

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

SS February 12, 2013

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, February 12, 2013.

This meeting was called to order by Mayor Chris J. Johnson

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

Mayor Present: Chris J. Johnson

Council Present: Councilman John Rice
Councilman Rich Perry
Councilwoman Mandy Simons
Councilman Robert Schmidlein

City Staff Present: Curtis Calder, City Manager
Shanell Owen, City Clerk
Matt Griego, Fire Chief
Ryan Limberg, Utilities Director
Dennis Strickland, Public Works Director
Scott Wilkinson, Development Manager
Tony Ferguson, Sr. Engineering Technician
Doug Gailey, Human Resources Manager
James Wiley, Parks and Recreation Director
Rick Magness, City Planner
Jeremy Draper, Civil Engineer
Ted Schnoor, Building Official
Don Zumwalt, Police Chief
Mike Haddenham, Assistant Wastewater Superintendent
Dave Stanton, City Attorney
Lorraine Martinez, Accounting Supervisor
Debbie Henseler, Business License Technician
Diann Byington, Recording Secretary

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this

item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

John Carpenter commented about the graffiti in Angel Park. There used to be a detective and a crew set up to take care of the problem. Some time ago he approached Council about putting lights in at Angel Park to help stop graffiti. Nothing has been done yet. The lighting there is in the trees and is not of any value. That was a long time ago. He thinks that the lights should be done and it might help the situation. He felt it wouldn't be hard to put lights in there since there is already electricity out there.

**APPROVAL OF MINUTES January 22, 2013 Regular Session
FOR POSSIBLE ACTION**

**January 28, 2013 Special Session
FOR POSSIBLE ACTION**

The minutes were approved by general consent.

PROCLAMATION – RECOGNIZING ELKO COUNTY CATTLEWOMEN “BEEF MONTH” - NON-ACTION ITEM

Mayor Johnson read the Proclamation and presented it to a representative of the organization.

ELKO COUNTY MONTHLY UPDATE: COMMISSIONER GLEN GUTTRY – NON-ACTION ITEM

Glen Guttry, County Commissioner, reported on the BLM Law Enforcement Officers wanting to be able to enforce traffic violations and other laws that the Sheriff's Department, Elko Police Department and the NHP enforce. NDOT has cut back funding by 40-50% on the transit bus service and the county had to cut back on the overhead and reduce the bus service by about 50%. The County just passed a resolution on the Second Amendment for gun rights and sent it off to the federal government. They are still in the process of acquiring an all-risk service for the county from NDF. They did an inventory county wide of fire equipment. They have no idea how they will dispatch the fires. County is just finishing the 800 megahertz radio upgrade project.

PRESENTATION – FIRE DEPARTMENT YEAR IN REVIEW 2012

Matt Griego, Fire Chief, gave a presentation of some of the accomplishments the fire department had last year. (See Exhibit “A”)

I. PERSONNEL

A. Employee Introductions:

- 1.) Rick Magness, City Planner, Planning Department
Present and introduced.
- 2.) Kevin Klein, Operator in Training, WRF
Present and introduced.

II. APPROPRIATIONS

- B. Review, consideration, and possible authorization for Staff to begin negotiating a Professional Service Agreement with a design team for the design of the Sports Complex to be located near Errecart Boulevard and Bullion Road, and matters related thereto. **FOR POSSIBLE ACTION**

In October 2012, Council authorized Staff to solicit for Statements of Qualifications (SOQ's) for the design of a Sports Complex. A committee made up of three (3) Parks and Recreation Staff members, a member of the Parks and Recreation Advisory Board, and the Civil Engineer evaluated the SOQ's that were submitted for the project. Of the eighteen (18) submissions received, six (6) design teams were asked to attend oral interviews on January 25, 2013. The committee recommends the design team of MGB+A, CHA Sports and Farrwest Chilton Engineering for the project. JW

James Wiley, Parks and Recreation Director, explained there were 18 proposals received and all were good. It took the better part of the month of December to narrow the choices down to 6. The selection committee feels MGB+A will do a good job for the city of Elko. This team has the ability to assist the City in obtaining grants and funding for the projects. The committee recommends MGB+A.

Councilman Schmidlein asked for a breakdown of MGB+A. He understood they were a firm out of Salt Lake City and CHA Sports is out of Kentucky.

Chris Woster with Farr West Chilton Engineering answered MGB+A is going to be the overall facility designer. They will optimize what goes where. They are the project lead on this out of Kansas City. CHA Sports out of Kansas City will be doing the microscopic aspects and make sure we select the right materials. There is an individual that is going to be focused on the funding for the project. Mr. Woster's job will be the local civil engineering.

Councilwoman Simons asked how much of the wetlands are going to be an issue.

Mr. Woster answered he worked for Chilton Engineering in the 1990's when the City hired them to help create the wetlands that are there now to offset some previous elimination of wetlands that was done at the airport. Those wetlands are marginally successful. From Errecart Blvd to the lot line at the modular homes and over to Hot Hole will be the project site. We would like to get those wetlands closer to the river corridor. MGB+A have actually built one in Salt Lake City that is now going into the construction phase where they had to do the same thing. Moving it closer to the corridor will give it a better success rate. It also needs to be moved to make more space for the fields.

Councilwoman Simons commented she has concerns about the lights and the noise. He mentioned that these firms have experience with this. What kind of things are they planning on doing about this?

Mr. Woster answered there is light pollution, vehicle noise pollution and loud speaker pollution. There are high tech lights now that can control how far they emit the pattern. The directional things you can do with the acoustics is where CHA Sports is going to come into play.

Jeremy Draper, Civil Engineer, showed an example of a sports field and the night time lights.

Councilman Schmidlein asked what is their budget they are designing to. How much do you have set aside for this project now? What is the overall plan for what is to be spent?

Mr. Wiley answered the overall plan for the design phase is to come up with a complete master plan for the area. That could involve multiple phases. He guessed between \$3 and \$5 million for a complete park. Our goal is to have a plan so that we can budget for this. Since it will be multi-phased we can address it that way.

Councilman Perry asked will this use re-use water.

Mr. Wiley answered we will be exploring the option since the WRF plant is in the middle of a major upgrade to dramatically improve the quality of the water. He thinks there will be a need for re-use water down there.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Perry, to authorize staff to begin negotiating a professional services agreement with the design team headed by MGB+A.**

The motion passed unanimously. (5-0)

- C. Review of bids received and possible authorization for Staff to enter into a Two (2) Year Custodial Services Agreement for the Elko Police Department, and matters related thereto. **FOR POSSIBLE ACTION**

Council directed Staff to solicit bids on January 22, 2013 after one failed attempt to seek a qualified bidder. DZ

Don Zumwalt, Police Chief, explained we went through this process before and did not get a qualified bidder. We put it out to bid again. We received one bid that we so far consider qualified. We haven't started the background check. The bid is higher than we have now (\$15,600.00 a year or \$1,300.00 a month) but we can make some adjustments to afford it.

Shanell Owen, City Clerk, said you can go back and re-bid it as a different project and scale some of the items down to get a lower bid.

Mayor Johnson said you will be expecting to see these people three or four times a week and it seemed reasonable to provide a cleaning product. It breaks down to about \$50 a man-hour.

Ms. Owen pointed out they will have to provide their own liability insurance too.

Councilman Schmidlein asked if they will provide their own cleaning products.

Chief Zumwalt explained the Police Department has been buying their own trash can liners and some chemicals but the cleaning company will provide their own vacuum cleaners and that kind of stuff. He offered to go back and look at the bid to make sure what we have asked them to do falls within that dollar amount.

**** A motion was made by Councilman Rice, seconded by Councilman Perry, to authorize staff to enter into a two year Custodial Services Agreement upon satisfactory completion of the background checks with Time for Clean at a cost of \$1,300.00 per month.**

The motion passed. (4-1 Councilman Schmidlein voted no.)

After the motion and before the vote, Councilwoman Simons asked how much more a month will they be paying.

Chief Zumwalt answered they have been paying \$465.00 a month.

Councilman Schmidlein asked if there had been other people interested in providing numbers.

Ms. Owen answered there were no other people interested. She had made some phone calls to a couple of the other cleaning companies that we have (one was the lady that cleans the airport). Initially when we sent this out the first time, we sent it to everyone that has a cleaning business in town.

Council voted on the motion.

III. UNFINISHED BUSINESS

- A. Continued review, consideration, and overview of Title 4, Chapter 5 “Elko Liquor Control Code” inclusive of licensure/permit requirements and revocation processes, including the possibility of code amendments, and matters related thereto. **FOR POSSIBLE ACTION**

The City considered this item at the October 23, 2012 Council meeting. Council directed Staff to bring back proposed amendments to the Code to include specific language to address systemic problems that further define non-compliant behavior from liquor license holders. Direction also included consideration of a last call provision, which would exclude establishments with non-restrictive gaming licenses. Council may give direction to Staff based on the information provided during the presentation. DA

Dave Stanton, City Attorney, explained we are in the midst of trying to add some clarity and expand upon the City Liquor Control Code. We are at a point of having a red-line version of the code. It is still a working document pending guidance from Council. He will go over the more substantive changes proposed to the code. Some minor changes on grammar and minor mistakes will not be included. He is looking for guidance from Council and hopefully come back with a proposed code change. He began a presentation (See Exhibit "B") with the following:

- 4-5-1: Definitions were clarified and some more were added;
- 4-5-2: Licenses Required and New Section A;
- 4-5-3: Classes of Licenses and new Section D; and,
- New Section E.

John Carpenter thought the new Section E had been already covered.

There was some discussion about exceptions and what types of events would fall under the Special Event Liquor Permit and who would get server training.

John Carpenter said he didn't have any paperwork on this agenda item and thought that was a violation of Open Meeting Law. He felt if this was going to be discussed in Council Meeting then the public should have the paperwork for it too.

Mr. Stanton said the idea is to find out if the City wants to do this or not. Council will give him guidance on what they want to do. This is being presented to Council for the first time just as the public is. The item was described in the Agenda. He asked Council what they wanted to do.

Council discussed and agreed they didn't have all the materials needed for this Agenda Item and wanted a copy of the presentation to review.

**** A motion was made by Councilman Perry, seconded by Councilwoman Simons, to table this and re-notice with the slide presentation for the next meeting.**

The motion passed unanimously. (5-0)

IV. NEW BUSINESS

- A. Review and possible approval of an agreement with Ruby Mountain Rios to Adopt-a-Street for litter collection in the public right-of-way on Silver Street from Errecart Boulevard to 3rd Street, and matters related thereto. **FOR POSSIBLE ACTION**

Ruby Mountain Rios is interested in volunteering their services for the Adopt-a-Street program. This portion of Silver Street is currently available for adoption.
DS

Dennis Strickland, Public Works Director, explained there was a representative from Ruby Mountain Rios present to speak to Council. He was contacted by the Chapter Chairman this winter and he expressed the group's desire to clean up the area. They understand the guidelines and the information sent to them. Staff recommends approval.

Alan Snow, Ruby Mtn. Rios, thanked Council for allowing them to propose to clean up Silver Street from 3rd to Errecart twice a year (Spring and Fall). They will use volunteer labor for this and do what they can to beautify the Elko area. Ruby Mountain Rios is the Elko Chapter of the National Wild Turkey Federation. They have been around in the Elko area for about 15 years. They have done several conservation projects in the local area. Each year they try to expand on their public projects.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Perry, to approve the agreement with Ruby Mountain Rios to adopt the street for litter collection in the public right-of-way on Silver Street from Errecart Blvd. to 3rd Street.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible authorization for the Engineering Department to begin the process of readdressing certain properties in the City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

In June 2012, the City of Elko and Elko County entered into a contract with GIS Data Resources, Inc., GDR, to create a GIS file that will provide accurate addressing for the entire county. During this process GDR has identified several areas in the City of Elko that do not conform to current addressing standards, many of these are in mobile home parks. Staff is requesting authorization to begin the process of readdressing these locations and notifying the affected residents and/or businesses. JD

Jeremy Draper, Civil Engineer, explained in the packet there is a form letter that would be sent out to residents informing them of what the City is doing and some steps they would need to take. Any time you change an address you have to change contact information such as the DMV, utilities, banks, insurance companies, etc. We would be E911 ready. Emergency response times could be reduced. There are parks in the City that do not have street names. He used one mobile home park (2151 Pinion Road) as an example.

Councilman Perry asked how many total addresses in Elko will this impact.

Mr. Draper answered 1,100 plus addresses.

Councilman Perry asked how many residents are there in the City.

Mr. Draper answered there are approximately 9,000 addresses.

Councilman Schmidlein asked what kind of notification will you give to people that you are changing their address. And how much of a time frame will they have?

Mr. Draper answered there is a form letter in the packet that will go out to the residents notifying them when the new address will become effective. We will try to give them a month and only do 100-200 addresses at a time as requested by the utility companies. This will also go out to the County Assessor so they can update their tax records.

Councilman Schmidlein asked if the city is offering anything to the residents to offset the cost of this.

Mr. Draper answered that was discussed internally. They considered getting some numbers and have some people go out to these addresses and put up the new numbers. The city could pursue that if Council wanted them to but it is not budgeted for this cycle.

Councilwoman Simons asked if the Post Office will still deliver mail to the old address. She also noted the residents would have to change their voter registration.

Mr. Draper answered the Post Office will do a change of address form for that residence. Tony Ferguson has gone out and field certified each address. The addresses will be assigned to each house according to what street the front door faces.

Tony Ferguson, Sr. Engineering Technician, explained this is a culmination of several years of mismanagement of addressing. In order to become E911 compliant we need to complete this. We have tried to change a few of these over the years with cooperation of property owners. He suggested using the same example that Mr. Draper gave on the overhead screen as a test run to see what complications might arise.

Councilman Schmidlein asked about assisting homeowners with changing their house numbers. He felt there are some people that will need that assistance.

Mr. Draper noted in the form letter it is stated that it will be the homeowner's responsibility to make those changes. Some subdivisions will also need street signs put up. He suggested using sticker numbers on the houses.

Mr. Ferguson said some of the assistance will come from staff creating lists that go to each of the entities. They will be responsible for their personal stuff such as their driver's license and voter registration, etc. We will do what we can to assist but we are limited.

Mayor Johnson said the biggest driver is safety.

Mr. Draper agreed. They want to get EMS personnel there as quickly as possible. The key to it is getting the public safety part of it going.

Curtis Calder asked what is the County doing since this is a county wide plan. Is it similar to our plan?

Mr. Draper said he spoke with Katrinka Russell at the Assessor's Office and they have the same kinds of issues. He has sent her their memos and she has sent some memos to Randy Brown with the same issues. They will follow suit shortly.

Robert Wines Manager of the Silver Pines Mobile Home Park said when he reviewed the agenda he didn't see this item. He didn't feel the discloser on the Agenda described what is going on. The business impact statement needs to be sent out because if you change the address to one residence there isn't much impact. When you are talking about a park like the one he manages, there are street signs that need to be purchased, installed and maintained. You also have house numbers on 50 to 100 houses that need to be changed. He has many non-English speaking people he is going to have to hire an interpreter to go to the homeowners and explain to them why their address has changed and also hire someone to go replace the numbers. He doesn't feel the city has taken into account the effect this will make on the parks.

Mayor Johnson noted this is for emergency purposes and is a lifesaving program. The City of Elko is not looking at causing an issue but looking at a safety side of things.

Matt Griego, Fire Chief, said one of the problems is that these addresses do not verify on the maps and they interfere with their programs. We have spent several hundred thousand dollars on New World programs for CAD (Computer Aided Dispatching) for the Police Department and the Fire Department. Because these addresses don't verify that product is basically not working for us. Even if the numbers were not on the house and the numbers all verified and the maps verified the address, even if the house didn't exist we could get to a vacant lot based on the GPS location on the map. These are map driven programs.

John Carpenter thought this has not been very well thought out. At his park he has people that have been there for 30 years. If you tell them to change their address they will go ballistic. They just won't do it. Unless you send someone out there to change the addresses himself it won't get done. He said he won't do it himself. If the city has the money to do it then they should do it and not the owners.

Councilman Schmidlein asked of these private mobile home areas, is the owner going to be responsible for changing the street signs and whatever needs to be changed.

Mr. Draper answered it has been discussed that if the mobile home park owners furnish the signs the city can help them install it. We can inform them of who to contact for the signs. This does impact mainly mobile home parks. We won't touch the RV parks but we will change the mobile home parks. Streets in mobile home parks are private streets.

Councilman Perry asked why these addresses cannot be geo verified now.

Mr. Ferguson answered the City has a grid system for addressing. The grid runs primarily with the tree streets and the center point is at 1st and River. As you go to the east the numbers get bigger. To the north the numbers also get bigger. The south side of River Street would have a

South address and the numbers would get bigger as you go south. Not all city streets are following the grid. The newer developments are not the issue. Now we need to deal with it.

Councilman Perry asked if there is another way to do this without changing the existing mailing addresses.

Mr. Ferguson answered not with all circumstances. If you want to throw out the current grid system then there might be a possibility. Why do we have this grid system to help us address the city if we don't adhere to it? It is there for a purpose. The geo coding that we have gone through and have now is based on that grid system. Other communities that have been faced with this same problem have gone through the same process and have been successful with it.

Councilman Perry asked if the issue is driven with public safety, if the Fire Department gets a call to go to the Pinion Road for a fire what happens.

Chief Griego answered the guys will flip through a notebook to find a map of that area and try to locate that on a paper map.

Doug Gailey, Human Resources Manager, said when he was working at the Sheriff's Department years ago they would go out Elburz or Ryndon and we would get directions such as turn where the school bus parks and such. When deputies responded to calls in the city they would be driving around with spotlights looking for house numbers until they found the house. The Fire Department usually arrived after the law enforcement officers were on scene and they would have a more difficult time trying to find those addresses.

Councilman Perry asked if anything would have been accomplished if they changed the addresses and the numbers on the houses fall off.

Chief Griego answered that then they would have maps that are geo verified and now the vehicle Mobile Data Terminals (MDT's) would be able to locate the residence using a map.

Mr. Gailey pointed out that even without the numbers the houses are sequential and you can do the math to find the house.

Mr. Ferguson asked what are we going to do if we have a fatality and the EMS couldn't get there quick enough because their address wasn't corrected. Are we willing to take that risk because an address wasn't changed?

Councilman Rice said taking into account all of the legitimate concerns that have been raised and using the Southgate Park as the pilot project, also keeping safety in mind, that we would authorize staff to begin the process of re-addressing areas around town that have been identified as being out of compliance with current addressing practices and examine the feasibility for offering assistance with providing new address numbers.

Councilman Perry said using Southgate Park as an example, to see what would happen we should send a letter to each resident explaining what we want to do including the owner of the

park. We tell them they are the beta site to see what issues there are there and why the City wants to do it. Most of the work will be on the resident there.

Councilwoman Simons thought a meeting of some sort will benefit the citizens. If they just get the letter they won't get all the information that was presented to Council.

Councilman Perry asked if he could notice the costs at a meeting place.

Mr. Draper said we can do a public workshop.

Councilman Schmidlein said he likes the idea of the workshop and wants to move forward with that. We can establish the public notice for the workshop and if the residents cannot attend they can have a representative present.

**** A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to authorize staff to have a public workshop to discuss with residents in the Southgate Mobile Home Park which could be our beta site for readdressing to establish issues and concerns and that there be a Spanish speaking interpreter at the workshop.**

The motion passed unanimously. (5-0)

VI. 6:00 P.M. PUBLIC HEARINGS

- A. Second reading, public hearing and possible adoption of Ordinance No. 767, an ordinance amending Title 3, Chapter 2, Subsection 10. B. of the Elko City Code entitled "C General Commercial District" by removing Section 3-2-10 B. 8. Mobile Homes, filed and processed as Zoning Ordinance Amendment No. 4-12, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission determined that it is necessary to amend the zoning regulations of the Elko City Code to remove Section 3-2-10 B. 8. Mobile Homes of the C General Commercial District due to the fact that a recent amendment to the C General Commercial District prohibited all residential uses other than multiple family residential developments which contain five or more units located on a single lot or parcel; townhouse or condominium or attached housing developments subject to the conditional use permit process and provided for other allowable mobile home uses under conditional use permits, and pursuant to Section 3-2-21 made a motion to initiate the process at its regular meeting of November 7, 2012. The Planning Commission held a public hearing on December 4, 2012, and took action to forward a recommendation to City Council to approve the amendment. SW

Scott Wilkinson, Development Manager, explained this is the same information that was available at the first reading.

John Carpenter said you need to get a conditional use permit to have a recreational vehicle park. If this is adopted, and he applied for a conditional use permit, are you going to hold me to the temporary short-term transient recreational occupancy? Many of his residents have been there many years. Not many parks would make it without permanent residents. There isn't enough overnight RV traffic going through Elko anymore and in the winter time there are even less. What would happen if you would be held to that short-term transient occupancy?

Mr. Wilkinson answered by referring to RMH districts. There are 4 different types of uses in that subdivision. When you look at the code, the intent is to clearly distinct between those types of uses and have those types of uses located appropriately. An RV park is for that. It is for transient type uses. We do see a lot of conversion with the RV's being permanentized. You would not get a conditional use permit for this existing park. If someone comes in and wants to put in a park like that they need to go through that process to establish the correct district for that type of use. The idea looking at the code is going from a transient use and going to a permanent use with all the setbacks and other requirements you develop a neighborhood that is consistent with single family developments. RV parks are intended to be transient.

John Carpenter said if you held these people to that you probably wouldn't get any more RV parks built. A lot of those people are permanent. You won't get any developed if they have to meet those conditions because it isn't feasible to have just an overnight park because the traffic isn't there.

Councilman Perry noted RV parks have become permanent residences. What you just read was already in the zoning code.

Mr. Wilkinson said that has been in the code since 1978.

Councilman Perry said the process of the conditional use permit is the mechanism you give the neighbors a chance to say if they may have an issue with it. It is there for transparency.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to conduct Second Reading, Public Hearing and adopt Ordinance No. 767.**

The motion passed unanimously. (5-0)

- B. Second reading, public hearing and possible adoption of Ordinance No. 769, an ordinance approving an amendment to the development agreement between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada ("City"), and Copper Trails LLC, a Nevada limited liability company ("Owner"), specifically to reduce the principal building front yard setback from 15 feet to 10 feet. **FOR POSSIBLE ACTION**

Pursuant to N.R.S. 278.0205 and Section 3-2-26 F. of the City Code, Council may amend or cancel binding development agreements by mutual consent of the parties to the agreement or their successors in interest if it finds that the amendment to the agreement is consistent with the Master Plan. The amendment

shall be approved by adoption of an ordinance. Owner has requested the City amend the approved development agreement and Staff is in agreement. SW

Mr. Wilkinson explained as they went through the subdivision process for Copper Trails they had some substandard lots that were smaller in area. As we went through the development standards for that subdivision what we looked at was a 20' front yard setback for garages. The front yard setback for the building itself was encroaching up to 10' instead of the 15' that would typically be required. That was part of the development standards for that subdivision. When we put together the agreement we overlooked that change in the agreement. The developer didn't catch the mistake when they reviewed it. When they submitted some plans for some homes he denied the plans based on the development standards and this issue came to light. It was requested that the setback be corrected.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to conduct Second Reading, Public Hearing and adopt Ordinance No. 769.**

The motion passed unanimously. (5-0)

- C. Second reading, public hearing and possible adoption of Ordinance No. 770, an ordinance approving cancellation of the development agreement between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada ("City"), and The Pointe at Ruby View, LLC, a Nevada limited liability company ("Owner"), and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to N.R.S. 278.0205 and Section 3-2-26 F. of the City Code, Council may amend or cancel binding development agreements by mutual consent of the parties to the agreement or their successors in interest. The cancellation shall be approved by adoption of an ordinance. In this instance, the owner has requested the City cancel the approved development agreement and Staff is in agreement. SW

Mr. Wilkinson explained that on the overhead there are 10 lots that was called the Pointe Patio Home Subdivision. What is being proposed is to subdivide the area with larger hillside lots and merge this subdivision into the adjacent subdivision. In order to do that we need to cancel the development agreement that was approved.

Councilman Schmidlein asked if all the meter pits are going be left in place behind the sidewalks and shut off.

Mr. Wilkinson answered we will try to utilize the utilities that are in place right now. The meter pits will have to be relocated to the new property lines. We won't have any access off Khoury Lane so we won't have driveway utility conflicts.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to conduct Second Reading, Public Hearing and adopt Ordinance No. 770.**

The motion passed unanimously. (5-0)

- D. Review of bids received and subsequent public auction for the sale of approximately 5,000 square feet of Vacant City Property (A.P.N. 001-560-057), located on the northerly side of Manzanita Lane, near the southeasterly limits of the East End Mall, in a southeasterly portion of Elko, Elko County, and matters related thereto. **FOR POSSIBLE ACTION**

On January 22, 2013, Council approved Resolution No. 1-13 which set forth the conditions of the public auction for the sale of City-owned land. The minimum sale price must be \$25,000.00. A copy of Resolution No. 1-13 has been enclosed in the agenda packet for review. SO

Shanell Owen, City Clerk explained there is one sealed bid and she passed it to the Mayor.

Mayor Johnson opened the only bid the city received for A.P.N. 001-560-057. The bid was for \$25,001.00 for the property advertised. The bid also included reimbursement for advertisement costs, cost of appraisal fees, recording fees (if any), preliminary title report or title insurance policy or any other costs set by City Council.

Ms. Owen said the bidder is actually Janet Pescio.

Mayor Johnson opened it up for oral bids. With no other bidders we can now award the bid to the only bidder.

Ms. Owen said the Council can still decide not to sell the property.

Mayor asked for the pleasure of the council.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to recognize the bid and approve the sale of the described property to Janet Pescio in the amount of \$25,001.00.**

The motion passed unanimously. (5-0)

IV. NEW BUSINESS (Cont.)

- C. Review, consideration, and possible approval of Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements (B4 and M10) to Vicki Peterson and Jo Ann Macari, trustees, and matters related thereto. **FOR POSSIBLE ACTION**

The attached Assignment and Assumption is pursuant to the terms of the Elizagoyen Family Trust. SO

Ms. Owen explained this is a housekeeping item with the passing of the Elizagoyens. The ownership transfers to the new trustees. These are split up as the agreements are currently written.

Councilman Perry asked how long are these leases for.

Ms. Owen thought they were 20 year leases.

Councilman Perry asked if they built the buildings.

Ms. Owen answered yes. The City owns the property and they own the structure.

Councilman Perry asked what happens after the 20 year lease expires.

Dave Stanton, City Attorney, answered that is an interesting legal question. Technically the city could order the removal of the structure from the property.

Ms. Owen said the laws have changed recently regarding leasing city property. It used to be that you could negotiate with the City but now everything has to be put up as public auction for a lease. There are some exclusions but she wasn't sure if it applies. At the time these leases begin to expire would be the time she would contact legal counsel and ask for direction.

**** A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to approve the Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements (B4 and M10) to Vicki Peterson and Jo Ann Macari, trustees.**

The motion passed unanimously. (5-0)

- D. Review, consideration, and possible approval of Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements (F1, F2, G1, G2, G3, G4, G5, G68, G9, H1, M2, M3, M6, M8, M9) to Vicki Peterson and Jo Ann Macari, trustees, and matters related thereto. **FOR POSSIBLE ACTION**

The attached Assignment and Assumption is pursuant to the terms of the Sauver Elizagoyen and Elizagoyen Family Trust. SO

Ms. Owen explained this has the same information as the previous item. These leases were in the name of Sauver Elizagoyen. He subsequently turned it into the Elizagoyen Family Trust.

Councilman Perry asked are they subleasing these T-Hangars to other people. (yes)

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to approve the Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements (F1, F2, G1, G2, G3, G4, G5, G68, G9, H1, M2, M3, M6, M8 & M9) to Vicki Peterson and Jo Ann Macari.**

The motion passed unanimously. (5-0)

V. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Consideration of a claim for damages totaling \$7,500 by Mr. Dave Frost for the alleged loss of enjoyment of property located at 1076 College Avenue, and matters related thereto. **FOR POSSIBLE ACTION**

Over the past several years, the City of Elko has received numerous complaints from Mr. Frost regarding alleged nuisance activities in the vicinity of Elko High School. City Staff and Elko Police Department representatives have met with Mr. Frost on multiple occasions in an effort to resolve his concerns.

On October 17, 2012, the City of Elko was served with an “Affidavit of Complaint” from the Elko County Justice Court. In the complaint, Plaintiff Dave Frost demanded payment for \$7,500 for “Nuisance(s), Loss of Enjoyment of Property.”

The City of Elko responded to the complaint and appeared before Judge Nethery on January 7, 2013. At the hearing, Judge Nethery allowed Mr. Dave Frost the opportunity to exhaust his administrative remedies before the Elko City Council. A status hearing before Judge Nethery has been set for March 11, 2013.

Included in the agenda packet for review are the following documents:

- Mr. Frost’s original demand letter dated August 10, 2012
- The City of Elko’s response to the above referenced demand letter, dated August 14, 2012
- The “Affidavit of Complaint,” dated September 7, 2012
- Mr. Frost’s “Nuisance Letter,” dated January 23, 2013

David Stanton, City Attorney, will be in attendance to answer any questions the City Council may have. CC

Curtis Calder, City Manager, explained Mr. Frost was not in the audience but Council could proceed whether he is in attendance or not since his request is in writing.

Councilman Perry asked what the basis of the nuisance claim is. Is it something that is happening on City property?

Dave Stanton, City Attorney, answered it is possibly on City and private property. The complaint is that the kids from the high school are creating a nuisance near his property and that the Elko Police Department is not doing enough to prevent that.

Chief Zumwalt explained where Mr. Frost lives. They have tried to visit with Mr. Frost and resolve the problem. His complaint is due to noise and kids being kids.

Councilman Schmidtlein asked if the high school was built after Mr. Frost moved in.

Chief Zumwalt answered no and he lives there with his mother. Years ago the school took out the parking that was across the street so there isn't much foot traffic out there. He has talked to Mr. Frost and there isn't much we can do. It is quieter and better now than it was five years ago.

Mr. Stanton said there are a couple of legal principles that apply to things like this. The Public Duty Doctrine says when a public entity performs a police function the duty is owed to the public and not owed to any specific member of the public with some exceptions. When you are just talking about the level of police protection that is applied cross the board the law is that there is no duty owed to a specific member of the public who happens to be dissatisfied. That means that member of the public does not have a right to bring a lawsuit on that basis. A separate legal issue is Discretionary Function Immunity. It says acts of public officials that are committed to the discretion of the public official that there is no liability for the manner in which that decision is made. The reason to that is that in the Nevada Supreme Court in a case called *Parker vs. Mineral County* said that when it comes to the manner in which law enforcement resources are allocated that is isn't the job of the courts to step in and second guess the police department. The local Police Department has limited resources and they have made the decision to allocate their resources in their own way. By law this Council is limited as to how it can expend public funds on something like this. It has to fulfill some sort of a public purpose. The only way he can see this fulfilling a public purpose would be if the City decided that since this is a disputed claim that the City was settling a disputed claim with Mr. Frost and that there would be a release of liability. He doesn't believe there is liability in this case.

Councilwoman Simons asked Mr. Stanton what the judge said.

Mr. Stanton answered she said basically as the agenda item read. She did not render a decision at the hearing.

Mr. Calder said what she did say to Mr. Frost was that if the Court made a decision right then he would not have an opportunity to go back to City Council to ask for any administrative relief. She was just giving him the option and he took it and submitted the letter in the packet.

Councilman Rice said given what you have advised in terms of the law in regards to Mr. Frost's predicament he is looking for Mr. Stanton to draft a letter to decline his request for damages and other fees.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to direct Legal Counsel to deny the claim.**

The motion passed unanimously. (5-0)

II. APPROPRIATIONS (Cont.)

A. Review and possible approval of Warrants. **FOR POSSIBLE ACTION**

Councilman Perry asked under Police Department there was a payment to 5th Gear Power Sports for \$10,796.00.

Chief Zumwalt explained those are big tall stand-alone lights purchased through a grant. They will be used for crime scenes when it is dark.

Councilman Perry asked there was also one for Vivex Inc Software lock cylinder keys for \$10,334.00.

Chief Zumwalt answered that is grant money. Those are smart locks. A lot of this security equipment that we have purchased can move with us when we move out of the building.

Councilman Perry asked Mr. Magness what the check for \$125 was for.

Rick Magness, City Planner, answered it was for high school basketball and the season is over.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to approve the warrants.**

The motion passed unanimously. (5-0)

VIII. REPORTS

A. Mayor and City Council

Councilwoman Simons reported she had the opportunity to sit in on the interviews for Airport Director.

Councilman Perry (with some input from Curtis Calder) reported he went to St. George two Fridays ago with Curtis Calder and Jim Foster for a meeting with Sky West regarding the sequencing of the airport runway.

Mayor Johnson had an opportunity to meet with the Police Chief and look at some of the issues with the Police Department building. He will miss the next Council meeting due to traveling out of town.

B. City Manager – Nevada Legislature update

Curtis Calder gave a Legislature update. A week from today the City of Elko has a meeting with the NDEP in Carson City and Union Pacific Railroad regarding the railroad property in the corridor to discuss the second round of reports that were generated by the Railroad's consultant on the east side cleanup. On the 26th, the same day as the next meeting, Karen Jenkins of the Ethics Commission will be here from 10:00 to 12:00.

C. Assistant City Manager

D. Utilities Director-North Reuse Reservoir Emergency Liner Repairs- RL

Ryan Limberg reported on some emergency repairs done to the North Reuse Reservoir by Comanco for \$5,310.00 and inspections done by Newfields for \$2,137.50. He also gave a status update on the WRF project. (Exhibit "C")

E. Public Works

F. Airport Director

G. City Attorney

- H. Fire Chief
Matt Griego reported they are trying out a new thing with the department by publishing a monthly newsletter to keep the Elko Council and the public informed about what is happening. (Exhibit "D") They just concluded the written promotional testing, are preparing for upcoming retirements and they had 73 applicants tested for the new hire position.
- I. Police Chief
- J. City Clerk
Shanell Owen reported on the CDGB project submittal for the Silver Street ADA improvements. She had distributed a copy of the City Clerk Annual Report to each of the Council members.
- K. City Planner-Planning Department report on Rezone No. 1-13
Rick Magness reported on Rezone No. 1-13 filed by The Pointe II LLC; a conforming zone change from R to R1. The proposed annexation that Council had previously approved got tabled by the Planning Commission.
- L. Development Manager
- M. Administrative Services Director
Doug Gailey reported they hold the Airport Director interviews and will have some come in to tour the airport facility and meet the staff before they conduct a second interview. They did receive all of the position analysis questionnaires and sent those off to the consultant.
- N. Parks and Recreation Director
James Wiley reported that his recreation staff and the office down there have been working on improving our recreation guide to include all four seasons. It is his understanding that the Snow Bowl is still open but people should call the hotline (777-7707) for a condition update before going there.

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

John Rachey, Elko Daily Free Press, reported the ex-cop (Dorner) that had been hunted by law enforcement for murder; it was on the news that his body was pulled from a burned building about an hour ago.

There being no further business, Mayor Chris Johnson adjourned the meeting.

Mayor Chris Johnson

Shanell Owen, City Clerk