

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

SS December 22, 2015

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, December 22, 2015.

This meeting was called to order by Mayor Chris Johnson.

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

## **ROLL CALL**

**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  
Scott Wilkinson, Assistant City Manager  
Ryan Limberg, Utilities Director  
Shanell Owen, City Clerk  
Dawn Stout, Administrative Services Director  
Jonnye Jund, Accounting Manager  
Ben Mangeng, Information Systems Manager  
Aubree Anderson, Human Resources Manager  
Ben Reed Jr., Police Chief  
Rich Genseal, Police Lieutenant  
Ty Trouten, Police Lieutenant  
Mark Gibbs, Airport Director  
Jeremy Draper, Development Manager  
Matt Griego, Fire Chief  
Bob Thibault, Civil Engineer  
James Wiley, Parks and Rec Director  
Dennis Strickland, Public Works Director  
Dave Stanton, City Attorney  
Tom Coyle, Deputy City Attorney  
Lauren Landa, Deputy City Attorney  
Ted Schnoor, Building Official  
Diann Byington, Recording Secretary

## **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. PRESENTATIONS**

- A. Presentation and possible approval of the Consolidated Annual Financial Report and Audit for the City of Elko for the Fiscal Year ending June 30, 2015, and matters related thereto. **FOR POSSIBLE ACTION**

Teri Gage with Eide Bailly, LLP will be in attendance to present the City of Elko's Fiscal Year 2014/2015 Financial Report. DS

Teri Gage, Eide Bailly, LLP, went over the audit reports starting with the audit opinion (included in the packet) and gave a presentation (Exhibit "A").

Mayor Johnson called for public comment without a response.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to approve the City of Elko's Fiscal Year 2014/2015 Annual Audit as presented.**

*The motion passed unanimously. (5-0)*

## **IV. NEW BUSINESS**

- C. Review, consideration, and possible approval of Staff's recommendation for use of the ¼ cent sales tax increase recently approved by the Elko County Commission, and matters related thereto. **FOR POSSIBLE ACTION**

At their regular meeting on December 2, 2015, the Elko County Commission approved increasing the Elko County sales tax by ¼ cent to be used exclusively for Elko County's fire district and for street and highway construction, maintenance, or repair. Based on their estimates, the City of Elko will receive approximately \$350,000 per year to be used for City streets. Part of the condition for receiving this money is to have a plan submitted to Elko County specifying the proposed use(s) for this money. Staff is recommending that the allocation be used to fund the City of Elko's annual preventative maintenance program. If these funds are used for the preventative maintenance program, the monies that are normally budgeted in the Street Department's operations budget for that program could be reallocated to the Capital Construction fund. DS

Dennis Strickland, Public Works Director, explained if this is the direction that council wants to go it will ensure the community for the next 15 years that preventative maintenance will happen. This would cover all of your Micro-Slurry project that we do every year. We could also use some of the allocation to purchase the City's annual allocation for crack sealant.

Mayor Johnson thought we needed to have the county agree that the money could be spent this way. He isn't sure if it is clear where the money could be spent. The City of Elko should make a strategic plan over the next few years and present it to the county. It could be that the City of Elko needs to complete a project as a refundable grant and the county fund it afterwards. At the last county commission meeting they were trying to "bottom line" the road plan.

Mr. Strickland said he and Mr. Calder were called in to meet with the county regarding this. The county agreed that the proposed use of the funds would qualify. The county is on board with us going this direction if this is the direction council chooses to go.

Mayor Johnson suggested putting together a whole plan and present it to the County Commission to see what response we get. The city could still make a good case with traffic counts that we need the funding. We need to communicate more with the county. If it is the pleasure of the City Council, this could be an option but we may not want to limit it to this.

Scott Wilkinson, Assistant City Manager, said the county is asking for the cities to submit a road plan by 5 pm on January 4<sup>th</sup>. Mr. Brown, the Assistant County Manager, will provide the plan back to the cities on January 11. They are looking to have a final completed plan to the County Manager by January 13. They are looking for us to provide direction to staff so we can develop a road plan.

Mayor Johnson suggested that we don't limit it to that but put all the next five years' strategic Capital Plan along with it. The county could then decide what they want to fund.

Councilwoman Simons clarified that Mayor Johnson doesn't want to tie up this money with just maintenance.

Mayor Johnson answered this tax increase will generate \$3.5 million. This money will be allocated by the county where \$1.5 million will go to the Fire District and another \$2 million will go to county roads. As a representative to the City of Elko, the allocation of the funding is not fair to the city. He made a presentation and called some County Commissioner and explained that to them. Now they will allocate some funds to the city. There is still a strong argument that the county is gaining \$1.5 million for the Fire District (which in his opinion should be funded with property tax). The county is limited with their funding. He supports the Fire District. There still needs to be a balance when those funds are reallocated. It is fair that the county fund the Fire District at \$1.5 million and the county fund their roads at \$1 million with \$1 million going to the city.

Mr. Strickland said they could take the annual inventory and present that to the county. If they decide they want to explore the avenue the Mayor has discussed they would definitely see that. It would not require a lot of work from staff. We still have over \$20 million on immediate street needs that need to be addressed.

Councilman Keener said he would support any effort to get more revenue for the streets.

Mr. Wilkinson, for clarification, explained the county has asked staff to bring this to the council. They are asking for a road plan based on the estimated revenues. We need direction as to whether they should present a road plan based on \$350,000. Based on some of this conversation,

maybe we should present a road plan at \$350,000 under some sort of protest and ask them to consider additional funding.

Mayor Johnson said no. They have a lot of responsibility and it is tough to raise taxes. We have a responsibility as to what is out there. We as a city are not doing enough to communicate with the county. We can tell the county that we are good with what they are allocating and give them our plan but also let them know that we have a \$20 million need. We want to work as a team.

Mr. Strickland noted that Mr. Wilkinson's concern would be that maybe we draft the preventative maintenance as our number one option and be prepared to go testify at the Commission Meeting.

Councilman Schmidlein felt the biggest thing is he feels two or three years down the road they ought to consider partnering with the city in eliminating all of our bottlenecking issues. The additional surplus of vehicles coming over the summit have contributed to the issue.

Mr. Strickland said that would be a political decision that the county is going to hold the full frontal of the mallet. We can go plea our case but ultimately if they do not have the votes to reallocate additional money this is going to be where we land.

Mayor Johnson thought the commission decision is still fluid. There is no telling which direction it will go.

There was some discussion about the needs of the roads, the proposed motion, and what will be presented to the county.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to direct staff working with Mayor Johnson to prepare a plan for submission to Elko County Commissioners which will show the needs for \$350,000 plus other needs as well. The plan that is developed can be ratified at the first January City Council meeting.**

*The motion passed unanimously. (5-0)*

Mr. Strickland thanked Northern Nevada Equipment for adopting some of our senior and disabled people. They have been helping shovel some folks out. Dan Stevens at Northern Nevada Equipment and Steve Christean both have sent folks around in the last few days to help dig some people out.

- B. Consideration for a Five Year License Agreement between the City of Elko, Nevada and the Elko RC Club, Inc., and matters related thereto. **FOR POSSIBLE ACTION**

Elko RC Club, Inc. has had an agreement with the City of Elko for the purpose of flying recreational model aircraft since 1976. The previous agreement with the City of Elko for such a use expired in 2006. Chapter 493 of the Nevada Revised Statutes requires that a person shall not operate an unmanned aerial vehicle within specified distances of a critical facility including a waste water management facility or within five miles of an airport unless such a use is authorized by

agreement with the airport/waste water treatment operator. The RC Club has maintained a model recreation aircraft facility on property owned by the City of Elko waste water treatment that is within the statutory distance requirements contained in NRS 493. A license agreement has been negotiated to meet the statutory obligations of NRS 493. This license has been vetted through an attorney and will have an associated annual fee of \$250.00 payable to the Elko Sewer Fund. MG

Mark Gibbs, Airport Director, explained Chapter 493 requires that we have an agreement in place for the RC Club to operate. The agreement states that whenever they are operating aircraft within 1400 feet of the center point of that runway they need to call the airport and let them know so we can issue a NOTAM and they are not to fly any higher than 400 ft. above ground level.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilman Rice, to approve the RC Club, Inc. License Agreement effective January 1, 2015.**

*The motion passed unanimously. (5-0)*

- A. Review, consideration, and possible approval for a 25 year lease agreement with options to extend lease for 12.21 acres of real property defined within Elko County Assessor's Parcel 001-660-105, and matters related thereto. **FOR POSSIBLE ACTION**

On June 11, 2013, the City of Elko received a letter of intent from Meridian Pacific, Ltd. to lease property at 700 Aspen Way. The City of Elko has been awaiting Federal Aviation Administration authorization to approve the use of this parcel of real property as a commercial retail mall. The Federal Aviation Administration has granted us permission to proceed with this development and the airport is ready to bring the lease up for consideration. The lease contains an annual escalation clause of 0.5%. MG

Mr. Gibbs explained this has been a multi-year process due to federal delays. The FAA has released the property for a retail mall. Meridian Pacific would like to execute on the lease before council.

John Carpenter said he doesn't understand what is going on. This was brought to council some years ago. At that time he didn't feel the appraiser put a high enough value on the property. Since this was done so long ago he felt the city needed to be in compliance with certain statutes such as NRS 268.059 which states the appraisal needs to be done not more than 6 months before the date on which real property is offered for sale or lease. This appraisal was done two or three years ago. This is a complicated situation. NRS 268.062 talks about advertising the property so other people could bid on it. He is wondering, if this was done a number of years ago and then it comes up now and still be the way it should be. You need to really send this back to the attorney and see if you could do this without going through the procedures that are required. There are some things in there that have not been done. The appraisal could be no more than 6 months old.

Curtis Calder, City Manager, offered to go through the chronology. We went through the letter of intent process and received a letter of intent for this property on June 11, 2013. That letter of intent was based upon an appraisal completed on May 24, 2013 by Bill Tessler. In the August 27, 2013 Council Meeting, the City Council adopted Resolution No. 17-13 that stated that the City of Elko found it was in the best interest of the public of the City of Elko to lease certain land at the Elko Regional Airport to Meridian Pacific LTD for the purposes of economic development pursuant to NRS 268.063. We waited for the FAA to provide the aeronautical release for this property, which took quite a long time. We received that letter last week and as part of that vetting process the FAA required another appraisal. We received another appraisal on March 17, 2015 conducted by John Wright which had the same value as the appraisal provided by Bill Tessler in 2013. The FAA also required the city to conduct a traffic analysis. Because the values did not change, he felt we were in compliance with the statues. If this lease is approved then that will start a feasibility period which would expire at the end of March 2016. The rent commencement date does not start until after the feasibility period is completed.

John Carpenter said this has been going on but it has never been brought up in open meeting that another appraisal was being done or that it was received. The public has a right to know what is going on with this process. These things happen but the public has been unaware of what was going on.

Mr. Calder said the second appraisal was done at the demand of the FAA, as was the traffic analysis. The 2013 Resolution accepted the value of the first appraisal. Based on the second appraisal there is no reason to adjust the resolution. If there is a violation of NRS268 then this lease would be invalid. We have tried the best we could as staff to keep this process moving along.

Kimberly Owen, Strata Realty, 227 Silver, thanked council on behave of Meridian Pacific for moving this forward.

Councilman Keener said he liked it since it was infill development and it increases the airport revenues.

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the lease between the City of Elko and Meridian Pacific, LTD to develop a commercial retail mall on airport property.**

*The motion passed unanimously. (5-0)*

### **III. APPROPRIATIONS**

- F. Review, and consider accepting Grant # CC-16-56 in the amount of \$5,000 from the Nevada Commission on Tourism (NCOT), and matters related thereto. **FOR POSSIBLE ACTION**

On September 9, 2015 Elko City Council authorized Elko Regional Airport to apply for a NCOT marketing grant. The airport in coordination with Delta Air Lines and the Elko Visitors & Convention Authority (ECVA) have successfully been awarded an “Explore Elko” campaign in secondary markets served by SkyWest Airlines (a Delta Connection) along the Wasatch corridor for the period

May 1-May 31, 2016. The grant application is for \$5,000 with a local match of \$2,500 from the Airport Enterprise Fund and \$2,500 from the ECVA. MG

Mr. Gibbs explained this is going to be at the tail end of our 2015/2016 marketing campaign. It will direct traffic to the Explore Elko guide. It will raise awareness of all the things to do here.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to authorize Elko Regional Airport to accept a NCOT Marketing Grant in the amount of \$5,000.**

*The motion passed unanimously. (5-0)*

## **II. PERSONNEL**

- A. Review, consideration, and possible approval for the Fire Department to recruit, hire, and train a Part Time Records Technician I, possible approval of the corresponding position description, and matters related thereto. **FOR POSSIBLE ACTION**

The Part Time Fire Records Technician I is a newly proposed part time position for the Fire Department. In October of 2014, Council approved a part time Fire Inspector to assist the Fire Department with annual inspections. Because of the difficulty in finding qualified applicants, the Fire Chief is requesting to create the Part Time Records Technician Position to help alleviate some of the data entry requirements of the Fire Marshall and assist with maintenance of the numerous records required to be kept by the department. AA

Aubree Anderson, Human Resources Manager, explained she has reviewed and approved the job description included in the packet.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilman Keener, to authorize the Fire Chief to hire a Part-Time Records Technician I and approve the corresponding position description as presented effective December 22, 2015.**

*The motion passed unanimously. (5-0)*

## **IV. NEW BUSINESS (Cont.)**

- D. Review, consideration, and possible approval of an Inter-local Agreement between the City of Elko and the County of Elko for cost-sharing and joint use of the fiber optic network, and matters related thereto. **FOR POSSIBLE ACTION**

Staff from both agencies have worked together to find an equitable method of sharing the costs incurred at present and for future extensions of the City of Elko Fiber Optics Network. This agreement explains what is expected from both parties moving forward and allows the City to collect for the work already completed. This will allow the City and County to connect to each other and to themselves at very high very reliable speeds and allow for cost sharing in the build out of the City's Fiber Optic Network. BM

Ben Mangeng, Information Systems Manager, explained the agreement defines what is expected from both parties initially and moving forward with additional expansions of the network.

Councilman Keener asked about the formula for cost sharing.

Mr. Mangeng answered this is using a lot of existing infrastructure that has been put in over the last 10 years. We got creative with this. In order to expedite and satisfy the City's needs we opted to split the last phase of the project. The county will pay half of the phase and will get 1/12 of the fiber optic.

Councilman Keener asked if there has been any cost sharing in the previous phases.

Mr. Mangeng answered no. They were not able to reach out to the county until recently.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to approve the Inter-Local Agreement between the City of Elko and the County of Elko for cost-sharing and joint use of the fiber optic network as presented.**

*The motion passed unanimously. (5-0)*

- E. Review, consideration, and possible approval for the City of Elko to enter into an Interlocal Agreement with Elko County for the purpose of fire protection support services, and matters related thereto. **FOR POSSIBLE ACTION**

Elko County assumed the responsibility for all hazards fire management in the unincorporated portions of the county from the Nevada Division of Forestry on January 1, 2015. The City of Elko's Interlocal Agreement with NDF expired at that time. In an effort to continue the cooperation between city and county fire protection services and define how that cooperation will be administered, a new Interlocal Agreement between the City of Elko and Elko County was created. MG

Matt Griego, Fire Chief, explained this is the long anticipated agreement we have been working on for over a year. A copy of the agreement is in the packet. It redefined the auto-aid area. It also addresses reimbursement for services further out of the city.

Mayor Johnson asked how long is this agreement proposed for.

Chief Griego answered that has not been set yet. There are a couple of other things that will need to be annually updated. We need council's recommendation on the terms.

Councilman Schmidlein would like to see the terms set at three years to see how this goes initially. Where is the closest county station going to be established?

Chief Griego answered that would be Elko Station One located at the county yard where the offices are. The county is looking for other options for the station.

Councilman Schmidlein asked regarding Elko responding to outlying areas, what will happen when this takes place.

Chief Griego answered that each party has the opportunity to designate what their response will be. When he is asked for a response that response will be set according to what we can reasonably let go.

Councilman Schmidlein asked if he sees any overtime issues impacting this.

Chief Griego answered it will be pretty much the same as under the old agreement. There is a possibility of overtime in the auto-aid area.

Councilman Keener said the benefits are obvious for the county. What are the benefits for the city residents in this agreement?

Chief Griego answered with the new administration, the county can handle their own incidents the best they can with their own resources. We have had to leave the city fewer times. For city residents we are able to respond to calls 100% committed. We won't have the resources to handle another incident but with the auto-aid agreement we could move the county resources up to handle a second incident.

Curtis Calder, City Manager, added another benefit is the reduction in size of the auto-aid area is significant. Previously that area was pretty large and required a lot of use of our personnel.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to recommend approval for the City of Elko to enter into an Inter-Local Agreement with Elko County for the purpose of Fire Protection Support Services for a duration of three years.**

*The motion passed unanimously. (5-0)*

- F. Review, consideration, and possible approval of a request from the Elko Fire Department to enter into an agreement with ARC Health & Wellness to perform annual physical fitness exams on career and volunteer personnel, and matters related thereto. **FOR POSSIBLE ACTION**

Fire Department personnel are required to have an annual physical fitness exam per NRS 617.455 and NRS 617.457. After reviewing costs from local medical providers it was determined ARC Health & Wellness will substantially reduce costs and more closely meet the needs of public safety physical fitness exams. ARC Health & Wellness is currently a service provider for to the State of Nevada Purchasing Division for public safety physical fitness exams. MG

Chief Griego explained this contract is cheaper than what we are currently paying with better service and follow up.

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the request from the Elko Fire Department to enter into an agreement with ARC Health & Wellness to perform annual physical fitness exams on all Fire Department Personnel.**

*The motion passed unanimously. (5-0)*

- G. Review, discussion, and consideration for a possible donation of two performance stages from the Parks Department to the Elko County Fair Board, and matters related thereto. **FOR POSSIBLE ACTION**

As a result of the addition of two newly constructed performance stages, the Parks Department has a surplus of two old stages that are slated for disposal. The Elko County Fair Board is requesting these be donated for possible use at the Elko County Fairgrounds. If this request is authorized NRS 268.028 requires the Council to approve the donation by Resolution at a subsequent meeting. JW

James Wiley, Parks and Recreation Director, explained that the Parks Department is in the process of constructing new stages. We do this periodically to reduce the amount of maintenance that we have to do over time. One issue we have every year is that there are a lot of events going on and there is a huge demand for stages. Since we provide that service we seem to be caught in the middle. This donation would alleviate the conflict between the Basque Festival and the 4<sup>th</sup> of July Festival at the fairgrounds. Included in the packet is a letter from the Fair Board for the donation.

Gil Hernandez, 1316 7<sup>th</sup> Street, doesn't know why we are duplicating what we already have. What was wrong with the old ones? We are reconstructing two new stages when the old ones are still usable. There may be conflicts during the Basque Festival. The only thing that needs to be done on those is the artificial turf on them.

Dave Stanton, City Attorney, said we would need to comply with the statute with a finding the stages have reached the end of their usable life and that the donation will serve a significant public purpose.

Mr. Wiley said every year we do a fair amount of maintenance. The Parks Department looked at the stages and felt it would be best to just start over with them.

Mayor Johnson asked if the recipients understand that the stages need work.

Mr. Wiley answered yes. We have four stages. Two of them need more repairs than the others. We will completely reconstruct those two.

**\*\* A motion was made by Councilman Keener, seconded by Councilwoman Simons, to authorize the donation of two old stages to the Elko County Fair Board, making a note that these assets have exceeded their useful life and the donation will be a benefit to the Elko County Fair.**

*The motion passed unanimously. (5-0)*

**BREAK**

## **VII. 6:00 P.M. PUBLIC HEARINGS**

- A. Review, consideration, and possible action to adopt Resolution No. 32-15, a resolution of the Elko City Council adopting a change in zoning district

boundaries from PQP (Public, Quasi-Public) to CT (Commercial Transitional), involving approximately 9.787 acres of property located generally on the northeast corner of the intersection of Ruby Vista Drive and College Parkway, filed by MRP, LLC and processed as Rezone No. 14-15, and matters related thereto. **FOR POSSIBLE ACTION**

Jeremy Draper, Development Manager, explained Mr. Ormaza was present and willing to answer any questions. We have a recommendation from the Planning Commission to accept the zone change.

Mayor Johnson called for public comments without a response.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilman Keener, to adopt Resolution No. 32-15.**

*The motion passed unanimously. (5-0)*

## **VI. PETITIONS, APPEALS, AND COMMUNICATIONS**

- A. Review, consideration, and possible ratification of the Police Chief and City Clerk's denial of Ms. Debra Mensing and/or Mr. John Smuda's application for a Principal Sexually Oriented Business License, dba The Horseshoe Club, located at 442 Idaho Street, Elko, NV 89801, and matters related thereto. **FOR POSSIBLE ACTION**

Mayor Johnson explained this will be conducted like the meeting we have had in the past where we have to swear in witnesses.

Tom Coyle, Deputy City Attorney, said the applicant is waiving the notice provisions of 4-10-11A concerning denial of the license application and they agree to proceed today in this appeal. He asked Mr. Lockie to confirm that for the record.

David Lockie, 919 Idaho Street, attorney for the applicant, said the stipulation proposed by the City Attorney is acceptable.

Mr. Coyle passed out a set of documents to the council (Exhibit "B"). Regarding how we would like to proceed; the city has two witnesses (City Clerk and Police Chief) and they will be sworn in. We ask that Mr. Lockie be allowed a chance to ask questions and if necessary, rebuttal questions from the city and surrebuttal from Mr. Lockie. It may not get as in-depth as the last liquor license hearing we had. Ultimately it is supposed to be in the nature of a hearing where at some point after those two witnesses, the city will rest and then at that point Mr. Lockie will be allowed to present his evidence and argument concerning the appeal.

Mayor Johnson asked if the City of Elko will be making a presentation.

Mr. Coyle answered yes. We will go first and our first witness would be Shanell Owen, City Clerk.

Mayor Johnson confirmed that the City of Elko will be allowed to go and then Mr. Lockie will be able to question that witness as needed.

Mr. Coyle answered yes. After her presentation and he has questions.

Mayor Johnson asked once the City of Elko makes their presentation with the witnesses they call then the applicant will make a presentation.

Mr. Coyle answered yes. They would have that opportunity.

Mayor Johnson asked Mr. Lockie if he was going to have any witnesses.

Mr. Lockie answered yes.

Mayor Johnson asked everyone that was going to be a witness stand up. He swore in all the witnesses at once. "Do you swear or affirm under penalty of perjury, that the evidence and information you will provide at this proceeding today shall be the truth?" Everyone answered yes. He turned the meeting over to Mr. Coyle.

Mr. Coyle thanked the Mayor and turned it over to the City Clerk.

Shanell Owen, City Clerk, began her presentation (Exhibit "C"). She addressed the ownership change regarding the Horseshoe Club's Sexually Oriented Business License. On the second page we show the ownership changes. Roger Mensing was the owner on June 11, 2008. Debra Mensing became the new owner January 11, 2010. Additional officers were added to the license (Andrew Welsh and Jessie Welsh) on May 21, 2012. The deletion of Debra Mensing on the license took place on February 9, 2015. In February of 2015, Chief Ben Reed was attempting to contact the owner of the Horseshoe to discuss issues regarding the business. Our Business License Technician gave contact information to Chief Reed's Administrative Assistant via email on February 4, 2015. Our Business License Technician then received an email back which stated, "Good morning, Debbie. Chief Reed called the number listed below and left a message for Debra Mensing to call him. Andrew Welsh returned the call and said that he and Jessica Welsh are the owners of the Horseshoe Club and Debra cannot answer any questions, etc., regarding the business. He also stated the address listed on the business license is not a good address." It was just after that on the same day that Andrew Welsh contacted the Business License Department and indicated that Debra Mensing was no longer an owner of the business and they needed to remove her from the license. The Business License Technician pulled the appropriate paperwork for the change. On line 16 she noted in the details that they were deleting Debra Mensing from the license. Andrew Welsh came in on February 9, 2015 and completed the rest of the form. Andrew Welsh signed line 18. Note the language in Box 18 that says, "Signatures must be that of a responsible party, I declare under penalty of perjury that the information provided is true, correct and complete to the best of my knowledge and belief and acknowledge that pursuant to NRS 239.330, it is a category C felony to knowingly offer any false or forged instrument for filing." That is what Andy Welsh signed as President. The Business License Technician also made a note on the bottom of the form that the State License was checked and the Sales Tax Office was okay with the change. The Business License Technician then printed from the State of Nevada Website, the business entity details from the Secretary of State's Website, noting that Debra Mensing was no longer listed on the Secretary of

State Business license. Note the date on that form was February 4, 2015. Andrew C. Welsh is listed as President and Director at that time. This is page 2 of the Secretary of State's Business details reflecting that Debra Mensing is no longer listed. Again, note the printed date of February 4, 2015 at the bottom. Jessie L. Welsh is listed as Secretary and Treasurer. The Business License Technician conducted due diligence before making the change even though this is not a requirement in City Code. Other acknowledgements that Debra Mensing was no longer a part of the Sexually Oriented Business: There are several notations from the minutes from the May 19, 2015 Special City Council Session for the Horseshoe Club. Page 48 of the minutes, Mr. DeWitt asked how long Mr. Welsh had been involved with the business. Mr. Welsh answered the Horseshoe Club he has owned for about 2 years. Mr. DeWitt asked to clarify for the City Council, Debra Mensing sold it to you, right? Mr. Welsh answered yes. Further in the hearing on page 54, Mr. Coyle asked what is the date Mr. Welsh signed as President and Owner. Mr. Welsh answered June 24, 2013. Mr. Coyle asked who is presently on your license. Mr. Welsh answered me and my wife, Jessie Welsh. Further in the conversation, Mr. DeWitt asked Ms. Welsh if she and Mr. Welsh own the Horseshoe business and she answered yes. There were many citations and references made during the Horseshoe Liquor License complaint hearing that makes note that Ms. Debra Mensing was no longer on the license or owner of the Horseshoe. If she is still the owner then I would expect that she probably would have been at the hearing where her license was in jeopardy and she did know about this hearing through her attorney Mr. DeWitt. On Paragraph 3 of the Stipulation regarding Debra A. Mensing, File No. 2015-001, which is the Horseshoe Liquor License Hearing. It acknowledges that Ms. Mensing was not an owner in the business. Paragraph 3 states that "Debra Mensing agrees that the license discipline imposed, if any, in the above entitled action shall be deemed to have been likewise imposed upon her in the event she should subsequently obtain any ownership interest in the business (other than as a lien holder) or become involved in the operation of the business." This was dated May 15, 2015 and signed by her Counsel. Another acknowledgement that she was not the owner. An advertisement placed in the Elko Daily Free Press on October 21, 2015 which noted that the Horseshoe Club was "Under New Ownership." There is an article by Heather Kennison of the Elko Daily Free Press on October 22, 2015 also notes, and I quote, "that since undergoing an ownership change, the Horseshoe Club plans to re-apply for a liquor license next month and get a fresh start. Debra Mensing owned the downtown bar and strip club between 2008 and 2013. In September, she and her fiancé, John Smuda, reclaimed ownership. We also have an email from Ms. Mensing's attorney and our correspondence between her attorney and our Deputy City Attorney where Mr. DeWitt says, "I think what we are trying to say here is that she (referring to Debra Mensing) is no longer a licensee and would be required to make application as a new licensee as a condition to any further operation of the business." Again, another record reflecting that Ms. Mensing owned the business. This email is dated May 13, 2015. I have another email not in the presentation but I have a copy, dated May 8, 2015, from Clyde DeWitt which says, and I quote, "she (meaning Debra Mensing) relinquished all ownership in the subject premises on April 1, 2013. I think your records will substantiate that. For that reason I think it would be behoove the city to remove her from the proceeding. Please advise as to whether you are willing to do that." According to the Secretary of State's list of officers and business license information, on November 18, 2014 Debra Mensing was taken off the officer list according to their records. On September 28, 2015, Debra Mensing changed the Secretary of State's list of officers and business license information listing only herself as the President, Secretary, Treasurer and Director. These are the acknowledgements and evidence that Ms. Mensing knew she was no longer on the Sexually Oriented Business License for the Horseshoe. It was evident through statements made during the liquor license hearing, through

statements made through her attorney, Mr. DeWitt, and through statements made to the Elko Daily Free Press. The last slide just shows the ownership changes and all of this takes us to where we are now with the application for a new Sexually Oriented Business License for Debra Mensing. The Application came in on November 12, 2015. That concludes my presentation.

Mayor Johnson asked City Council if they had any questions for Ms. Owen. No answer from Council.

Mr. Lockie asked Ms. Owen, regarding the form that you showed, would you indicate it was filled out completely.

Ms. Owen answered the information that requested the change, yes.

Mr. Lockie pointed out that the change of ownership section is completely blank, is it not. Box 17.

Ms. Owen answered the list of owners we look at is actually paragraph 13. That tells us who the owners are.

Mr. Lockie said at the top it indicates “change of ownership” right? It is checked, right?

Ms. Owen responded right.

Mr. Lockie said if you look at the box down below with regards to more detail as to change of ownership, that is completely blank, is it not.

Ms. Owen answered right, it is.

Mr. Lockie asked if you also noticed that Debra Mensing’s name was misspelled.

Ms. Owen answered yes. Our Business License Technician did make the note in box 16 and did misspell her name.

Mr. Lockie asked anywhere on that form does there appear to be Debra Mensing’s consent to Andrew Welsh coming in and taking her off the license.

Ms. Owen answered no.

Mr. Lockie asked if the city notified Ms. Mensing of the proposed action of taking her off the license.

Ms. Owen answered, as she stated in her presentation, in February our Chief of Police attempted to call the number on record for Debra Mensing and the call was diverted to Mr. Andrew Welsh who answered the phone call at that time. We were unable to get hold of her.

Mr. Lockie said Andrew Welsh answered and the only effort to notify Ms. Mensing was a message diverted to Andrew Welsh and there is no contact with Debra Mensing, herself, notifying her that this Andy Welsh guy was going to take her off the business.

Ms. Owen answered that is correct and that is similar to the Secretary of State's office where the information is filled out by one of the responsible parties who was signing who is on the license which would have been Andrew Welsh.

Mr. Lockie said he is just trying to find out what if anything that the city did to make sure that Debra Mensing knew that this Andrew Welsh character was going to take her off the license.

Ms. Owen answered, well, the Business License Department also checked the Secretary of State's records which indicated that she was nowhere on that license as well.

Mr. Lockie asked if anybody checked with Debra Mensing to see if Andrew Welsh had her authority to take her off the license.

Ms. Owen answered, as stated before, we didn't have any phone calls back from Ms. Mensing.

Mr. Lockie added because it was diverted to Welsh, right?

Ms. Owen said it wasn't diverted. We left a message on that phone and Mr. Welsh is the one that called us back.

Mr. Lockie said so you brought up some issues in May which was way after this action took place in February. Right, these emails?

Ms. Owen answered yes.

Mr. Lockie said the emails you selected do not include the emails where Mr. DeWitt informs the city that he could not represent Debra Messing because he has a conflict of interest.

Ms. Owen answered that is correct.

Mr. Lockie said so the city received an email from Clyde DeWitt indicating he cannot represent Debra Mensing because he has a conflict of interest in representing Welsh in this, correct?

Ms. Owen answered actually in the stipulation Mr. DeWitt signed the stipulation of behalf of Ms. Messing so it would seem that if he was signing it on her behalf...

Mr. Lockie interrupted saying he may have slid that document in.

Ms. Owen said he was acting for her.

Mr. Lockie said prior to that time, in your emails, you reference between the city and Clyde DeWitt, who was reporting to represent Debra Mensing, he says in there he cannot represent Debra Mensing because he has a conflict of interest, correct?

Ms. Owen answered he says he may need to get special for Ms. Mensing.

Mr. Lockie said the City Attorney also sent a confidential memo in the records indicating the City Attorney was aware that Clyde DeWitt had a conflict of interest and could not represent Debra Mensing.

Ms. Owen said that she has no knowledge of.

Mr. Lockie said it's in the packet. No further questions, thank you.

Mayor Johnson asked if the City of Elko was still making a presentation.

Mr. Coyle answered yes and called the Police Chief.

Chief Reed gave a presentation (Exhibit "D"). His recommendations to council and the placing of this item on the agenda tonight was because of trying to follow the City Code. You are all well aware that there is a lengthy chapter specifying the requirements for a Sexually Oriented Business, that Ordinance was adopted in 1994 by the City Council. There are a number of requirements in there. It's a very specific privilege license. We will start off with the fact that we received the application as the City Clerk mentioned, in November. For this new ownership and for a business license called a Principal Sexually Oriented Business License to operate the Horseshoe Club. In his understanding, in the same manner or fashion in which it had been operated in the previous years, basically as a cabaret sexually oriented business activity. The applicant on that application, there is just one name, Debra Ann Mensing. It is dated November 10. Shanell said it was received November 12. On page two, there is, as is required, to mention if anybody who might be managing the establishment has to be listed. There is that. It is Mr. John Smuda, also of Clearlake Minnesota. We proceeded then, after that was forwarded to the Police Department, to conduct an investigation about the applicant. What we typically do is we also review any criminal history items associated with anybody that may be a manager or somehow also involved in the operation of the business. The main investigation focused on the applicant and it's just Debra Mensing. He is required to report whether or not he found any errors or omissions on the application; none that he is aware of. We then proceeded to send a Police Detective to Clearlake, Minnesota to interview Debra Mensing and John Smuda, which was done. A check of their current business there, which is a restaurant located in Clearlake, was found to be a clean and apparently well run. Interviews went smoothly with the applicant, Debra Mensing, and her associate, Mr. Smuda. Also we reviewed the financial statement for Debra Mensing, the applicant, which came from the bank. It is called a confidential personal financial statement; there is nothing specific to note on there other than Ms. Mensing appears to have a positive cash flow. Her assets exceed her liabilities. In other words, she is in a good position to operate a business. That is as far as we dig into that. Criminal History databases were queried for both names because of what we believe the intent for Mr. Smuda to be the manager of the facility, and neither one of them have any criminal history to report. Essentially, that part of it as far as he can tell, they are good people, in good standing in their community, etc. There is nothing remarkable there. When we get into some of the concerns, and I listed them in your packet in my memo, he had three things specifically. I will detail them out a little bit and try to fill in the blanks. The one concerning zoning is really just a heads up for the council to note the issue of zoning, and since it has been a long time that the business previously run was there. He reviewed the ordinance and in 1994 some of the council's minutes (the City Clerk provided those) and that is when this sexually oriented business ordinance was established. The Council took note at that time that there was an exception; a sexually oriented business in the City of

Elko in operation at that time that would as soon as they passed the ordinance be outside of compliance for zoning because it was located in the 400 block of Idaho Street, which is zoned commercial. I checked and the little I know about zoning. The Council at that time noted that that would be an exception (and they used the word “grandfathering”) to allow the existing business, that is in non-compliance with this ordinance, to be allowed to continue on a grandfathered basis unless the use is discontinued for a period of six months. And the six month part is the main point. It is still zoned General Commercial in that area, but it has been operating under this exception all along as directed by Council. The six month issue comes into play in that, and I just want to alert the Council to this, in that the Horseshoe Club has been closed up and been inactive for several months. They closed on their own. No communication was given to the City nor do I know that they are required to but it would be nice for us to know. We did not that they weren’t in operation, and I talked to the City Clerk about it, or she talked to me about it, a note was made in her file that we noticed that on July 17, 2015; this last summer July 17. My staff believes that it was actually not in operation possibly a week or two before that, the officers that operate the field, but nobody noted the date. We have the July 17 date. That is a little soft. It could have been before that and that is what I am trying to point out to you in my memo. I am not certain but I will go with July 17. Well if you apply the six months of inactivity principle from earlier, that puts us to January 17 of 2016, in other words, next month. In other words, three weeks or so from now. We are getting dangerously close already to the six months of inactivity and if we didn’t have this discussion to ask the council to review and possibly ratify the Clerk’s and the Police Chief’s decision on a business license, if we push that into January or if we didn’t hustle and get this before you, which we did, in January it is very questionable. I don’t know if the Council would even have the ability to approve or not in January because of that six month time limit. You get the point. We wanted to get it to you quickly and make sure you understood that in 1994 that business was given that exception and it has operated that way since. So technically they are still in compliance with the zoning because of the exception. If I didn’t explain that well in the memo, I apologize. I should have wrote it better. The main point is under City Code, Section 4-10-5D(11) and under D it lists 15 different items in which the City Clerk and/or the Police Chief shall deny (shall is the key word for me). In other words our City Code say we shall deny if the finding of any of those 15 exist and I found that number 11 does exist. And I will quote it, “it shall be denied if this finding occurs, No. 11 when an applicant has been employed in a sexually oriented business use, in a managerial capacity within the preceding 12 months and has demonstrated that he/she is unable to operate or manage a sexually oriented business use premises in a peaceful and law-abiding manner, thus, necessitating action by law enforcement officers.” The timeline that the City Clerk gave to you just a moment ago regarding who is in ownership during the past 12 months triggers this. That would be Debra Mensing prior to her name coming off of the SOB license. It is within the 12 month timeframe talked about; roughly 10 months ago and before, and, of course, several years before of ownership. As far as demonstrating an inability to operate or manage the premises in a peaceful and law-abiding manner; I didn’t go into the details with council members because I didn’t think I needed to. Just back in May you had your second liquor license hearing with the same establishment. One two years before that in 2013 in which the council found the ownership of the Horseshoe to be in violation of the liquor license, put them on a probationary status and had some other findings. Fast forward to another hearing in May of 2016, just earlier this year, in which hours of testimony was given to the council in regards to problems at the Horseshoe, crimes of violence that occurred over a long period of time, liquor law violations, minors in the establishment, disturbance of the peace. We gave all kinds of statistical data, testimony from our personnel at the Police Department, our operations Lieutenant spelled out in great detail to you some of the

problems there. It is obvious that it meets that because of the past history and the actions by law enforcement officers. That is the biggest one. I would be remiss if I said yes, it's approved from our standpoint and overlook this because clearly this triggers. We are required to follow the law and enforce the law and it's a "shall." I didn't really have much choice here to deny it after the investigation and quickly get it to the council for your opinion. The third point I wanted to make to you was the communication. The point of the communication timeline that I listed for you is that demonstrated past history should show you what is going to happen in the future. You want communication from a sensitive business like this. We have had very difficult, (I use the word sporadic) at best, communication from Horseshoe ownership over a long period of time. When we were requested by John Smuda back in September, and was represented by Mr. Lockie here local, who we have worked with many times and have good communications with on a number of matters, they asked to meet with us in September. We had a good meeting on September 16. The Deputy City Attorney and myself and those two, in which they expressed their intentions to restore the Horseshoe back to a similar type of function and gave us details of their plans and so forth. I reminded them two times at least, and I think it was a third time before we walked out the door, there is no problem as long as you have two things: You must possess a business license for that. It is a very specific license and if you are going to serve alcohol you got to have a liquor license, which had just been revoked. We made that very, very clear and had a good meeting. Next thing we know we see a sandwich board out in front of the location on October 20, indicating that this coming weekend the Horseshoe would open. It took City Staff by surprise. We hadn't had any communication about that. The only business license in effect at that time, two months ago, was under the names of Andrew and Jessie Welsh. That was communicated back via the City Attorney to Mr. Lockie to try to figure out what was going on and what was their intent. At the same time, the next day on October 21, we see an ad in the local newspaper, the Elko Daily Free Press, announcing the reopening of the Horseshoe that following weekend. Then we have the front page article interview by the news reporter on October 22. Meanwhile, a lot of communications are occurring back and forth between the City Attorney and Mr. Lockie where we were able to reinforce the fact that the current owners don't have a business license to do such. Let's not have a showdown at high noon at the bar. That problem was avoided after some communication. Like I say, the communication was stressed and only after we tried to figure out what was going on from the city staff's point. In conclusion, as I said earlier, their personal backgrounds appear to be fine, it is the previous troubled history (I would call it) surrounding the ownership and management of the Horseshoe Club under about a five year window from Debra Mensing, when her name was on the SOB license and the fact that she is now your applicant for this license and solely on the name of the application. That is a big problem. Both the City Clerk and myself recommended to council to ratify our decision to follow the SOB licensing code and deny issuance of this license to Debra Mensing and/or to John Smuda, if either one were to be an applicant. That concludes my comments. The other things I have on the overhead screen, the clerk already covered and she has a more specific timeline than I do as that is her department.

Mayor Johnson asked the council if they had any questions for the Chief without a response.

Mr. Lockie expressed sincere appreciation to the Chief and what he said about creating an opportunity for this hearing is entirely accurate. Debra Mensing and John Smuda appreciate that too. The question that I have is with regards to 4-10-5 that we see up on the overhead screen. Was John Smuda, to your knowledge, ever employed in any sexual oriented business use in a managerial capacity within the preceding 12 months?

Chief Reed answered not to my knowledge and I also asked him in one of our conversations, what type of business he runs back at home and my understanding it's not one of these. It is a restaurant/bar type business.

Mr. Lockie asked you agree then that refusal conditions would not apply to him.

Chief Reed answered he would agree it would not apply to him and what is more important to me is the fact that he is not the applicant for the SOB.

Mr. Lockie noted he is listed in the application though, as a manager, which is also required by the City Policy.

Chief Reed said that is correct.

Mr. Lockie asked there is nothing wrong with the application, correct.

Chief Reed answered not that he could tell.

Mr. Lockie said full disclosure as far as you could tell.

Chief Reed said yes, sir.

Mr. Lockie asked and the investigation included sending a detective clear out to Minnesota.

Chief Reed answered yes, it did.

Mr. Lockie asked they went to these peoples' place of business, including a bar, is that correct.

Chief Reed answered correct. They found it's clean and it's run properly as far as we know.

Mr. Lockie added as far as the detective that was sent by you out there during the investigation.

Chief Reed said right and that is what I testified to just a moment ago.

Mr. Lockie asked no crimes, a clean bill of health, correct.

Chief Reed answered correct.

Mr. Lockie asked for Mensing and Smuda.

Chief Reed answered and that would be for everything except the operation of the Horseshoe in Elko, Nevada.

Mr. Lockie said totally understand that. I'm talking about the background investigation for Mensing and Smuda, right?

Chief Reed answered yes.

Mr. Lockie asked if you have any evidence that Debra Mensing, looking at 4-10-5D(11) had ever been employed within the preceding 12 months in a sexually oriented business use in a managerial capacity.

Chief Reed answered I would argue that she owned it. And she owned it for many years and had oversight of it through Hadlor Corporation, I think is the technical term on some of the paperwork I saw. It has everything to do with that. It was on her watch for many years that we had many problems.

Mr. Lockie said I understand that but the statute in the plain language of it says, an applicant has been employed and Debra Mensing was an owner and not an employee, correct.

Chief Reed answered I guess it just depends on how you define that. She is listed as President, Secretary, Treasurer, etc. as officers of the corporation and I think that meets the intent of that pretty clearly in mind. I understand your point.

Mr. Lockie asked so your argument there is that she was an owner, right. The other argument in taking her off the business license is that she wasn't an owner, right? When she was taken off the business license by Andrew Welsh back in February, the city's argument there is that she was not an owner but the argument to refuse her under 4-10-5(D)(11) is that she wasn't...

Chief Reed said she was an owner sometime during the preceding 12 months, which she was, so prior to the February change of license, I talked about that and she has a long history of being the owner of the Horseshoe Club over several years.

Mr. Lockie said thank you very much again, Chief. Appreciate the opportunity. I know it's late and I know you have worked hard.

Chief Reed said thank you.

Mayor Johnson said, all right, City of Elko?

Mr. Coyle said that in conjunction with the other emails that sort of go along with the ownership issue that we submitted in the packet, with that, the city would rest its case on this denial.

Mr. Lockie said prior to presenting evidence, I think it would be helpful because it is easy to get confused as to how and why we are here. At least from our point of view we would like to clear a lot of that up. The basic reason that we are here and the reason this application was made was to really offer the city an opportunity to correct an error that was made. If the city looks at the December 18, 2005 letter, which I have included in the materials for the city's consideration, there are 4 separate exhibits there that are relevant from our point of view.

Councilman Rice asked in which packet.

Mr. Lockie answered well, I had asked that it be included in the packet so I am not sure where it is in yours.

Councilman Rice asked in the letter is...

Mr. Lockie said it's a letter dated December 18, 2015 and I have attached four exhibits to that letter and I numbered them in the lower right-hand corner.

Mayor Johnson asked if that was part of the packet or a subsequent email.

Councilwoman Simons answered yes, it is on our computers, isn't it?

Councilman Rice said oh, I got it.

Mr. Lockie said I apologize. I just sent them to the City Attorney and asked that it be included.

Mayor Johnson said, just so you know we did receive a lot of information in the packet and then follow-up emails.

Mr. Lockie said I know it was fast and furious.

Councilman Rice said I read this earlier today.

Mr. Lockie said if we see the attached exhibits there... Let me back up and give a little bit of history here. On February 9, this Andrew Welsh came to the city and asked the city to take Debra Messing's name, basically asked the city to revoke her business license. Revoking is taking it away, taking her name off. In support of that he filled out this Nevada Business Registration form. It is totally incomplete. He checks at the top "Change in Ownership Business Entity." Box 17, if it is a change of ownership business entity fill out that portion; not filled out. The deleting owner business and liquor is under "Describe in detail the nature of your business in Nevada, including products sold, labor performed and services rendered." What does that have to do with deleting owner? Then there was that writing not in Welsh's handwriting that has Debra Mensing's name misspelled. So Debra Mensing will testify here that he did all of this without her authority. There was this message that was left that in the words of what we heard was diverted to Andy Welsh. They don't get along. Welsh called the city and he came down to the city and he gave the city this document without her knowledge, without her consent and there is nothing in this packet, as of February 9, that indicates in any way that Debra Mensing consented to that. So that's the document this has to go to court that the city is going to stand on, that it took its action on February 9 to take away Debra Mensing's business license with no notification to her. Our problem is that the city had sent her a written notification or made actual contact to her and said, "Hey, Debra, this Andrew Welsh guy is here wanting to take you off the license. Is that okay with you?" She would have said, "No." And that is why we have these provision in the City Code that says, before you revoke a license you gotta send written notice and give them a chance to respond. That is all that would have needed to happen here. So what happened was, the Debra Mensing resolved her dispute with Andy Welsh after these horrible things happened and the liquor license got revoked. The dispute was resolved internally. It was not till August 28, 2015 that the actual stock was ever even transferred over to Welsh and that was just done rapidly in connection with the resolution of this business dispute. So she was the owner of record of that stock clear till August, in the corporation. So what happened was, they got this resolved, Deb and John came out from Minnesota, they are clean as a whistle. They're nice people and all they wanted to do was open on a limited basis for one weekend, no liquor,

comply with all the laws, only to do it one time, limited, to preserve that six month window because everything goes bye-bye. In other words, they lose their entire lock, stock and barrel and she has over \$1.1 million invested in this business. They lose it all if the six months go by. That's all. They came here to open for one weekend to do that. Hanging on the wall, hanging on the wall, down at the Horseshoe, was our exhibit that shows D. Mensing/A J Welsh issued 2/1/2015 from the City of Elko. That is February 1, 2015 from the City of Elko with an expiration date of January 31, 2016. February 1, 2015 issued by the City of Elko, her name on it, hanging down there in the office. So I get this notice from the City Attorney with an order from the city, can't open because she doesn't have a license. And they said, "What? We've got it right down here. It's on the wall." So I get ahold of the City Attorney's office, I have an exhibit here, City Attorney says, "See attached which trumps the license you have." Which trumps the license you have. She would have to obtain a new license, it would appear. She was shocked to hear that the city had revoked, taken her name off that license because Andy Welsh filled out an incomplete form and told the city that he wanted her off of it without her consent. There is nothing to show that he had her consent at all. Now on this consent issue, then the city tries to make much of the "May" after this action is taken things that were coming from this guy Clyde DeWitt, and council saw his performance. But besides that, besides that, I asked Shanell Owen, who admitted that the city was aware, that he had represented to the City that he had a conflict of interest, which he did, because Mensing and Welsh do not get along, that's the conflict of interest. It's in writing to the city. Clyde DeWitt tells the city, I cannot represent Debra Mensing. The city knows it. Those emails are in the packet. So, what happens then is, I would suggest that Deb Mensing could have gone to court right then and said, "Look, the city took her off the license because Andrew Welsh came in. She didn't know about it. She didn't authorize it. They didn't give her any notice as required under the City Code," before you revoke somebody's license, and probably a judge would have reversed that. Because there is no showing that he had any authority to do it. There is nothing from her that says she agreed to it or authorized it. There is nothing from the city that shows, and the city did not get hold of her and say, "Welsh is down here. He wants to take you off. Is that okay with you?" There is nothing like that. But instead Deb Mensing does not come before the city to try to be in conflict with the city. She took the approach recommended by the City Attorney and says, well, okay, she's got to file a new application. She says, "Okay." And it is to our shock and dismay that we get all this blow back from it because we are providing the city an opportunity to fix an error. Imagine, you're a business partner with somebody. You don't get along. Your business partner doesn't tell you about it, goes down to the city, fills out a form and says, "I want John Rice off this business." And John Rice is off the business. And he comes in from out of state and he wants to open to preserve some of his rights, the city orders him not to open because he is off the business. Why? Well, your erstwhile business partner submitted a form. He says, "Well, nobody told me about it. You can't take my license away without contacting me first." City Code says you have to give notice and an opportunity first. Section 4-10 Revocation. Revocation means taking license away. Required, shall give written notice. No notice given. Okay? So, we don't mean to be combative here. We want to be cooperative. That's why we met with the Chief. Undoubtedly we could have gone to court. No authority. The city takes the license. No notice. We didn't do it. Instead, she fills out an application and makes full disclosure. Just what the city wanted because we want to fix the city's action of taking her off and offer the city an opportunity to fix it without going to court, without doing battle. The Mensing's are clean people who want to develop a long-range plan to protect their \$1.1 million investment, work with the city, clean the place and eventually get it going. That's what they want to do long-term. They don't want to be in conflict. They don't want to sue the city. This is

a simple problem. She was licensed since 2010. She was on that license. None of these calls and so forth that came about on the liquor license involved allegations of prostitution or showing too much flesh or improper methods of dancing down there. That was a liquor license issue. And the city is trying to blend these two issues together and they don't deserve to be blended because all of that occurred in May with communications with a lawyer, Clyde DeWitt, who says, "I've got a conflict of interest. I can't represent Mensing." The city has an opportunity here simply to correct the mistake on that form. Do you think that a judge, looking at that form, is going to have any problem, and those emails of conflict of interest and everything else in possession of the city, is going to have any problem issuing an injunction and say, "Hey, the city didn't give her notice. There's no showing that Welsh had any authority." You heard Shanell Owen talk about, "Well, we checked with the Secretary of State and all that." If they did all that checking, why not check with Debra Mensing? Why do something other than leave a message that gets diverted to the very Welsh guy? Why not ensure that she knows about it? Pick up the phone, make actual contact with her. Make some contact with her. Say, "Hey, look. This Welsh wants to take you off the license. Is that okay with you?" And she would have said, "No." And she is here saying no. She wants it fixed. Now if the city thinks that there is a reason and a basis to revoke her SOB license based upon the considerations that the Chief indicated, the city could move for that. They can follow the procedure. They can state their reasons and say, "Look, we think that the Horseshoe Club's license ought to be revoked."

Councilman Rice said you keep saying, "Revoked." We are here to grant. I mean... So...

Mr. Lockie said, totally understand your question and it's very well placed and that is why it's so important that I explain, at least, our position regarding this issue. The city, on February 9, revoked Debra Mensing's license.

Councilman Rice said we didn't... I'm just trying to get clear. It doesn't appear to me that there was actually a revocation. Her partner came in and changed the names on it. There was no revocation by the city. Her partner came in and changed the names on the license.

Mr. Lockie said he can't do that. The city does it. He asked the city to do it and the city did it. What does the term revoke mean? You had it and it's gone. Anyway you shake it, it's revoking your license. She had a license, poof, no license. Welsh didn't do it. He asked the city to do it and the city did it. Welsh can't type anything on that license. The city did it at Welsh's request. So, it is our position that the city revoked (because that term means 'take away'), took away Mensing's license on February 9. She went off the license by the city at Welsh's request which constitutes a revocation which did not follow any of the procedures for the revocation of a license. Namely, notice to her, and there is a good reason for that notice. There is a good reason for it. "Hey, guys down here wanting us to revoke, take away, take away, your license. We got a guy wanting to do that. Wants the city to do it for you Deb. Are you good with it?" Her answer would have been, "No." And that's the reason for the constitutional procedure; notice prior to taking away a protected property interest. So, I agree with you, Councilman Rice, we are here on this application but it's important to understand why we are hearing this context. We are here because that's how the city asked us to try to fix the error. That's why we are here. So, you are right, Councilman Rice. We are here to deny or nod an application. I'm suggesting that the city can just reverse that improvident action of revoking or cancelling or whatever they did, taking away, removing her business license on February 9. The city can just fix it and then if the city has grounds or wants to or if the City Attorney or the Chief want to bring an action to revoke

the SOB license based upon these hundreds of calls and so forth, they can do it. They can try to do it with constitutional procedures; give her notice, not Welsh coming in saying, "Hey, take it off."

Councilwoman Simons asked Mr. Lockie, I'm sorry. I know that you pointed this out and I can't find it. The portion of code that says that we have to give written notice if a change is made on the business license.

Mr. Lockie answered no. There is a requirement under Section 4-10-9 under Suspension, as well as, 4-10-10 under Revocation. I don't know what else to call it. If you have a license and it is taken away it's revoked. It might be that somebody came in and asked that it happen but those require notice to the party. You can't just do it. I can't go in there and ask the city to Chris Johnson's name off of Chester Plumbing. The city's got to get hold of Chris and say, "Hey, Dave wants your name off it." You got to notify Chris and say, "Hey, you good with this?"

Councilwoman Simons asked and the written, the part where it says... I mean, I don't think that those are what happened but I'm trying to find the term "written."

Mr. Lockie said, well, if you look at 4-10-9 Suspension, which is one option. "The City Clerk or Chief of Police may suspend for a period." All in written notice.

Councilwoman Simons said okay. That is the term I was looking for. So you're saying, you're calling what happened, that they suspended her license?

Mr. Lockie answered, well, and revoked it. It's authorized under 4-10-10 subsection 8, by written notice. See, written notice is required in both places. It didn't happen.

Councilwoman Simons said for suspension and revocation, okay.

Mr. Lockie said there is a reason for all this. It's called due process. There is a reason for it. You need to get written notice before you take a license away, saying, "Hey, Welsh is here. He wants to take you off. Are you alright?" That's the reason for notice, an opportunity to be heard. It's constitutional and moreover, it's fair. Somebody just can't come in there and take ya off. I mean...

Mayor Johnson said you have made your point.

Mr. Lockie said, I understand. I'm just trying to answer the question. I'm sorry. I know I'm taking a lot of time. So, I'd like to have, at this point in time, and I know I kind of gave the opening statement which preceded the evidence but I wanted to get this presentation initially as to why we're here in clear up exactly what Councilman Rice asked.

Mayor Johnson said, you are fine. We have been through this before.

Mr. Lockie said, at this point I would like to have Debra Mensing and John Smuda each just give their statements and then Bob Wines is the business attorney. I'm appearing as the advocate for purposes of this proceeding but Bob Wines has information business wise and will provide for the council.

Debra Messing said thanks for listening to me tonight. My name is Debra Mensing and I want to tell you a little bit about myself. I live in Minnesota and I work full-time in a dental laboratory and I have been employed there for 35 years. I have currently been their lab administrator for the 9 years. I also own a bar/restaurant in a little town called Palmer, Minnesota, where John Smuda is our manager. Before that, my husband, Roger, and I own two businesses at the gas station/convenience store and a bar/restaurant in a town in Orrock, Minnesota for about 8 years, where Roger ran the business and I did all the bookwork. Let me explain how we came Elko, Nevada. My husband, Roger, and I purchased the Horseshoe Club in the 2008 of April. We were planning on moving to Elko in 2009 but unfortunately my husband became ill in 2009 of February. While he was working at the Elko bar he collapsed and was taken to the Elko Hospital and then later airlifted to Salt Lake City Hospital. Six months later he was diagnosed with pancreatic cancer and he died within 4 months. My life in the next year or so was like a whirlwind trying to run a business from afar and working full-time at the dental lab. My attorneys from Elko and from Minnesota advised me not to do anything irrational for about a year or so because I wasn't stable and I was not thinking clearly. This is where my step-daughter, Jessie and her husband, Andy Welsh, stepped up to help me. I entered into an agreement with them for managing the bar for about a year and a half. They decided they wanted to purchase the business from me. All this time they informed me everything was going well and Andy was making trips out here every other week to make sure everything's running and they were making their monthly payments on time. About mid-2013, communication from us became sporadic. The first time I heard about the management issue was when they called to tell me they were experiencing problems with their liquor license and that the city was looking to revoke the liquor license. Shortly thereafter they lost the liquor license and ultimately closed the business doors. This is a huge investment that Roger and I made. We have a lot of money invested into this business and building. Without the license the business is worthless. My fiancé, John, owned a bar back in Minnesota for six years. Both his sons worked along his business with him. John now manages the bar that I own. John knows the bar business very well. He always said you need to be 'hands on' in order to run a great business. After the liquor license was revoked, John and I came out to Elko. We started by cleaning the place up. They planned to open just a weekend in October to preserve the business license. And much to my shock I was advised that the city ordered us not to open because my name was not on the license. We had the license hanging in the bar and as it turns out, sometime in February, Andy Welsh went to the city office and taken me off. This was done without my consent and without notice to me. If the city had provided me with a notice that it was going to be revoked, I would have told the city that Andy Welsh did not have my permission or request and I did not agree to have my license revoked and we would not be here today. I hope the city will correct what went wrong. Thank you.

Mayor Johnson said okay.

Mr. Coyle said he would like to ask some questions.

Mayor Johnson said oh, sure. Sorry Tom.

Mr. Coyle asked in February when the Police Chief left the message on your voicemail, you received that, right.

Ms. Mensing answered I did.

Mr. Coyle said and you were the one that rebounded that to Andy Welsh to handle, correct?

Ms. Mensing answered I did call back. The number he gave me, I cannot remember if I talked to a live person or if I talked to a recording, and I did say that I will contact Andy if there's any problems with the Horseshoe Club. That's when I called Andy and then he called the Chief.

Mr. Coyle said okay. So you basically told Andy to handle the issue because he was the one operating the place at the time, right?

Ms. Mensing answered correct.

Mr. Coyle said now you mentioned back in mid-2013 there were problems between you and the Welshes in communication, correct?

Ms. Mensing answered yes.

Mr. Coyle said and you also mentioned that was after you had agreed to sell the business to them?

Ms. Mensing said 2013. What was the question again?

Mr. Coyle repeated in 2013 you had arranged, had an agreement to sell the business to them, correct?

Ms. Mensing answered correct.

Mr. Coyle asked and yet you failed to execute any of the stock certificates and things necessary to do that, correct.

Ms. Mensing asked can I? I'm not sure about that. I guess I don't understand the question.

Mr. Coyle said okay. Well, other than the written agreement, did you have a written agreement to sell the business to them?

Ms. Mensing answered yes.

Mr. Coyle asked and you haven't provided that to the city at all, have you? As far as you are aware.

Ms. Mensing answered no, not that I am aware of, no.

Mr. Coyle said now back in February of 2015, under that written agreement to sell, you had sold all of your ownership interest other than a retaining a security interest, correct?

Ms. Mensing said, Dave, can you help me with that? I don't know.

Mr. Lockie said we have Bob Wines here who is the business attorney.

Mayor Johnson told Mr. Lockie that he should answer in the mic for the record.

Mr. Lockie said we have attorney Robert Wines here, Bob Wines who handled the business transaction and the communications and so forth. He would be the best person to answer those questions, we believe anyway.

Mr. Coyle said I can still ask and then if she can't she can defer to Mr. Wines, Mayor.

Mayor Johnson said, okay, that's your call.

Ms. Messing said Bob.

Bob Wines said just a second...

Ms. Mensing said I defer to my attorney.

Mr. Coyle said other than referring that message from the Chief to Andrew Welsh, and I guess you left a voicemail on some city?

Ms. Messing said whatever. I just can't remember the number that he gave me if it goes to answering machine or if I talked to a live person, but I did call back.

Mr. Coyle asked so this \$1.1 million that you had invested, you didn't any other action to follow up what was happening.

Ms. Messing answered I did ask Andy if there was a problem, give me a call back and he never did.

Mr. Coyle asked now you would agree the Secretary of State documents showing that Andrew Welsh was the Director and he and Jessie Welsh were all of the officers back in November 2014. That was correct, right?

Ms. Messing said I will defer that to my attorney. I'm not sure.

Mr. Coyle said you didn't put yourself back on as any officer of Hadlor, Inc., or as Director until September of 2015, just a few months ago, correct?

Ms. Messing answered correct.

Mr. Coyle asked based on that would you assume that you weren't on there prior to that.

Ms. Mensing answered I know we were in the process. I had the shares and that was never...

Mr. Coyle asked were you supposed to have the shares or was that because you just hadn't had the documents completed.

Ms. Messing said I will refer to Bob because I'm not sure.

Mr. Coyle asked after the written sale document, all you had was a security interest in the property. Do you remember that?

Ms. Messing answered you know, there was so much going on after my husband passed away and all the stuff going on. I cannot say yes or no. I'd rather have you talk to my attorney.

Mr. Coyle said let's just go back to February of 2015. Andrew Welsh was the only one managing and operating the Horseshoe Club at that point, right?

Ms. Mensing answered correct.

Mr. Coyle asked evidently he had authority to take care of all of that, correct.

Ms. Messing said but he didn't have authority to take me off no license.

Mr. Coyle said okay, but to the city, and the City Business License Department, Andrew Welsh was the face and the authority for the Horseshoe Club, would you agree?

Ms. Mensing answered I guess, yes.

Mr. Coyle asked prior to that, you hadn't really had any contact with City Officials since the first time your license was under disciplinary action in 2013, correct?

Ms. Messing answered I don't recall the 2013, I'm sorry.

Mr. Lockie said that was the liquor license. Or are you referring to the SOB?

Mr. Coyle answered I am referring to the liquor license. You haven't really had any contact with city officials concerning the Horseshoe Club operation since 2013, when that business was placed on probation, right?

Ms. Mensing answered correct.

Mr. Coyle asked and the face of anybody with authority was Andrew Welsh.

Ms. Mensing answered yes.

Mr. Coyle asked and perhaps a manager that he had hired, correct?

Ms. Mensing answered yes.

Mr. Coyle asked the city didn't ever tell you that you had to apply for a Sexually Oriented Business license to fix an error by the city, correct?

Ms. Messing said I will defer that to Dave (Lockie).

Mr. Coyle asked are you aware under the City Code of any requirement to file documents with the city if there's a change in ownership.

Ms. Mensing answered yes.

Mr. Coyle asked are you aware of any requirements to get preapproval from the city to sell interests in a business.

Ms. Messing answered I will defer that to Bob (Wines).

Mr. Coyle asked when you sold the business to Andrew Welsh and Jessie Welsh, did you ever give notice to the city of that.

Ms. Messing answered it was a contract for deed so I never personally did, no.

Mr. Coyle asked you didn't even know that your name was on the license until you came to the City of Elko and saw it there at the bar.

Ms. Messing answered no, that was incorrect cause I have been out here a few times during the year and I've seen my name on there prior to this. Cause if you looked at the timeline, my name was on there.

Mr. Coyle asked what timeline are you referring to.

Ms. Messing answered on the SOB license. When my husband was on there, when he passed away then I took over and I was on there since 2015.

Mr. Coyle asked and then you actually were involved with getting Jessie and Andrew on there, correct.

Ms. Mensing answered on the SOB license, yes.

Mr. Coyle asked when you received the voicemail from the Police Chief were you upset by that voicemail in February.

Ms. Mensing answered no.

Mr. Coyle asked you didn't direct Mr. Welsh to come down and get your name off those licenses at that time.

Ms. Mensing answered no because the voicemail said this is the Police Chief, Ben Reed, and I know you are the owner of the Horseshoe Club. Can you call me back? So there was nothing about...

Mr. Coyle asked he didn't say what it was about then?

Ms. Mensing answered no.

Mr. Coyle said that's all I have Mr. Mayor.

Councilwoman Simons asked in the time when you wanted to open it for the weekend, because of the 6 month rule, were Jessie and Andrew still helping you out.

Ms. Mensing answered no.

Councilwoman Simons asked so you were the one that paid for the ads and talked to the newspaper.

Ms. Mensing answered yes.

Mr. Lockie called Mr. Smuda to make a brief statement.

John Smuda said I think everybody pretty much covered all of this. Thank you for letting me appear in front of you. First let me tell you about myself. My name is John Smuda. I owned a bar in Limrod, Minnesota for six years and now I manage a bar, Palmer, Minnesota, for Debra Mensing. I'm 57 years old. I'm retired from the Burlington Northern and Santa Fe Railroad after 24 years. I have an excellent record, both in the Railroad employment and subsequent bar management. I am Debra Mensing's fiancé and I have a strong interest in the Horseshoe Bar. The bar in Palmer, Minnesota, is open from 11:00 am to 1:00 am. We serve food, sanctioned Texas Hold'em and we have pool tables and bar bingo on Monday nights. One of the nights we have Bar Bingo there are usually have 75-85 people in the establishment. On Texas Hold'em nights we have anywhere from 32 to 36 people. We also have other events. Everything is always well behaved. When the Elko detective was at the bar in Palmer, Minnesota, for an hour and a half in early December 2015, there was a good crowd and there was no issues. He thought our establishment was very nice.

Mayor Johnson said okay, perfect. Thanks. Oh question, Tom (Coyle), did you have questions?

Mr. Coyle answered just one. You don't have any ownership interest in Hadlor Inc., correct?

Mr. Smuda answered no.

Mr. Coyle asked your only interest is in the real property through that Tiah Investment, LLC.

Mr. Smuda answered that is correct, yes.

Mr. Coyle said thank you.

Mr. Lockie said because of having deferred questions, Bob Wines, I think is appropriate that he appear.

Mayor Johnson said alright.

Robert Wines said good evening, Council. Thank you. I'm Robert Wines. A couple of years ago, Debra Messing approached me and asked me, told me that her son-in-law or her daughter and son-in-law (I'm going to call them for lack of anything better) were contemplating taking

over the Horseshoe business entirely from her. Requested that I draft up some documents. We worked on documents and agreements which would allow them to ultimately succeed to 100% ownership of the Hadlor stock. One of the very strongest provisions I remember having put in both the contract and the security agreement was that Jessie and Andy had to maintain the SOB license in good standing. Obviously that's a problem here. The stock was only issued into Jessie and Andy's name in August 28 of 2015 in order to be able to cancel that stock. Part of the take-back I had drafted documents that, where they terminated their interest in not only the stock they were entitled to purchase, but the 4% of the shares that they owned when they were put onto the operating license. I believe all of this happened in early 2014. As part of that transaction, and because they were going to take over the operation of the business, Debra resigned as an officer of the corporation and a director of the corporation, and Andrew and Jessie were installed as the officers and director of the corporation. That happens all of the time when you have a corporate takeover/buyout. Because you want to transfer the ownership or the control to the new people who are taking over and they don't want the people that are going out and ultimately going to give them the asset, to be in control anymore. That was what the entire intent of the contract and those documents were. Of course, when things went haywire we had to go through about four months' worth of transactions to get the cancellation in place. During that period of time, Jessie and Andy closed the business down. Debra finally got it back in about August 28, 2015. One of the reasons John is not on the Hadlor stock is because he was not a previous owner of Hadlor. We just took the stock back from Andy and Jessie as it was previously vested. That is, Debra owned 100% when they were out, Debra owned 100%. That doesn't mean that we didn't have plans at some point in the future to transfer some of the ownership interest to John because he was going to be managing the place. He was going to be intimately involved in the continuing operation. One other comment that I would like to make is that I did listen to the voicemail that Chief Reed left on Debra Mensing's phone. The fact is that I recorded it and copied it on to a digital recorder here. I would like to play it into the record. "The following message was recorded on Debra Mensing's cellphone on February 4, 2015, 'Hello. I'm trying to reach a Debra Mensing. My name is Ben Reed. I'm the Police Chief in Elko, Nevada. And our time here is about 11:00 am on a Wednesday. The phone number here: 775-777-7315. I'm calling in regards to the Horseshoe Club and I want to speak with you for a few minutes as I understand you are the owner. So, if you can call me back when you get a chance, please. I will try to connect with you and I appreciate it. Thank you very much, bye-bye.' End of message." As you can see, there was nothing in that message that indicated that in any way that the SOB license or the liquor license for that matter, either one of them were in jeopardy. I mean it sounded like a business call that the Chief wanted to make to the manager/owner of the club. She turned it over to Andy Welsh to take care of and that was the last that we heard of it.

Mr. Lockie asked can you just describe the significance of Deb Mensing's security interest and her being on the SOB license in terms of the value of the stock.

Mr. Wines answered I felt that the Hadlor stock had absolutely no value whatsoever without the SOB license. The Horseshoe Club itself, the physical building, has actually owned by a separate entity. So, that was not part of the transaction to sell the business enterprise to Jessie and Andy Welsh. The only things that were being sold to them was the right to operate on the premises. And primarily, the thing of value there was the SOB license.

Mayor Johnson called for questions.

Mr. Coyle said I do have some questions, Mr. Mayor. So, just to be clear, in early 2014 there was an agreement to transfer ownership and control to the Welsh's.

Mr. Wines answered there was a contract of sale drawn up and executed which would transfer full control and ownership of Hadlor Stock and all the underlying business assets of Hadlor to Andy and Jessie Welsh. I do not recall whether that called for an immediate transfer of those stocks or whether it was only to be done at the end of the contract term. I'm sorry. I didn't review the documents today before I came in here.

Mr. Coyle asked then that agreement stood firm until August 28 of this year.

Mr. Wines answered yes.

Mr. Coyle asked and that was when ownership and control went back to Mensing.

Mr. Wines answered yes.

Mr. Coyle asked it did not involve going back to Mensing and Smuda, just Mensing alone.

Mr. Wines answered Smuda was not involved in the Horseshoe before and he is not involved afterwards. It went from Mensing and back to Mensing.

Mr. Coyle said there's an October 21, 2015 email that looks like you and Mr. Lockie were looking at the facts and it states, and this one is from you, "none of the stock certificates from Debbie to the kids or back to Debbie from the kids have been completed." So that initial agreement in 2014, whether or not they were required to be done, none of the stock certificates had been transferred.

Mr. Wines said at the time he did not have control of the corporate book. I did not obtain control of the corporate book until August 28, 2015. On August 28, 2015 I went back and looked at all the documents, all the transactions that had supposedly occurred before. I prepared and cancelled stock certificates to bring the ownership current to Debra Mensing holding 100% of the shares of stock. Does that answer your question?

Mr. Coyle answered probably. So let's go back to February of 2015. There was in existence a contract that transferred ownership and control to Andy Welsh?

Mr. Wines answered there was an existence, a contract that transferred control. The ownership would have been transferred when they finished up the contract and finished paying for the stock.

Mr. Coyle asked it was like an executory...

Mr. Wines said, like I said when I testified, I don't remember whether I actually did an executory contract or a contract that called for the stocks to be issued. I didn't look at the documents earlier today. I don't recall.

Mr. Coyle asked so control was transferred anyway.

Mr. Wines answered control was transferred.

Mr. Coyle asked if someone in control went to the city and said there has been a change in ownership, take this name off, it would be perfectly reasonable to rely upon that apparent authority, would it not?

Mr. Wines answered I think I would have required additional documents. I would have required at least copies of the contract before I did it because you are taking one person's word that they've done something and many times I've seen corporate officers who go in and remove a member from the control of the corporation who technically, there is nothing back there to back him up.

Mr. Coyle said the city did look at the Secretary of State's website and saw two things: They saw the list of officers had nothing to do with Mensing left on there, it was all the Welsh's; and then they saw the other filing which showed Welsh was the Director and the President. It wasn't as though they just relied upon Mr. Welsh's representations, correct?

Mr. Wines said, I'm sorry. The only document that I saw in the presentation was a copy of the Secretary of State's printout page that shows who the officers and directors are.

Mr. Coyle added in November 2014?

Mr. Wines said I agree that control of the corporation was transferred over to Andy Welsh at that time.

Mr. Coyle asked and at that time, the interest that Ms. Messing had was some security interest.

Mr. Wines answered if you want to phrase it that way, sure.

Mr. Coyle asked you're not aware of any notice to the city about this change in ownership at that time, correct?

Mr. Wines answered I don't really believe that there was a change in ownership since both Welshes were already of record on the ownership, so transfer, entering into a contract to sell them a larger percentage of the club, I don't know if that would be a change of ownership.

Mr. Coyle said of 96% of the ownership being changed, you don't think that's a change of ownership?

Mr. Wines answered when they paid for it, it would have been a change of ownership. Debra would have been totally out.

Mr. Coyle said she was totally out as to control, though?

Mr. Wines answered she had no control.

Mr. Coyle asked at the time Welsh was doing this, I think we have established he was the one operating and running the business as far as you were aware.

Mr. Wines answered as far as I know.

Mr. Coyle asked do you know if you provided at this point, you or Mr. Lockie, a copy of that agreement that transferred the ownership to Welsh.

Mr. Wines said, I'm sorry. I couldn't hear ya.

Mr. Coyle repeated do you know if you've ever provided, or Mr. Lockie's ever provided a copy of the agreement to the city wherein 96% would ultimately go to the Welshes?

Mr. Wines answered I know I have not provided one to the city.

Mr. Coyle said that's all I have.

Mr. Lockie said that concludes our presentation.

Mayor Johnson said okay.

Mr. Coyle said, Mr. Mayor, I would like to recall witnesses for the city.

Mayor Johnson said, alright. Hang on a second. City Council do you have any questions or comments?

Councilman Keener said I guess this is for Dave or Tom, either one. I mean our agenda item, it specifically talks ratification of the Police Chief's and City Clerk's denial of the application. It seems like we are going down a completely different road with the way that this progressing in terms of the standing bringing the revocation, if you will, of Ms. Mensing's name off of the business license. I was wondering, are we still within the agenda item?

Mayor Johnson said I think we are, it's just a matter of is there enough there that could make a decision. That's my question. But I mean, if we're ready to make a decision, I think that's important to know. John, do you have a question?

Councilman Rice answered yes. My question has been, Mr. Lockie introduced the phrase "revocation." We are looking at a different matter. I do have a question for Ms. Messing. Did you receive, did you hear the voicemail from the Chief?

Ms. Mensing answered yes.

Councilman Rice asked and when the Chief of Police called regarding a business you own, you thought that you would simply defer the matter to Mr. Welsh?

Ms. Messing answered the only reason I did, I did call back to let them know, and I can't remember if that phone number, maybe they know, would go to a voicemail or if somebody picks it up. And I did talk to somebody or the thing saying that I am Debra Mensing and I will

have Andy Welsh call you if there's any problems at the Horseshoe. So that's what I did. And Andy did not call me back to let me know anything else about whatever was going on.

Councilman Rice asked you didn't follow-up with Mr. Welsh yourself?

Ms. Mensing answered no.

Councilman Rice asked you weren't that concerned about it.

Ms. Messing answered, well I figured if it was very important he'd let me know. But because our relationship is very strained.

Mayor Johnson said I have some questions. Shanell, when the City of Elko issues a City Business License, isn't one of the requirements to check whether or not that entity has a State License as well?

Shanell Owen, City Clerk, answered yes for a new business license we do check that. When it comes to changes we will also check the state and then get clearance from the Taxation Office.

Mayor Johnson said, right. So they have to have, that's the other one, that they have filed with Department of Taxation and the State Business License.

Ms. Owen answered, that's correct. So, changes on a license would be if you have two people on a license and one person is removing another person, that would be a change. We don't call that a revocation. A revocation is outlined in the City Code, as far as taking the whole business license away. Other changes... We have 3200 business licenses in the City of Elko. For us to go through and check all of the ownership and everything for every single one of those for every little change that would be a pretty big job for the Business License Technician, the one that we have. So we put that onerous on the officials that are on the application as the owners, as the directors, the people listed as the partners, and anyone listed on there can make changes. As noted before, line 18, and that box says, "must be made of a responsible party." If it came to a corporation that has hundreds of names, can you imagine getting documentation from everybody constantly as to the changes on the ownership? I really don't know how we would physically do that. And our procedure is the same as the Secretary of State's procedure. They list their officers with them in the same manner, one person signing off that is on the ownership and that's how they make their changes as well.

Mayor Johnson asked what is the cost of a City of Elko SOB license.

Ms. Owen answered I believe it's \$1,500. The investigation fee was \$1,500 and I don't know off the top of my head, I believe it's either \$1,000 or \$1,500 a year, or close to that.

Mayor Johnson asked if that's a flat fee.

Ms. Owen answered yes.

Mayor Johnson asked based on volume?

Ms. Owen answered not based on volume.

Mayor Johnson asked is there a requirement that individuals be listed on that license or is the option that a company name can be on the license.

Ms. Owen answered we always require the individuals be listed.

Mayor Johnson said that seems to be unique to a SOB license. Is that a policy across the board for any City Business License?

Ms. Owen answered any City Business License calls for the name of the business and then also the owners listed, the partners are listed as well. We have some corporations that send us ten pages of people listed on the license.

Mayor Johnson asked how do you handle that.

Ms. Owen answered when they make changes they just update that information with us.

Mayor Johnson said what I mean as far as being printed on the license.

Ms. Owen answered we cannot print all of that so we just have that in the file.

Mayor Johnson asked what do you normally print on an Elko City License.

Ms. Owen answered we're limited on the number so we try to get unique in how we list, you know, Welsh, A & J, you know we will make abbreviations for the, you know, we try to get as much information as we can on there.

Mayor Johnson asked is that unique to an SOB license.

Ms. Owen answered no. The license, the actual certificate itself is the same license certificate as the actual business license. So we have exact same number of characters.

Mayor Johnson asked the city handles an SOB license just as they would a regular city business license as far as listing of who's on the license.

Ms. Owen answered yes.

Mr Lockie asked may I just make one more comment, and I'm not going to make a lot of argument here...

Mayor Johnson said hang on if you would a minute, Dave. When was the license due? Was it due at the first of the year?

Ms. Owen answered I believe the expiration date is February 1, 2016.

Mayor Johnson said okay, so that's when the change...

Ms. Owen said the change was February 9. So, what happens when someone comes in and makes a change to a business license, whether it's an ownership change or location change, we reprint the license and give it to the person and then they are to post it at the location.

Mayor Johnson said okay, so the City of Elko issued the SOB license in Mensing's name on February 1 and then it was requested to be changed by Mr. Welsh on February 9.

Ms. Owen said we had the initial... State the question again?

Mayor Johnson said it sounds as though the license was issued to Mensing on February 1 but then there was a request for change of ownership on February 9, is that the case?

Ms. Owen answered right. The license is due on February 1 and then as long as we don't do a new ownership change, that date stays the same consecutively.

Mayor Johnson said then it becomes reoccurring.

Ms. Owen answered right.

Mayor Johnson asked was the license paid for on February 1 with Mensing's name on it.

Ms. Owen answered February 1 as of 2014 and 2015. They renew every year.

Mayor Johnson said so the license expired on February 1, 2015 with Mensing's name on it.

Ms. Owen said yes.

Mayor Johnson asked then the license was renewed it was requested by Mr. Welsh, here's what the owners are.

Ms. Owen answered that's correct; the ownership change. As far who actually made the payment and renewed the license, I don't have that information.

Mayor Johnson said I just want to qualify it because there were two licenses, if I remember correctly, with 2/1/15 on it and I was curious about that.

Ms. Owen said that's because the old license had the old name on it and then we reprint that license with the new name on it. So that's showing right there (indicating the overhead screen) Debra Mensing/A & J Welsh and then you would actually have to look at the business license changes to get the date that the changes occurred. That's why I'm telling you that February 9 was the date he came in and changed that because that is the date at the bottom of the application there. So the business license itself is going stay the same as far as its term, that February 1 date.

Mayor Johnson asked why did Mr. Welsh feel the need to make the qualification on the 9<sup>th</sup> and not before then.

Ms. Owen answered that I don't know. That's just when he contacted us.

Mayor Johnson asked out of the blue. I mean, the city was under, we were talking to the Horseshoe because I remember when the Horseshoe came up before and we were talking about who the owners were and then it turned out that Mensing wasn't an owner. That was a big deal.

Ms. Owen said right. And the information that I have is that Mr. Welsh called up the city and talked to Debbie on February 4 and said, "I need to get Debra's name off of here. She's not an owner." That she was upset that she was getting phone calls and at that point Debbie pulled the license, made the note on line 16 and then Mr. Welsh said, "I will be in on the 9<sup>th</sup>." And then that's when he came in and signed it.

Mayor Johnson said it seems as though that during the talking of the liquor license is what prompted the...

Ms. Owen said it may have.

Mayor Johnson said I mean, the timing would be there.

Ms. Owen said right.

Councilman Keener clarified, when you said Debbie you meant Debbie Henseler.

Ms. Owen said Debbie Henseler, yes, the Business License Technician.

Mayor Johnson said I apologize to use your name is the quickest for me to identify you, so...

Councilman Rice said the details on the Secretary of State's web page there is a date on the bottom of that of February 4. Is that the date it was changed or is the date it was found out?

Ms. Owen answered that's the date that Debbie in the Business License Department printed that form showing that Debra Mensing was no longer the...

Councilman Rice said so the Secretary of State's, so that would mean that, according to the Secretary of State's Office, at least on the 4<sup>th</sup> of February, Andrew Welsh and Jessie Welsh were the only owners of that business.

Ms. Owen answered that's correct.

Councilman Rice said and that could have been changed prior to, is there anything on this that tells us when that was changed?

Ms. Owen answered yes, we called the Secretary of State's Office and requested that information. On November 18, 2014 was when the change was made.

Councilman Rice said oh, okay.

Ms. Owen said and I have a copy of that. And then it was changed again September 28, 2015 back to Debra Mensing. So the Secretary of State's Office is saying that on November 18, 2014,

Andrew C. Welsh is listed as President, Jessie C. Welsh is listed as Secretary, Jessie C. Welsh is listed as Treasurer, Andrew C. Welsh is listed as Director.

Councilman Rice asked do you know, would it be, would making such a change require, I mean, can anyone go into the Secretary of State's Office without any sort of authorization, codes or anything to go in and make that change? Could I so that? Could I go in and change this to my name?

Ms. Owen answered ya, I really don't know. It says filed in the office and it has a document number and a filing date and time.

Councilman Rice said I've got a quick question for Ms. Mensing. Were you aware of, that in November, that Andrew went into the Secretary of State's Office and changed...

Ms. Mensing answered no.

Councilman Rice asked so, okay. That is not at issue here but that seems like another matter you may wish to investigate because going back, I'm just seeing that it's reasonable to believe, checking up, that our Debbie did her due diligence and went to the Secretary of State's Office, saw that this had been changed there. It would seem to me that you would have to have some sort of authorization to get into the Secretary of State's site to make these kind of changes that would be... You're nodding your head no, and David used my name earlier. So, I can go in and change, I can go in and put my name on this business.

Mr. Wines answered from the audience, yes.

Councilman Rice asked really?

Mr. Wines answered yes.

Councilman Rice said I can just, I mean, it's that insecure?

Mr. Wines said it's a website that's available. All you do is call up the name of a corporation...

Councilman Rice said I have to register with the Secretary of State to do lots of things in regards to election disclosures. I've got a code. No one, I mean, I've got some code that I've got to... Wow.

Mayor Johnson said hang on one second. All I want to do right now is make it where City Council, are you ready to make a decision or qualify some questions. I don't want to get off tract.

Councilman Rice said I understand. So, I go back to, I'm still, I think a reasonable person, I think we did our due diligence.

Ms. Owen said I just received information that the Secretary of State's Office will give notification to the Resident Agent if there's a change.

Councilman Rice said if a change had been made, so if Mr. Welsh went in then Debra Mensing would have been notified.

Ms. Owen clarified whoever the Resident Agent was at the Secretary of State's Office.

Mr. Lockie added which is usually an attorney.

Ms. Owen and Councilman Rice said oh, okay.

Mayor Johnson said alright, City Council Members, are you prepared to start making a statement of position, if you will?

Mr. Lockie asked Mr. Mayor, may I just say one thing very briefly.

Mayor Johnson said hang on one second. Do you want to make more questions? Do you want to hear more testimony? As much as I really don't want to make a decision, I have enough information to make a decision, so I am indicating that...

Dave Stanton, City Attorney, said Mr. Mayor, I would recommend allowing the applicant to provide all of the evidence and argument.

Mayor Johnson said it's duly heard but I want to go home, so, and the City Council is in charge, so... And not to be disrespectful to you Dave, but like you said, we have an obligation as the City Council to make a decision and I think that we should be given the allowance if we're ready to make a decision or not. So, I'll leave it up to...

Councilman Rice stated I would like to hear David's, he said he had a brief statement.

Mayor Johnson asked is that the consensus of the council?

Councilwoman Simons answered I think so.

Mr. Lockie said thank you. I apologize. I'm not trying to beat dead horses here but I know we focused on this revocation remedy but separately from that we are affirmatively requesting that he City Council approve the application on its merits.

Mayor Johnson said alright. City Council...

Councilwoman Simons said I am kind of a firm believer in have your day in court and let them get it all out but that's just me.

Councilman Keener said I think I have enough information to make a decision.

Tom Coyle said Mr. Mayor, due to this being in the nature of a hearing, and that the City Council, I know they have the ultimate authority to make the decision. The decision should involve findings of fact and then approval or ratification or denial or whatever the council is going to do. The city did prepare some suggested language for a motion and I just like to pass that out, as you are getting to that point and considering matters (Exhibit "E").

Mayor Johnson said and since there is a moment of silence, again, I probably didn't use the best of words. I mean I will stay here as long as City Council wants to but again I think that my responsibility as Mayor of the City is to run the meeting efficiently. I just want to be sure that we're working in that manner. Like I said it's... The City of Elko has spent a tremendous amount of time in relation to this business and I think that we've done a lot of work. Anyway, I will retract that and apologize if I came across in the wrong manner. Certainly we'll stay here as long as it takes but again I know that we have to make a decision and it's not an easy one. I think there's been enough evidence presented to City Council that we will do our best to make the right decision for the City of Elko.

Councilman Rice said Mr. Mayor, I appreciate that. I was interested in hearing David's statement and I got that.

Mayor Johnson asked did you get the statement from Dave.

Councilman Rice answered ya.

Councilman Schmidlein said I had one question I'd like to ask Debra. It was mentioned earlier. You were involved with helping putting the Welshes on the license, is that correct?

Ms. Messing answered on the SOB license, yes.

Councilman Rice said I'm ready to make a decision. I'm ready to make a motion.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Keener, to ratify the decision of the Chief of Police and City Clerk to deny Debra Mensing's and John Smuda's application for a Principal Sexually Oriented Business license for the business known as "The Horseshoe Club," located at 442 Idaho Street, Elko. This motion is based on the following findings:**

**1. The status of The Horseshoe Club's liquor license was considered by this Council earlier this year. During that process, Debra Mensing was represented by legal counsel. On May 15, 2015, Debra Mensing's attorney stipulated on her behalf "that the license discipline imposed ... shall be deemed to have been likewise imposed upon her in the event she should subsequently obtain any ownership interest in the business (other than as a lienholder) or become involved in the operation of the business."**

**This Stipulation can only be interpreted to mean that Debra Mensing had no ownership interest in The Horseshoe Club as of May 15, 2015. Without an ownership interest in The Horseshoe Club, Debra Mensing could not have been a licensee under the Sexually Oriented Business License. There is therefore good cause for the conclusion that Debra Mensing had relinquished her status as a licensee by that point in time.**

**Although Debra Mensing is now claiming that the Welshes – who were the business owners at the time – took her name off the Sexually Oriented Business License without her consent. However, the Welshes, as owners of the business, had the authority to take her name off the license as owners of the business. Moreover, even if Debra Mensing did have an ownership interest in the business, the Welsh's had apparent authority, in no small part because Andrew and Jessie Welsh were listed as the officers of the Company on the Annual List on file with Nevada Secretary of State.**

Nevertheless, because Debra Mensing stipulated that she was not an owner by May 15, 2015, Debra Mensing knew or should have known that she would have to submit a new application in order to obtain a Sexually Oriented Business license for The Horseshoe were she to subsequently obtain an ownership interest in the business.

2. In terms of the decision of the Chief of Police and City Clerk to deny her application, Elko City Code Section 4-10-5(D)(11) states that “the city clerk, at her own direction or at the request of the chief of police, shall refuse to grant a license to any applicant ... [if] an applicant has been employed in an sexually oriented business use in a managerial capacity within the preceding twelve (12) months and has demonstrated that he or she is unable to operate or manage a sexually oriented business use premises in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.”

The evidence presented at this hearing shows that Debra Mensing was listed on the Sexually Oriented Business License for The Horseshoe between January 11, 2010 and February 9, 2015. Debra Mensing agrees that she was a licensee at that time. Therefore, in that capacity, she had a duty to participate in the management of the business in such a manner as to prevent license violations. However, as was previously determined by this Council during the Liquor License hearing, during the past 12 months, the Horseshoe experienced numerous violent crimes, disturbances of the peace and Elko Liquor Code violations. This demonstrates that she is unable to manage a sexually oriented business in a peaceful and law abiding manner, thus necessitating action by law enforcement officers.

I note that the evidence shows this was also the case before she sold all or part of her interest in the business to the Welsh’s, when Debra Mensing was listed as the sole licensee. In other words, The Horseshoe Club has a history of Code violations dating back to the time when there were no licensees other than Debra Mensing.

3. On October 20, 2015, it came to the attention of City Staff that Debra Mensing and John Smuda, who is apparently now a co-owner of the real property but not Hadlor, Inc., were actively preparing to open The Horseshoe, and were intending to conduct activities requiring a Sexually Oriented Business license. At least one of the advertisements for the opening states, “Under New Ownership.” This is consistent with statements made by Sean Smuda – identified as a manager – to the Elko Daily Free Press. These statements clearly identify Debra Mensing and John Smuda as being different from the previous owners.

It was only after Debra Mensing and John Smuda were informed that they were not licensed that they suspended their efforts to open the business. Neither Debra Mensing nor John Smuda contacted the City to determine the status of the Sexually Oriented Business license prior to the attempted business opening. This conduct shows an unwillingness to communicate with City staff and a deliberate disregard for the City’s Sexually Oriented Business licensing requirements.

4. A Sexually Oriented Business license is a privilege, not a right. Debra Mensing is attempting to have it both ways by denying ownership in the business when there was a danger of being penalized for Liquor Code violations, and now asserting that she was improperly removed as a licensee by the previous owners because she was a licensee all along.

When Debra Mensing and John Smuda tried to open the business in October – a mere two months ago -- they did so with knowledge that they were new owners. They should have known – and it is only logical to conclude that they did know – that new licenses would be required. They simply disregarded the City’s licensing requirements. By following this course of action, they took a deliberate risk that they would not become

**licensed in time to operate a sexually oriented business on the property within the 6 month “grandfathering period.” This is through no fault of the City.**

**This motion is based on these reasons, the testimony presented and the documents provided.**

*The motion passed unanimously. (5-0)*

After the motion and before the vote, Mayor Johnson said I don’t know if it matters so much but I think that the City of Elko made the right call in looking at who was on the license and asking to have the application resubmitted. Also too, it came back as far as the operation of the particular location, I’m not seeing anything that would say that the operation would change. That’s really the biggest issue that I have is that, as City Council members, our job is to look at the balance of the city resources. With the constant calls and the increase in population and the resources of the Elko Police Department to be utilized time after time after time in the downtown area, it’s not fair to the rest of the community. We have to make a decision of how to allocate those resources and this issue, not only with this business came up but with other bars in the area, the Horseshoe was named in that one to begin with. The City of Elko and City Council have spent countless, well, they’re not countless but they are certainly upwards of ten to eleven hours based on this one particular business where no other business receives this type of attention from the City of Elko. I just want to say I understand your investment in Elko and I just hope that you understand the City’s position in balancing of resources and allocation of safety and what’s better for Elko in the future. I think the City, the Chief of Police and the Clerk made the right call in the requirement to reapply which was the right call not to issue this license based on the past operation of the club. We look to the owners of the properties and the patrons of that business to really solve the biggest part of the issues that come from that business and that it’s not fair that the city taxpayer continually provide a security force for very limited, and also take the risk on a day to day basis based on the significance of the incidents, it’s not the right tract to be on. As City Council we need to find that better tract and be more proactive in making it so that the resources are better used and then also the entire system and the Elko County is used the best as it can. I appreciate all the information and you being here at today’s meeting and advice of everyone. I think just from being the Mayor of the City that’s some of the statements that I have in support of the motion as presented by Councilman Rice. Any other comments, City Council?

**SEEING NONE, COUNCIL VOTED ON THE MOTION.**

- B. Ratification of the Police Chief issuing a 30-day temporary Fraternal, Social and Civic Club Liquor License and issuing a regular Fraternal, Social and Civic Club Liquor License to Alfred Zaga and Zachary Arbillaga, dba Elko Euzkaldunak Club, located at 1601 Flagview Drive, Elko, NV 89801, and matters related thereto. **FOR POSSIBLE ACTION**

Chief Reed explained this one was straight forward. This is for the Basque Club. We have had no problems with the service of alcohol over the years. We put them in compliance with the intent of the code. We did our background check and there are no criminal histories. He recommended that it be approved.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Schmidlein, to ratify a 30-day temporary Fraternal, Social and Civic Club Liquor License and issue a**

**regular Fraternal, Social and Civic Club Liquor License to Alfred Zaga and Zachary Arbillaga, dba Elko Euzkaldunak Club, located at 1601 Flagview Drive, Elko, Nevada.**

*The motion passed unanimously. (5-0)*

**V. RESOLUTIONS AND ORDINANCES**

- A. Review, consideration, and possible approval of Resolution No. 29-15, a resolution establishing new Airport Identification Media Fees at Elko Regional Airport, and matters related thereto. **FOR POSSIBLE ACTION**

After an internet/phone survey of 30 F.A.R. 139 Certificated airports in the Western United States to include airports in Idaho, Arizona, Nevada, Utah, and California; Elko Regional Airport was inconsistent with industry standards for charging users for the costs associated with processing TSA 1452 mandated identification media. As you are aware, Elko Regional Airport is not financially self-sustaining and is required by the FAA to achieve financial self-sustainability to the maximum extent practicable. The airport would like to institute security badging fees that recoup direct costs to the airport operating budget associated with processing and issuing identification media for airport users. These fees are in line with industry standards and are ubiquitous among similar facilities across the west. The fee schedule associated with this resolution has been approved unanimously through the Airport Advisory Board on November 20, 2015. MG

Curtis Calder, City Manager, explained he and Councilwoman Simons attended the Airport Advisory meeting where this was discussed. This will help defray the hard costs the city pays to the Federal Government to run those security badges.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to adopt Resolution No. 29-15, establishing a fee schedule for issuing new airport identification media, renewing said media, replacing lost media and fees failing to return media when required.**

*The motion passed unanimously. (5-0)*

- B. Review and possible approval of Resolution No. 33-15, a resolution amending Resolution 34-06 which established a policy regarding procedures related to business impact statements, and matters related thereto. **FOR POSSIBLE ACTION**

The 2013 Nevada Legislature amended NRS Chapter 237 which requires amendments to the business impact statement policy. SO

Shanell Owen, City Clerk, explained enclosed in the packet is the revised procedure for conducting Business Impact Statements. She reviewed the changes.

Mayor Johnson called for more discussion without a response.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Rice, to adopt Resolution No. 33-15.**

*The motion passed unanimously. (5-0)*

- C. First Reading of Ordinance No. 799, an ordinance amending Title 1, Chapter 5, Section 12 of the Elko City Code entitled “Notices” by clarifying the procedure for Notice of Close of Registration and to direct Staff to set the matter for public hearing, second reading and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Owen explained the proposed changes are reflective of the actual process that we use for noticing of our elections. After discussing this with the City Attorney we felt we needed to clarify the procedure and processes that take place.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to conduct the first reading of Ordinance No. 799 and direct staff to set the matter for public hearing, second reading and possible adoption.**

*The motion passed unanimously. (5-0)*

### **III. APPROPRIATIONS**

- A. Review and possible approval of Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

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

*The motion passed unanimously. (5-0)*

- B. Review and possible approval of Print ‘N Copy Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to approve the Print ‘N Copy warrants.**

*The motion passed. (4-0 Councilman Keener abstained.)*

- C. Review and possible approval of Charles Chester Plumbing and Heating Warrants, and matters related thereto. **FOR POSSIBLE ACTION**

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Keener, to approve the Charles Chester Plumbing and Heating warrants.**

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

- D. Review, consideration, and possible approval to solicit bids for the Exit 298 Waterline Project, and matters related thereto. **FOR POSSIBLE ACTION**

Engineering has been completed for this project and the plans have been submitted to NDEP for approval. RL

Ryan Limberg, Utilities Director, explained the engineering is complete and we are ready to go to bid. We have an engineer's estimate of \$2.35 million and we do have that money in the budget with financial commitments from both Newmont and Barrick in the amount of \$200,000 each.

Councilman Keener asked how long has it been since the mines acknowledged they are still in with their donations.

Mr. Limberg answered very recently.

Councilman Rice said the NNRDA has the funds from one of the mines.

Curtis Calder, City Manager, said Newmont has already submitted the funds to NNRDA. They have the money in the bank. Barrick is planning on issuing a check before December 31 to NNRDA, as well.

Councilman Schmidlein asked if there had been any correspondence regarding the future development.

Mr. Limberg answered he has heard that Artisan and the Rynan are excited to see the waterline to go out there. The Millers are excited too. Newmont would have to relocate their parking. Joy Global was very interested but they may have slowed or reconsidered since then.

Scott Wilkinson, Assistant City Manager, explained he and Jeremy Draper met with Joy Global three or four months ago. Joy Global, at one point, was considering a new facility out there. The message at that time was that they were looking at an expansion to the existing facility. One of the goals out there is that if the property is annexed into the city they would connect to the city system.

Mr. Limberg added NDEP folks have a positive view on this occurring.

Councilman Rice felt it was an excellent economic development move.

Mr. Limberg said we went through our development report. We analyzed each of the areas quite a bit and ranked them in priority. Infill in our existing areas was number one. The second area was north of town out by the CAT Logistics building in that vicinity. Exit 298 came up as the third priority on that ranking sheet. We are pretty well situated on the first two.

Councilman Keener doesn't feel it is the best time to spend the money but if we make the investment now, when things do improve it will be ready to go. He was in favor of this.

Mr. Limberg said we will likely need to see a higher connection fee to going forward with payback on our investment for this area. He will produce something and bring it back with the budget process in January.

Mayor Johnson thought the other saving part of the project is that we will have another water source and a transmission main. That is one that substantiates the project.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to direct staff to solicit bids for the Exit 298 Waterline Project.**

*The motion passed unanimously. (5-0)*

- E. Review, consideration, and possible authorization for staff to enter into a Professional Services Agreement with Petty and Associates Inc. for design services for the replacement of boilers at the City of Elko Swimming Pool, and matters related thereto. **FOR POSSIBLE ACTION**

The swimming pool has two options for heating the facility, geothermal and boilers. For the past year and half we have become more reliant on the use of the boilers due to the geothermal system being in disrepair and not providing enough BTU's to properly heat the facility. The current boilers are unreliable due to their age, limited availability for parts, and their inefficiency to operate. Costs associated with replacing the boilers are estimated to be \$162,000. The cost to properly replace and repair the geothermal system is a multi-million dollar project. JW

James Wiley, Parks and Recreation Director, explained our preferred method of heating the pool is the geothermal system. The last couple of years we have struggled to use that system on a regular basis. The last year we have solely relied on the boilers. In September of this year the geothermal came back online and the boiler system went down. We are now reliant on one source of heat without a backup. If that source goes down we would have to close the facility. We are looking at replacing the boiler system.

Mayor Johnson disclosed that when the geothermal system has gone down in the past Charles Chester Plumbing has been awarded a contract to make repairs. We were the last company to make the repairs. The contract was administered through the School District. He didn't see it as enough that he would have to take an abstention. What is the plan for the future of the geothermal system? I have heard in the past that when the geothermal is not in place that really the cost to heat the water at the pool may be unsustainable.

Mr. Calder answered the boilers that we have are very inefficient. The money spent with the current boilers is a lot more than what we would spend with the replacement boilers.

Mr. Wiley said last figure he heard was \$45,000 for natural gas.

Councilman Rice said the ECVA budgets rely on the geothermal but they budget for natural gas expenses.

Councilman Keener asked for clarification, in option No. 1 we are using geothermal or we are using the boiler. On option No. 2 we use both at the same time.

Mr. Wiley answered that was correct. We thought option No. 2 it was a good idea. Sometimes we have some geothermal heat but not enough BTUs but if you could supplement that with boiler heat we feel like we would be pretty efficient. Option No. 2 is a budget buster because it will cost another \$100,000 to get that system in place.

Councilman Schmidlein asked if you go with option No. 2 it would be about \$250,000.

Mr. Wiley answered he thought it was \$280,000.

Councilman Keener added the engineering for that option is another \$15,000. It sounds like our payback period would be probably over a decade.

Mr. Calder said the city pays an annual maintenance fee to the geothermal user group, which is this geothermal system. That fund builds up over time to handle some of these major repairs and maintenance items. That fund is based on the BTUs used by each entity. A grant allowed us to do a master plan for the system. If we don't receive any further grant funding on that we will not be able to do what we need to do.

Mayor Johnson thought, looking at this agenda item, there seems to be a potential that the geothermal may be going away.

Mr. Calder said the geothermal user group's intention is to keep the system up. It would be wise to invest in the boilers even though it is an old building.

Councilman Keener asked about the life of the equipment.

Mr. Wiley answered the current boilers have been in for over 40 years. We haven't always used them as our primary source of heat. He would think at least 20 years.

**\*\* A motion was made by Councilman Keener, seconded by Councilman Rice, to authorize staff to enter into a Professional Services Agreement for Design Services for the replacement boilers at the City of Elko Swimming Pool, citing option No. 1.**

*The motion passed unanimously. (5-0)*

## **VIII. REPORTS**

### **A. Mayor and City Council**

*Councilman Keener said he has an industry meeting in January and he will not be attending the first January meeting.*

*Mayor Johnson said Jeff Williams with NNE Construction sent a letter thanking the city for their exceptional service. He looks forward to 2016 and working with other departments throughout Elko County. We have a lot of opportunity and thanked everyone for their hard work. Merry Christmas. He will look at the liaison positions and make some changes.*

### **B. City Manager**

*Curtis Calder reported Mark Gibbs and his crew are dealing with snow removal issues. One FAA issue we are dealing with is a missed approach procedure that when they came in and resurveyed that airport before they*

*reopened the runway, they found that some topography to the northwest of the runway was not surveyed correctly some 25 years ago. It's really an FAA issue and doesn't really have anything to do with the city. We are going to make sure that FISH opens up the shelter on both Friday and Saturday. Every year we go through a population estimate procedure estimate through the State Demographer and we have chosen to appeal the estimate this year. That appeal may get resolved before it gets to the taxation department.*

C. Assistant City Manager

D. Utilities Director

*Ryan Limberg reported on the swimming pool sewer back up. They jetted the line and found some grease and pine needles. The call initially came out yesterday and didn't find a backup.*

Shanell Owen noted that she had not heard any action for the approval of the minutes.

### **APPROVAL OF MINUTES: December 8, 2015**

### **Regular Session**

*The minutes were approved by general consent.*

E. Public Works

F. Airport Director

G. City Attorney

H. Fire Chief

*Chief Griego handed out a copy of the December Fire Watch newsletter (Exhibit "F").*

I. Police Chief

*Chief Reed thanked council for their support and help on the SOB license. We were able to arrest the shooter that shot at the police car some months ago. We have been working for months to strengthen the reserve program. These are volunteers. We were able to put on an Academy and the graduation ceremony was last night. Five of the graduates were representing the city.*

J. City Clerk – Financial Disclosure Statements

*Shanell Owen reported filing financial disclosure statements are due January 15, 2016.*

K. City Planner

L. Development Manager – Police Department Change Orders

*Jeremy Draper reported on the most recent change orders for the Police Department and the status of the construction.*

M. Administrative Services Director

N. Parks and Recreation Director

*James Wiley reported on an incident at the pool; they experienced a sewer backup in the control/mechanical room in the basement. They lost some electrical controls and possibly some pumps.*

O. Civil Engineer

P. Building Official

### **COMMENTS BY THE GENERAL PUBLIC**

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

John Carpenter felt the crime in this town is too much. He thinks we need a summit. Cimarron West has been broken into a few times. We need to get all the agencies together to see if there is a weak link we can improve upon or what.

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

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Mayor Chris Johnson

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Shanell Owen, City Clerk