

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.S.T., TUESDAY, DECEMBER 5, 2017
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The meeting was called to order at 5:30 p.m. by Aaron Martinez, Chairman of the City of Elko Planning Commission.

ROLL CALL

Present: **Aaron Martinez**
 David Freistroffer
 Jeff Dalling (*arrived at 5:33 p.m.*)
 John Anderson
 Kevin Hodur
 Stefan Beck
 Tera Hooiman

City Staff: **Curtis Calder, City Manager**
 Scott Wilkinson, Assistant City Manager
 Dave Stanton, City Attorney
 Shanell Owen, City Clerk
 Cathy Laughlin, City Planner
 Jeremy Draper, Development Manager
 Ben Reed, Police Chief
 Ty Trouten, Police Department
 John Holmes, Fire Marshal
 Bob Thibault, Civil Engineer
 Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

November 7, 2017 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the minutes from the Meeting on November 7, 2017.**

Moved by Kevin Hodur, seconded by David Freistroffer.

I. NEW BUSINESS

A. PUBLIC HEARING

2. Review, consideration, and possible action on Conditional Use Permit No. 6-17, filed by LYFE Recovery Services, LLC, which would allow for a Halfway House for recovering alcohol and drug abusers within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the east side of Winchester Drive, approximately 420 feet north of Orchard Cove Drive, 1683 Winchester Drive. (APN 001-920-054)

Commissioner Jeff Dalling arrived.

Eric Velasquez, 1665 Winchester Drive, commented that they have the halfway house in their neighborhood now. He thought there were already people living there. The rest of the people in the neighborhood feel that this will drop the value of their homes, and make them harder to sell. He thought this should be put in a better location in the City, which could be better monitored. He thought he was going to have a hard time selling his home, because the halfway house would scare potential buyers away.

Codie Sharp, 1635 Winchester Drive, was concerned that 40% to 60% of rehabilitation drug abusers, or alcoholics, use again within the first month. Her main concern was that she has little kids, and her neighbors do as well. She asked if this would be providing a safe environment for her children to play in the yard. What if somebody relapses, or wanders off, and leaves needles around and her children find them? She understood that this would be a rehabilitation center and people would have already gone through treatment. She believed it should be put in a better monitored area. She was also concerned with how it would affect the marketing for her house.

Jonathon Timmons, 1696 Winchester Drive, said that this halfway house had him concerned for the property value of his house. The Winchester Apartments, down the road, have been known to have drugs for a while, so he didn't find it a good idea to put a halfway house where drugs are easy to be found. He didn't want to be worried about his things when he goes to work. He works hard for his things and had already had them stolen from people that were addicted to drugs before. He doesn't want to have that happen again.

Miguel Cespedes, 1655 Winchester Drive, said he had the same concerns as everyone else. He has one child that is a year old. He had the same concerns about having his kid playing outside and someone relapses, they are driving, and they cause an accident. There are kids in the summer that run up and down the street. He bought the home because he knew it was a nice, safe, quiet area. This will cause problems for him in the future if it depreciates the value of his home. He asked why he had to worry about that now, when he first bought it he thought it was a good neighborhood with new homes where he would have no issues.

Cathy Laughlin, City Planner, wanted to start off with a little background information. The property is zoned R, which is the Single-Family and Multi-Family Residential District. It does allow for this type of development with a Conditional Use Permit. The subject property was developed as a single family residence and it was built to the existing setback requirements. There are no additional areas within the property to accommodate any growth, accessory uses, or off-street parking. The City of Elko issued a building permit in 1999 for the construction of the existing house. It was originally developed as an elderly care facility for 10 or fewer, therefore it did not require a CUP, as that is a principle permitted use within the zoning district. Beehive Homes was the original developer of the property and they owned the property until July 2017. At that time, it was sold to the current owner, who leases the property to LYFE Recovery. The property owner's permission for LYFE Recovery to apply for this Conditional Use Permit was included in the packet. One of staff's largest concerns of this is it does meet all of the applicable Codes and Master Plans, with the exception of 3-2-17. Staff looked at 3-2-17 a couple of different ways. If you look at it as a boarding house, or a rooming house, our current code requires one parking space per sleeping room, or one per bed whichever is greater. They also looked at it as ITE as well, which would require .45 parking spaces per room; that would equate to 4.5 parking spaces that are 9' by 20'. It currently has about 3.5 parking spaces in the front driveway area, none of which are outside the front setback. Our code requires that off-street parking be outside the front setback. But staff looks at this as a legal non-conforming use. If you look at the Code section that talks about legal non-conforming uses, they shall be known as non-conforming uses and may be allowed to continue provided, however, that such non-conforming uses may not be extended, enlarged, or changed to other non-conforming uses except by Conditional Use Permit. As this was approved in 1999, we pulled the original site plan, and it showed one ADA Handicapped Parking Stall with an access isle, and that was approved in 1999 by the City of Elko. Staff felt that this could continue as a legal non-conforming use, but they want to limit the parking to what is provided off-street. Staff doesn't want to create a burden for the adjacent property owners with overflow parking on the street. Other concerns have been brought up through either verbal phone calls to the Planning Department, or communication amongst staff. Some of those concerns are rules of the Halfway House. Staff reached out to Ms. Payne and she provided copies of the rules for the house, which are in front of you. Staff also has concern that the property is currently being used. It is listed on several different venues for rooms for rent. Up to possibly 10 to 15 guests at a time. They are currently unlicensed to be using this facility for any use, so that is a large concern. On one of those websites it states that the host of the home is within 15 minutes away from the home. If that's the case, Ms. Laughlin's question for Ms. Payne on the rules was if they are being monitored by someone who lives within the facility or outside of the facility. How are the rules being enforced and monitored?

Chairman Aaron Martinez said to be clear. He asked if Ms. Laughlin's findings and conclusion in her memo was still consistent.

Ms. Laughlin said the findings were consistent and they do consider the parking as legal non-conforming. Her recommendation was if this was approved tonight, she would recommend the conditions listed in the memo.

Jeremy Draper, Development Manager, said the Development Department concurred with the Planning Department as it was presented, with this particular use. In Mr. Draper's memo under Recommendations, Recommendation Number 5, which would require additional parking, he

asked that to be struck, as this would be a Conditional Use Permit allowing for the continuation of this legal non-conforming use.

Bob Thibault, Civil Engineer, said the Engineering Department had the same concerns about parking.

John Holmes, Fire Marshal, stated that a fire inspection of the facility is mandatory, and keeping on an annual inspection rotation. If they are going to have over 10 occupants, sprinklers will need to be installed into the facility.

Scott Wilkinson, Assistant City Manager, concurred with a possible conditional approval based on what staff has presented. He thought they should hear from the applicant on how the rules are enforced and maintained at the facility, who is in charge at the facility to ensure that the rules are followed, and it would be beneficial to go through the rules with the applicant. There is a Midnight curfew, and he wasn't sure if that was appropriate for a residential setting. Have that type of discussion for the benefit of the public and the concerned residents that have testified tonight. One other concern he had was that he thought there was some information that has come to light that we have rentals occurring for traveling public. The applicant should address that issue with the Planning Commission. Mr. Wilkinson didn't believe that was the intent of the Conditional Use Permit Application.

Stacey Payne, 695 W Arroyo St. Reno, NV 89509, explained that her company runs structured housing, where there is a staff member on site who lives at the property. There are a set of rules and an intake packet that they go over during their admissions procedures to ensure that the resident understands that they are going to be held to the rules. They clearly state in the rules that there are numerous reasons for immediate grounds for discharge. That should there be any breach of the rules then they address them immediately with the onsite staff. They have a hierarchy of management in the Company. Ms. Payne is the owner, she has an Operations Director, Facility Director, and staff at each of her ten properties. She stated that she was really sympathetic to everyone in the community. They have residences in every community in Northern Nevada right now, Carson City, Dayton, Fallon, Elko, Reno, and Sparks. She also operated 15 homes in Las Vegas since 2014. They are not a new to running Halfway Houses. They aren't even Halfway Houses, because halfway houses provide social reintegration, which they do not. They provide structured supervised housing only. Treatment is all done offsite. They have requirements for people to participate in a recovery program, so that they do stay sober and clean, but they also understand that people are going to pick a multitude of treatment modalities. They encourage recovery in all of its forms, and they are there to support and encourage them to continue to do that. As far as drug use or alcohol use. They have a breathalyzer on site and if someone's drug of choice is alcohol, then anytime they return to the property they ask them to blow into the breathalyzer. If they are impaired or intoxicated they are not allowed to remain on the property. They have a preapproved plan with that person and their family as to what they would do at that point. They also do random drug testing. Their staff members do that on a random number generator basis. They use instant tests onsite, so they know the results immediately. What they've done while they tried to get all the paperwork ready for the Conditional Use Permit Application was listed it on *Airbnb*, and they do have residents who have booked with them through *Airbnb*. They are not operating as a life recovery property, so at this time they had someone who was local who would do a check-in for *Airbnb* residents that wanted to stay with them. As soon as the Conditional Use Permit is in place, then she will have a full

time staff member that will move to the property. Since they have had some residents come through Airbnb she comes out and spends two to three days a week. Curfew is 10:30 pm every night, and its 9:00 pm for the first thirty days. They have a pretty extensive business plan and an extensive amount of experience running sober living homes. This property is almost her 40th home. She ran 16 homes in northern California, 15 homes in Southern Nevada, and now the 10 locations in Northern Nevada.

Chairman Martinez asked what the current status of the facility was and who was using it. He also asked how a person would come into contact with her corporation in order to stay in the facility.

Ms. Payne explained that they have a listing on Airbnb, Craig's List, and Facebook Market Place.

Chairman Martinez asked if it was advertised as a nightly room.

Ms. Payne said it was not advertised as a recovery residence. They advertised it as nightly, weekly, or monthly.

Chairman Martinez said he was thrown off a bit by this application, because it was supposed to be a residential usage. He understood that the original facility, as constructed, was to be an elderly care facility. He asked under what portion of the permitted uses within the Code was allowing for the sale of each room individually. He asked if they were achieving the current permitted use today, or if they were already outside those lines.

Ms. Laughlin stated they were outside the lines. A rooming house, or boarding house, is not listed as a principle permitted use in the Residential Zoning District. An elderly care facility of ten or fewer is listed as a principle permitted use. That's how the Beehive Home was allowed to be there without a Conditional Use Permit. Even if you have three or more rooms that you rent, you are still required to have a City of Elko Business License and you are required to pay room tax on the nightly rentals. Currently neither one of those are being done.

Chairman Martinez was curious why this application was in front of the Planning Commission, when they are currently operating out of their permitted usage of that facility now.

Ms. Laughlin explained that Ms. Payne applied for Business license for the Lyfe Recovery Services home, and they denied that Business License because it needed a CUP, which was back in May or June of this last year. Staff provided support to Ms. Payne and told her she needed to have a Conditional Use Permit. That's why it's in front of you now. The business license was for a sober living facility; it wasn't for a rooming house.

Ms. Payne explained that they had a few problems with getting all of the plans that were needed to submit to the Planning Department. Month after month they were being delayed, so they did what they needed to do to generate revenue and listed it on Airbnb. It's not something that it was intended for, but this property is a financial responsibility of hers. It was just a way to make sure some of the rooms were being occupied and generating some revue.

Commissioner David Freistroffer asked Ms. Payne if she was aware of The Elko City Codes on boarding houses, etc.

Ms. Payne said no. In every City that they go into, they go to get a business license and make sure that they are operating correctly. It wasn't her intention to side swipe all of that, she just needed to get some revenue.

Commissioner Stefan Beck asked if this was a designated recovery house.

Ms. Payne said they operate under NRS 449.008. What they have worked with, the Health Care Quality Compliance, Don Sampson down in Las Vegas, is they fall under the threshold for HCQC, because they do not provide reintegration services. They are not a halfway house for released offenders, they aren't technically a halfway house. They operate under the NARR, which is the National Alliance of Recovery Residence. They have listed them as a Level 2 recovery residence, meaning that there is a management structure, set of rules, and those rules are followed by the company. In the NRS 449.008 there is a halfway house, which has reintegration services, they fall under that threshold because they don't provide treatment or counseling on site. They are not required to have HCQC, but they fall under the Fair Housing. They are an ADA population that falls under the Fair Housing Act.

Commissioner Beck said he wanted to know what the admission standards were.

Ms. Payne explained that a recovery house is like a bunch of roommates that want to live in a clean and sober environment, because they are all like-minded in trying to accomplish something. Their organization provides that kind of structure, oversight, and accountability. So it's a little more than a bunch of roommates living together, because they have a set of rules and a company that enforces those rules. People come in at all different stages of recovery. If she talks to someone and feels that they are going to go through a detox, and will have withdrawal symptoms, then this facility is not the appropriate fit for them at that point, because they don't have anyone on staff that would help somebody through that particular period. If someone is willing to try to their change life, willing to try to follow the rules, and they are reaching out to live in an environment like theirs, then they will give them a shot. If it's not working out with that individual, if there are too many interior problems, then they are not going to have them continue to live there. The basic requirement is someone that is really trying to change their life and do it in a safe environment.

Chairman Martinez asked Ms. Payne how she was able to achieve that. He read that people could rent it on a nightly basis.

Ms. Payne explained that it is currently not a life recovery property yet. They are not operating with those rules, because they don't have the approval to do it. The rules and concept is not in that house right now, because they don't have the business license to operate Lyfe Recovery there. She has a variety of people living in the house.

Chairman Martinez said that concerned him, because it was outside of the City Code currently, which is a blatant disregard for how the City of Elko operates and the residents nearby. To come to this meeting and state, publicly, that she was operating illegally was shocking to Mr. Martinez.

He understood it was investment, and understood about generating revenue, but at the sacrifice of residents nearby, at some point you teeter off the ladder of acceptable, in his opinion.

Commissioner Freistroffer said he was struggling to understand how a company, which seems to be rather large, could be ill-informed about Elko's localities, rules on operating any properties. You have acquired a property that you don't know if you're going to get a CUP for. He wanted to understand if her legal department, or anybody, had looked at if this was a feasible place to have this, because the Planning Commission can deny it on many different grounds, and you're obviously putting a big investment into it.

Ms. Payne explained that this was the first time that she had to do something like this. She has business licenses and approvals in all of the other locations, and she's never had to come to a City Planning Meeting and apply for a Conditional Use Permit. When she met with Ms. Laughlin, at first she didn't think she needed a CUP. She went on to explain more and more, to make sure that it was understood exactly what they were going to propose. Ms. Laughlin got back into the Code and in the Code they found that she needed to get a Conditional Use Permit. She has not had to have this experience in the past. What she has done in other counties, is have the Fire Marshal come out and sign off. Some of them don't come to the property, they just know that they are able to operate that. She has the City Engineer and the City Planner come out as well. She just had some out today in the Fallon house, and they had one thing that needed to be changed and then they signed them off. She didn't intend to go outside of any of Elko's rules, laws, or anything else. If this is disapproved, then it will be a business loss. She did a lot of due diligence. She came out here month after month, until May when the property was bought, and she talked to residents in the town. There are no sober living homes in Elko, except for one that is attached to Vitality Center. They looked at what they could bring to Elko as a large organization that has had 17 years of experience.

Commissioner Freistroffer thought it was an admirable business to start in this town, there is a need. He asked Ms. Laughlin if she could comment on what she perceived in the Cities procedures that may have hung this up, or what has caused a delay since June or July. He asked Ms. Payne if she acquired the property in July.

Ms. Payne said they moved in in July.

Ms. Laughlin explained that she had discussed this with Ms. Payne in June, as well as another individual that worked for Lyfe Recovery that's no longer there. When the Business License came in Ms. Laughlin denied it, because it needed a CUP. Staff was basing it off of the definition of Halfway House in Section 3-2-2. If you look at the definition and the application, as well as the services provided listed on her website, staff felt that it truly was a house for recovering alcohol and drug abusers. In the R District it does require a CUP. She gave them the application at that time. Staff could not give Ms. Payne copies of the plans that were submitted in 1999 without confirmation from the architect or design professional that developed the plans. We let her know at that time, part of our application process is the Site Plan and Elevations of the property. Then Ms. Payne came in in August to submit the application for the September Planning Commission Meeting, she was one day late and the application wasn't filled out at that time. We asked her to fill out the application and she missed the September meeting, but we would take it onto the October meeting. Ms. Laughlin did not see her again until three weeks ago. It has not been a delay on behalf of the City of Elko, we have tried to accommodate Ms.

Payne and everything she needed, but for us to sign off on a business license for halfway house on Winchester on this property, it would require a Conditional Use Permit.

Commissioner Freistroffer said he was trying to get to the seriousness of this business, which could be operating this facility in a residential neighborhood. He asked Ms. Laughlin where, in her mind, could they have gotten the idea that they didn't need a permit, then they did need a permit, and it was something that made her take time.

Ms. Laughlin explained at first it was a residential group facility, and they were looking at the definitions under residential group facility, which is a different section in the Residential Code. As time went on we learned more about the business, we said no, it would require a Conditional Use Permit.

Commissioner Freistroffer asked if Ms. Payne was informed of that in July. (Yes)

Commissioner Kevin Hodur asked Ms. Payne when she added Elko to her website.

Ms. Payne explained that they uploaded Elko and her Webmaster didn't put the three properties as "coming soon". When it was brought to their attention of it being live on their website they changed it to "coming soon".

Commissioner Hodur pointed out that he didn't see the "coming soon" designation. He then read the statement from the website.

Ms. Payne said that was her Webmaster.

Commissioner Jeff Dalling asked when they were looking at homes if there were any other homes available other than Winchester.

Ms. Payne explained that she has a man that buys properties for her. When they were invited to Vitality Center to do a presentation she got on a phone call with him on her way home from Elko. He said he got a call from the owner of Beehive, he buys distressed properties or properties that owners want to sell for cash. Both of the properties on Winchester were on the market. He told Ms. Payne that it was perfect for her. She said she couldn't have asked for a better property. They were trying to buy both of them. In the meantime, while they were researching the area the property across the street went into contract as a single family home. She would look for more properties like this, or have them built, because for 10 residents to have their own room, half bath, and a large common area is exactly what they want for people who are going to live there for a year or two. Their goal is not to have people come in and out, their goal is to have them live there for a year or two and truly achieve long lasting sobriety.

Commissioner Dalling said that Ms. Payne lives in Reno, so she won't be there, but the neighbors will be there every day. Their lives and their kids will be affected by this. He asked Ms. Payne what her safety net was for the neighbors and what she had to say to them to make them feel better about this.

Ms. Payne said most of time they do extensive property renovations. Normally they go in and improve the property, but this one was move in ready. The concerns about property value going

down generally isn't the case. The other thing she wanted to say was that not too many neighbors have a phone number they can call 24/7 if they needed to reach someone that's going to do something about whatever is going on. They have an extensive list of good neighbor policies. They never park in front of another person's house, they never have loud music, they have a 10 pm quiet time, and they have someone on site that is going to manage those people. They act immediately, Ms. Payne distributes her cards, she becomes friends with the neighbors, and they don't hide what they are. There is a number that can be called day or night to let her know if something is going on. They try to stay to themselves and to just be a value to the community.

Mr. Wilkinson said Ms. Payne talked about if someone had to be discharged that she had a program set in place with family members. He asked what would happen if that support does not materialize, but you need to discharge someone. Are they just asked to leave, and they're kicked out loose in the neighborhood?

Ms. Payne said they are very cognizant of their neighborhood, and they would never put someone on who is impaired, or intoxicated, in car or out in the neighborhood. If they don't have a family that they would go to, or if there is no one to call, then they take them to the local detox, or to a hotel with a buddy. So, that person will hopefully stop using and come to their senses the next day.

Mr. Wilkinson had one other question. He said they had discussion about Ms. Payne's need to generate revenue. He asked what percent vacancy she had with these type of facilities. Mr. Wilkinson said he would be looking for an assurance that if she has vacancies that they wouldn't be advertised for other uses outside of that. He thought she could get into some explanation to the Board with regard to those issues.

Ms. Payne explained that they were anticipating getting this Conditional Use Permit in place, so they can operate as who they really are. If they are denied, they will, more than likely, shut the house down. It doesn't operate for them; they are not a motel. They're occupancy rates, they stay pretty full. There is a very large population in every City in the Nation of substance abusers. They market to the treatment program discharge coordinators that this is the next step for someone coming out of treatment. They encourage that rather somebody come out of a 30-day program, that they are put in to a recovery residence, where they can continue to be monitored and held accountable.

Mr. Wilkinson asked if they were typically local residents that go to those homes.

Ms. Payne said generally everyone that moves into a house is local.

Commissioner Beck asked Ms. Payne if she were denied, if she would give up and leave Elko, or if she had other options.

Ms. Payne said she hadn't entertained that, because she wouldn't believe that an organization serving an underserved population, with the Americans with Disabilities Act and the Fair Housing Act behind them, that they would not be approved with everything that they have done. With that said, this property is very expensive to operate. Everyone that lives in the house has to pay rent, they are not a free organization. They are not County, State, or federally funded. They don't bill insurance. In order to afford to live there, people have to work and pay rent. It's part of

becoming stabilized. If they were to be denied, they would continue the conversation and see what the Commission would want them to do in order to operate here, because they have put a lot into the property.

Mr. Thibault asked if there was a more appropriate zone, one in which a halfway house is a principle permitted use.

Ms. Laughlin explained that a halfway house is not listed as a principal permitted use in any of the City's Zoning Districts.

Mr. Thibault asked if the Residential District was the only one in which it is listed as a Conditional Use. (Yes) So this is the most appropriate Zone for this type of facility.

Ms. Payne added that they are not a treatment program. People that live with them are residents, they aren't patients. They want to live in a home. They want to live with their families and their families are not letting them live with them, because it's dysfunctional. Putting them into some other warehouse area is dehumanizing what people are trying to do in their home.

Steven Sharp, 1635 Winchester Drive, asked if the residence was going to cause more cops or more conflict in the neighborhood when someone had to be removed. He also asked if this does pass, would you want a halfway house next door.

Desiree Leniger, 1696 Winchester Drive, said her concern was that they had already broken rules with the City to generate revenue. She asked if, for the right price, the members of the house could also break the rules. They are already causing issues with the City, are they going to cause issues with the residents as well.

Ms. Laughlin read into the record the conditions listed in the Staff Report that would be applied if the Commission were to approve this application.

Miguel Cespedes, 1655 Winchester Drive, said they probably had a drug problem in the area. It would be like putting a beer in front of an alcoholic. He said it was a quiet neighborhood. He was concerned with his wife staying home alone at night and not being able to contact her because he's out at the mine. With the Airbnb that is going on they have people parking in front of their homes. He asked why Ms. Payne didn't come talk to them about what she was planning for the house.

Codie Sharp, 1635 Winchester Drive, said there are people using drugs in the neighborhood. There are people smoking weed, they smell it all the time. She asked if it was a neighborhood where you would bring people that are trying not to relapse. She said they already had people parking in their driveways. Every night there is a new car on the street. The people that are living in the house now, come and go whenever they please, they park wherever they want, and they walk up and down the street. They moved into the neighborhood knowing that that was a Beehive Home, that it was an old folk's home. They were very quiet and kept to themselves. Her main concern was that this would come in and cause chaos and ruckus.

Commissioner Dalling asked Mr. Holmes what the number was that they had to add the fire suppression system.

Mr. Holmes stated if they had 10 or more occupants, they would have to add a sprinkler system, because of being a boarding/halfway house.

Commissioner Dalling asked if the house had eleven rooms. (Correct)

Ms. Payne thought there was already a Fire Suppression system in the house.

Mr. Homes added that he hadn't been to the location, but it would be a requirement for the Business License.

Commissioner Dalling asked Chief Reed if he could fill the Commission in on any of his run-ins with this kind of business, and what his thoughts were.

Ben Reed said he could only draw on his experience where he used to work. They had a number of problems in the City Police Department there with Group Homes for juveniles, in particular, but also for this type of operation with alcohol and drug abusers that were in stages of recovery. It's when they struggle, relapse, and don't comply. Some of the houses, and operations were better, and some were much worse. It typically depended on the level of management, how proactive they were, and how accountable they were. That City, at that time, made some efforts, as the years went by and the problems surfaced, to enact some addition regulations, such as a Conditional Use Permit. Chief Reed said he responded to those places, as an officer, a supervisor, and later as management, and dealt with some of the oversight and the problems with the neighbors. Some of them are fairly quiet and some very problematic. In general guidance, either prohibit, deny it, or if you're going to allow it you will want to put significant amount of controls in place, to give the City the handle that is needed.

Commissioner Hodur asked who the permit would be issued to, since the company is leasing the property.

Ms. Laughlin explained that it would be granted to the property owner for Lyfe Recovery Services, LLC, which is the applicant for the use of a halfway house.

Commissioner Hodur asked if the permit still went to the owner(s).

Ms. Laughlin explained that the permit will get recorded to the property, but it can be transferred to a new property owner, if the property were to be sold.

Chairman Martinez commented that Ms. Payne identified her company as having extensive experience in the real estate industry, broadcasting all over Northern Nevada. That is a concern of his, because this item is a basic Planning issue, which is dealt with in every community across the country. Permitted uses versus non-permitted uses in a Residential Zoning District is day one planning stuff. For a company of this size Mr. Martinez thought Ms. Payne would have done her land planning properly, to identify this parcel in its current zoning application. He understood that in the Residential Zoning District it is a CUP type of usage. This facility was brought in as an elderly facility. He also thought the facility was ill equipped for all the things that Ms. Payne was identifying. With eleven rooms this facility should have never been built. The fact that there is not enough off-street, or on-street, parking to achieve that. If you have eleven residents there will

potentially be eleven vehicles, or more. There have been some previous decisions made about this facility that has allowed it here on the Commission's lap today. This facility cannot handle 11 groups of people going through there. They will be parking all across the street and the Commission has been trying to clean up the off-street parking. In his opinion this company was grossly mistaken on this facility, its usage and utilization in this Zoning District is not appropriate. This is not the right place for it. He thought the City was stuck with the facility and they would see future applications of some sort of occupation along the lines of an elderly care facility. Mr. Martinez stated that he was not a fan of this application and the way that it had been operating. He thought it was too uncertain, but there was a path forward. That path would be along the lines of each individual occupying the facility signing a lease. He thought the applicant would want to provide leases beyond 3 months for people that are targeting sobriety.

Commissioner Freistroffer agreed with Mr. Martinez. He stated his issue was that the applicant had shown a severe lack of due diligence on researching the property and its suitability for having a minimum of eleven residents, and have also rented the rooms out against City Code. That made Mr. Freistroffer doubt the seriousness of this business. They weren't in compliance now and Mr. Freistroffer didn't think they would be in compliance with many things having to do with the Conditional Use Permit in the future.

Commissioner Hodur thought this was the type of facility that would be a benefit to the community. He had some concerns however. Where do you put a facility such as this? He was ill at ease overall with how to proceed, because this is a facility that this community needs, however there are issues.

Commissioner Freistroffer added that it is an admirable use. He thought that the way that the Code was structured this seems to be the most appropriate zone for it to be in. Just not with this particular facility, which seems to not be dimensioned for the lot or the space.

Chairman Martinez disagreed with that. He thought it was more of a multifamily, or some sort of a buffer zone. He thought a principle residential zoning district was not appropriate for this type of facility.

Commissioner Hodur said one of the questions for the Commission is, for a structure that is already built within this neighborhood, what are they considering to be an acceptable use.

Chairman Martinez said what it was originally permitted for, or a residential only. Currently under the Code it is allowed to operate under all the permitted uses. This is a non-permitted use.

Commissioner Hodur asked if this was a non-permitted use.

Chairman Martinez clarified that it was a non-principle use for the facility.

Mr. Wilkinson explained that it is allowed under a Conditional Use Permit. The Commission hasn't had a discussion on limitations on occupancy. That might be a discussion you could have with the applicant, it may not fit their model, which addresses some of the concerns. The limitation would be a low number to accommodate the available parking. That may not work for them, and it just may not be an appropriate use regardless.

Ms. Laughlin said if parking was the concern, there is an empty lot behind the facility and a parking lot around the corner, there is a Section in the Code that states for rooming houses, they may provide parking in a parking lot not further than 200 feet from the entrance to the dwelling unit it is intended to serve. If there is an issue with the parking, maybe the applicant could come up with a parking agreement.

Chairman Martinez thought there was conflict there. He thought that under several circumstances they were not allowed to utilize a separate parcel as a parking lot for another location.

Mr. Draper explained for a Commercial use a parking lot is allowed to be on a separate parcel, but it is required to have a Conditional Use Permit.

Mr. Wilkinson added that they would have to control the property that they were parking on.

Commissioner Tera Hooiman said that Ms. Payne was in the business of making and enforcing rules. The City of Elko has rules, laws, and regulations in place that Ms. Payne and her business have broken. Ms. Hooiman said that she couldn't get past that.

*****Motion: Deny Conditional Use Permit No. 6-17.**

Commissioner Freistroffer's findings to support his motion was that this was not a suitable use for the property, and that the business was not in compliance currently.

Moved by David Freistroffer, Seconded by Tera Hooiman.

Vote: *Motion passed (5 – 2 Commissioners Hodur and Beck voted no).

Mr. Wilkinson notified the applicant of her right to appeal and that it was time sensitive.

1. Review, consideration, and possible action on Zoning Ordinance Amendment 3-17, Ordinance No. 825, specifically an amendment to Title 3, Chapter 2 of the Elko City Code entitled Zoning Regulations adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited," and matters related thereto. **FOR POSSIBLE ACTION**

At the October 24, 2017 meeting, City Council took action to initiate an amendment to the City Zoning Ordinance establishing a new Section 3-2-29 of the Elko City Code, and referring the matter to the Planning Commission for further action in accordance with Elko City Code Section 3-2-21.

Ms. Laughlin explained that the State of Nevada passed a law allowing recreational marijuana establishments starting July 1, 2017. As a practical matter the City Code prohibits the City from issuing a business license for a marijuana establishment, whether it is medical or recreational, because the business for which the license is applied for is unlawful under the Federal Controlled Substance Act. In terms of land use, we currently do not have medical or recreational marijuana establishments of any kind listed as principle, conditional, or accessory uses in any of the City's Zoning Districts. The Nevada State Law allows for Municipalities to prohibit both medical and recreational marijuana establishments through zoning ordinances, or other land use restrictions.

Because this is a Zoning Ordinance and involves a land use issue it was referred to the Planning Commission with a recommendation to City Council. The Commission has been provided a new map, which has the locations within the City of Elko which the law prohibits any marijuana establishments. The green shows 1,000 feet surrounding any schools and the yellow shows 300 feet surrounding any social, civic, and activity locations, which includes churches, the Boys and Girls Club, Girls Scout House, etc. In Ms. Laughlin's Memo she has provided information on some questions that have been addressed to the Planning Department and those are on the election results, taxes, and what another community is doing in regards to Tribal Land. Ms. Laughlin then turned the microphone over to Dave Stanton.

Dave Stanton, City Attorney, stated that under NRS Chapters 453 'A', dealing with medical marijuana establishments, and 'D', dealing with recreational marijuana establishments. Both of those statutes contain provisions that key the States approval of establishments, basically any type of business that deals in marijuana processes or sales, which keys the approval to compliance with local Zoning Requirements and Land Use Requirements. As matters now stand communities with zoning authority, such as the City of Elko, are not required to zone for medical marijuana establishments or recreational marijuana establishments. The City does have the power to prohibit the establishments through zoning. The issue of Business Licenses is a separate issue; as a practical matter they are related. One of these establishments cannot operate commercially without a business license. The way the City Code now reads: A Business License cannot be issued to a business that is in violation of Federal Law. We are talking about the Federal Controlled Substances Act. We all know the disparity between State Laws and Federal Laws. It is a collateral issue, it's not a land use issue, and it's not before this board, but Mr. Stanton wanted to bring that up.

Mr. Draper and Mr. Thibault had nothing further.

Mr. Holmes said to keep in mind that there are differences between the growing and the business establishments, so there are regulations, rules, and inspections that need to be compiled. The 2015 International Fire Code is being changed with this subject in matter. If marijuana does get approved there will be changes coming for the Fire Department and far as Fire Codes.

Curtis Calder, City Manager, mentioned that this Ordinance 825 was initiated by the City Council, just so the Planning Commission was aware of what started the process.

Chairman Martinez thought that was a good point of clarification. The City Council identified this initiative, and then it was approved to come to the Planning Commission.

Ty Trouten, Police Department, explained that the legal issue was the most concerning issue, because it does tie up Law Enforcement's side of this. They are sworn to uphold State, Federal, and Local Law. When those laws aren't in accordance with each other it places them in a very precarious position. Until the law is changed on the Federal level that issue will remain. Having been at the DEA headquarters in Quantico, learning from them, they have nothing on the table to readdress the level of this controlled substance. They are going to maintain it as a Schedule 1, because there is a great deal of mixed studies, less than scientific studies, which do not clearly show from marijuana a medical benefit. That would be the caveat that would take it from a no medical use controlled substance down to something with limited medical use, or moderate medical use. He did not foresee a change in that law coming anytime soon. The concern from the

Law Enforcement was with any drugs, prescription or illicit, there are a host of issues that follow quickly on the heels. Some of the issues that were not foreseen as other states have pursued this route and legalized marijuana. Because it is still federally prohibited it interferes with the cash transactions for such a business. Basically, you cannot utilize a bank, they will not accept the cash. You have a high dollar cash business, which makes a prime target for people who wish to commit robberies, armed robberies, home invasions, and so forth. If we have readily available marijuana for all, not just medicinal, you also have the accompanying DUI issues, just like with alcohol establishments. A lot of crimes are related to drugs, obtaining money for, theft, sales, prostitution, etc. For that reason, Law Enforcement is not in favor of it. If we do violate the federal law there is the question, should we be at liability down the road. We are seeing that issue play out long term with the Sanctuary City issue. The other concern they have, they see with alcohol establishments, they end up fielding the complaints with the minors that are trying to buy it. They anticipate a rise in those types of things. Talking with other establishments in the area, within the State of Nevada, about the additional burdens that come with it. There is not anything within the law passed by the state that would provide for funding for increased enforcement, or to combat the problems that occur. There are some problems that were already seen in Clark County and Reno. Some things as simple as traffic control when you have a business with exceedingly long lines and crowds of people. Mr. Trouten wanted to talk about Colorado tracking their marijuana related statistics for the past 5 years since recreational use was allowed in 2013. The data coming out is one direction, negative. Even though it is approved at the State level, 66%, over two-thirds of their jurisdictions, have prohibited both recreational and medical use of marijuana, because of these issues. The right thing to do for the community is to prohibit the existence of marijuana establishments, whether or not Federal or State Law allows such operations is a moot point. We do not need a greater supply of an intoxicating drug readily available in the community to further compound an already significant drug problem that is in Elko. He encourages the Planning Commission's support to prohibit marijuana establishments via a revision to the Zoning Code, as written by the City Attorney.

Commissioner Freistroffer said the Colorado Law differs from the Nevada Law, in that the Colorado Law allows jurisdictions to prohibit the use of marijuana.

Mr. Trouten said as he understood it, the Colorado Law allowed the County Entities to opt out of legalizing marijuana.

Commissioner Freistroffer asked if it was for recreational use, not just sales. (Correct)

Commissioner Beck asked if this was a State's right issue. Did the State decide that marijuana is legal, then the feds say it's not legal, so whoever trumps who? As far as getting a business license, you can't issue a business license if the State says yes, and the feds say no. he asked if was correct in that understanding

Mr. Stanton said generally, yes. He thought a lot people viewed this as a State's rights issue.

Commissioner Beck said he had a question for Mr. Trouten. He asked what would happen if the City had a business license to sell marijuana. Would that potentially get rid of all the underground procedures going on? Would there be a tax revenue? He asked if Mr. Trouten had an opinion on that.

Mr. Trouten explained that he had opinion and it was formed on some information received through National Academy, talking with the DA, and some trends that are being seen across the country. The prices, that the dispensaries are charging, are quite high, much higher than street value. Because there is a great deal of money to be made, what they have seen is that there are criminal elements that are taking over the growing, preparation, and deliverance of the marijuana. They are now making greater money than they were selling it on the street level. It doesn't get rid of the black market as you would hope. What it does is the players get involved on both sides and the black market will continue, because we have juveniles. A lot of the minors and juveniles are using marijuana as well. They are going to get it somewhere, so there is continually that market. Prohibiting a marijuana dispensary or a medical marijuana dispensary in the City of Elko doesn't deprive the residents the ability to obtain medical marijuana, or anything of that nature. For the medical marijuana laws there are allowances for growing, amounts, and number of plants. So, there are still means to obtain marijuana legally and use it within the parameters of the law without running into an issue. This is strictly the issue of a dispensary or a medical dispensary.

Commissioner Beck said you read in the news about all the drug cartels and all the drugs coming across the border. If there was a way to reduce that, he thought that would be everyone's goal. He asked if it would be fair to say that if they legalize marijuana stores throughout the country if it would affect the illegal drug trade.

Mr. Trouten didn't know if there were any accurate projections. It's not like they could lock down the border and no drugs would get in. The drugs are here, whether they are manufactured, grown, or anything else. The people who choose to use marijuana, there are other dispensaries within the state and a multitude of avenues. From their personal standpoint the concern comes down to their oaths, which are to uphold Federal, State, and Local Laws. And now they would have laws that couldn't be reconciled.

Commissioner Hodur asked why they were doing this. If they already couldn't issue a business license, because it is federally against the law, why are they doing this?

Chairman Martinez thought that was a great point and added that he brought that up himself. Because in the past the Commission has always tried to not make policy changes, or be a part of policy changes, that focused on one singular item. They have tried to make it a house keeping policy that they don't target singularity like that, because their policies are supposed to be much broader than that. It's almost as though they have to identify this and treat it similarly in the Code as they do a bar, so they can address where, and where they do not want it. So that when it does come about they will have the foundation work for what the constituents want.

Commissioner Hodur asked if this was in anticipation that it would someday be federally legal that they were going to do this now.

Chairman Martinez thought it was in anticipation of the State Law forcing the City of Elko to act.

Commissioner Hodur said that they already had the federal backup in the Business License Code.

Chairman Martinez pointed out that the Code doesn't identify whether it is permitted or not. He thought they might be getting themselves into some liability by not addressing it.

Mr. Stanton said that there are a lot of questions that are up in the air on all of this right now, particularly at the State level. The issues are complex and are likely to become more complex. What we are talking about here is specifically the issue of land use. Business regulation falls into one category, and land use falls into another category. One of the primary purposes of land use is to enable people to make plans as to how they are going to utilize their property, whether they are going to sell their property or purchase property. A Business Licensing Mechanism operates independent of a Land Use Mechanism. That is in part why when the Legislature wrote these two chapters in the NRS, the issues of land use and licensing were addressed separately. Both of those requirements have to be satisfied independently in order for the State to issue a license to a marijuana establishment, or a medical marijuana establishment. The issue of zoning is complicated because it interrelates with surrounding communities and land uses throughout the rest of Elko County. There are limitations on the number of these establishments that can be placed in one county. We have an Indian Colony located within the political boundaries of the City, which may be subject to a different set of regulations than outside of the boundaries. We are thinking that we really need to address it on all fronts. Mr. Stanton asked what they are going to do in the areas where they have the authority to regulate, both through Land Use Planning and through Business Licensing. He thought it was a legitimate issue to be considered by the Planning Commission. How are we going to deal with this in the Zone Code, so that we know how this ties in with the State Statutes that have been enacted, which specifically refer to Zoning and Land Use?

Commissioner Hodur thought all of it was a grey space.

Commissioner Beck asked what kind of complex situation the Elko Police Department would be in if the City issued a business license to a marijuana dispensary. Would they be arrested and shut down because they are in violation of Federal Law?

Mr. Stanton said he could give some of his opinions on how that might work, but there is no definitive answer to that question. The issue of Federal Law versus State Law versus Local Law is in flux right now. At the Federal level it was Mr. Stanton's understanding that there is not a lot of appetite for enforcing the Federal prohibition against the sale of marijuana, and marijuana establishments, in states where it's been legalized. There are some internal federal memoranda that talk about what criteria they will look at, at the State level in order to make a decision as to whether to enforce or not. These are policy issues, at the federal level, that can be changed at any time. His understanding, generally, is that they have their hands full with plenty of other stuff and they aren't really inclined to do that right now. Could the Federal Government sweep in and decide to enforce the Federal Controlled Substances Act at some point, and shut down every one of the medical or recreational marijuana dispensaries that have been permitted throughout the State? It is a possibility.

Commissioner Hodur asked, if he understood correctly, if such a business license would be issued by the City of Elko for within the City of Elko.

Mr. Stanton explained that if it were legalized at the Federal Level and someone came in and applied for one. It's legal at the Federal level, it's legal at the State level. Were that to happen without some sort of land use restriction? Yes.

Commissioner Hodur said he was troubled overall. He explained that he was troubled by the either or options that they have before them. That it's either do nothing, and have that be open, or do something based on the City Council, and agree with their Zoning Ordinance to make it disappear. He was troubled that those were his options.

Chairman Martinez asked Commissioner Hodur what he proposed.

Commissioner Hodur said he didn't know. If you take the federally illegal element out of this, they have been able to zone all of the other sorts of businesses within the town. It's additionally complicated with the Federal element. He felt that this was a backstop for them, since they already can't issue a business license based on a federally illegal substance. They are backstopping it, and already deciding even if it's federally and state legal they are still not going to have it. His first inclination was to deny this.

Chairman Martinez stated this was a very important item on many fronts. He had been doing research, investigating, and interviews. It has been a very long process. The City Staff has put in a ton of effort into trying to identify all these facets, and not all of them will get identified tonight. Speaking about the colonies that surround the City of Elko. It was his understanding that a certain amount of facilities is allowed within each county. Is that number six, for Elko County?

Mr. Stanton clarified that it was two for Elko County. You want to know whether that counts against the total.

Chairman Martinez said that was correct.

Mr. Stanton said he placed a call to the Attorney General's Office and asked that question. That question is being run up the flag pole right now.

Chairman Martinez said that was an interesting item, because technically that is a sovereign land and it's not within the Elko City or Elko County Limits. He wasn't sure how that would play out, but thought it would be an important item. We have neighbors that could be humoring these in the future. That is a concern for many folks. The fact that the State Law has forced the Planning Commission, and the City of Elko, to act is unfortunate. They are placed in a position of making decisions, when the Code doesn't identify that that is a permitted usage right now. He has made that argument and has heard from other staff members both sides of that argument. He understood both sides of the argument. Technically the Code doesn't allow for it now. So, to act and to further prohibit was an interesting move, which was not something that the Planning Commission generated. One of the other staff members made eloquent point, which was sometime when you're not sure what to do it doesn't mean you have to act, and they can wait and see. Chairman Martinez didn't think the prohibition would be permanent and it can be readdressed through the City Council. He asked if this could be brought up through the Planning Commission to be humored by the City Council.

Mr. Wilkinson said the Planning Commission could initiate a change.

Chairman Martinez said his biggest concern was having a distribution center right next door, but the City of Elko not benefitting from that, but the City of Elko policing it, health services facilitating it, and facilities absorbing it. At what point are we doing ourselves due justice by not allowing it.

Mr. Stanton brought up that West Wendover was actively pursuing a marijuana establishment. There is a moratorium in the County, but West Wendover has separate authority to issue a license.

Chairman Martinez pointed out that West Wendover was located within Elko County limits, so it would be taking one of the two establishments within the County.

Mr. Stanton said that was correct.

Ms. Laughlin said she had an email from Chris Melville, from the City of Wendover, and he states in the email that the Council had not adopted a recreational component to the ordinance, given that the majority wanted to see how the medical impacted the community first.

Commissioner Hooiman asked if that would still fall under one of the two establishments. (Yes)

Mr. Wilkinson stated that he had a question for the City Attorney. If the City doesn't address either a prohibition or allowing these establishments through zoning, and someone approaches the City and says the State Law allows for it, is the City open to litigation, because the City hasn't addressed it.

Mr. Stanton explained that the Code states that it has to be in compliance with Federal Law before we can issue a business license. He thought that was a pretty strong position. The City can be sued for that, but he thought the City's position was strong. The think to consider is that that we are keying our decision on what other governmental authorities may, or may not, do, rather than being proactive and making a decision for ourselves. Congress can change the Federal Controlled Substance Act and just say it's up to the States, and that may happen. The State can change its rules when it comes to how it goes about issuing licenses for these establishments, including changing the number per county, or per jurisdiction. What we are talking about here today is actually making a decision on the part of Elko. What does Elko want to do in terms of Land Use, irrespective of what other governmental entities may, or may not, decide to do in the future?

Mr. Wilkinson clarified that if the City didn't provide for this as some type of use, and some type of zone, we wouldn't be able to issue a license, even if the Federal Law were to change, because it is not an identified use in any Zone District.

Mr. Stanton deferred to Ms. Laughlin whether it would fall under the description of any of the principle uses, or uses that might be permitted with a CUP.

Mr. Wilkinson thought it could be retail sales.

Ms. Laughlin pointed out under Commercial there is sales and service.

Mr. Stanton said there are some pretty broad categories listed under the different uses that this might fit into.

Mr. Wilkinson said with that in mind, if someone approached the City of Elko and wanted a business license, and the federal government were to change, they would be able to say that it was allowed in a Commercial District and they respectfully requested a business license to be issued, if the City didn't have a prohibition on this specific use.

Ms. Laughlin added that it couldn't be in the colored area on the map.

Mr. Stanton said if it falls within a description of a principle permitted use, and it's not otherwise prohibited under Federal or State Law, and someone comes in and wants a license for it, unless it's in the Code we wouldn't be able to deny it.

Mr. Wilkinson explained that the City Council initiated this potential prohibition for consideration, and that was not a unanimous vote. It was four to one. You have a majority of the City Council who is behind initiating this prohibition. So it is before the Planning Commission for a recommendation back to the City Council, one way or another.

Mr. Wilkinson said in actuality with the current law you can grow an amount for personal use.

Chairman Martinez pointed out that when Mr. Stanton started identifying the business license law. That was interesting to Chairman Martinez, because he knew that they were here today to identify the land usage, and that is what the Commission is tasked with, because that is under their responsibilities. Chairman Martinez thought it sounded as if the City was protected from liability or litigation strictly on that standpoint. He asked if that was true, or if he was misunderstanding.

Mr. Stanton read the City Code Provision regarding Business License denials. He stated that the provisions that he read prevent the City Clerk from issuing a business license to a marijuana establishment or a medical marijuana establishment. However, somebody who is really crafty might want to challenge that ordinance, and say that the ordinance violates State Law. There is some litigation risk, because there is a disparity between Federal and State Law. He thought that it was a strongly worded ordinance, but the ordinance could potentially be challenged. Especially in light of the climate we are in right now, there is so much controversy over the scope of the Federal Government's control on this issue.

Chairman Martinez said by issuance of the ordinance, he asked if it was his understanding, that they were going further into a liability, because now someone can come in and contest that the City is going against Federal Law.

Mr. Stanton explained that courts look at regulatory codes differently than they look at land use codes. The courts are very deferential to local governments when it comes to land use decisions. Something like this, Mr. Stanton would feel pretty comfortable with. Although, whenever a land use decision is made, especially something that is controversial like this, there needs to be some rationale for it, and you would want to put that in the record. His experience is regulatory, police,

ordinances like this one, or licensing ordinances, can be challenged more easily than land use ordinances.

Mr. Wilkinson thought they should probably review the options for the Planning Commission, because this will still go back to the City Council one way or another. There will be a hearing in front of the City Council. This is before the Planning Commission for advice and a recommendation back to the City Council. Tonight the options are to approve with a recommendation for approval, a recommendation not to approve, or the Planning Commission could ask to have the item tabled if they need more information. Regardless of where the Planning Commission lands on the issue there will be another hearing before the City Council.

Commissioner Freistroffer asked if they could allow it in certain zones with a CUP process, under certain stipulations.

Mr. Wilkinson thought what would happen in that case, because this is a proposed amendment, you would then have a recommendation to not approve, and in support of that recommendation you could convey your desire to the City Council that they consider allowing that use under a Conditional Use Permit in whatever districts you determined appropriate. The areas on the map are delineated under the NRS, so they would be prohibited there.

Mr. Stanton asked if Commissioner Freistroffer was referring to an overlay district.

Commissioner Freistroffer clarified that he was referring to allowing it in the Commercial and Industrial Districts with a Conditional Use Permit.

Commissioner Dalling asked if the Indian Colony ever made the vote to decide whether or not to allow the marijuana establishment.

Commissioner Hooiman thought they tabled it.

Commissioner Hodur said that he would be comfortable with Mr. Freistroffer's suggestion of allowing it in the Commercial and Industrial Districts, with a Conditional Use Permit. He would also be comfortable with an overlay district. It's the yes or no nature of this that had him concerned, especially when they are backed up by the business license process.

Commissioner Dalling said the County Commissioners had already said no, and City Council is four to one. He asked if it was John Rice that voted against. (Yes)

Mr. Wilkinson believed Mr. Rice's primary concern was on the medical side.

Commissioner Dalling thought it seemed like it's all lined up against it. He didn't know what good it would do to give it its own zoning or trying to do a CUP or an overlay, if the kibosh has been put on it from the top.

Commissioner Freistroffer explained that the Planning Commission can propose what they want and then the City Council can then respond.

Commission Dalling asked what good that would do.

Commissioner Freistroffer said there would be no delay or speeding up, it would just be something different.

Commissioner Hodur said just because there is a line, doesn't mean that they are right.

Commissioner Dalling said he didn't say anyone was right. He was just saying that he didn't know what they were fighting for. And now you want to turn it into a whole new district, an overlay, or a whole new CUP process, that turns it into more work.

Commissioner Hodur said he was fine with just denying. If the City Council wants to ignore the Planning Commission's recommendation, then that's fine. The Planning Commission can come back with a recommendation later, if the atmosphere changes. He didn't see the Planning Commission needing to get in the line, not when the City is already protected.

Mr. Wilkinson thought they would include that as part of the findings for their recommendation. Those type of concerns for the City Council to consider. Mr. Wilkinson knew that Chairman Martinez had some concerns and staff hasn't been able to do a really good job of trying to do some projections on what type of revenues you might get off a facility in the City. There are some unanswered questions.

Chairman Martinez thought that staff had done great job identifying a lot of the concerns and they've answered a lot of questions. He hadn't brought up a lot of those questions. He would be happy to discuss those in this form, the financial aspect and what the benefit would be for the City. Ultimately the City of Elko Planning Commission is looking at it from a Zoning purpose and land usage, but at the same time the Planning Commission sometimes evaluates the impacts financially on a residence through different land zoning policies. The Planning Commission does have a say in taking into account the financial aspect. He stated that staff had already answered all of his questions, and he felt comfortable with all the research he had done.

Ms. Laughlin stated that she had information on Mesquite's 1st Quarter revenues, as well as what Wendover used as their projected revenues, if anyone would like to know.

Commissioner Hooiman said she would.

Ms. Laughlin said that Mesquite's first quarter, just on the dispensary, they received \$12,600 in revenue for medical, and in recreational they received \$77,000. Mesquite charges \$12,500 a quarter license fee, plus 3% gross revenue.

Chairman Martinez asked if any of that was sales tax revenue.

Ms. Laughlin stated that none of that was sale tax revenue. Aaron Baker, from Mesquite, informed Ms. Laughlin that the sales tax they collect all goes to the County.

Chairman Martinez asked if that was an inter-local agreement or if it was a global.

Ms. Laughlin wasn't sure. Mr. Baker just said that they don't get any sales tax revenue from it, this is simply their license fee. Mesquite had projected in their estimates, when they took this

ordinance to their City Council, they estimated \$50,400 in medical in a year and \$308,000 in recreational in a year. West Wendover projected in their medical \$80,000 annually, and that was on the fee structure of 3% of gross sales, and they estimated between \$250,000 and \$300,000 annually for recreation, if they add the recreational component to their ordinance.

Commissioner Dalling asked if \$350,000 would go to the County.

Ms. Laughlin clarified \$250,000 to \$300,000 for the City of Wendover.

Mr. Wilkinson suggested the Commission keep in mind that both those communities are boarder communities. There is that influence there.

Commissioner Beck asked if there were any studies done about where marijuana is legalized if the crime rate goes up or down. Will we be over loading the local Police Department? He thought the dominating variable was finances, but he thought they needed to worry about if this would be making it easier for the drug problem to expand, or would this make it easier for the problem to go away. He knew there was a lot of issues and that they couldn't solve them all tonight. His concern was how it was going to affect the community. He thought it was probably too early for there to be any data on that, but he thought maybe the Police Department might have some data on that.

Chairman Martinez said the Chief had issued quite a bit of information on that.

Ben Reed, Police Chief, stated that the most definitive date he's seen was the Colorado Study, because they had been in the business longer than anyone else. They started studying it their first year, when it went legal, which was 2013. They just issued Volume 5 about a month ago. They track all kinds of data: hospital visits, DUIs, crime data, and all other kinds of data. All of it is trending in the wrong direction towards safety for the community. It appears that they went with an approach in the State that it was up to the local jurisdictions as well. They quote a statistic that 66% of their local jurisdictions have somehow prohibited marijuana dispensaries, either recreational and/or medicinal. They currently, as of June 2017, have 491 retail marijuana stores in the State, compared to 392 Starbucks and 208 McDonalds. About a year ago Chief Reed listened to a lecture by a District Attorney for the Denver area, at the time, he was speaking in Reno. He was speaking to a variety of attendees. He was highly recommending that the voters of Nevada not give a thumbs up to Question No. 2. Question No. 2 did go ahead and pass State wide about a year ago. He didn't believe it passed the voters in Elko, it went down in Elko County. He looked at the Secretary of State's data and it typically passed in Washoe and Clark Counties, with a couple of exceptions. He spoke to a lot of the problems they had from a crime standpoint, but Denver is their major metropolitan area and is much different than Elko. It was all bad news; he spoke of all the foreign countries that are operating cartels out of Colorado. There were five or six different countries that he identified, who sell, process, control, and ship out, which they had never saw before. He also talked about the immigration of people coming there for marijuana from all over the world, Europe, Canada, Mexico, and Asia. They went to live there to acquire product. Chief Reed thought this was a fairly new statistical area Nationwide, because not many people are tracking it. The Federal Government doesn't really track it with a ton of statistics like they do for everything else, because it's prohibited. Chief Reed read some internet crime stories for what is going on in Nevada. There are a lot of them in the Clark County area. There have been around 30 burglaries of marijuana establishments since

January 2016, one armed robbery, one shooting by the police, and a number of other crime problems. He has seen that from where he used to work and talking to other Police Chiefs and Sheriffs in Nevada, as well as Colorado and California, that there is an impact on the Police Department once the establishments are established. He will be placed in a position where he will either have to tell callers calling for service that they aren't coming call the State, or Elko Police Officers will respond. The types of responses that they have seen in other areas are a variety of things, loitering, minors, fights, burglaries, etc. They do get marijuana conflict calls now for people who have personal grows in their homes, or their backyards. Typically, it is the neighbors complaining about the smell, but it is permitted under current law in Nevada for up to six plants, or up to possession of an ounce. There are about 4 in the City that they've gotten calls on, they check to make sure they are in compliance with NRS 453, and then if they are they move on and let the neighbor know.

Commissioner Freistroffer asked if the Police Department checks to see if they have a State Marijuana Card, because it's for personal medical use right.

Chief Reed explained that they are typically looking for the card, which is issued by the State. There are issued Statewide, there are not many around here, but there are several hundred that have been issued. Because it is still prohibited by Federal Law, it was Chief Reed's understanding, Doctors cannot prescribe, but many doctors recommend, or not recommend, but there is no script for it. If Congress was to act and move this through the FDA, like all the other drugs, into a particular schedule and allow a medicinal use for it. In there that would take it away from the law enforcement, mostly, at the individual level. You would put in the hands of doctor and patient. We would still have the black market, trafficking, and cultivation issues, but you wouldn't have the conflict that we have now. This is a very difficult issue. Chief Reed stated that he had a hard time explaining to his officers what their policy is, when they have a Federal set of rules, State schematic, County prohibition, and a current City Resolution moratorium on medicinal facilities, which expires March 2018.

Commissioner Hooiman wanted some clarification on something that Mr. Trouten had said. He said that the dispensaries cannot use banks. Why is that?

Chief Reed explained that most of the businesses deal on a cash basis. They're not doing business with the banks, because the bank's guidance, from their owners and legal staff, is to be cautious of that issue. They don't want to get sideways with the federal regulators in the banking industry, because they are federally insured, they have federal oversight, and federal law. It's very complex.

Mr. Wilkinson added that he attended a short seminar on this issue at League of Cities, and a small community that has the full chain of the product, from grow to dispensary, has a huge problem with the amount of cash that they have to deal with. It is also a huge security concern. It's just waiting for a crime. When you allow for these type of businesses you are setting the stage for a big problem that could arise.

Grett Miller, 1024 Barrington Avenue, pointed out that someone could grow six plants without a medical marijuana license by recreation.

Chief Reed thought Mr. Miller was correct, he thought that was under Question No. 2 that allowed for that. Question No. 2 established a whole new set of crimes on marijuana. He thought it got even more complex when that passed last year.

Mr. Wilkinson asked by extension if individuals are able to cultivate and use marijuana, does the City really needed to allow for dispensaries or grows. It's more of an individual choice at that time and if the City had a prohibition, it would be a City decision on land use, but an individual could still do what they wanted to do.

Chairman Martinez thought that was an interesting point. On the other side of that too is if a distribution center is open then those folks, who were once able to cultivate, are no longer. He asked if that was correct. Once that distribution facility is open within a 25-mile radius there is no cultivation allowed. He said at some point they would be reducing the residents' ability to make that individual decision.

Chief Reed explained within 25 miles of a retail marijuana store personal cultivation is prohibited.

Chairman Martinez said that was one of the most interesting things he read on the law. It was almost like to feed the coffers. 25 miles covers the City of Elko.

Commissioner Dalling asked if it would stop someone from doing it at home.

Chairman Martinez said no, absolutely not. It's more of the cause and effect of each decision.

Commissioner Freistroffer added that another aspect to add to this is to get the money and the revenue generated, it is no longer a small scale business, it would be a very large business. The Nevada Statute is set up so that only large, well endowed, businesses can run any kind of an operation. It's not necessarily something that helps a small business to establish a corner pot store.

Mr. Wilkinson wasn't sure if the Chief would agree with him, but almost all of this is revenue driven. It's almost like the consequences of doing it, other than acquiring revenue, have just been disregarded across the board. The States have looked at it purely as a revenue resource.

Chairman Martinez pointed out that the law is sculpted to where they have the largest benefit of it. If you look at tax distribution, what we have been able to identify so far and the State is who is receiving all of those funds.

Mr. Wilkinson didn't believe that the City Council viewed this as a revenue resource and something that the City should go do to generate revenue for the City of Elko.

Commissioner Dalling said his thoughts on it were, normally he wouldn't care. He rode with Reece Keener in the Centennial Parade and they talked a little bit about it. Mr. Dalling knew he wasn't into it, but he was questioning why. Mr. Keener's thoughts were the crime. Mr. Dalling stated that he was a business owner and he had looked into. He talked with Ms. Laughlin about it and asked her what the boundaries were. He thought whoever got it, it would be like the golden ticket. Mr. Keener had a good point and said that one person benefits, and the rest of the people

get to deal with the fallout. Part of him wanted to go with not allowing it and the other half thought maybe they should allow it. The problem is that it is fully illegal in the County and in the City. So, by doing this are they really hampering anything, or are they doing what is right, or are they leaving the door open for a legal fight. He pointed out that there were dispensaries in Las Vegas and Reno. Would they benefit from allowing one in little Elko? Nevada borders two States, and if they open their own it's not like this is a destination town to come get weed. If the City is getting \$300,000 into the City coffers. He thought \$300,000 was a joke for the City budget.

Chairman Martinez thought Mr. Dalling brought up good points. The City's operating budget is \$19 Million per year. He thought they brought up a lot of good points. There are plenty more to be made. For Mr. Martinez it came down to more access and more usage. He wasn't sure that was in the City's best interest at this time.

*****Motion: Forward a recommendation to City Council to not approve Zoning Ordinance Amendment No. 3-17.**

Commissioner Hodur's findings were that such establishments were already not allowed under the Business License Process and can be handled as the Federal situation changes.

Moved by Kevin Hodur, Seconded by Stefan Beck.

**Motion passed (4 - 3, Commissioners Martinez, Dalling, and Hooiman voted No).*

3. Review, consideration, and possible adoption of Resolution 1-17, containing amendments to the Acknowledgments, Land Use and Transportation components, and the Land Use and Transportation Atlas Maps #5, #6, #8 & #12 of the City of Elko Master Plan, and matters related thereto. **FOR POSSIBLE ACTION**

Planning Commission reviewed and initiated the amendment to the City of Elko Master Plan at its August 1, 2017 and September 7, 2017 meetings.

Ms. Laughlin explained that in front of the Commissioner's was a spreadsheet that was a cross referencing table that highlighted the majority of the amendments that Staff was proposing to the Master Plan. She then went over the proposed changes to the Acknowledgements and the Land Use Document.

Chairman Martinez had a question about the airport for the City Manager's Office. He asked if this was the appropriate time to address the long term plan of the Airport.

Ms. Laughlin explained that the Airport just completed a Master Plan.

Mr. Wilkinson added that the Airport had their own Master Plan.

Chairman Martinez asked if the City Master Plan is referencing the Airport Master Plan, and if so if there was an identification of that long term commercial utilization of the Airport.

Ms. Laughlin explained that it was all included in the new Airport Master Plan, and that was why they added the Airport Master Plan on the Acknowledgements page. She then continued going over the changes to the Land Use Document.

Mr. Wilkinson explained that the reason they removed the development Multi-Family Zoning District was because Multi-Family Districts are already in the Code.

Commissioner Freistroffer asked if they changed the CUP process for Multi-family, to streamline it.

Mr. Wilkinson explained that they allowed mixed use under Commercial with a CUP.

Ms. Laughlin continued going over the proposed changes.

Mr. Wilkinson explained that they changed annexation by petition to other annexation areas. In reality the City has a pretty good handle on the first two classifications with the Development Report, and then everything outside that is speculation and the City doesn't have the water to serve it.

Ms. Laughlin finished going over the proposed changes to the Land Use Document.

Mr. Draper had nothing to add for the Land Use Document.

Mr. Thibault, Mr. Holmes, and Mr. Wilkinson had nothing to add.

Ms. Laughlin went over the proposed changes to the Transportation Document.

Chairman Martinez asked what the level of service was on 5th Street.

Mr. Draper said it was Level of Service B.

Chairman Martinez asked if those were based on total trips.

Mr. Draper explained that they were based on the total trips and the tables listed in the Best Practices. It doesn't take into account any turning movements or anything else.

Chairman Martinez asked if the total trips were evaluated through actual traffic counting means, or if it was through population evaluation.

Mr. Draper explained that they are done by NDOT. They come out yearly and do traffic counts.

Chairman Martinez asked when the last study was done.

Mr. Draper stated that when he updated the table the last published study they had was for 2015. He also added that they included the NDOT identifier for their traffic count, so that way as they review this in the future it is easier to identify exactly what the trending data is.

Ms. Laughlin went over the proposed changes to Atlas #5, #6, #8 & #12

*****Motion: Adopt Resolution 1-17 containing amendments to the Acknowledgements, Land Use and Transportation Components, Land Use and Transportation Atlas Maps #5, #6, #8, and #12 of the City of Elko Master Plan, directing that an attested copy of the forgoing parts, amendments, extensions of, and/or additions to the Elko City Master Plan be certified to the City Council, further directing that an attested copy of this Commission's report on the proposed changes and additions shall have been filed with the City Council and recommending to the City Council to adopt said amendments by resolution.**

Moved by Kevin Hodur, Seconded by Stefan Beck.

**Motion passed unanimously. (7-0)*

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to set regular meeting dates as well as special meeting dates for 2018, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin explained that regular meetings are the first Tuesday of every month. If any of those don't work, we will need to set special meeting dates.

Chairman Martinez said they needed to change the January 2nd meeting.

Commissioner Freistroffer said they would also need to change the July 3rd meeting.

Chairman Martinez asked if they could move the January meeting to the 9th.

Ms. Laughlin stated that there was a City Council meeting that day, so that would not work. She also added that she would prefer to keep it as close to the regular meeting day as possible, because it messes the Planning Department up with application cycles.

Chairman Martinez suggested they change it to January 4th.

Commissioner Hodur suggested they change the July meeting to the 5th.

Chairman Martinez proposed July 17th.

Mr. Wilkinson explained that last time the meetings were delayed for that long it created some issues. He recommended that they didn't go any further than the next week out.

Chairman Martinez proposed Monday, July 9th for the July meeting.

Commissioner Freistroffer said that they would need to change the September meeting because of Labor Day.

Commissioner Hodur suggested they move it to September 6th.

*****Motion: Accept the dates that are the first Tuesdays of each month for next year's meetings, with the exception of instead meeting on January 4th, July 9th, and September 6th.**

Moved by David Freistroffer, Seconded by Tera Hooiman.

**Motion passed unanimously. (7-0)*

II. REPORTS

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
 - 1. Zoning Bulletin
- D. Preliminary agendas for Planning Commission meetings.
- E. Elko County Agendas and Minutes.
- F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.
- G. Staff.

COMMENTS BY THE GENERAL PUBLIC

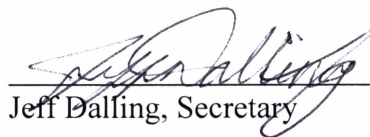
There were no public comments made at this time.

ADJOURNMENT

There being no further business, the meeting was adjourned.



Aaron Martinez, Chairman



Jeff Dalling, Secretary