

CITY OF ELKO
CITY COUNCIL AGENDA
REGULAR MEETING
4:00 P.M., P.D.S.T., TUESDAY, JANUARY 23, 2018
ELKO CITY HALL, 1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The Agenda for this meeting of the City of Elko City Council has been properly posted for this date and time in accordance with NRS requirements.

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**

APPROVAL OF MINUTES: January 9, 2018 Regular Session

I. PRESENTATIONS

- A. A presentation of a retirement plaque to Diane Armuth for her twenty-two years of service, and matters related thereto. **INFORMATION ONLY – NON ACTION ITEM**

II. PERSONNEL

- A. Employee Introductions:
 - 1.) Susanne Ray, Scale Operator, Landfill
- B. Mayoral designation of City Council members to specific "Liaison" positions within the City of Elko, and matters related thereto. **NO ACTION BY THE COUNCIL REQUIRED**
 - 1. Police Department Liaison
 - 2. Street Department Liaison
 - 3. Waterworks and Sewer Liaison
 - 4. Fire Department Liaison
 - 5. Airport and Public Property Liaison

6. Parks/Recreation Department Liaison
7. Building Department Liaison
8. Animal Shelter Liaison
9. Landfill Liaison
10. Redevelopment Advisory Council (Board Member)
11. Centennial Committee (Board Member)
12. ECVA (Board Member)
13. NNRDA (Board Member)
14. Elko County Commission Liaison
15. Elko County Water Planning Commission Liaison
16. Elko County Fair Board Liaison
17. Elko County Regional Transportation Commission (Board Member)
18. Elko County Debt Management Commission (Board Member)
19. Elko County Recreation Board (Board Member)
20. Other Departments Not Listed – SO

- C. Election of Mayor Pro Tempore, and matters related thereto. **FOR POSSIBLE ACTION**

III. APPROPRIATIONS

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**
- B. Review, consideration, and possible action to select a firm for design services for a combined Water/WRF Reclamation Facility Shop, direct Staff to negotiate a proposal with said firm, and thereafter bring back to Council for possible final approval a Professional Services Agreement (PSA) with said design firm, and matters related thereto. **FOR POSSIBLE ACTION**

Council authorized Staff to solicit for Statements of Qualifications on November 28, 2017. Staff received Statements of Qualification (SOQ's) from four firms. These SOQ's were rated by three Staff members (the rating sheet summary is attached for Council review). RL

A presentation by Public Works Director, Dennis Strickland regarding the Cedar Street Reconstruction Project, and matters related thereto. **FOR POSSIBLE ACTION**

- C. Review, consideration, and possible approval to authorize Staff to solicit bids for the Cedar Street Reconstruction Project Phase 2, and matters related thereto. **FOR POSSIBLE ACTION**

This item has been approved and budgeted for in the 2017/18 Fiscal Year Budget, Capital Construction Fund. DS

- D. Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) to enhance emergency communications, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko Fire Department radios are a mix of brands and models none of which are capable of communicating with County Ambulance, Sheriff's Office or NHP. In addition, they will not be capable of decoding scrambled communications from Elko PD radios in the future. The FEMA Assistance to Firefighters Grant would allow Fire Department to attain 20 mobile radios, 60 portable radios and accessories utilizing government pricing. These radios will enhance emergency communications and interoperability with Elko PD, Elko Ambulance, Sheriff's Office and NHP. In addition, these radios will meet the criteria for enhanced 911. JS

IV. UNFINISHED BUSINESS

- A. Review, consideration, and possible approval of a revised Water Line Special Reimbursement Agreement with Golden Gate Petroleum of Nevada, LLC, and matters related thereto. **FOR POSSIBLE ACTION**

The original agreement was approved by Council on November 28, 2017. There were no comments provided by Golden Gate Petroleum of Nevada, LLC to the agreement prior to the time Council approved the agreement. Thereafter, Golden Gate Petroleum of Nevada, LLC submitted the Council approved document to their legal team for review. Their legal team suggested wording changes prior to signing the document.

The total financial contribution by the City is still limited to One Hundred Eighty-Six Thousand Dollars (\$186,000.00) as previously approved. The change requested in the new document essentially amounts to stating reimbursement for the oversize and I-80 crossing portion of the work will be reimbursed to the developer within 30 days of completion. RL

V. NEW BUSINESS

- A. Review, consideration, and possible approval of Map of Reversion to Acreage No. 2-17, filed by 12th Street Associates, LLC, for the purpose of reverting to acreage parcel B & C as shown on Parcel Map File No. 711850, identified as APN 001-630-092 & 001-630-093, located generally south of the intersection of 12th Street and Opal Drive, and matters related thereto. **FOR POSSIBLE ACTION**
- B. Review, consideration, and possible action to accept the 2018 Planning Commission Work Program, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered a draft 2018 Work Program at their special meeting January 4, 2018. They took action to approve the Work Program and forward it to Council for acceptance. CL

- C. Review, consideration, and possible authorization to pursue legal action against Braemar Construction for continued violations of Title 9 Chapter 7, Construction Site Runoff Control, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko as a part of our Small Municipal Separate Storm Sewer Systems (MS4) permit requirements as issued by NDEP, and Elko City Code Title 9 Chapter 7, Construction Site Runoff Control, conducts regular inspections of constructions sites throughout the City of Elko. The inspections are to verify the contractors' compliance with their Storm Water Pollution Prevention Plan (SWPPP), and the Best Management Practices (BMP) they have selected to use to minimize storm water pollution from their construction sites. Braemar Construction has been in continual violation of these regulations resulting in multiple violations from regular inspections and a total of seven (7) written Notice of Violations (NOV) being issued since 2012 for failure to correct actions in a timely manner. Recently, work began on a property near Jennings Way and Courtney Drive without Braemar filling the required Notice of Intent (NOI), or receiving a grading permit from the City as required in Elko City Code 2-2-2-Appendix J. Staff is requesting authorization to pursue legal action against Braemar Construction for these continued violations pursuant to Elko City Code. JD

VI. RESOLUTIONS AND ORDINANCES

- A. Review, consideration, and possible approval of Resolution No. 2-18, Resolution and Order providing for the Elko City General Election to be held November 6, 2018, and matters related thereto. **FOR POSSIBLE ACTION**

The Elko City Council will have one Mayor position and two Councilmember positions available for the election to be held November 6, 2018. The City Election shall be governed by and conducted in accordance with the Elko City Charter, Title 1 Chapter 5 of the Elko City Code, and all applicable laws of Nevada. SO

- B. Review, consideration, and possible approval of Resolution No. 3-18, a resolution amending fees for treated effluent construction water by changing the billing rate from the metered rate to a flat rate, and matters related thereto. **FOR POSSIBLE ACTION**

At the January 9, 2018 meeting, Council directed Staff to modify the billing by converting it to the flat rate. RL

- C. Review, consideration, and possible approval of Resolution No. 4-18, a resolution placing a four-year moratorium on the issuance of business licenses for marijuana

establishments and medical marijuana establishments, and matters related thereto.
FOR POSSIBLE ACTION

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

- D. First reading of Ordinance No. 825, an ordinance amending Title 3, Chapter 2, of the Elko City Code "GENERAL ZONING ORDINANCE" specifically adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited", filed and processed as Zoning Ordinance Amendment No. 3-17, and possible direction to Staff to set the matter for public hearing, second reading, and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

At its December 5, 2017 meeting, the Planning Commission considered the action initiated by the City Council to establish a new Section 3-2-29 of the Elko City Code to prohibit marijuana establishments and medical marijuana establishments in all zoning districts. The Planning Commission voted to recommend denial of the amendment. The Council at their January 9, 2018 meeting rejected the Planning Commission's recommendation, approved the amendment and directed Staff to set the ordinance for a first reading. CL

VII. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible action to accept a petition for annexation of property to the City, filed and processed as Annexation No. 2-17 by Surebrec Holdings, LLC, consisting of approximately 62.03 acres of property located northeast of the intersection of Statice Street and Delaware Avenue, and matters related thereto. **FOR POSSIBLE ACTION**

VIII. 5:30 P.M. PUBLIC HEARINGS

- A. Review, consideration, and possible adoption of Resolution No. 33-17, a resolution amending Zoning Application Fees pursuant to Elko City Code Title 3, Chapter 2, Section 21, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to NRS 237.080, the City of Elko completed the Business Impact Statement process and Resolution No. 33-17 is ready for adoption by the Council.
SO

IX. REPORTS

- A. Mayor and City Council
- B. City Manager
- C. Assistant City Manager
- D. Utilities Director

- E. Public Works
- F. Airport Manager
- G. City Attorney
- 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

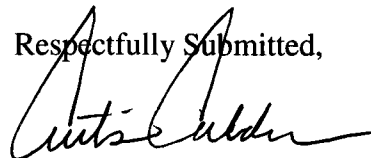
COMMENTS BY THE GENERAL PUBLIC

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NOTE: The Mayor, Mayor Pro Tempore, or other Presiding Officer of the City Council reserves the right to change the order of the agenda, and if the agenda has not been completed, to recess the meeting and continue on another specified date and time. Additionally, the City Council reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully Submitted,



Curtis Calder
City Manager

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

SS January 9, 2018

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, January 9, 2018.

This meeting was called to order by Mayor Chris Johnson.

ROLL CALL

Mayor Present: Chris J. Johnson

Council Present: Councilman John Rice *left at 6:34pm*
 Councilwoman Mandy Simons
 Councilman Robert Schmidtlein
 Councilman Reece Keener

City Staff Present: Curtis Calder, City Manager
 Scott Wilkinson, Assistant City Manager
 Ryan Limberg, Utilities Director
 Shanell Owen, City Clerk
 Dennis Strickland, Public Works Director
 Jonnye Jund, Administrative Services Director
 Candi Quilici, Accounting Manager
 Aubree Barnum, Human Resources Manager
 Cathy Laughlin, City Planner
 Ben Reed Jr., Police Chief
 Ty Trouten., Police Captain
 Jeremy Draper, Development Manager
 Bob Thibault, Civil Engineer
 Jeff Ford, Building Official
 Matt Griego, Fire Chief
 John Holmes, Fire Marshal
 Jim Foster, Airport Manager
 Mike Haddenham, WRF Superintendent
 James Wiley, Parks and Recreation Director
 Dave Stanton, City Attorney
 Diann Byington, Recording Secretary

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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Brady Griffiths, Field Outreach Director with Marsy's Law for Nevada, thanked everyone that has endorsed their cause and introduced their new representative.

Lynda Tache, Political Director with Marsy's Law for Nevada, asked for the Council's support to be the 3rd Council in the State of Nevada endorsing Marcy's Law. They would be honored to have the support.

Councilman Keener asked who are the other two that are signed on.

Ms. Tache answered North Las Vegas and the City of Henderson.

APPROVAL OF MINUTES	December 12, 2017	Special Session
	December 12, 2017	Regular Session

The minutes were approved by general consent.

II. PERSONNEL

A. Employee Introductions:

- 1.) Ashley Cooper, Police Records Technician II, Police Department
Present and introduced.
- 2.) Andrew Kellum, Patrol Officer I, Police Department
Present and introduced.
- 3.) Melinda Black, Patrol Officer I, Police Department
Present and introduced.
- 4.) Dean Pinkham, Patrol Officer 1, Police Department
Present and introduced.

I. PRESENTATIONS

A. Presentation and possible approval of the Consolidated Annual Financial Report and Audit for the City of Elko for the Fiscal Year ending June 30, 2017, and matters related thereto. FOR POSSIBLE ACTION

Mike Spilker with Hinton Burdick CPAs will be in attendance to present the City of Elko's Fiscal Year 2016/2017 Financial Report. JJ

Jonnye Jund, Administrative Services Director, introduced Mike Spilker, to give his presentation.

Mike Spilker, Hinton Burdick CPAs, gave a presentation (Exhibit "A").

Mayor Johnson asked about the PERS liability. When will that liability come due and is there a cash balance covering this?

Mr. Spilker answered that is something you could consider. If everything stopped at PERS at this point of time, and everyone retired, you would need to have it. GASB wants those numbers

in there to show the volatility but at this time PERS is in good shape. It is based entirely upon estimates.

Mayor Johnson called for public comment without response.

**** A motion was made by Councilman Rice, seconded by Councilman Keener, to approve the City of Elko's Fiscal Year 2016/2017 Annual Audit as presented.**

The motion passed unanimously. (5-0)

III. APPROPRIATIONS

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

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

The motion passed unanimously. (5-0)

- B. Review and possible approval of Print 'N Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

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

The motion passed. (4-0 Councilman Keener abstained.)

- C. Review and possible approval of Great Basin Engineering Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

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

The motion passed. (4-0 Councilman Schmidlein abstained.)

- D. Review, consideration, and possible approval to solicit bids for the City of Elko Water Main Removal and Replacement Project, and matters related thereto. **FOR POSSIBLE ACTION**

This project is included in the current fiscal year budget. There are four alley locations targeted for replacement in this project. These locations have been selected based on the high volume of waterline repairs in these areas (9 this past year). RL

Ryan Limberg, Utilities Director, explained the project. This project is budgeted for this year.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to approve soliciting bids for the Elko Water Main Removal and Replacement Project as described by the Utilities Director.**

The motion passed unanimously. (5-0)

- E. Review, consideration, and possible approval to solicit equipment bids for the WRF- Emergency Diesel Generator Project, and matters related thereto. **FOR POSSIBLE ACTION**

The current generator (700 KW) is undersized to run all of the necessary plant equipment during power outages and high flows or full plant load. A minimum generator size of 1000 KW is required to do that. Staff desires to solicit bids for a new, larger, 1250 KW generator. This project is budgeted for in the current fiscal year. RL

Mr. Limberg explained there are two separate items for this project. We would like to solicit the equipment bids because there is a long lead time in getting the equipment. We will be required to pay sales tax on the equipment.

Councilman Keener commented that this would be used infrequently. Is there an equipment company that the City can call upon for use of a generator in the case of an emergency?

Mr. Limberg answered possibly but waiting for the equipment, possibly five hours, is a lot of flow that is coming through. The generator works there now but it isn't enough if the flow is at full capacity. He also doubts that someone will have a generator sitting around just for our use when we need it. This will be well worth the costs to have it there to ensure the facility will work as designed.

Councilwoman Simons wondered if they could just buy an additional smaller generator? Or if we do buy a larger one can we sell the smaller one?

Mr. Limberg answered we can sell the older one. It seems better to have one unit rather than two so we don't need to maintain two generators.

Councilwoman Simons asked how much would we get if we sell the older generator.

Mr. Limberg answered he hasn't seen a lot of demand for this type of equipment and thought we would get less than \$50,000 for the old unit.

Councilman Schmidlein asked about the existing unit.

Mike Haddenham, WRF Superintendent, answered it is nearly 30 years old.

Councilman Rice thought the sewer plant should be running correctly all of the time. We should be looking at staff's recommendation on this.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to approve soliciting equipment bids for the WRF Emergency Diesel Generator Project.**

The motion passed unanimously. (5-0)

- F. Review, consideration, and possible approval to solicit construction bids for the WRF-Emergency Diesel Generator Project, and matters related thereto. **FOR POSSIBLE ACTION**

The current generator (700 kW) is undersized to run all of the necessary plant equipment during power outages and high flows or full plant load. A minimum generator size of 1000 kW is required to do that. Staff desires to replace this generator with a larger unit (1250 kW) and solicit bids for the necessary related construction work to remove and replace this unit. This project is budgeted for in the current fiscal year. RL

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to approve soliciting construction bids for the WRF Emergency Diesel Generator Project.**

The motion passed unanimously. (5-0)

- G. Review, consideration, and possible final acceptance of the Chilton Centennial Tower Construction Project, and matters related thereto. **FOR POSSIBLE ACTION**

This project was awarded to YESCO in the amount of \$183,860.00 on August 22, 2017. This project had no change orders and was completed on time and in conformance with the plans and specifications. BT

Bob Thibault, Civil Engineer, explained this was a great project overall. YESCO did a great job.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, for final acceptance of the Chilton Centennial Tower Construction Project, in the amount of \$183,860.**

The motion passed unanimously. (5-0)

- H. Review, consideration, and possible approval for the Fire Department to accept a Local Giving Grant of \$2,500.00 from Wal-Mart Stores Inc. to assist with cost associated with fire prevention education, and matters related thereto. **FOR POSSIBLE ACTION**

Wal-Mart Stores Inc. has established grants to assist local agencies to fund public education. The City of Elko Fire Department Prevention Bureau has been selected as the recipient of a \$2,500.00 grant for community fire prevention education materials. Wal-Mart has been a great supporter of the Elko Fire Department's fire prevention efforts for many years. JH

**** A motion was made by Councilman Keener, seconded by Councilman Schmittlein, to recommend approval of the Fire Department to accept a Local Giving Grant of \$2,500 from Wal-Mart Stores Inc.**

The motion passed unanimously. (5-0)

IV. UNFINISHED BUSINESS

- A. Review, consideration, and possible approval of a lease agreement between the City of Elko and the Elko Television District, for 2,500 square feet of property located at Elko Regional Airport, and matters related thereto. **FOR POSSIBLE ACTION**

The Elko Television District is requesting to lease 2,500 square feet of property in the vicinity of the airport beacon, for the purposes of installing a utility building and related Elko Television District equipment. A copy of the proposed lease has been included in the agenda packet for review. CC

Curtis Calder, City Manager, said this item is back because it was discovered at the last meeting that there was a utility conflict with the location. A new location has been selected. This lease is to assist the TV District in bringing in a fiber-based signal to the area vs. a broadcast signal to assist them in their efforts to provide television service to the community.

Councilman Keener asked about the Olympic coverage.

Paul Gardner, Chairman Elko Television District, said that was a very good question to ask the people at KSL who had the local affiliation pulled. They are doing everything they can to make sure they have Olympic and Super Bowl coverage on NBC.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the Lease Agreement between the City of Elko and Elko Television District.**

The motion passed unanimously. (5-0)

V. NEW BUSINESS

- A. Review, consideration, and possible action to accept the resignation of Arts and Culture Advisory Board Member Simone Turner, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Simone Turner's letter of resignation has been included in the agenda packet for review. CC

**** A motion was made by Councilman Keener, seconded by Councilman Schmittlein, to accept Simon Turner's resignation letter from the Arts and Culture Advisory Board.**

The motion passed unanimously. (5-0)

- B. Review, discussion, and possible authorization to advertise for one (1) vacant position on the Arts and Culture Advisory Board, and matters related thereto. **FOR POSSIBLE ACTION**

Arts and Culture Advisory Board Member Simone Turner has submitted her resignation from the Board, which leaves one vacant position. CC

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to authorize staff to advertise for one vacant position on the Arts and Culture Advisory Board.**

The motion passed unanimously. (5-0)

- C. Review, consideration, and possible action to modify the fees currently charged for reuse water as defined in Resolution 2-08, and matters related thereto. **FOR POSSIBLE ACTION**

At the December 12, 2017 Council meeting, "a Motion was made by Mayor Johnson, seconded by Councilwoman Simons, to direct Staff to solicit bids for the WRF Fill Station less the scope of work of the electronic reader that the City of Elko would not bill for effluent water".

Currently, construction water is the only use which we bill for reuse water. RL

Ryan Limberg, Utilities Director, explained he wanted confirmation of the intent of Council's motion. We will still need a meter at the location to track the usage for the reports that we submit to the state. The cost is minimal for a truck load of water. Contractors need to use the water regardless of the fee. There is a demand for a product that we sell and we don't have any competition for that product. He gave a suggestion to Council to increase the fee and not waiving it or eliminating it. We won't see a reduction in usage but we can see a potential increase in the revenue.

Councilman Schmidlein asked if there could be a flat fee for this like the landfill. That way we can eliminate staff time on billing this.

Mr. Limberg answered we do have a flat fee that we charge as part of this but this is added as a consumption amount. We can do a flat fee but we will still need to monitor the usage. He offered to investigate the possibility. We have a new engineer's estimate for the project and it is under \$150,000. When our bids come in we are hoping to be under that some more.

Jonnye Jund, Administrative Services Director, said billing for reuse is dependent upon the drivers filling out a log sheet. We can do a flat rate during the season.

Mayor Johnson felt we should do a flat rate and see how that goes. We need the meter to keep in compliance with the state.

**** A motion was made by Councilman Keener, seconded by Councilman Rice, to direct staff, the two departments, to work with each other and bring a solution back to Council for consideration.**

The motion passed unanimously. (5-0)

After the motion and before the vote, Mr. Limberg said they would need to change Resolution No. 2-08 that currently lists the fee as \$0.40 per 100. We will need to bring back a new resolution with the new fee.

Council voted on the motion.

- D. Review, consideration, and possible action to initiate an amendment to Title 4, Chapter 6 of the Elko City Code entitled "Room Tax," and matters related thereto.
FOR POSSIBLE ACTION

City Staff is recommending several changes to the Room Tax Code to assist with reporting deadlines and auditing compliance. SO

Shanell Owen, City Clerk, summarized the proposed changes.

Mayor Johnson called for public comment.

Matt McCarty, Convention Board Chair, said they have been discussing this for a few months. They would like a discussion in getting these changes through. He offered to help staff iron this out before the first reading so it can be in a language that the hotel owners will better understand. The lodging community will get together and discuss these. Redefining or clarifying the 28-day section is essential since there are a few different ways it can be interpreted.

Ms. Owen said she would be happy to meet with the lodging committee to discuss this.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Keener, to approve initiation of Title 4, Chapter 6 of the Elko City Code entitled "Room Tax," and refer the matter for First Reading.**

The motion passed unanimously. (5-0)

VII. 5:30 P.M. PUBLIC HEARINGS

- A. Review, consideration, and possible adoption of Resolution No. 01-18, a resolution of the Elko City Council amending the Elko City Master Plan Acknowledgments, Land Use and Transportation components, and the Land Use and Transportation Atlas Maps #5, #6, #8 & #12, filed as Elko City Master Plan Amendment No. 1-17, and matters related thereto. **FOR POSSIBLE ACTION**

On December 5, 2017, the Planning Commission adopted its Resolution No. 1-17 to amend the Acknowledgments, Land Use and Transportation components, and the Land Use and Transportation Atlas Maps #5, #6, #8 & #12 of the current Elko City Master Plan, and also took action to recommend City Council adopt said

amendment via a resolution. An amendment of this type requires positive action by both the Planning Commission and the Council. If the Council suggests any changes to the Master Plan amendment as adopted by the Planning Commission, the Master Plan must first go back to the Planning Commission for review and approval. CL

Cathy Laughlin, City Planner, explained the Master Plan needs a cleaning up amendment, such as this, every few years. Planning Commission has vetted this over several meetings. It is really just housekeeping of language and text. It was updated with current conditions as well. The entire document was in the agenda packet. She went over some of the highlights.

Mayor Johnson called for public comment without a response.

**** A motion was made by Councilman Rice, seconded by Councilman Keener, to adopt Resolution No. 01-18.**

The motion passed unanimously. (5-0)

BREAK

- B. Review, consideration, and possible action on the Planning Commission's recommendation that the Council deny Zoning Ordinance Amendment 3-17, Ordinance No. 825, amending Title 3, Chapter 2 of the Elko City Code (entitled "Zoning Regulations") adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited," and matters related thereto. **FOR POSSIBLE ACTION**

At its December 5, 2017 meeting, the Planning Commission considered the action initiated by the Council to establish a new Section 3-2-29 of the Elko City Code to prohibit marijuana establishments and medical marijuana establishments in all zoning districts. Under State law, marijuana establishments and medical marijuana establishments cannot be licensed in areas where such uses are precluded by zoning. The Planning Commission voted to recommend denial of the amendment, in part, because Elko City Code 4-1-5 prevents the City from issuing business licenses to applicants for businesses that violate Federal law, including marijuana establishments and medical marijuana establishments. The Council must either approve or deny the Planning Commission's recommendation. CL

Ms. Laughlin said her background information stated all of the facts. The Planning Commission voted to deny based on the fact that Elko City Code, the way it is written as of today, prevents the City of Elko from issuing the business license to businesses that violate Federal Law. The Planning Commission felt there was no need in having this zoning section as the code sets the regulation.

Ben Reed Jr, Police Chief, spoke about this item numerous times. It is complex but he won't go over all of it again. March 2014 was when Council voted to impose a two-year moratorium. In 2016, there was another vote to extend the moratorium. It is coming around again shortly. This

action of precluding marijuana establishments of all types via zoning would supersede the moratorium and strengthen the City's position. He is in favor of the zoning code amendment.

Mayor Johnson called for public comment.

Mike Magney, PACE Coalition, wanted to make Council aware of some of the impacts of marijuana establishments (Exhibit "B").

Sean Fericks, Elko County Libertarian Party, said he is troubled by some of the things he sees online. Nevada is a state that is known for freedom and liberties such as prostitution, cigarettes, etc. Things that can potentially hurt people are legal in Nevada. No one has cited deaths by marijuana overdose. No one has cited vehicle accidents due to marijuana. He spoke further in favor of cannabis.

Mr. Magney pointed out that death is not the only consequence with overdose. There can be cannabis overdoses even though they do not necessarily lead to death. It does happen from time to time.

Mr. Fericks said when they go to the hospital due to an overdose, what is the treatment for this; you make sure their vitals are good and let them sleep it off. If they drink their parent's booze that can lead to death. Liberty is more important to absolute safety. It is not up to City Council to tell him what he can put into his body or medicate his diseases. He wants everyone to share in liberty.

Councilman Keener said his position on this has not changed. It is still illegal at the federal level and does not contribute to a safe and clean City. Marijuana use is not compatible with mining sector employment.

Councilman Rice said Jeff Sessions made a statement regarding the Cole Memo (Exhibits "C" and "D"). In that statement, he turned over responsibility for prosecutions to the discretion of the US Attorney in every state. Essentially the Cole memo has not been revoked but each state will use their own discretion in prosecuting these cases, if at all. Our business license, which prohibits granting a business license to those that are in violation of federal law, the Cole memo and Sessions' latest directive, would extend to that as well. It would be within our power to grant business licenses under this NRS. His main concern is access to medical marijuana but he is also supportive to those that wish to engage in recreational marijuana. We are denying the liberties that other parts of the state enjoy. The use of a zoning ordinance that targets one particular business, rather than a category of businesses, sets a dangerous precedent. He is a very liberal person in this community. He is surprised that he is the one that is standing up for the liberties of the citizens on this board. It is a shame that members of the community that use medical marijuana have to go to Sparks or Reno in order to get their prescriptions. We are doing them a huge disfavor.

Dave Stanton, City Attorney, said he won't take a position on policies since that is up to Council. This is illegal at the federal level. The Cole memo and now the current policy that has been given to the US Attorney's Offices, that is an internal policy decision. It is based on resources and priorities, letting each US Attorney in each state make that decision, in terms of enforcement. The Federal Controlled Substance Act lists marijuana is a controlled substance,

whether it is medical or recreational. Until there is some direction at the Supreme Court to impose that requirement on states, we have to live with the fact that it is unlawful under Federal Law. Can the City change that part of the business code to remove that provision in the business licensing section? Yes if they wanted to. As matters now stand, as he interprets code and law, the City cannot issue licenses for this kind of business activity. Whichever way the Council goes on the zoning component of it, under the NRS, one of four factors must be taken into account in making an amendment to the zone code. The Council has to consider public health, safety, welfare and morals. The discussion should focus on that and not just deferring to federal law.

Curtis Calder, City Manager, said looking at the facts we have a federally illegal substance and law enforcement has to deal with that on a daily basis. That will conflict with the sworn officers. The federal government supersedes the state government if there is a conflict. He supports the Police Chief's position on this.

Councilman Rice understands the conflict of the sworn officers but the latest directive provides guidance to law enforcement all the way down. Enforcement of this is still not a priority for Sessions. We should just say no rather than targeting a particular business with a zoning ordinance.

Mayor Johnson asked if this is the only tool local government has to address this.

Mr. Stanton said we are limited in terms of what we can do. Some marijuana possession is authorized under state law. We will be conflicted in knowing how to handle this until federal and state laws are reconciled. The way the NRS is written is turning it over to local governments to decide how to zone and how to issue business licenses. Based on that the State will decide whether to license on of these establishments.

Councilman Rice noted another tool is the moratorium. Extend the moratorium.

Mayor Johnson said this is the action described by Mr. Stanton that we can take on this item. There are people coming to him saying they don't want it in Elko.

Councilman Rice noted the vote tallies at the last election. He is confused on the action. The Planning Commission voted to deny. We are in a rock and a hard place. He didn't think Council can do anything if Planning Commission denied it. Are we back to square one?

Mr. Stanton answered we just have to consider the Planning Commission recommendation; we are not bound by it.

**** A motion was made by Councilman Rice, to reject the Zoning Ordinance Amendment No. 3-17, Ordinance No. 825, Title 3, Chapter 2, of the Elko City Code.**

The motion failed for lack of a second.

Councilman Keener said Aaron Martinez is present from the Planning Commission. He asked him if there was anything he wanted to add.

Aaron Martinez, Planning Commission Chair, said he wasn't present for this specific agenda item tonight. For the record, there were four Planning Commission members against modifying the zoning ordinance. Three of them were for it. He was opposed to this amendment. Many of the Commissioners felt the existing code already solved this problem for us. We talked about tools that were allowing and not allowing. One that was being missed was the business licenses. He felt more access to the drug would lead to more usage and he didn't feel it was in the best interest of the constituents. One of his concerns was that our neighbors were going to be incorporating distribution centers very quickly. His largest concern was how could the City of Elko boil to the top of this situation when our police will be policing the drug, our health services will be maintaining the individuals that are on the drug. So the City of Elko would be left holding a bag with no money in trying to add to these services that are going to be affecting our budgets?

Councilman Schmidtlein said the current law allows people to smoke marijuana in their house and grow it at their house. If they want to keep it in their household then so be it. The medicinal marijuana needs to be sold at a pharmacy and then all of this would go away. He is opposed to dispensaries in the City of Elko. Many people he deals with daily do not allow marijuana.

**** A motion was made by Councilman Schmidtlein, seconded by Councilwoman Simons, to not accept the Planning Commission's recommendation to not approve Zoning Ordinance 3-17 and direct staff to place the item on a future Council agenda for first reading of the proposed ordinance.**

The motion passed. (4-1 Councilman Rice voted against.)

Councilman Rice left at 6:34pm

The following agenda item contains detailed testimony regarding an appeal to a Planning Commission decision. Attention was given to include as much discussion on this item as possible, but the wording is not verbatim.

- C. Review, consideration, and possible action on an appeal filed pursuant to Elko City Code 3-2-18(E)(3), appealing the Elko City Planning Commission's decision to deny Conditional Use Permit No. 6-17, filed by Lyfe Recovery Services, LLC., which seeks permission to operate a halfway house within an R (Single Family and Multiple Family Residential) Zoning District, located generally on the east side of Winchester Drive approximately 400 feet north of Orchard Cove Drive (1683 Winchester Drive), and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to Elko City Code 3-2-25, the Council may affirm, modify or reverse the decision of the Planning Commission.

The Planning Commission considered the subject conditional use permit on December 5, 2017 and took action to deny the conditional use permit. Subsequently, of the applicant appealed the Planning Commission's decision. CL

Dave Stanton, City Attorney, went over the appeal procedures for Council, found in Elko City Code 3-2-25-b-3.

Attorney Kent Thomas was present representing Lyfe Recovery. It was quite interesting, the last conversation we had on marijuana. There is a supremacy clause. We are governed by the Constitution. United States Code has Federal Housing Authority (FHA) and the American Disability Act (ADA). The City of Elko and the Council of Elko did a Resolution not too long ago (Resolution No. 13-87) and the County Commissioners passed 66-86, which was read and published in October 16, 2014, to uphold the Fair Housing Act and the ADA. The Planning Commission has Lyfe Recovery listed as a sober living home. Lyfe Recovery does not raise to the standards of a sober living home because it does not provide rehabilitative services. It does service those that are recovering from drugs and alcohol abuse. It provides a sober living residence. There is no use in the City Code for that. There is no permitted use, there is no stated use, there is no conditional use. This is a use but it is not stated. The closest thing, and why the Planning Commission has put them under that, is a sober living home. There is a new statute in the State of Nevada, 278.021 which actually says it basically protects sober living homes from zoning and building codes. It specifically says on 278.021, the provisions of... Let's do this. In any ordinance adopted by City or County, the definition of single family residence must include a residential facility for groups in which ten or fewer unrelated persons with disabilities reside with: 1) house parents or guardians who need not be related to any persons with disabilities, and, if applicable, A) additional persons, B) home for individual residential care, C) halfway house for recovering alcohol and drug abusers. One thing to note, under ADA and FHA you cannot be considered disabled if you are a current user of drugs. That is huge. A sober living home is just that. You are not allowed to use drugs. You are expelled for using drugs. And there's other rules and regulation. This is not where you have a lease for a year or a month. This is a lease that is pretty much perpetual. You may pay for a month but if you are drug tested and you are found to have drugs you are expelled. You cannot be there. You are still disabled but you are no longer protected by the ADA or FHA, and those rules are in place, and those are things you must understand. These are people who are smoking, as you say, it is legal to smoke marijuana in your home and to drink. You are not allowed to do that in a sober living home, at all. To go further, the provisions of subsection one cannot prohibit the definition of single family residence which permits more people to reside in a residential facility for groups nor does it prohibit a regulation of homes which are operated on a commercial basis. For the purposes of this subsection, a residential facility for groups, a halfway house for recovering alcohol and drug abusers, or a home for individual residential care shall not be deemed to be a home that is operated on a commercial basis for any purposes relating to building codes or zoning. He said that because we are not even at the level where Nevada Behavioral Health regulates sober living homes or halfway houses. Either way you can call us what kind of use you call us. If you force us into that, which we are not going to concede to because we don't meet that threshold where we have to be licensed. So, that being said, we are in the Federal Ninth Circuit. In the Ninth Circuit has done extensive sober living homes. Primarily in California but it does cover Nevada. The Ninth Circuit has found that people who are recovering from alcohol and drugs are disabled. You cannot regulate them through zoning. You cannot deny them the same benefits that everyone else has. That is a violation and what the Planning Board did, he sent a letter but he wasn't sure if everybody got it. He laid out a lot of case law, and there is a lot to it and hopefully his esteemed colleague explained it. There are violations that occurred. Lyfe Recovery wants to be a good neighbor. We want to provide a facility where people who want to stay sober and who have already been through rehab, halfway houses or some type medical facility, have a place to

foster and grow and get on the right track and stay on the right track. We want to be good neighbors. We don't want to be in a conflict situation. We have the Federal Law behind us. We also have the State law. And we have your own Resolution that says you will not violate the ADA and FHA. If you have any specific questions he can go deeper into it with case law for days. But as an attorney he likes doing that. He can pull out case after case after case. There is actual case law that says forcing disabled persons to even go through this process is a violation. It is. He had the case there. It was Pacific Shore Properties vs. the City of Newport Beach. That is one of the ones that spells out a lot. There have been several since. It was in the letter he sent; it was cited. So there is a lot of case law behind it. The steps that Lyfe Recovery could take, is once even the Planning Board denied the Conditional Use Permit, we could file for, immediately, in Federal Court, an injunction and just go from there. But they choose to mitigate their damages and work with the City of Elko. They don't want to fight against the City the Elko to provide a service that is absolutely needed.

Councilwoman Simons asked if they were allowed to ask questions at this point.

Mr. Stanton answered you could ask questions. There is going to be, he's going to give a presentation and then there is going to be a rebuttal from Mr. Thomas so he can have a chance to get up and respond and so throughout this whole process we can be asking questions and communicating. Some of your questions may be answered. The next step, once Mr. Thomas is done with his initial presentation, if there are members of the public who want to get up and speak, that would be the opportunity.

Mr. Thomas said absolutely. He conceded to the public.

Mayor Johnson called for public comment.

Judy Robison is a retired nurse and local citizen. She lives in the house right above, north of this blue block (on the overhead screen). The facility will be directly in her backyard. It appears to her that the facility is already being occupied. She has seen two gentlemen over there. It faces, what appears to be two of the bedrooms, face the deck in the back of her house. They can see the entire back of her house. She lives alone. It makes her very nervous that they are there. She believes in second chances for anyone but a halfway house in their neighborhood would not be a good thing. As you can see around the corner there, she lives on the corner so she has this parking, this open parking area where that really is a lot of the, when everybody is home at night, that is just an area that is mostly vacant because she lives alone and she keeps her car in the garage. They would park on the side of her house, in the front of her house, and she is very nervous. She doesn't even open her back curtain to her patio anymore. That is her issue. The parking and just having... You don't know if they are going to be using drugs. He said they would be kicked out if they do but once they have taken them there is an issue between the time they have taken them and the time they are kicked out possibly.

Ron McLemee said he lives across the street from Ms. Robison. He asked if this is a private business. You say it is against the law for us to not give housing to these drugs addicts, but who owns the house? Is this a business? Who owns the house?

Attorney Thomas answered it is leased by Lyfe Recovery. They lease it. They do have a company that buys houses and they are leasing it from them. They have a long-term lease at this point.

Mr. McLemee said they are doing things backwards. You just leased the house. They felt like the neighborhood is being taken over. Seems like all of this would have all been taken care of before.

Mayor Johnson asked if Attorney Thomas answered his question.

Mr. McLemee said it sounds like someone made a bad business call. You just lease the house and go ahead without getting your permits and everything for the business?

Attorney Thomas said in Elko, under their code, you have to have a property before you can get a business license, which is unusual. You can't even apply for a business license without having a property.

Mayor Johnson asked if Mr. McLemee was completed with his public comment.

Mr. McLemee answered yes, for now.

Councilwoman Simons clarified that the reason we need everyone to talk in to the microphone is it recorded and so the Recording Secretary can type. That is why you have to take turns at the mic and we do have a roaming mic if that would make you more comfortable.

Councilman Keener added that there are individuals watching over the internet. If we are not on the mic they can't hear what is going on.

Mayor Johnson asked if there was any more public comment.

Eric Velasquez, 1665 Winchester Drive, said he has no problem with someone wanting to get sober and stay sober. That is fine and he is all for it. His concern with this halfway house coming into their neighborhood is the value of his home. He is a first time buyer and if/when he sells his house, is he going to be worried about the value of it depleting and losing money on this property that he has purchased? This is a huge investment for him and a huge investment for everybody else in the neighborhood. They are worried about the value of their homes and the safety of their kids. That is his only concern about this halfway house coming in. When somebody actually ends up breaking one of their rules and they are kicking them out of the house, how long or what is the plan of getting them out of the house. What is going to be the plan of what happens with their actions afterwards? If you kick somebody out of the house they are going to get really pissed off really fast. With that being said, are they going have cops come in before this happens or after it happens? Depending on traffic, where they are in the neighborhood it kind of gets hard to get through town. It can probably take the cops 10 to 15 minutes to come de-escalate the situation once somebody is kicked out of the house for using drugs or alcohol.

Steven Sharp, 1635 Winchester Drive, stated his concern with the situation is that he has three kids. If they relapse or have any problems, which can happen and will happen, and get mad and

his children don't need to be seeing this. There are risks out there. He is a very protective dad. He protects his children. He has a stepfather that is a recovery alcoholic that does relapse every time, about once a year. They will be at his mom's house holding him down until the cops get there because he is wanting to hurt her. Those situations he doesn't want near his children, hence the reason why his stepfather does not come around his children. People that have drug problems always say they want to get clean and they always have problems of relapse. It is an addiction. It will cause more problems in his neighborhood. More cops will need to be around his neighborhood. Parking alone, because it is a ten or eleven bedroom home, and there is not enough room to park. The roads already get pretty congested just from the people that live there. They only have enough room for about three cars because they are already using that place and there are four cars there at some point in time (three in the driveway and one on the road sometimes). If they occupy all ten or eleven rooms where are they going to park? There is a turn going to the facility and it is close. When you turn you almost end up going into on way traffic coming at you to make that turn, to if somebody is parked there near that corner it is going to cause a blind spot because it is already a blind spot, and you are going on into oncoming traffic to make that turn. His fact is there is not enough room to park eleven cars.

Codie Sharp, 1635 Winchester Drive, said that was her husband that just spoke. When they went to the meeting for the other Council (Planning Commission) one of the main factors was parking. The other part was that the house was being rented out. It didn't have a permit for what it was being rented out for. She was renting it out as a B and B without a permit. And that there was people living in the house and she was renting it out, and that there was nobody in the house that that lived in the house or worked for her company. That was a big issue at the Council meeting when they were here the last time. Since then it has not changed. There are still people living in the house and it is still being rented out as a B and B. Nobody has left. There are people living there. Along with that, there is the parking issue which her husband and other people have gone over. There is eleven bedrooms in that house that they are going to be renting out. That is eleven people. This is not a lockdown facility so they can come and go until whatever the curfew is. That would be eleven cars trying to be packed into that corner. If you try to take that corner during the winter, if you can see there is a trailer parked there. She knows several people that have slid trying to take that corner and they have almost hit that trailer. What do you expect to do when somebody is coming the other way and there is already cars on one side and cars on the other side? There are going to be several accidents, if not oncoming or exiting that street right there.

Attorney Stanton said the purpose of this hearing is to decide whether to affirm, modify or reverse the decision of the Planning Commission to deny the CUP. In making its decision, there are some procedural and substantive issues to keep in mind. First is a matter of procedure. This Council in this context is not bound by the decision of the Planning Commission. Under Elko City Code Section 3-2-25B, the Council can consider new evidence, other matters not raised at the Planning Commission level or brought up by staff. The Council must consider the recommendation and findings of the Planning Commission and staff as shown on the official record, but it is free to follow or disregard those recommendations as it seems fit. Second, in terms of the substance of the Council's decision, and Mr. Thomas brought up a bunch of points and he agrees with most of them. And he will explain that all shortly and talk about what he thinks are really the issues here. In terms of the substance of the Council's decision, the City is bound by certain legal limitations in deciding how to handle this. Since this type of facility does have certain protections under federal law; specifically the Fair Housing Amendments Act,

sometimes we call it the Fair Housing Act, and the Americans with Disabilities Act. As the Council applies the City Code in this case, and makes its decision, the Council is going to have keep this in mind. He offered to go into that in a little bit more detail so they know exactly what he is talking about. There is a minor point he would like to address in the appeal letter. There was a separate issue that was brought up about the sprinkler system and compliance with the Fire Code. Lyfe made an argument, the applicant made an argument that this is an existing eleven-bedroom facility and should be granted some sort of a waiver from the requirements of a sprinkler system. He didn't think Council could take that up right now. This is a CUP appeal hearing. That is a separate issue that should be separately agendaized and described at another meeting if that is going to be an ongoing issue. The actual issue before this Council tonight is whether to allow the proposed use in light of the zoning code, the Elko City Zone Code. This type of use is absolutely contemplated under the City Zone Code for this district, for the R district. The issue here isn't the fact that it's going to provide residential facilities for recovering drug and alcohol abusers. That part of it is not an issue at all. The zoning issue is whether this facility can accommodate the number of residents Lyfe proposes to house there. And parking in light of parking limitations. It is an intensity of use issue and not a type of use issue. Council needs to make that distinction. It's really important. During the Planning Commission hearing, and we heard some of it tonight, there were members of the public neighbors who made statements to the effect that they didn't want this type of facility in their neighborhood, that they didn't want recovering drug and alcohol abusers living in their neighborhood. This Council cannot consider that. That type, the fact that it is that type of use, cannot be considered. That type of use is contemplated under our zone code and is protected under federal law in this type of a district. It can't form part of the decision making process. He asked Council to disregard that part of it. When Lyfe's attorney, Mr. Thomas, comes back up, he would like this Council to ask a couple of questions, or maybe he will just tell you right off the bat since he is bringing it up. But first, what is the maximum number of residents Lyfe intends to house in this facility? Because we really don't know at this point. We hear all kinds of different numbers. But what this Council does is going to bare a relationship to the number of residents. The second question is, what is the maximum number of vehicles that will be parked in conjunction with this use? Because if we are talking about an eleven bedroom facility with two residents per bedroom, and if each one has a car, twenty-two residents, twenty-two vehicles. There is an occupancy issue potential and a parking issue definitely. As he sees it, intensity of use is the issue that this Council really is going to have to grapple with, not the type of use. That's not an issue. In the appeal statement, Lyfe made an argument that he disagrees with, and that's that the Planning Commission decided to deny the CUP because of the type of use. He didn't get that out of the minutes and he was there. He read the minutes again and maybe he is missing something. He knows there were some public comment to that effect but he didn't see the Planning Commission denying the CUP because this was going to be a facility for recovering drug and alcohol abusers. There is another issue that is sort of lingering in the background here that the Council is probably aware of and might hear some more of tonight. And that has to do with good faith of the applicant. We heard a little bit of testimony about the facility being used as for some sort of a rooming house, being rented out on Airbnb. He thought there was some evidence to show that is actually taking place and that is a violation of the City Code. And this is just being done regardless of zoning and business licensing limitations. Good faith of the applicant is a legitimate consideration for this Council. The Planning Commission was very upset about that and that is reflected in the record. In his opinion that is something that can be considered. It is something that might be subject to a separate enforcement action. He didn't think that should be dispositive. He thought the intensity of use issue is something that is much more objectively a

compliance problem. There will be some discussion about the fact that there might be some violations ongoing at this facility right now. He thought that was a valid discussion. He thought it was a valid consideration and he would like to hear Mr. Thomas address it when he gets back up. He thinks that is an issue to consider in the process. He wanted to make a couple of statements reinforcing what Mr. Thomas said in a couple of regards. One is even though unlawful activity such as ongoing drug use is not protected. If somebody is in a recovery program, recovering alcohol or drug abuser, that person is considered disabled. These federal protections do apply. There are actually some specific statutes and some case law that recognizes that. That being said, under the Fair Housing Act, there is an exception for any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling. The way our zone code is written parking and occupancy are key to one another. Occupancy and parking are valid issues to consider. Irrespective of the fact that this is a protected facility, generally speaking. Also note that other communities in Nevada, including Sparks, Winnemucca and Reno, contain provisions in their zone codes specifically dealing with halfway houses and group homes for disabled people in residential areas and make them subject to certain limitations, including in some cases special use permits which are the equivalent of CUP (different word for the same thing). Elko is not alone in this regard. This is a common practice. When denying a CUP it has to be based on legitimate grounds, intensity of use being a legitimate ground. Other factors that Council can take into account include the proposed location of parking within the site. The amount of traffic likely to be generated and how it would be accommodated and the influence that such factors are likely to exert on adjoining properties. These are intensity of use issues and not type of use issues. They would apply to a facility of this type regardless of whether it is housed disabled people or people who are not disabled. These are objective nondiscriminatory criteria that the Council can consider. In closing he would like to say, and he asked Cathy Laughlin, City Planner, to get up and speak after he finished and give the Council some background on how this process has worked and what some of the parking problems are from her perspective because she might have a little bit of insight to give everybody on the parking situation. Council needs to recognize that this type of facility is specifically contemplated and allowed in the R district. It is made subject to a CUP if it goes over a certain size in the case of a group home. Intensity of use is driving the CUP, not type of use. When the Council makes the decision on this, he asked that Council make a clear statement to that effect. The effect that this facility is going to be occupied by recovering drug and alcohol abusers, but that is not a factor in the Council's decision. He would like that statement to be very clearly made as a finding prior to making a decision on it. We have received evidence that the City of Elko needs this type of facility. There is no doubt about that. He also pointed out that if a CUP is issued for this use, that reasonable conditions can and should be attached in order to deal with parking. As a procedural matter, he didn't think the CUP process is the right process to waive parking requirements. There is a separate process in the code for waiving parking requirements. It goes to the Planning Commission as agenda'd for that. The Council would be within rights to make obtaining a waiver or a obtaining additional parking a condition. Waiving a requirement, this wouldn't be the place to do that. At this time, unless the Council has any questions of him, he will ask Cathy Laughlin to get up and speak a little bit about the parking situation and just sort of provide some background in terms of how this process has worked.

Cathy Laughlin, City Planner, said during the Planning Commission deliberation, the Commissioners had lengthy discussion regarding to two items that led to the denial. The first item, which we heard numerous things about tonight, was the parking concern. Our City Code, 3-2-17 states that for this type of facility we require one (parking space) per bedroom or one per

bed, whichever is greater. There is currently eleven bedrooms in this home based on the testimony at the Planning Commission from Ms. Payne. There are eleven bedrooms in this home. There are, according to their Airbnb advertisement, they are double occupancy rooms. They show photos that there are two twin beds in the rooms. We could have eleven rooms but up to a possibility of twenty to twenty-two occupants. When staff was analyzing this application, we looked at the Institute of Transportation Engineer's (ITE) schedule instead because we thought maybe our code is requesting too many parking places for this type of facility. We wanted to look to see what the ITE required. So we did look at the ITE and their requirement is .45 per room which would result in 5 parking stalls required for this facility. Their existing driveway, right now, is approximately 32 feet wide, which calculates to 3.5 parking stalls in their front driveway. According to our code, a 9 by 20 foot parking stall. There is also approximately 60 feet in on-street that is from the end of their driveway to the end of their property line. But mind you, on-street parking cannot be counted towards the calculated requirement of off-street parking. If we are requiring at the minimum of 5 off-street parking, based on the ITE requirements, or 11 to 22 for our City Code, then it has to be off-street. It cannot be counted on-street. The property was developed in 1999 with 3 parking stalls in the front set-back. That would not be approved as of today. If that was brought to us today our Code has changed since then and it does state that parking is not allowed in your front set-back. But this was submitted in 1999. We pulled the original plans and looked at the site plan. It was approved with a handicapped stall, handicapped access aisle, and a stall for the live-in nurse at the time. It was developed as a Beehive Home which, the use at that time was adult living and probably 90% of those individuals that lived there did not drive. Both of the homes were approved that way. The second concern that the Planning Commission had, as Mr. Stanton has reflected on was the good faith of the applicant. And the lack of concern for the Elko City Code. She went a little bit into the history of the application as this is a hearing. Ms. Payne came in to the City of Elko Business License Department at the end of July to apply for a business license for this facility. Debbie Henseler sent her to the Planning Department as she felt it was a Planning and Zoning concern, and she wanted, as all businesses and business licenses, come to the Planning and Zoning. She has to sign off saying they are zoned appropriately. She felt it was a Planning and Zoning concern and she wanted them to talk to her first before they filled out the rest of the application for the license. So we had discussion and at that time we were in the City Code and trying to define if it would be a group facility, residential group facility or if it would be a halfway house. Our definition in our City Code, and either one, if it's ten or more for a group facility, it requires a CUP. If it's a halfway house it requires a CUP. It's for ten or fewer for the group facility that does not require a CUP. Looking at our definition in our City Code in 3-2-2, it clearly defines that a residential facility for groups provides limited supervision. Ms. Payne described that there fulltime, 24 hour supervision there. We thought that didn't work. It also describes that it provides food and shelter. She doesn't provide them food so that wasn't fitting into it. I clearly evaluated it down to what is the most similar use, and that would be a halfway house. At that point the halfway house requires the CUP. She gave Ms. Payne an application for a CUP, gave her the deadlines of when the next Planning Commission deadline has to be in. Three weeks prior to the meeting the applications must be in the Planning Department. It was explained to her and out the door she went. We also have in our CUP application a requirement for the site plan and the elevations of the property must be submitted. It was some time later, August 14th, that she received a call from one of her assistants, Gabriel, that asked about the plans. At that time, all plans that we have in our possession are usually copy written by the Architect. This plan for Beehive Home was done by an Architect and it was copy written. We are not allowed to provide them copies of the plans without the permission from the

architect. She copy and pasted a cutout of the plans title block with the name of the architect, the address and phone numbers and emailed it to Gabriel on August 14th so she could reach out to the original architect, see if he will give us permission to provide her those plans so she can use those in the CUP application. Moving on from that, on September 13th, Ms. Payne came into her office with the CUP application that was not filled out and she wanted to submit it for the October meeting. She was one day late and we have a reason for our deadlines. We stick by our deadlines. We don't allow people to submit things late because if I allowed it for her she would have to allow it for the next engineer, the next architect, the next developer that came into the office. We do have a deadline. It's clearly stated on our applications and we did not accept it. But at that time I told her if she wanted to fill out the application and submit it we could get it in the November Planning Commission meeting. She wasn't pleased with us so she left without filling out the application. So on November 13th we received the application from Ms. Payne for the December Planning Commission meeting. This was 110 days after her initial contact with her. There was plenty of time there to get what she needed and to get the application in for the CUP. The December 5th Planning Commission happened and she was denied. On December 6th, Ms. Payne came in to talk to Shanell Owen and herself regarding how she can become legal with the occupants that she currently had in the home. She said she had leases with them. One was a student, one was a miner, a variety of individuals that were living there. She wanted to know how she could become legal with those residents because she had leases with them and this was the beginning of December so they paid for the whole month of December rent. We explained to her the way that our Elko Code is written in the residential code that if it is an accessory use, if the home's principal use was a single family residence, then we allow an accessory use of renting up to two rooms out. The key is that the home had to be a single family residence that was the principal use. It wasn't being used as a single family residence. This was being used as a business. We told her at that time that she really needed to cease all operations. That she was not legal and she was operating a business without a business license. We told her to cease operations. Give time to your tenants to find new locations but you need to cease. At that time we advised her that the Planning Commission also said you need to remove this off Airbnb, it is in the meeting minutes. She stated it was listed on Airbnb, on Craig's list and Elko Facebook Marketplace. She did remove her listing off Airbnb but her associate, Allison, continues to have that listing on Airbnb to this day. It was still on there today. During the meeting, Ms. Payne stated that they do have residents who have booked with them through Airbnb. "They are not operating as a Lyfe Recovery property." But as she has provided today in her email from drug court, the drug court clearly states that they had started sending residents to Ms. Payne's property since October 19, 2017. This was before she even submitted for the CUP application. They state that she currently has two there in the residence that have been assigned to live there from drug court, and she has two additional residents coming this Friday. As you can see in the agenda packet, the meeting minutes show that the Planning Commissioners were concerned with Ms. Payne's complying with any of the conditions that we set on the property. That was one of their true concerns on the good faith, was simply if we list a condition that she's only allowed three vehicles at the property, or whatever we list in conditions, will she comply with that because record shows since July she hasn't complied with any City Code? That was one of the concerns of the Planning Commission.

Mayor Johnson asked as far as the zoning goes, where is a place that they could land with the CUP. Could it be where it's an allowed use with three spaces or how can this....

Ms. Laughlin answered a halfway house is a permitted conditional use in the residential zoning district. We have another facility in town that is a similar facility, its a transitional housing and it is in a residential zone district. It happens to be an old converted church so it has a large parking lot. She spoke to the operator of that home and asked how many of the residents own vehicles that park there. They said 100% because they are required to have jobs and they get to and from jobs by their vehicle. It is allowed in the residential zoning district as a conditional use.

Mayor Johnson asked what does the City look for as far as conditions?

Attorney Stanton answered he still wants to know how many residents Lyfe plans to house in this facility. He knows what the capaCity is in terms of the physical capaCity of it but he didn't know how many residents Lyfe plans to house here. If its ten or fewer it is a principal use. A residential facility for groups of ten or fewer is listed as a principal use in this district, no CUP is required. If it's a halfway house for recovering alcohol and drug abusers, as that term is defined, or a residential facility for groups of eleven or more, as that term is defined, then a CUP is required. We need to find out how many people are going to be there. What kind of conditions can the Council place? From his perspective, assuming the Council wants to go there, he thought that parking really has to be dealt with because that is the issue. The facility as he understands it has off-street parking for four spaces. There is some property nearby that can probably be converted into a parking lot. Maybe it's just not going to have that many occupants. It should be either to direct the applicant to go and obtain a waiver of the parking requirements through the process outlined in the code, or direct the applicant to take the steps necessary to comply with the applicable parking requirements based on the number of residents. It can have alternative conditions stated. That has to be addressed because this place just doesn't accommodate it.

Mayor Johnson asked if he thought an option for the City to consider is that the conditions could be that if the occupants are eleven or less that the three parking spaces will suffice if the occupants are more than eleven then additional conditions could be put in place.

Attorney Stanton said we can't do that here. The dividing line is ten or less or eleven or more. He didn't think we could because the code specifies the number of parking spaces per resident. Right now you have three and a half parking spaces and three residents. Lyfe is planning on putting more people than that in there in order break even on this.

Councilwoman Simons said you can only do three.

Mayor Johnson asked why they are in a conditional use process anyway. How did we get here?

Ms. Laughlin answered because a halfway house requires a conditional use.

Mayor Johnson said she has to tell him what conditions the City of Elko can impose.

Ms. Laughlin said if you look in your agenda packet, her memo to the Planning Commission, the Planning Department and the Development Department and the Fire Department all had listed conditions if it was approved at the Planning Commission.

Scott Wilkinson, Assistant City Manager, said he wanted to offer some comment.

Mayor Johnson told Mr. Wilkinson to hold on because that is not what he is seeing. He wants to get his hands around that.

Ms. Laughlin said it was her memo dated November 21st. The City of Elko staff report.

Councilman Schmidtlein said it is on page 371 of 393, that he thought she was talking about.

Mayor Johnson asked if Ms. Laughlin had it with her in her hand.

Ms. Laughlin answered she did and handed it to the Mayor.

Mayor Johnson said it has been his experience with the conditional use permit that when times when types of uses don't match that they can be allowed if certain conditions are met. He is used to seeing that these are the conditions that the Council or City may impose, for an example, maybe not in this case, the adding of a fence or parking or slope or those kinds of things. That is what he wants to know more of. What gets this as an allowable use in zoning with a CUP? He is not seeing where that fits in the code.

Ms. Laughlin said she wanted to back up. When someone applies for a business license, as an example, it comes to Planning and Zoning for approval. We look at what the zoning is and if that business fits into that zoning as a principal permitted use or a conditional permitted use. We also look at what the occupancy of that business is and what the required parking are for that occupancy. Our key here and what Mr. Stanton is trying to point out, is that even if the business is only going to have three occupants, our code clearly states what the parking requirements are based on the amount of rooms is what our code reads. This would be even if they were not a conditional use. This would be if they were ten or fewer and they weren't even applying for a business license and it came through the Planning and Zoning. What is the required parking for this property? If this was a single-family residence, two off-street parking that cannot be in the front setback or the side setback. If it is a business that is a rooming/boarding house rooms for rent type thing, is required one per bed or one per room, whichever is greater. We also looked at the ITE though so that we could reduce that amount down and the ITE requires 0.45 per room. They would be required five parking places off-street for that property. That property as an adult care facility or that property, that parking is based on the occupancy is what the parking requirement states. The reason it is in front of Council as a conditional use permit is because in residential code in 3-2-5, it clearly states in the R zone district, which this whole area is, a halfway house is a conditional use. The reason it is conditional use is so we can address things such as parking.

Mayor Johnson said that was his point. What options does the City have as we can address parking?

Attorney Stanton answered said he saw maybe two and a half. If the applicant would obtain a waiver of parking requirements, there may be some flexibility there depending upon the number of residents that are going to occupy the facility at any given time. That is a separate process and not something we can resolve here tonight but he sees that as a possibility. The other would be a condition being applicant would have to go and get parking. You have to get parking so you satisfy the code requirements based on the number of residents and the occupancy.

Mr. Wilkinson said fundamentally, what we have here, if this was a new development being proposed in a residential district and they could address their parking, we wouldn't have this conversation. But they took a developed property, they are changing the use to a more intense use and the parking is non-conforming and not a legal non-conforming use. That is what we are dealing with today. We're dealing with a developed property that really has some issues with the proposed intensity of the use. If this was a new development and they could develop the required parking and it was proposed in this district, it is a whole different discussion. They are proposing this use on a developed property in the correct zone. A conditional use is, it provides the opportunity to determine that you might have some of these issues that need to be mitigated because it is a more intense use. You can't grant variances or waivers under the conditional use process. It's really unique to code and you add on the conditions to mitigate the circumstances with that proposed use would present or might present. That is the intent of that. They do have options. No. 1, they could agree to a reduced occupancy to meet the existing parking. They could try to address their occupancy of the building and ask for a waiver for some of the parking from the Planning Commission. Again that is a separate process. We can't do it under a conditional use process. They can ask for a waiver of some of the parking and apply for a revocable permit to do a couple of on-street parking spaces. They have a lot of options. Or they can develop the rest of their front yard into parking and get a variance for the setbacks.

Mayor Johnson asked if the applicant made the decision to apply as a CUP. The City is advising that they should go for a CUP?

Ms. Laughlin answered she couldn't sign off on their business license without a CUP.

Mayor Johnson said he can't see where a CUP is going to solve any of this. A CUP doesn't give the City any options. It looked as though the applicant needed to come down a different path.

Mr. Wilkinson said under some circumstances, under a CUP application, you may come to the conclusion that that use at that intensity will not work at that property location. That may be the result of all of the deliberation.

Mayor Johnson said he has asked that question and he didn't know if Mr. Stanton... He has asked that question if it is an allowable use with the condition that you only have eleven occupants but you are saying that may not be what the City can do.

Attorney Stanton referred to the code and talked about intensity of use. A residential facility for groups of ten or fewer do not require a CUP but that doesn't mean that the facility is exempt from the parking requirements. What it means is that they don't have to get a CUP. Once the intensity of use increases, or the use becomes eleven or more for this type of facility, then the CUP requirement kicks in. Then the Council gets to get a little bit more creative in terms of dealing with ingress, egress, the effects of the intensity of use, and in this case, parking. He isn't sure what the solution is in this particular case just because of the configuration of this property. It seems like it's really going to be a difficult thing to deal with without doing something that allows either a change in the parking requirements, which is a different process, or conditioning the approval on obtaining parking. There is the possibility of obtaining parking elsewhere in order to come into compliance.

Mayor Johnson asked if that could be a condition.

Attorney Stanton answered yes.

Mayor Johnson said those are things we can consider. We can say it is an allowable use with the condition of X amount of off-street or waive.

Attorney Stanton said yes and they would have to do A, B or C in order to deal with parking. That would be perfectly appropriate.

Attorney Thomas said he hated to interrupt but there are so many questions that everyone has put for him and he needs to get in here somewhere. I won't remember all of them. He has made notes as fast as he can but there are a couple of things he can address as we go.

Attorney Stanton said he does have the right to get up and...

Councilman Keener agreed with what was said. Council needs to know what the applicant's intentions are in terms of the maximum number of occupants for this facility with respect to off-site parking. This is still going to put a huge burden on the neighborhood because if the parking is half a block away, he drove up there earlier today and he knows there is an empty lot a little ways from there more to the west, but if it's two o'clock in the morning... They have a curfew. But let's say it's nine pm and it's zero degrees out with three inches of ice, you are going to park in front of a neighboring house. You are not going to hike a block away to get to your housing. It puts a big strain on the neighborhood.

Mayor Johnson said if Council permits then that would be an answer. What is your intended use for occupancy?

Ms. Laughlin said back to reason it was a CUP, is looking and discussing it with Ms. Payne, looking at her website and the services she provides, it did not fit under our definition in 3-2-2 as a residential facility for groups. Residential facility for groups, in our definition, states that it's limited supervision, provides food, shelter and on and on. She looked at it as a definition with a similar use.

Attorney Thomas said they agree with that and it doesn't fit under, actually, halfway house. It's less than a halfway house. You have to provide reintegrated services.

Mayor Johnson said, if you would, occupants.

Attorney Thomas answered as stated, there are 11 bedrooms which were preexisting. You could have two per bedroom. More than likely, it would be a maximum of twenty because the house manager would have one. So it would be a maximum of twenty. This is also similar to older folks. You can't on the one hand say old people aren't going to drive there. They aren't going to have cars and they aren't going to park overnight. Well people are going to come visit them. So it's no different. This was an existing use already. So it would be arguably discriminatory to say now you can't use it for a halfway house or a sober living residence.

Mayor Johnson said he will still have his time and he won't take any of that away. Stay close. Mr. Stanton that was a question you asked Councilman Keener to ask.

Attorney Stanton said it sounds like there is a real parking problem. He needs to hit a couple of these points. The point was made about this earlier use as another type of facility. He believes it was a beehive home for elderly. There was a period of non-use for over a year. Even though that may have complied with the zone code at the time, 1999, that would not be a legal non-conforming use because it was abandoned. To say that this is now discriminatory because we are imposing contemporary zoning requirements, he didn't think that was accurate. It was an older use that was abandoned. Under our code, it is not a legal non-conforming use after a period of one year of nonuse. In terms of the what the occupancy does, we are talking about twenty people. It sounds to him as if this is going to be granted, the condition needs to require the applicant to somehow or another deal with the parking problem. Either by obtaining a waiver, some kind of combination of a waiver and revocable license agreement for on-street parking, or obtaining suitable parking on an adjacent property nearby in order to otherwise comply with the code's parking requirements. He wanted to hit another point that keeps coming up. That is about the fact that this proposed use doesn't cleanly fit within the definitions of a group home, a residential facility for groups or a halfway house. In terms of the halfway house, its not providing re-integrative services. In terms of the group home, it's not providing food. The argument is being made that it's not any of these things. He didn't think that is the correct way to interpret a zone code, and there is a lot of this effect that zoning codes need to be reasonably and fairly construed and they should be considered in light of the purpose and intent of the zone code. In this particular case, what we have is a purpose and intent, is having a CUP requirement when there is a greater intensity of use. This type of use fits very close to a combination of a group home or a halfway house, closer to a halfway house. The purpose of the code in requiring a CUP is to deal with these types of issues and that is stated in the code. The CUP is designed to deal things related to intensity of use: parking, egress, ingress and that kind of thing. Keeping that in mind, he still thought with twenty people, we are still consistent with the code in requiring a CUP for it. He thought the parking can be dealt with and there is a mechanism for doing it. He thought it could be done through conditions. It could be done through alternate conditions. Require the applicant to go get a waiver and that waiver may very well involve getting some sort of on-street parking, revocable license agreement worked out or alternatively obtaining suitable parking in order to meet the code requirements.

Councilman Keener said the parking can be dealt with administratively but it will be a huge burden for all the people in the neighborhood going forward.

Attorney Stanton said it would be a separate process though. The Planning Commission may very well say no, we don't want to grant a waiver for that very reason.

Mayor Johnson said it sounds more along the lines that it's a use of property that isn't allowed by code because of some of the other activities that have happened as far as the advertising for room and that type of thing. That's where some of the concern has come. To him a conditional use permit is that you have a property under certain conditions can be approved, and there sounds like there are some options that the City could take that says if you want to operate this business then something is going to have to be done with the parking, whatever it is.

Attorney Stanton said let's make a distinction though. The proposed use is permitted by code. You are talking about their use as an Airbnb which as he understands it, that's not permitted.

Mayor Johnson said that is part of the issue that came up at the Planning Commission. The Planning Commission fit what was presented and what was presented to staff was that the use of the property was more along the lines of a bed and breakfast or a motel. That's part of the issue of why we are here tonight.

Attorney Stanton said that is what they are doing there now.

Mayor Johnson said why we're in the middle of a CUP to address a zoning issue, that to him doesn't fit. Right now he is at a point where it says we aren't going to take any action because a CUP doesn't address this situation and that the City needs to address it as far as a zoning compliance situation. How we got to a CUP to try to solve this where he is trying to land on.

Ms. Laughlin said part of their conditions that she had in her staff memo, one of those conditions was listed that all Airbnb and all transient lodging needed to end and needed to cease. It needed to be a halfway house as it would be conditionally permitted to be a halfway house. It is a use that is permitted in the residential zoning district. One of the conditions was to operate it as that specific use.

Mayor Johnson said that is what he is not finding. He doesn't see where the Planning Commission... Here are the conditions.

Ms. Laughlin said it was because the Planning Commission denied it. In the memo she provided Council, it is in the packet, those were her recommended conditions. The Planning Commission, had they approved it, they would have listed conditions on the conditional use permit. Which could be possibly the ones listed in her staff memo recommendation, or it could be additional ones. There are many times the Planning Commission adds their own conditions to conditional use permits.

Mayor Johnson asked what conditions can the City impose to get this to approved use. We need to know what that list is.

Attorney Stanton said he could give them a couple but he is restating it. He could say, A) applicant shall either obtain a waiver of parking requirements, or, B) obtain, for twenty people he didn't think the current lot could be reconfigured/modified in order to accommodate that.

Ms. Laughlin said with a variance it could. Currently the way our City code reads is that off-street parking cannot, in a residential zone district, cannot be in the front setback. This parking is partially in the front setback and partially in our right-of-way. With a variance they can expand that parking to allow the off-street parking and make a sea of concrete in the front yard.

Attorney Stanton said or, C) obtain adjacent or nearby property in order to satisfy the code's parking requirements.

Ms. Laughlin said the vacant lot behind them.

Mr. Wilkinson said another option too, he believes the City Council can actually look at, as part of the conditional use permit, restricting the number of occupants and/or addressing the required code parking requirement for that number of occupants. You can throw that into the mix. You

can say we don't believe twenty occupants would be appropriate but some other number might be appropriate. And that the applicant address the parking requirements through the mechanisms available in code. Let them explore the options rather than us telling them how they should go about that. They can explore the code. They can get with their attorney and go through the code and explore those options and pursue those options.

Attorney Stanton agreed with Mr. Wilkinson on that. He thought that would be a good alternative as well.

Ms. Laughlin said other conditions that they had listed in the memo was that the CUP issued for this specific use of a halfway house and not a residential boarding house, the property advertising for rooms for rent be removed from websites such as the Airbnb and others, the CUP effective date to be the date City of Elko business license is issued. She still needs to go through a business license application and have the proper inspections done by Fire and Building. Compliance with all City, state and federal laws required. That the CUP is granted to the property owner. That it be recorded. That our standard language about the permit shall be personal to the property owner and applicable only to this specific use, on and on. That the property owner recorded and it shall automatically lapse and be of no effect one year from the issuance unless the permit holder is actively engaged in developing this specific property or the use of the permit.

Mr. Wilkinson said it would be best for all those conditions that they reference your memo by date, the conditions listed in that memo, other conditions that they might determine that would be appropriate, a maximum occupancy level if you determine that's appropriate, and that the applicant determine how they will address the required parking for whatever occupancy level you may determine as appropriate at that location. This just may be a location that doesn't work for twenty-two people going forward unless they purchase additional property and merge the lots and build a parking lot in accordance to the code, which would require quite an expense. That is the options that we have.

Mayor Johnson called for comments from City Council. He assumed they were getting close to...

Attorney Stanton said we have to give Attorney Thomas an opportunity to get up and speak.

Attorney Thomas said he disagrees with his esteemed colleague that they fit under a halfway house but if he insists that they fit under a halfway house then according to the NRS, and this is new, NRS 278.021 building codes and zoning codes don't apply. Parking would not apply. There would be no variance. There would be no need for a CUP. There wouldn't be. NRS is clear. It's plain language. He wanted to address the timeline because it is important because this keeps being brought up about bnb. In any type of civil case, you have a duty to mitigate your damages. The way the Elko code is, you have to lease a property (they leased the property for \$5,000 a month) for a business license. That is counterintuitive if it's anything he's ever known. You get the business license, then you find the place, then you get the approval for it, but you get a business license first. That's not how it works here. You are on the hook for \$5,000 a month for a property, that if you look at the timeline, okay, we don't know where to put you. We don't know if you are a residential facility. We don't know if you are a halfway house. We don't know where you're at. We are going to have you jump through these hoops, which is a whole

other issue, jump through these hoops as far as getting the site plan and the other things, he had to get the permission from the architect, which strings these things along. This takes months. She missed it by one day but that's because she is putting everything together. Of course there was another lapse in time but during that lapse in time now you have a duty to mitigate your damages. Damages would occur for what they believe are violations of FHA and ADA, and they are very clear. Especially going through this, putting handicapped people through this, he likes to call it, it's an intensity of use and not a type of use. That's a fine line and it's almost impossible because it was already used. It already had eleven rooms. You can't say that even if time goes by, those eleven rooms that has to be used. Even if it was eleven individuals, those are eleven cars. The odds of people coming out of recovery having cars are slim anyway. About the same as old folks. You're not going to get that many. You're not. And the conditions, he liked the idea of the conditions of doing the frontage and making that more parking or other options. One of the main things you have to keep in mind, you have to make reasonable accommodations. There is endless case law that cover all zoning and City ordinances and codes that under FHA and ADA you have to make reasonable accommodations. And you can't put a person with a disability through the rigors that you don't normally put anybody else through, or that you even put Lyfe through. Case law is very clear on that. He can provide all the case law you would like. He had Oxford House here. He had Newport Beach here. There are so many. He is talking Ninth Circuit, our circuit. Very plaintiff friendly when it comes to people with disabilities. He would like to see something worked out. He was glad it was asked what can be done. At the end of the day, what they want to do, is provide a sober living area that does not hamper people with parking. You have to have a legitimate government interest, and there is case law that says parking is not a legitimate government interest. Absolutely not. You cannot use zoning parking. It does not rise to overcoming a disability claim. It doesn't rise to that level. Parking alone will not do it. It's another thing in the Federal Code and the CFR's is they encourage, especially on disability claims, settlements, working together. It is highly encouraged which is part of mitigating damages. The only things was doing with Airbnb is mitigating her damages. Like was said in Planning Commission, that's not what we want to do. That's not what we are here for. We want sober living but we want to get a license and do this right. There is \$5,000 a month and we will get some people in there until we can get everything the way that Elko City wants it. You mentioned that other cities have similar codes. Actually Reno just changed theirs and he had it. They just changed theirs and they literally made it so that instead of getting a CUP, they call it Special Use Permit. Instead of that, it's a letter describing what it is sent to the commissioner. He either agrees with it or doesn't agree with it and then it's done. Reasonable accommodations is the key. If you do not make reasonable accommodations, it is an FHA and ADA violation and subject to serious damages. We don't want that. They are not looking to do that. They want to figure out a solution. They want to work within the solution and not create more of a problem. If it's only parking, and that is not what he is hearing, people are worried about property values, drug abusers and alcoholics in the neighborhood. Even public comments on that is discriminatory and there is case law on that also. We are already there and it was there at the plan. At this point in time, they are not looking to file an injunction in federal court, although he could. He is licensed in federal court also. That's not even close to what they want to do. They want to find a solution. He liked the solution, absolutely, limit the number of parking. There is three and a half now. Three and a half cars. He didn't know how we could do a half a car. Change the frontage. Concrete the frontage and then you can have five or six. It limits and agree that we won't have people in there that have more than six cars. Basically if you got six people in there and they got cars, anybody that comes in it like nope, unless you secure some other parking.

Councilman Keener said he didn't think that would work.

Attorney Thomas said he didn't know. There is a lot of property there. He didn't know about buying other property but sober living homes generally don't have people... They are more on public transportation. He doesn't know the public transportation or availability of it here but there is also Uber and Lift.

The group disagreed with Attorney Thomas and told him Elko does not have either of those at this time.

Attorney Thomas asked you don't have Uber or Lift?

Attorney Stanton said there is an opportunity for him.

Attorney Thomas said no. There is such a great need here. He thought, and he put in his letter, he wished that somebody would have responded to him so we could have had more concrete resolutions, where to go and how to do it, and where we are going to go from here. There are a couple of other things. He has a lot of notes. There is a lot of stuff. On the waiver they were asking for, it has a fire suppression system so that is no longer even an issue. He looked over his notes and said he didn't think he had anything else and asked if anyone had any questions that he can address.

Councilwoman Simons said she had quite a few. She is a black/white person so when you get into the mud she... If we said you could fit six spaces across there and you could only rent it out to six people, is that feasible? It sounds like that wouldn't be feasible.

Attorney Thomas said not six people but only six people that live there can have cars.

Councilwoman Simons asked and then what. They get a car and you kick them out?

Attorney Thomas said that could be one of the rules. That can be worked out. The thing is under FHA and ADA, you can't treat people, even if there is twenty...

Councilwoman Simons said nobody here is treating anybody any differently but we have to conform to our rules. That is what she is trying to get. Nobody here is saying that.

Attorney Thomas said under the supremacy clause FHA and ADA they surpass your rules. We are trying to work within your rules is what he is saying. They are trying to work within the rules.

Attorney Stanton interjected he thought they were trying to basically give you what you want. We should tone the rhetoric down a little bit and let's talk about how we can fashion these conditions in such a way that have some alternatives for you to take back to your client

Attorney Thomas said absolutely. And he apologized. The lawyer in him...

Councilwoman Simons said good, she hates lawyers and we all know that.

Attorney Thomas said he doesn't like them either.

Councilwoman Simons said she was just kidding. Her husband is a judge.

Attorney Thomas said he is not going down there. He may have to appear before him. Does he do criminal? Just kidding.

Councilwoman Simons said it does irk her a little bit that we didn't have a business license and we were conducting a business but she knows there is a huge need. She loves drug court and she wished that we could get some people going. So let's say, hey, we are going to start fresh, we are going to do everything right, we are going to be zoned like we need to, we are going to get our licenses like we need to, we are going to follow the rules, we are going to comply with Ms. Laughlin and everybody here. We need to talk about what you are willing to do. Having twenty-two people and three parking spaces, it's not going to fly. Telling her that federal law says that you can have a house full of twenty-two people and the City can't require them to have adequate parking, that's nuts to her. She isn't saying twenty-two spaces. She's not saying that. She's saying we can maybe meet somewhere in the middle but let's be realistic here. Let's say that we plan on having X people, which puts us under our zone in this area, which requires this many parking spaces, well, can we go down a little. What are we willing to do? Are we willing to pave the front? Are we willing to buy the back parking lot? Are we willing to limit the number of people? That is where we need to start because this can go on all night and she feels like we are muddying the waters. So we need to find out what our options are here. She asked Attorney Stanton what our options are because if we are going to get this going then we have to all be willing to work together.

Attorney Stanton said he didn't think the Council has the ability to waive requirements tonight. The CUP process is not designed for that. It is designed to impose conditions but not to waive requirements. It sounds like there may be a way of doing that. This is not an abnormal process that we are talking about. This is what would we require for this type of facility, whether it were occupied by disabled people or not, because of the intensity of use. It sounds like; A) There could be a waiver of parking of parking requirements through the Planning Commission, there is a code section that allows for that. B) the applicant could apply for a variance which Mr. Wilkinson brought that up. Maybe we can reconfigure the property in such a way to accommodate larger number of cars. That could be...

Attorney Thomas asked where they could get the variance. Would that be Planning Commission also or would that be...

Attorney Stanton answered yes and then that can be somehow or other keyed to...

Attorney Thomas said or that would be here.

Attorney Stanton said ultimately it could come back up here but that would be through planning. In that process that could be keyed to the number of cars the residents are allowed to have and capping it at some point. Another option we talked about is obtaining another parcel of property which sounds like the least workable option but let's leave it on the table. The first part about obtaining a waiver could be in conjunction with obtaining some sort of license for on-street

parking. To him that sounds like it's a problem but let's leave that on the table as an option as well so that we have different options. A waiver and a variance are two different things. A variance means we are talking about changing setback requirements and the location of parking spots and things like that, in order to accommodate the characteristics of this lot. A waiver of a parking requirement just means we are not going to require this many parking spaces for this particular use. That's different.

Attorney Thomas asked if there could be a combination of both.

Attorney Stanton answered possibly.

Attorney Thomas said thank you.

Attorney Stanton said there is no reason why these things can't be combined. He is wondering whether they ought to table this until his client has gone through those processes and come back.

Councilwoman Simons said that would be her suggestion on this. Can they take no action and get together and work together and see if we can't hash something out. If not, then come back to us and try to get this to overturn this.

Attorney Thomas said he thought that was a great idea.

Councilwoman Simons said we would still have this avenue. If something happened and we couldn't work things out they could still come through this process and still have this avenue.

Attorney Stanton said he did not know how Ms. Laughlin felt about this and he didn't want to do anything that's not going to work for her, but to him it seemed like if there are other ways of dealing with some of these underlying issues that could be addressed in a CUP, maybe these things ought to be worked out and then placed in the CUP as a condition. The reason for that is because a CUP is, it runs with the land. There is permanency.

Attorney Thomas said it has to be recorded, correct.

Attorney Stanton said when you lay out a bunch of alternatives in something that becomes an interest in the property, in a sense; it gets to be a little bit more confusing how you are going to comply with it. If you have actually resolved these issues and then you come back and then the CUP can be very concisely stated and then everybody knows what has to be done in terms of parking from that point forward. It runs with the land and that's why he was saying maybe we ought to think about doing it that way. He asked Ms. Laughlin what she thought.

Ms. Laughlin said she completely agreed with him. She still has a concern that she is operating without a business license at this point. She has two people there that are issued there from drug court and she has two additional coming on Friday. She is running ads in...

Councilwoman Simons said she suspected that if they truly want to start new and fresh and do things right that they would take care of that immediately.

Attorney Thomas said immediately. The only...

Attorney Stanton asked if he could agree to that on the record that his client will cease operating this facility in violation of the City Code. He thought that would help.

Attorney Thomas said yes, except that tenants have rights when they have a lease. The last lease is up the first of February, the beginning of February.

Stacey Payne, Lyfe Recovery, said they all run generally month to month.

Attorney Thomas said his concern is if you have a lease, a written lease, then as soon as that expires then not take anymore. We will lose money anyway because you just can't put them out.

Councilwoman Simons asked if he understood how this sounds, and it does sound heartless, but that is not our problem. You did this illegally and we want to start things new and do it right.

Attorney Thomas said they want to start things new and do it right too. Our position is that things were done that violated federal law and ... We want to start new but that's not your problem, he agreed, but putting them out, you just don't throw people out on the streets.

Attorney Stanton asked what about an agreement that they will not have any new tenants.

Attorney Thomas said yes.

Councilwoman Simons said you would have to ask these people.

Attorney Stanton said no new tenants.

Ms. Laughlin said drug court said two are coming on Friday.

Ms. Payne said they can tell drug court what happens here tonight. She just wanted to say something. All she has done for the past 18 years is work with people that have substance abuse and alcohol issues. She came here because she did all due diligence, she thought, on what this county actually needed. The City actually needed that. There isn't anything for anybody here. The women come out of treatment and go back to your streets. She leased a property, furnished a property, and spent over \$100,000 so far in your City to house people that want to live drug free. Simply want to live drug free. She came here in July to turn on the water and to get a business license. Just like she goes to every other City that they operate in. This is her 40th home. She did try. Ms. Laughlin read how long it took but they scrambled to find those plans. It was only by a fluke that she was able to get the plans. The architect didn't respond. She called the previous owner and he dug them out of a garage.

Attorney Thomas said they were past that.

Ms. Payne said she had to say this in her defense. She isn't trying to violate the rules. She isn't trying to be antagonistic. But she has a property there. She has an investor and she has a lease. She has people that live there that came to her. She can stop taking anymore. That's fine. She can pack up and leave but she didn't think that's what the City needs. That's not what her passion is. If we go back to starting over do we start over? Do they get the same fair treatment

from the Planning Commission again when they have denied her already? She sits there feeling somewhat already defeated because she can put 1.5 for parking spaces. She will go pour concrete tomorrow. That's how willing she is. She is willing to go tonight and dig up that grass and put concrete down. That is how dedicated she is. But she doesn't feel that going back to square one and going to get a variance from the Commission that was very clear that it said that she is just about breaking rules when she isn't about breaking any rules. She is here tonight. She drove 4.5 hours today and she is driving 4.5 hours back and if she is needed here tomorrow she will be back tomorrow. She has been to every single meeting. She has walked in and talked to them. We have gone through every code to try to find a way to make this work and here we are still. Everyone is confused except for that ex-alcoholic that is sitting in a very warm beautiful home that she furnished for them. That's her passion. She brought her attorney in to fight for her. She doesn't need to do this. She doesn't need to have him fight. She will be done with Elko. We have houses in Carson City and Fallon and Reno that we don't go through this with, but we believe in this fight. She believes in it enough but if you tell her that she can't operate, she can't have revenue, and she gets evicted. The property was not vacant when she moved in. When she toured the property in May there were seven very elderly people sleeping in the living room. It wasn't vacant. The property across the street was vacant and has been. Where does she go as somebody that's dedicated to do this. She will do whatever they want her to do. She can't go backwards.

Mayor Johnson said those are great comments. What she has to do is when Council makes a motion then that is when you know what direction to head. All of this input is very important. We are here to listen as information gathering and we still haven't make a decision. It's the majority of us here. We will just have to see where we land tonight and go from there. He asked Attorney Stanton if they were through the process as far as public comment and appellant.

Attorney Stanton answered yes. Now it is a matter of considering the evidence and any recommendations and findings of the Planning Commission and you may affirm, modify or reverse the decision of the Planning Commission. You have the inherent power to table it as well.

Gene Robison, 1691 Winchester Drive, disagreed with the lawyer. She has lived there since 2009 and Beehive was there when she moved there. Both facilities housed seniors. She never at any time saw more than seven vehicles in front or in the parking area there the whole time she has lived there.

Aaron Martinez, 445 5th Street, said there were a few things he wanted to add on this item and that is why he showed up tonight. Some things that bothered the Planning Commission ultimately is, the Planning Commission and the City of Elko is not here to provide development review. That is number one. We are not here to tell people how to develop their property and when to do so. The number one thing to him to look at is there should have been a greater deal of investigation before purchasing this parcel, to think you can come and occupy it in such a way. He thinks that is number one. Number two, the Planning Commission had never received any documentation that actually illustrated these folks even following their FHA and ADA guidelines. You have to prove that these people are not current drug abusers or alcohol abusers. None of that was ever applied to us. We got a list of twenty rules. None of them was random drug testing, required drug testing or any individual that would be a part of that parcel that can actually inflict those rules. In his opinion, we have a business model that is very hands off.

They leased the property. They may have someone that oversees the property but is not living on the property, and that is how it was presented to Planning Commission. So we have a business model that is very hands off but yet a requirement from FHA and ADA that requires these individuals to not be on these drugs, yet we have no one here to administer them. Does the City have to administer that? He didn't think so. Those are the concerns that he has. We still haven't closed those doors on if they are even able to fall under those guidelines and who is administering that to ensure that they fall under those guidelines. Thank you.

Mayor Johnson asked City Council what they would like to do.

Councilwoman Simons said she didn't mind giving them a chance and see if they want to try to work it out.

Mayor Johnson said with the descriptions that we have been giving, as far as the use goes, then the recourse that he sees, and that is why he kept digging as far as what conditions can be imposed, as that is really the direction the City can head. There are two things that he can see going into this but having the information as far as what options we have to impose conditions opens up the second one. The first one would be that it's started with however it started, came through and the goals of. He thought it was pretty clear that the goals for the use of the house is to have a place for a use that would be beneficial to Elko. He thinks that is definitely clear and how we got here is probably something that is behind us. Keeping within the code is probably another thing that needs to be but he thinks it is something that can be pretty easily... It looks to him as though they can go ahead and grant the use under certain conditions, and he thinks for the property owner, if we can get there, is the very best because time is of the essence. Then she can decide how to move forward with some good solid type decision from the City. He would think that if it's Council's approval, he would like to see if they could consider drafting tonight, or coming up with a motion tonight as far as it's a use with the conditions of, and whether it goes as that only if it's a use that is allowed that there are only three parking spaces. That's all that we can do tonight. As they move forward they can come back to the City and ask for a variance and maybe there are some other recourses as far as if they if they were able to acquire other property to get parking. If the City has the option. He thinks maybe it's there under the conditions, since there are eleven rooms, there's only eleven occupants.

Attorney Stanton corrected the Mayor saying twenty-two potentially.

Mayor Johnson said there are only eleven room. If the City has grounds for that. Maybe even so that it's enough of a direction for them that they know that this is the way that we are going to head with these conditions. If we can make a run at that and make a motion along those lines then he would like to see that. He is open other options and more discussion by City Council. Is there appetite to consider conditions?

Councilman Keener asked if what he is suggesting then is to reverse the Planning Commission's decision and then impose some conditions. Just so we are on the same page.

Mayor Johnson answered yes.

Councilman Keener said he is looking at Ms. Laughlin's recommendations on page 376. He asked Mr. Wilkinson if he had any ideas in terms of trying to make things work.

Mr. Wilkinson said he believed it was said to reference the staff memo, the conditions outlined in the staff memo.

Mayor Johnson asked if that was under recommendations. City of Elko Development Department recommends conditional approval of this item based on the following conditions...

Mr. Wilkinson said yes, there is a Planning memo from the Planner. There are two memos in there. One is from Ms. Laughlin which includes all of the conditions from all the departments. His thought would be that we limit the occupancy to eleven persons, one per bedroom, and that the applicant work with City staff to address the parking requirements required for that level of occupancy through the various mechanisms in City Code. That would be what he would think. It might be inappropriate use at this location and then they can look for waivers, they can look for increasing the parking count in the front yard. They can look at variances in order to accomplish that or they can look for something more. He thought allowing twenty-two people to at this location can present some problems. He didn't know how Attorney Stanton felt about a limitation on the number of occupants in the building as a condition for a conditional use permit but he thought under a conditional use permit you can do that.

Attorney Stanton said he agreed with that. He thinks that the number of occupants can be limited in terms of a condition that is key to working with staff. Keep in mind that this is something that runs with the land. His concern about that part of that would be what exactly is going have to be done and by when and what are the consequences of that going to be? It seems like a very difficult thing to put into a CUP.

Mayor Johnson asked as far as the number of occupants?

Attorney Stanton answered no, that part is okay. That part he can see.

Mr. Wilkinson said maybe they obtain the necessary waivers, variances or approvals...

Attorney Stanton added to comply with the City Codes requirements relative to parking.

Mr. Wilkinson said correct. And they would have to accomplish that maybe in a certain period of time allowing for the hearings with the Planning Commission. To him that timeframe might be 90 days. He is not sure where we are at in the cycle but he is thinking 90 days for them to fill out applications, meet our deadlines and have those matters heard by the Planning Commission. Then those conditions...

Attorney Stanton said a variance might require a survey.

Mr. Wilkinson said we need to allow for a period of time and those approvals, whatever they might be, can be incorporated into the conditions for the CUP. The waiver can be referenced. If we grant a waiver and you actually have it referenced in the CUP, then that is recorded and runs with the land, then you have determined that level of parking for that occupancy of that building going forward in perpetuity.

Attorney Stanton said the waiver would be, assuming it were granted, would be recorded.

Mr. Wilkinson said it would be referenced as a condition in the CUP. Waiver XXX is approved by the Planning Commission on a certain date, allowing for a reduction in parking of X number of spaces based on an occupancy of eleven and/or whatever. If they develop the front yard area under a waiver for additional parking spaces you might have a waiver for a number of spaces with a requirement that they add four more. You can probably put diagonal parking in there and get one or two more. He didn't know. You can do those types of things. Their opportunity would be to explore: 1) how many parking spaces are they going to need based on whatever occupancy is appropriate, and 2) how do they want to address that. In his opinion there would be a waiver request and in addition to that, some additional parking developed. That starts meeting in the middle trying to be reasonable allowing for that type of use at this location.

Attorney Stanton asked how about something like this: Obtain and record a waiver and/or variance, in order to bring the facility into compliance with the City Code within 180 days.

Mr. Wilkinson said that is plenty of time. He does believe that they should discuss the level of occupancy for the building. He believes, personally, that twenty-two can really create some problems in the neighborhood. It has that potential. He believes, since we have a facility that has eleven bedrooms, for lack of a better classification of the rooms, that eleven occupants would be appropriate at that location. That is somewhat consistent with what is allowed for under code. Opportunity under code and prior uses of the property.

Councilman Keener asked if there would be no requirement for a sign out front, would there.

Mr. Wilkinson answered he didn't think we would need... Residential doesn't allow.

Ms. Laughlin said signs are not allowed in residential zoning district.

Mayor Johnson asked if we had a motion.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidtlein, in respect to Conditional Use Permit Number 6-17, to reject the Planning Commission's recommendation of denial and to approve this CUP on a conditional basis. This is based on the City of Elko Planning Department recommendations from the staff report, City Planner's report dated November 21, 2017, and the conditions on there stand as published. Also that there will be an eleven occupant limit to this facility and that there will be no new leases that are assigned going forward with non-core client base; no more Airbnb; and with respect to parking, what Attorney Stanton said, obtain and record a waiver and/or variance in order to bring the facility into compliance with the City Codes parking requirements within 180 days.**

After the motion and before the vote, Councilman Keener added that he would like to require the operator of this to conduct a neighborhood meeting with once City staff person present. He thought the neighbors might have some false assumptions or unfounded concerns that might be able to be cleared up in this meeting.

Attorney Stanton said he was wondering if all of these things are conditions that are going to be placed in a CUP that runs with the land. A neighborhood meeting? If she doesn't hold a neighborhood meeting, what happens to the CUP?

Councilman Keener answered that he is the lawyer. Attorney Stanton can tell him.

Attorney Stanton said he is trying to think about the practicality of this. As he sees conditions... The thing about a CUP is that is an extension of the zone code. When you are talking about the zone code you are talking about land use. He can see limiting the number of occupants to eleven, that's a land use. He can see obtaining and recording a waiver and/or variance in order to bring the facility into compliance with parking; that's a land use. Ordering the applicant to stop violating other provisions of the City code, specifically the business license requirements, that seems like a straying away from land use to him. When you get into having a neighborhood meeting, is not land use.

Councilman Keener asked if he can modify that to highly suggest that the applicant conduct a neighborhood meeting. He thinks that would be really constructive for everyone that we heard from in this community. This is not the end of this. There will be several steps and this will be brought before Council at least one more time. You will have the opportunity to participate.

Attorney Stanton said he thought that was a great idea. We ought to segregate the conditions that are placed in the CUP from other recommendations. He thought that we had a commitment on the record from the applicant to not bring in any new tenants until we have completed this process and the property can be used for the type of facility that is stated in the application. We have that on the record. He thought the CUP itself should be very concise and it should say limiting the occupancy to eleven residents. We can do that. And then his statement about the waiver and/or variance to deal with parking within 180 days. Those are two enforceable conditions that we can place in a CUP. The other things that were discussed, he felt more comfortable not having them as part of the CUP.

Councilman Keener confirmed, the eleven person limit and then the parking as Attorney Stanton had indicated and strike everything else except for what is in the Planner's report he referenced. He accepted that change and asked Councilman Schmidtlein if his second still stood.

Councilman Schmidtlein answered yes.

Mayor Johnson said moved and seconded. Any further discussion?

The motion passed unanimously. (4-0 Councilman Rice was absent.)

BREAK

- D. Review and consideration of the Business Impact Statement for Zoning Application Fee increases, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to NRS 237.090, a Business Impact Statement must be prepared and considered by the City Council prior to the adoption of a resolution increasing Zoning Application Fees. SO

Shanell Owen, City Clerk, explained in the agenda packet is the completed business impact statement signed by the City Manager as required by the NRS. The resolution will be at the next Council meeting for adoption.

Mayor Johnson asked for public comment without a response.

**** A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to approve the business impact statement.**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

V. NEW BUSINESS (Cont.)

- E. Review, consideration, and possible initiation for the adoption of the '2018 International Existing Building Code' and possible amendments to related existing City Code sections and/or the model IEBC, and matters related thereto.
FOR POSSIBLE ACTION

The Council took action at its meeting on April, 11 2017 directing Staff to adopt the 2018 Building Code. Currently the City has adopted the 2009 Building code. During the 2015 code change cycle the international code Council membership voted to delete Chapter 34, Existing Structures, from the 2015 IBC code and reference the *International Existing Building Code* (IEBC). As a result, the City will be required to adopt the International Existing Building Code as a separate model code. The 2015 IEBC contains more extensive provisions than Chapter 34 of the 2009 IBC, such as seismic and energy requirements. Staff will evaluate the appropriateness of the level of adoption and make a recommendation to the Council. JF

Jeff Ford, Building Official, said after talking to our outside plan review guys, Salt Lake has adopted this. As plan review guys, engineers, designers and building owners, they love this. We have this adopted this as existing structures. It outgrew the IBC and now it is its own standalone code. This gives us some wiggle room to get through these old buildings. It would be advantageous to adopt this.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Keener, to direct staff to initiate the adoption of the 2018 International Existing Building Code and possible amendments to related existing City Code Sections and/or the model IEBC.**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

- F. Review, consideration, and possible initiation for the adoption of the '2018 International Property Maintenance Code' and possible amendments to related

existing City Code sections and/or the model IPMC, and matters related thereto.
FOR POSSIBLE ACTION

The Council took action at its meeting on April 11th, 2017 directing Staff to adopt the 2018 Building Code. Currently the City has adopted the 2009 Building code. The 2018 Building Code contains a section entitled “International Property Maintenance Code”. Enforcement of this code will require additional Staff and training. As a result, Staff is not recommending adoption of this model code. In addition, the adoption process would require a business impact statement. JF

Mr. Ford said this code is referenced in both the one we just talked about, the International Residential Code and in the IBC. He does not recommend adopting this because it would require more staff to enforce it.

Scott Wilkinson, Assistant City Manager, added that a lot of the provisions are subjective. We are not in a position to adopt this model code.

**** A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to forward with the adoption process of the 2018 Building Code, striking out the portion entitled “International Property Maintenance Code.”**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- B. Ratification of the Police Chief issuing a 30-day temporary Retail Liquor License and Caterer’s Liquor License and issuing a regular Retail Liquor License and Caterer’s Liquor License to Mai Burrows, Jaden Enterprises, LLC dba Cowboys, located at 442 Idaho Street, Elko, NV 89801, and matters related thereto. **FOR POSSIBLE ACTION**

Chief Reed explained this one is not routine and requires a little bit of explanation. Cowboys has changed hands. The applicant for a regular liquor license and caterer liquor license is Mai Burrows and does not speak English and they have arranged for an interpreter if Council wanted to ask her any questions. Her son, Danny, was present. He manages the business. Sam is also a business partner and has been very helpful. When they applied, they started with a 30-day temporary license. The temporary was extended due to not having the second meeting in December. The Police Department management has met with two of them to go over the liquor codes, which we always do with bar applicants. They were provided with a copy of the liquor control code. We made it clear that we want them to be successful and stay in good communication. The hiccup came over the last couple of weeks. The nighttime patrol supervisor reported that he had observed Danny (bar manager) “extremely intoxicated inside the bar” on a couple of occasions and the liquor code prohibits that. The code states that any of the employees cannot be performing any of the operations of the bar while intoxicated. There was another meeting today to clear up the issue. He fully understands the issue. The applicant is Mai Burrows. Up to today they have used Danny as the interpreter for his mother. They both have passed background investigations. He would normally recommend approval. He and the City Clerk were reviewing the City Code earlier. All liquor licenses are on probationary status for the

first six months. That allows the Police Chief to summarily to suspend or revoke if there are difficulties in that first six month. He recommended proceeding cautiously since this is one of the busiest places in town.

Councilman Schmidtlein asked he understood there is a six-month probation, but with the temporary permit, can we extend that for thirty additional days or do we need to basically take his recommendation and authorize the liquor license. He wants to figure out what we are allowed and not allowed to do here.

Chief Reed said all new liquor licenses are under six-month probationary status per the code.

Councilman Schmidtlein said he doesn't want to authorize this and then find out we are going to go through another eight hour hearing like we did the last time to revoke a license. He wanted to know if they could extend the temporary even for sixty days moving forward.

Chief Reed said they do occasionally extend a 30-day into a 60-day and we are already here just because of the timing of the Council meeting. Everything he has read in the liquor code, you can attach conditions to it from day one.

Councilman Schmidtlein said he wants to ratify for an additional 60-day temporary liquor license with the understanding of the entire liquor code. One thing he wanted to point out was *Section 4-5-27 Intoxication of a License Employers Prohibited. It shall be unlawful for any licensee under the provisions of this chapter or any manager, bartender, servants, agents or other employees thereof, to be in an intoxicated condition in or about the licensees business premises while performing his/her duties in connection with the business.* He wants to make sure they fully understand what he is saying because they are going to grant an additional 60 days on a temporary basis. If the Chief comes back with any additional violations, we are going to yank it.

Dave Stanton, City Attorney, said the temporary license shall be valid for 30 days or until approval or denial of the final application by the City Council, whichever occurs first.

Councilman Schmidtlein asked if they go for an additional 30 days?

Mr. Stanton didn't think so. The applicant can apply for a new temporary but it wouldn't be an extension of an existing temporary. It would be a new temporary license.

Mayor Johnson agreed that we need to be careful with this. From what he is hearing it wouldn't take much for him to deny this tonight. That particular property with the business hours, they get all the end results, and they need to be the most organized of them all.

Sam Schmally, 598 Spring Valley Pkwy, represents the applicant, there was some miscommunication on his interpretation of the law. He explained to Danny and Danny understands that he cannot drink alcoholic beverages while on the property at all. Mai is also fully aware and understands. As far as staffing, depending on the day of the week, there are two bartenders and two security staff. Fridays have two bartenders with an on-call bartender and four security personnel with one on-call. Saturdays they keep the same staffing levels but there are two security personnel on-call. At any point they can have six security personnel on staff on Saturday evenings.

Chief Reed said the security is as Sam has portrayed. There is the same level of security and communication with the Police Department. We want them to succeed. This is very serious. It won't take much to revoke this.

Councilman Schmidtlein said it is a privilege to have a liquor license.

**** A motion was made by Councilman Schmidtlein, seconded by Councilman Keener, to reapply for a 30-day temporary liquor license with them understanding what the liquor code is. He read into the record 4-5-27 and he reiterated that it is a privilege.**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

After the motion and before the vote, Chief Reed asked if the intent of the motion that at the end of the next 30-day extension this is back on the Council's agenda.

Councilman Schmidtlein answered yes and if there are any issues, the license will be jerked.

Ryan Limberg, Utilities Director, asked who explains this to Mai.

Mr. Schmally answered he has explained this all to Danny and he has explained everything to Mai. There was some miscommunication at first but that has been cleared up.

Councilman Schmidtlein asked if Mai is onsite periodically. How is this all working?

Mr. Schmally answered that Mai is not onsite but there is a bar manager. She is an employee and runs day to day operations for Mai.

Councilman Schmidtlein asked if something arises, can someone call her and communicate the problem to her so she can be there?

Mr. Schmally answered the bar manager has been instructed to contact Danny immediately so he can contact Mai.

Chief Reed offered to set up another appointment with them and make sure Mai is there and get the interpreter on the line and review the steps on the liquor control code.

Councilwoman Simons said that would make her feel better. Maybe you can hire the service to translate the rules or something. She is afraid there are technical terms that not knows how to translate.

Council voted on the motion.

V. NEW BUSINESS (Cont.)

- G. Review, consideration, and discussion for the appointment of one (1) new member to the Parks and Recreation Advisory Board, and matters related thereto.
FOR POSSIBLE ACTION

Council authorized Staff to advertise for one (1) open position on the Parks and Recreation Advisory Board at a previous meeting in early 2017. Since then, Staff has received three letters of interest from Ms. Katie Archuleta, Mr. Christopher Kentopp, and Ms. Amber Fox. All have expressed a desire to serve as a member on the Board. The appointment will be for the remainder of the vacant term through June 30, 2019. JW

James Wiley, Parks and Recreation Director, said there were three applicants. They have all expressed interest in serving.

Councilman Schmidtlein thought all three are great candidates. Amber Fox stayed for five hours of this meeting and recommended her.

**** A motion was made by Councilman Schmidtlein, seconded by Councilman Keener, appoint Amber Fox to the Parks and Recreation Advisory Board.**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

VI. PETITIONS, APPEALS, AND COMMUNICATIONS (Cont.)

- A. Review, consideration, and possible action to accept a petition for annexation of property to the City, filed and processed as Annexation No. 3-17 by Swire Coca-Cola, Inc., consisting of approximately 3 acres of property located on the north side of West Idaho Street, and matters related thereto. **FOR POSSIBLE ACTION**

Cathy Laughlin, City Planner, explained the property is developed in the county. It is their local distribution center. The property owner does have plans for an extension of the existing facility in the Spring 2018. The property owner has entered into an agreement with Golden Gate for a waterline extension. Their connection to the water is contingent upon them annexing into the City. There is no City sewer connection in the area so they cannot connect to the City sewer at this time. The applicant has also applied for a rezone of the property. She recommended accepting the petition and referring the matter to the Planning Commission.

**** A motion was made by Councilman Keener, seconded by Councilwoman Simons, to accept the Petition for Annexation No. 3-17, to include assessor's parcel number 006-09G-036 and refer the matter to the Planning Commission for further consideration and recommendation to the City Council.**

The motion passed unanimously. (4-0 Councilman Rice was absent.)

VIII. REPORTS

- A. Mayor and City Council

Councilman Keener said he didn't expect the news would get out so fast but he will be running for Mayor in the next election. January 23rd and 24th, the broadband group is getting together and will be conducting meetings. The

Governor's office and the consultants have really been doing a great job with engaging new potential suppliers here.

Councilman Schmidlein congratulated Councilman Keener for stepping up to the plate. He also recommended making some changes on the liaison positions.

B. City Manager

Curtis Calder reported that the sales tax report looks good. We are up over 10% for the year and up about 2.5% over where we were this time last year. He sent out an email regarding Senator Heller being in town on Saturday and he is looking for RSVPs for the meeting.

C. Assistant City Manager

D. Utilities Director

E. Public Works

F. Airport Manager

G. City Attorney

H. Fire Chief

I. Police Chief

Chief Reed reminded Council the Police Department Annual Award Ceremony is tomorrow night at 6pm. There are several awards to be given out including citizen awards.

J. City Clerk-**Financial Disclosure Statement**

Shanell Owen reminded Council that their Financial Disclosure Statements are due the 15th.

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

**Elko City Council
Agenda Action Sheet**

1. Title: **Mayoral designation of City Council members to specific “Liaison” positions within the City of Elko, and matters related thereto. NO ACTION BY THE COUNCIL REQUIRED**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **PERSONNEL**
4. Time Required: **10 Minutes**
5. Background Information:
 1. **Police Department Liaison**
 2. **Street Department Liaison**
 3. **Waterworks and Sewer Liaison**
 4. **Fire Department Liaison**
 5. **Airport and Public Property Liaison**
 6. **Parks/Recreation Department Liaison**
 7. **Building Department Liaison**
 8. **Animal Shelter Liaison**
 9. **Landfill Liaison**
 10. **Redevelopment Advisory Council (Board Member)**
 11. **Centennial Committee (Board Member)**
 12. **ECVA (Board Member)**
 13. **NNRDA (Board Member)**
 14. **Elko County Commission Liaison**
 15. **Elko County Water Planning Commission Liaison**
 16. **Elko County Fair Board Liaison**
 17. **Elko County Regional Transportation Commission (Board Member)**
 18. **Elko County Debt Management Commission (Board Member)**
 19. **Elko County Recreation Board (Board Member)**
 20. **Other Departments Not Listed – SO**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Mayoral Appointments**
9. Recommended Motion: **No Action by the Council Required**
10. Prepared by: **Curtis Calder, City Manager**

Agenda Item II.B.

11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

<u>Mayoral Appointments</u>	Mayor Johnson	Councilman Rice	Councilwoman Simons	Councilman Schmidtlein	Councilman Keener
Airport and Public Property	2nd		1st		
Fair Board				1st	
Fire				1st	2nd
Parks/Recreation/Cemetery/Golf			2nd	1st	
Police	1st	2nd			
Streets/Public Works	2nd			1st	
Building Department			1st		2nd
Water and Sewer	1st				2nd
RDA	1st	2nd			
Landfill				1st	2nd
Animal Shelter		2nd	1st		
County Commission	2nd	1st			
Elko Debt Service				1st	
NNRDA	1st				
ECVA		1st			
Recreation Board	Member		Member	Member	Member
RTC				1st	
Mayor Pro Tempore		1st			

**Elko City Council
Agenda Action Sheet**

1. Title: **Election of Mayor Pro Tempore, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **PERSONNEL**
4. Time Required: **10 Minutes**
5. Background Information:
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **None**
9. Recommended Motion: **No Action by the Council Required**
10. Prepared by: **Curtis Calder, City Manager**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to select a firm for design services for a combined Water/WRF Reclamation Facility Shop, direct Staff to negotiate a proposal with said firm, and thereafter bring back to Council for possible final approval a Professional Services Agreement (PSA) with said design firm, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **APPROPRIATION**
4. Time Required: **5 Minutes**
5. Background Information: **Council authorized Staff to solicit for Statements of Qualifications on November 28, 2017. Staff received Statements of Qualification (SOQ's) from four firms. These SOQ's were rated by three Staff members (the rating sheet summary is attached for Council review). RL**
6. Budget Information:
 Appropriation Required:
 Budget amount available: **\$250,000.00**
 Fund name: **50% Water and 50% Sewer**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Summary Rating Sheet**
9. Recommended Motion: **Pleasure of the Council regarding selection, thereafter direct Staff to negotiate a proposal with said firm and bring back to Council a PSA for possible final approval.**
10. Prepared by: **Ryan Limberg, Utilities Director**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

**CITY OF ELKO
SOQ Rating Results
FOR
WATER/WRF NEW SHOP DESIGN
January 11th, 2018**

	FIRM NAME		Rater 1	Rater 2	Rater 3	TOTALS
			<u>Score</u>	<u>Score</u>	<u>Score</u>	<u>Total Score</u>
	ZGA Architects & Planners		98	96	95	<u>289</u>
	Lombard-Conrad Architects (LCA)		99	93	92	<u>284</u>
	Lostra Engineering		93	80	85	<u>258</u>
	BJG Architecture & Engineering		77	78	89	<u>244</u>

Rating sheets indicate that ZGA is the highest rated architect for this project.

**Elko City Council
Agenda Action Sheet**

1. **Title: Review, consideration, and possible approval to authorize Staff to solicit bids for the Cedar Street Reconstruction Project Phase 2, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **APPROPRIATION**
4. Time Required: **5 Minutes**
5. Background Information: **This item has been approved and budgeted for in the 2017/18 Fiscal Year Budget, Capital Construction Fund. DS**
6. Budget Information:
Appropriation Required: **\$1,600,302.75**
Budget amount available: **\$1,301,776.00**
Fund name: **Capital Construction; Additional anticipated revenues of approximately: \$250,000 in ad valorem tax to be collected; 300,000 from the ¼ cent Elko County sales tax available September 1, 2018; and \$50,000 from NV Energy franchise agreement; for a total approximate amount of \$1,901,776.00 available in October of 2018.**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **This does not include quality control and assurance. We anticipate that amount to be approximately \$160,000.00.**
9. Recommended Motion: **Authorize Staff to solicit bids for the Cedar Street Reconstruction Project Phase 2.**
10. Prepared By: **Dennis Strickland, Public Works Director**
11. Committee/Other Agency Review:
12. Council Action:
13. Agenda Distribution: **Lana Carter**
lanalcarter@live.com

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval for the Fire Department to apply for an Assistance to Firefighters Grant (AFG) to enhance emergency communications, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **APPROPRIATION**
4. Time Required: **10 Minutes**
5. Background Information: **The City of Elko Fire Department radios are a mix of brands and models none of which are capable of communicating with County Ambulance, Sheriff's Office or NHP. In addition, they will not be capable of decoding scrambled communications from Elko PD radios in the future. The FEMA Assistance to Firefighters Grant would allow Fire Department to attain 20 mobile radios, 60 portable radios and accessories utilizing government pricing. These radios will enhance emergency communications and interoperability with Elko PD, Elko Ambulance, Sheriff's Office and NHP. In addition, these radios will meet the criteria for enhanced 911. JS**
6. Budget Information:

Appropriation Required: \$45,000 (10% Match)
Budget amount available: NA
Fund name: Capital Equipment
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **N/A**
9. Recommended Motion: **Recommend approval for the Fire Department to apply for the Assistance to Firefighters grant for \$450,000 with 10% match, through the Federal Emergency Management Agency Assistance to Firefighters Grant.**
10. Prepared By: **Jack Snyder, Deputy Fire Chief**
11. Committee/Other Agency Review: **N/A**
12. Council Action:
13. Agenda Distribution:

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of a revised Water Line Special Reimbursement Agreement with Golden Gate Petroleum of Nevada, LLC, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **UNFINISHED BUSINESS**
4. Time Required: **5 Minutes**
5. Background Information: **The original agreement was approved by Council on 11/28/2017. There were no comments provided by Golden Gate Petroleum of Nevada, LLC to the agreement prior to the time Council approved the agreement. Thereafter, Golden Gate Petroleum of Nevada, LLC submitted the Council approved document to their legal team for review. Their legal team suggested wording changes prior to signing the document.**

The total financial contribution by the City is still limited to One Hundred Eighty-Six Thousand Dollars (\$186,000.00) as previously approved. The change requested in the new document essentially amounts to stating reimbursement for the oversize and I-80 crossing portion of the work will be reimbursed to the developer within 30 days of completion. RL

6. Budget Information:

Appropriation Required: \$186,000.00
Budget amount available: \$186,000.00
Fund name: Water
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Revised Water Line Special Reimbursement Agreement**
9. Recommended Motion: **Move to approve**
10. Prepared by: **Ryan Limberg, Utilities Director**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

WATER LINE SPECIAL REIMBURSEMENT AGREEMENT

THIS WATER LINE SPECIAL REIMBURSEMENT AGREEMENT (hereinafter the "Agreement"), made and entered into this _____ day of _____, 201__ by and between the **CITY OF ELKO**, a municipal corporation and political subdivision of the State of Nevada, hereinafter referred to as the "**City**," and **GOLDEN GATE PETROLEUM OF NEVADA, LLC**, a Nevada Limited Liability Company, hereinafter referred to as the "**Owner**."

R E C I T A L S

1. The **City** is a governmental entity to which is delegated the responsibility of providing water service to persons who reside within its corporate boundaries;
2. The **Owner** is engaged in the development of a business in the vicinity of Exit 298 known as the "Golden Gate Truck Center" located on the parcel bearing Assessor's Parcel Number (APN) 001-679-003 and identified as "Golden Gate Petroleum" on the map attached hereto as **Exhibit A**;
3. A 12-inch water line must be extended a distance in excess of 100 feet from an existing water main on Cattle Drive and across the Interstate 80 right-of-way in an area known as "Sheep Creek Trail," as shown on the maps attached hereto at **Exhibit B** (hereinafter the "**Project**");
4. The 12-inch water line is considered an "oversize" line, since only a 10-inch line is ordinarily required pursuant to Elko City Code Section (ECC) 9-1-35(A);
5. The area through which the water line will be extended is well suited for growth;
6. The **City** has agreed to reimburse **Owner** for the total cost of the construction of the water line across the Interstate 80 right-of-way and for the incremental cost difference of constructing a 12-inch water line less the cost of constructing a 10-inch water line for the balance of the water line; provided, the reimbursement for the oversize water line is a materials-only cost reimbursement without any reimbursement for labor; and
7. The **City** will reimburse **Owner** for the costs identified in recital 6 above upon completion of the Project as set forth herein. Subsequently, after completion of the Project and the foregoing reimbursement by the City, as the two (2) parcels identified as APN 001-679-003 and APN 006-09G-037 on the map at **Exhibit A** are developed, the developers will pay water extension connection fees to the **City**. As those connection fees are collected, the **City** will pay the **Owner** for water line associated costs all as further set forth herein.

NOW, THEREFORE, the **City** and **Owner** agree as follows:

1. The parties agree that the **City** will reimburse the **Owner** for a portion of the cost of the water line construction and oversizing in accordance with ECC 9-1-35, as follows:

a. The actual cost of constructing the water line at the locations shown on the map at **Exhibit B** shall be paid by the **Owner**, subject to the reimbursement provisions contained in this Section 1.

b. The **City** shall reimburse the **Owner** the actual cost of materials and labor for the construction of the water line across the Interstate 80 right-of-way in accordance with Subsection 1(d), below.

c. The **City** shall reimburse the **Owner** the actual cost of materials for the incremental cost difference of constructing a 12-inch water line less the cost of constructing a 10-inch water line for the length of the water line, less the I-80 section of line the City is paying for, in accordance with Subsection 1(d), below.

d. The reimbursement from the **City** to the **Owner** for the items identified for reimbursement pursuant to Sections 1(b) and 1(c) above shall be paid to the **Owner** within thirty (30) days of the date on which the City conducts a final inspection of the completed water line and authorizes the water line for operation. The City shall not unreasonably withhold, condition or delay the foregoing acceptance and authorization. The reimbursement to be paid by the **City** pursuant to this Section 1(d) shall be the actual cost to **Owner** of the items set forth in Sections 1(b) and 1(c) or One Hundred Eighty-Six Thousand Dollars (\$186,000.00), whichever is less.

2. In addition, the **City** shall collect water extension connection fees from any person that develops either or both of the two (2) parcels identified as APN 001-679-003 and APN 006-09G-037, as shown on the map at **Exhibit A**.

3. In addition to the amount set forth in Section 1(d), as the foregoing water extension connection fees are collected, the **City** shall pay to the **Owner** an amount equal to the fraction of the full frontage of the parcel served by such connection bears to the total length of the water line extension for the **Project**, multiplied by the actual cost (before taking into account the reimbursement provided in Section 1(d) above) to **Owner** of the water line oversize or extension as approved by the **City**, up to a maximum amount of Fifty-Two and 32/100ths Dollars per linear foot (\$52.32/foot); provided, in no event shall this Section 3 be construed so as to require the **City** to reimburse the **Owner** an amount in excess of the water extension connection fees which are eventually collected from the two (2) parcels identified in Section 2, above.

4. Reimbursable costs pursuant to this Agreement are limited to materials and labor for the construction of the water line extension in the Interstate 80 right-of-way, and

materials for the cost of oversizing the water line from 10-inches to 12-inches. The **City** shall not be responsible for any other costs associated with the **Project**, such as the cost of constructing the water line to the minimum 10-inch diameter or traffic control.

5. The parties agree that the **Project** will be installed by the **Owner** in a diligent and workmanlike manner, according to the approved plans and specifications, and in accordance with all applicable provisions contained in the Elko City Code, and that the foregoing are conditions precedent to the **Owner's** right to reimbursement hereunder. Where applicable, the **Owner** shall dedicate all water mains to the **City** in accordance with ECC 9-1-35(B).

6. Each party shall protect, indemnify and hold harmless the other party and the other party's officers and employees from any and all claims, damages, losses, expenses, suits, actions, decrees, judgments, attorney fees and court costs which the other party, its officers or employees may suffer as a result of, by reason of, or arising out of its negligent acts or omissions, or the negligent acts or omissions of its subcontractors or agents, to the extent such acts or omissions take place in relation to the fulfillment or performance of the terms, conditions or covenants of this **Agreement**.

7. Any disputes arising hereunder shall be resolved in the Fourth Judicial District Court, in and for the County of Elko, State of Nevada. In the event of a dispute, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. This **Agreement** replaces all prior agreements pertaining to the subject matter hereof and any further modifications or amendments must be in writing.

8. The **City** has determined that special conditions exist which justify reimbursement to the **Owner** on the foregoing basis upon completion of the Project, since there are presently no projected new water users above the water line extension and, thus, no ready mechanism for reimbursement through new connection fees. These conditions render portions of the reimbursement mechanism set forth in ECC 9-5-33(D) impractical.

9. This **Agreement** shall become effective upon the execution hereof by the **City**.

IN WITNESS WHEREOF, the parties hereto have caused this **Agreement** to be executed by their duly authorized representatives the day and year first above written.

CITY OF ELKO,
a municipal corporation and
political subdivision of the State of Nevada

By: _____
CHRIS J. JOHNSON
Mayor

ATTEST:

SHANELL OWEN, City Clerk

**GOLDEN GATE PETROLEUM
OF NEVADA, LLC**

By: _____
DENNIS O'KEEFE
Managing Member

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of Map of Reversion to Acreage No. 2-17, filed by 12th Street Associates, LLC, for the purpose of reverting to acreage parcel B & C as shown on Parcel Map File No. 711850, identified as APN 001-630-092 & 001-630-093, located generally south of the intersection of 12th Street and Opal Drive, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **10 Minutes**
5. Background Information:
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Map, Staff Reports and Application**
9. Recommended Motion: **Approve Map of Reversion to Acreage No. 2-17**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review:
12. Council Action:
13. Agenda Distribution: **12th Street Associates, LLC
Attn. Frank Gallagher
4751 Caughlin Parkway
Reno, NV 89519**

**Summit Engineering
Attn. Eric Snyder
1150 Lamoille Highway
Elko, NV 89801**



CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: Eric Snyder, Summit Engineering
From: Jeremy Draper, Development Manager
Re: Reversion to Acreage, 2-17, 630 12th Street
Date: December 27, 2017

The City of Elko, Development Department has reviewed the proposed reversion to acreage under existing conditions. Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Code – Section 2-13-3 Sidewalk, Curb and Gutter Construction
- City of Elko Code – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Code – Section 3-2-10 (B) General Commercial District
- City of Elko Code – Section 3-8 Flood Plain Management
- City of Elko Code – Section 3-3-60 Parcel Maps
- City of Elko Code – Section 3-3-75 Reversions to Acreage



The City of Elko, Development Department finds the reversion to acreage is in general compliance with the above referenced Master Plan Components and Sections of City Code. The reversion to acreage was evaluated based on the existing conditions and current development of the property.

BACKGROUND INFORMATION

1. The proposed map creates 1 new parcel from the existing land identified as APN 001-630-092 and -093.
2. The proposed parcel has an area approximately
 - a. Parcel 1: 2.11 Acres
3. The property is currently undeveloped.
4. The area lies south of 12th Street and Opal Drive.
5. It appears public improvements are in place.

MASTER PLAN:

Land Use:

- The land use is identified as General Commercial.

Transportation:

- The proposed parcel fronts 12th Street, a Major Arterial.

ELKO REDEVELOPMENT PLAN:

- The property is located outside the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

- The property is located outside the 30 year capture zone.
- Conformance with this plan is required.

NRS 278.479-4965-REVERSION OF DIVIDED LAND

- Conformance with this section of NRS is required

SECTION 2-13-3 SIDEWALK, CURB AND GUTTER CONSTRUCTION

- Sidewalks, curbs and gutters shall be required on all vacant lots or parcels of land which are hereafter developed, or upon lots or parcels of land which are merged or divided.
- It appears that all public improvements are in place on public roadways.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

- Section 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS states that no yard or lot area can be reduced below the minimum requirements set forth in Title 3 (zoning).

Section 3-2-10 (B) GENERAL COMMERCIAL DISTRICT

- Compliance with this section of code is required

SECTION 3-8 FLOODPLAIN MANAGEMENT:

- The area is located outside the Special Flood Hazard Area (SFHA)
- Conformance with this section is required

SECTION 3-3-75 REVERSION TO ACREAGE

Reversion (A) – The requirement for a parcel map has not been waived.

Reversion (B) – The reversion map will be presented to the council.

Reversion (C) – Fees associated with this section shall be paid.

Reversion (D) – The map of reversion shall be recorded with the Elko County recorder

Reversion (E) – No streets or easements are proposed to be included with this map of reversion.

Reversion (F) – A fee was submitted with this application.

RECOMMENDATION

The City of Elko, **Development Department** recommends approval of the map of reversion.



City of Elko
1751 College Avenue
Elko, NV 89801
(775) 777-7160
FAX (775) 777-7119

CITY OF ELKO STAFF REPORT

MEMO DATE: January 8, 2018
CITY COUNCIL MEETING DATE: January 23, 2018
APPLICATION NUMBER: RTA 2-17
APPLICANT: 12th Street Associates, LLC

PROJECT DESCRIPTION:

Parcels B & C of Merger and re-subdivision parcel map for 12th Street Associates, LLC File No. 711850



The City of Elko, Planning Department has reviewed the proposed reversion to acreage map under existing conditions. Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan – Land Use Component
- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- NRS 278.479-.4965
- City of Elko Code – Section 2-13-3 Sidewalk, curb and gutter construction
- City of Elko Code – Section 3-2-4 Establishment of Zoning Districts

- City of Elko Code – Section 3-2-9 Commercial Zoning District
- City of Elko Code – Section 3-8 Flood Plain Management
- City of Elko Code – Section 3-3-75 Reversion to Acreage

PROJECT INFORMATION

PARCEL NUMBER:	001-630-092 & 001-630-093
PARCEL SIZE:	2.11 acres combined
EXISTING ZONING:	(C) Commercial
MASTER PLAN DESIGNATION:	(COMM-GEN) Commercial General
EXISTING LAND USE:	Undeveloped land surrounded by newly developed commercial uses

BACKGROUND INFORMATION

- The proposed map creates 1 new parcel from the combination of parcel B and C as shown on the parcel map for 12th Street Associates, LLC File No. 711850, identified as APN 001-630-092 & 001-630-093.
- The proposed parcels have an area approximately 2.11 acres
- The area is zoned (C) General Commercial
- The property is currently undeveloped
- The area is south of the intersection of 12th Street and Opal Drive
- Public improvements are in place for 12th Street frontage

MASTER PLAN:

Land Use:

- The land use is identified as Commercial General

Transportation:

- The proposed parcel fronts 12th Street, Classified as a principal arterial

ELKO REDEVELOPMENT PLAN:

- The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

- The property is located outside the 30 year capture zone.

NRS 278.479-4965-REVERSION OF DIVIDED LAND

- Conformance with this section of NRS is required

SECTION 2-13-3 SIDEWALK, CURB AND GUTTER CONSTRUCTION

- Sidewalks, curbs and gutters shall be required on all vacant lots or parcels of land which are hereafter developed, or upon lots or parcels of land which are merged or divided.
- It appears that all public improvements are installed on public roadways.

SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS

- Section 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS states that no yard or lot area can be reduced below the minimum requirements set forth in Title 3 (zoning).

SECTION 3-2-9 COMMERCIAL DISTRICT

- Compliance with this section of code is required

SECTION 3-8 FLOODPLAIN MANAGEMENT:

- The area is located outside a Special Flood Hazard Area (SFHA)

SECTION 3-3-75 REVERSION TO ACREAGE:

Reversion (A) – The requirement for a parcel map has not been waived.

Reversion (B) – The reversion map will be presented to the council.

Reversion (C) – Fees associated with this section shall be paid.

Reversion (D) – The map of reversion shall be recorded with the Elko County recorder

Reversion (E) – No streets or easements are proposed to be included with this map of reversion.

Reversion (F) – A fee was submitted with this application.

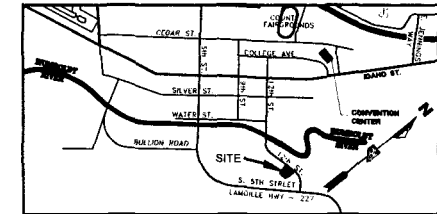
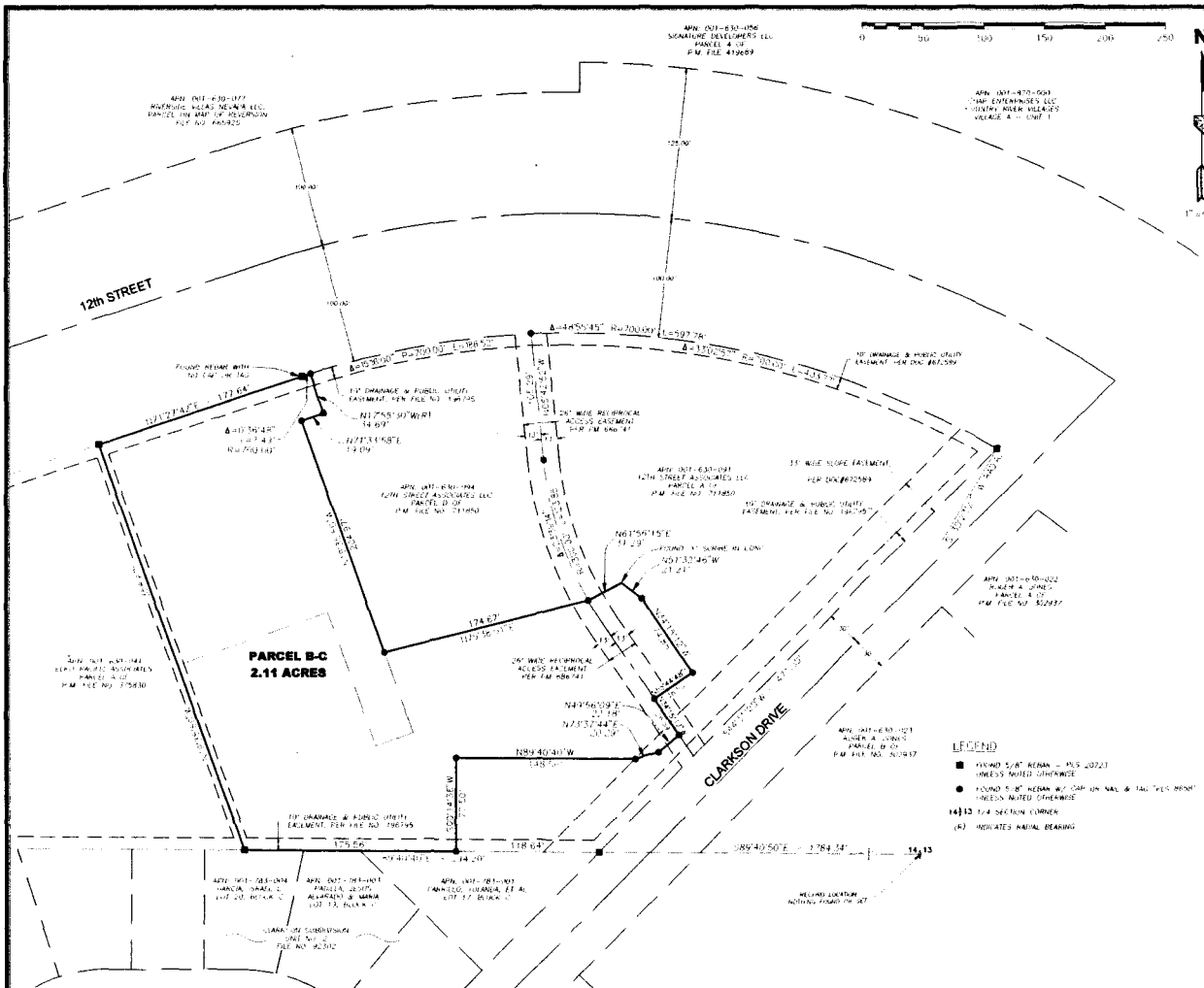
CONCLUSION:

The City of Elko, Planning Department finds the reversion to acreage is in general compliance with the above referenced Master Plan Components and Sections of City Code. The reversion to acreage was evaluated based on the existing conditions and current development of the property.

STAFF RECOMMENDATION:

RECOMMEND APPROVAL

No other departments had concerns at the time of this memo.



VICINITY MAP

OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, FRANK S. CALLAGHER, AS MANAGING MEMBER OF 12TH STREET ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, THE OWNER OF THE PARCELS SHOWN ON THIS PLAT, DOET HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS PLAT.

12TH STREET ASSOCIATES, LLC

FRANK S. CALLAGHER
MANAGING MEMBER

STATE OF NEVADA)
COUNTY OF ELKO) S.S.

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME AND THIS DAY OF 12TH MONTH 2017 BY FRANK S. CALLAGHER, AS MANAGING MEMBER OF 12TH STREET ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY.

NOTARY PUBLIC IN AND FOR THE STATE OF NEVADA

MY COMMISSION EXPIRES 12/31/2018

SURVEYOR'S CERTIFICATE

I, ERIC V. SNYDER, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1. THIS PLAT WAS PREPARED AT THE INSTANCE OF 12TH STREET ASSOCIATES, LLC.
2. THE LARDS SURVEYED LIE WITHIN THE NORTHEAST 1/4 OF SECTION 14, TOWNSHIP 44 NORTH, RANGE 55 EAST, MDM.
3. THIS PLAT COMPLES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THIS CERTIFICATE WAS GIVEN BY MY FINAL APPROVAL.
4. THE PLAT HAD BEEN PREPARED FROM INFORMATION OBTAINED FROM THE MERGER AND RESUBDIVISION PARCEL MAP FOR 12TH STREET ASSOCIATES, LLC FILED BY THE OFFICE OF THE ELKO COUNTY RECORDER ON MAY 24, 2016 AS FILE NO. 711850 (SAD MAP IS THE MAP TO BE RECORDED).



ERIC V. SNYDER
1114

RECEIVED

DEC 21 2017

Initial: _____

NOTES

1. THE TOTAL AREA OF THIS MAP IS 2.11 ACRES.
2. THIS MAP IS A REVISION TO A PLAT TO ACQUIRE BETWEEN PARCELS B & C OF THE MERGER AND RESUBDIVISION PARCEL MAP FOR 12TH STREET ASSOCIATES, LLC, FILE NO. 711850 (ELKO COUNTY OFFICIAL RECORDS).
3. NO NEW EASEMENTS ARE BEING CREATED NOR ARE ANY EXISTING EASEMENTS OR RIGHTS-OF-WAY BEING REDUCED WITH THIS MAP.
4. THIS MAP DOES NOT PURPORT TO SHOW ALL EASEMENTS WHETHER OF RECORD OR NOT.

BASIS OF BEARINGS

MERGER AND RESUBDIVISION PARCEL MAP FOR 12TH STREET ASSOCIATES, LLC AS RECORDED IN ELKO COUNTY RECORDS ON MAY 24, 2016 UNDER FILING NO. 711850 (M).

REFERENCES

1. MERGER AND RESUBDIVISION PARCEL MAP FOR 12TH STREET ASSOCIATES, LLC AS RECORDED IN ELKO COUNTY OFFICIAL RECORDS ON MAY 24, 2016 UNDER FILING NO. 711850.
2. PARCEL MAP FOR 12TH STREET ASSOCIATES, LLC AS RECORDED IN ELKO COUNTY OFFICIAL RECORDS ON MAY 28, 2014 UNDER FILING NO. 686741.
3. CERTIFICATE OF AMENDMENT PROVIDED IN ELKO COUNTY OFFICIAL RECORDS ON JUNE 2, 2014 UNDER FILING NO. 686833.
4. THE RECORD OF SURVEY FOR MICHAEL H. AND TANA M. CALLAGHER SHOWING A BOUNDARY LINE ADJUSTMENT, RECORDED IN THE OFFICE OF THE ELKO COUNTY RECORDER AS FILE NO. 537563.
5. THE PARCEL MAP FOR HUMBOLDT VILLAGE PARTNERS, A NEVADA LIMITED PARTNERSHIP, RECORDED IN THE OFFICE OF THE ELKO COUNTY RECORDER AS FILE NO. 511850.
6. THE PARCEL MAP FOR ONE VALLEY OF CALIFORNIA, INC., RECORDED IN THE OFFICE OF THE ELKO COUNTY RECORDER AS FILE NO. 136739.
7. THE RESOLUTION, VACATING A PORTION OF THE 12TH STREET RIGHT-OF-WAY, RECORDED IN THE OFFICE OF THE ELKO COUNTY RECORDER AS DOCUMENT NO. 672599.

COUNTY TREASURER'S CERTIFICATE

I, REBECCA ERICKSON, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL NOS. 001-630-092 & 001-630-093 HAVE BEEN PAID FOR THE FISCAL YEAR

REBECCA ERICKSON
COUNTY TREASURER

DATE

ELKO CITY COUNCIL CERTIFICATE

AT A REGULAR MEETING OF THE ELKO CITY COUNCIL HELD ON THE _____ DAY OF _____, 2017, THIS MAP WAS APPROVED FOR REVERSION TO AGRICULTURE PURSUANT TO NRS

278.480 THROUGH 278.490, AND ALL APPLICABLE ORDINANCES.

NAME

DATE

TITLE

COUNTY ASSESSOR'S CERTIFICATE

I, PATRICKA HENSEL, CERTIFY THAT THE PARCELS SHOWN ON THIS MAP ARE A PORTION OF ASSESSOR'S PARCELS NOS. 001-630-092 & 001-630-093.

ELKO COUNTY ASSESSOR

DATE

TOTAL AREA = 2.11 ACRES

REVISION TO ACQUIRED MAP

12TH STREET ASSOCIATES, LLC

BEING PARCELS B & C OF

THE MERGER AND RESUBDIVISION PARCEL MAP FOR

12TH STREET ASSOCIATES, LLC, FILING 711850

LOCATED IN THE E. 1/4 OF SECTION 14, T. 34 N., R. 55 E., M.D.M.

ELKO ELKO COUNTY NEVADA

ELKO COUNTY RECORDER

D. MIKE SMALES

SHEET 1 OF 1

SUMMIT ENGINEERING CORPORATION

1100 W. 12TH STREET, SUITE 100, ELKO, NV 89801

TEL: 775-738-1100 FAX: 775-738-1101



CITY OF ELKO PLANNING DEPARTMENT

RECEIVED 751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 * (775) 777-7219 fax

DEC 21 2017

APPLICATION FOR REVERSION TO ACREAGE

APPLICANT(s): 12TH STREET ASSOCIATES, LLC

MAILING ADDRESS: 4751 Caughlin Parkway, Reno, Nevada 89519

PHONE NO (Home) _____ **(Business)** 775-329-4000

NAME OF PROPERTY OWNER (If different): FRANK S. GALLAGHER

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: SAME

LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):

ASSESSOR'S PARCEL NO.: 001-630-092 & 001-630-093

Address 630 & 640 12TH STREET

Lot(s), Block(s), & Subdivision _____

Or Parcel(s) & File No. PARCELS B & C OF MERGER AND RESUBDIVISION PARCEL MAP FOR 12TH STREET

ASSOCIATES, LLC, FILE NO. 711850

APPLICANT'S REPRESENTATIVE OR ENGINEER: ERIC SNYDER - SUMMIT ENG. 1150 LAMOILLE HWY, ELKO

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. A complete application must include the following:

1. One .pdf of the entire application, and one (1) copy of a 24" x 36" sized Map of Reversion provided by a properly licensed surveyor as well as one (1) set of reproducible plans 8 1/2" x 11" in size of the site drawn to scale showing the property prepared in accordance with Section 3-3-75 of the Elko City Code.
2. If the property is improved, a plot plan depicting the existing conditions drawn to scale showing proposed property lines, existing buildings, building setbacks, parking and loading areas and any other pertinent information.
3. Copies of all recorded parcel maps or subdivision maps associated with the Map of Reversion.

Fee: \$300.00 non-refundable filing fee

Other Information: The applicant is encouraged to submit other information and documentation to support the request.

If the map includes the reversion of any street or easement owned by the City, Vacation provisions of NRS 279.480 must be followed prior to the approval of the Map of Reversion.

DESCRIPTION, PURPOSE OR OBJECTIVE OF THE REVERSION: TO COMBINE
PARCELS B & C OF MERGER AND RESUBDIVISION PARCEL MAP, FILE NO.
711850, INTO A SINGLE PARCEL.

(Use additional pages if necessary)

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By My Signature below:

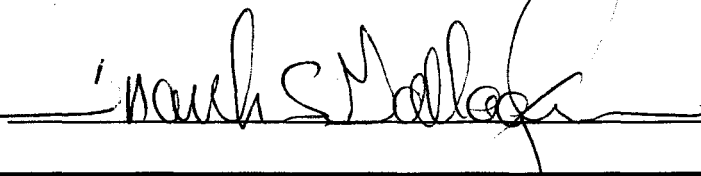
- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I acknowledge that, if approved, I must provide an AutoCAD file containing the final lot layout on NAD 83 NV East Zone Coordinate System to the City Engineering Department when requesting final map signatures for recording.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

Applicant / Agent Frank S. Gallagher
(Please print or type)

Mailing Address 4751 Caughlin Parkway
Street Address or P.O. Box
Reno, Nevada 89519
City, State, Zip Code

Phone Number: 775-329-4000

Email address: Frank@CPNV.com

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 2-17 **Date Filed:** 12/21/17 **Fee Paid:** \$300 **CV#** 4666

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DEC 21 2017

Initial: _____

**CLOSURE CALCULATIONS
FOR
REVERSION TO ACREAGE MAP
FOR
12TH STREET ASSOCIATES, LLC**

Name: ORIGINAL PARCEL B

North: 28471762.2590' East: 611642.0460'

Segment #1 : Line

Course: N75°38'01"E Length: 174.67'

North: 28471805.5984' East: 611811.2538'

Segment #2 : Line

Course: N61°56'15"E Length: 31.29'

North: 28471820.3183' East: 611838.8652'

Segment #3 : Line

Course: S51°32'46"E Length: 21.21'

North: 28471807.1281' East: 611855.4750'

Segment #4 : Line

Course: S34°15'12"E Length: 74.85'

North: 28471745.2603' East: 611897.6045'

Segment #5 : Line

Course: S55°44'48"W Length: 38.50'

North: 28471723.5905' East: 611865.7821'

Segment #6 : Line

Course: S34°15'12"E Length: 36.59'

North: 28471693.3467' East: 611886.3769'

Segment #7 : Line

Course: S49°56'09"W Length: 22.18'

North: 28471679.0707' East: 611869.4020'

Segment #8 : Line

Course: S73°37'44"W Length: 20.29'

North: 28471673.3518' East: 611849.9346'

Segment #9 : Line

Course: N89°40'40"W Length: 148.56'

North: 28471674.1873' East: 611701.3770'

Segment #10 : Line

Course: S00°14'36"W Length: 77.50'

North: 28471596.6880' East: 611701.0478'

Segment #11 : Line

Course: N89°40'40"W Length: 175.56'

North: 28471597.6753' East: 611525.4906'

Segment #12 : Line

Course: N19°35'50"W Length: 163.05'

North: 28471751.2804' East: 611470.8027'

Segment #13 : Line

Course: N70°24'10"E Length: 132.00'

North: 28471795.5540' East: 611595.1564'

Segment #14 : Line

Course: S19°35'50"E Length: 118.20'

North: 28471684.2009' East: 611634.8014'

Segment #15 : Line

Course: N70°24'10"E Length: 33.00'

North: 28471695.2693' East: 611665.8898'

Segment #16 : Line

Course: N19°35'50"W Length: 71.11'

North: 28471762.2601' East: 611642.0391'

Perimeter: 1338.55' Area: 55,263 Sq. Ft.

Error Closure: 0.0070 Course: N80°24'01"W

Error North: 0.00116 East: -0.00687

Precision 1: 191222.86

Name: ORIGINAL PARCEL C

North: 28471955.3565' East: 611573.2976'

Segment #1 : Line

Course: S19°35'50"E Length: 204.97'

North: 28471762.2597' East: 611642.0457'

Segment #2 : Line

Course: S19°35'50"E Length: 71.11'

North: 28471695.2688' East: 611665.8964'

Segment #3 : Line

Course: S70°24'10"W Length: 33.00'

North: 28471684.2004' East: 611634.8080'

Segment #4 : Line

Course: N19°35'50"W Length: 118.20'

North: 28471795.5535' East: 611595.1630'

Segment #5 : Line

Course: S70°24'10"W Length: 132.00'

North: 28471751.2799' East: 611470.8093'

Segment #6 : Line

Course: N19°35'50"W Length: 195.63'

North: 28471935.5778' East: 611405.1938'

Segment #7 : Line

Course: N71°27'42"E Length: 177.64'

North: 28471992.0565' East: 611573.6163'

Segment #8 : Curve

Length: 7.49' Radius: 700.00'

Delta: 00°36'48" Tangent: 3.75'

Chord: 7.49' Course: N71°46'06"E

Course In: S18°32'18"E Course Out: N17°55'30"W

RP North: 28471328.3787' East: 611796.1736'

End North: 28471994.3998' East: 611580.7303'

Segment #9 : Line

Course: S17°55'30"E Length: 34.69'

North: 28471961.3937' East: 611591.4069'

Segment #10 : Line

Course: S71°33'58"W Length: 19.09'

North: 28471955.3572' East: 611573.2964'

Perimeter: 993.83' Area: 36,608 Sq. Ft.

Error Closure: 0.0014 Course: N57°58'49"W

Error North: 0.00072 East: -0.00115

Precision 1: 709871.43

Name: PARCEL B-C

North: 28471597.6799' East: 611525.4954'

Segment #1 : Line

Course: N19°35'50"W Length: 358.67'

North: 28471935.5735' East: 611405.1954'

Segment #2 : Line

Course: N71°27'42"E Length: 177.64'

North: 28471992.0521' East: 611573.6179'

Segment #3 : Curve

Length: 7.49' Radius: 700.00'

Delta: 000°36'48" Tangent: 3.75'

Chord: 7.49' Course: N71°46'06"E

Course In: S18°32'19"E Course Out: N17°55'30"W

RP North: 28471328.3754' East: 611796.1784'

End North: 28471994.3955' East: 611580.7318'

Segment #4 : Line

Course: S17°55'30"E Length: 34.69'

North: 28471961.3893' East: 611591.4085'

Segment #5 : Line

Course: S71°33'58"W Length: 19.09'

North: 28471955.3529' East: 611573.2980'

Segment #6 : Line

Course: S19°35'50"E Length: 204.97'

North: 28471762.2560' East: 611642.0461'

Segment #7 : Line

Course: N75°38'01"E Length: 174.67'

North: 28471805.5954' East: 611811.2540'

Segment #8 : Line

Course: N61°56'15"E Length: 31.29'

North: 28471820.3153' East: 611838.8654'

Segment #9 : Line

Course: S51°32'46"E Length: 21.21'

North: 28471807.1251' East: 611855.4751'

Segment #10 : Line

Course: S34°15'12"E Length: 74.85'

North: 28471745.2573' East: 611897.6047'

Segment #11 : Line

Course: S55°44'48"W Length: 38.50'

North: 28471723.5875' East: 611865.7822'

Segment #12 : Line

Course: S34°15'12"E Length: 36.59'

North: 28471693.3438' East: 611886.3770'

Segment #13 : Line

Course: S49°56'09"W Length: 22.18'

North: 28471679.0677' East: 611869.4021'

Segment #14 : Line

Course: S73°37'44"W Length: 20.29'

North: 28471673.3488' East: 611849.9348'

Segment #15 : Line

Course: N89°40'40"W Length: 148.56'

North: 28471674.1843' East: 611701.3771'

Segment #16 : Line

Course: S00°14'36"W Length: 77.50'

North: 28471596.6850' East: 611701.0480'

Segment #17 : Line

Course: N89°40'40"W Length: 175.56'

North: 28471597.6723' East: 611525.4908'

Perimeter: 1623.75' Area: 91,871 Sq. Ft.
/ 2.11 Acres

Error Closure: 0.0089 Course: S31°44'53"W

Error North: -0.00754 East: -0.00467

Precision 1: 182443.82

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to accept the 2018 Planning Commission Work Program, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **15 Minutes**
5. Background Information: **The Planning Commission considered a draft 2018 Work Program at their special meeting January 4, 2018. They took action to approve the Work Program and forward it to Council for acceptance. CL**
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **2018 Planning Commission Work Program**
9. Recommended Motion: **Accept the 2018 Planning Commission Work Program**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review: **Planning Commission**
12. Council Action:
13. Agenda Distribution:

Elko Planning Commission 2018 Work Program

	<u>ITEM</u>	<u>START DATE</u>	<u>PROJECTED COMPLETION</u>	<u>ACTUAL COMPLETION</u>
	* Revise Sign Ordinance	February	October	
	* Review Zoning for RMH districts, revise map	October 2017	March	
	* Review and revise 3-3 Subdivisions	January	June	
	* Revise P & Z applications and fee schedule	October 2017	February	
	ONGOING PROJECTS			
	Planning Commission training (General conduct, , Ethics, NRS, Open meeting law)			ongoing

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible authorization to pursue legal action against Braemar Construction for continued violations of Title 9 Chapter 7, Construction Site Runoff Control, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **NEW BUSINESS**
4. Time Required: **20 Minutes**
5. Background Information: **The City of Elko as a part of our Small Municipal Separate Storm Sewer Systems (MS4) permit requirements as issued by NDEP, and Elko City Code Title 9 Chapter 7, Construction Site Runoff Control, conducts regular inspections of constructions sites throughout the City of Elko. The inspections are to verify the contractors' compliance with their Storm Water Pollution Prevention Plan (SWPPP), and the Best Management Practices (BMP) they have selected to use to minimize storm water pollution from their construction sites. Braemar Construction has been in continual violation of these regulations resulting in multiple violations from regular inspections and a total of seven (7) written Notice of Violations (NOV) being issued since 2012 for failure to correct actions in a timely manner. Recently, work began on a property near Jennings Way and Courtney Drive without Braemar filling the required Notice of Intent (NOI), or receiving a grading permit from the City as required in Elko City Code 2-2-2-Appendix J. Staff is requesting authorization to pursue legal action against Braemar Construction for these continued violations pursuant to Elko City Code. JD**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information:
9. Recommended Motion: **Authorize Staff to work with legal counsel to pursue legal action against Braemar Construction.**
10. Prepared by: **Jeremy Draper, PE, Development Manager**
11. Committee/Other Agency Review: **Scott Wilkinson, Assistant City Manager, David Stanton, City Attorney**
12. Council Action:
13. Council Agenda Distribution: **Howard Schmidt, howardschmidt@hotmail.com
Dusty Shipp, dusty@braemarco.com**

Braemar Construction Stormwater Inspections

Project Name	Date of Inspection	Initial/Final/Other Inspection	Type of Inspection	Corrective Action Needed	Date to be Completed	Follow-up Date	Corrected (Y/N)	Comments
Brookwood Estates	3/15/2012	NOV	NOV	Soil In ROW	immediately			NOV
	4/4/2012	NOV	NOV	Soil In ROW	immediately			NOV
	2/26/2013	NOV	NOV	Soil In ROW	immediately			NOV
				Trackout Issues/Soil in ROW	immediately			NOV
	3/21/2013	NOV	NOV	Trackout Issues/Silt Fence	24 Hours			NOV
	4/3/2013	NOV	NOV					NOV
	2/28/2012							Several Large piles of excavated soil on corners of Brookwood & Valley Ridge, including E& W corners. Met w/ Christine on-site. Discussed a method to "put teeth" into our ability to earn cooperation from builders. Among other possibilities, she suggested refusing any more inspections until the contractor had corrected the problem. Another would be to refuse to issue a C of O until corrections were made. Withholding inspections & C of O would apply real economic pressure and result (hopefully) in prompt corrections by contractors.
	2/29/2012							Large piles indicated above were being moved by way of excavator, farm tractor & two 6 to 8 yard dump trucks. These were being filled & soil transported somewhere but not, apparently on-site. Scott phoned Dusty to learn if the Co had been fined by NDEP. Dusty advised that they had been given 2-weeks by "Chris" NDEP field man or Braemar would have difficulties. "Dusty" @ (208) 870-0559. Dusty is Braemar's Foreman on-site. Weather today is cold, windy, and snowy. It looks like Gillette, Wyo. Despite this, the Excavator is still moving soil using 2 6 to 8-yd dumps. I followed one of the dumps W on Brookwood, S on Wright Way, W on Montrose Ln, and S on a dirt track (probably) Burgess where the soil was dumped. May be County or BLM land, or could be private. Need to follow-up on actual location.
	3/1/2012							
The Point-Townhomes-	1/9/2015	Other Inspection	Routine					
	2/3/2015	Other Inspection	Routine	1. Need Permit on site	2/9/2015	2/23/2015	YES	
				2. Need SWPPP on site	2/9/2015	2/23/2015	YES	
				3. Install Fiber roll around Storm Drain	2/9/2015	2/23/2015	YES	
	2/20/2015	Other Inspection	Routine	1. Silt Fence needs Repair	2/23/2015	5/21/2015		Not sure if it was corrected. There is some silt fence present, but determined that vegetation is present and it is not needed. NDEP (5/21/2105)
	5/21/2015	Other Inspection	Post-Storm	1. DI clogged and found silt fencing material in DI that is not letting water through, so sediment is washing directly into stormwater pipe. 2. Track out area not effective. Need to work on and increase size				Inspection with NDEP. Not sure of when corrective actions are due
	5/26/2015	Other Inspection	Post-Storm	1. Track out onto streets from two areas.	24 hours after storm	5/28/2015	NO	Compared to how much rain we got, the track out was not too bad. A quick sweep would suffice.

Project Name	Date of Inspection	Initial/Final/Other Inspection	Type of Inspection	Corrective Action Needed	Date to be Completed	Follow-up Date	Corrected (Y/N)	Comments
	5/28/2015	Other Inspection	Post-Storm	1. Track out onto streets from two areas.	24 hours after storm		NO	Similar issues. No change. Go back next week
	6/8/2015	Other Inspection	Post-Storm	None			YES	Appears they have swept. Looks better
	6/18/2015	Other Inspection	Routine	All looks good			YES	They are still accessing the side of the building with no track out rock, but there was not too much track out. Looks like they have been sweeping regularly.
	7/7/2015	Other Inspection	Routine	All looks good			Yes	Not accessing the side of the building anymore. Looks like the buildings are nearing completion.
	8/3/2015	Other Inspection	Routine	1. Jennings DI re-arrange the waddles	8/14/2015		Yes	
				2. Pile of dirt in gutter in back corner of Khorhy and Puchinelli	8/14/2015		Yes	
				3. Sweep Streets	8/14/2015		Yes	
	8/14/2015	Other Inspection	Routine	None				Looks good. They even added some new waddles to better help run-off.
	9/11/2015	Other Inspection	Routine	None				
	10/12/2015	Other Inspection	Routine	None				
	10/16/2015	Other Inspection	Routine	None				New construction of house on the corner. Watch trackout, but was ok today.
	10/19/2015	Other Inspection	Post-Storm	Some track out, but not too bad				Talked to Dusty. They were on it.
	11/5/2015	Other Inspection	Routine	TRACK OUT!				Talked to Dusty.
	12/2/2015	Other Inspection	Routine	None				None
	1/6/2016	Other Inspection	Routine	None				Building two new homes. A lot of snow. Hard to see Dis.
	2/9/2016	Other Inspection	Routine	Track out				Have Dusty clean up.
	3/3/2016	Other Inspection	Routine	HORRIBLE - See photos				Tried to contact Dusty, but never could reach him. Left messages. He is being taken to formal inforcement with NDEAP as of 2/23/2016
	4/25/2016	Other Inspection	Routine	NONE!				Looks Great. They hired Lana Carter to do the inspections and they are keeping up on things MUCH better!
	5/10/2016	Other Inspection	Routine	None				
	6/1/2016	Other Inspection	Routine	Some track out, but not too bad				
	6/8/2016	Other Inspection	Routine	Some track out, but not too bad				Two days before poored rain - .52"
	7/11/2016	Other Inspection	Routine					
	8/9/2016	Other Inspection	Routine					
				Track out and waddles around DI's need to be replaced.				
	9/26/2016	Other Inspection	Routine	None				Conatct Dusty about this
	10/18/2016	Other Inspection	Routine	None				
				Some track out, but not too bad				
	11/15/2016	Other Inspection	Routine	None				
	12/7/2016	Other Inspection	Routine	None				
				Porta Potty on Side				
	1/9/2017	Other Inspection	Routine	Walk				Contacted Lana and Dusty was moved by the 11th
				None-Looks pretty				
	2/17/2017	Other Inspection	Routine	good				
	3/7/2017	Other Inspection	Routine	Ok				
	4/12/2017	Other Inspection	Routine	Trackout				Contacted Lana
	5/9/2017	Other Inspection	Routine	Trackout				Inspection with Chris

Project Name	Date of Inspection	Initial/Final/Other Inspection	Type of Inspection	Corrective Action Needed	Date to be Completed	Follow-up Date	Corrected (Y/N)	Comments
	6/16/2017	Other Inspection	Routine	Trackout				
	7/10/2017	Other Inspection	Routine	Looks good				
	8/9/2017	Other Inspection	Routine	Looks good				
	9/12/2017	Other Inspection	Routine	Looks good				
	10/10/2017	Other Inspection	Routine	dirt ramp				
				concrete washout				
				sediment needs				
				sweeping				
				di inserts need				
				maintenance				
				irrigation line on				
				jennings broken water				
				running				emailed Lana will re-inspect on 10/13
	11/9/2017	Other Inspection	Routine	ok				
	12/14/2017	Other Inspection	Routine	ok				
	1/9/2018	Other Inspection	Routine	Ok				
Golden Hills								
Braemar Construction off	11/15/2016							
The takeover this project				Porta Potty on the				
from someone else.....	12/7/2016	Other Inspection	Routine	sidewalk				Email Dusty and Lana
	1/9/2017	Other Inspection	Routine	Track out				
	2/17/2017	Other Inspection	Routine	Track out- a mess				
	3/7/2017	Other Inspection	Routine	Trackout				Called Lana
				Dirt ramps				photo evidence in file
				trash				
	3/12/2017	Other Inspection	Routine	Better				Improvement,
				Encroaching, need to re-				
				seed and re-countour				
	4/12/2017	Other Inspection	Routine	our property				
	5/10/2017	Other Inspection	Routine	Jeremy Wrote NOV				
	6/16/2017	Other Inspection	Routine	Porta Potty on the				
	7/10/2017	Other Inspection	Routine	sidewalk				
				ok				
	8/9/2017	Other Inspection	Routine	Track outs at both ends				emailed Lana
				Concrete washout				
	9/12/2017	Other Inspection	Routine	Piles not in street				fixed by 8/11
	10/10/2017	Other Inspection	Routine	not perfect, but ok				track out still lacking, but ok...
	11/9/2017	Other Inspection	Routine	Needs a sweeping				emailed Lana
	12/14/2017	Other Inspection	Routine	Horrible track out				talked to andrew about it and new road
				Horrible track out				
				made a roade not on				
				their property				issued them an NOV see file for more details
	1/9/2018	other inspection	Routine	no changes... Track out				
				di still not protected				referred to legal
	5/5/2017			remove grading, BMP's	5/12/2017			NOV
				Trackout/sediment				
	11/29/2017			barriers	48 hours			NOV
Jennings Way Subdivision	8/17/2017			Work without permit				Grading work without a permit, property located in county still, NDEP notified, Braemar notified about needing to clean up trackout

Project Name	Date of Inspection	Initial/Final/Other Inspection	Type of Inspection	Corrective Action Needed	Date to be Completed	Follow-up Date	Corrected (Y/N)	Comments
	8/21/2017			Trackout				Letter drafter but never sent
	11/13/2017			Work without permit				Received notice that work resumed at this location, the property is now within the City boundary, requested plans for a grading permit
	12/2/2017							Grading plan submitted for review
	12/6/2017							Email sent to design engineer requesting additional information for grading permit
	1/10/2018			Work without permit				Work resumed without a grading permit, pictures taken, spoke with Dusty about what is needed to issue the permit, does not appear to have all BMP's in place
	1/10/2018							Received revised plans for grading permit after hours
	1/16/2018							Grading permit letter emailed to Dusty with condition to provide information on export location prior to any export of material



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March 16, 2012

Mr. Dusty Shipp, Project Manager
Braemar Construction LLC
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Sections of City of Elko's *Construction Site Runoff Control Ordinance*

Dear Mr. Shipp;

The purpose of this letter is to advise Braemar Construction LLC that it is in violation of several sections of the City of Elko's *Construction Site Runoff Control Ordinance*. This ordinance establishes operational rules that contractors must adhere to when engaged in construction activities within the City. These rules are intended to prohibit certain activities that could result in violation of the City's NPDES and Stormwater Permits.

These permits are issued by the State of Nevada (NDEP) to regulate construction activities occurring on land from six thousand (6,000) square feet up to 1-acre (43,560 square feet). Construction sites in excess of 1-acre require an NPDES construction permit, issued by the State of Nevada (NDEP) and a Storm Water Pollution Prevention Plan (SWPPP), prepared by Braemar Construction LLC or their consultant).

VIOLATIONS

Section 9-7-3. Braemar Construction LLC does not have City permission to utilize the right-of-way for placement (even temporarily) of excavated soil. Off-site impacts of erosion and sedimentation from a construction site are prohibited and polluting substances such as construction material and waste *shall be contained on the site*.

Section 9-7-7. This section is the requirement to prevent, control, and reduce storm water pollutants by the use of Best Management Practices (BMPs). "...any person responsible for a property or premises, which is, or may be, the source of an illegal

discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4."

Section 9-7-8. Inspection. "Whenever the City of Elko or its designee find that a person has not properly implemented the storm water pollution prevention plan or the storm water pollution prevention plan (SWPPP) requires modification to prevent the discharge or possible discharge of pollutants to the storm water conveyance system or storm water, the City of Elko or its designee may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. If an inspector determines the installed storm water controls are placing the City of Elko at risk of violating its NPDES permit, the inspector may order [a] change to the storm water controls. If the change to the storm water controls is not acceptable or is not immediately implemented, *enforcement action may be taken.*"

Section 9-7-9. Enforcement.

A. Notice Of Violation (NOV): Whenever the City of Elko or its designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- 1) Violating discharges, practices, or operations shall cease and desist;
- 2) Abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- 3) Payment of a fine to cover administrative and remediation costs; and
- 4) Implementation of source control or treatment BMPs.

B. Deadline: If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator (Ord. 671, 4-10-2007)

Section 9-7-13. Criminal Prosecution. Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution and fine.

It will be necessary for Braemar Construction LLC to remove all soil from the right-of-way immediately. We've been fortunate, so far, that winter has been dry. Soil on the R-O-W is, at present, a violation of several sections of Elko's *Construction Site Runoff Control Ordinance*. Unfortunately, the weather forecast indicates a very high probability

of snow and/or rain over the next four days. This will likely result in transportation of sediment into the storm water conveyance system (storm sewers). To prevent rain or snowmelt from carrying sediment into the storm sewer system and ultimately into the Humboldt River, it will be necessary for Braemar Construction LLC to *immediately* remove any remaining soil from the R-O-W and place it on-site where it will not erode and contaminate stormwater now or in the future.

Sincerely yours,

Jay Paxson
Environmental Coordinator
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

(775) 777-7213 (Phone)
(775) 777-7219 (Fax)

Cc: City of Elko, File
City of Elko, Environmental
City of Elko Legal Counsel, David Stanton



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April 4, 2012

Mr. Dusty Shipp, Project Manager
Braemar Construction LLC
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Sections of City of Elko's *Construction Site Runoff Control Ordinance*

Dear Mr. Shipp;

The purpose of this letter is to advise you, as the on-site representative of Braemar Construction LLC, that your company is in violation of several sections of the City of Elko's *Construction Site Runoff Control Ordinance*. This ordinance establishes operational rules that contractors must follow when engaged in construction activities within the City. These rules are intended to prohibit certain activities that could result in the issuance of NOV's against the City of Elko and its NPDES and Stormwater Permits by state and federal regulators.

These permits are issued by the State of Nevada (NDEP) to regulate construction activities occurring on land from six thousand (6,000) square feet up to 1-acre (43,560 square feet). Construction sites in excess of 1-acre require an NPDES construction permit, issued by the State of Nevada (NDEP) and a Storm Water Pollution Prevention Plan (SWPPP), prepared by Braemar Construction LLC or their consultant.

On approximately March 15th, 2012 Braemar Construction, LLC was observed placing large piles of excavated soil on the public right-of-way. Placement of material in this manner is expressly forbidden by City Code and can result in several violations of the federal Clean Water Act among numerous other local, state and federal laws. Should Elko have received significant amounts of snow or rainfall, these piles of material would have limited the access and function of existing storm sewers. Snowmelt and/or rainfall could have caused significant erosion, resulting in transport of significant amounts of soil particulates to the storm sewer system and eventually to the Humboldt River.

An informal inspection on Tuesday April 3rd by Development Manager Scott Wilkinson exhibited a considerable pile of base rock that had also been placed in the public right-of-way. Even temporary placement of any material is in direct violation of City Code and the *Construction Site Runoff Control Ordinance*.

VIOLATIONS

Section 9-7-3. Braemar Construction LLC does not have City permission to utilize the right-of-way for placement (even temporarily) of excavated soil. Off-site impacts of erosion and sedimentation from a construction site are prohibited and polluting substances such as construction material and waste *shall be contained on the site*.

Section 9-7-7. This section is the requirement to prevent, control, and reduce storm water pollutants by the use of Best Management Practices (BMPs). "...any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4."

Section 9-7-8. Inspection. "Whenever the City of Elko or its designee find that a person has not properly implemented the storm water pollution prevention plan or the storm water pollution prevention plan (SWPPP) requires modification to prevent the discharge or possible discharge of pollutants to the storm water conveyance system or storm water, the City of Elko or its designee may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. If an inspector determines the installed storm water controls are placing the City of Elko at risk of violating its NPDES permit, the inspector may order [a] change to the storm water controls. If the change to the storm water controls is not acceptable or is not immediately implemented, *enforcement action may be taken*."

Section 9-7-9. Enforcement.

A. Notice Of Violation (NOV): Whenever the City of Elko or its designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- 1) Violating discharges, practices, or operations shall cease and desist;
- 2) Abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- 3) Payment of a fine to cover administrative and remediation costs; and
- 4) Implementation of source control or treatment BMPs.

B. Deadline: If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator (Ord. 671, 4-10-2007)

Section 9-7-13. Criminal Prosecution. Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution and fine.

It will be necessary for Braemar Construction LLC to remove all soil from the right-of-way immediately. We've been fortunate that winter, so far, has been dry. Soil and/or rock on the R-O-W is, at present, a violation of several sections of Elko's *Construction Site Runoff Control Ordinance*. To prevent rain or snowmelt from carrying sediment into the storm sewer system and ultimately into the Humboldt River, it will be necessary for Braemar Construction LLC to *immediately* remove any remaining materials from the R-O-W and place it on-site where it will not erode and contaminate stormwater now or in the future.

Sincerely yours,

Jay Paxson
Environmental Coordinator
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

(775) 777-7213 (Phone)
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Cc: City of Elko, File
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City of Elko Legal Counsel, David Stanton



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May 16, 2012

Mr. Dusty Shipp, Project Manager
Braemar Construction LLC
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Sections of City of Elko's *Construction Site Runoff Control Ordinance* at Brookwood Development

Dear Dusty,

The purpose of this letter is to express the City's appreciation for your efforts in promptly bringing Braemar Construction LLC into full compliance with the City's Construction Site Runoff Control Ordinance. In its NOV letter of March 16, 2012, the City expressed concern that a number of Braemar's construction practices at Brookwood were out of compliance with the City's Ordinance. The Ordinance is designed to ensure that contractors and the City remain in compliance with all state and federal laws and regulations governing stormwater. We appreciate your efforts to adopt construction practices in line with those specified in the Ordinance.

As we have discussed on several occasions, the City's primary concern is to encourage construction practices that are consistent with all established city, state and federal rules regulating stormwater management in areas where construction is occurring. areas are established to support the City's existing Stormwater Permit issued by Nevada Division of Environmental Protection (NDEP). As the holder of an NDEP Stormwater Permit (SWPPP), Braemar is responsible for following all aspects of their permit which in turn, follows all aspects of the City's permit.

Sincerely yours,

Jay Paxson
Environmental Coordinator
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

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February 26, 2013

Braemar Construction LLC
Mr. Howard Schmidt, Developer
Mr. Dusty Shipp, Project Manager
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Various Sections of City of Elko's *Construction Site Runoff Control Ordinance*

Dear Mr. Shipp and Mr. Schmidt;

This letter is to advise Braemar Construction LLC that it is in violation of several sections of the City of Elko's *Construction Site Runoff Control Ordinance*. This ordinance establishes operational rules that contractors *must* adhere to when engaged in construction activities within the City. These rules are intended to prohibit certain activities that could result in violation of the City's NPDES and Stormwater Permits which could result in fines levied against the City and Braemar Construction LLC.

As you know, these permits are issued by the Nevada Division of Environmental Protection (NDEP) to regulate construction activities occurring on sites ranging from six thousand (6,000) square feet up to 1-acre (43,560 square feet). Construction sites in excess of 1-acre require an NPDES construction permit, also issued by the NDEP and a Storm Water Pollution Prevention Plan (SWPPP), prepared by Braemar Construction LLC or their consultant). The SWPPP prepared by Braemar Construction is on file in City offices; it is this document that Braemar and all its subcontractors must adhere to whenever working on any part of the Brookwood Development.

The City is especially concerned that continued failure by Braemar Construction and its subcontractors to adhere to all provisions of the submitted SWPPP could result in the issuance of citations and monetary fines against both Braemar and the City. This would likely occur in the event that NDEP were to conduct a site inspection of Brookwood Development. For this reason it is imperative that Braemar attend to mud and soil track-out promptly and thoroughly *each day*. A day skipped could be followed on the next day by an inspection by NDEP. Should NDEP inspect the development and discover the streets, curb and gutter heavily loaded with soil would

likely result in a series of follow-up inspections. The City cannot accept the sanction resulting from one or more citations. Worse, the City cannot accept the erosion of its good reputation with NDEP or the possibility that the City would receive greater scrutiny from state or federal regulators.

in particular those relating to the potential of sediment carried in stormwater runoff the continuing situation will become particularly serious and embarrassing to the City in the event that NDEP (Nevada Division of Environmental Quality) might opt to inspect the Brookwood Development at this time of year. Should this occur the Braemar Construction LLC would likely be written-up and fined for failing to abide by the conditions specified in the SWPPP filed with the City. Of even greater concern to the City is the likelihood that the City would likely be cited and fined for failing to enforce all provisions of Braemar's SWPPP. Frequent inspections and verbal

CURRENT VIOLATIONS

9-6-10: REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES:

The city of Elko requires the identification and use of best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the stormwater conveyance system, or waters of the United States. The city of Elko requires as a minimum the use of its BMP manual to identify and utilize appropriate BMPs. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal stormwater conveyance system or water courses through the use of these structural or nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Whenever the city of Elko finds that a person has not properly implemented the storm water pollution prevention plan or the stormwater pollution prevention plan requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the city of Elko may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. (Ord. 670, 3-13-2007)

Section 9-7-3. Braemar Construction LLC does not have City permission to utilize any portion of the right-of-way for placement, even temporarily, of sand, soil, or any other material. Off-site impacts of erosion and sedimentation from any construction site constitutes a violation of Section

9-7-3 and are prohibited; polluting substances such as any construction material and waste *shall be contained on the site.*

Section 9-7-7. Section 9-7-7 requires the prevention, control, and reduction of Best Management Practices (BMPs). "...any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4."

Section 9-7-8. Inspection. "Whenever the City of Elko or its designee finds that a person has not properly implemented the stormwater pollution prevention plan or the stormwater pollution prevention plan (SWPPP) requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the City of Elko or its designee may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. If an inspector determines the installed stormwater controls are placing the City of Elko at risk of violating its NPDES permit, the inspector may order [a] change to the stormwater controls. If the change to the stormwater controls is not acceptable or is not immediately implemented, *enforcement action may be taken.*"

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Section 9-7-13. Criminal Prosecution. Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution and fine.

It will be necessary for Braemar Construction LLC to remove all soil from the right-of-way immediately. We've been fortunate, so far, that winter has been dry. Soil on the R-O-W is, at present, a violation of several sections of Elko's *Construction Site Runoff Control Ordinance*. Unfortunately, the weather forecast indicates a very high probability of snow and/or rain over the

next four days. This will likely result in transportation of sediment into the stormwater conveyance system (storm sewers). To prevent rain or snowmelt from carrying sediment-laden water into the storm sewer system and ultimately into the Humboldt River, it will be necessary

for Braemar Construction LLC to *immediately* remove any remaining soil from the R-O-W and place it on-site where it will not erode and contaminate stormwater now or in the future.

Sincerely yours,

Jay Paxson
Environmental Coordinator
Secretary, Stormwater Advisory Committee (SWAC)
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

(775) 777-7213 (Phone)
(775) 777-7219 (Fax)

Cc: City of Elko, File
City of Elko, Environmental
City of Elko Legal Counsel, David Stanton
Howard Smith, Braemar Construction LLC



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March 21, 2013

Braemar Construction LLC
Mr. Howard Schmidt, Developer
Mr. Dusty Shipp, Project Manager
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Various Sections of City of Elko's *Construction Site Runoff Control Ordinance*

Dear Mr. Shipp and Mr. Schmidt;

This letter is to advise Braemar Construction LLC that it is in violation of several sections of the City of Elko's *Construction Site Runoff Control Ordinance*. This ordinance establishes operational rules that contractors **must** adhere to when engaged in construction activities within the City. The City is especially concerned that continued failure or refusal by Braemar Construction and/or its subcontractors to adhere to all provisions of the SWPPP may result in the issuance of citations and/or monetary fines against both Braemar and the City.

These permits, as you are aware, are issued by the Nevada Division of Environmental Protection (NDEP) to regulate construction activities on sites ranging from six thousand (6,000) square feet up to 1-acre (43,560 square feet). Construction sites in excess of 1-acre require their own NPDES permit, also issued by the NDEP together with a Storm Water Pollution Prevention Plan (SWPPP), prepared by Braemar Construction LLC or its consultant. Braemar Construction's approved SWPPP for the Brookwood Development is on file in City offices. It is this document to which Braemar and all its subcontractors **must** adhere whenever working at Brookwood. Failure or refusal to do so can result in monetary penalties levied by the City against Braemar LLC and/or its subcontractors. Worse, failure or refusal to adhere to the stipulations of the SWPPP. These ordinances prohibit certain activities that could result in violation(s) of the City's NPDES and Stormwater Permits which could result in fines levied not only against Braemar Construction LLC but against the City as well.

This would likely occur in the event that NDEP were to conduct a site inspection of Brookwood Development. For this reason it is imperative that Braemar attend to mud and soil track-out issues promptly and thoroughly **each day**. A day skipped could be followed on the next day by an inspection by NDEP. Should NDEP inspect the development and discover the streets, curb and gutter heavily loaded with

soil, it is likely that a series of surprise follow-up inspections would follow. The City cannot accept the sanction resulting from one or more citations. Worse, the City cannot accept the erosion of its good reputation with NDEP or the possibility that the City would receive greater scrutiny from state or federal regulators.

in particular those relating to the potential of sediment carried in stormwater runoff the continuing situation will become particularly serious and embarrassing to the City in the event that NDEP (Nevada Division of Environmental Quality) might opt to inspect the Brookwood Development at this time of year. Should this occur the Braemar Construction LLC would likely be written-up and fined for failing to abide by the conditions specified in the SWPPP filed with the City. Of even greater concern to the City is the likelihood that the City would likely be cited and fined for failing to enforce all provisions of Braemar's SWPPP. Frequent inspections and verbal

CURRENT VIOLATIONS

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person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

Whenever the city of Elko finds that a person has not properly implemented the storm water pollution prevention plan or the stormwater pollution prevention plan requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the city of Elko may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. (Ord. 670, 3-13-2007)

Section 9-7-3. Braemar Construction LLC does not have City permission to utilize any portion of the right-of-way for placement, even temporarily, of sand, soil, or any other material. Off-site impacts of erosion and sedimentation from any construction site constitutes a violation of Section 9-7-3 and are prohibited; polluting substances such as any construction material and waste ***shall be contained on the site.***

Section 9-7-7. Section 9-7-7 requires the prevention, control, and reduction of Best Management Practices (BMPs). "...any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4."

Section 9-7-8. Inspection. "Whenever the City of Elko or its designee finds that a person has not properly implemented the stormwater pollution prevention plan or the stormwater pollution prevention plan (SWPPP) requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the City of Elko or its designee may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. If an inspector determines the installed stormwater controls are placing the City of Elko at risk of violating its NPDES permit, the inspector may order [a] change to the stormwater controls. If the change to the stormwater controls is not acceptable or is not immediately implemented, ***enforcement action may be taken.***"

Section 9-7-9. Enforcement.

A. Notice Of Violation (NOV): Whenever the City of Elko or its designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- 1) Violating discharges, practices, or operations shall cease and desist;

Abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and

- 2) Payment of a fine to cover administrative and remediation costs; and
- 3) Implementation of source control or treatment BMPs.

B. Deadline: If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to the violator (Ord. 671, 4-10-2007)

Section 9-7-13. Criminal Prosecution. Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution and fine.

It will be necessary for Braemar Construction LLC to remove all soil from the right-of-way immediately. We've been fortunate, so far, that winter has been dry. Soil on the R-O-W is, at present, a violation of several sections of Elko's *Construction Site Runoff Control Ordinance*. Unfortunately, the weather forecast indicates a very high probability of snow and/or rain over the next four days. This will likely result in transportation of sediment into the stormwater conveyance system (storm sewers). To prevent rain or snowmelt from carrying sediment-laden water into the storm sewer system and ultimately into the Humboldt River, it will be necessary

for Braemar Construction LLC to ***immediately*** remove any remaining soil from the R-O-W and place it on-site where it will not erode and contaminate stormwater now or in the future.

Sincerely yours,

Jay Paxson
Environmental Coordinator
Secretary, Stormwater Advisory Committee (SWAC)
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

(775) 777-7213 (Phone)
(775) 777-7219 (Fax)

Cc: City of Elko, File
City of Elko, Environmental
City of Elko Legal Counsel, David Stanton
Howard Smith, Braemar Construction LLC



CITY OF ELKO
CITY OFFICES
DEVELOPMENT / ENVIRONMENTAL
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775) 777-7217 / (775) 777-7213
FAX (775) 777-7219

April 3, 2013

Braemar Construction LLC
Mr. Howard Schmidt, Developer
Mr. Dusty Shipp, Project Manager
Post Office Box 95410
South Jordan, UT 84095

Re: NOTICE OF VIOLATION- Various Sections of City of Elko's *Construction Site Runoff Control Ordinance*

Dear Mr. Shipp and Mr. Schmidt;

This letter is to advise Braemar Construction LLC that it is in violation of the City of Elko's *Construction Site Runoff Control Ordinance*. This ordinance establishes operational rules that contractors **must** adhere to when engaged in construction activities within the City. The City is especially concerned that continued failure or refusal by Braemar Construction and/or its subcontractors to adhere to all provisions of their approved SWPPP (Storm Water Pollution Prevention Plan) could result in the issuance of citations and/or fines against Braemar LLC and the City of Elko by the Nevada Division of Environmental Protection (NDEP), the state's environmental regulatory agency.

These permits, as you are aware, are issued by NDEP to regulate construction activities on sites ranging from six thousand (6,000) square feet up to 1-acre (43,560 square feet). Construction sites in excess of 1-acre require their own NPDES permit, also issued by the NDEP together with a SWPPP, prepared by Braemar Construction LLC or its consultant. Braemar Construction's approved SWPPP for the Brookwood Development is on file in City offices. It is this document to which Braemar and all its subcontractors **must** adhere whenever working at Brookwood. Failure or refusal to do so could result in monetary penalties levied by the City against Braemar LLC and/or its subcontractors.

Repeated inspections of the Brookwood construction site over the past 45-days have revealed continuing issues related to soil track-out onto finished road surfaces. Also noted is a failure or refusal to install and maintain silt fencing along the base of the slope of all lots fronting along the northern side of Rocky Road. In the event of

significant rainfall or snowmelt the steepness of the slope behind these lots can result in extensive erosion or even slope slippage, particularly since these soils have been disturbed. Eroded soil particulates must be prevented from entering 8-Mile Creek by installing silt fence along the entire length of the toe of the slope in question. Further, if rainfall or snowmelt should increase, it may be necessary for Braemar Construction to employ additional BMPs to enhance and further ensure soil stability. Limiting any increase in particulate pollution in 8-Mile Creek is of special concern to the City of Elko because water quality data from this stream is a primary source of data used to establish the quality of water entering the City. These data are submitted to the Nevada Division of Environmental Protection each year in the City's Annual MS4 Report.

CURRENT VIOLATIONS

Chapter 7, Section 9-6-10: REQUIREMENT TO PREVENT, CONTROL, AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES: *"The city of Elko requires the identification and use of best management practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the stormwater conveyance system, or waters of the United States. The city of Elko requires as a minimum the use of its BMP manual to identify and utilize appropriate BMPs. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal stormwater conveyance system or water courses through the use of these structural or nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit."*

"Whenever the city of Elko finds that a person has not properly implemented the storm water pollution prevention plan or the stormwater pollution prevention plan requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the city of Elko may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies." (Ord. 670, 3-13-2007)

Chapter 7, Section 9-7-3, Applicability: *Off-site impacts of erosion and sedimentation from a construction site are prohibited and polluting substances such as construction materials and waste shall be contained on the site where such substances cannot drain or be transported by storm water into a watercourse or the storm water conveyance*

system. Best management practices shall be implemented for all construction sites. The performance standards set forth in the city of Elko "Construction Site Best Management Practices Handbook" together with such addendum, all of which are on deposit in the office of the City of Elko, are adopted by reference and incorporated herein and made a part hereof as if set forth in full." (Ord. 671, 4-10-2007)

Chapter 7, Section 9-7-7: Stipulates "...the owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm water conveyance system or watercourses through the use of these structural or nonstructural BMPs. Further, any person responsible for a property or premises, which is, or may be, the source of an illegal discharge, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to prevent the further discharge of pollutants to the MS4."

Chapter 7, Section 9-7-8. Inspection: "Whenever the City of Elko or its designee finds that a person has not properly implemented the stormwater pollution prevention plan or the stormwater pollution prevention plan (SWPPP) requires modification to prevent the discharge or possible discharge of pollutants to the stormwater conveyance system or stormwater, the City of Elko or its designee may, at its sole discretion, allow a time frame not to exceed ten (10) calendar days for the person to correct the identified deficiencies. If an inspector determines the installed stormwater controls are placing the City of Elko at risk of violating its NPDES permit, the inspector may order [a] change to the stormwater controls. If the change to the stormwater controls is not acceptable or is not immediately implemented, **enforcement action may be taken.**"

Chapter 7, Section 9-7-9. Enforcement:

A. Notice Of Violation (NOV): Whenever the City of Elko or its designee finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- 1) Violating discharges, practices, or operations shall cease and desist;
Abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- 2) Payment of a fine to cover administrative and remediation costs; and
- 3) Implementation of source control or additional treatment BMPs.

B. Deadline: "If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a

designated governmental agency or contractor and the expense thereof shall be charged to the violator.” (Ord. 671, 4-10-2007)

Due to the high potential for water quality degradation in 8-Mile Creek the City will permit Braemar Construction only a single day to accomplish the installation of silt fencing as referenced above. The allowed day is specified as the 24-hour period following the delivery date of this letter to Braemar Construction, as indicated on PS Form 3811 (Postal ‘green card’ Domestic Return Receipt). Installation of the silt fencing along the entire ‘toe of the slope’ (Elko GIS aerial image attached) *and* maintenance of existing silt fencing must be completed by the end of the day to prevent further action.

Chapter 7, Section 9-7-13. Criminal Prosecution: *“Any person that has violated or continues to violate this chapter shall be liable to criminal prosecution and fine.”*

Should questions or concerns arise, please contact me or Scott Wilkinson.

Sincerely yours,

Jay Paxson
Environmental Coordinator
Secretary, Stormwater Advisory Committee (SWAC)
City of Elko
1755 College Avenue
Elko, NV 89801

jpaxson@ci.elko.nv.us

Attachment: Elko GIS Aerial image indicating ‘toe of slope’

Cc: Environmental File- 100.98.02-2013
City of Elko, File
Mr. Scott Wilkinson, Development Manager, City of Elko
Mr. Dusty Shipp, Braemar Construction LLC, Email Delivery
Mr. Howard Schmidt, Braemar Construction LLC, Certified Delivery SRR, So. Jordan,

UT



CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

May 5, 2017

Dusty Shipp
Braemar Construction
PO Box 95410
South Jordan, UT 84095

RE: 2322 Mittry Ave., Golden Hills Unit 2 Phase 2

Mr. Shipp,

During a recent stormwater inspection, April 14, 2017, it was determined that the grading work completed for homes located on the east side of Mittry Ave as part of Golden Hills Unit 2 Phase 2 encroached onto the adjacent City of Elko Property. The stormwater remediation request for this encroachment included the placement of Fiber Rolls and reseeding of the slope, as of an inspection that was completed today this work has not been completed.

In accordance with Elko City Code 9-7-9, this is a Notice of Violation for failure to address the requested stormwater remediation as requested on April 14, 2017 through your designated SWPPP representative Lana Carter. It is requested that this violation be addressed, and inspected by the City of Elko by May 12, 2017, failure to do so will result in the work being completed by another contractor and the expense being paid for by Braemar Construction.

The grading work was completed outside of the approved grading plans for this subdivision approved on October 28, 2009. The work associated with this subdivision took place in 2016 and the as-builts submitted in October 2016 do not indicate that grading took place outside of the approved plans. The approved plans included the placement of rip rap on the slopes, it does not appear that this was completed.

The Eight Mile Creek adjacent to these properties contains a FEMA regulated Floodway. Elko City Code 3-8-5-G prohibits the placement of fill within a floodway, unless it has been demonstrated through hydrologic and hydraulic analysis, performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge. It is requested that you provide evidence showing that an encroachment into the designated floodway did not take place.

Prior to the approval of Certificate of Occupancy for the house at 2322 Mittry Ave we request that all grading work on the City of Elko parcel be removed and that proper remediation work take place and the grading be completed in accordance with the

approved subdivision plans. An option for consideration would be to request a slope easement from the City of Elko. If Braemar Construction would like to make this request a map depicting the limits of the slope will need to be submitted to the City of Elko for consideration and possible approval by the Elko City Council.

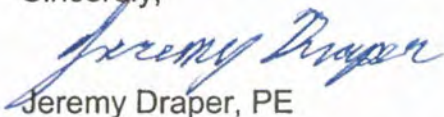


Below is a summary of items required prior to the issuance of a Certificate of Occupancy at 2322 Mittry Ave, as noted in the inspection that took place today:

- Address items in relation to the SWPPP Permit
- Remove grading work on the adjacent City of Elko property
- Provide evidence that the grading work on the City of Elko property did not encroach into the FEMA Floodway
- Install a drainage swale on the northeast property
- Install a traffic rated water meter pit, as it is located within the driveway

Additionally as a part of the subdivision still under warranty, the street sign at the corner of Cari Way and Mittry Ave is not correct and needs to be replaced.

Sincerely,


Jeremy Draper, PE

cc Chris Gravenstein, NDEP



CITY OF ELKO
Development Department
1751 College Avenue
Elko, NV 89801
(775)777-7210

November 29, 2017

Braemar Construction LLC
ATTN: Mr. Howard Schmidt, Developer
Mr. Dusty Shipp, Project Manager
Post Office Box 95410
South Jordan, UT 84095

RE: Violations of Elko City Code Title 9, Chapter 6 (Illegal Discharge and Connection to Stormwater)

Gentlemen:

Enclosed please find a Notice of Violation (NOV) issued pursuant to Elko City Code 9-6-13(A). As you are aware, there are several ongoing violations of ECC Title 9, Chapter 6 because of your activities at the development in the vicinity of Mitty Avenue and Cari Way. These violations are outlined in the attached NOV. Note that the NOV contains a deadline of 48 hours for completing the actions needed to restore and/or remediate the violations. Please contact the undersigned when the restorative/remediated actions are completed.

The violations outlined in the attached NOV, while serious, are relatively easy to correct. These actions are necessary for the protection of the environment, City infrastructure, and use of public streets and sidewalks. The City does not intend to hinder or delay your project, but taking the corrective actions outlined in the NOV will cost very little and can be completed in one or two hours.

Please review ECC 9-6-15 (Injunctive Relief), ECC 9-6-16 (Violations Deed a Public Nuisance), ECC 9-6-17 (Criminal Prosecution) and ECC 9-6-18 (Remedies not Exclusive) for information about the steps the City is able to take in order to enforce stormwater discharge requirements. As you will see, the consequences of violating this Chapter can be significant.

In the event you wish to appeal the attached NOV, you are directed to ECC 9-6-14, which provides that a "notice of appeal must be received within thirty (30) days from the date of the notice of violation." You will then be entitled to a hearing on the appeal before the Elko City Council and you may be represented by an attorney.

Please contact the undersigned with any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Adeline Thibault", written in a cursive style.

Adeline Thibault
Environmental Coordinator

Cc. Curtis Calder, City Manager
Scott Wilkinson, Assistant City Manager
David Stanton, City Attorney
Chris Gravenstein, CESSWI, Technical, Compliance and Enforcement Inspector, Bureau
of Water Pollution Control

NOTICE OF VIOLATION
(Elko City Code Section 9-6-13)

YOU ARE HEREBY NOTIFIED that the City of Elko finds you have violated a prohibition or have failed to meet requirements of Title 9, Chapter 6 of the Elko City Code (Illegal Discharge and Connection to Stormwater), as follows:

1. Operating vehicles in such a manner as to track sediment onto City streets where it then washes into the City stormwater system.
2. Failing to place sediment barriers around stormwater drain inlets.

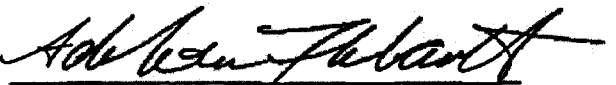
YOU ARE HEREBY ORDERED to abate the foregoing violations and restore the affected property as outlined in this Notice of Violation by completing the following actions 48 hours after receipt:

1. Eliminating all illegal discharges into the municipal stormwater system;
2. Ensuring that all violating discharges, practices, and operations cease and desist;
3. Abating all stormwater pollution or contamination hazards and restoring any affected property, to include, without limitation, preventing the operation of vehicles in such a manner as to track sediment onto roads and placing sediment barriers around stormwater drain inlets; and
4. Implementing source controls as prescribed in Braemar's *Stormwater Pollution Prevention Plan* (SWPPP) and the City of Elko's *Construction Site Best Management Practices Handbook*.

YOU ARE ADVISED that, should you fail to remediate and/or restore as provided herein within the established deadline, the work will be done by a designated governmental agency or contractor and the expense thereof shall be charged to you.

DATED this 29 day of November, 2017.

CITY OF ELKO

By: 
ADELINE THIBAUT
Environmental Coordinator

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of Resolution No. 2-18, Resolution and Order providing for the Elko City General Election to be held November 6, 2018, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **RESOLUTION**
4. Time Required: **10 Minutes**
5. Background Information: **The Elko City Council will have one Mayor position and two Councilmember positions available for the election to be held November 6, 2018. The City Election shall be governed by and conducted in accordance with the Elko City Charter, Title 1 Chapter 5 of the Elko City Code and all applicable laws of Nevada. SO**
6. Budget Information: **N/A**

Appropriation Required:
Budget amount available:
Fund name:
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Resolution No. 2-18**
9. Recommended Motion: **Adopt Resolution No. 2-18**
10. Prepared By: **Shanell Owen, City Clerk**
11. Committee/Other Agency Review: **None**
12. Council Action:
13. Agenda Distribution:

**CITY OF ELKO
RESOLUTION #2-18**

**PROCLAMATION OF THE
ELKO CITY GENERAL ELECTION**

NOTICE IS HEREBY GIVEN that the City Council of the City of Elko, Nevada, pursuant to Article V of the Charter of the City of Elko, State of Nevada, and Title 1, Chapter 5 of the Elko City Code, and the election laws of the State of Nevada, by its resolution passed, adopted, signed and approved on the 23rd day of January, 2018, has ordered a general election for the City of Elko, as follows:

1. A general City election shall be held in the City of Elko, Nevada, on Tuesday the 6th day of November, 2018, for the election at-large by the qualified voters for one (1) Mayor position and two (2) Councilmember positions on the City Council for the City of Elko, who shall hold office for a period of four (4) years and until their respective successors shall have been elected and qualified.

2. The Elko City Precincts and Polling Places within the City of Elko for such election shall be as follows:

PRECINCT NO. 1: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 2: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 3: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 4: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 5: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 6: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 7: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 8: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 9: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 10: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 11: At the **ELKO CONVENTION CENTER**, 700 Moren Way;
PRECINCT NO. 14: At the **ELKO CONVENTION CENTER**, 700 Moren Way;

3. Said polling place shall be open at 7:00 o'clock a.m. and close at 7:00 o'clock p.m. on the 6th day of November, 2018, unless polling times are changed by Nevada law, in which event the polls shall open and close in accordance with such Nevada law.

4. Extended In-Office Registration for this election shall close at 7:00 o'clock p.m. on October 16, 2018. Qualified persons residing within the exterior boundaries of the City of Elko, Nevada may register for this election at either the Elko City Clerk's Office, Elko City Hall, Elko, Nevada, or the Elko County Clerk's Office, Elko County Courthouse, Elko, Nevada according to the law, prior to such close of registration.

RESOLUTION 2-18 (Cont'd)

5. Each of the officers elected by the popular vote shall qualify as required by the Charter of the City of Elko and the Constitution and laws of the State of Nevada, and enter upon the discharge of their respective duties on the first Monday in January next following the election, and failing to do so within said time, such office shall be and become vacant. To qualify, each candidate shall be:

- (a) A bona fide resident of the City of Elko for at least two (2) years prior to election.
- (b) A qualified elector within the City.
- (c) The candidate must actually, as opposed to constructively, reside in the City of Elko at least 30 days immediately preceding the date of the close of filing of declarations of candidacy for this office.

6. All persons interested in becoming a candidate for office in this election must file their Declaration of Candidacy and pay their \$50.00 filing fee at the Elko City Clerk's Office no earlier than 8:00 o'clock a.m. on Monday, the 5th day of March and not later than 5:00 o'clock p.m. on Friday, the 16th day of March, 2018.

7. Any registered voter who by reason of physical disability or inability to read or write English or who is unable to read election material or mark a ballot or use any voting device may be assisted by a person of the voter's own choice, with exceptions as set forth in N.R.S. 293C.282.

IN WITNESS WHEREOF, the Mayor of the City of Elko has made this Proclamation pursuant to the Elko City Charter and the order of the City Council of the City of Elko, this 23rd day of January, 2018.

CHRIS J. JOHNSON, Mayor

ATTEST:

SHANELL OWEN, MMC
Elko City Clerk

Publish: January 26, February 2, 9, 16, 2018

Post: January 24, 2018

NOTICE OF TIME FOR CANDIDATES TO FILE DECLARATION OF CANDIDACY
FOR ELKO CITY GENERAL ELECTION NOVEMBER 6, 2018

STATE OF NEVADA)
) ss:
COUNTY OF ELKO)

NOTICE IS HEREBY GIVEN that all persons wishing to be a CANDIDATE FOR OFFICE in the Elko City Election to be held in and for the City of Elko, Nevada the 6th day of November, 2018, for the office of **Mayor or City Councilmember** must file a Declaration of Candidacy and pay a \$50.00 filing fee at the City Clerk's Office, Elko City Hall, 1751 College Avenue, Elko, Nevada. Any interested Candidates must file the Declaration of Candidacy no earlier than Monday, March 5, 2018, and not later than 5:00 o'clock, Friday, March 16, 2018 as provided for in NRS 293.177. No person shall be a candidate or have his name printed on the Official Ballot for such election unless such person has timely filed such Declaration of Candidacy and paid the \$50.00 filing fee.

DATED this 22nd day of January, 2018.

SHANELL OWEN, MMC
Elko City Clerk

Publish: January 26, February 2, 9, 16, 2018

Post: January 24, 2018 – March 16, 2018

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of Resolution No. 3-18, a resolution amending fees for treated effluent construction water by changing the billing rate from the metered rate to a flat rate, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **RESOLUTION**
4. Time Required: **3 Minutes**
5. Background Information: **At the January 9, 2018 meeting, Council directed Staff to modify the billing by converting it to the flat rate. RL**
6. Budget Information:

Appropriation Required:
Budget amount available: **N/A**
Fund name: **WRF**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Resolution No. 3-18**
9. Recommended Motion: **Move to approve Resolution No. 3-18**
10. Prepared by: **Ryan Limberg, Utilities Director**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

Upon introduction by _____, seconded by _____
following Resolution and Order was passed and adopted:

CITY OF ELKO
Resolution No. 3-18

**A Resolution Amending Fee for Treated Effluent Construction Water pursuant to Title 9,
Chapter 5, Section 30 of the Elko City Code, and matters related thereto.**

WHEREAS, the Elko City Code Title 9, Chapter 5, Section 30, provides that the City Council may, by resolution, establish a fee for treated effluent construction water; and

WHEREAS, the City Council of the City of Elko has deemed it necessary to amend the treated effluent construction water fee.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the City Council of the City of Elko that fees for treated effluent construction water be added as follows:

~~TREATED EFFLUENT CONSTRUCTION WATER METERED RATES~~

~~Deposit: The applicant shall deposit, in advance, the estimated cost of installing and removing the facilities required to furnish said service, exclusive of the cost of salvageable material. Upon discontinuance of service, the actual cost shall be determined and an adjustment made as an additional charge, refund or credit. If service is supplied through a fire hydrant, the applicant will be charged in accordance with the following rate schedule:~~

~~Flat charge per connection, for both installation and removal of service facilities, including meter~~ ~~\$75.00~~

~~Each additional move of facilities to another location~~ ~~\$25.00~~

~~Rates: The rate for metered service shall be forty cents (\$.40) per one thousand (1,000) gallons. The minimum charge for water shall be fifteen dollars (\$15.00) per month. Water charges shall be billed monthly. The monthly flat rate for reuse construction water service at the WRF Fill Stand location shall be one hundred dollars (\$100.00) per month.~~

IT IS FURTHER RESOLVED, that upon adoption of this Resolution by the City Council, it shall be signed by the Mayor and attested to by the City Clerk and shall be in full force and effect
August 1, 2018.

PASSED AND ADOPTED this ____ day of _____, 2018.

CITY OF ELKO

CHRIS JOHNSON, Mayor

ATTEST:

SHANELL OWEN, City Clerk

AYES:

NAYS:

ABSENT:

ABSTAIN:

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible approval of Resolution No. 4-18, a resolution placing a four-year moratorium on the issuance of business licenses for marijuana establishments and medical marijuana establishments, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **RESOLUTION**
4. Time Required: **20 Minutes**
5. Background Information: **A copy of the proposed resolution has been included in the agenda packet for review. CC**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Resolution No. 04-18**
9. Recommended Motion: **Pleasure of the Council**
10. Prepared by: **Curtis Calder, City Manager**
11. Committee/Other Agency Review:
12. Council Action:
13. Council Agenda Distribution:

**CITY OF ELKO
RESOLUTION NO. 04-18**

**A RESOLUTION PLACING A FOUR-YEAR MORATORIUM
ON THE ISSUANCE OF BUSINESS LICENSES FOR
MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA
ESTABLISHMENTS**

Upon introduction and motion by _____ and seconded by _____
_____ the following Resolution and Order was passed and adopted:

WHEREAS, the possession, distribution and cultivation of marijuana was and continues to be unlawful under the Federal Controlled Substances Act;

WHEREAS, pursuant to Elko City Code Section 4-1-5, an application for a business license shall be denied if the City Clerk determines that the business for which the license is applied for is unlawful under any law of the federal government or the business for which the license is applied for involves any act, the commission of which is made unlawful or is prohibited by any law of the federal government;

WHEREAS, on March 25, 2014 and January 26, 2016, the City Council adopted a resolution placing a two –year moratorium on the issuance of business licenses for medical marijuana establishments in order to study the potential effects of medical marijuana establishments on public health, safety, welfare and morals on the residents of the City, to include the local demand for such establishments, impacts on crime and property values, and lessons learned from other communities that have experience with similar establishments;

WHEREAS, the City Council has determined the desire to place a four-year moratorium for marijuana establishments and medical marijuana establishments and that this is appropriate for the purposes of receiving further public input and further exploring the potential effects of marijuana establishments and medical marijuana establishments on public health, safety, welfare and morals on the residents of the City;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE ELKO CITY COUNCIL that the City shall not issue a business license to an applicant for a business or business activity constituting a “marijuana establishment” as that term is defined in NRS Chapter 453D or a “medical marijuana establishment” as that term is defined in NRS Chapter 453A for a period of four (4) years from the date of January 23, 2018;

IT IS FURTHER RESOLVED that nothing herein shall be interpreted as amending or repealing any provision contained in the Elko City Code, to include, without limitation, restrictions pertaining to the issuance of business licenses for businesses and acts that are unlawful under any law of the federal government;

IT IS FURTHER RESOLVED that this Resolution may be rescinded by the City Council prior to expiration of the aforementioned four (4) year period;

IT IS FURTHER RESOLVED that this Resolution shall be effective and shall be in force immediately upon adoption, and that upon adoption of this Resolution by the Elko City Council it shall be signed by the Mayor and attested to by the City Clerk.

PASSED AND ADOPTED this ____ day of _____, 2018.

CITY OF ELKO

By: _____
CHRIS J. JOHNSON, MAYOR

ATTEST:

SHANELL OWEN, CITY CLERK

VOTE:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Elko City Council
Agenda Action Sheet

1. Title: **First reading of Ordinance No. 825, an ordinance amending Title 3, Chapter 2, of the Elko City Code "GENERAL ZONING ORDINANCE" specifically adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited", filed and processed as Zoning Ordinance Amendment No. 3-17, and possible direction to Staff to set the matter for public hearing, second reading, and possible adoption, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **ORDINANCE**
4. Time Required: **10 Minutes**
5. **Background Information: At its December 5, 2017 meeting, the Planning Commission considered the action initiated by the City Council to establish a new Section 3-2-29 of the Elko City Code to prohibit marijuana establishments and medical marijuana establishments in all zoning districts. The Planning Commission voted to recommend denial of the amendment. The Council at their January 9, 2018 meeting rejected the Planning Commission's recommendation, approved the amendment and directed Staff to set the ordinance for a first reading. CL**
6. Budget Information:

Appropriation Required: **N/A**
Budget amount available: **N/A**
Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Ordinance 825 and P.C. Action Report**
9. Recommended Motion: **Conduct first reading of Ordinance No. 825, and direct Staff to set the matter for public hearing, second reading, and possible adoption.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review: **Planning Commission, City Attorney**
12. Council Action:
13. Agenda Distribution:

CITY OF ELKO

ORDINANCE NO. 825

AN ORDINANCE AMENDING TITLE 3, CHAPTER 2 OF THE ELKO CITY CODE, ADDING A NEW SECTION 29 ENTITLED "MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA ESTABLISHMENTS PROHIBITED"

WHEREAS, the City of Elko desires to amend Title 3, Chapter 2 of the City Code pertaining to general zoning regulations to prohibit marijuana establishments and medical marijuana establishments in all zoning districts;

WHEREAS, the City of Elko has determined that the proposed amendment furthers those goals;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ELKO, NEVADA

For purposes of this amendment, words which are in bold italics are additions to the Code.

SECTION 1. Title 3, Chapter 2 of the Elko City Code is hereby amended to add the following Section 29:

3-2-29: MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA ESTABLISHMENTS PROHIBITED:

- A. Notwithstanding any other provision of this Code, marijuana establishments and medical marijuana establishments are not allowed, and shall be unlawful as a permitted use, conditional use or accessory use in any zoning district within the incorporated area of the City of Elko. For purposes of this section, the term "marijuana establishment" shall have the definition ascribed to it in NRS 453D.030, as amended from time to time, and the term "medical marijuana establishment" shall have the definition ascribed to it in NRS 453A.116, as amended from time to time.***
- B. The prohibitions of marijuana establishments and medical marijuana establishments, respectively, are not intended to interfere with the individual rights of persons to the lawful use and possession of marijuana as permitted by Chapters 453A and 453D of the Nevada Revised Statutes.***

SECTION 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

SECTION 3. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid, unenforceable or unconstitutional by any court of competent jurisdiction, the invalidity, unenforceability of such section, paragraph, clause or provision shall not affect any remaining provision of this Ordinance.

SECTION 4. Upon adoption, the City Clerk of the City of Elko is hereby directed to have this ordinance published by title only, together with the Councilman voting for or against its passage in a newspaper of general circulation within the time established by law, for at least one publication.

SECTION 5. This Ordinance shall be effective upon the publication mentioned in Section 4.

PASSED AND ADOPTED this ____ day of _____, 2017, by the following vote of the Elko City Council.

AYES: _____

NAYES: _____

ABSENT: _____

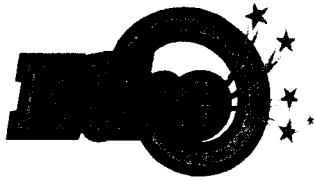
APPROVED this ____ day of _____, 2017.

CITY OF ELKO

By: _____
CHRIS JOHNSON, Mayor

ATTEST:

SHANELL OWEN, City Clerk



CITY OF ELKO

Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

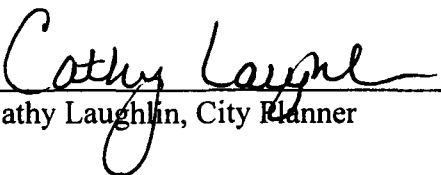
CITY OF ELKO PLANNING COMMISSION ACTION REPORT Regular Meeting of December 5, 2017

WHEREAS, the following item was reviewed and considered by the Elko City Planning Commission on December 5, 2017 under Public Hearing format, in accordance with notification requirements contained in Section 3-2-21(B)(1) of the City Code:

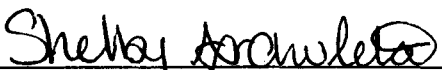
Zoning Ordinance Amendment 3-17, Ordinance No. 825, specifically an amendment to Title 3, Chapter 2 of the Elko City Code entitled Zoning Regulations adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited," and matters related thereto.

NOW THEREFORE, upon review and consideration of the application, supporting data, public input and testimony, the Planning Commission forwarded a recommendation to City Council to not approve Zoning Ordinance Amendment No. 3-17.

The Planning Commission's findings to support its recommendation was that such establishments are already not allowed under the City of Elko Business License process and can be handled as the Federal situation changes.


Cathy Laughlin, City Planner

Attest:


Shelby Archuleta, Planning Technician

CC: Applicant
Jeremy Draper, Development Manager (via email)
Shanell Owen, City Clerk

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to accept a petition for annexation of property to the City, filed and processed as Annexation No. 2-17 by Surebrec Holdings, LLC, consisting of approximately 62.03 acres of property located northeast of the intersection of Statice Street and Delaware Avenue, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **PETITION**
4. Time Required: **10 Minutes**
5. Background Information:
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Not Required**
8. Supplemental Agenda Information: **Application and Map**
9. Recommended Motion: **Accept the petition for Annexation 2-17 and refer it to the Planning Commission for further consideration**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Committee/Other Agency Review:
12. Council Action:
13. Agenda Distribution: **Surebrec Holdings, LLC
207 Brookwood Drive
Elko, NV 89801**



CITY OF ELKO
DEVELOPMENT DEPARTMENT
1755 COLLEGE AVENUE
ELKO, NEVADA 89801
(775)777-7210
(775)777-7219 FAX

To: City Council
From: Jeremy Draper, Development Department
Copy: Planning Department
Date: January 16, 2018
Re: Annexation Petition 2-17, Surebrec Holdings, LLC

BACKGROUND INFORMATION:

1. The petition includes that portion of APN 006-10C-006 lying just north of the intersection of Ruby Vista Drive and Statice St and contains approximately 62.03 acres of land.
2. The area is identified as having annexation potential as shown in the adopted Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure and Annexation Potential Report dated November 2012.
3. The area fronts Statice Street, Ruby Vista Drive and Delaware Avenue.
4. There is City water and City sewer within the vicinity of the property.
5. The city has a non-exclusive waterline easement as was granted by the state and is record number 604499, it appears that this agreement provided for a specific number of water taps in part for the easements being granted.
6. Other non-city utilizes are located in the immediate area.
7. The area was included in the land use component of the master plan showing the area as Industrial Business Park.
8. The applicant has indicated they will request a rezone for an Industrial Commercial District.
9. The proposed annexation appears logical and orderly.

RECOMMENDATION:

1. Accept the petition for annexation 2-17, to include APN 006-10C-006 and refer the matter to the Planning Commission for further consideration and recommendation to the City Council.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7119

Memorandum

To: City Council
From: Cathy Laughlin –City Planner
Date: January 16, 2018
Meeting Date: Tuesday, January 23, 2018

Agenda Item:

Review, consideration, and possible action to accept a petition for annexation of property to the City, filed and processed as Annexation No. 2-17 by Surebrec Holdings, LLC, consisting of approximately 62.03 acres of property located northeast of the intersection of Statice Street and Delaware Ave., and matters related thereto. FOR POSSIBLE ACTION

Additional Information:

1. The area is identified as having annexation potential.
2. The area fronts Statice Street and Delaware Ave. and is approximately 62.03 acres.
3. The property is currently undeveloped.
4. The property owner has completed a land exchange with the State of Nevada to obtain ownership of the property. The parcel was previously part of the 100 acre parcel owned by the State of Nevada.
5. The property owner has applied for a rezone of the property to IC- Industrial Commercial contingent upon the annexation.
6. The existing property is in conformance with the Master Plan Transportation document.
7. In conjunction with the annexation, the property owner has applied for a rezone for the property to be Light Industrial which will be in conformance with the Master Plan Land Use document after finalization of the current amendment.
8. The property can be served with City of Elko water as it appears to be in the 5400 zone.
9. The property is not in a flood zone.
10. The property is located outside the 30 year wellhead protection.
11. The proposed annexation appears logical and orderly. The area is identified as having annexation potential

Staff Recommendation:

Approve the petition for annexation 2-17 by Surebrec Holdings, LLC and refer the matter to the Planning Commission for further consideration and recommendation to the City Council.

Cathy Laughlin
City Planner

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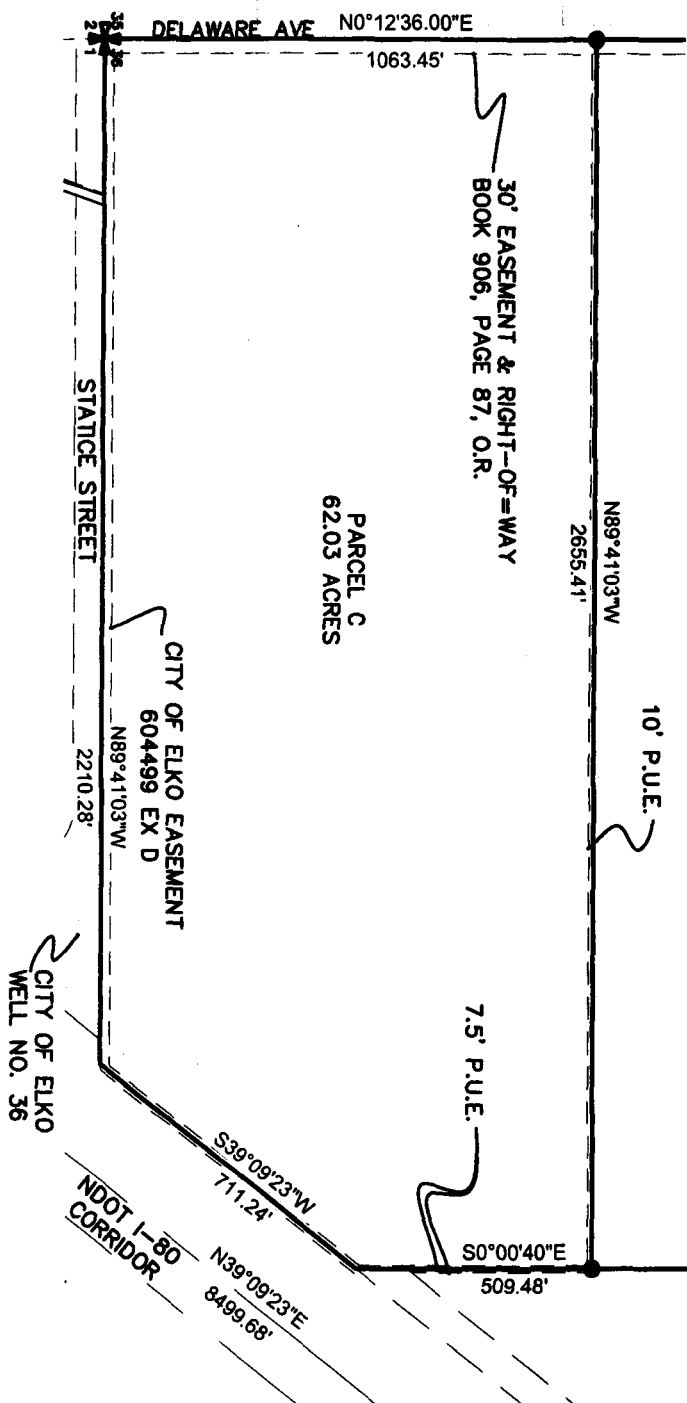
JAN 09 2018

LEGAL DESCRIPTION:

ALL THAT REAL PROPERTY SITUATED IN THE COUNTY OF ELKO, STATE OF NEVADA, BOUNDED AND DESCRIBED AS FOLLOWS: PARCEL C, AS SHOWN ON A PARCEL MAP, FILED IN THE OFFICE OF THE COUNTY RECORDER OF ELKO COUNTY, STATE OF NEVADA, ON JANUARY 5, 2018 AS FILE NO. 735391




GRAPHIC SCALE
SCALE IN FEET



SHEET
1
OF
1

DATE: JANUARY 2018
DRAWN BY: RSR
CHECKED BY: BEJ
JOB NO.: 193.000

SUREBREC HOLDINGS LLC
ANNEXATION MAP
OF
SECTION 36, TOWNSHIP 35 NORTH
RANGE 55 EAST, M.D.M.
ELKO COUNTY NEVADA



ENGINEERING
445 5TH STREET, SUITE 201
ELKO, NEVADA 89801
TEL: (775) 738-3113
FAX: (775) 738-6199
WWW.AMENGINEERING.ORG

- CIVIL ENGINEERING
- CONSTRUCTION MANAGEMENT
- QUALITY ASSURANCE
- TOPOGRAPHIC SURVEYING

RECEIVED
JAN 16 2018



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 * (775) 777-7119 fax

APPLICATION FOR ANNEXATION

The applicant (100% of all property owners) hereby petitions the Elko City Council to annex to the City of Elko certain real property by ordinance, to be adopted pursuant to NRS 268.670. Said property petitioned for annexation is legally described as follows: (Attach if necessary)

See Attached

ASSESSOR PARCEL NUMBER (S): 006-10C-006
(This is not the legal description)

PROPERTY OWNERS: (Attach additional pages if necessary)

Robert Fitzgerald
Surebrec Holdings, LLC
(Print Name)

Signature

775-219-8199

Telephone Number

207 Brookwood Dr, Elko, NV 89801

Mailing Address

(Print Name)

Signature

Telephone Number

Mailing Address

(Print Name)

Signature

Telephone Number

Mailing Address

RECEIVED

NOV 02 2017

Initial: _____

FILING REQUIREMENTS:

Complete Application Form: In order to begin processing the application, an application form must be complete and signed. Applications go before the City Council, Planning Commission, and back to City Council twice, and will take a minimum of 8 weeks.

Fee: 10 acres or less \$500.00, greater than 10 acres through 50 acres \$750.00, greater than 50 acres \$1,250.00. The filing fee shall be paid in full prior to consideration of the annexation request by the Planning Commission.

Annexation Map: An annexation map or record of survey of the area proposed for annexation provided by a properly licensed surveyor. Such map shall include the proposed acreage to be annexed, and the length and percentage of common boundary (at least 15%) with the corporate limits of the City. If the property abuts a road not already in the City limits, at least one half of the road must be included in the map and legal description (see N.R.S. 268.663).

Legal Description: A complete legal description of all property proposed for annexation.

Plot Plan: If the property is improved, a surveyed plot plan showing property lines, existing buildings, building setbacks, parking and loading areas and any other pertinent information.

Note: One .pdf (email is okay) of the entire application must be submitted, as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

Other Information: The applicant is encouraged to submit other information and documentation to support this Annexation request

1. Identify the existing zoning classification of the property: Open Space
2. Identify the zoning classification being requested upon annexation: I.C.
(A separate zone change application must be submitted for the requested classification.)
3. Explain in detail the type and nature of the use anticipated for the property.

A mixture of commercial and small scale industrial uses which may include retail and service activities, office buildings, public and quasi-public land uses, building and material sales, lumber yards, automotive dealerships, and/or conditional uses permitted to include gas station, RV parks, residential uses.

Using light industrial and/or commercial development standards where appropriate.

4. Identify any unique physical features or characteristics associated with the property.

Flat, no unique physical features

5. Identify the type and extent of City infrastructure anticipated for service to the property such as streets, sewer, and water service.

Street, Sewer, and Water Service

6. Identify any water rights which will support the annexed property:

2AF that was dedicated to create the parcel

(Use additional pages if necessary to address questions 3 through 6)

By My Signature below:

☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspection said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

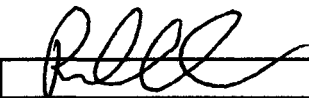
Applicant / Agent Surebrec Holdings, LLC
(Please print or type)

Mailing Address 207 Brookwood Drive
Street Address or P.O. Box

Elko, Nevada 89801
City, State, Zip Code

Phone Number: 775-219-8199

Email address: rob.fitz@earthlink.net

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 2-17 Date Filed: 11/2/17 Fee Paid: \$1,250 CX# 1042

**Elko City Council
Agenda Action Sheet**

1. Title: **Review, consideration, and possible adoption of Resolution No. 33-17, a resolution amending Zoning Application Fees pursuant to Elko City Code Title 3, Chapter 2, Section 21, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 23, 2018**
3. Agenda Category: **PUBLIC HEARING**
4. Time Required: **10 Minutes**
5. Background Information: **Pursuant to NRS 237.080, the City of Elko completed the Business Impact Statement process and Resolution No. 33-17 is ready for adoption by the Council. SO**
6. Budget Information:
 Appropriation Required: **N/A**
 Budget amount available: **N/A**
 Fund name: **N/A**
7. Business Impact Statement: **Required**
8. Supplemental Agenda Information: **Resolution No. 33-17**
9. Recommended Motion: **Pleasure of the Council**
10. Prepared by: **Shanell Owen, City Clerk**
11. Committee/Other Agency Review: **N/A**
12. Council Action:
13. Agenda Distribution:

Upon introduction and motion by _____ and seconded by _____, the following Resolution and Order was duly passed and adopted:

**CITY OF ELKO
RESOLUTION NO. 33-17**

**A RESOLUTION AMENDING THE ZONING APPLICATION FEES ASSOCIATED
WITH TITLE 3 OF THE ELKO CITY CODE ENTITLED ZONING REGULATIONS
PURSUANT TO ELKO CITY CODE TITLE 3, CHAPTER 2, SECTION 21**

WHEREAS, pursuant to Elko City Code Title 3, Chapter 2, Section 21, the City Council of the City of Elko may, by resolution, amend the rates for zoning fee charges; and

WHEREAS, the City Council of the City of Elko has identified the need to increase certain rates in order to better recover costs associated with providing services to the public; and

WHEREAS, the costs of publication as well as postage have increased.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF ELKO that the Zoning Application Fee Schedule for the City of Elko be amended as follows:

ZONING APPLICATION FEES:

Until further resolution of the City Council the Zoning Application Fees associated with Title 3 of the Elko City Code entitled Zoning Regulations, effective upon adoption, shall be as follows:

	<u>Current Charge</u>	<u>Proposed Charge</u>
Annexation of property into the City limits		
10 acres or less	\$500	\$750
Between 10 acres and 50 acres	\$750	\$1,000
Over 50 acres	\$1,250	\$1,500
Appeal	50% of Original Fee	50% of Original Fee
Boundary Line Adjustment	\$0	\$200
Conditional Use Permit	\$750	\$750
Curb, Gutter and Sidewalk Waiver	\$50	\$250
Detachment of Territory from the City of Elko		
10 acres or less	\$500	\$750
Between 10 acres and 50 acres	\$750	\$1,000
Over 50 acres	\$1,250	\$1,500
Final Plat	\$600 + \$25 per lot	\$750 plus \$25 per lot
Home Occupation Permit	\$25	\$50
Lease (Plus cost of negotiating lease if applicable)	\$200	\$200
License Agreement for Right to occupy right-of-way		
Planning Commission & City Council approval	\$400	\$400
Administrative Approval	\$200	\$200
Addendum to Agreement	No fee	No fee

Parcel Map		
Administrative approval	\$200 + \$25 per lot	\$200 plus \$25 per lot
Planning Commission & City Council approval	\$300 + \$25 per lot	\$400 plus \$25 per lot
Parking Waivers	\$25	\$50
Preliminary Plat	\$600 + \$25 per lot	\$750 plus \$25 per lot
Reversion to Acreage	\$300	\$300
Site Plan Review	\$200	\$200
Temporary Use Permit	\$200	\$300
Vacation of City Property		
(Plus cost of land if applicable)	\$600	\$600
Variances	\$100	\$500
Associated with a zoning amendment		\$250
Zoning Amendment	\$300	\$500

IT IS FURTHER RESOLVED, that upon adoption of this Resolution by the City Council, it shall be signed by the Mayor and attested to by the City Clerk and shall be in full force and effect upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2018.

CITY OF ELKO

CHRIS JOHNSON
Mayor

ATTEST:

SHANELL OWEN, MMC
City Clerk