

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

SS November 10, 2014

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 4:00 p.m., Monday, November 10, 2014.

This meeting was called to order by Mayor Chris Johnson.

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

Mayor Present: Chris J. Johnson

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

City Staff Present: Curtis Calder, City Manager  
Dawn Stout, Administrative Services Director  
Shanell Owen, City Clerk  
Doug Gailey, Human Resources Manager  
Dennis Strickland, Public Works Director  
Mark Gibbs, Airport Director  
Scott Wilkinson, Development Manager  
Rick Magness, City Planner  
Ted Schnoor, Building Official  
Fritz Sawyer, WRF Superintendent  
Dale Johnson, Assistant Water Superintendent  
Tom Coyle, Assistant City Attorney  
Matt Griego, Fire Chief  
Ben Reed, Jr., Police Chief  
Jeremy Draper, Civil Engineer  
Ben Mangeng, Information Systems Manager  
Jonnye Jund, Accounting Manager  
Diann Byington, Recording Secretary

## **ROLL CALL**

## **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**

Cathy McAdoo, Director of PACE Coalition, said she was thankful for our veterans. She was at the college and saw their display honoring veterans and those that have been lost at war since September 1, 2011. There is a special presentation Wednesday night beginning at 5:30 in the theatre. There is a Veteran's Day Parade tomorrow at 11:00am. If you are a veteran, McAdoo's will be giving away free cupcakes to all veterans.

## I. PRESENTATIONS

- A. A reading of a Proclamation by the Mayor recognizing the 65<sup>th</sup> Anniversary of the Soroptimist International of Elko.

Mayor Johnson read the proclamation.

Elaine Castle, President of Soroptimist International of Elko, thanked the city and everyone that helps them do what they do.

**APPROVAL OF MINUTES:** October 28, 2014 Regular Session

*The minutes were approved by general consent.*

## II. PERSONNEL

- A. Employee Introductions:

- 1.) Roger Veldt, Water/Sewer Laborer

*Present and introduced.*

- B. Review, consideration, and possible adoption of Drug and Alcohol Free Workplace, and matters related thereto. **FOR POSSIBLE ACTION**

The Drug and Alcohol-Free Workplace Policy has been updated and formatted consistent with POOL/PACT HR recommendations. DG

Doug Gailey, Human Resources Manager, explained this is a re-working of the current policy. It has been updated a little bit.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to approve the Drug and Alcohol Free Workplace policy effective November 10, 2014.**

*The motion passed unanimously. (5-0)*

- C. Review, consideration, and possible adoption of Sick Leave Policy, and matters related thereto. **FOR POSSIBLE ACTION**

The Sick Leave Policy has been updated and formatted consistent with POOL/PACT HR recommendations. DG

Mr. Gailey explained this policy is exactly what we currently have in place. There are a few exceptions with the different contracts.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to approve the Sick Leave Policy effective November 10, 2014.**

*The motion passed unanimously. (5-0)*

### **III. APPROPRIATIONS**

- B. Review, consideration, and possible authorization for Staff to award the equipment bid for the WRF West Secondary Activated Sludge Center Well Project, and matters related thereto. **FOR POSSIBLE ACTION**

Council authorized re-bidding this project during the October 14<sup>th</sup> meeting. Staff received four bids on October 24<sup>th</sup>. These bids and the engineering evaluation are enclosed for your review. FPS

Fritz Sawyer, WRF Superintendent, explained they opened the bid packages and went through their detailed analysis. He recommended award to WesTech Engineering. WesTech also had the best warranty and the best reviews.

Councilman Keener thought it was remarkable how close the bids were. Was there much bid variation the first time through?

Mr. Sawyer answered the bids were about the same. One company had included a piece of equipment that wasn't required. The bids are pretty close.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to accept staff's recommendation in awarding the bid to WesTech Engineering in the amount of \$78,990 for the West Secondary Activated Sludge Center Well Project.**

*The motion passed unanimously. (5-0)*

After the motion and before the vote, Councilman Keener noted in the agenda item information it said \$78,990 but...

Councilwoman Simons said the price is for only the part.

Mr. Sawyer said we are just buying the equipment and not the installation.

Shanell Owen, City Clerk, reminded the Mayor that they needed to open the bid up to any public comment.

Mayor Johnson asked for public comment with no response.

**Council voted on the motion.**

- C. Review, consideration and possible final acceptance of AIP 43 Rehabilitate Runway 5-23 (Phase 2) including Paving Shoulders and upgrading Airfield Lighting and Signage at the Elko Regional Airport, and matters related thereto. **FOR POSSIBLE ACTION**

Rehabilitate Runway 5-23 (Phase 2) including Paving Shoulders and upgrading Airfield Lighting and Signage has been completed. A walk through inspection took place on September 17, 2014, and all punch list items were accepted on October 6, 2014. Staff is asking for final acceptance of this project. This project encompassed a mill and overlay of approximately 1,800 feet by 150 feet of Runway 5/23 including the Runway 05 Blast Pad. Runway shoulders were added to either side of the runway on the portions rehabilitated. New runway edge lighting, runway end identifier lighting configuration and the removal of discontinued REIL NAVAIDS were also components of this project. The final invoice is still in progress but the project is estimated to close out at \$1,565,000.00 - \$1,575,000.00. MG

Mark Gibbs, Airport Director, explained there have been delays due to equipment breaking down.

Councilwoman Simons asked what the original bid was.

Mr. Gibbs answered the total cost will be under the original bid amount by about \$35,000.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, for final acceptance of AIP 43 Rehabilitate Runway 5-23 Phase 2 including paving shoulders and upgrading airfield lighting and signage at the Elko Regional Airport.**

*The motion passed unanimously. (5-0)*

#### **IV. UNFINISHED BUSINESS**

- A. Review and possible selection of an engineering firm to provide aviation planning services at the Elko Regional Airport, and matters related thereto. **FOR POSSIBLE ACTION**

The Federal Aviation Administration has requested that Elko Regional Airport complete an Airport Master Plan with Airport GIS survey in 2015. This AIP eligible planning project is scheduled for the FY 2015 Federal grant cycle. The airport has invited qualified airport planning services firm to complete Statements of Qualifications.

Based on a review completed by Mandy Simons, Norman Rockwell and myself, Jviation, Inc. had the highest ranking. We ask the City Council to allow the airport to enter into negotiations with Jviation regarding a five year planning contract that is contingent upon Federal AIP funding at 93.75%. MG

Mr. Gibbs explained this is likely to be their next project that is AIP funded. There were two other firms that provided proposals. Jviation is our current engineering firm. Now we will add planning services to their contract if council accepts them.

Councilman Keener noted this has been driven by the FAA requiring that we update our master plan.

Mr. Gibbs answered the FAA asked us to undergo this project. We didn't plan for this but we are carrying forth their request.

Councilwoman Simons said they have been very pleased with Jviation thus far in our current contract with them.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Keener, to select Jviation for engineering services at the Elko Regional Airport and direct staff to negotiate a Professional Services Agreement which will be brought back to council for review and possible approval.**

*The motion passed unanimously. (5-0)*

## **V. NEW BUSINESS**

- A. Review, discussion, and possible approval of a first amendment to the contract of purchase and sale between the City of Elko and Parrado Partners, L.P. & Gloria E. Capps, as Trustee of the Gloria E. Capps Revocable Trust of 1989, as Amended January 25, 2011, for the purpose of extending the close of escrow, increasing the amount of the deposit, and acknowledging the public improvements provided by the seller are complete/acceptable on the property commonly known as a portion of Elko Assessor's Parcel Number 001-630-060, further described as Parcel 1 of a conditionally approved Parcel Map for Parrado Partners, LP & Gloria E. Capps, as Trustee of the Gloria E. Capps Revocable Trust of 1989, as Amended January 25, 2011, and matters related thereto. **FOR POSSIBLE ACTION**

The contract of purchase and sale between the City of Elko and Parrado Partners, L.P. & Gloria E. Capps, as Trustee of the Gloria E. Capps Revocable Trust of 1989, as Amended January 25, 2011, anticipated closing escrow no later than November 21, 2014. However, the effective date of the Federal Emergency Management Agency (FEMA) Letter of Map Revision Determination Document is February 5, 2015. In return for extending the close of escrow, the seller has requested an increase in the deposit by \$100,000, to be applied toward the purchase price of \$315,000 at time of closing.

The seller recently completed all required public improvements and is requesting the City of Elko deem the improvements "condition acceptable," per the original contract of purchase and sale. A copy of the proposed first amendment to the contract of purchase and sale between the City of Elko and Parrado Partners, L.P. & Gloria E. Capps, as Trustee of the Gloria E. Capps Revocable Trust of 1989, as Amended January 25, 2011, has been enclosed in the agenda packet for review.  
CC

Curtis Calder, City Manager, explained we have Robert Capps in the audience if you have any questions for the seller.

Councilwoman Simons asked if this was the last hurdle.

Mr. Calder answered if this amendment is not approved the purchase contract would expire and we would have to start over.

Councilwoman Simons asked if there are other things we are waiting on.

Mr. Calder said the LOMR is waiting for appeals to be filed. The effective date is February 5, 2015. We have to wait for that. Assuming that becomes effective on February 5 then we would move to close escrow and complete the purchase transaction. All of the other elements of the Police Department project are pending that LOMR effective date.

Kimberly Owen, 1289 Parkview, said an increase to the deposit of \$100,000 is a large increase. Why did they request for that?

Robert Capps said due to this comment period for the LOMR we are not able to close escrow until February 5<sup>th</sup>. The additional deposit will keep them from listing the property until that date. The money is refundable if the deal doesn't go through.

Ms. Owen suggested that council counter the increase. If you accept the improvements right now then you have nothing to fall back on. Leave yourself an out with no obligation to the seller. There is no one in line behind you looking for this land so there is no rush.

Mr. Capps said in light of the money spent on the improvements, the deposit should have been higher in the first place. This deal was supposed to close in the next few weeks other than this delay from FEMA. We have been through all the investigations. Title is still a contingency. As a seller he is not interested in additional contingencies. There has been some additional interest in the property and he felt that comment was inaccurate.

Ms. Owen strongly urged the council to add those contingencies. There was a buyer that decided not to purchase the property due to the soils conditions on the site.

Councilman Schmidlein asked if there is any merit to us taking the improvements as is. Are we accepting it as it currently is? Are there any issues we need to worry about?

Mr. Calder said the improvements have been completed to our satisfaction. Capps has provided a maintenance deposit for a Maintenance Agreement for those improvements and we have accepted those.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Keener, to approve the First Amendment to the Contract of Purchase and Sale between the City of Elko and Parrado Partners LP and Gloria E. Capps as Trustee of the Gloria E. Capps Revocable Trust of 1989 as Amended January 25, 2011 for the purpose of extending the close of escrow, increasing the amount of the deposit and acknowledging the public improvements provided by the seller are complete and acceptable on the property commonly known as a portion of APN: 001-630-060 further described as Parcel 1 of a conditionally approved parcel map for Parrado Partners LP and Gloria E. Capps as Trustee of the Gloria E. Capps Revocable Trust of 1989 as Amended January 25, 2011.**

*The motion passed unanimously. (5-0)*

## VI. RESOLUTIONS AND ORDINANCES

- A. Review and approval of the Elko City Election held November 4, 2014, and its results, including the adoption of Resolution No. 36-14, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to Nevada Revised Statutes 293C.387, the election returns from a general city election must be filed with the City Clerk. No person may handle, inspect or in any manner interfere with the returns until they are canvassed by the Mayor and the governing body of the City. The canvass must be completed on or before the fifth working day following the election. After the canvass is completed, the governing body of the City and Mayor shall declare the result of the canvass. SO

Shanell Owen, City Clerk, explained this is our second election held in conjunction with the County election. We had a 54.55% voter turnout for the city part of the election. In the packet is the final summary report and a copy of Resolution 36-14. She went over the results.

Mayor Position: Chris Johnson 1,989 and Charlie Myers 1,524.

City Council: Reece Keener 1,917; John Patrick Rice 1,686; Kimberly Owen 1,677; and, Bill Hance 927.

Overall the election ran very smoothly. There was some congestion that began around 4:00pm and went until 7:30pm.

Mayor Johnson called for public comments without a response.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to adopt Resolution No. 36-14.**

*The motion passed unanimously. (5-0)*

- B. First reading of Ordinance No. 789, an ordinance, amending Title 3, Chapter 2 Section 3 C(5) of the Elko City Code, which ordinance is entitled "TEMPORARY WAIVER OF IMPROVEMENTS AND FEES REGARDING TUP's FOR CAMPGROUNDS" by adding Subsection "i" which permits the Council to waive permit fees and requirements for onsite and offsite improvements under specified conditions, filed and processed as Zoning Ordinance Amendment No. 4-14, and to direct Staff to set the matter for public hearing, second reading and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

Council took action to initiate an amendment to the zoning ordinance on October 14, 2014. The Planning Commission then held a public hearing on November 4, 2014, and took action to forward a recommendation to City Council to adopt an ordinance which approves the zoning ordinance amendment. RM

Rick Magness, City Planner, explained this had been forwarded to Planning Commission and they heard and approved it at their last meeting. Their recommendation was back to council to move this along.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to conduct the first reading of Ordinance No. 789 and direct staff to set the matter for Public Hearing, Second Reading and Possible Adoption.**

*The motion passed unanimously. (5-0)*

## **VIII. REPORTS**

**A. Mayor and City Council**

*Councilman Keener attended the IT open house. A copy of a letter had been placed in the Council boxes that Curtis Calder and Chief Griego had signed to Frontier Communications regarding the reliability of the phone lines. He wondered if the city had heard anything back from them yet. Curtis Calder had not received a response but he did get the return receipt back. Bill Hance said there was a response from Frontier this afternoon.*

*Councilman Rice has a trip next week to meet with Heller, Amodei and Reed.*

**B. City Manager**

*Curtis Calder said Delmo Andreozzi's last day is December 5<sup>th</sup>. December 6<sup>th</sup> will be his going away party. There is a gift in the vault waiting for signatures.*

**C. Assistant City Manager**

**D. Utilities Director**

**E. Public Works Director**

*Dennis Strickland said the landfill scale project is substantially completed. There are some technical issues that the scale people will have to come back and fix. Ground has been broken at Errecart and Silver Street for the signal project.*

**F. Airport Director**

*Mark Gibbs reported that the AIP 44 project has already started. The IT Department is a great asset to the Airport and he is glad that building is finally being used.*

**G. City Attorney**

**H. Fire Chief**

**I. Police Chief**

*Ben Reed said the fingerprint machine went out in February and while they were waiting for the equipment to be repaired the Information Systems Manager discovered that they could disconnect their T1 line and save the department about \$20,000 a year.*

**J. City Clerk**

**K. City Planner**

*Rick Magness reported there is a workshop for RDA and RAC with the consultants that are working on the Economic Program in the Central Business District next Tuesday next week at 1pm at Stockmen's. The same day will be an open house for the public.*

**L. Development Manager**

**M. Administrative Services Director**

*Dawn Stout reported on the sales tax return information. We are up over budget this year so far.*

**N. Parks and Recreation Director**

**O. Civil Engineer**

P. Building Official

Q. HR Manager

*Doug Gailey said the OE3 contract is still being negotiated.*

## **BREAK**

## **VII. 6:00 P.M. PUBLIC HEARINGS**

- A. Public Hearing for the purpose of obtaining additional citizen input on possible activities to be included in an application(s) for funding by the Community Development Block Grant (CDBG) Program in 2015, and matters related thereto.  
**FOR POSSIBLE ACTION**

The City may submit two grants for this funding cycle. During the public hearing, the City will ask for citizen input on proposed projects and suggestion of further ideas and projects. Proposed projects include: Elko Storefront Renovation Program - \$300,000 and Joshua Tree Homeless Shelter Design - \$75,000. Council will prioritize the applications on December 9, 2014. Grants are due to the CDBG office January 7, 2015, in Carson City. SO

Shanell Owen, City Clerk, explained this is the second hearing for the CDBG process. The final hearing will be in December. There are three projects for consideration. We can submit two projects. The store front renovation program will be from set-aside funding and will not be counted as one of the projects we submit. She handed out a letter (Exhibit "A") from Kerry Aquirre.

Kerry Aquirre, Executive Director Elko Senior Center, 1795 Ruby View Drive, explained the project they want to do is reduce their overall energy costs by doing a retro-fit/upgrade to the interior and exterior lighting. The letter summarizes costs. They have an estimate. They are not asking for the entire amount. They think they can get a match from NV Energy Sure Bet Program. Upgraded lighting fixtures and bulbs is what they need.

Councilman Rice asked if there is an estimate as to how much they can save with this.

Ms. Aquirre answered they do not have an estimate yet. They have asked for an assessment. She did some research and made some phone calls. She found out that there may be an opportunity to fund the entire project through NV Energy. NV Energy representatives told her that there are no Sure Bet Contractors in this area because no one has applied. No one has applied because this is the first year they have done this program.

Mayor Johnson asked if there is a cost to do the assessment.

Ms. Aquirre answered no. It is her understanding that NV Energy handles that.

Mayor Johnson asked how long it would take to get that assessment.

Ms. Aquirre answered she believed it would be done in the next three months.

Richard Harris, Board President of the Senior Center, asked if this money is funded by the State of Nevada.

Ms. Owen answered it's actually Federal funds.

Mr. Harris asked if there is a certain amount of money allocated to each entity.

Ms. Owen answered there is not. There are approximately 26 entities that put in competitive grants for approximately \$2.5 million.

Jennifer Kidwell, Joshua Tree, PO Box 1353, Elko, gave a presentation (Exhibit "B" Joshua Tree Shelter, Elko Nevada).

Councilman Keener asked about the floor plan. It looks like general quarters for the clients. Is there not segregated areas for male and female?

Ms. Kidwell said there are separate dormitories for men and women. This is for housing first. Another phase will be transition housing with studio apartments. These studio apartments will help create revenue for the shelter where they can set rents on a sliding scale and help keep the shelter open and running.

Mayor Johnson noted the process is very competitive. If they fund this they will want to know more about how you will fund this and will this be sustainable but Ms. Kidwell touched on how that will work.

Ms. Kidwell does have some of that information now in a presentation. They are still working on their sustainability options.

Councilman Rice anticipates the dollars will be used to plan all three phases. (yes) You will be initially aiming at phase one construction. Do you have an estimate?

Ms. Kidwell said she has an estimate of \$200 a sq. ft. This will be approx. 9000 sq. ft. They have had several companies approach and say they can assist lowering the costs. Until they have the architectural plans they cannot bid further.

Councilman Rice said the city has been dealing with a lot of issues around homelessness. There is a task force that Delmo Andreozzi has been working with. Is she working with that group as well?

Ms. Kidwell answered she was originally on the very first Ad Hoc Task Force but due to job requirements she was unable to participate in the group. She is open to working with the group if they would meet at times her work schedule would allow.

Councilman Rice said there is a lot of effort on that end too and wants to see coordination with them.

Ms. Kidwell agreed.

Rick Magness gave a presentation (Exhibit "C" Downtown Storefront Improvement Program).

Mayor Johnson asked if there will be a maximum amount per project or can one property receive the entire grant.

Mr. Magness answered there would be a \$50,000 maximum threshold per frontage. This will be match money so in the end you will have \$100,000 put into a storefront façade.

Mayor Johnson asked if there is a time limit on the grant.

Mr. Magness answered there is a time limit where they have to start executing. Then there will be milestones of when that matching is reimbursed.

Mayor asked if the money is not used, will it go back to CDBG. (yes)

Shanell Owen noted we need to ask for any public comment on the presented projects and if there are any other possible projects.

Mayor Johnson called for public comments without a response.

Councilman Keener said it seems like when this was presented a month or so ago, you indicated they were discouraging grant applications under \$130,000.

Ms. Owen answered that it is her understanding that the grants with the higher limits may get more consideration but they didn't want to say that you cannot submit.

Councilman Keener asked if several small projects could be bundled together.

Ms. Owen answered no. Each project has to be submitted on its own merits and meet the objectives and criteria of the program.

Mayor Johnson noted that we will continue this process at the December 9<sup>th</sup> meeting.

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to continue with the grant process.**

*The motion passed unanimously. (5-0)*

After the motion and before the vote, Richard Harris, Board President of the Senior Center, asked based on what he just heard from Councilman Keener and Shanell Owen, does it pay, then, to submit their grant request for \$50,000.

Mayor Johnson answered it would be his call whether or not they want to put the time into it. That is an indicator that came back from CDBG that they are looking for bigger projects but it doesn't mean that they will disqualify a project because it doesn't meet a particular amount.

Mr. Harris said in his view, they are discouraging the smaller operations from even applying.

Mayor Johnson noted this is the first year he has heard of CDBG making an announcement like that.

Ms. Owen said they get so many grant requests that they are trying to rein that in. Any project that meets the qualifications and criteria would be considered. An advisory committee will hear the presentations and make the decisions.

Mayor Johnson asked if there was a number that someone could call to get a better feel for the CDBG process and what the board is looking for.

Ms. Owen answered yes. She has several contacts she can put people in touch with. The application process is a process and the application packet will be fairly large. There is a lot to it. For entities that are struggling for funds, this can really help.

Councilman Rice thought that maybe something could be added on to the proposal as it is prepared to make it a bigger project.

Ms. Owen said they look at what you are willing to put towards the project. It shows your dedication to the project if you have a match.

Mr. Harris thought it would hurt their proposal if Kerry and her staff got money from NV Energy. That would reduce what they are looking for. That is a decision they will have to make.

Ms. Owen said there are two different ways of looking at that. The advisory members are made up of representatives from the local cities and counties. They understand what other funding is out there. When we go and give a presentation they ask if you have looked for and applied for other grants.

Councilwoman Simons seconded the motion.

**Council voted on the motion.**

- B. Review, consideration, and possible action to adopt Resolution No. 35-14, a resolution of the Elko City Council adopting a change in zoning district boundaries from C (General Commercial) and LI (Light Industrial) to C (General Commercial), involving approximately 1.44 acres of railroad property located generally on the southeast corner of the intersection of West Idaho Street and West Silver Street, filed by Greg Secrist on behalf of Ruby Mountain Motors, LLC and processed as Rezone No. 6-14, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the subject zone change request during a special meeting on October 23, 2014. It took action to forward a recommendation to Council to adopt a resolution which conditionally approves Rezone No. 6-14 subject to the five conditions listed in the City of Elko Staff Report dated October 7, 2014, which were agreed to by the petitioner. The Commission included findings in support of its recommendation. RM

Rick Magness, City Planner, explained we have a parcel that is bifurcated by two different zoning classifications; light industrial and commercial. For the use that is being proposed (an auto dealership) we realized we need to request that this area be zoned as commercial to allow

for that use. In a way it is to clean up this parcel. The applicant has already been busy submitting drawings to the Building Department. There was a list of conditions that the Planning Commission has approved. He asked that the applicant come up and accept the conditions on the record.

Greg Secrist, 2030 Candlewood Circle, Twin Falls, Idaho, said he accepts the conditions from the Planning Commission as described.

Councilman Keener asked Mr. Magness, this has been used as a trailer lot and other car lots; what is driving the need to change the zoning.

Mr. Magness said he didn't know if that parcel had been zoned correctly in the past. He is unable to speak for the uses that were there before.

Councilman Schmidlein asked if any permanent structure will be built on this property.

Mr. Magness answered the existing structure will be used. There will be additional landscaping that will be in conjunction with what is being done with NDOT. There will be paving and lighting out there. In the application they have received to date is utilizing that existing structure as is.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to adopt Resolution No. 35-14.**

*The motion passed unanimously. (5-0)*

After the motion and before the vote, Councilman Rice asked if there is a time when these conditions are to be met.

Mr. Magness answered yes. The applicant currently has drawings into the Building Department.

**Council voted on the motion.**

- C. Review, consideration, and possible action in response to an appeal filed appealing the Elko City Planning Commission's decision to conditionally approve Conditional Use Permit No. 7-14, filed by Ormaza Construction, Inc., to allow a bar/restaurant within a C (General Commercial) Zoning District that is located within the Central Business District, located generally on the southeast corner of Idaho Street and 4th Street (400 Idaho Street), and matters related thereto. **FOR POSSIBLE ACTION**

In consideration of this item, the Council may affirm, modify or reverse the decision of the Planning Commission.

The Planning Commission considered the subject conditional use permit on October 4, 2014 and took action to conditionally approve the conditional use permit. Subsequently, an appeal was received of the Planning Commission's decision. RM

Mayor Johnson said he conferred with the City Attorney regarding whether or not he had a conflict of interest that would require a disclosure. Since his company is in contract with Ormaza Construction for the jail project he has been advised by the City Attorney that he abstain from this item. He handed the gavel over to Mayor Pro Tempore John Rice and recused himself.

Mayor Pro Tem Rice read the agenda item. Council received a memo from Tom Coyle regarding the standing to make this appeal.

Tom Coyle, Assistant City Attorney asked if there were any other conflicts of interest that needed to be disclosed.

Mayor Pro Tem Rice disclosed he is a member of the board of NNRDA.

Councilman Schmidlein disclosed he is a member of RAC and has no pecuniary interest in this matter whatsoever.

Mayor Pro Tem Rice said his position on NNRDA is as a board member and he has no interest in this particular matter, nor has this matter been discussed by the board of NNRDA.

Mr. Coyle asked if there was any concerns about the independence of judgment.

Mayor Pro Tem Rice answered he didn't have any concern about his independence of judgment on this particular matter.

Councilman Schmidlein said he didn't have any concerns on his independence of judgment either.

Mayor Pro Tem Rice read from the memo; 2) we will open the hearing and the public hearing simultaneously. That has been done. 3) the Mayor Pro Tem is to advise the parties, the appellants and the Planning Commission (which is represented by City Staff) that the City Council is first going to consider the issue of standing to pursue this appeal and will permit the parties and others present to solely address that issue initially. He asked the appellants to identify themselves at the dais.

Pam Borda, Executive Director of NNRDA and member of the Redevelopment Advisory Council (RAC), introduced herself.

Mayor Pro Tem Rice asked Ms. Borda are you the sole appellant.

Ms. Borda answered yes.

Mayor Pro Tem Rice asked are you representing yourself or NNRDA.

Ms. Borda answered she is representing both herself and NNRDA. As a correction, this was discussed at NNRDA but not when Mayor Pro Tem Rice had been present.

Mayor Pro Tem Rice said typically, in order to stand for an appeal the party needs to be an aggrieved party. By definition that has to do with personal and property rights.

Mr. Coyle said all appeals on land use decisions must begin with an analysis of legal standing. It is intended to make sure that a real party is filing the appeal and contesting the matter. It is intended to protect government bodies and courts and administrative agencies from being choked up on appeals from anyone who wants to contest the matter. It is a legal term of art that we have in our City Code under Elko City Code 3-2-25-A. That is what discusses our standing standard. It says any person aggrieved by a particular decision may appeal that decision. When you go into what that legal term of art means, it basically boils down to it must be a person whose personal or property right has been adversely and substantially affected. It usually involves private rights, private property interests and involves more than minimal harm. It usually involves some interest that is generally different from just what someone else in the public at large would have. Initially, there is a Supreme Court case that stated it was error for a city council to proceed on a land use appeal without first determining this legal standing issue. He suggested in that memo that the council initially hear from the appellant what grounds on which they claim to have this legal standing to come forward with the appeal.

Mayor Pro Tem Rice then asked Ms. Borda to provide them with grounds for her position as being an aggrieved person or organization.

Ms. Borda said this highlights the amount of problems we have with these processes. She made this appeal on October 16, 2014 and found out at 10:00 this morning that there had been a legal opinion requested and that she probably is not a legal appellant. What is wrong with that picture? She paid \$375 and go through all the effort to do this. She even met with city staff and not one person ever said, "are you a qualified appellant?" That says to her that we still have some problems with processes. She has an interlocal agreement with the City of Elko to provide economic development services to it. As such, she was also asked to sit on the Redevelopment Advisory Council knowing that we have a significant role in the redevelopment of downtown. A huge part of her responsibilities in economic development is business retention. In other words, she is not just about bringing new business to town, but also retaining the ones that we have. That means the downtown businesses. She does, in fact, represent the retail businesses downtown and their ability to sustain themselves and be healthy and thrive.

Councilwoman Simons asked about the application process in order of this appeal. She thinks that maybe the standing is broad enough that we can argue that Ms. Borda has standing. Let's just say that we decide that is not the best route. That it would be better to have someone with a direct business or something like that. Will they have to start again and pay the fee again in order for us to hear this? It seems like we have some support and maybe it is something we can hear out and get all the information on and consider. It seems like that might be a good idea. She feels awful that Ms. Borda has gone through this process. She wanted to know what the options are. If they decide that Ms. Borda doesn't have standing the whole thing goes down the wash and we have to start all over again? How does that process work? What would be required of somebody else?

Mr. Coyle answered it is his understanding that 10 days within the determination of the Planning Commission, that is when you had to file an appeal under 3-2-25-A. That time has lapsed. Other persons are precluded from filing an appeal.

Councilwoman Simons asked we either have to decide whether Ms. Borda does have some standing and hear it now or the matter is settled at that point.

Mr. Coyle answered that is correct.

Mayor Pro Tem Rice asked if there was another copy of this memo available. He read more of the legal decision. *His review of the appeal document does not show forth the grounds of standing. The appellant asserts grounds which amount to alleged: deficiencies of the CUP application and review, discord over the proposed use, possibilities of negative impact to area businesses, and, Redevelopment Advisory Council (RAC) failure to receive notice or consider the CUP issue. Moreover, it is Mr. Coyle's understanding that RAC, the Appellant member of RAC, and NNRDA did not present oral or written testimony or otherwise participate in CUP consideration before the Planning Commission.* The attorney's position is that there is not standing for Ms. Borda to be making this appeal.

Mr. Coyle said that is not entirely correct. It was not shown in the appeal document itself and that is why it is appropriate to ask the appellant right now what grounds are you stating justify finding of standing because what was set forth really didn't address legal standing.

Mayor Pro Tem Rice said that Ms. Borda just gave us the explanation.

Councilwoman Simons asked Ms. Borda if she was present representing any particular businesses that have talked to her and asked her.

Ms. Borda answered this is as a result of two years of work with the downtown businesses. We are very likely to lose three businesses if this becomes a bar and not a bar and restaurant. She will follow whatever the attorney recommends but it is disturbing that we have serious problems with the process here. We need to fix those. She was the only one that could step forward and try and do that. Now that she is stepping forward it seems to her it is convenient the way this council gets out of that is to declare her not a valid appellant. She knows they didn't do that but she is saying that if they were to sit back from her standpoint and others that once again we have a process problem.

Councilman Keener thought this case was very unusual. Usually when a decision from Planning Commission does gets appealed it involves a party that is directly impacted by whatever it was that was passed. This is really very different. He is sorry that this came as a surprise to her. It was actually a surprise to him when he saw the memo on this. It is a very unusual circumstance. Now that we have seen this happen once, staff will be more tuned into it in the future if something such as this arises.

Ms. Borda agreed that this is very unusual. She is willing to go with whatever this council decides. She thought she has gotten her \$375 worth by elevating this issue to the council which is also the RDA and letting them know that there is an issue with people who don't understand redevelopment, making decisions that impact it and that impact her personally. If you think that she can recruit businesses successfully downtown with yet another bar there, she is telling them that it's not going to happen.

Councilwoman Simons wanted to make sure. From what Mr. Coyle is seeing, he is not seeing standing but that doesn't necessarily mean that it doesn't exist. It just means that we are going to have to clarify and identify what gives her standing, right?

Mr. Coyle answered correct.

Councilwoman Simons said she wants to make sure they ask every question so that if they decide she doesn't have standing it is because she truly doesn't have standing. If she does have standing that they go ahead and hear out the information from both sides and go ahead and consider this properly. That is why she is trying to identify if maybe there were specific businesses that came to her and asked her to represent them, or some caveat that might fit in and it sounds like there has been a lot of examples of who has standing to file these things and if one of those applies to Ms. Borda then she thought the board could go ahead and Mr. Coyle would be on board with this hearing. We just have to determine if that exists.

Mayor Pro Tem Rice said typically an appellant would be a next door neighbor or someone across the street. That is his take on it on a case like this. Someone when some sort of a change is made, someone wants to have a temporary or a conditional use in a neighborhood, often business owners or homeowners or property owners within a certain vicinity of piece of property are noticed. And that is a determined parameter.

Mr. Coyle said in this case they had to give notice to people within 300 feet.

Mayor Pro Tem Rice asked if there were any objections.

Ms. Borda said there wouldn't have been any because staff was recommending denial. They would have agreed with that so they wouldn't have objected.

Mayor Pro Tem Rice said that is not necessarily so.

Councilman Keener said when the notification card comes out he didn't think it says what the staff recommendation is. It just says what the matter is that will be going before the Planning Commission.

Councilwoman Simons asked if none of the businesses showed up to Planning Commission. She wasn't at that meeting. No negative comments were made at that Planning Commission meeting?

Duane Jones, Cedar Creek Clothing, 453 Idaho Street, said that if you allow one bar then you open the gate. They will be the next ones with their location for a bar at their table. He felt that was a negative connotation. We have 20 bars in this area.

Mayor Pro Tem Rice said we have to decide standing first. We have two choices. We can declare that Ms. Borda doesn't have standing for the appeal or we can declare that she does.

Councilman Keener said he is having a hard time seeing the standing. He recognizes the work that she does in bringing potential clients to this area to look around and kick the tires but it isn't like she has property or real estate down in this area. He is having a difficult time seeing it. It is not like she is a neighbor with a business right there.

Councilman Schmidlein agreed with that, especially with what Mr. Coyle has pointed out. If she has adjoining property, absolutely she would have standing. With the 9 items she did list, she has very valid concerns with what is going on in the redevelopment area but without having physical possession of anything in the immediate area, he doesn't see how council can allow her

to have standing. Another item they can look at is, are there violations of public health and safety. That is something else you can look at. I don't know. He isn't an attorney at law but with what is being suggested to them he does not see standing.

Councilwoman Simons said she hates that there is obviously this issue and we can't even really address it. When she reads what deals with standing it almost sounds like you can argue that Ms. Borda maybe does. It would be stretching it though. But when you look at the individual cases that have dealt with that, none of them really deal with somebody with that relationship. As much as she hates to just kind of just shove something under the rug that may be aired more properly and maybe addressed in some way. She didn't know that you could argue that she has standing and not have it turned around and have somebody argue against it and have it turn into a whole big thing. She tended to agree that maybe she doesn't have standing and hopefully we can find a way to address this kind of thing and the issue because it is kind of sad that this is how it is turning out.

Mayor Pro Tem Rice agreed. He has spoken to staff about finding a way to avoid this going forward. We have the Planning Commission that goes directly to the council. We have the RAC that goes to the RDA which goes to the council. The processes aren't coordinated. Then he would ultimately say that when it comes down to the RDA and the direction and the vision, there is still nothing that prohibits any particular business in the redevelopment district. That is where he stands on this.

Councilman Keener added even if the appellant did have standing it would be pretty profound to overturn a Planning Commission recommendation. That was well vetted. There is probably 20 pages of minutes from that particular meeting.

Mayor Pro Tem Rice said we need a motion that declares the standing of the appellant.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidlein, on the Conditional Use Permit No. 7-14 to decide that the appellants, NNRDA and Pam Borda as a member of RAC, does not have standing in the aforementioned case.**

*The motion passed. (4-0 Mayor Johnson abstained.)*

After the motion and before the second and vote, Mr. Coyle asked for some verification regarding the appellants.

Councilman Keener modified his motion to included NNRDA and Pam Borda as a member of RAC.

Councilman Schmidlein seconded the motion.

Mayor Pro Tem Rice called for public comment without a response.

**Council voted on the motion.**

Ms. Borda asked for a refund of her money. It wasn't her fault that they couldn't hear her case. If she doesn't get to make her case you shouldn't get her money.

Mayor Pro Tem Rice agreed. Staff will look at it and if needed, we will consider that at the next meeting.

Councilman Keener felt that was valid.

Councilman Schmidlein said Ms. Borda brought up a lot of good points. In reference to policy or code discussions, changing a code to prohibit or establish a moratorium on bars in such areas as the downtown, obviously it was pointed out that having too many bars in a centralized location, and so on and so forth, but moving forward here it has clearly been identified that if there are too many uses in one block area that can be identified through RAC or RDA and many other areas. There is a negative impact to that. If there are no codes written in place when a person purchases a property they have a right to put whatever they want on that property. If this stuff needs to be changed; it's obvious this has been thrown out in front of us that there are changes that may be necessary to be made. Until those changes are done, once properties continue to sell, if we don't have these put in place, we can't discourage whatever a private enterprise person wants to do with their personal property. There is a lot of headways and headaches ahead to try to get this stuff straightened out.

Councilman Keener said a bar establishment is probably the best and highest use for that property. If retail was the best use then they would be knocking on the door to acquire the property.

Dillon Jones, Cedar Creek Clothing, said Conditional Use Permits (CUP) attach to the land. Can council change that that those things do not have to attach to the land?

Scott Wilkinson, Development Manager, said a CUP runs with the land but if the use were to change they could come in and undo that. The use may require another CUP or they can just come in and invalidate that use and move forward with something else. The owner of the land needs to make that request.

**Mayor Johnson took over the meeting.**

### **III. APPROPRIATIONS**

A. Review and possible approval of Warrants. **FOR POSSIBLE ACTION**

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

*The motion passed unanimously. (5-0)*

### **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**

Lina Blohm, Chairman RAC, applauded council's decision and in-depth consideration. The processes are not smooth or well thought out because we haven't gone down that road. What is

redevelopment? It isn't about how many bars we can have in the downtown area. Redevelopment addresses infrastructure and design guidelines. Our job in redevelopment is to stimulate investment and not deny investment. We have to be clear in our minds how we are looking at our business relationships in the downtown. We are over-stepping our boundaries if we are telling anyone that they can or cannot do such a thing.

Pedro Ormaza, 225 Silver Street, thanked council. He owns a building on Silver Street across from a restaurant that he is sure everyone in the room visits. For the last 20 years, every morning he picks up beer bottles, empty glasses and cleans up other messes that are in his parking lot. He isn't in downtown or on a main street. These messes are cleaned up daily. A bar is fine in his opinion.

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

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Mayor Chris Johnson

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Shanell Owen, City Clerk