

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

SS November 19, 2013

The City Council of the City of Elko, State of Nevada met for a special meeting beginning at 5:00 p.m., Tuesday, November 19, 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
Councilwoman Mandy Simons
Councilman Robert Schmidlein
Councilman Reece Keener

City Staff Present: Curtis Calder, City Manager
Shanell Owen, City Clerk
Ryan Limberg, Utilities Director
Scott Wilkinson, Development Manager
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.

I. PUBLIC WORKSHOP

A. Review, discussion, and possible recommendations concerning the Exit 298 Project, and matters related thereto. **FOR POSSIBLE ACTION**

Artisan East, LLC is interested in the potential development of this property. Staff has worked with Artisan East, LLC and City legal counsel in drafting a development agreement for this area, for Council consideration.

The development agreement was heard and considered by the Council on September 24, 2013.

Council directed Staff to work towards an agreement with Artisan with the following three guidelines: 1) participation by the city of \$1.5 million through the end of fiscal 2014 for water line construction and extension; 2) overall we are okay with the timing and the split of 60/40 on the sewer; and, 3) and we are okay with the timing and other parts of the agreement in concept with details to be worked out by staff, City Attorney and Artisan.

This workshop gives the Council an additional opportunity to evaluate the draft development agreement and further refine or clarify direction in regards to a possible development agreement.

Mayor Johnson said a good place to start was to hear from Artisan to get their side. One of the concerns in the letter we received was that there wasn't enough time given to the developer to present their side.

Jack Reynen, Artisan Communities, thought the letter stated their position better than he could restate it. As far as who they are, his dad and his partner have been in the construction and development business since the 1960's. They have done various things. One reason why they came out of the latest economic downturn was that they recognized it fairly early, faced the issues head on and didn't give up. They built-out what was there and did the best they could so they could get the biggest return. That left them in a position where there was some capital available. We came to look at Elko because in 2011 Elko was still doing fine when the rest of the west was not. It was difficult to build and sell new things in that period. They started buying land for building in 2012. Since then they have been building in Hamilton Stage. They are buying another parcel to build more homes in Elko. Many developers come in and say they want to build and then they disappear. The rest of their items were set forth in the letter. What we are trying to do here is to do several types of development. Around the exit there would be some commercial and industrial and then farther north from the exit will be residential. The Millers had others interested in their property but they wanted to just purchase part of it. Their project involves the entire property. They sent their first draft of the proposal to the city about what they propose in early February. They went into contract with the Millers 14 months ago. We thought we had it narrowed down to three issues before the last meeting. We asked the city to identify which conditions would survive termination. The second issue was the cap on the contingency. We agreed upon 15% cap but if the city makes changes that would not apply. If we are making the changes then that would be fine but if the city wants the changes then we can't be responsible for the increases. They also wanted to clarify the contingency cap was on the entire amount and not each item. The third item was clarifying the language with the sewer fee credits. The other thing we wanted to clarify was the escalation in limitation.

Councilman Rice asked if you paid in full \$100 you have then invested \$100. If we raise the fees to \$125 then you want credit for \$125 as opposed to \$100?

Mr. Reynen answered yes. The credit is really paying them back for having put the stuff in. We have already paid up front for the full amount. The credit should match the fee.

Ryan Limberg, Utilities Director, the staff has been looking at \$100 in equals \$100 out. There is a sewer transmission main involved with the project that would convey the wastewater back to the wastewater plant. Our connection fees aren't designed just for that sewer main. They also pay for capacity at the wastewater treatment plant and upgrades. It's a little bigger than just the conveyance system involved with the sewer connection fees.

Councilman Rice noted that the sewer fees increase for a variety of reasons. He wasn't ready to agree to that.

Jack Reynen said those were the three items we were expecting to deal with but there were two new issues. One was the alternative alignment. The city had not had much time to look at it by that time. We want to have alternative alignments. They want the city to be fine with both alignments so they may be able to get the job done either way. When we originally started this discussion, Scott Wilkinson was disappointed that we came into the picture because he already had a plan to build the sewer line. We came into the picture and wanted to do this this year. We thought we could get this in quicker and cheaper because we wouldn't have to pay prevailing wage. There was an estimate for the water line at \$1.5 million but now the estimate is at \$2.2 million. One reason the estimate has gone up is the grading for the right-of-way. When you do this line and the grading you disturb the drainage pathways that are there. You can't just disturb drainage so you need to put in culverts and things to fix that. The storm drain also added to the estimate.

Councilman Rice asked did we ask for some sort of... He said he wanted to see numbers.

Scott Wilkinson, Development Director, we asked Artisan how they wanted to proceed but we didn't have any communication from them until this letter was received.

Mayor Johnson said getting the information into a public setting is something we haven't done. The idea with this workshop with possible action was to get the exchange of information so we could be up to speed.

Byron Georgiou, 2857 Paradise Road, Las Vegas, said he is appreciative that you have chosen to have this special session so we could move forward. We have been at this for almost a year. We wanted to do this quicker and less expensive than the city could on its own. We have lost a whole season. We are prepared to continue to work with the city. If the city wants to do it themselves then they could still do it. We thought we could help move the project forward quicker and cheaper. We spent \$1/4 million dollars on engineering to date. The last time we were here people suggested we didn't have a significant investment in the project. We do. We are prepared to move into whichever direction you want to go.

Mr. Reynen said last year in the early part of the year, we really did push hard for us to do this. We wanted to get that line in quickly. We had potential buyers. We weren't able to get it in and our position isn't quite the same. You don't gain as much having us do it next year.

Scott Wilkinson, Development Manager, thought we should focus on; the last council meeting we talked about, and we always talked about, that we had \$1.5 million budgeted. He did not indicate that the city would agree to reimburse any costs. All we ever conveyed is that we put together the report that prioritized different areas. Some of the staff felt pretty strongly that Exit 298 was an important area to look at. He didn't think the city should take any responsibility for how long this has taken so far. We have had issues with trying to get a Development Agreement together that we felt could be presented to the Council. We have \$1.5 million budgeted and an engineer's estimate at \$2.1 million. The Council needs to decide if we want to have an expectation to stick with the \$1.5 million or do we want to work with Artisan and try to close that delta? Or if Artisan has a position that the city be responsible for that \$2.1 million and they are not willing to contribute anymore to closing that delta? With regards to the water alignment; we should have had the discussion from the beginning about a water alignment.

Councilman Rice said \$1.5 million is a lot of money. We are also talking about two different projects: the water and the sewer. The \$1.5 is for what?

Mr. Wilkinson answered council budgeted the \$1.5 million this budget year for a water line. There is no sewer budgeted at all. The agreement puts that out several years. That is probably the first hurdle to get over to move this forward.

Mayor Johnson said this isn't his top issue. He is willing to say it is an issue along with other issues. After his conversation with City Attorney, Dave Stanton, there is probably at least 20 different items in there as far as the survival of the contract.

Dave Stanton, City Attorney, said at this point it would be hard to quantify it. He thought it was a solvable problem. That is one of the remaining issues we still have to work out. The process is going to be going through the agreement in detail. There are a number of sections that will have to be addressed and clarified with additional language.

Mayor Johnson said if the project just can't make it without any consideration that is what the city needs to know.

Councilman Rice said he wasn't sure if the \$1.5 million was a place where they could discuss the reimbursement/credit.

Mr. Wilkinson said that credits were for the sewer connection fees and not the water.

Councilwoman Simons said the biggest problem is that we were going to budget \$1.5 on water to build it. If you build it there is a possibility it can go as high as \$2.2 million.

Mr. Georgiou said if you were to build it, it would cost you \$2.1 million or more. Your preliminary estimate didn't include some things that his engineer thought needed to be done.

Mr. Wilkinson said if you have time to look at the engineer's estimate; in the development report we looked at mass grading and installation of a water line only. Road construction costs are typically not something a utility department pays for. If you look at some of the grading we would have to do would really just set the stage for road construction. Some of these costs are not what a utility department would have to incur. The question is: would the utility department have to incur these costs that are really driven by the need to have a road and having the utilities and the road align together saves money in the long run. If you back those numbers out you get pretty close to the numbers in the development report. Maybe it will be a different fund that picks up some of the difference or maybe Artisan shares in it. Typically, developers pay for roadways. We might pay for the backbone infrastructure for utilities but we don't build roadways. Some of these costs have to do with roadway construction.

Mr. Limberg said two years ago in our water budget we had \$1 million for capital expansion. That was in there as a placeholder but it wasn't defined where that money would be used. That money rolled over and last year we increased it to \$1.5 million. That money is still there. It hasn't been allocated or used in any way. In Exhibit "H" the water line cost is \$2.1 million but we have to add in the additional costs below. That bumps the total up to just under \$2.4 million. Staff has concerns with the storm drain items. He has an issue with the water department paying for the culverts and other roadway expenses. In the Development and Feasibility Report they envisioned a water main from the State Route Mountain City Highway on the north end of the project, coming down to the Exit 298 area to a future well site. We had that project estimated at about \$2.7 million. Then we had some additional costs in there for QA/QC and so forth.

Councilman Schmidlein asked if these budgetary items are coming off Sundance Drive and going to the Cattle Drive alignment and from there on down. This coming from section 18 heading north towards Mountain City Highway is not part of this whole package?

Mr. Limberg said that was correct. He demonstrated what he was talking about on the overhead.

Mr. Wilkinson said Artisan came to staff and said they want to bring Cattle Drive further into the property. We believe that made sense and it added lineal footage to the project and increased the costs a bit. That was also a change from the report vs. what we are faced with today. We anticipated we would need a water well down there. For the minimum water infrastructure that we anticipated we needed over there we were looking at a \$5 million project which was a water line and a well. We had a 20% contingency on that (\$1 million). That would bring the total to just over \$6 million for the minimum. We adjusted the alignment and that increased the costs. It wasn't a bad estimate for not having engineering behind it.

Councilman Schmidlein asked on a secondary access, from what is being proposed we are going to use Sundance as secondary access until the build-out through Section 18 to Mountain City?

Mr. Wilkinson answered that would be a possibility.

Mark Rotter, Manhard Consulting, when the original estimates were done a number was put to that at \$150 a foot. That would let you do some earthwork and build that water line. When we

chose to then go to the north end of Section 19 the lineage footage increased. We got more detailed as to how they are going to grade the roadway so that the ultimate water line ends up in what is ultimately going to be the roadway subgrade. The other choice is to just build along that alignment. When you come back later to build the road will you have to cut areas and you may have a water line you have to reconstruct because you have areas where you will have to cut down. The idea is to do the earthwork now rather than later. You will see 6 inches of type II class B base. That is \$212,000 of running aggregate base along that whole alignment. Not only are we cutting and filling to create a subgrade of a roadway to put this line in with drainage crossings, we are also putting base to be able to drive up and down that roadway. That alone is half a million dollars. You logically want to build these improvements. You don't want to build a water line down through without doing the earthwork and without building the structures. That is what it is going to take to build this water line.

Mr. Wilkinson said we could pull the base out. We don't need the base until we build the roadway. That takes out the \$212,000 and reduces the contingency proportionately. We only need to worry about the water department having access for maintenance of the water line. We could work on this engineer's estimate and bring it down. We are still faced with the stormwater improvements. Logically they need to go in. Then the question is what department or cost sharing arrangement can be worked out to address those types of costs.

Mr. Rotter said the secondary access issue in terms of where this water line goes, our intent was to bring secondary access once we get onto the next plateau. He indicated on the screen what he was talking about. The idea was to be that we would be that as we got up on to that plateau we would be triggering the sewer improvements and when we did the sewer improvements we would bring the sewer lateral down under the highway and create the secondary access for that next phase.

Councilman Schmidlein asked going through Section 19 you have 15-20 foot swales/drainages throughout that area? Is there some other substantial depth? When you get into Section 18 there will be a 75 foot fill there. Your cut and fills will be minimal in Section 19.

Mr. Wilkinson asked what speed limit did we design that? (45 mph) The grading is also taking into accommodation the road construction and the vertical curve design for the speed limit. Some of the grading is driven by that road design.

Mr. Reynen said his understanding is the city does not want to contribute to the construction of Cattle Drive. This is an area of significant cost. From his understanding, one estimate was \$7 million. That would exceed both the water and sewer by time and a half. When we look at what is going into this project and how much we have to put in, it is important to realize we are sort of stretched a bit. We like the project but there is a lot of cost in it already. One thing going on here is that when we came to Elko in 2011 there were few other development opportunities. That has sort of changed. There are so many other things going on in other places that have recovered. You should recognize that we are talking about putting in a lot of money here and we need the city to also make an appropriate contribution to the project.

Mr. Wilkinson said we do provide for cost recovery for extension of water and sewer mains. Our codes doesn't provide for extension of roadways. He and Mr. Calder met with another developer a couple of weeks ago where this issue came up with roadway extensions. We are going to present to council that issue to see if they would amend the codes to allow for cost recovery for road extensions. It may be something we could write into the agreement.

Mr. Reynen said all of these things affect the overall economics of the project. If an amount were available that may change the way we treat other things. At the moment we are working under the presumptions we were working under before.

Councilman Rice asked if anyone has calculated and looked at the full build out and the increase in the tax base. Are there any numbers on the return? That's what makes it worth our risk.

Mr. Reynen answered they were planning for about 1/3 of the property to be residential. A very rough number would be 400 units on that acreage.

Mr. Wilkinson said he thought when they did the report it was based on the designated land use in the Master Plan. That is subject to change. We projected some revenue from connection fees. He thought Artisan could take a look at that and see how this fits. They will propose some changes to what we have here. They can maybe present something that could give us an idea.

Mr. Reynen talked about what businesses they would like to get at the area near the exit.

Pam Borda, NNRDA, said if we had done an economic impact analysis of the six major companies they had on the line last year you would have found it was 1.5 times of what the Rail Port has already done. The Rail Port paid for itself in the first two years. It was at \$21 million with just 2 of the buildings out there in terms of the entire economic impact. Exit 298 has the potential to be \$150 million impact overall from just the industrial park. Lots of things go into that. That would be total economic impact to the community and then there is the domino effect. She offered to run the economic impact analysis for that development area and thought the payback would be there.

Councilman Rice thought it would be great to run that. It would be good information for us.

Mr. Georgiou asked if anybody was interested in potentially doing all of this infrastructure with a bond issue of some sort. Rates are at the lowest since the great depression. Municipalities can borrow at very low rates. It requires some analysis but that is what people do, they borrow money.

Councilman Schmidlein thought when you run into bonding that would trigger prevailing wages. You have to be careful when you start bonding because it will trigger the NRS.

Mr. Georgiou wasn't sure if it would trigger prevailing wages or not since he doesn't have the experience with that. He thought legal counsel or special bond counsel could give them a better idea. More municipalities are doing it since the rates are so low.

Councilman Rice thought it may not be a popular route to take but it is smart to examine it further.

Councilwoman Simons noted a bond would have to go to voters.

Mr. Wilkinson said in the water alignment and the alternate alignment is related to this. Everything presented in this agreement is based on an alignment that we have talked about for several months. If there is enough uncertainty out there with where this water point of connection is going to be, we need to back up and get Artisan to either have agreements in place or alignments of record so that uncertainty is removed. The way this development agreement structure; we wanted to put a cap on it. Here's an engineer's estimate based on this alignment for council to consider. At least you would know what you are getting into. Then the way this is structured is if it moves forward they will go out and get hard bids and bring that back to City Council. You would approve those bids. If we have a lot of uncertainty here on where this alignment is going to end up, it's pretty hard in his mind for council to say we are going to enter into an agreement and we have an engineer's estimate but that is subject to change depending on whether we have this alignment go here or there. A couple things need to happen there. Another concern is that the proposed alignment; we have a pending annexation application and we have heard that with the Planning Commission and there are some issues with that but if those two things are tied together that complicates the issue and the costs long term will go up for the city. If we have an alternate alignment that we end up choosing and we have to annex some property and we have road maintenance and some other things that go on with that, none of that is addressed in this agreement. Those potential pitfalls are really out there.

Mr. Reynen said there is no question about the alignment through the Miller property. The question is when it reaches that NE corner of the Miller property, where does it go? It's only a slight difference and they are almost parallel. The city wants us to negotiate the easements from the owners but can we negotiate without some agreement with the city in place first? If we can't get these other owners then this will fall apart but you have to start somewhere. The first step is to get the economics because when we know the economics of this we have a better idea what our alternatives are.

Mayor Johnson wasn't sure if we are closer than at the last council meeting. Council does need the opportunity to listen to the problems. He wasn't sure if he could make a call tonight or not. He wasn't sure if he could make the call to override what staff has been recommending up to this point or not. There are probably more things that we need to discuss.

Councilwoman Simons said it might be worth a conversation about the water. There have been several options thrown out that we share. There might be some things that we can hash out a little bit.

Mayor Johnson said he would have to learn more about the scope of work. He was concerned about the water fund being able to provide any dollars for roadway construction. Once you get outside the water fund you get to the general fund. The city is pretty taxed on the general fund side of things. He asked Mr. Georgiou if things are workable as far as the survival of the agreement concept. Has there been any discussion about those concerns?

Mr. Georgiou said we haven't had any discussions. We can sit down and discuss which ones would continue. Our general rule is that if the contract is terminated then nobody has any further obligations to one another unless you specifically identify which ones there are. If we come at it from that way then we can sit and talk about it.

Mayor Johnson said the city has requirements where the private industry doesn't. You are saying there is a chance that we could come to some agreement.

Mr. Georgiou said we haven't talked about it since the last time we were here. He is willing to do this.

Mayor Johnson asked if there was an estimate as to how much staff time would be needed.

Dave Stanton, City Attorney, said potentially it could be quite a bit. There is no way to come up with an accurate estimate for how long that is going to take. It will involve quite a lot of staff time. We will have to identify the terms that would survive termination. If Artisan agrees then we may be okay but if not then we would have to work on the document. It could involve a lot of time. Before we try to attack that issue there may be bigger issues that we ought to get resolved before we start spending a lot of time re-working all of this.

Mr. Georgiou said the easiest way would be to send us a document and let us respond.

Mr. Stanton agreed that is a good approach and asked should that be the next step.

Mayor Johnson said we have a deadlock between the developer and staff and council needs to make a call as to continue to allocate staff time to work out the details or override staff or if the developer makes concessions.

Mr. Stanton said we have some big issues in terms of who will pay for the water line and what the water line really is. We don't have any resolution in terms of the alternate alignment. The city needs to figure out if there will be a contribution to the road base or not. These are substantial issues in terms of the economics of this deal. Then we can get into the weeds on survival of terms and tweak that as much as we need to. The financial picture is a bigger overriding issue.

Councilman Rice said given that, what will our long-term return be on this. He wasn't opposed to funding the aggregate base if he would be provided the economic analysis. There is no question that Exit 298 is a priority but is it enough of a priority that we should take some risks on it that we haven't in the past. The other thing is for Artisan to keep in mind that it isn't 2011 anymore. Gold isn't pushing \$2,000 an ounce anymore. We need to consider that too in terms of what our return's going to be in the next five years or so. It makes your risk higher and our risk higher. He felt we should give staff some direction to work out some of these end of contract termination issues. He would like for us to get a really good analysis from NNRDA in regards to the economic return and then he would also like for us to examine the bonding question just so we can get some information so we aren't dismissing it. We need to get some

information on it. When we were looking at the development on Lamoille Highway across from the hospital in terms of developing the water tanks, we had a brief discussion about a private organization being able to use our bonding capacity. There may be some possibility in there too.

Mr. Georgiou thought there might be ways. He doesn't profess to have that kind of expertise. With the permission of the city private parties can enter into these bonds. It is complicated but there are ways to do it. People don't like to borrow but there are circumstances where borrowing for investment does make some sense and it is worth looking into.

Ms. Borda thought Councilman Rice was dead on regarding risk. She wanted council to be willing to take on some risk. Why would the developers come to town and take all the risks when no one else would be willing to do it too. The county took a risk when they bought the property for the Railport. That risk paid off. This has to be a partnership and the city has to take some risk right along with the developer in order for all of this to succeed. There is no endless pot of gold that these guys are going to reach into and develop your community for you. They have limited funds and they have to get a return just like anybody else. If we make this project undoable for them because we are unwilling to have any risk then we probably won't get the project.

Mr. Calder said the city is taking risk. \$1.5 mill investment is a risk. What makes this project a lot different than the Railport is the city does not own any of this property. It is all privately owned. If the property doesn't sell and the infrastructure is all built, the city will have invested \$1.5 - \$2.3 million and that money will be tied up for years. It will develop eventually but looking at Elko's past development pattern, things don't develop quickly. Financing tools such as special improvement districts and special assessment districts, we have a policy on those and we can certainly provide those to the developer and they can look as see if they can structure something. Typically those types of financing tools do not work if projects do not built out quickly. Since the city does not own any of this property that we would be extending infrastructure out to, there is no direct return. It's all indirect return. We want to see it develop. The city is at risk.

Councilman Rice agreed with Mr. Calder. We are putting money on the table. He would like to see how this return will happen. We don't have good numbers in front of us to help us calculate our risk. He wanted those numbers. Artisan may have a business plan showing their best case and worst case.

Mr. Georgiou said we had a better case a couple of years ago than we do today. The city is investing and the property is in private hands.

Mr. Reynen said not all of it may be in private hands. If the city acquires Section 18 then this will service that section too.

Mr. Georgiou said if you put any bonding financing in connection with this infrastructure it would be customary for the bond securities to have a first deed of trust against the property. We would have to own the property first and then agree to secure those bonds with the property themselves. That isn't really the city's risk because we would be at risk as well because we

would be pledging the property as security for the bonding. This is a combination that has to work together for both of us or else it doesn't work for either of us. He would be happy to look at the city's regulations for a special assessment district.

Mr. Wilkinson said he doesn't believe staff has ever indicated that the developer needs to take all the risk. We have worked diligently in trying to bring an agreement to the City Council that envisions the City Council contributing to some infrastructure in this area. This agreement has not envisioned any type of bonding scenario, special improvement district scenario or anything like that. Sitting back and listening to the discussion, what he is taking away is that we are looking at the first step being that we'll get an economic impact analysis from Artisan or NNRDA for the council to consider. The second step being that Artisan will evaluate the special improvement district and how that might work. That is a great process to go through because we are going to have a very detailed analysis. Does council envision staff being involved in those first two steps or do you expect the developer to bring that back to council before we make any changes to the existing agreement and further that agreement towards some type of resolution? Maybe that is what we are looking for tonight. He didn't see the city expending any more funds to have the attorney review any issues that would survive the agreement or anything like that if we are going to end up going down some special improvement district approach. What we have done to date would just be set aside and then we would start over.

Mr. Reynen thought what he was talking about how to precede from here. Do we really want to figure out the termination provisions of the agreement if it's not going to work somewhere else. He asked that the City Attorney provide them with a list and then they can decide if they want to negotiate further. On the second issue, the contingency cap, if the city is going to take the position that they could make any changes they want and we will pay for it then that is a deal killer and there would be no point in going any further.

Mr. Wilkinson asked the agreement requires that submittal of civil improvement plans for our review and approval and the state. So we would approve the plans and you will go out to bid. How do you envision the city at that point in time coming back and changing the plans? What type of scenario would even precipitate that type of an event?

Mr. Reynen answered he didn't think it would likely happen, however, given that if it doesn't happen then get rid of it. If somehow it does happen then we don't want that. There is no harm to you in giving that provision.

Mr. Wilkinson asked why not have a provision that says if we approve the plans then we won't effect a change on them. If the water alignment doesn't work out and we have plans that are submitted, if this agreement works out and we are going to work on an approval. But if you come back and say the water line alignment didn't work and we need to go to the alternate water line, you've included that in the agreement and you have to accept that in good faith and it's triggering this change. We want you to pay for the engineering that is required because we have this alternate water line. He sees that as a scenario where, for whatever reason, we get stuck with that bill. Who is going to pay for the engineering changes if the alternate water line gets utilized rather than the one that you proposed to date.

Mr. Reynen said they would like them both costed out; they want the ability to proceed with either one. We would then need everything agreed upon up front because the danger is the city is going to review and approve all these things but what if we already started the process and this particular thing is... If you said up front that everything was done, but if there are subsequent approvals needed, and the city's position changes, we want to be protected against that. If the city had changes in the code, etc. we should be protected against that.

Mayor Johnson said he thought we can work that out. That's a fair assessment.

Mr. Georgiou suggested a break so they could talk amongst themselves.

BREAK

Attorney Travis Gerber representing Artisan said he has been involved in this since spring. The negotiations have languished. They have been dwelling on the smaller issues while more issues have arisen. They want to cut to the chase and identify the issues one at a time and deal with them. The biggest issue is how much will the city approve for this project. They urge the city to approve the estimate as presented; the grading and culverts and drainage issues that are incidental to the installation of pipeline. If the city were doing this project on its own prior to any development coming in, it would be the responsible thing for the city to develop this properly with the proper size of water line for the full development with the grading and drainage so that this water line has to be disturbed again and dug up in order to build a roadway over it. The city would be anticipating that roadway anyway for Cattle Drive and access to the annexed section 18 which the city intends to acquire in the future. The alternative alignment is important to Artisan to insure they can negotiate alignment of and connection of the water line. The alternate alignment will not affect the city in any major way. The two alternates are in such close proximity to each other and the costs will be relatively the same. All the city has to do is approve an amendment to the development agreement that allows for an alternative alignment and attach an exhibit showing the possible alternative alignment. The estimate would still be at the same amount from his understanding. This is not tied to the annexation of the Jordanelle property at Sundance. Whether Jordanelle allows that pipeline to be built is up to Jordanelle and is not contingent on annexation. The alternative alignment is not something that would cost the city anymore and would just give Artisan additional alternatives in order to connect this water line. The argument that Jack Reynen was making regarding the fee credits to match any fee increase that the city may impose in the future is reasonable. It would be similar to if I would buy a movie ticket today and that movie ticket doesn't expire and then I want to cash it in and use it to watch a movie next year, I shouldn't have to pay anymore in order to get my admission into the movie. Or similar to the pre-paid tuition through UNR; if I pay my tuition today and 20 years from now my son or daughter goes to college there, that's the deal. You pay it now and you get admission later. An incremental fee increase should match the credit because Artisan is investing.

Councilman Rice said later on he wanted Mr. Gerber to clarify this because he thought he may have been thinking this point backwards.

Mr. Gerber continued. The next issue was, it appears through this meeting there has been some resolution to the idea that if city were to demand or request changes to the construction of the pipeline midstream while it is being constructed, that the city be willing to bear it as additional cost. We can clarify that so that Artisan doesn't bear the risk of the city saying "we can get a better" or add some upgrades to the pipeline and have Artisan pay for them. The idea is that we will build it as estimated as according to the plans. Any request from the city to change the plans would be borne by the city.

Mr. Wilkinson asked we are very clear that would be changes after the city has approved the plans. This would not be changes that we request in reviewing the plans, correct? (yes)

Mr. Limberg said you would want to add the state approvals as well. We've got the city and the state approvals.

Mr. Gerber continued. There is a small issue is whether there would be any terms that survive this contract. To this point city staff and city attorney have indicated that there may be some survival terms but nothing has been identified. Being present in negotiations where we asked this question before the only terms that the city could identify to survive this contract were that if Artisan starts this pipeline and for whatever reason couldn't finish it then the city has step-in rights to step-in and finish that pipeline so it is done in time. The only survival terms that we talked about in negotiations, to his recollection, were that the city would want the plans. That is such a small issue that Artisan would turn over the plans to the city for the city's new contractor to finish it. That's a remote contingency. If Artisan commits to build this pipeline it's going to have the money to get started and to finish. It's not going to commit and break ground without full funding in place. He felt the survival clause issue is really a non-issue and as staff indicated, that can be looked at by just putting our minds to that in a short session. The last point is to keep these negotiations moving. In hindsight he wished that this meeting had been requested and held back in June of last year. We are here now and we lost a year in construction and development. In order to make sure that Artisan has an opportunity to break ground as soon as spring rolls around they would request that they come back onto the agenda in December. Would Tuesday, December 17 be available? If we could set a return meeting.

Councilman Schmidlein asked if he wanted to attend a regular meeting or have a special session?

Mr. Gerber answered a special meeting and that way people traveling would have a better opportunity to know exactly when the meeting was to start. But if we could have a follow-up meeting in order to set on these issues and have one more month to negotiate then hopefully be able to sign a development agreement in December and have Artisan in place to build this pipeline in the Spring.

Mayor Johnson asked City Council what they wanted to do. He thought they had a good topic list of discussion. It may not be all but they were identifying the points of discussion. He would like to see these lists and have it so they could make a response. He needs more information to answer those questions. He asked to schedule another meeting in December as a special session and see where we land at that time.

Councilwoman Simons asked if we want any negotiations to happen between now and December 17.

Mayor Johnson answered if any of the issues in front of City Council are not supported by staff then council is being asked to override staff's decision. Enough information has to come as to whether or not the City Council would want to. Staff needs to have the opportunity to be able to see. The developer needs to know too if we are coming back into the December meeting with a controversy that staff is not supporting then council will have to make that call. There will be some qualifications between the developer and staff.

Mr. Georgiou added that he felt council should instruct staff to work with us in the next four weeks so we actually make progress. If you ask the NNRDA to come up with as good an estimate that they can with their cooperation before the next meeting then you will have more data to make a judgment about whether it makes sense to invest a little bit more or less or what. He asked that they try to make some progress between now and four weeks from now so that everyone is at a point where they can reach an agreement at that time. Otherwise the risk is strong that they will lose another season. This needs to be decided so they can start when the thaw happens.

Mayor Johnson said he is supportive of that. We may have the cart before the horse in this process. Perhaps council should have been brought up to speed sooner. We have to follow the open meeting process. The only way we can share data and deliberate as a body is hold a public meeting. We got ahead of ourselves by having staff and developer work on the details without having City Council know where you are in this process. Whatever can be worked out and whatever discussions can be made then we want that to happen. With the simple move of the city attorney that says here's the highlighted contract and here is where I have a concern. Once you see those and then you are going have to rank them. Is it a minor change in language or is there a financial obligation that doesn't make sense to us. There may be a business model that doesn't make sense for the developer as far as some of the survival aspects of the agreement that the city is going to really want to look for. Artisan needs an opportunity to see that. Those details need to get worked into it. It has to happen between now and the December 17 meeting of more discussions.

Mr. Georgiou said they we are happy to work with Mr. Stanton. We would like for Mr. Stanton to provide the list that he thinks will survive and work on that.

Councilman Rice thanked Mr. Gerber for laying it out in six very clear terms. This gives him a better idea.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to direct staff to enter into meaningful and affective negotiations with Artisan, centered around the following items: 1) the question of how much will the city will approve knowing that the city has already approved \$1.5 million for this project, but there is a recommendation from Artisan that we increase that to the estimate as presented at \$2.5 million. 2) we negotiate in terms of the alternate alignment to assure alignment and**

connection which is connected to the fourth point which is about clarifying changes. 3) fees must match the credit. 4) clarify that any changes which might be made mid-stream. Those would be changes as staff has pointed out that Artisan fears could occur after the plans have been approved by both the city and the state. 5) the city attorney clarify specific issues in regards to the terms that would survive the contract and provide Artisan with specific answers to those concerns. 6) staff work with Pam Borda with NNRDA for an economic analysis that is a realistic one; a very conservative return. 7) that we be provided with some information in regards to bonding. Either the city bonding or whatever opportunities there may be for private bonding through the city. 8) these discussions take place so that a meaningful proposal can be brought back to the council at a special meeting to be scheduled on Tuesday, December 17, 2013 at 5:00 pm.

The motion passed unanimously. (5-0)

After the motion and before the vote, Councilwoman Simons asked if we could get an update on the progress at the meeting scheduled for the 10th. Perhaps provide further direction so that when that meeting on the 17th comes, as much possible work that can be done. **Councilman Rice added Councilwoman Simons' suggestion to his motion.**

Mr. Calder said a big part of that motion is a commitment on the city's part to fully fund the water line, or at least investigate where we are going to find an additional \$1 million. If that is the case then staff will need direction on where that money will come from. It is unbudgeted so therefore we would have to look at all of our funds.

Councilman Rice said he did not mean for the motion to by any means authorizing up to \$2.5 million. The discussion centered around the \$1.5 million that we have committed and Artisan's desire that we look at it at \$2.5 million. There could be some negotiating room in there and there may be some alternative funding opportunities that could be considered. He didn't mean to authorize the \$2.5 million.

Mayor Johnson said the direction from City Council to staff is to move into discussions with the developer and whomever. We don't want to box staff in. We still want staff's recommendation as whether or not they agree to it. If you can't come to an agreement, you can't come to an agreement. He still wants everyone opinion.

Mr. Calder said we work off an annual budget.

Mayor Johnson said if Mr. Calder comes back and says "I don't know where you are going to get the \$900,000 out of the General Fund."

Mr. Calder said it isn't in the general fund but other capital construction funds and scheduling of other capital improvement projects.

Mayor Johnson said he would have staff make the recommendation and also the developer as to where are the deal busters. He would not want staff to say council gave us nine things to do here and he have to get them all done. We want to get this to an end.

Councilman Rice said we have \$1.5 mill budgeted in this fiscal year. This project will cover another fiscal year. His motion said a meaningful agreement to discuss. He meant a meaningful proposal to discuss on the 17th and an agreement will come from that proposal.

Mr. Gerber noted the budget was \$2.4 million with the contingency.

Mr. Wilkinson said council took action that we were limited to \$1.5 million. Staff has never taken that position. Staff presented the agreement with the engineer's estimate. He wasn't sure what they could do there. They may be able to look at the road base coming off. Just for clarification, staff has never disagreed that you shouldn't be able to utilize your sewer connection fees to reimburse (estimated at 40%) 100% of those costs. We have never ever said you shouldn't get that. He thought they were speaking the same language but cannot understand each other. We are still there. It's really about how it is worded. If the fees increase after five years because of all the other issues that Mr. Limberg mentioned earlier, you are just getting your money back sooner with every time you pull a building permit. He thought they drafted that language that allowed for that. We will work that out. He wanted to be clear that the sewer connection fees should be limited to the reimbursable costs that are well defined in the agreement at 100%, not some percentage above that if the sewer connection fees increase after five years or something like that.

Councilman Schmidlein added in on item No. 1, Mr. Gerber said how much is the city willing to invest. That leaves us with a wide open threshold. We may come back with a different number. The \$2.5 million is not what is being asked; instead we are being asked how much we are willing and capable to invest.

Sydney Miller said she understands that Cattle Drive road isn't just a road into a subdivision. She thought the city may want to pay some for that.

Mr. Calder said we will talk to Mr. Stanton about the roadway improvements. He didn't think the \$900,000 delta is going to be something that comes out of the water or sewer fund. We will be looking at a couple of different funds instead. We don't believe there is enough money in the general fund to do that. We do have declining revenue right now.

Mayor Johnson thought maybe we got ahead on the details and we missed the broad strokes. That is a huge delta. How will this work if you can't get the project off the ground? If we ever get an opportunity to do something like this again we will know more. This is a new process for the city.

Councilman Schmidlein asked Mr. Calder, on the storm drain, can that come out of the sewer fund or is that considered roadway improvements?

Mr. Calder answered it is not considered sewer funds. That would most likely be capital construction.

Mayor Johnson noted this is a complicated issue. He has learned a lot more on this process in today's meeting. This is important to the City of Elko and it is a big project. We will keep digging at this thing and see if it makes sense for both sides and get to the end of it. We will see where we are with the report at the next council meeting and then also having the workshop on the 17th.

Mr. Stanton said if the development agreement is going to be approved there has to be a public hearing and adopted as an ordinance. He didn't think it would be realistic to expect this to be approved on December 17.

Councilwoman Simons asked if we could expect to do first and second reading in January.

Mr. Stanton answered that would be realistic.

Mr. Wilkinson said there would be a Planning Commission hearing and then it would come with a recommendation to the City Council. It pushes it out but that is the procedure just so everyone is aware of the procedure and does not have expectations of what might happen on December 17.

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**

Shanell Owen, City Clerk, asked that all councilmembers be ready for pictures at the next council meeting. Councilman Schmidlein said he would not be in attendance that day.

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

Mayor Chris Johnson

Shanell Owen, City Clerk