

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

SS February 26, 2013

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, February 26, 2013.

This meeting was called to order by Mayor Pro Tempore John Rice.

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

Mayor Pro Tempore: Councilman John Rice

Council Present: Councilman Rich Perry  
Councilwoman Mandy Simons  
Councilman Robert Schmidlein

Absent: Mayor Chris J. Johnson

City Staff Present: Curtis Calder, City Manager  
Delmo Andreozzi, Assistant City Manager  
Shanell Owen, City Clerk  
Matt Griego, Fire Chief  
Ryan Limberg, Utilities Director  
Dennis Strickland, Public Works Director  
Scott Wilkinson, Development Manager  
Dawn Stout, Administrative Services Director  
Doug Gailey, Human Resources Manager  
James Wiley, Parks and Recreation Director  
Joe Carr, Park Superintendent  
Rick Magness, City Planner  
Jeremy Draper, Civil Engineer  
Ted Schnoor, Building Official  
Don Zumwalt, Police Chief  
Dave Stanton, City Attorney  
Tom Coyle, City Attorney  
Lorraine Martinez, Accounting Supervisor  
Robert Spencer, Electrical/Facilities Superintendent  
Debbie Henseler, Business License Technician  
Diann Byington, Recording Secretary.

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## COMMENTS BY THE GENERAL PUBLIC

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

John Carpenter said he hopes the city isn't going to file another appeal to the Supreme Court on the airport deal.

Matt McCarty said he will not be able to attend the entire meeting but wanted to comment on item IV. A. He read a letter dated February 26, 2013 to the members of the Elko City Council. (See Exhibit "A")

## APPROVAL OF MINUTES                      February 12, 2013 FOR POSSIBLE ACTION

*The minutes were approved by general consent.*

### I.        PERSONNEL

- A.        Consideration and possible appointment of a City Sexton, including direction to Staff to negotiate the terms of the appointment, including work schedule and compensation, and matters related thereto. **FOR POSSIBLE ACTION**

Mr. Jason Muth resigned as City Sexton. In response, the City received seven (7) letters of interest from Heather R. Dinan, Brandi Gunderson, Amber Lechuga, Carol Morgan, Dusty Muth, Janet Petersen, and Fred Weeks.

After reviewing the letters of interest, Staff recommends the appointment of Janet Petersen as City Sexton. Upon appointment, Staff will negotiate the terms of the appointment and return to the City Council for approval of a work schedule and compensation package.

Copies of the seven (7) letters of interest and the relevant sections of City Code have been included in the agenda packet for review. CC

Curtis Calder, City Manager, explained this is the first time in recent history that the city has had to look outside the current owner of the funeral home to provide City Sexton services. This is an appointed official pursuant to City Code. Once the council makes the appointment he envisions sitting down with whoever is appointed and working out the details of employment.

Councilman Perry asked Janet Petersen why she wanted this job.

Janet Petersen said she has always had an interest in the cemetery. It is history and it tells the story of this town. It shows reverence and concern. It is an interesting part of the community and she would like to be part of it.

Councilwoman Simons asked if Ms. Petersen's current work schedule is flexible enough.

Ms. Petersen answered she understands it will be a part-time job. She currently works full-time but that job has a term limit. She would be available at any time since her current job is flexible.

Mayor Pro Tem Rice asked if there were any other candidates present in the audience, there was no response.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to appoint Janet Petersen as City Sexton and direct staff to negotiate the terms of appointment including the work schedule and compensation which has to come back to the Council for approval.**

*The motion passed unanimously. (4-0)*

## **II. APPROPRIATIONS**

- B. Review of the bids received and possible award of the Traffic Signal Battery Backup Project for the Facilities Department, and matters related thereto. **FOR POSSIBLE ACTION**

Council approved soliciting bids at their October 23, 2012 meeting. The deadline for submitting bids is 3:00 p.m. local time on February 22, 2013.

This project was budgeted for and approved in the FY 2012-2013 Budget. The project will provide battery backup, and new meter pedestals at several of our key intersections and allow the signals to continue to function in the event of a power outage. DS

Dennis Strickland, Public Works Director, explained when we re-did the Idaho Street corridor we removed a lot of old and outdated signal equipment. That phase of the project was funded out of the facility fund. There wasn't enough money in that fund to do this work at that time. Our focus on this project is our high profile intersections that present a problem when to do lose power. This provides a safer and efficient function. The bids were opened last Friday. We had \$120,000.00 budgeted for this project in the beginning. We did spend some money on a consultant (about \$16,000.00) to do some design work for this. We discussed the issue of being within the threshold of prevailing wage. The contractor has agreed to provide certified payroll just in case we were to breach that threshold. The low bidder is right where we need to be. He recommended approval of this project. The only change in the motion would be that we would award this pending a five (5) day bid protest being filed.

Councilwoman Simons asked if the \$16,000.00 would have to be deducted from the \$120,000.00 total project budget.

Mr. Strickland answered yes. There would be approximately \$104,000.00 remaining.

Councilman Schmidlein asked if this goes over the \$100,000.00 mark, will the contractor be compensated for the Davis-Bacon.

Mr. Strickland answered no. Everyone that bid the project was a union shop so they are already paying the prevailing wage. The only thing we would have to make sure happens is the certified payroll. There is no monetary impact to that if they cross that threshold.

Mayor Pro Tem Rice asked are you recommending with both additive alternates one and two.

Mr. Strickland answered yes. They recommend approval in the amount of \$99,600.00.

Justin Alanis, Electrician, said these battery backups are great units and they don't miss a beat.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Perry, to award the bid to Titan Electrical Contracting pending a five (5) day period for bid protests to be filed in the amount of \$99,600.00.**

*The motion passed unanimously. (4-0)*

- C. Review, consideration, and possible approval of a proposal from New World Systems for an addition to the current Financial Management module for Purchasing Base and Inventory Management, and other matters related thereto.  
**FOR POSSIBLE ACTION**

Council approved an Additional Software License Agreement with New World Systems at the May 22, 2012 meeting for conversion of all City financial software systems to one source. Staff recently became aware of another module that would be required to complete the Financial Management Conversion. A copy of the proposal is included in the packet for review. DS

Dawn Stout, Administrative Services Director, explained this was not part of the original document as stated. It is pricey but required to complete the conversion. It was unbudgeted but she is anticipating that the Consolidated Tax Revenues for the Capital Equipment Fund will come in \$120,000.00 more than anticipated. That is more than enough to pay for this.

Councilman Perry asked Ms. Stout to explain what this module does.

Ms. Stout answered it does inventory tracking. The inventory that we have and track with this module is monthly gas oil inventory as well as water and sewer inventory. It would integrate just as the rest of it does.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to purchase the New World proposal for additional financial management modules for the inventory package for a total of \$39,320.00.**

*The motion passed unanimously. (4-0)*

### **III. SUBDIVISIONS**

- A. Review, consideration, and possible action to conditionally approve Final Plat No. 21-12 for the Orchard Cove Phase 2 subdivision, filed by Granite Holdings, LLC., for the proposed division of approximately 6.94 acres of property into 32 lots for residential development within an R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto, located generally 100 feet south of the intersection of Winchester Drive and Colt Drive (APN 001-928-004), and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered this Final Plat on February 5, 2013 and took action to forward a recommendation to City Council to conditionally approve the Final Plat. SW

Scott Wilkinson, Development Manager, explained there were a few lots that were non-conforming in dimensions only. The Planning Commission is aware of that and believes the modification of standards allowed for under the Subdivision Process meets the intent of the code. With that they had some conditional approvals identified in the agenda packet. He recommended conditional approval based on the Planning Commission conditions.

Councilman Perry asked if it is that parcel that is vacant on the overhead projector. (Yes) If this is final plat then they can move forward?

Mr. Wilkinson answered they would move forward. The council approval would be good for two years. They would have two years to record that plat.

Councilman Perry asked if the Planning Commission conditioned this already.

Mr. Wilkinson answered yes. He referred to a Development Department memo dated 1/23/13 and explained there are a few minor conditions for the plat. The Planning Commission action report is also in the packet.

Councilwoman Simons asked if Granite Holdings is aware of these conditions.

Mr. Wilkinson answered yes and they were present at the Planning Commission meeting and didn't have any objections.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to conditionally approve Final Plat 21-12 for the Orchard Cove Phase 2 subdivision subject to the conditions and recommendations by the Planning Commission and staff.**

*The motion passed unanimously. (4-0)*

#### **IV. UNFINISHED BUSINESS**

- A. Continued review, consideration, and overview of Title 4, Chapter 5 “Elko Liquor Control Code” inclusive of licensure/permit requirements and revocation processes, including the possibility of code amendments, and matters related thereto. **FOR POSSIBLE ACTION**

This item was tabled during the February 12, 2013 Council meeting. The City also considered this item at the October 23, 2012 Council meeting. At that time, Council directed Staff to bring back proposed amendments to the Code to include specific language to address systemic problems that further define non-compliant behavior from liquor license holders. Direction also included consideration of a last call provision, which would exclude establishments with non-restricted gaming licenses. Council may give direction to Staff based on the information provided during the presentation. DA

Mayor Pro Tem Rice explained this is not an ordinance. We will be discussing some revisions to an ordinance and recommendations could be made at the end of discussion to revise our liquor ordinance. That would come back through a process as a first and second reading as well as an impact statement. This is an opportunity for all of us to discuss this matter. This was carried over from a council meeting in October where the City Council asked staff to look at the ordinance and come back with recommendations. It became evident to the council that there were more and more problems occurring downtown that were related to the consumption of alcohol (fights, injuries and deaths). Council took some measures to remedy that but we didn't see a lot of progress. We felt the best move would be to move forward with this discussion. City Attorney Dave Stanton will give a presentation. There are some administrative housekeeping changes that will also be pointed out. There are some provisions that will be discussed. He asked that we go forward with the presentation in its entirety and hold questions until the end.

Dave Stanton, City Attorney, said he was here to propose some language. We want a meaningful discussion about the liquor control code. It needs to be updated and cleared up. Nothing will be decided here. Hopefully in the end we will get advice and direction from council. The presentation today was a collaborative effort by a number of people. Tom Coyle is present and he added language along with Shanell Owen, City Clerk and Don Zumwalt, Police Chief. He will be deferring questions to these people during the question period. He began his presentation. (See Exhibit “B”)

Mayor Pro Tem Rice explained he wants to hear from the public on four main components: Last Call; Change in ordinance that gives authority to the Chief of Police; definition of visibly

intoxicated; and, the clarification of all the administrative/housekeeping changes in the ordinance. He asked that they start with last call.

Robert Wines, representing Adlor Inc., asked how can you enforce a last call in a gaming state? The Gaming Control Board requires a lot of these casinos to remain open 24 hours a day. They can serve liquor. If you try to impose a rule on the other people who are in business competing with them that requires them to close down, you are going to have to require all of the casinos to close down too. The 14<sup>th</sup> Amendment to the US Constitution provides that no state shall deny to any person within its jurisdiction equal protection of the laws. If you try to close down bars at 0200 while allowing others to stay open all night because they have a gaming license then you have denied them equal protection of the laws. Article 1 Section 1 of the Nevada Constitution says that all men (people) are free and equal. Imposing last call you are not keeping things equal. He didn't come with any ideas of how to solve the problem.

Dave Stanton said in terms of the Constitution/Equal Protection Clause issue says that if you make a distinction like that between the big casinos and everybody else it has to have a rational basis.

Mayor Pro Tem Rice admitted he did forget one bullet item: requirements for server training. He wanted to make that discussion item four.

Laura Roman said last time she was present most people got up and walked out because this issue wasn't going to be addressed. She has held a bar card in this town for over 30 years. Elko Police Department is over worked and does not have the manpower to keep up with all that is going on in the downtown area. If the smaller businesses want to keep their bars open why don't they all get together and fund an officer in that area. Can a bartender drink while serving?

Police Chief Zumwalt answered bartenders can drink but they are not allowed to be intoxicated. Last weekend a bartender was intoxicated and the police had to deal with it.

Ms. Roman thought the bars should just get together and pitch in instead of saying they don't want something. She wanted unity rather than fighting.

Marv Churchfield thought last call is just more regulation. This same situation came up about 25 years ago and it wasn't solved then and it won't be solved now. He suggested putting up cameras to catch the people breaking windows.

Kevin Sur said Elko is a 24 hour town. Why not tell the mines to stop running between 2 and 8 am. You can't because they would lose money. You are giving the casinos an unfair advantage by being able to stay open while closing the small bars. Fights happen in the parking lots. You say you want to stop the behavior but by closing the bars you are putting people in the parking lots you are causing it. If you don't like to drink don't go to a bar. Enforce the laws you already have but you have to be there to enforce the laws. In his opinion officers just drive around in circles instead of getting out of their cars and seeing what is going on.

Dale Andrus said he is a downtown business owner, not a bar. Regarding this 6 hours of closing, has anyone considered a risk to these bars to theft, break-ins and other risks. You are taking away their income. The fights happen in the corridor day and night, all day long. There have been some unfortunate occurrences after hours. Using Utah and Idaho as a comparison to the 2:00 am last call is not fair because those are state laws there.

Scott Ruetner, Matties Bar and Grill, said this ordinance wouldn't affect his bar much but it is a restriction of freedoms. He moved to Nevada because of the freedoms. He thought some of the problems downtown may not be alcohol related but drug related. Maybe we need to concentrate on drug enforcement. You are not going to take drinking away. He knows we are heavy on administration and light on workers. We should look at staffing issues and work at night more.

Jean Sloan said she works downtown. She wasn't sure if last call is the option or not. There is a serious problem with over-serving. The windows where she works have been put out multiple times with bottles being thrown at them. It is discouraging going to work in the morning and finding vomit and/or excrement at the doors. The broken glass downtown is a mess. She suggested fining the bartenders that over-serve.

Brandi Sandstrom from Goldies Bar said Utah and Idaho do not have casinos serving in the area at 2am. Everyone is going to go to the casinos to party after last call. She feels that will make the violence worse.

Mike Uriate from Goldies Bar said you are limiting closing the downtown bars only. You will still leave the casinos open and there will be one avenue for the people to go to. He thought the problem then will be that people are going to be in their cars, driving on the streets, to go to the mom and pop stores that are still serving alcohol.

Ms. Sandstrom said last call will not fix the problem. There are always going to be things they cannot control. The bartenders at Goldies pay close attention and keep things in line but they cannot control the guys in the parking lot guzzling liquor before they walk into their bar. We communicate with other bars to stop potential problems. Bars will not survive if they have to close at 2am.

Mr. Uriate said that will put him out of a job. The issue is in this town, there are more new people coming in and out of this town (short timers). They don't care what problems they cause. He suggested council approach some of the mining companies; if there is an alcohol related incident downtown, put the employee(s) in a program to teach them responsibility.

Ms. Sandstrom asked regarding the suspension of the license by the Chief of Police, is this a situation where a bartender was intoxicated and they had to shut the bar down for the night. Would that mean the liquor license would be pulled until the next council meeting?

Mayor Pro Tem Rice answered that hasn't been determined yet.

Ms. Sandstrom asked are there going to be any exceptions for late payments, such as the mail.



Councilman Schmidlein thought it was stated in the code that as long as it is postmarked the day it is due at City Hall.

Shanell Owen, City Clerk, said the payment needs to be received in the office by the due date. They are actually due the first of the month but we give them until the 15<sup>th</sup> of the month to make the payment. Every liquor license holder knows every quarter they need to make their payment. We are not responsible for what happens in the mail.

Mayor Pro Tem Rice said the reason for the cost of this is because it costs the taxpayers money. There is money spent in that process when the licenses are renewed in a timely manner. To simply issue a temporary license the next day means that we lose money. We are trying to make it more efficient.

Scotty Mayer said he works for a distributing company. His is that bars are not going to require as much alcohol. This will impact distributors too. Distributors would have to lay off employees to make up for what they are not selling.

Ron Abbott said he doesn't see that last call provision will cure the problem. He has lived in several states and has been involved in law enforcement. He suggested re-distribution of fees to the Police Department so they can staff.

Andrew Wood said he is a bartender at Matties. The number one problem is over-serving. If all the bartenders could take the TIPS serving class that could reduce over-serving. Night shift workers get off at 2am and they want to drink. The bartenders would know when to cut them off.

Luc Gerber said before being drastic and shutting down businesses, we need to address the real issues. The list is a good list but in real life it isn't always that easy to determine if someone is drunk. If you shut the bars downtown these people are going to go somewhere else. At that point they won't be in a safe environment, they will be outside instead.

Marv Churchfield asked do you have a list of every business that you tell to close down and when to open.

Mayor Pro Tem Rice answered he didn't believe there was a list.

Royce Hackworth said he doesn't own a bar but he frequents some. He felt there would be a basis for law suits for unfair treatment. We don't have income tax and we don't have business income tax. The reason was that they looked at taxing with the idea of people participating by buying goods or services (sales tax, cabaret tax, etc.). You are deciding you are going to cut your revenue.

Tony Still said what is a big thing is that there are contractors that don't have a lot of skin in the game since they are away from home. We have some wild guys and some guys that are here without their wives that contribute. Every hotel in this town is filled up. There is the upside to

all the people that sell food and goods and services. Maybe if we get cops on the beat and more visible it will help.

Susan Thornburg said she has had a phone call at 3:00 am in the morning from Silver Dollar to pick up someone. They were serving them coffee and water. The community needs to do this more. She does see bartenders that are working very hard, talking to people to help friends. Any time you can add more training is a plus. Stepping up the police department is great but harassing a drunk can get out of hand. Instead of helping people like back in the day it seems more like it is harassment.

Mayor Pro Tem Rice asked for input from council.

Councilwoman Simons said she appreciates people coming to express opinions and ideas. She wrote them all down. She understands the concerns about closing the small bars and hurting their business. When you hurt businesses you hurt the whole community.

Councilman Perry said going back to October we had a public meeting to address alcohol and vagrancy problems downtown. Council did ask staff to look at the ordinance and write down a last call provision. They also asked the Chief of Police to start a foot patrol downtown.

Chief Zumwalt said he has gotten good feedback about the downtown foot patrol. Cops don't just drive around in circles they do get out and do walk-throughs. He has done bar checks himself. We had a terrible summer with aggravated assaults and fights. Now it's winter and the foot traffic downtown has decreased. It seems like with the combination of more enforcement and more proactive approaches have helped. He has talked to bar owners about over-serving. If we can make adjustments between now and the summer then maybe it will make a difference by then.

Councilman Perry said the other item was homeless and vagrancy. Curtis Calder put together a venue to help the homeless. He felt all along that last call was problematic and he has heard some arguments that support that. We are talking about 5 or 6 places that are the venues for a lot of these fights. The foot patrol has helped. He feels last call is too problematic for staff to follow up on.

Councilman Schmidlein sympathizes with some people here. It is difficult to identify an individual that is intoxicated. You don't know what they have consumed prior to walking into a bar. He understands from the bartender's point of view how hard this is. We need to come together to solve these problems. If you go to a last call you are going to send out 50 people to the parking lot drunk. There have been a lot of good points brought up tonight.

Mayor Pro Tem Rice said he went from bar to bar with the Chief about a year or so ago. They went to the top 5 where there had been a dozen or more calls with fights. Every single bartender or bar owner they spoke with acknowledged there was a problem and that they are part of the problem. They asked them to address the problems themselves and instead of things getting better they got worse. There are a bunch of people that live in this community that are concerned about the problems. We as a community have invested a great deal of money in the downtown

area. We can't have people punched in the nose, disabled or dying in downtown Elko if we expect this community to grow. There is no support for a last call but we have some good solutions here. This isn't just a problem regarding alcohol. We do have a lot of people coming into our town that don't care. We all have to be thinking of solutions or we will all be in trouble. He moved on to discuss the chief's authority and after some discussion about how to proceed he read the proposed revised procedure (4-5-14). Does the Chief have authority in some NRS to take a license off the wall if there is a fight that cannot be stopped?

Brandi Sandstrom said officers have threatened to remove the license from the wall but she doesn't think the Chief has that authority. She felt this was too wide open and that the punishment was too severe.

Luc Gerber asked if there is an incident one evening and the foot patrol officer pulls the license because he now has the power to do that, not the Chief of Police. The Chief won't want to be called at 4:00 am. Will there be a hearing the next day or 45 days?

Dave Stanton answered the Chief of Police would have to make the decision. In order to deal with due process you have something that is called post deprivation due process. That means someone has been deprived of some sort of constitutional right. If you give them prompt notice and an opportunity to be heard then that satisfies the due process requirement and that is why it is written the way it was. We decided to make it available for everyone to get in front of council and voice their concerns.

Mayor Pro Tem Rice noted in some circumstances we might have a special meeting.

Scott Ruetner said it would be his understanding that the Chief of Police could come in at 4:00 am and pull my license and then you cannot re-apply for 45 days? So he could have a spat with the Chief of Police and he could pull my license until I get in front of Council. He thinks that puts too much power in one person's hands. He sees it now that if there is a big fight they close the bar down.

Mayor Pro Tem Rice said it has happened but we don't have the legal authority to do it. In a broad policy sense, the police chief is a sworn officer and someone who the City Council sees worthy of making those decisions. If a police chief had a personal grudge with someone and pulled their license that would be wrong.

Mr. Ruetner said there is an EPA that operates like that right now. He suggested a 24 hour cooling off period.

Chief Zumwalt noted the language is if they get into trouble the City Council may suspend or revoke a license. His view is not to suspend a liquor license but to stop a problem in the case of an emergency when City Council is not available. If you say 8 hours, 24 hours to cool off that is an idea but he needs to be able to deal with an emergency. We need to write language that is legal and enforceable.

Mr. Gerber asked what defines an emergency.

Chief Zumwalt gave an example of a night where there were multiple fights at one bar downtown. Most of the bar staff was intoxicated that night. The only sober person in there was frantic and they couldn't get control of the bar. His suggestion was to turn the band off and close the bar which is what they did. If there is a serious fight, stabbing and continuous problems would fall into that category. You would want the Chief of Police to do something in that case. If we need more language or explain that better we can do that.

Lori Vavak, Double Dice Bar, said she doesn't understand why we are shutting down bars in this manner. Why can't we just remove the fight? If the bartenders are intoxicated, don't they go to jail too? (yes) If there is no one left to run the bar then the owner gets a phone call to come down and shut it down.

Chief Zumwalt said then we have to have a solution. You have to have an end result to all of those categories. We want to be reasonable. When bar staff cannot handle the problem that is what it comes down to.

John Carpenter said we have enough rules and regulations now. You just need to enforce them. Two incidents in 22 years does not make it right to give the Chief of Police to shut these places down. The Chief has not brought anyone in front of Council that has been a problem as he promised approximately six months ago.

Chief Zumwalt said there has been only 2 times in the last 22 years because we don't have the authority to do it. We do have problems. There have been graveyard shifts where the entire police force has been downtown trying to clean up the bars. He has taken data for four bars to the City Attorney that have been problems. When it is ready it will be brought to Council.

John Carpenter said it doesn't say anything in the regulation about the City Attorney doing it. It says these guys have the authority to do it.

Mayor Pro Tem Rice said we have to have cause and that is what the Chief and the City Attorney is working on.

Jean Sloan said she is taking this to mean is that the Chief is asking for permission in extreme circumstances to have the authority to act. If he abuses that authority then Council would do something about that. If he doesn't close a bar down and someone gets killed, what will the next meeting be about? She proposes they be closed down for a 24 hour period and if it happens again then that bar be brought before City Council.

Robert Wines agreed with Ms. Sloan. It allows the Chief to revoke the liquor permit for problems going on but then requires the bar owner to stay closed down for three weeks. If you are going to allow the Chief to revoke the permit it should be for a limited period of time. Then Council would have a chance to withdraw their liquor permit.

Mike Uriate, Goldies Bar said his problem with this is that the Police Chief can come in and say there is an issue. The way this is written it could be 3 weeks before that bar could engage in

business again. He thinks there should be a business impact statement sent out before you even consider putting this up.

Mayor Pro Tem Rice explained this is not an ordinance reading. When it does get to that point a business impact statement would be sent out.

Mike Uriate said if they are doing walk-throughs on a consistent basis then they should be addressing these issues. Does that constitute an emergency that would close the bar for 3 weeks? Be cautious of the language.

Susan Thornburg with Gateway RV thought the Police Chief would be the one to be able to make that decision. If her own business were to be closed for 45 days, that would devastate her business. She liked that you can call the Police Chief at 4:00 am about an establishment being a problem. You can't close a business down but you should be able to call the owner and diffuse the situation. She agrees with a cooling off period.

Mr. Stanton suggested instead of modifying this section have a new section discussing the Chief's ability to close a business.

Mayor Pro Tem Rice said Council needs to have their own authority. We could consider an additional section that could give the Police Chief specific authority in an emergency situation.

Shanell Owen, City Clerk, clarified the 45 days was not intended for this kind of situation.

Councilman Perry felt strongly that a liquor license is a privilege and should be granted by the City Council and should be a very public affair if it is removed. He doesn't think the Chief of Police should have the authority to remove a liquor license but he does like most of the new language.

Chief Zumwalt said this Chief of Police doesn't want to close a business for 45 days. He wants a safe downtown.

Mayor Pro Tem Rice mentioned the definition of visibly intoxicated. This isn't a change rather it is in addition to provide some guidelines. He moved on to server cards. This was addressed in a separate part of the chapter. This would be in addition to what is required for professional bartenders. There was also going to be some discussion on exemptions.

Luc Gerber wanted an explanation of the server cards. The bartender is responsible because he has his bar card. The owner is responsible because he is holding the liquor license. The bartenders are giving the drinks to the servers who are bringing them out to the customers. Is that who we are talking about at this point?

Chief Zumwalt answered this deals with only special events and not bars or restaurants or casinos. It affects special events. Using the cowboy poetry as an example, he spoke to the bartenders for the events. There were no problems this year at cowboy poetry. He can go down the list and tell you what events do not present problems. The problems are because the people

serving are not educated. They don't know the law or responsibility. His idea is to have those serving at special events have server training to protect themselves as well.

Luc Gerber asked if this will affect wine walks and beer crawls.

Mayor Pro Tem Rice said the server training should not be confused with a license.

Chief Zumwalt said we are not asking them to get a bar card just server training and it is good for four years.

Councilman Perry asked what that training consists of. Is that what you did for cowboy poetry?

Chief Zumwalt answered no. What he did for Cowboy Poetry was just that he spoke to them and gave them some ideas. This would be the TIPS training that PACE and Stockmens put on.

Mr. Stanton said that we threw this out to generate some discussion on it. We had the change for bar employees to have the server training and now we want to ask if you want to have others subject to the liquor code have the server training? This could be limited to specific activities.

Councilman Schmidlein used Ducks Unlimited as an example. When they have those events and set wine out on the tables, who is responsible for the server training there? Is that considered a special event?

Debbie Henseler, Business License Technician, said that if they had invitations then that would be a private event. The caterer would be responsible.

Mr. Stanton said we may have to write that in to clarify who is responsible for that. It is up to Council to decide how far you want to expand the training requirement? Who do you want to do that? The parameters need to be defined somewhat.

Claudia Wines from the Museum said we have art receptions every time we change an exhibit. The artist is responsible for the food and drink. Does every artist have to go through this server training because they bring that wine?

An audience member mentioned that if the servers for a non-profit group all got server training at \$25.00 each then there goes all the non-profit funds. He accused the City of using a shotgun approach for a few problem areas.

Mayor Pro Tem Rice said we are trying to get together to make something work and not a shotgun approach. We haven't made a decision on this.

Ms. Wines asked if it would work to exempt non-profits.

Councilman Schmidlein said we are digging pretty deep. We need to move things forward and not deeper. When he brought up the issue of Ducks Unlimited he just wanted clarification and a better understanding.

Chief Zumwalt said we need to be careful to define what the events are. The differences are public and private. When we talk about special event licenses they are open to the public and sometimes on City property. The issues are with events that are open to the public with servers who don't know what they are doing. Non-profits serve alcohol and have a responsibility to the public just like anyone else.

Ms. Wines asked the Museum isn't city property so are their events exempt.

Ms. Henseler answered that special events are held on both city and private property.

Larry Hire, VFW, wanted clarification on special events. He assumed the fair would be a special event. In the past they haven't had any problems that he knows of. His problem is that their servers are volunteers and they never know who is going to show up to serve. It would be a burden on them to put all of their 200 members/volunteers through a server class.

John Carpenter said this is going to be a huge problem when you require everyone to take the training. If you make them pay \$25 to serve one time they won't show up. If you have a problem with some of these special events he feels you can handle it. Most of these special events have security there.

Mike Mosgrove, VFW, asked would it be possible for their organization to train a trainer to cover part of this.

Mayor Pro Tem Rice said there are all kinds of organization that engage PACE for that training.

Kim Steninger said the Halle Bar Party has four people serving and pouring wine. It isn't just the money but it is also the time. We never know who we can count on being the bartender until the day before the party. Most non-profits have the same problem.

Councilman Schmidlein said the VFW has bathtubs full of beer at the fair. You go through a gate and go to a booth and buy beer tickets. Then you go to the guy and tell him how many beers you want and give him the tickets. How can you come back on these guys because I passed out the beers? How can you hold those guys accountable?

Mike Uriate, Goldies Bar, said the Chief knows the events that are worse than most. He presented that question to council the time before.

Mayor Pro Tem Rice agreed and said he challenged him on that before. It is the bartender's responsibility. He is responsible for every single person inside your bar.

Mr. Uriate said if that is the case then that needs to be fair all the way across the board and it should be distributed out across the board to the special events.

Chief Zumwalt said inside a bar the establishment is responsible for the bar and the people in it. We haven't discussed security. In the event that Councilman Schmidlein brought up makes the person taking the beer to his friends responsible. If it were easy we wouldn't be here at all.

Kathy McAdoo, director of PACE coalition, said the majority of the events are non-profit. The beverage server training has always been provided for free. They started charging when it became mandated through City Code. The \$25 charge is minimal and helps pay for the staff that works the training. The reason for the special event training was to reduce under-age drinking and it has helped. She encouraged looking at what we as a city could do for the young people in the community. She understands the costs of non-profits getting training. Maybe PACE could offer free training once a year.

Luc Gerber asked why not look at we do at most states where you have one person that has a food handler degree per shift. As long as you have one person that is trained he would be responsible for the group.

Mr. Abbot said he takes exception to the verbiage approved by the Chief. What is wrong with you guys making that decision rather than the Chief? We already have Council's recommendations. If the Chief wants to close the bar in an emergency situation then he should have that right because that is already in NRS.

Mayor Pro Tem Rice said the last part is to discuss the housekeeping and/or administrative clarity. For the most part those were clarifying language.

Shanell Owen, City Clerk, explained she wanted to talk about the 45 day period rather than the entire presentation. We have to call businesses on the 15<sup>th</sup> to tell them that they no longer have a license per the code because the businesses are late renewing their liquor license. On the 16<sup>th</sup> the Chief submits a letter to them explaining they do not have a license. They can come in on the 16<sup>th</sup> and apply for a new license. It is the same businesses consistently. There needs to be some kind of consequence for being late. Maybe 45 days is not the right number. Maybe after so many times of being late they come back to council to explain their actions.

Mayor Pro Tem Rice said it was pointed out that shutting down a business for that time period can close them.

Ms. Owen said that in some cities they Police Chief actually confiscates the liquor. That may be in NRS or even Federal Liquor control regulations.

Councilman Schmidlein understands that you need to be aggressive with people paying their fees. People have issues maybe making that payment but it is a responsibility too. If they can't pay it maybe they can let us know.

Ron Goldie, Goldies Bar, said his business license didn't come in the mail so he didn't pay it. He paid a late fee. He normally pays his bills. These things can happen.



Ms. Owen said the business license code says that the City is not responsible to make sure they get their notices. There are quite a few notices sent out before you are in the penalty period.

Delmo Andreozzi, Assistant City Manager, suggested maybe a late assessment.

Ms. Owen said we do have a late fee assessment but it doesn't help the problem.

Debbie Henseler, Business License Technician, said on the business licenses the renewal notices are a courtesy. Just like a driver license. It isn't her responsibility to make sure the postman delivers the mail to them. The liquor code is a privilege. Everyone in the state says it is a privilege. At the 15<sup>th</sup> we take the license from them. Our fees are low. She understands these are hard times. This is a privilege and they should be aware of making this payment. These past years she has stopped calling and babysitting the businesses. They get closed on the 15<sup>th</sup> but they come in and get a temporary and sell liquor for 30 days before it goes to City Council.

Councilwoman Simons said the challenge here is that you cannot babysit these businesses. She didn't think a phone call was a horrible idea because things do happen. At some point you have to say there are consequences. If you close them down for 45 days they will not come back from that.

Ms. Henseler said part of the liquor code says they need to have business responsibility. Paying your license fees is part of your business responsibility just like staying current with state and federal taxes. Maybe say no selling liquor until the next council meeting.

Mayor Pro Tem Rice thought the recommendation is that 45 days is too much. Perhaps come back with a different proposal that would not be as punitive.

Cathy McAdoo noted there is no grace period to get a driver's license renewal.

Kim Steninger asked how many of these items need a unanimous vote.

Councilman Perry said there are several things that require that. He thought it might be fair that after the 15 day grace period there should be another 5 day loss before someone could go in and renew their license.

Mr. Stanton said it takes council action to do this. Is 5 days enough?

Ms. Owen said the five days would be before they could get a temporary license.

Robert Wines said he has some problems with the language in the middle of a section before this one. He felt the language about a business being in trouble was vague and shouldn't include language about actions instituted or pending. Another section he had a problem with was one he commented on at the last meeting. There was a provision about everyone having a catering license from the City. He felt licenses should be from the ECVA district and not limited to just the City of Elko.

Mayor Pro Tem Rice said the ECVA district does not cover the entire county.

Mr. Wines said this doesn't allow a Wells or West Wendover license. Wells would not have a county license; just a City of Wells license.

Mayor Pro Tem Rice asked if it could be a valid license issued within the boundaries of Elko County.

Mr. Stanton answered you could do that if you want.

Councilwoman Simons asked weren't we going to check and make sure that they have the same requirements?

Mayor Pro Tem Rice answered we can change that language and do that research.

Mr. Wines said he felt the section regarding the death of a licensee wasn't clear. At the end of the quarter a representative would have to go in and actually apply for a liquor license themselves or would they be able to go in and renew it under the name of the decedent?

Ms. Henseler answered the intent was that they would have to come in and apply for a new license.

Mayor Pro Tem Rice said we have been at this a long time. We have covered a lot of ground and have some good ideas. Do we want to make a recommendation for an ordinance or a recommendation for another review?

Councilman Schmidlein said he would like to have the staff bring back revisions with the exclusion of last call. Maybe have something in more detail?

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, (using the slide presentation given earlier) to have staff revise the proposed changes to the Elko Liquor Control Code Title 4, Chapter 5 as follows:**

- **4-5-1 DEFINITIONS be included;**
- **4-5-2 NEW SECTION A be included;**
- **4-5-3 CLARIFICATION OF CATERER'S LIQUOR LICENSE be included;**
- **4-5-3 NEW SECTION D be included but be modified to read an entity within Elko County that is licensed;**
- **4-5-3 NEW SECTION E be deleted;**
- **4-5-4 NEW INFORMATION TO BE PROVIDED BY APPLICANT be included;**
- **APPLICATION FEE IS NON-REFUNDABLE be included;**
- **4-5-5 REFERRAL BY POLICE CHIEF TO CITY COUNCIL be included;**
- **4-5-7 LAST CALL be deleted;**
- **4-5-9 APPLICATION FEE IS NON-REFUNDABLE be included;**
- **NEW REQUIREMENT TO COMPLY WITH FEDERAL AND STATE LAWS be included;**
- **4-5-10 CLARIFY LICENSE CERTIFICATE REQUIREMENTS be included;**

- **ELIMINATE SIGNING REQUIREMENT ON CERTIFICATE** be included;
- **REVISE RENEWAL PROCEDURE: ONLY RENEWS IF THE LICENSE IS NOT “IN TROUBLE”** be included with some language clarification regarding “instituted or pending” actions;
- **REVISE TEMPORARY LICENSE PROCEDURE TO PRECLUDE LICENSEES WITH RECENT LIQUOR LICENSE PROBLEMS** be included with the 45 days changed to 5 days;
- **4-5-12 NON-PAYMENT OF FEES TRIGGERS LICENSE REVOCATION** be included;
- **4-5-14 REVISE SUMMARY SUSPENSION PROCEDURE** look at adding an emergency line for the Chief of Police to do a 12 hour shut down in the case of an emergency and look at NRS that might give the Chief of Police the authority. A separate section may be written specifically to the Chief of Police and leave the section as it was;
- **4-5-15 APPLICANT MUST WAIT 45 DAYS BEFORE RE-APPLYING** keep the new language but change 45 days to 5 days;
- **4-5-16 ADD PROVISION FOR DEATH OF LICENSEE** be included with new language with possible language to require application;
- **4-5-28 NEW GUIDANCE ON IDENTIFYING PEOPLE WHO ARE “VISIBLY INTOXICATED”** be included with typos corrected and look at the TIPS training guidelines; and,
- **4-5-33 VARIOUS AMENDMENTS** be included with a correction to Item C; changing vendors to persons.

These changes are to be brought to Council for further review in draft ordinance format.

*The motion passed unanimously. (4-0)*

During and after the motion but before the vote there was some discussion clarifying proposed revised provisions.

## V. NEW BUSINESS

- C. Review, consideration, and possible action to approve Revocable Permit No. 1-13, filed by Riverside Villas, LLC, to occupy portions of the Opal Drive and 12<sup>th</sup> Street rights-of-way, located generally west of Opal Drive and north of 12<sup>th</sup> Street, to accommodate the construction of a free-standing sign and landscaping, and matters related thereto. **FOR POSSIBLE ACTION**

Rick Magness, City Planner, explained this has been reviewed by staff and this is acceptable. The developer agrees to the revocable permit. Staff is in approval of this and recommends approval.

**\*\* A motion was made by Councilman Schmidlein, seconded by Councilwoman Simons, to approve Revocable Permit No. 1-13 subject to execution of a standard license agreement between the applicant and the City.**

*The motion passed unanimously. (4-0)*

## VI. PETITIONS, APPEALS, AND COMMUNICATIONS

- A. Review, consideration, and possible action in response to an appeal filed by Gig Thornburg, appealing the decision of the Elko City Planning Commission which disapproved Curb, Gutter and Sidewalk Waiver No. 1-12, to waive the installation of required public improvements along the west side of Hot Springs Road frontage, located generally on the south side of West Idaho Street, west and east of Hot Springs Road (1377 West Idaho Street), and matters related thereto. **FOR POSSIBLE ACTION**

The Planning Commission considered the subject waiver on February 5, 2013 and took action to disapprove the item. The Planning Commission then directed Staff to reconsider a temporary waiver. Staff has done this and finds the criteria identified in code for temporary waivers do not apply in this case. Staff notified the applicant of their decision, and thereafter the City received an appeal of the Planning Commission's decision from the applicant. RM

Mayor Pro Tem Rice explained this is a public hearing and has specific procedures. He read the procedures:

3. *The procedures pursuant to which the city council will hear an appeal are as follows:*
  - a. *The appellant shall be first to provide comment and present the grounds for appeal.*
  - b. *Other persons shall be given an opportunity to speak and provide comment.*
  - c. *The city may respond to appellant's appeal, after which appellant may present any rebuttal argument or evidence.*
  - d. *Appellant and the city are entitled to be represented by counsel, present testimony, evidence and argument on all issues raised on appeal.*
  - e. *The city council may, if it appears helpful to a clear understanding of the issues, consider evidence or other matters not raised at the planning commission level or with the administrative officer.*

Gig Thornburg, Gateway RV, explained right now the way they are situated there is no curb and gutter (C&G). The closest C&G is Main Street. It stops at Hot Springs Road. He spoke to the Union Pacific rep and he doesn't want anything crossing the spur that is feeding Tricon. This is located from Idaho Street, back 200' to where there is a little dike that the City has some access to from the Railroad. On the corner there is the waste treatment water hydrant tower. The rep says he cannot find anything that says it can be moved. Putting C&G there would be a problem. It would be a waste of his money because it would be run over and destroyed. He doesn't have a problem putting C&G there when the City comes to him. If he puts it in there will be a 200' strip of C&G there only.

Councilman Perry said Mr. Thornburg already have a waiver for the existing facility from 2001. That is along Idaho Street and Hot Springs?

Mr. Thornburg answered yes. It would be the east side of Hot Springs.

Councilman Schmidlein asked Mr. Strickland on the future development of West Idaho Street, what is the plan for the City at the end of City limits? Are you planning on putting C&G all the way down?

Dennis Strickland, Public Works Director, answered yes. The plan is that if NDOT moves on their project that we will do whatever we need to do to be in the position to have curb, gutter and sidewalk from Crazy Corner all the way to the end of City limits on just the developed side of West Idaho Street. Regarding the existing deferral he has, we would be ready to call that in and budget to get the rest of the work done.

Councilman Schmidlein asked what advantages would there be to running 200 feet of sidewalk on Hot Springs Road right now.

Mr. Strickland answered at this time there probably isn't any advantage. The problem is once you go down the deferral road things get lost and it makes it very difficult for the Development Manager to interpret and put these requirements on other businesses. It is a slippery slope.

Councilman Schmidlein said just looking at this, if you do not develop next year, he feels this should be piggy backed at that point of time when West Idaho Street gets developed. Where the waste water hydrant is, there are times during the summer when there are 25 or 45 loads a day depending on where construction is at. If there is C&G there it will be pulverized.

Mayor Pro Tem Rice said we are getting away from the process.

Mr. Thornburg said he wouldn't have an objection if you could defer that along with his 2001 deferral. It will be a waste of money. It will get buried and torn up and he will have to do it again.

Susan Thornburg, Gateway RV, they keep saying "in the book we can't let one person do it because everyone will want a deferral." We are different than other properties because we don't own the property. Who will build on past where their business is because there are no more roads out there? They are the stepchildren at the end of the road and we lease from Union Pacific Railroad. Our situation is isolated next door to the Waste Water Treatment Plant. Pedestrians don't even go out there. They keep the property cleaned up and they try to make it look really nice. She feels an additional deferral is fair since they are talking about 220' that will not have any surrounding C&G.

John Carpenter said he goes down to that place to buy parts for his trailer park. He looked at it and he looked at maps. He went along there and found no other improvements. It doesn't make sense to make them do something like this at this time. When he built the mini storages the City made him put in C&G and the City took it out. Later on when the City wanted to finish that street they used taxpayer money to redo the sidewalk, C&G. He doesn't know what the City is planning out there but if you go out there and look the street is higher than the rest of it. If

everyone improves their property then they should too. It isn't good planning to make someone do that.

Mayor Pro Tem Rice said now the City may respond to the appellant's appeal.

Scott Wilkinson, Development Manager, said the appeal was for a waiver. A waiver implies that the applicant will not construct the improvements at any time in the future. The discussion tonight is digressing to include a deferral and that is not why they were hearing the appeal. If you look at the RAM development at the end of West Main you have curb, gutter and sidewalk. Across the street from Hot Springs Road where there is a parcel development of a Mexican club there, their approval included curb, gutter and sidewalk. The idea is to get the complete streets within the city limits constructed. He has had conversations with Mr. Thornburg regarding the access to the water stand. There is a special circumstance that is going to require that the city participate in addressing that. In other areas of the city we put in curb, gutter and sidewalk and that infrastructure doesn't get destroyed with that traffic. He wrote a memo for Council dated 2/20/13. On page 2 of that memo he went over the circumstances outlined in the appellants communication to the City. The appeal states that the cost of constructing curb, gutter and sidewalk is prohibited considering that there are no other businesses to the front or rear of the property. Development of the property within the City limits triggers certain required civil improvements. Basically what we have here with regards to the waiver (which has to do with the storage area across from Gateway) is that we have gone from a change of land use, from vacant property to an RV storage and a towing impound area. There appears to be ingress and egress all the way to the NDOT right-of-way and it is not clear if NDOT has approved that access. The second item in the appeal states there are no improvements to the property. An example of these improvements would be the Cashman project on Manzanita Lane. Cashman installed improvements based on engineering design. Another item is that the council has recently taken action on Manzanita Lane where there will be gaps in the infrastructure. Gateway has already acknowledged the need for improvements when they actually entered into a deferral on West Idaho Street. They didn't believe the second circumstance in the appeal warrants consideration. The third issue stated in the appeal has to do with the obligation to allow access for trucks to the construction water fill stand. He has talked to Gateway and the Utility Department, and the idea there is that with the City having that use there, the City is going to bear some responsibility to partner in those improvements. The fourth item in the appeal discusses major damage to any improvements. We don't feel that is an issue. The fifth item is that the appeal states that the applicants are willing to complete the required improvements based on the timing of state or city constructing improvements on Idaho Street or Hot Springs Road. Currently, neither the city nor the state intends on completing improvements on either Idaho Street or Hot Springs Road. NDOT has completed the design for the improvements on Idaho Street. The City Engineer believes the applicant could use that design to finalize the design for curb, gutter and sidewalk on Idaho Street. The timing of those improvements is undefined at this time. Property owners are not responsible for the ongoing maintenance of those improvements. Staff doesn't believe a deferral is appropriate in this case. It isn't apparent why the city gave the previous deferral. It didn't rely on any engineering that addresses the reason for the deferral. Deferrals present practical difficulties. We are in the process of calling in deferrals now and we don't have a lot of recourse in managing deferrals or enforcing them. The city doesn't have an agreement when

property changes hands. We don't have any engineering study available that shows the installation of curb, gutter and sidewalk at this location would not be appropriate.

Mayor Pro Tem Rice asked Mr. Thornburg if he had a rebuttal.

Susan Thornburg said that everyone but the Elko Bail Bonds place owns the property. They are leased property. This all started because we put up a fence and now it is a change of use. There has been so much vandalism out there so we put a fence to try to control the problem. We are at the end of city limits. They tried to buy some property but the current owners have not gotten back to her. There are so many incidences out there. The road sits so high above their property. They aren't saying they don't want to do it but to put out that much money on property that they don't even own will hurt their business. Putting in 220' feet of curb, gutter and sidewalk is a lot of money and they are willing to do it when the rest of the street is completed. She doesn't think it is fair since pedestrians do not walk down that road and they are next to a sewer plant.

Gig Thornburg said if you drive down Idaho Street (starting at the light) and looking off to the left and see what looks best. It looks bad in front of Franklin Lumber and Tricon.

Mr. Wilkinson agreed with that statement. The city did not do a good job when the Railroad leased those properties and that area developed. Manzanita Lane is another example of the city doing a poor job and trying to go back and clean up the issues. Are we going to exasperate our problems with missing infrastructure?

Mr. Thornburg pointed out he has a deferral on the existing property since 2001. Can't this be added to the deferral he already has?

Mr. Wilkinson said Mr. Thornburg is building a shop on Gateway property now. You have expanded your business to include a tow service. Some of the fencing has to do with impound requirements and the tow business. When we approved that building permit we gave you notice that we are going to call that deferral.

Mr. Thornburg said he was prepared for that deferral being called in. He was concerned about the 220 feet and adding it to the 1000 feet.

Councilwoman Simons asked if the City can even do a deferral. The agenda item was about a waiver.

Dave Stanton, City Attorney, answered a deferral is not before the council.

Councilman Perry said it is a waiver with an agreement for a deferment.

Mr. Strickland said it doesn't matter to us if we start in the middle or the end. If we don't get on board with this we will have problems.

Councilman Perry thought it seemed logical that when we call in the other one, we require them to do this at the same time.

Mr. Strickland said the engineers can design that so we can build one at a time.

Mayor Pro Tem Rice said the next step (the fourth step) is that we are entitled to be represented by counsel, present testimony, evidence and argument on all issues raised on the appeal. Are we properly agendized for this?

Mr. Stanton said he doesn't see anything about a deferral in the agenda item. Looking at the code, the Planning Commission doesn't have the authority to grant a deferral but the city engineer does. He doesn't think it fits in the agenda item.

Mr. Wilkinson said in the packet the Development Department's letter dated December 14, 2012 to Gateway; when we approved a shop on the gateway leased area we put them on notice that we would call their deferral this spring or summer. We stated the City of Elko is in the process of completing the design for the Idaho Street frontage by June 2013. Once the City completes the design of the frontage the City will notify you requesting you to complete the design for the Hot Springs Road frontage. If you look at the deferral one of the things it says there is that the design would be completed by the city and/or Gateway. We intend to call that deferral this spring.

Delmo Andreozzi, Assistant City Manager, said this was formally NDOT right-of-way and given to the City back in 1983. Similarly some of those places were already built at that time. There was missing infrastructure at that time. Not all the parcels in the community have curb, gutter and sidewalk. We look at this as access control too. Even if there aren't a lot of pedestrians out there we are trying to control access from the moving vehicles. Whether it is this location or another location there is potential for conflict.

Councilwoman Simons asked in the Code, who is authorized to grant a deferral.

Mr. Stanton answered the City Engineer.

Councilman Perry said it just says City Engineer. This original deferral was granted by the City Engineer and didn't go to Planning Commission or City Council. This was administrative.

Mr. Wilkinson said there are specific criteria listed in the ordinance.

Councilwoman Simons asked if isolation would apply.

Mr. Wilkinson asked what does isolated mean. They looked at that and we take a hard look at all the criteria. We have curb, gutter and sidewalk on W. Main right now. He doesn't look at them as being that isolated at this point.

Mayor Pro Tem Rice said that Mr. Thornburg stated when the city gets out there then you would do that?



Mr. Thornburg answered he would get on the deferral and make the improvements as needed on Idaho Street and both sides of Hot Springs.

Mayor Pro Tem Rice said his feeling is that he sees where the city has not done the right thing in the past. The right thing to do is to complete curb, gutter and sidewalk. He wondered if we have anything that shows that they do it once and then have to do it again.

Mr. Andreozzi answered we don't have anything on record that would be a problem.

Mr. Wilkinson said once those improvements are completed they are dedicated back to the City. You have to show that it would be impractical to install these required public improvements. No engineer has come to them and said you cannot install this at this time. We have a very simple site plan with fencing proposed. We have lighting requirements because this is RV storage and impound yard.

Councilman Schmidlein asked does Mr. Thornburg need to hire an engineer to do the design.

Mr. Wilkinson said any civil improvements need to be completed by a professional engineer, submitted to the City of Elko for review and possible approval.

Curtis Calder, City Manager, all of those properties are on Union Pacific Property. A lot of those folks have been lease holders before the City got the right-of-way. It was industrial use. The Union Pacific leases are short term and could be terminated on short notice. If one of these businesses were to leave we do not have an agreement with Union Pacific for any of these improvements. The Railroad has told us that they have no intention of doing the work because they didn't develop the property.

Mayor Pro Tem Rice asked why hasn't a trigger been pulled for the other properties.

Mr. Andreozzi answered they did look at one where Northern Nevada equipment was but they moved out. The other buildings are non-conforming legal uses.

Mr. Wilkinson said one point to be made; there are trigger mechanisms in the code now. Les Schwab is an example because they wanted to change the occupancy of their building and they had to make improvements.

Mr. Thornburg asked what about Precision and Northern Nevada Equipment.

Mr. Wilkinson answered he isn't sure. Until recently the Development Department didn't sign off on business licenses. They didn't add square footage to the buildings.

Ms. Thornburg said they have had the business for 40 years. Ram did their concrete but across the street the city paid for all the concrete work. We were going to move Gateway out to the Ram property until the City made the improvements and then he upped the price of the property. We might have to shut down or take loans out to put in the curb, gutter and sidewalk. This will be a huge impact on them financially.

Mr. Wilkinson said the City didn't put in sidewalk.

Ms. Thornburg said understood they have an obligation but give them a chance to plan for it. Ahern went into a building and they didn't have to do it. We need our city to help us. We are doing our best. We pay our taxes.

Mayor Pro Tem Rice asked is it possible to extend that 90 days so they may be able to plan.

Councilman Perry said the logical thing to do is to extend the waiver until the point that NDOT paves that road. Just do it all at once. This is an appeal. He thought we need to send this back to engineering to update the agreement.

Jeremy Draper, Civil Engineer, said we want the improvements in before NDOT does their improvements.

Mr. Wilkinson said Council also heard the concerns of putting it off on them performing at some point in time they may not have the money to do that. They already say 90 day notice is too short of time to perform. We will have those issues if we try to tie this to NDOT improvements. Are you going to grant that waiver the taxpayers will make those improvements? All other deferrals have a 90 day time limit. We start leading down a path of preferential treatment. Those people will come because it is a small community. No one wants to make improvements.

Mayor Pro Tem Rice asked should they be making a different request.

Mr. Wilkinson said they requested a waiver.

Mr. Thornburg said he asked Mr. Wilkinson what to do and he said to ask for a waiver.

Mr. Wilkinson said a waiver is allowed for so they made application. Planning Commission denied the waiver and it was sent to council. Planning Commission asked staff to review this a second time and there are no special circumstances that allow for a temporary waiver.

Mr. Calder said if council chose to deny the appeal and have staff look at the existing deferral perhaps that is an option to consider. I am not saying that is the only option but it is one option.

**\*\* A motion was made by Councilman Perry, seconded by Councilwoman Simons, to deny the appeal of this waiver and instruct city staff to work with the applicant to tie in a deferral of the Hot Springs Road curb, gutter and sidewalk with that of the Idaho Street sidewalk and negotiate and agree on a logical time to build all of that.**

*The motion passed unanimously. (4-0)*

**V. NEW BUSINESS (Cont.)**

- A. Review, consideration, and possible action to authorize Staff to give a Landfill Voucher to adult volunteers that participate in the “*Take Pride in Your Community Cleanup, Greenup, Recycle Event and Prescription Drug Roundup*” event, and matters related thereto. **FOR POSSIBLE ACTION**

This year’s “*Take Pride in Your Community Cleanup, Greenup, Recycle Event and Prescription Drug Roundup*” event is scheduled for Saturday, April 27, 2013. In the past, Council has provided one voucher to the adult volunteers that were engaged in cleaning public property/right-of-ways. The voucher concept was very popular with the volunteers and affords them the same opportunity to remove waste from their personal property and dispose of it without having to pay a tipping fee at the landfill. In order to provide these volunteers the same opportunity as other citizens, these vouchers would be good for one day. DS

Dennis Strickland, Public Works Director, explained they have been doing this for a number of years. This just offers the volunteers the same opportunity to use the free landfill day as those that just take advantage of it.

Councilman Perry said this is a great thing every year. 10% of population participates in this every year.

**\*\* A motion was made by Councilman Perry, seconded by Councilwoman Simons, to authorize staff to give no more than one landfill voucher per family to adult volunteers that participate in the “Take Pride in Your Community Cleanup, Greenup, Recycle Event and Prescription Drug Roundup”.**

*The motion passed unanimously. (4-0)*

- B. Review, consideration, and possible approval of Staff’s response to auditor noted violations of statute and/or regulations in relation to the Fiscal Year 2012 Annual Audit, and other matters related thereto. **FOR POSSIBLE ACTION**

The City violations as noted in the Fiscal year 2012 Audit Report. Staff is required to respond to these violations with corrective actions which must be approved by Council prior to February 28, 2013. Included in the agenda packet is the letter from the Nevada Department of Taxation as well as a copy of the violations noted in the FY 2012 Annual Audit Report. DS

Dawn Stout, Administrative Services Director, explained you have the memo addressed to the council regarding the violations. The revenue stabilization fund; we have an account analysis that we get charged once a year by our bank that was not budgeted for and that is why had an over expenditure there. We will make sure we cover that in future years. The youth recreation

fund; their expenses were greater than we had anticipated and they didn't have sufficient revenues to augment their budget. That was the same situation in the golf fund. We try very hard so that we don't have these violations.

Councilman Perry asked if we had augmented these funds we wouldn't have these violations.

Ms. Stout answered we did not have sufficient revenues in the funds to cover the expenses.

Councilman Perry asked did we receive money from the county.

Ms. Stout answered we did receive money but she is concerned it wasn't the right amount.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to accept the corrective actions planned by Administrative Services Director Dawn Stout for the violations from the fiscal year 2012 annual audit report.**

*The motion passed unanimously. (4-0)*

## **II. APPROPRIATIONS (Cont.)**

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

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

*The motion passed unanimously. (4-0)*

## **VII. REPORTS**

A. Mayor and City Council

B. City Manager – Legislative Update; UPRR Land Acquisition Update

*Curtis Calder passed down a plaque and some souvenirs that General Moly wanted him to give to Council. He gave a legislative update. He will be meeting with NDEP regarding the UPRR land acquisition.*

C. Assistant City Manager

D. Utilities Director

E. Public Works

F. Airport Director

G. City Attorney

H. Fire Chief

I. Police Chief

J. City Clerk

K. City Planner

L. Development Manager

M. Administrative Services Director

*Doug Gailey reported on the airport director interviews. They had one candidate that they thought would be a good fit but he turned down the*

*position. We are going out to recruit and April 5<sup>th</sup> will be the new closing date.*

N. Parks and Recreation Director

## **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**

Dale Andrus said he noticed on Commercial Street near the cinema people park near the sidewalk. He wonders if that needs to be addressed. Also by O'Reilly's and Gold Dust West there is a sign that says no parking but everyone uses it. This is on the Smith's side near the intersection. He noted there are several places where there is a solid white line. He understands that you cannot cross that line but everyone is doing it. He wondered if someone could take a look at those things.

There being no further business, Mayor Pro Tempore John Rice adjourned the meeting.

---

Mayor Pro Tempore John Rice

---

Shanell Owen, City Clerk