

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
NOVEMBER 21, 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
CITY ATTORNEY WILLIAM BROGAN
CITY CLERK RENEE 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. A roll call was taken, and Commissioner Ed Cole was absent. The invocation was given by Reverend Ron Williams, and the pledge of allegiance was led by Commissioner Chris Lujan.

Mayor Don Carroll extended condolences to the family of Isaiah Scott.

CALL OF THE CONSENT CALENDAR:

ORDINANCES AND RESOLUTIONS:

6. Consider Resolution No. 2006-69 memorializing the City's and the Tularosa Basin Historical Society's responsibilities and ownership of exhibited materials located in the Historical Society Museum.

Recommendation: Approve the resolution.

OTHER BUSINESS:

7. City Commission Regular Meeting Schedule for 2007.

Recommendation: Approve the schedule.

8. Statement regarding the Executive Session of November 7, 2006.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve Items 6, 7 and 8 of the consent calendar. Commissioner Moncada seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

MINUTES:

1. Minutes of November 7, 2006 Regular Meeting.

Recommendation: Approve the minutes.

Commissioner Brockett requested that a change be made on page 6, Item #14. Commissioner Brockett did not ask the Mayor to follow up on the project, but he did request that the Otero Association of Realtors do so.

Commissioner Brockett made a motion to approve the minutes as amended. Seconded by Commissioner Lujan. A vote was taken, and the motion carried by a vote of 6-0-0.

PLANNING ITEMS:

2. Consider a rear yard setback variance for Robert Osborne [Case V-06-0501(A), 2159 Camino del Sol].

Recommendation: Deny any variance to the rear yard setback requirements.

Mayor Carroll explained that during the meeting of September 26, 2006, a request was considered and denied to allow a setback variance that would have been within six feet of the property line. The petitioners had indicated that they had an alternate plan that they wanted considered, which went back through Planning and Zoning. P&Z has recommended a denial of the variance.

Mayor Pro-Tem Griggs said that the way he recalls this Item is that the Commission sent it back to P&Z but was on the verge of approving it last time for the particular distance requested. He went on to say that it looks to him like the Department of Public Safety does not like this arrangement primarily because there is no alley, and that is a standard objection from DPS when there is any type of encroachment into a setback particularly in the rear or side yard when there is no alley. Mayor Pro-Tem Griggs said that he couldn't see how this particular variance would create an insurmountable hazard, and the rear setback is based perhaps on the size of the lot and the house. It would appear to him that there could be a defined distance, which could be different based on whether or not there were alleys instead of one that appears to be somewhat arbitrary without having exact definitional requirements. He doesn't see a reason not to approve the variance.

Commissioner Moncada said that she feels the same way and thinks that in reading some of the notes there is still room for DPS to get through if there is any problem unless Director Trujillo would indicate that is not the case. The notes indicate that there are extra wide gates in order to provide access to the area.

Sam Trujillo, Director of DPS, said that this particular subdivision came before the Commission around April of 2005, and at that time DPS submitted a letter to P&Z and ultimately the Commission recommending that alleys be put in. That is a recommendation that they stand by, and it is required in the City Ordinance, which is why a variance is required to not put alleys in. From a public safety standpoint, they believe that there should be alleys. In April of 2005, the variance was approved resulting in the development of the subdivision without alleys. What is being asked now would be an additional variance that would further reduce the access. His concern and the concern of the staff is that this particular variance does not involve a hardship. If the variance is approved, it then becomes a standard. The Ordinance requires 30 feet, and the formula as applied to this particular residence would require the setback to be 26 feet and 3 inches. If the Commission decides to approve the variance, the rear yard setback would be reduced to 14 feet, and from this point forward it would be difficult to deny anyone who may request a variance. The 14 feet becomes the standard because there is not a significant hardship on this particular resident. Director Trujillo referred to the photographs in the packets that were provided to the Commissioners, and explained that there is no backyard, which would mean that access would have to be over the fence or through the side of the residence. In terms of both police and fire response, the access would be very limited. Director Trujillo stated that they would like to be consistent in terms of what is required for subdivisions and alleys as well as what the Ordinance indicates is required for the rear yard setback.

Mayor Carroll said that this particular lot has a standard setback on one side of 5 feet, but on the other side it is 16 feet, which would seem to allow access to the backyard from the front. In addition, there is still a large area that is not covered or enclosed with either a patio or part of the house, which would allow access. Mayor Carroll said that if this were not the case, they may be much more restricted, but the large side yard setback on one side of the house may allow for the approval of a setback for the rear yard of less than 26 feet.

Director Trujillo stated that if the concern was whether or not they could respond to mitigate a fire or emergency, they can do what they need to do regardless of the size of the setback, but he reiterated that what they are concerned about is the standard. He asked if this is going to be the standard from this point forward.

Mayor Carroll pointed out that variances have typically been granted on a case-by-case basis. He didn't think they had ever taken the approach that any particular variance becomes the standard for everything else. The idea of the variance is to look at cases on an individual basis rather than one decision on a particular request becoming a new standard.

Mayor Pro-Tem Griggs stated that he appreciated Director Trujillo's perspective. That said, as they go through a review of the Zoning Ordinances and look at setbacks, they should perhaps look at how the number is determined. He would love to avoid variances, but they are included in the Ordinance because people have different needs

Director Trujillo said that, first of all, this is not a personal issue for the Department. They are simply trying to make sure that they have realistic views. Obviously, he would like a whole block available if there is an emergency, but he realizes that is unrealistic. They then have to come to an understanding of exactly what is needed. He feels as the Public Safety Director that the Commission should stand by the current formula, which in this case would require approximately 26 feet for the setback in order to be consistent. If the Commission decides to approve the variance, then obviously they move on, but for the next variance request they would stand on the same grounds. They would like the best space realistically available in order to respond in emergency situations. Mayor Pro-Tem Griggs said that he certainly wouldn't expect them to do anything different.

Commissioner Lujan asked if the recommendation of DPS is being given because they want to remain consistent with the standards or because this particular variance would cause a real safety hazard.

Director Trujillo stated that it is both. They want to make sure that they are consistent in their approach to the Ordinance, and the reason for the Ordinance from their perspective is public safety. They want access in the case of an emergency. If there is a fire, they want to be able to get the necessary equipment in. Since the subdivision was already approved without alleys, one of the access points has already been removed. The access to the area is now limited to the side yard, and the pictures show that one side is very small. The other side, as has been mentioned, is considerably larger and would allow equipment to be brought in. Everything else in the property is in a block fence, which means they would have to go over the top of a block fence to perform rescues. Realistically, the service would have to be provided from the front of the residence, and they would prefer many more access points in the case of an emergency.

Mrs. Osborne pointed out that one thing that is being overlooked is that they do have double gates on the side, which would allow another primary entry point. Director Trujillo said that is correct. Commissioner Lujan asked for clarification on where the gates are. Mrs. Osborne explained that if you're facing the property, which is a corner lot, on the right-hand side there is more of a setback to enter the property in addition to double gates on the sidewall.

City Attorney Bill Brogan reminded the Commissioners of the content of Ordinance 29-01-07-0, Variances. Number one, variances are discouraged, and, "The City Commission must find that such action will not be materially detrimental to the public interest, such action will not grant discriminatory benefit to the landowner and/or harm neighboring properties, and such action owing to conditions peculiar to the property or the neighborhood and not the result of actions or the situation of the applicant. A literal enforcement of the Code of Ordinance of the City of Alamogordo, New Mexico and not in conflict with any other adopted code would result in practical difficulties or unnecessary hardship." The three tests that need to be included in the motion if the motion is approved are that the action is not detrimental to the public interest, it is not a discriminatory benefit to the landowner, it

won't harm neighboring properties, and if the Code of Ordinances were to be strictly applied, it would result in an unnecessary hardship to the property owner.

Commissioner Lujan asked if the variance is granted and then something happens in which an individual is harmed or killed because the Fire Department could not get in, would the City be held responsible for passing the variance. Mayor Carroll said that it would likely not be successful because at this point there is no indication that in the event of a fire there would not be adequate access. Mayor Carroll went on to explain that City Attorney Brogan was indicating the conditions that need to be found if the Commission chooses to grant the variance, which are standard requirements for any variance.

Commissioner Ledford pointed out that Director Trujillo didn't say DPS couldn't get in. He said that it would be more difficult. The consideration is not that approval of the variance would preclude getting DPS from having access because they can get in. Commissioner Ledford asked for clarification on why the minimum requirement for the side yard setback is 15 and 5. City Planner Sharon Few clarified that the standard is 15 and 5 for the interior lot line. The side lot requirement is five feet, but the corner lot side is 15 feet.

Commissioner Ledford asked if typically there is a five-foot setback on both sides of an interior house. That would definitely be a problem for DPS, but it would seem that with the large setback on one side of this particular residence, DPS would be able to get in.

Mayor Pro-Tem Griggs made a motion to approve the setback variance for Mr. Osborne for a 12'3" variance with the findings as stipulated by the City Attorney. Commissioner Moncada seconded the motion. A vote was taken, and all voted "aye." The motion carried by a vote of 6-0-0.

3. Consider an off-street parking variance for Donald Ham [Case V-06-0505(A), 1110 and 1120 E. Tenth St.]

Recommendation: Deny the variance.

Mayor Carroll said that he is not totally sure what is being requested. It seems to him that what was there at one time was a storefront, and what is being requested is to remove the storefront and make the property a garage. There is garage door access from the alley currently. Mayor Carroll asked Ms. Few to clarify what is being requested.

Ms. Few explained that there already is a storage garage, and what is being proposed is to move the enclosure of that storage garage towards Tenth Street. They are enclosing the breezeway that is between the buildings, and there have been two previous variances on this property for off-street parking. This is the third one.

Mayor Carroll asked if prior to the modifications that have been made to the front of the building it was basically a storefront. Ms. Few said that it was not, but it was an open breezeway between the two buildings. There was framing of the proposed enclosure prior to the application for a building permit.

Commissioner Moncada asked if the garage that Dr. Ham used to park his car in would no longer be available if this is approved. Ms. Few said that the garage would be expanded. It would allow for his car to be in there in addition to other storage area.

Ms. Few said that they are very concerned, and there has been no response to their comments. There was not a representative to address concerns at the P&Z meeting, and no one was present at this meeting. Commissioner Moncada said that she used to work across the street from the location, and she could see that when the car would pull out of the garage, it was difficult because there was a

distance to go before Tenth Street. If approved, it would be even worse as far as getting in and out. Ms. Few said their concerns are for both traffic and pedestrian safety.

Commissioner Ledford said that when he looked at it, what he understands is that the garage door would open so that someone could pull in from Tenth Street, but then they would have to back out from the garage directly onto Tenth Street. He pointed out construction has already taken place. Ms. Few explained that the construction was begun prior to the application, and when the application came in, the building was put on hold pending resolution of the variance. Commissioner Ledford asked if the sidewalk was modified as part of the construction that is taking place.

Mayor Pro-Tem Griggs said that the sidewalk modification was done years ago. Ms. Few said that she wasn't aware of any current cuts. Commissioner Ledford clarified that previously the owner would back out of the garage and have some distance before entering Tenth Street whereas if the variance were approved he would back out of the garage onto Tenth Street.

Commissioner Brockett pointed out that there were walls on both sides before so it was likely a safety issue before. Ms. Few said that is the case, but that there was 25 feet between the garage door and the sidewalk. Now, the garage door would open, and the sidewalk would be right there. Ms. Few said they have recommended that if it is approved it be a drive through from the alley to Tenth.

Mayor Pro-Tem Griggs asked if the area hadn't already been enclosed. Ms. Few said that was not the case, but they were framing it in. It had previously been a breezeway.

Commissioner Brockett asked for clarification on how much of the sidewalk the owner could see going east and west previously, and Ms. Few said that he didn't have a clear view of the entire sidewalk. There was a safety area, however, where he could back out from the garage, close the door, and then more cautiously back onto the sidewalk. Now, he would immediately back onto the sidewalk.

Commissioner Ledford clarified that what would change would be there would be no clearance. The front of the garage would be on the sidewalk. Ms. Few said that there would be no clearance, it would be right on the sidewalk, and the situation is viewed as a safety issue. There is no justification, and it would be discriminatory to the individual. Commissioner Ledford said that he was surprised that no one appeared before P&Z and no one is at the meeting, as the framing will have to be torn down if it is not approved.

Commissioner Moncada said that she couldn't see how they could approve this unless it was only going to be used for storage. Mayor Carroll said that it sounds to him like they would be taking what is already a somewhat hazardous situation and making it worse.

Commissioner Brockett made a motion to deny the variance. Commissioner Moncada seconded the motion. A vote was taken, and all voted "nay." The motion carried by a vote of 6-0-0.

ORDINANCES AND RESOLUTIONS:

4. Consider Ordinance No. 1283 approving the lease of real property and improvements to the Center of Protective Environment, INC. (C.O.P.E.).

Recommendation: Approve the ordinance for first publication.

City Manager McCourt explained that there have been minor changes in the wording of the Ordinance to make it more definite. COPE would like for the City to enter into a lease with them for property on Mimosa where a structure is being built. They are then proposing to sell an existing structure that they have been using. The money from that will go into paying off the existing structure and clearing the note that is on it. A copy of the agreement that was entered into in August of '04

was in the Commissioners' packets. City Manager McCourt said that they do need to address the issue of some deed restrictions on the property, and he asked City Attorney Brogan to go through those issues.

City Attorney Brogan explained that in order to continue operating COPE had to borrow \$125,000 from the Federal Home Loan Bank of Dallas. The deed restrictions are not a mortgage. It's not a lien against the property, and it is a very unusual document. It runs with the land, and under paragraphs four and five should COPE or the City refinance the project, or should COPE go out of business resulting in the use of the property changing from an income eligible facility as it will be now, the City will be responsible for paying back the \$125,000. City Attorney Brogan said that it is a slight risk to the City though the City would still own the property free and clear of any liens. The City simply could not sell the property or change the use of the property without paying off the \$125,000.

City Manager McCourt further explained that the duration of the agreement is 15 years starting August of '06. City Attorney Brogan said that there is no reduction in the \$125,000 during the 15-year period.

Mayor Carroll explained that the intent is to allow COPE to be able to get into the new facility, and they have been in existence for at least 20 years and probably longer than that. He suspects that COPE or some similar operation, whether it's under the name of COPE or not will unfortunately be needed in the community for many years to come so there would be little or no risk to the City that the piece of property would not be utilized for what it is currently proposed to be used for.

City Manager McCourt said that was staff's opinion also, but they felt it necessary to make sure that the Commission was aware of the deed restriction.

Commissioner Brockett made a motion to approve the first publication of Ordinance No. 1283. Commissioner Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

5. Consider Ordinance No. 1287 deleting the Delayed Repeal of Municipal Infrastructure Gross Receipts Tax Ordinance No. 1209.

Recommendation: Approve the ordinance for first publication.

Mayor Carroll explained that basically this is the economic development gross receipt tax fund, and when it was originally adopted in 2000, there was a sunset clause on it in which it would sunset after five years. The Ordinance was then re-adopted in 2004 and again contained the same five-year sunset clause. It has been found that the funds generated by the Ordinance have successfully been used to attract new businesses to Alamogordo. Unfortunately, due to the success, all of the available funds have been committed, and without either the re-adoption of the Ordinance with the sunset clause or the repeal of the sunset clause, there is no longer the capability under the current Ordinance to generate enough money for incentives to attract additional business. What is being asked for is to take this to the voters for their consideration.

Mr. Ed Carr, Executive Director of Economic Development, then addressed the Commission and stated that in today's economic development environment, Alamogordo would not likely be able to recruit business without incentives. There are too many other communities with incentives, and this is the only community in New Mexico that he is aware of that has passed the taxes and put a sunset on it. Those who have passed it, do not have a sunset. When the tax was first passed, there was a lot of talk about how it would be misused and wouldn't work, and those concerns have been disproved. The money was used for what it was planned for, which is great jobs, and there is a strong case to take to the voters that it works. Approximately 1,200 to 1,400 jobs have been created in the last five years. He would like to see the voters have a chance to vote the tax back in.

Mayor Carroll said that the proposed date for this election would be in March of '07, and it would be a special election. He explained that the special election would be needed because right now there is no money left in the fund. If it were left until the next regular election, there would be a period of time in which the economic development business would simply not move forward. Mr. Carr said that the fund is committed almost entirely, and without re-adoption there will be no incentive to offer. Mayor Carroll explained that if at some future date there is no longer a need for an economic development fund or the fund grows to such a level that the money is not being spent, there is nothing to prohibit a future Commission from repealing the Ordinance and doing away with the tax without an election.

Commissioner Ledford said he has been pretty active in economic development, and he said this has been a very effective tax that has done its job. He also asked what would be done to get the message out to the voters. Mr. Carr said that he would likely do what he has done in the past in terms of essentially taking it to the voters. For historical purposes, when this tax was first put before the voters, it failed. About a year later, he was asked to take it before the voters again. The second time they held public hearings and tried to educate the public on why it was important as it related to the current economic situation. It is essentially a public campaign similar to an election campaign. They also solicit money from the business community, which are some of the primary drivers in trying to stimulate economic development to pay for the effort, and then they just go to the voters. Mr. Carr will likely be on the radio, and he had a conversation with the Secretary of Economic Development and asked if he would be willing to come to Alamogordo to speak regarding why the State feels it is important for communities to pass the tax. He would welcome the chance to do so because he understands from a State perspective how important it is and how more jobs can be brought to New Mexico by leveraging local dollars with his incentives at the State level.

Mayor Pro-Tem Griggs said that there had been discussion previously about doing away with the sunset clause, and one thing that was discussed was whether it would be possible though perhaps not advisable to eliminate the sunset clause by Commission action. City Attorney Brogan stated that the statute on economic development states that any amendment to the Ordinance must be done by election. The Commission cannot do it by its own action. The Commission will have to adopt an Ordinance to have an election and then take it before the people.

Commissioner Brockett made a motion to approve the first publication of Ordinance No. 1287. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

OTHER BUSINESS:

9. Appointments to Boards and Committees.

Mayor Carroll announced that there are vacancies on the following boards:

Mayor's Committee on Aging, Airport Advisory Board, Parks and Recreation Board, Alamogordo Promotion Board, Senior Volunteer Program Advisory Council, Community Development Advisory Committee, & Housing Authority Board.

Mayor Carroll appointed Mr. Karlon Cox to the Planning and Zoning Commission, and asked that anyone interested in serving on one of the boards contact the City Clerk's office.

UNSCHEDULED COMMUNICATIONS:

- A. Commissioner Moncada

Commissioner Moncada wished everyone a very fulfilling Thanksgiving.

- B. City Manager McCourt

A copy of the water report was passed out, and City Manager said that they are intentionally lowering the level of the North Reservoir. They do not anticipate having any difficulty refilling it.

City Manager McCourt will be out of town on Wednesday, Thursday and Friday of next week, as he will be attending the New Mexico City Mangers' Meeting.

C. Mayor Carroll

Mayor Carroll said that after a great length of time they have completed the work on South Florida. The paving was recently re-done, and he said that it certainly does not look like a satisfactory paving job.

City Manager McCourt said that he did receive a copy of an e-mail that Commissioner Cole had received on the subject, and he also saw a copy of an e-mail in which Mayor Carroll had responded. City Manager McCourt sent those to the Community Development Department that inspects and makes sure that jobs are done according to specifications. He has not received any feedback at this time.

Mayor Carroll said it would be one thing if they still have additional work to do, but if they think they are finished, he has some concerns about the final product.

Mayor Carroll also took the opportunity to wish the citizens a Happy Thanksgiving, and he asked that the community keep the troops that are overseas and in harms way in mind and particularly the members of Team Holloman that are away from home during this holiday season and remember them in prayer.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss threatened and pending litigation with Checkpoint Systems Inc. and Christopher protest, and specific personnel matters.

Mayor Pro-Tem Griggs made a motion to adjourn into Executive Session to discuss threatened and pending litigation and specific personnel matters at 8:30 p.m. Commissioner Lujan seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 6-0-0.

/s/Donald E. Carroll

Mayor Donald E. Carroll

(SEAL)

ATTEST:

/s/Renee Cantin

City Clerk René L. Cantin

(Prepared by Ubiquis Reporting)
Approved at Regular Meeting on December 5, 2006