.

1. Consider the final plat of **MARKET PLACE, REPLAT A, SUBDIVISION**, for C. Michael Shyne [Case S-06-0929(A), 3313-3751 N. White Sands Blvd.].
Recommendation: Approve the final plat of MARKET PLACE, REPLAT A, SUBDIVISION with variances on the construction and installation of alleys and from Section 22-01-040 relating to drainage plans; with the dedication of an easement for Scenic Drive to the west property line of subdivision; with the developer being responsible for the required intersection and signal modifications on North Scenic Drive at North White Sands Boulevard; with the payment of fees in lieu of land dedication and with a Subdivider's Contract.

Mayor Carroll explained that this Item has been before the Commission several times. It has been postponed several times, and a work session has been held regarding it. Mayor Carroll read the recommendations from staff and P&Z, and he then went on to explain that the past discussions have centered around right-of-way dedication, how far west Scenic needs to go and who should be financially responsible for the traffic signal modifications on North Scenic.

Mr. Robert M. Doughty, II addressed the Commission as the attorney representing the developers of the Marketplace Subdivision. His desire was to succinctly summarize the history of the Marketplace Subdivision while focusing on narrowing the issues that need to be resolved.

On or about April 12, 2005, the Commission approved the final plat of the Marketplace Subdivision, which is and always was intended to be a commercial subdivision as opposed to a residential or industrial subdivision. It is the replat of the original subdivision that falls within the authority of the Commission.

The subdivision of April 12, 2005, contained approximately 34.791 acres, and the plat before the Commission is approximately 65.165 acres, which is about twice the size of the old subdivision. The old subdivision contained three platted commercial building sites, and the new plat contains seven. The original plat provided no extension of the North Scenic Extension west through the Marketplace Subdivision to the railroad right-of-way. The new plat would be based upon a dedication that would ultimately match the North Scenic Extension that was built by Charlie Herrell from Florida to White Sands Boulevard. This replat was submitted to the City on March 6, 2006, and it continues to be pending. The first Planning and Zoning Commission meeting was April 5, 2006, at which time the Item was tabled because the developer's engineer, Livingston and Associates, needed to complete work. The staff prepared a report for that meeting, which recommended preliminary approval for seven lots as requested subject to certain conditions.

The first issue was an extension of the North Scenic Extension to the railroad right-of-way and an 80-foot easement with the dedication of three acres to the City or payment to the City in lieu of those acres. On May 5, 2006, P & Z again considered the subdivision as submitted. Dean Hunt's engineering comments addressed for the first time the need to modify the traffic signal at North Scenic Drive and White Sands Boulevard, and the staff recommendation was to approve the plat subject to a road extension of the North Scenic Extension to the railroad tracks citing that the recommendation is in accordance with the 2000 Comprehensive Master Plan and the 1998 Traffic Study. Staff also addressed the reconfiguration of the traffic light and suggested that the developer bear the cost. P & Z recommended approval subject to the staff concerns.

The Item was then scheduled for the regular meetings of June 27th and July 11th, but the matter was tabled or withdrawn from the agenda. There was then another meeting July 25th, 2006, in which there was much discussion, and the matter was tabled to determine the cost of reconfiguring the traffic light. The Item was again before the Commission at the meeting of August 22, 2006, and again after much consideration it was tabled in lieu of a work session. The Commissioners then conducted a work session from which there are no minutes and no tapes. Mr. Doughty could not summarize that though he does have Mr. Shyne's handwritten notes.

Mr. Doughty said that they view the issues as being whether the City should require the developer to bear the cost of reconfiguring the traffic light. There is a tangential issue, which is whether the City of Alamogordo should change its Master Plan to delete an extension of the North Scenic Extension. Finally, Mr. Shyne withdrew his objection to paying the City \$11,300 in lieu of dedication of public land for a park, and he does that so that focus can be maintained on what he considers to be the more important issues.

Mr. Doughty stated that the Commissioners had asked Mr. Shyne to provide a precedent under which the City should participate financially in the extension of North Scenic Extension, and at one of the meetings, Mr. Shyne produced for the Commission an agreement dated September 19, 1988, between the City of Alamogordo and Cottonwood Heights Venture, which was in reality Mr. Charles Harold. Under that agreement, Cottonwood Heights built a 64-foot road on an 80-foot right-of-way, which would constitute the extension of the North Scenic Bypass to White Sands Boulevard from North Florida in lieu of the standard 44-foot road. The City agreed to compensate Mr. Harold in the sum of \$220,000 for the extra right-of-way and additional 20 feet of roadbed. Mr. Harold may have made some modifications to the intersection at North Scenic and White Sands Boulevard, but he was not asked to pay for the traffic light. Mr. Shyne will be making significantly expensive modifications to the intersection being discussed, and the Commission is asking him to pay the expense of the traffic light.

Mr. Doughty provided a handout to the Commission delineating an arrangement in which Mr. Shyne would bear the cost of \$48,000 for the construction of the North Scenic Extension to the width that would match the bypass and \$156,000 for construction of acceleration and deceleration lanes, and that would be followed with the land costs. The cost to Mr. Shyne for that road and intersection will wind up being a total of \$204,000. Mr. Shyne is asking that the City bear \$22,000 for the upgrade on the street, \$62,700 for the land costs east of Marketplace, \$71,600 for the land cost west of Marketplace to the railroad right-of-way, and finally the signalization at \$112,400, which would be a total of \$268,760 for the City. Mr. Shyne is asking the City to bear the cost of reconfiguring a major traffic light that should have been reconfigured with the extension of the North Scenic Extension. The Department of Transportation paid to redo the intersection, and if it had been done at that time, there would have been no cost to the City or the developer.

Mr. Doughty explained that they truly believe that to require Mr. Shyne and Ms. Williams to bear the expense of the traffic light and asking them to bear the expense even of a camera for the City of Alamogordo, the function of which doesn't have anything to do with the subdivision, in light of the way that the City contracted with Mr. Harold for the North Scenic Extension would be arbitrary and capricious as it would be to change the Master Plan deleting the extension of the North Scenic Extension after Mr. Shyne has gone through the trouble of preparing a subdivision. They further

believe that would not be supported by all of the evidence that the Commission has heard and would be unreasonable. He stated that they are ready, willing and able to answer questions. Mr. Doughty then called upon Mr. Bobby Martinez to address the Commission.

Mr. Bobby Martinez addressed the Commission, and explained that they are very close to getting started on their project. On Wednesday, he has a meeting in Albuquerque with the architects to get the final draft on the Toyota building, which will be good for the City. He went on to explain that Toyota is growing about 15% annually nationwide, but in Alamogordo it has been growing between 15% and 30% making it time to create a nice facility for the customers. This need creates some problems and some issues with the traffic light in that initially there will be large construction vehicles going back and forth as the building is underway. Once it is built, the employees and customers will be trying to pull out, and there is not a four-way stop to facilitate that, which creates a huge hazard. He believes that the City can help them out, and it is not such that the City will not get anything in return. If Toyota's growth in Alamogordo continues, it will mean increased taxes that the City will collect as well as increased employment of up to 40 employees that will have to be hired to keep that facility up and going. These are real positives for Alamogordo, and once the Toyota building is there, Mr. Shyne will be able to further promote and sell additional properties at that location. Mr. Martinez went on to explain that it is clean industry with no pollution of any kind, and it is a good thing for the future growth of Alamogordo with it being a state-of-the-art facility.

Mr. Doughty stated that they would prefer that the Commission ask Mr. Shyne and Mr. Zimmerle questions, and if the issue comes up about railroad bypasses, he stated that Mr. Shyne is prepared to make a presentation. He stated that they stand ready to address any issue that the Commission might raise.

Mayor Carroll explained that his impression is that the City understands and is agreeable to the additional cost of right-of-way as it is similar to what was done in Cottonwood Heights, which is the figure of \$62,760. Mr. Doughty asked if the City disagrees with the 70 feet of right-of-way times 190 feet, which is the land cost that comes out to \$71,000.

Mayor Pro-Tem Griggs stated that he is not certain, but in going back to Mr. Herrell's situation, it is either unclear or he does not read it the same way as it is being presented because it appears to him that as the roadway ran through Cottonwood Heights, he developed it at the time, and the only cost that the City paid was for the additional bits of right-of-way. In this particular item, it appears that the land cost is for the full right-of-way. Mayor Pro-Tem Griggs went on to say that if he is reading it correctly, if the City were to agree to that and to the dollar number per square foot, if one goes back to the Cottonwood Heights agreement, one should only look at the additional right-of-way, which would be for an arterial over the size of a regular street.

Mr. Doughty stated that the City actually paid Charlie Herrell the difference between the land cost for a standard road and an arterial road and compensated him for the extra paving and construction, which was above and beyond the land cost. Mayor Pro-Tem Griggs said he believes that is correct, but he does not believe there was any point in time at which the City paid Mr. Herrell for the full arterial right-of-way in Cottonwood Heights, which is what is being asked of the City in this situation—to pay the full right-of-way from Marketplace to the railroad tracks.

Mr. Klad Zimmerle said that it is from Marketplace to the railroad tracks, which was relinquished originally with the first plat of Marketplace. The issue was brought up, and the City said they didn't need it. Now, with the replat the City is saying they need it, which is an entire piece by itself. The one to the east is just the additional 20 feet.

Mayor Pro-Tem Griggs said that if they are looking at the arterial and they are going to say that they need the arterial, they need it all the way to the tracks because the arterial is in the Master Plan, which is part of the other argument. If that is the case, then the City should agree to only pay the difference instead of the full price. Mr. Zimmerle said this is something that was beat to death during the approval of Marketplace itself, and it has also been addressed several times in the review of the

replat. The City said they did not want the strip of land to the railroad. Mayor Pro-Tem Griggs said when they looked at it the last time, one of the discussion items was whether the City wanted to continue with making North Scenic an arterial and taking it across the tracks. He also believes that it was left such that Mr. Shyne was going to talk with Mr. Martinez to determine whether or not locating the road in a different place or running it through would be an issue. Mayor Pro-Tem Griggs said that he believes the location of Scenic needs to stay where it is platted. As such, the whole length of the arterial has to be considered in that the Commission hasn't addressed what would be done with that other than talking about it in the meeting when no agreement was reached.

Mr. Zimmerle said again it is only the total value of the strip, which at one point in time the City didn't need and now does need. Mayor Pro-Tem Griggs pointed out again that the Herrell agreement only dealt with the City paying for the additional right-of-way, which would say to him that the City would only be willing to pay about \$20,397 versus \$71,600.

Mr. Shyne stated that the Herrell contract was worded specifically so that the City reimbursed Mr. Herrell for expenditures for right-of-way and road improvements that the City needed for their plans, which Mr. Herrell did not need for his project, which is exactly the way this item is being presented. The City needs additional width to the paving that he does not need, and the City needs additional land in the westerly extension of Scenic from White Sands Boulevard up to Marketplace Road and so would pay for that additional 20 feet of land there. However, the City also needs the right-of-way all the way to the railroad tracks to extend Scenic west, which is not anything that Mr. Shyne needs in the development, which is the reason why the City would pay for the entire piece with the right-of-way. If indeed the City draws back and says the City should only pay for 20 feet, then in this opinion, the City is working in complete contradiction to the Herrell contract.

Mayor Pro-Tem Griggs said that he obviously didn't read the Herrell contract the same way in that he doesn't know at the time that development was done whether Mr. Herrell needed to run the road all the way to Florida, whether it was his desire to do it or the City's desire. Mr. Shyne said it was part of Mr. Herrell's original plan. Mr. Shyne asked Mr. Zimmerle if Scenic was intended through all of the phases of Mr. Herrell's development to run all the way to Florida, and Mr. Zimmerle said that in the original master plan that was submitted for the Cottonwood Heights venture Scenic was in place from the Florida intersection to the White Sands intersection. There were some commercially developed areas at the extreme east side, residential through the center and commercial again at the far side. Mayor Pro-Tem Griggs asked if they were talking about the master plan of Cottonwood Heights, and he asked at the time that was done where the City stood in terms of the comprehensive plan as far as the location of North Scenic and whether it crossed the highway or not. Mr. Zimmerle said that the City's traffic plan showed it crossing the highway, to which Mayor Pro-Tem Griggs replied that there consequently shouldn't be a distinction. Mr. Zimmerle said that the City at one time said the Master Plan had been changed when the first plat was approved.

Mayor Carroll asked Ms. Few to shed some light on this from the City's perspective. Ms. Few stated that the extension of Scenic from west of the railroad to White Sands has been in the plans for a number of years, and there was even inclusion of it in the 1971 plan. Mayor Carroll clarified that it predates the Relief Route and any connections to the Relief Route, which Ms. Few concurred with. In addition, she said that the original Marketplace, which was only three lots, did not include any rights-of-way within the subdivision. All three lots that were originally proposed had frontage on White Sands Boulevard, and at the time they came to the Commission, no road development was planned with any incursion west of White Sands with right-of-way since they saw no need of the extra right-of-way being put upon them. The City said that since the lots had frontage on White Sands, they would be allowed to not put any extra right-of-way for Scenic between the railroad and White Sands. However, Ms. Few said that with the replat, the property owners proposed the extension of Scenic Drive and the placement of Marketplace Drive, and it was in the negotiated agreement as reflected on the July 18th subdivision plat that an easement was all that the developers were going to grant to the City west of Marketplace Drive, which meant that the properties would stay in the holdings of the private property owners and not become City property. Evidently, this has changed, but Ms. Few indicated that they did not receive a plat that reflects that change. In addition, Ms. Few

explained that the roadways would have to carry large commercial vehicles. A residential street is not going to fare well with motor vehicle carriers.

Mayor Pro-Tem Griggs stated that he believes that the Commission is in agreement that if there is an extension or a widening of the road the City would certainly be willing to consider paying its part of that as was discussed at the last meeting. He doesn't know, however, if it is equitable for the City if the roadway is in the City's plan and the City believes that it needs to be extended all the way to the tracks for the City to have to buy the whole right-of-way. Ms. Few said that the 200 feet west of Marketplace Drive was not to be dedicated. It was to be set aside as an easement for future development with the caveat that if the Master Plan changed to remove the extension of Scenic, the easement would go away, which was the wording that was agreed to between the developer and the City. That has apparently changed as well.

Mr. Arthur Alterson stated that there is an awful lot of confusion in his mind as to what is being asked as he does not know what went on with earlier subdivisions or what went on with Marketplace when it was originally subdivided. In looking at the subdivision regulations in the Municipal Code, all streets need to conform to the general community or comprehensive plan. It also says that street right-of-way width would be shown in the City technical standards. He does not want to debate what the Commission may feel is a fair outcome, but what he is reading as a regulation is that the streets in the subdivision are supposed to conform to the comprehensive plan. It does not talk about parlaying a residential street with an arterial if an arterial is what was being indicated on the comprehensive plan as he believes that the comprehensive plan shows Scenic going to the railroad tracks though he understands the argument that the City perhaps does not need Scenic at this moment to extend that far. It may never be needed, but it is certainly an option that the City wants to keep open. His understanding is that the discussions that were held months ago were about putting the remainder of Scenic West of Marketplace Drive into some kind of an easement to put it in a holding pattern for when the road may need to go through or alternatively to put the land itself in the best position to allow it to be transferred back to the private owners if it is never going to go through, which is what he thought they were talking about a couple of months ago.

Mr. Zimmerle said that it seems that they are lacking a plat that reflects the changes. He is not sure what was said months ago, but they were tasked by the Commission to find costs and a comparable situation. They have done that, and that is what the changes are reflecting in paying for right-of-way and not having easements anymore. They have all been worked out as well as street widths.

Mayor Pro-Tem Griggs said that he does not believe that the Commission ever agreed on any numbers though they may have been in favor of things one way or another. He also asked Mr. Shyne where he differentiated or delineated rear lot prices because the price sheet shows rear lot prices at \$2.50. Mr. Shyne said that what they actually did to simplify things was just as he agreed to pay the park tax so that it doesn't have to be argued he would also forget all the business about the water line easement and the City paying for that with him paying the City for the benefit and then adjusting for the fire hydrants. He would still give the City the easement, the City would build the water line, he would have to install the hydrants at his expense, but to make it simple he would forget about that. That is the only place that the back land value exists, and what he did on the evaluation of the price per square foot of the land for the 20' x 600' and for the 70' x 195' was to take the exact amount of the Toyota comparable. He said if it is actually differentiated because the front land is worth more than the back land, the average of \$5.23/square foot would be allocated, and the front property would be worth more and the back a little less. It is the actual comparable sale for the full length of the purchase because the Toyota purchase was the full length from White Sands Boulevard to the railroad tracks.

Mayor Pro-Tem Griggs went on to point out that what drives the question is when Mr. Shyne says the \$5.23 and then \$2.50 for the rear land and it is obvious to him at least that the extension right-of-way would be rear land, it needs to be clarified. Mr. Shyne said he could reduce the cost of the 195 front feet because it's rear land, but then he would in turn increase the cost of the front land if that is done. The average price per square foot at the intersection from White Sands Boulevard back to the

railroad is \$5.23 per square foot, and so realistically it's easier to just use the average price for both of them since that was front to back comparable. They can be allocated, but that will simply increase the price per square foot of the 20' x 600' and reduce the price per square foot of the 70' x 195'. Mr. Shyne thought the allocation was somewhat arbitrary no matter who did it, but the average price isn't arbitrary. It's clear and mathematical. Mayor Pro-Tem Griggs said he appreciates him coming up and stating that as he has never seen it done that way. Mr. Shyne went on to clarify how an appraiser would allocate the cost per square foot, and why it is mathematically accurate and does not depend on allocations.

Commissioner Ledford said that first of all the City has to decide whether it's going to buy the back west property. Mr. Shyne asked if he could add some detail before that question is asked as something may have been overlooked in the last meeting. When the City Manager brought up the issue of the easement for the back 195 feet, which on the plat says that if it is not used it will revert back to the private owners, it was asked why the City would pay for something that would revert back to the owners if it was not used. Mr. Shyne wanted to say that provision would be deleted from the plan, and the City would receive deed ownership of the 195 feet. There is no easement, and the City would receive deed ownership. Mr. Shyne said that was agreed to in the last meeting.

Commissioner Ledford said that what is mathematical is what is paid for a certain piece of property and whether or not the average is the same is not the bottom line. The issue is whether the City is buying the west property or not. Commissioner Ledford pointed out that there is disparity between Mr. Zimmerle's and Mayor Pro-Tem Griggs' interpretation of the Herrell agreement, and to say that any agreement has been reached is not true. Mr. Zimmerle said that before they were tasked to find the comparable, they had addressed that, which is what the plat reflects and what it has always reflected. He said they have not made changes to the plat or the construction drawings, which show wider streets and deeper asphalt.

Mayor Carroll said that the plat he is looking at talks about a street easement, and Mr. Shyne said that is what he had just addressed that was agreed to in the previous meeting as being no longer there. Mr. Shyne also pointed out that other than for the access to the two corners, the Scenic extension west of White Sands would only be used for possible access to back lots if a portion of the frontage is sold off and there is land behind it. It all has frontage from the Relief Route to K-Mart. They have their own access directly to the highway and won't need to use Scenic Drive at all. Scenic Drive will not be handling the traffic for the development of the property.

Mayor Carroll said that brings them to something that was discussed at the work session as to whether the City needs to go back and review the comprehensive plan to make a determination as to whether Scenic needs to go through. That is something that may need to be looked at because when the traffic light was put in, it was not envisioned that Scenic would go across because there was nothing for it to tie into. When the Relief Route was designed, Scenic did not connect to it on the State's plans. The City asked them to do it, and the State would not.

Mr. Shyne stated that he is trying to be as gentle as possible, but that he does not care what the State agreed to or didn't agree to. The City dropped the ball. The Scenic Extension west has been on the Master Plan since 1971, and the State has forced the City into a number of bad situations such as the intersection of First Street and the Relief Route, which is not in line with First Street east of White Sands Boulevard. Mr. Shyne said he was at the very meeting when the City Commission met with the County Commission and agreed on the locations of the intersections in which the First Street intersection was exactly in line with First Street between Scenic Drive and White Sands Boulevard. It was done that way so that it would be a nice straight street as it should be. Somewhere along the line, the High Department changed that. Somebody in the City allowed that change to take place or didn't notice it, and the traffic light being discussed was first installed in 1989 at which time the Scenic Extension had been on the plan to be a four-way intersection since 1971. The City had a second chance in 1999 when the intersection was rebuilt to tell the Highway Department that it should be a four-way intersection and needed to be built accordingly by simply blocking out the lights

pointing to the west. Mr. Shyne went on to say that now the City is telling him he should pay for the City's mistake, and it is the City's responsibility.

Commissioner Lujan asked what the difference is between the \$268,760 and what the City is saying it should be paying. Mayor Carroll said the difference is about \$215,000. Mr. Doughty asked that Mayor Carroll explain that number in that he has only circled the \$62,760 that the City is agreeable to pay. Mayor Carroll said that is right, and Mr. Doughty asked if the City is agreeable to paying the extra cost of construction of the road at \$22,000, which is the arterial upgrade. Mayor Carroll asked if he was talking about the additional 195 feet, but Mr. Doughty was referring to the \$22,000 in the City's column, which is the difference between the 36-foot and 52-foot road width. Mr. Doughty went on to say that in the Herrell contract clearly the City compensated him for the extra land that it took for the right-of-way and the extra road that he had to construct. The \$22,000 is for the extra feet of paved road that would have to be constructed. Mayor Carroll said that what the City is mainly interested in acquiring the additional right-of-way but not necessarily requiring the developer to build the entire width at this time. If the City were to require the additional width, then, yes, the City should pay for that as well.

Mayor Pro-Tem Griggs said he does think that is correct, but he also thinks that taking into consideration the usage, the wider roadway will be necessary. Mayor Carroll said that the City would then pay for the upgrade as well as purchasing the 20 feet. The City would be responsible for paying the additional cost to build it. Mr. Doughty said that it then comes down to buying the land from the subdivision as platted to the railroad tracks, which he understands is an issue as well as the signalization, which is an issue. If they take the \$268,760 and back out \$22,000 and \$62,000 that will show how far apart they are in regards to Commissioner Lujan's question.

City Attorney Brogan stated that Mr. Doughty has indicated and has sort of backed the Mayor into a corner where just the Mayor is agreeing to the numbers. He cautioned that the entire City Commission has to agree to it. Mayor Carroll said that he is saying that if in fact the requirement is to pave the road to the full width at the time is built, then it would seem to him that would be in keeping with the agreement with Cottonwood Heights. He further said that no one else on the Commission may agree with him on that. It is simply his opinion. Mr. Doughty indicated that he understands that the final decision of the administrative body will be the vote at the end of the debate, and the order will be in the minutes. Mr. Doughty said he was just trying to understand the Mayor's answer to Commissioner Lujan's question, and he couldn't. Mayor Carroll said he did not include that number when he said what the difference was, and that is a potential difference. Mayor Carroll had just backed up the \$62,760 from the \$268,000, and as he recalled when they discussed it initially, they were talking about acquiring the right-of-way and not necessarily requiring that it be developed at this time. However, that may be something that needs to be done at this time. Mr. Doughty stated that makes it hard on the developer if they are not going to know what the City is going to do. He said it would seem reasonable to resolve it now, and Mayor Carroll said that may be the best way to go.

Commissioner Cole said if you just subtract the \$204,000 from the \$268,760, there is a difference of \$64,960. He said that he was having a hard time keeping up with some of the discussion. He had no problem with what was being said, he was just having a hard time understanding it completely. He went on to ask if when he subtracts the Marketplace column and the City column, the \$64,760 is the total money difference between the developer and the City. Mayor Carroll said that is not the case, and Commissioner Cole asked for clarification. Mayor Carroll said that the difference is \$180,000. What is shown are the suggested costs to each party to put the project together. The cost for Marketplace would be \$204,000, and the cost for the City would be \$268,000. Mayor Carroll said he sees the difference as \$180,000 because of the still unresolved right-of-way and the additional 195 feet from the end of Marketplace Drive to the railroad tracks coupled with the issue of the signalization.

Mayor Pro-Tem Griggs said that speaking for himself he can support the City paying the \$22,000, and he can support the City paying the \$62,760. However, he is not so sure about the \$71,600

because he does not think it is a parallel to the Herrell agreement. They have not yet really addressed whether the City should pay for the signalization.

Commissioner Cole said that if he understands the situation correctly, the \$71,600 is based on the Cottonwood Heights precedent. Mayor Pro-Tem Griggs said that the Cottonwood Heights subdivision agreement indicates to him that when an arterial is required, the City is willing to pay for additional pavement and additional costs to create an arterial versus a regular street. What Mr. Shyne has offered is that on the part of the arterial that runs west of Marketplace to the railroad tracks, the City will pay for the entire right-of-way. The Commission has to decide whether that is in the best interest of the City.

Mayor Carroll said that then goes back to another issue that has been discussed but not resolved as to whether or not it is still feasible to take Scenic across the railroad tracks. If that still makes sense, then the City needs to resolve the additional dedication of right-of-way from Marketplace Street. If Scenic is going to dead end at Marketplace Drive going west, there is no need to discuss the additional acquisition of right-of-way. Commissioner Cole said that he would think there would be continuous growth, but he suggested that there might be some type of compromise on the \$71,600 as considerable time has been spent on the issue.

Mr. Shyne said he thinks the question is reasonable and suggested getting back to the \$71,600 issue. If an agreement is reached on the signal, then they can go back and do some negotiation on that. Commissioner Ledford suggested that they may just have to vote as they are not accomplishing a thing. He agrees with the \$22,000 and the \$62,760, but as far as the \$71,600, there is an issue of whether or not the City needs it. If the City doesn't need it, they won't pay for it. If the City does need it, there is still the issue of whether or not it is going to be paid for. Secondly, as far as the signalization, he doesn't know that the issue has anything to do with Cottonwood. He wanted to know how this type of situation has been handled in the past such as with Wal-Mart and Home Depot.

Mr. Shyne said that the Commission requested a precedent two meetings ago, and they have provided the Cottonwood precedent as the most appropriate one. In that precedent, the developer and the City shared specific costs, but the developer did not pay for the traffic light. Mr. Shyne pointed out again that the City had the opportunity twice to get the Highway Department to build the signal appropriately, and they passed on both of them so it is the City's fault. Mayor Carroll said that as he understands it, the normal procedure would be to require the dedication of the right-of-way all the way to the railroad track. Mr. Shyne said the normal procedure is for the City to buy the additional right-of-way necessary for City plans that exceed the developer's plans, which is what the Herrell contract is all about, and west of Marketplace is not in his plans though it is a City requirement.

Ms. Few said that she begs to differ with Mr. Shyne as to the normal procedure. She referenced City Ordinance 22-01-110 Subsection C. She explained that the right-of-way is on the Master Plan and by Ordinance the City does not need to pay for any additional right-of-way or for the dedication of that road. Mr. Shyne said that is not at all what it says and that Ms. Few was changing the meaning into something entirely different from what it is stating. Mr. Shyne said that section does not apply at all. Mayor Carroll then read the Subsection, and asked what additional right-of-way the City needs, which Mr. Shyne said is the additional 20 feet between White Sands Boulevard and Marketplace and the entire width between Marketplace and the railroad tracks, which is shown on the Comprehensive Master Plan. Mayor Carroll said then that would say that when it is shown on the Comprehensive Plan the City doesn't pay for it. Mr. Shyne asked Mayor Carroll to show him where it says that. The point is that it doesn't say that in the paragraph. Mayor Carroll said that it would seem they are specifically talking about right-of-way that is not shown on the Comprehensive Plan, and asked if that logic would say that if it is shown on the Comprehensive Plan, the City doesn't have to pay for it. Mr. Shyne said the same logic would also say that all developers are required not only to pay for services that serve their subdivision but for services, roads, and other things for the benefit of the entire community if that happens to be on the Master Plan.

Mayor Carroll said they are talking about the additional 20 feet, and Mr. Shyne said they are talking about the 20 feet, the 195 feet and the extra width of pavement. Commissioner Ledford said he is talking about the 195 feet, and Mayor Carroll said that what Mr. Shyne is saying is that the road is shown on the Comprehensive Plan going all the way to the railroad track. However, since it's not part of what Mr. Shyne is showing his development to be, the City should have to buy it. Mr. Shyne said that is exactly the basis of the Herrell contract, but Mayor Carroll said the City bought the additional but not going east and west. Mr. Shyne said that is because Mr. Herrell himself planned to build the entire Scenic Drive from Florida to White Sands, but he does not plan to build a road to the railroad tracks. The only entity that needs that is the City, which is why the City would pay for it.

Ms. Few said that there are a couple of other issues that should be addressed, which include that Marketplace is being considered under the Ordinance that she just cited. The Herrell subdivision was done under previous Ordinances. Marketplace replat A is being done under the 2000 Comprehensive Plan, and the Herrell subdivision was done under the 1971 Comprehensive Plan. Marketplace is also being done under the new technical standards, which were adopted in 2004. It is the same community and there are similarities, but it is also different legislation with different requirements for the subdivision. Commissioner Ledford asked if West Market Place was on both Comprehensive Plans, which it was, and he wanted to know then why it mattered which year it was. Ms. Few said that the authority changed. There was a provision in the preceding Ordinance for the City to buy additional right-of-way when over-sized lines and over-sized roads were required.

Commissioner Ledford suggested moving to the signalization, and he stated that he is not into compromising to the extent that it sets precedent under which everybody wants to compromise. He would like to have some pattern of precedent that makes sense. Mr. Shyne said in other words Commissioner Ledford doesn't want him to bargain if he might be willing to. Commissioner Ledford said there seem to be many precedents for the signalization. Mr. Shyne said that the City did not pay for lights when they were not arterial streets, such as the K-Mart and Home Depot lights. Mr. Shyne pointed out that the Wal-Mart light really only serves Wal-Mart. Commissioner Ledford asked if since this is an arterial street on Scenic the City is supposed to pay for the light. Mr. Shyne said this is an arterial in the Master Plan. Commissioner Ledford asked if there is something in the Ordinance or policy that says because it is an arterial the City is supposed to pay for the light. Mr. Shyne said there is not, but there are a lot of things that aren't written. They are just trying to come up with something that is philosophically reasonable. Commissioner Ledford said that as it is not written down, the Commission must be extra careful as it will establish a precedent. The staff is saying the City does not pay for the light. Mr. Shyne is saying because it's an arterial street, the City pays for the light. Commissioner Ledford said he doesn't know where all of it comes from.

Mayor Carroll asked if the light at the intersection of 54/70 that goes north through the property is signalized for traffic coming south. Mr. Shyne said it is all there, and he built the acceleration, deceleration and turn lanes on that intersection at his expense. The Highway Department put in the traffic light, which is a four-way light.

Commissioner Ledford asked Ms. Few if there is anything in the Ordinances about traffic lights, but this is a new situation.

Commissioner Cole said that he talked with the State about who should bear the expense of the traffic light, and it was indicated to him that it should be at the expense of the builder. He therefore has a hard time supporting the City picking up that type of expense. Mr. Shyne asked him precisely the wording of the question that Commissioner Cole asked. Commissioner Cole said he explained the location and what was happening to the best of his understanding. He made it as clear as he knew how and asked again several weeks later. It was said that the City should not have to pick up the expense of the traffic light. Based on that input, he doesn't see how he can ask the City to pick up the expense. Mr. Shyne said the key point is that answer was likely based on traffic lights that are installed on New Mexico State highways running through cities to serve a development like a Wal-Mart for which the answer would be absolutely correct. This case, however, is completely different

because this street is shown on the comprehensive Master Plan of the City as one of the arterials, which is completely different. Mr. Shyne cited his experience in working with the Highway Department in which they favor themselves 100%, and he asked that Commissioner Cole reconsider his thinking. Commissioner Cole stated that while he appreciates Mr. Shyne's comments, based on his research, he would not support the City paying for the traffic light.

Mr. Shyne proposed that if they comply with the Herrell contract as a precedent, if the City pays him \$204,000, he will pay for everything including building the traffic light, but the proposal only lasts for the next five minutes.

Mr. Martinez commented that based on what is happening right now across the bypass, at some point the City may need to cross the railroad tracks, and that should be considered.

Commissioner Cole asked if anyone could give him good reasons why Mr. Shyne's proposal should not be considered. Mayor Carroll said that he feels they need to try to come to an agreement. As far as the signalization, in terms of the City missing chances to have the signal done, Mayor Carroll would like to investigate why that happened. If there is some reason the City should absorb some or all of the cost, Mayor Carroll wants some rationale that he can explain to himself why that should happen. The City's practice has been to not pay for traffic signals. If there is some reason Scenic should go through, the signalization has be there at some point. If not, the City is looking at something else. Mr. Shyne pointed out that it would be hard to find the answer to that question.

Commissioner Ledford said that he cannot support a compromise because it's a dollar thing. It has to be accurate, and it has to have a purpose.

Commissioner Moncada said that she has also sat on the Commission for almost 20 years. She remembers some of the issues with the Herrell agreement, but she stressed that the Commission has to think it through completely. A compromise might sound good, but they must consider the end result. She would like to research what was taken into consideration in the Herrell agreement. She expressed that she is sorry Mr. Shyne has to keep on coming back, but the Commission is spending tax dollars and must make sure it is not setting a precedent incorrectly. Commissioner Moncada said that she is not willing to vote on it at this point.

Mr. Shyne said that he can't go on forever, and he wanted to know how soon another special meeting could take place. Commissioner Moncada said she is willing to come back every single night to get it resolved. Mr. Shyne said he is comfortable having another meeting as soon as possible on the issues after providing enough time to conduct the necessary research. Mayor Carroll suggested December 4th as a possible meeting date, and Mr. Shyne said he is available to meet on that date.

Commissioner Ledford asked what the difference is in this traffic light or anything else that the developer is required to pay for. Mr. Shyne said his argument is that the Commission asked for a precedent, and the precedent specifically did not deal with the light. The developer specifically did not pay the light cost, but in this case compounding the precedent are the two historical opportunities to have had the traffic light built by the Highway Department, which would have eliminated all of this discussion.

Mayor Pro-Tem Griggs pointed out that what is being talked about is precedent, and there are other things that the City sees on the horizon where there are other issues involving traffic lights. If that is something that the City says yes to today, they will have to stare those right in the face. If the City pays for this light regardless of the reasons and whether those reasons will be different when the next developer comes to the Commission, the City will wind up paying for lights. What the Commission will have to deal with is how does the Commission tell them no?

Mayor Carroll said they could take a ten-minute break, and people can visit and do whatever they want. Mr. Shyne said that Mayor Pro-Tem Griggs' concern is very important and other people will ask the same thing. He said the first way to start filtering out the majority of the requests for other

lights will be to get out the Comprehensive Traffic Plan to see if the intersection is one of the arterials. If it's not, that is the difference. If it is, the City may have a philosophically correct responsibility to pay for it.

City Attorney Brogan reminded the participants that they are subject to the Open Meetings Act restrictions, and the Item cannot be discussed during the break outside of the open meeting even among two of them because that will run into the rolling quorum problem.

Commissioner Cole said that he thinks the sense of the Commission is that the City will not pay for the traffic light. If that is the case and everything is agreed upon except that, he would like to try to reach a decision. He believes the Commission is not going for picking up the cost of the traffic light. Mayor Pro-Tem Griggs suggested that the City pay the \$22,000, the \$62,760, and half of the construction cost for the acceleration and deceleration lanes but not the signalization for a total of around \$162,760.

Commissioner Ledford asked what the policy is for the acceleration and deceleration lanes, but there is none. Commissioner Cole asked if Mayor Pro-Tem Griggs would be willing to put that into a motion. Ms. Few said that there is a policy in terms of the cost of the acceleration and deceleration lanes and the signal light, which is called a permit from the Department of Transportation for access onto the property from White Sands Boulevard. She asked if Mr. Shyne had applied for a permit, and Mr. Shyne said they had asked about doing a partial application. They can't do a complete application until the items are resolved.

Ms. Few said that the DOT might say that a complete traffic impact analysis is needed by the subdivision for access of any of the properties much less the street onto White Sands Boulevard. Their standards will take precedent over anything that the City would establish unless the City's were more stringent. Mr. Shyne said that has nothing to do with the cost, but Ms. Few said it does have to do with what the standards are and whether acceleration and deceleration lanes are required or signalization. None of this would be necessary if it weren't for the development. Mr. Shyne pointed out that having that philosophy argues against Alamogordo's growth.

Mayor Carroll said that the need is because the connection to Highway 54/70 lines up with Scenic Drive and it shows up in a Comprehensive Plan as going through. If the access to the property were moved 300 feet in either direction, it would all be the developer's responsibility. Mayor Carroll said he is not advocating that the entrance be moved. He is simply using it as an example of why the discussion is taking place. Mr. Shyne pointed out why he feels that to be an irrelevant argument and not in the best interest of the City.

Mayor Carroll said he would like to see a motion to adjourn to December 4th at 3:00 p.m.

City Attorney Brogan pointed out that they cannot recess a special meeting. It will have to be re-noticed and re-convened.

Commissioner Lujan stated that the impression he gets is that this is not going to be approved because there is nothing in writing. He expressed that he hopes there will be some kind of compromise. The Commission says it wants to be business-friendly, and he thinks that is what the Commission should be. Mr. Shyne has a hunger to see this resolved, and the Commission should hunger for it also.

Commissioner Moncada said she does believe there is a hunger on both sides, but she has always promised to deliver the best for the citizens. That is why she wants to see it through completely, and she thinks they need to go ahead with having another meeting on December 4th.

Mr. Shyne said he would go along with Mayor Pro-Tem Griggs' proposal if they would add one-third of the traffic light.

Commissioner Ledford said that he understands what Mr. Shyne is trying to do, but he wants to be specific about a ruling.

Mayor Pro-Tem Griggs made a motion to adjourn at 6:20 p.m. Commissioner Moncada seconded the motion. A vote was taken, and the motion carried by a vote of 6-0-0.

Mayor Carroll directed the City Clerk to call a special meeting on December 4, 2006 at 3:00 p.m. to again consider the above Item.

/s/Donald E. Carroll

Mayor Donald E. Carroll

(SEAL)

ATTEST:

/s/Renee L. Cantin

City Clerk Reneé L. Cantin

(Prepared by Ubiquis Reporting)

Approved at Regular Commission Meeting on December 5th, 2006.