

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

SS August 13, 2013

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, August 13, 2013.

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 Rich Perry
Councilwoman Mandy Simons
Councilman Robert Schmidlein

City Staff Present: Curtis Calder, City Manager
Ryan Limberg, Utilities Director
Dawn Stout, Administrative Services Director
Ben Mangeng, Information Systems Manager
Shanell Owen, City Clerk
Matt Griego, Fire Chief
Josh Carson, Fire Marshal
Mike Hecht, Deputy Fire Chief/Fire Marshal
Dennis Strickland, Public Works Director
Fritz Sawyer, WRF Superintendent
Vince Smith, Water/Sewer Superintendent
Jeremy Draper, Civil Engineer
Doug Gailey, Human Resources Manager
James Wiley, Parks and Recreation Director
Dawn Leyva, Recreation Services Manager
Jerod Linder, Recreation Coordinator
Mike Hess, Landfill Superintendent
Rick Magness, City Planner
Lorraine Martinez, Accounting Supervisor
Ted Schnoor, Building Official
Don Zumwalt, Police Chief
Mark Gibbs, Airport Director
Dave Stanton, City Attorney
Diann Byington, Recording Secretary

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

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

There were no public comments.

APPROVAL OF MINUTES:

July 23, 2013

FOR POSSIBLE ACTION

The minutes were approved by general consent.

I. PRESENTATIONS

- A. Presentation of a Retirement Plaque for Daniel Bledsoe.

Mayor Johnson presented a plaque to Dan Bledsoe for recognition of his dedication to the City.

Dan Bledsoe just wanted to say a lot of things had changed since he was hired. The one thing that won't change with the Elko Fire Department is customer service. You guys, keep it up and do good.

- B. Presentation of a Community Appreciation Plaque for Ramon Zugazaga.

Dawn Leyva said the AYSO Soccer petitioned the City Council to name the upper field at the John Hogg Soccer Complex after Mr. Zugazaga. She presented a certificate of appreciation to Ramon Zugazaga.

Mayor Johnson thanked Mr. Zugazaga for all of his dedication.

II. PERSONNEL

- A. Employee Introductions:

- 1.) Kyle Stone, Firefighter

Present and introduced.

- 2.) Dale Johnson, Assistant Water Sewer Superintendent

Present and introduced.

- 3.) Larry Jacobs, Landfill Equipment Operator

Present and introduced.

- C. WRF Biological Upgrade Project Presentation: **NON-ACTION ITEM - INFORMATION ONLY**

JD Simmons, Project Manager for WRF Upgrade Project, gave a presentation on the status of the project. (Included in Agenda Packet)

Councilman Perry asked from the standpoint of completion of the project, it fell behind on concrete, is there now a plan to complete it by the end of this year?

Mr. Simmons answered the original plan had us completing by the end of this year. We've asked for a recovery schedule. He can't answer when they will be done until he gets that recovery schedule.

Councilman Perry asked the major components are completed but they are in Salt Lake? (yes)

Ryan Limberg, Utilities Director, said there will be some walkway widening that will be brought back.

Councilman Schmidlein asked on their recovery schedule, if they don't meet the deadlines will liquidated damages be imposed?

Mr. Simmons answered yes. Currently, if they don't meet the contract deadline, and when I asked for a recovery schedule they have offered up that they have some contract days that they are wishing to get back from us. If they don't meet the contract days liquidated damages will come into play.

Mr. Limberg said we will bring that back to City Council for your direction if you want to proceed with those liquidated damages.

D. FEMA Presentation: **NON-ACTION ITEM – INFORMATION ONLY**

Jeremy Draper, Civil Engineer, gave a presentation. (Exhibit A)

Councilman Rice asked the \$300 dollar per year increase is what they see now and it will become incrementally larger? (Yes)

Councilman Perry asked would the storm water management plan we have been working on have any value in that CRS.

Mr. Draper answered he would have to check on that. It may have some value to it.

Councilman Schmidlein asked overall what has triggered all this. Where is all that water supposed to be coming from that's triggered the entire flood plain to be expanding as large as it is?

Mr. Draper answered the flood plain is not expanding. That's part of the original map shown on the screen. The legislation is coming from Hurricane Katrina and when those disasters happened back east. They didn't have the money in FEMA to actually cover their costs.

Councilman Perry said he went to the FEMA presentation here. What's really happened here is FEMA has pulled the federal subsidy on this.

III. APPROPRIATIONS

- B. Review, consideration, and possible direction to Staff to solicit bids for the Reuse Site Fencing Project, and matters thereto. **FOR POSSIBLE ACTION**

The acquisition of approximately 800 acres of BLM property through the R&PP process and the purchase of approximately 40 acres from Jordanelle Third Mortgage is complete. Perimeter fencing and signage is required for this property. Last year, the northern boundary along Bullion Road was completed. This fencing project is budgeted in the Fiscal Year 2013/2014 Budget. FP

Fritz Sawyer, WRF Superintendent, explained this is a budgeted item. We would like to fence the southern boundary of the property we've gotten from BLM.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to approve the project bid solicitation.**

The motion passed unanimously. (5-0)

- C. Review, consideration, and possible authorization for Staff to solicit bids to slip line approximately 800' of sewer main from Ruby View Drive downstream to golf course property, and matters related thereto. **FOR POSSIBLE ACTION**

This section of sewer main was recently televised and found to be in need of maintenance (small cracks and roots were observed in the pipe). This project is budgeted in the Fiscal Year 2013/2014 Budget. Slip lining has proven to be an effective method of maintaining sewer lines, and is less costly and less disruptive than replacing pipe. RL

Ryan Limberg, Utilities Director, explained this was budgeted last year. We televised the sewer line in the last few weeks and found some minor cracks in the line as well as roots. We would like to proceed with this slip lining project. It has proven up well on a project we did on Country Club and the area of McDonald's. The flows from the three different streets all tie into Ruby View there and then it all leaves out through the Golf Course. We also noticed some high flows in that sewer main on the north side. A high proportion of that flow seems to be coming from the Indian View Heights property but it doesn't seem in relationship to the number of homes there. It seems higher than what it should be for that number of homes. We will be investigating that.

Councilman Perry asked do you want to proceed with the slip line other than finding an answer to the high flows and determine if the diameter of that one line is adequate.

Mr. Limberg thinks it is an important project to do. He recommended approval of the slip line.

**** A motion was made by Councilman Perry, seconded by Councilwoman Simons, to approve soliciting bids to slip line a portion of sewer main from Ruby View Drive approximately 800 feet east onto Golf Course property.**

The motion passed unanimously. (5-0)

- D. Review, discussion, and possible approval to authorize the Parks Department to purchase playground equipment from a shared governmental contract, HGACBuy (Houston Galveston Area Council), in accordance with NRS 332.195, Joinder or Mutual use of contracts, and matters related thereto. **FOR POSSIBLE ACTION**

The Parks Department was approved to purchase playground equipment for the current fiscal year with a budget of \$30,000. NRS 332.195 authorizes the use of joinder contracts within or outside the State of Nevada for the acquisition of equipment with the authorization of the contracting vendor. Playworld Systems has provided authorization for the use of the HGACBuy contract to the City of Elko for the purchase of this equipment. A copy of the purchase amount has been included in the packet. JW

James Wiley, Parks and Recreation Director, explained this will be installed at Mountain View Park. He recommended using a joinder contract similar to what we did a year ago. We have a budget of \$30,000. The price is \$19,000 and some change. The remainder of the money would go to installing the equipment.

Councilman Perry said this is one of the items that was in the budget. Is this the same stuff we put in the Main City Park last year?

Mr. Wiley answered its similar and won't be exactly the same. There has been some vandalism and it's time to replace it.

**** A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to authorize staff to purchase playground equipment through the governmental coop contract HGACBuy according to item 3D.**

The motion passed unanimously. (5-0)

IV. UNFINISHED BUSINESS

- A. Review and consideration of submitted data and/or arguments as to whether proposed Liquor Code Ordinance No. 777 will impose a direct and significant burden upon a business or directly restrict the formation, operation, or expansion of a business, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to NRS 237.080, the City of Elko notified trade associations or owners and officers of businesses, which may be affected by the Ordinance. Responses were due to the City by 5:00 p.m. P.D.S.T. on Friday, August 2, 2013. No responses were received. After making a determination regarding the proposed rule, Staff will prepare a Business Impact Statement to be considered during a subsequent public hearing. SO

Shanell Owen, City Clerk, explained to council what actions have been taken and what actions were needed.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to declare that there is no direct or significant burden and direct staff to bring back the business impact statement and ordinance at a subsequent meeting.**

The motion passed unanimously. (5-0)

After the motion and before the vote, Dave Stanton, City Attorney, asked was the motion that there was no burden and we are going to prepare a business impact statement?

Councilman Rice answered that there is no direct or significant burden so I guess that doesn't require a business impact statement?

Ms. Owen said we prepare the business impact statement and in that statement it notes that the council meeting on this date declared that there is no significant burden.

- B. Review, consideration, and possible action to waive the requirement for curb, gutter and sidewalk on the north northeast side of State Route 227, and matters related thereto. **FOR POSSIBLE ACTION**

The Development Department is requesting Council direction with regard to the installation of curb, gutter and sidewalk on the north northeast side of State Route 227 from Pinion Road to Powder House Road. Staff does not believe the extension of curb, gutter and sidewalk from Pinion Road to Powder House Road is feasible. The Nevada Department of Transportation right-of-way varies in width over the length of the road segment and there are related slope issues making the installation of sidewalk impractical. Staff believes the requirement for curb and gutter should be determined by the needs of the Nevada Department of Transportation. Pedestrian access is more appropriate on the opposite side of the State Route. NDOT agrees that that a multi-purpose path from Pinion Road to Errecart Boulevard is a more logical approach. The multi-use path would be 10 feet in width. NDOT has requested the City require development on the north side of the State Route to complete an equivalent public improvement on the south side of the r-o-w. SAW

Jeremy Draper, Civil Engineer, said we do have Mr. MacRitchie here in the audience as well as his engineer. This was brought before council a couple of meetings ago to actually waive the requirement but at that meeting we did have Mike Murphy from NDOT present. We asked him the question, "What does NDOT require for pedestrian access?" At that meeting they did state that they are now requiring pedestrian access to be built along their right-of-ways. He passed out a letter from NDOT, (Exhibit B) and he read the letter into record.

Councilman Rice noted in other words they would split the costs.

Scott MacRitchie, Jordanelle Third Mortgage pointed out how property owners have not done any improvement work along Lamoille Highway even though they may have been required to do it in order to get their Certificate of Occupancy. He used the hospital as an example and asked if there was a deferral.

Mr. Draper said he would have to do some research on that.

Curtis Calder, City Manager, agreed and wasn't sure if the City did that or not.

Mr. MacRitchie said he isn't opposing putting in 5ft wide walkway. Will the hospital match what he does and be made to comply? Do other businesses have similar agreements that he doesn't know about?

Mr. Draper suggested tabling the item to allow staff adequate time to review his concerns.

Mayor Johnson said he was putting up a fair point. He's not saying he's not going to.

Councilman Perry asked how did the path get built in Spring Creek along the State Highway.

Councilman Rice thought it was part of the state budget.

Mr. Calder thought RTC contributed to the pedestrian pathway. He vaguely recalled RTC participation.

Councilman Perry noted there is no egress or ingress onto the highway from that property. You aren't building a sidewalk for anyone coming out of the project. People ride bicycles across that hill every day and if there was a path they would probably get off the main road and ride it.

Councilman Schmidlein asked going up further up the summit on future development is it proper to have sidewalk all the way on that south side?

Mr. Draper answered technically you can develop both sides all the way up.

Councilman Perry said it needs a plan from NDOT all the way up.

Mr. MacRitchie said NDOT says I have to comply but they don't tell me what the plan is.

Councilman Perry said we need to write a letter to NDOT and ask them for a plan. Treat it like a street light where there is development.

Councilwoman Simons thought they should table this for the time being and direct staff to get in touch with NDOT. We need to be uniform and we need to make this a requirement that nobody can get out of.

Mr. Draper said this is our City of Elko Bikes and Pathway plan. It does show the bike paths on there. It is being shown on the west side of Lamoille. We do have a plan and it is out there. (Exhibit C) He has been working with NDOT over the last year while they update their Urban Bicycle Master Plan that has design guidelines in it.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to table Item IV.B. which is the Development Department's requesting Council direction with regard to installation of curb, gutter and sidewalk until such time as we have a design and**

detail from NDOT with what their expectations are and have researched the other requirements for curb, gutter and sidewalk at properties in the vicinity.

The motion passed unanimously. (5-0)

- C. Review, discussion, and possible action regarding the ranking and selection of alternative Police Department Facility locations and/or facilities, as presented by Lombard-Conrad Architects, and matters related thereto. **FOR POSSIBLE ACTION**

The City of Elko has fielded numerous inquiries with regard to the proposed Police Department Facility. In some cases, unsolicited proposals have been submitted to the City for review. On May 28, 2013, the City Council retained Lombard-Conrad to assist in the development of proposal criteria and the evaluation of alternative locations and/or facilities. Lombard-Conrad representatives will be present at the City Council meeting to discuss their findings and recommendations. CC

Curtis Calder, City Manager, introduced Russ Moorehead. He was the original designer for the project that was anticipated to be located at the Kittridge Canyon site. With him is Byron Smith who is the local rep from Lombard-Conrad.

Russ Moorhead, Lombard-Conrad, explained his presentation (included in agenda packet).

Byron Smith, Lombard-Conrad, continued with the presentation and explained the pros and cons of each site.

Mr. Moorhead talked about his overall analysis.

Councilwoman Simons asked regarding the Bailey site does that include the purchase of the property next to Les Schwab that we would need.

Mr. Moorhead answered we don't know because that is still under negotiations and it may be a possibility and would more than likely be an additional cost. He continued with his overall analysis explanation.

Councilwoman Simons asked how necessary is it really to be that close to the jail? Are there big benefits?

Chief Zumwalt answered it is not necessary. We take very few people into custody from our building.

Rick Magness said with regards to planning, he hoped there was an opportunity to work on some type of L.E.E.D. approach to building and site. Was that taken into consideration with any of these sites?

Mr. Moorhead answered redeveloping a site is an advantage for L.E.E.D.. Any time you repurpose a building you are being sustainable. There are points available with all of the sites.

Mr. Calder said some time ago when the discussion of the Police Department came up, staff had worked with a financial advisor to present to us the financing options. The primary way would be through bonding. We do have 11 cents left in our available tax rate. The issue with bonding is that we will have to put it on a ballot and get voter approval. The next general election would be 2014. If you were going with the Kittridge Canyon site new construction, the only way you would be able to afford it is to tap into the Ad Valorem rate. There were several options explained and the least favorable would be a lease option because it's the most expensive over time. We did retain some cash and that was put in our facility fund. We have a fairly sizable down payment whatever direction we go.

Councilman Rice asked would we be obligated to hold onto the Kittridge Canyon site or can that be disposed of to help off-set the cost.

Mr. Calder said the school district has indicated an interest in that property if the city does not use it for city purposes. There is also some value to the existing police site.

Councilman Perry said one building is significantly larger than what is required. You could have other departments in it. Have you given that any thought to that?

Mr. Calder answered we have talked about that. One that came to mind was the Recreation Department is located in the old fire department building. Public safety, maybe Fire Department could utilize some of that space. Maybe locate some of the development folks. We haven't analyzed that yet.

Councilman Perry felt this is a decision between two properties. Regarding the financial part of this, if indeed one of these properties is a lease to buy that raises a red flag. That is a piece of city property that was sold. The city would lose the tax base on that. He wants to look at these properties and decide this at the next meeting.

Jim Winer, Coldwell Banker, 700 Idaho Street, said one of the items that was a negative on the CAPPS land was that things were too small and couldn't be read. He handed out a copy of the proposal (Exhibit "D") and hung big copies of the maps on the wall. He explained further about the property, utilities, and the proposal.

Councilman Perry said looking at this map there are green dots that go up where Silver Street doesn't exist. Is the CAPPS group proposal having all of this paved as part of this project?

Mr. Winer answered they have to do their portions of the extensions that will be required with any develop. They intend to extend Silver Street out to the edge of their property.

Councilman Rice asked is this piece of property in the redevelopment area?

Mr. Draper answered yes it is.

Chief Zumwalt said he is so thankful we have this problem. Don't be afraid of the extra space. When this process was started seven years ago it was said that the city would grow. In his opinion, the city has already reached 2015 projections. The Police Department staff wise hasn't

grown any. If the city continues to grow then city staff needs to grow too. He wants the best situation for the city. All three locations are fine and all three would work.

Doug Gailey said he had a concern with having the jail and the Police Department so close together. They say you should not build next to an Airport, a freeway and a railroad. We have dispatch and the Sheriff's Department and potentially the Police Department all right in that area. From the emergency management perspective it may make sense to have it in a different location.

Glen Guttry, Elko County, said this has gotten complicated. He thinks his proposal is the best one. He has two other proposals to buy the property and they will need an answer soon.

Norman Rockwell, Elko, said he would hate to see the city make a decision based on the information presented tonight. He felt the CAPPs proposal is the best one so far and made the most sense in the long run.

John Bailey, Bailey and Associates, said they have a BLA agreement with Les Schwab to take down that additional $\frac{3}{4}$ of an acre. I am one of those L.E.E.D. accredited guys that gets excited about doing buildings that way and would look forward to pursuing that avenue. He would like an answer soon because his project has been on hold.

Mayor Johnson asked do we have a timeframe. Would we still be in it in 2 more weeks? Both Glen Guttry and John Bailey nodded in agreement.

Councilman Rice said he would appreciate the 2 more weeks to work out some more details on the properties.

Councilman Schmidlein said he would like to see a little more detail broke down. There are a lot of pros and cons to all three.

Councilwoman Simons said there is one site that stands out to her at this time. She would like to see the finance options. No bonding and no leasing.

Councilman Rice said if we could take a look at that Kittridge Canyon site and make a deal with the school district. What's the value of Kittridge Canyon?

Mr. Calder said with a two week window most will be rough to get. He suggested re-engaging the financial advisor with Nevada State Bank. We can refine it within two weeks. We do need some answers to some key questions and some direction from the council. For example, if the Bailey building is a lease only deal and the city doesn't want to do a lease then we need to know that.

Councilman Perry said this comes down to a lease vs. buy. He suggested they short list this down to two choices.

Councilman Rice agreed and said he is weighing the Bailey and Good Morning Furniture choices.

Mayor Johnson wanted two weeks and let's leave the options open. He suggested make a motion to see if there is support for that.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to short-list two of the four options here which would be the Bailey and Good Morning Furniture options for siting the Police Department and direct staff to do a financial analysis on both to clarify the question of cost and timing and how we would actually finance it.**

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

After the motion and before the vote, Mayor Johnson said he thought the answer comes with any of them. He isn't satisfied and wants the financing to be nailed down. How much will we saved from not having the old PD station?

Councilwoman Simons asked is the plan to take down the old Police station and sell that property?

Mayor Johnson answered the city doesn't do well in real estate management. I would say sell it or make it a vacant lot.

Councilman Perry said he wants to make it simple for staff. These other two options will take years to make happen.

Council voted on the motion.

VII. 6:00 P.M. PUBLIC HEARINGS

- B. Second reading, public hearing and possible adoption of Ordinance No. 775, an ordinance amending Title 2, Chapter 13, Section 3 of the Elko City Code entitled "SIDEWALK, CURB AND GUTTER CONSTRUCTION", hereby permitting authorized tenant or lessee application for a sidewalk, curb and gutter waiver; requiring determination of a waiver by the City Council; requiring the waiver application to be based on evidence showing that it is impractical to install curb, gutter and sidewalk; deleting provision for appeal of the decision by the planning commission; deleting the temporary waiver provision, and matters related thereto.
- FOR POSSIBLE ACTION**

The code amendment is proposed to eliminate the conflict with regard to Planning Commission decisions prohibiting the Planning Commission from incurring a financial liability in the name of the City not provided for under Title 3 Chapter 4 of City code. The proposed amendment to the code also eliminates temporary deferrals. Staff recommends eliminating the temporary deferrals for the following reasons:

- The City is experiencing difficulties with the responsible party fulfilling its contractual obligations.
- The deferral agreements are not secured.

- The deferral agreements do not run with the land and the City has no viable recourse if the property changes ownership for any reason.
- The program does not appear to be manageable based on the above concerns. SW

Jeremy Draper, Civil Engineer, said we want to remove the waiver requirement if there are any waivers to be granted. It will go straight through City Council and not through Planning Commission. We also want to get rid of the temporary deferral. We have had nothing but issues trying to call in those deferrals. If there is a viable reason for a waiver that decision should be decided by City Council. Currently deferrals are done through the City Engineer's office which would be under his office. It has been handled through Planning Department in the past. There has been some issues with that.

Councilman Rice asked doesn't this change it that a waiver is granted by City Council. No deferrals and only waivers granted by City Council.

Dennis Strickland, Public Works Director, said his impression was that this would get rid of the deferrals. There would be no more deferrals.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to adopt Ordinance No. 775.**

The motion passed unanimously. (5-0)

- C. Review, consideration, and possible action in response to an appeal filed appealing the decision of the Elko City Planning Commission which conditionally approved Conditional Use Permit No. 11-13, filed by Iron Horse Elko LLC, for the development of a recreational vehicle park within an LI (Light Industrial) Zoning District with a zone change to C (General Commercial) pending completion of required conditions, and the merger of this parcel with an existing parcel developed as a recreational vehicle park, and matters related thereto, located generally northeast of Manzanita Lane and the un-vacated Norco Lane (APN 001-860-098), and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the subject conditional use permit at their regular meeting of July 10, 2013 and took action to conditionally approve the conditional use permit. Subsequently, an appeal was received of the Planning Commission's decision which involved one of the Fire Department's recommended conditions. The Fire Department has worked out the issue in question, and is in agreement the condition may be removed. RM

Josh Carson, Fire Marshal, explained we worked this issue out with the applicant. We want to thank the applicant for working diligently to get this resolved and we remove that condition from the item.

Mayor Johnson asked if that makes this item go away. It is rescinded and we don't have to take any action?

Curtis Calder, City Manager, said if the applicant rescinded.

Jerry Gagnepain, Lamb Architect, representing Gary Lamb, said we would like to have this entered into the record as an amendment to the conditions.

Mayor Johnson noted you want us to accept the conditions with the removal of the requirement from the Fire Department.

Mr. Gagnepain said they have one other item that wasn't on initial appeal. It's a technical wording issue.

Mayor Johnson asked how strict to they need to remain within the context of the agenda.

Dave Stanton, City Attorney, asked what was the language change.

Mr. Gagnepain said the language is on Item No. 3, or condition No. 3, Item 11, "Norco Lane and Manzanita Lane improvements are required. Those improvements will be completed by September 30, 2013." We request that the language be amended to read, "By September 30, 2013 or to a level of completion or progress deemed satisfactory to the Development Manager." The reason for that is that we have contracted with Ruby Dome Construction to do that work. As the owner we cannot compel Ruby Dome to complete it by that date. If we do not meet that date them basically this agreement is null and void or this approval is invalid. There is no wiggle room.

Mr. Stanton felt the agenda item place the public on notice of the nature of the request.

Mr. Gagnepain said we are allowing that Development Manager to make that decision. Ruby Dome is doing that work. We need some kind of guarantee.

Mayor Johnson asked can't staff make that determination that the project's moving in a manner and they are doing the best they can. They can just handle this at staff level.

Mr. Stanton said they typically would. This is just adding that to the completion date. I didn't see an open meeting law problem.

Mr. Gagnepain said the reason to the appeal wasn't stipulated specifically. We appealed that decision generally. We are appealing the overall approval and this is one of those conditions. He handed out a copy of the letters from Josh Carson, Elko Fire Department (Exhibits "E" and "F") and his handwritten addition to Condition 3, Stipulation 11 (Exhibit "G").

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to modify the decision of the Planning Commission regular meeting of July 10, 2013, with regards to Planning Commission item No. 11-13 which was a conditional use permit and the following items to be modified: on page 2 number 2, the six conditions from the Fire Department Memo dated July 21, 2013 listed as follows, to be replaced by the letter from the City of Elko Fire Department by Josh Carson which now has five items with condition 2 removed; and the second modification on page 3, item 3-11 which read, "Norco Lane and Manzanita Lane improvements are required. Those improvements will be completed by September**

30, 2013,” to be replaced and read as follows, “Norco Lane and Manzanita Lane improvements are required. Those improvements will be completed by September 30, 2013 or to a level of completion or progress deemed satisfactory to the City Development Manager.”

The motion passed unanimously. (5-0)

- D. Review, consideration, and possible action to conditionally approve Preliminary Plat No. 6-13, filed by filed by Steve Patterson with authorization from Sierra Blue Development & Holdings LLC, for the development of a subdivision entitled Golden Hills Estates Phases 2 and 3 involving the proposed division of approximately 5.138 acres of property into 22 lots for residential development within an R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto, located generally west and east of Mittry Avenue approximately 110 feet north of Chris Avenue (APNs 001-619-002 and 001-619-006). **FOR POSSIBLE ACTION**

The Planning Commission considered this preliminary plat on July 10, 2013 and took action to forward a recommendation of conditional approval to City Council.
RM

Rick Magness, City Planner, said this item was heard at Planning Commission and they recommended conditional approval of this plat at this time.

**** A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to conditionally approve Preliminary Plat No. 6-13 for the Golden Hills Estates Phases 2 and 3 Subdivision subject to the conditions as recommended by the Planning Commission and/or as updated by staff.**

The motion passed unanimously. (5-0)

- E. Review, consideration, and possible action to conditionally approve Preliminary Plat No. 9-13, filed by Jordanelle Third Mortgage LLC, for the development of a subdivision entitled Tower Hill involving the proposed division of approximately 24.971 acres of property into 73 lots for residential development within an R1 (Single Family Residential) Zoning District, and matters related thereto, located generally southeast of the terminus of Stitzel Road (a portion of APN 001-920-079), and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered this preliminary plat on July 10, 2013 and took action to forward a recommendation of conditional approval to City Council.
RM

Rick Magness, City Planner, explained the developer and the engineer of record are in the audience. This is the plat that was conditionally approved by council. We also talked about this tonight regarding a trail. Planning Commission recommended conditional approval.

Tom Ballew, High Desert Engineering, said he doesn't have any problem with the conditions but he wanted to do a little clean up. Condition No. 4, NDOT written confirmation that its approval is not required with regard to level of service. We have requested that and we have been told

verbally by NDOT that we don't have to do a traffic study but for some reason we don't have any written confirmation and I don't think we are going to get it. He was worried about being in a position that it is his responsibility to do something that somebody else is not getting done. Item No. 8, the intent to serve letter, that has been done and he wanted that condition removed. Item No. 9 addressed the Engineering Department's memo dated June 20th. That has been done and he wanted that removed from the conditions. Item No. 10 addressed comments in the Development Department's letter dated June 26th. That has been addressed and he wanted that item removed too.

Mayor Johnson recapped that it was requested that items 4, 8, 9 and 10 were being requested to be removed.

Mr. Ballew said he didn't want item 4 removed but wants help getting that letter from NDOT.

Mayor Johnson asked what would you like the city to do.

Mr. Ballew said he doesn't have a problem going back to them again and ask for the written document, he just doesn't want to be held responsible for something he has no responsibility to get done.

Rick Magness said conditions need to be kept on record, even if you have met the conditions.

Councilman Perry said what we have here is a recommendation of a conditional approval for council. We can act on this the way it is but I don't think we can modify this. Can we modify a preliminary plat that comes from Planning Commission?

Mr. Stanton said it isn't agenda'd that way and he didn't think council could do that. The agenda doesn't say anything about modification.

Councilman Perry said we can approve this like it is or we can send it back to Planning Commission and ask them to change this.

Mr. MacRitchie asked can those items be acknowledged as completed. He wanted the city to acknowledge those items are complete.

Councilman Rice said he thought they acknowledge that by approving the plat.

**** A motion was made by Councilman Rice, seconded by Councilman Perry, to that we conditionally approve Preliminary Plat No. 9-13 for the Tower Hill Subdivision subject to the conditions as recommended by the Planning Commission.**

The motion passed unanimously. (5-0)

- A. Consideration and possible approval of Resolution No. 7-13, a resolution restating and amending Fire Department fees pursuant to Title 6, Chapter 5, Section 3 of the Elko City Code, and matters related thereto. **FOR POSSIBLE ACTION**

Council directed Staff to bring back the Business Impact Statement and Resolution for further consideration. Council may adopt the resolution as presented or with amendments. SO

Shanell Owen, City Clerk, explained this is the final step. We used the business impact statement process. We sent out the proposed rule notifications. Included in the packet is the proposed resolution and the current resolution as well as the business impact statement. At this time after calling for public hearing/public comment you would consider the possible adoption of the resolution for the fees.

**** A motion was made by Councilman Perry, seconded by Councilwoman Simons, to adopt Resolution No. 7-13 which is the resolution restating and amending Fire Department fees pursuant to Title 6, Chapter 5, Section 4 of the Elko City Code.**

The motion passed unanimously. (5-0)

After the motion and the vote, Ms. Owen said the effective date of the resolution will be the 30th day of September.

V. NEW BUSINESS

- D. Review, discussion, and possible authorization for the Elko Municipal Court to retain administrative assessments and court facility fees, and matters related thereto. **FOR POSSIBLE ACTION**

A letter from Municipal Court Judge Mason Simons has been included in the agenda packet for review. CC

Councilwoman Simons abstained from the discussion and voting on this matter because she is married to the judge.

Mayor Johnson said according to Mr. Calder this is normal and that the judge needs to make the actual request for the City Council. It looks like a housekeeping issue.

Mr. Calder explained the judge is intending to write a letter every six months to ensure the facility fees and court assessments get put into that specific fund and cannot be used for anything other than those improvements.

Judge Mason Simons gave some background regarding fines/assessment fees related to cases that come to court and how they are applied.

Councilman Perry asked do you have to do this every six months.

Judge Simons answered not necessarily. We do it as a housekeeping matter. We do the same thing with the county.

Dawn Stout, Administrative Services Director, said we are audited as part of the general city audit. Every fund of the city is audited.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to direct staff to retain administrative assessments and court facility fees for the ongoing and exclusive use of the Elko Municipal Court.**

The motion passed. (4-0 Councilwoman Simons abstained.)

- J. Review, discussion, and possible approval of the transfer of twenty-one (21) T-Hangar Leases from two (2) Elizagoyen Trusts to V&J Properties, LLC, including approval of the appropriate “Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements,” and matters related thereto. **FOR POSSIBLE APPROVAL**

A letter from the V&J Properties, LLC legal representative, a schedule of the twenty-one (21) T-Hangar Leases, and the appropriate consent agreements have been included in the agenda packet for review. CC

Richard Barrows, 442 Court Street, explained the Elizagoyen family, all three have died. The two remaining daughters, Vicky and Joanne, are requesting a transfer of those 21 leases from the Elizagoyen Trust to V&J properties LLC.

Mayor Johnson asked didn't we do something similar recently.

Mr. Barrows said unfortunately, every time an Elizagoyan died you had to approve the transfer to the trust that they set up. Now all three have died and all trusts are terminated.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, that the City Council consent to the transfer of 21 T-Hangar leases from Elizagoyen Trusts to V&J Properties, LLC as identified in the schedule of 21 hangar leases and approve the appropriate consent agreement.**

The motion passed unanimously. (5-0)

- K. Review, discussion, and possible approval of the transfer of twenty-one (21) T-Hangar Leases from V&J Properties, LLC to GBB Express, P Series, LLC, including approval of the appropriate “Consent to Assignment and Assumption of Airport T-Hangar Lease Agreements,” contingent upon fifteen (15) year lease extensions being approved in Agenda Item V.(L) below, and matters related thereto. **FOR POSSIBLE APPROVAL**

A letter from the V&J Properties, LLC legal representative, a schedule of the twenty-one (21) T-Hangar Leases, and the appropriate consent agreements have been included in the agenda packet for review. CC

Mr. Barrows explained there has been a sale agreement entered into between the Elizagoyen family represented by V&J Properties, LLC to another LLC unrelated to the Elizagoyen named GBB Express, P Series and that sale is contingent upon the council approving the transfer to the buyer but the buyer also makes the purchase contingent of the extension of an additional 15 years. That option to extend is contained in the existing lease. There is one proposed term to the

extended lease. That is the extension be granted upon the condition that the leasee shall release and covenant not to sue the City in the event this extension should be declared void by a court of competent jurisdiction (Exhibit “H”).

Councilman Schmidlein asked say there was high demand in another two years and the current lease is only good for another so many years. We would be voiding going to public bid. For the next 15 years we are committed to whatever that price is per sq. ft. or whatever it’s based on. So we are extending the entire lease for the current rate for an additional 15 years?

Mr. Barrows answered the existing leases if they were extended have a clause that says it will always be the going lease rate of all T-Hangar leases. If the city increases the lease rate, that would include these 21.

Ms. Stout explained the T-hangars are personal property. The ground is what they lease. They buy the T-Hangars and they need to get the leases extended contingent on their sale. We have not had an appraisal done recently on the ground that the T-Hangars sit on. We do have to charge the same rate to each of those.

Norman Rockwell said he did the last appraisal on this eight or ten years ago when the lease was standardized. Leases were always set up so that if the rates were raised the lessor would abide by the new rates.

**** A motion was made by Councilwoman Simons, seconded by Councilman Rice, to consent to the transfer 21 T-Hangar leases from V&J Properties, LLC to GBB Express, P Series, LLC as identified in the schedule of the 21 T-Hangar leases and approve the appropriate consent agreement contingent upon 15 year lease extensions being approved in the next agenda item.**

The motion passed unanimously. (5-0)

- L. Review, discussion, and possible approval to extend twenty-one (21) T-Hangar Leases by fifteen (15) years, pursuant to the extension provision listed in Section 2.02 of the Airport Hangar Lease Agreements, between the City of Elko and GBB Express, P Series, LLC, and matters related thereto. **FOR POSSIBLE APPROVAL**

Section 2.02 of the Airport Hangar Lease Agreements includes the following language: *“**Option to Extend** At the expiration of the initial term, if this Lease shall then be in full force and effect and the Lessee shall have fully and timely performed all of the terms and conditions, the Lessee shall have the option to extend this Lease. All provisions of the Lease, including rental terms, will be subject to renegotiation at the expiration of the initial term.”*

A schedule of the twenty-one (21) hangar leases and a copy of a typical Airport Hangar Lease Agreement has been included in the agenda packet for review. CC

Councilman Perry asked say a lease comes due, and they are subleasing these out there, if we do not renew the lease and the buildings are there, what happens to the buildings? Does the city have to buy them out?

Mark Gibbs, Airport Director, answered they revert to the airport.

Councilman Perry asked if we don't renew a lease we get the buildings. Or they remove it?

Mr. Stanton answered he thought what happens is they remove the building.

Councilman Perry asked has this ever happened where we didn't renew a lease and they removed the T-hangar.

Mr. Stanton answered it has happened in other places. When making this motion, this is the place to add the wording Mr. Barrows suggested to the lease agreement (Exhibit "H").

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to extend 21 T-Hangar leases by 15 years pursuant to the extension provision listed in Section 2.02 of the Airport Hangar Lease Agreements between the City of Elko and GBB Express, P Series, LLC as identified in the schedule of the 21 T-Hangar leases conditioned upon the extension being granted on the condition that the Lessee shall release and covenant not to sue the City of Elko in the event this extension should be declared void by a court of competent jurisdiction.**

The motion passed unanimously. (5-0)

After the motion and before the vote, Councilman Schmidlein asked we can raise these rates at any given time. He wanted to make sure it can be implemented if there was a reason to raise the rates.

Ms. Owen answered on page 2 of the agreement that we currently have in place, Section 3.02, the last sentence of that paragraph says, "It is hereby agreed that said rental rate may be increased if the City adopts rental increases for other hangar leases at the Elko Regional Airport."

Council voted on the motion.

- I. Review for possible consideration the donation of old radios from the Police Department, Fire Department, and the City Narrowbanding project, and matters related thereto. **FOR POSSIBLE ACTION**

Through the FCC Narrowbanding requirement the City has radios that are no longer useable by us or have exceeded their life expectancy. The Elko Amateur Radio Club has expressed interest in these radios because they do not fall under the same FCC requirements as the City. Our other option would be to auction these items off. However, we would need to pay on average \$20 per radio to have these radios' programmed frequencies removed. Elko Amateur Radio Club has offered to ensure our frequencies are removed from all of these radios. BM

Ben Mangeng, Information Systems Manager, explained over the last couple of years we have amassed about 101 radios (at the current count) that are either have exceeded their life expectancy or are no longer operational due to the narrow banding requirements. The President

of the local Amateur Radio Club is present to explain what they would be interested in using the radios for.

Harry Botsford, President of the Elko Amateur Radio Club, gave a presentation about his organization and what they do. (Exhibit "I")

Councilman Perry asked not knowing a lot about radios, do we continue to use that narrow band?

Mr. Botsford answered the FCC switched you to a narrower band. These radios cannot be put back into your service.

**** A motion was made by Councilwoman Simons, seconded by Councilman Perry, to approve the donation to the Elko Amateur Radio Club and direct staff to bring back a formal resolution for the donation.**

The motion passed unanimously. (5-0)

- A. Review, consideration, and possible approval to pursue a solicitation from the State of Nevada to lease between two (2) to four (4) acres of airport property for a proposed Nevada National Guard Helipad Facility, and matters related thereto.
FOR POSSIBLE ACTION

Dave Marlow, Supervisory Land Agent, Nevada Division of State Lands sought input from Elko Regional Airport to possibly sell/lease between two (2) to four (4) acres of land to the Nevada National Guard to support their dual Federal and State missions. After discussions with the Federal Aviation Administration the airport would not be allowed to sell real property to the State of Nevada; however, may enter into a long term ground lease charging less than Fair Market Value due to the National Guard being a government organization. The proposed ground lease would be similar to that granted to the U.S. Bureau of Land Management to operate the Elko Central Dispatch Facility. Elko Regional Airport has already selected two preferable site alternatives for National Guard consideration. The Elko Regional Airport Advisory Board has adopted this proposal on July 26, 2013. MG

Mark Gibbs, Airport Director, said John Ellison was here earlier today in support of the continued effort to bring the Nevada National Guard assets to the Elko Region. His two primary goals for having a heli-tack base at the airport would be firefighting capabilities and enhanced search and rescue. This is a solicitation from the Nevada Division of Lands. They are looking for additional capabilities in NE Nevada for the National Guard. The airport is one of several facilities in Northern Nevada they are looking at. Site number two is the recommended site by the Airport Advisory Board. This will be a long-term lease agreement.

Councilman Rice asked would the proposal be for a structure as well.

Mr. Gibbs answered yes, there would be a structure. There will be a guardhouse, fencing and paved areas for their operations and access to the movement area.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the airport solicitation to the State of Nevada to establish a rotorcraft operations facility to support the Nevada National Guard missions in Northeastern Nevada with the Airport Advisory Board's recommendation for site number 2.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible appointment of one (1) Elko Regional Airport Advisory Board Member, and matters related thereto. **FOR POSSIBLE ACTION**

The City currently has one (1) vacancy on the Elko Regional Airport Advisory Board. This appointment is to fill an unexpired four year term, to expire June 30, 2016. Letters of interest have been enclosed in the agenda packet for review.
MG

Mr. Gibbs explained we had two letters of interest but the Airport Advisory Board is not giving any recommendation on whom to elect for the Advisory Board.

Councilwoman Simons said Mr. Valline is one that applied for the Planning Commission but Jim Meeks flies and he is familiar with the Airport and has some history there.

Councilman Perry said Jim Meeks owns and operates Vogue Laundry and he has been a pilot and has a hangar. He felt Mr. Meeks would bring a good member.

**** A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to appoint Jim Meeks to the vacancy on the Airport Advisory Committee.**

The motion passed unanimously. (5-0)

- E. Review, discussion, and possible acceptance of a legal opinion regarding the proposed "Residency Requirement" ordinance, including possible direction to Staff regarding the proposed ordinance, and matters related thereto. **FOR POSSIBLE ACTION**

A memorandum from David Stanton, City Attorney, has been included in the agenda packet for review. CC

Dave Stanton, City Attorney, explained this goes to the issue of what City Employees can be required to be residents of the City. Across the country there are some places where there are residency requirements for appointed officials and so forth. When you actually start looking into the law, there is a series of US Supreme Court Cases generally addressing these issues. The bottom line is, there are two clauses in the Constitution that are sort of triggered by Employee Residency requirements, regardless whether they are appointed or other types of employees. We are talking about the Equal Protection Clause and the Privileges and Immunities Clause. What these cases basically say when you come down to it, is public employees have a constitutional right to travel. The freedom to travel is a recognized right under certain circumstances. The bottom line is that if an employee has the type of job that creates a justification known as a

compelling governmental interest (i.e. a firefighter or a police officer who needs to be able to respond to emergencies very quickly) that can be justification for creating residency requirements. However, in cases where the employee doesn't have that type of a job where public safety is at issue, the courts have gone the other way. They have said now if you start doing that you start impacting people's ability to travel, their freedom to travel. A similar analysis has been applied to what are known as these fixed point residency requirements where you say after April 5th, these people in these jobs have to be residents of the city. The problem with that is that it creates two classes with an arbitrary date being the only distinction between them. The courts have said that is not enough of a compelling governmental interest to justify that kind of a distinction under the constitution. What it really comes down to is the city is sort of constrained by who it can require to be a resident of the city. It has to have a really darn good reason for it. His recommendation was to limit it to emergency personnel; firemen and policemen. Courts in other jurisdictions have said that is justification enough.

Councilwoman Simons said last time she was against that because we are not in the business of telling people where they should live. She felt this is something we should not require.

Councilman Rice said with an emergency with police or fire fighters ability to respond in a timely manner be part of their performance evaluation? It is his opinion that we limit ourselves in a variety of ways if appointed officials or employees need to live within the city limits. He felt we would be stepping on the Fire Chief or the Police Chief's feet if we make a requirement to have a timely response. Do you make evaluations based on their ability to respond when they are not at the department?

Chief Griego answered not generally. We evaluate their performance while they are at work. Most of them respond. Some respond longer than others based on where they live. It would make a big impact on his department if council required all of the career staff to live within the city. It would wipe out about 1/3 of his department. The volunteers are required to live within the city because they don't work shifts and they have to respond from home.

Councilman Rice noted the response has never been an issue before.

Chief Zumwalt said his situation was similar to Chief Griego's. Anytime you have a SWAT call most of those respond from Spring Creek. Half of his operational people in his department live outside the city.

Councilman Perry said this got put on the agenda because of a former Fire Chief that wrote about it. It seemed to be timely since we were looking to hire a new Police Chief. We discussed appointed officials appointed by City Council minus those that are contracted. He followed up after looking at Mr. Stanton's legal opinion with some state statutes. There are numerous states that clearly allow cities and municipalities to make a decision as to whether one or all of the employees in the city live in the city. He mentioned a couple of cities outside of the State of Nevada as examples.

Mr. Stanton said those examples are consistent with what he said. It's going to be the case law the decisions courts have made if it gets to be a legal challenge. He takes a conservative approach when it comes to these types of constitutional issues. He will give advice which will most likely keep us out of court.

Councilman Perry asked do we want the new Police Chief to live here. We requested at the last meeting to draft us something we can act on. He wanted to modify that request that to address Mr. Stanton's concerns. He thought the Police Chief, Fire Chief, City Manager and the City Engineer should have residency requirements. He felt there was justification for all of those to be required to live within the city limits. From the citizens he talked to there is an overwhelming opinion about that, including him.

Councilman Rice said bottom line is, in his opinion, City Council are the only ones that should be required to live within the city limits. People come here for a variety of reasons. He also thinks the Spring Creek/Elko area is a metropolitan area of sorts. People go back and forth over the hill all of the time. The appointed officials serve at our pleasure and we are the ones that are ultimately responsible for this community.

Councilman Schmidlein said if we do have a catastrophic failure, all the bridge structures going over the Humboldt River, gets blown up, that does have merit. If we say they have to live on the NW side of the Humboldt River then they can have their horses and there is plenty of property in the immediate area.

Councilman Perry felt he tried to address that issue by saying, "The following appointed officials are required to establish a permanent residence within the official city limits or within one mile of the official city limits on a paved and maintained road."

Mr. Stanton said and if council is going in this direction what I would ask would be to establish enough to show a compelling governmental interest in choosing these four positions as opposed to other positions, other employees of the city. They need to make a distinction between the Police Chief and the Fire Chief and firemen and police officers because they aren't going to be subject to this requirement. Why a Police Chief and not a police officer? Why a Fire Chief and not a fireman? Maybe there is a good reason for that but he wants that to be established on the record before something like this got passed. Also, we would have to have a compelling governmental interest in not making this retroactive. That is something that the courts have called a durational residency requirement. It's a subcategory called a fixed point residency requirement. Every case he saw dealing with it said it was an arbitrary distinction and that it violates the equal protection clause. If there was something unique in this particular situation that would need to be established as well.

Councilman Rice noted they weren't making a decision about residency requirement. We are accepting his legal opinion.

Mayor Johnson asked if we accept your opinion are we bound by the constraints of your opinion.

Mr. Stanton answered you are accepting the recommendation.

Mayor Johnson said we can still go down this road. Since the City of Elko is an "at will" employment, does that give any latitude for the City Council?

Mr. Stanton answered it doesn't change anything when it comes down to the residency requirement. This is a Federal Constitutional issue. This needs to be done within the constraints

of the US Constitution. The Legislature hasn't really done anything to deal with this specifically.

Councilman Perry asked did we have this before for the Police and Fire Chief. (no)

Shanell Owen, City Clerk, said the city had requirements for all employees at some point. She found quite a few waiver requests where the employee would go to the City Council and one by one the City Council would waive that requirement for that employee. Down the road City Council said let's remove that requirement.

Mayor Johnson asked it was just in policy form.

Ms. Owen answered she wasn't exactly sure if it was in code or in policy but it was probably in policy.

Councilman Perry said at the last meeting when we voted to ask for a draft, we got a draft but obviously the draft doesn't work for what was put there. Who wrote the draft?

Ms. Owen said she drafted an ordinance and I forwarded it to Mr. Stanton.

Mayor Johnson said he wanted to see this come back and see if there is an interest in this now that we more of an understanding from the legal standpoint.

**** A motion was made by Councilman Perry, none seconded, to direct city staff to come back with a proposed residency requirement ordinance based on the draft marked 5-E and to accept the City's legal opinion with regards to the first draft.**

The motion failed due to a lack of a second.

After the motion and before the vote, Mayor Johnson said if we don't agree with the attorney we can say we don't accept your legal opinion and we are going to go in a direction we think the city can.

**** A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to accept the legal opinion of the City Attorney regarding residency requirements ordinance and direct city staff to work with the draft modification to the ordinance and bring it back to a future Council Meeting for a decision.**

The motion failed.

(2-3 Mayor Johnson, Councilman Rice and Councilwoman Simons voted no.)

After the motion and before the vote, Mayor Johnson asked how long would it take to draft the ordinance.

Ms. Owen answered it was mostly drafted and she just needed some paragraphs from Mr. Stanton as far as the specific requirements.

Councilman Rice said he accepted Mr. Stanton's legal opinion but he can't support the motion.

Councilwoman Simons said same here. We are going forward with something that could be found to be unconstitutional. The legal opinion is enough to not go forward with this. In going forward we are disregarding his legal opinion in a way.

Councilman Rice said the reason he suggested the motion be put in this was to poll this body regarding this matter. I do not support a residency requirement. I think first of all the reason for that is because Mr. Stanton has told us that we may be treading on some constitutional ground that is thin. Another reason is we have so much difficulty in hiring people into our organization now to put residency requirements will be limiting the pool of applicants for any position. This body, City Council, is the ones responsible for the community. I haven't heard the outcry for this at all.

Councilman Schmidlein said a lot of people are saying that as far as the Police Chief goes they are not too worried about the bedroom community of where they are actually living at. They will not be dealing with it one on one. They will make it a more friendly more safety environment if they live right in the middle of it.

Councilman Perry said the only movement forward that he sees is if they are consistent with the legal opinion Mr. Stanton gave us. He felt they were because they are about public safety. He didn't agree with Councilman Rice in that the City Council is not responsible for the safety of this community. He can't respond to an emergency. His job is to choose the people. By ensuring that they live here in town we will know that they can respond quickly. If you are going to take one of these senior positions, they are very important to the safety of the community, there should be a residency requirement.

Mr. Stanton said if he was to be directed to work on a draft ordinance then he will need more guidance than what he has gotten so far because it's not just enough to say these four positions are really important and relate to public safety. He didn't think that was sufficient. What needs to be on the record is why these positions are different than other employees. It's not enough to say the Police Chief is important. If this is an arbitrary decision that is not backed by a compelling governmental interest then it's likely to be thrown out. The same would apply the durational requirement. Why are we grandfathering in these existing officials and making this prospective and not retroactive. There has to be some sort of a rationale for that and not just out of fairness for people already living in Spring Creek.

Council voted on the motion.

Mayor Johnson asked if that was all that we needed to do.

Mr. Stanton said Council hasn't accepted the legal opinion.

Ms. Owen asked from this point there won't be anything brought back to council?

Mayor Johnson said that was part of the motion. It has failed.

Councilman Schmidlein asked when we go back to interview for the Police Chief position would we be able to say we would prefer if the Chief lived in the city? He has a problem if the

Police Chief lives in Carlin, Wendover or Lamoille. If we are looking for a Chief to live in a rural area of Nevada we aren't on the right page here.

Councilwoman Simons said if he is not doing his job because of where he lives then we can take action. If he wants to live out in Lamoille and it turns out that he does his job beautifully then she doesn't feel like we should care.

Councilman Perry asked can you put a residency requirement into an employment contract.

Mr. Stanton answered it doesn't matter what form it takes.

Councilman Rice asked was a residency requirement advertised in the job announcement.

Doug Gailey, Human Resources Manager, answered a residency requirement was not posted. If they did a contract you would have the ability to do that, put it in the contract.

Councilman Rice thought that requirement would have been put in the job announcement and he didn't think you could even bring it up in the interviews.

Mr. Gailey said you can tell them that is a requirement and you could put it in a contract.

- F. Review, consideration, and possible action to waive the requirement for sidewalk throughout the Ruby View Heights Subdivision, and matters related thereto. **FOR POSSIBLE ACTION**

The Development Department is requesting Council direction with regard to the installation of sidewalk throughout the Ruby View Heights Subdivision. The majority of the lots are fully developed without the benefit of sidewalk in place. At this time it does not appear practical to install sidewalk throughout the entire subdivision. Staff is reviewing two building permits at this time and is requesting Council action on the matter. SAW

Jeremy Draper, Civil Engineer, explained there is no sidewalk in the Ruby View subdivision. This is an old county subdivision that has been annexed into the city. One thing unique about this subdivision there isn't enough room to put in sidewalks. If so it would have to be on the owners' property. We still prefer to have curb and gutter in there for drainage issues.

**** A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to instruct the Development Department to allow Ruby View Heights subdivision to continue to develop with curb and gutter only, no sidewalks.**

The motion passed unanimously. (5-0)

- G. Review, consideration, and possible action to address the requirement for curb, gutter and sidewalk on the west side of Sage Crest Drive from the Connolly Drive intersection the Royal Crest intersection, and matters related thereto. **FOR POSSIBLE ACTION**

The Development Department is requesting Council direction with regard to the installation of curb, gutter and sidewalk on the west side of Sage Crest Drive from Connolly Drive to Royal Crest. For the most part, the Sage Crest r-o-w delineates the City/County boundary. The west side of Sage Crest Drive is characterized by a low density residential land use. Several residential properties have been annexed into the City. Most of the properties annexed into the City were annexed as-is and are developed. The remaining frontage is associated with private property within the County and appears to be fully developed. There is a low probability those property fronts will be developed to City standards. Staff anticipates application for two building permits on the remaining vacant parcel that has been annexed into the City and is requesting Council action on the matter.
SAW

Mr. Draper explained this one is unique. He indicated the property on the overhead screen. The properties are zoned Residential Suburban and are not required to have sidewalk. Jennings is identified as a collector and services additional subdivisions. We have county islands along Sagecrest and Connely to El Armuth.

Councilman Schmidlein asked on the north side, that property you are going to make them put sidewalk, curb and gutter.

Mr. Draper answered yes, this property would have three frontages to complete.

Councilman Schmidlein asked on the Jennings side of that lot you will require curb, gutter and sidewalk there as well?

Mr. Draper answered yes. The waiver we are requesting is just for the Sage Crest right-of-way.

Councilwoman Simons thought there was question of whether it is required because of the zoning.

Councilman Perry thought they should require curb and gutter but not sidewalk because there is no connectivity.

Councilman Schmidlein said that property is being annexed into the city. If they put a curb in there and then the guy next door doesn't have a curb, all that drainage is going to run right into him. That will put a hiccup in to put curb in, leave an opening and then put curb in.

Dennis Strickland, Public Works Director, said there are going to be areas in our community over time that the city is just going to have to put some of this stuff in. It's not going to be a scenario where it is perfectly equitable and fair for everyone. There will be some areas where the taxpayers going to have to put some of this in.

Mayor Johnson said we have to stay consistent. We've made some tough decisions.

Councilman Rice said we'd be contributing to the problem that we are trying to solve.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, that there be no waivers and no deferrals on curb, gutter and sidewalk on the west side of Sage Crest Drive from Connolly Drive to Royal Crest for land that that is within or annexed into the city in the future.**

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

- H. Review, consideration, and possible authorization for Staff to solicit bids for the sale of the 1981 International Fire Engine, and matters related thereto. **FOR POSSIBLE ACTION**

This fire engine has served the City for over 30 years and is being replaced with a new engine in this budget cycle. MG

Chief Griego explained this is the 1981 International that we discussed we were going to replace with new type 6 engine that you approved at the last meeting. We are seeking permission to instead of going through a city auction solicit bids for this truck from qualified people so we can get more value for this engine.

Mr. Strickland said that's probably a great way to go. Just like what we did for that old paver. If we had dumped that into an auction we would have gotten pennies for it.

**** A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to approve staff to request to solicit bids for the sale of the 1981 International Fire Engine.**

The motion passed unanimously. (5-0)

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- C. Consideration of an appeal from Richard A. Milroy, Jr./RAM Enterprise Inc. requesting a deferral of water/sewer connection fees for a proposed 72 unit apartment complex located at 542 12th Street, to be paid in full before a certificate of occupancy is issued, and matters related thereto. **FOR POSSIBLE ACTION**

Historically, the City of Elko has considered occasional deferrals of water/sewer connection fees for large, multi-unit projects (hotels, multi-family, etc.). However, on December 8, 2009, the City Council voted to no longer allow deferrals of water/sewer connection fees.

In light of the City's revised mission statement which places an emphasis on "enabling economic development," Richard A. Milroy, Jr./RAM Enterprise Inc. is requesting the City consider deferring the water/sewer connection fees, estimated at \$575,000. This particular project will not only add 72 multi-family units to the available multi-family housing inventory, it will generate sales taxes, create/sustain jobs, and increase assessed valuation.

If approved, Staff requests that the developer reimburse the City of Elko for costs associated with developing the deferral agreement, estimated to be \$3,500. Copies of correspondence between RAM Enterprise Inc. and the City of Elko, as

well as the December 8, 2009 City Council meeting minutes, have been included in the agenda packet for review. CC

Mayor Johnson abstained because they are looking at bidding on this project. He deferred to the Mayor Pro Tempore and left the room.

Councilman Rice though the statement, “This particular project will not only add 72 multi-family units to the available multi-family housing inventory, it will generate sales taxes, create/sustain jobs, and increase assessed valuation,” is a reach and is not supported with any documentation.

Ryan Limberg, Utility Director, explained the last time we did a water/sewer deferral was in 2009. We produced that deferral document and we paid for the development of that document and then at the last time the developer backed out and decided not to proceed with the project. We ended up picking up the costs on that. Thereafter council directed staff to produce some options for council to consider as far as deferrals are concerned. Council’s decision at the time was to support option A, which was no deferrals.

Councilman Schmidlein asked that apartment complex going in on N. 5th Street did not get a deferral.

Mr. Limberg said this is the first deferral he’s seen for water and sewer connection fees.

Councilman Schmidlein said then you have all the Bailey subdivision being built up there, you have the Pointe Ruby View being built, you have all those other current apartments that are in construction right now and none of those people got deferrals. He’s having heartburn if we are going to try to give a deferral to these people for 72 more units.

Councilman Perry said he was hoping the developer was here tonight but they’re not. I would consider this if it was in the downtown redevelopment zone and/or if this was low income housing.

**** A motion was made by Councilman Perry, seconded by Councilwoman Simons, to deny the appeal for deferral of water/sewer connection fees for the 72 unit apartment complex at 542 12th Street.**

The motion passed. (4-0 Mayor Johnson abstained.)

VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible approval of a change in the liquor license for Duncan Little Creek dba The Gallery Bar. The Gallery Bar is adding Jennifer Anderson to the bar’s owner partner list, and needs to be included on the liquor license, and matters related thereto. **FOR POSSIBLE ACTION**

Duncan Little Creek is an established business and wishes to add Jennifer Anderson to the bar owners partner list. The Elko Police Department has done the background check and recommends approval. DZ

Chief Zumwalt explained we have done the background check and we recommend approval.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to approve the addition of Jennifer Anderson to the liquor license at Duncan Little Creek dba The Gallery Bar.**

The motion passed unanimously. (5-0)

- B. Review, consideration, and possible action to accept a petition for the vacation of a portion of the Fir Street right-of-way consisting of an area approximately 80 feet in width by 8 feet in depth, filed by Craig Walsh and processed as Vacation No. 2-13, and matters related thereto. **FOR POSSIBLE ACTION**

Rick Magness, City Planner, explained this item was heard and approved by Planning Commission. They recommended to move this along.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to accept the petition for vacation and direct staff to commence the vacation process by referring the matter to the Planning Commission.**

The motion passed unanimously. (5-0)

V. NEW BUSINESS (Cont.)

- C. Review, consideration, and possible action to approve the 2013 City of Elko Land Inventory, and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission reviewed the 2013 City of Elko Land Inventory Update during its meeting of July 10, 2013. The Planning Commission took action to forward a recommendation of approval to Council for the update. The last Land Inventory List was approved on January 6, 2006. RM

Mr. Magness explained this was a work item that was presented to the Planning Commission to get this updated and approved. They reviewed it. We have done a little bit of a different format by identifying by color some of the land uses instead of just identifying a parcel. We identify it and then show the uses of each parcel/lands.

**** A motion was made by Councilman Perry, seconded by Councilman Rice, to approve the 2013 City of Elko Land Inventory.**

The motion passed unanimously. (5-0)

VIII. REPORTS

- A. Mayor and City Council
B. City Manager
C. Assistant City Manager
D. Utilities Director-Water Model status update, WRF Generator Repairs.
Ryan Limberg gave two reports; 1) A water model update, and 2) WRF generator repairs. Fritz Sawyer had on an invoice "emergency generator repairs" but it is listed as budgeted. It isn't so much an emergency generator

repair as it is a sole source vendor. We have a bill to AI Radiator for \$11,202.50 for radiator core and rebuild.

E. Public Works

Dennis Strickland reported on four projects that were TAP Grant applications (5th Street roundabout, infrastructure on the Flag View Middle School and park area, Adobe Way sidewalk/Jennings Way and then some lighting on Idaho Street). He presented the projects in Carson City and he was recently notified that we ranked in the top four. There is a possibility that we will be the recipient of about \$600,000.00 worth of infrastructure.

F. Airport Director

G. City Attorney

H. Fire Chief

Chief Griego handed out his monthly newsletter (Exhibit "J"). He reported they will have one more retirement coming up, Deputy Chief Mike Hecht.

I. Police Chief

Chief Zumwalt reported on National Night Out that was August 6th.

J. City Clerk

Shanell Owen reported on street closures. One was August 6th for National Night Out where we closed approximately 100 yards on Cedar Street near Johnnie Appleseed Park. On July 27th, Good Time Charlee's requested a closure between 5th and 6th Street for parking.

K. City Planner – Rezone Reports

Rick Magness reported on some rezones. Rezone No. 6-13 is a residential area along Front Street and 6th Street that is zoned general commercial and it needed to be changed to single family and multi-family residential. Rezone 8-13 filed by Craig Walsh from residential single family to residential office and it is the area the 1934 Forest Service Buildings that had been considered for vacation. There was a rezone and a conditional use permit on that project as well as a variance because of the way the property was configured. Rezone No. 9-13 which was a zone change from general commercial to residential along Manzanita in the general area behind Wendy's. There is a row of single detached homes and this one needed to be changed because the owner could not sell the home as a commercially zoned residential property. On August 5th three new Planning Commissioners were sworn in. There will be a RAC meeting this Thursday, August 15 at 1:00 pm. The Coffee Mug will have their grand opening on the 16th.

L. Development Manager

M. Administrative Services Director

N. Parks and Recreation Director

O. Civil Engineer – Update of Downtown Paver/Landscape Project

Jeremy Draper reported that Linda Buffington, Administrative Assistant that lives in Lamoille has been looking for flood insurance for the last month but has not been able to find any. The joint project between City Council and RDA is progressing but three weeks behind schedule. They have run into issues that were under the pavers. This past budget year he was authorized to have an intern and he was very pleased and thanked council for that.

III. APPROPRIATIONS (Cont.)

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

Councilwoman Simons asked did the Culture and Rec get some Motorcycle Jamboree rooms at the High Desert Inn.

Chief Zumwalt answered we always rent rooms for people that come and help us work the Jamboree. We rented 10 hotel rooms.

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

The motion passed unanimously. (5-0)

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**

John Rasche, Elko Daily Free Press, said he left everyone messages for Council Members. The paper did finish the Meth series. As a problem that is widely recognized in the community, he thought it was important to get feedback from community leaders. It's an in-depth series and it is pretty long but he would like comments.

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

Mayor Chris Johnson

Shanell Owen, City Clerk