

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

SS September 22, 2020

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, September 22, 2020. Due to the COVID-19 pandemic the meeting was held via GoTo Meeting.

## CALL TO ORDER

This meeting was called to order by Mayor Reece Keener. He stated the agenda for this meeting has been posted for this date and time in accordance with State of Nevada Emergency Directive 006. The public can participate by phone, tablet, laptop, or computer by registering with the Goto Meeting link provided in the agenda, as well as the public call in number provided in the agenda. Questions can be sent to [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov).

## ROLL CALL

**Mayor Present:** Reece Keener

**Council Present:** Councilwoman Mandy Simons  
Councilman Robert Schmidlein  
Councilman Chip Stone  
Councilman Bill Hance

**City Staff Present:** Curtis Calder, City Manager  
Scott Wilkinson, Assistant City Manager  
Kelly Wooldridge, City Clerk  
Candi Quilici, Accounting Manager  
Jan Baum, Financial Services Director  
Dale Johnson, Utilities Director  
Clark Phillips, Water & Sewer Superintendent  
Bob Thibault, Civil Engineer  
James Wiley, Parks and Recreation Director  
Cathy Laughlin, City Planner  
Jim Foster, Airport Manager  
Matt Griego, Fire Chief  
Mike Palhegyi, Police Lieutenant  
Shelby Archuleta, Planning Technician

## 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. Comments may be made through GoToMeeting.com, or by calling (775) 777-0590, or email comments to: [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov). **ACTION WILL NOT BE TAKEN**

*There were no public comments.*

**APPROVAL OF MINUTES:**            **September 8, 2020    Regular Session**  
   **August 25, 2020        Special Session**

*The minutes were approved by general consent.*

**I.        APPROPRIATIONS**

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

**\*\*        A motion was made by Councilwoman Mandy Simons, seconded by Councilman Stone, 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 Mandy Simons and seconded by Councilman Schmidlein, to approve Print 'N Copy warrants.**

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

C.        Consideration and possible approval of an Interlocal Agreement for the Grant of Funds Pursuant to the Coronavirus Aid, Relief and Economic Security Act between the City of Elko and the County of Elko in the amount of \$1,095,919.16, and matters related thereto. **FOR POSSIBLE ACTION**

Council previously authorized Staff to accept the CARES Act funding, determine eligible expense and purchases to be reimbursed or expended from CARES Funding, and to consider the possible allocation of the CARES Funding not utilized by the City of Elko to Elko County for the business Grant Cares Grant Program subject to an Interlocal Agreement with Elko County. An Interlocal Agreement was prepared by David Stanton, City Attorney. The County is requesting changes as outlined in the attached red lined agreement, Page 4, Paragraph 3. Specifically, the County is requesting that the original language of: "as well as any subsequent emergency directives or executive orders related to the COVID-19 health crisis capacity" be changed to "as of September 3, 2020 related to the COVID-19 health crisis capacity." This is a substantive change to the proposed Interlocal Agreement

which does not align with the original Coronavirus Relief Fund Eligibility Certification approved by the City Council and certified by the City Manager. JB

Jan Baum, Financial Services Director, explained that when the City submitted the CARES funding plan to the State it included \$1,000,095.00 to Elko County for the business grant program. We then submitted an inter- local agreement to Elko County. The County does not want to include the language that states “the County will adhere to enforce emergency directives by the Governor.” This language was included in the original agreement submitted to the State by the City and the County. The City proposed changes to this item to the State, who declined changing the agreement.

Councilwoman Simons stated they accepted the money from the State with that language but they want it different from the City.

Ms. Baum stated yes that is accurate. If something happens and the County doesn’t adhere to or enforce future directives, it would be the responsibility of the City to pay the money back to the State.

Mayor Keener asked City Manager Curtis Calder to weigh in on the issue.

Mr. Calder stated we should retain what our legal counsel wrote in the agreement and not make the changes. If the County does not agree then we would not transfer the money to them.

Mayor Keener clarified that if something went wrong with the County then the City would have to repay the money.

Mr. Calder stated yes that is correct.

Ms. Baum stated the County has started the business grant program and there have not been many requests yet.

Mayor Keener asked about the grant application and wondered if it was complicated to complete.

Ms. Baum felt the wording was more confusing than the actual process of completing the paperwork. Businesses must show their financial situation is different than in 2019.

Councilman Stone stated he went through the process today and stated it was fairly simple to complete. The purpose of the City agreeing to these funds was so it could trickle down to the small business owners, but does not want to put the City at risk.

Councilman Schmidlein does not understand the double standard and wants the City to follow the original language proposed by the City Attorney.

Mayor Keener called for public comment. There were no comments.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Robert Schmidlein to return the document to the County unchanged and give them the option to move forward as written. If this is not acceptable the City will keep the funding.**

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

- D. Review, consideration, and possible rejection of all bids for the Water Tank Interior Coating Project-2020, and matters related thereto. **FOR POSSIBLE ACTION**

Bids were opened September 11, 2020. Only one complete bid was submitted for the project, with four bids being incomplete. All of the bids were above the \$500,000.00 budgeted amount for the project. A Bid Tally Sheet has been provided for review. DJ

Dale Johnson, Utilities Director, stated there was only bid considered compliant, however it was well over the budgeted amount. He stated we could reject the bids or just go with doing one tank right now.

Mayor Keener asked if there was a pre-bid meeting and if the potential bidders were cautioned about everything that needs to be included in the bids.

Mr. Johnson stated yes.

Mayor Keener then asked about adjusting the specifications of the project.

Mr. Johnson stated this was not really a job that had many adjustments.

Mayor Keener asked when the last time these were done.

Mr. Johnson stated on one tank this is the first time it's been recoated and on the other it is the second time.

Councilman Schmidlein does not understand why all of the bids were so high unless painting companies are just that busy. He thinks all bids should be rejected.

Mayor Keener asked City Manager Calder what he thought.

Mr. Calder feels it is not an emergency and that all bids should be rejected.

Mayor Keener called for public comment. There were no comments.

Councilman Stone asked if the bidders will be notified what made the bid non-compliant.

Kelly Wooldridge, City Clerk, stated they would be contacted and that the bid tabulation will be posted on the website.

**\*\* A motion was made by Councilman Robert Schmidlein and seconded by Councilman Chip Stone to reject all of the bids and re-bid the project next year when additional funds are available.**

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

- E. Review, consideration, and possible ratification of Staff's approval for Change Orders related to unforeseen conditions with the Re-roofing Project at the City of Elko Swimming Pool, and matters related thereto. **FOR POSSIBLE ACTION**

Due to various un-known conditions related to the City of Elko Swimming Pool re-roof and ceiling demolition project it was necessary for Staff to approve Change Orders currently totaling \$50,719.28. Change Orders pertain to asbestos mitigation measures, placement of additional roof decking, and the demolition and reconstruction of the rotted wood curb for the roof mounted air handler unit. JW

James Wiley, Recreation Director, stated copies of the change orders are in the packet and described the three change orders. He is aware of one additional change order that will be brought back for ratification at a future meeting. It is around \$21,000 to replace rotting rafters on the roof area. The tops of the rafters could not be seen until the roof came down.

Councilman Schmidlein asked if Lostra Engineering is the project engineer.

Mr. Wiley stated yes and that we could not see what was really going on until the roof was demolished.

Mayor Keener called for public comment. There were no comments.

**\*\* A motion was made by Councilman Schmidlein and seconded by Councilwoman Mandy Simons to ratify the change orders made to the pool repair roof project totaling \$50,719.28.**

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

## **II. NEW BUSINESS**

- A. Review, consideration, and possible action to conditionally approve Parcel Map No. 7-20, filed by City of Elko, for the division of approximately 49.98 acres into three parcels, located generally along the Humboldt River from approximately 9<sup>th</sup> Street to approximately 1,200 feet west of Errecart Blvd., and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko is the applicant of the parcel map, therefore must have City Council approval. The parcel map will create the 2,800 sq. ft. parcel in which City Council approved to sell to Anthem Broadband of Nevada. CL

Cathy Laughlin, City Planner, stated Mr. Thibault completed the parcel map so we can continue with the sale to Anthem Broadband. There is a need for public access and a drainage easement so there is access to the Harp Trail and utility access.

Mayor Keener called for public comment. There were no comments.

**\*\* A motion was made by Councilwoman Mandy Simons, and seconded by Councilman Chip Stone to conditionally approve parcel map 7-20 with the conditions stated in the staff report dated September 14, 2020.**

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

- B. Review, discussion, and possible approval for payment to the Boys and Girls Club of Elko for COVID-19 related expenses (for example PPE and COVID-19 testing) incurred as a result of the COVID-19 pandemic, and matters related thereto. **FOR POSSIBLE ACTION**

The City received Cares Relief Funds from the State of Nevada in August, 2020. As outlined in the Coronavirus Relief Fund Terms and Conditions for Local Governments from the State of Nevada a sub-grant to reimburse the Boys and Girls Club of Elko for direct costs associated with COVID-19 which include, but are not limited to, COVID-19 testing and PPE are eligible expenditures.

The City would like to sub-grant Cares Relief Funds to the Boys and Girls Club of Elko for direct COVID-19 related expenses. The payment of these funds would be subject to the Boys and Girls Club of Elko providing a specific list of COVID-19 related expenses along with invoices as well as the Boys and Girls Club of Elko agreeing to the terms specified in the Coronavirus Relief Fund Terms and Conditions for Local Governments from the State of Nevada; including adhering to Nevada Governor's Directives.

The current list of expenses provided by the Boys and Girls Club of Elko is \$16,253.21. JB

Jan Baum, Financial Director explained the request and that the Boys and Girls Club is providing a great service at a time when schools have closed and they have endured a great deal of expenses related to COVID-19 prevention and mitigation. The COVID-19 task force agreed these expenditures would be covered.

Mayor Keener stated the Boys and Girls Club is essential right now and that their three big fundraisers have been cancelled this year so he is in support of this request. He called for public comment without a response.

**\*\* A motion was made by Councilman Chip Stone and seconded by Councilman Robert Schmidlein to request an updated expenditure list and invoices of COVID-19 related expenses for the Boys and Girls Club of Elko; and that the Boys and Girls Club of Elko sign an agreement to adhere to the terms and conditions set forth in the Nevada Governor's Directive.**

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

- C. Review, discussion, and possible direction to Staff regarding CARES Act funding, including the possible initiation of the closeout process, and matters related thereto. **FOR POSSIBLE ACTION**

Based upon the outcome of related agenda items, City Staff may recommend that ongoing compliance with the terms and conditions imposed by the State of Nevada is no longer feasible and/or Cares Act funding is no longer necessary. CC

Curtis Calder, City Manager, stated that based on the motion made on the item regarding the CARES funding relief act agreement with the County we should wait to make a decision on this item. If the County will not sign the inter-local agreement without the changes they requested, the City could close out the CARES grant and return the unspent monies to the State. He stated this item should be no action or tabled for now. This item should be on every agenda until it is resolved.

Councilman Stone asked if there is an end date to when we are done with the CARES money.

Ms. Baum, Financial Services Director, stated December 30, 2020 the funds need to be either committed or committed to be expended, all reporting needs to be completed by the end of March and all unused funds need to be returned to the State by end of March 2021.

Councilman Stone asked if we are still tied into the contract agreements until the end of March.

Ms. Baum stated the contract has an end date of December 30, 2020 but she will find out.

Mr. Calder stated that if we close it out before December 30, 2020 we would be obligated to the conditions until the grant closed out.

Mayor Keener called for public comments. There were no public comments.

**\*\* A motion was made by Councilwoman Mandy Simons and seconded by Councilman Chip Stone to table this item.**

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

### **III. RESOLUTIONS AND ORDINANCES**

- A. Review, consideration, and possible approval of Ordinance No. 856, an Emergency Ordinance Reducing the Amount and Deferring Payment of Brothel License Fees, and matters related thereto. **FOR POSSIBLE ACTION**

On June 23, 2020, City Council approved Ordinance No. 855, which deferred payment for Brothel License Fees until September 30, 2020 due to the COVID-19 pandemic. This ordinance extends the date to within thirty (30) days of the date the licensee is permitted to reopen by order of the Office of the Governor or upon termination of this Ordinance, whichever occurs first. KW

Kelly Wooldridge, City Clerk explained this is mainly a housekeeping item. We thought the brothels would be open by now and they are not open. This ordinance extends the time the brothels have to pay the brothel fees.

Mayor Keener called for public comment.

Louis Goldberg, of Mona's Ranch and Inez's D & D thanked the Council.

**\*\* A motion was made by Councilman Robert Schmidlein and seconded by Councilman Chip Stone to approve ordinance 856.**

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

#### **IV. PETITIONS, APPEALS, AND COMMUNICATIONS**

- A. Review, consideration and possible approval of a request from Attorney David Lockie, representing Mr. Louis Goldberg. Mr. Goldberg is requesting to modify conditions on the business licenses for Mona's Ranch and Inez's D & D, and matters related thereto. **FOR POSSIBLE ACTION**

On August 14, 2018, City Council approved the Brothel License Application for Louis Goldberg, with the restriction that he is on site twenty days a month and this is subject to audit from the Police Department. Mr. Goldberg is requesting to modify this condition to 10 days per month. KW

Kelly Wooldridge, City Clerk, stated this business license is conditioned. Mr. Goldberg and Mr. Lockie are available to explain the request.

Mr. Lockie explained how we got here. He stated on August 14, 2018 the City Council approved the business license and added this condition, which is not a requirement by City Code but within discretion of the City Council. Two years have elapsed with no problems at the businesses. There are also two additional owner Licensee's, Ana Brown and Peter Tang. The prior problem was a single individual and a single incident. This person is now in prison and the case is concluded. Therefore, it appears reasonable to reduce the on-sight requirement to ten days and the other owners are allowed to be included in the on- sight.

Louis Goldberg stated we have three owners and two of them are on sight 30 days a month. There is an owner in town, on sight every day.

Mayor Keener stated he spoke with EPD who had no concerns with it.

Councilman Schmidlein stated two years ago when we put this condition on the license it was different situation and he is in agreement with the change.

Councilwoman Simons stated her primary concern was that an owner is on premises everyday it is open.

Mayor Keener called for public comment. There was no comment.

**\*\* A motion was made by Councilman Stone, seconded by Councilman Hance, to modify the agreement to a 10 day per month on premises for Mr. Louis Goldberg at Mona's Ranch and Inez D & D.**

Mayor Keener called for discussion.



Mr. Bert Gurr asked if the intent of the motion was to have any owner on sight for ten days or just Louis Goldberg.

Mayor Keener stated he thought the request was to reduce Mr. Goldberg from twenty days to ten.

Mr. Gurr stated Louis Goldberg is under lock down in San Francisco due to COVID-19 and should not be traveling.

Mr. Goldberg stated in the agenda item, it was requested that it be just a licensee.

Mr. Lockie stated the request was for an owner/licensee be on the premises.

Councilwoman Simons asked if they want an owner to be ten days only because we want an owner every day.

Mr. Lockie stated they are asking for two different things. One was to reduce the owner being on premises for ten days.

Councilman Stone clarified that the desire is for an owner to be on premises only ten days.

Mayor Keener asked if we can act on this based on how the agenda item is worded.

Curtis Calder, City Manager, stated the agenda item is worded broadly, stating it is a request to modify conditions on the business license so there is flexibility on the agenda item.

Mr. Goldberg stated they are more than happy to have an owner there daily.

Councilman Stone stated he understood that travel was an issue right now for Mr. Goldberg.

Mr. Goldberg stated correct but he would like it to say just licensee.

Councilman Schmidlein clarified asked the difference between licensee and owners.

Mr. Goldberg stated they are all owners and all licensees.

Mayor Keener proposed requiring a licensee is on the premises each day. Mayor Keener would like to look at changing the code in the future to make this a requirement.

The first motion was struck from the records.

**\*\* Councilman Stone motioned and Councilman Robert Schmidlein seconded to modify the business licenses for Mona's Ranch and Inez's D & D to the requirement a licensee is on premises every day.**

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

- B. Review, consideration, and possible approval of a request by Mr. and Mrs. Barris for reimbursement for damages resulting from sewer leak at their residence, and matters related thereto. **FOR POSSIBLE ACTION**

On July 30, 2020 Kimberly and James Barris, 3505 Forest Court, contacted the on-call regarding a water leak. The on-call went out and suggested the homeowner turn the water off. The house flooded again the next morning and the Water Department Supervisor responded who determined it was actually a sewer leak on the City side of the pipes not a water leak. The City of Elko insurance (Alternative Services Concepts) denied the claim. The City Sewer Policy allows for reasonable cost of the initial clean up and does not include removal of property, replacement of carpeting, tile or furnishings, new construction, disposal or any other costs and/or damages. The Barris's are requesting payment for lost items and other damage.  
KW

Kelly Wooldridge, City Clerk stated Mr. Johnson and Mr. Phillips are on to address the sewer/water issues. The insurance company normally denies this type of claim based on NRS that the City has immunity.

Mayor Keener asked if Ms. Wooldridge had called Dain Uriarte regarding this denial.

Ms. Wooldridge spoke to the insurance company and they deny it based on the NRS that is clear the City has immunity.

Mayor Keener asked Mr. Phillips to provide information regarding what happened.

Clark Phillips, Water/Sewer Superintendent, stated the department failed to meet the mission statement of the City and the department. The on-call showed up and the water pit was already off. There was water leaking in the house still and the on-call thought it was residual water so he left the pit off. He decided to leave it overnight and failed to notice it was actually a sewer leak and plug in the main. The Barris's had sewer flooding that got worse throughout the night and the next day. The leak got so bad that it was out into the street. When Mr. Phillips arrived on scene he found there was a sewer blockage on Forrest Lane, which is a half of a block away and the overflow went to the Barris residence. This was a very unfortunate situation and the on-call did not do enough on the front end to prevent this from happening.

Mayor Keener asked about previous cases in past years on Ruby View Drive that there was a home with a number of back up events and if Mr. Calder can remember the specifics.

City Manager, Curtis Calder, recalled there were chronic backups on Ruby View Dr. and it was eventually determined it was grease coming from the Indian Colony clogging the pipes. The City decided that this line would be cleaned on a regular basis and put a device in one of the manholes that will alarm if it starts to back up. Mr. Calder stated each back up can be a different situation. In cases in which the City has caused the backup we have replaced above cleanup costs. There is a settlement agreement the property owner will sign and it will be final.

Mr. Phillips added that there have been extensive conversation with the water shop staff and they have reviewed every SOP and made some changes, the biggest being that anytime there is an issue like this the on-call needs to contact Mr. Phillips until the problem is resolved.

Mayor Keener called on Mrs. Kimberley Barris. He stated he feels awful they had this situation and asked if they have contemplated a settlement amount.

Ms. Barris stated they don't want to make money, just recoup what was lost. Their homeowners insurance denied the claim stating the City was at fault so they have had a total loss. They would like to just recoup some of the loss.

Mayor Keener noted the \$2700 bill from Callaway Carpet Cleaning.

Mrs. Barris stated their grand total was \$17,500 in loss. Everything soaked in black water overnight and had to be thrown away.

Councilwoman Simons noted she sees about \$9000 in the request.

Mrs. Barris stated there were invoices for flooring and walls. She stated the flooring was a little excessive at \$8800.

Councilman Stone asked if the work has been completed.

Mrs. Barris stated it has not. Mr. Callaway stated they needed to wait at least six weeks to ensure everything is dry.

Mayor Keener asked if paying for more than the cleaning would set a precedent.

Mr. Calder stated no, this has been done previously after factoring in age of the flooring and paint. He feels the flooring price is too high.

Councilman Stone asked Mrs. Barris if she had a figure in mind and she stated no they are hoping for something fair. She stated they have priced flooring for much less as of now.

Councilman Schmidlein asked what kind of flooring they had and when it was installed.

Mrs. Barris stated carpet was put in around 2004 but she wasn't sure.

Mayor Keener stated the call was not handled appropriately and he is thinking an amount of \$10,000 to include the cost of the carpet cleaning.

Councilman Schmidlein agreed with this. Mrs. Barris stated she would be fine with \$10,000 excluding the cost of the carpet cleaning.

Mayor Keener asked if Callaway Carpet has been reimbursed yet.

Ms. Wooldridge stated no and asked that the motion includes that the Barris's sign the waiver developed by the City attorney.

**\*\* Councilman Schmidlein made a motion, seconded by Councilman Chip Stone, to authorize reimbursement for the cleaning bill of \$2702 to Callaway Carpet and a**

**reimbursement for damage to personal property of \$10,000 to Mr. and Mrs. Barris once they sign the waiver.**

*The motion passed unanimously. (4-0 Councilwoman Simons lost connection)*

- C. Review, consideration, and possible action to accept a petition requesting the lease of City owned property pursuant to NRS 268.062, approximately 1.126 acres, identified as Lease Area N1 located at the Elko Regional Airport, at public auction, and authorize Staff to obtain the required appraisal, and matters related thereto. **FOR POSSIBLE ACTION**

Classic Air Care dba MedX AirOne has petitioned the City of Elko to lease airport owned property identified as Lease Area N1 located on the Elko Regional Airport. If Council accepts the petition, an appraisal will be obtained and Council will hold a meeting on the fair market value of the property and adopt a resolution declaring its intention to lease the property at public auction. JF

Jim Foster, Airport Director, stated we would like to get this lease created so MedX can build a new hanger.

Mayor Keener called for public comment. No comments were made.

**\*\* A motion was made by Councilman Chip Stone, seconded by Councilman Bill Hance, to lease Area N1 pursuant to NRS 268.062 at public auction, authorize Staff to obtain the required appraisal, direct Staff to consult with the FAA on any required approvals for leasing the property.**

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

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

- A. Review, consideration, and possible action to adopt Resolution No. 23-20, a resolution of the Elko City Council, adopting a change in zoning district boundaries from C (General Commercial) to PQP (Public, Quasi-Public) Zoning District, approximately 26,061 square feet of property, filed by City of Elko, and processed as Rezone No. 1-20, and matters related thereto. **FOR POSSIBLE ACTION**  
The Planning Commission considered the Subject Zone Change Request on September 1, 2020, and took action to forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 1-20. CL

Cathy Laughlin, City Planner, explained this is a housekeeping issue. This parcel is the Southside Fire Station on the corner of 9<sup>th</sup> and Lamoille Highway. We did a Master Plan Amendment to change the zoning to public and put it in conformance with what the actual use is as a fire station.

Mayor Keener called for public comments. No comments were made.

**\*\* A motion was made by Councilman Chip Stone and seconded by Councilwoman Mandy Simons to adopt resolution 22-20.**

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

- B. Review, consideration, and possible action to adopt Resolution No. 24-20, a resolution of the Elko City Council, adopting a change in zoning district boundaries from AG (General Agriculture) to R (Single Family and Multiple Family Residential) Zoning District, approximately 2.415 acres of property, filed by Legion Construction and Development LLC., and processed as Rezone No. 5-20, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the Subject Zone Change Request on September 1, 2020, and took action to forward a recommendation to City Council to adopt a resolution, which approves Rezone No. 5-20. CL

Cathy Laughlin, City Planner, explained when we annex property into the City it automatically defaults to general agriculture. This is changing this parcel to R (single family and residential). There are 18 townhomes proposed for this parcel. The rezone will run concurrent with the tentative map. Planning Commission considered this rezone and recommended to adopt the resolution.

Mayor Keener called for public comment. No comments were made.

**\*\* A motion was made by Councilman Chip Stone, seconded by Councilman Bill Hance, to adopt resolution 24-20.**

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

- 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. 3-20, filed by Ruby Mountain Acton Academy on behalf of Gladys Burns, which would allow for a Teaching of the Creative Arts/Childcare Center within an R (Single Family and Multiple Family Residential) Zoning District, located generally on the southeast side of West Birch Street (675 W. Birch Street), 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 August 4, 2020 and took action to deny the conditional use permit. CL

Mayor Keener stated on July 12, 2020, Ruby Mountain Acton Academy, dba Acton of the Rubies (Acton) filed an application for a conditional use permit (CUP) to provide home schooling support services to home school students in the residence at 675 W. Birch Street in the City of Elko. The function of the home schooling support services is to supplement the home schooling experience by providing socializing and creative arts services for students being home schooled by their parents. A public hearing of the CUP application was held before the City of Elko Planning Commission on August 4, 2020. After a lengthy public hearing, the Planning Commission voted 4-2 to deny the application. The applicant appealed the Planning Commission decision to the Elko City Council pursuant to City Code § 3-2-18(E) and 3-2-25. This is the public hearing of the appeal before the City Council as required by City Code § 3-2-25. It will be conducted by the following procedure and rules:

- This public hearing is de novo. That means that all interested parties may present all relevant testimony and evidence anew, as though no evidence had been presented to the Planning Commission.
- As the appellant, Acton has the burden of proof and persuasion on appeal.
- That Acton shall be first to present the grounds for appeal, all of its supporting testimony, evidence and argument.
- Any members of the neighborhood or public shall then be given an opportunity to speak and provide comment.
- The city may then respond to Acton's appeal.
- Acton may then present any rebuttal, argument or evidence. The mere failure of Acton to provide rebuttal may not be considered by the Council in deciding the appeal.
- The City shall then be given the opportunity to make closing argument to the Council.
- Because Acton has the burden of proof on appeal, Acton shall then be given the opportunity to make closing argument to the Council.
- Acton, neighbors, members of the public and the city are entitled to be represented by counsel, present testimony, evidence and argument on all issues raised on appeal.
- The Council shall consider the recommendations and findings of the Planning Commission as shown by the official record of the CUP application.
- As a general rule, the Council may not consider evidence or other matters not raised at the Planning Commission level. However, the Council may do so after determining that such additional evidence will be helpful to a clear understanding of the issues on appeal.
- The rules of evidence shall not apply.
- The Council Presiding Officer may limit testimony or other proffered evidence that is duplicative, unnecessarily argumentative or not reasonably related to the matter being appealed.
- The Presiding Officer may terminate the hearing upon finding that sufficient testimony, documents and arguments have been presented to enable the Council to fully deliberate and decide the appeal.
- The Presiding Officer shall first request from Acton a summary of all remaining matters it desires to present at the hearing.
- At the conclusion of the hearing, the Council shall make a final decision that is consistent with the requirements of the Elko City Code to affirm, modify or reverse the decision of the Planning Commission.
- In reviewing a decision on an appeal, the Council must be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020:
  - a. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of Nevada cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures;
  - b. Any such regulation, restriction and control must take into account:
    - The potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and the availability of and need for affordable housing in the community, including affordable housing that is accessible to persons with disabilities.
- The decision of the Council shall be considered the final decision for the purpose of judicial review.

Mayor Keener asked Mr. Barrows if everything was covered that needed to be.

Mr. Barrows answered yes. Mayor Keener called for Ms. Katie McConnell to present

Katie McConnell, Attorney for Acton Academy, advised that Acton's principals were present. Acton is appealing the planning commission's decision that was rendered August 4, 2020. Acton applied for a Conditional Use Permit (CUP) that was for the teaching of creative arts/child care center, a resource for homeschooling families. The property at 675 W. Birch St. is located in close proximity to several other youth programs. There is a map provided with the statement of appeal that show the proximity of the youth services. Acton is a Nevada Non-Profit Corporation and has a 501-C3 designation. Acton is not a school and provides resources and services to home schooled families. During the Planning Commission hearing Acton was referred to as a school. This was incorrect. They operate Tuesday, Wednesday and Thursday from 8:00 A.M to 3:00 P.M, for ten months out of the year. The pickup and drop off times are reflected in City of Elko's staff report for approved CUP. The property would be used to conduct the meetings and activities that would allow children to participate in learning activities. Pursuant to the CUP staff report there would be 24 children at this location. Prior to the Planning Commission meeting the City of Elko staff reviewed the request thoroughly and issued a staff report recommending approval of the CUP with specific findings regarding parking, pick up and drop off, and operating three days a week. According to Elko City code 3-2-18(E), the commission must have specific findings and actions. The planning commission denied the CUP without findings or a notice of denial, which is a violation of the Elko City code 3-2-18(E). It is important to point out that this is a permissible use under the code. The applicant was never provided a notice of denial that included findings from the Planning Commission. Acton Academy is appealing the decision from the Planning Commission for the following reasons; the commission is required to make findings as to why the applications supporting data is not applicable in conditions and requirements the CUP will be met and the reason of denial was not provided. There has been no evidence presented to date on behalf of the Planning Commission's decision to deny the CUP or support why it was denied. City staff has recommended the CUP as long as the conditions fall within the recommendation are abided by. The neighbors presented many reasons they did not want this approved and all of the concerns were addressed in the CUP conditions. Acton Academy has agreed to follow those conditions and address the concerns with the City. One Commissioner stated "who are we to overrule the public?" The commission is there to support the City of Elko code, not to overrule the public. Acton was also referred to several times as a school, and this is not legally sound. Acton does not meet the NRS requirements of a school. The application is for creative arts and a childcare. Noah's Ark operates nearby with 50 children from 6:00 a.m. – 6:00 p.m. daily. Acton has been doing this for years. Acton Academy is requesting the Council to overturn the decision of the Planning Commission.

Mayor Keener stated there is provision for members of the neighborhood or public to be given the opportunity to speak. There were letters that were sent in. He had one that was dated September 22, 2020 from Jamille Sirotek and another one with over 20 people from the neighborhood that signed the letter. He asked for additional comments. (See Exhibit A)

Liza Baumann, 975 Dotta Dr. Elko, stated she sent a letter, however, she did not know if it was received. She is a neighbor in the area. She does not know why this is an issue when there are better places in town to have this establishment. The area is not a safe place and does not have the necessary sidewalks or drop-off section. The neighborhood is against having the school in the area.

When she first heard about this, they were told there would be 15 kids. At the Planning Commission Meeting, they were told it would have 24 kids. At this point, no one has answered the question of how many kids would be allowed there per code. She also questioned if it is a school or a child care facility. She addressed the concern of the CUP to stay with the property if Acton moves to another location. The home values can also be affected if the CUP is approved. Mayor Keener confirmed we did receive her letter.

Kelly Wooldridge, City Clerk, advised there were several letters that were received. The letters have been entered into the record. Letters were received from: Earl and Mary Craig of 1030 Dotta Drive, the petition with 20 names and addresses, and Roseann Carpenter.

Robert Loranger, 1000 Dotta Dr. Elko, said he disagreed with Acton Academy's definition of not defined as a school. He explained that the definition of the word academy is a school. He had invested capital into his home as others did in his neighborhood. The clientele of Acton Academy are students that get transported to the Academy. He is concerned that the CUP could be transferred if the home is sold or leased and it could be to a company that isn't even from Elko. If the CUP is approved, this would affect the health, safety and may impact home sales. He asked the City Council to uphold the decision of the planning commission.

Jamille Sirotek, Sewell Drive stated she just moved to the area a few months prior. They didn't want to live near any businesses specifically. They don't want any issues or to have anything happen. She agrees with her neighbors that do not want this academy and she hoped it got denied by the Council.

Mayor Keener asked for people that live in that neighborhood that may be in favor of the Academy to make some comments. There was no response. He moved on to the City's response to Acton's appeal.

Cathy Laughlin, City Planner, wanted to clarify one of the comments that Noah's Ark is zoned commercial. This is inaccurate, it is zoned residential and has a CUP on it with a new owner that transferred the CUP in a public hearing a few years ago. She said her entire staff report was included in the Agenda Packet. She didn't to go over all of the sections of code that they analyze when they receive these applications, but she did want to go over a few of them. Under Section 3-2-3, it states that under conditional uses, certain specified uses designated as conditional uses permitted, may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance hereafter, specified in this chapter, imposed by the Planning Commission or City Council. That is where it gives us the right to add conditions based on their use and their intensity of use and the impact they would have to the neighboring area. Looking at Section 3-2-4, the existing principal permitted house, as a single family residence, it does conform with that section, as well as the development standards listed in 3-2-5. Under our Traffic Access Parking and Loading regulations, it would not meet the requirements for a conditional use. It does meet the requirements for a single family residence but it would be required to meet those requirements as an approved conditional use permit. Therefore, they had several recommended conditions listed in the report that would address that parking and access. There were eight different findings that were listed in the staff report, all of which were in support. Those findings were leading to an approval recommendation, but a conditional approval. They had eleven conditions in the staff report. They felt they were addressing the concerns that were brought up by the public prior to the hearing, as well as the evaluation of all staff to include fire,



building, community development, engineering and planning. She went over the background of how this came about. I was contacted on a complaint form on May 26, 2020 and I was provided a letter Ms. Heguy provided to neighbors about Acton. I reached out to Ms. Heguy on this date. We determined it required a business license. We reviewed 3-2-18, but it did not meet the criteria for a home occupation permit. We looked at 3-2-2 the definition of a school and NRS 388D.020. We request the applicant and her legal counsel to provide us a legal opinion if they felt it met the definition of a school and they provided a letter it did not. We also contacted Elko County School District and the State Board of education. We determined it is not a school. Knowing they pay a tuition we did agree it is some type of a business transaction. We compared the use and activities to child care center. After some research and inquiries, it was determined that the City Code does not call out the Acton Academy as a conditional use permitted but you have to look at what the use is and how the use is similar to other conditional uses that are listed in our code. We then came to the conclusion that a conditional use permit would be required in order for us to have them receive a business license and allow the inspections for that location just as Noah's Ark does. That is how they came to the conclusion they could recommend a Conditional Use Permit. There were no findings in the staff report that were in denial of the CUP.

Mayor Keener asked Rich Barrows, Attorney, at what point could City Council ask questions.

Rich Barrows answered it would be at their discretion.

Mayor Keener asked if there were comments from any other City staff.

Ms. Laughlin stated that all City staff recommended approval and that is part of the agenda packet, as well.

Mayor Keener asked if the Planning Department underestimated the level of outrage within the immediate neighborhood. Was she surprised at the pushback?

Ms. Laughlin answered she was not surprised because once the complaint came into the Planning Department in May, she received a few phone calls and such right after that. She did expect neighbors to be in opposition. We were simply unaware that Acton Academy has been operating at the Girl Scout House for two years. She wasn't aware of their type of use or their business at all.

Mayor Keener asked, we have this petition that appears to be most of the address in that area, is there anyone that lives in the immediate area that supports this CUP.

Ms. Laughlin answered included in the agenda packet was the meeting minutes from the Planning Commission. There were several people that spoke on behalf of the Acton Academy and in support of Acton Academy. There is also another letter from another adjacent neighbor that she was just concerned with the sidewalk issue and possibly tearing up her landscape if we were to require Acton Academy to sidewalk the entire side of W. Birch. Other than that, she was in support of it. This can be found in exhibit six of the packet.

Councilman Schmidlein asked Ms. Laughlin if it was fair to say that Noah's Ark was established prior to residential homes being built in the area.

Ms. Laughlin said the first Noah's Ark was by Grammar No. 2 in the Tree Streets. This one was Noah's Ark No.2. They both had conditional use permits. The one that was close to Grammar No. 2 has since been converted to a single family residence and is not a Noah's Ark. The other one could have some new construction going in around it but the school was there, the church was there, and there were several things in that vicinity.

Mr. Schmidlein said that was he was getting at was that Noah's Ark was built as the neighborhood was being built. When people were going in and purchasing homes, Noah's Ark was already established. The current location of where they are trying to assess the Academy, you already have an established neighborhood that is trying to be transferred into an Academy. There are two different comparisons there.

Mayor Keener added you have the Presbyterian Church and you have the Northside Elementary, and then you have the Noah's Ark across the street, it is right in the character of the neighborhood to have an even more public type facility there. You move there, you know what you are getting.

Councilman Stone said he has had three people contact him regarding being against this happening and in regards to letting it move forward. They felt they moved there and that was their area. They perceive that this will make the area busy and create a busy atmosphere, different than what they moved there for. When he was studying the notes there seemed to be some concerns about sidewalks and kids walking and riding their bikes there. He thought he read something about some standing water issues in the alley that would need to be addressed if this was to move forward. He has not had anyone contact him in support of the Academy.

Councilwoman Simons said there were other similar facilities in the area. She could see their view. She didn't know how she would feel if this type of facility opened up next door to her. Overwhelmingly, the input she has received has been against it. The neighbors don't want it so this is a tough decision.

Councilman Stone asked if the neighbors to the left or right are in support of it. He was trying to read all the comments but he had a hard time telling which was which.

Ms. Laughlin answered the neighbor to the southwest is Exhibit No. 6 in the agenda packet. The neighbor to the northeast was one of the letters they received today that Ms. Wooldridge had sent them. They were opposing the Academy.

Councilman Hance said he was mixed both ways. He remembers the Beehive homes on the other street. On the opposite side, we would all like to have our neighborhoods perfect, with the white picket fence, stay there and never have traffic come down your street. Sometimes things have to go forward. If there is no specific reason to deny, we as the Council don't have the latitude. We need to take all things under consideration but if there is no reason to deny the use on their own property, it is tough to just come out and say no. He would be unhappy if he made a request for something and someone came back and said, "we just don't want you and we don't want it there." Just looking at the one page regarding sidewalks; there are plenty of streets in Elko that do not have sidewalks. He lives on 5<sup>th</sup> Street and there sections of 5<sup>th</sup> Street that do not have sidewalks. If there is no traffic, people will walk on the street. People have been walking on the street for over 50 years because there hasn't been sidewalk there since it was built. As long as the property use does not turn itself into a nuisance. There are businesses like this around town. It is very low

profile and unless you know what is going on there, you don't know what it is. He is on the fence both ways but there is also what is in the City Code that we have to uphold as well. We have to balance that.

Mayor Keener asked Rich Barrows if declining property values could be defined as a nuisance.

Mr. Barrows answered if there was evidence of that, yes.

Mayor Keener asked what about if the land use of the CUP is inconsistent with the surrounding properties. The CUP they are seeking, it is a unique use. It is a unique land use that is not currently at play in that neighborhood.

Mr. Barrows answered he thought the Code was written to state that certain uses that are compatible with residential use in a residential district may be allowed if the issues related to them can be met with conditions.

Ms. Laughlin wanted to address the comment regarding the sidewalk. There is sidewalk on the north side of W. Birch Street. NRS does state that you can cross the street without being at an intersection or in a crosswalk as long as you are giving the right-of-way to the traffic, meaning the vehicles, in the street. If students were walking to school, they do have sidewalk options of getting to the property and crossing the street at that location.

Councilman Stone asked what the ages of the students at the academy will be.

Ms. McConnell answered the ages will be from 5 to 12.

Councilman Stone asked if that was a permanent thing or will that be changing.

Ms. McConnell answered the actual ages of the children could vary but the targeted grades are Kindergarten through 6<sup>th</sup> Grade.

Scott Wilkinson, Assistant City Manager, said one of the concerns that came up at the Planning Commission meeting from the residents in the neighborhood was if teenagers started going to the facility or the Academy and they were driving, that would increase traffic. One of his comments to the Planning Commission was if that was a concern by the commission it could also be a condition that could be added to the CUP that there is an age limit.

Mayor Keener wanted to put something out there to Katie McConnell, it is evident to him from correspondence that he has had and the individuals they have heard from this evening, it is overwhelming with one exception, that the neighborhood does not want this Academy there. Given that, do your clients really want to try to move forward with something that is extremely unpopular?

Ms. McConnell said the problem is that the neighborhood has formed an opinion on what they think this is going to be and they continue with that opinion. They feel this will be a school with people coming and going, cars, drug use, all different kinds of things, all day and all night. It won't be like that. Councilman Hance used the words low profile. That is exactly what this is. The truth is, her clients are doing the right thing. They were approached by Ms. Laughlin and have

spent months looking into how to approach this in the current City Code to do this legally. There are a number of Day Cares that operate throughout the City. Right now there are a number of Home Schools, Micro Schools as she calls it, which are already without any conditional use permit or any type of home occupation permit. What Acton Academy has done, is they have gone through the procedure under the City Code to follow exactly as City staff has recommended. The neighbors being upset and saying they don't agree with it is kind of the cart before the horse because we don't even know what this is going to look like on a daily basis. Most of their concerns have been addressed by the conditions that are put in, including the parking, including the hours of operation, the days of operation, etc. This all started because Angie wanted to be a good neighbor and she went door to door to her neighbors and told them what she wanted to do. That was how this whole thing started. She believes that Acton wants to be a good neighbor and they will be a good neighbor if this is approved in conformance with the City Code. The problem is that basically with a lot of complaints with no legal basis for the complaints and compliance under the City Code. It is generalized complaints that this will lower property values. You can't pick your neighbors with the uncertainty of who buys the property year after year. We were trying to do the right thing by presenting it and tell City Council and Planning Commission what the plan is with the property and move forward with that. It feels like the neighbors are trying to bully this property owner out of what she is legally entitled to do with her property. The question that they had for Mr. Barrows was about the youth. This is a permissible use with a conditional use permit for this type of code. The City Code already addresses that this can be allowed in a residential neighborhood and in that zoning district. Her clients have this property. The reason they have this property is because they looked at other properties but there wasn't any outdoor space for the children. All the places that are zoned commercial are warehouses or office buildings that do not have the outdoor space. This property was in the family and it seemed like the best option for what they were trying to do. The neighbors not being aware of what this will actually look like when it plays out, that is not enough to bully her clients out of continuing with the application for a conditional use permit and the compliance with if approved under the code. There are a lot of opinions and emotions from the neighbor side but there is no legal basis to deny it. There are no findings that state that it doesn't conform or won't conform. As far as the neighbors are concerned, the specific conditions can be put in if approved and more conditions can be put in order to address issues.

Mayor Keener asked if there was no basis for the neighbor's concerns, you have had a month and a half now since the Planning Commission denial, what have you done for outreach in the neighborhood to change people's hearts and minds.

Ms. McConnell answered that Angie has reached out to some neighbors that didn't appear today and who didn't send letters in and who did appear at the original meeting to explain what Acton was. One neighbor in particular said she had thought it was a full school, all day every day, that cars would be parked there. They will be there three days a week for 10 months a year, from 8:00am to 3:00pm. Angie reached out from the beginning and some of the neighbors that came today and contested this originally said that it didn't sound bad. She went door to door and approached them all preemptively to try to be a good neighbor. She was attacked at that meeting. It hurt her business moral. Her morals were attacked and her values because she tried to follow procedure in City Code. When I say there is no basis, I say there is no legal basis. We aren't asking for a rezone or a commercial business in a residential neighborhood. We are asking for the approval of this Conditional Use Permit that is already allowed in the code. If it lapses for over a year then the approved use runs out. It just can't go on for forever. She has to be operating it that

way and if anyone else wants to operate it as a day care, it would have to go back to Planning Commission to be approved. This is very specific to that use with the conditions.

Mayor Keener asked if her clients have considered the option of leasing the home out and using the revenue from that to pay for a commercial property. You mentioned they looked around and the commercial buildings were lacking yard space. He was sure there is something out there that was made, as there are properties out in Elko.

Ms. McConnell said that wasn't an option. This is a home that has been in the family for a very long time. As many of us know, renters can destroy property. The intent was to keep the home and use within the family. You can see that this would be a wonderful place for Angie and what she does. She understood the question but she didn't think that was the issue. The issue is whether or not this is allowable under the code.

Mayor Keener said just from an equity standpoint, Gladys Burns built that house and enjoyed 60 years of tranquility on that street. It will change the character of the neighborhood with the increased activity in the area. There is no getting around that the traffic is going to increase and to some neighbors it is going to be burdensome.

Ms. McConnell wasn't sure what to say to that. We know there will be people picking up and dropping off. The duty of City staff is to minimize those items. A number of these kids, there are 24 kids, it is mostly multiple children's families. The actual number of families and cars is probably half that. Most of the families have two kids, or three kids. There is probably 10 families. They were doing this at the Girl Scout house for two years and nobody knew they were there.

Councilwoman Simons asked Mr. Barrows, what kind of finding would we have to... We are bound to overturn the decision unless we find some kind of ruling. Can we just say the neighborhood doesn't like it, or this is a miserable spot for this? What are we looking for here?

Mr. Barrows answered the Council has to have findings which support the decision of the Council, whether that is denial or approval, and those findings have to be part of the evidence.

Councilman Schmidlein said at the end of the day, you are knowing what you are purchasing when you have an established neighborhood. For the past 7 years we have had different hearings in regards to people wanting to come in and build apartment complexes, change to different zonings and everything else. Basically, we had a rule of thumb, if you want to stop something from being built in your backyard, you need to purchase adjacent property. The adjacent property, as Ms. McConnell summed it up, this is a home. Everybody in that neighborhood realize they were purchasing homes at the time they were purchasing homes. He understood there were several residents up there that have been established for 40, 50 or 60 years, and many of them are still up there. At the same time it's like you are trying to take a square peg and pound it in a round hole. He was all in favor of an Academy being established. Education is very, very important. He felt this is being put... It was also mention of people in the neighborhood bullying. They were bullying not to allow this but at the same time, an Academy is trying to bully all the neighbors in the neighborhood, which some are for but a majority are against. He was having a hard time getting off of this situation. He was trying to be very fair on how he looks at this. He and his wife had this conversation last night. She said it was great with all the COVID going on and everything else, that somebody is coming forward and being willing to try to establish an Academy. He felt

it was trying to be pushed into a wrong location. That was his opinion and everybody has their own. It is a very unique situation that is taking place here. He has been contacted a few minutes ago by text that one of the homeowners that only lives two houses down, has not been contacted by Angie of any sort. They are also listening online. Another person texted him a few minutes ago, saying they have not been contacted either and they live on the corner of Sewell Drive. These homes are within a couple hundred feet of what's trying to be established. He was trying to understand how many homeowners were actually contacted in the entire neighborhood.

Ms. Laughlin said her Department, based on the NRS, sends out per the requirements for our legal notifications. If you go to the Agenda Packet right after Exhibit 7, it is on page 243, there is a page and a half of 38 notifications that went out for this Conditional Use Permit to the adjacent neighbors.

Mayor Keener thought Councilman Schmidlein was talking about them not being contacted by the applicant. Is that right?

Councilman Schmidlein answered absolutely correct. Ms. McConnell said Angie went door to door to the neighbors in the neighborhood. He knows of two people that are within 200 feet of that house that had just texted him that were never contacted by Angie going door to door on how they were trying to promote this Academy.

Councilwoman Simons asked Councilman Schmidlein what his findings were. She was onboard with this being a bad idea but wondered what were the findings and the reasons he would state.

Councilman Schmidlein said he would go back to having an established neighborhood that were homes when everybody was purchasing homes. There are no vacant lots in the vicinity of where they are trying to establish the Academy. He wasn't sure if that was a finding or not. Is there enough evidence to come back and say it is going to contribute to a devaluation? He can't say that one way or another.

Melissa Duke, 1011 Dotta Drive, Elko, asked if she could interrupt and make a public comment. She said they fall between the cracks on all of this because they just purchased their house. Moving into the neighborhood, they had no idea any of this was going on. As soon as they moved in, they got flooded with the residents that live here. This neighborhood is established and old. These people were going to them to be a voice for the neighborhood. She was not against the school doing what they do. There are some people that may not be very happy with her right now because their children go there and she is opposed to it. They know these people and they understand why they want their children to go to this facility, yet they don't want the traffic or the extra construction going on. She lives on the end of the street where the sidewalk ends. Her kids are back and forth on a blind corner. She didn't feel it was safe to have children crossing the street there because it is a blind corner and people cut it off all the time. She worries what will happen to property values with this in the neighborhood. Her family chose to move there without knowing anything of what was going on. There may not be findings to be a reason this cannot come here because of X, Y and Z but this is also emotional for everyone there. She didn't think this should go through.

Mayor Keener thanked Ms. Duke for her comments. It was interesting to hear her perspective of being just moved in and she wasn't noticed because she was in the between stages of home ownership.

Ms. McConnell said she was confused as to where they were at in the procedure of the appeal hearing.

Mayor Keener went over the appeal hearing procedures again and said we've had some comments and it was Acton's turn to rebut the evidence or arguments.

Ms. McConnell said what she would like to move on for the rebuttal. If Council could recall, the reason they were hearing this appeal was because the denial from the Planning Commission was without any findings. They just said they deny this. We have the opportunity to appeal because their denial did not comply with Elko City Code. What they have heard for the last hour and a half is basically a number of residents saying they don't want this in their neighborhood. Most recently, Ms. Duke who operates a salon on a conditional use permit in the tree streets. Conditional use permits are permissible within certain residential neighborhoods. She drew the Council's attention to the City Code 3-2-18, which talks about conditional use permits. It says specifically, certain uses of land within certain zoning districts, *shall* be permitted as principal uses only upon issuance of a conditional use permit. When we talk about conditional use permits, it states that it is the express intent of this chapter that any use for which a conditional use permit is required shall be permitted as a principal use in a particular zoning district provided that all special conditions and requirements of this chapter are met. Therefore, the action of the Planning Commission shall be one of recommending approval or denial as to whether the specific conditions have been or will be met. The condition may consider not only the nature of the use of the special conditions but also the proposed location of parking and other facilities within the site, the amount of traffic likely to be generated and how it will be accommodated, and the influence that such factors are likely to exert on adjoining properties. The Planning Commission may make such suggestions it considers desirable and may provide guidance to the applicant in his preparation of application, plans, and date in such a manner as to satisfy the intent of this section. That is what Angie has done here. She has taken into consideration the concerns that have been expressed. The generalized consensus of the neighborhood is that they don't want it here. But she does not see a legal basis that the neighbors don't want it here. The factors of the CUP and the consideration of parking, hours, age limit, and all of the conditions to be put on that, addresses all of the concerns that have been brought forward. There is no evidence that has been presented tonight that shows that property values will decline because of a conditional use permit. Specifically, one of the biggest issues that she keeps seeing brought up is changing the zoning. We are not changing the zoning. We are asking for the City Council to approve a permissible use pursuant to a conditional use permit within this district. When you buy in an R zoned neighborhood, and research the neighborhood, you can find the conditional uses that there are uses that are allowed in that neighborhood. Those are uses that all may be allowed by City Council or the Planning Commission at some point. This is not changing zoning. We are requesting the permissible use that is already authorized as within the Code be approved pursuant to conditions. She understands that there is a lot of public opinion against this because they think it is going to devalue the property, but there is no evidence that it will devalue the property. There is push back from the neighbors. Does it fall within the code or are there findings to support why this does not fall within the code. The applicant can come back and reapply to try to meet the conditions upon which it was denied. In this case, because the neighbors don't want it, she doesn't see how that can be a condition to not allow this conditional use in this situation. She said that Angie went door to door and she did go to the closest neighbors and talked to them and gave them pamphlets. She is not operating a school. She is not requesting that 50-100 kids come into home each day. They are

limited as to how many kids could ever be there based on parking spaces, fire code and square footage. The 24 that has been brought up is the most pursuant to the number allowed under occupancy. She understood that Council has concerns, and Councilman Schmidlein has texts from somebody which we don't even know who it is. They didn't call in or send a letter and we can't really rebut because it is being presented as evidence but we don't even know who has informed you. This use is supported by City Staff and recommended by City Staff. We recommend that Council approve the CUP pursuant to the specific findings and conditions that staff has recommended, as well as any conditions Council wants to put in they feel addresses the concerns of the neighbors. That the CUP be approved with those specific conditions.

Mayor Keener asked if he would take that as her rebuttal statement.

Ms. McConnell looked at the procedures and said she made her rebuttal and City has the closing argument.

Mayor Keener then stated the City will make closing argument to the Council.

Ms. Laughlin said her job is to go through the City Code. It is not to put her personal opinion out there of if she likes this idea or don't like this idea. It does follow City Code. Our City Code actually envisions this type of use within the R Zone District or else we wouldn't allow it as a conditional use permit. That is where she is doing her job and simply going through Elko City Code. She agrees with the applicant and doesn't think they are going to be a burden to the neighborhood or have a large impact on the neighborhood because we have addressed a lot of that with conditions. As Ms. McConnell stated, they have worked out of the Girl Scout House for two years and we didn't even know they were operating there. As a neighbor here at City Hall, if they were a disruptive use, we would have certainly known about it working out of the Girl Scout House. Her findings are listed in her staff report, as well as, the conditions.

Mayor Keener asked if there was an option on the table to do a CUP with a 12-month trial period. In other words, the applicant comes back 12 months after the fact and then we re-hear the item. It might very well be everything they say it is and then the neighborhood would support having it renewed at that point.

Ms. Laughlin answered a CUP does run with the land but it can be revoked. She was bringing up that section of code, 3-2-18. It does state that it can be revoked at any time by the City. It shall be reviewed from time to time by City personnel. Conditional use permits may be formally reviewed by the Planning Commission. In the event that any or all of the conditions of the permit or this chapter are not adhered to, the conditional use permit will be subject to revocation. That sums it up that you can revoke it.

Mr. Wilkinson stated unless our legal counsel states differently, the City Council can add a condition that it is reviewed after a certain timeframe. Because they do run with the land, he was not sure that you could just limit it to just 12 months to start and then have another hearing or something like that. Be believed Council could specifically require a review by the Planning Commission after a certain timeframe. At that time, if there are issues, the City could revoke that permit.



Mayor Keener noted that they have heard from Planning and the Assistant City Manager. He asked Mr. Calder if he had any comments on this item.

Curtis Calder, City Manager, said he did not have anything additional.

Mayor Keener said because Acton has the burden of proof on appeal, Acton shall then be given the opportunity to make closing argument to the Council.

Ms. McConnell said she thought they gave their closing argument before. She would just reiterate that they agree with City staff that this is a permissible use within the City Code and as long as all of the conditions are met that are imposed upon the conditional use permit that this is something that is allowed within this specific type of zoning district and that the conditional use permit with the findings and conditions as recommended by staff and any conditions that Council may impose, that it be approved and the decision of the Planning Commission be reversed.

Mayor Keener read, Acton, neighbors, members of the public and city are entitled to be represented by Council, present testimony and argument on all issues raised on appeal. Is there any public that would like to weigh in one last time?

Melissa Duke said she wanted it on the record that Ms. McConnell stating that she runs a business out of a conditional use permit is absolutely true. That is because she applied for a brand new conditional permit for her residence and it was denied. She had to go find one that was already established. This difference is that was already established and this one is not.

Robert Loranger said he heard something from the Planning Department that some type of correspondence was sent out to the neighbors concerning this permit application before the meeting. Did he hear that correctly? He did not receive anything. More importantly, one of the things in the introduction was that Angie Heguy came to his house and they talked. He was concerned that in her letter she stated that in September 2020 we will be at housing our program at the Burns house. It didn't state that they would really like to do this. He mentioned it in the Planning Commission meeting that any kind of business like this really needs to reach out beyond an introduction or even a rebuttal. You have to be seeking buy-in from the critical stakeholders which are the neighbors. That's how you get people on your side. Unfortunately, that did not happen. He has been researching Acton Academies in the nation. A lot of them operate on a 5-day a week schedule. He didn't know if this one would expand to a 5-day schedule. Only they can say if that fits into their business plan model. If things move to a 5-day schedule, you are looking at increased traffic, pedestrian traffic congestion even more. What has not been addressed is that it's not just traffic, it's UPS, FedEx, United Postal Service and Elko Sanitation. All of these businesses and government agencies utilize this traffic pattern to service the people that live here. There is a tremendous amount of risk that he felt was not being fully addressed. He would really hope that people really consider a bit beyond just the legal code and look at the inherent risk that doesn't seem to be getting the proper attention. That concluded his comments.

Ms. Wooldridge stated there was someone on the phone.

The caller said on the County website it says that Noah's Ark is zoned commercial.

Ms. Laughlin said that is not correct. She was probably looking at the land use in the County website. The land use is completely different than the zoning. The zoning is single family residential.

The caller noted that they were told that a pedestrian has to give the right-of-way to a vehicle when crossing a street. She always understood that the pedestrian had the right-of-way. If a kid were to be hit by a vehicle, it would be the child's fault and not the driver?

Ms. Laughlin explained that in that section of the NRS, if there is not a marked crosswalk, then a pedestrian can cross at a 90 degree angle across the street but it has to be giving the right-of-way to the vehicle.

The caller clarified that the vehicle would not be at fault if there were to be an altercation and the pedestrian was hit in that situation.

Mr. Wilkinson said that would be determined by a Police investigation.

Liza Baumann, 975 Dotta Drive, said there had been a question earlier about who might be in favor or opposed and whatnot. On that side of the street, all of the neighbors on the right and on the other side are opposed to it, as well as, some of the neighbors behind it because their yards back up to the back of this where they will be outside enjoying their outside stuff. She has been operating out of the Girl Scout House for two years now. What license has she been operating under until now?

Ms. Laughlin answered that she has applied for a City of Elko Business License. She does have a state license.

Ms. Baumann said she has been in business for two years. Has she had a license for those two years?

Ms. Laughlin answered no she has not. Our Code states that even though we waive the fee for non-profit organizations, they are still required a business license. There are several non-profit organizations, such as churches, that are unaware of that as well.

Ms. Baumann asked if they would be required to have a state license.

Ms. Laughlin answered she does and you can go onto the State Secretary of State website and search for that.

Ms. Baumann asked what name it was under. She couldn't find it.

Ms. Laughlin answered it is under the Acton Academy of the Rubies.

Ms. Baumann said there were a lot of points made earlier about how she is going about this legally and that we should all appreciate that, but realistically, she hasn't been for two years. She just wanted to make that point.

Mayor Keener read from the list of instructions. He stated the Council shall consider the recommendations and findings of the Planning Commission as shown by the official record of the CUP application. He stated thank you very much Planning Commission for not providing any findings which makes the task more difficult for this Board, thus Mr. Barrows DE Novo designation. Moving on to number 11: As a general rule, the Council may not consider evidence or other matters not raised at the Planning Commission level. However, the Council may do so after determining that such additional evidence will be helpful to a clear understanding of the issues on appeal. 12. The rules of evidence shall not apply. 13. The Council Presiding Officer may limit testimony or other proffered evidence that is duplicative, unnecessarily argumentative or not reasonably related to the matter being appealed 14. The Presiding Officer may terminate the hearing upon finding that sufficient testimony, documents and arguments have been presented to enable the Council to fully deliberate and decide the appeal; provided, the Presiding Officer shall first request from Acton a summary of all remaining matters it desires to present at the hearing. Mayor Keener asked Ms. McConnell if she has anything else. She stated she would like to get back on track. They have made their closing argument and stated their position. To rebut from the most recent neighbors comment, a lot of this issues were discussed at the Planning Commission. The staff already said three days a week, not five. She reiterated this is a permissible use and would like the CUP approved. Mayor Keener stated 15. At the conclusion of the hearing, the Council shall make a final decision that is consistent with the requirements of the Elko City Code to affirm, modify or reverse the decision of the Planning Commission. This is where we are at right now and we need a motion with some findings. As everyone contemplates that he stated 16: In reviewing a decision on an appeal, the Council must be guided by the statement of purpose underlying the regulation of the improvement of land expressed in NRS 278.020: a. For the purpose of promoting health, safety, morals, or the general welfare of the community, the governing bodies of Nevada cities and counties are authorized and empowered to regulate and restrict the improvement of land and to control the location and soundness of structures; b. Any such regulation, restriction and control must take into account: The potential impairment of natural resources and the total population which the available natural resources will support without unreasonable impairment; and the availability of and need for affordable housing in the community, including affordable housing that is accessible to persons with disabilities. Mayor Keener told Mr. Barrows he fails to see how this will effect what we are doing here tonight. Mr. Barrows agreed and said it is stated because NRS requires a CUP considers these factors and these were not involved in this appeal. Mayor Keener called again for a motion with findings. He asked if the Board has any questions of Mr. Barrows. Councilwoman Simons asked if a legitimate finding could attach to the health, safety, general morals and welfare of the neighborhood. Mr. Barrows stated he would think there would need to be something specific related to health, general morals or welfare. Mayor Keener stated Mr. Loranger brought up the fact of more people and more traffic, more delivery vehicles etc. if this could be construed to be some kind of harm to the character or safety of the neighborhood. He is having a difficult time finding a justification that is safety based. Councilwoman Simons agreed and stated this is a very poor decision to put this business at this location with the blind corner. However, she isn't sure this is a finding that supports the Planning Commission's decision. Councilman Stone stated he envisions a Sysco Diesel truck going down the road to unload, commercial garbage truck, and the safety concern of the blind corner. He loves the idea of the Academy but the location is poor. Mayor Keener stated it is a great concept and great program, but it is a square peg round hole situation. He asked Mr. Wilkinson to expand on the blind corner. Scott Wilkinson, Assistant City Manager stated that when staff evaluated the location they believed that with the speed limit in the neighborhood the safety issues were addressed with the conditions. It is a difficult corner so some of the things the

Council has mentioned do present difficulties. He is not sure if there are any conditions that staff could recommend that could go any further than what has already been considered. Staff took into account all of the issues brought up but there is some uncertainty. Mayor Keener asked if anybody else had a comment. He stated in the absence of having any findings we are looking at a unique situation and asked if it is appropriate to table this until we have some findings. Mr. Barrows stated one alternative is to take action and make a decision and then follow up after the meeting with findings that the Council can adopt at the next meeting. Ms. McConnell stated the appeal statute states the Council shall render a decision within 60 calendar days of receiving the appeal which was on August 13, 2020. Mayor Keener stated there are still several weeks and he does not see this as an issue. The situation is just so unique and an unforeseen scenario the neighborhood did not expect they would have to deal with. He again called for a motion.

**\*\* Councilman Hance made a motion and Councilwoman Simons seconded the motion to approve the CUP as presented in the staff report and its recommendations absent any findings to deny it.**

Mayor Keener clarified you are moving for approval of the CUP. Councilman Hance stated that is correct because we have no findings in City Code or NRS that we can say no to other than our emotions or feelings. We either follow the Code and NRS or we don't. You are not going to see a Sysco truck driving down a City street. Every subdivision we approve up 5<sup>th</sup> street adds traffic to 5<sup>th</sup> street. It takes five minutes to make a left turn on 5<sup>th</sup> street. There comes a point where you say the City is going to grow and be dynamic. This is why we have the City code. For many years it has been haphazard and I give staff kudos for trying to straighten it out and follow code. Something is going to change in neighborhoods one way or another. There is no way to get around the City growing and changing. If it passes muster on the Code and on NRS we can't deny it just because we don't like it. I don't like that my neighbor's house is purple. If I don't like it I open up my wallet and buy his house. Mayor Keener stated all good points.

**The motion failed (2-5 Councilmen Schmidlein, & Stone, Mayor Keener voted against)**

Mayor Keener called for another motion. Councilwoman Simons stated someone on the other side of the issue needs to make a motion. Councilman Stone asked about Mr. Barrow's idea of following it up with the safety issues. Mayor Keener asked something along the lines of affirming the denial with findings that will be submitted by legal counsel to support the denial. Councilman Stone asked what happens if they do not come up with findings. Mr. Barrows stated there could be proposed findings drafted and submitted to the Council and they would have to vote if there is evidence to support these findings or reject them. Councilwoman Simons stated she thinks it's an amazing idea but the location is bad. If you cannot come up with a finding tonight I think we need to approve it. It is disingenuous.

Mr. Barrows proposed two things to consider: 1) the possibility the Council consider the point made the current neighborhood is old and established and everyone that is there now purchased their home with Acton not being in business. This has nothing to do with neighborhood opposition. 2) In Nevada law in the case of the Stratosphere vs. the City of Las Vegas which stated that while general opposition by neighbors alone may not constitute general evidence to support a land use planning decision, a local government may weigh public opinion when making a land use decision. Furthermore, both substantial and specific public opposition may itself constitute substantial evidence to support the local government's decision to deny a land use request.

Councilman Schmidlein stated in a neighborhood that has already been established and the blind corner issue should be a basis for denial. Then the Nevada law with the Stratosphere situation, can this be a basis for denial. Mr. Barrows stated addressing only the Stratosphere case decision, public opposition may constitute substantial evidence to deny if the public opposition is substantial and specific. There is no question it is substantial. The question is if the Council believes it is specific opposition as opposed to general opposition. Councilman Schmidlein feels it is substantial.

Mayor Keener stated he will entertain a motion to uphold the Planning Commission's decision to deny Conditional Use Permit 3-20 filed by Ruby Mountain Acton Academy on behalf of Gladys Burns and the findings being that this is a gentrified established neighborhood and Acton was not there when many recent residents purchased their homes, there is also the issue of the blind corner on West Birch and finally there is substantial public opposition to this CUP that is very specific and overwhelming in the immediate surroundings.

**\*\* Councilman Schmidlein made a motion and Councilwoman Simons seconded it to uphold the Planning Commission's decision to deny Conditional Use Permit 3-20 filed by Ruby Mountain Acton Academy on behalf of Gladys Burns and the findings being that this is a gentrified established neighborhood and Acton was not there when many recent residents purchased their homes, there is also the issue of the blind corner on West Birch and finally there is substantial public opposition to this CUP that is very specific and overwhelming in the immediate surroundings.**

**The motion passed (4-1, Councilman Hance voted against)**

## **VI. REPORTS**

### **A. Mayor and City Council**

*Mayor Keener stated he has a meeting tomorrow with Southwest Gas Government Relations. There is a movement in the State to go all renewable and get rid of gas appliances in all new homes. He also stated kudos to the COVID task force for finally bringing the numbers down and getting Elko out of the red zone. There was a meeting involving elected officials and school district trustees. We have all heard from parents, employers, and kids that they want to be back in school. We need to have an executable plan in place by the end of this distance learning period to get kids in school.*

*Councilman Stone gave a shout out to law enforcement. They use great care and do all they can. Our local police department receives 200 (+) calls a weekend and we really appreciate them.*

*Mayor Keener attended the 9/11 ceremony honoring all law enforcement, first responders and fire. It is great to live in a community that honors the law enforcement.*

### **B. City Manager**

*Curtis Calder stated that during the meeting, we got the new COVID numbers and Elko County has another 12 cases and this is not something we want to hear. We were doing really well so hopefully we will not trend back*

*up. If we stay in the yellow zone we can go back to live meetings and are tentatively planning the next meeting to be live.*

C. Assistant City Manager

D. Utilities Director

*Dale Johnson stated walls are going up at the new shop. Last two days has been steel work. The golf course project is moving along. We were able to find a secondary source for water last week and it has made a difference.*

*Mayor Keener discussed a letter he received complimentary of the golf course work.*

*Councilman Schmidlein has also received positive calls.*

*Mr. Johnson stated it was a team effort with the water crew, fire department, and golf course workers.*

*Councilman Stone asked how the biobot numbers are this week.*

*Mr. Johnson stated the latest report shows we only have five new cases and the concentration is at about 148, 000.*

E. Public Works

*Dennis Strickland stated they have been busy paving. They finished up Dotta Drive and got all of Mr. Ormaza's work done and it looks nice. They have finished the first section of Country Club and it will reopen tomorrow. They will start on Cedar Street tomorrow. Cedar Street is looking great. Ms. Carter and her team did a great job again. We will be within our targeted budget. We are finishing patching. Facilities is working on signal upgrades. We are getting good traffic data and will be making some adjustments. Especially on Spruce and Mountain City Highway.*

*Mayor Keener asked if Country Club Drive's old asphalt is at a different elevation than the new one.*

*Mr. Strickland stated yes but we have a plan to overlay at the end. We need different aggregate and this will solve the issue. It is not a safety hazard at this time. It is smoother than what it was previously.*

F. Airport Manager

*Mayor Keener asked if the parking system is live.*

*Mr. Calder stated as of a week ago it was not. If it is live, it is temporary until we order a new system. We are moving forward with this purchase.*

*Councilman Schmidlein asked about some props at the airport.*

*Mr. Calder stated this is the annual ARC training. A contractor comes here and sets up props so staff do not have to travel.*

G. City Attorney

H. Fire Chief

*Chief Griego stated SLC closed their ARC training facility so we had to send crews to California which is very expensive. We are hoping moving forward with an AIP grant to have a training center in Elko. This could become a revenue maker for the airport.*

I. Police Chief

*Lieutenant Palhegyi wanted to thank the Council for their kind words toward the Police Department.*

J. City Clerk

K. City Planner

*Cathy Laughlin stated no Report.*

*Mayor Keener thanked her for the work on the CUP item stating it was a difficult hearing and stated he understands where Councilman Hance was coming from and it just did not feel right and we may need to look at changing code to accommodate situations like what we dealt with tonight. The Board did a good job deliberating and did the best they could.*

- L. Development Manager
- M. Financial 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. Comments may be made through GoToMeeting.com, or by calling (775) 777-0590, or email comments to: [cityclerk@elkocitynv.gov](mailto:cityclerk@elkocitynv.gov). **ACTION WILL NOT BE TAKEN**

Mayor Keener reminded everyone to register for the Census.

## **ADJOURNMENT**

The meeting was adjourned at 8:23 p.m.

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Mayor Reece Keener

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Kelly Wooldridge, City Clerk

**For 9-22-20 meeting conditional use permit 3-20**

Jamilie Carvajal &lt;jsirotek2001@yahoo.com&gt;

Mon 9/21/2020 1:56 PM

To: City Clerk &lt;cityclerk@elkocitynv.gov&gt;

Good Afternoon,

The purpose of this email is to voice my concern regarding the possibility of a conditional use permit being approved for the Acton Academy to be located at 675 West Birch Street.

I recently purchased the home located at 1010 Dotta Drive. My concerns are similar to those already voiced at the first meeting when the permit was denied. I am worried about increased foot and vehicle traffic, and the danger of a school being located right at an intersection. Also, with the increase of those homeschooling, I am worried about the school growing to a much larger size than the original 24 stated. Is there a clear maximum capacity that will be enforced for how many students attend the school? Please take into consideration the concerns of those that live in the neighborhood and the fact that there are other spaces in Elko where the school could be located and other options that the school has for relocating their school. It is evident from the first meeting, that many of us in the neighborhood do not support the approval of this conditional use permit.

Thank You,  
Jamilie Sirotek  
775-340-1469



## Conditional Use Permit 3-20

Mel Craig <tarkwasa@citlink.net>

Fri 9/18/2020 3:18 PM

To: City Clerk <cityclerk@elkocitynv.gov>

Cc: tarkwasa@citlink.net <tarkwasa@citlink.net>

Our home is located at 1030 Dotta Drive, and we are OPPOSED to the approval of CUP 3-20. We wrote a letter which was handed to you at the Planning Commission meeting on August 4, 2020, and read into the record.

That letter mentioned concerns about setting a precedent for future CUPs, traffic concerns and neighborhood children playing in the street, and the fact that there are suitable buildings for sale in Elko.

Since we will be out of town on September 22, we are sending this email to express a further concern. We are concerned that, since the CPU will be transferable with the property, in the future someone else will probably own that property and may want to operate another, less appropriate business.

Please consider carefully ours and others' objections to the approval of CUP3-20.

Sincerely,

Earl and Mary Craig  
1030 Dotta Drive, Elko

Virus-free. [www.avg.com](http://www.avg.com)

September 20, 2020

Re: 675 W. Birch St

Proposed future location of Ruby Mountain Acton Academy

It has come to our attention that the Elko City Council will be considering the approval of a conditional use permit for the above mentioned 501 C3 Non-profit organization. According to the City Planning Commission meeting that many of the neighbors attended, the academy currently has 24 children enrolled.

The City at this time has not answered the question of how many additional students will be allowed per code. It is our understanding that once a CUP (Conditional Use Permit) has been approved by the city, it stays with the property as long as the business in operation maintains it. If the home is sold to another childcare facility after it has served the academy's purpose, the home may remain a childcare facility as long as the CUP is maintained by the new owner.

We are in support of offering homeschooled children in this town an option for outside socialization and extracurricular activities, but feel that there are many other available locations in town that would be more appropriate for this type of establishment.

We are signing this petition to express as a neighborhood, that we are opposed to this CUP as it will directly affect our current lives, enjoyment, safety and property values.

Allen & Elizabeth Baumann  
975 Dotta Dr.  
775-934-4528

John & Marie Martin  
655 W Birch St  
775 738-5348

Jordan & Melissa Duvall  
1011 Dotta Drive  
775-934-8514

Jason & Wendy Fogden  
625 W Birch St  
775-385-4454

Karen & Jeff Dotta  
1015 Malaga  
775 381-2200

Mike & Lauri Hesbo  
1010 Dotta Drive Elko, NV  
775-934-1917

Jamie's Home  
1064 Dotta Dr STEVE  
775-954-8223  
HAYES

Marrett + Famille Sirotek  
1010 Dotta Drive  
Elko 775-340-1459

Just R7/1-1/2  
1050 Dotta Dr. SAHO  
775-397-6219

[Signature]  
1017 Sewell Dr.  
775-397-2069

Frances Bilbao  
1058 Dotta Dr. Bjo  
Elko - 775 738-5951  
5951

Jack Legtme  
1010 Sewell Dr  
340-9820

Janet Ward  
1082 Dotta Dr  
Elko 738-2865

Gene Nasler  
1070 Sewell Dr  
Elko, NV 89801

Bonnie Carpenter  
1091 Dotta Dr  
Elko, NV 89801  
934-6454  
738-6220

W Schuster Randy Schuster  
1093 Sewell  
Elko NEVADA

[Signature]  
1074 Dotta Dr  
Elko NV 89801 284-6041

Robert LoRanger  
1060 Dotta Dr.  
Elko NV 89801  
275-934-0197

Matt Flan  
1049 Sewell Drive

Matt Gurdahl  
1060 Sewell Dr.

September 22, 2020

Dear Elko City Council Members~

I am writing to you to address my concerns regarding Ruby Mountain Acton Academy's appeal to open their creative arts/childcare center at the intersection of Birch Street and Dotta Drive. A favorable decision on your part would not only be a disservice to the residents of Dotta Drive, Sewell Drive, and Birch Street, but also to the children enrolled in the facility.

This would be a disservice to the residents because we have lived in our homes for 60+ years, taking pride in the ownership of our homes. Many of the residents on the above named streets are widows or widowers, or are families with young children. Opening a school for kids from elementary to high school will encourage increased traffic, which our streets are not designed to accommodate. Young kids with driver's licenses will no doubt feel the need for speed as they head down our streets to their school. This is a recipe for disaster as young kids are playing in the streets, or the elderly are walking on the sidewalks, or on the shoulder of the road. We have never had to worry about speeding vehicles. Will you have full-time police available during the center's hours to patrol the neighborhood and ticket the speeders?

As I drive by the intended address for the creative arts/childcare center, I see absolutely no parking for vehicles, no sidewalks for pedestrians, nor appropriate accommodations for handicapped people. Are the extra vehicles just going to start parking in front of our homes?

The increased traffic also brings a concern for increased drug use and traffic. Once the drug dealers in town realize there are young adults attending school in the neighborhood, it is likely they will canvas the area looking for their next buy or sell.

I also have a concern about the disservice being done to the kids attending the creative arts/childcare center. Are there accredited teachers teaching at all grade levels? If not, where is the instruction and curriculum coming from? This is not a homeschool, so there need to be licensed teachers.

I urge you to table the approval of this facility for good. The residents of the neighborhood were never informed of the intended use of the Burns' family home, you are going to add additional costs to the city to provide the extra patrol of the neighborhood for the safety of the residents and of the children attending the school, and you are setting a precedent for more creative arts/childcare centers to be opened throughout residential neighborhoods in Elko.

Sincerely,

Roseann Carpenter

Concerned Citizen of Elko