

City of Elko)
County of Elko)
State of Nevada)

SS October 27, 2009

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, October 27, 2009.

This meeting was called to order by Mayor Pro Tempore Chris Johnson

NOTE: The order of the Agenda has been changed to reflect the order business was conducted.

ROLL CALL

Mayor Present: Mayor Pro Tempore Chris Johnson

Mayor Absent: Michael J. Franzoia

Council Present: Councilman Jim Conner
Councilman Jay Elquist arrived @ 4:08 p.m.
Councilman John Rice

City Staff Present: Curtis Calder, City Manager
Delmo Andreozzi, Assistant City Manager
Shanell Owen, City Clerk
Alan Kightlinger, Fire Chief
Don Zumwalt, Police Chief
Dawn Stout, Administrative Services Director
Rick Hofheins, Airport Security Manager/Assistant Director
Ryan Limberg, Utilities Director
Dennis Strickland, Public Works Director
Eric Howes, Parks & Recreation Director
Mike Hess, Landfill Superintendent
Jared McEntire, Electrical/Facilities Superintendent
Scott Wilkinson, Development Manager
Lorraine Martinez, Accounting Supervisor
Jessica Johnson, Human Resources Manager
Ted Schnoor, Building Official
Ben Mangeng, Sr. Computer Technician
Ed Wynes, City Planner
Jeremy Draper, Civil Engineer
Linda Buffington, Recording Secretary

PLEDGE OF ALLEGIANCE

bid in a relatively quick time period. Mr. Andreozzi commented Elko County pledged their amount to the City of Elko which gave us the \$485,609. Included in the packet is an agreement between the State of Nevada and the City of Elko; it is similar to other enhancement projects but there are strings attached i.e. reporting requirements etc. In reviewing the agreement City Staff believes they can administer the grant if the Council elects to engage this. There has also been legal review on this agreement with no issue. This is an opportunity to do a project and be reimbursed in the amount of \$485,609.

Public Works Director Strickland advised there were criteria for roads before they could even be considered eligible for the funds.

Mayor Pro Tempore Johnson called for public comment on this matter and there was none.

Councilman Elquist questioned if it was a done deal if Council agrees.

Mr. Andreozzi indicated if the Council agrees the City has an agreement with the State of Nevada; the agreement requires the Council to sign the agreement. There are deadlines we have to meet; it has to be ready to bid and advertise no later than January 15th. In speaking with the project design professional it is still in an accelerated process but Staff is believes we can meet that deadline.

Mr. Andreozzi indicated he has never worked with the stimulus grant process. Through the enhancement process we would need to wait for a "Notice to Proceed" before we could begin; in that past that has taken close to one year before we received that notice. Staff is committed to trying to make a quick turn around; the idea is to get the money out on the street.

Councilman Rice requested verification of reimbursement; we will be paying \$952,672.00 up front with a reimbursement coming sometime in FY2010.

Mr. Andreozzi verified reimbursement would come after the project was complete. This is a mill and fill; something that can be completed in a short period of time. We would have approximately \$ 1.1 million available to fund the entire project; there is a construction cost of \$952,672.00, there is also bid preparation and contract administration on the next agenda item which is \$83,000; the entire project is estimated at \$1.1 million.

Dale White questioned where the additional funds will come from. Mr. White expressed concern of government programs; what strings are attached?

Mr. Andreozzi noted in analyzing the agreement he did not see any other than reporting requirements and deadlines. There are requirements in the bidding documents but they are similar to other projects funded by the State of Nevada i.e. the CDBG Grant for the Southside Tennis Courts which involves prevailing wages etc.

City Manager Calder indicated a comparable project would be the downtown corridor lighting project which is through a similar State Grant process; it is somewhat onerous with the reporting requirements and the associated paperwork. The balance of the funding will come from our

Capital Construction Fund; when we put the contract out there will be enough of a balance in that fund to actually pay for the entire project and then be reimbursed once the project is completed.

Mr. White believed this was a good choice for the stimulus money.

Mr. Andreozzi advised Staff along with the design professional have put a lot of thought into this and feel comfortable & confident that a “mill and fill” project would be good repair strategy for this stretch of road. If we don’t take this type of corrective action we may need to take a more aggressive and costly approach.

Mr. Strickland verified it will be less costly than waiting until a later date.

Councilman Conner questioned if this was the same type of mill & fill used on the section between 5th and 12th.

Mr. Strickland indicated it was somewhat different; this end of Silver Street has extensive joint failure as opposed to the other section that had reflective cracking joint failure.

Councilman Elquist supported the project.

**** A motion was made by Councilman Elquist, Seconded by Councilman Rice to approve a Local Public Agency (LPA) agreement with the Nevada Department of Transportation (NDOT) to perform a pavement resurfacing project on a section of Silver Street between 5th Street and Idaho Street and direct Staff to proceed with the entire project, dedicate the \$952,672 of the Capital Construction funds with \$485,609 to be reimbursed.**

**Motion passed 3 to 1.
Councilman Johnson voted against.**

After the motion and before a vote was taken Mayor Pro Tempore Johnson commented, in the short-term, accepting federal funds will make it such that we won’t be as tight with budgets and we won’t make the decisions we need to make in the future. There is a general concern of what the federal government is trying to accomplish with the stimulus funds. Our decision of not taking this money won’t make much change at all, but it’s under the precedence. Mayor Pro Tempore Johnson acknowledged this is a good project, it is a good place to put the money; the money is going to get spent elsewhere.

Councilman Rice believed the responsibility of a good, prudent council lies with the members; he was confident of this council’s ability to do the right thing.

- C. Review and possible approval of an Agreement for Engineering Services with Chilton Engineering & Surveying, Ltd. for the Silver Street Pavement Resurfacing Project; 5th Street to Idaho Street, and matters related thereto.

ACTION ITEM

Provided in your packet for review is an agreement for Chilton Engineering & Surveying, Ltd. to provide engineering services, including the design, preparation of bidding documents, contract administration and Quality Assurance/Quality Control for Silver Street Pavement Resurfacing; 5th Street to Idaho Street Project in the amount of \$83,42.00. DA

Mayor Pro Tempore Johnson requested clarification of project amount.

Assistant City Manager Andreozzi advised \$83,945. This matter is directly related to the action taken on the previous agenda item. We need to have design, contract bidding documents, contract administration along with quality assurance and quality control. Staff is asking for an award to Chilton Engineering so they can provide the design work for Silver Street.

Chris Woster, Chilton Engineering advised there was quite a bit of work to get the estimates before the Council tonight. The full design and construction fee that is less 10% of the whole cost is quite low and that is because the City has already put forward funds to get to the point we are now. There is approximately a month's worth of design to be done and it has to be done as fast as possible to comply with the schedules.

**** A motion was made by Councilman Conner, seconded by Councilman Rice to approve an Agreement for Engineering Services with Chilton Engineering & Surveying, Ltd. for the Silver Street Pavement Resurfacing Project; 5th Street to Idaho Street.**

Motion passed unanimously.

- D. Review, consideration, and possible authorization for Staff to apply for US Forest Service FY10 Western Competitive Grants, through the Nevada Division of Forestry, and matters related thereto. **ACTION ITEM**

Several communities and counties in North and Eastern Nevada have been working together to apply for grant funding to provide for the completion of Urban and Community tree inventories and canopy studies. These tools would allow our Parks and Recreation Department to better manage and plan for the future of our community forests. EDH

Parks and Recreation Director Howes advised he has been trying to obtain a tree inventory for some time; the primary benefit is related to liability. We want to identify our hazard trees and take care of those; to identify those trees is too large of a project for City Staff. This grant will give us the opportunity to do that. This is a 50/50 match and any work done in the community with trees counts towards that i.e. the work we do with the power companies and out at the landfill. Essentially there is no additional cost to us; work we already do will count towards the match.

**** A motion was made by Councilman Conner, seconded by Councilman Rice authorizing Staff to apply for US Forest Service FY10 Western Competitive Grants, through the Nevada Division of Forestry.**

Motion passed unanimously.

- E. Review, consideration, and possible authorization to purchase hardware for a new sipXecs Enterprise Communications phone system, and matters related thereto.
ACTION ITEM

Staff received authorization through the budget process to purchase a new phone system. This system is an open source product currently implemented by a variety of entities ranging in size from small to large and everything in between. The software is free and requires no maintenance fees. This is the hardware that is compatible with the software. This will enable the City to control the functionality of the system as needed. The system offers many features with no additional fees as they are requested by the individual user. DS

Administrative Services Director Stout advised several quotes were obtained on various systems and this was the least expensive and the one that offers the City the most options. Four additional quotes ranged from \$50,000 to \$87,000.

Mayor Pro Tempore Johnson commented that during the budget process it was indicated this phone system would save the City money.

Ms. Stout verified that was correct. The hardware will cost approximately \$43,000 and Staff estimates a savings of \$30,000 to \$60,000 per year over the phone system we currently have. We will be able to eliminate many of the lines around the city but will keep the fax lines as backup in the event of any problems.

Councilman Elquist questioned the company with the low bid; how old are they, do they have staying power, references of successful clients that we checked into?

Sr. Computer Technician Mangeng advised the system has been implemented by many different agencies; Staff researched the Nortel system which this is based on and received positive feedback. The sipXecs version is identically the same without the additional licensing charges and is very expandable; this is the system Amazon.com uses.

**** A motion was made by Councilman Elquist, seconded by Councilman Rice authorizing Staff to purchase hardware for the new sipXecs Enterprise Communications phone system.**

Motion passed unanimously.

III. UNFINISHED BUSINESS

- A. Review of revised Humboldt-Toiyabe National Forest Combined Travel Management Project maps, as provided by the United States Forest Service and matters related thereto. **INFORMATION ONLY – ACTION WILL NOT BE TAKEN**

The City of Elko recently received revised USFS maps for review. The maps will be on display in the Council Chambers for public review. CC

City Manager Calder indicated updated maps have been placed in the Council Chambers for the public's review. There have been significant revisions and appears the Forest Service has taken into consideration some of the public comments. As this is an item of public interest and the City approved a resolution that was sent to our congressional delegation this is an opportunity to review them; Staff can schedule a subsequent item on a future agenda for more detailed analysis.

- B. Review and possible approval of a "Correction of Amendment of Lease Agreement and Lease Modification and Extension Agreement" between the City of Elko and Aspen Plaza Partners, LLC and matters related thereto. **ACTION ITEM**

A copy of the above referenced agreement has been enclosed in the agenda packet for review. CC

City Manager Calder advised the City Attorney was present to address this item. This issue is simply typographical errors in the previously approved agreement.

City Attorney Goicoechea explained some language had been changed in Article XX. There is a specific sentence in the original lease that the City does not have a right to terminate; they do have the right to continue to collect rent. That language has been changed to say "rights against the lessee be exercised"; the word "termination" was taken out as was the 45 days to make consistent with next item which indicated 120 days.

**** A motion was made by Councilman Elquist, seconded by Councilman Rice to approve a "Correction of Amendment of Lease Agreement and Lease Modification and Extension Agreement" between the City of Elko and Aspen Plaza Partners, LLC.**

Motion passed unanimously.

- C. Review and possible approval of a "Lessor's Consent and Agreement" as it pertains to the lease between the City of Elko and Aspen Plaza Partners, LLC Lease, and matters related thereto. **ACTION ITEM**

A copy of the above referenced agreement has been enclosed in the agenda packet for review. CC

City Manager Calder advised legal counsel has worked with the bank's attorneys on the appropriate language in this.

City Attorney Goicoechea indicated this was a standard type of agreement required by banks for a major loan on a leased facility.

**** A motion was made by Councilman Rice, seconded by Councilman Elquist to approve a “Lessor’s Consent and Agreement” as it pertains to the lease between the City of Elko and Aspen Plaza Partners, LLC Lease.**

Motion passed unanimously.

IV. NEW BUSINESS

- A. Review and approval of pending Special Events, and other matters related thereto. **ACTION ITEM**

This item has been added to the agenda in order to consider any application for Special Events received by the Clerks Office. Staff will report on any application on file. SO

There were no Special Events.

- B. Review, consideration, and possible approval of a Water/Sewer Fee Deferral Agreement with Bharat Bhai Lal (El Neva Motel Partnership) for Candlewood Suites, and matters related thereto. **ACTION ITEM**

On September 22, 2009 Council considered the request by Mr. Lal for Water and Sewer fee deferrals and instructed Staff to draft the agreement and bring it back to Council for final approval. The agreement is included in your packet for review. The agreement includes water/sewer connection fees, water tap fees and water meter fees. RL

Utilities Director Limberg advised the agreement was included in packet; the agreement includes connection fees as well as the meter and tap fees. Backing up the Water/Sewer Fee Deferral Agreement which was drafted by legal counsel is the promissory note; backing that up is the Deed of Trust.

Mr. Limberg indicated project representatives were present to answer questions.

City Attorney Goicoechea advised this is extra protection for the city.

Councilman Elquist requested verification the City would not issue the Certificate of Occupancy with it also.

Mr. Goicoechea verified that was correct.

Mayor Pro Tempore Johnson reviewed past deferrals i.e. Quail Run; for that project the City raised rates on the connection fee rate from the time they put the project together until the time they were ready to go to construction, it hit their budget to be able to fund those connection fees; the Council took that under consideration and granted that deferral. Mr. Johnson advised he voted against it as he believed the City should not be in the business of lending money; one could argue this is not lending money but there is promissory note involved so it is some form of that.

Mr. Johnson noted another individual came to the Council asking for the same consideration and were denied. Mr. Johnson believed when the council goes outside what is normal operation it sets a precedent and may not offer a fair situation for others to come to the city when they want to build something; for that reason his is not supportive of this request; it is a great project and good for the community but he wants to stay consistent with his interpretation of the code.

Councilman Elquist acknowledged Mr. Johnson raised some good points, it has some subjectivity. For larger projects it has some merit, there is no impact to the water or sewer system until it is occupied and the deferral makes sense; but it does cost city money in legal and staff time. Mr. Elquist supported a program where the project has to be a certain amount to make it worth that time and then have some type of fee involved to cover the expenses of setting up the promissory note. It would be a reasonable compromise that the developer would have the decision to pay the extra fees to cover our costs and it has to be a minimum size project to make it worthwhile.

Councilman Rice supported the suggestion by Mr. Elquist.

Councilman Elquist expressed his appreciation for the investment in the community; it is great for developers and the city is happy to help but we should stay whole.

**** A motion was made by Councilman Elquist, seconded by Councilman Rice to approve of a Water/Sewer Fee Deferral Agreement with Bharat Bhai Lal (El Neva Motel Partnership) for Candlewood Suites.**

**Motion passed 3 to 1.
Mayor Pro Tempore Johnson voted against.**

Under further discussion City Attorney Goicoechea supported amending City Code to include a size requirement; and by resolution to set a fee to recover all costs incurred by the city that are connected with it.

- C. Review, consideration, and possible approval of a water line oversize agreement with Ormaza Construction (PBDK, LLC) for the Golden Health Family Medical Center, and matters related thereto. **ACTION ITEM**

On September 22, 2009, Council directed Staff to draft the oversize agreement and bring it back to Council for final approval. The agreement is included in your packet for review. RL

Utilities Director Limberg indicated the cost difference from the ten-inch pipe and associated materials, upsizing to the eighteen-inch pipe was \$29,675.38; a breakdown of those costs is included in the packet in the form of a quotation from Western Nevada Supply.

**** A motion was made by Councilman Rice, seconded by Councilman Conner to approve a water line oversize agreement with Ormaza Construction (PBDK, LLC) for the Golden Health Family Medical Center.**

Motion passed unanimously.

- D. Review, consideration, and possible approval to extend a temporary transfer of use of City of Elko surface water rights to South Fork State Recreation Area, and matters related thereto. **ACTION ITEM**

On July 10, 2007 City Council agreed to temporarily transfer the use of City of Elko surface water rights for a period not to exceed two years to South Fork State Recreation Area (SFSRA) to help maintain water levels in the reservoir for recreational activities, subject to SFSRA paying all associated fees to temporarily transfer the use of these surface water rights. RL

Utilities Director Limberg advised Jim Wilkinson with South Fork State Recreation Area was present to answer questions. Mr. Wilkinson contacted Staff to determine if the City would be willing to extend the prior agreement to transfer the use of some of our surface water rights to the recreation area to keep the reservoir at a higher water level; this amount of water adds approximately one foot to the level. We are looking at approving the temporary transfer of two proofs (#00234 and #00240) which amount to just over four-hundred acre feet annually.

**** A motion was made by Councilman Rice, seconded by Councilman Conner to approve a temporary transfer of use of City of Elko surface water rights to South Fork State Recreation for a period not to exceed three years; subject to the SFSRA paying all associated fees.**

Motion passed unanimously.

- E. Review, consideration, and possible acceptance of a letter of resignation from Ms. Debbie Myers from the Ruby View Golf Course Financial Committee, and matters related thereto. **ACTION ITEM**

Ms. Debbie Myers submitted a letter of resignation from the Ruby View Golf Course Financial Committee in November 2008. Staff is requesting authorization to advertise the vacancy on the board. DS

Mayor Pro Tempore Johnson thanked Ms. Myers for her time on the committee.

**** A motion was made by Councilman Rice, seconded by Councilman Elquist to accept a letter of resignation from Ms. Debbie Myers from the Ruby View Golf Course Financial Committee and authorize Staff to advertise to the vacancy and to send a message of gratitude to Ms. Myers for her service to the community.**

Motion passed unanimously.

V. RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance No. 709, an ordinance providing for the issuance of registered, negotiable, general obligation (limited tax) airport refunding bonds (additionally secured by pledged revenues), Series 2009A and Series 2009B; and matters related thereto. **ACTION ITEM**

Administrative Services Director Stout introduced our bond and financial counsel, Kendra Follett with Swendseid & Stern and Andrew Artusa with Nevada State Bank Public Finance.

Ms. Stout stated Staff anticipates cutting three years off the term of the loan and saving approximately \$950,000; it was originally a thirty-year bond.

City Manager Calder clarified the term of loan is at seventeen years; we've paid off about ten years. This means the airport terminal will be paid off in seventeen years versus twenty.

Councilman Elquist questioned if the market was stable currently.

Mr. Artusa verified the market has improved dramatically; there are significant numbers of buyers interested in purchasing municipal bonds. A year ago that was not the case; interest rates are at forty-year lows in the municipal bond market so it is an excellent time. We still aren't going out to price the bonds for several weeks, this is the first step in the authorization process and we will continue to monitor the market. Based on shortening the term and the current market we expect the city to receive some very significant savings.

**** A motion was made by Councilman Rice, seconded by Councilman Elquist to set for public hearing and second reading Ordinance No. 709, an ordinance providing for the issuance of registered, negotiable, general obligation (limited tax) airport refunding bonds (additionally secured by pledged revenues), Series 2009A and Series 2009B.**

Motion passed unanimously.

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Ratification of the Chief of Police issuing a 30-day temporary retail liquor license and issue a regular retail liquor license to James E. Kikumoto dba Double Dice Sports Bar located at 3730 E. Idaho Street, Elko, NV 89801, and matters related thereto. **ACTION ITEM**

Police Chief Zumwalt advised all background checks have been conducted; Staff recommends approval.

**** A motion was made by Councilman Conner, seconded by Councilman Rice to ratify the 30-day temporary retail liquor license and issue a regular retail liquor license to James E. Kikumoto dba Double Dice Sports Bar located at 3730 E. Idaho Street, Elko, NV 89801.**

Motion passed unanimously.

- D. Review and consideration of a request by Ms. Renee Wright and Ms. Natalie Roach to name the alley adjacent to the new Elko County Administration Building "Reynolds Alley," and matters related thereto. **ACTION ITEM**

Letters from Ms. Wright & Ms. Roach, Elko County, and neighboring businesses have been included in the agenda packet for review. CC

City Manager Calder advised currently there is no policy in place for the naming of streets or alleys; each request comes before the council for discussion, review and possible approval.

Renee Wright, Administrative Deputy, Elko County Recorder's Office explained the request. Mr. Reynolds is a long-time native of Elko and has served with the Elko County Recorder's Office for thirty-five years. Mr. Reynolds has also served the citizen's of Elko during that time; he is extremely knowledgeable and helpful. Mr. Reynolds is an active member of the local rotary club and has volunteered and/or donated to many different programs. Ms. Wright indicated they have purchased the sign so there is no cost to the city. Rob Stokes, Elko County Manager has advised the sign can be attached directly to the new building when completed. Approval has been obtained from the surrounding businesses and there is no impact on local addresses as it is an alley.

Councilman Rice referred to the letter from Rob Stokes indicating Elko County's support; did commission vote on it.

Ms. Wright indicated they had not.

Mayor Pro Tempore Johnson questioned if the Council's action tonight could result in the alley being named or is there a public process.

City Manager Calder stated tonight's action can make happen; there is no policy. It appears there will be no cost to the city other than notating the name on a map in our system.

Councilman Elquist expressed support of the request. For future precedent we do not want to rename alleys on a willy-nilly basis; this request makes sense; it is for a long-standing, good community member.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to name the alley adjacent to the new Elko County Administration Building "Reynolds Alley.**

Motion passed unanimously.

Under further discussion Councilman Rice noted in the past Staff has presented suggestions for protocol to follow in the naming streets etc.; in the past we have chosen to do it on a case by case basis. Mr. Rice supported having a policy in place that addressed this type of request; have Staff bring something back before the council sometime in the future.

City Manager Calder advised currently in place is park and facilities naming policy that was approved some years ago; we do not have a street and/or alleyway naming or remaining policy; that would be something that would help Staff sift through some of these requests prior to Council meetings. The council debated this matter extensively last year; ultimately the council

voted to not have a policy; if the council desires Staff can bring back what we have for consideration.

Councilman Rice offered to meet with Staff to review and discuss various options.

- B. Review and consideration of a petition for the placement of lights at the tennis courts located at the Elko City Park, and matters related thereto. **ACTION ITEM**

A petition has been received requesting the replacement and inclusion of additional lighting for two tennis courts. EH

Perry Arbogast explained the petition and identified four points of concern; 1) lighting to property illuminate the ball 2) four light poles to cover both courts 3) ball is not fully lighted throughout the court and 4) non-blinding bulbs and reduced glare housing. Mr. Arbogast provided and referred to documentation that outlines the minimum requirements for recreational play as well as for club and tournament play. Mr. Arbogast commented the group had met with the Parks and Recreation Department and at that time they did have the funds at that time to cover the proposed costs of approximately \$12,000 which included two new poles with hardware and fixtures.

Mayor Pro Tempore Johnson advised this is the first step in the request; this is only a petition. The Council's action tonight either approves it to the next step or not at all. Mayor Pro Tempore Johnson believed the petition had merit.

Councilman Conner commented he attended some of the meetings between the petitioners and the Parks and Recreation Department; the petitioners had suggestions on how to help fund the project. The tennis courts are used extensively, mainly in the evening.

Mr. Arbogast stated they cannot play at night; it is not an option due to the lighting.

Councilman Conner believed it was a worthy project and expressed support of the petition.

Councilman Elquist supported raising funds in other ways. Councilman Elquist also noted there were other ways to achieve the desired lighting i.e. higher poles, larger watt lamps etc. In concept Mr. Elquist agreed, do it right once.

Mr. Arbogast advised they understand finances are a liability; they are only asking for two of the four courts to be lighted to allow night-time play.

City Manager Calder advised the Recreation Fund is fully allocated for this year. The Recreation Fund which is funded through room taxes is going down; we are receiving less room taxes. During the budget season Council is presented with a recreation priority list; this is a new item that wasn't considered through that priority list and out of fairness to the other projects that didn't get funded this current budget year this project should be factored into that list and brought back before the council before we make funding decisions on this.

City Manager Calder noted the courts were resurfaced four years ago and we have had problems with the surfacing. It is the City's intent, once the Southside Courts get finished and the players provide feedback on that surfacing (post-tension concrete) those courts will need to be resurfaced at the Main City Tennis Courts in the near future. All the courts will need resurfaced and if lighting is an issue it should be considered as part of an overall construction project.

Parks and Recreation Director Howes advised the funds discussed that could potentially be available were from the Recreation Fund; there is nothing in the regular budget. A couple of budgeted projects for the current year could come in under budget; it is too early to know that at this point. Mr. Howes expressed his support of this project.

Councilman Rice excused himself from the meeting @ 5:25 p.m.

Councilman Elquist requested clarification on the motion.

Mayor Pro Tempore Johnson clarified this is a petition submitted to Council for consideration. It has merit; private dollars could come into this if they knew the City was acceptable for the light placement and design. This is a need from the public. Mayor Pro Tempore Johnson stated if the council accepts the petition by no means is the City of Elko giving a commitment that yes this project will be funded and happen with 'x' amount of time; it is solely to accept the idea and study it further.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to accept a petition for the placement of lights at the tennis courts located at the Elko City Park and move the project into the budget review process.**

**Motion passed unanimously.
Councilman Rice was absent for the vote.**

- C. Review and consideration of an appeal from ABCO Construction regarding the City of Elko's Building Official's interpretation of the code requirements pertaining to the installation of an elevator at the Cummins Rocky Mountain Service Facility Project, and matters related thereto. **ACTION ITEM**

An appeal letter and related correspondence have been enclosed in the agenda packet for review. TS

Stacy Riggs, Logan UT, was present to address this issue. Mr. Riggs questioned if the discussion needed to wait until Councilman Rice returned.

Mayor Pro Tempore Johnson indicated the discussion could move forward with three council members. It will take a unanimous vote by the three council members present to pass so if the applicant preferred to have a fourth council member present it could make a difference. Jim Winer questioned whether Councilman Rice would be returning to the meeting.

Mayor Pro Tempore Johnson advised Councilman Rice indicated he could return if necessary.

City Manager Calder stated Councilman Rice intended on returning to the meeting; Mr. Calder estimated one hour.

Mr. Winer requested the item be tabled until the next meeting.

Mayor Pro Tempore Johnson questioned if that would work with their time schedule; he was not opposed to waiting for Councilman Rice's return.

City Manager Calder advised, just as with a full council, any measure would have to pass with three votes. There is a quorum tonight but all three councilmen will have to vote for it depending on what the action is.

Mr. Winer referred to Building Official Schnoor; will a two week postponement stop construction?

Building Official Schnoor stated construction could continue.

Mr. Winer verified they wish to have the item tabled at this time.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to table this item.**

**Motion passed unanimously.
Councilman Rice was absent for the vote.**

**** See further discussion on this item following Appropriations.**

VIII. REPORTS

- A. Mayor and City Council
 - 1. Councilman Conner - Nevada Day parade 10/30/09 @ 11:00 a.m.
- B. Public Works - Free Landfill Day 10/24/09; \$5,000 - \$7,000 monetary value
- C. Human Resources Director - Safety Committee meeting 11/29/09 @ 8:00 a.m.
- D. Civil Engineer – Railroad St. Project begun 10/26/09 by Canyon Construction

II. APPROPRIATIONS

- A. Review and possible approval of Warrants. **ACTION ITEM**

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to approve the warrants as submitted.**

**Motion passed unanimously.
Councilman Rice was absent for the vote.**

5:35 p.m. Mayor Pro Tempore Johnson called for a brief recess.

5:45 p.m. Councilman Rice returned.

5:50 Mayor Pro Tempore Johnson called the meeting back to order.

VII. PETITIONS, APPEALS, AND COMMUNICATIONS

- C. Review and consideration of an appeal from ABCO Construction regarding the City of Elko's Building Official's interpretation of the code requirements pertaining to the installation of an elevator at the Cummins Rocky Mountain Service Facility Project, and matters related thereto. **ACTION ITEM**

An appeal letter and related correspondence have been enclosed in the agenda packet for review. TS

Upon Councilman Rice's return discussion on this item resumed.

Stacy Riggs, ABCO Construction advised the appeal is based on whether the building meets code without the elevator. The building plans were submitted to the City of Elko Building Department and they took them to Precision Inspection Company; a third party administrator. Precision Inspection Co. reviewed the plans and came back with a list of items they believed didn't meet code and wanted fixed on the plans. In that review there was no mention for the need of an elevator. Their architect took the plans, corrected everything needed and they were resubmitted; the plans were approved without any mention of the need of an elevator. Construction began in April 2009, there have been multiple inspections including inspections up through a four-way inspection which is a mile stone in a project. At this time Mr. Riggs estimated the project to be about 80% complete and there has been no mention of the elevator during the inspections until most recently when the City Building Department did an inspection and came up with the point that an elevator was required in the building. Mr. Riggs indicated there was discussion between ABCO Construction, Cummins Rocky Mountain and Beecher Walker in regard to the building department and how to interpret that; the building department's stance is still that there was a need for an elevator.

Mr. Riggs continued and noted they built a replica of this building in Grand Junction, Colorado under the same IBC (International Building Code); the same floor plan and there was no need for an elevator. We had that premise that we worked on; there was no need for an elevator. When the plans were submitted and approved it was more affirmation to us there was no need for an elevator. Now we are faced with this huge financial burden; a basic elevator is approximately \$65,000. The building is now 80% complete; it costs more when you do things out of order. Our estimates for a basic elevator for where the project is at right now is estimated between \$65,000 and \$95,000; had we known in the beginning when the plans were presented to the building department that there was an issue with an elevator our intent would have been to redirect and redesign the building; they never wanted an elevator due to the cost. They wanted to meet the building codes and believed they were. The decision is not up to them at this point; the option has been taken away to make that change in the plans.

Mr. Riggs directed a question to the council; "if you were in our place and did everything required by law, followed every regulation necessary and get to this point; now someone throws a price tag of this amount at you; what would you do? Mr. Riggs advised their request is that there is some type of fair and balanced assessment given here so there is no need for the elevator.

City Attorney Goicoechea preferred to hear the entire presentation; all Mr. Riggs has mentioned is money and money is not an issue.

Devin Jones indicated in trying to understand the building department's interpretation of the code to best comply they have tried to redesign the upstairs to meet that interpretation. In doing so, they have two stairways that access the upstairs; they would like to isolate one of those staircases for a storage area and isolate the other stairway to the office space of less than three thousand feet that meets the qualifications of an exception of not needing an elevator. By isolating the two different areas they are creating two separate areas upstairs which they believe meets the city's interpretation of the code.

Building Official Schnoor verified when the plans were sent out to the 3rd party there was an oversight for the accessibility to the second floor which based on the code is required for that second level of the building. Mr. Schnoor noted when he reviewed the plans there is an elevator pit designed into the building for a future use. The elevator issue came to his attention when he did the inspection. Mr. Schnoor advised in working with the architect and all the other correspondence he was relating their questions to other experts in field to get their interpretation of code. He corresponded frequently with a member of the ICC Senior Staff in Illinois who works with the codes on a daily basis for the interpretation and intent of the building code. The interpretations he received from ICC indicate the 2nd level is over three thousand square feet and in the same facility therefore it requires accessibility. Accessibility means it requires an accessible route for a physically impaired person from lower level to the 2nd level. Mr. Schnoor noted the code reads "if you have any level that is an aggregate of over three thousand square feet (the combined area) requires an accessible route to that level"; there are a number of options available through the code to provide that accessibility.

Mr. Schnoor continued and advised he questioned Precision Inspection Company for an explanation of what happened. Precision Inspection Co. submitted a letter back stating they went back and reviewed the set of plans they have in their records for this building and says "*it appears that the 2nd floor has an aggregate area of over three thousand square feet and the occupancy is both a B and S; with these conditions it is my opinion that an elevator is required*". Based on the letter Mr. Schnoor stated Precision Inspection Co. basically admitted they made a mistake and should have got that.

Mr. Schnoor believed the intent of the code and his interpretation through Chapter 11 and the 2003 IBC that accessibility is required for that second level and the interpretations he received from knowledgeable professionals indicate the same; whether they break it into sections or not, it still exceeds three thousand square feet in aggregate area and requires accessibility.

City Attorney Goicoechea advised he reviewed the plan with Mr. Schnoor. Mr. Goicoechea believed money was not a consideration; the sole consideration is whether or not the code requirements are met. At this point it is very technical; there are two areas he wants to discuss 1) the architects have categorized one area of the 2nd level as a "B" space which is less than three thousand square feet (2,959 sq. ft.). The other area is categorized as "S" which is for storage and includes a mechanical room. Mr. Goicoechea indicated Section 1104.4 of the 2003 IBC addresses multi-level buildings and facilities and states you must have an accessible route; it then

gives four exceptions. The fourth exception reads “*where a two-story building or facility has one-story with an occupant load of five or fewer persons that does not contain public use space*”; that seems to be the important wording. Mr. Goicoechea read from the letter received by Mr. Schnoor from the knowledgeable consultant “*this is all one facility, I would not consider separating the areas to make any difference*”; however a later letter reads “*areas that are exempt can be subtracted from the three-thousand square feet aggregate requirements, i.e. a mechanical room accessed only by service personnel.*” Mr. Goicoechea believed that meant if you had an area that could not be accessed by the public and only by service personnel that area could be subtracted from the three-thousand; however Mr. Schnoor did not agree.

Building Official Schnoor informed the council members a second architect from ICC provided additional response to one of the questions; “*per Section 1104.4 the second level of this facility is required to be serviced by an accessible route. While areas that are specifically exempt can be subtracted from the three thousand square feet aggregate requirements office space and parts storage are not exempt. An example of the space; you could subtract a mechanical room that is accessed only by service personnel per Section 1103.3.9.*”

Mr. Goicoechea acknowledged the response but it seems that where you put the emphasis is that it is only accessible by service personnel only; that is a focus area to look at.

Mr. Schnoor believed when they have the exception for mechanical rooms and state access by service personnel, the intent of that is also stating it will be accesses by specialized individuals only.

Mr. Goicoechea commented he and Mr. Schnoor still disagree over the issue.

Jim Winer representing the project investors spoke on the burdensome financial impact. They met all checks and balances, plans were stamped as approved, now 80% into the project an issue arises. They would have redesigned if notified during the appropriate time; now they are trying to come up with options that are fair to both sides.

Councilman Elquist expressed appreciation to both sides; the Building Official is doing a great job and the investors are doing a good job representing their side; that is important in these types of situations and hopefully a good result will come out of it. The architect in this case gave some thought to the code; the office square footage is 2,959 and the storage area occupancy is 5 so an elevator is not needed; the fact they are combined together brings up the aggregate issue where the total square foot exceeds 3,000. While their argument is good, making the two areas separate would allow the gray area in this case. Mr. Elquist indicated he was looking for some gray area because of the whole story and the reasonable rule of it. Mr. Elquist sketched an alternative plan for the second level but indicated both would need stairs for access; according to code it would require an elevator but where would you put it; would you require an elevator on both? Mr. Elquist stated it seems unreasonable to require it, at some level, but we have to be code compliant so by making the two areas their own entity you shouldn't need an elevator. Mr. Elquist believed that was the architects thought and the way they interpreted the code; they are professionals too.

Councilman Rice questioned whether the two sections were actually separate; you cannot access one from the other from the same level. He was advised currently you can; the proposal is to wall it off.

Councilman Elquist questioned if blocking it off presents another problem with two ways out.

Mr. Schnoor advised there was no issue there.

Jim Winer summarized a paragraph from the letter submitted to Mr. Schnoor from Mike Brinkman, design professional, *“unfortunately neither plan checker can recall the plan check so it can be assumed the requirement for the elevator was missed.”*

Mayor Pro Tempore Johnson indicated the description in the code when referring to aggregate area seems to qualify it. In Councilman Elquist’s example; those two areas are separated; that wouldn’t be an aggregate area; why is the word aggregate there instead of just qualifying it as aggregate area?

Mr. Schnoor advised it takes into account total combined square footage of that level; it is the storage, offices, bathrooms; it is the total aggregate area of that level. If the total aggregate of that level exceeds 3,000 square feet then you have to have accessible route to that level. They combine everything on that level. Another one of the issues was their concern if you separate it you still have a total aggregate area on the second floor of over 3,000 square feet.

Councilman Rice believed they were using levels as defining the whole; he is looking at the possibility of two separated sections so you have two wholes on a single level.

Mr. Schnoor advised it is the intent of the code to say it is the total aggregate area of the second level; if it exceeds that square footage then it needs to be accessible otherwise it is likely no second level or basement level or any other level in a building would ever be accessible to physically handicapped people because they were divided into smaller areas therefore not giving them the same service or reasonable accommodations they give everyone else.

Councilman Rice believed in this case it didn’t involve public use; there is a distinction there.

Mr. Schnoor advised the only exception in the code when it addresses public use is when the entire level is used for storage and that occupant load is five and less and is not open to the public; the entire floor is storage. Mr. Schnoor interpreted the code to mean employees will also have the ability to have accessibility to their work areas etc. The appeal is here because of a unique case, there are some things outstanding with this. Mr. Schnoor believed reasonable accommodations can be made. If they divide the area and make it less than 3,000 square feet then the accessibility issue wouldn’t be a big factor.

Mr. Schnoor continued and advised no matter how this came in front of him, no matter what the occupancy is, no matter what the use is and the unfortunate fact this was discovered too late; the intent of the code is that if the aggregate area over 3,000 square feet you need an accessible route for that level.

Councilman Rice agreed with Mr. Winer that typically you go back to the drawing board when something like this happens; in this case it was discovered so late and that option is denied. Everything builds the case this can be approved.

Mr. Schnoor commented he has tried to refrain from using the term elevator and stating accessibility; there are other methods that are probably extremely less expensive to get an individual from one level to the next.

City Attorney Goicoechea expressed concern with the code; there is no definition of aggregate area in the code itself. That is a concern; a rule of law in the courts is that if a statute or law is ambiguous the courts would normally throw that out.

Mr. Schnoor advised in the code itself under Chapter Two for definitions it says "*terms not defined; when terms are not defined through the method authorized by this section such terms shall have ordinarily accepted meanings such as the context implies*". Mr. Schnoor noted the old code used to state anything that wasn't defined in the code they quoted a Webster Dictionary edition for reference. This version doesn't even give that clarification. There is a lot with the codes that is left up to interpretation; we have to try and do the best to meet the intent of the code.

Mayor Pro Tempore Johnson questioned exception #4; does it state a floor could have an individual occupancy load.

Mr. Schnoor advised it depends on the use of the floor i.e. storage area and not open to the public then there are exceptions; occupancy load also plays a part in the decision but it is technical.

Mayor Pro Tempore Johnson questioned Mr. Schnoor if his sources looked at the occupant load.

Mr. Schnoor noted their interpretation was the total floor had to be used for that purpose, storage; not a portion of it.

Councilman Conner questioned who made the interpretations.

Mr. Schnoor clarified as a member of the ICC (International Code Council) there is a service that you can e-mail and get interpretations from qualified ICC Staff; it's very quick so you can make a decision. If you want to take it all the way you give written question to the main board of ICC and they will decide as a board on your question and make a decision which is a binding decision through ICC. They are binding because the City of Elko adopted the ICC Codes.

Councilman Rice requested clarification on the levels; one is above office and used as a break room and restrooms and the other is for parts storage.

Mr. Schnoor verified that was correct.

**** A motion was made by Councilman Rice to accept the appeal from ABCO and allow ABCO to continue with construction as per their approved plans with the amendment**

offered being the two separated sections; one being a break room/restroom area and another a parts storage area which is in keeping with the International Building Code 1104.4 multi-level buildings and facilities exceptions #1 and #4.

Following the motion by Councilman Rice Councilman Elquist indicated they could do that or add accessibility which is another option if they can find a reasonably priced way to get accessibility that would be our preferred option.

**** Councilman Rice amended motion to include “or add accessibility”; motion was seconded by Councilman Conner.**

**Motion passed 3 to 1.
Mayor Pro Tempore Johnson vote against.**

Following the motion and before a vote was taken Mayor Pro Tempore Johnson commented although we look at the function of our building official within the construction process, the building official never takes any type of risk or quality assurance for a project. The city doesn't want to have that burden. Even after the event and a building has a certificate of occupancy and something goes wrong no one is off the hook; the city is not liable and is not guaranteeing any quality assurance to let the contractor or assure the owner that there is any type of issue given by the building official. It is a system to try and catch all you can and things happen. Even through the building process the inspector isn't there twenty-four hours a day, seven days a week and that is why you hire architects and licensed contractors; to work as a team to avoid all those issues.

Mayor Pro Tempore Johnson stated he hoped to have something come before the council tonight for him to support the appeal; something in the code that could be construed that it didn't require that accessibility side. Mayor Pro Tempore Johnson stated this one is close; he is going with the aggregate, it is similar and connected three thousand square foot and is the driver on the requirement for the accessibility. Not to say that it is an elevator; the accessibility can be met in other ways.

Mayor Pro Tempore Johnson commented this is a dicey type situation but it should be known that building officials, like any of us, will do the very best they can and mistakes happen; it is unfortunate but by no means is the City of Elko or any inspection agency there as quality control.

Jim Winer commented they live here, pay taxes, the taxes go to the city for services; one of the services that is out-sourced is the plan check process. It was stated neither plan check personnel recall the plan; they were being paid with taxpayer monies that then creates a financial burden down the road for someone. Will the City do anything about this and what is the liability?

Mayor Pro Tempore stated there is no liability to the City.

Mr. Winer then questioned why the city even had a process if there is no accountability.

Councilman Elquist believed this was an isolated incident; if it was a trend then it would be a different matter.

Mr. Winer questioned if this was an isolated incident.

Mr. Schnoor stated Precision does good job on life safety issues i.e. structural, mechanical. Unfortunately this wasn't a life safety issue and it was missed.

VII. 6:00 P.M. PUBLIC HEARINGS

A. Public comment period. ACTION WILL NOT BE TAKEN

There was no public comment at this time.

B. Public Hearing for the purpose of obtaining the views of citizens regarding the type(s) of project(s) to submit for funding by the Community Development Block Grant (CDBG) Program in 2010, and matters related thereto. ACTION MAY BE TAKEN

The City may submit one grant for this funding cycle. During the public hearing, the City will ask for citizen views and respond to proposals and questions for the development of proposed activities. The City Council will prioritize the applications at the November 10, 2009 meeting. Grants are due to the CDBG office January 12, 2010 in Carson City. City Staff will present a proposed project to install curb, gutter and sidewalk improvements on Ruby Vista Drive.
SO

City Clerk Owen gave a presentation on the CDBG Grant process and indicated grant application requests are due by January 12, 2010.

Ms. Owen advised City Staff has one project to present for consideration; the "Ruby Vista Curb, Gutter & Sidewalk Project". This project area is located on the north side of Ruby Vista from Ruby View Drive to Skyline Drive. The project consists of 1,830 linear feet of curb & gutter, 2,080 linear feet of 5' sidewalk, ADA ramps, sidewalk cross-drains, ADA rest areas, dirt work and some patch back as well as other items that will be discussed at a later time. Ruby Vista is classified as a collector roadway in the City's Street and Highway Component of the Master Plan. Ms. Owen noted the proposed improvements serve surrounding neighborhoods and will provide for a safer route for pedestrians walking to nearby ball fields, parks and the Senior Citizen Center. It will also provide a safer route for children walking to Flagview Intermediate School, Elko High School and Grammar #2.

Ms. Owen indicated quotes were taken from the City Master Plan that cite the importance of curb, gutter and sidewalk and ADA accessibility; the quotes provide justification and show the intent of the City and will be part of the presentation Staff gives to the advisory board.

Ms. Owen advised the request would be for \$262,322.54 for CDBG funds (83.3% of total project) City's in-kind would be 16.7% at \$52,714.38 for a total estimated project of \$315,036.92 which would include administration, design, contract management, QA/QC and patch back.

Councilman Conner questioned if that section was a city right of way across tribal land.

Assistant City Manager Andreozzi indicated it was a 60' easement on tribal land.

Ms. Owen advised they would notify the tribes to obtain their support on the project.

Councilman Elquist questioned how projects are weighted and measured.

Ms. Owen advised this is a grant for competing funds. They look at several things, our participation, community support; ADA safety is a big factor. They definitely will look at what we are contributing to the project. They also like to see that you are going for things outlined in your master plan. Ms. Owen believed with the location being so close to the schools etc. this project has merit.

Chief Kightlinger question if the low to mod factor of a CDBG grant dictated by location.

Ms. Owen indicated for this project we would consider this an area wide project so it does meet the low to moderate income levels.

Councilman Rice noted the Family Resource Center is along the route also.

Assistant City Manager Andreozzi commented this is a project that has been on our long range transportation program for quite some time. There are drainage issues in the area and this will address those and this is also an area that raises concerns with the local citizens.

Mayor Pro Tempore Johnson opened this item up for additional public comment or requests; there was no public comment or input on this matter and no additional projects submitted for consideration.

There being no further business, Mayor Michael J. Franzoia adjourned the meeting.

Mayor Pro Tempore Chris Johnson

Shanell Owen, City Clerk