

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

SS September 25, 2018

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, September 25, 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 Mandy Simons  
Councilman Robert Schmidlein *arrived 5:28 p.m.*  
Councilman Reece Keener

**City Staff Present:** Curtis Calder, City Manager  
Scott Wilkinson, Assistant City Manager  
Ryan Limberg, Utilities Director  
Kelly Wooldridge, City Clerk  
Dennis Strickland, Public Works Director  
Cathy Laughlin, City Planner  
Matt Griego, Fire Chief  
Jack Snyder, Deputy Fire Chief  
John Holmes, Fire Marshal  
Ben Reed Jr., Police Chief  
James Wiley, Parks and Recreation Director  
Candi Quilici, Accounting Manager  
Jim Foster, Airport Manager  
Bob Thibault, Civil Engineer  
Jeff Ford, Building Official  
Dave Stanton, City Attorney  
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:** August 28, 2018 Regular Session  
September 11, 2018 Regular Session

*The minutes were approved by general consent.*

## **I. PRESENTATIONS**

- A. Reading of a proclamation by the Mayor in recognition of Fire Prevention Week 2018, and matters related thereto. **INFORMATION ONLY – NON ACTION ITEM**

Mayor Johnson read the proclamation and presented a copy of it to John Holmes, Fire Marshal.

John Holmes, Fire Marshal, stated the Fire Prevention Picnic is this Saturday from 12:00 to 3:00 p.m. at the Main City Park.

## **II. APPROPRIATIONS**

- B. Review, consideration, and possible final acceptance of the Public Works Department Preventive Maintenance Project 2018 to apply Micro Slurry Seal to select City streets, and matters related thereto. **FOR POSSIBLE ACTION**

At their June 12, 2018 meeting, the Council awarded the Bid for the Preventive Maintenance Project 2018 to Sierra Nevada Construction in the amount of \$527,507.00 plus additive alternate 1 in the amount of \$4,500.00, for a total of \$532,007.00. Micro Slurry Seal was also placed on Airport and Landfill facilities. Sierra Nevada Construction has satisfactorily completed the work. DS

Dennis Strickland, Public Works Director, explained it was a good project for the City and it looks great. He recommended approval.

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve and accept the Public Works Department's Preventative Maintenance Project 2018.**

*The motion passed unanimously. (4-0)*

## **III. NEW BUSINESS**

- A. Review, discussion and possible action to direct Staff to develop alternative dark fiber pricing models, including authorization to obtain feedback from broadband providers regarding the viability of such models, and matters related thereto. **FOR POSSIBLE ACTION**

City Staff has been in communication with the Governor's Office of Science, Innovation and Technology concerning the possibility of leasing or licensing to various companies, such as Syringa Networks, the use of dark fiber owned by the City. The City has different options at this point, to include setting pricing for the

use of dark fiber. The City also has the option of leasing dark fiber through an agreement that gives the lessee exclusive use of specific strands of fiber for a term, typically 20 years, versus the option of licensing the use of strands of fiber under certain terms and conditions. A lease would guarantee exclusive use during the term while a license would not. Typically, dark fiber is leased through an “indefeasible right to use” contract. However, since those contracts are actually leases in most cases, the requirements of NRS 268.059, et seq. would apply and the City would likely have to go through a public auction process before entering into the contract. City Staff needs direction from the Council in terms of how to proceed. CC

Dave Stanton, City Attorney, explained this a new legal situation for the City. There wasn't a lot of authority that he could find on this specific issue. What happens is if the City leases out real property we are subject to NRS 268.059, the public auction process. We have gone through that quite a few times. When we give a license for someone to use city property that confers a lesser interest in property that does not trigger that statute. What we have here is a situation where we have a real property interest involved because this fiber involves actually taking a cable, burying it underground, and it is not easily removed from the real estate without doing something to the real estate like digging it all up to replace it. It becomes, at minimum, what is known as a fixture. A fixture is something that is affixed to the real property in such a way you can't easily remove it. In his opinion we have real property. The next question is, what do we do if we give somebody the right to use some cable that is buried underground? The typical way to do it is an Indefeasible Right to Use Agreement. They are kind of like a lease. They are a long complicated document but they are basically a lease. It gives the lessee the exclusive right to use this fiber in this cable for 20 years, and nobody else gets to use it. It is not just leasing out bandwidth, it is actually leasing out physical strands of fiber. You will be leasing out a part of the real estate. In his opinion, an Indefeasible Right to Use Agreement that is constructed that way, would trigger the lease statute and a public auction process. An alternative would be the possibly of entering into a license agreement with a company. He explained the difference between a lease and a license agreement. There is a lot of physical investment that goes into a project as this. Whoever uses this would have to come in with a facility in order to use it. He's not sure how Council will want to approach that. We thought we needed Council to give us direction as to which direction to go. He's conservative with things like this.

Councilman Keener asked, if they did a license agreement, that would only involve one party, correct?

Mr. Stanton answered you could enter into a license agreement with a single party but the problem is the exclusivity of it. If we write into the license agreement that they have exclusive use of strands of fiber for a period of time, you can call it a license if you want but it's not. It's a lease.

Councilman Keener said there are twelve bundles, twelve strands each. Could we do a license agreement to different bundles of fiber to various different parties?

Mr. Stanton answered yes. It cannot be exclusive because these strands are real property once they are buried. It will be a lease no matter what it is. He would feel more comfortable going

the public auction route unless an economic development exemption applies. That is a decision he cannot make.

Councilman Rice asked how widely is this distributed throughout the community.

Troy Poncin, IT Manager, explained the fiber goes down Mountain City Highway from the airport, to Idaho Street and then all the way to City Hall. It also turns a little bit to go to the Police Department.

Councilman Rice asked if a third party used some of that fiber would they be able to channel different directions or would they only be able to serve people along that corridor?

Mr. Ponsin said they would only use our piece and maybe dig a bit to get to their goal. We would be a transport provider.

Councilman Rice thought he felt more comfortable going the public auction way. There are other vendors out there that might be interested. Obviously Syringa has shown some interest and that is great. Is there any expectation of level of service to anticipate?

Mr. Poncin answered we should anticipate that. We should anticipate that we should have the service up. If there was a fiber cut, that would be our responsibility. We would be responsible for locating these fibers to make sure they don't get cut.

Councilman Keener said we made that investment. In talking to consultants, it was said for a city this size, this is the most underserved community in terms of internet. He was in favor of making our facilities available for providers.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to direct staff to work with legal counsel and prepare documents so that we can move forward with a lease of the City property, under the Indefeasible Right to Use provision, and matters related thereto.**

After the motion and before the second, Mr. Stanton asked if there was any interest in pursuing an economic development exemption. Are we talking about developing minimum pricing for the public auction process?

Councilman Keener thought they should have all options on the table. He felt it would be valuable to include that language.

Councilman Rice read the recommended language, "to gather additional information about the viability of different pricing schedules, forms, leases and licenses." Was that the language Councilman Keener wanted in there?

Mr. Stanton asked if they were still talking about licenses or leases?

Councilman Rice answered leases. He was looking at the recommended language in the agenda. They are looking for the most comprehensive look at this opportunity.

Councilman Keener said his motion was with the intent to not pursue the licensing but rather the lease of real property.

Councilman Rice seconded the motion.

*The motion passed unanimously. (4-0)*

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

- A. Review, discussion, and possible adoption of Resolution No. 26-18, a Resolution Opposing Ballot Question 3, The Energy Choice Initiative, for the 2018 General Election, and matters related thereto. **FOR POSSIBLE ACTION**

A copy of the proposed Resolution has been enclosed in the agenda packet for review. CC

Curtis Calder, City Manager, explained it was the pleasure of council. They have heard both arguments regarding Question 3. If Council would like to oppose it, they are welcome to do so through this Resolution.

Mr. Stanton reminded Council we cannot spend any money supporting or opposing a ballot measure.

Councilman Keener said he fully supports this Resolution. Nevada Mining Association is opposing Question 3 too. It could probably help the large corporations but there will be devastating impacts on rural Nevada.

Councilman Rice said he has the same position. He has watched how de-regulation takes a toll on rural communities. He is concerned that this initiative would result in rural Nevadans being underserved.

Mayor Johnson confessed he voted yes on the original ballot. But then he heard from Wells Rural Electric and he changed his mind. He has had meetings with both sides. You will always have one utility that will provide and have control. He has spent time listening to both sides but looking at some of the reasons it should be a no, he is in support of this resolution.

Councilman Keener said he is a free market person but when you talk about the stranded costs, someone has to pay for that. We will be dependent on the Nevada Legislators to address this. That doesn't seem like the right way to address deregulation. Electricity, because of the capital costs, is one of the very few industries that sets up a monopoly that is regulated.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to approve Resolution No. 26-18.**

*The motion passed unanimously. (4-0)*

#### **VI. REPORTS**

- A. Mayor and City Council

*Councilman Keener said there is a blood drive this Friday at GBC. There was an ECVA meeting this morning and they reviewed the room tax receipts. They came in strong. The board wanted him to express appreciation to the Clerk's office and everyone else in updating the reporting requirements. He attended a board breakfast with the Chamber on Friday. He thanked John Holmes for being there and doing such a terrific job.*

B. City Manager

*Curtis Calder said they had Nevada League of Cities (NLC) last week. Jonnye, Kelly and himself went down and then Scott went down to discuss the homeless camp. It wasn't as attended as well as it would have been if it had been held down south. We were approached to hold the 2020 conference. That could cost us \$15,000 as a hosting fee. Councilman Keener asked Curtis to reach out to Winnemucca about their host fee. Maybe we can get some assistance from hotels. Jonnye Jund said Winnemucca did pay the \$15,000 fee. Curtis just wanted to run that by everyone. Some of the smaller communities that used to host this do not host anymore. Regarding the OHV ordinance that was initiated, he is working to schedule the first workshop for it. He anticipates the meeting in the next two weeks.*

C. Assistant City Manager

*Scott Wilkinson did a presentation on the humanitarian camp at NLC. He felt there were several people in the audience that looked like they may be considering something similar to this in their community. Councilman Keener asked about the census out at the camp and Scott answered there are about 25-30 people camping there.*

D. Utilities Director

*Ryan Limberg reported on the River and Railroad Track crossing project. That project is essentially complete and they are addressing the punch list. Ruby Dome is working on a manhole because it has shown some leaking. The other item relates to the Sports Complex. To use reuse water, there are two steps. The effluent plan was submitted to NDEP and approved last week. The next step is we need a permit to use the water there. That application has been turned in for about a month now. He will be pushing that along to the approval stage.*

E. Public Works

*Dennis Strickland said he should have Cedar Street on the agenda for final acceptance at next meeting. He has heard nothing but positives about the work done on Phase 2. The Centennial Park should also be on the net agenda for substantial completion. The culvert rehab work will start Monday, next week. Striping should wrap up this week. It has been a busy season.*

F. Airport Manager

*Jim Foster said the fencing project is 1/3 into the days but not 1/3 into the project. There is a phone line that goes through the area that has slowed the process. They expected this to be slower. Once they get into phase 2, he expects them to make up some time. He felt they were doing fine and was not worried yet. The vault work has begun.*

G. City Attorney

H. Fire Chief

*John Holmes repeated the Fire Prevention Picnic is Saturday at the Main City Park.*

- I. Police Chief
- J. City Clerk
- K. City Planner
- L. Development Manager
- M. Administrative Services Director
- N. Parks and Recreation Director

*James Wiley said this Monday they started some different phases at the Sports Complex. The comfort station construction has begun. The fields are starting to take shape. The wall behind the residents is slated to begin on Monday. The goal is to get the parking lot paved before the end of this construction season. It is looking good there. Utility work has been ongoing on Errecart and hopefully it will be completed in the next couple of days. There is a little bit of storm drain left.*

*Councilwoman Simons asked about a charge on the warrants. James answered it was for repairs to some playground equipment. It took a while to get a new piece molded to fix it. Those parts are expensive.*

*Curtis Calder asked for an update on Centennial Park. James said the sod went in today. Tomorrow is the deadline for the project and he felt they would meet that just fine. They will be working on a punch list from that point.*

- O. Civil Engineer

*Bob Thibault clarified that leaky manhole behind the jail was ground water leaking into the system and not grey water leaking out.*

- P. Building Official

## **II. APPROPRIATIONS**

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

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

*The motion passed unanimously. (4-0)*

## **BREAK**

**Councilman Schmidlein arrived at 5:28 p.m.**

## **V. 5:30 P.M. PUBLIC HEARINGS**

- A. Review, consideration, and possible action on an appeal filed pursuant to Elko City Code 3-2-22(H), appealing the Elko City Planning Commission's decision to deny Variance No. 9-18, filed by Moises Luna for a reduction of the required interior side yard setback from 5 1/2' to 0' and the required rear yard setback from 10' to 0' for an accessory building within an R (Single-Family and Multi-Family Residential) Zoning District, located generally on the north side of Benti

Way, approximately 257' east of Spruce Road (927 Benti Way), and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the subject variance on September 6, 2018 and took action to deny the variance. Subsequently, the applicant appealed the Planning Commission's decision. CL

Cathy Laughlin, City Planner, explained the subject property was displayed on the overhead. The property fronts Benti Way. The back abuts Peace Park. The property is developed setback to setback. This is part of the 8 Miles Estates Subdivision. It has a 5 foot easement along each side property line but not along the back property line due to drainage. The City Building Department delivered a stop work order when the construction was spotted. The accessory structure was being built in the rear and side setbacks. Mr. Luna applied for a variance and the Planning Commission denied it. She went over some items in her memo that determined the denial on the variance. She showed some pictures on the overhead.

Councilman Keener said he was at the meeting and heard the testimony of the Commissioners. It presents a unique situation in this case but there are numerous sheds in the city that are not in conformance. It would be different if this had been a bully barn situation. If Mr. Luna would cut the 4X4's that are in the concrete, would that solve the situation?

Ms. Laughlin said she didn't know how he built the shed but she thought it was built onto the concrete. It was not built on a skid such as the ones sold at T-rix. It would need to be built outside the setbacks to meet with code.

Councilman Keener said is difficult to him when there are non-conforming sheds in the area. Typically the pre-fab unit is just moved in but his was built on site. It doesn't seem fair that this individual was singling out.

Scott Wilkinson, Assistant City Manager, felt he wasn't singled out because of the shed. It looked like he was doing an addition to the house that caught the attention of the building department.

Councilman Schmidlein asked if that could be dismantled from the concrete?

Moises Luna, 927 Benti Way, answered he could cut the posts and there is no cement pad. He just put thicker slabs of plywood underneath. He can make it movable.

Councilman Keener stated his concern that if this is denied we need to treat everyone the same. The Building and Planning Department will have hundreds of other non-conforming type structures around the city. What are we going to do about those?

Mayor Johnson said there are other properties in Elko that were provided with notices. Will this be a new project across the community? Where the setbacks are concerned, this can be a life-saving issue. When we look at these, we need to be careful what else is happening in the community. Why should we enforce the code? There are good reasons the setbacks are in place. The decision tonight will be tough.

Mr. Luna read a statement:

*The reason he is here is because he started building a storage shed and was 90% completed when he got shut down by the City of Elko. As you guys already know, my storage shed got built with zero setbacks. Due to his backyard being 20 feet wide, taking measurements from the fence to his home, if he was to go back 10 feet, that would leave him with only ten feet. Then he would have to leave at least 5 feet from his window, leaving him with only a 5 foot shed. If he was to make it longer, he would have to leave the shed in the middle of his yard. He has a son that is 3 months old right now and he would like to leave as much yard as possible for him for when he is older. He and his wife have worked hard to buy their home that they purchased in September of 2017. They have invested a lot of money on improvements to the home, including the storage shed. When he started constructing his storage shed he had drainage issues from his neighbor where he had to add a French drain system to that side of the property to avoid his shed having any problems sinking. He added a grading drain system as well, right next to the shed for extra security. He feels it would be very unfair for him to have to tear down his shed after investing so much time and money. He has invested thousands of dollars into it. It doesn't include the \$750 that he has had to pay for the two variances. If he hadn't invested so much in this shed he wouldn't mind tearing it down. His intent was never to bypass any of the Elko City Codes. As a matter of fact, before he started constructing the shed, he called the City of Elko Building Department for advice and asked if he needed a permit. He was told as long as it wasn't over 200 square feet it didn't require a permit. But he was never notified of the setback requirements. He didn't know that was a different department and all that stuff. He just called and they told him he didn't need the building permit, which that is how it is, but he never knew about the setback requirements. And then he never thought it would be an issue because many homes around Elko have storage sheds built next to their fence lines as well. If he was to tear down his shed he would not be able to comply with Code 3-2-1-7, making him use his garage as storage. He hoped they could take his points into consideration and put themselves in his shoes. He does not believe he is hurting anyone or causing any issues from his neighbors who he has already spoken to. He is simply trying to give his family a nice home and a yard.*

Councilman Schmidlein wondered if it was moved from the setback from the side of the house, even with the flood plain on the backside, if we move it to the east, would he meet the setback requirements there? Nothing is ever going to be built on the back of that property.

Mayor Johnson said this is an issue in the City and there other properties that are currently under review. He knows of houses that have been up for sale and couldn't sell because they didn't meet setbacks. It is a big deal and the City needs to be careful with this. If there was a way to move the shed and meet the setbacks, that might be one course of action.

Councilwoman Simons thought the easiest thing, if there were an alley behind their house, would that be okay?

Ms. Laughlin answered, just on the back. He would still have to be 5.5 feet from the side.

Councilwoman Simons thought if you have a park there, does it provide the same or does it resolve the same issues as having an alley or a street? Is that where the code needs to be changed? Maybe there are more exemptions than have been included in the code.

Councilman Keener said he walked back there this afternoon and it is very steep and rocky and full of weeds. There would be minimum to zero impact to the park on the back.

Mr. Wilkinson said if there was a zero setback on a park area, you really don't have the life safety issues, you don't have the fire requirements, the building permit and all that, but today that is not what the code says.

Councilwoman Simons said there are situations in Elko that we couldn't do anything about and we need that easement. She was wondering if adding more of these unique circumstances...

Mr. Wilkinson said it would make sense if you revised the code that said "Open Spaces." It's really about setbacks serving a couple of functions, maintaining some level of yard space so people can enjoy their property, and more importantly, it's about protecting neighboring properties from each other.

Councilman Rice said he understands the predicament and it is unfortunate that building didn't mention setback requirements when he called. What are other practices in other communities in terms of open spaces and setbacks? His only solution he can see is to saw it off at the 4X4 and move it 5 feet away from the western fence and then provide a variance.

Mr. Wilkinson said he wouldn't be able to answer that today. They could do research about changing the code for open space. The Mayor is cautioning the Council on some other legal issues that the City has going on. This code was drafted when subdivisions abutted alleys. All your utilities were in the alleyways. Many times your garage was your accessory building. This is a remnant of how subdivisions used to be designed. We don't include alleyways in subdivisions at all anymore.

Curtis Calder, City Manager, asked if an access easement by definition of Code, qualify as an alleyway? Could the City established an access easement around the rear lot lines of all of those houses and qualify as an alley?

Ms. Laughlin answered the rear lot line in that subdivision does not have any rear easement. The easement is on the Peace Park side of it. It is a public utility and drainage easement on the Peace Park side. It is similar to what an alley would be.

Mr. Wilkinson said it was done to accommodate the grading and the drainage in the area. There are definitions for streets and alleys that they can look at but it is well defined on what establishes streets or alleys.

Mr. Calder said there had been instances of access easements being considered public roadways throughout the City. He thought most of them had been rectified. If there is already an access easement, and it could qualify as an alley, perhaps a zero setback could already be allowable on the rear.

Councilman Keener stated by changing the code to allow for a zero setback along the north property line along the back, that would bring two other non-conforming buildings into code, besides this one we are talking about.

Ms. Laughlin said the structure has been built over the drainage and utility easement on the side lot line. If the variance was approved, that easement would have to be vacated.

Councilwoman Simons wants to look to see if there was anything else that could be added to the code to allow this.

Councilman Rice said he knows Mr. Luna tried to do this the right way but unfortunately he didn't learn about the setbacks and the building is out of compliance. He has received calls from constituents regarding similar situations. He can't support granting a variance on this one. Unfortunately, if this is not granted he would need to take this down and suffer a financial loss. He was sorry for that. The codes serve a broader purpose in the community.

Mayor Johnson said there is no doubt in his mind that he needs to disclose that he is the owner of a storage business. He may need to recuse himself and should pass the gavel to Mayor Pro Tempore Rice. He felt he was too close with the ministorage business to vote.

Jeff Ford, Building Official, said this isn't something done regularly. He felt there was some wiggle room for this if he put in a smaller shed.

Councilman Keener said for someone that is a new homeowner, if you see that your neighboring properties have sheds, you assume that is okay. We need to find some kind of way to work around this.

Mayor Pro Tem Rice understood that position. He indicated, in his neighborhood there are non-compliant car ports and they are aluminum structures. A code enforcer would be very busy. We find ourselves undoing the mistakes of the previous councils a lot. This is just like curb, gutter and sidewalk exemptions. There is an option to simply make a smaller building. It isn't prudent to grant this variance because other people in the neighborhood are out of compliance as well.

Councilwoman Simons agreed they shouldn't grant a variance. She felt the easement in the back makes this unique.

Mayor Pro Tem Rice asked if she was suggesting tabling this?

Councilwoman Simons answered yes. Let's table this and look at it further. We should add things to the code.

Mayor Pro Tem Rice felt the ordinance was good. The only option we can give Mr. Luna is to make the building smaller. That would be in the best interest of the community. If we table it, it is dangerous to start changing ordinances because of one case.

Mr. Wilkinson said if this variance were to be denied, and he felt there has been enough discussion that maybe staff could look at other circumstances where zero setbacks would be appropriate, but if this were denied and we were to have a code revision take place before the applicant were to completely demolish and remove his structure, you may see a code revision that would address the rear yard setback. Then if he had not demolished his structure, not completed his structure, he would then have the opportunity if the code were to be amended or revised, that if he were to move it east, he could then be in conformance with the current code.

Mayor Pro Tem Rice asked about tabling until the next meeting and give staff a chance to go out and come up with some solutions that would probably require Mr. Luna to uproot that and move it somehow in his yard.

Mr. Wilkinson said if you were to look at the codes and the findings required, the variance would be denied today. If there is not a timing for demolition and the code were sequentially changed, and Mr. Luna had an opportunity to revisit his project and were to comply with side yard setbacks, we don't have the life safety issues, that might provide an opportunity.

**\*\* A motion was made by Councilwoman Simons to deny the variance and cease construction at this time, with direction to staff to look at possibility of adding exemptions to the zero requirement setback.**

*The motion died for lack of action.*

Councilman Keener asked if they should do a motion to table until such time staff has time to investigate.

Councilwoman Simons asked if they would worry about denying it right now.

Councilman Keener answered, right.

**\*\* A motion was made by Councilwoman Simons to table the motion.**

Mr. Wilkinson that they were opening themselves for some issues.

Mayor Pro Tem Rice wasn't sure if tabling this was the right way to do this. We can't grant the variance. We don't have the codes that allow us to grant a variance.

Mr. Wilkinson said there has been a lot of discussion so staff will be looking at the code. The motion should be specific to the agenda item. That may be the best we can do today in consideration of some other legal issues that the City has pending on other variance issues.

*The motion died for lack of a second.*

**\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to table the appeal and direct staff to look for a remedy on the rear yard setback for the Benti Way location that borders the public property (Public Quasi-Public) of the Peace Park.**

Mayor Pro Tem Rice cautioned that staff has indicated that there are other legal matters the City is dealing with in similar situations. If we table this, we may be opening up a larger box of questions and concerns.

Mr. Wilkinson said if this is tabled we would still have to have a hearing on an appeal. Tabling may not get us to where we need to be.

Councilman Keener withdrew his motion.

Councilman Schmidlein withdrew his second.

Mayor Pro Tem Rice thought they needed to deny the variance. Staff has indicated that they have an interest in looking at the ordinance for some possible changes. If the ordinance is changed, there is a possibility that Mr. Luna's shed could be in compliance with some minor changes.

Bob Thibault, Civil Engineer, said he is thinking about open space and zero setbacks. He sees open space as land that could be easily be developed in the future for a different purpose. This might be one of those things where we are setting up future generations for failure.

Mr. Wilkinson thought that was a good point and the they can address that easily with staff. The City can deal with those issues. We would not allow it to be developed to a setback on open space that could be in the future developed for any type of land use other than public parks or something like that. That can be dealt with in a definition.

Mr. Thibault thought even a park like this can be developed into a different use someday.

**\*\* A motion was made by Councilman Schmidlein to deny Mr. Luna's request for a variance and allow staff to look into any future remedies that something may transpire that may be possible to...**

*The motion was restated below.*

Mr. Wilkinson felt the motion should be restricted to the agenda item.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to deny Mr. Luna's request for the appeal.**

Councilman Schmidlein told Mr. Luna it is difficult to approve this and they have an obligation and responsibility to enforce the code. In the near future there may be possibilities you could come back to the Planning Commission. We were trying to figure out a way for Mr. Luna to keep his structure where it is at but it would have to move to the east.

Mr. Luna said he would bring a list of everyone in the neighborhood with sheds so action could be taken on them.

Mayor Pro Tem Rice called for a vote.

*The motion passed. (4-1 Mayor Johnson abstained.)*

Councilman Keener thought it would be helpful for staff to go to different sellers to advise buyers about the setbacks.

#### **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**

Councilman Keener announced there was a Community Concert next door starting at 7p.m. this evening.

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

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Mayor Chris Johnson

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Kelly Wooldridge, City Clerk