

**APPROVED OCTOBER 15, 2009**

The regular meeting of the Douglas County Board of Commissioners was held on October 1, 2009 in the Douglas County Commissioner Meeting Room of the Douglas County Administration Building, 1616-8<sup>th</sup> Street, Minden, Nevada, beginning at 1:04 p.m.

**COMMISSIONERS PRESENT:** Nancy McDermid, Chairman; Greg Lynn, Vice Chairman; David J. Brady; Michael Olson and Doug Johnson.

**STAFF PRESENT:** Ted Thran, Clerk-Treasurer; Ron Pierini, Sheriff; Scott McCullough, Project Manager; Joe Ward, Chief Civil Deputy District Attorney; Lisa Granahan, Assistant to the County Manager; Dirk Goering, Assistant Planner; T. Michael Brown, County Manager; Michael McCormick, Assistant District Attorney; Mimi Moss, Community Development Director; Carl Ruschmeyer, Public Works Director; Sergeant Jim Halsey, DCSO; Claudette Springmeyer, Comptroller; Chris Oakden, Building & Fleet Services Supervisor; Tod Carlini, EFFPD Chief; Captain John Milby, DCSO; Steve Eisele, Deputy Fire Chief; Steve Tognoli, Deputy Fire Chief; Scott McCullough, Community Development/Project Manager; Scott Morgan, Community Services Director and Lorraine Diedrichsen, Clerk to the Board.

**PLEDGE OF ALLEGIANCE**

T. Michael Brown led the Pledge of Allegiance.

**APPROVAL OF AGENDA**

MOTION by Brady/Olson to approve the agenda as presented; carried unanimously.

**APPROVAL OF PREVIOUS MINUTES**

- **September 3, 2009**

MOTION by Lynn/Brady to approve the minutes as presented; carried unanimously.

- **September 17, 2009**

MOTION by Olson/Brady to approve the minutes as presented; carried unanimously.

**PUBLIC INTEREST COMMENTS (NO ACTION)**

Linda Bissett, NvEnergy, commented on the NACO conference and an upcoming rate decrease in NvEnergy utility bills.

Linda Kleiner discussed a petition circulating regarding the proposed Wal-Mart store in Gardnerville.

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Jim Slade cited violations with the Master Plan and the Virginia Ranch Specific Plan with respect to the proposed Wal-Mart.

The board recognized and thanked DeAnn Hoogestraat for her service to the board.

Ms. Hoogestraat thanked the board and added it has been a pleasure working for them.

Public comment closed.

**DOUGLAS COUNTY AWARD PRESENTATIONS**

**PROCLAMATIONS**

**1. Discussion and possible action to adopt Proclamation 2009P-080, in recognition of Vicki Schussel's 30 years of dedicated service to Douglas County.**

Vice Chairman Lynn read the proclamation.

Scott Morgan, Community Services Director, commented on Ms. Schussel's passion for her work and commitment to Douglas County.

Vicki Schussel accepted the proclamation and thanked the board.

MOTION by Johnson/Brady to adopt Proclamation 2009P-080 in recognition of Vicki Schussel's 30 years of dedicated service to Douglas County; carried unanimously.

**2. Discussion and possible action to adopt Proclamation 2009P-081 recognizing Douglas County Fleet Services for earning the Blue Seal of Excellence as prescribed by the National Institute for Automotive Service Excellence.**

Vice Chairman Lynn read the proclamation.

The staff of Fleet Services accepted the proclamation.

Carl Ruschmeyer, Public Works Director, noted the staff strives for excellence and congratulated them on the award.

Chris Oakden, Building & Fleet Services Supervisor, thanked his staff for their hard work and dedication.

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MOTION by Olson/Brady to adopt Proclamation 2009P-081 recognizing Douglas County Fleet Services for earning the Blue Seal of Excellence as prescribed by the National Institute for Automotive Service Excellence; carried unanimously.

**3. Employee Service Awards**

- Sergeant James Halsey – 15 years – DCSO

Ron Pierini, Sheriff, thanked him for the work he does within the Sheriff's Office and noted he was named Officer of the Year by the International Footprinters Association.

Sgt. Halsey talked about the professionalism and dedication of the DCSO and felt fortunate to be part of it.

- Sergeant John Munk – 20 years – DCSO

Sheriff Pierini and Captain John Milby, DCSO, noted Sgt. Munk was a valuable part of the sheriff's office/jail facility and thanked him for the outstanding job he has done.

Sgt. Munk said it is a pleasure working at the sheriff's office and expressed his thanks.

**CONSENT CALENDAR**

MOTION by Brady/Olson to approve the consent calendar;

**ADMINISTRATIVE SERVICES/COMPTROLLER**

**4. Review status of treasury funds through October 1, 2009 per NRS 251.030.**

MOTION to approve;

**CLERK-TREASURER**

**5. Cumulative voucher sheets for checks issued.**

MOTION to approve;

**EAST FORK BOARD OF FIRE COMMISSIONERS**

**6. Discussion and possible action on a First Amendment to a 2001 Interlocal Contract between Douglas County and East Fork Fire and Paramedic Districts regarding the Districts conveying all of their ownership interests to Douglas County in certain property located at 1568, 1590 and 1592 Esmeralda Avenue, Minden, Nevada. (APNs: 1320-32-111-021; 022 & 023).**

MOTION to approve;

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**7. Discussion and possible action to approve the East Fork Fire and Paramedic Districts' Monthly Report for July 2009 and authorize accounts receivable write-offs for July 2009.**

MOTION to approve;

**8. Discussion and possible action to approve the East Fork Fire and Paramedic Districts' Monthly Report for August 2009 and authorize accounts receivable write-offs for August 2009, and to accept the ambulance billing final report for FY 2008-2009.**

MOTION to approve;

**PUBLIC WORKS**

**9. Discussion and possible action on adoption of a Water and Sewer Facility Plan for the Minden-Tahoe Airport.**

MOTION to approve;

**COMMUNITY SERVICES**

**10. Discussion and possible action on the approval of an Interlocal Agreement between Douglas County and Indian Hills General Improvement District for improvements to Valley Vista Park with funding from Residential Construction Tax.**

MOTION to approve;

**STAFF REPORTS**

**REPORT OF FEES:**

- 11. Civil Clerks – August 2009**
- 12. Tahoe Township Justice Court – August 2009**
- 13. Recorder – August 2009**
- 14. Tahoe General Services – August 2009**
- 15. Court Clerks – August 2009**

MOTION to approve;

MOTION; carried unanimously.

**ADMINISTRATIVE AGENDA**

**CONSENT CALENDAR ITEMS PULLED FOR FURTHER DISCUSSION**

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None.

**CONSENT CALENDAR DISCUSSION CONCLUDED**

**COUNTY MANAGER**

**16. Discussion on a presentation from the Carson Valley Trails Association regarding their trails planning, activities and projects in the Carson Valley.**

Lisa Granahan, Assistant to the County Manager, introduced Kerstin Wolle and Jeremy Vlcan from the Carson Valley Trails Association.

Ms. Wolle and Mr. Vlcan explained the association is a non-profit, all volunteer organization that works in collaboration with Douglas County and partners with other organizations. Recently completed projects include trail construction with trail signage and a strategic plan; current projects consist of the Genoa Foothill Trail system, a trail system on Bently Agrodynamic property, and an interpretative trail system. Using a National Park Service grant to facilitate the process, an upcoming project will attempt to incorporate a trail around the entire valley.

Commissioner Brady thanked the Trails Association for the dedicated hard work that is provided through their membership and volunteers.

**EAST FORK BOARD OF FIRE COMMISSIONERS**

**17. Discussion and possible action on approval of employee contract with the East Fork Professional Firefighters (EFPF). The employee contract provides for merit increases, trade days, and other properly related matters.**

Darcy Worms, Human Resources Manager, stated the only change to the contract since the last review was the minor correction to the annual and sick leave accruals.

MOTION by Brady/Lynn to approve the employee contract for the East Fork Professional Firefighters Association; carried unanimously.

No public comment.

**18. Presentation and award by Care Flight representatives to the East Fork Fire and Paramedic Districts in recognition of the District's continued service and assistance with Care Flight's survival training program.**

Temple Fletcher and Care Flight representatives presented a plaque to EFFPD in recognition of their participation in Care Flight's survival training exercises.

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Steve Tognoli, Deputy Fire Chief, accepted the plague.

**19. Presentation and update on Douglas County Emergency Management's role in the coordination, education, and vaccination of the H1N1 Flu Virus.**

Tod Carlini, EFFPD Chief/Emergency Management, stated a comprehensive team of health care professionals have been assembled to prepare and plan for the H1N1 flu virus.

Steve Tognoli, Deputy Fire Chief, provided an update on the efforts to prepare Douglas County for the H1N1 flu virus. Partners have been established and a NIMS organization has been developed. The signs and symptoms, vaccination distribution, target populations, difference between seasonal flu and H1N1 flu vaccinations, prevention efforts, special training required to administer vaccinations, planning goals and objectives, command system for a POD, strike team concept, funding and recommended actions for employers and employees were explained.

Commissioner Brady asked how outreach to non-English speaking community members was being handled.

Deputy Chief Tognoli stated some of the brochures are available in Spanish and the website contains a link for the Spanish speaking population to access.

**20. Discussion and possible action to introduce Ordinance 2009-1299 amending Douglas County Code, Title 8 Burning Restrictions, section 8.12.030 to remove the provision that sets the burning hours and allows the fire chief or his designee to set the hours, and providing for other properly related matters. (1<sup>st</sup> reading)**

Chairman McDermid read the ordinance by title.

Steve Eisele, Deputy Fire Chief, explained the change, to accommodate the area's weather conditions and the rancher's desire to start burning earlier, would allow the flexibility to adjust the starting time which burning is allowed. The process to determine the starting time and the notification process will remain the same.

No public comment.

MOTION by Johnson/Brady to introduce Ordinance 2009-1299 amending Douglas County Code, Title 8 Burning Restrictions, section 8.12.030 to remove the provision that sets the burning hours and allows the fire chief or his designee to set the hours, and providing for other properly related matters; carried unanimously.

**DOUGLAS COUNTY LIQUOR BOARD**

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**21. Discussion and possible action to change a Cabaret, Class C Liquor License with restricted Gaming for Mr. Alan Adams, representing DG II, LLC. to: a Discotheque License for Mr. Alan Adams, representing DG II, LLC. dba D.G. II Brew Pub & Grill, located at 2244 Meridian Blvd., Ste. A, Minden, Nevada.**

Sergeant Jim Halsey, DCSO, stated the sheriff's office had no objection to the application as requested. All legal notifications have been made.

Mr. Alan Adams, applicant, was available to answer questions.

No public comment.

MOTION by Lynn/Brady to approve changing a Cabaret, Class C Liquor License with restricted Gaming for Mr. Alan Adams, representing DG II, LLC. to: a Discotheque License for Mr. Alan Adams, representing DG II, LLC. dba D.G. II Brew Pub & Grill, located at 2244 Meridian Blvd., Ste. A, Minden, Nevada; carried unanimously.

**22. Discussion and possible action to approve the request for a Cabaret (full bar) Discotheque/Off Sale Beer & Wine/Caterer Liquor License for Richard and Kathy Halbardier, owners/operators, Tahoe Ridge Winery & Marketplace, LLC, dba Tahoe Ridge Winery & Marketplace, a tasting room, marketplace and bistro, located at 1644 Highway 395, Minden, Nevada.**

Sergeant Jim Halsey, DCSO, stated the sheriff's office had no objection to the application as requested. The applicant is relocating their business and adding dancing. The sheriff's office has not had any issues with the applicant's current license. All required inspections have been completed.

Kathy Halbardier, applicant, thanked the sheriff's office and EFFPD for their help in steering them through the application process.

PUBLIC COMMENT

Hayley Maynard spoke in support of the license.

Public comment closed.

MOTION by Olson/Brady to approve the request for a Cabaret (full bar) Discotheque/Off Sale Beer & Wine/Caterer Liquor License for Richard and Kathy Halbardier, owners/operators, Tahoe Ridge Winery & Marketplace, LLC, dba Tahoe Ridge Winery & Marketplace, a tasting room, marketplace and bistro, located at 1644 Highway 395, Minden, Nevada; carried unanimously.

**SHERIFF**

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**23. Discussion and possible action on a protest from K7 Construction Inc. on the recommendation that the jail bid be awarded to APCO Construction Inc. for the Jail Expansion Project, Base Bid One and Additive Alternates 1-4 for \$3,738,600 and a 5% contingency for the project.**

Joe Ward, Chief Civil Deputy District Attorney, noted counsel for K7 Construction was present.

John Moore, counsel for K7 Construction, explained the bid advertisement contained a Base Bid One and a Base Bid Two with a budget amount of \$4,000,000. \$18,000 separated the lowest bids on Base Bid One with the four alternates and K7 had the lowest bid. K7 believed it would be awarded Base Bid One but the contract is proposed to be awarded to APCO Construction.

As the project is structured, it is two separate items to be built. Base Bid One is a kitchen facility with on site improvements and Base Bid Two is for housing and housing pods. K7 bid the job under the assumption that they were two separate bids. Both Base Bids are within K7's licensing limits. This situation is unique because it is two bids which have their own additive alternates. The contract that is proposed to be awarded is Base Bid One with its four alternates and is within K7's license limit. K7 Construction is willing, able, capable, and has the bonding capacity to do the work; they feel they are the low bidder on Base Bid One and the aggregating of the two bids into one amount is not what this bid was for. The bid appears to have been intentionally separated to allow the county flexibility to decide what they wanted to do.

Mr. Ward said the bid protest was not posted with the proper bond or security as approved by Douglas County at the time the protest was submitted. In paragraph 2.01 of K7's bid form, it accepted all the terms and conditions of the advertisement or invitation to bid and instructions to bidders. Article 24 *mandates* a bond or security be posted with the protest and since this was not done the bid protest may be fatally defective.

This is one project regardless of the number of Base Bids. The total amount of K7's bid as advertised exceeded \$6,700,000 and their license amount is \$5,000,000. NRS 338.1475 mandates local government cannot award a contract for public work to a person, who at the time of the bid, is not properly licensed under the provisions of Chapter 624 of NRS or if the contract would exceed the limit of his license. NAC 624.640 mandates "if a licensee bids or contracts outside the scope of his license or exceeds the monetary limit placed on the license the bid or contract is void". If K7's protest is accepted as an attempt to amend its bid, then that bid on this one project regardless of the Base Bids and phasing and based on financial constraints is of no

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consequence. That bid would be a non-responsive bid for the one project that was advertised.

In light of this, the District Attorney's office advised the board to deny K7's protest. It is either non-cognizable since the required bond did not accompany the protest or it is void.

Commissioner Olson said the county had \$4,000,000 available to pay for Phase I and Phase II but Phase I came in close to \$4,000,000. Will we ever go to Phase II or re-advertise for bids at a later date?

Scott McCullough, Community Development/Project Manager, said Base Bid Two is separated for today's needs and tomorrow's needs. Base Bid One is the core of the project. Base Bid Two is for housing units and the infrastructure to support them would be completed with Base Bid One. Staff is choosing to do this portion of the work based on the bids received. Once the bids were opened, cost prohibited Base Bid Two from being considered.

Commissioner Olson asked if this is one bid on two phases and since has changed to be one phase, does K7 have the funding or bonding to meet that obligation?

Mr. McCullough responded this is one project and is in excess of their license limit. This was never meant to be bid as two prime contracts. The project came in over the amount of available funding so it has been reduced to what is affordable.

Funding was approved for the project for Base Bid One and Base Bid Two but it was to be kept separate. When the bids came in over the available funding, staff combined the funding available for both to fund Base Bid One and the four alternates.

Mr. Ward reiterated this was bid as one project.

PUBLIC COMMENT

Steve Fitz, Vice President of K7 Construction, read from NRS 338.1475 and said they bid two Base Bids. The protest was not timely because they did not know there was something to protest. How can they protest in five days when the county did not even know? If they are the lowest bidder, they should be awarded the contract.

Gabe Silverberg, Western Single Ply, said he was the roofing sub-contractor and is a resident of Douglas County. He talked about issues with the bidding process and said APCO is a Las Vegas company and the money should be awarded to a local company.

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Dave Knaub, owner of K7 Construction, said they felt the bid was within their limit and there was no need to get a one time limit increase. These were two separate bids and were handled legally. This is not right and the sub-contractors deserve the right to work for Douglas County.

When the protest was made, the bond or security was not posted because it "may" be required. Mr. Fitz added the statute provides the county the option to post the bond. It does not state the bond has to be posted with the protest. They missed the protest date because there was nothing to protest for three weeks. They were the low bidder based on the award of Base Bid One and four alternates.

Public comment closed.

*At this time, the board recessed to confer with their legal counsel.*

Michael McCormick, Assistant District Attorney, noted the recess consisted of discussion regarding possible litigation and no decisions were made.

Vice Chairman Lynn stated the county does not have a local bidder preference mechanism in place because current statutory limitations do not allow it. Upon advice of counsel:

MOTION by Lynn/Johnson to find APCO Construction Inc. to be the lowest responsive and responsible bidder, and deny the protest of K7 Construction based upon all the points brought forth by Chief Civil Deputy District Attorney Joe Ward and including all comments and discussion; carried unanimously.

**24. Discussion and possible action on approval of the bid award to APCO Construction Inc. for the Jail Expansion Project, Base Bid One and Additive Alternates 1-4, for \$3,738,600 and a 5% contingency for the project.**

Scott McCullough, Community Development/Project Manager, said APCO Construction was the lowest responsive bidder. Presenting their background, he stated the bid package contained no flaws; they have experience in jail building and/or remodeling; they are an experienced contractor in the State of Nevada and have an unlimited license amount; they have done numerous public works projects; and have been in business for 30 years.

No public comment.

MOTION by Lynn/Brady to find that APCO Construction Inc. is the lowest responsive and responsible bidder, and award the contract for the Jail Expansion Project, Base Bid One and Additive Alternates 1-4 for \$3,738,600 and a 5% contingency for the project; carried unanimously.

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**HUMAN RESOURCES**

**25. Discussion and possible action to approve renewing current contracts for medical and prescription coverage through Saint Mary's HealthFirst with a 10.6% rate increase.**

Darcy Worms, Human Resources Manager, presented the recommendation from the benefits committee to accept the option of a 10.6% rate increase. This option has the most plan design changes with the most significant being the elimination of the PPO Enhanced Plan. Staff will continue to research self-funding.

No public comment.

MOTION by Brady/Olson to approve renewing contracts for medical and prescription coverage through Saint Mary's HealthFirst with a 10.6% rate increase which includes medical and prescription; carried unanimously.

**PUBLIC WORKS**

**26. Discussion and possible action to approve the Douglas County Energy Efficiency and Conservation Block Grant program award in the amount of \$195,000.**

Chris Oakden, Building & Fleet Services Supervisor, explained the grant for energy upgrades. Some of the award has been released but the remaining funds will be released upon completion of the energy efficiency plan. Most of the funds will be used for lighting projects within the county.

No public comment.

MOTION by Lynn/Brady to approve the Douglas County Energy Efficiency and Conservation Block Grant program award in the amount of \$195,000; carried unanimously.

**27. Discussion and possible action to approve a professional services contract in the amount of \$148,506 with Manhard Consulting, Ltd. for design of Section 1 of the North County Water System Improvements.**

Carl Ruschmeyer, Public Works Director, said the contract would extend the new water line from its current terminus point between Johnson and Stephanie Lanes to the intersection where Indian Hills would be served in the future. This will initiate the time critical work related to bringing Indian Hills into compliance with the arsenic standards.

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No public comment.

MOTION by Brady/Olson to approve a professional services contract in the amount of \$148,506 with Manhard Consulting, Ltd. for design of Section 1 of the North County Water System Improvements; carried unanimously.

**28. Discussion and possible action to adopt Resolution 2009R-078 amending Certain Rates, Fees and Charges for Sanitary Sewer Service for the North Valley Sewer Facility.**

Carl Ruschmeyer, Public Works Director, said the resolution, in keeping with the county's financial policies, would raise the monthly sewer rate from \$39.50 to \$51.02. All other components, fees and charges remain in place. The resolution also addressed some housekeeping issues concerning references to the Ridgeview Sewer System.

No public comment.

MOTION by Brady/Olson to adopt Resolution 2009R-078 amending Certain Rates, Fees and Charges for Sanitary Sewer Service for the North Valley Sewer Facility; carried unanimously.

**29. Discussion and possible action on a presentation of a proposed water rate increase for the East Valley Water System for consideration and adoption at a subsequent meeting.**

Carl Ruschmeyer, Public Works Director, presented the rate drivers, forecast assumptions, financial policies, CIP, revenue requirements, fund balances and uses, existing and proposed rate schedules, and a sample bill impact.

- ✓ Rate drivers: an EPA unfunded mandate regarding arsenic compliance, debt service and system replacement.
- ✓ Forecast assumptions: a five year study, FY 09-10 adopted budget plus annual escalation, no use of connection fees for debt, no growth, and a customer base of 2,509 meter equivalents.
- ✓ Financial policies: depreciation will be phased in over five years for existing assets and new assets will be depreciated 100% at completion, operating reserves will be funded at 25% of the annual operating expenses, capital reserves will be funded at 2% of the total cost of fixed assets, emergency reserve minimum will be \$50,000, and debt service coverage at 1.25.
- ✓ CIP: Johnson Lane parallel line and water line upgrade, Johnson Lane 2<sup>nd</sup> water tank, and water meter upgrades.
- ✓ Revenue requirement: Coverage and cash tests were done and have a shortfall which needs to be funded. The rate increase will be 56.99%.

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- ✓ Fund balances & uses: operating account meets the county's financial policies, emergency reserve will be set at \$75,000, and the rate stabilization reserve will be transferred to the capital account to meet future needs.
- ✓ Rate schedule: currently based on a fixed charge and consumptive use; the proposed rate will be an across the board multiplier based on the 56.99% increase.
- ✓ Sample bills: a typical residential user's bill would go from \$34.00 to \$53.35. If the county would have implemented the arsenic treatment plant, the rate would have gone from \$34.00 to \$66.28. A typical commercial bill would go from \$54.68 to \$85.79 and a typical irrigation bill would go from \$118.72 to \$186.19.

PUBLIC COMMENT

Chairman McDermid read a comment into the record from Nathan Tolbert opposing the increase. He asked the county to pursue alternative funding or grant money.

Public comment closed.

Mr. Ruschmeyer responded Douglas County would have to meet all eligibility requirements in order to secure stimulus money and it is unlikely we would be able to do so given the median income requirements.

MOTION by Johnson/Brady to direct staff to bring to the November 5, 2009 Board meeting a resolution establishing water rates for the East Valley Water System; carried unanimously.

**RESOLUTIONS & ORDINANCES:**

**30. Discussion and possible action to adopt Resolution 2009R-079, a resolution of intent, proposing the issuance of, and authorizing the publication of notices relating to General Obligation (Limited Tax) Water Bonds (additionally secured by pledged revenues) in the maximum principal amount of \$1,200,000 for the purpose of financing a water project for the Job's Peak Water System; providing the manner, form and contents of the notices; and authorizing the County Manager or County Comptroller to arrange for the sale of such bonds.**

Claudette Springmeyer, Comptroller, said the DMC approved going forward and this action will set into motion the 90 day petition period.

Commissioner Brady added the anticipated rate would be 3.5% but would depend on the index when the county takes the money.

PUBLIC COMMENT

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Barbara Smallwood asked which revenues would repay the debt.

Public comment closed.

T. Michael Brown, County Manager, said the repayment of the bonds is from the Jobs Peak Water System users; the securing of it is from all the valley water systems.

MOTION by Brady/Olson to adopt Resolution 2009R-079, a resolution of intent, proposing the issuance of, and authorizing the publication of notices relating to General Obligation (Limited Tax) Water Bonds (additionally secured by pledged revenues) in the maximum principal amount of \$1,200,000 for the purpose of financing a water project for the Job's Peak Water System; providing the manner, form and contents of the notices; and authorizing the County Manager or County Comptroller to arrange for the sale of such bonds; carried unanimously.

**31. Discussion and possible action to adopt Ordinance 2009-1295 amending the Douglas County Code, Title 1, General Provisions chapter 1.01 to update the effective date of the Douglas County Code, and chapter 1.04 by adding two sections that provide for the preparation of and revisions to the Douglas County Code and providing for other properly related matters. (2<sup>nd</sup> reading)**

Chairman McDermid read the ordinance by title.

Michael McCormick, Assistant District Attorney, said this will allow correction of minor errors in the code and publishing of the code without posting a new date.

Vice Chairman Lynn asked if this effects the implementation of an ordinance.

Mr. McCormick said this will only clean up the code and allow staff to keep it updated.

PUBLIC COMMENT

Karla Kuhn asked for an example of some of the errors.

Public comment closed.

Mr. McCormick responded it could be a misspelled word or be grammatically incorrect. This would allow the District Attorney's office, in accordance with state law, to make procedural changes only. It would not affect the substance.

MOTION by Lynn/Brady to adopt Ordinance 2009-1295; carried unanimously.

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**COMMUNITY DEVELOPMENT**

**32. Discussion and possible action on the First Amendment to the Grant of Conservation Easement between Holbrook Beef & Cattle Company, LLC and Douglas County, relocating and decreasing the size of the designated Reserve Area by 1.6 acres, and increasing the conservation easement area with 6.7 acres of irrigated agricultural land within Assessor Parcel Number 1419-35-001-003.**

Mimi Moss, Community Development Director, provided the site location and amended conservation easement map (with existing reserved area and proposed reserved area). This will move the building envelope closer to the Carson River; increase the amount of irrigated agricultural land; and decrease the amount of reserved area by 1.6 acres. Enforcement issues have been ongoing for the last 18 months - work was completed within the property without the proper permits. An SIP has been applied for and issued to correct the errors made but it was picked up by someone without a contractor's license so the SIP may become invalid.

This is a unique situation as it is the first request to amend a conservation easement area established under the TDR program. Staff is making no recommendation for approval or denial as this is a policy decision by the board and may set a precedent. This is a 98 acre parcel with 40 acres of reserved area and the question to ask is why the conservation easement needs to be moved.

Rob Anderson, on behalf of the applicant, presented the conceptual development plan, history of the TDR program, how the reserved area was originally designated, existing site plan, conceptual development plan, and the policy implications. The resulting community benefits include the preservation of an additional 6.7 acres, a 3% increase in the conservation area, a 16 acre pond which would provide additional habitat and open space benefits, relocation of the buildable areas into the upland areas, riverbank stabilization, and open space preservation values.

The board and Mr. Anderson discussed the floodplain designation on the 2100 acres, location of the fill material in relation to the floodplain, fill material moved without permits or consideration for the reserved area, remaining acres of irrigated agriculture land, water rights needed to fill the 16 acre lake, possible trails or trailheads proposed as part of this area, whether a Section 404 permit from the Army Corp of Engineers would be required, possible future amendments, timing of and assurance the riverbank stabilization will occur.

Commissioner Johnson said this is a policy decision that may set a policy to change reserved areas in the future.

Chairman McDermid said every proposal would have to stand on its own merits.

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Ms. Moss said the prior conservation easements that were requested to be amended were clustered subdivisions. This is the first TDR certified conservation easement requested to be amended. This is a policy decision by the board.

Commissioner Johnson discussed concerns with the displacement of the water in a flood and the redirecting of flood waters.

PUBLIC COMMENT

Jim Slade discussed the Budge Brown case and the board's ruling, the conservation easement and reserved area was in place when he bought the property and was designated in perpetuity, floodplain issues, Army Corp of Engineer's approval and the precedence that would be set. He urged denial.

Karla Kuhn commented on the location of fill dirt, erosion, and water movement with respect to the riverbank stabilization of the river. She urged denial because the riparian issues between the slough and river are not addressed.

Public comment closed.

Commissioner Brady stated concern with the number of assurances that would have to be provided and addressed such as the acquisition of the water rights, letter from the Army Corp of Engineers, stabilization of the riverbank, and analysis of the displacement of the fill. All of these create more questions about the success of being able to implement this strategy.

Vice Chairman Lynn added the applicant can do everything he is proposing with the existing configuration so why is he requesting a modification to it.

Jeremy Page, owner, apologized for his ignorance on conservation easements and the processes regarding the permits. He would consider an agreement addressing the rehabilitation of the riverbank.

Mr. Anderson continued and provided an October 2008 letter from the Army Corp of Engineers stating a permit is not required. The creation of the 16 acre pond will create an area that can absorb some water from a flood and would not be as impactful as a 40 acre development. The pond area would provide 16 more acres of open space. He is proposing to build within a ten acre area. Mr. Page has indicated he would accept conditions to the application regarding the timing of the improvements. The net benefit to Douglas County is 1300' of riverbank restored, more conservation easement, and additional agricultural land preserved. The board will have done what the agreement says and consider any application for change.

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Commissioner Johnson discussed the water access to the home and possible activities on the lake such as water skiing. He asked about the anticipated uses of the lake.

Mr. Anderson stated it is Mr. Page's intent is to enjoy the wildlife and the outdoors and would accept a stipulation to prohibit the allowed A-19 use for a water ski lake.

Ms. Moss stated any change on the pond from a private use would require a SUP.

Commissioner Brady suggested directing this back to staff to work out the details regarding the conditions and assurances before the board considers a decision on this request. Many variables have yet to be answered.

Mr. Anderson asked the board if they would support a modification to the easement if some of the suggestions were included as conditions. Reasonable conditions could be added but assistance is needed to know if the board would be supportive if the applicant goes through that process.

T. Michael Brown, County Manager, thought the issue boiled down to the policy decision of whether or not to make an amendment to the TDR program and would that amendment be beneficial for the county.

Commissioner Olson thought many conditions have been agreed to but there are too many to keep track of. It would be beneficial to sit down with staff and iron out the details. He does not have a problem making the changes if they are reasonable.

Chairman McDermid said the project has many merits but many of the aspects are up in the air and would like staff to explore this further.

Commissioner Johnson reminded the board staff does not have a policy to fall back on so board direction is necessary.

Ms. Moss added the applicant has provided benefits (bank stabilization, irrigated agriculture land, and the change to the reserved area) to moving the reserved area. All the rest of the proposed development can be done in the original reserved area. Does the board believe this is a sufficient trade-off for moving the reserved area?

PUBLIC COMMENT REOPENED

Jim Slade thought it was unfair to the public when the public has no opportunity to respond to new issues raised. He said all deference is given to the developer and little to the public. He talked about the effect of fill on the floodplain and Mr. Page's ignorance of the law.

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Donna Buddington agreed with Mr. Slade and stated the applicant is given too much time. She would like the "in perpetuity" clause upheld.

Public comment closed.

Chairman McDermid responded a policy decision by the board is being considered and as much information as possible along with public input will allow the board to make the best decision possible.

Subject to all the discussions from the board, staff, and applicants, no determination can be made that this amendment furthers the development purposes of Title 20.20.500, MOTION by Johnson/Lynn to deny this amendment; carried with Olson and Brady voting Nay.

**33. Discussion and possible action on Development Application (DA) 09-055, for Robert and Ann Funk, an abandonment of 4,755 square feet, more or less, of the Carson Street right-of-way, reducing the right-of-way width from a maximum of 85.56 feet to 60 feet in front of 179 Carson Street (APN: 1319-19-801-001). The area to be abandoned will become part of APN: 1319-09-801-001, owned by Robert and Ann Funk. The parcel is in the SFR-1 (Single Family Residential, one acre minimum parcel size) zoning district in the Town of Genoa.**

Dirk Goering, Assistant Planner, presented an exhibit of the abandonment, photos of the site, site history, an overview of Carson Street and the surrounding area, recommendation by the Town of Genoa to add an additional condition, and staff's recommendation for approval.

Darryl Harris, Resource Concepts and representing the applicant, cited specific examples of abandonments granted within the Town of Genoa due to property line issues. The water line utility easements are still being worked out.

The board discussed with Mr. Harris the effort to bring the property into compliance while keeping the road at 60' and preserving the historic rock wall.

Karen Peterson, Allison, McKenzie law firm, noted Dr. Cochran has not made any request to date. NRS 278.480 (abandonment) is clear stating if the public will not be materially injured by the granting of the abandonment, the governing body shall grant and vacate the street or easement as requested. A material injury has not been determined by anyone involved. She submitted maps of the other street abandonments granted in Genoa.

Ron Funk, owner, explained the property is being sold due to his health issues. He read excerpts from books on the guidelines for the historic district of Genoa. He

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talked about information provided on the title report at the time he purchased the home.

PUBLIC COMMENT

David Cochran stated concerns regarding the impact the abandonment will have on his 100 year old rock wall. He discussed the history of the property line and setbacks and addressed omissions/misinformation provided in the staff report. A variance is appropriate but he is opposed to the abandonment.

Marian Vassar is opposed to the abandonment and is in agreement with Mr. Cochran. The material injury is reflected in the infringement on the rock walls, free land abandonments, and the fact the board is being told they cannot say no. She would like to maintain the character and integrity of Genoa.

Bill Donohoe thought a setback variance should be granted instead. He said the town water lateral is located on the proposed abandonment and the issue should be denied until the water distribution issue is resolved. Many of the issues addressed in his letter have not been answered satisfactorily.

Jim Vasey, representing Chris & Shaunda Vasey, spoke in favor of the abandonment. He added information regarding a water right and the water provided by a diversion box.

Chairman McDermid read a comment into the record from Rex Cleary who is in opposition to the abandonment.

Public comment closed.

Vice Chairman Lynn said he can support a variance but cannot support changing a historic street in a historic town. The property will remain non-conforming even if this is granted.

Commissioner Johnson stated several people are in opposition and that is a sign of material damage so he cannot support this. The parcel will still be non-conforming.

Chairman McDermid concurred.

Mimi Moss, Community Development Director, stated a variance could not be considered because this is an existing structure. Clarifying the comments made, Ms. Moss stated the abandonment will not hinder access to public lands, the look of and the parking along Carson Street will not change, and the water diversion issue could be resolved with a water line easement.

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Mr. Harris explained the diversion box is located 4' from the property line but inside the private property. The water line is within the right of way and an easement will be provided over that portion.

Michael McCormick, Assistant District Attorney, reminded the board they must find specific material injury to deny the abandonment. The law cannot be ignored and the statute is clear regarding the granting of abandonments.

PUBLIC COMMENT REOPENED

Barbara Smallwood asked if the Funks can change the look of the property.

Ms. Moss responded yes.

Public comment closed.

MOTION by Lynn/Olson to approve the Development Application (DA) 09-055, an abandonment of a portion of Carson Street for Robert and Ann Funk, with the modification that in order to preserve the historic rock wall across the street and maintain a 60' roadway, the abandonment width be reduced to 20' with the additional condition the Funks will provide any and all necessary easements for water lines or other utilities, based on the discussion and subject to the recommended conditions in the Staff Report;

Chairman McDermid explained the difference between a variance and abandonment.

MOTION; carried with Johnson voting Nay.

**35. Discussion and possible action on Development Application (DA) 09-057, for James Bradshaw, requesting the abandonment of the following: 1) 8,898 square feet, more or less, of a 50-foot radius temporary turn-around easement (over APN: 1220-10-510-006); 2) 45,515 square feet, more or less, of a 37-foot wide ditch irrigation and maintenance easement "Old Virginia Canal" (over APN: 1220-03-000-038); 3) 13,545 square feet, more or less, of a 20-foot wide storm drainage easement (over APN: 1220-10-510-006); 4) 62,160 square feet, more or less, of a 41-foot wide ditch irrigation and maintenance easement "Company Ditch" (over APNs: 1220-10-510-002 and 1220-03-000-038); and 5) nine public utility easements ranging from five-foot to 30-foot in width over APNs: 1220-03-000-038, 1220-10-510-002, 1220-10-510-006, 1220-10-110-007, and 1220-10-110-008, in Douglas County, Nevada. The parcels are located in the GC (General Commercial, 10,000 square-foot minimum parcel size) and A-19 (Agricultural, 19-acre minimum parcel size) zoning districts in the Town of Gardnerville.**

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Michael McCormick, Assistant District Attorney, stated due to an error within the agenda title and a possible open meeting violation, this item will be continued to the November 5, 2009 meeting. He apologized for any inconvenience.

MOTION by Johnson/Brady to continue this item to November 5, 2009; carried unanimously.

PUBLIC COMMENT

Donna Buddington expressed outrage with the lateness of the hour and noted many have been in attendance for several hours to speak on this item. She commented on the error and said the public is cut out of the processes and governance is losing credibility. The public is owed an apology.

Public comment closed.

**34. Discussion and possible action on Development Application (DA) 09-054, for Greg Sayabalian, owner of Hamdog's Restaurant, as follows:**

**A) A zoning map amendment changing the zoning district from GC (General Commercial) to TC (Tourist Commercial) to support a future non-restricted gaming use for the 6,630-square foot tenant space occupied by Hamdog's Restaurant.**

**B) A zoning map amendment to establish a GD (Gaming District) Overlay zone under Douglas County Code, Chapter 20.685, which includes a development plan for unrestricted gaming use for the 6,630-square foot tenant space occupied by Hamdog's Restaurant.**

**C) Introduction of Ordinance 2009-1296, an ordinance for Greg Sayabalian, changing the zoning district on a 6,630 square foot portion of a 3.18-acre parcel (APN: 1220-03-410-003) from GC (General Commercial) to TC (Tourist Commercial)/ GD (Gaming District) Overlay to support a non-residential gaming use, within the Meadowdale Shopping Center and other properly related matters (1st reading).**

**The subject site is located at 1267 U.S. Highway 395 South, within the Town of Gardnerville (a portion of APN: 1220-03-410-003).**

In reading the agenda title, Chairman McDermid read the ordinance by title.

Dirk Goering, Assistant Planner, presented the vicinity map, existing land use and zoning, proposed zoning, site/suite/floor plans, TC and GC land use comparison, map of the existing TC districts/Gaming districts overlay, Planning Commission and Town of Gardnerville's recommendation for approval and the Master Plan goals.

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Keith Ruben, on behalf of the applicant, clarified the zoning runs with the land together with the SUP and any conditions of the SUP.

An attempt to introduce a zoning district to serve this purpose was unsuccessful; Nevada has a limited gaming license and an unlimited gaming license. Working with the county, it was determined you cannot have a zoning district different than state law. This is the only option but the applicant is willing to limit the number of machines. Any future change to the SUP would require board approval.

Michael McCormick, Assistant District Attorney, explained any increase to the number of slot machines would ultimately be the Gaming Control Board's decision.

Greg Sayabalian, owner, provided a history of Hamdog's Restaurant. When the smoking ban was enacted, 30% of his customers were lost. They are hoping to expand their dining to accommodate smokers and this could be done by using the unit next door. Having one large business instead of three individual businesses would show the community Hamdog's is growing. He would like free flowing access to all sides. Advertising would be done both to attract tourists as well as get back local customers.

Having a bigger gaming license would allow smoking in the gaming areas. Upon approval from the Gaming Control Board, they would have a total of 50 machines between the three units. The goal is to accommodate the smoking/food customers and this may be accomplished by adding tables along the side.

Commissioner Brady said this is being driven by the smoking ban and an attempt to win back customers. This is a creative way to address an issue but problems could be created with an unrestricted gaming license. Using zoning laws and adding more slots does not keep with the original intent of the shopping center. This is spot zoning and he is uncomfortable with it.

Mr. Sayabalian responded he is trying to expand his business and create a few more jobs. If a smaller license were available he would apply for it. The slots are a convenience and an attempt to compete.

Commissioner Johnson noted the smoking ban has hurt businesses. However, the unrestricted gaming license and TC/Gaming district overlay does not fit the area; there has to be a better way to go about this. Approving this could have dire consequences for the county in the future.

Chairman McDermid agreed with Commissioners Brady and Johnson. Other possibilities are available to make this work. TC provides suitable areas for tourist related activities; this strip mall provides services for residents and not tourists.

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Vice Chairman Lynn asked if three restricted licenses would be acceptable.

Mr. Sayabalian said he would then have three separate businesses and three separate licenses. They have been working with staff for a number of years to try to come up with a solution – this is the final straw.

PUBLIC COMMENT

Scott Tate, on behalf of the COD Casino project, commented on the smoking ban, the value of an unrestricted gaming license and explained the state's process when there is a request to increase the number of slot machines.

Public comment closed.

Mr. Sayabalian stated he would not be opposed to any restrictions on the SUP.

Commissioner Brady said the question is whether TC zoning is appropriate at this location. It has been indicted by the applicant that it is not tourist driven as much as it is an attempt to bring back his existing customer base. Are we meeting the expectations of the TC zoning?

MOTION by Brady/Olson to deny a zoning map amendment (ref. DA 09-054), changing the zoning district from GC (General Commercial) to TC (Tourist Commercial), for the space occupied by Hamdog's Restaurant as it is not consistent with the purpose of TC zoning and based on the discussions by the board, applicant, and public; carried unanimously.

MOTION by Brady/Olson to deny a zoning map amendment to establish a GD (Gaming District) Overlay under Douglas County Code Chapter 20.685 for space to be occupied by Hamdog's Restaurant as it is not consistent with the Chapter 20.650 and is not compatible with the other uses in the Meadowdale Shopping Center and the surrounding areas; carried unanimously.

MOTION by Brady/Olson to not introduce Ordinance 2009-1296; carried unanimously.

**35. Discussion and possible action on Development Application (DA) 09-057, for James Bradshaw, requesting the abandonment of the following: 1) 8,898 square feet, more or less, of a 50-foot radius temporary turn-around easement (over APN: 1220-10-510-006); 2) 45,515 square feet, more or less, of a 37-foot wide ditch irrigation and maintenance easement "Old Virginia Canal" (over APN: 1220-03-000-038); 3) 13,545 square feet, more or less, of a 20-foot wide storm drainage easement (over APN: 1220-10-510-006); 4) 62,160 square feet, more or less, of a 41-foot wide ditch irrigation and maintenance easement "Company Ditch" (over APNs: 1220-10-510-002 and 1220-03-000-038); and 5) nine public**

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**utility easements ranging from five-foot to 30-foot in width over APNs: 1220-03-000-038, 1220-10-510-002, 1220-10-510-006, 1220-10-110-007, and 1220-10-110-008, in Douglas County, Nevada. The parcels are located in the GC (General Commercial, 10,000 square-foot minimum parcel size) and A-19 (Agricultural, 19-acre minimum parcel size) zoning districts in the Town of Gardnerville.**

This item was heard earlier in the meeting.

**36. Discussion and possible action on Development Application (DA) 09-052, for the Ranch at Gardnerville, LLC, a Modification to the development schedule for The Ranch at Gardnerville Planned Development (ref. PD 04-008), for Phases 2 through 10, modifying the time to record each phase, with the final phase (Phase 10) required to be recorded by December 31, 2027. The subject site is located to the south of Buckeye Road, north of Chichester Estates, and east of Zerolene Road (extended), within the SFR-8,000 (Single Family Residential, 8,000-square foot minimum parcel size)/PD (Planned Development) Overlay and MFR (Multi-Family Residential, 9,000-square foot minimum parcel size)/PD Overlay zoning districts in the Minden-Gardnerville Community Plan Area (Multiple APNs).**

Dirk Goering, Assistant Planner, presented the vicinity map, phasing plan, revised development schedule, and staff's recommendation for approval. This is being requested to allow the applicant time to work with FEMA on a CLOMR and a floodway analysis as well as the result of the downturn in the economy.

Rob Anderson, on behalf of the applicant, said Phase I has been recorded and the improvement plans for phases 2-4 along with many other improvements have been completed.

No public comment.

MOTION by Olson/Lynn to approve DA 09-052, a Modification to The Ranch at Gardnerville Planned Development (ref. PD 04-008), based on the recommendation from the Planning Commission and the discussion and findings and subject to the conditions in the Staff Report; carried unanimously.

**COUNTY MANAGER**

**37. Discussion and possible action to approve payment to the V & T Commission, in an amount not to exceed \$55,000, for Engine #18, which will be used for the expanded rail line between Virginia City and Carson City.**

Commissioner Johnson provided the background on the V & T Commission and said the donation would be used to fund the purchase of Engine #18.

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The board held a discussion about the county's Economic Development goals and objectives and requested time to confer with Karen Craig, Douglas County's Economic Development consultant.

At this point, Commissioner Johnson pulled the item from the agenda.

**38. Discussion and possible action to appoint a representative to the Steering Committee for the Economic Prosperity Plan in the Lake Tahoe Basin.**

T. Michael Brown, County Manager, said Chairman McDermid has expressed an interest in serving on this committee.

No public comment.

MOTION by Brady/Olson to appoint Nancy McDermid to the Steering Committee for the Economic Prosperity Plan in the Lake Tahoe Basin; carried unanimously.

**39. Discussion and possible action to set a joint meeting date and time with the Board of County Commissioners and the Gardnerville Town Advisory Board.**

T. Michael Brown, County Manager, suggested October 20, 2009 at 7:00 p.m. at the Gardnerville Administration Office.

No public comment.

MOTION by Johnson/Brady to set 7:00 p.m. on Tuesday, October 20, 2009, at the Gardnerville Administrative Office, 1407 Hwy. 395, Gardnerville as a joint meeting date, with a light dinner to precede the meeting starting at 6:00 p.m.; carried unanimously.

**40. Discussion and possible action on the approval of an employment contract for County Manager T. Michael Brown through September 30, 2012.**

Commissioner Olson stated Mr. Brown received an excellent review but was not offered any reward or increased compensation. This is a way the board could show confidence in his ability.

No public comment.

MOTION by Olson/Brady to approve an employment contract for County Manager T. Michael Brown through September 30, 2012; carried unanimously.

**41. Reports/updates from the Board of Commissioners concerning the various boards and/or commissions that they may be a member of or a liaison to. These**

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**boards/commissions include but are not limited to the: Nevada Association of Counties; Carson Water Subconservancy District; Lake Tahoe Visitors Authority; Tahoe Regional Planning Agency; Law Library; NevadaWorks; Carson Valley Chamber and Visitors Authority; Tahoe Douglas Visitors Authority; Tahoe Basin Transportation Authority; Lake Tahoe South Shores Chamber of Commerce; Western Nevada Development District; Regional Transportation Commission; Nevada Tahoe Conservation District; Nevada V & T Railroad Commission; Joint Powers/Waste Management; Tahoe Transportation District; and the Debt Management Commission. There will be no action taken on these reports/updates. A public hearing is not legally required on this item thus there will be no public comment. Anyone wishing to comment should do so at the beginning of the meeting during the public interest comment section.**

Chairman McDermid noted Carson Water Subconservancy District would be conducting a tour of the Carson River on October 10, 2009.

MOTION by Brady/Olson to adjourn the meeting; carried unanimously.

There being no further business to come before the Board, the meeting adjourned at 9:49 p.m.

Respectfully submitted:

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Nancy McDermid, Chair  
Douglas County Board of Commissioners

ATTEST:

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Ted Thran, Clerk-Treasurer