

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

SS April 12, 2011

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, April 12, 2011.

This meeting was called to order by Mayor Michael J. Franzoia

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

Mayor Present: Michael J. Franzoia

Council Present: Councilman Jay Elquist
Councilman Chris Johnson
Councilman Jim Conner

Council Absent: Councilman John Rice

City Staff Present: Curtis Calder, City Manager
Delmo Andreozzi, Assistant City Manager
Shanell Owen, City Clerk
Don Zumwalt, Police Chief
Alan Kightlinger, Fire Chief
Dawn Stout, Administrative Services Director
Ryan Limberg, Utilities Director
Mike Hecht, Deputy Chief/Fire Marshal
Joshua Carson, Deputy Fire Marshal
Dennis Strickland, Public Works Director
Eric Howes, Parks and Recreation Director
Trent Moyers, Airport Director
Scott Wilkinson, Development Manager
Fritz Sawyer, WRF Superintendent
Ted Schnoor, Building Official
Jeremy Draper, Civil Engineer
Lorraine Martinez, Accounting Supervisor
Linda Buffington, Recording Secretary

PLEDGE OF ALLEGIANCE

**APPROVAL OF MINUTES March 8, 2011
March 22, 2011**

**** A motion was made by Councilman Elquist, seconded by Councilman Johnson to approve the minutes of March 8, 2011 and March 22, 2011 as presented.**

Motion passed unanimously.

READING OF A PROCLAMATION RECOGNIZING ARBOR DAY

I. SPECIAL PRESENTATIONS

- A. Presentation of a retirement plaque for Ms. Karen Walther, former Animal Shelter Manager. **NON-ACTION ITEM**

Upon presentation of the retirement plaque Mayor Franzoia thanked Ms. Walther for her years of service and commended her for all the improvements at the animal shelter.

Ms. Walther noted everyone was responsible for the success of the animal shelter moving forward into something that is extremely unique in the State of Nevada. It was her hope the City Council, Staff and community will continue the support they have given her and the Staff at the animal shelter. Ms. Walther thanked everyone for their support.

- B. Review and possible approval of the Fiscal Year 2011/2012 Tentative Budget, inclusive of all funds, and matters related thereto. **ACTION ITEM**

Administrative Services Director Stout gave an overhead presentation of the Fiscal Year 2011/2012 Tentative Budget; see Exhibit 'A'.

Ms. Stout advised this would be a condensed review of what Council has already seen; the numbers may have changed a bit as we have received our final revenue estimates from the State and what we expect our tax abatements to be.

Under discussion of the General Governmental Funds Councilman Johnson questioned the use of RDA funds to cleanup the downtown corridor during the summer months.

Mayor Franzoia advised this is only tentative; everything can be discussed further at the next meeting.

Councilman Elquist commented it is priority they brought up and believed there should be more discussion on the matter.

Councilman Elquist referred to the Ad Valorem Capital Projects Fund and questioned if there was a plan for the use of those funds.

Administrative Services Director Stout advised there are projects out there; we typically like to use those funds to leverage our money for grant projects.

Assistant City Manager Androzzini advised we have two projects out there that would fall under the enhancement grants through NDOT. At this time we are unsure if those will be funded but they are typically a 5% grant match.

Mayor Franzoia also indicated it would also cover the second phase and completion of the downtown corridor lighting.

Councilman Elquist questioned if it was available for any capital work.

Ms. Stout advised, by State Statute, the money is limited to facilities for the City of Elko.

Councilman Elquist believed there should be a list of priorities or a facilities type of plan.

Ms. Stout advised in addition to facilities it has been used for the downtown corridor lighting project and for the roof on City Hall. Staff is looking at some infrastructure on Ruby Vista; we applied for a CDBG Grant and were unsuccessful. Any grant monies we would get would be reimbursement grants; we have to have the funds available to up front the cost. This is the only fund that we have sufficient funds in to do that type of expenditure.

Councilman Elquist believed one weakness in our budget is the way we fund the maintenance of facilities and capital improvements; we don't seem to take care of them. Trying for grants is great but if you are waiting for a grant for something great and all your facilities are falling down around you then maybe going for the grants isn't the best use of the money.

Mayor Franzoia disagreed. The ongoing maintenance of a facility i.e. the police department, that wasn't design for that use is what drove us into getting a design plan for a new facility; the operational cost of maintaining it is tremendous.

Councilman Elquist then asked; "how are we going to fund it".

Mayor Franzoia advised there are ways. The good thing is we own the property already; it is a matter of priorities that we set.

Ms. Stout reminded everyone that we don't have a fund that has a huge balance in it that has the availability to do the large projects that we need to do. Many of our facilities are aging and need to be replaced; the police department being the best example. City Hall was built back in 1970 and the only thing we've done to it is make the restrooms ADA accessible, add the Break Room and the new roof.

Councilman Elquist commented the General Fund has a lot of money; maybe our priorities need to move toward more of our infrastructure.

With no further questions at this time Ms. Stout continued on and addressed the Enterprise Funds.

Following the presentation Ms. Stout advised Council of the proposed schedule;

- April 30th updated information will be available for taxable sales and other revenues
- May 17th Public Hearing to adopt Final Budget

Mayor Franzoia called for public comment and there was none.

Councilman Elquist stated unless we are optimistic in future years we continue to under-fund our infrastructure considerably. He was unsure if that was the right way to run this enterprise. We need to look at some scenarios looking at other areas and moving dollars into Public Works for street maintenance and some of our infrastructure needs. We have some big ticket items that we are doing nothing about; not to mention maintenance of the streets.

Councilman Elquist believed we need to explore reconfiguring our budget to make it more sustainable to take care of our infrastructure. Public Safety and General Government are areas he thinks need to be looked at. Councilman Elquist appreciated Public Safety but we have other needs we aren't addressing; if we cut 10% from General Government and Public Safety that would be \$1.0 million. That is a tough decision to make but it is a big picture priority thing that may be is a more sustainable model for the future. Councilman Elquist stated he was concerned about our investment in our infrastructure.

Ms. Stout advised although not shown in tonight's presentation; our staffing levels are less than they were fifteen years ago.

Councilman Elquist stated we can't look backwards it doesn't matter; what matters is how we are going to move forward with the dollars we have.

Ms. Stout advised we have a shoestring budget for the current budget year we are in and a shoestring budget going in to next year.

Councilman Elquist noted Staff has said that for the past two years; this might be our new reality. This might not be a shoestring budget; it might be our real budget for the next five to ten years.

Mayor Franzoia disagreed with Councilman Elquist's statement regarding infrastructure. We have a program in place we didn't have in the past related to infrastructure; infrastructure primarily being city streets. There are some maintenance issues that we haven't addressed completely but we have done some major projects in lieu of; which is still infrastructure i.e. 5th Street and Silver Street and in this current fiscal year we will be doing Idaho Street.

Mayor Franzoia advised there is a good program set up to handle the infrastructure; the limitation is the revenues. To discuss it at any length at this point in time; with the Legislature still in session would be a waste of effort.

Councilman Elquist advised it would add value to see what the impact would be by moving things around. Maybe we do have the programs in place and we are funding our facilities and streets responsibly; but at this point he is not convinced of that.

Councilman Elquist strongly believed we need to move toward a sustainable model.

Mayor Franzoia advised sustainability is going to be based on revenues coming in that are sustainable as well; that is what drives government.

Councilman Elquist stated that was his point; if the revenues aren't there then we need to cut services.

**** A motion was made by Councilman Conner, seconded by Councilman Johnson to approve the Tentative Budget as presented.**

Motion passed unanimously.

III. APPROPRIATIONS

- B. Review, consideration, and possible authorization for Staff to solicit bids for the Public Works Department for Plantmix Bituminous Pavement materials to be used for the 2011 Construction Season, and matters related thereto. **ACTION ITEM**

This is an annual bid request for Plantmix Bituminous Pavement materials based upon a unit price per ton amount. The materials are primarily used by the Public Works Department on streets, but the material may also be used by other departments as needed. DWS

Public Works Director Strickland advised this is an annual routine request.

**** A motion was made by Councilman Johnson, seconded by Councilman Elquist authorizing Staff to solicit bids for the Public Works Department for Plantmix Bituminous Pavement materials to be used for the 2011 Construction Season.**

Motion passed unanimously.

- C. Review, consideration, and possible approval to allow Staff to solicit Statement of Qualifications for the 2011 WRF Plant Upgrade Project, and matters related thereto. **ACTION ITEM**

Staff is requesting approval to solicit SOQs for the WRF Plant Expansion Project. The SOQs evaluations and recommendations will be brought back to the Council in July for approval. This would allow Staff to complete the engineering and receive NDEP approval during FY 2011/2012 Budget Year. FPS

WRF Superintendent Sawyer advised this is part of the Tentative Budget previously approved. Staff hopes to get the engineering work done this year and hopefully receive approval from NDEP to build the project next year.

**** A motion was made by Councilman Johnson, seconded by Councilman Elquist authorizing Staff to solicit Statement of Qualifications for the 2011 WRF Plant Upgrade Project.**

Motion passed unanimously.

- D. Review, consideration, and possible approval to re-bid the WRF Biosolids Drying Beds Project, and matters related thereto. **ACTION ITEM**

Council authorized Staff to solicit bids for this item at the August 10, 2010 meeting. At the September 14, 2010 meeting, Council rejected bids and directed Staff to revise the scope of the project and rebid at a later date.

WRF personnel have completed most of the demolition work associated with the project.

This project is part of the approved December 2009 Master Plan and part of the FY 2010/2011 capital request. FPS

WRF Superintendent Sawyer advised Staff was able to complete most of the demolition work due to good weather. Staff estimates that work will reduce the project price by approximately \$100,000.00.

**** A motion was made by Councilman Conner, seconded by Councilman Johnson authorizing Staff to re-bid the WRF Biosolids Drying Beds Project.**

Motion passed unanimously.

- E. Review, consideration, and possible award of the Regional Road Repair Project (Idaho Street & 12th Street) Project, and matters related thereto. **ACTION ITEM**

Bids are to be accepted until 3:00 p.m. on April 8, 2011. City Staff and Summit Engineering will review the bids and provide a bid tabulation at the meeting. DS

Public Works Director Strickland advised bid opening has been extended to April 15th.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to table this item.**

Motion passed unanimously.

- F. Review, consideration, and possible ratification of a Staff decision to apply for a \$250,000 Office of Criminal Justice Assistance Equipment Grant for the purchase of a new SWAT vehicle, and matters related thereto. **ACTION ITEM**

The policy for the City of Elko is to have the Council approve all grant requests prior to the department applying for that grant. However, the grant deadline was on April 9, 2011, three days prior to the regularly scheduled City Council meeting. DZ

Mayor Franzoia requested verification that acceptance of the grant will come back to Council.

Police Chief Zumwalt verified that was correct.

Councilman Elquist advised it was his belief Council wants to review these before applying to better understand the cost of owning. Had Staff looked into that at all?

Chief Zumwalt advised it will require maintenance similar to what we currently have. The maintenance cost will actually be less.

Councilman Elquist questioned our match.

Chief Zumwalt advised there is no match.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to ratify Staff's decision to apply for a \$250,000 Office of Criminal Justice Assistance Equipment Grant for the purchase of a new SWAT vehicle.**

Motion passed unanimously.

- G. Review, consideration, and possible ratification of a Fire Department Staff decision to apply for an Elko County Local Emergency Planning Committee (LEPC) grant, and matters related thereto. **ACTION ITEM**

Elko County LEPC is applying for "United We Stand Planning, Training, Supplies, and Equipment Grant." The City of Elko Fire Department has been assisting in the writing of the grant and will be a recipient of some of the hazardous materials response equipment in the City of Elko. The City of Elko will not be liable for any matching fund for this grant.

Elko County Commissioners approved LEPC to apply for the United We Stand Grant on February 16, 2011. County commissioners had two goals they would like LEPC to work towards: 1) Cross train with the several emergency responding agencies to work towards a Regional Hazmat Team; and 2) Improve the Response capabilities of the current EFD Decontamination Unit. MH

Deputy Fire Chief Hecht advised this is a \$30,000 non-matching grant. Staff put in for a mercury detector, gas odor detectors, and collection berms for the Decontamination Unit. There might be a maintenance cost if the city accepts the mercury detector.

Councilman Elquist questioned whether Staff knew how much the maintenance cost would be.

Mr. Hecht advised it would be semi-annual for the mercury detector and estimated the cost at \$450.00.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to ratify the Fire Department Staff's decision to apply for an Elko County Local Emergency Planning Committee (LEPC) grant.**

IV. NEW BUSINESS

- A. Review and possible approval of a Release of Interest and Confidentiality Agreement between the City of Elko and Union Pacific Railroad, and matters related thereto. **ACTION ITEM**

The City of Elko and Union Pacific Railroad have been investigating the City's possible acquisition of certain Union Pacific Railroad property for many years. Last year, an appraisal was conducted of approximately 93 acres of Union Pacific Railroad property. The total cumulative market value was appraised at \$5,397,000.

Since the property in question is derived from original Central Pacific Railroad land grants, the federal government holds the underlying fee for all rights-of-way. Thus, Union Pacific Railroad cannot pass title to the City of Elko, but will "release" their interest in said right-of-way for 50% of the appraised value, or \$2,698,500.

Acquiring title to the property will require congressional action. The City of Elko has discussed this issue with Congressman Dean Heller's staff and they have indicated a willingness to sponsor the required legislation. A prerequisite to initiating any legislation is completing the Release of Interest and Confidentiality Agreements. Both agreements have received considerable scrutiny from City Staff and the City Attorney's office, as well as Union Pacific Railroad's legal department.

Representatives from Union Pacific Railroad and City Attorney's office will be present to answer any questions the City Council may have. A final draft of the Agreements will be provided prior to the City Council meeting. CC

City Attorney Dave Stanton item advised they are still in the process of negotiating the Release of Interest and Confidentiality Agreement. A revised draft was sent to the attorney for Union Pacific Railroad this morning; there is still some back and forth discussion to work out the remaining issues. Any action at this point would be premature and it was his recommendation to table this item.

Jeff Matter, Property Manager, Union Pacific Railroad was present to answer questions.

Mayor Franzoia informed Mr. Matter the Council had not reviewed the document at this time.

Mr. Matter clarified he received the modified agreement Mr. Stanton had sent to their attorney in Omaha, Nebraska. The attorney emailed the agreement to him and he reviewed it prior to this meeting. Although their attorney had not yet reviewed the entire agreement Mr. Matter advised he did have time to discuss with their attorney some of the revisions put on the agreement by Mr. Stanton. Mr. Matter advised in his review of the agreement and discussions with their attorney; the revisions were basically on par with what had been discussed with Mr. Stanton. Pending any potential legal language issues that may be in there Mr. Matter didn't see any delays that could occur.

Mayor Franzoia advised tabling the item allows a lot of latitude and would give Council time to review the document. Staff can reschedule this to accommodate Union Pacific Railroad.

Mr. Matter advised their participation was to answer any questions in regards to anything related to the property or questions regarding Act of Congress Property. Company representatives in Washington D.C. have been in contact with several keys players involved in producing this legislation and didn't see any obstacles that might be in the way.

Mr. Matter advised if the Council had any questions they would make themselves available for the next meeting date.

Councilman Johnson questioned what other communities have this.

Mr. Matter commented this is a very unique transaction; the only transaction that is vaguely similar would be a project they did in Reno.

Councilman Johnson believed this was driven by Project Lifesaver because the tracks were relocated to the river and the yard was moved to the east end of town.

Mr. Matter verified that was correct. Typically when something like this happens, abandonment is filed; since the actual main line wasn't abandoned, but just relocated, the STB didn't assert their jurisdiction here and take the abandonment under their authority so all the tracks there had to be reclassified as yard tracks. That left us with this property and we didn't know what to do with it.

City Manager Calder referred to the timeline; the goal set forth between Staff and Mr. Matter is they would like to see this transaction take place before the end of the calendar year. Staff wants to make good use of the construction season to perform the due diligence that is necessary for the environmental. Staff would like this back in front of the Council as soon as possible.

Mr. Calder continued and noted this has been discussed at RDA and various other meeting over the past couple of years but to clarify for the public; part of this acquisition and release of interest involves the acquisition of the current Union Pacific leases which will provide a revenue stream. Utilizing the revenue stream in place from those leases is how we will fund the majority of the release of interest; we aren't going to have to come up with \$2.7 million out of our pocket. We will have to finance it but the lease revenue will go to reimburse the City for those payments to make this transaction happen.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to table this item and bring it back to the Council as soon as possible.**

Motion passed unanimously.

- B. Review and possible approval of an agreement with The Boomtown Betty Bashers Roller Derby League of Elko to Adopt-a-Street for litter collection in the public right-of-way on Silver Street between 3rd Street and 12th Street, and matters related thereto. **ACTION ITEM**

The Boomtown Betty Bashers Roller Derby League of Elko is interested in volunteering their services for the Adopt-a-Street program. This portion of right-of-way was previously adopted by Crayons to College; however, Crayons to College is no longer in business, which makes this portion of right-of-way available. DS

Public Works Director Strickland advised Staff had one reservation; there has been discussion this is simply an attempt for the league to get their name out to the public and increase their popularity. Mr. Strickland indicated the concern is if the group no longer exists within a short time period; there is a cost to the City of approximately \$500.00 for the sign.

Councilman Elquist questioned if this was a worthwhile program.

Mr. Strickland believed it was.

Councilman Conner suggested tabling the item and request they be present.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to table this item and direct Staff request The Boomtown Betty Bashers Roller Derby League of Elko attend next meeting.**

Motion passed unanimously.

- C. Review and possible approval of a contract between the City of Elko and the Boys and Girls Club of Elko, outlining the terms and conditions of the proposed conveyance of City-owned property for the purposes of constructing a Boys and Girls Club facility, and matters related thereto. **ACTION ITEM**

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

Gary Morfin, Vice-Chairman, Elko Boys and Girls Club, was present to answer questions. Mr. Morfin indicated he had read the contract and advised they were in agreement.

City Manager Calder advised the contract outlines the terms of the actual conveyance, this is not actual conveyance. There are a couple of outstanding items that need to be accomplished 1) Need Legal description on property; that parcel as it exists is part of City Park System with the same APN. The \$1,000 fee will cover that cost as well as the legal cost for drafting the sale documents etc. The only other fee the Boys and Girls Club will be responsible for, outside the \$1,000, would be the title transfer fee for tax that goes to the Elko County Recorder's Office; that is approximately \$538.00.

Mr. Calder advised that was the limit of what the expense of the land conveyance would be and wanted to make sure the Boys and Girls Club were comfortable with that.

Mr. Morfin believed Summit Engineering could have the necessary work done by the end of the week.

Mr. Morfin informed the Council they have raised over \$2.0 million of the \$2.9 needed to build the facility.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner, to approve a contract between the City of Elko and the Boys and Girls Club of Elko, outlining the terms and conditions of the proposed conveyance of City-owned property for the purposes of constructing a Boys and Girls Club facility.**

Motion passed unanimously.

- D. Review, consideration, and possible approval of Map of Reversion to Acreage No. 1-11, filed by Carl and Janet Pescio Trust, for the purpose of reverting to acreage Lots 15-17 of The Pointe at Ruby View LLC, Phase 1, recorded in the office of the Elko County Recorder as File No. 580788, located generally on the west end of Khoury Lane, and matters related thereto. **ACTION ITEM**

Development Manager Wilkinson referred to an overhead and identified the lots in question.

**** A motion was made by Councilman Johnson, seconded by Councilman Conner to approve of Map of Reversion to Acreage No. 1-11, filed by Carl and Janet Pescio Trust, for the purpose of reverting to acreage Lots 15-17 of The Pointe at Ruby View LLC, Phase 1, recorded in the office of the Elko County Recorder as File No. 580788, located generally on the west end of Khoury Lane.**

Motion passed unanimously.

V. RESOLUTIONS AND ORDINANCES

- A. Review, consideration, and possible approval of Resolution No. 13-11 creating a Public Utility, Drainage and Access Easement for public purposes of constructing, repairing, operating and maintaining a public utility, drainage and access easement, and matters related thereto. **ACTION ITEM**

The Planning Commission conditionally approved Vacation No.1-11 filed by Frederick B. Lee Jr. and Karen A. Albrethsen to consider vacation of a portion of 6th Street Right-of-Way and a portion of Cedar Street Right-of-Way. The approval was conditioned on several items identified in the attached Planning Commission Action Report. One of the conditions was the recordation of a public utility, drainage and Access Easement prior to recordation of the right-of-way vacation.
SAW

Development Manager Wilkinson advised our legal counsel drafted the resolution to create the easement; it includes the legal description and drawing as an exhibit to that. It was also one of the recommendations from the Planning Commission.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to approve Resolution No. 13-11 creating a Public Utility, Drainage and Access Easement for**

public purposes of constructing, repairing, operating and maintaining a public utility, drainage and access easement.

Motion passed unanimously.

After the motion and before a vote was taken Councilman Johnson questioned whether the conditions needed to be qualified or was that incorporated enough in the resolution.

Mr. Wilkinson advised the conditions were with regard to the vacation and creating this easement through the resolution.

- B. Review, consideration, and possible approval of Resolution No.14-11 creating a Public Utility, Drainage and Access Easement for public purposes of constructing, repairing, operating and maintaining a public utility, drainage and access easement, and matters related thereto. **ACTION ITEM**

The Planning Commission conditionally approved Vacation No. 2-11 filed by Pedro G. Ormaza Trust and Ormaza Properties, LLC to consider vacation of the Main Street Right-of-Way located between 2nd Street and 3rd Street. The approval was conditioned on several items identified in the attached Planning Commission Action Report. One of the conditions was the recordation of a public utility, drainage and access easement prior to recordation of the right-of-way vacation.
SAW

Development Manager Wilkinson advised this was a condition of the Planning Commission; to create an easement over the area proposed for vacation.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to approve Resolution No.14-11 creating a Public Utility, Drainage and Access Easement for public purposes of constructing, repairing, operating and maintaining a public utility, drainage and access easement.**

Motion passed unanimously.

- C. First reading of Ordinance No. 732, an ordinance approving the Development Agreement between the City of Elko and Bailey and Associates, LLC, for the purpose of considering and establishing standards and parameters for development of the subdivision pursuant to the conditions proposed on Preliminary Plat No. 1-11 for Spanish Gardens II the Elko City Council, and matters related thereto. **ACTION ITEM**

A condition of the approval of the Preliminary Plat for Spanish Gardens II Subdivision was for the applicant to submit for approval and execution an Agreement to Develop Land pursuant to Section 3-2-26 of the City Code before the final plat is to be submitted. Planning Commission considered the Preliminary Plat at its meeting on January 4, 2011, and forwarded a recommendation of conditional approval to the City Council. City Council conditionally approved the Preliminary Plat at its meeting on February 8, 2011.

One of the conditions was to have City Council approval of an Agreement to Develop Land before consideration and possible approval of the Final Plat. The City Council approved the Agreement at its meeting on March 22, 2011 and directed staff to bring back an Ordinance for consideration as provided for in Section 3-2-26 of the City Code. SAW

Development Manager Wilkinson called attention to Section 1 of the Ordinance under Approval which stipulates the date Bailey Associates and the City of Elko had signed the Development Agreement. Bailey and Associates have signed that agreement; Staff is waiting for the Mayor's signature which we need before the Second Reading of the Ordinance.

Mr. Wilkinson continued and advised the agreement was before the Council at the last meeting with direction for Staff to bring back the Ordinance.

**** A motion was made by Councilman Elquist, seconded by Councilman Johnson to set for Second Reading, Public Hearing and possible Adoption Ordinance No. 732, an ordinance approving the Development Agreement between the City of Elko and Bailey and Associates, LLC, for the purpose of considering and establishing standards and parameters for development of the subdivision pursuant to the conditions proposed on Preliminary Plat No. 1-11 for Spanish Gardens II the Elko City Council.**

Motion passed unanimously.

After the motion and before a vote was taken Mr. Wilkinson advised Staff will modify the Ordinance to reflect the date the Development Agreement was signed.

VI. PETITIONS, APPEALS AND COMMUNICATIONS

- A. Consideration and possible action regarding a letter from Gary D. Woodbury, Attorney at Law, requesting a delay in the issuance of City building permits pending litigation of Conditional Use Permit 10-10, and matters related thereto.
ACTION ITEM

A letter from Mr. Woodbury has been included in the agenda packet for review.
CC

Gary Woodbury, Attorney at Law, came forward to address the Council. Mr. Woodbury stated a second amended petition for judicial review had been filed by his office that alleges a variety of additional theories regarding why the appellant process the Council provided his clients was insufficient. Mr. Woodbury advised he specifically added a theory that Councilman Elquist was forbidden to vote on the appellant issue, and on today's request, because his brother Joseph Elquist is a principal in a company that did, and is doing, electrical design for this project. Mr. Woodbury advised under Nevada Law that represents a community of interest between Councilman Elquist and his brother; Nevada Ethics Laws require him to abstain in today's vote and in the vote on the appellant issue.

Mr. Woodbury continued and advised today's filing also clarified an allegation regarding a pecuniary interest of Councilman Johnson in connection with his rental storage units located in near proximity to this high density residential development; which provides no storage inside and no storage outside by code. The proximity of his storage units constitutes a pecuniary interest on the part of Councilman Johnson that should prevent him from voting on today's issue and should have prevented him from voting on the appellant issue.

Mr. Woodbury advised they have alleged a number of other theories and he is not here to argue whether they are valid, invalid, strong or weak; you can make that determination with your legal counsel. If the allegations concerning Councilman Elquist are true, and he is in a particular position to know whether or not they are true, then his appellant vote is void and at a minimum the interim motion of Councilman Rice that this project contain a two story building on the south end abutting the Royal Crest residents passed and you cannot issue a building permit allowing three story buildings against Royal Crest. If the vote of Councilman Johnson is voided, and they think it will be, because of the close proximity of his commercial storage units to this project. There are only two commercial storage units north of the freeway, one is on the frontage road between 5th Street and Mountain City Highway and the other is Councilman Johnson's which is approximately one-half mile away from this project. If Councilman Johnson's vote is also voided; there was not a quorum to vote on this issue and the issue will go back to the Council when there is a quorum. Mr. Woodbury wanted to make sure the Council understood that Barrick Gold Corporation, with whom Councilman Elquist is already performing a contract for, is both interested in and the financier of this project. In the event any of the rest of the Council have problems or have connections with Barrick Gold Corporation you need to think about that as well.

Jeff Kump representing Ormaza Construction advised he had read Mr. Woodbury's second amended petition. Mr. Kump believed Mr. Woodbury was asking the Council to do what he could otherwise do through the court system. The petitioners have challenged the ethics of this board; they brought that to the Fourth Judicial. What the petitions could do, and what Mr. Kump was asking the Council to do, is make them get the injunction to stop. Mr. Kump stated; don't let them bully their way through this.

Mr. Kump outlined what Ormaza Construction has done so far; bought the property, done all the architectural work and the civil engineering, obtained and paid for the grading permit, plan review fees have been paid, they have done all the design and have submitted for building permits, all the planning, electrical and mechanical; they are between \$2.0 and \$3.0 million into a \$12.0 million project; which is just Phase One. This project is for one hundred ninety-two apartments, developed in sixteen buildings. Mr. Kump advised if we are talking about public policy; this is something that truly benefits Elko.

Mr. Kump stated his belief the City has done their due diligence and he does not believe the City has been unethical. This is something the court should decide and the City should not back down at this point.

Mayor Franzoia called for additional public comment and there was none.

Mayor Franzoia referred to the statements by Mr. Woodbury regarding the appeal process and the issue of two Councilmen participating in the vote. Based on those statements isn't it the same situation tonight?

Dave Stanton, Legal Counsel, advised following that argument through to its logical conclusion, maybe that would be the result. His office has differing interpretations of the conflict of interest statutes. Mr. Stanton commented this is a matter that is now before the court, it is a civil action. If the court makes a decision and orders the City to do something; then the City is going to comply with that. As matters now stand, we just received the second amended petition for judicial review a few hours ago; we are going to be developing a response to that, we are going to file a response with the court and then proceed through a very orderly process where the court is going to examine all the applicable statutes. We are going to make arguments, we are going to present them and the court is going to make a decision one way or the other. It was Mr. Stanton's understanding that what is on the agenda today is asking for the City Council to make some sort of preliminary decision on a potential building permit that may be is anticipated to be filed. It was Mr. Stanton's recommendation to the City Council was that City Code contains specific requirements in terms of building permits and the City has a policy and procedure for reviewing and approving or denying building permits; that is the procedure that should be followed. Just because someone happens to file a lawsuit and make a bunch of claims against the City should not be a reason for the City to suddenly change the way it does business. If a court orders the City to do something differently then the City has to comply with the court order. Mr. Stanton noted the City has an orderly process that it follows with respect to building permits and he questioned the propriety of suspending the granting of a permit that otherwise satisfies the requirements of the City Code just because someone has filed a bunch of claims against the City.

Mayor Franzoia commented if there was any desire by the Council to take a vote it could be a situation where the two members identified may not want to vote; then we have no quorum. Mayor Franzoia stated under any allegation of a threat, why would anyone that has been identified, want to vote on this item?

Mr. Stanton agreed, if you accept the argument there is a conflict of interest.

Mayor Franzoia believed if you are facing a lawsuit you will react cautiously.

Mr. Stanton advised under State law if a council member is going to abstain from voting on an item the standard is essentially the same as if a council member makes a disclosure and decides to vote. Whether you vote, or decide not to vote, that decision has to be based on whether or not you perceive there to be a conflict of interest; in accordance with the statute. If the decision was made to vote on this at a prior City Council Meeting and there was no conflict of interest then, the decision should be the same now; irrespective of challenges that have been made.

Mayor Franzoia advised based on the fact of what was done prior and the presentation by Mr. Woodbury tonight he would pose the question back to the Council.

Mayor Franzoia questioned whether any member of the Council wanted to comment at this time.

Councilman Elquist advised, until this moment, he was unaware that his brother was involved with the project. Councilman Elquist stated he would follow recommendation from legal counsel and commented his brother may not have been hired at the time of the previous discussion.

Mr. Stanton advised Staff would follow up on that and provide Councilman Elquist with a legal opinion. Mr. Stanton noted this was the first they have heard of the issue also.

Mayor Franzoia called for a motion; there was none.

**** No action was taken on this item.**

Mayor called for brief recess at 6:03 p.m.

Mayor Franzoia called the meeting back to order at 6:12 p.m.

VII. 6:00 P.M. PUBLIC HEARINGS

A. Public comment period. ACTION WILL NOT BE TAKEN

This agenda item is to provide time for the general public to address the City Council regarding items of concern. Action cannot be taken at this time, but a matter can be set on the agenda for a future meeting, as appropriate.

Kevin Doerr came forward to address the Council regarding the downtown redevelopment. Mr. Doerr requested the Council keep in mind all the special events held throughout the year and how the changes, especially to the streets, will affect them.

B. Second Reading, public hearing, and possible adoption of Ordinance 731, an Ordinance amending Title 9, Chapter 1, Section 5 of the Elko City Code entitled, "Water Service", amending the charges for service taps (tap fee), and matters related thereto. ACTION ITEM

The water tap fees presently listed in this section of City Code are not the current tap fees. As the tap fees are set by resolution, to avoid changing City Code each time the tap fees are modified, Staff is recommending removing the specific amount from City Code. These fees are available online on the City website and at numerous other locations should a party be interested in finding them. First reading was conducted at the March 22, 2011 meeting. RL

**** A motion was made by Councilman Johnson, seconded by Councilman Elquist to adopt Ordinance 731, an Ordinance amending Title 9, Chapter 1, Section 5 of the Elko City Code entitled, "Water Service", amending the charges for service taps (tap fee).**

Motion passed unanimously.

- C. Public Hearing and possible approval of the 2011 Motorcycle Jamboree Special Event to be held June 16 through June 19, 2011 including the following requests:
1. Closure of the downtown corridor from 3rd Street to 6th Street between Commercial and Railroad Street for the duration of the event. The closure request includes the corridors along with the crossroads.
 2. Closure of the downtown corridor between 6th Street and 7th Street to allow for event set-up with access to parking for businesses during the evenings of Thursday and Friday. It will remain closed Saturday for the concert.

Other matters may be discussed as related thereto. **ACTION ITEM**

Ken Wellington, Public Safety Chair, Elko Motorcycle Jamboree, advised there are a number of issues this year due to the Idaho Street Project. They have been numerous meeting with City Staff and Public Safety to address some of the concerns; for safety reasons they have chosen to not have a parade this year. They have looked at additional early closures for 5th Street; after meeting with NDOT and City Staff they asked for a 4:00 p.m. closure on 5th St. between Idaho and Railroad and a 4:00 p.m. closure on 5th Street between Commercial and Silver Street. That request was made based on the opportunity to add an additional hundred vendors to the event; which means more money for the Jamboree and the City.

Mr. Wellington referred to an overhead which outlined and identified the area and streets to be impacted by the Jamboree as well as the closure time. Because they changed the time to 4:00 p.m. for the streets controlled by NDOT they are asking the City to consider closing the additional streets identified on the overhead from 9:00 p.m. to 6:00 p.m. for safety reasons. They also want to close off access to Idaho Street due to the construction; they have been looking into the use of water barricades to keep motorcycles and traffic from moving out onto Idaho Street from the center of the venue and try to direct them back towards 3rd Street, out to Silver Street and direct them down to 11th Street. They won't stop all traffic but hope to deter as much of it as possible. Mr. Wellington advised Nevada State Bank will close at 4:00 p.m. that day. Staff has spoken with some of the other businesses in the area and they are excited about the added portion.

Mr. Wellington noted they have added one corridor by the movie theater and have requested a 6:00 p.m. closure for that block. Currently they are considering holding a car show in that area with the hope of drawing more people in to the event. Traffic will be allowed to move through the area on a one-way basis and the cars would be moved out by a specific time which would still allow parking for any movie theater attendees.

Mr. Wellington advised Ruby Dome will be doing the road closures; this is their eleventh year.

Mr. Wellington continued and indicated there had been discussion among committee members regarding a curfew for juveniles; that is something they would really like to see happen. Any juvenile in the area after 10:00 p.m. creates problems for event staff and the police department.

Mr. Wellington advised the alcohol vendor has not been selected yet; it will not be the group they had last year due to all the problems.

Mayor Franzoia referred to the comment regarding a curfew; Staff would either have to change what we already have in the code, or create a new ordinance; there are issues with that.

Mr. Wellington believed it would benefit the police department and certainly the jamboree; maybe it is something we can look at in the future.

Mayor Franzoia commented it wasn't too late address a curfew if it is an effective tool for controlling crowds. The concern is when an event is winding down and it creates more problems for law enforcement because that is another level they have to deal with. Mayor Franzoia recommended further discussion with Staff on the matter.

Mr. Wellington advised the only outstanding item in the application packet was the insurance binder; they typically receive that the week of the event and will submit it to the Clerk's Office at that time.

Councilman Elquist questioned if anyone had spoken with theater since that area is new for this year.

Kevin Dorr advised they have signed off on the sheets but was unsure if anyone had actually spoken with them. There is no intent to interfere with their movie times; the car show will be over prior to that and all the vehicles moved out of the area.

City Clerk Owen noted there were a few business's in the area that had not signed off; had anyone gone back to get those signatures?

Mr. Wellington advised they made a second visit and they weren't there. It was his assumption the City sends out notice to the downtown businesses for this Public Hearing.

Mr. Doerr advised Machi's was one business that had not signed off and The Flying Fish was the other; both are Jamboree sponsors. If City Staff wants their signatures they will obtain them.

Mr. Doerr noted they have been unable to notify Duncan Little Creek and one other business.

Mayor Franzoia called for additional public comment and there was none.

Police Chief Zumwalt addressed the Council with his concerns regarding the event and the impact it has on his department. Chief Zumwalt advised the Elko Police Department is losing law enforcement partners and their support for this event due to the economic times. The Motorcycle Jamboree costs local law enforcement \$100,000.00 every year for the two day event. Chief Zumwalt believed it was important for the Council and citizens to understand we will not have the law enforcement presence or resources we are used to having; we are opening ourselves up to huge liability.

Chief Zumwalt continued; because of the amount of people, the amount of alcohol and the environment this brings to the City, this event has become more violent and causes more problems than any other event in the City; during the two day event there will be over one hundred arrests, injury to police officers and to citizens. As past events have shown; if we do our job the way we are supposed to there will be numerous law suits as well. This event also brings into our community outlaw motorcycle gangs known throughout the United States for their gang affiliation. Several of these gangs are rivals to each other and they will be in our City.

Chief Zumwalt stated he was not recommending that we do not have the Jamboree; he was however recommending a few ideas to make Elko a safer place for the event.

- Implement and enforce a 10:00 p.m. curfew for anyone under the age of 18
- Close the venue at 12:00 midnight – nothing good happens between midnight and 4:00 a.m.
- Close the sidewalk venues at 12:00 midnight
- Require the Jamboree Committee to pay for at least half of the security costs
- Require all servers of alcohol to obtain a bar card

Mayor Franzoia questioned if the curfew applied to the corridor only; if so there are issues.

Chief Zumwalt verified it did; legal counsel would need to advise if that was even feasible.

In regards to the recommendation for bar cards Chief Zumwalt stated he wants some accountability. Tactically, things will be done differently this year than were done last year; we still have court cases pending from our actions from last year's Jamboree.

Mayor Franzoia questioned whether any of these recommendations have been discussed with the committee members.

Chief Zumwalt advised they had discussed the curfew; it was their suggestion and it is a great idea.

Mayor Franzoia referred to the cost of the event; you can't take specific event and make them pay. Other events also create issues; some greater than others and we don't ask for any consideration from them as is being proposed for this event.

Chief Zumwalt acknowledged Mayor Franzoia's comments but stated we don't typically arrest people during parades, Mining Expo, Cowboy Poetry, July 4th etc. Chief Zumwalt believed 95% of the arrestees are from Elko County and the surrounding area; for some reason, it is worse during this Jamboree weekend than any other time in the City. There are more people in town on July 4th than any other day; except for possibly "Concert Saturday". We don't have problems during the Fourth of July and a lot of other special events. This event, typically, is the most violent and most difficult event to police.

Chief Zumwalt advised he has contacted other agencies across the State to learn how they police these types of events.

Mayor Franzoia commented if it brings out the worst; the solution would be to stop the event. Therefore the money is not an issue, no matter who is paying for it, if you support the event it goes on. The resources may be limited from the City's point of view or the events point of view; it is not going to break the City but it could break the event. Mayor Franzoia didn't believe that was the intent. You are walking a fine line with what you want; if the bad apples come out, don't have the event; you are saying we need to have the event but we can't afford to pay for it.

Chief Zumwalt clarified he did not say we need to have the event and he did not say he supports the event. He does not support the event. He will not tell the City Council that we should not have it. He does not support the event because it is very difficult to do safely; it opens the City up to a huge liability down the road. Chief Zumwalt reminded everyone the department is still involved in issues from last year.

Mayor Franzoia stated we have the risk of being sued on any given day or hour.

Councilman Johnson commented there was 'x' amount of arrests and 'x' amount of law enforcement; how is that ratio going to change with fewer law enforcement for this event?

Chief Zumwalt advised he is losing one entire agency.

Councilman Johnson questioned if the event always required this amount of agencies.

Chief Zumwalt advised from the very beginning everyone from the Police Department and Sheriff Department worked the event. When they evaluated and tried to cutback on manpower to save money they have had more problems. Obviously you can talk to different people and get different ideas; attendees and Jamboree members might say we have too many officers now. Chief Zumwalt was concerned that without sufficient law enforcement personnel in attendance we will lose that pro-active advantage of being able to observe and take action before the problem gets too big. The fear is without sufficient staff to observe; things can get out of hand much quicker and then we have more problems than we would have had if we could have solved the situation quicker i.e. a fight, where the "crowd mentality" factors in.

Chief Zumwalt again advised he has spoken with colleagues to understand how they do these special events; they all have a similar philosophy "we plan for the worst and hope for the best".

Councilman Elquist questioned the Jamboree about providing security. Expending the entire overtime budget in one weekend did not appeal to him; the City has some tight budget issues.

Mr. Wellington advised they had a meeting with City Staff not to long ago and maybe they could have discussed it; this was the first time he had heard of it. Mr. Wellington noted three years ago when they did a survey this event brought \$4.2 million to this economy. What are the percentages if they spend \$100,000 to bring in \$4.2 million? Three year's ago they had \$180,000 in sponsorships; last year's was \$68,000.

Mr. Wellington advised they are trying to make this a self-funding event by exploring the alcohol side of it. Last year P.A.C.E. was set up to do the wrist bands and right before the event they

backed out and were running undercover people at the bars. Mr. Wellington stated he was listed on the liquor license and was never contacted that there was a problem or he would have addressed it. For each liquor license he submitted a list of individuals that would be working the bar and their bar card numbers to the police department. If they had been advised alcohol was being sold to minors they could have addressed the issue; instead no one was made aware of it until the bar was shut down.

Councilman Elquist indicated the point he was making was they should know before the law enforcement. Maybe you should take the responsibility for hiring your own security.

Mr. Wellington advised they do pay for security on the venue; they use the City Reserves. Mr. Wellington also advised he worked in public safety for eighteen years; half of that time was working biker gangs. This is not a bad outlaw event at this point and as the Public Safety Chairman he is committed to making this a safe event for the public. When he sees any of the gangs he advises the police department so they can make contact with the group; over the past five years the number of those people attending this event has dwindled. This event now, according the survey two years ago, are forty-nine to fifty-four year old individuals, business people, with a \$128,000 to \$150,000 income; those are not allow dirt bikers.

Councilman Elquist believed Chief Zumwalt supported that, the people for out of town aren't necessarily the problem; it is the six block party that is going on with the locals.

Mr. Wellington advised his budget for public safety, at this point, doesn't extend to hiring more security and the other budgets are already struggling with the advertising to try and draw in the tourism.

Councilman Elquist suggested they police themselves.

Mr. Wellington commented they could look at volunteers for security but they will still have the same issue; they are still going to be there on the bike patrols etc.

Mayor Franzoia noted it would be additional eyes on the ground that aren't as noticeable and that may be a benefit. There is a lot of merit in handling it different ways. We could approve this with the caveat that we may add additional restrictions at a future time. Mayor Franzoia believed the committee members need to sit down with City Staff and discuss the various items that have been brought up.

Mayor Franzoia advised if you are looking at a reduction of manpower for security he supported a curfew. It would reduce the level of exposure at crucial times of the evening. Mayor Franzoia believed the curfew should relate to anyone twenty years old and under.

Mr. Wellington advised most venues close at 10:00 p.m. with the last closing at midnight. The only exception to that is the tatoosers; and they do their work inside their trailers. Mr. Wellington stated they do support the curfew and the age suggested.

Mr. Doerr advised the Jamboree closes down by midnight and their security is out. They don't want the perception the Jamboree fills the police blotter; that comes from the local bars that are still open and over capacity so people are spilling out onto the sidewalk.

Mayor Franzoia stated it's a gray area and people don't know where the Jamboree stops. The issue now is; how do we minimize the impact; a curfew would be one thing. Another issue is the relationship of the public property and public right-of-way and the cost of keeping a safe environment with limited resources.

Mr. Doerr advised they will do whatever they can as a board to help with the issue. Mr. Doerr questioned the total tax dollars the event brings in; he agreed with Mr. Wellington that there should be some ratio in regards to how/can it fund itself. Perhaps the tax dollars created from the Jamboree should be identified as funds that help pay for the event.

Mayor Franzoia advised with every activity that comes into the community, every entity gets a benefit from the sales tax. To track exactly where the money is spent would be difficult but we do know there is an economic value.

Mayor Franzoia referred back to the suggestion of a curfew; if an ordinance is needed or a change to an existing ordinance we are time line specific as it takes the City Council three meetings to address the issue.

Councilman Conner advised he was not totally supportive of a curfew; you are punishing everyone from eighteen to twenty. Trouble makers will go down there with or without an ordinance.

Mayor Franzoia commented we have an opportunity to give the police department the tools to handle that.

Councilman Conner acknowledged it was a great tool but it is just another thing the police have to look out for and enforce.

Councilman Elquist recommended discussing the curfew issue when Council had the ordinance in front of them.

A member of the public thanked Chief Zumwalt for his concerns. The curfew is something they want to work on and the members will do whatever they can to help. Just the announcement that we will be looking out for minors on the venue will decrease the number of people down there. Before we put any stipulations out there the committee needs to do our homework and know what the issues are. This is a great event for Elko.

Mayor Franzoia advised there is a very short window to accommodate some of the concerns that have been addressed tonight by all concerned to make is a successful, safe event.

Dale Andrus, Elko Trophy, advised he has a bar every year during the event and applies for the two day liquor license. He was glad to hear Chief Zumwalt's recommendations and totally

supports closing down the sidewalk vendors at midnight. As the Chief stated; nothing good happens after midnight. A curfew would be a good idea but it probably won't happen this year. Mr. Andrus agreed kids are a problem; he and his staff police themselves and he supports the curfew 100% and closing the sidewalk vendors down at midnight. Mr. Andrus believed if we do this right it can be a safe event.

Chief Zumwalt apologized to Mr. Wellington and the committee members and clarified he has only learned of the loss of support in the last few days. He will meet with the Jamboree and work things out.

Chief Zumwalt stated the only other issue would be how to "slow the flow of alcohol"; all of their problems are alcohol related. Chief Zumwalt advised there was no judgment against motorcyclists; his concern is about the law breakers. With or without restrictions they will continue to work the event and make it the best they can.

Councilman Johnson questioned if the committee had looked at how sports games have gone over the years; where they limit alcohol? Have you looked at those strategies to start tapering down the availability of alcohol to try and get better control?

Chief Zumwalt stated he would be happy to; but we do live in Nevada. They could restrict the outside vendors i.e. close them down at midnight. But still, how to you "slow the flow of alcohol".

Councilman Johnson noted they do it at Mackie Stadium and other Nevada properties where they have this type of thing in place.

A committee member advised they shut their bars down at 10:00 p.m. but they don't control the sidewalk vendors.

Mayor Franzoia believed a curfew should apply to the sidewalks also so that everything is the same; that encourages everyone to disperse and either go home or to an inside bar. The curfew could be specific to the venue and have the venue boundaries defined. Mayor Franzoia was supportive of approving the special event as submitted; reserving the right to add additional requirements in the near future, based on tonight's discussion, that could be inclusive of limitations of when the venue bars and sidewalk bars stay open, as well as a curfew, age specific. If there is any resolution it would come back to the Council for further consideration.

Councilman Johnson clarified it would be left up to the committee to come back before the Council.

Mr. Andrus questioned the purpose of the bar cards.

Mayor Franzoia advised it protects the public.

Mr. Doerr questioned the curfew; who directs the initiative? The jamboree supports a curfew ordinance.

Mayor Franzoia explained the ordinance process and indicated further discussion was necessary.

Councilman Elquist believed Mr. Doerr was asking whether City Staff was going to handle the issue or the event committee.

Mayor Franzoia advised Staff will work with the committee to discuss the issues and concerns; Staff will then work up an ordinance to bring before the Council.

**** A motion was made by Councilman Elquist, seconded by Councilman Johnson to approve the 2011 Motorcycle Jamboree Special Event to be held June 16 through June 19, 2011 including the following requests:**

- 1. Closure of the downtown corridor from 3rd Street to 6th Street between Commercial and Railroad Street for the duration of the event. The closure request includes the corridors along with the crossroads.**
- 2. Closure of the downtown corridor between 6th Street and 7th Street to allow for event set-up with access to parking for businesses during the evenings of Thursday and Friday. It will remain closed Saturday for the concert.**

And direct Staff to work with them related to the issues brought forth by our Staff, as well as concerns they have, related to various issues, not withstanding; curfew, venue closing of bars, etc. and sidewalk related issues and whatever else may come up through discussion and bring those issues, if needed, for ordinance changes, modifications and bring back to the Council.

Motion passed unanimously.

VI. PETITIONS, APPEALS AND COMMUNICATIONS

- B. Consideration of an appeal from Elizabeth and Tracy Del Fante regarding delinquent water bills and associated penalties for property located at 4848 Idaho Street, and matters related thereto. **ACTION ITEM**

A letter from the Del Fante's has been included in the agenda packet for review.
CC

Accounting Supervisor Martinez explained the water was disconnected on October 2009 for non-payment. This is the Silver Dollar property on East Idaho; at some point the property was foreclosed on. Staff received a phone call regarding the water bill and a request that because the building was vacant could the water bill and penalties be waived. Staff advised that as long as the water was turned on there would be a charge. The owner then again questioned if the penalties could be waived and were advised by Staff that would be a Council decision. Ms. Martinez advised the penalties to date total \$625.59; total bill is \$2, 295.56.

Mayor Franzoia commented when a water bill becomes delinquent it gets turned off; so in this case, what keeps accruing?

Ms. Martinez advised the penalties continue to accrue.

Mayor Franzoia commented the penalty would be to encourage the individual that failed to pay to do so and keep it turned off so that someone new coming in wouldn't end up paying for the penalties.

Councilman Elquist believed when you buy "foreclosed property" you are obligated to do your due diligence.

Ms. Stout advised on this property the lien holder was the person holding the note; they foreclosed on the property. The letter is from the president of the company that holds the lien on the property and foreclosed on the lien; so they were well aware of the situation the entire time.

Ms. Stout clarified the person who was buying the property from the lien holder left the water bill. The lien holder that foreclosed on the property did not go through the normal processes that a lien holder would; typically a bank would call to determine if there were any liens on the property because, by statute, it follows the property. These people held the note on the property, foreclosed on the people buying the property, and didn't go through the normal processes.

Ms. Stout stated the bottom line is; the person asking for the waiver of the penalties was the lien holder to begin with.

**** A motion was made by Councilman Elquist, seconded by Councilman Conner to deny an appeal from Elizabeth and Tracy Del Fante regarding delinquent water bills and associated penalties for property located at 4848 Idaho Street.**

Motion passed unanimously.

- C. Consideration of a refund request from Edwin Lance Wheeler for an unused 2011 Ruby View Golf Course Season Pass, and matters related thereto. **ACTION ITEM**

A letter from Mr. Wheeler has been included in the agenda packet for review. CC

Mayor Franzoia clarified Mr. Wheeler was transferred by his employer.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to approve a refund request from Edwin Lance Wheeler for an unused 2011 Ruby View Golf Course Season Pass.**

Motion passed unanimously.

After the motion and before a vote was taken Councilman Johnson questioned why this could not be a Staff decision.

Ms. Stout advised the current golf policy does not allow Staff that level of authority.

Councilman Johnson whether the policy should be qualified i.e. from the first of May?

Ms. Stout advised that would depend on weather; we have had years where we've seen players out in March or April.

Councilman Johnson believed if this was not a trend, Council could deal with it on a case by case basis.

Ms. Stout advised since this policy has been in place there may have been three or four appeals that came back to the Council for a refund; it isn't very common. Ms. Stout noted the current system allows Staff to track the number of times the pass has been used.

V. RESOLUTIONS AND ORDINANCES

- D. First Reading of Ordinance No. 733, an Ordinance amending Title 6, Chapter 1, Sections 1, 5, 6 and 10 of the Elko City Code entitled, "International Fire Code of the City of Elko," "Fire Lanes on Private Property", "Appeals" AND "Tank Storage and Bulk Storage Compliance" respectively, and matters related thereto.
ACTION ITEM

In keeping with the adoption of the 2009 International Building Code, the Fire Department is requesting approval to adopt the 2009 International Fire Code. The Fire Department recommends amending several sections of the IFC-2009 to better fit the environment in Elko, Nevada, and the amendments are redlined accordingly. The Building Code and Fire Code work together, and the Fire Department's primary role is to inherit the building for the life of the building after the Building Department issues the initial or follow up certificate of occupancies. Residential enforcement is only under certain limited conditions and/or invitation. JC

Deputy Fire Marshal Carson advised this is an amendment to the 2009 Code.

Mayor Franzoia requested this item be tabled to allow Council time to review the changes.

Mr. Carson indicated most of the changes follow what was adopted in the Building Code.

Mayor Franzoia then questioned why the terminology Fire Code Official was included; we don't have anyone in our system with that designation.

Mr. Carson advised in the Fire Code Definitions it says "either the Fire Chief or his designee".

Mayor Franzoia noted the new version has Fire Chief stricken out and replaced with Fire Code Official.

Mayor Franzoia questioned whether the City had to change someone's title.

Mr. Carson advised the Fire Code Official could be the Fire Chief or his designee; essentially it is the same, the title has just changed from Fire Chief to Fire Code Official in the new codes.

Mayor Franzoia recommended adding in parentheses Fire Chief or his designee.

Mr. Carson requested clarification; did Council want it to read the same as previously?

Mayor Franzoia advised it could read Fire Code Official but in parentheses identify who they are; otherwise we don't know.

City Clerk Owen advised Staff can add a definition for that part.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to table this item.**

Motion passed unanimously.

- E. First Reading of Ordinance No.734, an Ordinance amending Title 6, Chapter 5, of the Elko City Code entitled, "Fire Department Service Fees", and matters related thereto. **ACTION ITEM**

In keeping with the adoption of the 2009 International Building Code, the Fire Department is requesting approval to adopt the 2009 International Fire Code. The Fire Department recommends amending several sections of the IFC-2009 to better fit the environment in Elko, Nevada, and the amendments are redlined accordingly. The Building Code and Fire Code work together, and the Fire Department's primary role is to inherit the building for the life of the building after the Building Department issues the initial or follow up certificate of occupancies. Residential enforcement is only under certain limited conditions and/or invitation. JC

Mayor Franzoia requested this item be tabled to allow Council time to review the changes.

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to table this item.**

Motion passed unanimously.

II. PERSONNEL

- A. Acceptance of a retirement letter from Alan Kightlinger, Fire Chief, effective May 27, 2011, and matters related thereto. **ACTION ITEM**

Chief Kightlinger's retirement letter has been enclosed in the agenda packet for review. CC

The Council expressed their appreciation for Mr. Kightlinger's years of service to the City of Elko as well as his passion, commitment and professionalism to the position.

**** A motion was made by Mayor Franzoia, seconded by Councilman Conner to accept a retirement letter from Alan Kightlinger, Fire Chief; effective May 27, 2011.**

Motion passed unanimously.

- B. Possible appointment of Mike Hecht, Deputy Fire Chief, as Acting/Interim Fire Chief, effective May 28, 2011, and matters related thereto. **ACTION ITEM**

**** A motion was made by Mayor Franzoia, seconded by Councilman Elquist to appoint Mike Hecht, Deputy Fire Chief, as Acting/Interim Fire Chief, effective May 28, 2011.**

Motion passed unanimously.

- C. Review, discussion, and possible authorization to recruit for the position of Fire Chief, including possible action regarding City of Elko residency requirements, and matters related thereto. **ACTION ITEM**

City Manager Calder reminded the Council this is an appointed official position; the Council will be the hiring authority in this case. How Staff proceeds with the recruitment will be at the pleasure of the Council. One of the first items Staff will need guidance on is whether or not the City Council is going to have a city residency as a requirement for this position. Even though Staff has been unable to find a policy on this issue; historically it has been the case that the Fire Chief and the Police Chief positions have been required to live within the city boundaries. That is more of a tradition issue because the practicality of that is that it probably doesn't matter; both departments have twenty-four hour first response capability through the command structure in place. If there is an emergency we have response coming from subordinate Staff; if the issue requires it, the Fire Chief and/or Police Chief respond.

City Manager Calder commented this is more of a philosophy question for the Council; Staff has researched back to the 1960's and there is no residency requirement. At one point in the 1960's there was a residency requirement for all City employees; that was later repealed. Because of economic situations and geography in general, there is no real residency requirement; with the exception of these individuals; at least historically. Staff needs to know that because there are not only possible internal candidates that may apply for this position but also external candidates that may be applying and wanting to know what the residency status is.

City Manager Calder advised once Council discusses the issue and provides guidance; Staff is seeking authorization to proceed with the recruitment. Staff estimates the recruitment process at a ninety to one-hundred twenty day time frame before we are ready to make an appointment; that will depend on the level of selection process that the City Council chooses to participate in.

Councilman Elquist commented everything is close to Elko; it is important to give a radius that includes Spring Creek, maybe out to Lamoille, Ryndon and those kind of places; this is kind of one big town. We don't want them living too far out but if we could do a radius of Elko, Spring Creek and the surrounding areas; there are nice homes out there with larger lots that might appeal to a candidate. Councilman Elquist believed a radius that includes most of our surrounding areas that are good places to live, but not so far out it takes an hour to respond i.e. twenty or thirty miles, was reasonable.

Councilman Conner supported the Fire Chief living in the City; he has heard the same comment in the community. Spring Creek isn't that far out and you probably couldn't arrive on scene any faster unless you were right next door to where the incident occurred. Councilman Conner liked the fact the current Fire Chief lived in town; a City resident, working for the City.

Mayor Franzoia also supported the Fire Chief living within the City boundary. Mayor Franzoia noted there is a perception issue.

Councilman Elquist commented if someone wants to live on two acres you restrict that. What if you lived in Reno as a fire chief; it could take longer to get around town than it takes to come from Spring Creek. Councilman Elquist stated we are trying to attract employees here.

Mayor Franzoia commented it is a key position and there is good money that goes with the position; there is a good selection of homes to purchase within the community that would work out well. Mayor Franzoia believed there was a risk if they live too far away and can't get to town because they aren't on a paved surface; winter weather could also restrict travel. The biggest issue is the public perception; they see a City vehicle that far out of town. Maybe that is why the City had a "defacto" policy of having those visible positions that have company vehicles live close at hand.

Councilman Johnson believed, from a Human Resource standpoint, the City needs to define why the Fire Chief or Police Chief need to be a City resident when he knew the Airport Director was not but is also required to come in on an "on-call" basis. How would the City get around a policy like that; it would almost be discriminatory?

City Manager Calder first clarified the previous Airport Director lived in Spring Creek but our current one actually lives in the City. The Assistant Airport Director does not; so we do have one of our vehicles going over the Lamoille Summit for that position.

City Manager Calder advised we have a Vehicle Use Policy that covers the use of the vehicles. The Fire Chief's vehicles, as well as some of the other fire official vehicles are covered under that already and some of those vehicles are already going over the Summit. Mr. Calder indicated he does not receive many complaints; he sees those vehicles out in Spring Creek occasionally as well; we have on-call vehicles that are covered under the policy. Mr. Calder did not see it as an issue, from a practical standpoint or even from a legal standpoint; it is more of a perception and philosophy issue.

City Manager Calder noted current Police Chief Zumwalt asked the same questions when he was going to build a new house. At the time Staff couldn't find the information saying it wasn't allowable to live outside of the City. He chose to build inside the City but on the boundary so he has a residential/suburban zoning district. When Mr. Kightlinger came to work for the City he made a choice, based on the leadership at the time, that they wanted the Fire Chief to live in the City; he sold a home in Spring Creek and bought a home in the City. City Manager Calder advised that was previous Councils, previous administrations; that is the way they felt. Now we are entering a new era for our Fire Chief. That is all we are talking about tonight but whatever

decision you make for the Fire Chief would hold true for our other public official which would be the Public Safety Official and perhaps other positions as well.

City Manager Calder believed from a Human Resource standpoint and a practical standpoint it doesn't matter. It would matter if that person was a First Responder and there was the expectation they be on the scene within ten minutes; that would be impossible living out in Spring Creek and probably the Osino area. City Manager Calder advised the Fire Chief could provide more information on how often he does respond to calls.

City Manager Calder again indicated this is perception versus practicality. There is probably not a right or wrong way to go; it is pleasure of the Council.

Mayor Franzoia advised he was on the Council when the current Fire Chief was hired; to remain consistent with that hiring, he will not change his position.

Utilities Director Limberg noted there aren't many places within Elko you can own horses.

Councilman Elquist believed a good Human Resource policy wants to attract the best possible candidate for the position. He admired Mr. Kightlinger for incurring the costs of selling his house, moving into town and incurring all those associated fees. But you may have lost a great candidate who gave a lot of passion for fourteen years if he says it isn't worth it to him. Councilman Elquist noted there are some nice parcels right on the outskirts of town that offer things you can't buy in the City.

Mayor Franzoia didn't believe that should be a consideration; you are saying we shouldn't know where these people are going to chose to live.

Councilman Elquist commented if the best candidate owns a horse then we aren't going to get the best candidate.

Mayor Franzoia stated the best candidate may not want the position because it doesn't pay enough.

Councilman Elquist stated with all things being equal; that was his point. It is okay it is just a debate.

Mayor Franzoia stated all things aren't equal. Because of the economy there will probably be a lot of candidates. Anything is better than nothing and that is the risk we have going forward. It may not work out; you may come back later because of the candidates, and may change it completely.

Councilman Elquist stated it is all philosophy.

City Manager Calder reminded everyone this is an appointed position and it is a Council decision. Historically, one of the issues why the City got away from the residency requirement was because of the tight housing market due to the boom and bust cycles Elko has gone through.

Not now, but there have been times in the past where it was very difficult to find housing in the City and if it had not been for housing in Spring Creek there would have been people we hired from outside the area that would not have been able to come to work here. Again, that is not the case right now; there is available housing in the City as well as Spring Creek but it has been an issue in the past.

City Manager Calder commented, if you are looking at internal candidates for the job, we do have qualified candidates; some that live in the City and some that do not.

Councilman Elquist questioned whether Staff wanted Council to present a couple of options.

City Manager Calder advised, because of the time line, he would like the motion to include authorization to begin the recruitment process and that you either want them to be a resident or residency is not an issue. If the motion did not include anything about residency Staff would make the automatic assumption, since there is no policy that the person can live anywhere.

Councilman Elquist questioned when the recruitment letter would go out; within the next two weeks?

City Manager Calder indicated Staff would first develop the recruitment bulletin and submit that back to the Council for review at the next meeting. That would provide Council the opportunity to look at what the minimum qualifications are. We already have an approved City of Elko job description; but it is about four years old. It would give Council one final opportunity if there is something you need to amend, add or subtract before it goes out.

Councilman Elquist questioned the possibility of adding; as an H.R. Policy they must live within a twenty-five mile radius and preference will be given to a City resident.

City Manager Calder cautioned about a preference issue; legally that is a gray area. City Manager Calder believed if the Council wanted to open it up to the most qualified people in general and the biggest pool, you will limit the number of restrictions you place on it.

Deputy Fire Chief/Fire Marshal Hecht advised department members interested in applying for the position requested he speak for them at tonight's meeting on this issue. A number of them do live in the county and are well qualified for the position and would like to apply. Mr. Hecht stated he also would like to apply for the position and lives in the county. He has been responding to emergencies in town; when he gets on scene the Captains have the scene handled and he is there to help with support. The operation end of things is covered; he hasn't seen any issues or heard any complaints. Mr. Hecht advised he carries a cell phone and radio 24/7. Mr. Hecht stated his support that anyone living in the county can do the job.

Mayor Franzoia thanked Mr. Calder and Mr. Hecht for their comments but stated he was not going to change his philosophy and how they dealt with Mr. Kightlinger. The Council has the option of waiting for Councilman Rice to be present and discuss the matter again or wait until a new Council is in place on July 1st and go from there.

Mayor Franzoia acknowledged there is always an urgency to fill the position. But because there is an interim it gives an opportunity to evaluate them through the course of the hiring process. In that case, time is not of the essence and we have done it in the past.

Councilman Elquist supported having Councilman Rice present.

Mayor Franzoia advised the process itself takes considerable time so waiting until July would pose no problem.

**** A motion was made by Councilman Conner, seconded by Councilman Johnson to table the issue until a full Council is present to discuss it further.**

Motion passed unanimously.

VIII. REPORTS

- A. Mayor and City Council
 - 1. Councilman Conner - CADV Spaghetti Feed & Bingo on Saturday, April 16th at 6:00 p.m. St. Joseph's Church
- B. City Manager
 - 1. Election Bill update
 - a. Lobbyist met with sponsoring legislator of competing election bill; indicated he will not amend his bill to include ours
 - b. Our bill is standing on its own and will get work session from the assembly and will hopefully get recommendation for due pass with full assembly
 - c. Everything is looking favorable
- C. Fire Chief
 - 1. Thanked Council and Staff for support
- D. City Clerk
 - 1. There will be an election
- E. Parks and Recreation Director
 - 1. New playground equipment in place at Southside Park

III. APPROPRIATIONS

- A. Review and possible approval of Warrants. **ACTION ITEM**

**** A motion was made by Councilman Conner, seconded by Councilman Elquist to approve the warrants as presented.**

Motion passed unanimously.

ADJOURNMENT

There being no further business, Mayor Michael J. Franzoia adjourned the meeting.

Mayor Michael J. Franzoia

Shanell Owen, City Clerk