

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
6:30 P.M., COMMISSION CHAMBERS
July 23, 2019**

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

**JASON BALDWIN, MAYOR PRO-TEM
DUSTY WRIGHT, COMMISSIONER
BRIAN CESAR, INTERIM CITY MANAGER
PETRIA BENGOCHEA, 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 Clerk Hughs announced there was a quorum present. Invocation was given by Reverend Dwight Harp and the Pledge of Allegiance was led by Commissioner Wright.

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 of the Alamogordo Public Library Advisory Board. (*Sharon Rowe, Alamogordo Public Library Manager*)

Library Manager Rowe gave a brief report on the Library Board. She stated for the first time in many years the Board is full with 7 board members, and also includes two members from the County.

Mr. Dennis spoke on his years of service on this board and discussed many times when this board did not have a quorum. Commissioner Sikes thanked Mr. Dennis for showing up to every single meeting whether they conducted business or not.

PUBLIC COMMENT

Gene Downer commented on the following:

He gave a pat on the back to Interim City Manager Cesar and Project Manager Balderrama for their work on the disability access to Desert Foothills Park on Abbott and Sunnyside. He said he is sure that Community Services Ortega also had something to do with it as well. He thought the City should publicize and send notices out about the changes done to the park. He complimented Commissioner Payne on Community Gardens. He spoke on applying for grants.

CITY MANAGER'S REPORT

Interim City Manager Cesar made the following remarks:

1. He stated this Friday is Fourth Friday at the zoo. He said this summer they have had Pop-Up City Hall from 6:00 p.m. to 8:00 p.m. At the Fourth Friday the topic will be Water. At these events they would like to have a Commissioner show up. Mayor Pro-Tem Baldwin said he would be there.
2. He said they have re-introduced looking at dilapidated structures around the City, and the Legal Department has sent out 12 notices to those property owners. He said the Legal Department has already received contact from three different owners that are either going to demolish the structures or clean up the property and bring up to today's standards.

Dr. J.L. Walker commented on the following:

He said he was the former Principal of Academy del Sol and is the current Athletic Director for Alamogordo Public Schools. He said he was tasked with the job of seeing Alamogordo for what it used to be, realizing what Alamogordo is and then seeing what it can be and bridging everything together. He wants to show people that Alamogordo is unified and works together. He also wants to show the kids of Alamogordo that the community supports them as well. He suggested putting a brand on the water tower in the Mesa Verde area such as a tiger logo or an "A", to show people coming in from out of town that this is Tiger Country.

REMARKS AND INQUIRIES BY THE CITY COMMISSION

Mayor Boss made the following comments:

He said he has heard some negative comments made on social media about his meeting with Governor Grisham. He said this meeting was scheduled to be only the Governor and APD (Alamogordo Police Department). He said he had heard about the meeting and asked if he could attend. He said Police Chief Peete made a Presentation to Governor Grisham. He said the day after the meeting, he was contacted by the Alamogordo Daily News for his comments. He read his exact comments as given to the Alamogordo Daily News. The Governor met with Police Chief Peete, Commissioner Sikes, and himself. He said the meeting with the Governor was not planned ahead of time, he invited himself but to that gratitude Police Chief Peete and Governor Grisham allowed him to listen in.

CONSENT AGENDA

2. Approve the minutes for the July 9, 2019 Regular meeting. *(Rachel Hughs, City Clerk)*
3. Consider, and act upon, grant funding from the Non-Metro Area Agency on Aging FY 20 contract for Direct Purchase of Services for senior programs. *(Magdalena Morales, ASC Manager)*
4. Approve Resolution No. 2019-34 authorizing the Mayor to execute the agreement for membership in the Southeastern New Mexico Economic Development District/Council of Governments (SNMEDD/COG). *(Rachel Hughs, City Clerk)* (Roll Call Vote Required)
5. Consider, and act upon, approval of an agreement with the New Mexico Economic Development District, Non-Metro Area Agency on Aging (NMAAA) for the Nutrition Service Incentive Program (NSIP). *(Magdalena Morales, ASC Manager)*
6. Approve the Annual Reports from City Boards, Commissions and Committees for Calendar Year 2019 January to June. *(Rachel Hughs, City Clerk)*
7. Consider, and act upon, a Mutual Agreement for Termination of Ground Leases and Conveyance of Lessee's Improvements relating to Oregon School. *(Brian Cesar, Interim City Manager)*

Commissioner Hernandez moved to approve items 2, 3, 4, 5, 6 and 7 of the consent calendar.
Commissioner Rardin seconded the motion.
Roll call vote was taken.
Motion carried with a vote of 7-0-0.

NEW BUSINESS

8. Consider, and act upon, award of Public Works Bid No. 2019-004 to Mevacon, LLC related to the Housing Authority Complex, Office, and Cuba Residence Reroof project in amount not to exceed \$184,904.72, including NMGR. *(Nancy Beshaler, Project Manager)*

Project Manager Beshaler explained the bids and stated that Mevacon was the low bidder for the project.

Commissioner Hernandez asked Project Manager Beshaler what the labor warranty is on this project. She answered they have a standard one-year warranty for projects and a 20-year warranty for the roof. He asked who manages that. She answered the Housing Authority would or she could be involved. Commissioner Hernandez said the ones downtown started failing within five years, then the City paid for a company to come back and do them instead of using the warranty. He wanted to make sure that the City manages those warranties.

Commissioner Rardin asked Project Manager Beshaler how many squares they are removing or replacing. She did not know the quantity because it was bid as lump sum items. She said she could go back and ask the architect if he would like to follow up. Commissioner Rardin said it was quite a bit of a spread between the three bidders.

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

9. Consider, and act upon, designating a 2019 NMML Annual Conference voting delegate and an alternate. (*Rachel Hughes, City Clerk*)

City Clerk Hughes said last year they had the Mayor as the delegate and the alternate was Commissioner Sikes.

Commissioner Sikes said since the conference is in Las Cruces, they should all consider going and someone else might consider taking on the responsibility of being the alternate.

Commissioner Wright volunteered to be the alternate. Mayor Boss said they have himself as the delegate and Commissioner Wright as alternate.

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

10. Consider and act upon, Ordinance No. 1596, an Ordinance amending certain sections of Article 29-03 District use regulations of the Code of Ordinances concerning setbacks and lot sizes. (*City Planner Stella Rael*) (Roll Call Vote Required)

City Planner Rael said Mr. French contacted her with a proposal regarding reducing setbacks and lot size requirements which he believes will allow more affordable rate housing by building larger homes on smaller lots. She said members of staff met to discuss the proposal and during this review process, staff agreed that there were no real concerns within any part of the proposal except with the request change of reducing the side setback on two story homes from 7 ½ feet to 5 feet. Staff has a concern with fire safety on this change. She said the ordinance is written whereas the changes in these sections will apply to only new subdivisions and new phases of existing subdivisions. She said this item comes to the Commission without no recommendation from the Planning & Zoning Commission due to a lack of a quorum at the July 11th meeting. She said staff recommends approval.

Commissioner Hernandez said he asked for this several years ago. He said the majority of the lots in the Chihuahua subdivision are 50 feet wide. He said anytime someone wants to build a house in that subdivision they have to come before the Commission to get approval.

Interim City Manager Cesar said if this ordinance is approved as written, those people that have lots in an already developed subdivision would still have to come before Commission to request that variance.

He said this would apply to either a new subdivision or a new phase in an existing subdivision, that way they do not have that mix and match in already subdivisions. He said not that it could not be changed. Commissioner Hernandez said he would make that recommendation to this because it is already in an existing subdivision and all of the lots are within that 50-foot width. He said a majority of those lots are 50 by 150 feet.

City Planner Rael thought they addressed that where the ordinance reads new phases within existing subdivisions. She said those older subdivisions, there is no more room for phasing. She said this is more for subdivisions like Mesa Village.

Mayor Boss asked City Planner Rael if she ever turns them down when a person makes a request. She answered no. She said she always recommends approval because of that.

Commissioner Hernandez said the problem is that the people have to pay before they come before the Commission. He thought that amount is up to \$600. He asked why that is, when it is already in an existing subdivision.

City Planner Rael said she found in the ordinances that it indicated that those existing lots from those older subdivisions did not have to come for variances. Commissioner Hernandez said that goes back to the comment made on one of the previous items. He said the timeframe between people building houses down there is pretty long and so he asked City Planner Rael if she was going to be here in 20 years. She said she understands that concern and hopefully there will be staff that pays attention to those kinds of things.

Mayor Boss asked if they could not have an ordinance specifically related to the old ones that would cover this. City Planner Rael said there is an article in there that covers this, that states they do not have to come. Mayor Boss said then it shouldn't be forgotten. Commissioner Hernandez said it was not known until she found it. City Planner Rael said that is correct.

Commissioner Hernandez said affordable housing is great. He thought that 50-foot lots are a little small but when you go to big cities those lots are even smaller than that.

Mayor Boss said Holloman has indicated that they need some way to get housing cheaper for the airmen in Alamogordo, and that is one way of doing that.

Commissioner Rardin said this is going to eliminate people putting carports on their homes. He asked how they are going to get around that. City Planner Rael said there is hardly any room at this point for carports. She said if you read in the proposed ordinance it does indicate that garages will still have to setback 20 feet.

Commissioner Rardin said one of the other issues he has is the 10 feet on the corner lots, off of the street side, he asked if they will lose the side triangle. City Planner Rael answered no. Commissioner Rardin stated he has a problem with going from 15 to 10. He said 20 feet is not that far for a front yard.

Commissioner Rardin asked if the Builder's Association had been notified of this. City Planner Rael said no, she has not notified them, and she is not aware if Mr. French notified them. Commissioner Rardin thought all of the developer's input should be included in the ordinance. City Planner Rael thought it would be the responsibility of Mr. French, since he is the one that brought the proposal, to attend one of those Home Builder's Association meetings and present it.

Interim City Manager Cesar stated that is the reason why these are brought forward as Ordinances is because staff does not know everyone that should be notified. He said that is why there is a first and second reading so that any interested parties can show up and raise concerns or give other ideas. Commissioner Rardin said in the past, when they had an item like this that was going to impact a certain industry, they would reach out to those groups and get some input from them. Interim City

Manager Cesar said he would agree with Commissioner Rardin if they were negatively impacting the Builder's Association or the builder. He said this is setting the minimum standard, they are actually reducing the amount of setback in the front and the rear of the property. He said if they were going the other direction then they would have reached out more than they did on this item. He said if the builder wants to put the house a little farther back that is up to them.

Mayor Boss said they can have as big as a lot that they want and they can put a house on that under the same rules that they have been building houses for years

Commissioner Rardin said this is asking to make the lot smaller and it is asking to make the setbacks smaller. Mayor Boss said it is giving you the option to do that, it is not requiring it.

Interim City Manager Cesar stated it is up to the builder or developer. This is the minimum requirement before they have to come before the Commission to ask for a variance. Commissioner Payne echoed Interim City Manager Cesar. She said because it is not required, she doesn't see where that should be a problem.

Commissioner Hernandez stated it changes the game for the builders. He said you are able to build a cheaper house and all the other developers are building what they are building, it is harder for them to sell. He said they either need to change their game to match, which some may or may not want to. He said it is what you want to put in the house and a lot of them are having to do that in order to compete with the lower cost housing and some are having a tough time with it. He said this is the first reading and he will be making some phone calls to see what the other builders feel about it. He said he does support this because he sees a lot capable with this, but he does have some concerns with what Commissioner Rardin has brought up.

Mayor Boss told Commissioner Rardin he does not see the negative impact and asked him to explain. Commissioner Rardin said look at the guys that have existing inventory in lots and those are 60 feet wide. He said if they let a developer come in and do one with 50-foot lots, those are cheaper because they are smaller. He said that original builder won't be able to sell his lots because everyone is buying the newer lots. He said he is not against this but thinks they should get input from all the developers before they approve this. He said they are creating an unfair advantage from the get-go for the guys that have existing inventory.

Commissioner Hernandez said the market is still there for both. He kind of sees it both ways. He said he understands that it is not the City's responsibility to notify everybody because they don't know who everybody is, but at this point because it has been brought up, he'll ask questions and see how they feel.

Mayor Boss thought the major intent of this was to help the military with their situation. He said they have houses on base that they want to bulldoze down, but they can't because there is nowhere for these people to go. He said it seems to him that there will be a demand for these smaller houses. He asked City Planner Rael if that was the reason for them doing this.

City Planner Rael said when she got the request from Mr. French, he talked about bigger homes and smaller lots.

Mayor Pro-Tem Baldwin said this basically sets everything up for the market to dictate what the builders build. The market will always dictate what can go on there, they are just giving the ability to whatever they need.

Tom French commented on the following:

He said in order to build more affordable homes you have to look at a lot of things. He said the lot is the largest component and the lot size drives the price. It also drives other costs like sidewalks, landscaping and fencing. He urged the Commission to loosen the regulations so that everybody has

that opportunity. He addressed three things, first of all, this is not about affordable homes, it is making all homes more affordable. He said to the concern that developments already have larger lots, what it means is that they can build larger homes on those existing lots and that gives them an advantage. Secondly, they are going to talk about side yard setbacks for two-story versus one-story. He said he respectfully disagrees with the Fire Chief in that the codes and standards that apply in this situation have been thoroughly vetted by numerous code councils and it is basically settled law. He said every one of the cities that they build in, all of them recognize single and two-story as the same. He said if they are going to say that a two-story has a different setback then they would have to prove that they have a different reason or a different circumstance which they don't. He said the second thing is that it applies to all developers and all developments. He said one of the concerns that he heard from one of the Commissioners is what about the developments that are partially sold out. He said they pulled up the restrictive covenants for every active development in Alamogordo and every one of them have provisions that require every project be approved by the architectural control committee. He said the second thing is that every one of those restrictive covenants have provisions for modifying the covenants or amending the covenants to allow this. He said he has talked to a lot of people in the community and could not find anyone who was opposed to it. He said they don't have to do it and this Ordinance allows them to do it. He disagrees with staff on the part where they want to apply this only to a moving forward basis, on new subdivisions or new units to existing subdivisions. He said they need to make a difference now, the F16 mission is temporary. He said a month or two ago the new Secretary of the Air Force decided that she was not going to move that new F16 wing here. He said they need to do all that they can to make the F16 mission permanent. He said there is a sense of urgency that the community should have in making this permanent. He said the Ordinance is not perfect, but it goes a step in the right direction which allows them to address it. He agreed with Commissioner Rardin in that not everyone is in the Affordable Home Market business. Mr. French encouraged the Commission to approve the ordinance with two change; strike the part of the sentence that differentiates two-stories with a 7 ½ foot setback instead of a 5, and then also allow it to apply to all lots across Alamogordo beginning immediately. He said there are checks and balances within those communities that allow their protection. He said it is not just good for the Air Force, it is good for Alamogordo residences. He said they build homes in Las Cruces in the Metro Verde Subdivision and that is the hottest market in Las Cruces. He said they have homes there that they build exactly the same home here in Alamogordo. He said the price tag is \$20,000 lower in Las Cruces.

Mayor Boss asked which one is cheaper. Mr. French answered Las Cruces. He said all those things put together makes a difference, not just for the Air Force but the residents of Alamogordo so that they can build on smaller lots, they can build a larger home on the same lot, it gives them latitude. He said when the Commission passes this tonight, they are not dictating anything, they are allowing them to take advantage of that. It applies equally to all builders and developers.

Commissioner Payne asked Mr. French if he is saying that a \$210,000 home in Alamogordo would run \$190,000 in Las Cruces. He answered that is exactly what he is saying. The exact same model with the exact same features. He said we in Alamogordo are stuck in years past when we think that we need all these large lots and big setbacks. He said they build on 50-foot lots all over the place. He said that is not considered a small lot by today's standards because the costs. He said the lot price is the single largest component of that.

Commissioner Payne said \$190,000 does not sound like affordable housing to her. Mr. French said it is not, market rate affordable homes in Alamogordo should be between \$130,000 and \$190,000. He said that would be affordable homes based on our per capita income. He said what they are doing tonight helps them get there, but it also helps all of the other homes in the other markets by reducing their price as well.

Mayor Boss asked Mr. French of the \$20,000, in the difference between Alamo and Las Cruces, how much of that is attributed to the lot. He answered about 75 percent is attributed to the lot and the lot size and the associated costs.

Fire Chief LeClair said the only issue that the Fire Department has with the Ordinance is reducing the 7 1/2-foot side yard setbacks to 5 feet. He stated one of the biggest issues for the fire department and fire service across the Nation is a lot of things have changed and a lot of it pertains to building construction components in general. He said one of the biggest ones is trust type construction and the others are associated with open floor plans. He said they can't compartmentalize fires anymore. He said a lot of the construction components nowadays are put together with glues, plastics and fire burns hotter than it ever has in years past. He stated his biggest issue with this is the reducing of the side yard setback to five feet for two story residential structures. He said Fire Departments across the Nation are required to ladder at least two sides of the structure when they are on fire, so if you take the 7 1/2 foot setbacks and reduce them to 5 feet, they can no longer ladder that side of the structure. This will hamper rescues, exposure protections and roof operations. He explained that the Fire Department breaks down a structure into quadrants, when the fire department rolls up on a fire structure. If you take the side yard setback to 5 feet, you have taken two sides of that structure out of the equation. He said there is an OSHA (Occupational Safety and Health Administration) rule that talks about ladder placement and ladder operations, and basically what it says is to place the base of the ladder a distance from the vertical wall equal to one-quarter to working length of the ladder. He said if you took a 28-foot ladder, which is required to ladder a two-story structure, the base of that ladder would be away from that vertical wall 7 feet. That would give the fire department six inches to work. He said Mr. French said other communities are doing this all over the Nation, but the point is that doesn't mean it is right for Alamogordo. There are a lot of variables that change what they are doing right here in Alamogordo compared to other communities. He said these other communities are fully staffed with firefighters. He said they have 3 times more firefighters than Alamogordo does working per day. He said they have 7 firefighters working per day here in Alamogordo covering 22 square miles. He said if you look at another community of this size, they are operating with at least 15 to 20 firefighters per day and they have the resources to fight home fires. He pointed out that 800-900 block of New York Avenue is the most hazardous area for a firefighter today in Alamogordo because there are zero side yard setbacks. He said when a fire gets into one of those structures it is going to spread from one to the other. He said a perfect example is to look what happened in Cloudcroft a few years back. He said that was the same identical situation.

Mr. French said he respects what Fire Chief LeClair has to say and sometimes reasonable people disagree. He said all of those things have been taken into consideration in the codes and the standards. Mayor Boss said not all of them. He said Fire Chief LeClair made a very good point when he said that the City of Alamogordo does not have enough firefighters out there. He said he can guarantee that Las Cruces has more for the same area. That is a point that he made that they did not take into account. Mr. French said he has never seen a city staff that says they are fully staffed, and they have all the resources they need. Mayor Boss said it is absolutely true here.

Mr. French said the current safety standards in this situation are the building codes, and the building code on a non-fireproof wall assembly is 5 feet from another wall assembly and this Ordinance would allow 10 feet. He said the standards and codes should be followed not reduced but they are there for a reason and they have been thoroughly vetted

Commissioner Hernandez said the short staffed in the Fire Department, the Commission created it when they put the two departments together, and then they re-created again when they split them again. Mayor Boss said but they still have the problem and that's the point he is trying to make. Commissioner Hernandez said the reason they split the two departments was for recruiting purposes. He said it did not work.

Mayor Pro-Tem Baldwin said his concern from the beginning was the developments that already had houses. He said he would be willing to move forward with a change in the Ordinance stating across the board changes can be made with the exception of the side setbacks, keeping them at 7 and not 5. He said assuming the information that they have is true, that subdivisions that do have homes or structures on them have checks and balances in place that would allow for notification and the homeowners to approve those different changes. Mayor Boss asked Mayor Pro-Tem Baldwin if he was doing that as a

motion. He answered that he is offering his two cents just for discussion and he would like to hear other's comments.

Commissioner Rardin asked Mayor Pro-Tem Baldwin if he is asking to strike the changes in the section that apply only to new subdivisions and new phases. He answered correct, basically make it across the board.

Mayor Boss asked how much work this will be for city personnel if they have to go back and look at other subdivisions. Interim City Manager Cesar answered he is sure that what Mr. French talked about in these more recent subdivisions are true. He said as staff they were trying to prevent issues coming forward where they have an unhappy homeowner because the City approved a home that is closer to the roadway, and now they have lost whatever view that they had because a home is closer to the curb.

Commissioner Rardin gave an example with the structure that was just taken down at the corner of 15th and Cuba. He said that was an existing subdivision, somebody could buy that lot come in here and build 15 feet off of it per these new rules, but every other house there is 25 feet because it was back in the 50s. Interim City Manager Cesar said he does not know if that is going to create an issue. He said that was the thought process of behind new subdivisions or new phases of subdivisions.

Mayor Boss said one consideration they have is to table this for now and give the other builders an opportunity to consider this. He said although notice has been given, if they were to table it, they could have an opportunity to get more input on this. He said he feels that he is not 100 percent on how he wants to go on this.

Commissioner Hernandez stated he is not concerned with the existing lots because the developer would have quite a bit of cost involved in changing them over to 50-foot lots. Mayor Boss said it is not just the developers, it is also the people that live in the lots that maybe they don't want a smaller house with different setbacks than they have. He said houses will not be symmetrical and people are not going to like that. Commissioner Hernandez said what he is saying is totally different to that side of it, there is going to be quite a bit of cost to the developer to change over to 50-foot lots. He does not think Mr. French is going to do that on some of these lots because there goes his 75 percent of that \$20,000, he was going to save. He said the setbacks would be a consideration on that.

Mayor Pro-Tem Baldwin said most of those people in those subdivisions with one empty lot would probably welcome another new home, especially a newer home. It will raise property values and complete the lots in reference to moving forward. He stated this is a no-win situation in a sense, other than we are kind of moving in the direction of setting our community up to accommodate the needs of the community. He said the Commission might need to handle situations on a case-by-case basis.

Commissioner Payne said her concern is with places like Rockwood and how it would look with a new structure built there under this proposed ordinance. She said the problem is that you cannot write the ordinance and just say that this only applies to new developments. She said it is an all or nothing thing, so if they pass this, they are passing this for any lot in the City. Mayor Boss said they don't have to do that; they can do it for only the new ones. Mayor Pro-Tem Baldwin said based off his recommendation. Commissioner Payne said right, it's going to apply to any lot in the City, whether it is part of a subdivision or just a lot like Rockwood. She said because not everything is new development.

City Planner Rael said that was staff's concern about these older lots and that is why they decided just for new subdivisions or new phases to existing subdivisions because they do not want to create that look. She said they do not want to upset our community or homeowners because they are probably sitting 25 feet back, because that was under the old ordinance, and then here comes somebody and puts a house and all they can see now, is the wall.

Commissioner Wright said if they left it as new subdivisions and new phases to existing, the existing lots like in Commissioner Hernandez's District would be a case by case basis. He asked how that would work.

City Planner Rael said she should have that Article memorized. Mayor Boss told City Planner Rael that she needs to put that in writing and have it in a file for people to see. She said she would email that Article to the Commission. She pointed out that the City does not get involved in covenants, the City strictly follows the Code of Ordinances.

Mayor Pro-Tem Baldwin said there is an assumption that every empty lot in an old subdivision is going to have a new house like this put on it and that is a tough assumption to make. Mayor Boss said what about the new subdivisions where there is a new phase that only has a few houses on it. Mayor Pro-Tem Baldwin said he would go back to his comment that the market will dictate what goes there.

Mayor Pro-Tem Baldwin said he sees everyone's argument here, but it doesn't address moving forward with this and dealing with the situation. He said from a homeowner's prospective, his area in Granada Hills has about five empty lots right now and it would do nothing but raise property value to have those lots built on, especially a brand-new home. He said if the concern is a slightly different home is going to be on there, he sees the concerns but does not have an issue with it. He said one of the reasons there is still not a home on that lot is because of our current Ordinances and the market is not dictating what kind of home can be built on that. He said if they change that, that home gets built.

Mayor Boss asked Mayor Pro-Tem Baldwin if he thought that is why those lot haven't been sold, and if he thought people maybe more interested in another subdivision. He answered that there are probably a number of factors. Mayor Pro-Tem Baldwin stated this is an Ordinance change, which means it is changed and posted. He encouraged the public to do their best and follow these meetings and pay attention to what is going on. He said they have a chance to address this based on concerns moving forward.

Mr. French suggested to the Commission to table this issue.

Mayor Boss made the motion to approve with no modification.

Mayor Boss moved to approve.

Commissioner Wright seconded the motion.

Roll call vote was taken.

Motion failed with a vote of 3-4-0.

Mayor Pro-Tem Baldwin, Commissioners Sikes, Rardin and Hernandez voted nay.

Commissioner Rardin asked if they can bring it back. He said the only reason he had an issue with it was because some of the other developers didn't have any input or he did not have a chance to discuss it with them.

City Attorney Bengoechea stated once a vote fails you cannot bring it back. She said they can bring back an amended ordinance but not this version. Commissioner Rardin asked if someone on the winning side can bring it back. City Attorney Bengoechea said correct, one of the "No" votes could bring it back.

Commissioner Sikes said she would like to see it without the restrictions. She asked for it to be made a blanket for everyone. Then make it the first reading and make sure everyone is aware of it, see the changes that might occur based on public comment and then do any changes. Mayor Pro-Tem Baldwin agreed.

11. Consider, and act upon, Ordinance 1597 amending 11-04-020 of the Alamogordo Code of Ordinances regarding Unlawful Possession of Marijuana. (Petria Bengoechea, City Attorney) (Roll Call Vote Required)

City Attorney Bengoechea said this changes the ordinance to be in line with what the Legislature did. It states that the first time a person is caught with marijuana, with up to a half of an ounce, it will be a penalty assessment of \$50. After that it gets more serious.

Commissioner Rardin moved to approve.

Commissioner Sikes seconded the motion.

Roll call vote was taken.

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

Commissioner Payne stated personally she is not in favor of this, but professionally speaking this makes sense.

12. Consider, and act upon, Amber Skies request for the City to repair water leaks in their community per base rate charges. (Clifford Appel, Amber Skies Resident)

Mr. Appel said there are many residents from Amber Skies and asked them to raise their hands. He said the community is made up of people ages 55 and up and has about 148 installed homes. He said in the past they have had water breaks in their community and the City has refused to repair the breaks. The City is notified about the breaks by the Park Manager and then comes and turns off the main feed and then goes back to the barn. He said during the last leak they were without water for two days. He asked the Commission if they would like to be without water for two days. He said a Contractor agreed to go out and fix the leak. He said it was in the afternoon when the City was requested to re-open the supply to ascertain that the Contractor's repair was holding properly. He read the Municipal Code 28-03-150. On behalf of the Citizens of Amber Skies, he requested the City to honor its own Municipal Code and repair future water leaks in their park. He said they pay a base charge per home for service.

Interim City Manager Cesar explained Amber Skies is a private subdivision. He said when a developer does a private subdivision the City is not responsible for maintenance inside that complex. The benefit to the developer/builder of that type of subdivision is that there is no land dedication or percentage of the improvements that is paid to the City. It is up to the developer/builder of that subdivision to do all maintenance inside the complex. He said Public Works Director Garner has the file for Amber Skies and in that file is the contract which states that the owner of Amber Skies is responsible for all maintenance inside the complex.

Mayor Boss said the City had no control of the quality of material that was put in the ground. Interim City Manager Cesar confirmed that the City did not. He explained how it would be handled for a typical subdivision. He said in a private subdivision the City does not do the maintenance. The City does not have maps and they have no idea how it was installed and the quality of work. He said as to the last water break, the City was notified that there was an issue in the park and was requested to go out and turn off the water, which they did. He said there was not a subsequent call to turn the water back on. He said the reason they went back out to check is because a number of residents in Amber Skies contacted dispatch, many of those used 911. The Manager or Owner of the Park never did contact the City. He said the base rates is not a guarantee that the City will go inside to a private subdivision and go do work. He said that is to guarantee that the City has the funds to replace tanks, the water filter plants, main lines that deliver water out to these complexes. He said Amber Skies is no different than any other mobile home park in Alamogordo. He said the only difference with Amber Skies is the developer/builder of that subdivision decided they wanted all the residents in Amber Skies to have their own meter, so that the resident would pay their own water and sewer. He said many complexes in Alamogordo have their own master meter. He said they can still go in and put a master meter there and the park or owner will pay off that master meter. He said the builder at that time chose not to do

that. It was not a City requirement that all the individuals in Amber Skies pay the base rate. He could have included that into the monthly rent for the spaces.

Mayor Boss stated Amber Skies is not unique, we have this situation all across Alamogordo. Interim City Manager Cesar named a few of the complexes and said that the City will only go to the meter. He said Amber Skies could have come in and dedicated everything to the City in the beginning of the process and individually metered the various complexes. Mayor Boss asked if when he says dedicated, if he means as far as the water line, easement of the water line. Interim City Manager Cesar answered yes, to the land dedication and the easements that are associated with it, etcetera. He said looking at both Wal-Marts, the Fire Department will go in and check the hydrants because that is public safety, but if there is an issue with the hydrant the City will not go into the complex and replace a hydrant, just like they will not go into Amber Skies.

Public Works Director Garner said the base rate they are talking about is to take care of City owned infrastructure. He said the City does not own the infrastructure at Amber Skies. The City will go in and take care of the meters, because the City does own the meters. He read the Agreement with Amber Skies, which included the responsibility of Amber Skies to repair all damages to all water lines, sewer lines and manholes at no expense to the City. He said this is a standard agreement that the City has with all private subdivisions. He said they are short staffed. They have had three water breaks (mains) that the City owns. They had to dedicate crews to go out and fix that and they simply don't have the manpower to go out and do the different subdivisions and take care of them at the same time they are taking care of the City's main infrastructure. He said when they originally went into Amber Skies, he thinks it was in Good Faith to try and get an emergency services put back on. He said it does not happen very often, so it was left to the side and it became a standard that the City does not take care of these subdivisions.

Mayor Boss said that is a question that has been asked of him. He said he was asked why the City has done this in the past. Public Works Director Garner said it was a matter that it was overlooked, and it was brought to his attention when they could not keep up with the breaks they have right now, with the staff they have right now.

Interim City Manager Cesar said at the first water line break at Amber Skies, a call was made by the owner, at the time, to Utility Maintenance and was told that the City does not perform the maintenance. A subsequent phone call was made to either the City Manager at the time or to a member of the Commission and word came down to the Utility Maintenance Department to go in and fix the break, then it happened a second time, and again and again until they drew the line in the sand. The developer signed an agreement, it is not the City's responsibility. He said that burden should not be placed on the rest of the citizens of Alamogordo to go and take care of a gated community that didn't pay as other subdivisions paid when they came in. He said if they wanted it public it would have been built to a much different standard than it was.

Commissioner Payne asked Interim City Manager Cesar if someone actually talked to the owner. Public Works Director Garner said he sent a letter out to the owner informing him of the situation. He did get a response letter back. He said they did get the letter but were not happy about it and talked about going to litigation over it. She said she thinks it is a different owner. Interim City Manager said it has changed owners, but it does not change the way the subdivision was developed. Commissioner Payne said she understands that, but she thinks that is where some of the miscommunication came in.

Interim City Manager Cesar said he has heard back from a local utility company that the owner or maintenance person at Amber Skies had contacted them to get an estimate on what it would take to replace the issues at Amber Skies. He explained that most of the issues have been due to the tapping saddles. He said that contractor has not been contacted back by Amber Skies.

Commissioner Sikes asked how much it would cost to fix it. Interim City Manager Cesar answered what it would cost to go in and replace every one of the tapping saddles that has not been replaced up

to this point. Public Works Director Garner said failures of the saddles has been the major problems. The developers are not using the City's specifications for the saddles. He said they are only required to meet the City's standards when they tie into ours. He said the saddles are usually what is failing. Commissioner Hernandez said this is actually a moot point because the owner is the one that would have to request anything. He said it falls on the owner who has failed to represent the residents of Amber Skies for this. He said there is a process that the City can get this changed, but the owner has to make the request. Mayor Boss pointed out that the change would not be at the City's expense. Commissioner Hernandez said no, not at our expense. He said again, the Commission could not do anything because the owner is not the one requesting the change.

Commissioner Sikes asked what it would take to allow the City to go in and take care of it. She also asked how that would work. Interim City Manager Cesar asked for clarification if what it would take for the City to accept it as a normal subdivision. She answered yes, where the City would take care of future problems. He answered at the bare minimum the issue of the tapping saddles. He said recommendation from staff would be that all the remaining tapping saddles be replaced. He said the same expense that the current owner does not want to go through, and that is just on the surface. Commissioner Sikes asked if the City knows that he does not want to do that. Interim City Manager Cesar said he has not contacted that utility company, maybe he is securing other quotes, but that is going to be a very expensive project. Commissioner Sikes said it is very bothersome to know that there are people here that live at Amber Skies who were not aware of that when they moved in and they have been paying the base rate and assuming that they should be getting their problem fixed by the City.

Public Works Director Garner said he has no axe to grind either way, but it sets a precedence. Legally, the City is not supposed to go on their property.

Commissioner Sikes asked if anyone knew who the owner of Amber Skies is. (Someone from the audience said the owner is an out of state LLC (limited liability company)).

Mayor Pro-Tem Baldwin asked the citizens from Amber Skies were aware of the contract with the City of Alamogordo prior to them buying their home. (They shook their heads said no). He said at some point a Good Faith attempt was made by the City, which didn't need to be made and in fact it could have put the City in harm's way as far as litigation goes, by going in one time. He said that put the City in a situation where there is an expectation by homeowners. He asked who the manager is and is she there (no one acknowledged). He stated at this point without representation of the business, there is very little the Commission can actually do.

Commissioner Hernandez said they should self-report their violation the anti-donation clause. He said by going out there and doing this work for free, they have violated that. Either that or send them a bill. He recommended the self-report and move on from that. He said if he could go out and help, he would. He said it all comes back to the owners and them not doing their work. In any way you look at it, if you are in my subdivision and you don't have water, I can get you water and take care of the issues later. If it ends up being the City's problem, then it is easy for them to come back and sue the City.

Mayor Boss asked the residents of Amber Skies if they knew what the anti-donation means. They said no. Mayor Boss explained to them that if the City is spending taxpayer's money on individuals that they have no obligation to spend it for, then they are breaking the law.

Someone from the audience said that had gone on for 19 years. Commissioner Hernandez said that is why he has recommended self-reporting because it can become an issue for the City. Mayor Boss said self-reporting is for the City and not the residents of Amber Skies. Commissioner Hernandez said the anti-donation clause is a very sticky situation that can put you in trouble.

City Attorney Bengoechea said the community is owned by an LLC called Amber Skies Community out of Eliseo Viejo, California. She said when she looks up that company on the New Mexico Secretary of State's website, the organizer's name is Brad Dunn and the Registered Agent is Jim Fryburger.

Lawrence Guidry commented on the following:

He said the residents of Amber Skies did not know of the Agreement. He said if the water breaks, they are stuck. He said it seems a little unfair that the residents did not know anything about this, but they are the ones who are going to catch the hind for it.

Mayor Boss recommended that the residents form an association and hire an attorney. Mr. Guidry said there is a Resident's Council and the President is in attendance. He said they can form anything they want, but the owner will not approve anything, it goes against anything he wants to do.

Commissioner Sikes asked the residents of Amber Skies if everyone rents (they answered yes, they rent the space).

Commissioner Rardin asked Interim City Manager Cesar if in the future they have breaks, can the City repair the breaks and then send the bill to the LLC and use the health, safety and welfare of the residents. He answered no, they looked into that and there was an issue where there was another owner of multiple trailer parks that had not paid the water bill. He said the City had no ability to go in and do that. He said there was also another issue where another trailer park had their water being consistently shut-off because they had issues inside the complex and the residents of that park went to the State Environment Department and complained. He said that issue has been resolved.

Johnnie Glass commented on the following:

She stated they had no knowledge of any contract with the City regarding the utilities. She said she went to the County Clerk's office and found a copy of a plat which was the original developers in 1997 where they conveyed the road, the easements and whatever to the City for public use and that was accepted by the City. She said she went back today, because that plat only has the roadway entrance from the highway into the park and the road that continues from the entrance to the first ten or twelve houses. She said this subdivision has a very confusing history. She said most of the animosity the Commission was subjected to with this issue is because the services from the City had been provided for the last nineteen years. She said the residents of Amber Skies have a very adversarial relationship with the current owner. She asked Facility Manager Garner to have a copy of the Agreement.

Commissioner Payne asked her if they have a rental contract when they rent the space. Ms. Glass answered they have a lease agreement. She also said there has always been a question if their roads are public or private.

Mr. Appel stated they are paying a base rate of \$13.90. He said what has been said tonight is that Amber Skies is going to have to fix it themselves. He said why doesn't the City give them back the \$13.90, because the City has not fulfilled their end of the bargain. Mayor Boss said the City has fulfilled their end of the bargain. He said the City has water tanks, storage tanks, transmission lines, pumps, the City brings water in, they have chemicals to treat the water and all of that is provided to you. Interim City Manager Cesar added that it goes to the property line of the private community, it is no different that the Apartment complex on First Street. He said the City's responsibility, for that complex, ends at First Street. He said they have multiple meters inside the complex. He said the original developers for Amber Skies made the decision to do individual meters for every lot. He said there are a number of empty lots inside Amber Skies and there is a monthly bill sent out to the ownership of Amber Skies and they are responsible to pay the base rates for every one of those vacant lots. Mr. Appel asked Interim City Manager Cesar if he is saying that even though there is not a home on it or no water is being provided, that they still are paying \$13.90 a month. Mayor Boss and Interim City Manager answered yes. Interim City Manager said the current owner, if they wanted to, could install one master meter. Then the City would deactivate all 148 accounts inside the complex. The ownership would then pay the base rates for that size of meter, which is more than the \$13.90. That has never been brought to the City and the City cannot mandate that.

Commissioner Rardin told the residents they might get together and talk to the Environmental Department. If the owner receives a letter from the State of New Mexico maybe he'll get the hint. He said like the Mayor mentioned, the residents getting together, getting an Attorney and send a letter to the owner. Mayor Boss stated quite frankly; the City has already done too much.

Robert Mays commented on the following:

He stated that the residents knew nothing of this agreement. He said his concern is a safety issue because they were two days without any kind of water. He said he understands that it is not the City's fault, but it's somebody's fault and they need to get that solved and they need all the help they can get to do that.

Commissioner Payne apologized to the residents saying, they did not get the answer they wanted but she does appreciate everyone coming and voicing their concerns.

No Action Taken

Mayor Pro-Tem Baldwin asked the Commission if they caught how all this started. He said a Commissioner made a phone call to City staff and gave direction. He said one of the things that he is proud of serving with this Commission and he fought extremely hard is to get away from that "Good Ole Boy" stuff. He said the reason people dislike politicians is because of those type of things. A Commissioner acting on behalf of the Commission directing staff to do something and staff allowed it to happen. He is appreciative of everyone there for not being that way. Interim City Manager Cesar said that is some of the things they are trying to clean up and get rid of.

ADJOURNMENT

Mayor Pro-Tem Baldwin moved to adjourn at 8:45 p.m.

Commissioner Rardin seconded the motion.

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



Rachel Hughes
City Clerk Rachel Hughes

Richard Boss
Mayor Richard Boss

(Prepared by Eric Barraza, Deputy Clerk)

Approved at the Regular Meeting held on August 13, 2019.