

**CITY OF ALAMOGORDO, NEW MEXICO  
CITY COMMISSION SPECIAL MEETING MINUTES  
3:00 P.M., COMMISSION CHAMBERS  
DECEMBER 4<sup>TH</sup>, 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 AND ROLL CALL**

Mayor Don Carroll called the meeting to order, and Commissioner Steve Brockett was absent. Staff members present included Arthur Alterson, Dean Hunt, Sharon Few and Matt McNeile. Others present included Michael Shyne, Klad Zimmerle, Robert Doughty II and Bobby Martinez.

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 the subdivision; with access permits from NMDOT for any driveway/street cut onto either Scenic Drive or White Sands Boulevard; with the payment of fees in lieu of land dedication; and with a Subdivider's Contract.

Mayor Carroll read the recommendation made by the City Planner and said that the more he looks at it the more confusing it is to him with regards to what has been asked for, what was agreed to and what is now being changed. One thing that he noticed was that the widths of the right-of-ways, construction costs, street widths and arterial upgrades do not appear to agree with the Technical Standards of the City or with the right-of-way that staff had agreed to initially with the developer in terms of the width of Scenic Extension. It looks to him like the City is being asked to buy land that is required to be provided to the City as part of the subdivision.

Mr. Klad Zimmerle responded and explained that the request was originally submitted to Planning and Zoning with 70-foot right-of-ways on Scenic and a 60-foot right-of-way on Market Place. The street sections were to provide a continuous turn lane on Market Place, a northbound lane, and a southbound lane with increased asphalt depth. Mayor Carroll said that if that is the case, they would probably be talking about a minimum of an 80-foot right-of-way, but Mr. Zimmerle said that the 3 lanes would total 36 feet, 12, 12, and 12.

Mayor Carroll went on to say that he thought the rationale was to treat the extension as Scenic Drive going west. Mr. Zimmerle said that he was talking about Market Place, but Mayor Carroll was talking about Scenic. Mr. Zimmerle said that Scenic was a 70-foot right-of-way that was submitted on the plat as having four lanes consisting of turn lanes to the right on the south lanes, turn lanes on the center lane and two lanes narrowing down to one coming in. Mayor Carroll said that his question really has to do with the fact that they are talking about a 70-foot right-of-way, and yet the numbers as presented are asking the City to buy and pave everything more than 36 feet and to buy anything more than 50 feet. Mr. Zimmerle said that is because if it was a residential street and not an arterial, it would be a 36-foot street and a 50-foot right-of-way. Mayor Carroll said that he thought they all agreed it is an arterial, and there is a right-of-way that is required for an arterial street as stated in the Technical Standards for the City. Mr. Michael Shyne said that they went over this in the last meeting. There is a right-of-way in the Technical Standards that is required, but the City has to purchase the additional amount that is not required by the developer. Mayor Carroll and Mr. Shyne disagreed as to

whether the City is to pay for that or not. Mr. Shyne suggested that they get the Ordinance out once again and read it, but Mayor Carroll said that he remembers it.

Mr. Arthur Alterson said that he had the Subdivision Ordinance, and Mr. Shyne asked that he find the paragraph that Mayor Carroll was referring to. Mr. Alterson said that what he has are the Technical Standards for arterials in which minor arterials have a right-of-way width of 60 feet and minor arterials with bike lanes have a right-of-way width of 70 feet, both of which are curb-to-curb. In addition, a major arterial has a 92-foot right-of-way curb-to-curb and a major arterial with bike lanes has a 102-foot right-of-way. Mr. Shyne said that is not what he is asking for, but what he would like is the paragraph in the Subdivision Ordinance that addresses the right-of-way in terms of when it is not shown on the Master Plan. Mayor Carroll said that this is shown on the Master Plan. Mr. Shyne said that this very item was gone over in detail in the last meeting because Ms. Few tried to create a different meaning out of the paragraph, and he asked for the paragraph so that he could read it. Mr. Alterson referred to Section 22-01-060, but Mr. Shyne said that is not the one that they read at the last meeting. He asked that Ms. Few find the paragraph, but Commissioner Lujan said that it may be Section 22-01-110c. Mayor Carroll read, "When additional right-of-way is required by the City for streets or easements and is not shown on the comprehensive plan or designated in its Flood Plane Management Ordinance, the City shall pay the subdivider for the current appraised value of that portion of the land as determined by an independent, certified appraiser." Mayor Carroll said that it is shown on the Comprehensive Plan as an arterial, and Mr. Shyne said that is correct and as such the paragraph does not apply. He went on to say that the paragraph cited addressed one specific situation, which is not applicable to this situation. Mayor Carroll asked what that specific situation is, and Mr. Shyne said that it is referring to a situation in which the street is not shown on the Master Plan. Mayor Carroll said then that what Mr. Shyne is saying is that the City must buy the additional right-of-way when it is shown on the Master Plan, which Mr. Shyne agreed with.

Mr. Alterson suggested that perhaps the relevant section is 22-01-130, Street and Utility Improvements, "Utility and street improvements shall be provided in each new subdivision in accordance with the current Technical Standards and in accordance with the Comprehensive Plan," which to him means that if the Comprehensive Plan shows an arterial, the subdivider is supposed to be building the arterial. Mr. Alterson went on to say that he fails to see anything in the Ordinance that says that the City is obligated to pay the difference between a local street and an arterial for any subdivision.

Mr. Bob Doughty said that what he thinks he hears the Mayor saying is that if the arterial is shown on the Master Plan, there is no cost to the City for taking the easement for the width of the arterial. Mayor Carroll said that is what the Technical Standards call for. Mr. Doughty asked for clarification as to whether Mayor Carroll was saying that should occur without remuneration by the City for taking the citizen's property. Mayor Carroll said that the City would not be taking the citizen's property, but the citizen is proposing to put in a subdivision and that would be the requirement that would go along with it. Mr. Doughty said that he thinks they will be reaching a Constitutional issue very quickly. Mayor Carroll said that Mr. Doughty appeared to be saying that the City is required to pay for whatever the subdivider wants to do, but Mr. Doughty said that he is asking if the City is intending to opine that the road would go through the Market Place subdivision built to the City's Technical Standards as adopted by Ordinance without any compensation to the subdivider for any of the land. Mr. McCourt said that does seem to be what has happened and is allowed under the law whether they are local roads or any other types of improvements that are required in the subdivision. Mr. Doughty asked why then the City had paid Mr. Charlie Herrell the difference between a 36-foot easement and a 70-foot easement when it was directly on the traffic study and the Master Plan. Mr. Alterson said that he has spent the last two weeks wrestling with the matter, and actually this subdivision has been on the table since he started working for the City. In fact, he walked in with it on the table, and he wanted to know how what happened at Cottonwood Heights 18 years ago has anything to do with it. Mr. Doughty said that the City Commission had asked Mr. Shyne to bring them some precedent, and that is what he did. He abided by their request, which in his opinion is very contrary to what the City staff has done at this meeting. Mr. Alterson pointed out that just because the developer believes it to be an analogous situation does not necessarily mean that it is. He went

on to say that he cannot find anything that the City Commission did 18 years ago that binds the hands of the present City Commission in this situation.

Mr. Doughty said once again that the Charlie Herrell contract was brought in because the Commission had asked them to find something that would be a precedent and bring it back to them. Mr. Alterson said that he believes that at the last session on the 20<sup>th</sup> of November there were all sorts of conversations as to why Cottonwood Heights was a much different subdivision than Market Place.

Mayor Carroll said what is being discussed is a 70-foot right-of-way and the difference between that and a 36-foot street, which is a local street. As he recalled, when Cottonwood Heights was developed, it was to be a major street. The addition was to increase it to an arterial, and Mayor Carroll said that he didn't know what the technical standards were or what the Subdivision Ordinance called for when that took place. However, to come back and argue that no matter what width of street needs to go in the developer should only pay for 36-feet because that is a neighborhood street doesn't seem reasonable to him.

Mr. Doughty said that the first final plat of Market Place Subdivision that the Commission approved didn't even have a street. A private street was going to be built. However, that was discussed with much objection, and ultimately there was agreement that a private street could be built on the property with no dedication, which is why no streets were shown. Mr. Shyne said that he is very willing to get out all of the recordings from all of the meetings that have been held to listen to them because it is so convenient to easily forget what has taken place in previous meetings, which has happened over and over in successive meetings. Mr. Shyne said the first meeting addressed the issue very clearly, and he was going to build a private street. Mayor Carroll asked where the private street would be, and Mr. Shyne said that it would be in that location but would be to his desired-width.

Mr. Shyne said it was an emotional issue for him and he got over it, but he had wanted to build a private street because on the northwest corner of the intersection is a small lot, which is not as big as it needs to be commercially. It is small because when the City chose the location of Scenic Drive knowing that it would eventually extend across White Sands Boulevard according to the Master Plan, the City never bothered to contact him so that they could come up with a location that would not be punitive and thereby create an inadequate corner. The City talked to the owners on the east side of White Sands but not the west, and so Mr. Shyne said he was angry and decided he wouldn't dedicate the street. He said he got over it, and that is why they dedicated the street.

Mr. Shyne said that he wanted to address the Mayor's philosophy because what is basically being said is if a subdivider happened to have a property where the water engineer had planned to put a 36-inch sewer line, the subdivider would have to build that sewer line. Mr. Shyne said sewer lines, water lines and street widths are all the same in that when they are designed to serve more than the development, that is when the City steps forward to pay because of past or anticipated future need. Mr. Shyne then suggested that perhaps they ought to start off with the handout that he provided. As he recalls, there were three reasons for this meeting. The Commission had asked staff to find out why a four-way intersection was not installed at the location when it was originally built. The Commission also asked staff to find out who paid for the 1989 intersection and the 1999 intersection. Mayor Carroll said that the best information that the City has indicates that the intersection was not signalized until 1998, and Mr. Shyne said he didn't believe that to be correct. Mayor Carroll said that he had a copy of a letter that the then City Engineer Joe Moore wrote in response to Mayor Carroll's request to Senator Diane Duran who at that point in time was asking for a traffic signal at the Highway and Glacier Drive. In that letter, Mr. Moore indicated that in all likelihood that was not going to happen because the Highway Department was considering signalization at the Highway and Scenic, which would alleviate the need for a traffic light at Glacier. That letter was from November of 1997. Mr. Shyne asked that the Commission go to page E-6 of the package that he had provided them, which was a letter from the City of Alamogordo dated 1988 addressed to the Highway Department requesting a municipal arterial project, North Scenic Drive Extension. In that letter, the signalization was requested in 1988, but Mayor Carroll pointed out that it was not done at that time. Mr. Shyne said that he believes the light was there before 1998, but he thinks unfortunately neither of them have complete information.

Going to page A-1 of the handout, Mr. Shyne referenced the last meeting in which Commissioners Moncada and Ledford said that simply coming up with a number to agree upon is not really going to help at all in the future. They need to come up with reasons, a philosophy, a plan, or a rule that can be used not to just solve this problem but to apply to future situations. Mr. Shyne cited five examples of traffic light and intersection construction cost responsibility on page A-1, and they specifically dealt with historic or future need, which really identified who would pay for what. In the case of North White Sands Boulevard at Glacier Avenue, the traffic light costs were paid for by Home Depot. Glacier Avenue is a short street serving only 40 acres of residential and commercial real estate. It is not shown as an arterial street on the Traffic Master Plan, and there was no historic need. The future need for the traffic light was generated entirely by Home Depot, and Home Depot paid for it. Secondly, the traffic light at Maryland Avenue at First Street was paid for by Wal-Mart. No acceleration or deceleration lanes were installed, and one turn lane was installed. Maryland Avenue runs only nine blocks to the north and is strictly residential creating no need for a traffic signal. Maryland Avenue is not shown on the City's Traffic Master Plan as an arterial street, and there was no historic need. The future need for the traffic light was exclusively to serve the Wal-Mart SuperCenter south of First Street, and for that reason, Wal-Mart paid for the light. Thirdly, with regard to the south intersection of U.S. Highway 54 and Highway 70 the acceleration lane, deceleration lane and turn lanes were pre-approved by the New Mexico Department of Transportation, and the cost of installation was paid for by the developer of the property to the north, Michael Shyne, because the future need for that specific intersection's turn lane, acceleration lane and deceleration lane exclusively benefitted the developer's real estate. The traffic light was installed by the New Mexico Department of Transportation because the historic need for traffic control at that intersection of two arterial thoroughfares with two highways was the predominant need. Service to the developer's property was an incidental need.

Even though the developer's property has never been developed, and Mr. Shyne emphasized this point, all four legs representing the complete four-way intersection of that traffic light system were initially installed by the New Mexico Department of Transportation at their expense. They didn't just put in a three-way street, but they put in a four-way as should have been done. Mayor Carroll asked if that was in anticipation of the Relief Route. Mr. Shyne said that at that time the Relief Route was going through, but if that had been the case, the Highway Department would have paid for the turn lanes, deceleration lanes and acceleration lanes also. Mr. Shyne went on to say that as Mr. Doughty pointed out there is no difference between the Relief Route and the extension of North Scenic Drive. Mr. Shyne said that it may be interesting to explore Mayor Carroll's point of view in that the Highway Department installed it as a four-way intersection, but all Mr. Shyne said he knows is that he owned the property to the north and the Highway Department installed a four-way intersection at their expense. It may be correct that it was installed because the Highway Department anticipated it to be an arterial street and they were going to pay for installing the Relief Route.

Further, Mr. Shyne said that with regard to Panorama Boulevard at South White Sands Boulevard, Panorama Boulevard is an arterial street extending east two miles to Scenic Drive. The acceleration lane, the deceleration lane and the Panorama Boulevard leg of the intersection were installed and paid for by the developer, Motel 6 Subdivision Partnership, which is the owner of the 18 acres at that intersection. The New Mexico Department of Transportation paid for the traffic signal due to the historic need to control traffic on White Sands Boulevard, which is why the Highway Department paid for the signal and the developer paid for the intersection construction. The 18-acre development was incidental, and turn lanes were not necessary because there was no median. The median and turn lanes were subsequently constructed by the Highway Department at the time they installed the traffic signalization system.

Mr. Shyne said that staff has brought up an example in the agenda report in which it says, "When an intersection change was planned and constructed at White Sands Boulevard and Panorama Boulevard, the New Mexico Department of Transportation offered to install a four-way signal if Vision Ford would pay the cost difference. Vision Ford declined, and a three-way signal was installed. Mr. Shyne said that is absolutely appropriate according to the rules of need—the historic and future need

define who pays. If a fourth leg would be installed to serve Vision Ford, then Vision Ford would pay for that as that is all the fourth leg would serve. It would not be part of an arterial street that crossed through Vision Ford, crossed over the railroad tracks and tied into the Relief Route making that example exactly correct and appropriate as far as who paid for it. However, that example is very different from the situation at hand in which the future need to benefit the Highway Department or the City for installing a four-way traffic signal is because of the Master Plan of Scenic Drive that extends West across the railroad tracks to the Relief Route.

The last example that Mr. Shyne cited was the First Street/Canyon Road intersection. The cost of the signal at the intersection was paid for by the City because the City concluded there was historic need for that traffic light to control traffic on First Street at Canyon Road and the future need, which was generated from the Mountain View Middle School justified the need for the signal. Even though the Alamogordo Do-It Center, which is located on that corner might have had some benefit from that light, they were not asked to pay for it.

Mr. Shyne's conclusion was that the developer or the user only pays for signalization or intersection construction when there is no historic need and when the developer creates the predominant future need. Mr. Shyne said that he is creating the immediate future need, but Mr. Shyne cited the second page of the handout as providing information that has not been provided to the Commission so far. Page B-1 was a cost comparison. Scenic Drive extending west is on the City Master Plan. Mr. Shyne pointed out that if he had not come along and said he wanted to extend the street to serve his property and the City said they needed to build out the Relief Route according to the Master Plan, to build Scenic out to the extent that Mr. Shyne is proposing would cost the City \$303,000 for the land, \$112,000 for the signalization system, \$156,000 for acceleration, deceleration and turn lanes, and \$109,552 for building the entire street including curb, gutter, base course and paving for a total of \$681,000. With the current proposal, the City will only be paying \$268,760 because only half of the land will have to be purchased, and the same signal will be installed. The developer will pay for the intersection modification, and the street improvements which are only \$22,000. Mr. Shyne pointed out that the City Commission has worked for years to accumulate funds to build out projects that are on the Master Plans. This will be a significant savings for the City because of the developer introducing the plan.

Mr. Shyne then made reference to page C-1. He asked the Otero County Economic Development Council to use the computerized formula that they have to evaluate the benefit of industry coming to town in terms of the tax benefit to the City for the new portion of the Toyota business moving to Alamogordo. Over ten years with the 19 jobs created there will be \$13,897,000 in salaries being paid. Taxable gross receipts expected in the area will be over \$10 million, and \$1.4 million in property values will be added to the tax rolls. On page C-2 it states that the gross receipts tax to the City of Alamogordo from the added sales tax created by the new Toyota store and its secondary and tertiary benefits are over \$300,000, which exceeds the City's share of the cost of improvements being discussed. Page C-3 gives an example of one 10,000-square-foot new retail store that might be attracted to Market Place, which may result in \$82 million in taxable gross receipts benefit to the entire area over ten years, and on page C-4 it states that over ten years the City of Alamogordo will receive from one single 10,000-square-foot retail store with \$5 million in annual sales and \$2,297,000 in sales tax revenue. Mr. Shyne said that this information should help the Commission grasp how important commercial development is to the City and why it is reasonable to make expenditures today to create development in the future that will benefit the City many times over from a tax benefit perspective as well as benefiting the citizens by creating new jobs.

Commissioner Ledford pointed out that is why it is called a tax because it is created to pay for and deliver services of all kinds not just to benefit economic development in a particular subdivision. Commissioner Ledford pointed out that the formula that Mr. Shyne is referring to is what it takes to qualify for the economic development incentive program as well as maybe to gain state incentives. It is not the City's way of justifying bringing in a business, and it has nothing to do with what is being discussed. Commissioner Ledford said that he appreciated what Mr. Shyne was saying and though it may be correct it is not as far as he knows how they decide how to build a road, where to build a road

or who pays for it. Mr. Shyne said that maybe it should be, and Commissioner Ledford said that his point is the City has taxes to provide services for a lot of things not just for a particular area.

Commissioner Ledford said that the Commission would likely disagree on the signalization, but he does think there is good reason that the City should share in the cost of the signalization. His goal is to try to find a basis for that. The light was already there. There is an arterial road that is going through, but the City wouldn't do anything to the light at this point in time if it weren't for the subdivision going in. The City does, however, need to have safety at the intersection, and it needs to have a four-way light. There is just cause to share in the cost, but the problem is coming up with the criteria by which that might be done. Perhaps it is when there is a light at an intersection already existing on an arterial road that is on the Master Plan that dictates that the City share in the cost. Commissioner Ledford said that right now today he doesn't know that there are a lot of those lights still out there. Commissioner Ledford also said that in terms of Cottonwood, his thought was that what the Commission wanted was a precedent that was relevant to today's regulations and laws. What he is trying to do is find a way to get the issue dealt with and to get out of the meeting before noon the next day without re-reading all of the minutes.

Mr. Doughty said that perhaps he needed to apologize. He cited an armed robbery case that he tried one time in which the clerk lost the record. The Supreme Court knew that he took good enough notes that they could be used as the record to judge it on appeal. The reason that he was shocked that they got down to the issue of not paying Mr. Shyne for any of the land costs is that he wrote down what was agreed on, what was not agreed on and what was at issue. He is certainly not naïve enough to believe that there is any judgment until a motion is made, someone seconds it and it is voted on. That said, he literally thought they were coming to this meeting to talk about signalization because he thought the City had agreed to the \$22,000 and the \$62,700 and was going to let them know whether the City wanted the land and the railroad tracks and that the big issue was the signalization as Commissioner Ledford had said. Mr. Doughty said that if he reacted harshly he was sorry, and he explained why he thought they were coming to the meeting prepared to talk about the traffic lights.

Mayor Carroll said that it is in continuing to look at this that he is beginning to question some of the street widths. He has thought about the traffic light as well in addition to the knowledge that no matter what the Commission does a precedent is being set of some sort, which they need to be mindful of in making sure that what they are doing is not going to come back and bite future Commissions. In this instance, because he cannot think of another one that is out there that has been encountered before and he hasn't given a whole lot of thought to where they might encounter one in the future, he does not disagree that a cost sharing on the redoing of the signalization may be warranted. Having said that, Mayor Carroll still has some potential issues on the City paying to improve additional right-of-way to make sure that the City is not buying something that the developer is already required to provide. Mayor Carroll said that he is not in disagreement and thinks that they can reach an accommodation on the signalization of the intersection.

City Manager McCourt pointed out that in 1988 and 1989 the City did not have a Traffic Plan as it was not adopted until 1998. At the time the Herrell agreement was entered into, there was not a plan for an arterial road, which is where the clause kicks in the Subdivision Code such that if the City requires additional right-of-way, the City would pay for it.

Mr. Zimmerle said that the plan that shows the extension of Scenic to the bypass is from the 1971 Comprehensive Plan, and Mr. Shyne said that was cited on page D-2 of the handout. This may be a definitional issue in that there is a difference between the Comprehensive Plan and the Traffic Study. Mayor Carroll said that the Traffic Plan is part of it, and it is his understanding that what drives the Comprehensive Plan are the results of the Traffic Plan. Ms. Few said that she might have misunderstood the City Manger's question in that there were in the 1971 Master Plan traffic components. The Separate Traffic Study that was adopted in 1998 is an addendum to the current Comprehensive Plan. Mayor Carroll said that in 1971 there was no Scenic Drive going north, and so there would not have been a plan to take it across to a road that didn't exist. Ms. Few said that it was

in there, and Mr. Zimmerle said that it was in the 1971 plan and he could get it if they would give him a few minutes. Mayor Carroll said that was not necessary.

Mayor Pro-Tem Griggs said that one of the things that he has been struggling with is the reason why this, that or the other should be done especially in dealing with the light. Mr. Shyne provided what he thinks would be a reason to have the City pay or the developer pay, and Mayor Pro-Tem Griggs appreciated that as good information. He is not sure, however, that it would be the final type reason to create a definition or set a precedent down the road for who does what. One of the things that he was thinking about several days ago was that the issue that confronts the Commission in terms of the signal itself is that it is located at the intersection of two arterials as shown on the Master Plan or the Comprehensive Plan and now the Traffic Study. A case could be made that when a developer proposes a development that causes a change or creates a light at an intersection of arterials, there could be a cost-sharing benefit to the City as well as the developer. In talking about the width of the streets, if there is a defined Comprehensive Plan that shows the width of the street and the developer knows that the Comprehensive Plan exists and knows that it calls for an arterial street, there is a good argument to be made that the developer knows what he is getting into when the development is pursued. In the event that the City intends to do it first, there is a good argument that the City should pay for the right-of-way. Mayor Pro-Tem Griggs pointed out that Mr. Shyne may disagree with him, but Mr. Shyne knew it was there and has argued about the fact that the arterial called for the fourth leg of the light. Where the Commission needs to get to is a place where the City can say with certainty based on points that this is where the City will share in the cost for lights or what the City will do on arterial streets. Perhaps the Subdivision Ordinance needs to be looked at in terms of whether it was done appropriately in the past. It was Mayor Pro-Tem Griggs' opinion that when the Ordinance was changed to allow for cash in lieu that where it was set up was in the 5% land dedication and at the City's option the cash in lieu could be used. The way the Ordinance is written, it is cash in lieu first and the land dedication is at the developer's option. Mr. Shyne pointed out that he has always agreed to pay it though he has a philosophical argument against it. Mayor Pro-Tem Griggs said that he was looking at it from the reverse in that then the developer could utilize the additional width of the street from a regular street to an arterial street as part of the public land dedication. Because, however, the Ordinance is written differently, he can't use that argument. Perhaps the Commission can meet him with the definition that where two arterials intersect and the developer comes to the City to bring a subdivision in, the City and the Developer will agree to split the cost of the light because it's in the best interest of both parties.

Commissioner Ledford asked whether in terms of the discussion the City agreeing to the \$22,000 and \$62,000 though it wasn't formal is violating the Ordinance. Attorney Brogan asked him to restate the question, and Commissioner Ledford asked whether if the Technical Standards require that the developer provide land the Commissioner can come in and pay for the extra width without violating the Ordinance. Attorney Brogan said that he understands the question but that it may be an oversimplification of the issues. At first blush, the conclusion is correct that it would violate the Ordinance, but he would have to sit down and do some work on it to render a final definitive legal opinion.

Mayor Carroll said that there is a requirement based upon the type of street that it is, and where would the City be if no one had to provide anything wider than an alley and if the City wanted anything different it would have to pay for it? The only option that the City would have would be one standard, and that ought to be that every street is 100 feet wide. There has to be some requirement depending on the type of development that is being done as to what the requirement is for the person developing the street. Mr. Carroll said that some of the right-of-way that Mr. Shyne is proposing that the City buy seems to him to be a requirement for the development that is being proposed because of the street that's going through it.

Mr. Shyne wanted to talk about land and asked how many people have observed land being picked up and moved—that is impossible. He asked who chooses, votes on and approves the location of arterial streets? It is City Commissions after engineering firms do evaluations to provide competent and educated professional information on where arterial streets should be, where water mains should

be and where sewer mains should be. He thinks that the logic being addressed may be flawed because of that. Mr. Shyne said this is all about benefit. How much of the benefit of extending Scenic Drive west to the Relief Route is to the property owner and how much benefits the City? It's very clear that when the Master Plan is built out, Scenic Drive Extension will predominantly benefit the City in moving traffic particularly since there is so much development taking place at Mesa Verde Ranch Road, which Scenic Drive will tie into. He happens to be doing something today that the City might not do for another few years, but in a few years the City would come forward and do it. At that time, the City would pay severely. Mr. Shyne said that the logic isn't if the Master Plan happens to go through your property you pay for it as that serves no one and penalizes the property owner to the benefit of the City. The City has to start looking at who benefits in the long term, which is the deciding factor along with historic and future need.

Mayor Pro-Tem Griggs said that he hopes that when the time comes to extend Fairgrounds Road, that Mr. Shyne will argue on his behalf. He went on to say that the City benefits and Mr. Shyne benefits. There is no question in his mind that Mr. Shyne will benefit in addition to the City. There is an Ordinance that says that the developer has to provide a certain amount of right-of-way though it doesn't particularly address whether the City pays for it. The only information that the Commission has in which something contrary to that has been done was from Cottonwood, which was 20 years ago prior to the adoption of the current Ordinance. If the Ordinance isn't clear, then what needs to be done is an amendment to the Ordinance to make it clear. If that is what needs to be done, they can make changes to the Ordinance, it will be publicized and citizens can weigh in on whether they agree or disagree. The Commission would then decide whether it agrees. Mayor Pro-Tem Griggs said he simply doesn't know whether there is a right answer. While he hears what Mr. Shyne is saying, he also believes that if the issue was in the Comprehensive Plan back in the seventies, there was plenty of time to address the issue. It will likely, however, be an issue that will come up in the future, and he doesn't know how it's handled in neighboring cities for instance. Mr. Shyne said that the philosophy of benefit has existed long before 1971 in cities across America and attempting to draft an Ordinance and get it passed to force major property owners to pay for major expenses that benefit the City is very, very wrong. He said that the Commission needs to start addressing the philosophical foundation of what is being considered because he believes a "them and us" mentality is being created as opposed to a "we" mentality. Mr. Shyne said that as Commissioners Moncada and Ledford had said at the last meeting, the Commission needs to come up with a plan that will work for future items such as this, and it has to be a philosophically correct plan. The components of historic and future need coupled with benefit are what should be used. He asked that the Commission not forget that he will be paying \$204,000, which the proposal clearly states.

Mayor Carroll said that what prompted him to look into the street indication to start with is that the numbers that are shown for streets do not show up in the Technical Standards as street widths. Mr. Shyne said they could make it an 80-foot street, but it will cost the City more money. What they are trying to do is put the four lanes in the smallest reasonable amount of land so that the City doesn't pay more money and still has the four lanes. Mayor Carroll asked if he was saying that the developer only needs to put in as narrow a street as it takes to service two cars, and if the City wants anything more than that, then the City has to reimburse for the additional width of the road. Mr. Shyne said that the minimum street size in the Ordinance is 50 feet, but he then clarified that is the right-of-way and the street is 36 feet of curb and asphalt. Mayor Carroll asked which standard he was looking at, and Mr. Shyne said that it was the minimum residential street. Mr. Shyne then stepped to the map to talk about the property and further explain that the only benefit to Market Place for the extension of Scenic Drive is some benefit to the corner properties, both of which will already have direct access to White Sands. There would also be some benefit to the back land behind 84 Lumber Company, which wouldn't have front access. Market Place Subdivision gets very little benefit from Scenic Drive. It's not as if it will be serving the entire acreage.

Mayor Pro-Tem Griggs said that the technical standards don't match up to the information provided by Mr. Shyne that talks about a 36-foot width of street. The Technical Standards seem to indicate either a 42-foot width or a 28-foot width. Mr. Zimmerle said that as far as the Technical Standards go, they are used as a guideline. Streets are built depending on additional easements that are added

and the way they are designed. He used the example of Parkways. They are 36-foot streets in 50-foot right-of-ways. There are additional ten-foot utility easements added to the right-of-way. It is worked out. Mayor Carroll pointed out that those are residential streets and not commercial, and because heavier traffic can be anticipated, the streets shouldn't be narrowed down. Mr. Shyne said that Mayor Carroll is picturing an industrial development. However, this is a commercial subdivision and almost all of the property will have direct access on to White Sands. Market Place Subdivision is going to provide access for something like the Motor Vehicle Department, which is again on a back piece of property. There might be a plumber back there with a plumbing shop. Market Place Street will not be providing access to K-Mart, or Target, or things like that. Those major businesses will have direct access to White Sands Boulevard.

City Manager McCourt said that he didn't understand the Technical Standards to be discretionary or a guideline. He thought the Subdivision Code said "shall" and not "may."

City Attorney Brogan said that City Manager McCourt was absolutely correct. The code is obviously an Ordinance. It cannot be waived. The Technical Standards were adopted by Resolution in 2004, and they are by implication adopted into the Code. It states in the purpose of the Technical Standards that the Standards shall be the minimum requirements for the design and construction of these improvements." "All of the technical standards and requirements contained in the subdivision regulations are hereby made part of these requirements even though they may not be specifically mentioned and described herein." City Attorney Brogan went on to say that he is not an expert on the Technical Standards, but it looks to him as if this street is on the Master Plan adopted in 2003 as an arterial street. As a major arterial street, the requirements indicate that the overall width for a major arterial street is 110 feet. The roadway width is 92 feet, and then there is an easement width on each side of that, which is 10 feet. Even considering this to be a minor arterial, the width required by the standards is 80 feet with the roadway width being 60 feet and the easements on each side for utilities and that sort of thing 10 feet. City Attorney Brogan said that he thinks Commissioner Ledford is correct in that these requirements cannot be waived because stated in the purposes is that, "It is to provide uniformity in the development of Alamogordo." City Attorney Brogan said that he respects Mr. Shyne's position, but he was aware that this was an arterial street in the Master Plan 30 years ago or 40 years ago and certainly as late as 2003. He went on to say that he does not entirely understand why this is being argued about.

Mr. Doughty asked if Mr. Brogan could explain then why the subdivision was approved the first time without a street. Mr. Brogan said that he couldn't answer that, but that partially it was because Mr. Shyne has substantially amended his application for the subdivision. Mr. Doughty asked what Mr. Brogan was reading from, and it was the City of Alamogordo Technical Standards adopted April 5, 2004. It was adopted parallel to the Subdivision Code and as part of the Subdivision Code in support of the Subdivision Code.

Mr. Shyne said that they don't at all have problems with widening it to 110 feet with 92 feet of paving. It is just that the amount of cost it will add to the City will probably be \$300,000. Mr. Shyne said that it is the City's responsibility to pay for what is above and beyond the needs of the subdivision, and he asked if the City really wanted to do that. Mr. Brogan said that there is no support for that in the Ordinance, and there is no authority for the City to do it. The Technical Standards require that the street be X amount of feet. Mr. Brogan went on to say that if it were designated as a minor arterial street and the City decided that because of increased traffic to the area that the City now needed a major arterial rather than a minor, the City would be expected to pay for the additional land. That is not the intent here. Mr. Doughty asked if Mr. Brogan is saying that the City of Alamogordo gets that strip of land of Mr. Shyne's property, that he has to build the road and the City doesn't have to pay for the property.

Mr. Brogan said that is correct. It is part of the expense of any subdivision. The subdivision has to provide access to the subdivision through the streets, and those are what the Technical Standards set up. Mr. Shyne said that just three sentences before Mr. Brogan had said that if the City needs a wider street they would have to pay for the extra land. Mr. Brogan said that is if the City changed its

plan somewhere along the line and needed more street than initially planned for. Then the City would be expected to pay for the cost of the additional street. That, however, is not what is happening here. Mr. Doughty asked if Mr. Brogan wouldn't expect it to be a bit arbitrary and capricious to require a wider street for the North Scenic Extension through Market Place than what existed across the street. Mr. Brogan said that he wouldn't if the City determines that it needs a wider street and it has been on the Master Plan.

Mayor Carroll said that is not what the City is talking about in terms of requiring a 112-foot right-of-way. The City is talking about a right-of-way that is in keeping with what it would be connecting with. In fact, it's actually proposed on the plat as 10 feet less right-of-way than what exists to the east. The question then becomes whether as part of the development of the subdivision the requirement is to put in a street in accordance with the Technical Standards. What the City is saying is it will allow them to put in something that is not totally in agreement with the Technical Standards because it doesn't make sense. Then it is back to calling it a minor arterial, which is an 80-foot right-of-way, which is what the City is saying was required by the Subdivision Ordinance that the subdivider provide—that street to that standard. The disagreement is coming in terms of Mr. Shyne saying that he will build it to that standard but the City needs to buy all of the additional right-of-way except for the minimum amount that works for him, which is not what the Ordinance requires.

Mr. Shyne said that is not what the Ordinance requires, and it's not what the Ordinance does not require. There is nothing in the Ordinance that specifies either case, which is why Mr. Shyne said they are trying to come up with something that works. City Manager McCourt said that with all due respect the meeting was back to where it was an hour and a half ago when they read from the Subdivision Code that said that the road has to be built based on the development standards. He understands there is some disagreement, but that is what the Ordinance says. Another section that was cited says that if the City requires additional right-of-way then the City has to pay for it and if it's not in the Comprehensive Plan. This is in the Comprehensive Plan.

Mr. Doughty said that there is a famous concept called due process of law, and that can be very simply defined as notice and an opportunity to be heard. He said that had he known at 3:00 today that road widths were going to be discussed, he would have had a brief prepared. However, nothing is being accomplished because staff was given specific instructions about the traffic light and at 2:30 he received the staff report about the traffic light. Mr. Doughty went on to say that if it hasn't been approved in 35 days, it gets a certificate, and it cites law that has been repealed. It makes him wonder what is going on, but no headway is being made because the issues are not being defined. The truth of the matter is they came to talk about signalization. Mr. Carroll said that three Commissioners have spoken on the signalization issue and are in agreement that it should be a cost share.

Mr. Shyne asked that the Commissioners go to page B-2 in the handout, which was a document that was also provided at the last meeting. Mr. Shyne said that they are paying \$204,000 according to the terms of the Cottonwood Heights precedent. The City pays the same amount. There is an equal sharing. He asked that they move on. Mayor Carroll said that again they get back to some of the other issues on the right-of-way in terms of what it is required that the developer provide. If in fact the developer is required to provide it, then he doesn't see how the City can turn around and pay for it. Mayor Carroll said that he thinks there is a way to cost share as far as the signalization, and though it is not a definitive commitment, half of the cost of the upgrade of the signalization seems like it may be reasonable. The signalization part seems to be simpler at this point than what now appear to be right-of-way issues.

Mr. Shyne said the dead horse has been beaten a long time, but he sees nothing in the Ordinance that specifically requires the developer to pay for street improvements above and beyond the requirement of his development, which is the motivating factor for initiating the application with the City. He also sees nothing in the Ordinance that requires that the developer give right-of-way beyond what is required for the development. The need for the extra requirement is placed there by the

Master Plan, which benefits the entire City and all of the citizens. The City pays for the additional amount over and above what the developer would have to do for his development.

Commissioner Ledford asked if the standards say these are the minimum requirements for this type of road, what the standards mean to Mr. Shyne. Mr. Shyne said he doesn't at all doubt the minimum standards, and he is not criticizing them. They state how big the road has to be, which would then be the basis for allocating the cost. In one particular, case a road might have to be 52-feet wide and in another case 72-feet. That then defines how wide the right-of-way and the street paving and curb improvements should be so that then the costs can be established in order to calculate how much the developer would pay and how much the City would pay based on benefit.

Commissioner Ledford said that he thinks he understands what is being said except that historically the City hasn't done that. The reason the City has the standards is that is what they want. The City hasn't gone through road after road and shared cost. When residential streets are put in, the developer pays it. If it meets the minimum standards, that's what they pay for. The standards are to have the developer provide it.

Mr. Shyne said that historically the City has done it, and that is based on the Cottonwood Heights precedent. In 1988 the City Commission recognized that benefit defines how the cost should be allocated. Today, the Commission is trying to say, no, it's not benefit. It's simply location. If you're the poor soul who has the land where we want to build a wide street, then you pay for the whole thing. That is not what the Ordinance says. The Technical Standards define the width of the street for any particular location and the width of a sewer line, and the width of a water line. The sharing of the cost, however, is simply not addressed because it was overlooked. This is an example of how that sharing was addressed to come up with something that is based on benefit.

Commissioner Ledford said that he might be right in that it is not addressed specifically, but he can't imagine that the City has acted according to the Cottonwood precedent everywhere else. Mr. Shyne said that a lot of Scenic Drive further to the south was actually paid for with Highway Department money even though the road went through a private development.

Mayor Carroll said that even in referencing the Cottonwood agreement, which perhaps the Commission needs to go back and read through the minutes as to what happened in that situation, it says in lieu of a 44-foot street on a 60-foot right-of-way ordinarily required. Mayor Carroll pointed out that Mr. Shyne is even proposing less than that.

City Attorney Brogan pointed out that in the 6<sup>th</sup> "Whereas" of the Cottonwood Agreement, it states, "City determines the purchase of the additional street work is in the best interest of the public health." At that time, the City only had a 44-foot street requirement, and they opted to build a wider street on a wider right-of-way. Instead of a 44-foot street on a 60-foot right-of-way, they opted to build a 64-foot street on an 80-foot right-of-way. The City made the decision to build a bigger street than the standards dictated, which is what was being discussed earlier. In addition, part of the consideration in the agreement was a drainage ditch. City Attorney Brogan underscored that Cottonwood was a bargained-for contract, and the Commissioners should not just take it on face value.

Mayor Carroll recessed the meeting at 4:50 p.m., and they then reconvened at 5:02 p.m.

Commissioner Cole suggested based on his notes from the last meeting that as a compromise the City and Mr. Shyne split the cost of signalization 50/50. What he believes he is hearing is that it is unclear what the street width should be. Commissioner Cole suggested that for this case only they come to some kind of decision with splitting the cost of the signalization 50/50 and then agree on the width of the street.

Mr. Shyne said that the full cost of the signalization is \$112,400 so splitting that 50/50 would be \$56,200 each. He went on to say that if they take the \$268,760 and subtract \$56,200 that leaves \$212,560 for the City to pay. If the City will pay that, Mr. Shyne will widen the right-of-way from 70

feet to 80 feet so the City would get another 800-foot by 10-foot strip for no additional cost. Mayor Carroll said that he didn't know what the size of the right-of-way was to start with, but he thought it was 80 feet. Mr. Zimmerle said that it was platted as a 70-foot right-of-way working with engineering. They had then gone up to an 80-foot, but all of that was thrown out the window when they came back with the precedent from Cottonwood and they went back to residential streets. Mayor Carroll said that it was his understanding that they started at 80 and compromised to 70. He said he still has problems with the right-of-way and who buys what, but he doesn't have a problem with splitting the signalization though he would be more comfortable since there is no approved plan at this time to state that it will be 50% of the cost of the signalization and not some number that was based on a bid that was an estimate to start with.

Commissioner Ledford pointed out that they didn't know for sure if the City was going to buy the land west of Market, which may bypass that as an issue. He said that he appreciates what Commissioner Cole is doing, and he may have done it 30 minutes ago. However, City Attorney Brogan has advised against it as being not according to the Ordinance. Commissioner Ledford said that the compromise is paying 50/50 for the signalization and then reiterated that it would be specifically for this situation and would not be a policy of paying for signalization under any other circumstances.

Commissioner Ledford asked if Commissioner Cole would agree after seeing Mr. Shyne's math that he would pay for the extra construction costs, the additional right-of-way and the west side. Commissioner Cole said that it is not the exact figures, but he does agree with the City paying for those things as specified. City Attorney Brogan said that he has heard the term that the City is going to "settle" this dispute, and the City has no obligation to settle anything here. This is not a disputed claim or any sort of injury situation. The City is not settling anything. Commissioner Cole said that he was simply trying to reach an agreement whereby both parties can go forward.

City Attorney Brogan explained that in order for the City to expend public funds, it must buy a good or service or settle a disputed claim. In order for Commissioner Cole's motion to work, the City will have to decide and define what goods, services, or claim is being settled. In terms of the signalization device where the City would be buying an additional upgraded signalization system, there is no difficulty, which is what Mayor Carroll said is happening. Commissioner Ledford reiterated that Commissioner Cole's suggestion was very specific in that what the City is purchasing can be defined. However, if the City cannot legally do that because it should be given to the City anyway that would be another situation. Buying additional right-of-way is very clear, but if the Ordinance says the City can't do that because the developer has to give it to the City, then Commissioner Ledford could see what City Attorney Brogan was saying. City Attorney Brogan said that is the way he read the Ordinance, and the Technical Standards.

Commissioner Ledford asked if they could act on Commissioner Cole's motion legally. City Attorney Brogan said he would be pretty hard-pressed to do that. Mr. Shyne stated that that is not accurate, and Mayor Carroll stated that at some point the signalization would be a part of the approval of whatever the City agreed to on the final plat. It would be approval of the final plat with upgrade of the signalization with the City paying half or reimbursing for the cost. Mr. Shyne said that he is ready to put the signal in, but he simply disagrees with City Attorney Brogan's interpretation of the Ordinance. He then stated that there is nothing in the Ordinance that says the developer has to pay for oversized improvements that benefit the City and not the development. What that actually is doing is stepping across the line into Eminent Domain—taking without compensation. He asked if they wanted to go there and said that is where City Attorney Brogan was leading them. Mr. Shyne went on to say that he was very willing to bring an Eminent Domain expert in to address the issue, but he believes it will cause the City to look at a number of things it is doing as perhaps being illegal.

Commissioner Ledford said that it is not just the City taking property, but it is part of the requirements for the subdivision. Mr. Shyne said he would find out when the Eminent Domain attorney can come from Albuquerque and they would start from scratch and define to the City what the law is. He said that he has gone through this once before with the City, and he will do it again, but takings without compensation by governments are not a popular thing at the moment.

**Commissioner Cole made a motion to approve that the City pay \$212,560, which includes \$56,200 being half of the anticipated signalization costs to be adjusted, and purchase the land all the way to the railroad tracks, and the subdivision plat will be redone to include the 80-foot right-of-way. There was no second.**

City Attorney Brogan stated that this is not a taking by the City but is part of the requirement for Mr. Shyne's subdivision. The City is not condemning the property, and it doesn't go anywhere near a taking to fall within the definition of Eminent Domain. In order for Mr. Shyne to build a subdivision, he has to provide access.

Commissioner Lujan asked what part of the motion there is a problem with, and Mayor Carroll said that he is having a problem in terms of what the City can require the subdivider to provide as part of the subdivision and what the City may be asking over and above what it can legally require him to provide. Answers to those issues cannot be arrived at during this meeting as there are differences of opinion as to what the Technical Standards mean or don't mean and whether in the long run anything over and above a minimum street width has to be paid for by the City. Commissioner Ledford asked if the Technical Standards are qualified as being based on what the subdivider proposes. Mayor Carroll said the Technical Standards say that is the minimum for the street that has been defined in the Ordinance, but it is not based on what the developer wants. Commissioner Ledford asked where Mr. Shyne was getting that from, and Mr. Shyne said that what he was getting at was the Ordinance also does not say that the developer pays for it. Mr. Shyne said that they need to come up with a plan that applies to all examples, which has to do with past need, future need and benefit.

Mr. Zimmerle said that the width of the street and what is determined to be the arterial is based on the traffic count, and right now Scenic going west of White Sands to the railroad has minimal traffic. It's not going to require an arterial street section. The only time that it's going to be required is when it goes over the railroad. Commissioner Ledford said that he could probably deal with the conditions of approval of the subdivision, but he doesn't know how he can do it if the attorney is saying he can't.

Mayor Pro-Tem Griggs suggested that they talk about it in a little bit different way as one of the issues is the right-of-way west of Market Place. More than likely, that is not going to be extended in the immediate future. Maybe with that they can differentiate a purchase of the right-of-way because the City wants the road to go through at some point. Mr. Shyne doesn't want to take it through, but the City may be able to differentiate in this case and buy the right-of-way west of Market Place, the cost of which is \$71,600. It has already been discussed as far as splitting the cost of the traffic light, which is \$52,200. That comes to \$127,800, and if the City splits the decel lanes, the total for the City would be up to \$205,800. He doesn't know how the Commission can go against the legal advice as far as the other issues. Mayor Carroll said that he is not sure about splitting the cost for the acceleration/deceleration lanes, but Mayor Pro-Tem Griggs said that could be justified based on the benefit to the public from a safety perspective. It also benefits Mr. Shyne's subdivision but the decel lane would be necessary and benefit the public once the traffic picks up from a use perspective and a safety perspective. Commissioner Ledford said he is okay with that except that would be an argument that would be made every time something comes up. It can be limited by definition in that it is defined on the Comprehensive Plan.

Mr. Shyne asked if they were saying that the City would pay for one-half of the actual cost of the traffic light update, one-half of the actual cost of the intersection improvement and \$71,600 for the 80-foot right-of-way west of Market Place with the total subject to adjustments based on actual costs being \$205,800. Mayor Pro-Tem Griggs said that the way he sees it, it would be up to Mr. Shyne to do the arterial upgrades.

City Attorney Brogan suggested that because the City has not done anything to verify the numbers they not agree to pay one-half of the actual costs. Mr. Shyne said he is comfortable with limiting it to one-half of the actual cost limited to a maximum of the amounts shown on the bid plus sales tax. Mayor Carroll asked if the Highway Department is going to require accel and decel lanes, and Mr.

Zimmerle said that it is going to be required by the State. The total for the City would be roughly \$220,000 including tax, and Commissioner Ledford suggested that the motion include that the intersection is being upgraded for safety issues at an intersection that crosses two arterial roads as shown on the Master Plan.

Mayor Pro-Tem Griggs asked City Attorney Brogan for advice to be sure that there were no issues with what is being discussed. With the purchase of the additional right-of-way beyond Market Place, City Attorney Brogan said he would have to struggle with it a little bit, but in the long-run if the City opted to buy the right-of-way, it could likely be justified. He has less difficulty with paying for part of the signalization device and paying for part of the accel/decel as a safety issue under the police power.

Mayor Carroll said that he is not totally comfortable with trying to put all of this in the form of a motion and getting it done at this meeting as he is still not comfortable on some of the right-of-way issues, but if that is the direction that the Commission wants to go something can be put together that will reflect what is being said. Mr. Shyne said it would be defined verbally and voted on, and if the majority vote approved it, then the attorneys could work to make sure that it is clear in writing for an agreement.

Mayor Carroll restated that he is not comfortable voting to approve it at this meeting. Mayor Pro-Tem Griggs said that one of the concerns he has in looking at a variety of things on this particular subdivision is what impact a decision that is made on this might have on other issues with other subdivisions. Some things are clearly timing-type issues. Mr. Shyne has come to the City with a subdivision, and he needs to adhere to the City requirements because he came first. Had the City come to Mr. Shyne like his numbers present and said it wanted the right-of-way, the same thing can be said about the right-of-way to the west. If the City wants it, the City needs to pay for it. Mr. Shyne said once the land is developed and the building is on it, the cost to the City would be staggering to purchase the right-of-way at that time.

Mr. McCourt said that his question comes back to what they heard earlier in the development code and whether the right-of-way can be purchased without an appraisal. Mr. Brogan said the answer to that was simple—no, the City cannot. Mr. Shyne explained how he arrived at the purchase price based on front property and back property land value. Mayor Carroll said that he didn't think having an appraisal done would preclude the City from paying for the property based on what is being discussed. Mr. Shyne said that he thinks what they are doing is throwing out one piece of property that would appraise for more and keeping the one that would hopefully appraise for less, which he feels is being done arbitrarily and is a bit unfair. The actual proposal does not pay for the 200 x 600 area of property. Mayor Carroll clarified that the City can get an appraisal on a square foot basis for the whole parcel of which the City is buying X number of square feet. Mr. McCourt said that he resents being told he is not supposed to do his job and advise the Commission when there is a legal requirement.

Mr. Brogan said they could ask for the appraisal on a square foot basis for the whole parcel, but City Attorney Brogan advised that the Commission listen to what the appraiser might tell them with regard to the professional guidelines and limitations. Mr. Shyne said he is assuming that the City will pay for the appraisal. If the City wants it, the City can pay for it. City Attorney Brogan reiterated that the City has no choice. The City cannot buy real estate without an appraisal. Mr. Shyne said that is correct, and the City also has no choice but to pay for it.

Commissioner Cole said that it just seems like to him that as they're trying to reach an agreement, more and more things keep bubbling to the top whether they are necessary or not.

Mayor Carroll said that this is a meeting where action can be taken, and a motion to do anything is always in order.

**Mayor Pro-Tem Griggs made a motion to approve that the City and Mr. Shyne share 50/50 in the cost of the traffic signal at the intersection of North Scenic and Highway 5470 with the city**

paying no more than \$56,200 plus GRT, that the city share the cost of intersection improvements at that same intersection up to \$78,000 plus GRT, that the City purchase the right-of-way west of Market Place at the appraised value limited to no more than \$71,600 and that the appraisal addresses the square foot cost of the larger parcel. Commissioner Cole seconded the motion.

City Attorney Brogan pointed out that what the Mayor is asking is that through this motion conditions will be attached to the approval of Mr. Shyne's request for approval of his subdivision. Mr. McCourt thought that they were trying to hammer this down after which time the attorneys would finish putting it in and at a future date the final plat would be approved.

Commissioner Ledford pointed out that the reason for negotiating on the cost of the traffic light is it is an upgrade to a current light at the intersection of two arterial roadways as shown on the City's Comprehensive Plan taking into consideration safety concerns. This same principle applies to the accel and decel lanes.

Mayor Carroll asked what the City would be getting in the way of a road in return for the stated conditions. Mr. Zimmerle clarified that Scenic Drive would be an 80-foot right-of-way with 5-foot sidewalks built by the lot developers, mountable curbs, handicap ramps, four lanes at 12-feet each for a total of 48 feet, and 4 inches of asphalt concrete. City Manager McCourt asked if they are making certain that there is an adequate turning radius for a semi to get in and out, and that is the case. Mayor Pro-Tem Griggs asked for clarification on the width of the mouth of the road, and Mr. Zimmerle clarified that there are two accel lanes and two decel lanes. The intersection improvement constitutes a decel turning lane that will come north of White Sands and turn west on to Scenic. There will also be a decel lane coming in from the north in the southbound lanes that will turn and go off west on Scenic. Accel lanes will take off from Scenic turning south, and there will be a rounded nose where one can cross the intersection and accelerate going north in the northbound lanes. They will match the width of Scenic immediately across the street.

Mr. Dean Hunt said that it was not his intention to include that in the cost of the accel/decel lanes. Mayor Pro-Tem Griggs said that they need to be clear on that because as the motion deals with intersection improvements, it needs to be defined whether that is part of the intersection improvement or not. The land cost is capped at \$71,600 no matter what the cost. Mayor Pro-Tem Griggs said that he believes they need to deal with just buying the portion west of Market Place even if the whole piece is appraised for value purposes because if the entire right-of-way is purchased from the highway, Mr. Shyne is putting in a road for his benefit and the City is buying the right-of-way for him. Mr. Shyne said it is for both because of the Master Plan. Mayor Pro-Tem Griggs went on to say that he can differentiate buying the westerly part as opposed to the easterly part.

Mr. Doughty said as he understands it the appraiser will appraise the land from White Sands Boulevard to the railroad track to get a per square foot land cost, which will be applied to the strip from Market Place Street to the railroad tracks. Mayor Carroll asked City Attorney Brogan if by doing this the City is in fact getting an arterial street with an 80-foot right-of-way. It is not a matter of discussion that the City is buying additional right-of-way. Mr. Brogan said that is correct, and it is his understanding of the motion. It is also his understanding of the motion that the City is buying in effect just the portion from the westerly edge of Market Place to the railroad track, which is what Mr. Shyne has said is not of any benefit to his subdivision.

Commissioner Lujan asked where Mesa Verde Ranch Road comes down to the bypass and in between there and where the City is buying the easement to the railroad tracks, who owns the land. He asked if by making this purchase the City is committing to go out to the bypass. Mayor Carroll said they are not saying they will do it, but at this point in time the City is acquiring land that would allow the City to do that at some time in the future. It is a totally different deal once the road goes over the railroad track and there is another landowner.

Commissioner Lujan asked how long it would take to know whether the City would take the road over the railroad tracks. Commissioner Ledford asked if the Comprehensive Plan means that is the City's

intent for at some time in the near future. Commissioner Lujan pointed out that they said before in the first meeting that it is still on the Master Plan but that is not really the City's intent. Commissioner Ledford said if the City doesn't want it to be their intention in the future, it can be changed. Mayor Carroll said in reality what the City would be doing is buying a 14,000 square foot lot at the end of a road. Commissioner Lujan said if the City eventually decided not to take the road there or it can't because of the other property owner, then the City would be agreeing tonight that it is the City's intent to go over.

Mr. Shyne encouraged the City to at some point sit down with the property owner and talk about acquiring the rest of the right-of-way so that the road can be taken over the tracks and it doesn't get built on. Ms. Few said that if for some reason the road were taken over the tracks, the City might not want to go all the way to the Relief Route. There is a road easement that parallels the west side of the tracks that goes north/south under the railroad tracks and back down to Mesa Verde Ranch Road, which shows as Rainbow Road on the City's map. There would be access to the Relief Route even if it were not taken directly to the West.

City Attorney Brogan pointed out that they don't have a final plat yet. It will have to be modified to widen the street, but he believes if it is the Commission's pleasure to adopt the motion, it could be adopted subject to presentation of the final plat. Mayor Pro-Tem Griggs said the conditions would have to be agreed to for the City to agree to approve the final plat. Mr. Zimmerle said that all that has to be done is to add the 10 feet of right-of-way on the plat. City Attorney Brogan said they would still have to get a permit from NMDOT.

Commissioner Lujan asked if anything illegal was being done in the motion, and City Attorney Brogan said there is not and that he would reword the motion with Mr. Doughty to make sure that it applies only to this particular situation.

Mayor Carroll asked if there is going to be a turnaround, and Mr. Zimmerle explained that there is a turnaround at the far end of Marketplace, which has been worked out with staff.

Mayor Carroll asked if this is in fact going to be for the approval of the final plat, and City Attorney Brogan said they cannot do that yet as there is no final plat. Mayor Carroll said the reason he asked is there are more conditions on the approval of the final plat than were stated in the motion. City Attorney Brogan said that it is his recommendation to not at this time approve the final plat but to wait until it is before them. Mr. McCourt said that there is a motion to set up some conditions that the Commission would be then directing staff to put into final form to bring forward at the time of final plat approval.

Mayor Carroll said that he still has some concerns, but he can see some benefit to the City that he didn't see earlier. The approval of the motion would be to set up conditions that would be added to the other conditions for approval of the final plat.

**A vote was taken on the motion, and all voted "aye." The motion carried by a vote of 6-0-0.**

**Commissioner Moncada made a motion to adjourn the meeting at 6:24 p.m. Seconded by Commissioner Cole. A vote was taken and all voted "aye." The motion carried by a vote of 6-0-0.**

*/s/Donald E. Carroll*

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Mayor Donald E. Carroll

(SEAL)

ATTEST:

*/s/Renee Cantin*

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City Clerk Reneé L. Cantin, CMC

(Prepared by Ubiquis Reporting)

Approved at the Regular meeting on December 19, 2006.