

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
SEPTEMBER 25, 2018**

**RICHARD BOSS, MAYOR
AL HERNANDEZ, COMMISSIONER
NADIA SIKES, COMMISSIONER
JOSH RARDIN, COMMISSIONER
SUSAN PAYNE, COMMISSIONER**

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
MAGGIE PALUCH, CITY MANAGER
PETRIA SCHREIBER, CITY ATTORNEY
RACHEL HUGHS, CITY CLERK**

CALL TO ORDER / ROLL CALL / INVOCATION / PLEDGE OF ALLEGIANCE

Mayor Boss called the meeting to order at 6:30 p.m. Roll Call was taken by the City Clerk. City Attorney Schreiber was as absent. City Clerk Hughs announced there was a quorum present. Invocation was given by Pastor James Forney and the Pledge of Allegiance was led by Commissioner Payne.

APPROVAL OF AGENDA

Commissioner Hernandez moved to approve the agenda.

Mayor Pro-Tem Baldwin seconded the motion. Motion carried with a vote of 7-0-0.

PRESENTATIONS

1. Presentation on concerns of the residents of Cottonwood Heights subdivision. (*Frank Bishop, Resident*)

Mr. Bishop spoke on behalf of the residents of Cottonwood Heights subdivision. He showed a power point presentation on behalf of the Cottonwood Heights residents that oppose the rezoning of land in their subdivision. He said this is evident by the 627 signatures on a petition opposing the rezoning. (See Power Point Presentation in Blue Book)

PUBLIC COMMENT

Shirley Owen commented on the following:

She was concerned about the noise level and speeding on Tenth Street and Juniper.

Rich Merrick commented on the following:

He said the State Auditor released a report on five allegations made against the City of Alamogordo. He asked that this Commission be transparent with the response to the State. He said the State was transparent with the Citizens of what they found. He asked that by the next City Commission meeting that there be answer to when the citizens of the City are going to see a response to a State Auditor's report that has made this City look very bad across the State.

Johanna Gonzales commented on the following:

She stated she lives in the Cottonwood division. She was concerned that the elderly women will not be able to go for walks. She said these people walk feeling unthreatened and very safe, she believes that will be taken from them if those apartments are built.

CITY MANAGER'S REPORT

City Manager Paluch made the following remarks:

1. She gave an update on the CES fraud case. She said the City of Alamogordo Police Department completed their review and have turned over their documents to the FBI Computer Forensics Department. She said the City will be requesting updated information periodically. At this time there is

no estimated timeline of when the computer forensics work for this case is going to be completed. Staff is working on gathering the information to present to the Commission regarding which projects will need to be revised to accommodate the stolen funds. She said the City did receive \$240,000 in Legislative funding for this year for playground shade structures. She said since the City received this funding, the options that staff originally thought to bring to the Commission are being reviewed one more time. She said the Commission will see on the October 9th, 2018 meeting, an item for the Commission to review which projects will need to be revised to accommodate that fraud case.

2. She said the final stages of Kids Kingdom are nearing completion. The contractor is finishing their portion, and once they are complete, staff will begin working on the landscaping around the playground, as well as, the installation of the irrigation system. Additionally, Community Services is seeking quotes for a concrete chess table, concrete bean bag toss stations and a concrete ping pong table. She said these potential items will really enhance the park and make it a multi-generational location for our community. She said they are scheduling for the park to open at the end of October 2018. Staff is meeting right now to discuss the ribbon cutting and the grand opening for the Park.

3. She reminded everyone that there is City Commission Special meeting on October 2, 2018 at 6:30 p.m. She said Senator Daniel Ivey-Soto will give a presentation to the Commission on the Local Election Act and the implications for our City.

Mayor Boss asked City Manager Paluch if we have been in contact with Leadership Otero 2017 regarding the replacement of the tile. She said yes, staff actually met about Kids Kingdom and they are going to be reaching out to the Chamber of Commerce because that was through Leadership Otero and working on a plan of where that wall should go for the handprint tiles.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Commissioner Payne made the following comments:

She said she spent two hours at the County Fair manning a table for the new branding initiative and she had the opportunity to talk to probably 75 to 100 people. She wanted to share with the Commission that she received so many positive comments from wide variety of residents. She said some of the comments were: Code Enforcement is really stepping up, can't wait for the Family Fun Center to open, excited about some of the growth and some of the new businesses.

CONSENT AGENDA

2. Approve the minutes for the August 21, 2018 Special Meeting and the August 28, 2018 Regular meeting. *(Rachel Hughs, City Clerk)*

3. Approve the statements related to the Executive Session held on August 28, 2018. *(Rachel Hughs, City Clerk)*

4. Consider, and act upon, a request by Cesar or Cecilia Perea, related to a leak adjustment request for 1105 Mesquite St. *(Mark Threadgill, Customer Service Manager)*

5. Consider, and act upon, Award of the Airport Runway Safety Area project (PW Bid No. 2018-004), In the amount of \$432,506.75 (including NMGR) to Mesa Verde Enterprises, Inc. *(Jim Talbert, Airport Manager)*

6. Approve the agreement with Otero County for Alamo Senior Center services to County residents. *(Magdalena Morales, ASC Manager)*

7. Approve the agreement with Otero County for Alamogordo Public Library Services to County residents. *(Sharon Rowe, Library Manager)*

8. Approve the New Mexico Department of Tourism Litter Control and Beautification grant agreement for Keep Alamogordo Beautiful (KAB) for FY2019. *(Kerry Uribe, Community Services)*

Commissioner Hernandez moved to approve the consent calendar.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

NEW BUSINESS

9. Consider, and act upon, naming the new Disc Golf Course at Alameda Park in honor of John Riffle. (Kim Riffle)

Mrs. Riffle said her husband designed this course in Alamogordo. She thanked everyone for allowing that happen because she thinks it has been a wonderful thing for the community. She asked the Commission that the course be named the John "Riff" Riffle Memorial Disc Golf Course.

Mayor Boss moved to approve.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.

Mrs. Riffle said she would like to see our City finish the course off with the tee pads and stuff they need. She said she is willing to go and get donations for these things and for the sign, if needed. She said she would be glad to help with any of that. Mayor Boss asked her to coordinate that with the City Manager's Office.

10. Consider, and act upon, a payment extension of water bill in the amount of \$2,361.70. (Cecilia Lucero, Property Owner)

Ms. Lucero asked the Commission to let her pay \$50 a month to pay this bill off because she is not working and only living off of social security.

Customer Service Manager Threadgill said Ms. Lucero does have a large water bill, it is a combination of three months usage. He said she did come to the City to speak to us about it, and we did notify her that if she had a leak she could file for a leak abatement. He said at the time he spoke with her, she did not know why her usage was so high. He said the majority of the usage was during this period, they could not link it to continuous consumption. He said in other words, the water would go on and off during the day. There was a period of continuous consumption, but the majority of the usage that constitutes these bills was during periods where there was no continuous consumption, so he does not know if there is a leak or if someone just left on the water. It did stop abruptly, though no repairs have apparently been made. He said when he last spoke to the customer, she wasn't sure either. He said they did offer to set her up on a six-month payment plan as a property owner and that is as far as they can go. He said the Commission, in the past, has allowed up to one-year. He said at the rate that the customer says she can pay \$50 a month, it would take four years to pay off the outstanding balance.

Mayor Boss asked if there was any way to explain the graph. Customer Service Manager Threadgill said what they are looking at on that graph is a daily usage profile. He said if you are looking at the right-hand side of it that indicates continuous consumption. Mayor Boss asked if there was something going on at that time that was different about the day before. Customer Service Manager Threadgill said every hour on the hour there was some consumption. He said it may or may have not been a leak, we don't know. He said there has been no repair done that they have been made aware of at the property, and yet you see the consumption stops which indicates something was turned off or repaired but we do not have any indication of that. He said as you can see prior to that the water goes on and off during the day, you have hours of zero usage and you have hours of some usage. He said that is where most of that water was used during that period of time for this nearly three month bill. He said they delivered a courtesy notice to the location to let the customer know that they have continuous consumption, it could be a leak, or a faucet left on or the evaporative cooler left on for 24 hours. He

said they got no response from the customer on this at the time. He said his understanding is Ms. Lucero was not living there at that time. Ms. Lucero stated her son was living there. Customer Service Manager Threadgill said at this time, the only relief they had to offer her is the six-month payment plan and she said that she needed more time than that.

Commissioner Payne asked how much it would be if they went a year. Mayor Pro-Tem Baldwin answered \$260 a month.

Mayor Pro-Tem Baldwin asked Ms. Lucero if she said there was a leak there. She said she really does not know because her son was living there, and she has not had contact with him. Mayor Pro-Tem Baldwin said there is an abatement process, if there was actually a leak. He asked Ms. Lucero if she has communicated with her son to find out, or if he had anything fixed or if he paid for anything. She nodded her head no.

Commissioner Payne asked her if it was empty or if she was renting it. Ms. Lucero said it is empty. Commissioner Payne asked her if she had water service. She answered no, nobody is living at that place. Customer Service Manager Threadgill said the service was terminated for non-payment and the meter was shut-off and locked.

Mayor Pro-Tem Baldwin told Ms. Lucero this was a very difficult situation for them. He said six-months is their standard policy. Historically they have done one (1) one-year extensions for payment and it sounds difficult but that is about our only option right now. He said the water was consumed, there wasn't a leak. He told Ms. Lucero if she could find out from her son, more information to help the Commission through this process it would be helpful. He said if there was a leak and he did something to fix that leak, there is an abatement process that could help us along here, but as it reads right now, our staff and our records indicate that there was no leak.

Mayor Boss suggested to Ms. Lucero to speak to the neighbors on each side to see if they saw her son doing any repairs or not.

Commissioner Wright asked Customer Service Manager Threadgill if there had been any payments made since June of 2017 on this account. He answered no. Commissioner Wright asked so this has been sitting there for a year and a half. Customer Service Manager Threadgill answered right, what finally happened is it went to collections. He said this was a tenant account that went to collections, and once it is in collections if we can't collect from the tenant then we go to the property owner and that is when Ms. Lucero came in to speak to him. He said she since got a letter from the National Recovery Collection Agency. He said they have now contacted her and if that does not become resolved or if some agreement made, then we'll file this with the City Attorney's Office to file a lien on the property, which might ultimately lead to foreclosure.

Ms. Lucero stated the lady from the collecting agency said she would be able to pay \$50 a month.

Commissioner Payne said Commissioner Wright made a good point that no payment has been made since August of 2017. Ms. Lucero said she did not know about it, until she talked to the lady from the collection agency. She said the lady from the collection agency told her if she could pay \$50 a month that would be okay.

Customer Service Manager Threadgill said that agreement was through the National Recovery Agency, the collection agency, so once we turn the accounts over to them for collections, then they have greater ability, but they are still going to send the City the money.

Commissioner Payne said she understands that, but she does not understand if the collections agency made the agreement with her for \$50 a month. Customer Service Manager Threadgill said this is the first time he hears that the collection agency has made her an offer. Ms. Lucero said the collection agency told her to call them back after she came before the Commission. Customer Service Manager

Threadgill said Ms. Lucero called him yesterday to say that she received this letter and wanted to know how to respond and he advised her that she was going to be heard by the Commission and to hold off responding until she receives direction from the Commission.

Commissioner Payne said let's pretend she just got the call from the collection agency and they said she could pay \$50 a month. She was confused as to what happens if Ms. Lucero made an arrangement with the collection agency. Mayor Boss said if we allow it to be turned over to a collection agency, then are they bound by any agreement that they make with that customer. Customer Service Manager Threadgill said they are obligated then to pay us, and the account would be paid at that point unless they are commissioned. Mayor Boss said but they are only going to pay us \$50 a month. Customer Service Manager Threadgill said if they do not pay the whole balance then we are not bound to that. He said he does not know what the terms and conditions would be between the customer and the collection agency. Commissioner Payne asked if they pay the City upfront. Customer Service Manager Threadgill said in order to relieve the debt they would have to pay us upfront, otherwise it is not paid off. Commissioner Payne said if she pays them \$50 a month it's not like we get \$50 a month, they have to pay us up front.

Customer Service Manager Threadgill said he does not know what the terms and conditions are, that would be a private contract between her and the collection agency.

Commissioner Sikes said for clarification, she is still obligated to the City to pay \$196 a month if we put her on a one-year plan. She asked if they already turned it over to collections, and now they develop a plan for her to pay \$50 a month, is she still obligated to us, and after x amount of time can we still file a lien against her. Customer Service Manager Threadgill said if and only if the collection agency does not pay the debt. Commissioner Sikes said she seriously doubts that they would pay the total amount while she is paying \$50. Customer Service Manager Threadgill said that would be a private contract between the owner and the collection agency. Commissioner Sikes said if she chooses to work with the collection agency to pay \$50 a month, we are getting a little bit of money each month from the collection agency. If Ms. Lucero finds out from her estranged son that a repair was made, would she be able to come before the Commission and have us reconsider this. Customer Service Manager Threadgill said if there is proof of a repair to a leak then she could file for a leak abatement. He said at that time, they would re-calculate the bill based on whenever the leak was, and the repair was made.

Commissioner Payne asked if consumption stopped after shutting off the water. Customer Service Manager Threadgill said there was about a two-week period between when the continuous consumption stopped, very little consumption, and we terminated the account for no payment. Commissioner Payne said it stopped on its own, not because you shut it off. Customer Service Manager Threadgill said the account was terminated and then about two weeks after the continuous consumption ceased.

Mayor Boss asked Ms. Lucero to ask her neighbors if they might have seen her son doing some work on a leak. He said possibly delay this until she has had an opportunity to do that. He said if we do that then we can consider a leak abatement and the amount that is owed would go down considerably. He said he thinks it could be a simple statement from her neighbors that they did in fact see that there was a repair done to the water line on the house. He asked Customer Service Manager Threadgill if that was adequate. He said they are very flexible on what they accept as proof of repair. Ms. Lucero asked if she needed to get a letter. Mayor Boss answered yes, get a letter from each neighbor that might have seen this, or if they saw a contractor out there, try to contact them. Ms. Lucero asked if it has to be a contractor. Customer Service Manager Threadgill said no, it could be a self-repair. He also said for a leak abatement it does not have to come back before the Commission, unless the abatement is going to exceed \$2,500 and in this case it will not.

Commissioner Payne asked how much will be abated. Customer Service Manager Threadgill said he does not know, first he would have to look at if there is cause for abatement and once that is done then we would re-calculate the bill. He reminded everyone that abatement does not erase any usage, it just

reduces the per-unit cost to the average. He said you are still going to pay for the entire amount of water consumed.

Mayor Boss asked Ms. Lucero if she understood what she needs to do. He told Ms. Lucero if she does find someone to make a statement to that effect, she won't have to come back before the Commission, the water department will be able to handle that. She asked who she would need to take the letter to. Customer Service Manager Threadgill said she could bring it back to him.

Mayor Pro-Tem Baldwin said they do not want to move forward until she exhausts all her options to help this situation.

No Action Taken.

11. Consider, and act upon first publication of Ordinance No. 1578, Case: Z-2018-0002 (A), Cottonwood West, Replat B, Lots 1-46 to change zoning from R-1 Single Family Dwelling District to R-4 Multiple Family Dwelling District. (City Attorney, Petria Schreiber) (Roll Call Vote Required)

Assistant City Attorney Johnson showed a Power Point presentation and explained the request. He said this was the same presentation that was used for the Planning and Zoning Commission meeting. He pointed out some proposed conditions from the Planning and Zoning Commission. He said the Planning and Zoning Commission recommended approval contingent upon these conditions. (See Blue Book for conditions and for Power Point presentation).

Assistant City Attorney Johnson said there was a lot of discussion about what the City's notice requirements are. He said our notice requirements can be found in our City Ordinances and it is 29-01-070, and when it comes to variances we have a sub-section in there that is notice and public hearing, it clearly states in there that requested of the land within 200 feet of the area for which the variance is requested. He said the employees of the Planning and Zoning department did as a courtesy, a 250-foot radius notice instead of the normal 200 foot. He said the other thing that has been coming up is, this Commission is here to vote on rezoning and not on a private real estate contract. He said the City has a responsibility before them this evening on whether or not to change from R-1 to R-4 pursuant to the application. He said it is important because he knows that one may lead to the other, but it is important that the Commission recognize that they are two separate matters. He said another thing that comes up is diminished property value. He said he was not sure, he has not received anything or has the Planning and Zoning department received anything verifying a diminished property value. He said we are always sensitive to something like that. He said we don't have information that it will do one or the other increase or diminish property value at this time. He said spot zoning is determined on an ad hoc basis depending on the facts and circumstances of each case. He said that came out of Watson B. counsel, there was an earlier landmark case of the City of Albuquerque versus Paradise Hills Special Zoning District Commission and that is where that actually stems from, it's been followed, it's well established law. He read what the New Mexico Supreme Court defines spot zoning as "an attempt to wrench a single lot from its environment, giving it a new rating that disturbs the tenor of the neighborhood affects only the use of a particular property or a small group of adjoining properties and is not related to the general plan for the Community as a whole but is primarily for private interest of owner of the property so zoned." He said historically that Courts have given great difference to municipalities with regard to rezoning classifications, those actions. He said there is a lot of variance out there, so one can always bring a spot zoning argument, whether it would withstand legal judgement and scrutiny, he is just not certain. He said after reading that definition, he does not think it is so unconscionable but that is not a judgement for him to make at this time. He said the last issue is covenants. He said covenants are two sorts of promise, referred to in the legal realm is a positive or a negative, a promise to do something or a promise to refrain from something. He said covenants are known in their uniqueness in law and legal remedies that they run with the land. He said meaning if the development wants to turn over a covenant would stick with that land, however, that is a piece once again that would go to a private real estate contract that the City themselves cannot get involved in. He

said the Planning and Zoning Commission did approve it based on these conditions and the big question is what would happen if these conditions aren't met, and so pursuant to our Ordinance it is known as reversion, meaning that it would go from R-4 and revert back to R-1. He said what does that mean, do we own it outright, we could do, and it stays with the conditions passed here this evening and the answer would be, it would be litigated.

Commissioner Payne said she understands that the Commission is only voting on the zoning, but in the interest of full disclosure she is a member at First Baptist Church, so she recused herself from any vote.

Commissioner Sikes stated when the idea of an Apartment complex or housing for Alamogordo, we have to all admit it sounds like a wonderful idea. She said with the potential of new squadrons moving in to Holloman, know that there isn't affordable housing in Alamogordo it sounded like a good idea. She said she did not think anything of it until the Planning and Zoning meeting, and in full disclosure she spoke with the developer and she has seen the plans, indeed you will all probably agree that it looks like a good idea. She said unfortunately it doesn't look like a good idea for our back yard. She said she lives in that area, she is a member of the Wood Streets, and she has disclosed to all of her neighbors, all almost 700 of them that signed the petition. She said not very many people said they totally oppose the idea of housing in Alamogordo, they just did not want that Apartment Complex in the neighborhood. She said the people do not want the neighborhood infringed upon, so she has told the neighbors over the past few months that as the District two (2) Commissioner, she agrees with them and she has no choice to vote against changing the zoning. She thanked everyone involved. She said not only did they go door-to-door, but they setup in their driveways to get signatures, they continually made phone calls and put out flyers and signs. She said this was a community effort and they don't oppose housing in Alamogordo, they just don't want it where we are proposing to change the zoning. She asked the Commission to understand where they are coming from. She said we have more areas in Alamogordo where this would be possibly more appropriate.

Russ Darby commented on the following:

He said he is opposed to the re-zone of the Cottonwood Heights West, Replat B, for all the reasons stated in a petition or letter to the City Commissioners. He said he would also like it noted that the July 12, 2018 Planning and Zoning meeting minutes were reviewed by at least six different people followed by a group discussion and they believe that they contain some misleading information in four different areas.

Laurie Anderson commented on the following:

She said she has been a resident of Las Ventanas for the past six and a half years. She said the fact that people feel unsafe about a community or a certain structure coming in is disheartening. She said she is a single female and never has she felt unsafe. She mentioned that new people will be coming into our community, from Holloman Air Force Base and they are looking for places that have great amenities for their young families. She said having one entrance and exit has never been an issue. She talked about quality of life and the amenities that an apartment complex of this nature can provide for people. She said it is an enhancement to our community. She spoke of how Las Ventanas addressed the privacy issue with a fence and trees, and said it is not an issue. She feels like it is something that should be considered. She said to feel unsafe, it's unfair. She said she just wanted the Commission to hear what it is like to live in a community of this nature.

Kevin Oquist commented on the following:

He thanked the concerned citizens who showed up to the meeting and those that went door to door to make all of them in the neighborhood come together. He was concerned that the rezoning of the subdivision will drive down property values and make the neighborhood less safe for people to raise their families. He said he can't understand the need to add rental properties when he sees countless single-family homes around the City with for rent signs. He said therefore, he must respectfully oppose the rezoning on their subdivision.

Barbara Oquist commented on the following:

She stated she is not interested in having those apartments in their backyard. She said they love their

home and the way it is now, and they are not interested in adding all that traffic to their area. She respectfully requests that they turn this zoning down.

Marilynn Darby commented on the following:

She stated she is opposed to the rezoning. She is not against the apartments being built somewhere else in Alamogordo, but she just thinks that this neighborhood is not the best place for it. She said having those apartments would make it a very noisy, crime area.

Frank Bishop commented on the following:

He wanted an answer to why in 2010, the First Baptist Church asked the City Commission to vacate all lots, streets and alleys in the subdivision. He said it was tabled and never visited again. He asked what happened. He said in all this research that they have done, they found a lot of inconsistencies with this and they would like to know why. He thinks First Baptist Church has a case because they asked for it and the City Commission didn't do anything.

Paula Daniels commented on the following:

She stated during this time she has learned how the City functions and dysfunctions, and she believes that the City is in a state of dysfunction right now. She said they do believe that the First Baptist Church should go back and revisit a 2008 case that came before the Commissioners in which it was tabled because there was confusion because there was split zoning. She said First Baptist Church had bought two pieces of land and were wanting to build on the Church. She said one was C3 and one was R1. They weren't allowed to move forward with their building because there could be no determination on if that was against New Mexico State Statute. She said she prayed for everyone involved. She wanted the Commission to know that she called other cities and she spoke with their Planning and Zoning departments. She said they all kept trying to correct her when she was trying to say that the City of Alamogordo was trying to rezone inside a subdivision. She said they kept correcting her and said you mean next to the apartments, or next to the subdivision, and she answered within the subdivision. She said nobody had an explanation for that. She said they have talked to previous City Planner Williams about a feasibility studies and the traffic issue. She said there is going to be a huge traffic issue there with one single entrance and exit, trying to get in and out of a gated community with over 540 residents. She said they know there can be sewer issues because that is in the City's SWOT analysis as a threat. She also asked the Commission to look at these abilities about what it does do to the income and the value of a home. She said the Tax Assessor may not formulate the value of their homes for property taxes, but the mortgage lenders, real estate brokers, property subdivision developers have all told them that apartments linked in and connected to a subdivision will absolutely drive down the value. She asked for the City to do a feasibility study and see if this is even a viable option.

David Smith commented on the following:

He said he would really like it if things would stay the way they are.

Paul Daniels commented on the following:

He stated he opposes. He does not think it would do their neighborhood any good. He pointed out to the Commission that they got over 600 applicants, which is almost all of Cottonwood Heights. He said that means that the people do not want these apartments. He said during the City and planning, they were put on the back burner through the whole deal. He said they were not respected, they were called idiots and all kinds of other names. He said this was the City Planner's little pet peeve. He said the City Planner wanted to make a name for himself and he thought he was going to buffalo everybody, and it started out trying to sneak it out under the fence. He said we found out about it and we didn't let him, but he has planned this thing all the way through and he has made a lot of mistakes. He thinks the Commission needs to look at what the people want because this thing is going to tear this City up because everybody in this town knows about this and it will fracture your town. He thinks the Commission needs to look at this really hard and to listen to their people.

Janell Cooper commented on the following:

She agreed with everyone else. She said the most concern they have is being elderly, their home is

their life savings. She said if that goes down any, they could be in real trouble medically if they needed care in the future. She said they are concerned that will happen to this community with the traffic, the sewer, the garbage and everything that this increase and this number of people in this small area is going to mean. She did not believe that anyone would even want to move in there next to the Dollar Store, let alone in a gated community. She said when she bought that home she was planning on staying there the rest of her life. She said if you put apartments, she is sure that it will not only change for herself and her husband, it will change for her heirs and everybody in her neighborhood and likewise for their families.

Ann Smith commented on the following:

She said it has all been said. She said they had moved there 11 years ago, and they knew it would all be houses one day, but they never dreamed there would be apartments. Think about 500 or 600 cars going in and out one gate on Scenic Drive, right by a truck stop, she couldn't imagine it. She said this is where they live, and this is what they like and she hopes the Commission listens to them.

Kyle Bueermann commented on the following:

He stated he is the Pastor at First Baptist Church and the applicants of this rezoning request. He said Alamogordo is growing and it is exciting to see the growth of this wonderful community. He said in any growing there is a constant need for affordable housing that meets the demands of the community. He talked about the Air Force bringing in a large transient population and the need for short term housing. He said the reality is these short-term individuals will most likely not rent a house. He said in his experience, many of those that are here for three or four years are highly unlikely to buy a house. He shared some stories of two families that would have benefited from a community like Montebello. He said since 1942, Alamogordo has been a welcoming community to those who serve in the Military and by approving this rezoning request it would affirm once again our City's desire to continue serving the needs of a growing military population.

Gary Black commented on the following:

He stated he was born and raised in Alamogordo. He said he has seen many changes in this community. He said he left here to go to Tech School in Albuquerque, and he went to the Army and served, and he came back because he loves this community. He said he has known many people that served at Holloman that would have loved the opportunity to move in to an area such what has been planned here. He said he is a member of First Baptist Church, but other than that he thinks that this project will be very successful for Alamogordo. He said it will improve Alamogordo again.

Rene Hatfield commented on the following:

She said she is saddened by some of the comments that were made and have been made since the initial request for this rezoning. She explained how she became a volunteer for different organizations throughout the State, regional and local. She also explained how she came up with the idea and the location for this apartment complex. She mentioned that Holloman Air Force Base is out of space, and the City of Alamogordo is generally 95 to 98 percent capacity full, via 13 apartment complexes in the City of Alamogordo. She said for people to say that they are not good enough to live in their neighborhood really upsets her. She said how dare you judge people in this community if they want to rent instead of buy, or if they want to rent an apartment complex instead of rent a home. She said it is their right to decide where they want to live, not yours to decide where they should and should not live. Regardless of their income, regardless of the jobs they may hold, if they are in the military or work at McDonalds, they have a right to live where they want to live. She said if they meet the restrictions, because there are restrictions, then they will be able to live in her apartment complex, it is not transient or an extended stay home. She said she does not know where that has come up in the community. The leases are going to accommodate the need of the people that seek to live in the community. She said it is a newer gated community and it is a safe community. She said the residents will go through regular background checks, rental agreements, and through the standards that will match the standards of which she wants this community to be which is; safe, flourishing, and has all of the things that someone wants in a community without having to be pressured to buying and being forced to live in a neighborhood that they don't want to live in. She said everyone on the Commission sits up there to

make the best decisions for this community. She said we know that a multi-family apartment complex is needed for this community, it is in the City's Comprehensive Plan that more units are needed. She said she chooses not to build a section 8 home, she chooses to build higher level homes than that. She told the Commission she is there to answer any questions they may have based on this project and that she does have some pictures that show the site plan.

Beth Crabbe commented on the following:

She said this is a very difficult thing for her because she has a lot of conflicts of interest in her opinion. She said she is not there to give her opinion. She wanted everyone to know how she feels about this issue as far as her position is. She has an office in Cottonwood Heights, she has a Property Advantage Business and she is also on the Planning and Zoning Commission now. She has only served on that Commission for two months. She said her sympathy goes out to everybody in particularly all of the Commission because this is a very hard decision. There are many pros and cons to each side. She said not too long ago, Christ Community Church wanted to zone their Church to commercial zoning. She said that Church sits right behind her house and absolutely she was there fighting that because she certainly did not want a commercial building behind her house. She said this is not a commercial zoning, but there are so many different sides to the coin and she respects everyone's opinion, but in her position where she is in right now she does have opinions as to the property values, she has seen it on Sunrise when the other apartments went up at the First Street entrance. She also knows from the property management side and from working with military, there are needs for that type of housing. She said she does not have a solid decision of what she would do if she was in their shoes, but she certainly sympathizes with everybody and she can see each side of that coin. She said speaking as a citizen or a realtor, she thinks the developer could or should put some restrictive covenants. She suggested that to many of the members to go and talk to the developers and ask them if they would be willing to put restrictive covenants on there that would not allow any HUD homes or any low-income housing there.

Maria Quade commented on the following:

She stated she is retired Air Force and she does a lot of volunteer work also. She said someone had spoken earlier and they did not know if this proposed project was going to increase or decrease property values. She said she happens to know that one person was planning on buying a house on Tradewood and when they found out about the project, they backed out because they did not want to be in it. She said that tells her that is going to lower their property values. She said yes, we have to take care of Alamogordo, however you have a job to take care of the people who bought their houses on good faith. She said she did notice that this is not going into the golf course area. She said take that into consideration that you have got a lot of people's lives already on the line, that they have invested their life savings and houses that are going to depreciate with what the Commission decides.

Mark Johnson commented on the following:

He said he had two houses in the area and sold one in the Tierra Bella subdivision and the reason being was because he did not want to look out his back door and look at three air conditioners on the roof. He said the house he lives out on Wood Loop, he looks at the mountain, so there is an empty space behind him. He said if the area that they are talking about now gets rezoned, that leads him to believe you are going to go next to the area right behind his house. He said he has listened to some passionate people this evening. He asked are they building it right behind your house. He said it is one of those things that you have to think about. He is not trying to be negative. He said one lady said she lives at Scenic and Juniper. He said as somebody that is on Scenic every day, there are people that roll down Scenic. He said between Florida and White Sands it's like the new raceway, the Holloman 500 and it's bad. He said not only that, but on Wood Loop we have all kinds of construction traffic every day. Why would you roll through a subdivision when you have an unpopulated street one block away. He said there are a lot of kids that play in this neighborhood. He said there is no speed limit sign in their neighborhood. He said when they first started this, he asked why. He said we have already allowed a subpar developer to come in, those were all one-story homes in that neighborhood. We've allowed another developer to come in and build subpar homes that are almost \$100,000 less than their homes, they are two-story, and they are an abomination when you look at them. He said he

wants the Commission to rethink this and make sure they are making the right decision for the right reasons. He said we do need multi-family housing here, he thinks everybody in this room knows that, but there are also approximately a thousand homes for sale, he does not know how many of those would be willing to rent. He said maybe we need to look at another strategy, another location.

Commissioner Hernandez asked Ms. Crabbe to come up. He asked her if anyone has ever asked her when selling a house, what they property next door is zoned. She answered most always. She said unless it is in regular subdivision then they assume, but if she knows that it is not that, then she is going to tell them that it is not necessarily zoned that, but there is an assumption usually made by the general public when they are driving down the street and they see an empty lot with two houses that is also going to be a home built there.

Commissioner Payne asked as it is zoned right now, what can be put there. Assistant City Attorney Johnson read what R-1 Single Family Zoning was defined as in our City Ordinance Chapter 29-03-010.

Commissioner Payne asked him to define farming for her. He said farming or truck gardening including the usual farm buildings and structures, which is a bus-section, it is worded just like that so it is rather vague but it would be essentially any building you would associate with a farm, also one operating a farm the raising of poultry and pets would be permitted in R-1 except when conducted strictly for commercial purposes or on such a scale that it would be objectionable to surrounding residences because of noise or odor.

Mayor Pro-Tem Baldwin thanked Ms. Hatfield for having a vision, for having something like this in Alamogordo. He said he knows that this will be a success, if not tonight but at some point. He asked her how the communication was between her and the home owners. He asked if during this entire process, if she offered to meet with the homeowners individually or as a group to discuss this with them. She stated during each Committee meeting she did say that she would be more than happy to speak with the residents, if they wanted to speak with her. She said because First Baptist Church is the property owner, their name and address and phone number were listed on communications that were sent out and not hers directly. She said no one reached out to her.

Mayor Pro-Tem Baldwin asked Pastor Bueermann if any residents reached out to him. He said he had two families reach out to him. He said one family was in support and the other let it be known that they were opposed.

Mayor Pro-Tem Baldwin said in a situation like this that became so contentious, his frustration was the lack of communication. He said if everyone knows that there is a need, why such the stance on you are not going to communicate with the people wanting to do it because it certainly seems to him listening to the stories or beliefs or what you think is going to happen or potentially could happen, there is a huge gap of what the complex would actually be. He said it does not change the fact that you do not want it there period, but it saddens him to see that there was not more communication. He said there wasn't a chance for them to you, and there was an attempt. He said and your attempts to reach out to them didn't happen. He stated this was a failure on community in this situation in one instance, and in one instance only, to come to an agreement. He said there are other signs of community that he is quite excited by in the fact that you have come together to speak as one voice. He said we seldom see this in the Commission Chambers, this unified and we have people that are wanting to enhance the community, so he does see it from a very positive point of view. He said it makes his decision more difficult when the two parties are not wanting or did not communicate with each other.

Commissioner Hernandez moved to approve.

Commissioner Wright seconded the motion.

Roll call vote was taken.

Motion failed with a vote of 2-4-1. Commissioner Payne recused herself from voting. Mayor Boss, Mayor Pro-Tem Baldwin, Commissioners Sikes and Rardin voted nay.

Commissioner Rardin said he is not against the development, he is 100 percent in favor of the development, but when you look at a petition with 700 signatures and a majority of them were in that area, we need to do what the people want.

Commissioner Hernandez said one of the signatures is a resident from that neighborhood. He said this resident was coming down Scenic Drive, he was racing his WRX, lost control of it and hit a sign pole.

Commissioner Sikes reiterated the fact that the Commission was voting on rezoning. The Commission was not approving an Apartment complex. If they could come to a decision on a different location, that wasn't offensive to other neighbors, everyone here would be gloriously happy to build this kind of housing unit. She thinks Ms. Hatfield did an incredible job designing this. She said the project was beautiful, it was just doing the will of the people and the location.

Mayor Boss echoed Commissioner Sikes' comments. He told Ms. Hatfield that he saw the plans also, and thought they were fantastic. He said this is needed in the community and to not give up and find another location.

Commissioner Payne thanked Ms. Daniels for her prayers. She said she works in a profession that deals with low-income people every day. They are some of the nicest and most giving people, and it was disheartening to her to read emails where people suggested that because you didn't make a certain amount that you were not allowed to live in a certain area, and that is disappointing. That is not the best part of what we have to offer in Alamogordo. She hopes these people didn't mean it that way, but it was heartbreaking to her because she spends every single day trying to edify people and lift them up. She spends every single day trying to move people out of poverty and into independence and when she reads things like that she is disappointed. She said we are going to have this problem because what is going to happen is the next piece of property, you are going to have a neighborhood just like yours that says not in my neighborhood, not those kind of people. Then they are going to move to the next neighborhood and they are going to say not in my neighborhood, not those kind of people, not that kind of situation. She said if you want to get upset at her, you can, but she is disappointed that we would have a mentality that would suggest that you have to have a certain amount of income or be of a certain socio-economic class to live in a certain neighborhood in our City. She said it is disappointing to her.

Commissioner Wright echoed Commissioner Payne's comments. He said that was the most disheartening to him in this whole project is the fact that the judgement placed on people for what kind of place they would like to reside in, because he has lived in it all. He said he has lived in a trailer, he's lived in an apartment and he has just done a major remodel on his residence which is five houses down from a drug inhabited trailer park in the County that has had two deaths this year. He said his personal residence just appraised for more than \$100,000 more than what he owes on his house. He said that mobile home park that is drug riddled has had no effect on his property. He said he looks out here and sees some of the comments that were made as Mr. Black walked back to his seat, and it is frustrating. He said we are up here sitting at this podium explaining how much we love this community and how much it means to us to have our neighborhood, in our community, and somebody that lives in our community that loves this place walks by you and you make a comment like that. He said he will vote for this rezone if it comes up again. He thanked Ms. Hatfield.

Commissioner Hernandez said most of you don't come to these meeting, but Commissioner Payne and himself usually don't agree on anything. Commissioner Payne said that is not true. Commissioner Hernandez said he usually has to convince her. He said he has lived here all of his life and what Commissioner Payne said really touched him. He said when you walk out of here, there is a sign board out there, he asked for everyone to read it, and said that is his dad. He said when his dad grew up here, there were certain streets that he could not cross. He said that is true. In his childhood he could not cross 10th Street and he could not cross Washington, and that is kind of what we are doing here by some of the comments. He said he too got the emails, and the ones that even talked about Section 8 he just deleted, and the reason why is because that was not true, that was never a part of this program.

He said somebody went out and said this was going to be Section 8 housing. Nobody talked to the right people, and the right people were available, again very disheartening. He said he sits there because he loves what he does, he loves his community. He said he fights for a lot of things, you will see his name where he will vote no, and he'll be the only one voting no, but it doesn't matter because he is going to do what he feels is right for this community as a whole, not as individual. When he built his house, he put three lots together and his neighbor said you are going to block the view of the mountains. He said he told her that he would gladly sell her the property, she did not want to buy the property she just wanted the view for free. He said well he paid for that property, he could put whatever he wanted to on it within the zoning, and he did. He said his appraised value of his house is \$280,000 and his neighbor's houses are \$10,000 to \$15,000 and that did not matter to him. He said that is his home, that is where he lives and probably where he is going to die, but Alamogordo is his home, and this is not what it is about. He said when you guys come up here and tell him about your concerns, he listens to them, but he still voted on what he felt what was best for Alamogordo not for anybody individually. He said his pockets are empty and are always empty. He said because he lives where he lives, he pays for his house and he enjoys being here in this town. He said his grandpa was born in 1904 and they have been here ever since and does not plan on going anywhere.

12. Consider, and act upon, award of Public Works Bid. No. 2018-007 to D&R Tank Company related to the Rehab Upper Heights Ground Storage Tank project, in an amount not to exceed \$597,140.64, including NMGR. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said this is the second in a series of rehabilitation projects for our various ground storage tanks or ground storage reservoirs. He explained what the work will consist of. He said they advertised the project on July 29, 2018 and approximately midway through the fitting period they had a mandatory pre-bid conference in which they had four bidders attend, and one of those bidders was not licensed to bid on the project. He said the results for remaining three bidders are clearly shown on the bid tabulation sheet. Staff is comfortable with the amount bid by D&R Tank Company. They have done several projects with the City over the past few years, the most recent is the Green ground storage reservoir that was completed successfully.

**Commissioner Rardin moved to approve.
Commissioner Wright seconded the motion.
Motion carried with a vote of 7-0-0.**

13. Consider, and act upon, approval of Change Order No. 5, RFQ 2014-05, to Bohannon Huston, Inc. related to the engineering and design services for the Bonito Lake Restoration project, in an amount not to exceed \$107,038.75, including tax. (Bob Johnson, Engineering Manager)

Engineering Manager Johnson said this is change order number five to provide some additional engineering and design services. He said approximately 25 percent of the amount of this change order is for permit processing through the Office of the State Engineer. He said the other 75 percent is for additional construction, inspection, and oversight. He said currently the project has a full time RPR (Resident Project Representative) that provides daily inspections for each day that work is ongoing. It is a rather significant list of items that is involved with this oversight. When the project was awarded to Bohannon-Huston some nearly four years ago, their initial scope and fee was based on a rather small performance period, 6 months he believed. He said the project became more of a reality and when we got to bidding it was determined that a 24-month performance period versus the initial six (6) was more accurate and adequate. We have a 24-month performance period which has been extended by an additional 93 days due to a weather event in February that threw the project behind about three months. He said that \$75,000 is basically for this additional oversight and inspection on a daily basis when there is work ongoing, we do anticipate some work to cease during the winter months if they should get significant snowfall. This particular budget item is time and materials, not lump sum, so we are only going to pay for what we actually receive.

Mayor Boss asked Engineering Manager Johnson what happened with the last rainstorm that we had to Bonita. He answered the lake filled up, they had the lake nearly completely de-watered. It was about

two to three weeks before the coffer dam was completed, and the bypass pipeline was brought online. He said it was sheer bad luck. Mayor Boss said so there was no hauling for a while. Engineering Manager Johnson said that is correct. He said hauling did start about five weeks ago. Mayor Boss said he knows that, but he meant there is no hauling right now because we can't get in to remove the material, correct. Engineering Manager Johnson said there is hauling going on right now. Mayor Boss said that was his question, what happened from the rainstorm that we just had. Engineering Manager Johnson said it did not affect the lake in any significant way.

**Mayor Pro-Tem Baldwin moved to approve.
Commissioner Rardin seconded the motion.
Motion carried with a vote of 7-0-0.**

14. Consider, and act upon, Resolution No. 2018-39 approving a Grant Agreement between the City of Alamogordo and the New Mexico Department of Finance and Administration, Local Government Division for Capital Appropriation Project No.18-C2537 in the amount of \$240,000 to design, construct, purchase and equip playground shade structures at Alameda Park Zoo, Alamogordo Family Recreation Center, Griggs Field, Hermoso el Sol, Paiute Park and University Park. (*Veronica Ortega, Community Services Director*) (Roll Call Vote Required)

Community Services Director Ortega said before the Commission is one of the top five ICIP requests for playground shade structures in the amount of \$240,000, so they are recommending approval for the grant from the State.

**Commissioner Hernandez moved to approve.
Commissioner Sikes seconded the motion.
Roll Call Vote was taken.
Motion carried with a vote of 7-0-0.**

15. Presentation of the Alamogordo Police Department's Five Year Strategic Plan (*Brian Peete, Chief of Police*)

Police Chief Peete presented his five-year strategic plan. He said this Plan is based on its Vision, Mission and Value statements. (See Blue Book for Power Point Presentation).

Commissioner Payne asked Chief Peete if the Dudley School really salvageable. He answered yes. He said the grant is specifically designated for areas of historical value and the Dudley School falls into the parameter. He said these are places that significance of minority, Dudley School used to be a place where only certain individuals could go, where you couldn't cross over into certain areas. He said the grant maxes out at \$500,000, and they offer it every year and he could keep applying for it and getting that grant to fix that school. Commissioner Payne thought it wasn't a bad idea, it just looks like it is about ready to fall. Chief Peete said he has worked with Fire Chief LeClair and talked specifically about the southern wall, but it is structurally sound. He said it is going to cost money and there is asbestos there, but we are willing to do that to make this a gem in the community and hopefully use this as a launch pad to reinvigorate.

Commissioner Hernandez said anything is better than what is there. He said there has been half-way houses there which it wasn't zoned for that, but they went around it and got it there. He said they had houses that they were using for half-way houses and it was up to 12 and 14 individuals living in a three bedroom house and paying \$450 a month and because they were under federal they couldn't do anything to them. He said a lot of people have tried to get that and remodel that but they couldn't come up with the money. Police Chief Peete said the current owner has agreed to sell it to them, all they have to do is win the grant.

16. Consider, and act upon, Resolution No. 2018-38 approving a Grant Agreement between the City of Alamogordo and the New Mexico Department of Finance and Administration, Local

Government Division for Capital Appropriation Project No.18-C2538 in the amount of \$100,000 to purchase and equip vehicles for the Alamogordo Police Department. (Brian Peete, Police Chief) (Roll Call Vote Required)

Police Chief Peete said this is the State grant that has been allotted to give them \$100,000 to purchase new vehicles, to maintain or increase the fleet of the Alamogordo Police Department.

Commissioner Rardin moved to approve.

Mayor Pro-Tem Baldwin seconded the motion.

Roll Call Vote was taken.

Motion carried with a vote of 7-0-0.

17. Consider, and act upon, the Memorandum of Understanding between the 49th Civil Engineering Squadron and the City of Alamogordo Animal Control Center to provide services to Holloman AFB. (Brian Peete, Chief of Police)

Police Chief Peete said there is a MOU (Memorandum of Understanding) that they would like for the Commission to approve to allow them to provide Animal Control services to Holloman Air Force Base. He said they do not have the resources to house stray dogs or cats, and again increasing our partnership with our Air Force community. He said this is something that they could do, and they would like to offer those services.

Commissioner Rardin said the current MOU has the same price agreement as the 1998 MOU, why didn't they look at revising pricing. Police Chief Peete said the pricing is primarily for pretty much housing the animals. He said they are looking at it in terms of it still is a very competitive and fair price to provide that service. Commissioner Rardin asked if it has not gone up in the last twenty years. Police Chief Peete said yes rightfully so, but it is more along the lines of providing food and water for the animals when we house them, but as far as looking at services like manpower and increasing salaries and benefits it doesn't touch that, but it will help contribute to purchasing food and water while we house the animals.

Mayor Boss said we've had this agreement for some time, we are just renewing it. Police Chief Peete answered yes.

Commissioner Rardin said we have not looked at these charges since 1998. Police Chief Peete said we already buy our food in bulk, so it would just add to it, and plus Animal Control is fortunate enough to get a lot of donations for food, so we believe that we can do it fairly at this price.

Commissioner Sikes asked how many dogs they are talking about. She also asked if they have to quarantine any dogs coming back from overseas. Police Chief answered no, this is primarily for stray animals or any animals that wonder onto Base. Commissioner Sikes asked if there are a lot of strays on Holloman Air Force Base. Police Chief Peete said he does not get that there are.

Captain Archibald said he is the one that has drafted this up. He said over the last four years they have had zero dogs. He said what this is a paperwork shuffle. He said recently the Security Force Squadron has decided that they are unable to be the OPR on this stray dogs' program and it got kicked over to him. He said what he is doing is creating an interim solution between the City of Alamogordo for now and possibly in the future seeing what the Sheriff's Department can do, but he is just trying to get an agreement in place so if they have an incident that it can get resolved in an appropriate manner.

Commissioner Sikes asked Captain Archibald if they have any stray animals that the City would have to take care of, would Animal Control have access to the Base or would someone have to drag the dog to the Visitor Center. He said with this falling under his purview, when they call and request those services, they will also call down to the gate and get them someone to escort them.

Mayor Boss moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 7-0-0.

18. Consider, and act upon, the HIDTA Sub-award Recipient Agreement Between County of LEA and City of Alamogordo. (Brian Peete, Chief of Police)

Police Chief Peete said this is requesting that the Commission approve and sign the agreement. He said this is based on when it was approved to join HIDTA, the next requirement was to do a fiscal assessment. Since Lea County is the fiscal agent for it, they had come in and make sure that there are mechanisms in place to ensure that we do not have any issues in handling Government grant money. He said this is something that Finance does on a daily basis, they passed it with flying colors. He said this is a formalized agreement. He explained the overtime funding process.

Commissioner Wright moved to approve.

Commissioner Sikes seconded the motion.

Motion carried with a vote of 4-3-0. Commissioners Hernandez, Rardin, and Payne voted nay.

19. Consider, and act upon, approval for the Alamogordo Police Department to apply for a Department of the Interior National Park Service Grant so to purchase and restore the property located at 523 Maryland. (Brian Peete, Chief of Police)

Police Chief Peete said this is a grant from the Department of the Interior National Park Service. The ceiling for any one grant is \$500,000. They will be able to continuously apply for this grant as the years go by, so if they are not able to do everything they need with the first year, they can again apply for it the second year and hit the same ceiling. He said they have to submit the grant proposal by October 8, 2018. He said they have a lot of support from the community to offer letters of support for this when they fill out the grant paperwork for this. He feels confident that we would be a very good contender.

Mayor Boss asked what the criteria for the expenditures of the funds is. Police Chief Peete said this is primarily the National Parks Service's African American Civil Rights Grants program (AARC), it preserves sites related to the African American struggle to gain equal rights to citizens in the 20th Century. He said because of the historical nature of the Dudley School and the population that was limited to attend it, as well as, it being in an area, as well as, it being in a State that needs this type of preservation, he is pretty confident we would be a very good contender. Mayor Boss asked about the restrictions, as far as, by when does the money need to be spent. Police Chief Peete said it has to be spent on the site itself. Mayor Boss asked if we get the grant, do we need to start immediately and expend the money, or can we keep that grant and move into the next year and apply for another grant. Police Chief Peete said as long as all the money that we have been awarded from the grant goes to the site itself and we just have to show that part of the grant applications they are asking for very specific things; how much is it going to cost to rehab the structure, how much is it going to cost for landscaping, how much is it going to cost for electric, so we would just have to fill in those blanks on what those estimates are. He said they would hold us to it, they just want to make sure that we have done our homework because they realize that there are other things that could pop up in purchasing something old and historical. Mayor Boss asked if we have made an estimate of that at this point. Police Chief Peete said we have a rough estimate, yes.

Commissioner Hernandez moved to approve.

Commissioner Rardin seconded the motion.

Motion carried with a vote of 7-0-0.

20. Appointments to Boards and Committees. (Richard Boss, Mayor)

Mayor Boss read the opening and appointed David Sword to the Airport Zoning Board. No one was opposed.

EXECUTIVE SESSION

21. Adjourn into Executive Session in compliance with Section 10151(H), NMSA 1978 (as amended), to discuss Threatened or Pending Litigation; Limited only to the Letter of the Office of the State Auditor. (Roll Call Required)

Commissioner Rardin asked if they were really threatened or pending litigation with this letter. He asked if they were going to potentially violate the Open Meetings Act by going back and talking about this letter. He stated it's technically not threatened or pending litigation.

Assistant City Attorney Johnson said he thought this might come up this evening. He read from the New Mexico Open Meetings Act Compliance Guide, under Litigation Section 7 page 29: "The exception does not apply only when a Public Body is sued or is threatened with litigation, it may also be used to close a meeting when the Public Body wants to consult with its Attorney about a law suit that the Public Body has initiated or is considering initiating against the defendant." He said that being said, that is going to be the complete scope of all he can answer while they are still in a public forum, however, in the interpretation of that rule they wouldn't be in violation of a closed meeting if they are talking about other matters pursuant to litigation such as litigation that they as the public body may initiate themselves. He said the reason he will not expand on this scope in a public forum is that should they enter into specific questions about what they are about to go into a closed meeting with, they run the risk of then violating that privilege which is still intact. He said he cannot go into specifics of that, he can just give them the generality of the rule and that they are allowed to have a closed session pursuant to things outside of just pending or threatened litigation in that if they were going to bring an action, it could be discussed in a closed meeting.



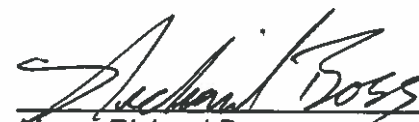
Commissioner Payne moved to adjourn in to Executive Session at 9:39 p.m.

Mayor Pro-Tem Baldwin seconded the motion.

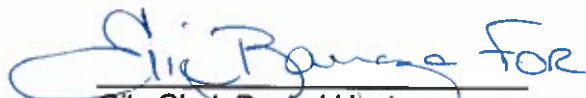
Roll Call Vote was taken.

Motion carried with a vote of 7-0-0.

ADJOURNMENT


Mayor Richard Boss

ATTEST:


City Clerk Rachel Hughs

(Prepared by Eric Barraza, Deputy Clerk)

Approved at the Regular Meeting held on October 9, 2018.