

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
DECEMBER 19, 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 7:35 p.m., and all Commissioners were present. Pastor Richard Hicks gave the Invocation, and City Manager Pat McCourt led the Pledge of Allegiance.

PRESENTATIONS:

1. Presentation by the Project Management Team of the Alamogordo Regional Water Supply Project regarding the Environmental Impact Statement.

This Item was skipped initially as the Project Management Team was delayed due to poor weather conditions.

Peter Castiglia with SWCA Environmental Consultants made a presentation on behalf of the United States Bureau of Reclamation and the Bureau of Land Management.

As a background, he provided information regarding the roles of the agencies, some of the tasks that have been completed, a description of the project and alternatives and some of the remaining tasks in addition to the schedule that is being worked under currently.

The federal environmental process that they are following is the National Environmental Policy Act of 1969 in which it is required that federal agencies consider every significant aspect of the environmental impact of a proposed action. In addition they are required to inform the public that they have considered the environmental consequences, and in the end the decision needs to be made based on an analysis of the environment and some of the socioeconomic effects. In addition, there are other environmental laws that are followed throughout the process.

Mr. Castiglia outlined what kinds of things require that an agency follow NEPA, and it is required for the Alamogordo project because the City is an applicant for use of land managed by the Bureau of Land Management and has also requested partial funding of the project from the United States Bureau of Reclamation. The actions that the agency would be taking would be whether to grant the City the right-of-way permit, which is on BLM land so it would be BLM's action. Reclamations would be whether to partially fund the project. The Environmental Impact Statement is the document that fulfills the needs for what the Agency has to go through by covering the decisions that the agencies are making and informing the public throughout the process and giving them an opportunity to comment on the documents that are being produced.

There are many other agencies that are being coordinated with for a variety of reasons including Otero County, New Mexico Office of the State Engineer, Fish and Wildlife, the State Historic Preservation Officer, various tribes and pueblos and others. Cooperating agencies have signed agreements in order to have a seat at the table in terms of coming to project team meetings and commenting on administrative drafts.

Mr. Castiglia explained what they have done so far including holding the public scoping meetings in 2004, compiling the public scoping report, providing some of the foundation for the Environmental Impact Statement, working through a lot of the engineering, conducting and completing the required biological assessment, reviewing the existing information that the City had developed over decades in terms of the water project, completing the cultural resources survey, reporting and developing alternatives as well as finalizing those alternatives with agencies, developing the first three chapters of a four-chapter EIS, providing the drafts to the agencies and City for review.

The purpose of the City's proposed project is to provide a sustainable, affordable drinking water resource in a timely manner reducing the dependence on drought-vulnerable surface water resources using ground water from the Tularosa Aquifer. He also showed a map of the ten wells and the proposed reverse osmosis facility with the delivery pipeline. An important point in the project was the public scoping, and there were over 200 attending public meetings with over 500 comments on the project. Most of the concerns were impacts on existing water resources. These things required that the EIS consider alternative locations for the proposed well field and discuss the concept of purchasing and leasing existing water rights as opposed to the well field and reverse osmosis plant. There was also the consideration of transferring the City's water rights that are not being put to beneficial use at the moment.

Commissioner Ledford asked what the public input had to do with the environmental impact, and Mr. Castiglia explained that they are required to assess the environmental impact of the agencies' action in terms of whether Reclamation should fund the project. Mayor Pro-Tem Griggs asked if it is trying to define whether there may be better ways to spend the federal dollar not necessarily dealing with this project. Mr. Castiglia said that is correct. It is the socioeconomic and environmental affect in terms of how the federal funding could be issued.

Mike Landis from the Bureau of Reclamation explained that the NEPA process is supposed to be a decision-making process of the public and the government working together based on science and not emotion.

Mr. Castiglia then continued saying that if it is technically, financially and legally feasible or if it decreases the impact on resources, the project is kept for a detailed analysis. If the purpose is to bring water to the City and the plan meets the above considerations, the NEPA process goes forward. A basin-wide analysis was done regarding the location of the well fields, and Mr. Castiglia showed maps once again showing alternatives that had been considered in terms of locating the well fields. They ended with alternatives that they would consider in the EIS. The first is the no action alternative, the Snake Tank Road well field with the reverse osmosis facility, which is the proposed action by the City, another alternative with the Snake Tank Road well field, the reverse osmosis facility and some of the City's existing water rights transferred to the Snake Tank well field and other water rights purchased and leased by the City at that location, an alternative that involved just purchasing and leasing fresh water rights within the Tularosa Basin, and the well field and reverse osmosis plant and a purchasing lease with no transfer.

Those are considered because with certain alternatives there is potential to reduce the overall impact on the basis, reduce the impact of a given alternative, and the purchase of fresh water rights from willing and able sellers might help to meet the water supply goal. At this point the City has a water right from the New Mexico Office of the State Engineer for 3,000 acre feet a year up to the year 2040. The demand would have to be met in other ways including the transfer of the purchasing lease, which would still require a facility to treat the brackish water. Alternative four would be the purchase and lease of fresh water rights from willing and able sellers identified through an open bid and would not require a plant. Mayor Pro-Tem Griggs said that actually in a lot of those instances the water would require some sort of desalination. Mayor Carroll said there is not that much fresh water to buy, and Mr. Castiglia said that the EIS would reveal considerations such as those leading to the final selection of the most viable and feasible alternative.

The next task is to get the draft EIS completed of which currently three of the four chapters are done though there are some new numbers that have to be incorporated. Once the draft is completed, it goes to public review for comment. The comment is addressed, and the document is finalized.

As far as the timeline, April of 2007 is predicted for completion of the draft EIS after which in May there would be agency and public comment. The final EIS is estimated for August, and the record of decision from the agencies at that point would be in December of 2007. Mayor Carroll commented that it will have taken almost four years to do an Environmental Impact Statement that should have been done in 30 days. He understands that it is the system, but they think the situation needs immediate action. If there was a real drought and they had no other source of water, they would all die of thirst waiting for the paperwork to get done. Mr. Castiglia said they know there is opposition now, and so they want to do a very good job of considering all of the comments and doing a sound technical analysis of what works and what doesn't.

Mayor Pro-Tem Griggs said he appreciates Mr. Castiglia coming to give the update because it is certainly a shoot the messenger type of deal. Last year Alamogordo was in pretty dire straits before the rains, and Alamogordo could be in the same situation next summer. There are thousands of people dependent on the City to provide them water, and that is why it is so important to push this ahead and get it done. Four years is a ridiculously long time. In protecting the very few, everybody else suffers. There were some people that gave comments that were just silly, and because of that tails were chased on a lot of it. Mayor Pro-Tem Griggs said they would certainly appreciate Mr. Castiglia moving it along as fast as he possibly could.

Mr. Castilla said that he had brought with him a number of documents that the City had produced for the water rights hearing process. He has reviewed a lot of them, picked out the ones the agencies need to be aware of, made recommendations on how they should move on that, but he needs approval from the Bureau of Land Management and the Bureau of Reclamation to make those decisions and move forward. It is a project management team where having both agencies in agreement at the same place on a constant monthly basis is important to get to the milestones. The adoption of the 40-Year Plan helps to move them through the process, and the agencies will have some decisions to make because of that action. Commissioner Brockett said he was convinced that some of the public comment was offered because they wanted to sell the City water.

Mike Landis commented that it is not really fair that Mr. Castiglia take the hits for the delay. The City and SWCA have not been the problem. The problems have been in the agencies. The NEPA Coordinator tried to make it to the meeting but was unable to. Mr. Landis said the federal employees should be there to explain, and he is thoroughly ashamed that it takes this long. The train is going down the tracks though.

Commissioner Ledford asked if it is safe to say that the process thus far is favorable and that in December of 2007 they won't be told to stop. He wanted to know if there have been warning signs along the way. Mr. Castiglia said that public comment will reveal whatever warning there is, and the job at this point is to address the current scoping issues so that things get resolved before getting to that point. If the public comment raises something that hasn't been considered or comments on something that might need to be changed that would have to be addressed. It would not necessarily destroy the structure of the alternatives of the analysis that have been completed. Mayor Carroll asked at what point a comment warrants investigation such as for instance buying water rights off the Rio Grande and piping water to Alamogordo. Mr. Castiglia said they had been able to use a lot of existing information with regard to less than feasible suggestions. The challenges that they faced were relocating the well field and purchasing and leasing water rights within the basin.

Commissioner Ledford said they were hoping for some pain relief because they have to answer to the people. He asked again if it is favorable from Mr. Castiglia's perspective. He said he is eager to come before the Commission with a plan they can be proud of. He said it is favorable to him now, but he had been disappointed in the past. He feels like concerns have been addressed, and so in

taking the time to do that they hopefully have minimized the amount of comment they get at that point.

Mayor Pro-Tem Griggs asked what would happen if they moved ahead as to whether it would jeopardize the federal funding. Another consideration is that it is federal land so that stops them as well.

Mayor Carroll said they appreciate the update, and he knows that Mr. Castiglia is just doing his best to get the EIS completed to where it will withstand scrutiny. It is the agencies that have misread and misinterpreted what the environmental impact thing was all about to start with and have taken it far outside of the scope of what it was intended for.

Commissioner Ledford said he didn't realize that what they were doing was a feasibility study. Mr. Castiglia said if the City had another action that would require federal funding related to this project, they could tier off this document and not have to repeat the process.

2. Status report regarding zoning map and zoning ordinance.

Arthur Alterson, Community Development Director, gave a presentation on the status of the zoning map and zoning ordinances. He showed a draft of the current Alamogordo zoning map, and staff is working very hard to finish proofing it. Their hope is to put an atlas-like map on the web site that will allow someone to look up a particular piece of property to confirm the zoning.

The City also is working with members of his staff to update the web site, and an RFP has been issued, which will result in a contractor being secured to update and maintain the City's web site. The main task for the web master initially will be to make the web site more attractive so that it will be more user friendly as well as a better marketing tool. That will hopefully be followed with an interactive service tracking system. They will then move on to other improvements including interactive mapping functions, which will include the zoning map. He invited everyone to a land use town hall meeting where they will be discussing zoning land use regulation and what can be done with rules and procedures to bring Alamogordo where they would like it to be in an efficient and relatively quick manner. It will take place on February 22, 2006 at 5:30 p.m. at the Civic Center.

The purpose of the Town Hall Meeting will be to provide an environment in which questions can be aired. It will also allow staff to present to the public the various regulatory devices that are available in the municipal toolkit. They need to begin a very thorough discussion regarding the sorts of land use programs they want to apply to the various areas of the City. Regulations can certainly be drafted, but the tricky thing is applying the regulations to actual pieces of ground and individual property rights. They need to look at some of the changes that have been made in the recent past because land use regulations must be woven together in such a way that they will be efficient and effective.

There are a small handful of categories of issues that need to be discussed and reflected on at the Town Hall Meeting. The first issue is the need to refine the property characteristics. The data and information that is laying around in files in various public agencies is the data that can be applied geographically. The issue of how to sort that stuff out so that information can be retrieved an analysis conducted of what is actually out there is not only very critical but also very, very difficult. In terms of land use regulations, they need to integrate all that they do with permitting, regulating, licensing and recording so that the regulations are streamlined. There is a lot of discussion going on currently in the private sector and within City staff as well as the County, and it is good to focus those discussions. Mr. Alterson said that his own theory of administration is that it's not necessarily that any of this stuff is currently being done wrong. However, from time to time things need to be examined, checked and shaken up so they are fresh and everyone knows what they are doing and why.

The relationship between subdivisions and recording rules and procedures needs to be studied. Mr. Alterson shared some philosophic questions including the following: Is plat approval really anything more than an administrative function? How do utility, roadway and minimum infrastructure requirements fit in with the whole picture of land use regulations? Under what circumstances can the corporate authorities actually refuse a plat? One of the ideas that has crossed his mind not as a suggestion but as a point of discussion is perhaps what should be done is to incorporate some kind of land recording master who merely checks that all of the requirements have been fulfilled and if the requirements are fulfilled that the records get recorded. Government does not grant individuals the right to convey their property. That is generally part of the bundle of rights that one acquires when real estate is purchased.

Mr. Alterson went on to say that a discussion he has been having with one of the citizens recently is whether or not it's good public practice for municipalities to issue land use approvals that appear to be contrary to private deed restrictions.

A lot of work has been done so far in drafting some sections of the zoning ordinance. There are a lot of open questions, and he said that he doesn't know whether any of the questions have actually been answered. So far most of what has been done has been in the designing of a platform. How many zones are needed? In the original 1950 Zoning Ordinance for Alamogordo there were six, and there currently are ten. One of the drafts that Mr. Alterson has been working off from in terms of suggestions and some work that staff has put together includes 18 zones.

Another issue is building heights, which is an issue that hasn't been discussed yet with the building community. Also to be considered are parking and loading. Is what is out there sufficient, or does it need tweaking or major reformation. He said that he wouldn't even get into everything that he wrote down on yard requirements, but what is a decent yard requirement? Does it serve a public purpose? Should it be looked at in the same old way, or should it be looked at in a new way? Other issues include estate zoning as well as the key topic of the segregation or integration of land uses. Zoning was originally adopted in the United States to in part keep everything that may be objectionable away from single-family homes. Is that good land use planning by today's standards?

Manufactured housing is another topic to discuss. In the present Zoning Ordinances, the City is grandfathered in as far as the prohibition of having double-wide manufactured housing located in any district in which a single-family home is allowed. That has to be looked at and a determination made as to whether the City wants to keep that and if so how. State statute actually no longer allows this apart from Alamogordo's grandfathered position.

Another key question is should zoning review be a land use planning function, or should zoning review really be a building permit and occupancy certificate function? How much discretion should actually be allowed in doing a zoning review for what you are considering is regulations for which there is a numeric value that can be programmed in as far as a best practice is concerned. Mr. Alterson said that for him as a land use planner just asking the question is heresy. Another question is regarding the sign codes, which generally get embedded within zoning ordinances and is a hot potato that he doesn't even want to touch for the present as far as dealing with the current Zoning Ordinance. It is sitting out there though in terms of what should be done regarding signage and how it is handled within Alamogordo. The answer may be yes.

Finally, Mr. Alterson reminded everyone again of the Town Hall Meeting.

Commissioner Brockett asked if input is being accepted from developers and realtors or if it is a process by which a rough draft will be presented and that will start the tweaking process. Mr. Alterson said that it is a little bit of both. He is meeting with the development community currently, and he is using them as a committee of sorts so that they are actually filling a voluntary administrative function as some of the issues are hammered out. They do want to get all of the input that they possible can before they go to public hearing. One of the defects of the municipal system in general is that public hearings are held to come to a decision, but they can never come to a decision at a

public hearing. A hearing has to be arrived at before the public hearing. In this instance, what they would like to do is get something on the table that is as complete as they could possibly have it and have the debate before the public hearing takes place. Commissioner Brockett commended their approach, and he said that he appreciates that cooperation.

Mayor Pro-Tem Griggs commented that he appreciates Mr. Alterson getting after this as the Subdivision Ordinance was something that he felt they needed to work on in years past. This ties right into that, and it is important for Alamogordo to put those two things together as it had not been done in quite a while and they need to be able to take the town further down the road. This expansion of the Zoning Ordinance along with the changes that have been made to the Subdivision Ordinance provides an opportunity to do that and is another indication of some of the things the City has done to really make Alamogordo a better place not only today but also in the long run.

3. Presentation of the Disability Award Certificate to Lowe's Home Center by the Alamogordo Disability Council.

Reverend Art Wolford was present representing the Disability Council, and Mayor Carroll read the certificate.

4. Award Presentation to DPS Officer Hiram Latin for major drug seizure.

This Item was withdrawn from the Agenda because DPS Director Sam Trujillo is in the hospital.

CALL OF THE CONSENT CALENDAR:

Mayor Carroll requested that Items 12 and 20 be removed from the Consent Calendar.

MINUTES:

5. Minutes of December 4th, 2006 Special Meeting and the December 5th, 2006 Regular Meeting.

Recommendation: Approve the minutes.

ORDINANCES AND RESOLUTIONS:

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

Recommendation: Approve the ordinance for final publication. [Roll call vote required]

16. Consider Resolution No. 2006-73 adopting the 40 year water development plan.

Recommendation: Approve the resolution. [Roll call vote required]

OTHER BUSINESS:

19. Consider award of Public Works Bid No. 2006-014, 0.5 Million Gallon West Side Elevated Reservoir.

Recommendation: Award the bid to CB&I Constructors, Inc. in the amount of \$1,125,267.00, including NMGRS.

21. Award of RFP No. 2006-009, Engineering Services for the 2007 Street Maintenance Program.

Recommendation: Award the proposal to Ideals, Inc.

22. Statement regarding the Executive Session of December 5, 2006 Work Session and December 5, 2006 Regular Meeting.

Recommendation: Approve the statement.

Commissioner Ledford made a motion to approve Items 5, 15, 16, 19, 21, and 22 of the consent calendar. Commissioner Brockett seconded the motion. A roll call vote was taken because of Items 15 and 16, and the motion carried with a vote of 7-0-0.

PLANNING ITEMS:

6. Consider the final plat of Mesa Village subdivision, Phase I, Replat A, for Mesa Verde Ranch Partnership [Case S-06-0933(A), on Mesa Verde Ranch Rd.].

Recommendation: Approve the final plat with a variance on the construction and installation of alleys, and with a Subdivider's Contract.

City Manager McCourt said that he feels this should be approved.

Randy Rabon was present from Mesa Verde and offered to answer any questions.

Commissioner Brockett asked if Governor Richardson had offered to put a traffic light in at his expense. Mr. Rabon said what they need to do is to have a letter written and sent to Governor Richardson to inquire regarding the status of that. It is a concern and will need to be addressed as they move forward with the project. Mayor Carroll has drafted a letter though they may first get in touch with the Secretary of Economic Development to see if that is the approach they should take. Mayor Carroll said they would follow up on that issue.

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

7. Consider the final plat of Mesa Village subdivision, Phase II, Replat B, for Mesa Verde Ranch Partnership [Case S-06-0934(A), on Mesa Verde Ranch Rd.].

Recommendation: Approve the final plat with a variance on the construction and installation of alleys, and with a Subdivider's Contract.

City Manager McCourt explained that the plat that was approved as Item 6 was on the East side of the Red Arroyo. This is a section on the West side of the Red Arroyo. It is not the entire future platting of the area as that will be phased in. This is a section that runs along Mesa Verde Road, and they would recommend approval.

Mayor Carroll asked a question with regard to the dedication of the 11.5 acres that is part of this plat, which is toward the required public land dedication. He asked if there is more to come. Mr. Rabon explained that they have committed to a land donation for the fire emergency services in Phase 1, which was in addition to the 11.5 acres. Mayor Carroll said a lot of the land dedication is part of Red Arroyo, and he asked if there is some land that is suitable to plan for park and recreation uses. Mr. Rabon explained that in the mid-way portion of the subdivision there are some areas that are going to be set aside for parks and playground areas.

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

8. Consider accepting a utility easement from Mesa Verde Ranch Partnership on Mesa Verde Ranch Rd.

Recommendation: Accept the easement.

City Manager McCourt explained that this is a further extension along Mesa Verde Ranch Road the purpose of which is to accommodate a sewer line that flows to the west with a force main that brings that sewage back and puts it into the main running down the Relief Route. This will get that system operational.

Commissioner Brockett made a motion to accept the easement. Commissioner Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

Mayor Carroll asked Mr. Randy Rabon to provide them with an update regarding the project related to the above items. Mr. Rabon indicated that the project is on schedule. Precheck is very happy with the progress, and weather permitting they will be able to take possession of the building on January 15, 2007, which was their target date all along. They are at the final hook-up point for all of the utilities, and the traffic light issue is being studied closely in an effort to find a solution for that and to see what can be done.

Phase one of the project is on schedule, and Mr. Rabon said the cooperation from the community has been phenomenal in terms of it being a group effort to get the project where it is. The support has been outstanding, and he commended City staff for their work on the project. They have set up weekly scheduling meetings that the engineering staff has been involved in to keep everyone up to date with the progress, and it could not have worked any better. Precheck is extremely happy and on schedule.

Mr. Rabon went on to say that Alan Theater is substantially complete with their design drawings, and they should be coming to the City soon with their proposals and be obtaining permits. They are hoping to have a ground breaking around February 1st.

Mayor Carroll thanked Mr. Rabon and the Heritage Group for their foresight and efforts to increase the economic development activity in the community. What is planned will be a tremendous asset, and Mayor Carroll expressed his appreciation for their dedication and commitment to the community.

Mr. Ed Carr said that Pre-Check had also applied to the Job Training Center Program board a week ago, and they were approved for \$311,000 in training funds for their first 44 hires, which should carry them through the May timeframe. The training plan was deemed to be very good, and they easily went through the approval for that.

9. Consider Ordinance No. 1289 rezoning to District "C-1" (Neighborhood Business) requested by Charles Andreas [Case Z-06-0666(A), 1212 E. Eighth Street].

Recommendation: Approve the ordinance for final publication.

Commissioner Cole made a motion to approve the ordinance for final publication. Commissioner Lujan seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

10. Consider a ten foot (10') front setback variance for Alamo National Bank [Case V-06-0506(A), 1300 N. White Sands Blvd].

Recommendation: Approve the front setback variance.

Mayor Carroll explained this is a cover over a drive-up ATM, and there was some different interpretation as to whether it is a sign or a structure. This is an attempt to ensure if it is the desire of the Commission to make sure that there is no ambiguity in the approval or requirement for this particular structure.

City Manager McCourt said they would recommend approval of the variance. They feel it could be argued either way, but they would like to have it decided.

Commissioner Cole made a motion to approve the front setback variance. Commissioner Lujan seconded the motion. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

11. Consider a five foot (5') front setback variance for Tierra de Suenos et al [Case V-06-0507(A), 2506- 2669 Las Alturas Ct.].

Recommendation: Approve the front setback variance.

This Item was withdrawn at the request of Tom French, and it will be rescheduled for the first meeting in January of 2007.

CONTRACTS AND AGREEMENTS:

12. Approval of agreement with Otero County for Transportation of Seniors and La Luz Home Delivered Meals.

Recommendation: Approve the agreement.

Mayor Carroll explained that this is another issue where the City of Alamogordo is providing services to county residents. They have annually requested reimbursement to cover the cost of those, and once again the county has approved an amount less than what the City believes it cost. This issue came up with the RSVP program at the first meeting in September, but that was a little easier because the RSVP reimbursement for mileage for the people that were involved in that to provide those services, which are basically administrative-type services to businesses and organizations in the county. At that time the Commission was going to notify them at the point that the money had been spent reimbursing the volunteers for mileage. He didn't know if that had been done as there was some miscommunication on it.

This is a bit tougher because the service is providing meals to seniors who are homebound or have in many cases no way to get to the senior center. This is provided in La Luz as well. Mayor Carroll said he doesn't know exactly how to resolve this as he doesn't want the City to be in a position where people who need meals are unable to get them. The City must also, however, make the County aware that they have some obligation in this to reimburse the City for the costs.

Mayor Carroll said the options are to go ahead and sign the contract to continue to subsidize the programs in the County or to possibly notify the County that the contract would be perhaps a nine or ten month contract in terms of the amount of money they have provided. He asked for suggestions or comments from the Commission.

Commissioner Cole asked for an update as to how the program got to this point. City Manager McCourt explained that at one time the County was providing the full amount that was necessary for the transportation and the Meals on Wheels program in the La Luz area. Over time costs have continued to rise, and their contributions to the program have not kept pace with that. At this point, based on the estimates of what it cost to provide the Meals on Wheels program, the County is providing about nine and a half months worth of funding. The transportation one is closer in that the County is providing about 11.8 months worth of funding. The County does not necessarily agree with the City's calculation in which they divide the cost and overhead over all of the meals that are

provided. They have indicated that they think the City should just absorb the fixed costs and only charge for the variable costs portion of the program. It is a growing problem and not one that seems to be declining. It is difficult because the individuals are very needy, and many of them count on these meals as sometimes their sole meal and sole contact with outsiders. They are, however, outside of the jurisdiction of the City.

Mayor Pro-Tem Ron Griggs asked if they have the numbers as to why the county picked \$22,984. He wanted to know if that amount does cover the variable costs, and he thought it was somewhat interesting that on transportation the City had asked for \$22,350 and the County felt that \$22,000 would be enough. It seems almost like they agreed with the amount and just didn't want to give the City the whole thing. He wanted to know if their figures were based on the variable costs.

City Manager McCourt didn't believe that the City had been given any rationale for the dollar amounts that they arrived at.

Commissioner Ledford asked if the City would be able to fulfill its obligations to those that are in the City's jurisdiction if this is approved. He also said that he thought the City and County had agreed to get together to decide on the appropriate amount and how it would be approached. He asked if that has happened. Mr. McNeile said that they did sit down with Commissioner Moore and several other staff members from the County about six times last year to try to iron out the cost differences, and they were not able to come to an agreement. He said they would get together with County staff and request an explanation for how they arrived at the numbers they are using. Commissioner Ledford commented that when the City budgets the amount for this service it includes receiving certain funds from the County. Mr. McNeile indicated that the City had budgeted based on what the County had done last year.

Mayor Carroll further explained that no services are being denied in the Senior Center, but what the City is doing is absorbing the amount that the County is not reimbursing as a transfer out of the City's general fund to the senior's program.

Commissioner Ledford commented that if the Commission goes ahead and approves it, it is unlikely that they will ever get to a point of agreement.

Mayor Carroll said that the County in fact wants the City to expand the Meals on Wheels program outside of the City, and they are still not willing to accept the numbers of what is being provided now let alone what it would cost to expand the services.

Commissioner Ledford said he would like to be able to provide the service, but it seems that an agreement needs to be reached.

Commissioner Moncada asked if he was saying that means if the County doesn't come up with an agreeable amount that the City would take the whole amount. Commissioner Ledford said the Commission would have to decide whether it is going to be a part of the budget and how that will be handled. If the City is never going to require them to pay according to the City's formula, then perhaps the City should agree to their formula so that it doesn't have to be discussed every year. Commissioner Moncada said perhaps they could agree to something like that, but a statement should be in the agreement that the County will increase the amount by a certain percentage each year.

Mayor Pro-Tem Griggs said that the contract also indicates that if the County receives less PILT money than they are anticipating, they can reduce the amount of money that they will give the City. Commissioner Moncada asked if they hadn't gotten more last year, and Mayor Carroll said their PILT has typically over the last number of years increased. The County will point out, however, that they have many obligations for that PILT money for programs that benefit City residents as well. However, the County seems less willing to understand that the City has budget constraints as well. Mayor Pro-Tem Griggs pointed out that it is factual that the residents of Alamogordo are residents of the County, but the residents of La Luz are not residents of Alamogordo. One thing they have talked

about in the past is that the City is being asked to provide a service outside of the City limits and pay for it for residents that don't live in the City. The City has made the choice to do that, but he questioned whether legally the City is able to do that.

Commissioner Brockett expressed that the City has some moral obligation, but he didn't know what could be done to convince the County of the numbers. Mayor Carroll said they had expressed in the past that they would have Commission to Commission meetings, but those never seemed to materialize. Commissioner Ledford said they did have a meeting, but they didn't reach an agreement. Mayor Carroll pointed out that there was a much larger shortfall the last time, and he pointed out the philosophical question of if there is a line the City can draw if the County some year just decides they won't give anything to provide the service. Commissioner Brockett said they need to plan for it as opposed to waiting until they reach that point. Mayor Carroll said there are a number of joint powers agreements between the City and County, and there doesn't seem to be a set formula or equity in them. Mayor Carroll cited the agreements regarding the animal shelter in which there seems to be equitable sharing of the costs and the jail in which there does not.

Commissioner Brockett pointed out the importance of the program, and he said it is essential that the Commission start the groundwork to reach some kind of expanding. Obviously, the program can't be expanded without some kind of agreement.

Commissioner Ledford asked if the City is required to provide the meals and if there are a certain number of meals that are provided. Mr. McNeile said that the contract is for the current fiscal year, and the City will be required to provide the meals regardless of the funding level if the contract is signed. Commissioner Ledford said that his point would be to take the approach that future contracts would be contingent on whatever level of service is provided.

Mayor Carroll said that years ago the County did run a senior center in La Luz, and they asked the City to take it over because for a number of reasons the County was unable to make it fiscally and politically viable. Commissioner Cole asked what the possibility would be of calling Dr. Martin Moore and talking to him about it. Commissioner Ledford asked why they didn't invite him to the meeting.

Mayor Carroll said that's what happens, they can't seem to get it ironed out before the budget cycle, and when the County arrives at their number, however they do that, that is what they stick in the contract to sign.

Mayor Pro-Tem Griggs said that surely the County has some reasoning for their numbers, and he thinks it would be good for the City to get with them and find out what that is. Then the City could try to understand what they are saying.

Commissioner Ledford asked if they reimbursed a particular amount for a given meal. Mr. McNeile said that they do not. It is just a lump number. At one time the County was exploring whether they could get a different contractor to provide the service, and obviously they didn't find one.

Commissioner Moncada asked how many people are served out of the City limits, but they didn't have that number.

Commissioner Ledford said he thinks they are at the point where they probably need to approve the agreement as there is a certain expectation out there for the citizens. He would like to see this negotiated with the County to try to reach a mutually agreement number. Whatever it is, the City will have to see if it can come up with difference and decide on the program so there is not this disagreement every year. He doesn't enjoy discussing the program in the context of money when it is so important to the citizens.

Commissioner Brockett said he would also contact the County immediately to begin negotiations for the next year's contract.

Commissioner Brockett made a motion to approve the agreements. Commissioner Ledford seconded the motion.

Commissioner Lujan said that he agrees that this is important. At the same time, if the City just agrees that it will pay the difference every single time regardless of what the County agrees to pay that will roll over to other agreements with the County. Commissioner Ledford pointed out that the motion was not to just go ahead and pay the difference every time. Mayor Carroll said they need to just have not gotten to the point where the City has said if the County doesn't provide the needed funds the City won't be able to provide the service. He thinks the City can do it this year without detracting from the services that are provided as the City had budgeted appropriately. He does agree that at some point there has to be a resolution that the County will pay for the service if that's what they decide they want to do.

A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

Mayor Carroll asked that City Manager McCourt set up a meeting with the County, and he said he had written down the issues as being Meals on Wheels, the animal shelter, detention, dispatch services and the transportation services.

Lieutenant Theo Livingston indicated that the animal shelter contract is working well.

CONTRACTS AND AGREEMENTS:

13. Civil Air Patrol lease agreement.

Recommendation: Direct staff on how to proceed.

Mayor Carroll explained that there has been some reluctance on the part of the Civil Air Patrol, whether the attorney or the local folks, to sign a lease agreement. Various concessions have been made, but for some reason the lease agreement is not acceptable to them.

City Attorney Brogan said they had not indicated to him what their issues with the contract are. He thought the issues had been worked out, but he doesn't know why they won't sign it.

Commissioner Brockett asked when City Attorney Brogan had last communicated with their attorney, and it was in late October. Commissioner Brockett asked if anyone had come in to the City to discuss it since then, and they have not. City Attorney Brogan said that he had asked Jim Talbert, Chairman of the Airport Advisory Board, what the status of the lease was, and he indicated that they would sign it. Nothing seems to happen after that.

Commissioner Ledford asked what the previous lease was. City Attorney Brogan said it was a dollar a year and expired June 30th. The City has offered to renew it for the same amount. Commissioner Moncada asked if it was because the duration was reduced from 25 years to 10. City Attorney Brogan said he just doesn't know. The lease is expired, and perhaps the City should notify them that the City will not renew if they are not communicated with in 30 days. There is a legal liability issue if the City allows them to operate without a lease.

Commissioner Lujan asked why the Chairman keeps saying they're going to sign it, but he doesn't know. This is the Civil Air Patrol which is kind of a branch of the United States Air Force, which is why the City can enter into a lease with them for a \$1 a year. Commissioner Brockett suggested writing to them and giving them the date of the next Commission meeting to provide the signed lease.

Otherwise, the City will conclude that they are no longer interested in leasing the property.

Commissioner Brockett asked why the term had gone to ten years, and that is the standard lease now.

City Attorney Brogan will send them a letter.

14. Essential Air Service Agreement – Mesa Airlines.

Recommendation: Accept amended Facility Lease. Direct staff on how to proceed with pass-through agreement.

City Attorney Brogan explained that he had received an Amended Facility Lease from Mesa Airline, but the changes that have been made are contradictory in terms of whether they will get insurance. Roswell allows them to be self-insured upon receipt of proper documentation.

City Manager McCourt said that this is another area where they have been trying to bring the airport into uniform enforcement for all users. No one else is allowed to self-insure, and it was a point of considerable discussion in the negotiations. He is not comfortable with that, and he is also concerned because he doesn't know where someone would go in terms of enforcement. They also name the City as additionally insured based on certain limitations, which the City is not familiar with those limitations.

Commissioner Ledford asked if the contract was included in the RFP process, and City Manager McCourt said he doesn't believe that was part of the entire process. Mesa Airlines did have a facility lease agreement when they were previously at the airport, but City Manager McCourt didn't know if it was this one in particular.

City Manager McCourt said another issue is that Mesa had agreed to provide the City reimbursement for the provision of certain services such as fire protection coverage, and they have also not signed that agreement.

City Attorney Brogan said they had been under the impression based on what Mesa's attorney had told them that Mesa had been passing the agreements through their Legal Department and through their Board of Directors as a publicly-traded corporation. It then disappeared until last week, and the pass through contract has yet to resurface.

Commissioner Ledford asked if the City can allow them to operate without a contract. City Manager McCourt said his position is that the City gave them a contract when they provided the RFP information to them. Mesa began operating so there is a contract. It is just not signed. City Attorney Brogan said that it is when things go badly that a contract is needed.

Mayor Carroll said that perhaps it is time for the City to direct correspondence to the management side of the company as opposed to the attorneys. Commissioner Cole asked if some kind of timeline could be included. Mayor Carroll indicated that the initial correspondence should indicate that the City is waiting for a contract and indicate why the City disagrees with the recent changes. City Attorney Brogan said that with the exception of the insurance clause, they have not made any substantive changes. Mayor Carroll said the self-insurance issue is addressed in that it is not the City's standard policy and there is no intention to waive it. It is also necessary that whoever they are insured with be licensed to do business in the State of New Mexico, which City Attorney Brogan said is a valid request.

City Attorney Brogan said the City had started billing them for the rent for November and December in addition to the landing fees. Mayor Pro-Tem Griggs pointed out that the City doesn't have to agree to the changes in the contract at all.

There are two contracts that the City is waiting for, which are both the Lease Agreement and the Pass Through Agreement. There should be documentation in one of the minutes of one of the Commission meetings as to the fact that Mesa agreed to the pass through arrangement.

Commissioner Moncada asked if the City cashes any payment checks from Mesa if that could be interpreted as the City agreeing to their changes, but that is not the case.

A letter will go out from City Manager McCourt to the management of Mesa Airlines regarding the contracts.

Commissioner Cole asked if it is normal that the airline would start flying without a signed agreement between the two parties. City Attorney Brogan said that he had tried very hard to get a written agreement before they were allowed in the building, but that was unsuccessful. It is very unusual to allow anyone to use City property without an agreement.

Mayor Carroll recessed the meeting at 9:02 p.m., and it reconvened at 9:11 p.m.

OTHER BUSINESS:

17. Request from the Airport Advisory Board to bring the above ground fuel tanks and fuel trucks at the Airport into compliance.

Recommendation: Approve the request from the Airport Advisory Board to inspect and bring into compliance the above ground fuel storage tanks and fuel trucks at the Airport.

City Manager McCourt said that this Item needs to be sent back to the Airport Board because there has been some miscommunication. They have received their 139 certification, and that has been approved. They worked with the fire inspector and got the fuel trucks into compliance. There was a problem with the grounding strips, but that is now in compliance. What they seem to be saying doesn't jive with what has happened so they need to go back to the Airport Board.

18. Request by Tamatha Boles to discuss the sale of the Boles Acres Water System.

Recommendation: Past direction from the City Commission was not to proceed.

Ms. Tamatha Boles wanted to bring to the Commission's attention not so much the water system but the fact that there are an additional 1,400 acre feet of water rights available for sale. They have been appropriated for commercial, light industrial, irrigation, municipal, fire protection, and highway road construction.

Mayor Carroll said that one of the problems is it is the Commission's understanding from the State Engineer's Office that only a small portion of those rights has been proved up, and that the State Engineer's Office would not likely grant the transfer of any more than the 274 acre feet that is currently being used to service the water system. Ms. Boles said when she checked into it she was told that they are as transferable as any other water right and probably more so because they have already been appropriated and declared. Mayor Carroll said the key is they have not been put to beneficial use, which is the key to being able to transfer or maintain water rights. Ms. Boles said she would do more research on those issues starting the first thing in the morning.

Mayor Pro-Tem Griggs suggested getting information in writing. Mayor Carroll thanked her for patience.

20. Consider award of Public Works Bid No. 2006-016, Streets repair (damage by 6/22/06 flood).

Recommendation: Award the bid to Star Paving Co. in the amount of \$72,916.59, including NMGRT.

City Manager McCourt said that he has a different recommendation than on the agenda. He suggests that they reject all bids because if the City moves forward it will have to pay the full

additional amount. He doesn't think that is the best use of the limited local resources. The total amount that the State estimated three of the four roads would take for repair was \$15,975, and the bid for those three streets was \$41,550. He believes that they should conduct reviews to try to get the estimate adjusted and to have the fourth street included. It is an inconvenience that the streets have not been paved, but it is not an emergency that they proceed. The bids expire on January 2, 2007.

Commissioner Ledford pointed out that follow up is being done on some of the work that Star Paving has done. They come up consistently cheaper on bids, but if it is at the expense of quality, it is not worth it. He wanted an update as far as the work on South Florida

City Manager McCourt said the City is working with them on South Florida as well as at the airport. He did have some concerns with the quality, and one of the project managers in community services said there are problems, but there are problems with everybody.

Commissioner Brockett asked if they are doing the work per specifications, and City Manager McCourt said that there has been some discussion that the work on South Florida is not within specifications in which case they will have to correct it.

Commissioner Ledford said his concern is that they are consistently doing the work outside of specifications, and he wants to make sure that is not the case. City Manager McCourt said that they are watching them closely.

Commissioner Brockett made a motion to reject all bids. Mayor Pro-Tem Griggs seconded the motion. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

23. Appointments to Boards and Committees.

Mayor Carroll appointed Mr. Tony Mandalia to the Promotion Board and Mr. Carlos Perea to the Senior Volunteer Program Advisory Council.

He asked that the clerk notify those individuals, and he indicated that there are still vacancies on other boards and individuals should notify the clerk's office if they are interested in serving in that capacity.

SCHEDULED COMMUNICATIONS FROM THE CITY COMMISSION:

24. Request for an update on the FEMA/State/City flood project by Commissioner Cole.

City Manager McCourt said that Mark Threadgill is the staff member temporarily in charge of taking care of this. The Commission essentially set aside a million dollars to take care of the City's portion of the repairs. To date, the City has committed, depending on the State reimbursement, between \$522,000 and \$657,000 of that set aside money.

Commissioner Cole asked if that includes the \$93,000 from the agency that worked on the ditch. City Manager McCourt said that is not in the FEMA money, but the City did have to match it. Mr. Threadgill said it is the Emergency Watershed Protection Program.

Mr. Threadgill stated that he has received verbal confirmation that the first five FEMA projects have been obligated, which means the money has been set aside. He doesn't have it in writing yet. The others have not been yet though they are in the review process and he has been contacted the last two days to provide additional information to the State Office of Emergency Management so they can continue the review process.

Commissioner Brockett asked if they would release it piece mill. Mr. Threadgill said they should be getting written confirmation on the projects that have been obligated, and they will then ask for proof

that the City has spent money or is going to spend the money. They want to see the City's 7%, 18% from the State and 75% from the feds. He expects to receive the written confirmation by the first of the year.

Mr. Threadgill reminded the Commission that most of the FEMA projects are addressing the events that took place on August 16th and August 19th/20th. The first meeting took place October 17th for the individual assistance, and as far as public assistance they were working up the projects from October 17th to the middle of November. They finalized the submissions on November 16th, and on December 13th four of the six had been obligated. For federal bureaucracy it was pretty fast.

Commissioner Cole asked what the four projects are, and Mr. Threadgill provided him that information, which was also included in the written update that was provided to the Commission. Commissioner Cole expressed his appreciation for the update as well as for the efforts the City has been making in the past week with the front end loader and the dump truck. Many people have expressed their appreciation, and he also complemented City Manager McCourt for driving up there to check it out. The people know they have not been forgotten.

Mayor Carroll said that originally the Governor declared an emergency in Alamogordo and designed up front funding. Subsequent to that he declared an emergency situation for Otero County. He wanted to know if that is a separate funding source that could be tapped.

Mr. Threadgill said he would look into it though he doesn't know they have more projects that they could add unless they wanted to cover some of the City's match.

Mayor Carroll asked for an update from Lieutenant Livingston on Director Trujillo's condition, which was provided.

UNSCHEDULED COMMUNICATIONS:

A. Commissioner Lujan

- 1) Commissioner Lujan visited Director Trujillo today and provided a report.

B. Commissioner Brockett commented on the following:

- 1) Commissioner Brockett wished everyone a great holiday. He said it's been a tough year with the floods, but there's been a great response. He hoped that everyone would enjoy the New Year because in 2007 it's back to work.

C. Mayor Pro-Tem Griggs commented on the following:

- 1) Mayor Pro-Tem Griggs wished everyone a Merry Christmas and Happy New Year.

D. Commissioner Moncada

- 1) Commissioner Moncada wished everyone a Merry Christmas and Happy New Year.

E. City Manager McCourt

- 1) He provided the water report.
- 2) He passed out a draft copy of the Legislative request. They are number two on the list to speak with them. He asked that any comments regarding it be submitted to him as quickly as possible.
- 3) He will be taking a vacation day tomorrow and then Thursday afternoon until January 2nd.
- 4) He wished everyone a Merry Christmas and Happy New Year.

F. Mayor Carroll commented on the following:

- 1) He congratulated the Tigers on an outstanding season. They represented Alamogordo very well.
- 2) He gave Christmas wishes to the Commissioners and City Staff and best wishes for a

Happy Holiday season.

EXECUTIVE SESSION: Adjourn into Executive Session to discuss condemnation proceedings to be filed for South Channel property, threatened and pending litigation (Christopher), purchase of property, and purchase of water.

Mayor Pro-Tem Griggs moved to adjourn into Executive Session to discuss condemnation proceedings to be filed for South Channel property, threatened and pending litigation (Christopher), purchase of property, and purchase of water at 10:29 p.m. Commissioner Brockett seconded the motion. A roll call vote was taken, and all voted "aye." The motion carried with a vote of 7-0-0.

Mayor Carroll adjourned the meeting at 10:29 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

(SEAL)

ATTEST:

/s/Renee L. Cantin

City Clerk Reneé L. Cantin

(Prepared by Ubiquis Reporting)

Approved at Regular Commission meeting on January 9, 2007.