

**City of Alpine  
Regular City Council Meeting  
Tuesday, March 4th, 2014  
6:00 P.M.  
Minutes**

- 1. Call to Order, Invocation and Pledge of allegiance to the flag – Mayor Rangra called the City Council meeting to order. Jo Beth McLeod, Pastor of the First Presbyterian Church gave the invocation.**
- 2. Determination of a quorum and proof of notice of the meeting – There was a quorum present. Mayor Rangra, Councilors Bermudez, Davidson, Fitzgerald, Gonzales and Castelli were present. The City Secretary said the notice had been posted at 4:50 P.M. on February 28<sup>th</sup>, 2014. City Manager Zimmer, City Attorney William “Mick” McKamie (remotely) and City Secretary Taylor were also present.**
- 3. Presentations, recognitions and proclamations – None**
- 4. Reports –**

**City Mayor’s Report** - Mayor Rangra said last week on Friday, Councilor Fitzgerald and he attended the TML Region 4 meeting in Odessa. He said it was well attended. He said Alpine’s name was mentioned a few times. He said when the time came to select a city for the next meeting, we said we would like to have it in Alpine. He said in May we are going to host the TML Region IV meeting. He said he had a note here from Big Bend Film Commission about an invitation this week on Sunday, March 9<sup>th</sup> for the History Channel, No Man’s Land will air its first episode at 9 P.M. He said this is the culmination of over a year of work by the Big Bend Film Commission. He said John Green sends an invitation to all of you for a celebration and viewing at the Holland Hotel Billiard Room at 7 P.M. on that night. He said all of you are welcome to attend.

**City Attorney Report** – Mick McKamie, City Attorney said he did not have anything special to report.

**City Manager Report** – City Manager Zimmer said at the last couple of meetings we talked about the 2014 Governor’s Community Achievement Awards, a part of TxDot Keep Texas Beautiful. He said we won! He said we won in the population category 5,500 to 9,000 population. He said the selection criteria included 7 key criteria which included community leadership, coordination, public awareness, education, beautification, community improvement, litter prevention and clean up, solid waste

management, litter law and illegal dumping enforcement. He said Martha Latta who is soon to be retired, spearheaded our efforts. He had Martha stand up and take a bow and the audience gave a round of applause. He said this is the kind of recognition that we can put on our letterhead as a distinguished accomplishment for the City of Alpine. He said there will be an awards ceremony in June but the details are not out yet. He said what this means to us is also about \$130,000 in landscaping that will be administered on TxDot right of way through the City of Alpine. He said this is in alignment with our beautification efforts. He said that was excellent work.

He said concerning law enforcement, and the February report, total arrests were 15, accident reports were 12, calls for service were 433, case reports were 46 and there were 59 911 calls received and there were 21 Municipal Court Citations issued. He said it was a pretty active month for our law enforcement.

He said concerning Code Enforcement, from this past week, we were up 32 code violations, 12 investigations initiated, 1 court case pending, 7 building permits issued, and 3 electrical. He said as we continue to issue more permits, one of the things we are sharing with the contractors out there is we do have a right of entry. He said once they do get the permit, during business hours, our code enforcement officer can show up and inspect a job. He said we did have an issue this past week where we were challenged with that. He said we are reverting back to ensuring that when someone comes in and gets a permit they sign the right of entry consent form too and acknowledge the state statute on that. He said last week we talked a little bit about some of the weed abatement that we are doing. He said he wanted to give the council a visual. He presented some pictures to the council that were taken in August and more recent pictures of last week when the issue was abated. He said that is very important this time of year with fire hazards. He said these images can be found on the code enforcement website as well.

City Manager Zimmer said next was the wastewater treatment plant. He said the city received a citation back in August from TCEQ on several items that we needed to work on from a compliance perspective. He said Virgil Clark came in of October of this year and instead of the belt conveyor we went to the de-watering bag process which was significantly less expensive for the city. He said he would show some images of that. He said we have been able to get the solids to the level that we would like them to be. He said we have also started excavating the covered drying beds and then we will assess what we need to do to get them back to life. He said we also got our pressure valve fixed so we are able to return the reused water to Kokernot Park in the golf course tank right there on the edge of Kokernot Park in the golf course. He said our auto control technician is in this week to use some of the equipment that had been purchased in years past which instead of having a person who had to turn the pump on and off, enabling the sensor will allow us to use that water through the off

hours, through the evening and refill the tank. He said we only have a 30,000 gallon tank out there and we can effectively go through about two and one half tanks with this sensor control on there. He said our two main wastewater techs are at Corpus Christi this week. He said one of the things that we made a commitment about to TCEQ and the Council was to continue to enhance our certifications and our licensing. He said we have done that. He said we have also hired a former wastewater treatment plant operator so we are getting back to being full staffed out there. He said he had a nice conversation with Kent Waggoner with TCEQ. He said how we handle the wastewater treatment plant is extremely important. He said we don't want to receive a fine out there and communicating back effectively with them is critical. He said things are really looking good there. He showed a picture of one of the drying bags. He said that is about three months of fill from the wastewater treatment plant. He said he would put these pictures on line for anyone who would like to see them. He also showed a picture of the excavation. He said that was something that Virgil had presented back in October.

City Manager said concerning the Gas Department, annual reports to the Feds and to the Texas Railroad Commission are due by March 15<sup>th</sup>. He said we have successfully submitted those. He said an example of that is the 7100 report. He said we have also addressed our yearly riser fees and that is part of the accounts payable list for this meeting. He said then we have Paradyne, which is a group that is coming in for public awareness and this will be specifically for City of Alpine contractors, emergency responders, city employees and anybody in the general public can sign up for this. He said it will be March 26<sup>th</sup>, 2014. He said if anyone would like further information on that please call City Hall. He said you can ask for the City Manager or you can call the gas department and ask for Lorena and she will get you set up if you have an interest in that.

The City Manager said next is the Finance Department. He said we continue the work around preparation of data for our auditor. He said he is here to present our draft audit this evening. He said the other significant project that we are working on is the accumulation of inventory reports that is really focused on looking at our old equipment that is in the field. He said upon the completion of this list, the real process is to declare a surplus of this equipment and then the equipment that is in surplus can be auctioned off to the highest bidder and then the goal would be to take the received monies and utilize them for additional capital items that are needed in each department. He said we will review each of these steps with council and ask for approval as we are going along. He said that is important for us to help defer some of our budget spending this year. He said it is to take some of our stranded assets that still have material value out there. He said some of them are steel and metal that have value and some of them are vehicles that have value.

Councilor Fitzgerald asked if there was anything that the City Manager could share with the Council and the public about the status of the

investigations of the agencies that are looking into Alpine. The City Manager said we continue to work with the agencies on a weekly basis. He said because the investigations deal with information that is personal in nature, he cannot disclose that in an open session.

#### City Staff Updates –

Judge Schlosser – said she has done an internal audit of the court and was probably as shocked to find out some of the things in the report as the council was. She said when she took over as Court Administrator in the fall we started identifying problems right away. She said we hired an external auditor at her request. She said she will be back next week to conclude her external audit. She said the auditor has been focusing on closed files. She said she has been focusing on open files trying to eliminate a backlog of 3,000 open files that she inherited when she became court administrator. She said she has personally reviewed 1,200 of them, with her eyes on each file. She said she had the results of what she found. She said we can go back and recoup revenues for two years for cases that have not been placed on the docket. She said she has now done that and all of those are set for the March docket. She said unfortunately there were thousands of cases that we could not include because the statute of limitations had run on those. She said she reviewed the 2011 files that she could find and found that many of them, over 50% had never been placed on a first appearance docket. She said she has not looked at 2010 or anything before that because her focus has been on helping the new clerk get these cases on the docket for March. She said she has signed a motion to dismiss the order on over 350 cases so far. She said the statute of limitations has run on these. She said that is unfortunate but the good news is that it is not going to continue. She said she has stopped the loss of revenue. She said she is also writing a policies and procedures manual that will include a checks and balances system so that will not happen again. She said obviously it is crucial that a court administrator be trained to understand that without the proper operation the court does not exist and revenues will go down. She said when she first started looking at revenue last fall she was shocked to find out that the revenue was \$2,000 to \$4,000 per month. She said it should be about \$20,000 per month, given the number of tickets that we write and that is why the extra audit and internal audit were absolutely necessary. She said you can tell from the internal audit that we have had gross mismanagement. She said her orders that all cases be placed on the first appearance docket have been ignored. She said what we have to do from here forward is to make sure that this type of activity does not repeat itself. She said that is her goal. She said her goal is to make sure that as Court Administrator, every case that should be placed on the docket is placed on the docket. She said the good news is that we have the Omnibase System working and we have cases going into the Omnibase System. She said we have had a few bugs in the system but to her

knowledge Hill Country is working those out as we speak. She said the other good news is that citizens are able to pay through Trafficpayment.com with a credit card or debit card. She said there is a slight fee for that but it is still more convenient for citizens. She said that has already started to improve revenue collections. She said she has been very busy trying to get all the cases on the docket so that we do not lose the revenue.

#### **5. Citizens Comments (on agenda items) –**

**Bob Brewer** said he wanted to comment on item #6B. He said he lived across the street, caddy corner from the house that Mr. Thomas is remodeling. He said he just wanted to speak in favor of this remodeling. He said it is also an action item on item #11. He said he thinks they have done a wonderful job of taking a rather plain ranch style house into a palace almost. He said he has no objection and thinks they are doing a great job.

**Jimmy Thomas** – said he is the owner of the home under item 6B and he appreciates the time. He said he contracted a local contractor, Yaden Hardaway. He said he and his wife have owned the home for 8 years now. He said he lived in Alpine 42 years ago while he was in college. He said he is a geophysicist who worked in the oil business and managed to be fairly successful. He said he and his wife always wanted to retire in Alpine. He said they are in the process of selling their home in Corpus Christi and remodeling this home that was previously their vacation home. He said when they started remodeling the home he needed to consider his car collection. He said he has some exotic cars which he would like to protect from hail and from the sun. He described the proposed project to the council and why he had the plans designed the way he did. He said the City Manager, Code Enforcement Officer and some of the Council members and board members came out and did a site inspection. He said this went to the Planning and Zoning Commission last week. He said they are trying to design the house so it takes on the Alpine “Sunday House” type style. He said the carport is designed to look like a porch. He said this will not stand out on the street but will be similar to the other houses on the street. He said the Planning and Zoning Commission voted unanimously to approve this project after coming out and inspecting on site. He said he would appreciate the approval of the Council. He introduced Yaden Hardaway, his contractor to the Council.

#### **6. Public Hearings –**

**A. Public Hearing to obtain citizens views and comments concerning a building setback variance for Thomas Derrick Addition, Block 14, Lots 1 and 2. Martha Serrano proposes to locate a mobile home on this location. The reason for the request for a variance is because of odd**

**sized lots. Legal description is Thomas Derrick Addition, Block 14, lots 1 and 2 of the City of Alpine, Texas. Record owner is Martha Serrano. (E. Zimmer, CM) –** The City Manager said because we posted this as a Public Hearing in advance, we did have to place it on the agenda. He said with our meeting with the Planning and Zoning Commission last week, there was preliminary work that needed to be done by the owner of the lots that this variance was requested on. He said they were owned by a different person so by law replatting has to occur before that person can sell the lots to Mrs. Serrano. He said we are removing that item this evening but we had to keep it on the agenda. He said once the owner of the lots (she has 6 sitting adjacent to each other) comes up with her plan on the replat she will present that to the planning and zoning commission. He said in the not too distant future that will go through the planning and zoning commission and then potentially come back to the council.

- B. Public Hearing to obtain citizens views and comments concerning a building setback variance to build a carport attached to a home. The carport would extend out from the house to the property line. Request is made by Jimmy Ray Thomas, and the property street address is 508 N. Cockrell. Legal description is Hancock B Addition, Block 73, Lots 9W/2-9 and all of Lot 10. Record owner is Jimmy Ray Thomas. (E. Zimmer, CM) -** The City Manager said this is the item that Mr. Brewer, Mr. Thomas and Mr. Hardaway had come up and addressed in the public comments. He said in this public hearing we give anyone else the opportunity to speak. There was no other public comment on this item.

**7. Consent Agenda – (Minutes, Financial reports, Department Written Reports, board appointments, etc.) –**

- A. Approve accounts payable. (E. Zimmer, CM)  
B. Approve Council Minutes of January 7th, 2014. (A. Rangra)

Motion was made by Councilor Davidson, by Resolution 2014-03-01 to approve the consent agenda as posted. Motion was seconded by Councilor Gonzales. Motion unanimously carried.

**8. Information or Discussion items –**

- A. Municipal Court of Record Legal Opinion by William “Mick” McKamie – City Attorney. (E. Zimmer, CM) –** The City Manager said this was requested, at a previous meeting, to work with Mr. McKamie on a legal opinion with the question at hand of what is the term of office of the current Municipal Judge. He said Mr. McKamie has provided us with that legal opinion that was put in your booklets. He asked the city attorney if there were any highlights that he would like to outline. The City Attorney

said what he looked at were the provisions of the charter that applied to the term of office of the Municipal Court Judge. He said it appears that in Section 4.05 of the Charter, the voters elected to include in the charter the same design for terms of office for the Municipal Court Judge as for the General Law Cities and that is that the Judge has a 2 year term and the term runs concurrently with that of the Mayor. He said there is nothing in the state statutes that conflicts with that two year term commencing on the date that the Mayor takes office and so the charter controls and the charter does still provide that the new Mayor, every even numbered year, comes into office, and this year it will be May of 2014. He said we looked at the history of the appointments of the Municipal Court Judges in Alpine over the last few years. He said it appears that there have been appointments but it is not clear if those appointments were made to commence on the date of the new Mayor's term. He said when that happens those appointments are considered to be interim appointments. He said when the new two year term starts, in May of the even numbered years, it becomes sort of a hold over appointment, technically not a hold over appointment but under the provisions of the government code, the Judge continues to serve for a full term, if no further action is taken by the city council. He said the study we did yields the opinion that the term of the current Municipal Court Judge will expire concurrent with the expiration of the Mayor's term in May of 2014. He said one question that is not addressed in the legal opinion is are the actions of the Municipal Court Judges in the past subject to attack or being declared invalid because it was not clear when the terms of office for those judges were to begin and the answer is "no". He said case law has consistently held that when a judge is appointed, even if there are irregularities in the appointment or some miscalculation of the term of office, everything that Judge does while in office is completely valid as a de facto judge. He said they think that everything can go back as the citizens who adopted the charter intended, this May, when there will be a two year term, beginning in May when the Mayor's term begins for the next term of the Municipal Court Judge. He said that is the gist of the opinion. Councilor Gonzales said he had a question, for example the Mayor is elected on May 10<sup>th</sup> and actually they are not sworn in until we have a meeting with a canvass and is that the day that starts the 91 day count. Mick said yes, because the term runs concurrently with the Mayor so when the former Mayor is still in office that term of the Judge is still in effect as well. He said when you use a two year term, it is just like any other elected or appointed office, it is not from day 20 to day 20 of that year, it is to coincide with the term of office which isn't an exact date. He said yes, the answer is as soon after that, within a reasonable amount of time, the Judge should also commence.

**B. First draft of FY 2012-2013 Audit to be discussed by Craig Gibson of**

**Gibson, Ruddock, Patterson, LLC, Audit Firm hired by the City of Alpine (E. Zimmer, CM)** – City Manager Zimmer said as he shared in the packets and shared in the last several meetings, the work that is coming together to put this audit for FY 2012/2013 has been a large undertaking. He said we continue to work days and weekends assimilating information. He said we do have a requirement from the Texas Water Development Board to have a final audit approved by Council before March 29<sup>th</sup> of this month and the clock is ticking back. He said we did feel it was important to have Craig Gibson and Marlene here to go over what we have put together from a draft perspective so that we can gather any feedback and put the final audit together. Craig said Marlene had been working daily with Megan on the audit. Craig said they came into a serious situation. He said as everybody knows, previously this year there were significant issues that came to light and for subsequent years there was little onsite direction. He said the council was meeting, of course but the City Manager's position was open and the Finance Director's position was open and so day to day activities continued but the actual recording and posting and what not was poorly done, not timely or properly. He said what we have to do in working with Megan is that she has been doing a lot of digging to try and find out exactly what did occur and then we were trying to get things posted properly. He said that is why this has taken longer than anyone would have liked. He said what was provided to the council, which was handed out right before the meeting, was a draft copy of the main statements that will be in the audit report. He said the first one is the balance sheet for the governmental funds. He said that is the General Fund, Debt Service and the other non-major funds such as special revenue funds. He said one thing that they did differently from prior years is previously we did not have a debt service fund recorded separately. He said it was combined with the General Fund. He said we believe it is proper to have that recorded separately. He said he would like to start on the next page which is the statement of revenues and expenditures. He said here we have listed out the revenue for the general fund debt service and then other non majors. He said then we have the expenditures in the next section broken out by the major categories. He said above that is the other financial resources that we use to bring transfers in and out. He said you can see in the General Fund that the revenue is up 2 and one - half million but the expenditures were about 3 and one-half million. He said that means that just from the operations there was a million dollar deficit and transfers in and out come into play. He said that leaves us with a net change of a fund balance of a decrease of about \$800,000. He said we started with a fund balance of about \$200,000 and we have quite a few adjustments and a number of small special revenue funds. He said what has happened is over the years with the grants, all of the expenses were posted into those grants but the transfers for the local match had not been made from the General Fund. He said the grants

had been closed out and so they closed out the fund and the \$390,000 at the bottom of the page is basically to do those transfer for the local match. He said that leaves us with a negative fund balance in the General Fund. He said way this was funded is basically moving money from fund to fund. He said there is nothing wrong with that but the problem we had was the intent was to cover that with transfers. He said that is totally appropriate however when you have debt that is guaranteed by Texas Water Development Board, they frown on transfers so the proper way to do that and the easiest way would be in lieu of franchise fees where you just set a percent of gross revenue and that would be a franchise fee say the water department would pay to the general fund and that is to cover the administrative work that the administration offices do here. He said that supports that fund. He said unfortunately that is not in effect for this year so we do not have that recorded but we have transfers out of the water fund. He said that is the situation that we are looking at, at this point. He said they visited with Megan on how to set that up so we can get it in place for this year. He said he thinks they have a good plan to move forward with that. He said you can figure in the actual budget comparison that the general fund did operate well below the budget that was approved. He said Exhibit 6 is the balance sheet for the enterprise funds which include water, sewer and sanitation, gas and airport funds. He said this summarizes the assets and the liabilities and the equity for those funds. He said one of the big differences between the proprietary enterprise funds and the accounting for the governmental funds is the proprietary funds they are accounted for basically like a business. He said when they buy a capital asset it gets recorded as an asset. He said a governmental fund, like the general fund, when you buy a capital asset it is expense. He said also when you borrow money, in a governmental fund that is revenue. He said so it increases your equity. He said in an enterprise fund, just like in a business, that is a liability that you pay back. He said the big difference here is that you have the capital assets included in these numbers. He said the next page is the operations where you have the revenue and the expenses for the different funds. He talked about transfers out of the water fund and the gas fund. He said the last two pages are the combining schedules for the smaller funds that are in that one column on the front two pages. He said you can see the amounts totaled up that go forward to those pages. He said they still have a couple of items that they are still looking into that they need to get cleared up before they issue that final report. Councilor Fitzgerald said the final report will include the missing pages. Mr. Gibson said it would. Councilor Davidson asked if the council would get the final report a few days before the meeting. Mr. Gibson said he would sure like to get to the council a few days before. He said it depends on how soon we can get the missing pieces. He said their intent is to always provide the report at least a week before the meeting. He said unfortunately we do not have the time, since there is only a week left, but they will do their best. He

said they would get it to the council as soon as they can. Councilor Fitzgerald said they could understand the time constraints but they really do need it before 6 o'clock on the night of the meeting. Councilor Gonzales said in the enterprise funds and this movement of money for administrative services, Mr. Gibson mentioned that we do not have a process right now but that we are working out one. He asked if that would help us or is this going to balance us out? Mr. Gibson said in previous years the management would transfer money between funds. He said we are trying to get more structure. He said there were no transfers budgeted in the last budget. He said they are not mentioned in the budget. He said the transfers were not made appropriately and the Texas Water Development Board does not approve of that type of movement. He said they will approve if you have a plan where you have a stated percentage which is referred to generally as "in lieu of franchise fee" then that can be charged and it is up front and it is approved and that is what they would recommend. He said another approach is an indirect cost plan which entities who have a large number of Federal Programs would follow that. He said what that does is take the actual expenses and applies them to the revenue from all the different departments in the grant. He said that is a good way to do it if you have a lot of Federal Grants but it is very time consuming. He said they have seen in El Paso, the water department pays a fixed percent of their gross revenue to the city. He said it appears to be more common to do it that way for this type of department. Councilor Castelli said coming off of the prior report where we had ten deficiencies, he wondered if Mr. Gibson had identified any deficiencies for this report. Mr. Gibson said they have a number of comments that they will be presenting to the Council. He said they have gone over them with management and they have already implemented some changes and they agree whole heartedly with everything that they have discussed so far. He said some will be considered findings and some will be considered Management tools. He said yes they have a number of items on the laundry list of things that the city will need to work on. He said they are eager to do this. He said the folks you have now want to do things properly, they really do. He said you can tell and they are eager to get it done. He said he is looking forward to next year. He said he thinks by the time we are discussing this next year, the council will be very pleased. Councilor Fitzgerald said we have fore warned the public on many occasions that this first audit was not going to be primo. Mr. Gibson said sometimes you just have to get a starting point. He said you have really made some good changes. He said he really feels comfortable with the management that you have in place. He said he thinks they know what they are doing and they are trying to do the right thing. He said he thinks the Council is going to be pleased. Mayor Rangra asked if Mr. Gibson or his staff had any problem getting all the information that they needed from the staff. Mr. Gibson said the only problem is that they are asking Megan about things that she had nothing

to do with. He said it is taking her and her staff's time to dig through reams of information to find what they need. He said and then you had the software conversion in the middle of the year which just compounded the issue. He said had it been at year end, it might have been a smoother transition. He said they have no complaints about the staff's efforts. Mayor Rangra asked if there was anything that was left out of the audit process, like last year they were told that there was not audit done of the payroll. Mr. Gibson said they are looking at all the major cycles. He said some of them are obviously higher risk and they get more of the attention. Mayor Rangra asked if Mr. Gibson noticed any advances. Mr. Gibson said that has been looked at everything pretty thoroughly and his understanding from what they can see is that the advances had all been repaid. Mayor Rangra asked if they saw any loans or any advances being done. Mr. Gibson said they did not see any.

- C. Report from Mike Davidson on Water Rights Seminar. (M. Davidson). –** Councilor Davidson said he was a self-admitted water nerd. He said about 20 years ago he was president of a small water supply corporation which was non-profit. He said they finished up grants and over the course of a few years spent two and one half million dollars on a water supply for Study Butte and Terlingua. He said he has been a voting member of the regional water planning group since 1999 and he was president of a non-profit organization that was leasing and purchasing water rights in the Rio Grande and dedicating those, changing the permitting to dedicate them to in spring flows. He said going to this conference for him was a great way to see what was going on out there in the legal world. He said the conference was hosted and put on by the Texas Bar Association Continuing Legal Education. He said about 80% or maybe a few more of the attendees were practicing attorneys. He said the name of the conference was “The Changing Face of Water Rights in Texas.” He said there are a couple of ways to look at the water rights. He said one is surface rights which have a long history in the American West. He said that does not really pertain too much to the City of Alpine because we get our water from the ground. He said finally up until about 20 years ago, even though scientifically we knew a lot about how underground water behaved, legally it is all considered magic. He said for instance in Fort Stockton, they used to have this wonderful perennial spring. He said it was a complete coincidence that 5 miles away somebody starting pumping out vast quantities of water for irrigation and the spring dried up. He said legally there has not been a connection between those kinds of things. He said it was considered a coincidence. He said he did not want to take too long but there were some points in the conference that were important. He said they clarified the legal changes that the legislature made in the last session regarding water. He said they considered it to be a water session. He said from now on all of the legislative sessions will have a really large

emphasis on water because the state has grown so fast. He said the water resources are limited. He said a couple of things that may or may not impact the city of Alpine, one) is up until recently the TCEQ is the water regulating agency and they have clearly ruled about how much per tap and how much supply and they will continue to rule with that function but the regulation of water rates is going to be handled now by the Public Utilities Commission since they field utility rates. He said if the City of Alpine were to decide to raise water rates, the Public Utilities Commission would be the one that would handle hearings or whatever. He said that is something that we will see if we have to deal with our rates we will be dealing with the Public Utilities Commission. He said another very big deal in front of the State Legislature is how the state is looking at their water. He said since the drought of the 50's, the state has done an annual or periodic state water plan. He said after a long time, agencies in Austin's role was to say "okay, you don't have water over here and this is what you need to do". He said because of that there was never any local buy in for the projects that were needed. He said if somebody came up and said you need to put a dam across Alpine Creek and flood somebody's ranch and have this reservoir there so you get your water well. He said that is crazy, if you want a well, you drill a well. He said it was not working. He said in 1997 they divided the state into 16 regions that have planning strategies that deal with water needs for 50 years in the future. He said even since then where does the money come from. He said you get these people from different counties and they all get together and they look at a huge amount of data that is generated about population, demand, needs and everything. He said then they identify these strategies. He said of course, El Paso, being a growing city and drought prone, they get half of their water from the Rio Grande over a period of time and right now the Rio Grande is not delivering. He said where does the money come from to finance this project. He said if you will remember in last November there was proposition 6 that was on the Constitutional Amendment ballot. He said this took money from the rainy day fund and took 2 billion dollars out of that and put it into the hands of the Texas Water Development Board. He said at the same time legislation changed the makeup of the Water Development Board. He said instead of six commissioners that are basically part time or volunteer they have gone to three commissioners, one appointed by the Governor, one appointed by the House of Representatives and one appointed by the Senate of Texas and those are full time positions. He said now they have this two billion dollar fund. He said this money will become available on March 1<sup>st</sup> and there are two programs. He said one of them has the acronym of SWIFT which stands for State Water Implementation Fund for Texas. He said this is the kind of program that has the money and enhances the viability of the Water Development Board and one of them is SWIRF which stands for the State Water Infrastructure Revenue Fund of Texas. He said this is

the actual mechanism. He said by leveraging this two billion dollars the Water Development Board can issue revenue bonds. He said as we go into the future, we will have this money that will ultimately help the City of Alpine, if we choose to go that route. He said one of the beauties is that instead of going through traditional bond authorities that we have seen over the past few years, they are talking about an interest rate of 3 ½ to 4%. He said at those current rates that we have right now, loans from these agencies would come out to about 2%. He said in the lifetime of a 3 to 4 million loan, we are talking about a million dollar savings on a 20 or 30 year payoff. He said this is all good. He said communities and utilities will fly through this funding and they will be disbursed by a combination of need and many factors will be considered, the number of people served, the urgency of the project, the ability of the local communities to pay the debt service and pay the loan back. He said conservation will be a very important factor when they come to evaluate your request. He said as a matter of fact legislation dictates that 20% of that fund of the money that that 2 billion dollars being used for projects involves legitimate documented conservation techniques and/or reuse of water. He said 10% is also for rural use. He said there are some earmarks and he thinks that a lot of those result and work to the City of Alpine's advantage. He said one small item, that may or may not work to our advantage, as he mentioned he was involved in a surface water organization, purchasing and leasing water rights on the Rio Grande for environmental reasons. He said at that time, the Rio Grande and most rivers in Texas have a position called a water master. He said they are the enemy organization that adjudicates disputes over water rights. He said you can still use surface water rights but if you move the intake point or formula, and it is very complicated, there is a man named Carlos Rubenstein. He said he had some minor personal dealings with him, just in a bureaucratic sense. He said Carlos Rubenstein is now the head of the Water Development Board. He said it is always nice when you talk to somebody that you have talked to previously on another issue. He said he was very confused about how a lot of that is going to work. He said it is nice to have people who can really explain it to you. He said Councilors Gonzales and Bermudez were also there. He said there was a lot of information to be absorbed. He said a subject of controversy here has been about groundwater conservation districts and there have been a couple of legal cases that have direct bearing on water districts. He said the legal cases have been dealing with the Edwards Aquifer Authority. He said this is a very well documented body of water. He said they understand how it works. He said it recharges pretty readily but if it does not rain for two years, it does not recharge so the levels fluctuate. He said they have a very strong scientific understanding on how it works, and they are basically tasked by the legislature to regulate this water so that there is enough to go around for everybody. He said Texas is the only state in the West where the state does not actually own the groundwater. He said New Mexico, Colorado and all of those do. He said in those states you have to get a permit from the actual state engineer office and the water belongs to them, it does not belong to you

even though it is under your property. He said in Texas it belongs to you if it is under the ground and they used to call it the right of capture but now the courts are ruling that even in it's state underground, it is your water. He said there have been a couple of lawsuits. He said one of them was the Edwards Aquifer authority vs. Dane. He said he believed Dane had to do with a Catfish farm or something like that. He said he believed they had been in operation before the water authority had actually begun. He said the water authority came in and told them that they would have to limit their pumping. He said they were pumping something in the neighborhood of 3 or 4 hundred acre feet per year. He said an acre's feet basically covers a little more than a football field. He said the court made a landmark decision and it was that it concluded more or less that limiting a land owners permitted use of groundwater to a historic level. He said these guys wanted to expand their farm and put in more facilities and use more water. He said the Texas Supreme Court basically said that Groundwater Districts are there to regulate groundwater so there is enough to go around for everyone. He said but then they said yes, for this governmental body to come in and regulate and limit these people's ability to use water in an essentially unlimited fashion, constituted a "taking". He said the parties settled. He said the compensational element of this is still up in the air. He said the specific impacts of the district's ability to control water use is unclear. He said there is another suit with some people who started two pecan orchards. He said one orchard was using water in the Edward's Aquifer previous to the establishment of the authority. He said the other orchard was using a shallower aquifer and was not into the Edwards and therefore it was not regulated by the Edwards. He said once again, the aquifer authority came in and said okay on one of your permit applications you are limited to what you are already using. He said on the other one, since it was not using the Edwards Aquifer, they did not prohibit their application at all. He said they sued and they may use this precedent and it may be that unless the parties settle it will be some type of ruling by the court which will dictate compensation to the users who purchased their property thinking that they could pump water how they wanted to. He said how much that will be and how it will work and actually since the legislature mandated that these districts do these functions, will the district sue the state of Texas to get them to pay the compensation? He said he found that particularly interesting because he follows the groundwater district and when it was first getting going he helped them to write those rules. He said one of the very interesting things was a luncheon meeting that they went to. He said this had to do with someone involved in the finance end, in a big city. He said a lot of our water systems in this country were built when the Federal Government had a lot of money. He said water projects were good business for everybody. He said it seemed like they had unlimited funds that did not hit local taxpayers. He said we all know is that those days are over. He said there is going to be very little grant money available to build on our city infrastructures or anywhere. He said we are going to have to go through more standard means of borrowing

money. He said a lot of people in the Southwest said when you look at your high water use times, in the summer, when people are irrigating their grass, not only in Alpine but in a lot of towns or cities everywhere, 50% of their water use is for turf irrigation. He said they were kind of hinting at that in terms of the outside money that is coming in, they are going to question whether the investment that it takes to create the extra capacity for this use, is actually going to be viable and if it is a good fit. He said they pointed out that a lot of the bigger cities have a lot more resources and programs to reduce the amount of grass that is being irrigated. He said in El Paso, San Antonio, Las Vegas and Tucson have all had programs that encourage people to remove grass and use xerascaping. He said this pertains to surface water but you can kind of see what is affecting the legislature and what the rule making is about this. He said surface water has value. He said the laws state first in time first in right. He said this has been modified some for obvious reasons. He said there have been exceptions established that have passed through the legal challenges and are becoming part of that body of regulation's law. He said Municipal use has a priority and they are not going to come to a small town that gets their water from the river and send it all to rice farmers. He said they have a list of priorities. He said municipal and domestic use is the kind of purpose that will call for exceptions. He said this preference of providing water to people in cities and towns is well established. He said if someone came and built a big production well here locally and the cities wells started drying up what would be done? He said in fact there is an application in for a pumping permit over in the Sunny Glen area that if granted for the amount of water that these people want to draw, could potentially cause some stress on some wells, especially in times of drought. He said that has not been granted and probably will not be granted, but that is just his intuition on this. Councilor Bermudez said she and Councilor Gonzales also went to this conference. She said they went a day prior to Councilor Davidson and attended a course called "Water 101". She said they got a book and the way they explained it, it was tremendous. She said you learned a lot from just that one afternoon. She said on the second and third day there were more courses. She said you saw all the people who were lawyers and wondered "what you were doing there". She said they appreciated that council members were in attendance to find out more about their water. She said she thinks there should be more council members attending more of these conferences. She said Councilor Davidson did a very good talk on all of this. She said they did stress protecting your water and not giving it up. She said whether or not we are in a water shortage, we should still try to conserve water at all times. She said overall she thinks the conference was very good. Councilor Gonzales said we were granted two billion dollars to work on water projects and it is going to be a loan and it is a low interest loan but the part he likes is that 10% of this money is going to be designated for rural areas, which is what we are. He said that is very important to us because there are a lot of big cities out there that are very thirsty and willing to do whatever it takes. He said they have projects that are

already drawn and everything. He said the fact that we are guaranteed 10% of that money and as you borrow it and pay it back it is going to grow up to 50 billion dollars so we will have the capacity to do more water projects, which is very important to us. He said one of the things that he took out of this seminar is that he thinks water is the most important thing, not oil or not the dollar, he said we have to have that water. Mayor Rangra said he and Councilor Fitzgerald attended the TML meeting Friday in Odessa.

Action Items to be accompanied by a brief statement of facts, including where funds are coming from, if applicable. (Action items limited to 15 per meeting.) –

9. Discuss and Consider approval of Zoning Change requested from R-4 to C-1 for restaurant/bakery on the corner of South 11<sup>th</sup> and Gallego. Property identification/street address is S. 11<sup>th</sup> and Gallego, Alpine, Texas. Legal description is Gillis 3<sup>rd</sup> Addition, Block 9, Lot 1. Record owner is Rudy Baeza and Agent is Julian Baeza. Public hearing was previously held at the council meeting on February 4<sup>th</sup>, 2014. Planning and Zoning Commission voted to deny this request with a 3-2 vote. Chair did not vote. (E. Zimmer, CM) – Motion was made by Councilor Davidson, by Resolution 2014-03-02, to approve the Zoning Change requested from R-4 to C-1 for restaurant /bakery on the corner of South 11<sup>th</sup> and Gallego. Legal description is Gillis 3<sup>rd</sup> Addition, Block 9, Lot 1. Motion was seconded by Councilor Bermudez. City Manager Zimmer said this item had been on the agenda for the planning and zoning commission for their last two meetings. He said through discussion with the commission, he would characterize the denial of the request on the 3-2 vote to be predicated on some concern, forward looking from the use restrictions on C-1. He said if Mr. Baeza ever sold the property and it went to someone else, because of the zoning change, what other type of business might go in there. He said that was the nature of the conversation with the planning and zoning commission. He asked the City Attorney about this item, if there were any comments on the legal side that he would like to make to the council. The City Attorney said not really. He said it was up to the council. He said they can determine if the application is complete and any council member can make a motion to grant or deny the request. He said even though the P & Z turned it down, he believed that a majority vote of the council either way would constitute action on this item. Mayor Rangra said the motion had to be positive and that we could not have a negative motion. Councilor Davidson said he toured the site and it is on a main thoroughfare. He said that given the diagram provided to the council, for a small modest facility with some parking, he thinks this will work. Councilor Gonzales said he would like to ask Robert Polanco some questions about this. Mayor Rangra said Robert Polanco is the Code Enforcement Officer. Councilor Gonzales said he wanted to know, looking at the pictures, that it is real close to the line on the 11<sup>th</sup> street neighbor. He asked if they had been

approached and asked what they thought. Robert said the resident is here tonight. Councilor Gonzales asked Robert what he thought about the parking situation. Robert said what they propose shows plenty of parking. He said their recommendation to planning and zoning at the time was based on not having any plans. He said there is no question that it will work out as a business. Councilor Bermudez asked if he sold the property would it automatically go back to the old zoning. The City Attorney said the question was if there was approval of this zoning change could other things go in later. Councilor Bermudez said if the man sells the place later, could we go back to R-4? The City Attorney said that would require another zone case but the city could make that application. He said he did not think that the council could condition a zone change on ownership. He said if the ownership changed it would not automatically revert. He said it would be a new zone change. Mayor Rangra asked if the Council could impose a condition that if ownership changes, then it would go back to R - 4. The City Attorney said no, generally zoning does not relate to ownership, it relates to the use of the property. He said just changing ownership would not be an appropriate condition to revert to a prior zone district. Mayor Rangra asked if the motion was made with that condition, how about that? The City Attorney said you cannot make a condition like that. He said he would recommend against that. Councilor Davidson said a future council, could upon future conditions, put that item on the agenda and rezone in the future if it seemed to be reasonable to do so. The City Attorney said yes, and the city could be the applicant for the rezoning. Councilor Fitzgerald said his only concern is that we pass all of these ordinances and it seems like any time anyone wants a change all they have to do is say something and it gets changed. He said he is not saying anything about this particular plan, he is just making a general comment. He said Councilor Davidson made a very good comment several meetings ago with an animal issue that came up and that was that the Animal Advisory Board never met an animal that they did not like. He said that is his only concern. He said we go through the process of creating ordinances and it seems awfully easy to get changes to it. He said he is not against this project necessarily. Councilor Castelli said he thought this was an opportunity. He said we have a neighborhood that was historically vibrant with retail and commercial and it has really over the years settled into a very quiet area and maybe this is the first step of getting more commercial there and bringing back a vital area. He said while a 50 foot lot is kind of small for this business he received comments from both neighbors who have spoken up in favor of this so he thinks we owe it to the community to take this step. Councilor Gonzales asked if the City Manager had a recommendation. The City Manager said after Mr. Baeza gave structure to what this plan would really look like. He said prior to last week's meeting, we did not really have that recommendation. He said they were recommending against it because they did not have the plan. He said later that afternoon Mr. Baeza provided the plan and they were able to get

that in front of the planning and zoning commission. He said there are adjacent properties that are zoned C-1 and so it did not appear to be a spot zone which would be another element of concern if you were taking one lot in the middle of a whole band of R-4, R-2 or R-1 and creating C-1. He said at that point they did not offer any opinion. He said there was nothing legal that they could see that would be prohibitive of the zone change. He said at that point it was really what the Planning and Zoning Commission wanted to do. He said he thinks there are valid points concerning adding commercial properties to the area if you have someone who is going to start a business. He said that will generate more sales tax revenue. He said if you ask him concerning the financial side he will say that he will like the sales tax revenue. He said he thinks it was kind of like a split vote for the planning and zoning commission so he thinks it is up to the council to make a good decision here. He said Mr. Baeza has followed through with the requests that have been made to him so from the city staff perspective we are appreciative of that. Rudy Baeza said he would like the help with a dream that he has had for 9 years. He said he wants to make the corner a beautiful place and make food. He said this will be extra money for the city. He said his brother is a contractor who will do all the building stuff that has to be done, including ADA. Michael Leyva said he was the closest resident to Mr. Baeza, right adjacent to him. He said he believes that this proposal will work out. He said it is going to be a kind of in and out type of business. He said they will need to work out the traffic flow. He asked if they would come in from the 11<sup>th</sup> Street side. Mr. Baeza said they would come in from the Gallego Street side. He said he had no objections and hoped that it would work out. Joe Nichols said he was the owner of the property to the rear. He said he had no objections. He said he thought it would generate revenue to the city and would offer another choice to dining in the city of Alpine. Motion carried unanimously.

10. Discuss and Consider approval of building setback variance for Thomas Derrick Addition, Block 14, Lots 1 and 2. Martha Serrano proposes to locate a mobile home on this location. The request is due to odd sized lots. Legal Description is Thomas Derrick Addition, Block 14, Lots 1 and 2 of the City of Alpine, Texas. Record owner is Martha Serrano. Planning and Zoning Commission took no action on this item. (E. Zimmer, CM) – The City Manager said as he shared earlier, this particular item will be tabled to a later date. Motion was made by Councilor Fitzgerald to table this item. Motion was seconded by Councilor Bermudez. Motion unanimously carried.
11. Discuss and Consider approval concerning a building setback variance to build a carport attached to a home. The carport would extend out from the house to the property line. Request is made by Jimmy Ray Thomas, and the property street address is 508 N. Cockrell. Legal description is Hancock B Addition, Block 73, Lots 9W/2-9 and all of lot 10. Record owner is Jimmy

**Ray Thomas. Five members of the Planning and Zoning Commission voted in favor. Chair did not vote. Planning and Zoning Commission voted unanimously to approve this variance. (E. Zimmer, CM)** – The City Manager said this particular item has created a lot of conversation around the variance request and he has asked City Attorney McKamie to address the council in relation to variance requests. The City Attorney said all that is necessary for a variance application to be approved is not like a zone change request. He said there must be some type of hardship to support the application and the hardship cannot be created by the applicant. He said the hardship should be something other than financial. He said typically they are granted only for unique circumstances and unique conditions that may exist which would suggest that strict applications of the zoning regulations would not be proper or would create some type of undue hardship. He said we are going to have some suggestions later on, on how to refine this process. He said the way we have been proceeding in the past here in Alpine, he thinks that the council should examine that issue on whether a hardship exists and make a finding if there is an undue hardship before granting a variance. He said as our ordinances are drawn right now, it could be approved with just a simple majority of the council finding an undue hardship exists to approve it. Councilor Castelli said we have done this before without any problems, from the council's standpoint, approving carports and variances. He asked if there was anything to prevent the council from continuing to do what they have been doing for the last several years, with unanimous support for these changes. City Attorney McKamie said it is probably all right now, to continue with the practices that the city has used before. He said as he mentioned he will have some suggestions which will make this process a little more structured and maybe assist the council in future decisions but for now there is nothing he could see legally to prevent the council for acting on the application as they have in the past. Council Castelli said in talking about a hardship case and you need conditions, he thinks Mr. Thomas demonstrated that he could put his carport on the north side of the property but the unique conditions of the change in elevation keeps him from being able to have the carport there and being able to drive underneath it. He said to him that sounds like a bit of a hardship because it is not a financial thing and is something that is beyond his control. He said we had not talked about it in those terms and the Planning and Zoning Commission did not consider it in that way but if it does require a unique condition, he thinks we have identified that. He said he knows that Mr. Thomas has complete support from all of his neighbors. He said we have a very slow real estate market now and we have people who would like to come here and retire and fix up homes and he thinks we would want to encourage that. He said people with these kinds of means that can invest in properties ultimately will really significantly raise our ad valorem taxes. He said when we reappraise that property, the taxes will go up and we will get those taxes. Motion was made by Councilor Bermudez, by Resolution 2014-03-03, to

approve a building setback variance to build a carport attached to a home, located at 508 North Cockrell, Hancock B Addition, Block 73, Lots 9W/2-9 and all of lot 10. Record owner is Jimmy Ray Thomas. Motion was seconded by Councilor Castelli. Councilor Fitzgerald said he did not see any heartburn with granting this to this gentleman, however, the fact that we have done this in the past does not set a precedent. He said we need to make the ordinance the way it should be, and that is what our City Attorney has been saying. He said he thinks we have done it so far and this guy has a legitimate complaint and he does not see anything wrong with that. He said he just wants to stress that he thinks we should really clean up so that we do not have these kinds of situations. He said just because we have done it in the past does not mean that we should do it ad infinitum. He said let's get it right. Councilor Gonzales said it states that the staff did not recommend that the Planning and Zoning Commission recommend the variance. He said he would like to hear from the staff to see why it is that they feel that way. City Manager Zimmer said one of the things from the staff perspective that they have been tasked with is to administrate following the laws and the ordinances as set forth, in the charter, ordinances that rule Alpine as well as State statutes. He said in this particular situation, what was presented to the city, did not fit within the ordinance that made a statement that said the hardship had to be created by an irregularity in the lot, the regular shaped lot. He said that was what was presented to the city as far as the law. He said in reading that, we the city, gets caught in this position, of you look at the history of granting variances and approvals and support for one situation, but not for the next. He said the approach the city takes is to go back to the specific ordinance or the law and that is the law that the people have voted on and stated that this is how they wanted Alpine to run. He said short of changing that, which is really part of that follow up process, that they have communicated with Mr. Hardaway, that when there are ordinances and laws out there that state something that maybe you don't agree with, there is a process to go out and make changes. He said short of that, on the administrative side, we are tasked with following what the city has laid out as far as the ordinance and law. He said that gives people the opportunity to go in and still request a variance. He said as Mr. McKamie mentioned, the task at hand moving forward is "why are people requesting variances?" and "what does a hardship mean?". He said from a staff perspective, what we would really like to see is every time there is a variance or a series of variances, what does that mean in relation to our ordinances and is it time for an update or time for a change. He said that is really our request, if the council, who is elected by the people, who have set the law in place, feel that the ordinances are not entirely suitable today then let's make a move forward and start working to change it. He said he thinks that is why you task those different commissions and boards out there and you put people on these to really look deeper into the ordinances to see if it is applicable to Alpine today. He said from a straight reading you are going to see more of a fact based

approach from our staff. He said we want to be very consistent across the board and allow the elected and appointed groups to make a determination based on legal guidance. He said we absolutely ask Mick to provide that input from a meeting perspective today. He said that is the reason that the staff did not recommend it. He said with that said, the staff does not vote on this. He said they are more focused on what the law states and the ordinances state that have been presented to us and that we have been asked to follow. He said that was the approach or the thought. Councilor Gonzales asked if the planning and zoning commission approved this. The City Manager said they recommended approval. Councilor Gonzales said what he has been saying before is that we need to look at the Planning and Zoning and see how we can better improve that, but at the same time voting on this variance is going to allow someone else to come in and ask for another variance somewhere else. He asked if that is something that the city was worried about. City Manager Zimmer said one of the things that he gained some clarity in talking to Mick about, is that these are not precedent setting because each request is different. He said it is a different lot and a different person. He said each one is different. He said Mick could expound on precedent setting or not. Mick said he thinks that as he mentioned earlier, proof that is necessary for the applicant to show the council to get a variance is some type of hardship and more or less unique to that property. He said the types of hardship that we are talking about for a setback, if it is an unusual shaped lot or a small lot, or would not allow some development. He said that is not going to transfer from one application to the next. He said one of the reasons you add variances is to allow those unique circumstances to come forward and nothing like a variance or special exception to your ordinance has any precedential value like a zone change would. He said he would not worry about that at all. He said you are not bound by your decisions on a previous application. He said that is the purpose of a variance process, to allow you to look at it on a case by case basis. He said there really is no legal authority for a zoning variance to have any precedential value. Mr. Thomas, the applicant, asked if it was true that this request, which involves a unique situation with respect to this lot, which has special topographic features, which he has discussed with the Code Enforcement Officer, who came out and looked at it. He said this requires not putting the carport on the Avenue A side which has the offsets which would allow a carport. He said since that is the topographic consideration, unique to this lot, to him that sounds like a hardship, which would justify a legal variance. Mick said that is up to the city council to decide. He said it is a fact intensive decision. He said there is a case called *Bounds vs. the City of Lubbock* that was decided in 1980 or 1981 by the Amarillo Court of Appeals with the same situation and they held that it was not a hardship. He said it was basically deferred to the Board of Adjustments in Lubbock on that issue. He said it is a determination for the City Council and it is not a legal determination as to what is a hardship and what is not a hardship. He said some of the information that they hope to

present soon in their recommendations to changes in the ordinances, is to give the council more guidance in making these decisions. He said the decision is really up to the Council like Mr. Zimmer says and not up to the staff or the lawyer. Motion carried unanimously.

12. Discuss and Consider increase in Airport Hangar lease for hangar #31 at Alpine Casparis Municipal Airport. (E. Zimmer, CM) – City Manager Zimmer said he had quite a bit of documentation that has been included in the packet in relation to hangar #31. He said we have worked with Adolfo Ruiz at Mick McKamie's office on this particular item. He said we currently have a request to assign that lease from the current lessee to Trans Pecos Bank. He said upon discussion with Adolfo, one of the outstanding issues with this lease is that it provides for a 1 cent per square foot rate increase annually. He said the original or current lease that we are under, began in 2004 and there has been no rate increase since. He said the recommendation from Adolfo is before we assign or recommend assignment of the lease, we put forth the rate increase on this lease and that is what we have proposed to council today for action is the authority to allow us to increase the lease 1 cent a year effective from 2005 which would basically be a 10 cent per square foot increase on the annual lease. He said once the council approves that we would assess the lease increase and then come back to council with a recommendation on the assignment of the lease. The City Manager said you can increase one cent per square foot every year. He said the current lease started at 10 cents per square foot. He said in effect you would be doubling the annual lease payment. Mayor Rangra said so we are talking about the money for the lease but not the time. City Manager Zimmer said correct, it is still a 30 year lease. Councilor Fitzgerald said he has always been against this ten cents a square foot. He said he thinks that is ridiculous. He said that is the way the leases are written. He said he highly recommends that any leases that were negotiated in the past conform to more realistic rates than 10 cents per square foot, and giving a multi decade lease. He said that is ludicrous. Councilor Castelli asked if the lease could be terminated so that the city could start a new lease with different terms. The City Manager said in talking to Adolfo, his recommendation was that there would be nothing out there that would give us the authority to terminate the lease as long as they are paying the lease annually. He said they do not have any violations out there and they are not doing anything illegal. He said there is no reason that we could terminate the lease in good faith. He said in order to assign it we do need to, if we make a determination to increase the payment, we want to do that before the assignment. He said that is our only prohibiting factor right now. Councilor Castelli asked if we could go up more than a penny. The City Manager said no because the lease says a penny per year and the lease has an expiration date of 30 years from the date it was signed. Councilor Castelli asked how much remaining time was on that lease. City Manager Zimmer said 20 more years. He said the standard in Texas is about a 15

year lease. He said that does not lock you in for extended periods of time. Councilor Castelli said in looking through this paperwork it looks like they acquired the physical hangar, and he thinks it is important for the public to see this, for \$155,000 and they pay the City \$600 a year for our land and they collect \$30,400 a year from the Federal Government in rent. He said it is a pretty good deal that the city is completely cut out of. Councilor Fitzgerald said several of the hangar owners are doing that. Councilor Castelli said this is a concrete example of what can we do to try to change that situation to get some revenue for the city because he wished he had that investment. Motion was made by Councilor Fitzgerald, by Resolution 2014-03-04, to allow the City Manager to double the rate of the lease agreement. Motion was seconded by Councilor Bermudez. Councilor Castelli asked if we were confident that we had exhausted any opportunity to change this situation. He asked if they are making a change like an assignment or something, is that an opportunity to nullify the lease and start over. The City Manager said if the lessee does not make payments to the city we have to send them a notice and if they do not adhere to that as specified in the lease, we could take it back over, but that is the only grounds. Mayor Rangra asked if there was a legal opinion for that. City Manager Zimmer said we are not trying to change the contract. He said we are asking approval from the council to increase the rent as specifically outlined in section 9 of the lease agreement. Mayor Rangra asked if this would be across the board or just for this particular hangar. City Manager Zimmer said this would be just for this particular hangar. Councilor Gonzales said the difference between when they signed the contract and now would be like back rent or would we let it go and start it now. City Manager said it is spelled out in the lease and we have to give them 60 days written notice of intent to raise the rental rates. He said upon a positive vote from the council, we would issue them a letter tomorrow. He said this would include the notice to increase the rent. He said if you read specifically in the lease, it sets this out. He said the maximum rate is .40 cents per year. He said in conversation with Mr. McKamie's office, we will go back and address the entire 10 years. Mayor Rangra said this is only for this particular lease. He said if we are addressing other leases will this be brought before the council again or will it be automatic for the other leases. City Manager Zimmer said because the statement here says city at its option, he is always going to be a conservative and ask the council for permission because it does not specifically say the city staff or the city administration, it says the city, so the council would need to be advised and approve of the rental. Betty Fitzgerald asked if this meant that the rent would go up and after 30 years it would be 30 cents per square foot. The City Manager said the maximum rental rate it could go up would be .40 cents per square foot. He said at a 30 year lease and after 30 years they would be up to 40 cents which is the maximum. He said at that point there would then be a renegotiation of the lease. There was discussion if the city could not allow the assignment. The City Manager said there was nothing to allow us to prohibit the assignment of the lease as long as they are meeting the terms

of the lease. He said there was a negotiation out there that allowed for this particular property to sublease and make a lot of money and that was approved at the council level. He said we have to continue to follow those confines. Councilor Davidson asked if the 1 cent a year was in all the leases. City Manager Zimmer said that was in all the leases. Mayor Rangra said in 2008 the Council modified the leases from 40 years to 30 years. Motion carried unanimously.

13. Discuss and Consider approval of purchase of used police vehicle by Alpine Police Department using Fed-PD funds. (E. Zimmer, CM) - City Manager Zimmer said in the Council's packets there were specifications concerning a vehicle. He said this vehicle unfortunately was sold before we could present it to the council. He asked the Council for permission to spend up to \$15,000 or \$16,000 to buy a vehicle for the police department using Fed-PD funds, if one became available, so that it would not be sold out from under them. Motion was made by Councilor Fitzgerald, by Resolution 2014-03-05, to allow the City Manager to spend up to \$15,000 or \$16,000 to buy a vehicle for the police department using Fed-PD funds, if one becomes available. Motion was seconded by Councilor Davidson. Motion unanimously carried.
14. Citizen's Comments (limit 3 minutes) This is the opportunity for visitors and guests to address the City Council on any issue. City Council may not discuss any presented issue, nor may any action be taken on any issue at this time. (Texas Attorney General Opinion JC-0169) –

Dale Christopherson – said all through the meeting he has been tremendously impressed by the level of discourse that has taken place. He thanked the council.

Joseph Goldman – said the Council had a rather long report on the water meeting. He said one part was obviously absent when you were talking about the future and that is rain water capture. He said since we do not have the same rainwater distribution that East Texas has, and most of our rainfall occurs as rather heavy showers and the water drains away. He said while we are trying to conserve water it seems like we should also try to capture the water as it falls. He said in East Texas the water evaporates a great deal. He said it just seems to him that there should be some incentive to capture water that falls over our Big Bend Area.

Shiela Ness – said she was wondering about that same thing. She said if we are recycling the gray water to water our yards to take care of our plants and what not, can there be a tax break or can they get some kind of a break on their city water.

##### 5. Council Member's Comments –

**Councilor Bermudez** – said she wanted to thank Erik and Megan. She said the comments coming from the auditor and what they said is tremendous and she agrees with him.

**Mike Davidson** – said he would like to thank Dr. Christopherson for his very kind words and he also wanted to say that Conde Nast Travel magazine just came out with a really attractive story about a road trip through this area which included some nice pictures of Alpine. He said he would send some links out on that and maybe they can go on our website. He said this magazine has a very high circulation and it is a very high quality magazine.

**Councilor Fitzgerald** – said he would also like to thank the City Manager and the Finance Director and their team. He said it was a community effort and he thinks that he liked the preliminary report and the draft. He also thanked Dr. Christopherson for his comments.

**Councilor Gonzales** – said he would like to ditto that. He said he felt those were good comments. He said it does make us feel good when the auditor makes comments like that. He said it makes us feel like we are doing the right thing. He told the City Manager and the Finance Director that he knew we were doing the right thing. He said to keep up the good work and that he appreciated it.

**Councilor Castelli** – said he just wanted to acknowledge our resident water geek. He said it was a long presentation but if 2 or 3% of that information drove home an issue to us, it is something that we are all going to have to deal with more and more every day. He said he thinks Mike did a good job of just beating it to death, but it is important information.

**Mayor Rangra** – said thanks for coming and he appreciates the fact that the audience stayed here a little longer.

Motion was made by Councilor Davidson and seconded by Councilor Fitzgerald to enter into executive session. Motion carried.

**16. Executive Session – Pursuant to Texas Government Code Section 551.071 Consultation with Attorney and Section 551.074 Personnel Matters –**

- A. Discuss and Consider City Manager Contract. (E. Zimmer, CM)**
- B. Discuss and Consider selecting and hiring Keep Alpine Beautiful (Recycling – Department Head) position. (E. Zimmer, CM)**
- C. Discuss assignment request – Airport Hangar lease for hangar #31 at Alpine Casparis Municipal Airport – City Attorney. (E. Zimmer, CM)**

**17. Action After Executive Session -**

- A. Take action, if any, concerning City Manager Contract. (E. Zimmer, CM) - Motion was made by Councilor Fitzgerald, by Resolution 2014-03-06, to accept the City Manager's contract as written. Motion was seconded by Councilor Davidson. Motion carried unanimously.**
- B. Take action, if any, concerning the selection and hiring of a Keep Alpine Beautiful (Recycling) Department Head. (E. Zimmer, CM) – Motion was made by Councilor Davidson, by Resolution 2014-03-07, to approve the selection of Patsy McWilliams, the City Manager's recommendation, for the position of Alpine recycling manager. Motion was seconded by Councilor Fitzgerald. Motion carried unanimously.**
- C. Take action, if any, concerning assignment request – Airport Hangar lease for hangar #31 at Alpine Casparis Municipal Airport – City Attorney. (E. Zimmer, CM) – Motion was made by Councilor Bermudez and seconded by Councilor Gonzales for no action to be taken on this item. Motion unanimously carried.**

**18. Adjournment – Motion was made by Councilor Fitzgerald to adjourn the meeting and seconded by Councilor Davidson. Meeting was adjourned.**

**NOTICE: The City Council reserves the right to adjourn into Executive Session at any time during the course of this meeting to discuss any of the matters listed on the posted agenda, above, as authorized by the Texas Government Code, Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations), 551.074 (personnel matters), 551.076 (deliberations about security devices), and 551.086 (economic development).**

I certify that this notice was posted at 4:50 P.M. on February 28th, 2014, pursuant to Texas Open Meetings Act. (Texas Vernon's Annotated Civil statutes, section 551.043 Texas Government Code.) This facility is wheelchair accessible and accessible parking space is available. Requests for accommodations or interpretive services must be made 48 hours prior to this meeting. Please Contact the city secretary's office at (432) 837-3301 or fax (432) 837-2044 for further information.

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Dr. Avinash Rangra, Mayor

Attest:

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Margaret "Molly" Taylor, City Secretary

I, Margaret "Molly" Taylor, City Secretary, do certify that this notice was posted at 4:50 P.M on February 28th, 2014, and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

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Margaret "Molly" Taylor, City Secretary