

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
7:30 P.M., COMMISSION CHAMBERS
SEPTEMBER 26, 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 Carroll called the meeting to order at 7:31 p.m., and all of the Commissioners were present. Pastor Richard Hicks gave the Invocation, and Commissioner Lujan led the Pledge of Allegiance.

PRESENTATIONS:

1. Presentation regarding the Quiet Zone by Frank Cisneros from Union Pacific.

No one was present from Union Pacific, and Mayor Carroll explained that he was not exactly sure what the presentation was going to be. The City has gone through the process of getting the railroad crossing at Dr. Martin Luther King Drive designated as a quiet zone, and apparently for whatever reason the railroad has still been sounding the whistle at that crossing. The City has concerns about after following the federal regulations, consulting with the railroad over a period of time and incurring considerable expense to make that cross compatible with a quiet zone it apparently hasn't happened.

Mayor Pro-Tem Griggs explained that the quiet zone was established, and approval was obtained from the Federal Railroad Administration to do so. The City did experience some expense to get that done and jumped through all of the hoops to accomplish it. The railroad has since pretty much ignored the change. Mayor Pro-Tem Griggs had a list from several people indicating when the train whistle has been blown. When a quiet zone is established, the engineer still has the option to blow the horn if he sees that there is any sort of emergency, but what the citizens have observed and heard is the regular blowing of the whistle. Since the railroad has chosen not to be present at the meeting, the City is left with no other option than to address the issue with the Federal Railroad Administration or the higher ups at Union Pacific. He believes that a letter should be sent to the appropriate individuals at the railroad stating the City's concerns and providing the list to them.

Mayor Carroll concurred with that idea and stressed the importance of identifying someone high enough up in the railroad hierarchy to address the letter to. As is sometimes the case in a large organization, the word doesn't always filter up or down the way it should, and the best thing to do would be to start with a letter expressing the City's concern that the railroad has not lived up to their part of the agreement. Hopefully that will solve the problem.

CALL OF THE CONSENT CALENDAR:

MINUTES:

2. Minutes of September 12, 2006 Regular Meeting.

Recommendation: Approve the minutes.

CONTRACTS AND AGREEMENTS:

10. Approval of Cooperative Marketing agreement with the New Mexico Tourism Department.

Recommendation: Approve the agreement.

ORDINANCES AND RESOLUTIONS:

11. Consider Resolution No. 2006-63 authorizing the Mayor to sign an agreement with the Union Pacific Railroad Company concerning the installation of a new sewer line in the golf course area.

Recommendation: Approve the resolution.

12. Consider Resolution No. 2006-64 approving a grant application to the State Forestry Division for the Forest Re-Leaf Grant Program - for a tree-planting project.

Recommendation: Approve the resolution.

13. Consider Resolution No. 2006-65 requesting written approval from the Local Government Division of the Department of Finance & Administration, State of New Mexico for the revised budget figures computed on September 26, 2006.

Recommendation: Approve the resolution.

OTHER BUSINESS:

17. Statement regarding the Executive Session of September 12, 2006.

Recommendation: Approve the statement.

Mayor Carroll requested that Item 9 be removed from the Consent Calendar.

Commissioner Ledford made a motion to approve Items 2, 10, 11, 12, 13 and 17 on the Consent Calendar. Seconded by Commissioner Moncada. A roll call vote was taken because of Items 11, 12, and 13. Mayor Don Carroll, Mayor Pro-Tem Ron Griggs, Commissioner Inez Moncada, Commissioner Ed Cole, Commissioner Marion Ledford, Commissioner Chris Lujan and Commissioner Steven Brockett voted "aye." The motion carried by a vote of 7-0-0.

PLANNING ITEMS:

3. Consider Ordinance No. 1277 rezoning from District "R-1" (Single Family Dwelling) to District "C-1" (Neighborhood Business) requested by Christina Shyne Williams [Case Z-06-0662(A), 1408 Cuba Ave].

Recommendation: Deny the rezoning or table consideration until October 24, 2006.

Mayor Carroll explained that this Item was before the Commission at the last meeting, and there was some discussion on it. The majority vote of the Commission was to honor the request of the petitioner to table this item until after the application for R-4 zoning had been heard by the Planning and Zoning Commission. For procedural reasons, no date was attached to that, and the Item now before the Commission is to again consider tabling it until the October 24th meeting or denying the rezoning.

Commissioner Cole asked Mayor Carroll what the question was that he was asked today regarding a meeting with Mr. Shyne on the 23rd or 24th. Mayor Carroll indicated that the meeting he was referring to was regarding a separate item.

Commissioner Cole asked who requested that it be tabled until the 24th, and Mayor Carroll explained that Mr. Shyne had requested it at the last meeting. There was some discussion, and the majority

vote was to honor his request to table the Item without attaching a date certain. The recommendation now is that if it is the desire of the Commission to table it, that it be tabled until the meeting of October 24th at which time he will have had his request for R-4 zoning through Planning and Zoning and he will either withdraw the request or want to have them both on.

Commissioner Cole said that he saw no reason why it couldn't be tabled until the 24th.

Commissioner Cole made a motion to table Case Z-06-0662(A) until October 24, 2006. Commissioner Lujan seconded the motion. A vote was taken, and the motion carried by a vote of 6-1-0 with Commissioner Brockett voting nay.

4. Consider an off-street parking variance for C. Michael Shyne [Case V-06-0499(A), 1408 Cuba Avenue].

Recommendation: Deny the variance or table consideration until October 24, 2006.

Mayor Carroll explained that this is a companion issue to Item #3 and involves the same request to table.

Commissioner Cole made a motion to table Case V-06-0499(A) until October 24, 2006. Commissioner Lujan seconded the motion. A vote was taken, and the motion carried by a vote of 6-1-0 with Commissioner Brockett voting nay.

5. Consider a front setback variance for William Pagel [Case V-06-0500(A), 1309 Sixteenth Street].

Recommendation: Approve the front setback variance.

Commissioner Cole made a motion to approve Case V-06-0500(A). Seconded by Commissioner Moncada. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

Ms. Karen Pagel addressed the Council and stated that their contractor needs documentation of the variance in writing. City Manager McCourt indicated that the Community Development Department would get that out to her the next day.

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

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

Mayor Pro-Tem Griggs asked where the City stands on this issue and what the distance is that the petitioner is willing to stay from the back wall. Mayor Carroll indicated that his understanding is that when Planning & Zoning recommended denial of the original request, an alternate plan had been proposed.

City Planner Sharon Few explained that Mr. and Mrs. Osborne did not have a specific plan to offer at the P&Z meeting. It was submitted subsequent to the meeting and the vote though it was discussed that they would provide an alternate plan. The alternate plan that they did provide was a setback of 14 feet as opposed to the original 6 feet.

Mayor Carroll pointed out that the Planning & Zoning recommendation was to deny any variance to the rear yard setback requirements. As such, if they are now proposing an alternative to that, it is his understanding that the City Attorney is recommending that the request go back through Planning and Zoning as it is basically a separate request.

City Planner Few stated that the wording "any variance" was staff's position. Planning and Zoning recommended that the variance that was requested be denied, which was 20 feet. The City Attorney is of the opinion that no other variance should be considered even if it is less of a variance than what was considered in the public hearing and advertised. However, it has been the practice of the City to approve lesser variances after the fact.

Mayor Pro-Tem Griggs asked if he was correct in stating that the most recent request would put the house fourteen feet away from the fence and six feet into the setback, and Ms. Few confirmed that as being the current request. Initially, they wanted it to be only six feet, which was twenty feet into the setback. Ms. Few explained that the required setback for the depth of the lot is 20'3", which is 30 feet or 20% of the lot depth. In this case, 20% of the lot depth is the lesser. Staff's position is not to allow any building into the setback as it is not a hardship with the property and it does grant a privilege to this property owner.

Mayor Pro-Tem Griggs stated that in looking at the plan it is a substantial addition, and he asked if it's not encroaching into the setback is it not an option for the owners. Mrs. Osborne asked if she could call on the contractor to address the question. Mr. Chayne Graham addressed the Council and explained that Mr. Osborne was going to have an extra room in the area in question, and with the original 20'3", that room would basically just be a hallway minus the portion that's already there. With the amount of work that has to be done to remove the beam and the column, the owner thought that it would make sense to take the room out as far as he could.

Mayor Pro-Tem Griggs asked what the size of the room would be if no encroachment were allowed. In looking at the plans, it looks like the room would be 22 feet. Though Mayor Pro-Tem Griggs would like to see them build the addition, it is hard to dispute with what staff recommends when the room is approximately 23 feet in size.

Mrs. Osborne explained that Mr. Osborne works at Southwest Medivac, which is shift work. He works twelve-hour shifts going in at 7:00 p.m. and coming home at 7:00 a.m. They have children, and Mrs. Osborne is self-employed so she is in and out all day as well. There is a lot of noise and a lot of racket, but Mr. Osborne is required to have his sleep so that when he goes in at 7:00 at night he can fly safely and fly the passenger safely. The first thought was to build a room back there, and the covered patio, which is currently there, would act as a buffer between his room and the rest of the house. They included photos of the patio. He has a lot of weight equipment because another requirement for his work is that his weight be kept down because they are only allowed to carry a certain amount of weight on the aircraft. Mr. Osborne is 6'5" and 225 lbs so he has to keep his weight down. They were going to get the weight equipment off of the patio and include it in his room so it would act as kind of a weight room and an area where he could sleep without disturbances. He works the 7 p.m. to 7 a.m. shift for 10 days. Then he has three days off, and then he starts the 7 a.m. to 7 p.m. shift, which makes it hard for him to make it to a fitness center.

Mayor Pro-Tem Griggs said that he is probably one of the guys that flew his mother to Las Cruces last year. He doesn't know which way to come down on this item, and he doesn't know if they have enough information to decide.

Mayor Carroll asked for confirmation as to whether the plan is to incorporate the existing covered patio into the room addition. Mrs. Osborne said that is what they had proposed. Mayor Carroll said that would make the room about 30 x 30, and Mrs. Osborne said that the covered patio doesn't really extend from the back of the house. It's flush with the rest of the house, the dining area and the bedroom. Mayor Pro-Tem Griggs couldn't tell from the photographs what was adjacent to the patio, and Mrs. Osborne said it is the fireplace.

Commissioner Ledford asked if they had already started construction, and they have not. He asked Ms. Few what the policy is for approving something different from the original request particularly as the City Attorney is recommending that it should go back to the Planning and Zoning Commission. He went on to say that it seems to him that they grant variances quite often, and he doesn't see why

this is different from others that they do. He questioned whether there is a safety issue and since there are no protests wanted to know if the issue is just that it's an encroachment into what the policy setback should be.

Ms. Few said that Public Safety is concerned about safety issues. There is no alley, and there is a vacant lot behind the property. However, it is private property that could and probably will be developed. The owners were notified in the Notice of Protest, and no protests were filed.

Mayor Carroll said that they have in fact granted variances before, but the recommendation at this point from Planning and Zoning is to deny the variance that would allow the building to be within six feet of the back fence. What the petitioner now appears to be saying is they would settle for a lesser variance that would allow them to build within fourteen feet of the back fence. Commissioner Ledford said that the way he understands the recommendation, they won't accept that either. Mayor Carroll reiterated that the recommendation to deny any variance came from staff and not Planning and Zoning. The 14-foot setback has not been through P&Z.

Commissioner Ledford pointed out that there would still be a setback variance. It would just be less. He doesn't know why P&Z would accept it just because it is less of a variance. He asked if this Item is at the point where the variance can be approved without going back through P&Z, and if the applicants do have to go back through P&Z, he wanted to know if they would have to go through the re-application, the new fee, and the whole process, which could be a month to two months. Ms. Few said it would be the end of November at the earliest, but it wouldn't necessarily be another fee or application.

Mayor Carroll reiterated that the recommendation of the City Attorney is that it needs to start over. The decision before the Commission is whether the six-foot variance should be denied and the issue sent back to P&Z for their recommendation on a fourteen-foot setback, or whether the six-foot variance should be denied granting them a variance that would allow them to be within fourteen-feet.

Mrs. Osborne said that when she attended the first meeting with P&Z one of their concerns was the safety issue because there was only six feet. By moving it in, their concern that the public safety officers could not gain access to their house would be eliminated. They changed the setback because of what P&Z's concern was, and when Commissioner Ledford asked if it would be acceptable for them to send it back to P&Z and have it addressed in November, she said it would be.

Commissioner Moncada said that she really doesn't understand what will be gained by having it go back to P&Z if they've already seen all of the details. Mayor Carroll pointed out again that it is the City Attorney's opinion that it needs to go back.

Mayor Pro-Tem Griggs said that this is an issue where there were no protests. There was apparently no one concerned about the six feet, and what he would like to be clear on is the City Attorney's opinion as to why this needs to go back to P&Z.

City Attorney William Brogan explained that he is really wrestling with the relationship of the Planning and Zoning Commission to the City Commission. The Ordinance is unique in its relationship and its description of the relationship. He has not written a legal opinion on it yet, but if P&Z is the first line of interpretation for the Ordinance, they have not yet seen the fourteen-foot setback application. That was a hand-written document presented to staff after the P&Z Commission meeting. It may be that P&Z would accept the fourteen-foot setback. He doesn't know that, and the Commission doesn't know it either. P&Z may have a very valid reason for accepting it or denying it. The way he reads the Ordinance and because Ms. Few does such a good job he has not really studied the Ordinance, it looks to him like it is not right that the issue should be before the Commission. The way the Ordinance is written is that the Commission is a Board of Appeal, which is the actual term in the Ordinance, for someone who is aggrieved by the decision of the Planning and Zoning Commission. If the Planning and Zoning Commission has not yet seen the fourteen-foot setback, then it's not right

that it come to the Commission because the hearing board, the Planning and Zoning Commission, hasn't seen it yet. The Ordinance on the Board of Appeals, in this case the City Commission, is pretty clear that the property owner has to be aggrieved by the Planning and Zoning Commission's ruling before they appeal to the Commission.

Mayor Carroll asked if they could not for the purpose of discussion argue that since the recommendation is to disapprove the six-foot variance the owners have been aggrieved and that the Commission should hear their concern and maybe not side with them but give them some measure of relief from the Planning and Zoning Board's denial.

City Attorney Brogan said that the only thing that's coming before the Commission is the denial of the six-foot setback.

Commissioner Ledford commented that he agrees with the City Attorney for the reason that if the Commission does this without going back through the process, other people may try to by-pass P&Z and come before the Commission because they didn't like the answer they received. He is strongly in favor of having a P&Z Board. They serve a great purpose, and without their input it makes his job more difficult. He would like to hear what they have to say about the issue, and then there is the option that if they deny it again the Commission would have the option of overturning it.

Commissioner Lujan asked if this situation has occurred previously when there is no protest, somebody wants to lessen the request and the Commission didn't go back to P&Z but made a decision on it themselves. Mayor Carroll indicated that he couldn't remember any specific case, but it probably has occurred at some point in time. It has had to do in the past with side yard setbacks more than rear yard. Going from memory, it was typically part of the discussion at the Planning & Zoning process of what that might be.

Commissioner Lujan also asked if Ms. Few was at the Planning & Zoning meeting and if she knew what their main concerns were. Ms. Few said the main concern was the safety issue and the fact that it was such a big addition. Commissioner Lujan asked if it was her opinion that they would have a problem with the 14-foot variance. Mayor Carroll said that he doesn't think that's a fair question. Ms. Few stated that staff's position hasn't changed because of the wording on the Ordinance, and Public Safety has reviewed both proposals and still has a safety concern.

Commissioner Lujan said he was just trying to determine whether P&Z was concerned more with just building back there or the variance itself. He would like to help the petitioners out. Ms. Few said that Mr. and Mrs. Osborne did bring up the possibility of reducing the size of the room, and she was asked how it would be viewed and what was the minimum reduction that would be acceptable. Hypothetically, she had to say that if a secondary proposal was submitted, it would be run through staff to see how it fared, but she couldn't guarantee how they would respond one way or the other. Mayor Carroll said that while it is certainly not what the petitioner would like to do, he would suggest that they direct the request back to P & Z for a lesser setback without having to pay additional fees. **Commissioner Ledford made a motion to deny the variance of twenty feet and direct that it go back to P & Z for their consideration of a smaller variance without additional fees. Commissioner Lujan seconded the motion. A vote was taken and all voted "aye." The motion carried by a vote of 7-0-0.**

Commissioner Cole asked when it would come before the Commission again, and Mayor Carroll indicated that it would be at the City Council meeting follow the hearing at Planning and Zoning in the second week of November.

7. Consider an off-street parking variance for Beth Crabbe [Case V-06-0502(A), 3410 N. White Sands Blvd.].

Recommendation: Approve the off-street parking variance.

Commissioner Ledford made a motion to approve the off-street parking variance. Seconded by Commissioner Cole. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

CONTRACTS AND AGREEMENTS:

8. Civil Air Patrol lease agreement.

Recommendation: Table the item until the next regular meeting of October 10, 2006 because the Legal Department has not received the Civil Air Patrol lease agreement at this point in time.

City Manager McCourt said they have had some difficulty in getting the agreement from them, and he suggested that no action be taken on it as they don't know when they will get the information.

Mayor Carroll consulted City Attorney Brogan as to whether if the decision is to table this Item it can be tabled until such time as the appropriate documents are received and reviewed by City staff. City Attorney Brogan said that could be done.

Commissioner Brockett moved to table this time until such time that the appropriate documents are received and reviewed by City Staff. Seconded by Commissioner Cole. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

Commissioner Cole asked if they would still be using the airport, and City Manager McCourt said that is the case.

9. Approval of an agreement with Bailey County, Texas to house City Prisoner's.

Recommendation: Approve the agreement.

Mayor Carroll asked for this Item to be removed from the Consent Calendar, and he explained that there was an article in the paper with a headline that may have been a little misleading in terms of exactly what is going on with this agreement and with the City's negotiations with the County.

City Manager McCourt said that Mayor Carroll had summed up why he had asked him to consider having this Item pulled from the Consent Calendar. The municipal prisoners are a City responsibility in terms of housing, and the City has traditionally worked very closely with the County. In fact, they have been the City's mainstay on where the City prisoners would be housed. As always, the City continues to look at operations in terms of finding more efficient and effective ways to stretch the taxpayer dollars. About a year ago, the City entered into an agreement with Dickens County, and that has worked out reasonably well and saved the City money. The County knew the City was going to do that and was informed of the decision prior to moving forward. They have also been informed that the City has been working with Bailey County because the City wanted to make sure that sufficient housing was available. The City met with the County today and is anticipating them being part of the continued mix for housing municipal prisoners. It is not that the City believes the County is gauging them. It is just that the City is trying to make sure that it gets the most bang for the taxpayers' dollars. Obviously, that applies to all of the City's operations.

The County Administrator, Dr. Moore, commented briefly that Otero County is in full support of what the City is trying to do. The detention center administrators were sent a follow-up because Otero County had entered into a contract with Bailey County earlier and had sent them down to see what was going on. It is a pretty basic facility, but per the report from the administrator it is a clean facility. They appear to do a good job with the prisoners. He commended the City Council for probably doing a good thing through this Agreement. They appreciate having been able to work with the City on this, flooding and other issues, and they will continue to work closely with City Manager McCourt and other staff to do something that is mutually beneficial.

Mayor Pro-Tem Griggs made a motion to approve the agreement with Bailey County, Texas to house prisoners. Seconded by Commissioner Moncada. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

OTHER BUSINESS:

14. Bonito water taps – Castro.

Recommendation: Authorize disconnection of Castro from the Raw Bulk Water system.

City Manager McCourt explained that these taps go back to the late 1950s and 1960s, and they are unable to determine from the records why they are there. The City has no desire to cut the people off from water and has never had that desire. However, the New Mexico Environmental Department had a safety concern because the taps are on raw surface water coming out of Bonito Lake. As such, there is a higher potential for pollutants to get in the water, and so there is a health issue. They felt that needed to be addressed. When the City looked at it, the option seemed to be to build a treatment plant in Lincoln County to serve the 14 taps. That, however, didn't seem to be a very fiscally responsible action on the part of the City. Discussions were entered into with the Environmental Department, and the net result is that an agreement was reached in which 13 of the 14 taps have been severed from domestic use. They can use the raw water for non-domestic purposes. One of the taps is still hooked up, and under the City's agreement with the New Mexico Environmental Department, the City needs to be moving forward in addressing that. As a second part of that agreement, the City agreed to be the funding agency for a study on small system purification, individual purification systems. A grant was received for that purpose through the New Mexico Finance Authority. It was then contracted out, and the study was performed, which has been turned back in.

At this time, the City needs to move forward with the last individual tap and either have the owner put an individual purification system on, which the City agreed to upfront the money for and then have him make payments on until it was paid off as has been done in some other hardship-type cases in the City, or disconnect the individual. City Manager McCourt's understanding is that the owner has not indicated any willingness to take any action to make sure he has a healthy water supply. If the Commission concurs, a 90-day notice will be sent under the Agreement with the Environmental Department, and certainly if Mr. Castro wants to go forward and work to ensure that he has a good, healthy water source, the City will work with him to institute that.

Mayor Carroll asked if the City would at the same time need to notify the Environmental Department of the action being taken, which is the case. The whole house water purification system would not necessarily be Mr. Castro's only option. He could possibly drill a well—maybe not on the piece of property that he currently has as it is not large enough to accommodate both the septic system and a well. However, he could make arrangements for bulk water to be hauled in or to share water with a neighboring well or something like that. City Manager McCourt agreed that there are other options, but the City does need to stop the raw water from being used for domestic purposes.

Mayor Pro-Tem Griggs asked if it is really procedural to give the owner 90 days because at the end of the 90 days the City has to turn around and consult with the Environmental Department to make further disposition. City Manager McCourt clarified that the 90 days is the time before the water would be disconnected. The City would consult with the Environmental Department before the 90 days started, and again the City would grant extensions if there was actual progress being made towards correcting the situation. Mayor Pro-Tem Griggs asked whether the City would disconnect him without authorization from the Environmental Department to do so. City Manager McCourt thinks the City is at risk in this particular situation and all the rate payers are at risk in having to use raw water for domestic use although the City has been notifying Mr. Castro that it should not be used for that purpose and that it should be boiled before there is any use.

Mayor Carroll clarified that what he thinks Mayor Pro-Tem Griggs is saying is that as part of the consultation with the Environmental Department, they should be in agreement with what will be done at the end of the 90 days if Mr. Castro has not availed himself of the options being presented. Mayor Pro-Tem Griggs reminded the Commission that one of the early options was to just disconnect everyone, and the Environmental Department said that couldn't be done. In fact, one of the statements in the agreement is that the City may not disconnect it without first consulting the Environmental Department. Mayor Carroll said that if the City consults with them and they say not to do it, then it would seem that would shift whatever liability there may be over to the Environmental Department.

Commissioner Brockett asked if Mr. Castro has been contacted and understands what the ramifications are. City Manager McCourt said that he thinks he does understand. There have been verbal responses from him, and there have been similar responses from some of the other individuals of the fourteen. However, once the City told the individuals they would be going through the disconnect procedure, they felt it was in their best interest to work more closely with the City.

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

15. Rudy & Maria Somers, utility bill request.

Recommendation: Deny the request.

The petitioners have asked that their utility bill request be tabled until the next regular meeting on October 10th. They are waiting on a report from DPS that they would like to present to the Commission.

Commissioner Brockett made a motion to table this Item until the next regular meeting on October 10th. Seconded by Mayor Pro-Tem Griggs. A vote was taken, and all voted "aye." The motion carried by a vote of 7-0-0.

16. Consider approval of Change Order No. 3, Public Works Bid No. 2005-011, Desert Lakes Golf Course Clubhouse.

Recommendation: Approve change order #3, Desert Lakes Golf Course Clubhouse, in the amount of \$14,904.53.

City Manager McCourt stated that he needed to get assistance from Mr. McNeile and Mr. Alterson regarding this item.

Mayor Carroll stated that it is his understanding that this Item is to resolve what started out as a drainage problem. In order to now make that situation work, there is some saturated soil that needs to be removed and clean fill put in.

Commissioner Brockett asked that they explain what pit run is. Mr. McNeile indicated that it is simply another word for gravel.

City Manager McCourt stated that in the last change order the Commission approved some new piping to carry the drainage away from this particular location so there would no longer be a drainage issue. He asked why the soil doesn't just dry out. Mr. McNeile said that apparently the green was reconstructed in 1990, and since that time the green has been draining into the location just as it was supposed to do. They wouldn't have known about the issue prior to construction when they got in there and found the problem. As they understand it, the soil cannot pass any type of density test whatsoever, which is why they have to haul it off and replace it with clean fill.

Commissioner Cole wanted to go back to the very beginning with the first change order and review the history of this Item. Mr. McNeile indicated that change order #1 was in the amount of \$10,630 to remove a grease trap that wasn't going to work and install a new grease trap as well as some additional windows. The second one was to address the drainage issue. It was to buy the hardware to take the water that was draining from the putting green out to the driving range. Again, there were some window issues.

Commissioner Cole indicated that his problem is that he has supported the golf clubhouse from the beginning, but those who are supposedly the experts, the construction-type engineers, should know the questions to ask from staff and know these different things that are now resulting in change orders. Everyone knows there has been saturated soil there, and he feels that somebody should be held responsible for overlooking the problem. He is not saying who because he doesn't know who, but it seems to him that it would be someone who is going to direct the bidding of the project. It is hindsight, and every Commissioner tries to do their best as does the City Manager and staff. However, when change orders come on quality of life issues, it's good, but when he has to say you can do change order but not such and such, that is inappropriate. Somebody should have tested the soil. He feels like the contractor says, well, this is a problem and since it wasn't in the bid, the City has the money somewhere or can get it. He has a hard time approving it considering what the City has gone through to try to have a good golf clubhouse. More is continually added to it because something has not been investigated. He can't support it this evening because it is just an add-on that somebody missed for one reason or another. His question is where, who or how was this not found out whether it is staff, the contractor, whoever did the soil test, the location, whatever.

Commissioner Ledford asked how much was paid to architects and engineers to design the facility. It was a lot of money. That is probably who is responsible. Typically, a change order happens because the owner wants to change something by choice like the windows. Mr. McNeile said that is not necessarily the case, as it can be unforeseen situations such as this one. They did speak with the general contractor today, and he said there would have been no way to detect this without actually going in, starting the construction, excavating and doing the earthwork. Commissioner Ledford said he's not blaming the general contractor because he doesn't think it's the general contractor's responsibility. The City spent a lot of money for experts to figure it out in the very beginning of the project. He will accept it because he doesn't want to stop a \$2 million project for a \$14,000 change order, but he doesn't like change orders very much.

Commissioner Moncada said she feels the same way. With this new change order, there has been a total of \$36,138 in change orders. How much more? What else is going to be seen? Is this the last, or how close are they to finishing? Mr. McNeile said they are probably 80% finished with the structure, and he certainly can't promise there won't be more change orders. He certainly hopes there won't be any more.

Mayor Carroll pointed out that no one likes to see change orders, but as Mr. McNeile said, oftentimes they are unforeseen either by the owner, the architect, or the contractor when they bid the project. The \$34,000 is a significant amount of money, but in the overall price of the project it's about 1.5% in change orders, which he suspects is not unusual.

Commissioner Brockett asked if the structure would be compromised if this isn't done, and that is correct. He said he has been involved in the process of building large restaurants that start at \$2.5 million and jump up in price sometimes 15% to 20% because they run into situations that they didn't find. It is frustrating, and this is frustrating. However, his perspective is to okay the change order tonight in an effort to save the City down the road because two years from now there will be settling problems again. He'd like to get it right the first time. That's the way construction goes.

Mayor Pro-Tem Griggs said that this is something that the Commission was certainly hoping to avoid, and for the most part they did avoid design change orders. What there have been are issues that no one anticipated. He doesn't believe that the Commission or anyone else knew that there were water saturation problems with the ground at that point. There was an old building that was having some

sinking or concrete problems. No one knew the cause of it. In hindsight maybe better soil samples should be taken for construction purposes, but this has to be approved in order to avoid another sinking problem, which would cost much more to repair.

Commissioner Lujan stated that he would have to vote for it although he doesn't want to. He would, however, like to know who is responsible.

Mayor Carroll said there is no way to pinpoint responsibility in a situation like this. It is just part of construction.

Mayor Pro-Tem Griggs made a motion to approve the change order. Seconded by Commissioner Brockett. The motion carried by a vote of 6-1-0. Commissioner Cole voted "nay."

Commissioner Lujan asked if the architects are responsible to pay for it if the City has paid them. Mayor Carroll said that it is his understanding that the only way this would have been discovered would have been by excavating the entire site before starting construction, which is not typically done. Commissioner Cole asked if they had not done soil tests. Mayor Carroll said there is a difference between soil tests and actually excavating the site.

Commissioner Ledford added that in the bid process there is usually a line item for contingencies or unforeseen issues. Mr. McNeile stated that it is typically part of any public works bid. Commissioner Ledford said that if it gets over budget it is much more of a serious issue, but the City knows that these things happen and that is why those contingency items are in the bids.

17. Statement regarding the Executive Session of September 12, 2006.

Recommendation: Approve the statement.

18. Appointments to Boards and Committees.

Mayor Carroll re-appointed Jim Talbert to the Public Library Board, Robert Joseph Andreoli to the Airport Advisory Board, and Ms. Delia Mirabal to the Public Library Board.

There are still vacancies on Parks and Recreation, the Promotion Board and the Community Development Advisory Committee. Anyone who is interested should contact the City Clerk's office.

UNSCHEDULED COMMUNICATIONS:

A. Commissioner Cole

Commissioner Cole stated that he would like to begin by saying that he knows each one of the Commissioners are dedicated and try to do their best. He thinks the same about staff, but when he got back on Friday, he had several e-mails and phone calls about things that had happened. The answers were fine, but what bothered him was how the answers were given. He is talking about public relations. He asked staff to look at the public relations of how certain answers were given and under what conditions.

First, he addressed Pecan Street and what took place there. Commissioner Cole said he doesn't know how much staff knew or did not know, but the response of what took place as far as public relations needs to be looked at.

The second instance is the Indian Wells Trailer Court on Indian Wells. The decision is unimportant, but how it was presented, the public relations, and the editorial in the newspaper concerned him.

The third issue is the White Sands Community and the water run-off. There are issues with how the City is responding to questions raised by those in the community. It is not what took place but the response to the people.

Finally, Canyon Road has been dirt since the flood and the potholes on Tenth Street have not been repaired. He explained to the people the situation with the airport and how staff is being used there, but as of today on Tenth Street other than the gravel being put in, it has not been repaired.

His concern is that citizens look at the Commission and get the impression that nothing is happening. When something is happening and it's probably the right thing, there needs to be a better public relations response as to why something is being done. When an individual is told when the sewer line is running over to go out and open the plug to let the sewer run on the grass, that doesn't answer their questions. When people ask where they can move and everything is so quick, they don't really have a chance to figure out what is going on. Answers have to be presented in ways that the people understand so that government is not always at fault. He suggested that it be evaluated.

B. Commissioner Lujan

Commissioner Lujan stated that ever since he has been on the Commission everyone including the other Commissioners, the City Manager and staff has been very helpful and taken him in like a son. They have been there when he has questions and needs help. Tonight, he feels like they have solved one problem by paying out almost \$15,000 to repair a problem, which is good for a project that is worth over \$2 million. However, two things he feels are important are that one, he is going to go home tonight not completely understanding the thing that happened tonight, and, two, more importantly it's not so much placing blame and getting somebody in trouble or fired as he is not for that. It is about solving the problem in the future. Things happen, but he wants to know how to keep them from happening again.

C. Commissioner Brockett

Commissioner Brockett thanked those who stepped up and helped the people in the trailer park with housing needs. There were many volunteers who used pick-ups and their own personal vehicles to get people moved.

D. Mayor Pro-Tem Griggs

Mayor Pro-Tem Ron Griggs wanted to switch gears and point out that there are a lot of serious issues that the Commissioners deal with. Some serious concerns have been brought up, and there are things that the Commission has done and will continue to do. He asked City Manager Pat McCourt about the rewriting of the Zoning Ordinance, and he wanted to tell the public that this weekend in Las Cruces they had the Miss New Mexico USA Pageant. Casey Messer, who is from Alamogordo, won that pageant, and he recognized her in that achievement.

City Manager Pat McCourt said that he did have an occasion to talk with Mr. Alterson regarding the Zoning Ordinance, and he suggested that Mr. Alterson update the Commission on the status of it and what the next step is.

Mr. Arthur Alterson, Community Development Director, explained that they are making progress. A meeting has taken place with the Building and Contractors Association to solicit input from them, and he has been reviewing the draft of April 21st, 2004, which was a product with some recommendations from some staff and from some private entities on some modifications to the zoning ordinance. He has been reviewing that and drafting new language. In addition, he has undertaken a review of zoning ordinances across the State looking very intently at about ten of them and looking at some other model ordinances. He spent the end of last week attending the annual conference of the New Mexico League of Zoning Officials where his mission was to make contacts, review other community zoning ordinances and position himself so that he could ask questions of his peers and Ms. Few's

peers in other communities across the State to learn what the limitations are of State statutes as well as the newest innovations. There are many things involved in a Zoning Ordinance, and there are many things that can easily be ignored until a problem arises. The Zoning Ordinance is not presently in bad shape, and he did not mean to imply that it is. It could use some work as there are many new ideas out there, but those things are being researched before the changes can be brought before the Planning and Zoning Commission for them to make a recommendation to the City Commission. He is hopeful to have some substantive chapters out to the private community within six weeks, and then though he doesn't want to predict a time hopefully before the winter is over, he would like to have hearings before the Planning and Zoning Commission

Mayor Pro-Tem Griggs asked that they keep the Commission updated, and Mr. Alterson said that he is trying to do that as best he can. He has looked at the draft, and he thinks that there are a lot of meritorious proposals in it. Most of what he is spending his time on now are not elements of the new suggestions that are in that draft as much as reviewing the variance procedures, amendment procedures and definitions and parking requirements, which actually were not so much addressed by the draft.

E. Commissioner Moncada

Commissioner Moncada said that she has the same problem as everyone else with the weed situation, and she tried to explain to a lot of the citizens why the weeds are not cut or why the City just can't go onto somebody's property and cut the weeds for them. What she would like to see as she has been working with Mr. Doyle on this quite a bit is in the next *Profile* perhaps an explanation of the procedures that the City has to go through in order to remove cars, or go into somebody's yard to remove debris, and other such things. The general public thinks the City can just go in and do that, and that is not the case. For instance, if there are abandoned cars, the City has to get identification numbers and follow a bunch of different steps including sending people notices. There are many steps that the City has to go through, and she would like to see that in the next *City Profile* to explain to the general public what that process is and what the time limits are.

Safety Director Sam Trujillo explained that about this time last year they put an article out in the *City Profile* addressing what was going to be done with the Code Enforcement Division, and that can certainly be done again. He let the Commission know that they have been very aggressive on the enforcement of the weeds. There have been a lot more this year with the rains, and they are using extra personnel to help get the message out. They are also trying to put in some public relation spots in the media to address the issue. They are a little behind this year, but they will get caught up fairly shortly.

Commissioner Moncada said she would also like to see if the people who continually call up and complain have time to go out and cut some little old lady's yard. That might help.

Director Trujillo said they had provided to the Commissioners the most recent statistics on what has been done with the code enforcement over the last several months. They have also run into several situations where people have refused to cut their weeds and they have been cited in the Court. Once it gets into the Court system and an individual pleads not guilty, it is set up for trial any time in the next six months. It is a lengthy process at that point, but the Department did feel that they were deserving of criminal citations.

Commissioner Moncada said that is the kind of thing some individuals don't understand, and she feels it would help if the steps were outlined to them.

F. City Manager McCourt

City Manager McCourt thanked the Commission for allowing him to attend the International City Management Conference. He feels that it was extremely beneficial, and probably the greatest benefit he received was going to an all-day seminar on high-performing organizations. It was very good in

the sense that it provided a very detailed map of the types of changes that are necessary to go on in an organization. It is actually a one-week or two-week course that is put on at the University of Virginia. It was obviously extremely condensed to try and hit the highlights in one day. He thought what is quite good is that Alamogordo is doing a lot of the things that need to be done. What was kind of depressing was to see how much more Alamogordo needs to get done to really get to where he feels the City needs to go. He will provide a written breakdown of the various training sessions he attended.

City Manager McCourt said that on Friday he would be in Santa Fe before the New Mexico Finance Authority. Mr. McNeile will be in charge while he is out of town.

He reminded the Commission that there are two scheduled Town Halls coming up. One is on drainage in October, and he strongly encouraged the Commissioners to attend that. There will be another one in early November dealing with capital improvements, the ICIP list, and he strongly encouraged them to attend that as well as there is a major, major item that needs to be discussed with regard to the waste water treatment plant and how to prepare for the future with that. A study has been done, and they want to discuss that with the Commission. It is a \$10 million project that the City needs to get moving on and prepare to implement. The desire is to discuss the various options with the community.

The water report was submitted more out of habit than anything else since the City is not currently under water restrictions. City Manager McCourt is not sure that the drought is over, but he hopes they will have a nice wet winter and get into more normal water flow. At this point, the water supply is in very good shape.

As far as the trailer park, he wanted to explain from his position what occurred. While he was out of town, he got a call from a meeting with the New Mexico Environmental Department, the Department of Health, the acting City Manager, the Public Works Department and the City Attorney. The situation was that in the rainy season there was raw sewage flowing out on the ground. There was basically a cesspool of raw sewage on the ground in a hole that included water pipes. There is a very strong chance of contamination to the water system, which could then be pulled back into the entire water system for the City. He made the decision to shut off the water. The owner had been notified to fix the situation, and it had not been fixed in three days. City Manager McCourt will not jeopardize the City's safety and take the chance of feces and urine getting into the water supply for the City of Alamogordo. There are close to 40,000 people that are served with City water. They did discuss the hardship that the decision would put on the residents of the trailer park. He is the guy that had to sit up there and make the decision that those individuals were going to be placed in extreme hardship, but he weighed that against the safety of the entire community and the safety of the water supply. He made the decision, and he would make the decision again tomorrow. He would never jeopardize the safety of the community's water supply. He echoed Commissioner Brockett's comments and the comments that have been in the paper about how the community, not the City, but the community stepped forward to try and assist the individuals. That is a very strong comment on the character of the community, and he is proud to be part of a community like that. He reiterated that he would make the same decision tomorrow, even though he has received a lot of criticism regarding it.

G. Mayor Carroll

Mayor Carroll received a copy of a thank you note for DPS Officer Rachel Picaso from a citizen who wanted to thank her for some individual assistance that she provided. He asked that Director Trujillo pass on the congratulations of the Commission to her as it is just another example of the men and women who are in the employment of the City of Alamogordo who go out of their way to do a good job in helping the citizens wherever and whenever they can.

The Chamber of Commerce Transportation Committee is hosting the annual SPIRIT conference this Thursday evening and Friday, and he asked the Commissioners to let the City Clerk know if they plan to attend. The registration needs to be sent in.

Also, the Secretary of Economic Development, Rick Homans, will be in Alamogordo tomorrow. He will be touring Sunbaked Biscuits' operations and the construction at PreCheck. That tour starts at 8:30 at Sunbaked Biscuits if any of the Commissioners are interested in attending. Mayor Carroll plans to attend at least the Sunbaked Biscuits part of it.

Commissioner Moncada made a motion to adjourn into Executive Session. Seconded by Commissioner Cole. All voted "aye." The motion carried by a vote of 7-0-0, and the meeting was adjourned at 9:19 p.m.

EXECUTIVE SESSION: Adjourned into Executive Session to discuss threatened and pending litigation, limited personnel matters, and purchase, acquisition or disposal of water rights.

/s/Donald E. Carroll

Mayor Donald E. Carroll

(SEAL)

ATTEST:

/s/Renee Cantin

City Clerk Renee Cantin

(Prepared by Ubiquis Reporting)
Approved at Regular Meeting on October 10, 2006.