

Monday, December 20, 2010

The regular meeting of the Humboldt County Board of Commissioners was called to order on Monday, December 20, 2010, at 10:00 a.m. in the regular place of meeting at the Courthouse, Winnemucca, Nevada. Those present were Chairman Chuck Giordano, Commissioners Garley Amos Jr., Dan Cassinelli, Tom Fransway and Mike Bell, District Attorney Russell Smith, Administrator Bill Deist and Clerk of the Board Tami Rae Spero.

DISCUSSION & ACTION ON CORRECTION/APPROVAL OF MINUTES - DECEMBER 6, 2010:

Commissioner Fransway offered a correction to the minutes of December 6, 2010. The following motion was made by Commissioner Fransway and passed unanimously:

To approve minutes with changes.

PUBLIC COMMENTS: Chairman Giordano asked for public comments. John H. Milton III offered his thanks to Chairman Giordano on his last meeting for his years of service.

ADMINISTRATIVE REPORT:

CONSENT AGENDA: The following items were presented under the consent agenda by Administrator Deist for the Board's review/action:

1. Approval of renewal of property management agreement with Humboldt Realty: A copy of the proposed property management agreement was provided to the Board for review. Administrator Deist noted that the original property management agreement had been entered into with Humboldt Realty in 2005 but with the addition of the new property it seemed appropriate to update and renew the agreement; the terms are the same as in the agreement from 2005. *Recommendation: That the Commission authorize the Chairman to sign the agreement.*
2. Approval of corrective action plan regarding the 2009-2010 audit: A copy of a memo from former Comptroller Bruce Brooks noting two audit violations related to expenditures exceeding appropriations for the Solid Waste Management Fund and the 6th Judicial District Fund-Judicial Function was provided to the Board for review; the memo set forth plans for corrective action including the adoption of the plan by the Commission and the need to forward the plan to the Nevada Department of Taxation as follows: An over expenditure in the Solid Waste Management Fund occurred. The County will review expenditure details prior to June 30 to ensure compliance. A better line of communication needs to be established between the Administrator's Office and the Comptroller's Office regarding landfill bills and the budget remaining to pay them prior to June 30. Also, an over expenditure in the 6th Judicial Fund - Judicial function occurred. The County will

work more closely with the 6th Judicial District Court staff to ensure over expenditures in the future can be avoided. *Recommendation: That the Commission authorize the County Administrator to send the letter as outlined in the memo.*

Commissioner Fransway questioned whether the two items should be handled separately as the memo from the Comptroller offered a specific proposed motion related to the corrective action for the apparent violations. After discussion the following motion was made by Commissioner Bell and passed unanimously:

To approve the renewal of the property management agreement with Humboldt Realty.

The following motion was made by Commissioner Fransway and passed unanimously:

To adopt the plans of corrective action as cited above and direct the County Administrator to forward these plans to the Nevada State Department of Taxation as requested by the Comptroller.

SOLID WASTE MATTERS: Administrator Deist stated that he had nothing on this item.

PUBLIC LANDS PLANNING MATTERS & FORMULATION OF COUNTY POSITION ON BLM, FOREST SERVICE AND THE FEDERAL FISH AND WILDLIFE SERVICE PROPOSED ACTIONS: Administrator Deist stated that he had nothing on this item.

MISCELLANEOUS REPORTS AND CORRESPONDENCE:

OTHER INFORMATION AND UPCOMING MEETINGS: Administrator Deist discussed a meeting that he and the City Manager had attended with Governor-Elect Brian Sandoval; he noted that the draft 2010 population estimates had been received and were being reviewed; he reminded the Board that he had provided them with a copy of the first draft of the Pine Forest Wilderness Bill previously and asked if they had any input to let him know so he could pass it along. Upcoming meetings and dates of importance were reviewed. Administrator Deist thanked Chairman Giordano for his service to Humboldt County. Discussion occurred regarding NRS 288.

REPORTS FROM COMMISSIONERS REGARDING OTHER BOARDS AND COMMITTEES

THEY SERVE ON: Commissioner Cassinelli presented a plaque to Chairman Giordano on behalf of the Commission honoring his service as a County Commissioner. Chairman Giordano offered his thanks. Commissioner Cassinelli discussed a WCVA meeting he had attended and noted discussion which had occurred about action needing to be taken by the insurance company with regards to the covered warm up arena; Administrator Deist stated that he would contact the insurance company regarding the issue. Commissioner Fransway discussed a meeting of the Nevada Association of Counties Public Lands

Committee and Natural Resource Committee. Chairman Giordano discussed a meeting he had attended with Administrator Deist and the BLM.

CLAIMS FOR EXPENDITURES OF COUNTY FUNDS: The following motion was made by Commissioner Bell and passed unanimously:

To approve the claims for expenditures of County funds as presented by staff.

PUBLIC HEARING ON THE 2011 COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM PLANNING - GRANT APPLICATION AND SELECTION PROCESS - SUMMARY OF PAST PERFORMANCE FOR CDBG GRANTS RECEIVED BY HUMBOLDT COUNTY SINCE 1984 - HUMBOLDT COUNTY ANNUAL HOUSING AND COMMUNITY DEVELOPMENT NEEDS STATEMENT:

Copies of the Annual Participation Statement (2011-2012), the Summary of Past Performance CDBG Program Humboldt County and a letter to the CDBG Advisory Committee requesting that they accept the Housing Needs Assessment completed in 2008 as the Humboldt County Housing Needs Study required for 2011 were provided to the Board for review. Brenda Willey, Administrative Assistant with the County Administrator's Office appeared before the Board. Ms. Willey reviewed the documentation provided for the Board and requested that Chairman Giordano sign the Annual Participation Statement and the letter to the Advisory Committee; she noted that if the Committee does not accept the 2008 assessment another assessment will need to be done to proceed. Ms. Willey noted that the only project she is aware of involves the McDermitt General Improvement District. Chairman Giordano asked for public comment. Patricia Tindall, Director of the Senior Citizens Center addressed the Board regarding being considered for a CDBG grant to assist with a senior housing project and an expansion at the senior center. Ms. Willey discussed the time frames involved with applying on this cycle. After discussion the following motion was made by Commissioner Bell and passed unanimously:

That the Chairman sign the two documents.

ADOPTION OF A RESOLUTION PROCLAIMING JANUARY AS RADON ACTION MONTH:

A copy of the proposed resolution was provided to the Board for review. Administrator Deist commented that a similar resolution was adopted last year. The following motion was made by Commissioner Cassinelli and passed unanimously:

To adopt the resolution proclaiming January as Radon Action Month.

(Resolution No. 12-20-10)

Commissioner Fransway asked if the public could obtain radon testing kits from the Extension office as they have been able to do in the past. Administrator Deist said yes.

PLANNING MATTERS: Betty Lawrence, Senior Planning Technician for the Planning Department, appeared before the Board.

LP-10-08 - Final approval of division of land into Large Parcel Map submitted by Desert Mountain Surveying on behalf of Robert Pratt to divide property located off Jungo Road approximately 24 miles +/- west of Winnemucca and 6 miles +/- north of Jungo, Section 3, T36N, R33E, M.D.B. and M. into 15 parcels; APN #005-331-04: Provided to the Commission for review were a copy of the memorandum and staff report from the Planning Department recommending approval, a copy of a map of the area and a copy of the Regional Planning Commission meeting minutes of November 18, 2010 at which the application was approved. John H. Milton III of Desert Mountain Surveying appeared before the Board. Mrs. Lawrence reviewed the application and recommended approval; she noted the access locations and stated that no mineral lease existed on the property. Mr. Milton reviewed the notices placed on the map and their location on the map noting that this is the first time they have been included on a map in this manner since the passage of the ordinance; he noted that there is no guidance in the ordinance for how they should be placed on the map. After discussion the following motion was made by Commissioner Amos and passed unanimously:

To approve large parcel map #LP-10-08.

SHERIFF'S OFFICE: Sheriff Ed Kilgore appeared before the Board.

REQUEST FOR A WAIVER TO THE ATTRITION POLICY FOR A VACANT POSITION AS

NORTH-END RESIDENT DEPUTY: Sheriff Kilgore explained that while the vacancy for the McDermitt Deputy had been recently filled, the individual hired had some family issues which made it necessary for him to resign; he explained the need for a deputy in the location and requested a waiver to the attrition policy to fill the vacancy. Commissioner Cassinelli commented that maybe the attrition policy requirement should be removed for this position. Sheriff Kilgore replied that it would be easier, noting that it had already been three weeks since the person had resigned due to the time of the resignation and the scheduling of the meetings. After discussion the following motion was made by Commissioner Fransway and passed unanimously:

To waive the attrition policy for a north end resident deputy as requested by Sheriff Kilgore.

Chairman Giordano agreed that perhaps in the future the Commission could look at removing the attrition policy requirement from this position so it can be filled in a quicker manner as it will always be needed but noted that communication should still exist so the Commission knows that the position is vacant and being filled.

REQUEST FOR A WAIVER TO THE ATTRITION POLICY FOR A VACANT POSITION IN THE

PATROL DIVISION: Sheriff Kilgore stated that at a previous meeting he had requested a waiver to the attrition policy for a position in the Detention Center but what has since occurred is that vacancy has been filled with a patrol person so for the purpose of transparency he is requesting that a waiver be approved for a patrol position. After discussion the following motion was made by Commissioner Cassinelli and passed unanimously:

To go ahead and approve the waiver to the patrol division.

REQUEST FOR A WAIVER TO THE ATTRITION POLICY FOR AN ADMINISTRATIVE CLERK IN THE CIVIL DIVISION: Sheriff Kilgore explained that Bev Wilson the current office manager has announced her retirement effective January 21, 2011 and he has moved the current civil clerk into the office manager position; he noted that the civil clerk position is required by law and that he is making the request at this time so there will not be a delay in filling the position which could hamper the operations of the office; he noted that the office is currently at its minimum staffing level, that any less would be a burden. After discussion the following motion was made by Commissioner Amos and passed unanimously:

To waive the attrition policy for an administrative clerk in the civil division.

DISCUSSION AND POSSIBLE APPROVAL OF DETENTION CENTER MEDICAL SERVICES AGREEMENT WITH DR. ROBBIE GRANT: Administrator Deist noted that this agreement is still under review by Mr. Maher. The Board agreed to table the item.

APPROVAL OF 2011 COMMISSION CALENDAR: A copy of the proposed calendar was provided to the Board for review. Discussion occurred regarding the dates of meetings, the dates of the annual Commission retreat and the dates for budget hearings. Chairman Giordano asked Commissioner-Elect Jim French if he had reviewed the proposed calendar. Mr. French stated he had and offered no comments. The following motion was made by Commissioner Bell and passed unanimously:

To approve the calendar for the year 2011.

Following the motion and approval Commissioner Fransway noted a conflict between the meetings scheduled in July and the National Association of Counties annual conference. After discussion the Board agreed to hold only one meeting in July on the 11th of the month. The following motion was made by Commissioner Bell and passed unanimously:

To rescind the previous motion on the calendar.

The following motion was made by Commissioner Bell and passed unanimously:

To approve the calendar as presented by staff with the exception of July and there will be one meeting in July on the 11th.

UPDATE ON ACTIONS TAKEN BY NDOW AT CHIMNEY RESERVOIR THIS SUMMER AND

FALL: Cody Byrne, Fisheries Biologist with the Nevada Department of Wildlife appeared before the Board. Mr. Byrne updated the Board on the fish salvage at Chimney Reservoir, the treatment of the south fork and north fork of the Little Humboldt, the drain down of the reservoir and the time frame for further treatment of the reservoir due to weather and flow. Photos of the reservoir were provided to the Board for review. Discussion occurred regarding the process. Chairman Giordano noted that in the prior discussion it had been mentioned that NDOW may want to drain the reservoir for a second year; he asked if that was still in the plans. Mr. Byrne stated it was too early in the water year to look at what conditions are going to be like next year but noted that from a fisheries management standpoint he would like to keep the option on the table but stated his understanding that if it is a good water year with the users downstream it would not be good to let the water go to waste. Discussion occurred regarding the success of killing the carp. Chairman Giordano commented that he would hope it would not need to be drained again looking at it from the recreational standpoint. Audience member Craig Carver appeared before the Board and asked why the draining hadn't ceased on October 31st or before. Mr. Byrne explained the work between the Nevada Division of Water Resources, the County, Nevada First Corporation and all the stakeholders regarding the drainage for the project which extended into the beginning of December; he discussed the long term benefits of the project. Mr. Carver commented on the damage done to Chimney by the drainage and his hope that the Commission does not allow it to be drained again. Commissioner Fransway discussed the manner in which Chimney was constructed in partnership with the Fair & Rec Board who contributed financially due to the fishery; he stated his hope that the reservoir does fill up and that what has occurred betters the fishery. Mr. Byrne commented on the need to stick with the long term management of the reservoir in order to see the benefits. Discussion occurred regarding the manner which will be used to control carp in the future, the amount of water actually in the reservoir at the time of draining, the number of downstream user and the investment in the reservoir by the Fair & Rec board.

ROAD MATTERS: Road Superintendent Ben Garrett appeared before the Board.

APPROVAL OF STIP PRIORITIES SUBMISSION: Provided to the Board for review was a memo from Superintendent Garrett detailing the possible State Transportation Improvement Projects (STIP) for 2011 (see attached). Superintendent Garrett reviewed the memo for the Board including the projects submitted in 2010. He discussed the top three projects from the 2010 STIP submittal noting that the ramp at the 173 interchange on I-80 project has been placed in the Nevada Department of Transportation's (NDOT) annual work plan, that the SR 140-US 95 intersection acceleration lane project was ranked 9th by the State and is currently in

design and may be funded this year though it may require assistance from the Road Department and that the Eden Valley Bridge #1658 project did not rank as a top project in the STIP process for 2010 but did qualify for Federal Highway Bridge Replacement funding (FHBRF), so the process is underway with a potential construction date of 2014. He noted that the other four projects submitted in 2010 including the Jungo Road gravel project, the Jungo Road pavement extension, the Cedarville Road improvement and the extension of SR 293 did not make it into the high category at the State level so unless something has changed or the County is going to provide more funding with those projects NDOT does not want them to be resubmitted; he noted that the increase in activity at Hycroft could benefit the gravel project on Jungo Road so it could be resubmitted. Superintendent Garrett suggested that one item that might be considered is working towards getting the road on Winnemucca Mountain functionally classified as there are more users due to the shooting range and the future bike trail, then it would be eligible for STIP and possibly being repaved at least up to the shooting range. Discussion occurred regarding the ability of combining STIP and FHBRF for the Eden Valley Bridge if it improved in the State's STIP rating and the potential that Hycroft activity and possible private sector contributions could improve the rating for the Jungo Road gravel project. Commissioner Fransway commented that with some of the STIP projects the County is responsible for the ongoing maintenance and that should be considered; he continued commenting that what also should be considered when determining the priority level is the amount of gas tax that is generated from a project noting that the County does not get gas tax from diesel and there is a lot of wear and tear from diesel traffic. The following motion was made by Commissioner Fransway:

To approve the STIP priority submission as presented with the addition to get Winnemucca Mountain functionally classified as a potential project.

Discussion occurred regarding the traffic count on the road on Winnemucca Mountain, the increase in traffic which could occur when the bike trail is completed and the need to improve the road. Chairman Giordano called Commissioner Fransway's motion to a vote and it passed unanimously. Superintendent Garrett asked for confirmation that 173 would be ranked one, Jungo Road gravel number two, Jungo Road pavement number three, Cedarville four and Kings River extension five; he asked if the road on Winnemucca Mountain could be functionally classified before submission of the STIP projects would the Board want it higher on the list. The Board agreed that it would higher on the list. Administrator Deist commented that if that occurs the matter could be brought back before the Board for further discussion. The Board concurred.

REPORT OF PENDING ROAD DEPARTMENT PROJECTS: Superintendent Garrett reported on snow

plowing, the removal of a sand drift on Sand Pass Road, graveling on Mountain View and at Big Creek, maintenance, grading, pipe installation & replacement, drainage cleaning on Jungo and drainage repair on Sperry Lane.

MISCELLANEOUS ROAD RELATED MATTERS: Commissioner Fransway asked if there were any developments regarding Forest meeting the requirements to be brought into the County Maintained Road System. Superintendent Garrett stated no but that he had been approached regarding bring Brayton into the system and he would be meeting with those making the request to discuss what is required.

Chairman Giordano recessed the meeting at 11:47 a.m. for lunch to reconvene at 1:30 p.m.

**CONSIDERATION OF POTENTIAL SETTLEMENT OF CASE NO. 3:10-CV-00257-ECR-VPC
JUNGO LAND AND INVESTMENT VS. HUMBOLDT COUNTY, NEVADA ET AL, LAWSUIT:**

A copy of the terms of the proposed Jungo settlement had been provided to the Board for review (see attached). Stephen Balkenbush, Attorney at Law, was present representing the County and Commissioners Giordano, Amos, Cassinelli and Bell. David Lockie, Attorney at Law, was present representing Commissioner Tom Fransway. John Frankovich and Debbie Leonard Attorneys at Law were present representing Recology and Jungo Land and Investment. Chairman Giordano addressed the audience and the Board regarding the need to respect each other. Mr. Balkenbush stated that purpose of today's hearing would be to consider the terms of a proposed settlement of a lawsuit; he reviewed what claims were included in the lawsuit, which Court is hearing the matter and what actions including mandatory settlement conferences have occurred in the matter; he continued noting that as a result of two settlement conferences, which involved the work of US Magistrate Judge Valerie Cook, terms of a settlement had been negotiated and were now provided for action; he commented that Judge Cook has told all parties that she believes it is in the best interest of the parties to resolve this case in connection with the terms that are before the Board today and he stated his concurrence with the Judge's position. Mr. Balkenbush reviewed the proposed terms. Mr. Balkenbush noted that what is not being considered is whether the landfill permit will be approved by the State as that is still under review. Mr. Lockie offered no additional comments. Chairman Giordano asked for comments from the Commissioners.

Commissioner Fransway stated that before the Commission today is a proposal that Humboldt County did not ask for, it was clearly orchestrated by Jungo and Recology, it is nothing less than an attempt to appease and coerce this County into agreeing to capitulate and reverse a sound defensible unanimous decision by this body not to restart the clock on Jungo's conditional use permit, Jungo was not operational, they were not even close, this does not change the facts, it does nothing to guarantee the future, it is driven

purely by profit and greed at the expense of the County and the people who reside here, this proposal does not represent economic diversification, it is contrary to it; he questioned what with the proposal has changed since April 5th to today and reviewed the terms including item two requiring Jungo to amend its application to NDEP for a solid waste disposal site permit to remove asbestos and sewage sludge from the wastes permitted for disposal; Commissioner Fransway stated that Humboldt County would have no way to verify what is contained on the trains as that is all done on the front end, so this is not a concession by Jungo, nothing has changed; he continued referring to item three which would require Jungo to fund a consultant to inspect the construction of the landfill's liner and then inspect once a month for five years; Commissioner Fransway stated that it is known that liners fail over time not just within five years, it is known that the groundwater is near the surface in Desert Valley and there has always been concern for the long term so this is not a concession for Jungo; he continued referring to item four which would require Jungo to fund a consultant at a cost not to exceed \$50,000.00 and noting that the air quality permit has already been approved by the NDEP and a Judge has ordered a stay on the rest of the proceedings, he stated that \$50,000.00 is small change to Recology so this is no concession by Jungo; he continued referring to item five which would require the parties to negotiate a host agreement in good faith on commercially reasonable terms and questioned who defined "commercially reasonable" noting it would be the industry not Humboldt County and that the host agreement has always been a mystery so this is not concession by Jungo and again nothing has changed; he continued referring to item six in which Jungo agrees to dismiss its lawsuit against the County and noted that Humboldt County did not initiate this action Jungo did, the Commissioners were just doing their jobs as County Commissioners, Humboldt County is not afraid of a fight to protect the health, safety and welfare of its citizens, this is not concession and nothing has changed. Commissioner Fransway stated that one thing has changed as on November 2nd the people said no, 70% of the voters in Humboldt County said no to big garbage; he stated that 70% is not a simple majority, it is a mandate, people supported the Commissioners decision the first time and now it is the Commission's obligation to support theirs; if the Commission agrees to the settlement it will be ignoring the will of the people who put the Commissioners here; that there is wrong and there is right and the Commissioners must choose the latter and reject the settlement. Commissioner Fransway stated he would reserve the right to speak later in the meeting.

Commissioner Bell agreed that 70% of the voters said no to the landfill, that 70% of the voters don't want this but the information that the voters received was pretty one sided and this could potentially bankrupt this County, there is no doubt about that and the County could still get the landfill, that potential does exist; he discussed his concerns with effects on County services including road maintenance and county salaries

and the need to increase taxes if bankruptcy were to occur and how everyone needs to look at what could happen; he continued noting that in terms of the settlement that maybe some of the things are a little light and maybe there is room for additional negotiation on the items because if there is no settlement it won't be the public or the Commission who makes the ultimate decision it would be the Supreme Court as any decision at the lower Court level would go to the Ninth Circuit and then the Supreme Court and it gets very costly very quickly and he does not know how much the insurance will cover, he commented that if it bankrupts the County then it would not be 70% that are mad at the Commission it would be 100% of the people; he continued stating that when it comes to the proposed settlement he would like some input but he stated that the Commission could have decided this thing without this hearing but that it was a unanimous decision of the Board that it should come to the voters of the County, that he thinks the people need to know the score as he does not think everyone knows the score of the ball game and that all the money could be spent and then we still get the landfill. Commissioner Bell discussed what had occurred in 2007 at the Regional Planning Commission (RPC) level noting that he was not on the County Commission at that time and that the RPC had the jurisdiction over conditional use permits because the County Commission gave them that authority and that irregardless of what happened in 2007 he thinks that the County could have defended this as there are no damages involved but when this is fast forwarded this Commission made mistakes, there were inconsistencies, a myriad of problems, this is not a clean case and the lawyers will confirm that, so what he would like, even if the Commission does not do the settlement today, he would like the public to absolutely know that this is not a slam dunk case, that it can potentially bankrupt this County and the County could still end up with the landfill as this will be decided by the Supreme Court.

Commissioner Cassinelli stated that he did not have any comments except to say that Commissioner Bell wasn't a part of this back in 2007 it was himself and the rest including Tom Fransway who voted yes to amend the ordinance, so he wants everyone to understand that.

Commissioner Amos commented on how controversial the issue is, how he feels mixed about it and that this is a very tough decision; he stated that he has listened to the Judge and the attorneys and based on what they have said he does not think the County has a strong enough case to overturn this, therefore he believes the County should do some sort of settlement and the County does stand a chance to get some more gains through a host agreement, that it is time for us to move on and try and take the advantages; he stated it is a bad deal that we got ourselves into and we need to get out of it; he continued and stated his agreement with Commissioner Bell that this could be very costly to this County and noted that the Commission has worked very hard over the years to keep the County fiscally strong.

Chairman Giordano stated his agreement with Commissioner Bell that as a Commissioner you have to look at everything, the public and how it effects the public in the future both as to having garbage here forever or losing money and still having garbage here forever but he also stated his agreement with Commissioner Fransway noting that the Commission had voted to deny the CUP renewal on a sound basis and with the six proposals presented you could shoot holes in all of them from now until forever, they are too vague, they leave the County open.

Commissioner Fransway commented on Commissioner Bell's concerns with regards to roads noting that they are funded by gas taxes which Recology has nothing to do with and he commented that the ordinance clearly states by the recommendation and approval of this board so the Board does have a say per the ordinance, that the decision was made and it was unanimous; he continued stating that when Commissioner Amos says the County can't win in Court, he has not talked to Commissioner Fransway's lawyer as he says the County can and it is worth the fight to do it. Commissioner Fransway stated that this has been going on for a long time and he wants everyone at the table and in the room to understand what is at stake; he displayed a map depicting the groundwaters in the State of Nevada and indicated on the map the groundwater areas under the landfill site and discussed his concerns regarding the contamination risk and that the right thing needs to be done to protect the health and safety of the community.

Commissioner Bell clarified that his reference to roads was as to the employees that are paid to maintain the roads and stated that he is not afraid of a fight; he commented on the need of the people to understand what could happen if everything is hung on that one CUP and the risks involved in that with going to court and the money involved; he said if all the people of the County are ok with it then he is ok with that but he wants the County to know what it is up against and questioned where the guarantee is as then he would not have a problem jumping on board. Commissioner Fransway stated that he believes that the people in this room and 70% of the voters knew exactly what was in store for them and they want a fight and we want a fight and we can win the fight. Commissioner Bell stated his belief that they do not understand the potential for bankrupting this County. Discussion occurred between Commissioner Bell and the audience regarding the issue.

Commissioner Cassinelli asked if Commissioner Fransway or Mr. Lockie is guaranteeing this, if the County is going to win. Commissioner Fransway stated there was no guarantee. Mr. Lockie agreed that there is no guarantee.

Mr. Frankovich offered comment stating that the issue before the Commission is a limited issue as to whether to settle this lawsuit in accordance with the terms discussed before the Federal Magistrate, if it

is not settled it does not mean the County wins the suit, it doesn't mean the project is gone, it means the suit goes on and it will be decided by the court and when that happens both sides have the risk to lose and ordinarily in his experience when a court makes a decision neither side likes it very much; he discussed going to trial and commented on most suits being settled and that this settlement is in the best interest of all the parties, he noted that many hours were spent on the settlement and both the opinions and recommendations of the Judge on both the suit and the settlement had been obtained and that those should not be taken lightly because who knows what will happen if it goes on. Mr. Frankovich stated he wanted to make clear that if the settlement goes forward that there is Federal Court oversight going forward to make sure that what is included in the settlement occurs. Mr. Frankovich offered comment on the initiative noting that it was not about this lawsuit and whether it should be settled, it was not about the project and Jungo chose not to participate in the initiative process because it does not apply to their project as it was approved three years before the initiative; he stated that what Recology wants to do is get on with it and hopefully establish a good working relationship with the County and the community as they have done in other locations where they have done business.

Ms. Leonard addressed the Board regarding the terms of the settlement noting how impressed she was with the Commission on being responsive to the public's concerns such as with the asbestos issue; she stated that the no asbestos agreement will be part of the NDEP permit, that Recology knows this and knows how it will dispose of asbestos and it will not come here; she continued discussing the terms of the settlement that requires a qualified independent consultant to review and inspect the project and the liner and to verify that NDEP is giving the required amount of oversight and noting that was very responsive by the Commission in addressing the concerns of the public. Ms. Leonard continued commenting on the concerns expressed by Commissioner Fransway with groundwater contamination including discussion on the separate basins, the liner system that will be used, that the law of the State does not allow contamination of groundwater and that would be a component of any permit issued by NDEP and part of the oversight by NDEP would confirm that the engineered liner system is going to be effective at preventing any such contamination; she also discussed the finding of the USGS report that was issued in relation to the aquifer.

Chairman Giordano responded to Mr. Frankovich's comments regarding the negotiation stating that to his knowledge the Commission did not negotiate anything, that this was a proposal sent to them so the Commission did not negotiate this they have only listened to it. Chairman Giordano continued, addressing a remark from the audience that this was not done with an open door, stating that the whole thing was under court order and that they had to sign a paper that nothing would leak out of the hearings that have happened

and this became public knowledge at 8:00 a.m. last Wednesday, there was no closed door in this, it was under the Judge's ruling.

Mr. Frankovich discussed how the negotiation process worked between the Judge and counsel and the parties noting that is typical, that the parties do not set across from one another; he continued stating that as for the confidentiality of settlement conferences that is set forth by State and Federal law.

Chairman Giordano agreed regarding the closed door/not taking out of the room and stated he understood the reasoning behind it but noted that there are a lot of people in the community that have contacted him stating that the Commission is doing it behind closed doors and he wanted it understood that the Commission has not done anything behind closed doors, everything done has been done by the law; he continued regarding the negotiation stating that at the meeting that had occurred these were concerns that the Commission had voiced and that he had not said that he wanted to negotiate, these were just terms that bothered the Commissioners, so he still does not consider it a real negotiation.

Commissioner Fransway agreed with Chairman Giordano that Humboldt County did not negotiate these terms and when the closed doors and secrecy is talked about, he does not care who ordered it, it was secret, it was behind closed doors and it is not anymore that is why everyone is here today. Commissioner Fransway responded to Ms. Leonard's comments about the groundwater noting that the landfill is a short distance above Humboldt County and the City's groundwater and there is no proof that there is no connectivity in the groundwater basins and who are we to say that it is okay to pollute any of the groundwaters in the State of Nevada; he continued noting that during the closed door hearings the idea of an Environmental Impact Study (EIS) was thrown out and Recology did not even address it.

Chairman Giordano stated that as Commissioner Bell had stated the Commissioners were approached by the Settlement Judge to settle this in Reno without coming to the public, the Commission said that would not happen as this is our public and it will be a public meeting; he continued stating that some public agenda items have public comments allowed and some don't, for this one he stated he would allow public comments as it is owed to the public but he stated that he did not want everyone coming up and saying the same exact thing, he wanted people to come up and provide facts not just stating that they don't want garbage; he stated that he would keep the comment period to three minutes each. The Board agreed. Chairman Giordano asked for public comment.

Diana Drake asked about counsel's comments regarding the soundness of the double liner and Recology's statements that all liners leak.

Robert E. Dolan voiced his concerns regarding the Commissioners being individually named in the

lawsuit and having a personal monetary interest in the matter and taking any action in the settlement while they are still individually named and he suggested better procedure would have been to dismiss the Commissioners in their individual capacity so that the ethics law, that he believes is about to be violated, wouldn't result in a complaint being filed against the Commissioners and cited NRS 281A.420(3)(b). Mr. Dolan continued referring to the current state of the law either under the initiative passed by the citizens or the ordinance that it replaced had in its language that the "terms, conditions and fees were to be established by the Board and Council", as a unilateral act of governmental power, under the proposed settlement the County is giving 50% of that or jointly deciding the terms, conditions and fees with Jungo which he believes is a defacto amendment to the ordinance and he thinks it is probably an open meeting law violation and there may be other issues with negotiating the host agreement with Jungo that may not have been fully briefed. Mr. Dolan continued addressing Commissioner Bell's comments regarding the Supreme Court deciding this matter, the Commission's chances before a jury, that the citizens will stand behind the Commission in a fight and he asked that the Commission reject the settlement proposal. Commissioner Bell asked Mr. Dolan's opinion as to whether this is a slam dunk case for the County. Mr. Dolan replied that in his thirty years litigating he has rarely used the term slam dunk, he addressed the issue of damages if the case was lost and what could be gained or lost depending on who wins the lawsuit but noted that there are no guarantees.

Chairman Giordano asked Mr. Balkenbush about the possibility that the Commissioners could be putting themselves in a spot if they vote today. Mr. Balkenbush replied that the Commissioners have a right to vote today, as this is a lawsuit in which the County is sued and the Commissioners are the representatives of the County and while you are sued in your representative capacities as Commissioners you have the right to resolve the case in that particular area as well and you are also sued individually and you have the right to resolve this case on those grounds as well and there are no ethical violations or redress of ethical violations in acting to resolve this case today; he stated his understanding of Mr. Dolan's argument but the Commission has the ability, under the existing statutes of the State of Nevada, to resolve the case today in concert with the terms that have been proposed. Mr. Lockie stated his understanding of the argument but this is the Commission's lawsuit both individually as well as in a representative capacity and as such, in his view, they do have the right to vote. Chairman Giordano stated that public comments would continue.

Vickie Rock commented on her choice to move to the community; she continued discussing the fact that the area is a seismic zone and questioning what an earthquake would do to the liner and our aquifers and downstream aquifers, her concerns about the vagueness of the proposed settlement including if the amount stated in item four is tied to item three, that the amount is not sufficient for five years of inspections, what