

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

SS April 24, 2018

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, April 24, 2018.

This meeting was called to order by Mayor Chris Johnson.

CALL TO ORDER

ROLL CALL

Mayor Present: Chris J. Johnson

Council Present: Councilman John Rice
Councilwoman Simons
Councilman Robert Schmidlein
Councilman Reece Keener

City Staff Present: Curtis Calder, City Manager
Scott Wilkinson, Assistant City Manager
Debbie Henseler, Business License Technician
Dennis Strickland, Public Works Director
Jonnye Jund, Administrative Services Director
Bob Thibault, Civil Engineer
Aubree Barnum, Human Resources Manager
Mike Hess, Landfill Superintendent
Cathy Laughlin, City Planner
Mike Palhegyi, Police Lieutenant
Jeremy Draper, Development Manager
Jeff Ford, Building Official
Matt Griego, Fire Chief
John Holmes, Fire Marshal
James Wiley, Parks and Recreation Director
Dave Stanton, City Attorney
Candi Quilici, Accounting Supervisor
Jim Foster, Airport Manager
Diann Byington, Recording Secretary

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this

item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

There were no public comments.

APPROVAL OF MINUTES: April 10, 2018 **Regular Session**

The minutes were approved by general consent.

I. PRESENTATIONS

- A. A reading of a proclamation in recognition of Arbor Day, and matters related thereto. **INFORMATION ONLY – NON-ACTION ITEM**

Mayor Johnson read the proclamation.

- B. A reading of a proclamation in recognition of Parkinson’s Awareness Month, and matters related thereto. **INFORMATION ONLY – NON-ACTION ITEM**

Mayor Johnson read the proclamation and presented a copy to a representative.

The representative said there are a number of folks in Elko, Elko County and surrounding areas that participate in their Parkinson’s Support Group. There are caregivers trying to help these folks as much as they can. The goal is quality of life and to continue living. He thanked the Mayor and Council.

III. PERSONNEL

- A. Review, consideration, and possible approval of the revised Personal Appearance Policy, Chapter 2.23 of the City of Elko Personnel Policy Manual, and matters related thereto. **FOR POSSIBLE ACTION**

The Personal Appearance Policy has been revised to better align with our organization’s workforce and acceptable personal appearance standards. AB

Aubree Barnum, Human Resources Manager, explained the changes to the policy. Staff recommended approval.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to approve the revised Personnel Policy, Chapter 2.23, Personal Appearance Policy, as presented effective April 24, 2018.**

The motion passed unanimously. (5-0)

IV. APPROPRIATIONS

- B. Review, consideration, and possible approval to award a bid for the Reuse Pipeline and Sanitary Sewer to the Elko Sports Complex-Railroad and River Crossing project, and matters related thereto. **FOR POSSIBLE ACTION**

Bids were opened on April 13, 2018. A Bid Tally Sheet is included as supplemental agenda information. SAW

Scott Wilkinson, Assistant City Manager, explained there were four bids presented. There was a bid tabulation sheet in the packet. The bids were evaluated by staff and it was determined that Ruby Dome was the low, responsive bidder. The recommendation is to award that contract to Ruby Dome Construction in the amount of \$1,117,267.50.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to award the bid to Ruby Dome Construction for the Elko Sports Complex River Crossing Project, in the amount of \$1,117,267.50.**

The motion passed unanimously. (5-0)

- C. Review, consideration, and possible authorization for the creation of a force account for the construction of the Sports Complex, and matters related thereto. **FOR POSSIBLE ACTION**

At the April 10, 2018 Council meeting, Granite Construction was awarded a contract for the construction of the Sports Complex. Due to the size and complexity of the project, Staff would like to establish a Force Account of \$100,000 to allow for the approval of Change Orders beyond our standard policy. Prior to approval, the Project Management Team will review all change orders for the City. BT

Bob Thibault, Civil Engineer, explained it was suggested that they do this to keep this project similar to what was done for the Police Station construction. There was a force account on that project. With this being a similarly large project, they are hoping to do the same.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to authorize the use of a force account for the construction of the Sports Complex in the amount of \$100,000.**

The motion passed unanimously. (5-0)

- D. Review, consideration, and possible authorization for Arts and Culture Advisory Board to contribute \$500 toward the completion of landscaping improvements around the Sesquicentennial Sagebrush, and matters related thereto. **FOR POSSIBLE ACTION**

At their April 4, 2018 meeting, the Arts and Culture Advisory Board took action to forward a recommendation to the Council to allocate \$500 from their budget to go towards the completion of improvements around the Sesquicentennial Sagebrush to be completed during Clean Up Green Up. JD

Jeremy Draper, Development Manager, explained this was something that the Arts and Culture Advisory Board has been working to get completed for some time. There was a landscaping component that could not be funded at the time. The Arts and Culture Advisory Board would like to contribute some funds.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to allocate \$500 to the Sesquicentennial Sagebrush Landscaping Project.**

The motion passed unanimously. (5-0)

- E. Review, consideration, and possible authorization for Staff to solicit bids for the Public Works Department Preventive Maintenance Project 2018, to apply Micro Slurry Seal to select City streets, and matters related thereto. **FOR POSSIBLE ACTION**

Micro Slurry Seal is a preventive maintenance treatment, which will be applied to approximately 40,466 l.f. of selected city streets, plus the parking corridor between 6th Street and 7th Street, which were identified and adopted as part of the City of Elko street inventory. This work will be completed after July 1, 2018. DS

Dennis Strickland, Public Works Director, explained they will be near that 40,000 number. We will see come bid day but the selection of streets will be based on the inventory and priority one streets will be selected and treated as needed.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to authorize staff to solicit bids for the Public Works Department Street Maintenance Project 2018.**

The motion passed unanimously. (5-0)

VI. NEW BUSINESS

- C. Review, consideration, and possible authorization to enter into an Agreement to Install Improvements and Performance/Maintenance Guarantees for subdivision improvements associated with the Tower Hill Subdivision Unit 1, and matters related thereto. **FOR POSSIBLE ACTION**

Elko City Code 3-3-44 requires the subdivider to have executed and filed an agreement between the subdivider and the City for the required subdivision improvements, included stipulations on the timeframe for when those improvements are to be completed, and to post a performance guarantee in accordance with Elko City Code 3-3-45. As a condition of the Planning Commission's approval of Tower Hill Unit 1, the Performance Agreement is to be submitted to the City Council in conjunction with the final plat. The subdivider has indicated that he would provide a cash security to satisfy 3-3-45 of Elko City Code. The agreement has been drafted based on that assumption.

A second requirement forwarded by the Planning Commission is for the developer to enter into the Agreement to Install Improvements and Performance/Maintenance Guarantees within 30 days of approval of the final plat by the City Council. JD

Jeremy Draper, Development Manager, explained the developer, Scott MacRichie, was in the audience with his legal counsel, Katie McConnell. There are two agreements presented as backup to the agenda item. The first is from our attorney and the next one is from the developer with some things they would like included in the agreement. He went over a staff memo in detail that was sent out earlier in the day.

Scott Wilkinson, Assistant City Manager, confirmed the agreement for Tower Hill that was executed by JTM in December 2016, was not structured the same as the Eight Mile Estates.

Mr. Draper agreed and said they had used it as a starting point and made modifications from there. He continued going over the memo. Just last week, Tom Ballew provided backup that Tower Hills is getting closer to completion. All of the underground utilities are completed. The type II base was being spread. Based on the engineer's estimate that was provided for the project, we show about 47% of the required improvements have been completed to date.

Mr. Wilkinson clarified that none of the work has been certified by the engineer of record and none of the testing required to back up the certification from an engineer of record has been submitted to the City at any point during this entire process.

Mr. Draper continued going over the memo. The submitted information indicates that it is in discussions allowing for the option to reduce the performance guarantee to reflect certified improvements. None of the work has been certified or accepted by the City to date. City Staff has had difficulty enforcing the code as it pertains to the requirements of a performance agreement, security for the performance agreement and with executing the agreement within an acceptable timeframe consistent with City Code. City Staff is attempting to ensure consistent application of the code and stress the importance of the performance agreement. In this case, the developer has taken over four years to partially complete phase one of the subdivision. The City of Elko has not accepted any of the work at Tower Hill Subdivision. The developer has not caused any of the work to be certified by the engineer of record. There is \$500,000 total cost yet to be completed. The developer was unresponsive to prior attempts to execute a performance agreement in a timely manner. The prior agreement was provided to the developer in January of 2015. That was not executed until December 2016. Once executed the required security was not provided to the City.

Dave Stanton, City Attorney, wanted the developer to discuss their side of this.

Councilman Rice asked the practice prior to this, the decision by staff is now that this requirement will be uniformly enforced. The practice prior to this was that it was not uniformly enforced?

Mr. Draper answered last Fall we had Mr. Schmidt in front of council. His agreement required that full guarantee in place. He had already completed the improvements and he still had to provide that full guarantee to us.

Mr. Wilkinson said right now we have some developers that have security in place for the full amount of the work to be completed. Other subdivisions are in advance stages of completion. There have been some inconsistency. A lot of the inconsistencies is due to unresponsiveness of developers. We need to have a developer indicate to the City what type of security they are

going to provide for those performance agreements so we can execute those agreements within a 30 day timeframe.

Councilman Schmidlein asked how this development has gotten this far without having the bonds put in place. City staff has allowed this project to proceed and now we are in a middle of a nightmare trying to straighten it out.

Katie McConnell, attorney representing JTM, the developer, said Mr. Schmidt's agreement was brought up. Mr. Schmidt was present and she wasn't sure if he wanted to speak to his agreement or not. The Planning Commission action on this item was that a draft of the agreement be submitted to City Council. The Planning Commission action did not indicate that the agreement had to be approved. Based on that action they have submitted their own draft with their proposed language, which is only one paragraph difference than the City's draft. There was a lot of information provided to her from Mr. Draper this morning. It is important that Council understand what is at stake here. Should the City allow a reduction in the performance guarantee commensurate with the amount of work that is completed at the time the performance agreement is signed. They have 30 days for that performance agreement to be signed. What is a performance guarantee? It would seem to be a guarantee that the work is going to be performed. We are working with a subdivision that is going to be almost entirely completed in the next two weeks, and probably completed by the time the performance agreement is signed. This is not a subdivision that is going to be completed. She went over City Code regarding performance agreements and required improvements. The Elko City Code does not provide any guidance for a subdivision in which all or part of the work is completed prior to the execution of the performance agreement. The code only contemplates work that will be completed or will be constructed, not that has been completed or has been constructed. When we are looking at the options for the performance guarantee, we look at the performance bond. It was stated that City Staff contacted LP Insurance in Reno and that they have "clearly stated that it is entirely possible to bond for work that has not been accepted as completed by the City." JTM tried to get a performance bond from their insurance company, Adobe Insurance, and they said we can't do it. She called LP Insurance yesterday, and the response that she got was that the City staff and City Attorney contacted them and asked them some questions. She asked what was said. They said this project is the result of "staff letting things slide" and it is not definitively capable of bonding such a project and a bond like this is "a lot more work" and it is like "pushing a boulder up a hill" to get assurity to bond for this. She called them back today regarding "clearly stated that it is entirely possible to bond for work," and she answered that is not definite and "there is always a chance that the bond will be declined and the developer is going to be paying hefty premium to get a bond like this." That is a bond for work that is already completed. Next is the irrevocable letter of credit. Mr. Draper provided an email today that said he talked to somebody at Nevada Bank and Trust. She called Nevada Bank and Trust and spoke to Tom Gust. He sent a letter to JTM saying Nevada Bank and Trust no longer offers revocable or irrevocable letters of credit of terms to anyone. Mr. Gust also said that he had no idea who may or may not be looking at implementing letters of credit in this area, he can only say that he has not done a letter of credit here since 2009. We do not refer to specifics unless there is only one institution doing a particular project that they do not do. JTM did their due diligence in looking for these things and had answers that it is not available. The next one is a deposit of funds of the full cost of the required improvements. That is essentially paying for the project two times. Once when the contractors are paid and a second time to the City so they can ask for it right back. Mr. Draper hit on a lot of the issues that have gone on between the parties. In 2013, JTM began a project

called Eight Mile Estates. They only issued a 10% maintenance bond for the project. The memo today said it has since been determined that agreements structured in this manner do not meet the requirements stipulated in code and place the City at risk by not having the appropriate agreement and security in place to ensure completion of subdivision projects. That was the first time they heard of that. She mentioned several other subdivision agreements that did not provide security for the full cost. The City allowed this pattern and course of conduct at least until November 2016. The code has not changed. This is a practice that has gone on for about a decade. August of 2017, there was an email that said the performance guarantee must be for the full cost of the required improvements but the next sentence said that the City can allow for a reduction in the performance guarantee. This was after construction had already begun. December 2017 City Staff contends that the City Attorney had determined that the method of securing the project was reviewed and was not in strict compliance with Elko City Code 3-3-45. When she inquired about it she was told it was an operational issue.

Tom Ballew, High Desert Engineering, spoke about the project and what has been completed. He also explained what still needs to be completed. Certification will come at the completion of the work unless he is directed to do something in the interim. Standard procedure is to do that when the work is complete.

Mr. Wilkinson asked how many days does it take to get concrete strength tests back.

Mr. Ballew answered typically they take three cylinders at each location. The first is broke at seven days. If they see an issue they may break one at fourteen but typically they wait until twenty-eight to break the second one. The third would be a spare in case they need it.

Mr. Wilkinson said they are twenty-eight days out from knowing if the concrete meets strength, as of today, correct?

Mr. Ballew answered possibly. They see concrete strength at seven days, sometimes that meets the requirement.

Councilman Schmidlein asked what has been certified to date. Is the 47% completed what you have certified?

Mr. Ballew answered he has certified all of the underground. This certification package has not been submitted to the City. They have done all of the pressure testing on the water lines. They have done the manual testing on the sewers. They have done all of the compaction testing on the subgrades and the gravels under the sidewalks. The items he lists as 100% includes the testing and the inspection to be able to say that is 100%. He has not provided that to the City because that is normally done at the end of the project.

Ms. McConnell said JTM has relied on what the statements of the City in developing this subdivision. The code has not changed but the interpretation has changed and now a bond for the full amount would now be required. She is requesting to allow for a provision in the performance agreement for some type of a reduction in the amount of the performance guarantee, however that performance guarantee be presented to the City, for items that are completed, certified at the time the agreement is executed, rather than the full cost of the improvements. They are not disputing that JTM should enter into an agreement within 30 days

of the Council action on the map. They just asked for what they have done for at least the last ten years. This changed mid-course for JTM. This is what the City allowed for all developers. JTM will have completed most or all of the improvements within the timeframe that the agreement will be executed. They are not asking for this forever. They get that this is what City staff is now implementing. She felt this was a reasonable request. There was never a meeting with the developers explaining that this will change. This has all come from internal communications between staff and her client. She requested that Council approve her draft. The dollar amount is not in there because it is not known what that dollar amount will be when the agreement is executed. Mr. Ballew's notes today say the project is more than 64% completed as of today.

Councilman Rice asked if JTM is seeking a performance bond cost that would cover the remaining work.

Ms. McConnell repeated that they want to bond what has not been completed at the time the agreement is executed. Everything has been paid for up front so why do they need to pay for it twice? The work will be certified by the engineer at the time the agreement is executed. We have done this backwards basically.

Councilwoman Simons asked if the work will be completed at the time the agreement is signed?

Ms. McConnell said that is correct.

Mr. Wilkinson made some points to Council about what their determination should be. We need to have a date certain with an approval of a preliminary plat. You have to have a security amount for the work that is not completed: the full amount. The Development Manager looked at that project and determined that it is approximately 50% completed on a dollar amount. We are talking about a security of a half a million dollars, \$521,000, assuming the rest of the work can be certified and can be accepted by the City. If we are going to approve a final plat today, we need to have a performance agreement in place supporting that final plat and moving forward. If we are going to determine what the final amount will be at some point in the future, it still has to come back to City Council for a final amount determination. In the meantime we are just being strung along. It is difficult to get these performance agreements executed and secured in a timely manner. That is why they will all be coming back to City Council going forward.

Councilman Rice said Mr. Ballew stated that the project is about 64% complete as of today. He asked Mr. Wilkinson where he got the \$521,000.

Councilman Schmidlein answered that is roughly 50% of the project.

Mr. Wilkinson said he thought there was about \$25,000 that is not included in the engineer's estimate that is a public improvement on the state route.

Mr. Draper said that was included in the \$521,000.

Councilman Rice asked Mr. Wilkinson if this was handled as he wanted it to be handled by the staff.

Mr. Wilkinson answered no.

Councilman Schmidlein wanted some clarification. If we come to some sort of agreement accepting 50% completion, they can obtain a bond to complete the work at a reduced amount. He wanted to see the 10% bond posted for the work completed.

Ms. McConnell said it's not a 10% bond. It is 10% of the whole project needs to be posted as a maintenance bond. Mr. Ballew pointed out that the 50% completion was from last week. We are at 64% completion.

Councilman Schmidlein said that was true but Mr. Ballew cannot certify the concrete that has been poured for 28 days. Sixty-four percent may be complete but he cannot guarantee it at this moment.

Ms. McConnell said they have thirty days to execute the performance agreement. It doesn't have to be executed today. They are asking for the permissive language in the agreement that says whatever is deemed complete between Mr. Draper and Mr. Ballew, that we allow a reduction of that security, that performance guarantee. That doesn't have to come back because the engineer certifies what the amount was to begin with and what has been done. The \$521,000 came from Mr. Draper, it didn't come from Mr. Ballew. Mr. Wilkinson said the developer has strung the City along but up to now the property is still his property.

Howard Schmidt, 6094 E. Torrey Pines Circle, Draper, UT, felt everyone was kind of missing the point. This subdivision has not been recorded and it is not City property. The City doesn't need a bond on it until this plat is recorded. The code is anticipating that they will record this plat and record the public improvements and post the performance bond, and then develop and start selling lots. The City owns the street right away and we certify that all these things are going in. That has been done many times. Generally speaking, we found it is difficult to get the bonding. The City has allowed us to meet all of the agreements, come up with an agreeable plat that is ready to record and then to the work and put in all of the improvements. The skin is on him to put it in. The City looks at it and accepts the work and then they post their 10% bond. He was hit with that last year and he had to come up with \$350,000 at the last minute to record a plat. Until the project is completed, it is their project. They ran into one at Golden Hills that frustrated the City but the City didn't have to go fix that. They just waited until somebody came along and bought it, fixed it and got it accepted. As long as the improvements are done before the plat is recorded, that meets the City Code. As long as the work is done and accepted, that can be recorded.

Mr. Wilkinson said what is lost is these performance agreements are intended to stipulate time for completion so that we have orderly and timely development in the City of Elko. They are also required so that we get maps recorded, we get right-of-ways and easements, etc., so that the City can choose at it's option to complete improvements when they are not completed. When you are extending the growth of your city from the core area, and people are subdividing and coming to the City and saying they want to subdivide it and they don't perform, everything behind that dies. You can't develop it. It isn't just about certifying a plat. It is about setting the stage for development and seeing that development move forward in a timely manner and allow for additional development to continue.

Mr. Stanton said everyone agrees this was done backwards. We shouldn't be here discussing this right now. If you take a look at 3-3-45-A1, it says performance or surety bond in an amount deemed sufficient by the City Engineer to cover but in no case be less than the full cost of required improvements, engineering, inspections, incidentals expenses and replacement and repair of any existing streets and utilities or other improvement which may be damaged during construction of required improvements. The latest date to provide this performance guarantee is prior to certification of the final plat. It is really not intended to work that way because it is still the full amount. You don't want to require the full amount, change the code. This code, as it is written right now, says the full amount. The fact that it may have been not strictly enforced years ago, that happens. It is not unique to Elko. The City has started enforcing this uniformly. Cities get into trouble by picking and choosing who you are going to give a break to. Then you start running into discriminatory enforcement issues. Just because we may have been lax in the past, that happens and it is not a constitutional issue. Enforcing something disparately, treating one person differently, that's an issue. That is his concern here. This language reads full cost of required improvements and so on. He doesn't see any other way to read that. It makes sense to enter into a performance agreement before you start the work. You post the bond to make sure if there are any problems down the road that the City can come in and fix them. We are being asked in this case, to take the developers word for it. To have a developer come in and say they have done the work and keep going until they are in crisis mode and they have to do all of this work that should have been done a long time ago. In this case, as everybody has seen, there is an agreement dated December 30, 2016, that this developer signed and the amount of the performance guarantee is the full amount of the engineer's estimate. There was an understanding on the part of this developer that the full amount of the performance guarantee would be deposited with the City. The final plat expired because of a time limit in the NRS. Now we are in a separate process and we are being asked to disregard what our City Code says. If the City Council is going to interpret this differently than the way he is reading it, he asked that the Council make that finding on the record. Otherwise he sees that it is the full amount of the performance guarantee. This should have been done a long time ago. Those are the legal issues as he sees them. If we are going to enforce this we need to do it consistently. The City Council can change the code if it decides to have some sort of a mechanism to allow a developer to come in and say they have done the improvements and give me a reduced performance bond.

Councilman Rice pointed out the agreement wasn't signed by the Mayor.

Mr. Stanton said he understood that it wasn't executed by the Mayor. He was saying that the developer has presented an argument that this is a new thing. It is not.

Councilman Rice said we need to always comply with these things. This matter seems to have been arbitrarily enforced among developers. He understood the risk faced if the City were to revise the way this agreement were enforced with this developer and it would open the door for others. He did not want to do that. Since we haven't uniformly enforced the code for the last number of years, is one direction we can take to say that on a date, that the Council has instructed staff this code, every code will be uniformly enforced?

Mr. Stanton didn't think that would work. It was a matter of it not being strictly enforced in the past. We are talking years ago and then a decision was made and he provided a legal

interpretation of how this code read. After that he thought it has been strictly enforced. That was a number of years ago. There has been consistent treatment for some time.

Councilwoman Simons agreed that everything they do sets a precedence. If they do something for one person it will always come back to bite you. In this situation, she felt bad and maybe an exception should be made. If we have said “A” all along and then we try to switch to “B,” that is kind of on us. If it were up to her she would say that we should rewrite the code to have other options. Maybe there are more ways of doing things. Comparing our Code to Reno may not be the way to go. We need to rewrite the code and from now on be completely consistent. This should never have happened but over the last decade this isn’t new. This happened. We need to find an option that works for development. It isn’t fair with anybody.

Mr. Stanton said if we make an exception here we need to be consistent. One thing the Council can do is determine what the term “Full Cost” means. If a council interprets its own code in a certain way that makes sense, then that will be given a lot of deference. Council can interpret the definition of “Full Cost” before making a decision on this matter, that will have to be applied to everybody.

Councilman Rice asked there is the possibility to create a way where they are enforcing the code the way it is written, but then require the performance bond to be a certain percentage.

Mr. Stanton said it has to be an interpretation of the term “Full Cost” because that is in the code.

Councilwoman Simons thought you could interpret it as full cost of what still needs to be done.

Mayor Johnson said a developer builds the property and builds it to a particular standard, it is inspected by the City and the engineer and then it is turned over to the City of Elko to provide maintenance until the end of time. The intent of the City of Elko’s side is to be sure that it is a quality project is to have some of these things in place so that these quality assurances are in place so that the City’s best chance of being able to replace the street in so many years, that the street will make it that length of time. The City counts on the tax revenues. The City of Elko is not only taking over streets, it is also taking over the water, sewer and storm drain under the same basis. It is a partnership from the very beginning. He wasn’t sure if it was fair for the developer to build all the way to when the final plat is and then say, here, you are going to take this and maintain this until the end of time without the City’s involvement up front. Now that it is on our desk, we cannot ignore or provide a deviation from the code but he thought there was a way out that he was interested in. There may be a couple of places that are in the engineer’s estimate as far as what is the exposure to the City. The City’s exposure will be in quality of streets and the longevity of the streets. How much of that is the total project? Is there exposure to the taxpayer as far as storm water runoff? He wasn’t sure if this could be resolved today. We can look at that interpretation that Mr. Stanton was talking about. It is important that the City is involved from that maintenance aspect.

Mr. Wilkinson thought a possibility might be that we had a prior approval and we had a prior performance agreement that wasn’t secured. Some work was conducted but it is not completed or certified or accepted by the City. We also have a letter from an engineer of record that indicates a certain amount, about half of the total dollar value, is still outstanding. We are in another approval process today. It might be something that the Council could say that under this

new approval process for this final plat, the work that is required to complete that would be what is listed and referencing Mr. Ballew's letter and relying on Mr. Draper's assessment of the engineer's estimate, and that a performance agreement with security for the full amount would be that \$521,000 under this approval. It might be something that the Council can consider. Then they would have to put up that full security for the full amount under this performance agreement. They would be able to complete work and the engineer would be able to certify that work. They could request draw-downs down to the remaining amount of the ten percent maintenance for the project. That might be a way to look at it.

Mr. Stanton said the council has to make a finding. The term "Full Amount" in that code provision allows the City to do that. The full amount means the full amount of remaining improvements as opposed to full amount from the beginning of the project. There is a big difference in numbers there. Courts will defer to Council's interpretation as long as it makes sense. The Council needs to keep in mind that if they do that in this case, we have to do that consistently unless until this code provision is rewritten.

Mr. Wilkinson said moving forward, these agreements will be presented to the City Council at the front of the project so the Council's interpretation of the full security required will be based on a beginning of a project. The developer has dodged a bullet here by not entering into the agreement in the first place. Going forward we can't have the City put in that position.

Ms. McConnell said they have no objection to a proposed agreement that would allow the guarantee to be the amount for the remaining improvements. We have thirty days to enter into the agreement and the project will be done. The code says, 3-3-45, prior to a certification of a final plat approval of the Mayor, we are still dealing with that timeframe. We are not there. The subdivider shall have provided the City a financial guarantee of performance for the completion of require subdivision improvements. What better guarantee than it being done. Mr. Draper, when he went through this with City Council, he said he met with Dave Stanton after June 20, 2017 to discuss the interpretation. That was his statement on the record. They did not get notified in this change in interpretation until January 2018. The emails they provided, they were statements from City Staff saying a reduction in the performance guarantee would be allowed. If the Council does not allow for some reduction, they are discriminating against her client. It is still his property and he has not dedicated anything to the City. He could have scrapped this whole project right now and not record the final map. The City has no obligation to go in there and fix it until that is recorded.

Mr. Wilkinson pointed out that JTM has tied onto City infrastructure with utilities. He tied onto an existing waterline. If that were to fail or there were any issues with that, the City has no recourse. There is a whole host of issues. The Code says, upon final approval of the plat, the Mayor shall certify the map. What is envisioned is after a final approval of the plat, if that were to occur tonight, the City Clerk is to obtain the Mayor's certification of the plat, not thirty days from now, not two years from now. It envisions that a performance agreement is in place, it is secured and the Mayor will certify the plat, as long as we have all the other certifications in place. If you go to final plat approval that is what it says. But this is a continuation of how developers deal with the City. Typically the developer will ignore City Staff and continue to do the work. This developer was notified in August 2017, before the prior approval expired, that they needed to put the full bond amount up. And they were notified that they could ask for a

reduction as allowed for under City Code. It wasn't January 2018. There were discussions prior to that.

Councilman Rice felt the City has utterly failed in its responsibility to enforce the agreement. Mr. Wilkinson was talking about the developers but the city has been negligent in its responsibilities as well.

Mr. Wilkinson agreed but what was being proposed today is that they pick a point in time and say this is the full amount under this approval of this final plat, based on an engineer's letter of what is completed. That may be a good point in time for the Council to take action and say the full amount required is \$521,000, etc. There is work continuing and we don't know if it meets certification.

Councilwoman Simons felt the code already said a point in time. It says prior to certification of final plat approved. It already specifies in code a point in time.

Mr. Wilkinson said that was the time by which the performance guarantee needs to be deposited. That's not he reads the method of determining the amount of the performance guarantee. He doesn't see a mechanism in the code for reducing the amount for work done. It isn't really designed to work that way. There is a provision in 3-3-44 that allows for the bond to be reduced as the work is done and the City certifies it as complete.

Mayor Johnson asked if they can get a certification or work completed.

Mr. Ballew answered he could do that at any time. He could certify what has been completed. Mr. Wilkinson made a good point on the testing of the concrete. Until they get those breaks they cannot say it has met that requirement.

Mayor Johnson wants to stay within the code as much as possible. What is the City exposure with this? What decision they make today will be carried on into the future. This needs to be a decision they can live with.

Councilman Keener said he is coming back to the \$521,000 number even though the developer has more than that.

Councilman Rice read the recommended motion. The revision of that recommended motion would be to approve the agreement, full cost being \$521,000.

Councilwoman Simons asked if they need to say how they arrive at that number.

Mr. Stanton answered there has to be some rationale for that. There is an interpretation of the City Code so there should be some rationale in the discussion for arriving at that number based on the Code.

Councilman Schmidlein noted that the engineer can certify to date that 50% of the project is completed.

Mr. Wilkinson said he would factor in the current approval process.

Ms. McConnell said the dollar amount has not been certified by their engineer. They would request that they be given a date and certify to that date with a dollar amount that can be put in. That \$521,000 was staff's interpretation or what they provided. That was not coming from their engineer of record.

Mr. Wilkinson thought the City had the authority to determine whether a full bond amount being presented is adequate or not. When they review the unit costs to what it may cost the City to do that. Mr. Ballew does a great job in presenting the engineer's estimates. Mr. Draper went through the engineer's estimate in detail and has arrived at his number. It seems to be a reasonable number based on Mr. Ballew's letter. We verify the cost estimate submitted to the City.

Mayor Johnson said the way the Code is written, the City Engineer interprets what the cost of the project should be. Then it is a matter of percentage between the City Engineer and what the project engineer is willing to certify. We are close. We may be off by five or ten percent in tonight's discussion. Now it is a matter of receiving the certification from the project engineer and that will define what number is left for the payment performance bond and what is left to be completed.

Councilman Rice struggled with how to word the motion. He was looking at a date of April 25. Mr. Ballew will tell us what the completion is tomorrow and the remainder will be \$521,000. That is 50%. We may be five or ten percent off from that when they receive the numbers.

Mr. Wilkinson thought what they could do is say the full amount will be determined on April 25th, based on certifications from the engineer of record, and that the full amount determined on April 25th is the full amount of the required public improvements required to support their approval of Final Plat Application.

Mr. Ballew said his interpretation of this is that at close of business tomorrow, they will come up with a value of what is done. Typically, what he would do at that point is prepare his certification and he would call Mr. Draper and have him do an inspection with him to verify what he came up with. At that point they would make their agreement and he would make any corrections that need to be done. Then he would submit officially to the City. Do they want that certification as of close of business today or close of business tomorrow? In any event, it will be the next day before you get the certification.

Mayor Johnson asked what day would work best.

Mr. Ballew answered he would do it as of Friday night. Then if need be, he could spend some time on the weekend working on what he needed to do and get hold of Mr. Draper on Monday.

Mr. Wilkinson said they are going to approve a plat tonight. A date of the work that is completed is that approval date. Whether it takes a day or two to get a certification. Maybe we aren't going to approve a plat tonight but he felt if the plat is approved tonight, the engineer's estimate should be based on work completed as of today. Certifications take place starting tomorrow.

Ms. McConnell said they would request the Friday night as Mr. Ballew stated. They want to make sure that the total amount of improvements is reduced by the amount of the improvements completed as of April 27, 2018.

Mayor Johnson said he was leaning to, as a finding, that a guarantee may be reduced upon certification of the project completion. The City Council will accept a security or guarantee on April 25th or April 27th of the project costs to complete.

Mr. Wilkinson noted that the full amount for final plat approval, which would be today, is the determined at the end of business today.

Mr. Stanton gave some language suggestions. He felt Council did have a rational interpretation of the Code. There can be some language that says, “approve the agreement to install improvements as it is written in the agenda item, provided the amount of the performance guarantee shall be determined as follows: A) the full cost of required improvements, engineering, inspections, incidental expenses, and replacement and repair of any existing streets and utilities, or other improvements which may be damaged during construction of required improvements shall be _____.” We will fill in that amount and that will be the full amount. “B) the performance agreement shall contain a provision permitting the reduction in the performance guarantee, not exceeding 90% of the value of improvements completed and approved as determined by City Staff.” We will also contain a provision that says, “the amount of the performance guarantee shall be determined by City Staff based on the engineer’s estimate provided on April 27, 2018.”

Councilman Schmidlein stated “certification?”

Mr. Wilkinson corrected that it would need to be today.

Mr. Stanton agreed today, April 24th.

Mr. Draper said the maintenance guarantee per code is ten percent of the performance guarantee. The maintenance guarantee should still be based on the million dollar number.

Councilman Schmidlein agreed it should be based on the original amount.

Mayor Johnson said the only way we are getting around this is because we have the provision of certifications.

Mr. Stanton said the full amount is going to be the \$1.9 and then there is going to be a reduction based on what Mr. Ballew certifies. The maintenance guarantee is going to be based on that full amount. Where he said “blank” in the motion, that would be the full \$1.9 million.

Councilman Rice asked what that number was.

Mr. Draper answered \$1,095,770. That is in the agreement as it is right now.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the agreement to install improvements as it is written in the agenda item, provided**

the amount of the performance guarantee shall be determined as follows: A) the full cost of required improvements, engineering, inspections, incidental expenses, and replacement and repair of any existing streets and utilities, or other improvements which may be damaged during construction of required improvements shall be \$1,095,770; and, B) the performance agreement shall contain a provision permitting the reduction in the performance guarantee, not exceeding 90% of the value of improvements completed and approved as determined by City Staff. The amount of the performance guarantee shall be determined by City Staff based on the engineer's certification provided on April 24, 2018.

The motion passed unanimously. (5-0)

VIII. 5:30 P.M. PUBLIC HEARINGS

- A. Review, consideration, and public hearing for Notice of a Proposed Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Dr. to C-A-L Stores Companies, Inc., and matters related thereto.
FOR POSSIBLE ACTION

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

Curtis Calder, City Manager, explained at the last meeting, Council approved Resolution No. 11-18. Public notices were published with regard to that, setting tonight as a public hearing. If this is approved then we will go back to an earlier agenda item, dealing with the C-A-L Ranch lease, which will complete the process.

Mayor Johnson called for public comment without a response.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to conduct public hearing and declare the continued interest to lease City owned property located at 2953 Manzanita Drive, to C-A-L Stores Companies, Inc.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible action to adopt Resolution No. 12-18, a resolution of the Elko City Council adopting a change in zoning district boundaries from R (Single Family and Multiple Family Residential) to PQP

(Public, Quasi-Public) approximately 1.314 acres of property located northwest of the intersection of College Avenue and Golf Course Road, filed by The City of Elko, and processed as Rezone No. 1-18, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the Subject Zone Change Request on April 3, 2018, and took action to forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 1-18. CL

Cathy Laughlin, City Planner, explained this is an attempt to clean up the zoning on several parcels that the existing zoning is not compatible with the current land use. This is the old Police Station and it is zoned residential. Planning Commission has approved the zone change and has forwarded a recommendation to Council.

Mayor Johnson called for public comment without a response.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Keener, to adopt Resolution No. 12-18 as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

VII. RESOLUTIONS AND ORDINANCES

- A. First reading of Ordinance No. 828, an ordinance amending Title 4, Chapter 6, entitled "Room Tax", and matters related thereto. **FOR POSSIBLE ACTION**
At its January 9, 2018 meeting, the Elko City Council initiated changes to the Room Tax Code. SO

Jonnye Jund, Administrative Services Director, explained the proposed ordinance was included in the agenda packet. Matt McCarty was present representing the Lodging Committee and wanted to go over some information.

Matt McCarty, 598 Flowing Wells Lane, Spring Creek, explained the ECVA Board is in favor of the ordinance as proposed. They sent out an information request for all of the Lodging Committee members that they had. There was one property that responded that was not in favor of the ordinance. There was no other response from the other properties. The Lodging Committee did have a chance to go over this at the beginning of April. At that time no one had no objections. As a previous manager at a property that had 28 day exemptions, at a meeting about six months ago, it was discovered that there were no fewer than three different methods that the 28-day exemption was being handled by various properties. This ordinance clarifies the 28-day exemption so that all properties are operating under the same rules and understanding those rules better. If this passes, there is a recommendation that one of the forms/documents that was previously optional will be now mandatory so the ECVA can see where they are being successful in the events they are attempting to bring into the City. That document is the Detail Occupancy Report. They can get some data from the reports that the City Staff provides currently. If there is a new event or a specific event that they have put money towards, they don't see that result on a weekend or weekly basis, or even a daily basis. Instead, they see it on a month-to-month basis. Having a day-by-day breakdown will help the board determine success

of events. There is not enough data to determine how much room tax is being lost. There is a gap and they don't know what that gap is because there isn't enough information. The occupancy report they currently get averages around 36%. Only about 1/3 of the rooms are being reported on the occupancy. They feel it can be required for an auditor to determine if all of the required room tax is being paid. Having the ability to audit what they feel they should be collecting is vital.

Ms. Jund went over the proposed changes to the code.

Councilman Keener noted there isn't any language that speaks to the selection process for audits. What is the selection process?

Ms. Jund answered that will be determined by the auditors.

Bob Wines, Attorney, manages a mobile home park. When he first read this he thought there was a lot of paperwork. He wanted to propose a new section that says if your business only does rentals over 28 days, those kinds of businesses do not have to do the reporting under this code.

Lori Vavak, Double Dice RV Park, 3730 E. Idaho Street, felt for RV parks, this presents a real problem. They have a transient business that people are in and out of all of the time. In order for a small business like them, they don't have the staff to do this type of thing. Why wasn't there a business impact statement? There should have been a business impact statement with as many changes that impact a business to this degree. This will cost her a lot of money to comply with. The City would want three years of records in ten days. It would take her accountant 90 days to get the information requested. Now you can pull the business license if they don't have the requested information. She doesn't feel that is logical. Does the Convention Center think they are here just to provide information for the auditors. In the last 30 years nothing has been done for the RV industry. She felt the City violated the law by not issuing a business impact statement. This will cost so much money to comply. Number one, it is requested that the staff go through everyday and fill out total rooms, total rooms rented, etc., and then fill out an exemption form. When a government employee comes in, they already have a form that the government gives them. Why is that not sufficient? Or they pay with a government credit card. Why is that not sufficient? This is all duplication and it will cost her time and money. All the RV parks are going to have the same problem. She has a transient business. She filled out the top part of number 3 and showed it to Council. This is the form she is supposed to run around and have every one of her tenants fill out every month. It is an affidavit. She is being asked to enter into this agreement with the tenant and she has no idea if they are going to stay. They have a trailer. Some leave without telling her. This is going to cost so much time and money for nothing. Another option for her is to provide the City with her contract with her tenant. The contract is private information. She can be sued for giving that contract to someone else. She was perplexed as to why the City didn't do the right, honest thing and put out a business impact statement to every single business that this would affect. She only found out about this because she saw something in the paper. She spoke about the records she would be required to maintain and wondered if this was really that big of a problem. Just taking out the promotional package should have been enough to put out a business impact statement. A big business would have an auditor. She is running a bar, grill, gaming and an RV park with three employees. She doesn't have time to fill out the sheet everyday. She doesn't have time to run down the tenants. She runs a tight ship. The information the City is asking for is unbelievable. Now she is asked to

keep records for three years. The City has more power than the IRS in here. You think you can come into her business, take her computer records? There is no limit as to what the City can do. She didn't think this was about finding out how much room tax the City is losing. This is about how much money people are making in this town. This is very intrusive and way beyond the law. Page 6 says this is not supposed to cost her any money. Explain to her how this doesn't cost her any money.

Mayor Johnson asked for an explanation as to why the City did not do a Business Impact Statement.

Rich Barrows, Wilson, Barrows, Salyer, Jones, 442 Court Street, special Attorney for the City, explained he rendered an opinion to the City on January 19, 2018, based upon a ruling by the Nevada Department of Taxation that charges of fees and taxes that are paid by individuals, rather than by businesses, as this Transient Lodging Tax is, a Business Impact Statement is not required. As long as the tax or the fee is paid by individuals, rather than by the business itself. He gave his opinion to the City that a Business Impact Statement was not required by law it is his assumption that the City followed that advice.

Mayor Johnson asked about the affidavit. Is that in favor of the business owner if the tenant changes their mind?

Mr. Barrows said you would have to ask Jonnye Jund that question because it is not a legal question.

Jonnye Jund, Administrative Services Director, said the affidavit is signed by the renter stating that they are going to stay the twenty-eight days. If they check-out before the twenty-eight days then they are required to pay the 14% for that stay. What some hotels do is keep a credit card on file and if they check out early they go back and charge the 14% for the tax. The affidavit is just a statement with their intent to stay twenty-eight days.

Mayor Johnson asked if the tenant doesn't honor that then the tenant is on the hook, not the business.

Ms. Johnson answered correct. The tenant is the one that would have to pay the tax.

Mayor Johnson asked if a tenant can fill out an affidavit for more than a month?

Ms. Jund answered if the stay is extended, they can do one and then continue it on and continually update that. They wouldn't have to redo the affidavit but they would have to somehow indicate the dates the affidavit is in effect.

Mayor Johnson asked if there was a way that a tenant could fill out an affidavit that says they would stay there for the next six months to a year.

Ms. Jund answered it is anything in excess of twenty-eight days. It has to be in twenty-eight increments.

Ms. Vavak wants it clarified that the City is going to go after the tenant for that money and not her or the business.

Ms. Jund said the business owner would still have to charge the tenant. It is up to the hotelier to pay that. Some will collect the tax and then refund it after the 28 days. That way they are ensured that they would be able to pay the tax if the tenant checked out early. It would be up to the property owner to collect the tax and remit. We are required to remit to the state for anyone who does not stay twenty-eight days but right now there is no way to verify.

Ms. Vavak still wanted that clarified. She would like to see the NRS that shows the provision of taking the business license and the lien on the property. She still disagrees with the interpretation of the business impact statement. It is a pass-thru tax and not an individual tax. It is insane to require records for three years. Right now, the business license can be taken if the records are not presented in ten days.

Matt McCarty said using the data from Smith Travel Research, the average room collection is \$3.5 million a year. The leakage is \$1 million a year. That leakage can be a number of things. The leakage is a significant amount and the new reporting can give us an indication of where it is going. He has worked at eight businesses throughout the town and the records are kept on property. Most of the businesses would have access to their records immediately.

Councilman Rice said he was ready for a motion. The wonderful thing about this is that it was created by the lodging community. They saw the need and they drafted it. He is comfortable with it because it came from the business it impacts.

Councilman Keener said he is also in favor and comfortable with the ordinance. They realize they will need to do a bit more work to keep up. It is a dysfunctional system when there is no method to conduct an audit. If this were controversial, this chamber would be packed with angry hoteliers that feel we are over stepping our bounds. It is important that we include this optional reporting form and make it mandatory. This is the tool that will give Don and his staff to gauge occupancy during events.

Ms. Jund said once this reading is done, we are sending everything with updated information to every hotel in the City.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to conduct first reading of Ordinance No. 828, and direct staff to set the matter for Public Hearing, Second Reading and possible adoption. In addition to that, make the monthly form entitled “Elko Hotel/Motel/RV Park Detail Occupancy Report” a mandatory form submitted each month.**

The motion passed unanimously. (5-0)

After the motion and before the vote, Councilman Schmidlein asked if he was going to include any further language about extending the time frame to get all of the records to the City.

Councilman Keener felt it was already reasonable. Under this new process the property will be filling out the forms daily and keep it at the property.

Ms. Jund added that the due date of the return was not changed. The grace period was changed.

Council voted on the motion.

- B. First Reading of Ordinance No. 830, an ordinance increasing the corporate limits of the City of Elko, Nevada, pursuant to the provisions of N.R.S. 268.670 annexing thereto a certain tract of land partially contiguous to and not embraced within the present limits of the City of Elko described as follows: a parcel of land located southwest of the intersection of P and H Drive and West Idaho Street in Section 30, T. 34 N., R. 55 E., MDM, Elko County, Nevada, consisting of 32.74 acres, filed by Legend Engineering on behalf of Ed and Sharon Netherton and JoyGlobal Surface Mining Inc. and processed as Annexation No. 1-18, and to direct Staff to set the matter for public hearing, second reading and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

City Council accepted the petition for the subject annexation on March 27, 2018, and directed Staff to continue with the annexation process by referring the matter to the Planning Commission. The Planning Commission considered the annexation on April 3, 2018, and took action to forward a recommendation of approval with findings back to the City Council. CL

Cathy Laughlin, City Planner, explained there is representation from Joy Global present in the audience. Planning Commission reviewed this and forwarded a recommendation to conditionally approve the annexation.

Councilman Keener pointed out that the parcel number is incorrect on the submitted surveyors map.

Ms. Laughlin said the legal description was correct.

Scott Wilkinson, Assistant City Manager, felt this was a minor technicality and the motion could be addressed in the motion.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to conduct first reading of Ordinance No. 830, and direct staff to set the matter for public hearing, second reading (and at the second reading we need to see a revised surveyor's map with a corrected APN Number) and possible adoption.**

The motion passed unanimously. (5-0)

V. SUBDIVISIONS

- A. Review, consideration, and possible action to conditionally approve Final Plat No. 4-18, filed by Jordanelle Third Mortgage, LLC., for the development of a subdivision entitled Tower Hill Unit 1, involving the proposed division of approximately 33.804 acres of property into 23 lots and 2 remainder parcels for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located southeast of the terminus of Stitzel Road (APN 001-920-079). Preliminary Plat was recommended to City Council to conditionally approve by Planning Commission September 7, 2017 and conditionally approved by City Council October 24, 2017. The Planning Commission considered this item on March 6, 2018 and took action to forward a recommendation to City Council to conditionally approve Final Plat 4-18. CL

Ms. Laughlin explained this was previously approved and that subdivision application had expired. Now they are in the process of re-approval. City Council did accept the preliminary plat and this did go to Planning Commission for their approval. The application is for a total of twenty-three lots with two remaining lots.

Councilman Keener asked if the applicant was good with the conditions.

Katie McConnell, Attorney for Jordanelle Third Mortgage, answered so long as the provisions in the Performance Agreement that were already approved by Council are included in the Performance Agreement as contemplated herein.

**** A motion was made by Councilwoman Simons, seconded by Councilman Keener, to conditionally approve Final Plat No. 4-18, for the Tower Hill Unit 1 subdivision, subject to the conditions as recommended by the Planning Commission, taking into account that the Performance Agreement, as agreed upon earlier, will apply to this motion as well.**

The motion passed unanimously. (5-0)

VI. NEW BUSINESS (Cont.)

- A. Review, consideration, and possible acceptance of a Deed of Dedication for a portion of Statice Street from Treadway Investment Co., LLC along the frontage of APN 001-860-110, and matters related thereto. **FOR POSSIBLE ACTION**

Treadway Investment Co., LLC is completing the required public improvements on Statice Street, as a part of the construction of a new facility for Kenworth Sales Company, Inc. Statice Street is identified as an industrial collector in the City of Elko Master Plan; the City has requested the dedication of the right of way. JD

Jeremy Draper, Development Manager, explained the Deed of Dedication.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to accept the Deed of Dedication for Statice Street.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible approval of a Lease of Real Property for City owned land of less than 25,000 square feet located at 2953 Manzanita Drive to C-A-L Stores Companies, Inc., and matters related thereto. **FOR POSSIBLE ACTION**

This item is to be considered following the related public hearing item.

C-A-L Stores Companies, Inc. dba C-A-L Ranch Stores currently holds a lease agreement with the City of Elko to use City property located at 2953 Manzanita Drive for storage of goods. The current lease extension does not expire until August 21, 2020; however, C-A-L Stores is currently working on extending their existing private building lease and would like to secure this lease as part of the package.

NRS 268.064 provides that the governing body may lease the property subject to the provisions outlined therein.

Council adopted Resolution No. 11-18 which states that it is in the best interest of the City to lease the property without offering the property to the public, and that the lease may or may not be at fair market value. RL

Curtis Calder, City Manager, explained this is the final step in the lease of the property to C-A-L Stores Companies.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to approve the lease to C-A-L Stores Company, Inc., according to the terms outlined in the Lease Agreement, for property located at 2953 Manzanita Drive.**

The motion passed unanimously. (5-0)

- D. Review, discussion, and possible appointment of one (1) candidate to serve on the Airport Advisory Board, and matters related thereto. **FOR POSSIBLE ACTION**

The Airport Advisory Board has one (1) vacant position. Mr. James P. Carragher, Mr. Matthew Griego, and Mr. Jairus Duncan have all expressed an interest in serving on the board. Letters of Interest from the candidates have been included in the packet. CC

Mr. Calder said it was the pleasure of the council. There are three interested candidates and one of the candidates is our Fire Chief Matt Griego.

Councilman Keener said he would like to have citizen involvement as much as possible. He said he would tip his hat to the one that was within the City limits.

Councilwoman Simons said Chief Griego already attends the meetings and he has a vested interest. He deserves a vote.

Councilman Rice would not have difficulty with that either.

Councilman Schmidlein agreed the more public input the better. He did not recommend putting a City employee on that board.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Keener to appoint Jairus Duncan.**

The motion passed. (4-1 Councilwoman Simons voted against.)

- E. Review, consideration, and possible approval of a Non-Exclusive Franchise Agreement between the City of Elko and Level 3 Communications, LLC for Data Communications Over, Under, In, Along and Across Public Roads in the City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

The proposed term of the agreement is ten (10) years and provides for a five (5) year renewal provided the terms and conditions remain the same. The proposed franchise fee is five (5) percent of the gross revenues actually collected from customers located within the corporate limits of the City. SAW

Scott Wilkinson, Assistant City Manager, briefly went over the agreement. The agreement has been reviewed by Legal Counsel. After some debate between Level 3 Communications and their attorney, we finally came to a resolution on an agreement that could be presented to the Council.

Councilman Keener said he remembered a number of 2% when we did Frontier's agreement.

Mr. Wilkinson said Beehive is 5% and Frontier was 5% but he wasn't sure what they ended up agreeing on.

Curtis Calder, City Manager, said they didn't increase the percentage. That franchise agreement was restricted to five years duration. The problem with Frontier, we saw on the franchise fee side, a reduction every year. When we requested their financial data that matched. They are losing customers. We didn't feel it would be helpful to raise franchise fees in that scenario.

Mr. Wilkinson added there are no escalators over the term of this agreement.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to approve a Non-Exclusive Franchise Agreement between the City of Elko and Level 3 Communications, LLC for data communications over, under, in, along and across public roads in the City of Elko.**

The motion passed unanimously. (5-0)

IV. APPROPRIATIONS (Cont.)

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the warrants.**

The motion passed unanimously. (5-0)

II. CONSENT AGENDA

- A. Review and possible approval of an agreement between the City of Elko and Erika Johnson, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko and Dr. Erika Johnson desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC

- B. Review and possible approval of an agreement between the City of Elko and William Wright, D.V.M., for the provision of independent contractor services on behalf of the City of Elko Animal Shelter, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko and Dr. William Wright desire to renew the annual Veterinarian Contract. Under this contract, LASSO reimburses the City of Elko for all fees paid. CC

**** A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve the consent agenda.**

The motion passed unanimously. (5-0)

IX. REPORTS

- A. Mayor and City Council

Councilman Keener was sad to hear about Senator Dean Rhodes passing. He attended the Fire Awards Dinner. On the broadband front, there should be some exciting news to report in May as soon as a non-disclosure agreement is released.

Mayor Johnson attended a Leadership Day at Sage Elementary school where the students presented the 7 Habits of Happy Kids. There is an opportunity to engage in what is known as the Junior Achievement Program. They will have orientation at Northside Elementary on Monday. They need twenty-eight volunteers at Northside.

- B. City Manager

Curtis Calder reported that he and Jonnye Jund attended the Insurance Pool meeting last week but they haven't received what the final rate will be for liability insurance. April 27 and 28 Maddie's Fund (a non-profit that supports animal shelters) is waiving all adoption fees for every animal shelter in the State of Nevada. We will participate with that and we will be reimbursed for the adoption fees.

- C. Assistant City Manager

Scott Wilkinson said April 28th is the Annual Clean Up Green Up Day.

- D. Utilities Director

E. Public Works

Dennis Strickland reported they lost the transmission on the loader at the landfill and they are faced with an emergency repair. They are looking at the mid \$40,000 for a rebuild.

F. Airport Manager

G. City Attorney

Councilman Keener asked where they were at on the Fiber Lease Agreement. Dave Stanton answered he spoke with Garrett Weir who is Counsel for the PUCN. They are trying to figure out a way to take advantage of the exception for public utilities providing services to the public in NRS 268.059.

H. Fire Chief

I. Police Chief

J. City Clerk

K. City Planner

L. Development Manager

M. Administrative Services Director

N. Parks and Recreation Director

O. Civil Engineer

P. Building Official

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

There were no public comments.

There being no further business, Mayor Chris Johnson adjourned the meeting.

Mayor Chris Johnson

Shanell Owen, City Clerk