

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

**SS** April 14, 2009

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, April 14, 2009.

This meeting was called to order by Mayor Michael J. Franzoia

## **ROLL CALL**

Mayor Present: Michael J. Franzoia

Council Present: Councilman Jim Conner  
Councilman Jay Elquist  
Councilman Chris Johnson  
Councilman John Rice

City Staff Present: Curtis Calder, City Manager  
Delmo Andreozzi, Assistant City Manager  
Alan Kightlinger, Fire Chief  
Don Zumwalt, Police Chief  
Shanell Owen, City Clerk  
Dawn Stout, Administrative Services Director  
Eric Howes, Parks & Recreation Director  
Ryan Limberg, Utilities Director  
Dennis Strickland, Public Works Director  
Trent Moyer, Airport Director  
Scott Wilkinson, Development Manager  
Brian Mickels, Golf Course Superintendent  
Fritz Sawyer, WRF Superintendent  
Joel Vega, Fleet Maintenance Superintendent  
Ed Wynes, City Planner  
Linda Buffington, Recording Secretary

## **PLEDGE OF ALLEGIANCE**

**APPROVAL OF MINUTES**      **March 24, 2009 Special Budget Session**  
**March 24, 2009 Regular Session**

**\*\* A motion was made by Councilman Johnson, seconded by Councilman Rice to approve the minutes of March 24, 2009 as submitted.**

**Motion passed unanimously.**

## **READING OF A PROCLAMATION RECOGNIZING "ARBOR DAY"**

## **READING OF A PROCLAMATION RECOGNIZING "WEEK OF THE YOUNG CHILD"**

**PRESENTATION OF CERTIFICATES FOR PARTICIPANTS OF THE NEVADA LEAGUE OF CITIES YOUTH AWARD AND SCHOLARSHIP PROGRAM**

**IV. RESOLUTIONS AND ORDINANCES**

- A. Review and possible approval of Resolution No. 4-09, a resolution establishing the recognition and support of Great Basin College from the City of Elko, and matters related thereto. **ACTION ITEM**

A copy of the proposed resolution has been included in the agenda packet for review. CC

GBC President, Carl Diekhans, thanked the City of Elko for the support.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Elquist to approve Resolution No. 4-09, a resolution establishing the recognition and support of Great Basin College from the City of Elko.**

**Motion passed unanimously.**

**I. APPROPRIATIONS**

- B. Review of the bids received and possible award of a contract to complete the Headworks Upgrade Project, and matters related thereto. **ACTION ITEM**

The Headworks Upgrade Project involves improving and upgrading the old Headworks building and the associated aging equipment. The plan involves replacing the existing +20-year old bar screen, improving the building ventilation for Hydrogen Sulfide and other gases; installing a Hydrogen Sulfide Odor Scrubber; and installing an Iron Dosing System to control odors throughout the plant, as well as improve the building's utilities.

Bids were opened on April 3, 2009. The bid tabulation will be provided at the meeting. Staff will make recommendations during the council meeting. FPS

WRF Superintendent Sawyer advised four bids were received; Peavine Construction, KG Walters, Canyon Construction and Resource Development Company. Low bid was Resource Development Company.

Mr. Sawyer noted the engineering estimate came in at \$950,000; low bid was significantly below that.

Mr. Sawyer stated all bid documents have been verified; Staff recommends awarding the bid to Resource Development Company in the amount of \$786,300.00

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Rice to award the bid to complete the Headworks Upgrade Project to Resource Development Company in the amount of \$786,300.00.**

**Motion passed unanimously.**

- C. Review of the bids received and possible award of a contract to complete the Secondary Digester Roof Repair Project, and matters related thereto. **ACTION ITEM**

The Secondary Digester Floating Dome will require repairs and re-painting to protect the steel dome from corrosion preventing a possible collapse of the dome. The dome was inspected this summer by WesTec, and plant personnel.

Bids were opened on April 10, 2009. A bid tabulation will be provided at the meeting. Staff will make recommendations during the Council meeting. FPS

WRF Superintended Sawyer advised three bids were received; Canyon Construction, Mach 4 and Ruby Dome, Inc. Canyon Construction was low bid in the amount of \$60,719.00. Engineering estimate for the project was \$180,000; Staff recommends Canyon Construction.

Councilman Elquist questioned the cost difference; was the expectation of the engineer in-line with the bids and specs?

Mr. Sawyer stated the estimate was done by him and was on the high side. The economy had not yet begun to fall and Staff believed the prices might stay high. The sandblasting will be done by the main contractor, not by the painter, so there is some saving there also.

**\*\* A motion was made by Councilman Johnson, seconded by Councilman Conner to award a contract to complete the Secondary Digester Roof Repair Project to Canyon Construction in the amount of \$60,719.00.**

**Motion passed unanimously.**

- D. Discussion and possible authorization for Staff to solicit bids for the Primary Clarifier Overflow Piping Repair Project, and matters related thereto. **ACTION ITEM**

The entire concrete clarifier overflow piping network is severely corroded due to the Hydrogen Sulfide Gases which will require repair (see Figures 1 through 4). This maintenance project is budgeted in the 2009/2010 budget. The estimated cost to repair the piping network is \$207,000. Should Council approve the project, Staff plans on bidding the project for an early July 2009 start. FPS

WRF Superintendent Sawyer advised the concrete is severely corrode and referred to photos showing the piping network of the overflows. NDEP has approved the project and the engineering packet is ready to go out to bid; this is part of the 2009/2010 budget presented earlier. Staff will come back to the Council for approval but anticipate starting the project right after the first of July.

Councilman Elquist requested clarification of the project.

Mr. Sawyer advised it will be slip-lined with PVC liner and then protective grout will be applied on the manholes and distribution boxes.

Councilman Elquist questioned if the integrity of what exists will hold up.

Mr. Sawyer verified it would.

**\*\* A motion was made by Councilman Johnson, seconded by Councilman Rice authorizing Staff to solicit bids for the Primary Clarifier Overflow Piping Repair Project.**

**Motion passed unanimously.**

- E. Review, consideration, and possible approval to release American Salvage Inc. from their contractual obligation to collect scrap metals from the City of Elko Municipal Solid Waste Facility, and matters related thereto. **ACTION ITEM**

The City of Elko received a letter from American Salvage Inc. dated March 18, 2009 stating they would no longer be able to continue with the agreement due to the economy and the drop in metal value. The letter is enclosed in your packet. The City entered into the agreement on April 30, 2008 and it was set to expire two years from that date. They submitted a price of \$125 per ton; market prices were at \$40 to \$70 dollars per ton as of 3-27-09. DS

Public Works Director Strickland advised Staff consulted with legal counsel on this matter; terms in the contract state that if they fail to follow through with any of the contract terms the contract becomes null and void. They obviously have no intent to continue due to the economy. On the good side; we did make it a year through the two year period and got one collection out of that contract price.

Staff recommends releasing American Salvage Inc. from the contract.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Conner to release American Salvage Inc. from their contractual obligation to collect scrap metals from the City of Elko Municipal Solid Waste Facility.**

**Motion passed unanimously.**

- F. Consideration and possible approval to sell the City of Elko's PF5510 Blaw-Knox Paver, and matters related thereto. **ACTION ITEM**

On July 22, 2008, Council authorized Staff to advertise for sale by sealed bid and/or public auction to the highest bidder, the City of Elko's PF5510 Blaw-Knox Paver with the minimum price being set at \$75,000.00. Bids were solicited with the closing date set for August 26, 2008. Unfortunately, no bids were received at that time. Staff received an offer from Cate Equipment Company on April 3, 2009 to purchase the paver for the minimum bid price. Staff has consulted with the City Attorney regarding this item. DS

Public Works Director Strickland indicated legal counsel has advised the City did not fulfill one step of the process; to advertise that no bids were received. We need to fulfill that obligation of NRS before proceeding. Staff recommends this item be tabled until the notice is published; Staff will then bring the matter back at a future meeting.

Mayor Franzoia questioned if at this point in time we are still within the legal guidelines.

City Attorney Goicoechea advised there is no time limit defined in the statute.

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

**Motion passed unanimously.**

- G. Review of the bids received and possible award of the Hot Bituminous Plantmix Asphalt for 2009 bid, and matters related thereto. **ACTION ITEM**

Bids will be received until 3:00 p.m., local time, on Wednesday, April 8, 2009, at which time Staff will review the bids and provide a recommendation prior to the meeting. DS

Public Works Director Strickland advised there had been an increase in the prices for the hot mix; there isn't much the City can do as they are the only local supplier for this product. The supplier attached notes A-D which sets them up for future volatility in fuel and oil prices to adjust their price accordingly if those things come to fruition. Mr. Strickland continued and advised Staff has ramped our hot mix back somewhat this year and are trying to do more preventative maintenance rather than putting down more asphalt we can't take care of; it is what it is and we'll have to be cautious as we proceed this year. Until we get some competition in Elko there is not a lot we can do if we want to repave streets. Item 'A' isn't an issue as our standard street project usually involves 200-300 tons.

Councilman Conner questioned the purpose of lime in the asphalt.

Mr. Strickland advised it gives a stronger product.

Councilman Johnson questioned if the City awards this contract to provide asphalt is the City bound for this next fiscal year to only purchase asphalt from this vendor.

Assistant City Manager Andreozzi indicated typically you buy a minimum amount; you have the right to increase or decrease and is the only thing we need to make sure of in this agreement.

Mr. Strickland believed the City was not bound to a minimum quantity; it is always based on our budget; that is an approximate tonnage.

Mayor Franzoia noted this is the first bid the City has seen with a clause in it saying the bidder retains the right to change the pricing after they bid due to other extenuating circumstances. Perhaps the Council could vote to accept the bid but reserve the right to not use the supplier if the prices increase so much the City cannot afford it.

Mr. Strickland also believed if another supplier moved into the area Staff could bring this item back to the Council for a decision.

Mayor Franzoia questioned if there was enough latitude in the bid documents.

City Attorney Goicoechea believed this was a bid for a price; it is not a contract where the City has to buy anything from them. If another supplier came into the area the City could go there for a price quote.

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Rice to award the bid for Hot Bituminous Plantmix Asphalt for 2009 to Staker-Parsons as submitted.**

**Motion passed unanimously.**

- H. Review of the bids received and possible award of a contract to supply the City of Elko with one new 1-ton four wheel drive truck with dump body and lift tailgate for the Street Department, and matters related thereto. **ACTION ITEM**

The deadline for submitting bids was 3:00 p.m., local time, on Wednesday, April 8, 2009. City staff shall review the bids and provide a recommendation prior to the meeting. DS

Mayor Franzoia noted six bids were received; low bid was Carson Dodge Chrysler, Inc. at \$34,615.00.

Public Works Director Strickland advised Staff recommends awarding to Carson Dodge, Inc.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Conner to award a contract to supply the City of Elko with one new 1-ton four wheel drive truck with dump body and lift tailgate for the Street Department to Carson Dodge, Inc.**

**Motion passed unanimously.**

- I. Review, consideration, and possible approval for the Ruby View Golf Course to make a one-time purchase of a large quantity of “valve-in-head” sprinkler heads for an urgent irrigation system upgrade, and matters related thereto. **ACTION ITEM**

The irrigation system at Ruby View Golf Course requires the replacement of approximately 100 obsolete sprinkler heads for the irrigation system. These replacement heads would represent an important upgrade to the existing irrigation system, as a large number of the existing heads are leaking and parts are unavailable. Staff is requesting that Council consider approving a one-time purchase from the Recreation fund in the amount of \$12,956.72. EDH

Golf Course Superintendent Mickels advised negotiations were done for the specific sprinkler models needed; Staff has been given a price quote.

Mayor Franzoia questioned if the risk of obsolescence was limited.

Mr. Mickels advised anything of this type can become obsolete; most commercial golf sprinkler heads were designed for a fifteen to twenty year life. Those being considered for replacement were installed in 1985; parts are now getting hard to find. Our current supplier has advised four of the current five different models of sprinklers we have on the golf course are not going to have parts availability after another few months. Staff has tried to maintain a good inventory of parts; that inventory has been used up due to the lean budgets over the past few years. Some of the better parts of those we replace will be placed in inventory for later use on the remaining sprinkler heads.

Mayor Franzoia questioned if Staff will be budgeting for purchases over the next few years.

Mr. Mickels advised the City will be looking at a total overall within eight to ten years; at that time everything will be replaced; Staff will be looking at how to fund that project.

Councilman Johnson questioned if this purchase would extend the sprinkler life another eight to ten years.

Mr. Mickels believed it would likely cover the next five years.

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Rice to approve the Ruby View Golf Course to make a one-time purchase of a large quantity of “valve-in-head” sprinkler heads for an urgent irrigation system upgrade in the amount of \$12,156.72.**

**Motion passed unanimously.**

## **II. UNFINISHED BUSINESS**

- A. Review, consideration, and possible action to accept a petition for the vacation of a portion of Ruby View Drive consisting of an area approximately 10 feet in depth by 150 feet in length and a portion of a 7.5' public utility & drainage easement filed by High Desert Engineering on behalf of Robert and June C. Womack and processed as Vacation No. 4-08, and matters related thereto.
- ACTION ITEM**

The applicant started building a low retaining wall on his property which did not require a building permit. The applicant decided to transform the retaining wall into a garage, which requires a building permit. The applicant was in the process of submitting an application for a building permit for the project, where upon review, it was discovered that the building was located within the utility easement and was also within the exterior side yard setback. A variance could not be considered since a portion of the building was in the utility easement. The applicant would like the City to consider vacating some of our eighty-foot right-of-way and shift the easement to accommodate the structure in its current location. The applicant asked that this item be withdrawn from the January 13, 2009 Council agenda in order for his agent to provide Staff with more information, which has been provided to Staff. EW

Mayor Franzoia excused himself from discussion on this item due to a conflict of interest.

Mayor Pro Tempore Johnson led this discussion.

**\*\* A motion was made by Councilman Conner, seconded by Councilman Elquist to accept a petition for the vacation of a portion of Ruby View Drive consisting of an area approximately 10 feet in depth by 150 feet in length and a portion of a 7.5' public utility & drainage easement filed by High Desert Engineering on behalf of Robert and June C. Womack and processed as Vacation No. 4-08.**

**Motion passed 3 to 1.  
Councilman Rice voted against.  
Mayor Franzoia abstained.**

After the motion and before a vote was taken Councilman Rice requested verification the garage would be located on a utility easement.

City Planner Wynes advised that was yet to be determined.

Councilman Rice then noted considerable construction has already been completed on this.

City Planner Wynes verified that was correct but it has not been grouted in; it is laid block and can be removed.

Development Manager Wilkinson indicated one consideration Staff is looking at with regard to this right of way is whether it is excess from the inner section all the way up the street.

Assistant City Manager Andreozzi advised on this particular piece there is quite a bit of grass between the sidewalk and the building itself; a minimum of fifteen feet. We have eighty feet of right-of-way and twelve feet of right-of-way beyond the back of the sidewalk. This is approximately fifteen feet off the back of the sidewalk; the property owner was asked to stop construction when Staff discovered that.

- B. Review and consideration of a request from the Northern Nevada Transit Coalition to purchase approximately 60.75 acres of City-owned property, located adjacent to Northeastern Nevada Regional Hospital, for \$900,000 pursuant to NRS 268.055 for the purpose of constructing a transit and assisted living center, and matters related thereto. **ACTION ITEM**

The Northern Nevada Transit Coalition has amended their original request since the March 24, 2009 City Council Meeting. Information has been included in the agenda packet for review. CC

Robert Newman, Northern Nevada Transit Coalition, informed the Council NDOT has determined they may not purchase the property. NDOT would like the City to continue owning the land, oversee the project and lease the project to NNTC for \$1.00. Mr. Newman indicated they would like to postpone any such request at this time and allow NDOT time to reconsider.

Mayor Franzoia noted the agenda item was to discuss purchase of the property; can discussion continue related to a lease.

City Attorney Goicoechea stated no action can be taken on this request.

Mayor Franzoia advised there was a subsequent item from Northern Nevada Transit Coalition; a request to allow NNTC to act as a non-exclusive agent for and on behalf of the City of Elko for the sole purposes of land-use, planning, or zoning procedures needed to pursue the goal of developing City property. Granting the request would allow NNTC to do whatever needs to be done to have their proposal go forward; obviously it would be conditioned upon acquisition of the property; by purchase or lease.

Mayor Franzoia questioned NRS 268.055; does it allow for non-profit to lease for \$1.00.

City Attorney Goicoechea advised it was possible but the City has been looking at selling the property for the appraised value. They could come back with a request to lease it for the appraised value but not going through the auction process. The Council could lease it to an entity that qualifies under that section for \$1.00 or whatever value they determined. Their original request was to purchase it; now they want to lease it for \$1.00.

Mayor Franzoia believed the applicant was on a difficult path due to the timeline.

Councilman Conner expressed strong support of the concept; it is a long over-due service needed in Elko.

City Attorney Goicoechea advised the Council to deny this request; the applicant can come back to Staff with a request to lease which can then be put on the agenda appropriately.

Mayor Franzoia expressed concern over taking action to deny the purchase request. What if NDOT changes their decision which results in NNTC coming back with this same request; how do we address that.

Councilman Rice questioned if Mr. Rikker could withdraw the request.

Mayor Franzoia believed that would address the issue.

Chuck Rikker, NNTC withdrew the request to purchase approximately 60.75 acres of City-owned property located adjacent to Northeastern Nevada Regional Hospital.

Mayor Franzoia encouraged Mr. Rikker to meet with Staff and request the lease option be included on a future agenda.

City Manager Calder reminded the Council the City has a development agreement with Province Health Care; whether we sell or lease that property we will need to reimburse them \$75,000 for the traffic signalization.

### **III. NEW BUSINESS**

- F. Review consideration and possible action to approve a request by the Northern Nevada Transit Coalition (NNTC) for the Council to consider allowing NNTC to act as a non-exclusive agent for and on the behalf of the City of Elko for the sole purposes of land-use, planning, or zoning procedures needed to pursue the goal of developing City Property, and matters related thereto. **ACTION ITEM**

NNTC is actively pursuing the possibility of acquiring City property that consists of approximately 60.75 acres and is described as Parcel No. 3 on a Parcel Map File No. 443291 filed April 7, 1999 with the Elko County Recorder's Office. The purpose of this acquisition is for the establishment of needed public transportation improvements and to incorporate an elderly health care facility. NNTC would like to have this project go through any land-use, planning, or zoning procedures concurrently with the possible acquisition to expedite the process. DA

Assistant City Manager Andreozzi recommended a time limit be attached if the City grants this authority to NNTC.

Mayor Franzoia believed a time limit was already established with the City; they are under a time restriction with the stimulus package.

Chuck Rikker, NNTC indicated it was now at ninety days which gives NDOT sufficient time to work on the Categorical Exclusion for the NEPA process.

Mayor Franzoia commented if the City pursues this; it should be conditioned up a signed lease in place. All things that would be approved would be null and void if no transfer occurs through a lease agreement; it would be their time and effort going through the process and any obligation of fees would also be associated with the applicant.

Assistant City Manager Andreozzi noted Mr. Rikker had indicated they would allow NDOT to do some site investigative work. Mr. Andreozzi believed this request pertained to any items going through the Planning Commission or any entitlements that need to be completed. Any site investigation should be a separate item before the Council; we don't know what the scope of that would be and the Council should know that before authorizing it.

Mayor Franzoia noted there are many items relative to City property Staff already has administrative authority to allow or not allow people to access for whatever reasons; we do it with utilities. If the Council pursues something agreeable with the applicants they would contact Staff with any invasive issues related to the property; no one works on City property without City approval.

Councilman Rice questioned the benefit to NNTC to act as an agent on behalf of the City.

Mayor Franzoia advised the intent is to concurrently go through whatever processes need to be taken through planning and permitting to expedite the timelines. We would allow them to do this with the assumption they were pursuing a lease. There is a lot of risk to the applicant as this goes forward; if we pursue this we need to make sure the City is not obligated to anything and is why it would be conditioned upon ultimately the City allowing a lease to be held or the land to be sold.

Development Manager Wilkinson advised the property is planned commercial which requires a conditional use permit; they are attempting to run that process concurrent with working through acquisition of the property in order to meet the timelines.

Assistant City Manager Andreozzi indicated “sole agent” allows them to sign on the City’s behalf to actually submit an application.

Councilman Johnson believed the City of Elko could move forward as the property owner and get the process through the Planning Commission. The coalition needs to decide that if their only option to make the project viable is for the City of Elko to lease it to them at \$1.00 per year; they are going to have to bring some more information to the table as far as community support if we go down that path. Mr. Johnson stated he had reservations with the sixty acres; that is a \$900,000 asset, perhaps we should go back to the original ten acres. Mr. Johnson didn’t believe the City of Elko would want to grant NNTC exclusive for zoning and recommended the City move forward with the process on the conditional use permit to help with the time frame and move the project forward.

Councilman Elquist believed ownership of the building and on going maintenance was an issue. Also, the breadth of the land is a lot of asset to tie up on something that needs more justification.

**\*\* A motion was made by Councilman Johnson, seconded by Councilman Rice to support the project as a whole and direct Staff to move forward as the property owner to the Planning Commission to help NNTC save time in pursuing a conditional use permit.**

After the motion Assistant City Manager Andreozzi requested verification the motion would cover their entitlements they need.

City Planner Wynes verified it would.

Councilman Elquist requested verification the City of Elko would be applying for the conditional use permit.

Mayor Franzoia advised NNTC will apply for that through the City; the City is allowing them to do that on our behalf.

Councilman Johnson stated the City of Elko is the property owner; they will apply for the conditional use permit.

Assistant City Manager Andreozzi noted there are fees associated with that; the City would not charge itself.

City Manager Calder questioned if the motion is approved, will that be effective immediately or contingent upon a lease being entered into with the City of Elko. If NNTC comes in tomorrow and want this to proceed and we don’t have a lease in place we may be expending Staff resources when we don’t know what the disposition of the property is going to be.

Development Manager Wilkinson recommended running the processes concurrent due to the time factor; from a Staff perspective the conditional use permit would not go into effect unless they were able to acquire the property; either through purchase or lease.

Mayor Franzoia believed it needs to be clarified at this meeting; as a land owner the City of Elko wants this condition, if we change our mind we don't want anything preapproved without a condition in case it fails. Mayor Franzoia believed everything needs to be clear going in.

Assistant City Manager Andreozzi noted there has been discussion on a smaller portion of the sixty acres also; does the Council want to discuss that further.

Mayor Franzoia indicated it was up to the applicant to come back if that is something they want to consider.

Assistant City Manager Andreozzi advised the property size will drive the conditions of the conditional use permit.

Councilman Elquist questioned if two weeks would impact the project; to allow time to work through some of the issues brought up at tonight's meeting.

Mr. Rikker withdrew the request by the Northern Nevada Transit Coalition (NNTC). Mr. Rikker advised they will work with City Staff and NDOT to work through the issues.

**\*\* Councilman Johnson withdrew the motion.**

### **III. NEW BUSINESS**

- A. Review and approval of pending Special Events, and 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 the Honors to Arlington parade, sponsored by the P.O.W./M.I.A Awareness Association, to be held on Thursday, May 21, 2009 starting at 5:30 p.m. until approximately 6:00 p.m., and matters related thereto. **ACTION ITEM**

The purpose of the parade is to escort the cremains of 3 military veterans traveling from Sacramento to the Arlington cemetery with the first stop being Elko. The parade would start on Idaho Street/Mountain City Highway in front of the Fire Department and head east on Idaho Street then north on College Parkway ending in the City Park across from the swimming pool. There will be closure after the parade for parking on Golf Course Road between College Avenue and Cedar Street. SO

Dorothy Minor, Service Officer with the Nevada Office of Veteran's Services and Les Brown, Director, P.O.W./M.I.A. Awareness Association were present to provide background information for the request, see Exhibit 'A'.

**\*\* A motion was made by Councilman Conner, seconded by Councilman Elquist approving the Honors to Arlington parade, sponsored by the P.O.W./M.I.A Awareness Association, to be held on Thursday, May 21, 2009 starting at approximately 6:00 p.m.**

**Motion passed unanimously.**

- C. Consideration and possible approval of a requested lease modification, including a name change and expansion of property leased by Canyon Construction Company, and matters related thereto. **ACTION ITEM**

Mike Lattin has requested that the property leased to Canyon Construction for hangar 5-G be expanded by approximately 2,500 square feet (see attached map) and that the LESSEE name change from Canyon Construction Company to Canyon State Aviation. TM

Airport Director Moyers noted this would increase the lease space to approximately 10,000 square feet at \$0.98 per square foot.

City Attorney Goicoechea advised there is an exception by the Legislature allowing cities with populations of less than 25,000 to lease hanger space that is less than half an acre without going through the auction or bidding process. Based on the square footage this would fall under that exception; the Council can approve this at tonight's meeting.

Mr. Moyers stated we need to obtain a new legal description and an amendment to the lease.

Councilman Elquist questioned the current term of the lease.

Mr. Moyers advised it expires in 2025.

Councilman Elquist questioned if the lease would be at the current market rates.

Mr. Moyers advised the current lease rate is \$0.98 per square foot.

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Rice to approve the requested lease modification, including a name change and expansion of property leased by Canyon Construction Company as submitted.**

Mayor Franzoia requested further clarification in the motion.

**\*\* Councilman Elquist amended the motion to include to amend the existing lease to include the new legal description and change the lessee name, Councilman Rice's second stood.**

**Motion passed unanimously.**

- G. Review and possible support for the Committee Against Domestic Violence (CADV) to file for Homeless Prevention and Rapid Re-Housing Funds (HPRP) from the U.S. Department of Housing and Urban Development (HUD) as a result of the American Recovery and Reinvestment Act of 2009 (Recovery Act), and matters related thereto. **ACTION ITEM**

A copy of the Certification of Local Approval for Non-Profit Organizations has been included in the agenda packet for review. SO

Yvette Waters advised to apply and receive a portion of these monies local approval is needed. The monies will help the women and children they serve with first and last months rent, utility deposits and up to eighteen months of rent depending on the grant approved. If successful they will be supporting the rentals that currently exist in Elko and moving the women out of Harbor House quicker; currently they stay for three to six months.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Conner to support the project and authorize Staff to sign the certification of local approval to allow the Committee Against Domestic Violence (CADV) to file for Homeless Prevention and Rapid Re-Housing Funds (HPRP) from the U.S. Department of Housing and Urban Development (HUD) as a result of the American Recovery and Reinvestment Act of 2009 (Recovery Act).**

**Motion passed unanimously.**

*5:57 p.m. Mayor Franzoia called for a brief recess*

**V. 6:00 P.M. PUBLIC HEARINGS**

- A. Public comment period. **ACTION WILL NOT BE TAKEN**

This agenda item is to provide time for the general public to address the City Council regarding items of concern. Action cannot be taken at this time, but a matter can be set on the agenda for a future meeting, as appropriate.

There was no public comment at this time.

- B. Review, consideration, and possible action in response to an appeal filed of the decision of the Elko City Planning Commission pertaining to a conditional approval of Conditional Use Permit No. 1-09, filed by Ruby Vista Lodging Associates, LLC, rendered by the Planning Commission to consider the construction of an 85 room hotel facility and related improvements within 150 feet of a residential zoning district and also to consider the need for installation of a screen wall to separate a commercial and a residential zoning district on approximately 1.85 acres located generally one hundred ninety feet (190') north of the intersection of East Jennings Way and Ruby Vista Drive, and matters related thereto. **In consideration of this item, the Council may affirm, modify or reverse the decision of the Planning Commission. ACTION ITEM**

The Planning Commission considered this item at their meeting of March 3, 2009, and took action to conditionally approve the subject Conditional Use Permit. Subsequently, a neighboring property owner submitted an appeal of the Planning Commission decision. EW

Mayor Franzoia abstained from all discussion on this item due to a conflict of interest.

Mayor Pro Tempore Johnson led discussion on this agenda item.

City Planner Wynes advised included in the packet is a memo that identifies what the appeal consists of and the discussions pertaining to it; see Exhibit 'B'. The Agenda packet includes all correspondence regarding the matter; Staff is prepared to answer any questions or concerns at this time.

Mayor Pro Tempore Johnson outlined the appeal procedure to be followed for everyone's understanding.

Appellant Craig Kidwell came forward to address the Council and state his opposition. Mr. Kidwell provided maps identifying the area and other related material; see Exhibit 'C'. Mr. Kidwell advised while living near a hotel for a number of years he and his family witnessed extensive drug activity, sexual activity, violence, minor's consuming alcohol, destruction of property and indecent exposure just to name a few. Mr. Kidwell stated at the time of purchasing this property he only had conversations with the developers; they were made aware of his concerns based on his current home in the vicinity of hotel and they promised no hotels on the lots in question tonight. The developer did advise they were considering a "small boutique and two-story hotel" at the far end of the larger lot which is not shown on the map; it abuts the golf course above Wingers.

Mr. Kidwell believed the developers owed the purchasers a duty; a separate civil action will be filed against them based on tonight's outcome. Mr. Kidwell stated the City Council also owes the purchasers a duty based on the master plan of the City. In the master plan under the land use section, pages five thru seven it states "*certain areas exhibit conflicting patterns of land use involving industrial, commercial, residential uses within close proximity such as in combined block areas which contributes to over crowding, improper utilization of land and depreciating property values. The problems associated with conflicting patterns of land use are also compounded by inappropriate zoning in many circumstances.*" The approval of this conditional use permit is in direct conflict with Elko's Master Plan and only adds to over-crowding and depreciating land values addressed in the master plan.

Mr. Kidwell noted in addition the hotel under discussion tonight there are three additional hotels planned for this immediate area. Mr. Kidwell now referred to pages two thru four of Exhibit 'C' included in the packet. Pages two and three are different versions of the proposed hotel as well as the future proposed hotel; page four is an article from the Elko Daily Free Press dated March 7, 2009 which indicates the Hilton is planning two hotels on the lower parcel abutting the golf course behind Wingers. Mr. Kidwell again referred to the city's master plan "*the northeast neighborhood as delineated in the master plan is the area bordered by the south by interstate eight and the Ruby View Golf Course on the west, most of the land within this area to the north and east remains vacant however when services are extended a mixture of commercial and*

*residential development is anticipated. A key feature associated with this area is the Ruby View Golf Course; parks and education facilities are examples of future needs of that area.*” Mr. Kidwell stated the Elko City Code requires adequate transitioning and buffering between residential and commercial uses; this type of property is called commercial transition. The City Planning Department states in its rebuttal that this protection is afforded only to “established neighborhoods”; Mr. Kidwell believed that was not the intent of the code and the area in question is an established neighborhood with houses soon to be built and should be afforded the same protections. The City needs to look at other things; material danger to public health or safety and value of adjoining abutting property. Mr. Kidwell referred to safety (crime) and cited examples of current concerns in Elko i.e. sex offenders, 29% of which live in extended stay hotels and police calls to hotels in 2008. The City needs also to consider the value of adjoining or abutting property. Mr. Kidwell noted this has been adopted by the Elko City Master Plan however the City Planning Department and Planning Commission have not taken any steps to address this and protect Elko’s residents.

Mr. Kidwell stated he would not be building a home in this area based on his experience of living in direct proximity to a hotel.

Mr. Kidwell advised many states require statistical data i.e. crime and property value on items such as these and how it affects the property prior to approval or denial of conditional use permits. Further, the Elko City Master Plan has addressed this as a problem and indicates Elko should correct it. City Planner Wynes states in his recommendation to the planning commission that 1) it is going to be hard to tell if the nature of the proposed use and location factors result in any negative influence or affect the adjoining properties as there are no dwellings being built or proposed to be built in the area closest to the proposed development. Mr. Kidwell disagreed nothing has been proposed to be built there, 2) it will be hard to say if the location of the building, parking and related facilities result in any negative influence or affect the adjoining properties. Mr. Kidwell believed by those statements the City admits they do not know; they have no studies or statistics. Elko does have the ability to do these studies and these factors should be taken into consideration; there are three hotels currently abutting residential neighborhoods in Elko; talk to those residents.

Mr. Kidwell stated as a land-owner representative of other land owners directly affected by the approval of this conditional use permit he respectfully requests the City Council reverse the planning commission’s approval of the permit; if not compelled to do so tonight there are options; reverse, approve or modify. Mr. Kidwell strongly encouraged the Council to modify and re-man back to the planning commission and ask them to complete the studies and demand they post further restrictions of the conditional use permit.

Mr. Kidwell noted the proposed eighty-five room hotel has eight-five proposed parking spaces and four handicap spaces, zero over-size vehicle parking. With extend stay hotels many people living in them are husband and wife with multiple vehicles. Per City Code 3-2-17 there are not enough parking spaces; by there own admission in the documents they provided to the planning commission the hotel expects to have at least ten staff vehicles.

Mr. Kidwell advised the Ruby View Homeowner’s Association has a private recreation area for its residents and is shown on the map provided. That right-of-way easement was deeded over to the Ruby Vista Lodging Associates (see pages 5-6 of Exhibit ‘C’). Rather than allow for the

appropriate recreation on the property i.e. extended stay property with people living there; their intent is to encourage their guests to leave the property, travel through the residential neighborhood and use the easement not only for that but as access to the Ruby View Golf Course. The Elko City Master Plan map calls for the top of the parcel in question to be used for parks and recreation. The special nature of an extended stay hotel requires special deference and attention and is what the appellant is asking for tonight; the Master Plan and conditional use permit should require that the special accommodations be constructed in this case; not to allow the hotel developer to simply pass that obligation on to residential neighbors; which is exactly what they have done. The privacy wall is only proposed along one-half of lots 25, 26 & 27; the lots are owned by Ruby Vista Lodging Associates and City Code requires the subject property to be isolated from residents via concrete privacy fence; therefore the conditional use permit must require the privacy fence to be extended all the way along lots 25, 26, & 27.

As previously stated parking is inadequate. There is nothing to stop oversize or over flow vehicles from parking on the vacant land or the residential streets; specifically Masters Lane which will be abutting it and have no protections from the hotel. Security is another concern; there are four hotels planned in this area directly abutting the residential area; there must be adequate security in place; security personnel, cameras, signage should be a minimum and none are addressed in the conditional use permit. Height; NRS Chapter 278 and the Elko City Master Plan require community, conformity with regard to aesthetics; the hotel is sixty feet high and taller than any building abutting a residential neighborhood. Pages five and six of the city's master plan states "*certain areas exhibit conflicting patterns of land use involving industrial, commercial and residential uses within close proximity such as in confined walk areas which contributes to overcrowding.*" Mr. Kidwell believed that was important, it is out of our master plan, if affects us and identifies the problem before the Council tonight.

Mr. Kidwell again requested the Council consider the matter before them tonight and set guidelines and precedence; this is not the first time this matter will come before you.

Mayor Pro Tempore Johnson called for additional comments from property owners.

Jim Pitts indicated Mr. Kidwell explained the matter thoroughly; and stated he also was strictly opposed to a hotel in the area. This type of hotel brings all sorts of problems to a neighborhood. Mr. Pitts was against allowing hotel residents to use their common area as a path to access the golf course; it would turn the golf course into a public park.

A resident of Ridgecrest Drive spoke in opposition of the hotel; and requested the Council consider 1) what type of action this hotel would have on the neighborhood and 2) this is supposed to be a high-end neighborhood, where is the beautification of Elko.

Dan Thompson opposed the hotel. Mr. Thompson advised there are three contractors involved with this property and he owns the majority balance of land there. Communications between contractors indicates construction of residential or spec homes has been put on hold in that immediate area; namely lots 18, 22 & 23 which are immediately across from the proposed hotel site. The hotel height has been a big concern; it will devalue those lots.

Mayor Pro Tempore Johnson requested clarification on how the property changed hands from the original developer.

Nate Taylor, Ruby Vista Lodging Associates advised they purchased lots 25-27; at the time of purchase they were zoned commercial. It was their understanding the adjacent residential area was rezoned from commercial to residential in 2006.

Mayor Pro Tempore Johnson questioned who filed for the zone change; was it Ruby Vista Lodging Associates.

Mr. Taylor stated it was not; they did apply for the conditional use permit. The conditional use permit was in regards to the required fencing and screening against the residential area. At the time of purchasing the land and in planning the hotel on the site they have complied with all height restrictions and zoning covenants associated with the land and have been in compliance with everything asked of them including upgrading the type of screening that has been proposed in compliance with the owners of the residential areas to the west of them. They have attempted to push the hotel as close back to the hillside as possible and the top of the hotel will be in-line with the terrain and hillside immediately behind it; from a view perspective that should not create any additional height or blockage of what is above it.

Mr. Taylor indicated Marriott is known as an upscale hotel; Zion's Hospitality Management, has managed well over one-thousand hotel rooms; all upscale. One issue they deal with regularly is; how do we maintain security and privacy for guests of our hotel. Guests that stay at Marriott are interested in class, feeling, comfort, security, protection; their overall experience as a guest there is of primary importance to us. Zion's currently manages a number of hotels in Salt Lake City, Utah; they do not have problems with migrant, transitory types of people with crime in the parking lots; they maintain adequate security.

Mr. Taylor continued and advised the proposed hotel will be in excess of ten million dollars; they have upgraded the exterior of the hotel in a fashion that will be beneficial and consistent with the architecture and design of the surrounding neighborhoods. A number of changes have been made to the outside of the hotel that are outside the normal proto-typical including; rock, hard surface, changing of the roof line in way that would be more conducive to those property owners. In regards to parking, Marriott Hotel has higher standards of parking than the City of Elko; they have very strict guidelines in terms of parking and we are in compliance with the Marriott requirements in such a way that corresponds to the needs we anticipate for the hotel.

Regarding the second hotel; they have attempted to position orient the hotel with an eye for what we could potentially do with the land we purchased. We have considered the second hotel, listened to what is being proposed and are sensitive to the needs. The plans to proceed as currently outlined are soft at the moment; there are no plans for the additional hotel but they are interested in maintaining the option of developing the land in a way that is most viable to them as commercial developers while being sensitive to the location they are in. Future decisions on the property will be based on the economy.

Mr. Taylor advised they were made aware of the easement into the golf course following the purchase of the land. They have attempted to have discussions with individuals associated with that; those discussions have not been a free flow of communication. They would be happy to discuss some additional options; if that proposes a major challenge they would be willing to entertain proposals and offers of something that would be acceptable to the homeowners and the homeowners association regarding that easement.

Mr. Taylor stated Marriott Hotels has strict requirements with respect to landscaping the property; we have already proposed full landscaping that would go into the hotel in such a way that would provide screening to the residential neighborhood as well as beauty and first-class experience for the hotel our guests have come to expect.

Mayor Pro Tempore called for additional comments.

Councilman Conner referred to the common area outlined in Exhibit 'C'; was it planned as a private park.

Development Manager Wilkinson advised the common area, with the approval of the subdivision, was never approved for access to the golf course by either subdivision in the area.

Mr. Kidwell stated his understanding of the common area was a grass area for the residents to have picnics etc. Mr. Kidwell indicated during negotiations with the original developers and his purchase of a second lot he was advised the developer required an easement across the bottom corner of the lot to provide access. Mr. Kidwell believed someone didn't understand what the limitations were; subsequent to this meeting he could provide the easement and the language of that easement; they do in fact have an easement across his property to make a concrete path down to the golf course.

Mayor Pro Tempore Johnson identified the lot Mr. Kidwell was referring to and advised the only property under discussion at tonight's meeting was identified on Exhibit 'C' as lots 25, 26 & 27.

Councilman Rice requested confirmation Masters Lane is of adequate size to accommodate the type of traffic a hotel will generate.

City Planner Wynes advised there is a legal requirement attached to the commercial properties that Masters Lane cannot be used as access; all traffic must come in off of Jennings Way.

Councilman Rice then questioned if Jennings Way was of adequate size.

Mr. Wynes stated it would be at full build-out.

Councilman Rice requested verification the developer understood the common area would provide hotel guests access to the golf course.

Mr. Taylor advised they were made aware of that following the purchase of the land; access to the golf course via that was not in their plans or desire to purchase the hotel; they are willing to have discussions with the responsible parties about that easement.

Councilman Conner questioned legal counsel if City Code requires the type of study mentioned i.e. the effect on homeowners etc.

City Attorney Goicoechea stated the Council could require that but did not believe it was mandatory.

Mayor Pro Tempore Johnson advised the City may now respond to the appeal after which the appellant may present any rebuttal argument or evidence.

City Planner Wynes advised the memo dated March 30, 2009 (Exhibit 'B') outlines the City's position. There is nothing in City Code that states we must conduct a study; questions often come up about projects we can't answer immediately; we have to see how development takes place and this is one of those cases. First person in is going to control how everything else goes; if all the houses had been built it is likely the hotel would not have purchased the property; they were the first in and had the right to do what they wanted with the zoning that was there; which makes them legal. From that perspective; a hotel is a hotel, regardless of whether it is long-term or short-term; it is in-material as far as whether we approve or deny it. Regarding transition and buffer areas; we do it where we can; it is a goal of the master plan to provide buffer areas, in some places there are no buffer areas. This property was approved originally as commercial, and then re-zoned to R1; when the subdivision went in no one questioned commercial next to residential with nothing between them but a street; now that it is time for development to come in the entire thing is out of whack. Staff did what was right and proper in looking at the property in the manner they did and the decision was made it was an appropriate use of the land. We attached conditions to it.

Mayor Pro Tempore Johnson questioned if this property was commercial at the time the subdivision was presented.

Mr. Wynes verified that was correct.

Councilman Elquist sympathized with the appellant's but believed it was a matter of "Buyer Beware" and personal responsibility. Regarding material danger and de-valuing; that argument could likely be used to stop any extended stay; it has to be reasonable and material; Mr. Elquist did not see any material danger in this situation. From the City's perspective it seems everything has been done correctly and legally; all the land use components that were laid out in the area and all the requirements of that zoning appear to have been met.

Councilman Rice agreed with Mr. Elquist's comments. We put the process in place, it has been followed; it is one thing we as a community need to be able to depend upon. The concerns expressed are understandable for a property owner to have, but a hotel in that area is reasonable.

Councilman Conner expressed support of the hotel; the planning commission covered a lot of issues and tried to alleviate the concerns of the homeowners. It is a good location for a hotel.

Mayor Pro Tempore Johnson questioned if a hotel within the City of Elko can put in an extended stay provision or would they have to change zoning for that type of business.

Mr. Wynes advised the phrase "extended stay" is only referred to in the City Code related to use or taxes.

Mayor Pro Tempore Johnson now advised Mr. Kidwell of the options available to the appellant 1) have council deny the conditional use permit 2) request the city impose other conditions thereof the study of the extended stay etc.

Mayor Pro Tempore Johnson referred to the building height; what type of screening is being considered.

Mr. Wynes advised it would be a six foot high fence with landscaping; we've asked they place trees inside and outside.

Mayor Pro Tempore questioned if the fence would run the entire length of the property.

Development Manager Wilkinson advised one clarification in the planning commission meeting was would that fence be extended along the three lots that currently exist. As a minimum when they build on the two lots they are going to have to merge those two lots creating one parcel; they will be developing that one parcel. They will be required to extend the wall and landscaping to the end of that parcel for that development. When the second parcel is created and develops the conditions that may be required for that development will be evaluated.

Mr. Wilkinson referred back to previous extensive discussion pertaining to the golf course, the fencing etc.; developers of Ruby View Resorts LLC committed to complete fencing of the entire residential area before the fence between the lots that are adjacent to the golf course could be removed. That was a self-imposed condition; not a public works improvement. Mr. Wilkinson understood this developer, Marriott Hotels, has committed to build that section of fence along Masters Lane in their agreement with the purchase of the land. When the two lots are merged we would be developing one parcel.

Mayor Pro Tempore Johnson questioned if the conditional use permit addressed all three lots.

Mr. Wynes advised it addressed the top lot (#25) but they will have to merge #25 & # 26.

Mayor Pro Tempore then questioned if they merge two lots do they automatically get the conditional use permit for the other two.

Mr. Wynes stated it did not; they will have to come back for a conditional use permit for the other property; depending on the proposed use.

Mayor Pro Tempore Johnson believed the biggest concern is the height restriction.

Mayor Pro Tempore Johnson advised Mr. Kidwell he could make a rebuttal at this time or wait until after Council makes a motion.

Mr. Kidwell believed before the Council makes the decision they should have additional questions for the developer. The developer uses words such as adequate security and higher standards of parking than Elko; what are those standards and what they do for security. Mr. Kidwell also stated he viewed their property in Salt Lake City and it is not near any residential areas so what sort of special treatment do they do for their hotels next to residential areas; do they own any hotels next to residential areas such as this. Mr. Kidwell disagreed with Mr. Wynes statement "a hotel is a hotel"; each hotel is different and the master plan requires the city and planning department to look at each one of them and how they affect the residents of Elko. Mr. Wynes statement to the planning commission states they don't know how it will affect the area residents; we need to find that out before this is approved. In addition the no buffer areas are, as

stated by Mr. Wynes, “out of whack”; the master plan discusses that very problem and it should be fixed. Mr. Kidwell acknowledged everyone knew there was commercial property there; he isn’t opposed to commercial, he is opposed to the problems seen with other hotels and that being placed there. The Council has the opportunity tonight to fix that; the planning commission imposed restrictions and in his experience they are not adequate.

Councilman Elquist questioned Mr. Taylor if they have extended stay hotels in this type of proximity to residential areas.

Mr. Taylor advised the extended stays they have are in more urban settings; they do not have one in a residential area. Their experience of extended stays of the Marriott brand has been they do attract an up-scale clientele; typically executive type, that would be conducive to and respectful of the surroundings.

Councilman Rice questioned if the developer has adequate parking taking into consideration there could be families living there with multiple vehicles and, is East Jennings Way prepared for that kind of traffic.

Mr. Taylor stated they do have adequate parking.

Mr. Wilkinson advised in the master plan East Jennings Way is identified as a minor arterial; that road has been developed to that standard which would handle considerable volume of traffic. Ruby Vista Lodging Associates, LLC will fully develop that full width past their approach and taper it back; the other half road up the hill will develop as additional development takes place.

Councilman Rice questioned when development of the site would begin if they are granted permission and does the conditional use go with the property if sold.

Mr. Taylor advised they anticipate a start day of June 2009.

City Planner Wynes stated the conditional use permit goes with the property.

Mayor Pro Tempore Johnson clarified there is a one-year time frame on it.

Mr. Wynes stated if the property was occupied it would go; it would not carry over on a property that has not been built upon.

Councilman Conner questioned the type of security the developer had on their other properties; that seems to be a real concern of the area residents.

Mr. Taylor advised they employ night security staff to circle the hotel; the safety of our guests is very material to the hotel and their experience; it is a top priority.

Councilman Elquist believed the City had no role in requiring security; we need to meet the basics of the commercial development and let people run their businesses.

Councilman Conner advised he brought the question up to perhaps alleviate the concerns raised by Mr. Kidwell.

Mayor Pro Tempore Johnson noted one condition of the conditional use permit was that it would expire if not activated within one year of the date of approval; how do they secure that.

Mr. Wynes advised they would have to get the building permit.

City Attorney Goicoechea questioned if the off-street parking requirements in City Code will have to be complied with regardless of what the conditional use permit says.

Mr. Wynes advised they would; their layout is such they will be able to meet City Code parking requirements.

Mr. Goicoechea requested clarification on the parking requirements according to City Code.

Mr. Wynes indicated he would not want to make a statement at this time without reviewing the zoning ordinance; they will have to meet City Code.

Mr. Goicoechea then questioned if there had been a determination on parking spaces.

Mr. Wynes indicated Staff made a count and the determination was made they meet the parking requirements.

Development Manager Wilkinson advised when they submit their development plans for a building permit they will have meet all the criteria and standards specified in 3-2-17 of City Code; which addresses lighting, parking, snow storage areas and trash receptacles. Staff will verify all those conditions have been met prior to issuing the building permit.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Conner to deny the appeal filed of the decision of the Elko City Planning Commission pertaining to a conditional approval of Conditional Use Permit No. 1-09, filed by Ruby Vista Lodging Associates, LLC, rendered by the Planning Commission to consider the construction of an 85 room hotel facility and related improvements within 150 feet of a residential zoning district and also to consider the need for installation of a screen wall to separate a commercial and a residential zoning district on approximately 1.85 acres located generally one hundred ninety feet (190') north of the intersection of East Jennings Way and Ruby Vista Drive.**

**Motion passed 4 to 0.  
Mayor Franzoia abstained.**

- C. Review and possible acceptance of a “Summary Appraisal Report of Three El Aero Hangar/Maintenance/Storage Improvements (and Small Metal Shed) Situated on the Established 32,813 Square Foot Site at the Elko Regional Airport” and subsequent determination of the fair market value of the above referenced real property, and matters related thereto. **ACTION ITEM**

NRS 268.059 allows municipalities to sell or lease property using one independent appraisal if the governing body holds a public hearing to determine the fair market value. Once the fair market value has been determined, the City of Elko can proceed with the lease of property in accordance with NRS 268.061 –

268.062 (public auction) or in accordance with NRS 268.063 (economic development).

A copy of the above referenced Summary Appraisal Report has been included in the agenda packet for review. CC

Mayor Franzoia advised this matter relates to Unfinished Business-Item C in regards to leasing the area.

City Manager Calder referred to the summary appraisal report completed by Mr. William M. Tessler, Certified General Appraiser; it was a very complex appraisal, it had to address three different specific areas because there are improvements on this property. Once Staff received the appraisal it was distributed to all interested parties including El Aero, Mike Lattin, legal counsel etc. To summarize for the public present tonight that hasn't seen the appraisal there is three appraisal premises; the first appraisal premise is the real property market value of the established subject El Aero 32,814 square foot site lease only in terms of dollar per square foot per year; that came out to \$9,200 per year. The second appraisal premise is the market value of the lessee lease hold interest in the three subject El Aero improvements and small metal shed; that equated to \$642,000; the third appraisal premise was the combined market values, lease only, of the real property and the lessee leasehold interest in the three subject El Aero improvements and small metal shed in terms of dollar per square foot, per year. You add the property value of \$9,200 per year to the 11,632 square feet of light industrial facility at \$5.40 per square foot per year; that comes to \$62,800 per year and combined \$72,000 of total potential annual net income for subject El Aero site parcel and subject El Aero light industrial facility.

Mr. Calder stated Staff is asking the City Council to 1) accept the appraisal and 2) confirm the market values via this public hearing since we only received one appraisal report rather than two and statute does allow us to do that. Once that occurs we can move on to the subsequent item of determining which method of lease the City would like to pursue. The lease in question was voided by the City in 2007.

Mayor Franzoia noted there are three different values; are we accepting all three or choosing one.

City Manager Calder stated in this instance the Council would accept all three values; those are the three values needed to deal with the subsequent item.

Councilman Johnson questioned why the City needed an appraisal on the buildings.

Mr. Calder indicated an appraisal was needed on the improvements because if the Council chooses to lease the property through the public auction process and the current tenant on that property chooses to take those improvements down, which is one option, there needs to be a value established. If you are going to lease the property with improvements you need to know what the lease value with the improvements is going to be as well as without those improvements.

**\*\* A motion was made by Councilman Conner, seconded by Councilman Rice to accept the "Summary Appraisal Report of Three El Aero Hangar/Maintenance/Storage Improvements (and Small Metal Shed) Situated on the Established 32,813 Square Foot Site**

**at the Elko Regional Airport” and subsequent determination of the fair market value of the above referenced real property.**

**Motion passed unanimously.**

## **II. UNFINISHED BUSINESS**

- C. Review, discussion and possible selection of a property lease option for approximately 32,813 square feet of property located at Elko Regional Airport, pursuant to NRS 268, and matters related thereto. **ACTION ITEM**

During the November 27, 2007 City Council Meeting, Staff was directed to work with the City’s independent legal counsel, Ann Morgan, to provide options to re-lease approximately 32,813 square feet of property located at Elko Regional Airport, generally identified as the El Aero Helicopter Services Area, but more specifically identified as the “Three El Aero Hangar/Maintenance/Storage Improvements (and Small Metal Shed),” as referenced in the December 12, 2008 Summary Appraisal Report conducted by Mr. William M. Tessler, Certified General Appraiser.

Once the fair market value has been determined during a public hearing, the City of Elko can proceed with the lease of property in accordance with NRS 268.061 – 268.062 (public auction) or in accordance with NRS 268.063 (economic development). Either option will require the future adoption of a resolution stating that the lease will be in the best interest of the City of Elko. However, in order to proceed, Staff requires direction from the City Council as to which option to pursue.

Relevant sections of the November 27, 2007 City Council Meeting Minutes and NRS 268.048 – 268.065 have been included in the agenda packet for review. A copy of the appraisal has been included in Section 5C of the agenda packet. CC

City Manager Calder advised the statute included in the packet outlines the process to be used going forward; either option requires a resolution be adopted by the City Council which would have to come back at a later date. Depending on which option is chosen there is certain noticing requirements. Staff is familiar with the resolution that is used for the public auction process; we’ve used that on other properties. Ann Morgan has presented Staff with a draft of a possible resolution for the economic development exception; she believes the Council can make findings that the property in question could be leased under that statute.

Mayor Franzoia noted there are interested parties present tonight that were also present during previous discussion on this matter back in November 2007 and supported hearing from them prior to the Council making a decision.

Stewart Wilson representing El Aero Services stated they made a lease with the City in good faith as did the City back when the lease was signed in 2006. The City has since obtained an attorney’s legal opinion which they have not complained about or second-guessed as Ms. Morgan was not present. Mr. Wilson advised he had several concerns about the opinion; the factual background that was presented to her; some of the facts may not have been as he saw

them. Rather than go into the details of her opinion and his objections or concerns/revisions of it the better approach was to make note of one thing that was likely not brought up to her and likely something she would not have addressed unless it was specifically presented to her. All of the statutes the City is proceeding under except the economic development statute contain certain language in them “*except as otherwise required by federal law*” and then they proceed to describe procedures that, in his opinion, have nothing to do with federal law and could very well conflict with federal law. That raises the issue of whether or not a lease negotiated in compliance with federal law can be defeated by state law. Mr. Wilson believed that may be an issue the City would like Ms. Morgan to address before making final decisions on this. Bearing in mind that this is a federally funded airport and that there may be an issue related to what he just described; whether or not the feds have completely pre-empted the state in this area. It is not an issue the Council can decide; it is an issue for a judge. El Aero’s attitude toward business is we don’t use litigation as a business tool and only use it as a last resort. Mr. Barrows noted the final statute the City is proceeding under doesn’t mention federal law; it may be compatible with federal law except where it purports to declare leases void that may have otherwise been negotiated in compliance with federal law. Mr. Barrows stated federal standards are quite different; they don’t address market value; they are concerned with rate of return which is sufficient to make an airport self-sustaining. They are concerned with standard such as fair and reasonable and is a completely different standard than these statutes would purport to adopt. Nevertheless, in an effort to resolve this in a satisfactory manner to ourselves as we have a sizable invest out there and a substantial portion of our business at stake should it be threatened, El Aero is willing to present information that would be in accordance with NRS 268.063, the economic development statute. If the Council makes a decision in El Aero’s favor that they were entitled to support and retention or expansion of the existing commercial enterprise at the airport; in the end there is no harm no foul. If on the other hand the City elects to evict them from the property El Aero will have to defend themselves.

Mike Lattin, Canyon Construction believed the City declared the lease null and void in November 2007. El Aero had the opportunity to protest or appeal that decision at that time. Mr. Lattin believed El Aero, as reasonable people, understand they don’t have any basis for that type of appeal to the City; the lease was done in violation of the law. It was agreed to by the Council to accept the attorney’s opinion that it was in violation. As they offered no evidence to the contrary at the time Mr. Lattin believed they waived their right to appeal on that basis now. Mr. Lattin noted in regard to market value Mr. Stewart is probably correct; the FAA and the federal government don’t talk about what you have to charge for leasing property on the airport. The only point they emphasize is it must be fair to all involved. Mr. Lattin noted under previous discussion tonight the Council granted him an extension to his lease; there is a real disparity; the City is charging him close to \$0.80 per square foot to lease and offering El Aero \$0.28 per square foot; that is not fair. Mr. Lattin advised he would protest that; he is not even a competitor of El Aero and the City is charging him a rate three times of what El Aero is paying. Mr. Lattin believed if El Aero wanted to be reasonable they should come to the table and say they will pay the same rate as Mike Lattin is paying; that would be fair and probably reasonable for the property; no one wants to pay any more than they have to but we have to be reasonable and fair with the public and the taxpayer. It’s the taxpayer that suffers the consequences if the City ends up subsidizing a private business entity. We are getting very close to the point tonight that we may be talking about subsidizing El Aero. Mr. Lattin commented he would appeal the Council not to go down that route; it is setting a bad precedent if you do. Why should you subsidize El Aero and not subsidize somebody else i.e. him; he would like that subsidy also.

It was Mr. Lattin's opinion the buildings at this point in time belong to the City; when El Aero's lease was declared null and void they technically had so many days to remove their property from the site or else it became the City's property. Technically the buildings are now the City's and the City should benefit from value of those buildings in leasing this ground to whomever. Mr. Lattin asked the Council to keep in mind the public's position on this and do the right thing in fairness to them and anybody else that leases ground at the airport.

Mayor Franzoia advised that by accepting a ruling by an attorney does not mean the City accepts there was a violation; it hasn't been proven. It is just avoiding the consequences of trying to see if it is proven by being silly and getting yourself in a position that has to be adjudicated in a court; which then determines that somebody is right and somebody is wrong. The City has been there a number of times where we've avoided those things and taken to heart what counsel recommends one way or the other; or we could disagree with it and take our chances. In this instance there is no violation of the law; the City at the time we decided to do that didn't want to take the risk of going into a potential lawsuit, but then again, it doesn't eliminate that potential from ever happening because it still hasn't been rectified as brought up by Mr. Lattin and Mr. Wilson. Regarding the buildings being owned even though the lease has been null and void; the City did not call in the lease. Mayor Franzoia directed that question to legal counsel; because the City said cease and desist and because it was voided by the Council, the lack of doing that keeps all terms and conditions of the lease in place does it not?

City Attorney Goicoechea stated he has not been involved in this issue due to a conflict of interest; Ann Morgan is the attorney for the City on this matter.

Mayor Franzoia acknowledged Mr. Goicoechea was not the City's legal counsel on this item but the question was in general; not specific to this. In practices of leases, if the term of lease expires or is determined to be null and void because of a legal question; unless the landlord (and not necessarily the City in this presentation) can immediately give notice to vacate said premises etc. the rules would be applicable if the lease said once you are vacated you have the right to remove your property and put the land back the way, if the lease allowed that. Being that it went from month to month because of lack of the City chasing them out, those requirements in a lease even though the term has been mitigated because of the action, the basic intent of it i.e. payment dates, how much etc., allowances and improvements or removals still go forward don't they normally in leases like that?

City Attorney Goicoechea attempted to answer Mayor Franzoia's question; the City has not taken any action to acquire and take over the properties from El Aero so the City doesn't own the buildings.

Mayor Franzoia questioned if the City did because the lease was null and void or someone goes from month to month and you decide to say we are going to use if for something else, can somebody still use those agreements because you are still abiding by the terms i.e. payment and due date, that if it says they can remove or cannot remove the property do they still have that choice where the City doesn't have that determination.

Mr. Goicoechea commented in this case it is clear that if the City attempted to take over those properties there would be a law suit and the court would determine whether or not the City could take over the properties that are on the City's real property.

Mayor Franzoia advised that question has been brought up because if the lease agreement allows for removal by the occupant; which is a standard deal in most leases. Does El Aero have the right to do that today; to take out the improvements? Mayor Franzoia acknowledged Mr. Goicoechea had a conflict of interest but his question addressed a standard business practice.

Mr. Goicoechea believed what Mayor Franzoia said regarding standard leases is correct; this lease has been declared null and void. Mr. Goicoechea believed El Aero's position would be they owned those buildings and have the right to remove them; it is probably not what they want to do but he wasn't sure the City would be opposed to that either. Mr. Goicoechea wasn't sure that would even become an issue; the real issue on the agenda is which method does the City want to proceed with; under the public auction process or under the exception Ann Morgan has said the City can proceed under.

Mayor Franzoia understood that but all this has to be a part of it to make that determination; there is three different ways to go; lease just the ground at \$9,200 per year which means you are not going to renew the lease and are going to put it to public auction without a building because that is what it is appraised for. Or is it beneficial to the City to discuss not having it as a land lease which is going to favor something with the existing tenant because we are making the decision to include the value of the structure on the next generation of agreements with whomever. Mayor Franzoia noted whichever direction the City chose there are issues and he wants to be careful we are going the right way on the long term side of the equation.

Councilman Rice believed the provisions of NRS 268.063 provide an opportunity to enter into the standard lease with the improvements on it; we are leasing the land. That is an option our attorney provided for us; using redevelopment and economic development. We don't have to determine whether or not we are going to enter into a lease for the land or the land with the improvements on it; simply enter into a lease for the land as stated in the agenda; leasing approximately 32,000 square feet of property and then provide Staff with direction to draft a lease as provided for in NRS 268.063.

Mayor Franzoia stated that was assuming you are going to put it back to the current tenant; 268.063 favors the existing tenant.

Councilman Rice indicated perhaps that was the conversation the Council should be having.

Mayor Franzoia advised that is what he is trying to determine. That is why the appraisal was so complex; there are multiple options to be considered to get to where we want to be based on how we want to see the airport or how we want to aid or support the interested parties; and looking at the long term benefits back to the airport property.

Councilman Rice believed it was not so much as aiding the current tenant but what is the best service that is going to be provided to the community. We are a small community with one business that provides this service to us; the particular business has a long history of good service.

Councilman Elquist stated he was maintaining the same position on this issue as when it was previously discussed; we work within the state law to try and make things right. We have risks with either decision. Stay with the intent back in the original negotiation of the lease; it went on too long without question between El Aero and Staff, but there wasn't any competition at the time; there was a loophole that was broken that eventually resulted in the City declaring the lease null and void. Mr. Elquist wanted to make that right; the original negotiations were fair; no matter what decision the Council makes tonight there is risk with lawsuits. Mr. Elquist stated he was supportive of the economic development statute and renewing the lease as originally agreed upon. Mr. Elquist acknowledged there are some costs to the taxpayer. Mr. Elquist stated there was no conspiracy in this case; there was intent to lease it originally; let's get that up and let the business carry on like they planned at the time and what they thought was a good lease. Mr. Elquist understood Mr. Lattin's concerns but believed the right direction was the economic development method and get it back on the track El Aero and the City thought it was on originally.

Councilman Conner agreed with Mr. Elquist and stated he also was in support of the economic development process.

Councilman Johnson advised he was not sold on the economic development side of it. The City should go back and look at how the negotiations went from the time the lease agreement was supposed to come up and when it finally became drafted. Before this issue ever came to the attention of Council he met with El Aero on a different issue; it indicated negotiations were not proceeding as they should have and it was because of the City of Elko. Mr. Johnson believed it was not fair to the tenant that because the City did not respond in a timely manner due to other issues at the airport at that time. Mr. Johnson believed the City of Elko needs to make a decision, should have made that decision back when it was decided to make this agreement null and void; move forward and get the lease agreement in place. Mr. Johnson liked the fact an appraisal is on the table and the appraised value of that leased ground should be the rent amount; possibly that rent amount should go back to agreement of 2006 or 2007. The City of Elko should receive a fair compensation based on an appraisal. Mr. Johnson commented if you go down the path of economic development it is a weak case; the economic statute says that "if you are challenged and if it doesn't hold up, it then talks about the zoning would be over-turned for five years. If you go down that route and the City loses Mr. Johnson was unsure what you do with that on the end of it.

Mayor Franzoia advised the lease negotiations in 2001 were interrupted due to the events of 9/11. From Staff's perspective it was a combination of the requirements of the federal government at the time and the rules were changing on a weekly basis; FAA alerts were coming out repeatedly. Staff was focusing on that because of the risk of the FAA coming down on us; everything else went on hold. When they tried to talk it was difficult to schedule a time to meet together; El Aero had their issues and couldn't make it, the City had issues and couldn't make it so it drug on. The events we were going through made it difficult; the intent was there.

Mayor Franzoia questioned Councilman Johnson if he wasn't supportive of economic development was he considering renegotiating the lease.

Councilman Johnson reminded the Council in previous discussions he was opposed to the determination the lease was null and void; it was based on what he had learned up to that point

even before the issue came to a head; he brought it as credibility. The City has to be careful if they go down the path of economic development; he doesn't see this as meeting economic development. There is a ramification on the tail-end of it that if you make the decision based on economic development it is a weaker case with ramifications; if you lose that then that property can't be zoned for what the intended use was for. We don't know how much interest there is in this property but there are some other indicators that should come into place first before the City of Elko decided that based on an economic development this is why we are leasing to El Aero. Mr. Johnson clarified his belief; because the City of Elko acted in slow faith in negotiating a lease that the City of Elko is the one that caused this. Mr. Johnson agreed we should take a hard look at what the lease rate is.

Mayor Franzoia commented if the City made a mistake it makes sense to rectify the mistake and have this re-leased. The economic value side as to the rate paid is already established by this appraisal.

Councilman Johnson verified that may be, but in his opinion, the mistake the City made is when Council made the decision the agreement was null and void. If we rectify that particular decision, that the lease as written, solely stands; maybe that is what it is and is a better course than economic development; which is a dangerous course for the City to take.

Stewart Wilson commented on a statement by Mr. Lattin that the statute had expired on their efforts to defend themselves; the fact is the statute of limitations for breach of this agreement is six years. At this point El Aero does not even regard the declaration that it was void as being in breach because it was not implemented. It was a declaration but there was nothing in effect on it; we continued to pay the rent, continued to get the benefits, we continued to perform. The lease was negotiated under the federal law and requires adjustment on a periodic basis; that's already in there so when you get to negotiating what the market value of this leased property is; whenever your rent is going to float to whatever the prevailing market is then it is always going to be at market value. The federal law requires that be adjusted and is why it was done. Mr. Wilson agreed there maybe policy issues with making the decision this is an economic development worthy situation when in fact what it is, is an attempt to rectify a situation that no one expected they were getting into. If the Council is unable to resolve this tonight Mr. Wilson recommended speaking with the attorney for her opinion specifically on how the federal law impacts this.

Mayor Franzoia agreed there was merit to obtaining an opinion from Ann Morgan regarding federal law on this matter.

City Manager Calder advised, although not involved directly with the initial negotiations which included Chris Jensen, Glen Guttry & Bob Goicoechea, he researched the history of those negotiations and like Mr. Wilson believed those negotiations were in good faith. We were actually negotiating an FBO agreement which included the helicopter services lease. For a number of different reasons, not just 9/11, but differences in philosophies of how property should be leased at the airport between airport management and El Aero there were delays on both sides. Nobody could point to the City delaying it; the argument could be made that El Aero delayed it. It wasn't until sometime in 2005 while Mr. Guttry was still on the City Council there was a sense of urgency to get this resolved. Staff tried to get the FBO agreement resolved, the one item that was a hang-up at the time was the helicopter services lease involved with that. It

wasn't necessarily a hang-up but was an item that could be resolved and taken off the table and is why that lease was broken out of the FBO agreement; to try and narrow the scope on the FBO side so we could get the FBO agreement adopted. Both sides were negotiating in good faith; did it take too long; absolutely. The issue at hand tonight is based on a series of actions the City Council took back in 2007; the Council declared the May 1, 2006 Helicopter Services Agreement null and void and directed Staff to work with our legal counsel Ann Morgan to release the property compliant with Nevada law. In order to comply with Nevada law we had to get the appraisal which took a long time to get completed. We have the appraisal and as it is worded on tonight's agenda a decision needs to be made on which direction the City wants to lease the property; Ann Morgan is confident there are only two options. Either way, Staff will need to bring a resolution back to the Council for consideration at a subsequent meeting; we then have to go through a process to actually get the lease back before the Council for approval. Staff needs direction on which way to go. Certainly Mr. Wilson brings up a good question about the federal side of it, whether federal law trumps state law; there are no cases in Nevada that answer that question so it would probably be answered in court if that were the case. Mr. Calder believed Ann Morgan would willingly render an opinion on the matter but was unsure that got us any closer to where we intended to go back in 2007 which was to release the property compliant with Nevada law.

Mayor Franzoia indicated he was opposed to the risk associated with the public auction process and expressed his support of comments by Councilman Elquist and Councilman Conner related to economic development.

Councilman Elquist stated we went to an outside legal opinion to conclude the lease was null and void which heavily influences him to act on this previously. We have that same outside legal opinion saying the economic development path is defensible; he agrees with that opinion. We paid for an outside legal opinion because we knew we were on a thin area from our expertise.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Elquist to enter into a property lease agreement for approximately 32,813 square feet of property located at the Elko Regional Airport and give Staff direction to draw up the lease in accordance with NRS 268.063 "Sale and Lease of disposable real property for redevelopment or economic development".**

After the motion and before a vote was taken City Manager Calder indicated if the City is going this route the next step would be direction to Staff to bring a resolution back to the City Council at a subsequent meeting utilizing the economic development exception for Council action. At that point, once the Council has taken action on the resolution it will trigger the process of drafting a lease and all those issues.

**\*\* Councilman Rice amended the motion to include; and give Staff direction to draft a resolution, Councilman Elquist's second stood.**

**Motion passed 4 to 1.  
Councilman Johnson voted against.**

Following the motion and before a vote was taken Mike Lattin questioned if a public hearing had to be held authorizing the formation of the district for the purpose of economic development.

City Manager Calder stated to his knowledge it did not.

Mike Lattin stated his belief the Council was not following the statute.

City Manager Calder advised the resolution will be in a public meeting and available for public review; Council will have to take public comment on the matter.

Mike Lattin requested copies of the recommendation/opinion from Ann Morgan.

City Manager Calder advised Ms. Morgan has not provided a written recommendation; she has provided two options stating the City can go either way and justify either way. Ms. Morgan has indicated Staff can prepare a resolution that will be defensible for economic development.

Mike Lattin again stated his belief that was not the way the statute is written but Ms. Morgan can address that. Mr. Lattin believed Ms. Morgan should also address the concern that if the City goes the way of economic development they are definitely granting favorable treatment to one party; is that in violation of the FAA standards. Mr. Lattin stated the Council is getting on thin ice.

Mayor Franzoia informed Mr. Lattin the City grants the same thing with an airline coming to Elko; they can't come here just because we have a commercial airport; they have to be granted that right by the City.

City Manager Calder commented it is important not to confuse the issue of the FBO with the this lease; they are separate issues because they were broken out and is why the Council took action to null and void the lease; it wasn't legal because it was broken out of the FBO agreement. The FBO agreement is a separate issue; it deals with exclusive use at airports etc. Staff has had discussions with Ann Morgan regarding that and she basically said she is comfortable the City of Elko is complying with the FAA standards for the following reasons; the City prepared minimum standards that comply with the FAA standards with regard to FBO's. When the City went out for requests for proposals for the FBO we invited bids from potential FBO's and the public; they were required to comply with minimum standards. At that time the only response was from El Aero; El Aero was the responsive bidder and the City accepted the bid. And finally, the FAA allows the City and entitles the City to manage it's airfield to the best interest of the public. Certainly that could be challenged but she is comfortable on that issue as well. We are not dealing with an FBO agreement; we are dealing with a ground lease of the property.

Councilman Johnson again expressed concern over the economic development process. This is the first time we have had this discussion.

Mayor Franzoia stated we have a long-term helicopter operation that serves the county and beyond and has been an integral part of it that we cannot do without. There is no assurance that somebody else picking the void up is going to have the reputation to do as well as what is existing. That is a huge economic value; the only helicopter operation that is private outside of Air Ambulance that is in Elko; it is crucial to us, to mining. With the down turn in the economy it is a valid deal that it is a huge economic benefit to the community; it could go away if we take another action. Mayor Franzoia stated that was a risk he is not willing to take.

Councilman Rice indicated there would be ample opportunity to discuss the matter further when the resolution comes back before the Council.

Mayor Franzoia noted it has been brought up as to what the opinions of legal counsel are; one way to find out is to go forward but it doesn't preclude us from going backwards as well if there are questions with the resolution.

Councilman Johnson indicated after reading further; if economic development is challenged and not upheld then the decision is void; it doesn't have a time frame to it. Mr. Johnson stated he would not go down that path but he will respect the majority vote of Council.

### **III. NEW BUSINESS**

- D. Review, consideration, and possible acceptance of a Deed of Dedication from Home Depot USA, Inc. for the widening Jennings Way adjacent to the Home Depot Development, and matters related thereto. **ACTION ITEM**

The City of Elko requires additional Right-of-Way on the east side of Jennings Way adjacent to the Home Depot development to accommodate road widening including the sidewalk. The requirement for additional Right-of-Way was addressed as Item 2 of the Road Improvements Agreement between the City of Elko and Home Depot USA. SAW

Development Manager Wilkinson advised this was a housekeeping issue required under the Road Improvements Agreement.

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Rice to accept a Deed of Dedication from Home Depot USA, Inc. for the widening Jennings Way adjacent to the Home Depot Development.**

**Motion passed unanimously.**

- E. Review, discussion, and possible action to support, not support, or remain neutral with regard to Assembly Bill 256, and matters related thereto. **ACTION ITEM**

Assembly Bill 256, if passed by the Nevada State Legislature, will modify the City of Elko's election cycle and election dates to coincide with the statewide election cycle. A copy of the bill, a portion of the Elko City Charter, and a memo from Shanell Owen, City Clerk has been enclosed in the agenda packet for review. CC

Mayor Franzoia noted nothing changes in the code other than the dates i.e. month when things start and all our terms get extended for eighteen months across the board.

Mayor Franzoia questioned the cost if we participate with Elko County on their election cycle.

City Clerk Owen stated the cost to the City would be \$1,500 to \$2,500.

Mayor Franzoia advised Ms. Owen has determined the machines currently used by the City will not be serviced after this year; replacement cost is estimated \$150,000 for electronic and \$50,000 for those utilizing pencil markings.

City Manager Calder advised he checked the bill tracking for the status of this bill; it was amended and is still under consideration. It has not moved to the Senate yet and could get held up there. It is still alive and what we wanted to provide to our lobbyist at a minimum was extension of the Council's terms. The Council needs to determine their position on the matter and Staff will relay that to our lobbyist.

Mayor Franzoia advised this item came before the Council in 2003; the Council opposed it at that time as they didn't want to get lost among the many positions on a county and state-wide election. However, the other argument at that time was more people turn out to vote in those elections than in a City election.

Councilman Rice noted there is a considerable cost savings with going on the County cycle.

Councilman Conner supported the cost savings but personally believed it took away from the City election. The City elections are our government of the people of the City of Elko and that is important.

Councilman Rice acknowledged a state or national election does bring out more voters; generally the turnout for City elections is poor. It would probably change the dynamic of campaigns; you would have to be out there more and louder.

Councilman Elquist believed it was a neutral issue if there wasn't such a significant cost. The offset is we get more turnout one way and more focus the other way; they probably balance each other out. Unlike four years ago, we have some big ticket items coming up and from the rate payers standpoint he would rather see the money go towards some of our issues i.e. public safety or infrastructure etc. Councilman Elquist expressed support of the bill.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Johnson that Elko City Council voices their support for Assembly Bill 256.**

**Motion passed unanimously.**

#### **IV. RESOLUTIONS AND ORDINANCES**

- B. First reading of Ordinance 705, an ordinance amending Title 4, Chapter 6, Sections 10 and 13 of the Elko City Code respectively entitled, "Allocation and Use of Transient Lodging Tax Funds"; and "Uses and Purposes of Transient Lodging Tax Proceeds," by amending the use of the 2% Elko Regional Airport Debt Service Transient Lodging Tax Fund to allow the Elko Convention and Visitor's Authority to donate a minimum of \$25,000, or up to a maximum of 25% of their allocation for their facility expansion fund to the University of Nevada Fire Science Academy, and adding a Sunset Clause for the donation, and matters related thereto. **ACTION ITEM**

Staff was directed by Council on October 23, 2008 to bring back an ordinance allowing the Elko Convention and Visitor's Authority to donate a portion of their facility expansion fund to the University of Nevada Fire Science Academy, contingent on the Academy staying open for three years. Council also directed there to be a Sunset Clause of three years for that donation. Ordinance 705 reflects the direction given to Staff. DS

Councilman Elquist indicated this was well discussed at the ECVA board meetings and falls right in line with the wishes of that board.

**\*\* A motion was made by Councilman Elquist, seconded by Councilman Conner to set for second reading, public hearing and possible adoption Ordinance 705, an ordinance amending Title 4, Chapter 6, Sections 10 and 13 of the Elko City Code respectively entitled, "Allocation and Use of Transient Lodging Tax Funds"; and "Uses and Purposes of Transient Lodging Tax Proceeds," by amending the use of the 2% Elko Regional Airport Debt Service Transient Lodging Tax Fund to allow the Elko Convention and Visitor's Authority to donate a minimum of \$25,000, or up to a maximum of 25% of their allocation for their facility expansion fund to the University of Nevada Fire Science Academy, and adding a Sunset Clause for the donation.**

**Motion passed unanimously.**

## **I. APPROPRIATIONS**

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

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

**Motion passed unanimously.**

## **VI. REPORTS**

- A. Mayor –  
NNTC & NDOT – City's function
- B. City Manager –  
Legislative Update  
Human Resources Manager retiring @ month end

## **ADJOURNMENT**

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

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Mayor Michael J. Franzoia

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Shanell Owen, City Clerk