

CITY OF ELKO
CITY COUNCIL MINUTES
SPECIAL SESSION
9:00 A.M., P.S.T., TUESDAY, DECEMBER 17, 2013
ELKO CITY HALL, 1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

Present: Mayor Chris Johnson
Councilwoman Mandy Simons
Councilman Robert Schmidlein
Councilman Reece Keener
Councilman John Rice

City Staff Present: Curtis Calder, City Manager
Delmo Andreozzi, Assistant City Manager
Dawn Stout, Administrative Services Director
Ryan Limberg, Utilities Director
Scott Wilkinson, Development Manager
Dave Stanton, City Attorney
Jeremy Draper, Civil Engineer
Dennis Strickland, Public Works Director
Rick Magness, City Planner
Rebecca Hansen, Planning Technician

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.

PROCLAMATION CELEBRATING KELK'S 65 YEAR ANNIVERSARY

Mayor Johnson read the proclamation.

Paul Gardner of Elko Broadcasting was thankful for the recognition.

Lori Gilbert appreciates working with this family and understands the responsibility of stewardship. She thanked the Council for recognizing this family owned business.

I. APPROPRIATIONS

- A. Review and possible approval of a Real Estate Commission & Listing Agreement with Kimberly Owen, Vice President, NAI Alliance for the payment of a commission upon the successful leasing of property located at the Elko Regional Airport, and matters related thereto. **FOR POSSIBLE ACTION**

This item was tabled on December 10, 2013, due to an incomplete listing agreement that was included in the agenda packet.

803 Murray Way commonly referred to as the old terminal building, is currently unoccupied after Four Square Church vacated the property in August of 2013. The Building Department has informed the Airport that the 803 Murray Way building no longer meets current codes and requires approximately \$300,000 in upgrades before they will allow a building occupancy certificate. The code issues address provisions in fire suppression, and Americans with Disabilities access. The building built in 1970, also requires significant remodeling to repurpose. The airport enterprise fund does not have the available capital to make these improvements and knows that an empty property of this size is a long term maintenance liability. NAI Alliance has agreed to assist in marketing the property for lease. The “as-is” leasable rate per square foot for the building would be in the range of \$0.20-0.25. A market ready rate for the building would lease at a per square foot price of \$1.50-2.00. The listing commitment between the City of Elko and NAI Alliance on the property at 803 Murray Way would be 12 months. MG

Mr. Calder mentioned that staff recommended approval.

John Carpenter understood it was a lease for one year, but the agreement states December 1, 2013 terminating at midnight December 1, 2015. He wondered if that was a typo. He had a problem with putting properties up without giving the rest of the community a chance to bid. He didn't think it met the criteria for economic development. Most of the time an appraisal is done, the community is made aware it will be available for sale or lease, and then it's put up for auction. If no one is interested then get a real estate agent to help. It's Council's responsibility to get the most it can for properties so taxpayers can realize the most bang for their buck. There are all kinds of properties available for lease for commercial enterprises which aren't full. The provision of NRS being used in the contract provides for an appraisal and auction, but you could also do it without letting the public know. This is the wrong way to do it, and you're not getting the most bang for your buck. The last one was a cheap lease rate and appraisal, and the people that got it then wanted to sell some of their property to the City for \$1 million per acre.

Mr. Calder explained the intent is for one year and the agreement should say December 1, 2014.

**** A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve a Commission Agreement with Kimberly Owen of NAI Alliance for the payment of a commission upon the successful leasing of property located at the Elko Regional Airport. The commission in the amount of five percent of the total lease value, payable in cash at lease execution. The lease will commence on December 1, 2013 and terminate at midnight December 1, 2014.**

The motion passed unanimously.

After the motion and before the vote Councilman Schmidlein asked what advertising the City did over the past 6-8 months.

Mr. Calder explained the preference was to get an existing governmental tenant. BLM showed interest during past fire seasons, but they didn't have the financial ability. Summit has an operation adjacent to the old terminal, but they weren't interested. Staff also talked to El Aero. There was no formal advertising.

Councilman Rice clarified we aren't leasing it. We are going into an agreement with a real estate person who will find a tenant for us.

Mr. Calder explained we still need to follow NRS 268 once we get a tenant: appraisal and, short of an economic exclusion, the auction process.

Council voted on the motion.

II. SUBDIVISIONS

- A. Review, consideration, and possible acceptance of public improvements for the Eight Mile Estates subdivision, and matters related thereto. **FOR POSSIBLE ACTION**

City Council approved the Final Map on August 14, 2012. An Agreement to Install Public Improvements and a Performance Guarantee was entered into on August 27, 2013.

The Agreement was backed by a provision in the agreement stating the City would not certify the final map until the Public Improvements were accepted by the City and the Developer had a financial guarantee in place for a one year maintenance agreement.

The Developer has substantially completed the Public Improvements in accordance with the approved plans with a few outstanding items. The City is in receipt of the required Certification of the project by the Engineer of Record. As noted on the certification there are some minor items to be completed. Upon acceptance of the Public Improvements by the City Council, the Developer will be required to provide security in the amount of \$101,287 for a 12 month maintenance period. SW

Mr. Wilkinson went over the outstanding items explaining during construction they damaged one of the lights at the Eight Mile Park. They discussed having City Parks do the repair and then invoicing them, but the decision was the contractor will take care of it.

**** A motion was made by Councilman Keener, seconded by Councilwoman Simons, to accept the Eight Mile Estates Subdivision Public Improvements based on the Engineer of Record certification with the following conditions: a) security on file with the City of Elko in the amount of \$101,287 for the 12 month maintenance period before the map is recorded, b) monuments installed before the map is recorded, c) repair the Eight Mile Park light within eight weeks of Council approval, this item is covered under the maintenance security; d) installation of the mailboxes within eight weeks of Council approval, this item is covered under the maintenance security.**

The motion passed unanimously.

III. PUBLIC WORKSHOP

- A. Review, discussion, and possible action concerning the proposed Exit 298 Project, including a review of the latest draft development agreement and possible Council direction regarding Staff recommendations, 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 discussed and considered by the Council on September 24, 2013 and November 19, 2013. In addition, a status update was provided on December 10, 2013. During this time Staff has continued to work with Artisan and refine the agreement.

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. SW/RL

Mr. Limberg explained Artisan and staff are very close to resolving four of seven items that Artisan asked for Council action on. We need to work out sewer funding, how to close the delta or the difference between the water infrastructure costs and the roadway related costs, and terms that survive the contract.

Councilman Rice wanted to hear Artisan's take on the seven items discussed over the last few weeks. It was a lot of work on staff and Artisan's part and he appreciated that.

Jack Reynen appreciates staff and their timeliness. They received the changes from Mr. Wilkinson and Mr. Stanton regarding provisions that survive termination of the agreement and only object to two of them which say "except for the accrued contractual obligations." What are

the accrued obligations? Those two comments covered all of Sections 5.4 and 5.5 which are about two-thirds of the agreement. You don't need those general statements when the specific sections that are to survive are called out, but because there are so many sections specifically called out there might be an implication that if it's not mentioned everything's cut off. They wanted to make sure the reimbursements and fee credits addressed in Section 7 continue on. Plus the date needs to be pushed back since the process has taken so long. Right now the date is September 30, 2014 for completing the water line, but they need at least three more months: December 31, 2014. They also understand that if they leave the City with half done water lines, for instance, that the City should have the right to the plans to finish that, but they would like a little more clarification. If the thing falls apart because they can't get the easements the City shouldn't get the plans for free.

Councilman Rice asked Mr. Reynen to point out the exact language he was talking about.

Mr. Reynen said 5.4 (g). The duty of the developer to deliver design documents...

Mayor Johnson asked him to continue with a broad approach.

Mr. Reynen moved on to the second issue which was how to pay for the water line. The City was prepared to put the water line in before they came along. If they weren't here the same thing would still have to happen. They were willing to delete the requirement for the base covering or gravel which is a substantial portion of the cost though, more than \$200,000. That will help to close some of the gap.

Mayor Johnson asked where that would put the total project costs.

Mr. Reynen thought it was a little under \$2.2 million.

Mr. Limberg went over the spreadsheet regarding project costs that he handed out before the meeting.

Councilwoman Simons asked if the \$2.3 million was before or after taking out the amount Mr. Reynen was talking about deleting.

Mr. Limberg explained that was the total.

Mr. Reynen said so \$2.376 million minus \$259,000 is roughly \$2.117 million.

Mayor Johnson asked if that covers engineering and construction management.

Mr. Limberg explained those are included in the additional costs.

Mr. Reynen moved on to the third issue which was sewer. What they're looking for with the credits is protection from increases where they don't have control. One of the purposes of a development agreement is to sort of freeze in time some of the standards and costs so you're not subject to arbitrary actions later. When he asked if fee increases are always City-wide, Mr.

Limberg said sometimes they can be location specific. His understanding is that some members of the Council thought they were saying they would never have to pay sewer fees on this property. That is not the case. They understand this property will have to pay its proportionate share of future upgrades to the sewer treatment plant. If the fees whereby the City recovers the cost of the infrastructure increase they should get an increased offsetting credit since they would've already paid their share by putting the infrastructure in. It's not like they're making a profit, they get more credit but they have to pay more fees. They never get fee credits unless the fees associated with recovering what they already paid goes up. The new staff proposal is that the City develops this. They worry that's still not the right solution because they would like to control the timing in case they have a hotel or houses that need sewer and it's not there. They still want to build it with appropriate credits.

Mr. Wilkinson explained staff never felt they shouldn't get credits, but it should be capped at their total amount invested. If connection fees increase that's just passed through as they build out.

Mr. Reynen gave an example of having fees and fee credits worth \$1.2 million. Now, if the fees increase to \$1.4 million they are charged an additional \$200,000 if the fee credits don't increase.

Byron Georgiou, 2857 Paradise Road, Las Vegas, explained the situation as they shouldn't have to pay connection fees for connecting to the sewer they already built and paid for. The way to handle that is credits for having essentially prepaid the connection fees. Those properties that are serviced by that sewer don't pay sewer connection fees again. They pay sewer service fees and an assessment associated with an upgrade to the sewer plant that might be necessary because of additional users in the future. If you double connection fees you double our credits because we already built it, so we don't have to pay again to connect to it.

Councilman Schmidlein wanted to know if Mr. Georgiou was talking about if the sewer line existed on the edge of their property and they took it from there or from the sewer plant on out.

Mr. Georgiou was talking about just from the property line because the City is already reimbursing them for the sewer plant to the edge of the property.

Councilman Schmidlein's understanding was that the developer pays for the infrastructure on all developments throughout Elko.

Mr. Stanton thought in this case the sewer connection fee is an impact fee as defined by NRS 278B.050. NRS 278B.160 is very concise in terms of what that money can be used for. Nevada Supreme Court clarified that what is listed is an exclusive list of costs. The impact fee, in this case the sewer connection fee, can be used for repaying the cost of facility expansion, constructing the sewer line; he read that as an expansion to the water reclamation facility if it needs to be upgraded in order to accommodate the additional use, etc. The way the development agreement is written complies with the statute, but the discussion is going broader than that.

Mr. Reynen explained we wouldn't even have this issue if we used the original draft where the fees were fixed.

Mayor Johnson said there are two items here, increase of fees and whether or not you are in acceptance that the connection fees from here on out would be limited to the amount of dollars that are spent to put in the force main.

Mr. Reynen said the credit issue doesn't come up unless the fees increase.

Mayor Johnson said the concern of staff is that Artisan is asking for more in credits than the dollar amount they put into the force main. Is that right?

Mr. Reynen said correct, if the fees increase. If you don't increase the fees then you never have to increase the credits. We're only saying if you increase the fees then we should get more credits.

Mayor Johnson said so it's limited to the increase in fees. When you look at that history the percentage is very small. I don't know that the City of Elko has raised connection fees more than five percent in 20 years.

Mr. Reynen said if you can give us something like that we'll take it.

Mayor Johnson just wanted to make sure it was solely limited to an increase.

Councilman Rice said perhaps the language can say in keeping with historic rate increases.

Mr. Reynen clarified that the infrastructure being discussed is outside their property.

Mr. Wilkinson disagreed with Mr. Reynen's approach. The credit needs to be capped.

Mayor Johnson explained they just want to be compensated for increases in the connection fee. They're willing to cap what their portion is in the force main.

Mr. Wilkinson said at 60 percent. We're still talking about the 40 percent.

Mr. Reynen noted if the fees don't increase we're capped at where we are.

Mr. Wilkinson said we should keep in mind this is a multi-decade project. The Council shouldn't consider making a commitment that the connection fees will not increase in this area.

Mr. Limberg explained the definition of connection charges in City Code is the fee to equalize the investment in plant and equipment, and other facilities made by the City. The charge is for the right of service. All connection charges go to the Sewer Capital Improvement Fund. A different section of code states that sewer main facilities may be extended by sub-divider, developer, property owner or other persons.

Mayor Johnson explained they are willing to accept the cap on the dollar amount spent on the force main that it would be a driver in the amount of credits they would get in sewer connection fees.

Mr. Limberg wanted to clarify that connection fees aren't used for main extensions.

Mayor Johnson said whatever they put in for the sewer force main is an amount that will be allocated in sewer credits connection fees.

Councilman Schmidlein wanted to make sure he understood: if you pay for a portion of the force main, say 40 percent you want to recoup 40 percent with no increase on your infrastructure development.

Ed Davis, 3085 Thornwater Drive, Reno, said correct. In some communities when you have a sewer connection fee there is a treatment portion, an operations/maintenance portion, and a conveyance portion. Your fee is not set up like that. If there's a portion of the fee that goes up relative to the operation of the plant we accept that. We'll get reimbursed 60 percent after we build it and then 40 percent in credits based on the collection system. If for example the 40 percent is equivalent to the number of connections on site and the fees start going up without a commensurate recognition of that, we'll lose credits because the dollar amount we put out is an equivalent to the fees that are being charged on the site.

Mayor Johnson said what you're asking for instead of a dollar for dollar is a unit for unit.

Mr. Reynen said yes.

Councilman Keener wondered if there was support for a price guarantee for a period of time, maybe a minimum of five years, where they wouldn't have to bear any cost increases since the City can't freeze its costs.

Mr. Limberg said that is in the agreement now.

Mr. Wilkinson would caution a unit per unit type credit.

Mr. Reynen said the fact that it can be a property specific increase is what worries us. If they were City-wide this would be much less of an issue.

Councilwoman Simons wondered if the City could guarantee not to increase Artisan's.

Mr. Wilkinson explained we had that for consideration in the agreement with a five year hold on it. The issue is we have no way of knowing their impact to the sewer plant which leads to this discussion. Staff recommended an approach which takes all this off the table: the Council commits to the lift station, force main and possibly a gravity extension up under I-80 based on some criteria threshold defined in the agreement, and the developer takes it from that point paying the necessary connection fees. That is consistent with what the City does in any other circumstance.

Councilwoman Simons wanted clarification that Artisan's concern was the City taking too long to build it.

Mr. Reynen noted exactly. It's critical for us to sell and lease as much of this property as quickly as we can possibly do it, and it is not good if we don't have sewer when we need to go.

Councilwoman Simons wondered if we could make a commitment to doing it within a certain time frame.

Mr. Wilkinson explained Mr. Limberg identified a fatal flaw with a date certain approach, but we can structure the agreement that if Artisan brings projects forward that trigger certain flows the City will perform within a certain period of time.

Councilwoman Simons wanted clarification that we can do it within a certain amount of time once they require a certain flow, but just not a general time frame.

Mr. Limberg said yes and then explained the mechanics of the lift station require a certain amount of flow through it to work properly. We need to have it timed to some sort of flow or development parameter as opposed to just a certain year in the future. If the City were to install the infrastructure we would recapture 100 percent of our connection fees. With the 60/40 approach we only recapture 60 percent and that's after Artisan recaptures their 40 percent. With the option staff proposed we would see immediate payback when customers connect.

Councilman Rice wondered if the City can afford that right now if Artisan says they need x amount of flow by 2015.

Mr. Limberg said based on today's data, yes.

Councilman Schmidlein was in favor of building the infrastructure and cutting ties with the 60/40 split. We do have funding to get it to the edge of exit 298.

Mr. Reynen wanted to make sure the Council knew with the 60/40 option the City only puts out \$1.8 million rather than the whole \$3.1 million initially.

Mr. Limberg disagreed with that. We're proposing minimal infrastructure. We're not proposing to do the phase two extensions.

Councilman Schmidlein clarified that we will put in from the sewer plant to the lift station, run the gravity line down toward the lift station and then extend from the lift station to the edge of the property. Artisan will install 100 percent of the infrastructure from that point onward and pay connection fees.

Mr. Reynen noted if we put in that additional part that benefits other properties. We should still get some reimbursement for those other properties.

Mr. Limberg explained if other people connect to the sewer main that you put in you can receive payment from those people per City Code Section 9-5-33.

Councilman Schmidlein added we will pay the difference in additional cost for an upgraded line size, but other than that we cut the ties.

Mr. Wilkinson explained reimbursements are typically limited to seven years, but this is a multi-decade build out. Maybe we can consider a more lengthy time period for their reimbursement in the agreement.

Lynette Snyder, 2093 High Noon Road, has been president of the Sundance Estates Homeowner's Association in the past and was asked to speak. The residents are concerned about where the water and sewer lines will go because Jordanelle wanted to run it down their streets. They don't get help from the County or City for road maintenance.

Mr. Limberg said there is no sewer on or near the Sundance property, but one possibility of the water line alignment is tying in at Sundance and Rio Bravo.

Ms. Snyder wondered if there would be an impact.

Mr. Limberg said at that location there would be a street cut and patch, and then it would run through an easement or right-of-way thereafter for water only.

Ms. Snyder wondered about the outlet to Mountain City Highway.

Councilman Schmidlein explained the proposed Cattle Drive is outside of their subdivision.

Ms. Snyder explained Jordanelle's excuse was it would take five years to put in Cattle Drive.

Councilman Schmidlein didn't see anything in the proposal that shows tying into Sundance Drive whatsoever.

Ms. Snyder noted so they won't have any need to use our roads.

Mr. Reynen explained the property will be developed from the south to the north.

Councilman Schmidlein said they will be on the western side of your subdivision.

Ms. Snyder wondered who they can contact regarding where the water and sewer lines are going.

Mr. Limberg offered to give Ms. Snyder a copy from the agreement.

Ms. Snyder felt the community needed to find things out a little bit sooner so they have a chance to know how it will impact them.

Mr. Carpenter thinks what Mr. Limberg is proposing makes sense. He himself had to put in all the sewer, water, streets, etc. and they should have to do the same. It's going to be mostly an industrial development, so they could be on a septic tank until it gets to the point where the sewer will work. If you borrow from the fund to put in the line then eventually you will get the money back so you can do something else. People won't stand for you taking money out of other funds. This has boiled up into such a monstrosity that no one can draft up that kind of an agreement. The developer shouldn't even be concerned about the connection fees because the people who go onto that property will be the ones to pay those fees. They don't have to put out any money until they get the property sold, and then they can put in the roads, sewer, etc. The City should be the ones letting Sundance know this won't go into their subdivision, not the developer.

Councilman Keener wondered what has the most risk for the rate payers over five years, the City paying for phase one or the 60/40 split.

Mr. Limberg sees them similar. If the City installs the infrastructure we get 100 percent back right away. If we do the 60/40 split we only get 60 percent of our money back and that's after Artisan gets their 40 percent. He saw the best deal as the City doing the infrastructure.

Councilman Keener initially liked the 60/40 split because Artisan would be motivated to get it developed, but there's a lot of merit to having the City take of it.

Mr. Limberg explained it would take a trigger mechanism for the sewer, so we'd have some development there to repay that fund as soon as it went in.

Councilman Keener wondered how fast the infrastructure could be put in place if nothing happens and then all of a sudden there is a 300 room hotel that gets approved.

Mr. Limberg explained it would have to be submitted to NDOT and Federal Highways for approval, and we would need a bid document, so as soon as we had a complete set of engineering plans we would start working on those. The work itself would take approximately four months.

Councilman Rice said it appears we can respond very quickly to the needed flow. He thought the number one issue had to do with giving staff direction on reducing the cost of the water project by eliminating the road base.

Councilman Schmidlein thought the sewer issue would trigger how to move the rest of the issues forward.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to direct staff to go forward with the preferred option of the City installing a force sewer main along airport frontage, a lift station, as well as a gravity sewer main under I-80 to the exit 298 interchange, more specifically to the edge of the property at the City's cost, and that it be done at such a time as the flow demands.**

The motion passed unanimously.

Mr. Limberg explained he has been working with Mark Rotter on the engineering design. They may need some minor adjustment to the flow rate, but they can work through that in the development agreement.

Councilman Schmidlein wanted to get back to the water line extension. Right now we're at \$2.1 million with the gravel base removed. We're committing to move this forward, but there's still a variance of \$450,000. At the end of the day Artisan will recoup quite a bit of cost. For the grading proposal, he wondered if the footprint was just for the water line or if it was from toe to toe on the roadway. (roadway) Can Artisan step up to the plate on any of the additional \$450,000 to where we can move this forward?

Mr. Reynen felt they would be at a lower cost than the City because of prevailing wages, etc., but by getting rid of the \$259,000 they are already making a significant contribution to closing the gap.

Mr. Limberg explained the proposed other funding column was what couldn't be paid for out of the City Water Fund. The only other funding option is the Capital Construction Fund, which is the same fund used for doing the streets. Beyond that they would need to look to outside sources.

Councilman Rice explained it was proposed that we can come up with another \$150,000. Additionally, Pam Borda, NNRDA has some confidence there could be other funding sources. He was happy to pursue those sources with Pam and Artisan. There is a meeting scheduled on Thursday. However, he was hoping Artisan would've come to the table with more cash as well. There's still a \$470,000 gap. We may be able to fill half of that from outside sources, but we're not in a position to fill that whole gap.

Mayor Johnson wondered if there was support of getting water to exit 298 if the costs were \$1.5 million.

Councilman Rice said yes, we've already committed to that. He would go to \$1.65 million.

Councilwoman Simons didn't think the whole \$1.65 million could come out of the Water Fund due to some of it being roadway expenses.

Mr. Limberg explained the \$1.65 million is only water related expenditures. The \$469,000 is expenditures above that such as storm drains.

Councilman Rice offered his own personal commitment, not a City commitment, to work with staff and the developer on the alternative funding sources.

**** A motion was made by Councilman Rice, seconded by Councilman Keener, to direct staff that the City commits to funding for the waterline project a total of \$1.65 million: \$1.5 million is currently budgeted and use an additional \$150,000 from the Water Enterprise fund to extend the water line to exit 298.**

The motion passed unanimously.

Before the vote, Mayor Johnson wondered if any other funding options were part of the motion.

Councilman Rice thought the only other option was to talk to some private organizations. There is a possibility at some point for a CDBG, but the GOED dollars are not there now. They could be there in the future.

Mr. Reynen wondered what happened to the Capital Construction fund.

Mayor Johnson explained staff presented that as an option, but Council is not in support.

Councilman Rice explained that takes money away from other areas of the City.

Councilman Schmidlein noted if you have potholes up and down your road we will get beat up over it.

Mr. Reynen understood that and asked if there was new money in the 2014 fund.

Mayor Johnson explained the motion does allocated another \$150,000, but no support from the General or Capital Funds.

Mr. Reynen said so your Capital Construction Fund is overtaxed already.

Mr. Carpenter noted there is opposition out there on the street of the City doing this at all, and we're getting pretty well built out on residences.

A FIVE MINUTE RECESS WAS TAKEN.

Mr. Reynen appreciated the City going to \$1.65 million and efforts to see if Barrick or Newmont is willing to help. The cost of roads in this project is significant and at the time Artisan is bearing those costs. Maybe that could be adjusted, but that's too much to get into right now. However, they would like to get everything else done. Mr. Limberg's proposal could work if they can be satisfied the infrastructure will be there when they need it, and that the reimbursement time can be extended.

Mr. Carpenter didn't want Council getting caught up in putting out all the money. The only thing that needs to be put up right away is the grading costs. Before Artisan was saying they want to build it and they had the money, now they're balking at \$400,000. Don't get caught into the deal where you're building the water line and don't have any agreement that they're going to do the rest of the improvements.

Mr. Wilkinson explained one thing Council can consider is we've had a lot of discussion from NNRDA about potential development. The agreement can be drafted where letters of commitment are presented to Council before moving forward with construction of the water line.

Mayor Johnson was in favor of the motion because the City has always been in the business of transmission mains, wells and tanks. The extension of this water main to Exit 298 falls within that scope of work. It's just a little different having the joint venture. From a transportation side it's strong and is an area Elko should look at because it's right there at the exit to the freeway. The downside is the project is so far from the existing utilities that neither the developer nor the City can't afford to put that cash out for the next 30 – 50 years. However, this meets our future needs by 1) identifying property that has larger parcels to have the potential for industrial; 2) it makes it such that other properties within the City could be moved to that location; and 3) we know that there's a property there now that would like to do a new expansion and wants to get out of the water providing business so when you get into where you have the fire flow side of things that's where the City really brings a benefit. The project cannot be more than \$1.65 million to meet the requirements that the City could still expense within the Water Fund and to protect the City from a cash flow stance. With the exercise we did over the last two years in identifying where Elko should grow we keep coming back to this area because the topography answers a lot of the needs. The City would like to develop a well at exit 298 and there needs to be a way to convey that water. The developer would still be responsible for the distribution side, road development, etc. specific to those parcels.

After the vote, Mr. Stanton mentioned that he thought they were more or less there with regards to terms that survive termination of the agreement. Artisan wanted Sections 5.4G, 5.4J, 5.5G, 5.5I and 5.5K identified as surviving termination because they involve the City's obligation to reimburse costs already incurred for: the water project, failure to complete construction, design and construction of sewer, sewer connection fee credits, and entitlement to the sewer connection fee credits. He had no problem with that. They wanted terms taken out of 5.4B and 5.5B which deal with water and sewer having to do with Artisan's obligation to obtain easements and rights-of-way, and to pay costs for those and record documents showing they are for public purposes. We might be able to tweak that language. However if there is a cost that has to be paid to a third party a termination of this agreement shouldn't affect an obligation to pay that cost. Regarding the recorded document showing public easements or rights-of-way, he wanted Artisan to be responsible for correcting any errors and that it should survive termination of the agreement.

Mr. Reynen wanted to take another look at it later, but we're close.

Councilman Rice mentioned they still need to direct staff regarding the procedures addressed in City Code Section 3-2-26.

Travis Gerber, Gerber Law Offices, once again pointed out the agreement needs to be amended to move the completion date of the water line from September 30th to December 31st.

Mr. Wilkinson wanted to leave that open ended because it may need to be adjusted again. Staff was in agreement.

Mr. Reynen noted as long as we know that you understand the issue we can wait.

**** A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to direct staff and Artisan to revise the agreement in accordance with direction given at this**

meeting and to have Council review the draft agreement before proceeding with the procedures as outlined in Section 3-2-26 of City Code.

The motion passed unanimously.

Before the vote, Mayor Johnson wondered if the motion tied them from acting on any terms or concerns that may come up.

Councilman Rice explained the intention is we have determined how the agreement will be written, now we go forward with drafting that and it will be brought back to us for final acceptance.

Mayor Johnson explained there were some other issues at the prior meeting. Maybe it's a moot point because today's scope of the work is driven on a transmission main, but there was a question of whether or not there should be a stipulation in how the property is sold, the amount and that kind of thing. He wanted Mr. Reynen to understand that issue is still out there and should still be discussed by Council because it's one that doesn't have full support of City staff. The concern is the City is invested in a project but doesn't have control of sale of the property or putting a price on that property. Again, maybe it's addressed since we're limiting the scope on a transmission main.

Councilman Rice thought the action taken today has drawn back our participation to what's within the normal scope of what we do: a transmission line and sewer line based on flow demands. Nothing done today would prevent us from addressing that later.

Mr. Reynen said that would be a deal breaker if we have a third person telling us how much we can sell our property for.

Councilman Schmidlein doesn't support having a controlling factor of what they do with their property. What is developed will be vetted with the Planning Commission, but the City doesn't have a right to tell anyone what they can sell their property for. We're meeting the needs and support of what has to happen for future development to grow as a community.

Councilwoman Simons said that's like us telling Councilman Keener what he can sell paper for.

Mr. Gerber heard about this for the first time on Friday. We live in the greatest economic system in the world and it's because it is free enterprise. Artisan is going to be motivated to sell quickly and at a profit. If they don't it would be counterproductive to this whole development. There shouldn't be a concern about developing the water line with no one connecting to it for years.

Mayor Johnson feels better about it because the City is limited to the transmission main.

Mr. Calder wanted to know Council's direction if the other funding sources don't pan out.

Council just wanted staff to bring back what they could and then it would decide from there.

Mr. Wilkinson thought the engineer's estimates could be adjusted down to the \$1.65 million and then the development agreement will be structured around that.

Mayor Johnson didn't think that property would see infill for 20 – 30 years. Optimally you would put the water line and roadway in so that you wouldn't have a shallow line or deep line, but when you make that model just follow the topography since it answers the immediate need. The gap in the distance between City limits and Exit 298 are so large that no one can pack that, but that may be a solution to get Exit 298 out of the ground. That scope should be considered as an option. If there's still a \$400,000 shortfall that's all we can do.

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.

ADJOURNMENT

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

Mayor Chris Johnson

Shanell Owen, City Clerk