

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

SS May 19, 2015

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 3:00 p.m., Tuesday, May 19, 2015.

This meeting was called to order by Mayor Chris 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 Robert Schmidlein
Councilman Reece Keener

Council Absent: Councilwoman Mandy Simons

City Staff Present: Curtis Calder, City Manager
Scott Wilkinson, Assistant City Manager
Shanell Owen, City Clerk
Matt Griego, Fire Chief
Ben Reed Jr., Police Chief
Bob Thibault, Civil Engineer
Dave Stanton, City Attorney
Tom Coyle, Deputy City Attorney
Diann Byington, Recording Secretary

ROLL CALL

PLEDGE OF ALLEGIANCE

Mayor Johnson explained the City of Elko Administrative Hearing procedure.

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**

There were no public comments.

I. ADMINISTRATIVE HEARING

- A. Administrative hearing before the Council, review, discussion, consideration and possible action to make findings and decide appropriate disciplinary actions, if any, up to and including termination of the license, regarding the liquor license action in file no. 2015-001 entitled CITY OF ELKO, Complainant v. HADLOR INC., dba HORSESHOE CLUB, DEBRA A. MENSING, OWNER-PRES., ANDREW C. WELSH, CFO, JESSICA L. WELSH, SEC., licensee(s), and other matters related thereto. **FOR POSSIBLE ACTION**

Tom Coyle, Deputy City Attorney, named 6 witnesses; Police Chief Ben Reed, Lieutenant Ty Trouten, Officer Locuson, Officer Gevok, Officer O'Farrell and Officer Catalano.

Attorney for the Defense, Clyde DeWitt, named more witnesses; Andrew Welsh, Jessie Welsh, Ely DeJesus, Delanie Andaus, Rebecca Bachli, Robert Bachli, Omar Driver, Leticia Gonzales, Jacob Hamilton, Mathew Jacobsen-Sharples, Colby Jayo, Kimberly Palmer, Keri Randisi, Josh Carson, Officer Clint Ratliff, Officer Sean Nolen and Sergeant Jason Pepper.

Shanell Owen, City Clerk, asked all the witnesses to stand and swore them in.

Mr. Coyle began his explanation of the matter. Police Chief Ben Reed has filed a First Amended Verified Complaint in this matter found at page 4073 in the record before council, alleging that the Horseshoe Club liquor licensees have committed violations of the Elko Liquor Control Code which warrants disciplinary action against their liquor license. There are two preliminary matters he wanted to bring up. Supplemental Volume page 4211, there is a stipulation regarding licensee Debra Mensing. That stipulation dismissed Ms. Mensing from this action. Andrew Welsh and Jessie Welsh have agreed to be substituted in her place as it pertains in the hearing. Secondly, in the Supplemental Volume page 4213 there is another stipulation regarding preliminary matters which will shorten the hearing to some extent. The first stipulation was that the licensees were properly served with notice of this hearing. The second stipulation licensees were properly served with the notice of meeting as required by NRS241 concerning a hearing which may involve potential misconduct and that administrative action could take place. The third stipulation in that is that Hadlor Inc., Andrew Welsh and Jessie Welsh are the proper licensees for all times relevant to the disciplinary hearing before you today. Another matter to address is there were some late records that came in from the Horseshoe. Mr. DeWitt has those and will hand them out later. There is another preliminary matter on a contested issue. The licensees have made a motion to strike pleadings and not permit evidence that is outside the scope of one year immediately preceding the filing of the First Amended Verified Complaint which was April 21, 2015. That can be found in the record on page 4124 line 16. The law at issue on this matter is that under 4-5-13B the citation to appear provision the verified complaint is to charge a licensee with commission of acts within one year prior to the date of filing the complaint which is cause for discipline. From the City's perspective the facts at issue on this motion are the initial complaint was filed February 9, 2015. At that time the licensee objected to any matters that were contained in that original complaint that were outside the one year scope. One April 21, 2015 we file the first amended complaint to make it clear the city would limit the primary allegations in evidence concerning the violations to the one year period that they had

originally wanted, February 9, 2015 and one year prior to that, February 9, 2014. The amended complaint may be found at 4073 of the record. He requested the motion to strike be denied.

Mr. DeWitt said if this were a civil case Mr. Coyle would be right because rule 15 says an amended complaint relates back to the original complaint. There is no provision in the municipal code for an amended complaint. Nor is there any provision that says an amended complaint relates back to the original complaint. Basically it is a new complaint. Is it okay if he files a new complaint? Of course it is. The code specifically says a year from the complaint. It doesn't say anything about amended complaints. You call it an amended complaint otherwise you would be confused by the two. A complaint is a complaint.

Mayor Johnson clarified the dates he wanted included were April 21, 2014 to April 21, 2015. Unless there is a complaint from Council he will remain with the original dates February 9, 2014 to February 9, 2015. That was what the city originally filed.

Councilman Keener concurred with Mayor Johnson.

Councilman Rice agreed.

Mr. Coyle called Ty Trouten to the stand.

TYLER WAYNE TROUTEN explained he is a Police Officer for the City of Elko and has been employed over 15 years.

Mr. Coyle asked if he was familiar with the establishment in Elko known as the Horseshoe Club.

Mr. Trouten answered yes, sir. They are located at 442 Idaho Street.

Mr. Coyle asked does that business have a liquor license from the city.

Mr. Trouten answered yes.

Mr. Coyle asked are you aware of who the licensees were during 2014.

Mr. Trouten answered it was his understanding that originally it was Ms. Debra Mensing and Andrew Welsh. It was modified somewhere in that time that we learned of in February of this year to just Andrew Welsh and Jessie Welsh.

Mr. Coyle directed his attention to the time frame between February 9, 2014 and February 9, 2015. Did you complete an investigation of matters that concern the liquor license of the Horseshoe Club in that timeframe?

Mr. Trouten answered yes he did.

Mr. Coyle asked what led you to perform that investigation.

Mr. Trouten answered it was part of a crime analysis to ascertain what our crimes are looking like in the downtown area as well as how three different businesses were performing pursuant to their licenses having been on probation the previous year. He began pulling statistics in early September.

Mr. Coyle referred to a table on the overhead screen (Exhibit "A") and asked Mr. Trouten if he recognized that table and to describe what was shown on that table.

Mr. Trouten answered when he was pulling the statistics he was looking at three different things. One of them was total calls for service at the different bars in the downtown area. He also looked at the number of fight calls at each bar as well as the number of disturbing the peace calls to each bar.

Mr. Coyle asked how he compiled those calls.

Mr. Trouten answered it was a search through the record system of incidents that are at a certain address within a certain timeframe.

Mr. Coyle asked what establishments are showing on the table.

Mr. Trouten answered these are bars in the downtown corridor. We have what is commonly known as the G Bar, Duncan Little Creek Gallery, the Silver Dollar Bar, the Casanova Club which switched its name to 24K, the Commercial Bar, the Tiki Hut, the Cantina El Ausente, Goldies Bar, The Stray Dog, Good Time Charlees and the Horseshoe.

Mr. Coyle asked was the same methodology used in compiling your numbers for each establishment.

Mr. Trouten answered yes it was. It was simply an address query and the same time frame.

Mr. Coyle asked once you gathered that information what did you conclude it was showing concerning the Horseshoe.

Mr. Trouten answered he was concerned by the high number of fight calls at the Horseshoe, as well as the overall number of calls they were sent to at that location.

Mr. Coyle asked was that data showing that the Horseshoe was quantitatively different from the other downtown bars.

Mr. Trouten answered yes. It seems to have a disproportionate number of fight calls as well as a higher number of overall incident calls to that location.

Mr. Coyle asked did the numbers show that the Horseshoe was qualitatively different than the other establishments as far as anything concerning more violence or less violence and things of that nature.

Mr. Trouten answered it would seem to indicate that is more violent than other similar establishments in the same area.

Mr. Coyle asked Mr. Trouten if he recognized the next slide on the overhead screen.

Mr. Trouten answered yes. This is a pie graph simply showing the same statistics but this one is specific to the total calls for service of those same establishments in the downtown area. It shows that the Horseshoe accounts for over 1/4 of the total calls in downtown corridor area.

Mr. Coyle asked what does pie chart 2 show.

Mr. Trouten answered this illustrates the comparisons between those same eleven businesses with respect to disturbing the peace calls. The Horseshoe has a significant number of calls there.

Mr. Coyle asked about the next slide on the overhead screen.

Mr. Trouten answered this one represents the number of fight calls to the same eleven businesses. It illustrates that the Horseshoe accounts for a disproportionate amount of fight calls in the downtown bar area.

Mr. Coyle asked these calls for service that you are looking at that would come up when you are going through the data that you are, are all of those something that would show fault in the Horseshoe.

Mr. Trouten answered no. These calls are anything that is called into dispatch for a police response. They can include medical calls, counterfeit bill received, fraud, assist or any number of things.

Mr. Coyle asked did you filter those out in preparing those charts.

Mr. Trouten answered these charts as he recalls are strictly the calls for service downtown.

Mr. Coyle asked your methodology for gathering data for the Horseshoe remained consistent with all the other bars.

Mr. Trouten answered yes.

Mr. Coyle asked were any of the bars given a benefit of doubt in your calculations at all.

Mr. Trouten answered no. This is strictly the calls for service to those addresses.

Mr. Coyle wanted to review some of the reports and documents in the record before the City Council. As we are going through it I would ask you to refer to specific exhibit numbers. There are three volumes there at the witness stand. If you need more time to review something, let me know. As a general practical matter, when officers respond to an incident, when are they required to file an incident report?

Mr. Trouten answered the incident report is created when the call is placed into dispatch and whatever information is received from the caller is placed in the call. The officers can add to the incident by their own narratives. If the case generates a crime there would be a case number with the same incident number drawn and a report done on that incident.

Mr. Coyle asked him to find bate stamped document 1065 to 1068 referencing Police incident number 14-4957. What is that document referencing?

Mr. Trouten answered this is an incident report from March 1, 2014 approximately 10:33 pm at night. This is a call that came into the police of five male subjects at the Horseshoe that are up on the stage and fighting.

Mr. Coyle asked from that document can you determine what happened in the police response.

Mr. Trouten answered it appears that the subjects had left prior to police arrival. Some were spoken to on the corner. There was a mention of pocket knives possibly being used however none were located on this. It was cleared as an incident and not a case. There was no one that wished to be a victim who would fill out a report about what occurred there. There were no arrests made at that time.

Mr. Coyle asked are you aware of the number of officers that responded to the call.

Mr. Trouten answered on page 1066 five officers.

Mr. Coyle asked can you tell who called that incident in.

Mr. Trouten answered the caller was Matt Sharples, one of the security personnel for the Horseshoe.

Mr. Coyle asked is it common for an incident to be called in and the matter resolved before the officers get to the bar.

Mr. Trouten answered that happens quite frequently. This is what necessitates a code 3 response which is lights and siren. Upon our arrival parties have already separated and tried to flee the area.

Mr. Coyle asked to move to the report found on page 1069 in the record. What is the date?

Mr. Trouten answered March 2, 2014 at approximately 1:33am.

Mr. Coyle asked was that also at the horseshoe.

Mr. Trouten answered yes. It was dispatched as a fight outside with an unknown number of subjects involved and unknown weapons. The person that called this in said they would meet

with officers at the front entrance. It further delineates that we had two possibly stabbed which came in from one of the officers.

Mr. Coyle referred him to page 1085. Does that indicate that the persons involved were inside the horseshoe prior to going outside for the fight?

Mr. Trouten answered yes. One of the subjects stated they were inside the Horseshoe. It appears that there were two subjects that had issues with one another and exchanged words that led to the fight.

Mr. Coyle asked does the report indicate the group left the Horseshoe to participate in the fight.

Mr. Trouten answered yes. It mentions that there was some "bumping" that occurs. They go outside with several other subjects who each state that they go outside to ensure that it is a one on one fight. It appears that this fight occurs initially then reinitiates and then turns into more of a general melee.

Mr. Coyle asked if it was fair to say that multiple fights erupted.

Mr. Trouten answered yes.

Mr. Coyle asked if the officers found evidence that stabbings occurred in the fights.

Mr. Trouten answered yes. He recalled specifically one subject had both a slash wound and a stab wound to his abdomen. He was transported to the hospital.

Mr. Coyle referred him to Page 1093. Does the witness indicate that the person starting the trouble was drunk and talking a lot of nonsense?

Mr. Trouten answered on page 1093 the witness stated that someone tried to grab the dancing partner he was dancing with.

Mr. Coyle asked does it indicate that the person approaching the girl had been pushed away and was asked to leave her alone. And came back in five minutes and challenged the man she was with to a fight?

Mr. Trouten answered yes to both questions.

Mr. Coyle referred him to Page 1096 the third paragraph. Does that indicate that most of the fight took place outside the Horseshoe?

Mr. Trouten answered the third paragraph starts with "I asked Jose..."

Mr. Coyle read the paragraph, "I asked Jerahmi where the fighting took place. Jerahmi advised when he went outside the bar..." In the second sentence it says, "and advised most of the fighting took place directly in front of the bar."

Mr. Trouten answered yes.

Mr. Coyle asked at the bottom of the page does one of the participants indicate that he was drunk.

Mr. Trouten answered yes. It indicates the reason he did not feel the stab wounds initially was because of his level of intoxication.

Mr. Coyle moved to page 1097 at the top. Does the witness there indicate what Horseshoe security was doing during the fight?

Mr. Trouten answered basically security came out and notified them that they had called the cops and told them to leave.

Mr. Coyle asked on page 1101 does a witness describe himself as drunk coming from the La Cantina and being drunk prior to even entering the Horseshoe.

Mr. Trouten answered yes. This witness was Felix.

Mr. Coyle said page 1102 had a person identified as Edwin admit to drinking a 5th of Jack Daniels before going out and then going to the Cantina and not remembering going to the Horseshoe.

Mr. Trouten answered yes. He admitted to drinking a 5th of Jack Daniels as well as 6 beers at the La Cantina before proceeding to the Horseshoe.

Mr. Coyle asked does he further state while at the Horseshoe he was so drunk he couldn't dance or swing during the fight.

Mr. Trouten answered yes stating when he swung he missed.

Mr. Coyle asked going to page 1104 did it appear the security did not call the fight in until someone from outside told them to call it in. With the information on that page would it indicate to you that security had not gone outside to do anything concerning that incident?

Mr. Trouten answered yes. It is noted that they are not allowed to go outside by Bobby.

Mr. Coyle asked did security personnel admit to seeing an argument and then people went outside.

Mr. Trouten answered yes and it states they took a picture of the fight.

Mr. Coyle asked did 5 more potential combatants go outside after the woman had told them to call the police.

Mr. Trouten answered yes it does indicate that.

Mr. Coyle referred to page 1128. What is the date, time and location of that incident.

Mr. Trouten answered March 15, 2014 approximately 1:23 a.m. and it is at the Horseshoe.

Mr. Coyle asked page 1148, does that indicate that video of that incident was sought from the Horseshoe without a response?

Mr. Trouten answered it does.

Mr. Coyle asked going to page 1152 the evidence there is that there was a victim of battery that was unconscious at the horseshoe.

Mr. Trouten answered yes, just inside the door.

Mr. Coyle asked does the witness statement indicate there was a problem person inside the bar trying to start fights that was removed or attempted to be removed by security.

Mr. Trouten answered the subject was trying to start the fights. Horseshoe security had put them out the front door.

Mr. Coyle asked what does it indicate happened at that point.

Mr. Trouten answered the subject that was starting the trouble then turned around and punched the male subject that was just inside the door and rendered him unconscious.

Mr. Coyle asked from your reading of that report, could security have detained that individual while he was trying to cause a problem inside the Horseshoe. If you are disturbing the peace you can be detained inside?

Mr. Trouten answered they did not detain him they merely removed him from the business. Yes you can be detained inside.

Mr. Coyle said the same as the prior incident. You can be detained by security and law enforcement contacted. Had that happened in either of these incidents, it could have prevented the subsequent fight?

Mr. Trouten answered presumably so yes.

Mr. Coyle asked in removing the individual in this incidence (report 14-1699), did security keep the public safe in removing this problem person?

Mr. Trouten answered no, they did not. Not even to one of the patrons within the confines of their business.

Mr. Coyle referred to page 1170. What is the date, time and location of the incident?

Mr. Trouten answered April 20, 2014 at approximately 2:49 am.

Mr. Coyle asked what is the description of that incident.

Mr. Trouten answered this was a call that was made to dispatch of a subject being hit in the face who then later said never mind, it was done by a friend of his and then will not answer the phone.

Mr. Coyle asked did police respond to that incident.

Mr. Trouten answered yes they did.

Mr. Coyle asked is that another code 3 response that you described earlier.

Mr. Trouten answered they may not have arrived in code 3 on a case like that but certainly would have expedited to get there.

Mr. Coyle asked can you determine from that report how many officers had to come to that incident.

Mr. Trouten answered 4 officers responded.

Mr. Coyle referred to page 1173. Was that involving an incident identified as 14-10116? What was the date, time and location of that incident?

Mr. Trouten answered yes it was April 23, 2014 approximately 11:41 pm at night. This is a call to remove a subject from the Horseshoe.

Mr. Coyle asked does that indicate there was fighting with security.

Mr. Trouten answered yes. It indicates they basically removed a subject or trespassed him from the bar previously and told him they would call police if he returned. He returned and then became involved in a fight with security officers at the bar.

Mr. Coyle asked to go to page 1175. What is the incident number for that?

Mr. Trouten answered 2014-00010325. This was on April 25, 2014 approximately 2:19 am in the morning at the Horseshoe.

Mr. Coyle asked what the description in that incident is.

Mr. Trouten answered there was a male subject that had hit one of the security guards. It was reported that he was at the front door of the business.

Mr. Coyle asked does it indicate that there was fighting with security on two occasions in this incident.

Mr. Trouten answered he only saw the one where he hit the bouncer.

Mr. Coyle asked how was this incident resolved.

Mr. Trouten answered it was resolved without an arrest. Under Nevada Law, Police Officers can only arrest for a crime that occurs in the presence if it is a misdemeanor or a felony or a gross misdemeanor that is not in the presence. A simple battery falls under the misdemeanor category which requires that the officer either has to observe it or we have to have a citizen who is a victim who is willing to make a statement or witness that is willing to make a statement as to what happened so we could make that arrest. It essentially becomes a citizen's arrest scenario.

Mr. Coyle asked even though security was struck, they didn't pursue any charges.

Mr. Trouten answered no.

Mr. Coyle asked was the subject there when the officers arrived.

Mr. Trouten assumed he was because there was a subject ran through dispatch.

Mr. Coyle moved to page 1182. What is the incident number?

Mr. Trouten answered 2014-00011928. The date was May 11, 2014 approximately 2:51 am at the Horseshoe.

Mr. Coyle asked what is the description of the incident.

Mr. Trouten answered the incident type was listed as fight in progress.

Mr. Coyle asked were officers present when the fight began.

Mr. Trouten answered yes it was reported by one of the officers. They were there doing a security walk-through.

Mr. Coyle asked Mr. Trouten to describe the security walks.

Mr. Trouten answered they have had a significant amount of violence, including homicides, in the downtown corridor. In effort to combat this and to prevent fights to keep things from getting so out of hand our agency has been involved in routine long-standing security checks where basically officers normally two, sometimes three, will check out at the downtown corridor area and begin a walk-through of each business down there. The goal is to go in down there and see what is going on. If we see problems we address the problems. If we see people with warrants we arrest the same.

Mr. Coyle asked on page 1197 it appears something happened inside the bars sufficient that two subjects went right past the uniformed officers to engage in a fight outside the doors.

Mr. Trouten answered yes, the subjects were inside and they both exited in a hurried manner. As soon as they got outside one of the officers saw them through the window fighting. Because the officer observed that both subjects were arrested.

Mr. Coyle asked how often do those security checks happen at the Horseshoe.

Mr. Trouten answered ideally each evening at least once. However that is subject to call volume and availability of officers to do so.

Mr. Coyle referred him to the next incident on page 1207. What is the incident number?

Mr. Trouten answered it is 2014-00013305. This occurred on May 24, 2014 approximately 2:23 am. It is a fight call at the Horseshoe. This was a fight observed by Officer Nolen. He observed several subjects out in front of the bar fighting. He immediately called it in and responds to the subjects fighting. He attempts to get them separated and ends up using a Taser to get them to stop.

Mr. Coyle asked how many people were reported fighting outside the bar in that instance.

Mr. Trouten answered he approximates at 10-15 individuals.

Mr. Coyle asked if that would be about the same amount of people at the incident found on 1069 where the stabbing occurred.

Mr. Trouten answered that one had roughly 6-7 individuals as he recalled.

Mr. Coyle asked if it was common at the Horseshoe that these fights can involve large groups of people?

Mr. Trouten answered they have had multiple calls of groups that large or multiple people fighting like that, yes.

Mr. Coyle asked what problems does that present for law enforcement when you respond to calls of that nature.

Mr. Trouten answered these are particularly problematic because we do not have that amount of officers on duty on one time. To break up a fight and contain all the subjects it requires usually the same amount of officers. It is also a huge officer safety issue in that if the officer goes in and tries to break up a fight these subjects can then turn on the officers.

Mr. Coyle asked when you are making that response and trying to contain an incident, does Horseshoe security participate at all?

Mr. Trouten answered they did not participate in this one. I see no mention of it in the report. This was just outside the front doors.

Mr. Coyle referred him to page 1229. What is the police report number in the case?

Mr. Trouten answered 2014-00015213. This occurred on June 15, 2014 approximately 12:55 am in the morning at the Horseshoe. It is a fight call.

Mr. Coyle referred him to page 1246. Does it appear that security witnessed the fight?

Mr. Trouten answered yes. This is a statement written by Chance Armas who was one of the working security guards there at the Horseshoe.

Mr. Coyle asked does it appear from that statement that security did not detain the individuals or call the police.

Mr. Trouten answered no. He lists in his statement that upon seeing the fight he tried to escort the guy and then the guy began to commit battery upon him.

Mr. Coyle asked on page 1248, does it indicate that the individual involved was extremely intoxicated and disoriented.

Mr. Trouten answered yes.

Mr. Coyle asked in that incidence on 1248, was it reported that security provoked the fight with the individual being removed.

Mr. Trouten answered yes the family members with him indicated that Mr. Armas initiated the battery.

Mr. Coyle asked was there a request for video made in this case.

Mr. Trouten answered yes there was through the club manager Ely DeJesus.

Mr. Coyle asked when Mr. DeJesus was asked for the video, did he indicate the process he would have to go through.

Mr. Trouten answered he stated that he would have to request it through his management.

Mr. Coyle asked as far as Mr. Trouten knew is he the onsite manager at the Horseshoe.

Mr. Trouten answered yes and he has portrayed the same to him in person.

Mr. Coyle asked when he says his management he's talking about the owners of the Horseshoe, the Welsh's.

Mr. Trouten answered that is what he would presume.

Mr. Coyle referred to Page 1257. What report is referenced there?

Mr. Trouten answered this is report number 2014-00015217. I occurred on June 15, 2014 approximately 1:32 am at the Horseshoe and a fight call.

Mr. Coyle referred to page 1267. What is that showing happening at the Horseshoe?

Mr. Trouten answered basically officers were outside the Horseshoe. There was a crowd gathered at the front waiting to get in the bar. The crowd began to fall back and subsequent fighting.

Mr. Coyle asked is it common on certain days of the week where crowds gather to try and gain entry into the Horseshoe.

Mr. Trouten answered yes. This was during the Elko Motorcycle Jamboree which tends to be a busy time for them and there are certain weekend nights that are also busy for the Horseshoe like that.

Mr. Coyle asked how long does the line get while they are waiting.

Mr. Trouten answered on most weekends or when there are lines outside it is just a small group outside the front doors. There are times depending on which year it is, the lines sometimes can be 15-20 people.

Mr. Coyle asked are you aware of security measures taken in regards to individuals outside waiting to come in.

Mr. Trouten answered no. Generally the security is stationed inside by their entrance way.

Mr. Coyle referred to page 1275. What is the police incident number there?

Mr. Trouten answered 2014-0015866 and occurred on June 22, 2014 approximately 3:25 am at the Horseshoe and again, a fight call.

Mr. Coyle asked what is the description of that incident.

Mr. Trouten answered physical fighting inside with two males, unknown weapons or negative weapons.

Mr. Coyle asked how was the call resolved.

Mr. Trouten answered it appears that there were no arrests. He wasn't even sure if subjects were contacted because there were no names entered in the call. It does look like at one time one of the subjects were fighting with security as well.

Mr. Coyle asked Mr. Trouten to move to volume 2 and page 1281. What is the police report involved there?

Mr. Trouten answered 2014-00016661 on July 2, 2014 approximately 2:16 am at the Horseshoe and a fight call.

Mr. Coyle asked what is the resolution of that case.

Mr. Trouten answered it shows that the parties were separated. It appears that the subjects were either gone or no one wishes to be a victim. There were no arrests made.

Mr. Coyle asked if law enforcement action can even be taken in those circumstances.

Mr. Trouten answered unless we have a victim or the witness stepped forward willing to put pen to paper and sign their name and testify in court we cannot make that arrest.

Mr. Coyle asked if there was a fight, Horseshoe security could actually detain those individuals.

Mr. Trouten answered yes they could.

Mr. Coyle moved to page 1301 in the record. What is the police report number in that case?

Mr. Trouten answered 2014-00020024 which occurred on August 9, 2014 approximately 10:43 pm, at the Horseshoe. It was a fight.

Mr. Coyle moved to page 1310. Does that indicate the fight began inside the bar?

Mr. Trouten answered yes. This was observed by one of the officers. He saw what appeared to be a fight. This time the males were arguing outside the front of the bar. One subject was wearing a t-shirt that stated security on it. The presumption was it was one of the security folks from inside. That turned out not to be the case, it was a subject with a novelty t-shirt on.

Mr. Coyle asked, in looking at that instance, security guard identified as Mr. Armas, does it indicate that he had punched one of the patrons.

Mr. Trouten answered yes. There are two brothers who seem to be arguing. Security intercedes. Mr. Armas was trying to escort the one out. There was some verbal exchange. One subject shoved the security guard and he responded with a punch. The subject was trying to get outside.

Mr. Coyle asked does it indicate that someone from management grabbed that security guard and pulled them away from the incident, on page 1316.

Mr. Trouten answered it states that he was assisted in the removal of the subjects. His boss handled the situation deescalating the incident.

Mr. Coyle asked on page 1319 did Mr. DeJesus agree that security was out of line in that instance.

Mr. Trouten answered yes. A push by a subject does not necessitate a punch in return especially by staff that are there to deescalate situations and maintain the peace.

Mr. Trouten moved to page 1329. What police incident is involved there and how was that incident resolved?

Mr. Trouten answered 2014-00021780 on August 31, 2014 approximately 3:48 am at the Horseshoe, a fight. This call indicates 15 people involved. The fight is now out in the middle of the street with unknown weapons. Looking at the record it appears there was no arrest made out of this. Three officers responded to the call.

Mr. Coyle moved to page 1346 of the record. What is the incident number involved and what is the description of the incident?

Mr. Trouten answered 2014-00023040 from September 14, 2014 12:37 am at the Horseshoe and a fight. Security has two subjects detained outside the front door for a fight that just occurred.

Mr. Coyle asked in that call they actually detained the individuals involved in the fight.

Mr. Trouten answered yes.

Mr. Coyle moved to page 1349.

Mr. Trouten said this is incident report number 2014-00023052 September 14, 2014 approximately 3:05 am at the Horseshoe, a fight call in progress.

Mr. Coyle referred to page 1365. What does security report there concerning this incident?

Mr. Trouten answered this is a statement by Mr. Armas. Mr. Armas observed a group in an altercation. He attempted to direct the group that became irritated.

Mr. Coyle asked did they remove an individual.

Mr. Trouten answered they tried to escort one subject out. They attempted to escort one other out and then that is when officers arrived. The fight then continued outside. It even continued in the alley.

Mr. Coyle asked on page 1367 was there a reported attack of a patron by security.

Mr. Trouten answered it appears that the security guard asked him if he wanted to step out into the alley and take care of it.

Mr. Coyle asked on page 1369 from a different witness is there a similar statement that there was an attack by security.

Mr. Trouten answered this one states that the security guard called out all guys in the incident and then actually punched one of the individuals.

Mr. Coyle asked on page 1372 did a female witness indicate the same.

Mr. Trouten answered yes she does.

Mr. Coyle moved to page 1398 in the record. What is the report involved there?

Mr. Trouten answered 2014-00025682 October 12, 2014 approximately 3:38 am at the Horseshoe and a fight in progress. It indicates a large group. It states that it is not yet physical but it looks like it will turn physical.

Mr. Coyle asked what happens when officers respond.

Mr. Trouten answered it looks like it was broken up and no arrests were made.

Mr. Coyle moved to page 1429.

Mr. Trouten said this is incident number 2014-00029221 from November 23, 2014 approximately 1:36 am at the Horseshoe and a fight that just occurred. There were four subjects, 2 females and 2 males. One subject was bleeding from the head. These subjects leave prior to law enforcement. They were last seen heading southbound on 4th Street towards the Stockmen's.

Mr. Coyle moved to page 1458.

Mr. Trouten said that is 2014-00030211 December 6, 2014 3:16 am at the Horseshoe. This is threats in progress. The call was that there was a male subject threatening to shoot the place. It states there is no weapon on him now. A description is given and that he is outside walking west on Idaho Street. The caller was Daniel and it states threats were made to the RP (reporting party) or the caller's boss.

Mr. Coyle jumped back to the beginning of Volume one where some of the record is different. It begins with Elko and then a number. Elko28 what incident is that?

Mr. Trouten answered this is 2014-26202 from October 19, 2014 approximately 1:11 am. This was dispatched as a female subject passed out on the sidewalk. The officers conducting the investigation were advised that there was actually a physical fight inside the Horseshoe. It sounds like there was a second female they did not have contact with.

Mr. Coyle asked if the subjects were inside the Horseshoe and then moved outside the Horseshoe.

Mr. Trouten answered yes. They were physically removed by security and placed outside.

Mr. Coyle asked if the unconscious female was on the sidewalk outside.

Mr. Trouten answered yes.

Mr. Coyle asked if the report indicated that there was actual fighting and pulling of hair as they were escorted out.

Mr. Trouten answered yes, it does.

Mr. Coyle asked if the reported indicated if all parties involved were extremely intoxicated.

Mr. Trouten answered it does.

Mr. Coyle asked if no other reliable or sober witnesses could be found.

Mr. Trouten answered correct.

Mr. Coyle referred to Elko20. What incident number is that?

Mr. Trouten answered 2014-29810 November 30, 2014 approximately 7:52 am at the Hospital. It was a report of a past tense battery. It was determined that throughout the night of the 29th and the morning of the 30th, the subject had been out drinking at the Horseshoe Club and there was a fight that resulted in the injuries that subject was in the hospital for.

Mr. Coyle moved to Elko23. What is the incident number?

Mr. Trouten answered this was case 2014-9725. It was reported on April 18, 2014 approximately 3:20 pm in the afternoon. It is a theft report. This is a subject that had gone to the Horseshoe. He was told by security that he could not bring the knife in and was told to leave it at the front door. They told him there was no receipt or anything like that. When he went back to retrieve it his knife is gone.

Mr. Coyle asked what his knowledge was regarding weapons allowed or not allowed inside the Horseshoe.

Mr. Trouten answered he wasn't sure what their internal policy was but there are various laws that prohibit consumption of alcohol while having a firearm and such things as that.

Mr. Coyle asked if in this case security offered to safeguard the knife but that didn't happen.

Mr. Trouten answered that is correct.

Mr. Coyle moved to Elko 24. What incident number is that?

Mr. Trouten answered 2014-18246. This occurred on July 20, 2014 approximately 2:45 am. This was a call where the security staff had caught a minor in the bar and had detained him near the front door.

Mr. Coyle asked if it indicated how the minor got into the bar.

Mr. Trouten answered it appeared that he had used another person's identification to gain access and was later confronted by one of the security personnel inside. He was unable to reproduce that same identification and was determined to not be old enough to be inside the bar.

Mr. Coyle asked if the ID he utilized was also used by his cousin.

Mr. Trouten answered yes.

Mr. Coyle moved to Elko31. What is that incident number?

Mr. Trouten answered 2014-29161 from November 22, 2014 approximately 1:30 am in the morning at the Horseshoe in reference to a fight about to take place outside.

Mr. Coyle asked what happened when officers responded.

Mr. Trouten answered this was one of those fights where we have no witnesses and no one wanted to be a victim and file a statement. The subjects were separated and sent on their way. The officers continue to do a security check. They encountered two different subjects inside known to the officer that were not 21 years of age. These subjects then flee and have to be chased down.

Mr. Coyle asked was it ultimately determined that those two subjects were under the age of 21.

Mr. Trouten answered yes it was.

Mr. Coyle asked if they were observed inside the Horseshoe.

Mr. Trouten answered they were.

Mr. Coyle asked how could they run from law enforcement from inside the building.

Mr. Trouten answered it is not simply a straight corridor depending on where they are at. They could either go out the front door, move around through the dance floor and out or exit out the rear door and go down the alley.

Mr. Coyle asked if they typically have security stationed at both the alley door and the front door.

Mr. Trouten answered in his experience they normally have security at the front door, almost without exception, but not always at the back door.

Mr. Coyle moved to Elko40. What is the report number in that matter?

Mr. Trouten answered this is case number 2014-27848 occurred on November 8, 2014 at approximately 1:36 am. This was a verbal argument that was possibly going to turn into a physical fight outside the front entrance of the Horseshoe.

Mr. Coyle asked what happened when officers responded.

Mr. Trouten answered they made contact with the subjects and determined it was an argument about whose turn it is to pay for a taxi ride. The officers decided that while they were there they would go walk through the bar. As they enter the bar they notice a couple of males walking through the club in front of the officers and they go into the bathrooms. It looks like from there that the officers make contact. One appears to be too young. He is only 20 years old. The second male was of a legal age to be in the bar.

Mr. Coyle asked if the minor that was observed, did he actually have alcohol in his possession.

Mr. Trouten answered yes. He believed he had a beer in hand.

Mr. Coyle asked if the officers detained that individual and started to escort him out.

Mr. Trouten answered they did and as they do so they observed another subject, a female, that the officers knew was not 21 years of age. She also had a plastic cup with an alcoholic beverage inside of it.

Mr. Coyle asked if they observed how she got inside the bar.

Mr. Trouten didn't know if they observed how she got in the bar. The male subject stated that security was aware that he was under 21 and allowed him in anyway. The female stated that she would wait until there was a group of people at the front door going through the security checkpoint and she would mingle in on the backside of them using them to screen her from security and then pass into the bar in that manner.

Mr. Coyle asked if the officers actually observed her in that instance.

Mr. Trouten answered they did observe her doing that and the officer also notes that he had seen her on two previous occasions coming out of the Horseshoe. She was 19 years of age at that time.

Mr. Coyle referred to page 1470. What is the report there?

Mr. Trouten answered 2014-00031335. This incident occurred on December 20, 2014 approximately 12:41 am at the Horseshoe. This is a drugs/alcohol type incident.

Mr. Coyle asked if the officers were present doing a security check.

Mr. Trouten answered yes. As the officers were inside the bar doing a security check they notice a Hispanic male walk out of the bathroom drinking from a beer bottle that he was holding. The officer had previous knowledge that this subject was not 21 years of age.

Mr. Coyle asked these incidents that you testify to, are they documents underlying those pie charts and the table graph that you prepared.

Mr. Trouten answered yes they are.

Mr. Coyle said at this time the city offered into evidence the reports set out in testimony at this point.

Mr. Coyle asked Mr. Trouten if he looked at the amount of manpower in hours used by the Police Department actually devoted in these calls that underlie the pie charts.

Mr. Trouten answered yes he did respective only to the actual incidents where the officers were called. Meaning this is the time the officers arrived, the number of officers that arrived and the time that they departed. It did not include times for report generation, arrests, bookings or investigation for other matters.

Mr. Coyle asked was that included as part of the power point.

Mr. Trouten answered yes. It was on the next slide (on the overhead screen).

Attorney DeWitt asked what page it was found.

Mr. Coyle answered it was at the very end of the supplemental volume.

Mr. DeWitt noted it was exhibit number 4208.

Mr. Trouten explained this is a list of the various incidents that come about that require the officers' presence and directed effort. The number of people involved is actually pursuant to the number of folks, if it is a fight, that are reported being involved in the fight, or potential suspects. He tallied up the number of officers, their arrival time and departure time and come up with an approximate man hours for each incident that they had to dedicate to that.

Mr. Coyle asked if that graph actually continues on the following page.

Mr. Trouten answered yes. There are actually two pages to it.

Mr. Coyle asked did you determine totals there or are you just showing what typically happens on these types of calls.

Mr. Trouten answered he had a total on an original document but it is not on the sheet. He could not recall what the total was.

Mr. Coyle asked in your review of these incidents and what you were finding about the Horseshoe, did you compare that as to how these numbers might stack up to a different period of time for the Horseshoe.

Mr. Trouten answered he did make the comparison to the time when this bar and two other bars were on a probationary status. He moved back to the six months preceding the probationary status for this Horseshoe Club as well as the six months during the probationary period. He was somewhat surprised with the numbers because the six months leading up to the probationary period he observed only six fights and only a couple of disturbing the peace calls. During the six months of probation there were only five fights.

Mr. Coyle asked if they were required to report those incidents during probation.

Mr. Trouten answered it was his understanding that during the probation they were required to report fights as well as to report patrons that they felt were at the point that they could not be served any further alcohol. They were to notify other local businesses/bars of troublesome subjects.

Mr. Coyle asked does it appear from that review that greater numbers of fights began occurring after coming off probation.

Mr. Trouten answered yes. Those two six month periods were a year in total. There were 11 fights for that year long period as opposed to the approximate 30 fights of the next year.

Mr. Coyle asked if his comparison was that found at Elko13 of the record.

Mr. Trouten answered yes.

Mr. Coyle passed the witness.

DeWitt noted there were a number of reports discussed. Were you present at any of these incidents?

Mr. Trouten answered no, he did not believe so.

Mr. DeWitt distributed a map (Exhibit 4215). On the screen is Elko10 in the first book. Of the establishments listed, one is called the Commercial. Are you familiar with that business?

Mr. Trouten answered yes. It is a casino and a bar.

Mr. DeWitt asked what is most of the space inside devoted to.

Mr. Trouten answered the restaurant is closed. It is now the Martini Lounge. There is the bar between the two sides of gaming.

Mr. DeWitt asked do any other businesses on the list have an unrestricted gaming license.

Mr. Trouten answered some of the other bars do have some gaming in the bar but they do not have unrestricted.

Mr. DeWitt asked did you do any analysis taking into account the size of these places; anything having to do with the size.

Mr. Trouten answered no, his analysis was strictly calls per business in a timeframe.

Mr. DeWitt said he noticed in these reports that underlie these figures, the calls for service, he noticed that one of them was an automobile had crashed into a tree in front of the Horseshoe. Would that be listed as the Horseshoe because that is where the event occurred?

Mr. Trouten said these are total calls for service that the address given was the Horseshoe. Which call are you specifically referring to?

Mr. DeWitt didn't recall as he stood there.

Mr. Trouten said that one may have also hit Ely DeJesus (vehicle vs. pedestrian) and the vehicle was stopped just down the road.

Mr. DeWitt demonstrated on the map where the downtown bars were. Between the Horseshoe and the businesses on the other side (Tiki Hut, Cantina and Goldies) there is an alley. You talked about people exiting the rear door of the Horseshoe. Do the other bars have back doors?

Mr. Trouten answered yes, they do.

Mr. DeWitt asked do you know why they do.

Mr. Trouten answered he imagined it was Fire Code.

Mr. DeWitt noted there was a parking lot between 4th and 6th on one side and Commercial and Railroad on the other side. In your opinion does this map depict the downtown area?

Mr. Trouten answered yes.

Mr. DeWitt noted there is also the G Bar and Duncan Little Creek and the Silver Dollar on Silver Street. Casanova didn't even make it into the picture because it is below what is depicted. You made mention of the Motorcycle event where there a couple of incidents at the Horseshoe during that weekend. Do you recall that?

Mr. Trouten answered yes.

Mr. DeWitt asked what the event is called.

Mr. Trouten answered the Elko Motorcycle Jamboree.

Mr. DeWitt asked if they set up musical activities/bands or something like that during that time?

Mr. Trouten answered yes.

Mr. DeWitt asked where they set up.

Mr. Trouten explained at times there is a stage in front of Stockmen's in the 300 block of the corridor. They also set up in the parking corridor at 7th Street.

Mr. DeWitt asked is there any rule about having an open container of alcohol in the downtown.

Mr. Trouten answered as long as it is not in a glass container, no.

Mr. DeWitt asked if the parking area is where everybody parks.

Mr. Trouten answered during regular times yes but during the Motorcycle Jamboree it is closed off for vendors.

Mr. DeWitt asked what they vend.

Mr. Trouten answered pretty much everything; leather gear, stickers, food and alcohol.

Mr. DeWitt asked if there was a rule against somebody going in to one of these other bars, buying a drink, taking it out as long as it is in a plastic cup and walking around.

Mr. Trouten said that was correct.

Mr. DeWitt said a minor could go into Stockmen's or Commercial and buy coke and get some alcohol out of his/her car and add it to the coke. Not legally because it would be against the law for a minor to do that.

Mr. Trouten said he could imagine a minor could do that and agreed it would be illegal.

Mr. DeWitt asked if that were possible and it would be easy to do.

Mr. Trouten said he could not speak to it being easy to do but it would be possible.

Mr. DeWitt asked if it were common on the weekends for a lot of people to be wandering around in the downtown area.

Mr. Trouten answered there are people that would walk between the different bars.

Mr. DeWitt asked are you familiar with Fire Department occupancy requirements. Generally, do you understand what he is talking about?

Mr. Trouten answered yes.

Mr. DeWitt asked him to explain what that is.

Mr. Trouten answered it was his understanding that it is a rating based upon the size of the facility and things such as the number of bathrooms, number of exits, and so forth they put an occupancy limit on a business.

Mr. DeWitt asked if the businesses have to post that here.

Mr. Trouten answered to his knowledge, yes.

Mr. DeWitt asked if in any one of these businesses there will be a sign that says the occupancy limit.

Mr. Trouten answered he would surmise that.

Mr. DeWitt asked if you look at your chart, exhibit Elko10, and you adjust it for occupancy, do you expect it the results to be different? In other words, police calls for 100 occupancy limit, would you get different numbers?

Mr. Trouten answered he imagined they could change the numbers that way. However, when he looks at this he does not consider such a factor for two reasons: 1) an occupancy limit does not attest to how many people may actually be in a business nor does it adjust to the hours that business may be open; and, 2) his concern is the number of calls to a business especially when he sees a significant rise in the number of calls to that business.

Mr. DeWitt said you testify there are times a line forms of people waiting to get into the horseshoe. Do you know why that line exists?

Mr. Trouten answered he presumes the security personnel are limiting access either based upon some in-house rules or upon occupancy limits.

Mr. DeWitt asked if other bars in the downtown area have lines outside waiting to enter.

Mr. Trouten answered it depends on the time of year, yes.

Mr. DeWitt asked what time of the year is it dependent on.

Mr. Trouten answered the rally tends to be a big time for all of the bars in the downtown area. If they are hosting special events within their business you can see those same lines.

Mr. DeWitt asked how often is the special events.

Mr. Trouten answered once or twice a year depending on the bar.

Mr. DeWitt said if you take away the special events and the motorcycle weekend, the Horseshoe the only place that has a line to get in there. Is that a fair statement?

Mr. Trouten answered that would be a fair statement. In his observations over the last year even that has diminished for the Horseshoe.

Mr. DeWitt asked to look at exhibit 4201. If you look at the next two pages and up to 4205, a request was made of the city to disclose the Fire Department occupancy we were talking about at each one of these businesses. 442 Idaho Street is the Horseshoe and it is 275. It looks like the next biggest one is the Tiki Hut with 136.

Mr. Trouten said the G Bar shows 267, a difference of 8 people.

Mr. DeWitt said if you look at the chart on 4201. This is an excel spreadsheet in which he made adjustment for Mr. Trouten's numbers on exhibit Elko10 to the occupancy of a particular place. He took the calls and related them per occupancy. You will see that both Goldies and Silver Dollar and in some incidents the Stray Dog are worse.

Mr. Trouten said as you adjust those numbers yes.

Mr. DeWitt asked does that make sense to you.

Mr. Trouten answered he understood the math but not the rational.

Mr. DeWitt asked Mr. Trouten to tell him about the Stray Dog, Goldies and Silver Dollar. What kind of problems have you had there? Are you familiar with the kinds of police problems that those three places have had.

Mr. Trouten answered yes he is. Council is aware that Goldies was one of the businesses also on probation. The Stray Dog has not been a bar that they have a lot of calls to or a lot of issues with. His numbers were not corrected to remove anything from the Motorcycle Jamboree weekend because he knows the area in front of the Stray Dog is also one of the gathering points. The Silver Dollar there we have calls there, however, we have great number of calls that are referenced to that place. The parking lot behind it, it is a marker point. If a person is calling in an instance to dispatch they will say, "Where is it at?" The easiest thing for most people to know is, rather than the streets, it is at "this" place.

Mr. DeWitt asked if there are any other establishments that have topless dancing besides the Horseshoe.

Mr. Trouten answered not that he is aware of. At least not on a continual basis. There are some who do on an occasional basis.

Mr. DeWitt asked if the Horseshoe was the only one with a license.

Mr. Trouten answered for the full sexually oriented business license, yes.

Mr. DeWitt asked the ones that you are aware of that have that activity occasionally, are any of them on the list.

Mr. Trouten answered they have temporary sexually oriented business licenses where up to two days a year they will have sanctioned such as a G-string contest or wet t-shirt contest. They would be the Stockmen's and the G Bar.

Mr. DeWitt asked if any of the establishments listed on exhibit 10 have gotten the temporary sexually oriented business licenses.

Mr. Trouten answered yes, the G Bar is one of those.

Mr. DeWitt asked how far the Horseshoe from the County Courthouse is.

Mr. Trouten answered approximately one block.

Mr. DeWitt asked if some provocation exists in a bar, (people start raising their voices at each other) does the bar have an obligation to call the police.

Mr. Trouten answered they do not have an obligation to necessarily call the police every time there is a disturbance. Their obligation is merely to maintain a safe and clean business establishment.

Mr. DeWitt said the Horseshoe in the probationary requirements, one of the requirements was that if there was a disturbance they had to call the police, right?

Mr. Trouten answered yes.

Mr. DeWitt noted a large number of these incidents listed in the chart, somebody at the Horseshoe called the police; an employee of the Horseshoe, right?

Mr. Trouten answered there are some but he wasn't sure of the number.

Mr. DeWitt said whatever that number might be, isn't it a fact that there are many that they could have taken the two potential combatants, one out the front door and one out the back door and just told them they didn't have to go home but they couldn't stay there.

Mr. Trouten answered he believed that is what had been done in many of those instances as noted in the reports.

Mr. DeWitt asked if they had called the police too.

Mr. Trouten answered there are some occasions where they had been the caller.

Mr. DeWitt asked if he knew of occasions when they had not been the caller.

Mr. Trouten answered yes we have discussed some of those.

Mr. DeWitt asked for a 5 minute break.

BREAK

Mayor Johnson called the meeting back to order.

Mr. DeWitt continued. If a fight starts in the alley behind the Horseshoe or on the street/sidewalk in front of the Horseshoe, do Horseshoe personnel have any authority to go outside and intervene?

Mr. Trouten answered no more than any other citizen would to prevent harm to another.

Mr. DeWitt asked if they had an obligation to do so.

Mr. Trouten answered no.

Mr. DeWitt said inside a crowded club, an altercation begins with two people and starts as a pushing match, and security jumps in, you said security can detain them and keep them in the club until officers arrive, as a citizen's arrest. Is that a good policy in a crowded club?

Mr. Trouten answered he considers is a better policy than putting the subjects out the doors and watch while the fight continues.

Mr. DeWitt offered a third option of putting one out the front and one out the back?

Mr. Trouten said the proximity of the front and back door, half a block walk either way, he does not advise that. As you pointed out, people walk from bar to bar and the fights continue.

Mr. DeWitt asked are you telling me it is necessary for the Horseshoe to have some kind of a facility to detain people so they are away from the other customers.

Mr. Trouten answered they could do the same thing that many security places do when they have people to detain. They walk them out the exit detained as they call for law enforcement. Elko is not that big and arrival can be quite prompt and the problem is dealt with. They don't have to set them in there for a long period of time.

Mr. DeWitt confirmed take them outside, detain them and call the police.

Mr. Trouten added or up to their front behind their podium at the entrance way where they check ID's.

Mr. DeWitt noted the Horseshoe attempts to check the ID of everybody. You said one woman who wasn't 21 managed to get into a group of people and sneak in. That is against the law, right?

Mr. Trouten answered yes.

Mr. DeWitt asked sometimes two friends that look pretty much alike, the one that is 21 can go in and then go out and give their ID to the other person. Does that happen regularly?

Mr. Trouten answered he doesn't know about regularly. There are cases where people look nothing like the ID.

Mr. DeWitt asked if the Horseshoe is the only place that ever happens.

Mr. Trouten answered it is not the only place that ever happens however the most reports he has seen that is the only place that has been happening.

Mr. DeWitt noted he had been talking about six month periods. There is a public records request of all the incidents that were listed at the Horseshoe going back to 2012. Going back to October 2014 that would start at page 1388 and go to 1397. What happened there is you executed a warrant. Is that what happened there?

Mr. Trouten looked for the warrant. He answered yes.

Mr. DeWitt asked that he look at 1398 – 1400. That was a fight. Can you tell if it was inside or outside the Horseshoe?

Mr. Trouten answered no.

Mr. DeWitt said the next one is November 1401 – 1411. There was a disturbance in an alley and an arrest warrant was executed according to his notes. Is that correct?

Mr. Trouten answered yes.

Mr. DeWitt said the next one in November is 1412-1413 was a traffic stop. Is that correct?

Mr. Trouten answered yes.

Mr. DeWitt asked is it fair to assume that the traffic stop was not inside the Horseshoe.

Mr. Trouten answered that was correct.

Mr. DeWitt said the next one is 1414-1415. Can you tell if the fight was inside or outside the Horseshoe?

Mr. Trouten answered it was in front of the Horseshoe.

Mr. DeWitt noted the fight was outside. The next one in November is 1416-1418. Does that appear to be another fight outside the Horseshoe?

Mr. Trouten said he couldn't tell if it is inside or outside.

Mr. DeWitt said the next one in November was 1419-1428 was vandalism of a motor vehicle. Is that correct?

Mr. Trouten answered yes this was damage to a vehicle that happened because of a fight there.

Mr. DeWitt note the vehicle was not inside the Horseshoe.

Mr. Trouten said no.

Mr. DeWitt said the next one is 1429-1433. Does that appear to be a fight outside the Horseshoe?

Mr. Trouten answered this one originated inside the Horseshoe and then went outside.

Mr. DeWitt asked about 1434-1457.

Mr. Trouten answered this was a fight that started inside the Horseshoe. They went outside and it involved one subject chasing another with a hand gun.

Mr. DeWitt moved to December 1458-1461.

Mr. Trouten answered this is the one discussed before, the subject threatening to shoot someone inside. Someone named Daniel called it in. There was no last name or phone number attached to the call.

Mr. DeWitt said 1462-67 was a fight in the parking lot, right?

Mr. Trouten replied he was not sure what parking lot he was being referred to. The notes list the location as the Horseshoe. The narrative by the dispatcher that says "in parking lot" but he wasn't sure what that was in reference to.

Mr. DeWitt noted the Horseshoe doesn't have a parking lot, does it.

Mr. Trouten answered it does not.

Mr. DeWitt asked if what was told to the dispatcher wasn't accurate it wasn't inside the Horseshoe, right?

Mr. Trouten answered he has no way to know what was told to the dispatcher or if that was pertinent to this call.

Mr. DeWitt said 1468-1469 was a traffic stop. 1470-1482 was a minor that managed to get in.

Mr. Trouten said yes.

Mr. DeWitt moved to this year 1707. Did that occur in the alley?

Mr. Trouten answered appears it occurred in the alley with one going back into the Horseshoe. He believed he was on this fight. Subject was inside causing a disturbance. This was one where he was pushed out the back door. It was icy since it was New Year's Eve. He went down and slammed his head into the ice across the alley.

Mr. DeWitt thought it wasn't a fight.

Mr. Trouten answered there was a fight inside. When they got there security had pushed him out the back door with another subject. The subject was quite intoxicated and they didn't locate the other subject.

Mr. DeWitt moved to 1708. Can you tell if this was inside or outside the Horseshoe or some combination?

Mr. Trouten replied no sir.

Mr. DeWitt asked if 1709 was not inside the Horseshoe.

Mr. Trouten answered it indicates one subject went into the Horseshoe and one was out front.

Mr. DeWitt asked how could there be a fight if one was inside the Horseshoe and the other is outside.

Mr. Trouten answered he imagined this was post fight. This is from the officer.

Mr. DeWitt asked if we don't know where the fight was.

Mr. Trouten answered no.

Mr. DeWitt said according to his tally based on these reports, in the six months from October through April, there were three fights inside the Horseshoe and four we aren't sure if they were inside or outside.

Mr. Trouten explained as he stated in his first initial statement, these are unfiltered numbers. It is possibility that addresses were given as a marking point. However, what is different, the Horseshoe is the only business open on that block during those hours. When he pulled these numbers they were raw unfiltered numbers. If it listed the Horseshoe it was a direct tally. If we were to go through and pull all of those numbers and do the same analysis it would reduce the number for all businesses in that area.

Mr. DeWitt said the point he was trying to make was the six month period from October to April, things seem to be better than the period you were talking about.

Mr. Trouten answered according to Mr. DeWitt's portrayal. Where you say if it is in front of the business it doesn't count.

Mr. DeWitt said that even if you assume that they are all somehow related to inside the business it is only seven according to his count. Obviously executing a warrant, traffic stops and things like that...

Mr. Trouten said the difference between the 5 and 29 which would be the 34 would be those calls such as traffic stops which were used as a marker point.

Mr. DeWitt said you looked at one 6 month period before the probation period and there were 6 fights.

Mr. Trouten said in the period before probation, yes.

Mr. DeWitt asked in the six months after probation there were five. In the last six months that were talked about he came up with seven.

Mr. Trouten added five minors.

Mr. DeWitt felt things are improving.

Mr. Trouten said that even if there were seven fights that is still an increase over the previous year when they were on probation.

Mr. DeWitt noted it was an increase of one at the most.

Mr. Trouten said from his position he can't condone any increases.

Mr. DeWitt didn't think the Horseshoe condoned any either. He passed the witness but wanted to call him later on depending on what happens.

Mr. Coyle asked we didn't even give any data concerning the period from February 9, 2015 to April 2015, correct?

Mr. Trouten answered no we did not.

Mr. Coyle said we are not comparing a full 6 month period, correct?

Mr. Trouten answered that is correct. You would be comparing approximately 4 and 1/3.

Mr. Coyle wanted to go back to the charts ELKO10 and 4201. When you look at 4201, the bar closest to similarity concerning occupancy to the Horseshoe is?

Mr. Trouten answered the G Bar.

Mr. Coyle asked the difference in occupancy is how much?

Mr. Trouten answered 8 persons.

Mr. Coyle asked if you go back to ELKO10 and you look at just the G Bar and the Horseshoe what do you see there?

Mr. Trouten answered the G Bar would have four disturbing the peace compared to the Horseshoe's five. The G Bar had eight fights compared to the Horseshoe's 29. Overall calls for the G Bar was 17 compared to the 70 at the Horseshoe. Those are the raw numbers.

Mr. Coyle asked if you go back to 4201 and you compare the calls adjusted for occupancy with the G Bar and the Horseshoe, what do you see.

Mr. Trouten answered adjusted for occupancy, not knowing how the math would work on this, it shows disturbing the peace at 1.49 to Horseshoe at 1.18. The fights at the G Bar of 2.996 to the Horseshoe's 11.636. Total calls at the G Bar of 6.367 compared to the Horseshoe of 24.455.

Mr. Coyle asked looking at what you just testified to, it doesn't appear that adjusting for the occupancy gives valid numbers, does it.

Mr. Trouten answered no.

Mr. Coyle asked if he would anticipate the G Bar and the Horseshoe to be similar if it was based on occupancy would you not.

Mr. Trouten answered if the occupancy rate was a valid variable, yes.

Mr. Coyle asked what are the hours for the Tiki Hut, Goldies and the Cantina.

Mr. Trouten answered he is not aware of their set scheduled hours.

Mr. Coyle said Mr. Trouten had indicated at some point it would be clear that only the Horseshoe will be the open during the times of some of these calls.

Mr. Trouten answered it tends to be that some of the bars will close with a self-imposed closing time and will close. Others will stay open until all hours. He wasn't sure if some bars closed.

Mr. Coyle said he had nothing further.

Mr. DeWitt said he has two witnesses that need to go to work and would like to testify out of order.

Mayor Johnson asked if Council had any questions for Mr. Trouten.

Councilman Keener asked about the number of officers that respond to calls. On a typical night between the hours of 10:00 pm and 4:00 am, how many patrol officers are on duty in Elko?

Mr. Trouten answered we would ideally have a crew of seven but we have been running a crew of six. If someone was sick or on vacation then it would be down to five.

Councilman Keener noted there could be times where every single officer on duty was responding to incidents at this establishment. Is the licensee typically cooperative for providing video evidence?

Mr. Trouten answered as noted we discussed the one where there were four different requests for video that was not met. At times we have received video from them to work and use in our investigation of the cases.

Councilman Keener asked with respect to the downtown bar graph, how many of these establishments have security personnel.

Mr. Trouten answered the Commercial has casino security that covers both there and Stockmen's. He was not aware if the Silver Dollar has any security other than during the Motorcycle Rally. Duncan Little Creek does not. The G Bar does have some security personnel on a regular basis. He was not aware if the Stray Dog or Goldies having any. Good Time Charlee's doesn't have any. The Cantina he wasn't sure about. He didn't believe the Tiki Hut has any security.

Councilman Keener reviewed the G Bar does some of the time. The Commercial would have security personnel all of the time. The Horseshoe has security. Those are the only three that you know of that have security personnel?

Mr. Trouten answered yes.

Councilman Keener said even with security personnel there were still 70 calls for service.

Councilman Rice asked you said the police are only able to arrest if they witness a crime occurring or if a citizen declares themselves a victim and wants someone arrested. In a number of these incidents there were no arrests made. In some they occurred inside the Horseshoe the incidents were of a nature that security could have made an arrest?

Mr. Trouten answered yes and they are presumably the most sober people inside that could make a statement. They would make good witnesses and could make a valid statement.

Councilman Rice asked if there were any incidents of those discussed where Horseshoe personnel requested an arrest be made.

Mr. Trouten answered there was one that he was aware of with the minor in the bar where they had called and had him detained. There are some where they have statements from them where Mr. Armas was accused of battery. As he recalled those were the only ones.

Councilman Schmidlein asked if he had any idea how many minors were arrested during that year.

Mr. Trouten answered he was aware of five arrests. He did not recall any others.

Mr. DeWitt wanted to clarify one of the responses. You were asked about video surveillance and copies of recordings. Are you familiar with the video system?

Mr. Trouten answered no.

Mr. DeWitt asked did they tell you that the system is only capable of maintaining the recordings for seven days.

Mr. Trouten answered they have not told him that personally. He is aware that many systems loop themselves after X amount of time.

Mr. DeWitt asked if he was aware of where the cameras are and that sort of thing.

Mr. Trouten answered no.

Councilman Schmidlein asked regarding the minors being arrested, how many times did the patrolmen go inside the establishment/Horseshoe to where you were strictly looking for underage drinkers.

Mr. Trouten answered he hoped that every time they go in there they are looking for underage minors at that establishment or any other establishment. He couldn't give a definitive number because when officers check out for a security check downtown they will hit as many of the establishments as they can. They may not hit every one if a call interrupts them. We encourage them to do them nightly or as you see the crowds. There are some nights when the crowds are minimal and the bars are locking up early. He doesn't have a way to give that number.

Mayor Johnson wanted to talk about how we are moving along. He didn't think we were going to make all 17 witnesses. He wanted City Council to indicate if they were ready to make a motion. He asked Mr. DeWitt about his witnesses.

Mr. DeWitt said they are brief witnesses that need to go to work. There are two of them; Matthew Jacobsen-Sharples and Keri Randisi. He would like to call Mr. Jacobsen-Sharples.

Mayor Johnson asked Mr. Coyle what he thought.

Mr. Coyle answered he had no objection to doing that.

Mayor Johnson noted we are into the third hour but he wanted to be fair to both sides.

Mr. DeWitt called Mr. Jacobsen-Sharples. He asked him to state and spell his name.

MATTHEW JACOBSEN-SHARPLES

Mr. DeWitt asked where do you work.

Mr. Sharples answered he is currently employed at the Horseshoe Club.

Mr. DeWitt asked if he had been in the room during testimony tonight.

Mr. Sharples answered yes.

Mr. DeWitt asked if that was the same Horseshoe Club that everybody has been talking about.

Mr. Sharples answered yes.

Mr. DeWitt asked how long have you worked there.

Mr. Sharples answered off and on for the last six years.

Mr. DeWitt asked if he has worked there full-time since April of 2013.

Mr. Sharples answered yes. He left since that time but he has come back.

Mr. DeWitt asked how many hours a week does he work.

Mr. Sharples answered anywhere from 32 to 40. Some weeks are busier than others.

Mr. DeWitt asked if he had any other source of income other than your pay from the Horseshoe.

Mr. Sharples answered no.

Mr. DeWitt noted he needs his paycheck to pay the rent and buy groceries, is that correct?

Mr. Sharples answered yes.

Mr. Coyle asked what age were you when you started working there.

Mr. Sharples answered he was 21.

Mr. Coyle asked at what position.

Mr. Sharples answered when he first started working the front door.

Mr. Coyle asked is that considered part of the security team.

Mr. Sharples answered yes.

Mr. Coyle asked did you have any experience working security prior to that hire.

Mr. Sharples answered no.

Mr. Coyle asked as security, what training have you had in performing security at the bar.

Mr. Sharples answered he has gone through TIPS training. He has gone through trainings to point out fake ID's. He has gone through to be able to tell if they have been faked with little indications through black light systems.

Mr. Coyle asked if the training has had has been centered around keeping minors from the bar.

Mr. Sharples answered yes.

Mr. Coyle asked what other training have you had as far as acting as security.

Mr. Sharples answered he has gone and worked and learned. Through TIPS you learn to see drunk individuals.

Mr. Coyle asked you are aware the law requires visibly intoxicated persons cannot remain on the premises. What do you look at to determine a visibly intoxicated person?

Mr. Sharples answered whether they are stuttering, stumbling around or flushed eyes.

Mr. Coyle asked what do you do if you find someone visibly intoxicated.

Mr. Sharples answered he offers to call them a taxi so they can get home safely. It tell them it is time for them to quit drinking and offer them water.

Mr. Coyle asked if at that point are they told they have to leave.

Mr. Sharples answered they are told they can drink water and they can no longer drink alcohol beverages. He also offers them a taxi to get home.

Mr. Coyle asked this training to determine an intoxicated person was part of the TIPS training.

Mr. Sharples answered yes.

Mr. Coyle asked does the Horseshoe have an employee manual.

Mr. Sharples answered yes.

Mr. Coyle asked does it have a manual regarding the security.

Mr. Sharples answered it has a security policy and procedure, yes.

Mr. Coyle asked what is your training as far as a person causing trouble inside the Horseshoe.

Mr. Sharples answered they are asked to escort them off the property with the least amount of force and be as polite as they possibly can.

Mr. Coyle asked what if there is more than one person involved.

Mr. Sharples answered at that point we do encourage more than one security personnel to be there.

Mr. Coyle asked is that all your training is.

Mr. Sharples answered yes.

Mr. Coyle asked if you take them at the same time out the same exit.

Mr. Sharples answered none of them go out the same exit. One will go out the front and one out the back.

Mr. Coyle asked what is your training if there is a fight inside.

Mr. Sharples answered to break it up as calmly as we can. One party goes out the front door and one out the back.

Mr. Coyle asked at what point, if ever, are the police contacted.

Mr. Sharples answered we have contacted them if there were physical fights inside or outside.

Mr. Coyle asked is that a matter of policy.

Mr. Sharples answered yes.

Mr. Coyle asked when do you usually call the police under your policy.

Mr. Sharples answered we usually call when it is out of our control.

Mr. Coyle asked once people are outside the building you wash your hands of them.

Mr. Sharples answered we were instructed that we were not allowed to go outside. We were instructed it wasn't their responsibility to do that.

Mr. Coyle asked the people that are waiting in line to come inside they are waiting for business reasons.

Mr. Sharples answered if we are at occupancy they are going to wait outside.

Mr. Coyle asked is there any security provided for them.

Mr. Sharples answered no.

Mr. Coyle asked if there any cameras directed on the outside of the building.

Mr. Sharples answered yes. Out the front entrance and coming from 4th Street, and out the back door facing the Commercial and down the alley.

Mr. Coyle asked we heard something about the security tapes looping and wiping off. How often does that happen?

Mr. Sharples answered he can't say.

Mr. Coyle asked do you make internal reports.

Mr. Sharples answered yes.

Mr. Coyle asked do you share those with law enforcement.

Mr. Sharples answered when they ask for a statement he has been willing to provide his statement.

Mr. Coyle asked when did you obtain the employee handbook.

Mr. Sharples answered when he was first started there.

Mr. Coyle asked what about the security policy.

Mr. Sharples answered at the same time.

Mr. Coyle asked has there been any amendments.

Mr. Sharples answered yes there has.

Mr. Coyle asked in what regard would you say about the security policy.

Mr. Sharples answered now it is policy that we take the aggressor out the back door and that way we are trying to diffuse the situation instead of letting it happen.

Mr. Coyle asked when did that amendment take place.

Mr. Sharples answered that happened when we were first on probation.

Mr. Coyle asked if there have been no amendments to the policy since the probation.

Mr. Sharples answered no.

Mr. DeWitt said he has produced a copy of the policies discussed to the City Attorney. He asked Mr. Sharples you said there are cameras outside, do you know when they were installed.

Mr. Sharples answered no.

Councilman Schmidlein asked do you ever call the police when you think it is going to get out of control. In other words a type of preventative maintenance. When you think something is going to escalate do you guys call the police right then and there or do you wait until it escalates out of control?

Mr. Sharples answered we do not wait until it escalates out of control. If it looks like it is going to be a big issue to us we will call the police.

Councilman Schmidlein asked do you ever drink on the job.

Mr. Sharples answered never. That is against company policy.

Councilman Schmidlein asked do other security officers over the last year, do they ever drink on duty.

Mr. Sharples answered no, that is against company policy and people have been let go because of that.

Mr. DeWitt called his next witness.

KERI RANDISI explained she works at the Horseshoe and Wingers.

Mr. DeWitt asked how many hours a week do you work at the Horseshoe.

Ms. Randisi answered 16 to 24.

Mr. DeWitt asked do you consider that a significant part of your income.

Ms. Randisi answered yes.

Mr. DeWitt asked if she needed it to pay rent and buy groceries.

Ms. Randisi answered yes.

Mr. DeWitt asked if she had any children.

Ms. Randisi answered no.

Mr. DeWitt asked if she lived alone.

Ms. Randisi answered no.

Mr. DeWitt asked how many roommates she had.

Ms. Randisi answered she has two.

Mr. DeWitt asked if the Horseshoe had to close would that create dire financial problems for her.

Ms. Randisi answered yes.

Mr. Coyle had no questions for this witness. He called Police Chief Ben Reed Jr.

BEN REED JR. explained he is the Police Chief for the City of Elko.

Mr. Coyle asked him to describe his law enforcement experience.

Chief Reed gave a short summary. Thirty-three years from top to bottom. Pretty much all ranks, administration, patrol and detectives with a few other miscellaneous assignments thrown in along the way over the years. Currently he is the Police Chief for the City of Elko since October 2013, roughly 20 months.

Mr. Coyle asked if he was familiar with the business in Elko operating as the Horseshoe Club.

Chief Reed answered yes.

Mr. Coyle asked if he had filed a verified complaint for liquor license discipline on or about February 9, 2015 concerning that establishment.

Chief Reed answered he did.

Mr. Coyle asked if there was a subsequent amended verified complaint filed on April 21, 2015.

Chief Reed answered yes.

Mr. Coyle asked the time frame that you are focused on in the Amended Verified Complaint is that from February 9, 2014 to February 9, 2015.

Chief Reed answered that is correct.

Mr. Coyle asked if he was aware of an investigation conducted by your department concerning that timeframe.

Chief Reed answered yes.

Mr. Coyle asked if he had reviewed the results of that investigation.

Chief Reed answered yes.

Mr. Coyle asked what concerns you have about what you reviewed on that investigation.

Chief Reed answered he has a number of concerns from that investigation. Largely those are centered around compliance with the Elko Liquor Control Code which is the City Ordinance that gives various ordinances regarding how you would conduct your establishment, liquor licensee. It is a lengthy list of dos and don'ts. He is concerned with various violations of that. Continued or ongoing violations over a longer period of time. He is concerned of the safety of citizens of Elko who attend the establishment and possibly end up in an incident involving violence. Things like trips to the hospital, stabbings, guns, weapons and those types of incidents get his attention quickly. We had a number of those during that timeframe. Minors being in a liquor licensee establishment concerns him greatly because he believes the public is relying on those licensees trust to take care of business so that we don't have minors in those establishments. He thought it is important that the liquor licensees, of which we have many in the city, that they run a safe, clean, orderly establishment as is required by the code. Obviously City Personnel and law enforcement cannot be present at all times at all of these establishments so it is required by the City Code ordinance. The lack of taking care of their business concerns him.

Mr. Coyle asked in your opinion, what you reviewed from that investigation, does that evidence a lack of management responsibility by the Horseshoe.

Chief Reed answered correct, that is what he saw from that investigation. There was a lack of satisfactory responsibility by management to comply with the law and the code. There were a number of violations in the original complaint and the amended complaint. The testimony from the lieutenant about the various incidents that we listened to, clearly demonstrate the violation of several of the code sections in the Elko Liquor Control Code.

Mr. Coyle asked what level of discipline are you seeking concerning this license.

Chief Reed answered a termination or revocation of the liquor license. Particularly because you have a pattern of violent incidents and a pattern of minors being served inside the establishment. These are just the incidents we know of and have documented. This is just the incidents we were called to by citizens, the Horseshoe or viewed by the police officers themselves.

Mr. Coyle asked when you came in as Police Chief for Elko in October 2013, did you become aware the Horseshoe was on probation at that time.

Chief Reed answered yes the former chief explained he had filed a similar complaint and that hearing had been conducted by the City Council and the result to that ended up with various sanctions. He has reviewed those requirements that were placed in a six month period. That was well under way when he came along. It had an ending date of December 25, 2013.

Mr. Coyle asked in your opinion was that prior discipline sufficient to affect a lasting positive change in the business responsibility of the Horseshoe.

Chief Reed answered no. The proof is in the pudding now that we are in May of 2015. The statistical data and some of the significant incidents involving violence and minors and safety demonstrate that it didn't correct the behavior.

Mr. Coyle asked when efforts in the one year period that had issue February 9, 2014 to February 9, 2015, did the Police Department engage in concerning what you are observing in that investigation. Did you contact the Horseshoe and say we have problems and they seem to be ongoing?

Chief Reed answered he did do that and we are not required to do that. He did it several times out of a sense of fairness and not knowing that we would end up in this hearing today. He just wanted to correct the behavior. That was really what his attempts were. Lieutenant Trouten made attempts.

Mr. Coyle asked if that was summarized on part of the power point.

Chief Reed answered we do have a summary of those contacts on the last page of the power point. He developed that timeline from an administrative standpoint. It was developed for Council's benefit starting with the probationary period.

Mr. Coyle asked if what was listed there was in addition to everyday security checks and contact with the establishment.

Chief Reed answered that was correct. Those security checks occur almost every single day and sometimes more than once per day. A key time period was December 2013 when he and Lt. Trouten met with the club owner and manager at the club. He had received a call from the club owner that day wanting to meet. They all met. It was a good meeting. The purpose of that was to introduce himself as the new Chief to make sure there was continuity within the Police Department and that we are paying attention. It was also to make sure they continue good safe conduct managing their establishment post probationary period. They had some other meetings along the way where problems areas were discussed and they tried to maintain the open communication. Around February 2015 when the complaint was filed he visited the Horseshoe himself in the evening hours with Sgt. Matt Locuson and they did an inspection on February 13 and 14. They met with the owner at the establishment.

Mr. Coyle asked do you affirm and reassert the facts and statements that were contained in your first amended verified complaint before the council.

Chief Reed answered yes.

Mr. Coyle referred to page 4201 in the record. There is some discussion with Lt. Trouten concerning using occupancy as some variable in looking at this data. What is your response in using this approach?

Chief Reed answered that approach didn't have any relevancy for what it is for what they were doing. One reason they didn't develop it from the City standpoint was because the per occupancy ratios, whether they are favorable to the Horseshoe or not, didn't matter from his standpoint. He is looking at the number of fights and the escalation since the probationary period ended. The establishment is not policing themselves in accordance with the code.

Mr. Coyle passed the witness.

Mr. DeWitt said you talked about the probationary conditions that were imposed on the Horseshoe, there were two other establishments that had that same set of conditions.

Chief Reed answered yes, Goldies Bar and the Tiki Hut. They had similar conditions. He reviewed all of those. A couple of those conditions may have been individualized for the bars.

Mr. DeWitt asked if there are any other liquor license discipline activities like this one that are currently pending.

Chief Reed answered no. We have several other issues but none that are at the disciplinary hearing stage.

Mr. DeWitt said there were conditions that were placed on the license during the probation period on the Horseshoe and the other two, right?

Chief Reed answered correct.

Mr. DeWitt said not conditions that are placed on every license but just on those particular licenses during that period.

Chief Reed said he thought there was a mix. Some of the conditions as he recalls were things like comply with the Elko Liquor Control Code which is on every licensee. Then there were individual specific things.

Mr. DeWitt said what he is talking about would be the things that are not imposed automatically by virtue of having a license. Those conditions could be imposed as a permanent condition on a license, couldn't they?

Chief Reed answered yes, by the council.

Mr. DeWitt noted the council could take those conditions and say it is not probation anymore, it is permanent. The Horseshoe is the only business in Elko that offers sexually oriented live entertainment, is that correct?

Chief Reed answered they are the only ones with sexually oriented live entertainment, that is correct.

Mr. DeWitt offered some statistics for a period of almost exactly three months. These are incidents that resulted in calls for service; one sexual assault, two incidents of assault and battery, 15 fights, 36 disturbing the peace activities and six threats. Would you consider that licensee a problem?

Chief Reed answered it is something he would look at and pay attention to. He would need to know if those calls had been reduced to police reports or arrests or verified incidents.

Mr. DeWitt noted he would drill into it. We requested the incident reports to be printed out of your computer for the Red Lion. They are not a subject to a proceeding?

Chief Reed answered they are not the subject to this proceeding. That doesn't mean that he doesn't pay attention to that very closely. You will see there is no data up here regarding the Red Lion. They are a large hotel that runs two restaurants, multiple bars, gaming establishment, beauty shop and others. When we gave the data for this hearing we tried to make sure we compared apples to apples as close as we could. We excluded hotels.

Mr. DeWitt said the bars we talked about here are all downtown but the Red Lion is not.

Chief Reed agreed it is not. It is a very large hotel property.

Mr. DeWitt said size makes a difference but not for our case?

Chief Reed said not for occupancy rates.

Mr. DeWitt noted occupancy for the Red Lion has got to be enormous. It is a lot more than 275. Do you have an estimate as to how big it is?

Chief Reed answered he has no estimate.

Mr. DeWitt said it is a big place so it has more calls, right?

Chief Reed answered there are more calls probably because it is larger and because of the type of business they run there. They have multiple functions going on there.

Mr. DeWitt said like the Commercial, right?

Chief Reed answered it is a much different magnitude. The Commercial may not rent out rooms anymore. The Red Lion has 100's. They also have multiple functions going on at the Red Lion. They run a very large casino. They have live entertainment and restaurants.

Mr. DeWitt asked if they have live adult entertainment.

Chief Reed answered no.

Mr. DeWitt said that was all he had.

Mr. Coyle had nothing based on that.

Councilman Keener asked responding to calls at the licensee's establishment, does that stretch the Police Department resources.

Chief Reed answered at times it does. It depends on the nature of the call. You heard Lt. Trouten testify earlier about different types of calls where multiple units responded. Our typical response most of the time is not 100%. Standard procedure would be two units at anything involving a bar, the brothels and the casinos. When we get into 3, 4, 5 or the whole shift it is because of the nature of the incident and the nature of the call provided to dispatch which sometimes turn out to be exactly as stated and sometimes go off a totally different direction. That puts a lot of pressure to try to manage the personnel accordingly. We have other calls to handle throughout the city. We are tying up the shift for 3 or 4 units for a long period of time at one establishment and that takes away from everybody else.

Mayor Johnson asked you had made contact at the Horseshoe, and it was more than once, looking at the incidents, calling management and saying we have a problem. How many times did you have that type of meeting with the Horseshoe?

Chief Reed answered he did it a few. He also directed Lt. Trouten a couple of times throughout last year during the calendar year 2014 to do that same thing. Between all of us there were probably five or six occasions. There was another occasion where he contacted the owner and manager and he asked them to come to the Police Department earlier this year which they complied with and did. We let them know this was coming and we had concluded our investigation. It looked like things were escalating and we had no other recourse but to bring a complaint to City Council. He gave them notice on that.

Mayor Johnson asked why he thought there was no other recourse.

Chief Reed answered besides the individual crimes that occurred and them investigating them. His review of the code is sanctions or actions against the licensee come from the City Council. It is his duty to watch all the licensees in the city and when there is a problem that they cannot resolve at their level, because he is an appointed official appointed by the City Council, and then he has a duty to notify council and sound the alarm. That is what they did in this case.

Mayor Johnson asked if he was seeing any progress or improvement.

Chief Reed answered no they did not. We had tried that at our level. We don't have to notify them at all. He does and he may again with another licensee along the way because we are trying to gain compliance and we are trying to make sure that the safety is maintained at their establishment. That is their duty and not ours under the code. We try to help along the way. All of this was after this licensee was put on probation for prior conduct the previous chief brought to you.

Mayor Johnson asked if it was a custom in the event that any property within Elko, if you thought there was a trend going the wrong direction that you would reach out to management and indicate your concern. You have done that with other properties.

Chief Reed answered yes he meets with business owners all of the time on a regular basis. Sometimes it is very informal and other times it is a sit down meeting, whether they are a liquor licensee or not. He also has an affirmative duty under the code to police business licenses and make sure they are enforced and they are accurate for the type of business that they have and that there is some accountability there. He tries to work with the owners or work with them if there are problems.

Mayor Johnson asked if he has seen a business moving in the wrong direction and you reach out to them and talk about the concerns he has and has seen results in a manner that he is satisfied with to think the improvements are acceptable and is on the right tract.

Chief Reed answered yes. Sometimes it could be as small as litter and sometimes it is rumors of criminal violations. It can be all over the map. Yes, that is the case.

Councilman Keener asked it is known that the licensee does not live locally. How big of a factor do you think that is with respect to this establishment's different incidents documented?

Chief Reed answered that is an issue because maybe they don't know what is going on. But in this particular case he has learned that he wasn't sure if that is an issue or not. He has met with the owner. He has been here at times. He wasn't sure how often the owner is here. What is key to him in this case is that the licensee has had an opportunity to correct the behavior. He has been before this board and the board has sanctioned him. A lot of time has gone by and the problem has gotten worse.

Mayor Johnson asked if there were any rebuttals.

Mr. Coyle dismissed the witness and rested his case but reserved the right to recall any of the witnesses on rebuttal if necessary.

Mr. DeWitt called Andy Welsh. Spell your name.

ANDY WELSH but his legal name is Andrew.

Mr. DeWitt asked where did you grow up.

Mr. Welsh answered he grew up in St. Cloud, Minnesota.

Mr. DeWitt asked if he graduated from High School there.

Mr. Welsh answered yes.

Mr. DeWitt asked how old he was.

Mr. Welsh answered 36.

Mr. DeWitt asked how long has he been involved with the business.

Mr. Welsh answered the Horseshoe Club he has owned for about two years. He has helped run for about a year and a half before he purchased it.

Mr. DeWitt asked what did you do between high school and getting involved with the Horseshoe Club.

Mr. Welsh answered at 18 he and his wife ran a bar for about eight years. He started his own landscaping business in 1999. In 2006 he started a vegetable farm. Two years ago he bought a beef farm.

Mr. DeWitt asked if he had significant experience running a bar before he got involved with the Horseshoe, is that correct?

Mr. Welsh answered about ten years.

Mr. DeWitt asked if the Horseshoe is actually owned by a corporation.

Mr. Welsh answered yes.

Mr. DeWitt asked you and your wife own stock in the corporation.

Mr. Welsh answered yes.

Mr. DeWitt asked to clarify for the City Council, Debra Mensing sold it to you, right?

Mr. Welsh answered yes.

Mr. DeWitt asked how did she acquire it.

Mr. Welsh answered his father-in-law, her husband, passed away. He bought it in 2008.

Mr. DeWitt asked how long did she try to run it.

Mr. Welsh answered approximately a year and a half to two years. She wasn't doing well. He and his wife stepped in to help her save it.

Mr. DeWitt asked if they paid cash to her for it.

Mr. Welsh answered they bought it on a contract to deed. They make monthly payments on it and they rent the building.

Mr. DeWitt asked if they paid rent on the building and make payments towards the purchase of the business. How much are those payments?

Mr. Welsh answered they pay a little under \$10,000 a month.

Mr. DeWitt said there has been some discussion about you living in Minnesota. How much time do you spend here in Elko?

Mr. Welsh answered he comes every 4-6 weeks. The time varies; it can be four days to a week. On a daily basis he watched the cameras and talks to Ely and other employees.

Mr. DeWitt noted he said he watches the cameras. Can you explain that?

Mr. Welsh answered the camera system has 18 cameras and they can view it live from home right off the internet.

Mr. DeWitt asked if you have a laptop computer you can view it anywhere.

Mr. Welsh answered yes. Where ever they go his wife can watch it on her phone. They always have access to it. We watch it a lot.

Mr. DeWitt asked who does the bookkeeping.

Mr. Welsh answered his wife, Jessie.

Mr. DeWitt said operating a computer is not one of your top skills. Do you know if the business could survive if it lost the liquor license?

Mr. Welsh answered probably not.

Mr. DeWitt asked what would happen to your mother-in-law's income.

Mr. Welsh answered his and hers would be gone.

Mr. DeWitt said she would lose \$10,000 a month. Do you know if she has a mortgage on the building?

Mr. Welsh answered no she does not.

Mr. DeWitt asked Ely DeJesus has been the manager for how long?

Mr. Welsh answered roughly 2 years. He worked there as a manager for Debra before that too.

Mr. DeWitt asked he has been the manager since you and your wife took over the place.

Mr. Welsh answered yes.

Mr. DeWitt asked about some occasions he called the police. Did you call the police because somebody broke one of your windows?

Mr. Welsh answered yes.

Mr. DeWitt asked did they prosecute the person that did it.

Mr. Welsh answered no.

Mr. DeWitt asked did the person admit it.

Mr. Welsh answered yes.

Mr. DeWitt asked in the presence of the police.

Mr. Welsh answered yes.

Mr. DeWitt asked somebody walked a tab once, right?

Mr. Welsh answered yes.

Mr. DeWitt asked how much was the tab.

Mr. Welsh answered \$250.

Mr. DeWitt asked what did you do to try to insist that he pay it.

Mr. Welsh answered he told him he had to wait there. He called the cops. The cops came. He admitted he owed the tab. His card was overdrawn or something was happening with our ATM. The officers said they could take him over to Wells Fargo and try over there and he agreed but he had no money in his account or something. He placed him under citizen's arrest. He heard nothing of it until they got the reports. In the reports it said "not enough evidence" and they had to release him. He admitted to the cops that he owed it. He told the officers he owed it too. He was not sure how there wasn't enough evidence to prosecute. They didn't contact him to ask any questions either.

Mr. DeWitt asked if he ever had any other incidents like that.

Mr. Welsh answered there have been a few with counterfeit money. They had them on video giving them counterfeit money. He knows that because they were \$100 bills. They were the only ones that paid with \$100's that night. It was a slow night. We had them on video. A couple of weeks later they came back in and the cops happened to be in there. I pointed them out to the cops. The cops said he could not arrest them. They didn't give him a reason so he doesn't know why. There was no further action that he knows of.

Mr. DeWitt asked whether they questioned them about where he got counterfeit \$100 bills.

Mr. Welsh answered no, not that he knew of.

Mr. DeWitt said these all had the same serial number, right?

Mr. Welsh answered yes.

Mr. DeWitt asked if he ever met with the Police Chief or the Lieutenant that testified here tonight about the Horseshoe other than the incidents that were just discussed.

Mr. Welsh answered no.

Mr. DeWitt asked if they have asked him to meet with them.

Mr. Welsh answered he met with the Chief when he first started and he and Ely were at the Horseshoe. He came down and introduced himself. We had a good talk. I gave him my phone number and said if you ever have any questions or concerns call me. I am here to run a clean business. I own multiple businesses. I enjoy what I do. Any problems, feel free to call. The next time I heard from him he called my mother-in-law wanting to talk to her. She didn't call him back because she has nothing to do with it anymore. She let me know and I called him. I asked if he had any questions for me. He said "you don't own it." I said I do own it. About a week later the Chief called him back and said I owned it. He said there were some problems. I said I was coming out next week. I came out and met with him and that is the second he met with him. He notified me we were being served with papers.

Mr. DeWitt asked if he served him at that time.

Mr. Welsh answered no he was served a day or two later. He didn't remember how many days.

Mr. DeWitt noted it was the same month.

Mr. Welsh added it was the same week.

Mr. DeWitt asked the telephone number you gave to the Police Chief, is that a cell phone.

Mr. Welsh answered yes.

Mr. DeWitt asked if that was usually located in your pocket or next to where you are.

Mr. Welsh answered yes.

Mr. DeWitt asked if that was just about the only phone number you have.

Mr. Welsh answered it is the only number he has.

Mr. DeWitt passed the witness for now.

Mr. Coyle asked regarding the incidents that you did not have prosecuted as a result of the police investigations, did you contact the DA's office to see why they didn't proceed.

Mr. Welsh answered no.

Mr. Coyle asked the officers at least on the first two incidents they showed up, took a report, they took it serious, and they submitted it to the DA's office.

Mr. Welsh said he had to make a citizen's arrest.

Mr. Coyle said they helped you with that process. To be fair, when the chief called your mother-in-law she was still on the license, correct?

Mr. Welsh answered yes.

Mr. Coyle asked it wasn't corrected until after you were served with the papers from his office, correct.

Mr. Welsh answered it should have been corrected before and he doesn't know why it wasn't. He re-corrected it and now it is right. His attorney was supposed to be handling all of that. He filled out the paperwork but he doesn't know what happened.

Mr. Coyle said the Chief called someone that was named as a licensee when he called your mother-in-law, right.

Mr. Welsh answered he also met with the Chief prior to that explaining to him who he was during the first meeting.

Mr. Coyle asked if there are special licensee documents that are displayed in the business, correct.

Mr. Welsh answered yes.

Mr. Coyle asked if he wanted council to get out of your testimony living in Minnesota is that there is no affect to that. You watch the cameras all of the time and talk to the manager every day and other employees. You are pretty much aware of what is going on, correct?

Mr. Welsh added that he is also out here quite a bit, yes.

Mr. Coyle asked if in his opinion there is no adverse effect to you being out in Minnesota.

Mr. Welsh answered no and nobody has ever told him there were issues either. Since he is here often nobody has ever approached him and said we are having issues.

Mr. Coyle said Ely DeJesus was the manager when the first disciplinary action took place.

Mr. Welsh answered Barry Simmons was the manager.

Mr. Coyle asked you said he was the manager for Debra.

Mr. Welsh answered before that. There was a time he worked for Debra and then he worked for me.

Mr. Coyle asked Mr. Welsh to look at page 1716 in the documents. Does that show an application to add liquor licensees as filed with the City?

Mr. Welsh answered yes.

Mr. Coyle asked that was to add you and your wife to the license.

Mr. Welsh answered yes.

Mr. Coyle asked that was filed May 21, 2012.

Mr. Welsh answered yes.

Mr. Coyle asked were you added as a result.

Mr. Welsh answered yes.

Mr. Coyle asked you went through the investigation and everything was okay to add you to the license.

Mr. Welsh answered yes because they were in the process of purchasing the Horseshoe. That was the first step they had to take.

Mr. Coyle said at that time it showed that Debra had 100% and you and your wife had 0%.

Mr. Welsh answered yes.

Mr. Coyle asked did you begin working at the Horseshoe at that point.

Mr. Welsh answered he would help, yes.

Mr. Coyle asked the past disciplinary action involved the period from May 1, 2012 to November 30, 2012. You were working there for 80% of that time, correct?

Mr. Welsh answered he was helping.

Mr. Coyle asked you were a licensee?

Mr. Welsh answered he was a licensee with the intention of buying it.

Mr. Coyle referred to page 1710. That reflects the settlement agreement from the first disciplinary action, correct?

Mr. Welsh answered yes.

Mr. Coyle asked you actually signed as president and owner of that settlement agreement, correct.

Mr. Welsh answered yes, because I purchased it in April.

Mr. Coyle asked you were then actually the president, owner and licensee during the entire period of the first disciplinary period, correct.

Mr. Welsh answered no. He brought that up during the first time. He was told tough, you are on the license. I said I didn't take it over until April.

Mr. Coyle asked what is the date you signed as president and owner.

Mr. Welsh answered June 24, 2013.

Mr. Coyle said then a probationary period started and went to December 24, 2013, correct.

Mr. Welsh answered yes.

Mr. Coyle noted by records that the city had you were the president, owner and licensee during the probationary period.

Mr. Welsh said yes.

Mr. Coyle asked who is presently on your license.

Mr. Welsh answered me and my wife, Jessie Welsh.

Mr. Coyle asked if the council wanted to find that it is on page 1044 of the record.

Mr. Welsh answered yes.

Mr. Coyle asked that is your current license.

Mr. Welsh answered yes.

Mr. Coyle asked it shows your wife and yourself as the licensee.

Mr. Welsh answered yes.

Mr. Coyle asked if the other named licensee is Hadlor Inc.

Mr. Welsh answered yes.

Mr. Coyle asked are you aware that the acting manager must be on the license under the City Code.

Mr. Welsh answered no.

Mr. Coyle said for reference under 4-5-4B of the Elko City Code and also referred to in 4-5-4K and L that if you have an active manager of the property for a liquor licensee they have to be on the license as well.

Mr. Welsh said when he filled out the paperwork the lady never brought that to his attention when she helped him out. She didn't make that clear.

Mr. Coyle said when you are the licensee you are required to comply with all the code considering a liquor licensee, right.

Mr. Welsh answered yes.

Mr. Coyle asked Chance Armas was an employee of yours.

Mr. Welsh answered yes.

Mr. Coyle asked do you recall if he was dismissed as concerns brought forth by the Police Department.

Mr. Welsh answered that was what Ely informed him, yes.

Mr. Coyle asked you say you only met with the Chief twice but if there are other contacts with your establishment through Ely you should be getting that information, correct.

Mr. Welsh answered he told me he was called down two other times. One was for Chance and they got rid of him. I don't recall what the other one was.

Mr. Coyle asked how long was Chance employed with you before his termination.

Mr. Welsh answered a few months maybe.

Mr. Coyle asked what are your minimum qualifications for a security guard.

Mr. Welsh answered we have Ely train them in procedures. As soon as you see a verbal confrontation get over there and break it up. If they don't want to listen they go.

Mr. Coyle said he is talking about training. He is asking are there minimum qualifications for someone to act as a security guard?

Mr. Welsh answered no because we train them to what we would like them to be.

Mr. Coyle asked is there any background investigation done.

Mr. Welsh answered no it is not required as far as he knows.

Mr. Coyle asked the training you are talking about that they get is just instructions from Ely.

Mr. Welsh answered yes.

Mr. Coyle asked is Ely the manager during the probationary period.

Mr. Welsh answered he was working there but he was not the manager. He came on during the probationary period.

Mr. Coyle said you heard your one employee that works for you as security, Mr. Sharples, state that there has no changes of policy on security since the probation. Is that correct?

Mr. Welsh answered there have been a few minor changes, yes.

Mr. Coyle asked there has been anything in writing.

Mr. Welsh answered no.

Mr. Coyle said it has just been changes as far as directions to the security staff.

Mr. Welsh said like where we take them in there if there are troubles and where we take the troubled parties.

Mr. Coyle asked how many security personnel do you have.

Mr. Welsh answered anywhere between three and six depending on how busy we are going to be.

Mr. Coyle asked if that meant three or six per night.

Mr. Welsh answered Friday and Saturday night we will have three to six. During the week we may have one or the DJ handles any problems.

Mr. Coyle asked if you are hired for security do you also work other positions in the establishment.

Mr. Welsh answered the door or security.

Mr. Coyle asked how many security personnel total do you have.

Mr. Welsh answered three to six depending on the time of year. Summers are busier so we will have more staff. Winters slow down so we have less staff. Some weekends and the Jamboree are busier so we will get some extra help. Halloween and New Year's Eve we get temporary help to come in.

Mr. Coyle asked Ely in acting as the manager, what training has he had to be a manager.

Mr. Welsh asked why would you need to train somebody. He knows the procedures, paperwork, and hiring. He knows how the bartenders are supposed to pour.

Mr. Coyle asked if those are just on the job training.

Mr. Welsh answered that is how he trained him. He has worked at other places before that. When I hire somebody I work with them to see how they will do.

Mr. Coyle asked if there were courses they attend.

Mr. Welsh answered no he didn't think there were any he knew of.

Mr. Coyle asked this bar you operated in Minnesota for 10 years, was that in St. Cloud.

Mr. Welsh answered is was outside of St. Cloud about 30 miles. It was in Orrock, Minnesota.

Mr. Coyle asked what was the occupancy level of that bar.

Mr. Welsh answered it was about 400.

Mr. Coyle asked if he was the onsite manager there.

Mr. Welsh answered towards the end, yes. When he started he was the bartender.

Mr. Coyle passed the witness.

Mr. DeWitt redirected. Do you know what active manager means?

Mr. Welsh answered they are the manager.

Mr. DeWitt asked because of the fact that you speak with Ely DeJesus daily and watch the place on the monitors, would you think you are the active manager.

Mr. Welsh answered yes.

Mr. DeWitt asked if no one ever told you Ely DeJesus has to have his own license, is that right.

Mr. Welsh answered no.

Mr. DeWitt asked when you have applicants for a security guard, you don't just let them walk in, you interview them and find out something about them, right.

Mr. Welsh answered yes. We talk to them about their background. When we do decide to hire them Ely works with them for a couple of nights to see how they do. We don't just throw them on the floor and say good luck. We watch and see how they are going to do.

Mr. DeWitt asked Ely is responsible for training.

Mr. Welsh answered yes.

Mr. DeWitt asked if Ely is a former New Mexico Highway Patrol Officer, correct.

Mr. Welsh answered yes.

Mr. DeWitt asked if he went to the police academy and all that.

Mr. Welsh answered yes and he was in the marines.

Mr. DeWitt asked Mr. Welsh to look at exhibit 1710. These are your conditions of probation.

Mr. Welsh answered yes.

Mr. DeWitt asked if he was familiar with them.

Mr. Welsh answered yes.

Mr. DeWitt said you signed them. No. 5 it what begins something other than background formalities. It says, "during a period of probation, licensee has the following reporting duties:" and then they list A, B, C. One is all incidents of fights or violence or threats of the same within the premises or in the vicinity of the premises if you find out about it basically. Your understanding is that was done, is that right?

Mr. Welsh answered yes.

Mr. DeWitt asked without this probation would you have to do that.

Mr. Welsh answered no.

Mr. DeWitt asked and in a weekly basis report in writing to the Chief of Police the number of times and circumstances for each instance where somebody was 86'd. What does it mean to 86 somebody?

Mr. Welsh answered you tell them they are not allowed back.

Mr. DeWitt asked if they come back they would be trespassing.

Mr. Welsh answered yes.

Mr. DeWitt asked then you could arrest them and call the police if they did that.

Mr. Welsh answered yes.

Mr. DeWitt said No. 6 was clean the sidewalk. Do you see that?

Mr. Welsh answered yes.

Mr. DeWitt said the sidewalk is the city's property, right?

Mr. Welsh answered yes.

Mr. DeWitt said you wouldn't have that duty except it said so here.

Mr. Welsh said they have done that for years, before this even.

Mr. DeWitt said he understood that he does it but there is no law that says you have to clean the city sidewalk.

Mr. Welsh answered no.

Mr. DeWitt said No. 7 says notify the other downtown bars if you 86 anybody. You don't have to do that, do you?

Mr. Welsh answered no.

Mr. DeWitt asked except for the probation.

Mr. Welsh answered yes.

Mr. DeWitt asked if they still do that now that the probation is over.

Mr. Welsh answered no. If they are really bad we will call a bar if we know they are going there but that rarely happens.

Mr. DeWitt asked if he thought it would be useful if the bars mutually did that.

Mr. Welsh answered yes.

Mr. DeWitt asked the downtown bars particularly.

Mr. Welsh answered yes.

Mr. DeWitt said No. 8, a licensee may consume alcohol in the premises but not under the influence of alcohol. Your employees are not allowed to drink on the job and you don't either?

Mr. Welsh answered no.

Mr. DeWitt asked so you more than comply with that.

Mr. Welsh answered that was easy.

Mr. DeWitt said No. 9 says security on the premises and it lists some conditions of that. Are you familiar with those?

Mr. Welsh answered yes.

Mr. DeWitt asked if he did those during the probation.

Mr. Welsh answered yes.

Mr. DeWitt asked if they still do them.

Mr. Welsh answered yes.

Mr. DeWitt noted he pretty much does everything except exchange information with the other downtown bars.

Mr. Welsh agreed and added notify the Chief on a weekly basis.

Mr. DeWitt noted he could do those things if asked to and you would.

Mr. Welsh said yes.

Mr. Coyle asked you are not sure whether or not if you are required by the City Code to clean the sidewalks.

Mr. Welsh answered he didn't know.

Mr. Coyle said in 4-5-18 there is a provision on property and adjacent area clean up. You can find that on exhibit 4161. You do have that duty, correct?

Mr. Welsh answered yes. We have always done that even before the probation.

Mr. Coyle said you are responsible to know the Elko Liquor Control Code, correct?

Mr. Welsh answered yes.

Mr. Coyle asked you are not disputing in looking at these conditions that were in the probation that under disciplinary action the council has the authority to place conditions on licensees, correct?

Mr. Welsh answered no.

Mr. Coyle said that was all he had.

Councilman Schmidlein asked when Chief Reed and Lt. Trouten came to you, whenever they met with you, did he tell you what he was expecting from you and your business of operations? I want to know what were the expectations presented to you and your manager.

Mr. Welsh answered we both just talked back and forth about how he ran his business and what he would like to see. It was a good conversation, he thought. He was excited to have a new Police Chief. He was hoping to open a good line of communication with the new chief. He made it clear he was here to work with him. He left my number with the Chief to call if there are any problems. He never heard from him again until he got served with papers.

Councilman Schmidlein asked you were sincere and you were buying in to what his staff was expecting of you.

Mr. Welsh answered yes we were both on the same page.

Councilman Schmidlein asked have you read any of the statements that are in those documentations.

Mr. Welsh answered he read every one of them.

Councilman Schmidlein asked did you realize your security guard Chance was out of control and getting involved with extra activities beyond the scope of his job position would be entitled to.

Mr. Welsh answered not other than what was going on at the Horseshoe.

Councilman Schmidtlein asked did you read those reports. When I read the reports your employee was the aggressor in some of the fights. I cannot believe that he was not prosecuted to the fullest extent of the law. When he is the aggressor taking people outside and thumping on them he cannot believe people would employ people like that.

Mr. Welsh said there was none he was aware of other than the one where he punched a guy inside.

Councilman Schmidtlein believed there were at least three of them that took place on the street. He has issues with that.

Councilman Rice noted you said you live in St. Cloud but you are out here every four to six weeks or so.

Mr. Welsh said that was the average.

Councilman Rice asked you said you are on the phone everyday with Ely and he reports incidents. He lets me know of the ones I need to know about. When you ask him if there was any trouble last night does he give you details?

Mr. Welsh answered yes. I asked him what the sales were and what the liquor order is going to be for that week. For over half of these incidents I was out here for. A lot of them he has called the police for.

Councilman Rice asked if there is a stabbing, does that concern you.

Mr. Welsh answered yes.

Councilman Rice asked knowing that there are stabbings and that sort of thing happenings, have you taken measures to make sure that doesn't occur anymore.

Mr. Welsh answered our policy is to check knives at the door. We look for knives and guns. When we are really busy we wand. We don't allow knives or guns because if we have to remove somebody or if there is an altercation in there he doesn't want to worry about a knife coming out. He tries to do his best for everybody's safety. People know when they come there we are going to watch out for them.

Councilman Rice asked if he was aware of the concern throughout the community for what is going on at the horseshoe.

Mr. Welsh answered no.

Councilman Rice asked if he reads the Elko paper.

Mr. Welsh answered yes.

Councilman Rice asked if he reads the letters to the editor. Are you aware of those things?

Mr. Welsh answered yes but we do our best to watch the stuff outside but we have a very small window to see out of.

Councilman Keener asked do you trust your manager's judgment to run the business. From what he read in the police reports and the reason he asked is because it is documented that Mr. DeJesus fired Chance Armas for using excessive force. If that is a fact then why did you hire him back? The police showed up after he was dismissed and he was working again. When the manager was asked about this Mr. DeJesus said that he was told he had to rehire Mr. Armas.

Mr. Welsh didn't recall that. He remembered letting him go when Ely was called down to the police about that incident of the guy getting punched. Ely informed me he already let him go.

Mayor Johnson asked what is your business's future.

Mr. Welsh answered he loves the Horseshoe and he wants to keep it here. He doesn't want to fight with anybody. He wants to work with people. In his eyes he is doing right at the Horseshoe. When he comes out here he wants to be safe. He wants everybody to be safe. He doesn't know how they are getting this picture of being so wild. He doesn't put up with anything. If he sees people arguing he will go to them himself and stop it instantly. If people are going to get into a physical altercation I will take them out myself. It is not like he is a business owner sitting in Minnesota and watching. I bartend when I am out here. I run the door when I am out here. I will do security. I am very much involved with this place. I have done it for a long time and I know what I am doing. In his eyes he thinks he is good at what he does. If anyone asks him to change anything and he thinks it is appropriate he will make the changes. To him this was a blindside. Nobody has ever told him there were problems. He would do his best to change it if he felt he could change it.

Mayor Johnson asked if there will be specific changes to the business operation.

Mr. Welsh answered he doesn't have any in mind. He isn't saying yes or no to anything.

Mayor Johnson is ready to vote. We have other witnesses and closing arguments. We want to hear closings. He just wanted to indicate that he is ready to make a motion and vote.

Mr. DeWitt said people are allowed to walk around downtown with an open alcoholic beverage.

Mr. Welsh said yes.

Mr. DeWitt asked would it help you significantly if that was illegal.

Mr. Welsh answered he thought that would keep people at a place so they wouldn't be out wandering around. When they come to his place they do not allow alcohol in. They will slam it

down and then buy more inside. He wasn't sure if it is making them drink more that way because people will come to his place with a full drink and then slam it quick.

Mr. DeWitt asked if they couldn't come up there with a full drink if they weren't allowed to walk around downtown with alcohol, could they.

Mr. Welsh answered no.

Mr. DeWitt asked do you or any of the bars to your knowledge that are downtown that we have talked about here today have any policy about reentering.

Mr. Welsh answered he didn't know about other bars.

Mr. DeWitt asked if at his bar could the customers go outside and come back in.

Mr. Welsh answered yes, all the bars do that.

Mr. DeWitt said that is a condition that the City Council could impose on the bars too; that nobody could go out and come back, isn't it?

Mr. Welsh answered they could.

Mr. DeWitt asked if that might help.

Mr. Welsh answered he didn't know. They like to wander a lot. They could.

Mr. DeWitt asked from your experience as a bartender, when someone drinks a couple of drinks right away it doesn't affect them right away.

Mr. Welsh answered no.

Mr. DeWitt said there is this thing called absorption rate and he thought a person absorbs about a drink an hour. It takes a while. Someone could come into the bar that has a lot of alcohol in them but no evidence of intoxication but that evidence could develop while they are sitting there, right?

Mr. Welsh answered yes.

Mr. DeWitt said he was finished with him.

Mayor Johnson asked for a break. He is still ready to make a motion and vote.

BREAK

Mayor Johnson called the meeting back to order. He has indicated that he is ready for closing and to make a motion. He asked the other members of City Council what is their position?

Councilman Rice agreed he is ready for a motion.

Councilman Schmidlein wanted council to discuss amongst council what their findings are of any sort whether it is positive or negative. Then we can come to a decision.

Mayor Johnson noted they will have that opportunity when they have deliberations before a motion is made.

Councilman Keener said he has heard enough testimony.

Mr. Coyle said he would like to offer Mr. DeWitt an opportunity to summarize any key points that his other witnesses would have made just to be fair so he has his opportunity to be heard in this hearing and let him do it summarily like that instead of calling his witnesses. Then we can go the route council is talking about.

Mayor Johnson could also make another offer. If we had heard some of council's deliberation and we gave him an opportunity to counter some of that would that help?

Mr. DeWitt said his understanding of the rules was that he could put on the evidence. If you are not going to allow that he would at least like to be allowed to offer more exhibits and summarize.

Mayor Johnson then said he needs to hear his case. He is not hearing enough counter and maybe that is a good point.

Mr. DeWitt said if the council was to propose something then he would go outside with his clients and discuss it.

Mayor Johnson pointed out that we all have time constraints. That is why he offered that.

Mr. DeWitt said there is another possibility. Because he knows everyone needs to get up in the morning, maybe deliberate and depending upon the outcome of the deliberation one possibility would be to adjourn this to another date. In between now and then the City Attorney and his clients can discuss it and then based on the deliberation come with a proposal to City Council that would stipulate.

Mayor Johnson said any type of deliberation may quantify the direction they are headed.

Mr. DeWitt noted there is no rule in this kind of thing. We would be deliberating in the middle of the hearing.

Mayor Johnson agreed and said it is a hybrid. It is a City Council meeting and we are trying to structure it as best as possible.

Mr. DeWitt said unfortunately Nevada Municipal Code does not apply to municipal procedures. It would be nice if it did the Legislature seems to have other fish to fry. If the council wishes to

deliberate and then let us consider your deliberations and maybe the City Attorney and he could talk and come back and give their suggestions.

Mr. Coyle had a couple of points. He didn't think they could deliberate and take action before they had all of the evidence. The other thing, he pointed out in 4-5-13D the conduct of the hearing, the complainant and licensee may appear in person by the attorney or both and present relevant evidence and witnesses. It would be fair that he be allowed to at least present in some form as to what his witnesses would have testified to before we would do a full deliberation.

Mayor Johnson said he is going off the offer from the defense that wants to hear some of the deliberation. He has been offered that to move forward with witnesses. At least council can say some of the things that we want to narrow down on.

Dave Stanton, City Attorney, said in terms of just the order of events and how this hearing is supposed to proceed, when the evidence starts to be redundant or not relevant that is when you cut it off. Both sides can present relevant evidence and witnesses. The council can discuss and deliberate in the interim before making a decision but cannot make a motion and vote on the matter until after all of that has taken place. As late as it might be the licensee needs to be given the opportunity to present relevant evidence and witnesses.

Mayor Johnson said he has been given that and if he understood correctly he is asking us to move into deliberation.

Mr. DeWitt said as long as he has the opportunity to present non-redundant evidence. Even in a judicial proceeding you start to prove the same thing over and over again the judge can say in his discretion can say that is enough. I will just tell the council that some of what he is prepared to show is 1) Chance Armas was not rehired. If he was rehired nobody was paying him. He was fired for misconduct and never rehired. 2) we did a survey and got a petition and asked people what they thought of the proceeding. We got almost 1000 people that didn't want the license taken away. 90% of them were Elko residents. The Fire Marshal, Josh Carson, was identified as a witness and the city did not produce him. The Horseshoe was one of the few businesses that were cited as excellent as complying with fire regulations and those sorts of things.

Councilman Rice said he would be more comfortable with a summary from the defense and then we deliberate. He doesn't want to go back and forth. He would like to continue with a traditional presentation even if it is in summary form.

Councilman Keener said the defense counsel mentioned this online survey that was going on. It was "Keep the Horseshoe Open" movement. It was forwarded to him. In explaining it to the people that participated in this they painted a rosy colored picture of the Horseshoe Club but nowhere in here to they take any kind of responsibility or address any of the accusations that have been made.

Mayor Johnson asked council if they would like the Defense attorney to summarize and/or present his witnesses.

Councilman Keener wanted a summary.

Mr. DeWitt said if it is going to the end then he would need to call his witnesses. There are some photographs that show that when you are inside...

Mayor Johnson wanted to hear closing. If we made it where you did your closing based on where we are right now and then City Council make a decision that we want to hear more witnesses, would that be acceptable?

Mr. Stanton said the process is the council needs to listen to the evidence and witnesses from both sides and not cut it off. He is getting the feeling that he is being directed to summarize. If he wants to call witnesses and present evidence he needs to be given the opportunity.

Mr. Dewitt said it seems to him if we hear some deliberation and we both agree to let the council do that without objection, it may cause us to say "let's continue the rest of this hearing and see if we can't come to an agreement" and that will save the council a lot of time.

Councilman Rice would like to proceed as Mr. Stanton has advised. Council agreed to proceed.

Mr. DeWitt called Jessie Welsh. State and spell your name, please.

JESSIE WELSH clarified her name is Jessie and not Jessica.

Mr. DeWitt asked if she was the wife of Andrew Welsh that testified a little while ago.

Ms. Welsh answered yes.

Mr. DeWitt asked you and he own the Horseshoe business, right?

Ms. Welsh answered yes.

Mr. DeWitt asked what are your functions and connection with that business.

Ms. Welsh answered her function is administration, accounting, payroll, daily sales and office duties.

Mr. DeWitt asked is this true of the other businesses you two own.

Ms. Welsh answered correct and she is also a territory operator for Dairy Queen and has been for five years. That is solely her. There are two stores that she is the territory operator so she makes sure they are in compliance with international Dairy Queen and following their procedures.

Mr. DeWitt asked you do the payroll for the Horseshoe.

Ms. Welsh answered yes.

Mr. DeWitt asked Chase Armas, was he an employee.

Ms. Welsh answered yes.

Mr. DeWitt asked was he terminated.

Ms. Welsh answered yes.

Mr. DeWitt asked if he had been rehired would you have found that out.

Ms. Welsh answered yes because she is the one that pays the payroll checks.

Mr. DeWitt asked there were no more payroll checks after he was fired, is that correct.

Ms. Welsh answered not to her knowledge. She is very good about recalling who was hired, rehired and how to spell their names.

Mr. DeWitt asked did you do a survey.

Ms. Welsh answered we did. We were getting a lot of feedback from the community. She also heard about it through their Facebook account. There were incoming messages and overall support from the community. She thought it would be good to take a petition online and get more thoughts and opinions out there from the community so she put it online and she got an overwhelming response.

Mr. DeWitt asked how overwhelming.

Ms. Welsh answered there were well over 800 signatures in less than three weeks.

Mr. DeWitt asked did the survey allow the responding people to make comments.

Ms. Welsh answered yes it did.

Mr. DeWitt asked were there some comments that you thought were particularly...

Ms. Welsh answered yes. If you look at the second page, the last one at the bottom, April 21, 2015. The comment that was made it says, "at the age of 52 I was asked for ID. When I was leaving I was asked 'sir, can I call you a taxi?'. That was my first time there but two other bars didn't care for my safety. Watching one fall face first and a few underage. And you want to terminate this bar for doing things right? I am a voter here in Elko County. You are doing the wrong thing here."

Mr. DeWitt asked any other pointed responses.

Ms. Welsh answered she does. If you flip a few pages back, the date is April 22.

Mr. DeWitt said if you look at the second column from the right we are going down to where it says April 22.

Ms. Welsh answered yes. April 22, her first name is Stacie. It says, "I am signing this because it is not fair to punish them for people showing up to the bar drunk. What I mean is when people go out they start at other bars and consume a fair amount of alcohol and then move on to the next bar. Eventually they will want to end the night at the Horseshoe to dance. Some people will act stupid and fight. IT IS NOT THE HORSESHOE'S FAULT. The adult that went into that bar made that decision."

Mr. DeWitt asked if there were any others she wanted to point out.

Ms. Welsh said if you flip it one more page and on April 22, her name is Annie. It says, "Me and my girlfriend have gone all the way to Elko to go to the Horseshoe from Crescent Valley. It is a little over 60 miles and it is the only place in Elko girls can go and know they are safe. There is security everywhere. It also has the best dance floor in Elko. I do not go in to watch other women but it is nice to know that a pervert is kept at bay. The removal of the establishment would be a tragedy on its own. A very sad day indeed." If you flip back a little further, on April 23, the first name is Joe. It says, "it is the only place in town where people from ages 21-75 can go to have a good time." Just in summarizing, a lot of community and the people that have come into the club have also expressed the same thing. There aren't many places you can go and have 21 year olds to people that are 75 having a good time at one place and just enjoying themselves. That is what a lot of people like to do. Flipping back a couple more pages, on April 26, the first name is Char, "as a previous manager working for previous owner, I know the value of this club in many ways. I have seen the lengths this club goes to ensure safety as well as rules of this new owner. With such a diverse club they an outstanding job. The city should pick on someone else."

Mr. DeWitt asked if there were any further ones.

Ms. Welsh answered that was all of the main online comments. When we put this petition online it was pretty overwhelming that it went live on April 20th late at night. On April 21 we had 251 signatures in one day. 34% of them left comments. There were 86 comments. On April 22 the next we had 131 online signatures with 50 comments. That is 38% of the people leaving a comment. On April 23 there were 73 signatures and 33 comments which is 45% of the people leaving a comment. Overall we are at over 800 signatures in about three and a half weeks.

Mr. DeWitt asked how much are you involved in the day to day operation of the business.

Ms. Welsh answered a lot. She does daily sales and pays the bills. She is aware of the liquor coming in and being sold. She is aware of the employees that are working for them. She does the payroll.

Mr. DeWitt asked you take care of the money.

Ms. Welsh answered yes.

Mr. DeWitt asked as far as the policies, the business, who they let in and that kind of thing, that is Andy's job.

Ms. Welsh answered we work on that together.

Mr. DeWitt said that was all he had for this witness.

Ms. Welsh asked to say something. When we got served with this complaint she was blindsided by it. As she got the huge stack of calls she had to find out what a FURP was. There were so many FURP's in the report. FURP is a follow-up report. So that number 70 represents a lot of FURP's. A FURP is an officer coming back to the club to ask up for a video from a couple of nights ago. She was very surprised and it seems like two strikes against you. There may have been an incident at the club where we had called a minor who was trying to get in our place. Maybe the next day they came and did a follow-up and said, "did you happen to get a copy of the license" or something like that. Then you are at two. She didn't know the exact numbers but she thought it was around 20 or 30 FURP's. She felt it was misrepresenting all of the high number of calls that go on there.

Mr. Coyle asked this survey was never provided to the city until you came by and handed it to me, is that right.

Ms. Welsh answered yes.

Mr. Coyle asked this survey is seeking public opinion on whether to drop all citations and complaints concerning your liquor license.

Ms. Welsh answered that was correct.

Mr. Coyle asked this one that has the two ladies on it and then Horseshoe Club, is that sort of what you see online when you look at the survey.

Ms. Welsh answered yes.

Mr. Coyle asked this other document that appears to have names and comments, that is something they filled.

Ms. Welsh answered that is anybody that left an online comment.

Mr. Coyle asked what is the third document.

Ms. Welsh answered this third document has all of the people that signed the petition online.

Mr. Coyle asked it is fair to say on the survey you didn't describe for the people looking at the survey what the allegations were against the Horseshoe.

Ms. Welsh answered we said that drop all citations and complaints to take the liquor license from Hadlor, Inc. doing business as the Horseshoe Club.

Mr. Coyle asked you didn't give them the number of citations, the number of complaints, what type of complaints, witness statements or anything like that, correct.

Ms. Welsh answered believed that was printed in the Elko Daily Free Press.

Mr. Coyle said but you didn't when they were looking at this to fill out your survey, correct?

Ms. Welsh answered correct it was optional to participate in it.

Mr. Coyle asked do you think the lack of that information has any bearing on the value of these opinions and comments.

Ms. Welsh answered absolutely not. If somebody asked her to sign a petition she would do further research before she would sign it.

Mr. Coyle asked if she assumed that all 800 people did further research.

Ms. Welsh answered yes.

Mr. Coyle asked this first one, he missed the name of the individual but he thought it was on the 21st, you were pointing to her statement. Can you tell me again who that was?

Ms. Welsh asked if he meant the one that starts, "at the age of 52?"

Mr. Coyle asked if that was the second or third page in.

Ms. Welsh answered the third page in on 4 /21 she had a Natacia.

Councilman Schmidlein said the first one discussed was on the second page the last paragraph, last signature, first name Russell.

Ms. Welsh said okay.

Mr. Coyle said that was a happy customer. The second one it talks about don't punish this bar for people showing up drunk. Do you recall saying that?

Ms. Welsh answered yes.

Mr. Coyle asked do you know what your licensee duties are when somebody shows up drunk.

Ms. Welsh answered she does know what they are. She was just reading comments from the public.

Mr. Coyle asked what would you describe the duties are.

Ms. Welsh answered to provide a safe environment while serving liquor. They do have people show up over intoxicated and we follow our policies and procedures and act accordingly.

Mr. Coyle asked if they are visibly intoxicated they are not to be on the premises, correct.

Ms. Welsh answered they do not allow them in no. We have called enforcement if they will not leave. They try to get in but they won't leave.

Mr. Coyle said nobody is trying to punish people for showing up drunk or punish your license for other people showing up drunk, correct?

Ms. Welsh asked that he repeat the question.

Mr. Coyle asked the city is not trying to punish your license because people show up drunk there, correct.

Ms. Welsh answered she thought the way they are interpreting it is that if somebody is showing up drunk at her door and we won't let them in and we have to call the cops and have them get this over intoxicated person, then it is being turned on us to say we did not serve him, we refused to let him enter into the establishment. We don't knowingly serve any intoxicated people.

Mr. Coyle said you were present during the testimony of Lt. Trouten, right?

Ms. Welsh indicated yes.

Mr. Coyle asked was there a single incident where the police showed up to contact a person that was outside your bar that the claim was that you had over served them inside the bar.

Ms. Welsh answered she didn't recall the exact incident because she wasn't there.

Mr. Coyle said Annie made a point. She was one of your commenters. "Girls can be safe at the Horseshoe," correct?

Ms. Welsh answered yes.

Mr. Coyle said you heard a lot of testimony about men not being able to be safe at your establishment, correct?

Ms. Welsh said she would disagree with that.

Mr. Coyle said that was all he had.

Mr. DeWitt asked if it was fair to say that everybody that signed the petition had been to the Horseshoe.

Ms. Welsh answered she would assume so.

Mr. DeWitt said some of them came right up and said so, right?

Ms. Welsh answered yes.

Mr. DeWitt said some of them signed the petition while they were there so you know they had been there.

Ms. Welsh answered yes.

Mr. DeWitt said for the record, the portion of the survey that has a picture of the Horseshoe Club on it and it says "Petitioning City Council of City of Elko, County of Elko, State of Nevada" on the top, he will number it 5001. The one that says signatures with a list that starts with Horseshoe Club United States and the date, that is 5002. The printout from the internet and starts with 4/21/2015 is 5003. He asked you had experience working in bars with him.

Ms. Welsh answered yes.

Mr. DeWitt asked how long have you been married.

Ms. Welsh answered 14 years.

Mr. DeWitt asked if they had been high school sweethearts.

Ms. Welsh answered yes.

Mr. DeWitt passed the witness.

Mr. Coyle asked would it have been fair for the Police Department to put out a survey and ask how many are in favor of shutting down the Horseshow and come take action based on that.

Ms. Welsh answered she feels a lot of the communication through the police goes directly through the Elko Free Press. She did see a survey on the Elko Daily Free Press asking if they should they take the liquor license or put restrictions on the liquor license?

Mr. Coyle asked should the police have listened to whatever that survey said and taken action based on that.

Ms. Welsh answered she wouldn't think so but you do need to listen to your community and you can see how many Elko, Nevadas are in this petition and that is your community. Those are the people that are here.

Mr. Coyle said you can see from the verified complaint and the evidence before the board today, how many people have been involved in fights and how many minors were in your establishment. He passed the witness.

Councilman Keener asked are the one that administered the survey.

Ms. Welsh answered yes.

Councilman Keener asked did you write the letter to the City Council.

Ms. Welsh answered yes.

Councilman Keener said in it on the first line, the City Council of the City of Elko, Nevada is planning to terminate the liquor license for the Horseshoe Club on May 19, 2015. He is part of this City Council and no one contacted me to ask me if I was doing that.

Ms. Welsh said in reading the complaint it says for action to terminate the liquor license.

Councilman Keener said you never asked him what his position was so he would submit she didn't do her research.

Ms. Welsh said when they were served with the formal complaint from the Chief of Police and he was bringing it to the City Council and that was put in the formal complaint was for the possible termination of the liquor license, that was the plan and that was reason for the formal complaint was brought up.

Councilman Schmidlein asked what would you do different to correct and fix your establishment. With all of the evidence presented if there was a second or third go around, what would you do different to fix the problem?

Ms. Welsh said that was a good question because they have never had anybody say, "I have been in your club while the officers have been in there numerous times." If anybody had said, "I think if you would do this differently this would help you and me." She would do it. She felt they are doing everything correctly. Unless somebody says this might help us and the community, she is all for it. That is the way she runs her businesses. She felt they have the 18 camera security system, we have given videos to the police and if there has been anything we have saved videos even if they hadn't requested it. We keep a log at the front door of any incidents that have happened. She felt with the Police Department we have a great rapport. They come in and assist them. Sometimes they are being punished because somebody acts out on us. If somebody kicks my glass front door and they break it, I'm going to call the cops whether I am at my business or at my home. If you were at your home and this person came to your home, what would you do? You would call the cops and ask for their assistance. You would ask them to help you out because you have this individual here who is acting a fool and you cannot control him anymore. It is not my job to sit here and I can only do so much. She can't control the choices that they are going to make. I can only control how I am going to react to the situation. We have our policies and procedures in the best way to react correctly to every situation. Nobody has 100% success

rate on that. If they notice something that we are doing wrong or could say this could help us, please speak up. Nobody has ever asked for a meeting or called Andy or reached out to them. That is why she felt so blindsided on February 9, 2014 when they got the formal complaint. It was frustrating because we were just going to invest over \$10,000 in new flooring because we want to maintain and keep up our business. We don't want a rundown club. We like a very nice clean club. It is disappointing that the same week that her husband came out here to put it in himself that we had to return that flooring so we could get a lawyer out of town and send that money out of town. She didn't feel that was good for the community.

Councilman Schmidlein asked if you were in our shoes, what do you feel from a disciplinary standpoint, if you were representing the public safety well-being of the citizens of Elko, with all of the stuff that has been presented, what do you feel from our position would a corrective measure be?

Ms. Welsh answered you should be able to say that the Chief sees this as a problem and you need to correct it. She is open to suggestions for any problems that can be identified. She felt there was a stereo type out there. She wished you guys would come in and actually see how the place is ran. She knows how things look on paper but until you walk in there you will not get the feel of it. When she first came to Elko and the Horseshoe it was a night and day difference. What she thought she was going to be walking into and what happened was totally different than what actually happens. You need to get in there and see what happens. A lot of the officers see that. They see we are following procedures and we are doing a good job. There are some grey areas they want improvement on. Show me how to improve on that and she will do it.

Mr. Coyle wanted to address one issue raised by Mr. Dewitt claiming somehow it was the fault of the city that Josh Carson isn't here. We agreed to exchange witness lists but there was no obligation by the city, and he never represented that he would subpoena or make other witnesses available.

Mr. DeWitt said he didn't think there was any dispute about what his testimony would be.

Mayor Johnson asked if it was based on what was in the packet about the award towards the business as far as the prevention.

Mr. Welsh said this had been going on for a year. There had been some electrical issues and we fixed it.

Mr. DeWitt called Andy Welsh back onto the witness stand. Have you had some interaction with the Fire Marshal?

Mr. Welsh answered yes, Josh Carson.

Mr. DeWitt asked describe that interaction.

Mr. Welsh answered he would come in for routine inspections. There would be some wiring he wasn't happy with. Curtains needed to be sprayed and we did that, no problem. During

Jamboree we worked with him numerous times and he brought in fire fighters so we could raise the occupancy. He stated that was getting hard to do because they were getting short staffed. We got a fire alarm system in there and it raised our occupancy. If he was capable of doing it he would fill the requests.

Mr. DeWitt asked you got some kind of an accommodation from him.

Mr. Welsh answered yes for putting in the fire alarm system.

Mr. DeWitt asked the back door of your establishment goes out to the alley and so does the back door to several other bars.

Mr. Welsh answered yes.

Mr. DeWitt asked do you have to have a condition of the back door so they can go out through it.

Mr. Welsh answered yes they can go out. It has to be accessible to go out as long as we are open.

Mr. DeWitt asked is that a fire requirement.

Mr. Welsh answered yes.

Mr. DeWitt asked can you put a crash bar on it.

Mr. Welsh answered they just need to be able to push it and it opens.

Mr. DeWitt asked if you can't totally prevent people from coming in that way. Is there a handle on the outside?

Mr. Welsh answered there is no handle on the outside.

Mr. DeWitt said you have taken care of that the best you can. This is one of those doors that says, "this door must remain unlocked during business hours" or something like that.

Mr. Welsh answered yes.

Mr. DeWitt said that is a fire regulation and the Fire Marshal told you to do that, correct.

Mr. Welsh answered yes.

Councilman Schmidlein asked if you were in our position in from a disciplinary standpoint for all the evidence that has been presented tonight, what do you feel that we should be doing to correct the situation.

Mr. Welsh answered he would be more than willing to listen and try to work together. Nothing sticks in his head because he truly feels that they handle stuff correctly. A lot of these reports you can turn them one way or the other. We want to get people fighting out and then we call the cops instead of restrain them in our place and call the cops. To us that is much more difficult to do. It causes a big scene. People leave and other people could get hurt. That one incident one guy got hurt on the way out but no matter what you do you can look at it and say you could have done this. None of these complaints that he recalls was there an incident that they did nothing. It just might be in someone else's opinion that we didn't do it correctly. In his opinion they were. Nobody has ever come to them and said they should do it this way. If you look at all of our reports we do everything the same. They fight and we get people out. We catch undercover people coming in with fake IDs. We restrain them and call the cops. He doesn't want them getting drunk, going out somewhere, get in an accident and come back at him. His policy is to hold them and call the cops. There are roughly five minor reports. Four of them they caught and called the cops. People come in all the time that are 40 or 50 and we ID them. There is even one report from the police officer that caught a minor in there and asked him how he got in. The minor said they just walked by. The police officer himself said that was impossible. We know how the Horseshoe IDs people. He takes pride in doing that stuff.

Mr. DeWitt asked if he would ask for his ID card if he went into the bar.

Mr. Welsh answered everybody. He gets hollered at all the time.

Mr. DeWitt said for the record he is 66. He handed out pictures and marked them 5004.

Mr. Coyle said it seems like we had direct exam and then the city waived and council asked questions. Are we having another direct exam?

Mayor Johnson thought that was a great question. Where are you headed with the pictures? Is it more questions of Andy?

Mr. DeWitt answered it is just to authenticate the pictures. All I am going to do is show him the pictures and say, "do these pictures fairly and accurately depict the inside of the Horseshoe?" I am reasonably certain his answer is going to be yes they do.

Mayor Johnson asked based on the Fire Marshal.

Mr. DeWitt said he could put these in through Mr. DeJesus. The City Attorney is looking at them.

Mayor Johnson asked where are you headed with the pictures.

Mr. DeWitt said he will wait until the next witness. He called Mr. DeJesus to the stand. He had Exhibit 5004 A-J. State and spell your name for the record.

ELY ED DEJESUS JR.

Mr. DeWitt showed him a pile of pictures that he has labeled 5004 A-J. You have been inside the Horseshoe many times.

Mr. DeJesus answered yes.

Mr. DeWitt asked do the pictures fairly and accurately depict the inside of the Horseshoe.

Mr. DeJesus answered yes.

Mr. DeWitt asked about his background. Where did you graduate from high school?

Mr. DeJesus answered Raton, New Mexico.

Mr. DeWitt asked what he did after high school.

Mr. DeJesus answered he joined the Marine Corp.

Mr. DeWitt asked how long were you in the Marine Corp.

Mr. DeJesus answered four years.

Mr. DeWitt asked what did you do in the Marine Corp.

Mr. DeJesus answered he was an MOS O311 soldier.

Mr. DeWitt asked what kind of function.

Mr. DeJesus answered he was stationed with guard platoon.

Mr. DeWitt asked after you got out of the Marines, what did you do.

Mr. DeJesus answered he became a police officer.

Mr. DeWitt asked where did you become a police officer.

Mr. DeJesus answered New Mexico.

Mr. DeWitt asked if that were the New Mexico Highway Patrol.

Mr. DeJesus answered yes.

Mr. DeWitt asked if he had to attend the Police Academy before he did that.

Mr. DeJesus answered he attended the Police Academy in Colorado.

Mr. DeWitt asked what did you do in the Highway Patrol.

Mr. DeJesus answered traffic.

Mr. DeWitt asked if he patrolled the interstate.

Mr. DeJesus answered mostly I25, Maxwell, New Mexico.

Mr. DeWitt asked how long were you with highway patrol.

Mr. DeJesus answered one year.

Mr. DeWitt asked what did you do after that.

Mr. DeJesus answered he became a correctional officer at Huerfano County Correctional Center in Walsenburg, Colorado.

Mr. DeWitt asked since then you came to work at the Horseshoe as the manager, correct?

Mr. DeJesus answered that is correct.

Mr. DeWitt said the active manager has to have a license. Did you know that?

Mr. DeJesus answered no he was not aware of that.

Mr. DeWitt asked do you know whether or not you are the active manager.

Mr. DeJesus said he may not be the active manager. Any decision he makes goes through Andy. He communicates with Andy every day. So if you had to pick an active manager Andy would be the active manager.

Mr. DeWitt asked if given the circumstances that have come up, the city tells you to get a liquor license, would you get one.

Mr. DeJesus answered yes. If the city says I have to get one then yes.

Mr. DeWitt asked if he knew of any reason he would be disqualified.

Mr. DeJesus answered no.

Mr. DeWitt asked if he agreed that Chance Armas was discharged and never rehired.

Mr. DeJesus answered yes. Chance Armas was discharged because of a suggestion by the Elko Police Department. We took the suggestion very seriously and Chance Armas was let go. When people go into the Horseshoe, even former employees, and a fight will break out and they think they can help. They are no longer employed there but they try to help anyway, just because they are used to the routine. It doesn't mean they are employed there, they just try to help out.

Mr. DeWitt said that might have been why somebody was mistaken into thinking he worked there.

Mr. DeJesus wasn't sure of any instances that would need him. Chance left right after his employment at the Horseshoe and went overseas. He is currently overseas today.

Mr. DeWitt asked do you think it is a problem for the Horseshoe that people are allowed to wander around downtown with open containers of alcohol.

Mr. DeJesus answered he didn't think it was a Horseshoe problem.

Mr. DeWitt asked if he thought it was a downtown problem.

Mr. DeJesus answered it depends on who you ask.

Mr. DeWitt asked you occasionally refuse entry to people that appear to be intoxicated, right?

Mr. DeJesus answered they do it almost every weekend, yes.

Mr. DeWitt said you have no way of knowing where they became intoxicated, do you.

Mr. DeJesus answered he does not ask.

Mr. DeWitt asked they could have had alcohol in their automobiles, they could have gone and gotten one to go from one of the bars and then went to another bar with the alcohol.

Mr. DeJesus answered that is correct.

Mr. DeWitt asked do you think the number of problem incidents that the Horseshoe has experienced has gone down in the last six months compared to the six months before then.

Mr. DeJesus said he did.

Mr. DeWitt asked why do you think that happened.

Mr. DeJesus answered the winter and time of year. A lot of the incidents that have happened that are named happened during special events such as wine walks and jamborees. People start drinking at 4:30 in the afternoon.

Mr. DeWitt asked what is a Wine Walk.

Mr. DeJesus answered the Wine Walks are done by the Elko Downtown Association where you walk into either the Commercial or Stockmen's, buy a badge and then you get to walk down to every business that participates and get a free glass of wine. Well, not free because they pay \$25 for the bracelet.

Mr. DeWitt asked so they pay money and they get a bracelet and a cup. You can tell by the bracelet that they are over 21 and they have established as much and they paid the money.

Mr. DeJesus answered that is correct.

Mr. DeWitt asked then they can go get a free glass of wine that they already paid for at any of the participating bars.

Mr. DeJesus answered that is correct.

Mr. DeWitt asked how many bars participate.

Mr. DeJesus answered he couldn't tell you. At least 7 or 8.

Mr. DeWitt asked how often do they have one of these.

Mr. DeJesus answered they have them every summer once a month for the summer months.

Mr. DeWitt asked and you said you have an increase in problems there.

Mr. DeJesus answered yes. Later on in the nights is where he sees an increase in problems.

Mr. DeWitt asked what about the motorcycle festival.

Mr. DeJesus answered the motorcycle festival is an all-day event. People are drinking all day.

Mr. DeWitt asked who puts on that.

Mr. DeJesus answered he was not sure. Elko? He is not sure who puts that one. He just works it.

Mr. DeWitt said he thought there were two incidents from last summer that were during that festival that the officer talked about.

Mr. DeJesus answered he believed so.

Mr. DeWitt asked so those are particular problems, you would say. Those wine walks and the motorcycle festival.

Mr. DeJesus said he didn't want to call them problems. They are harder to manage. Even for the officers it is harder to manage. They are even spread thin on those events.

Mr. DeWitt passed the witness.

Mr. Coyle asked what periods of time were you the manager at the Horseshoe.

Mr. DeJesus answered he thought he had been the manager at the Horseshoe for about two years. That is approximate because he doesn't know his rehire date.

Mr. Coyle asked he was the manager at one point and then he got rehired as the manager at another point.

Mr. DeJesus answered he was the assistant manager at one point and then he resigned his position to expand his horizons. He ended up bartending at another bar and then went back at the Horseshoe.

Mr. Coyle asked if it was fair to say he was the manager during that probation period in that prior disciplinary action.

Mr. DeJesus answered he came on while they were on probation. He wasn't part of the disciplinary action or the hearing before that.

Mr. Coyle asked your duties as a liquor licensee establishment, they don't change when special events are held around town, right.

Mr. DeJesus answered no. There is no special circumstance for that, no.

Mr. Coyle asked do you increase security when there is going to be a special event.

Mr. DeJesus answered they do.

Mr. Coyle said you were testifying about two events that the city brought up, concerning the Motorcycle Jamboree. Were you present when Lt. Trouten started testifying?

Mr. DeJesus answered he was.

Mr. Coyle said he began by testifying that two incidents back in April, back to back. Do you recall that?

Mr. DeJesus said he remember some of his testimony, yes.

Mr. Coyle asked those two incidents weren't involving a special event, correct.

Mr. DeJesus answered he was not sure if they involved a special event or not.

Mr. Coyle pointed out they were early April 2014.

Mr. DeJesus said there could have been something going on.

Mr. Coyle said one night there was a fight and the very next night there is a stabbing. Are those attributable to a special event?

Mr. DeJesus answered he wasn't sure. Was there a special event those days?

Mr. Coyle reminded him that he said these events increase during special events.

Mr. DeJesus said which statistics will prove.

Mr. Coyle said you should be anticipating those events as a responsible licensee, correct?

Mr. DeJesus answered they do anticipate them, yes sir.

Mr. Coyle asked Mr. DeJesus if he recognized he was under oath at the moment.

Mr. DeJesus answered he did.

Mr. Coyle asked if he was familiar with Lt. Trouten.

Mr. DeJesus answered he is.

Mr. Coyle asked Lt. Trouten has information that Chance Armas was in fact rehired. Do you know what might have led him to that conclusion?

Mr. DeJesus answered he doesn't. He did not rehire Chance Armas.

Mr. Coyle asked if he acted as a security guard after he was first fired.

Mr. DeJesus answered he didn't believe so.

Mr. Coyle asked you don't believe so but you don't know.

Mr. DeJesus said when Chance left, Chance left. He hasn't had communication with him.

Mr. Coyle asked why all the talk about sometimes people come back after they have left...

Mr. DeJesus said because that is true. When Lt. Trouten talked to him about Chance Armas he was right. Everything he said about Chance Armas was right and we let him go. Not only Chance Armas but also Sgt. Locuson talked to him about Chance Armas.

Mr. Coyle asked it is fair to say that you are the onsite manager of the Horseshoe.

Mr. DeJesus answered he is there, yes.

Mr. Coyle asked if issues come up he have to resolve them before you get your daily contact with Mr. Welsh.

Mr. DeJesus answered that is correct. When stuff happens, it happens fast.

Mr. Coyle said you address it as the manager then there may be an administrative discussion about what should we do and how was that handled and that sort of thing, correct?

Mr. DeJesus answered correct.

Mr. Coyle asked who is the manager when you are not there. Are you there 24/7?

Mr. DeJesus answered they are not open 24/7.

Mr. Coyle asked who is the manager when you are not there.

Mr. DeJesus answered they do not have assistant manager.

Mr. Coyle asked are you in charge of the security there at the Horseshoe.

Mr. DeJesus answered correct.

Mr. Coyle asked and you heard one of your security guards say these written policies haven't changed since probation, correct.

Mr. DeJesus answered that is correct. He heard him say that.

Mr. Coyle asked is that true.

Mr. DeJesus answered it is not that they haven't changed. He likes to say they have been amended. They haven't changed much. Are you working to get it better? We are. In fact we had a meeting where we decided we are going to throw out the aggressor out the back door while trying to keep someone inside so they don't go outside. We are working to make it better. It is not like we don't hear what the Chief is saying.

Mr. Coyle asked if he has had any formal training concerning running a security department.

Mr. DeJesus answered he was head of security at Rumbay Night Club in Grand Junction, CO.

Mr. Coyle asked what training did you have to obtain that position.

Mr. DeJesus answered in Grand Junction, Colorado he took a class called PPCT. He also took it while working in the prison system and take-down techniques. That is the only training he has had. He has never done any training in Elko.

Mr. Coyle said that was all he had.

Mr. DeWitt said he said he doesn't have an assistant manager. You are open now, aren't you?

Mr. DeJesus answered that is correct.

Mr. DeWitt asked who is running it.

Mr. DeJesus answered the bartender is Keri and the DJ is Matt Sharples.

Mr. DeWitt asked if that were the two people...

Mr. DeJesus said who left earlier.

Mr. DeWitt asked if he feels comfortable with him not being there right now.

Mr. DeJesus answered yes he does. Keri and Matt are two exceptional employees.

Mr. DeWitt asked how much business do you think you have right now based on your experience on a Tuesday night.

Mr. DeJesus asked what time is it.

Mr. DeWitt answered it was quarter to nine.

Mr. DeJesus answered you are going to have two dancers and maybe four to six customers.

Mr. DeWitt asked the two employees can handle that size crowd.

Mr. DeJesus answered he thought four to six people it should be okay.

Mr. DeWitt asked what is the occupancy limit on your place.

Mr. DeJesus answered 275.

Mr. DeWitt asked when it gets full how many people do you have.

Mr. DeJesus they have three bartenders, a bar back, a front door security, Omar is roaming security, a DJ, he is there and another security guard. About eight to ten people.

Mr. DeWitt noted the population of the employees varies according to the population of the customers.

Mr. DeJesus said you are correct.

Mr. DeWitt said that was all he had.

Major Johnson asked City Council if they had any questions without a response. He asked Mr. DeWitt if he had anymore witnesses.

Mr. DeWitt said he one other exhibit that he only had one copy of because they just got it. He went over the witnesses he had left, the employees. He offered to recite what he expects their testimony will be. He didn't think the City Attorney would object. It is a fact that they work there and if they lose their jobs they will be out of work. If they have children...

Mayor Johnson said we recognize that.

Mr. DeWitt said two of them have two children. One has one child. Only four out of the 15 have any other source of income.

Mr. Coyle said he would stipulate to that evidence.

Mr. DeWitt wanted to put in what he marked as 5005 which came from the city. He cross examined the Police Chief and asked him about the Red Lion. He asked if a licensee had this many calls. He has the incident reports from the Red Lion categorized by accident to welfare check in alphabetical order. He doesn't see that the city would have objection to this because the city gave it to him. He didn't want the council to think he was giving the Police Chief numbers out of thin air. He offered to write the dates on it.

Mr. Coyle said for clarification, those are call logs that Mr. DeWitt asked for yesterday. We did provide those. He stipulated that they can come into the record.

Mr. DeWitt said he had it but he wasn't sure who to give it to. A copy of picked up and taken out of the room to be copied. He indicated that unless council wanted to recall any of his witnesses he would rest.

Mr. Coyle said he would have more evidence concerning Mr. Armas and whether or not he was rehired but that is extraneous at this point. He does not have a rebuttal.

Mayor Johnson asked if they were to closing.

Mr. Coyle answered if that is where the city thinks they are.

Mayor Johnson asked City Council if they would like to hear closing and then a break. Do they want a break now?

Councilman Rice said he wanted to keep plowing through.

Mayor Johnson asked Mr. Coyle if he was ready for his closing.

Councilman Keener said he had one question that he felt was really important. Would it be possible to put the Chief back on the stand?

Mayor Johnson thought it would need to be brought up during deliberation.

Mr. Coyle pointed out that even with time elapsed since complaints were filed both Mr. Welsh and his wife got up there and they have no plan on how to change this and make it any better. That seems significant to him. They don't seem to be taking the lack of business responsibility allegations very seriously. We have shown plenty of documentation and evidence to show a lack of business responsibility. The security department, if you want to call that a security department, is so loose and so under trained and possibly even undermanned that with 275 people trying to get in there it is no wonder we are seeing this number of fights and this public safety issue and the resources of the city being utilized, minors slipping by when security is distracted. It seems the City has shown its case as set out in the First Amended Verified Complaint. You have your Chief who is asking for termination and that is what we are recommending. He brought two possible motions that he handed out to council (Exhibit "B"). One is a termination and one is less than termination. These are for consideration during deliberation.

Mr. DeWitt said he would be brief because he was sure council had a good memory. Revoking this license is an awfully drastic remedy. It will put 13 people out of work. It will take away Debra Mensing, a widow, take away her income. Jessie and Andy Welsh will lose their income. He had an alternative suggestion or two. The city attorney came up with the first constructive suggestion he has heard since we got here at 3:00 pm. He said the security department is undermanned and under trained. Tell us what to do in the way of training and in the way of having personnel there. If the city wants to say you need to have your security officers undergo, and there are companies that provide, and he can... there is a guy in San Diego named Bob Smith that has a company down there. He is a retired San Diego police officer. He does training for security in bars. They go around the country and he has seen him demonstrate some of the stuff they teach, for example when you have to restrain somebody which always happens in a bar. There are things you do so you don't injure the person. He teaches how to spot people that are intoxicated. If the city wants to put a condition on the license that says if there is more than X number of people in the business then you need to have a security person at the door that does nothing but security. If there is Y number of people in the place then you need some larger number of security personnel. He thinks Council ban people from having open containers downtown. He lives in Las Vegas. That is a problem there. On Fremont Street now you can only have alcoholic beverages that you purchased at one of the casinos. You can't go to the 7-11 and buy a six pack. That has helped. Fremont Street is a very well defined area. It has a skylight over it and zip lines and all kinds of things. You are not allowed to take open containers outside of that defined area. The idea of people walking from bar to bar to bar, they all park here where they can have a bottle of something in the trunk of their car so they can buy a drink here and go to the trunk of their car, fill it up and pound a couple more shots. By the time they get to the Horseshoe they just had a couple more shots and they go in there and twenty minutes later they can't see straight. Minors can go into the Commercial thing and buy a coke. Then they can go out to their car and pour some whiskey in it. Los Angeles has had a prohibition against open containers in a public place for as long as anybody can remember. He lived in Los Angeles for 25 years. So do most southern California cities. That would at least do something. The people who run around bar hopping as some people call it, they would at least be served alcohol by a bar that has a license that is not going to pour him a six ounce shot, which they might pour themselves out of the car. It is a lot cheaper to buy a bottle of whiskey than it is to buy a shot in a bar. Minors can usually get their hands on liquor. He thought one of the things that council

should do is consider an ordinance to deal with the problem that has been talked about. A lot of the fights didn't start inside the Horseshoe. He remembered one incident where somebody comes up to the door and he was drunk. The security guard said he couldn't go in the club. The next thing you know it is a fight. What can the Horseshoe do about that? Nothing. The City Council can do something about that but the Horseshoe can't. There are a lot of people that they turn down because you just can't go in there because they had too much to drink. There is the problem with people that have pounded a couple of shots and gone in there and the effects of it haven't materialized yet. Everybody knows that you take a drink or two or three you are not drunk right away. If your stomach is full it takes even longer. The drastic remedy of completely closing this place down, and he addressed it in the pleadings, for the record they have adult entertainment and they have nowhere to move. He asked the city where can they move this bar to where they are allowed to have adult entertainment too. They haven't responded to that request even though the law requires it. The focus is they want to cooperate and council needs to help them with getting the open containers out of the downtown and people storing alcohol in their cars or motorcycles.

Mayor Johnson called for public comments specific to the hearing.

Tony Still, 2265 Industrial Way, said everybody ends up at the Horseshoe. It is usually a younger crowd and it is the end of the night. The Horseshoe staff has their hands full. They have the best security in any bar in Elko. He has seen underage drinking at every bar in Elko. When you get people that get drunk they can get pretty crafty and hold the back door open and let their friends in or switch ID cards. That is everywhere and not just the Horseshoe. It is a tough job. If you shut down the Horseshoe that crowd that moves around will go somewhere else. That is the way it has been for 20 years. You hit all the bars and then you end up at the Horseshoe. It is a good place to dance. A lot of the people that have never been there think it is the nudie bar. The whole crowd of Elko goes there mostly to dance and shoot pool. It isn't about the entertainment up on the stage. That is ten percent. The rest of it is that is where everybody goes to congregate. He would hate to be the guy dealing with a whole bunch of drunks and trying to keep them all under control. Like he said, you can shut it down they are going to go somewhere else and they will do the same thing. The Horseshoe does have the best strictest security in Elko. There is always room for improvement. If the police and these people work together and come up with ideas it can always improve. As far as the open container, we have been down that road. This isn't Las Vegas and it isn't LA. It is Elko, the Wild West.

Brandy Sandstrom, 1617 W. Bullion Road, said she has listened to all of this and they went through this with Goldie's Bar. A lot of this is it's hard to control what people are going to do when they have been drinking. She has been to the Horseshoe plenty of times. They really do the best they can. Sometimes you have seconds from a raised voice to be able to react. They do their due diligence in getting the people out and keeping them separate. We cannot control every single thing that people do. Stopping alcohol from wandering around downtown isn't going to make a difference. People are going to find a way. They are crafty. In the long run communication would make a difference. Getting blindsided with a complaint. Communication would make all the difference in the world. Give them the opportunity to make changes. Give them suggestions. At this point they have no idea what to do beyond what they have been doing. Closing down a local bar that has been a staple for years won't do any good. People will just go

cause the problems somewhere else. You are going to get that big group of people that end up at the Horseshoe gathered somewhere else. They will not behave different because they are in a different place. If everyone works together instead of trying to hammer each place separately it would work out a lot better.

Lina Blohm, 495 Idaho Street, said her and her husband own Blohm Jewelers. They are in the same block as the licensee that has been discussed. We have had conversations about violations of liquor codes but then we have been talking about safe environment. She felt it was a paradox. What we really have here, adjacent to this place downtown is a green barricade roll down steel door. Why do you suppose that a business that has been a viable and probably one of Elko's oldest long standing businesses have to put a steel door across their entire façade when they close at night or on weekends? Then you have to ask yourself, right across the street is another retail business. Why has that business, after several broken windows, had to put bars in all of the display windows? Is that the kind of environment we want downtown? Is that family safe? We have spent thousands of dollars in the downtown beautifying. And for what? Because we are constantly picking up broken beer bottles and cleaning up vomit off the sidewalks and picking up cigarette butts. The reality is this, that this is what we are dealing with. This is a very difficult and hard question but at some point the hard decisions have to be made. This is for safety in the downtown. She offered to bring up surveys from stakeholders. They are calling for a safe environment. The studies are there that say the downtown is not safe after dark. You don't go downtown with your families after dark. That is not the kind of downtown Elko that any of us want.

Eva Owsian, 405 Court Street, wanted to address the safety issues. She has never had any issues but she has had issues with the Wine Walks. This is the first time in her business. She has never had any problem with the Horseshoe coming over but she has had issues with this. She is in the Old Map House. The first time she participated in the Wine Walk was the first time she ever got her business stolen from. She was really upset about that. They spilled in her business too. She had to have the carpets professionally cleaned. The last Wine Walk scared her. She opened her business door and there was blood all over her front door. The officers came right away. There were clothes. The officer was nothing but wonderful to her. He did mention to her that they had an over amount of fight calls because of the Wine Walk. Not once has her business ever had a problem from the Horseshoe, it has been from events. She feels the city is blaming the problems on the one place. It is a combination with alcohol. Maybe we should look at that and how we are letting alcohol be all over. She only has problems when they are walking around with alcohol.

Rachel Pete, 1620 Winchester Drive, said she has been sober for 15 years. She has been in Elko since 2000. She goes to the Horseshoe because it is a place to hang out. Everybody drinks everywhere and then says let's go to the Horseshoe. I'm sober and I am the Designated Driver. There has to be some kind of reasonable thing we can work out with the Horseshoe. Maybe we can have the City Police help them with their security, like beef it up or something. We can't just say their security sucks let's pull their license. What fairness is that? If we all work together the Horseshoe is a cool place to hang out at because a lot of people she knows go there to dance. Why take away the biggest dance floor in Elko?

Dwayne Jones, 453 Idaho Street, said he is the owner of Cedar Creek Clothing. His business is right across the street from the Horseshoe. He has been in business down there for 30 years. Daily he has to clean up the front of his store. Typically it is urine and quite often it is vomit and that sort of thing. Every day, before he can open his business and before he can have customers enter his store that is what he has to do. He has had to replace all of the glass in the front of his store. It is now all tempered glass. It had all been broken by beer bottles through the windows. Now he goes out and he sweeps up the brown glass off the sidewalk. He knows the beer bottles still come but the windows don't break anymore. That is his reality downtown across from the Horseshoe. He would love to have a shutter like Anita Franzoia has on her business. He needs it.

Ted Blohm, 495 Idaho Street, said he has been in this community for a long time. He doesn't have any regrets with people making business and making their own living but if they are breaking the law and they don't pay attention to what the law says that is a no-no. You have to take some kind of action against them. He is sure that the City Police are doing a great job. It is a problem that everyone is going to solve and he wished that we could solve it. If they are breaking the law you have to take action.

Mayor Johnson called for any other comments without a response. He called for deliberation by City Council.

Councilman Keener wanted to ask the Chief a question.

Mayor Johnson wanted to start with some deliberation. Let's see what we got. He has heard enough of the testimony and we have gone through the closing. There is a serious issue and the issue is in the future of the Horseshoe and the plan to get the Horseshoe on track. That is one thing he did not hear tonight. What he did hear a lot of was tell us what to do and we will do it. The Horseshoe is in a reactive business plan. We need owners that are the ones that say this is what we need to do and how to do it. For the City of Elko to continually come with what needs to happen to get is changed is not working. He has doubts that a business plan will be developed by this owner that will turn the Horseshoe around. He will listen to other deliberation but right now with what he has heard he has to side with the Chief in revoking the liquor license.

Councilman Rice said there was some talk that there had been a lack of communication. He started talking about this with bar owners back in the fall of 2012 when Don Zumwalt was the Chief. The first thing that happened was the Chief sent a letter to each bar owner in downtown Elko about addressing the issues of extreme violence that was taking place downtown. He went from bar to bar with the Chief and spoke with either the owners, the managers or the bartenders on duty about the problems we were having. Each one acknowledged the problems that were occurring in downtown Elko in the bar scene. The Chief followed up after that with another letter. We have been talking about this since at least 2012. It is an ongoing problem. Now we are talking about the problem that is happening and continues at the Horseshoe. They were on probation. The problems were not solved; they have escalated since then. The arguments about why this is happening all seem to point at it being somebody else's responsibility. The city doesn't have the right liquor ordinances. The per capita argument that was before us threw other organizations/bars under the bus and it didn't hold any water. Horseshoe security won't file

complaints or have people arrested when fights occur inside their establishment. If they were serious about changing behavior they would have these offenders arrested. That might change their behavior. The Horseshoe has done nothing to do this. Both owners said they don't know what to do and they don't have a plan. You simply don't have any solutions in mind. He is in agreement with our Chief's recommendation to terminate the liquor license of the Horseshoe.

Councilman Schmidlein pointed out that anybody that holds a liquor license; it is a privilege to have a liquor license. There are a lot of responsibilities that go with it. Many of those items have been pointed out tonight about what lacking items have been taken care of on a liquor license. I asked what are you going to do to fix the situation. It is not our responsibility to fix this. It is not the officer's responsibility to tell you how to run your business. That is the responsibility of the business owner, what you have to do to do your due diligence to run a day to day operation. Minors in the establishment; it goes on in several bars but we are focused on your bar tonight discussing what your bar operation does. At the Jamboree last year there were over 25 arrests for underage drinking and everything else. Fights are endless and all over downtown. You need to handle what takes place within your establishment. There was some testimony tonight that took place outside your premises. It is irrelevant at this time. There are many fights that have taken place in your establishment. Over serving; it goes on all over the place. When I go to a bar I go there to have a drink. I go to enjoy myself whether I am with my wife or whomever. You have a responsibility of serving alcohol in your establishment. If John Doe comes in from outside or wherever, I wouldn't let him walk in the door. There were some fights that took place outside, people waiting to get into your establishment but that is something you need to take care of as a business owner. That is your responsibility. 4-5-28 you have section A; establishment to be a clean and orderly place of business. That is your responsibility in the liquor code. Item B; knowingly allow or permit any of the following persons to remain, a person who is visibly intoxicated, any person exhibiting knife, gun, pistol, deadly weapons, or whatever, any person whose conduct is offensive. Item four; a person who provides liquor to another person who is visibly intoxicated. That is responsibilities of bartenders. It is not the responsibility of Council Members to allow the downtown bars to consume our Police Officers. They all mentioned tonight that you have 7 or 8 officers on duty and 5 of them are downtown. If there is a domestic violence on the other side of town at a residence who will respond to it? The security issues have been talked about tonight regarding a former security guard. That individual is gone. He still feels that individual should be prosecuted. He does not feel that they understand the Elko Liquor Code and what the responsibilities are. There were questions asked that you could not answer. He doesn't buy the lack of communication. The officers were doing their due diligence to work with the owners. You didn't understand the repercussions of what was going to come when the time came. He doesn't see a reactive plan at this time. He would accept a 60 day suspension and see a full blown plan put into place, what security measures will be implemented, and if you can prove the plan would work then it can come back to council. We have a responsibility here.

Councilman Keener read the first sentence of the mission statement. "The Mission of the City of Elko is to provide its citizens with a safe community." In the proceedings this evening he felt the city has demonstrated beyond doubt that the licensees' establishment is a threat to public safety and lacks satisfactory business responsibility. Even with security personnel the licensee has nearly double the number of fights than the next highest establishment. Being the least worst

offender is not a defense. We could have had a much different conversation this evening. If when the licensee was notified of the problems they could have done a number of other things and then come back to the meeting with a plan of where they are going to go. Instead they lawyered up and changed the dynamics of the conversation. He was leaning towards licensee revocation.

Mayor Johnson wanted to make good use of time. He also wants to come to the right decision. We have a serious problem. Councilman Schmidlein has made a suggestion. He didn't know if there was support from other councilmembers. The City of Elko has tried repeatedly. We just don't seem to get to a solution. He is not interested in increasing license fees to become a regulation board. He is relying on owners to be the folks with the vision on how to maintain downtown. Maybe it is not fair that Elko has allowed this type of use and then to have one licensee facing revocation of the license. There is an environment that the Horseshoe is a result of. It is a reactive type business plan that they have right now. He is ready for more discussion if that is what council wants but he is also ready for a motion.

Councilman Rice felt Councilman Schmidlein had made some terrific points. He can't go for a suspension of a term of time to regroup. The Mayor said we are in for a catastrophic event. I say we have had several catastrophic events that warrant termination of their liquor license. We have given them an opportunity to take the time and make changes during the probation period but they continued to operate the way they did in the past. After the probation period things got worse. Tonight was the first time he saw the polls presented. The poll in the Free Press was in support of termination. He has heard from constituents and downtown business owners that are tired of doing what Dwayne described having to do day after day. It is in the best interests of our community to terminate this license.

Mayor Johnson asked for a motion.

Mr. Coyle said as we proceed to that point if council could find specific violations and take action based on that.

There was some discussion about what sections of the liquor code should be noted in the motion. The proposed motion for termination was reviewed by council.

**** A motion was made by Councilman Rice, seconded by Councilman Keener, that the Elko City Council Board hereby finds that the licensee and persons with active management of the Horseshoe have violated the Elko Liquor Control Code in the following manner during the period of 2/9/14 to 2/9/15: permitting or allowing the Horseshoe establishment to be of such a nature as to have far too much violence and fighting, and the serving of visibly intoxicated persons, associated with the operation, causing public safety to be at risk and violations of the duties of liquor licensees in the city, as shown by the testimony and evidence produced at this hearing and disregarding any other information contained in the informational record produced by the parties; and/or, during the same period of time and established from the same body of evidence, by permitting or allowing too many instances of minors loitering in the bar, minors possessing alcohol in the bar, minors being able to pursue purchases of alcohol in the bar, minors having alcohol**

assimilated in their bodies and having consumed alcohol in the bar, amounting to unacceptable public safety risks – all of which is grounds for termination as found in the following codes:

- **4-5-13A4:** licensees permitting violations which adversely affect the licensee’s fitness to fulfill the requirements of the liquor license or code, in respect to lacking the ability to ensure the requirements of the code be followed due to the foregoing established facts;
- **4-5-13A6:** licensees have, due to the foregoing established facts which have been presented at this hearing this evening, May 19, 2015, committed acts which would be sufficient for denial of an application for a license due to the foregoing established facts since a lack of satisfactory business responsibility of the licensees and person in active management of the operation is a ground for denial of a license under 4-5-6A and 4-5-9A, of the City Code, which includes in part also consideration of reasonable likelihood of continued violations in light of the responsibility of the licensee and previous violations;
- **4-5-13A8, & A9:** licensees have violated, due to the foregoing established facts presented at this hearing this evening, the Elko Liquor Control Code by further permitting or allowing the operation of the business in other than an orderly manner under 4-5-18A for allowing tumultuous and offensive persons on the premises, fighting or challenging to fight, excessive degrees of violence or aggression, and/or permitting visibly intoxicated person to remain on the premises; and,
- **4-5-13A5:** managers or employees have caused or permitted violations of the Elko Liquor Control Code while acting in connection with the licensees business for allowing tumultuous and offensive persons on the premises, fighting or challenging to fight, excessive degrees of violence or aggression, and/or permitting visibly intoxicated persons to remain on the premises.

Based on the foregoing finding and conclusions, the license at issue in this matter is hereby terminated. This termination shall be effective immediately and shall be permanent as provided in the Elko Liquor Control Code.

The motion passed unanimously. (4-0)

After the motion, before the second and the vote, Councilman Schmidlein asked if they needed to include a specific date on there or is immediately right now this minute.

Mr. Coyle said immediately is right now.

Councilman Keener asked if they could say “close of business on May 20, 2015, which will be after tonight’s shift?”

Mr. Coyle answered yes.

Councilman Rice amended his motion to say “**close of business on May 20, 2015.**”

Councilman Keener seconded the motion.

Councilman Rice further specified “**close of business at 4:00 a.m. on May 20, 2015.**”

Councilman Keener upheld his second with similar findings.

Mayor Johnson clarified they want the license terminated on what day?

Councilman Rice said his intention is that when business is done this evening that it be terminated.

Mayor Johnson recommended that it be closed now. He doesn't want the police to deal a situation early in the morning.

Councilman Rice agreed and amended the motion back to “**immediately.**”

Councilman Keener seconded the revised timeframe for termination.

Council voted on the motion.

Mayor Johnson said the City Attorney is also recommending that we firm up with the motion of our decision to make the evidence be between the February timeframes and why we base that. The suggested motion is: motion to accept the City Attorney's argument as set forth in the opposition to motion to strike and evaluate violations taking place within one year period prior to the First Verified Complaint as modified by the Amended Complaint.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to accept the City Attorney's arguments as set forth in the opposition to the motion to strike and evaluate violations taking place within the one year period prior to the First Verified Complaint.**

The motion passed unanimously. (4-0)

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**

There were no public comments.

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

Mayor Chris Johnson

Shanell Owen, City Clerk