Item #8C

City of Carson City
Agenda Report

Date Submitted: November 28, 2006

Agenda Date Requested: December 7, 2006
Time Requested: 15 Minutes

To: Mayor and Supervisors

From: Parks and Recreation Department

Subject Title: Action to approve funding Fairground improvements at Fuji Park by transferring $1,000,000 from Question 18 Capital funds appropriated for JohnD Winters Centennial Park Field Improvements to the Fairgrounds Improvements fund.

Staff Summary: Mr. Michael Pegram is in the process of acquiring the former Bodine's Restaurant site for the development of a casino. The purchase is currently in escrow. The City has been negotiating with Mr. Pegram regarding the development of the casino and related improvements to the Carson City Fairgrounds at Fuji Park. The negotiations include a donation of $1,000,000 in cash or in-kind services or a combination of both from Mr. Pegram for the construction of a proposed parking lot located adjacent to the arena and other improvements such as new arena lighting. This donation along with the transfer of funds will assist the City in completing a portion of renovating the Fairgrounds consistent with the Carson City Fairgrounds/Fuji Park Conceptual Site Development Plan. The City currently has approximately $600,000 allocated for Fairground/Park improvements. Estimated costs by Lumos Associates for the first phase of these improvements is $2.9 million dollars (attached). The transfer of Question 18 funds and the donation from Mr. Pegram will make $2.6 million dollars available for this project.

Type of Action Requested: (check one)

(__) Resolution (__) Ordinance
(X) Formal Action/Motion (__) Other (Specify)

Does This Action Require A Business Impact Statement: (__) Yes (X) No

Recommended Board Action: I move to approve funding Fairground improvements at Fuji Park by transferring $1,000,000 from Question 18 Capital funds appropriated for JohnD Winters Centennial Park Field Improvements to the Fairground Improvements fund.

Explanation for Recommended Board Action: The Parks and Recreation Commission approved this action during their November 21, 2006, Commission meeting. Attached is a letter from the District Attorney's office by then Deputy District Attorney Mark Forsberg dated January 29, 2001, which renders an opinion that Question 18 funds can be utilized in this manner specifically in "acquisition, development, and maintenance of new parks, open space, trails, and recreation facilities."

Applicable Statute, Code, Policy, Rule or Regulation:

Fiscal Impact: $1,000,000 Question 18 Capital funds.

Explanation of Impact: With approval of the Board of Supervisors, funding for the Carson City Fairgrounds at Fuji Park will be available.

Funding Source: Question 18 Capital funds.

Alternatives: Deny the recommendation of the Parks and Recreation Commission.

Supporting Material:

1. Opinion from Deputy District Attorney Mark Forsberg dated January 29, 2001 regarding expenditures of Question 18 funding. (Pages 1-6)

Prepared By: _____ **Date:** 11/28/06
Roger Moellendorf, Parks & Recreation Director

Reviewed By: _____ **Date:** 11/28/06
Linda Ritter, City Manager

_____ **Date:** 11/28/06
District Attorney's Office

_____ **Date:** 11/28/06
Finance Department

Board Action Taken:

Motion: _____ 1: _____ Aye/Nay

2: _____ _____

_____

_____

_____

_____

_____
(Vote Recorded By)

January 29, 2001

John Berkich
City Manager
201 North Carson Street
Carson City, Nevada 89701

Opinion No. 01-02

Re: Question 18/Quality of Life

Dear John:

Question

You have asked whether "Question 18" or "Quality of Life" funds can be used for capital or operating and maintenance expenditures at the Eagle Valley Golf Courses. I reviewed the language of Question 18 as it was presented to and passed by the voters of Carson City, the legislative history of the charter amendment passed by the Legislature in the 1997 Session, and the charter provision as it exists, and I conclude that funds raised by this one-fourth of one percent sales tax were not intended to be applied to recreation facilities existing in Carson City at the time the ballot question and legislation passed. (Supporting documents are attached.) This conclusion is reached without considering the question of whether the non-profit corporation currently operating the golf courses is eligible for such funding.

Analysis

Question 18 was presented to the voters of Carson City and voted upon in the general election held November 5, 1996. The question, as it appeared on the ballot, was:

> Shall Carson City request that the Nevada Legislature authorize it to fund the acquisition, development and maintenance of parks, open space, trails and recreation facilities through an increase in the sales tax rate of 1/4 of 1 percent (.00025).

The ballot also contained an explanation of the question which stated:

> This Quality of Life Initiative (QOLI) provides dedicated funding to acquire open space land and develop and

> maintain *new park and recreation facilities.* About 40% of the funds would be for acquisition and management of open space land, 40% for development of community park facilities and trails, and 20% for maintenance and operation of these *new* park facilities. The funds will be separate from the City's general fund, and exclusively for the acquisition of open space, bike & hike trails, new park development and other recreational improvements.

(Emphasis added.)

Furthermore, the ballot explanation contained a list of projects expected at the time to be developed first. Of the eleven identified items, eight are new projects or acquisitions such as trails and bike lanes, the new therapy pool and enclosure of the outdoor pool, new recreation trails, a street tree program, two new softball fields, new facilities for youth sports, etc. The other listed items are improvements or renovations to existing facilities such as the Wungenema House, improvements to the Community Center theater, improvements to the rifle and pistol range and renovation of the Fuji Park irrigation system, restrooms and parking. In the paragraph which immediately follows the list of example projects, the following language appears:

> This QOLI creates dedicated funds for park, open space, trails and recreation facilities and will supplement, but not replace, current limited park funding levels. A portion of these funds will go toward *maintenance of the new facilities* and will allow better park upkeep. With development of these new park facilities, citizen suggestions for other park improvements will be requested.

(Emphasis added.)

In my view, the language of Question 18 itself does not make clear whether QOLI funds can be applied to the maintenance of existing parks or recreation facilities, such as the Eagle Valley Golf Courses. The explanation of the question contained in the ballot begins with what would appear to be a clear statement of the purposes of funds which is "to acquire open space and develop and maintain new park and recreation facilities." Reading this sentence by itself leads to the conclusion that the funds are only to be applied to new parks and recreation facilities, and that that portion of the funds earmarked for maintenance therefore must be for the maintenance only of new park and recreation facilities acquired with QOLI funds. However, the list of projects included in the explanation seems to suggest that the drafters of the explanation believed that the funds could be applied to "renovate" or "improve" existing

recreational facilities such as the Community Center and Fuji Park.

Ultimately, the Legislature enacted an amendment to the Carson City Charter, Section 8A.070, which provided as follows:

1. The board may enact an ordinance imposing a local sales and use tax for the acquisition, development, construction, equipping, operation, maintenance, improvement and management of open spaces, parks, trails and recreational facilities located within Carson City.

2. The proceeds from the tax imposed pursuant to this article and the interest and other income earned on the proceeds of the tax must be used as follows:

> (a) Forty percent of the proceeds of the tax, including interest and other income, may be used for the acquisition, development, construction, equipping, improvement, maintenance and management of real property for open spaces.
>
> (b) Except as otherwise provided in paragraph (e), 40 percent of the proceeds of the tax, including interest and other income, may be used for the acquisition, development, construction, equipping and improvement of parks, trails and recreational facilities.
>
> (c) Twenty percent of the proceeds of the tax, including interest and other income, may be used for the operation, maintenance and management of parks, trails and recreational facilities.
>
> . . .
>
> (e) If operation, maintenance and management expenses for parks, trails and recreational facilities do not equal or exceed twenty percent of the proceeds of the tax, including interest and other income, the balance of the proceeds of the tax, including

> interest and other income, authorized in paragraph (c) may be used for the acquisition, development, construction, equipping and improvement of parks, trails and recreational facilities in addition to the amount authorized in paragraph (b) . . .

Thus, the Charter amendment as enacted suffers from the same lack of clarity as the language in the ballot question itself and the explanation accompanying it. It does not expressly state that the QOLI funds are only to maintain new facilities. Similarly, Carson City's ordinance, enacted pursuant to the above enabling legislation, is ambiguous. In fact, Carson City's ordinance imposing the tax, CCMC 21.07.040(c), does not track the enabling legislation, modifying the language of Section 8A.070(c) as follows:

> c. Twenty percent (20%) may be used for the operating, maintaining and managing parks, trails and recreation facilities *which were acquired, developed or improved with the proceeds of the tax imposed pursuant to this chapter.*

The City ordinance removes statutory references to the use of interest and other income derived from the tax proceeds, and adds the italicized language. Because of this, the City Charter and the City ordinance imposing the tax have different, possibly conflicting, language addressing the same subject. Although apparently an attempt to clarify the intended uses of QOLI funds, the ordinance on its face seems to presume that QOLI funds can be used to "improve" a recreational facility, and once it is improved using QOLI funds, can be maintained and managed using them. The City's decision to vary from the language adopted by the Legislature (a practice which is improvident to begin with), does nothing to answer the question at hand, and in fact makes it more difficult to do so.

However, the legislative history of the Charter amendment is perhaps the most revealing source of the real intent of the statutory language. At a March 13, 1997, meeting of the Assembly Committee on Government Affairs, testimony was taken from Steve Hartman, a member of the Carson City Open Space Advisory Committee. The minutes of that meeting state as follows:

> Mr. Hartman stated it has been on the ballot and was specific. The Advisory Committee tried to keep the 40 percent in an open-space acquisition because of the dwindling surface area, 40 percent was to assist in recreation facilities, and 20 percent was dedicated to the

> *maintenance of those new recreation projects.* He stressed the 20 percent was not to be used for anything but the maintenance of those new recreation facilities and said the Advisory Committee had created what they called a "funded foresight" –to go out and acquire and develop, as well as maintain, those recreation facilities for the community.

Committee Member Joan Lambert pointed out to Mr. Hartman that the language of the proposed amendment did not specifically state that the maintenance funds were to be spent only on *new* parks, trails and recreation facilities and asked if Mr. Hartman would like an amendment to the language. Mr. Hartman answered that the intent could be clarified in the ordinance passed pursuant to Charter amendment and that the legislative history would reveal that the funds were to be spent only on acquiring new facilities and maintaining those new facilities. Mr. Hartman urged that Committee not amend the proposed language, suggesting that to do so would be unfaithful to the specific language of Question 18 voted upon by Carson City voters. He opposed the proposal by Committee Member Lambert that a one-word amendment be made.

Furthermore, Carson City Mayor Ray Masayko spoke at the meeting on behalf of the Carson City Board of Supervisors and stated that the intent was to memorialize in the ordinance that the 20 percent earmarked for maintenance would go to maintain the new facilities.

I conclude from the above that the intent of the drafters of Question 18 and its accompanying explanation, and the intent of the drafters of Charter Section 8A.070, was that all of the funds raised by the QOLI sales tax were to be spent for the acquisition of new properties and facilities and for the maintenance only of the newly acquired properties and facilities. Where a statute or ordinance, such as the provisions at issue here, is ambiguous or unclear, courts rely on legislative intent to ascertain the meanings of the words, and to resolve ambiguities in favor of that intent. See, Rodgers v. Rodgers, 110 Nev. 1370, 1373 (1994). In this case, I believe a court would resolve the inherent ambiguity in the ballot question, the Charter provision and CCMC 21.07.040(c) in favor of an interpretation requiring that all QOLI funds be spent on new projects and maintenance of new projects and not on maintenance of City parks and facilities that existed at the time the legislation was enacted. Therefore, it is my opinion that QOLI funds may not be expended on any City park or recreational facility which was in existence in 1996, including the golf courses. Unfortunately, this interpretation raises questions about the City's application of QOLI funds to some of the projects listed as examples in the ballot explanation accompanying Question 18, such as restoring the Wungenema House and renovating the irrigation system at Fuji Park, both of which existed at the time the Charter amendment was enacted by the legislature.

Conclusion

Carson City may apply QOLI funds only to the acquisition, development and maintenance of new parks, open space, trails and recreation facilities. This apparently was the intent of the drafters of the statutory provisions. Therefore, QOLI funds cannot be applied to the renovation, maintenance or improvement of the any facilities which were in existence at the time the voters approved the imposition of the QOLI sales tax, including the Eagle Valley Golf Courses. If you have questions about this opinion, please feel free to contact me.

Sincerely,

NOEL S. WATERS
District Attorney

By
MARK FORSBERG
Deputy District Attorney

MF:gp

cc: Mayor and Board of Supervisors
John Berkich
Gary Kulikowski