

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

SS January 22, 2013

The City Council of the City of Elko, State of Nevada met for a regular meeting beginning at 4:00 p.m., Tuesday, January 22, 2013.

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

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

Mayor Present: Chris J. Johnson

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

City Staff Present: Curtis Calder, City Manager  
Delmo Andreozzi, Assistant City Manager  
Shanell Owen, City Clerk  
Dawn Stout, Administrative Services Director  
Ben Mangeng, Information Systems Manager  
Mike Hecht, Deputy Fire Chief  
Ryan Limberg, Utilities Director  
Scott Wilkinson, Development Manager  
Tony Ferguson, Sr. Engineering Technician  
Doug Gailey, Human Resources Manager  
James Wiley, Parks and Recreation Director  
Jeremy Draper, Civil Engineer  
Ted Schnoor, Building Official  
Don Zumwalt, Police Chief  
Vince Smith, Assistant Water/Sewer Superintendent  
Dave Stanton, City Attorney  
Robert Spencer, Facilities Superintendent  
Diann Byington, Recording Secretary

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **COMMENTS BY THE GENERAL PUBLIC**

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this

item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

*There were no public comments.*

**APPROVAL OF MINUTES                      January 4, 2013 Special Session  
FOR POSSIBLE ACTION**

**January 8, 2013 Regular Session  
FOR POSSIBLE ACTION**

*The minutes of January 4, 2013 and January 8, 2013 were approved by general consent.*

**BRIEF PRESENTATION BY CITY OF ELKO LOBBYIST GRIFFIN COMMUNICATIONS GROUP (GCG) REGARDING UPCOMING 2013 LEGISLATIVE SESSION – INFORMATION ONLY. ACTION WILL NOT BE TAKEN**

Chelsea Capurro with Griffin Communications Group gave a presentation. See Exhibit “A.”

Councilman Rice said in the last session there were a lot of freshmen legislators. What is the ratio this session?

Ms. Capurro answered she believed it was 20% that are new.

Mayor Johnson asked how that trend will go. Will it go up?

Ms. Capurro answered that it will continue to increase and each session we will be getting new legislators. She offered to send a list showing how many more sessions each one would have.

Councilman Perry asked about the Governor’s budget and Ms. Capurro briefly described some of the changes he has proposed.

**BRIEF PRESENTATION BY CITY OF ELKO POLICE DEPARTMENT: 2012 YEAR IN REVIEW- INFORMATION ONLY. ACTION WILL NOT BE TAKEN**

Police Chief Don Zumwalt gave a presentation. See Exhibit “B.”

**I. PERSONNEL**

A. Employee Introductions:

- 1) Vince Smith, Water and Sewer Superintendent, Water Department  
*Present and introduced.*

## II. APPROPRIATIONS

- B. Review and authorization to solicit bids from qualified vendors to provide the custodial services at the Elko Police Department, and matters related thereto. **FOR POSSIBLE ACTION**

The City Council directed Staff to solicit bids on November 27, 2012. Staff did not receive any qualified bids. Staff is seeking authorization to solicit bids again for custodial services at the Elko Police Department. DZ

Don Zumwalt, Police Chief, explained two bids were received. One bid was not qualified and one was late. The late one was not opened. We ask that we go out to bid again.

Councilwoman Simons asked why was the one not qualified. What would disqualify them?

Chief Zumwalt answered they did not meet the background qualifications. They had a criminal record.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Perry, to authorize staff to solicit proposals from qualified vendors to provide the custodial services at the Elko Police Department.**

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

## III. NEW BUSINESS

- A. Review, consideration, and direction to Staff regarding possible code changes relating to the mandatory submittal requirements for “As-Built” drawings for new construction projects, and matters related thereto. **FOR POSSIBLE ACTION**

It is crucial for the City Water Department to have accurate “As-Built” drawings for all new construction projects. These drawings are referenced for emergency repairs, future maintenance, and to update utility mapping systems. Currently, Staff is unable to adequately obtain “As-Built” drawings on several projects (primarily commercial and industrial) as this provision/requirement is not defined in City Code. Staff desires to amend the current City Code to require “As-Built” drawings for all new construction. Staff is seeking Council input for the best method to accomplish this task. RL

Ryan Limberg, Utility Director, explained he is looking for feedback on means and methods to implement to improve the current situation with as-builts. This can be challenging and/or difficult to obtain the as-built drawings as needed (primarily industrial and commercial projects). As-built is a drawing that shows how the project was constructed. Design plans are not necessarily how the project was built. It is important for the water department to have those as-builts so we can keep our city maps current and up to date primarily for emergencies. There is language in City Code that requires the submittal of an as-built but it is not real strong on the language as to when that has to be submitted. There are two sections of code that mention the

as-built provision. We are lacking in the ability to enforce these provisions. We have worked with City Attorney Dave Stanton and we have revised some new language. We have added that under Section 3-2-3(s) under the General Provisions. We spelled out that we would have it prior to issuing a Certificate of Occupancy (C of O). We took this to the Planning Commission to initiate on November 7<sup>th</sup> and then we had our first reading on December 4<sup>th</sup>. There was some resistance at the Planning Commission level to approve that language as there was no other option listed other than the C of O. Some other suggestions came out such as bonding or a deposit or an electronic submittal with their design plans and then a smaller deposit being required. They would revise the electronic submittal upon completion of their plans. He felt the simplest solution remains tying that to the C of O or final acceptance on that utility infrastructure.

Councilman Schmidlein said on public works projects you have an area where you have substantial completion and then you have final acceptance. He felt that when substantial completion has been authorized there is a grace period before they get final acceptance. The as-builts should be turned in at that time otherwise you will not authorize final acceptance. Or you can hold ten percent of the retention before giving final acceptance. Holding that ten percent will give them the motivation to get the stuff to staff in a timely manner.

Mr. Limberg said we are pretty good on those projects that we do as a City. The biggest challenge for us would be on the commercial or industrial type projects that aren't done for the City. They would be private projects where the City is not involved with the completion.

Councilman Schmidlein said when you pull out a building permit, before you give them a C of O or final acceptance that gives you a lot of leverage to pinpoint it down to receive them.

Councilman Rice asked isn't the term prior to the issuance of a C of O, "...the applicant must submit the complete and accurate as-built." Are you suggesting that it actually be earlier?

Councilman Schmidlein answered they just have to hold their ground to make sure they don't give any of the C of O's prior to receiving the as-builts.

Councilman Rice asked if the as-built document is something developers would have completed for their own use.

Mr. Limberg answered it would be beneficial to them. Not all of them plan for that. It is something an engineer would do. He feels comfortable with the C of O. The Planning Commission would like an option B.

Councilwoman Simons asked if there are no substantial changes could they use their primary drawings and just stamp as-built on them. Do they need to re-do a special set of drawings for this situation?

Mr. Limberg answered they could do that as long as they constructed it according to those drawings.

Councilman Perry liked the wording proposed. Since you are looking for feedback, do you want to move forward with this for first reading?

Delmo Andreozzi, Assistant City Manager, said we took this proposed language to Planning Commission. They had some concerns with this. The Planning Commission wants some mechanism so the C of O is not held up. They are worried about delaying the opening of a particular business.

Councilman Perry said we had one of these with some homes up on 5<sup>th</sup> Street. We approved it pending some work because there were some people that needed to move in. They would have to come to City Council and ask if we would let them do that. There is an appeal process for that.

Mr. Andreozzi thought you could do that but that would be the kind of language that we should have and some additional language saying this could be appealed to the City Council.

Mr. Limberg said on this section we have drafted, a new single family dwelling is exempted from this provision. A subdivision is not. Subdivisions are less problematic because there is some leverage there. The major focus would be commercial or industrial projects.

Scott Wilkinson, Development Manager, said the simplest thing to do is to have this be a requirement prior to a C of O. One of the things we do is have a note on the plans that requires an as-built submittal. We have put in a paragraph that the owner is required to do this. Most don't read their letter or their plans. One way to address this is to have them supply their plans electronically up front. The developer should be aware that the engineer needs to do this. Maybe have a refundable deposit with the building permit application. As they produce an as-built we could refund that.

Mr. Limberg said most of our utilities are going into the ground first before the parking lots are paved. There is plenty of time to get the as-builts completed. His focus is on where is that utility infrastructure. He wants to know where the valves are to shut the water off in the middle of the night. He doesn't want to request that and have the engineer take months to get back. He wants to see that before they move into the building.

Councilman Perry asked what did the Planning Commission recommend.

Mr. Limberg answered they took no action on it.

Mr. Wilkinson answered they wanted an alternative. They wanted us to explore alternatives, whether there is a refundable fee or deposit that ensures that the City gets the information that it requires.

Councilman Perry asked if they were given an alternative. Why don't we have a recommendation from the Planning Commission of what to act on here?

Mr. Limberg said he intends to take it back to them but he didn't want to run through the Planning Commission process and then find out that City Council didn't like it. He wanted to see what their preference would be.

Councilman Schmidlein said with the grand opening, if you released the C of O you want a plan B with a dollar figure or something to give them more incentive to get you the as-builts. Once you release that C of O you are losing your bond with them. He is resistant. If you are going to grant a C of O what kind of dollar figure do you want to put behind it?

Mr. Limberg said that depends on whether we get those plans submitted initially that just need minor modifications. Or if we don't have those plans submitted electronically with the building permit. If we go that route we will have to follow the business impact statement process. The cost would be at least a couple of thousand dollars.

Councilman Schmidlein said a temporary C of O gives you a leg to stand on.

Mr. Andreozzi said we have far less leverage with a temporary C of O. Temporary C of O's are problematic and very difficult to manage.

Councilman Rice said it seems that a couple thousand bucks for that might not be enough. He doesn't want people to have an option. There could be an option that a developer chooses to provide the as-builts on two different occasions. The first might be at the substantial completion date or at the C of O. That would allow the time for a developer to provide the documentation.

Mr. Limberg said most of the projects will do a final walk list and give them a punch list of items they need to complete. One of which could be the as-builts.

Ted Schnoor, Building Official, said a temporary C of O is not worth the paper it is written on. Using the theatre as an example, we gave them a temporary C of O to complete several different things that needed to be completed. We told them if they were not done with this within 30 days we are going to pull your electrical meter. That is never going to happen. We have no control over that. A temporary C of O is not enforceable. There have been several good things that have been brought up. Why can't the utilities be as-built way before there is completion of the project?

Mr. Wilkinson said we are dealing with a couple of different things. We can change the code but he wasn't sure it would correct the problem. Changing the code will get their attention the day they want to get their C of O. If we require a submittal up front at the Building Permit stage that will go a long way to alerting the developer that they need to do this.

Councilman Rice said this happens in higher education. With the ordinance getting changed the communication changes. We need to communicate these changes whether in workshops or when they pull a permit.

Mr. Limberg said if this garners some tentative support we can run this through the process with the Planning Commission and back up. What we have done in the past with contentious items is

we have allowed some time before that goes into effect. The building department sends out a newsletter that covers a lot of contractors in the area who are doing this work. He hasn't seen that firms are not aware of this; rather they have other things to do.

Mayor Johnson said he would like to see if the process could get started earlier. It is in the best interest of the residents of the City for being able to know where to turn that water off.

Vince Smith, Water and Sewer Superintendent, said since the utilities are put in months before so there is no excuse why the City doesn't have the as-builts. We need those utilities first.

Councilman Perry asked Mr. Limberg if he had enough feedback to go back to Planning Commission.

Mr. Limberg answered he felt well about the information he had gotten.

#### **NO ACTION TAKEN**

- D. Review, consideration, and possible issuance of a written determination granting or denying an application from Wireless Beehive, LLC, dba Beehive Broadband to begin the process of negotiating a Telecommunications Franchise Agreement with the City of Elko, and matters related thereto. **FOR POSSIBLE ACTION**

Beehive Broadband has currently submitted an application to enter into a franchise agreement with the City in accordance with City Code, Section 8-12-17, Telecommunications Franchise. Per subsection B the City Council shall issue a written determination granting or denying the application in whole or in part. JD

Jeremy Draper, Civil Engineer, explained Scott Wilson from Beehive Broadband is present in the audience. There is a memo in the packet that explains that reviews City Code, Section 8-12-17 with some recommendations from the engineering department.

Councilman Perry disclosed that he has stock in Frontier Communications but since it is not much stock and is insignificant he will vote on this item.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to grant an application from Wireless Beehive, LLC, dba Beehive Broadband to begin the process of negotiating a Telecommunication Franchise Agreement with the City of Elko.**

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

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

- A. Consideration of a claim for damages totaling \$90,012 by Mr. Eugene Buzzetti for the alleged loss of grazing rights associated with the City's recent acquisition of BLM Land, and matters related thereto. **FOR POSSIBLE ACTION**

A letter from Mr. Robert J. Wines, Esq. has been included in the agenda packet for review. CC

Dave Stanton, City Attorney, explained there has been correspondence over this issue for a number of years. It comes down to a grazing permit that was canceled for public purpose. He mentioned a section of the Code of Federal Regulations (CFR) 4120.3-6(c); when a grazing permit is canceled in order to devote public lands covered by the permit for a public purpose, the permittee has some recourse with the United States Federal Government for compensation for the value of the interest. It is limited to permanent improvements placed or constructed by the permittee or lease covered by the canceled permit or lease. There is a mechanism for valuating that in the CFR. The claim is a claim for takings directed at the City of Elko. The City would be receiving the right to use property that would otherwise be covered by this grazing permit. The City is not a governmental entity that is engaged in a 5<sup>th</sup> Amendment takings. There is recourse in the CFR for making application for some form of compensation from the Federal Government. He isn't aware of any mechanism for going and making some sort of a claim for takings to the City. We received a lot of correspondence that has gone through a lot of law. He does not see any authority for the local government to compensate somebody with a grazing preference when property is devoted to a public purpose on federal public lands. It is a disputed claim. If council were inclined to compensate them just to settle the disputed claim that is something that is authorized by statute because it falls within the scope of a public purpose. He doesn't see any legal merit behind this.

Councilwoman Simons asked we made an agreement but because of state issued mandate our agreement wasn't allowed. Do they need to be compensated by another level of government?

Mr. Stanton said if they have any right to compensation it is not going to be from the City of Elko.

Bob Wines, representing Eugene Buzzetti, said about 15 years the City decided to put the sewer treatment ponds out in that area (he indicated an area using the overhead projector). At that point in time they acquired from the US government the right to use certain areas of land. What happened was that the Buzzettis gave up the right to graze on that particular piece of ground. It did not cost them any grazing rights. The second time was about 10 years ago (approximately 1998) the City came in and acquired additional ground. Some grazing rights were taken and the City expanded the plant area. The City paid them \$250 per grazing unit for the grazing rights that were taken back in 1998. And as an additional consideration, agreed to run a water line to an existing well. Instead of putting that water line to the well, the Buzzettis were told they could let their cows graze off the land and have water from the sewer ponds. The state imposed a rule that said they couldn't do that anymore. In 2010 the City of Elko made application to the BLM. They wanted 807 acres of ground for future expansion of the sewer treatment plant. That was ground that was historically used by the Buzzettis. In order for the City of Elko to put their sewer treatment plant out there the Buzzettis had to give up the right to graze 63 animal units (AUM). They calculated that as 16 head of cows. That means that the Buzzetti ranch in Lamoille has to take their 100 head of cows that they used to run and only run 84. They don't have the outside grazing privileges to turn those cows out in the summer. That is where we get our value from. The City of Elko has taken this ground, taken these grazing rights; therefore



they have impacted the ranch. We asked the BLM when we were at the meeting the City of Elko was at, if there was an alternate location where they could transfer these grazing rights. They said no. Mr. Stanton noted a portion from the CFR. The Federal Government has instructed the City of Elko to pay the \$765.00 for the fence that was taken. The Taylor Grazing Act of 1934 made grazing part of the base operation or part of the base ranch in Lamoille. This area was a specified area that the Buzzettis were allowed to let their cattle graze in. The Taylor Grazing Act makes this grazing part of the ranch in Lamoille. When you take the ground you are taking the ability to generate income from that ranch. We brought a dollar figure with us today but are willing to negotiate.

Councilwoman Simons asked that the argument is that we took the rights from the Buzzettis and our argument is that we got this from the federal government. But you still feel that since we got the ground from the federal government that the City is responsible for payment.

Mr. Wines answered that they are not arguing that the City took the ground. Nobody owns the federal ground. An exclusive right to use something is a protectable right. The Buzzettis had the right to graze that ground. You acquired that right. They no longer have it.

Mr. Stanton said there is distinction between a governmental entity using its regulatory authority acting within the scope of its jurisdiction in order to take property (eminent domain). We are talking about something that wasn't a result of the cities regulatory authority. The City isn't compelling them to do this. It went through a federal administrative process. He hasn't seen some authority for the proposition.

Councilman Schmidlein asked was there any communication between the City and the Buzzettis when all this went down in 2010.

Mr. Wines said both the City and the Buzzettis were called into the BLM office and the BLM said they were giving the City this ground.

Councilman Schmidlein said it is no different than the mines. Any time the mines come and take property from the ranchers they compensate them. The Buzzettis didn't own the property and neither did the City. He does feel there is a need for some compensation and he doesn't want a long drawn out lawsuit.

Mr. Wines said the opposite of eminent domain is called inverse condemnation. That is when the government takes property without using its eminent powers to do it.

Councilman Perry said in 1998 the City did compensate the Buzzettis \$250.00 per AUM for 40 AUM's. Now we are talking about 63 AUM's. Did the City make an offer when they went to the BLM?

Mr. Wines said there were some obscene gestures and a fist fight.

Councilman Rice asked what was the formula they used to come up with their figure.

Mr. Wines explained he took the cap crop from 16 head of cows for six years. Plus he added \$100 per AUM.

Councilman Rice said that is different than the formula that was used to come up with the \$250.00 in 1998.

Gene Buzzetti said at the time in 1998, his father was still head of the operation. At that time they were working with Linda Ritter and Mayor Franzoia. They realized how that was hurting our ranch. We were allowed to get water. We ended up with a large chunk of land that burned in 2005. The BLM deferred them from turning out for three years. During that period the City did their expansions and we didn't use the well on the other end. When we were allowed to go out there again there was no water on that site. Mr. Limberg and Fritz Sawyer were at the BLM and offered to provide piping. This time we felt the agreement we had with the City in 1998 was justified because they were willing to work with us. This time no one was willing to negotiate or even talk about it.

Mr. Limberg said he doesn't remember a fist fight. He also doesn't remember any hand gestures. Staff did not intend to be seen as a bully. When we went into our meetings with the BLM we asked what the rules were and what he had to follow. In the RP&P process ten years ago the city paid for some compensation to Buzzetti because there is a mandatory waiting period and the city couldn't wait. They were paid to speed up the process. Now we are not in a crunch.

Councilman Schmidlein asked what do you feel the value of that 807 acreage is to the City of Elko. Whatever number you come up with is going to be what the value of what it meant to the Buzzettis. It is great that we acquired that acreage.

Councilman Rice said there is no disputing that the land is ours. The Buzzettis had the right to graze on that property so this use is completely different. We are looking at whether or not we are we in a position to compensate the Buzzettis for a loss of production.

Mr. Buzzetti said we have not been compensated by the City on this last deal at all.

Mr. Limberg said he asked staff today and they did say it happened. He offered to look into that more.

Mr. Buzzetti said we were to get compensation for the range improvements. The city was to give \$1,100.00 for the fence and we have not received that.

Mr. Wines said that is not why we are here. He understood that was a given.

Mr. Stanton said the federal government was to pay that and not the city.

Mayor Johnson said you already put a number on the table that said that is what you are seeking. You are not seeking the range improvements.

Mr. Wines agreed that did not include the range improvements. He had assumed that the range improvements had been paid. They were supposed to have been paid before the government turned the 807 acres over to the city.

Mr. Limberg confirmed that we have no disagreement with the range improvements. Perhaps the BLM was paid and they were supposed to pay the Buzzettis.

Mayor Johnson said the city should make some compensation for the loss of the AUM's. He felt there is some negotiating there. From the operating standpoint of the ranch he could see that you had the opportunity to run 100 cows and now you can only run 86. AUM's are tough and hard to get. The range is pretty much locked up. He believes staff is looking out for the best interests of the City. It would be a good policy that the City of Elko considers compensating for the loss of the AUM's.

Mr. Stanton said the City can do it but it needs to be phrased the right way.

Councilman Rice said he saw there is room to deal. He isn't comfortable with the number. He wants to take a look at it further. He has confidence in the staff and he takes exception that the staff was being a bully and using obscene language in the meetings.

Mr. Wines said he was present in the meeting and he did witness it.

Councilman Rice suggested that since it has already been suggested in the current formula that any formula look at a production payout period of six years.

Councilman Perry mentioned we have a section of land in Kittridge Canyon. Is there a grazing permit there?

Curtis Calder, City Manager answered there may be cows there but nothing under a permit that was issued by the city.

A member of the audience asked how big it would be.

Mayor Johnson answered it was a whole section; 640 acres.

Mr. Buzzetti asked the Mayor to clarify what he was proposing.

Mayor Johnson said the City of Elko has Section 17 up on the Adobes. It is 640 acres. There may be some grazing possibilities there but there would have to be some work to see if that exists. He felt that was an option.

Mr. Buzzetti said a big issue would be if it is fenced. Also if water is available on it and access to the property.

Mayor Johnson asked if he would you be willing to look at that as an option if it is available?

Mr. Buzzetti said he would have to talk that over with his family.

Mr. Wines suggested that a Councilman and some staff get together with the Buzzettis and see if they could resolve the problems rather than dragging it out.

Mr. Limberg said there was water and access to that area but he wasn't sure about fencing. That is where we get some of our surface water rights from.

Mr. Wines said the matter of stock water available is crucial in this situation.

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to direct staff to work with Mr. Wines and the Buzzettis. We have put some options on the table and there seems to be some general consensus that the City could be in a position to provide some compensation or perhaps provide some grazing land and that staff could take a look at that and come back to the Council with a proposal at a later date.**

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

After the motion and before the vote, Councilman Perry said that someone needs to go to that area with Buzzettis and look at the land. The land is surrounded by BLM land and it may have fencing on it.

Mayor Johnson agreed there is some investigating and some options to go.

Councilman Rice said we are looking at the feasibility of that; we are not saying we are going to do that.

Council voted on the motion.

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

- A. Public hearing and possible adoption of Resolution No. 1-13, a resolution agreeing with the appraiser's value of the property, declaring intention to sell land at public auction and setting date for auction. The property consists of approximately 5,000 square feet of City owned real property located on the northerly side of Manzanita Lane, near the southeasterly limits of the East End Mall, in a southeasterly portion of Elko, Elko County, Nevada at the corner of Silver Street and Main Street, and matters related thereto. **FOR POSSIBLE ACTION**

William Tessler, Appraiser, has appraised the property at \$25,000. The public auction has been scheduled for February 12, 2013. SO

Shanell Owen, City Clerk, explained we received an application from Senora LLC requesting the sale of this property. Included in the agenda packet is Resolution No. 1-13. That Resolution does a few things. It agrees with the appraiser's value at \$25,000.00, declares the intent to sell

land, and then sets the date for auction. Council can discuss whether or not they want to sell the property and then review the resolution. She included a copy of the appraisal, the application and the resolution in the packet.

Councilman Perry asked how did the city end up with that.

Jeremy Draper, Civil Engineer answered it was dedicated for a water well.

Councilman Perry asked if there was any value in this little piece of 5000 sq. ft. that is would fit any way at all into the Manzanita Lane right of way extension thing that we always talk about.

Mr. Draper answered it is in the wrong place and would not help us at all. It would provide access to the parking lot off of Manzanita Lane.

Councilman Perry asked if we don't believe we will ever need another well. (no)

Councilwoman Simons asked if we choose to sell this land someone besides the shopping center could buy it. (yes)

Mr. Draper said it is too small to put a commercial building on it.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Perry, to conduct public hearing and adopt Resolution No. 1-13 agreeing with the appraiser's value of the property and declaring intentions to sell the land at public auction and setting the date for auction which is February 12, 2013.**

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

- B. Second reading, public hearing, and possible adoption of Ordinance No. 765, an ordinance amending Title 3, Chapter 2, Section 17 of the Elko City Code entitled "TRAFFIC, ACCESS, PARKING AND LOADING REGULATIONS" adding regulations to regulate parking within the Central Business District (CBD) parking corridor, and other matters appropriately related thereto, filed and processed as Zoning Ordinance Amendment No. 5-12. The motion made on January 8, 2013, to set Ordinance No. 765 for second reading included minor revisions to the time limit for parking and storage of properly licensed vehicles (increasing the time limit from 48 hours to 72 hours), and to the unlawful storage or parking of vehicles over 26,000 GVWR (clarifying the oversized vehicles shall be semis with trailers and adding that idling of such vehicles shall be unlawful). A copy of the proposed ordinance has been included in the agenda packet for review. **FOR POSSIBLE ACTION**

At the June 26, 2012 regularly scheduled Council meeting, the Council took action to initiate a Code amendment to regulate parking in the CBD Parking Corridor by promoting accessibility, economic utilization and parking turn over, and reducing blighting effects and unintended use of the public's asset. The

Planning Commission held a public hearing on December 4, 2012, and took action to forward a recommendation to Council to approve the amendment. DA

Tony Still, resident, said he did an audit of the corridor parking on Sunday. There were 1,038 spots available. There were 167 spots used. Six spots were used by vehicles that had been there for quite a while. He also talked to businesses and they admit to leaving vehicles parked there for more than 72 hours. Perhaps the code could read vehicles that are untagged could be towed. He thought this was overkill to say 72 hours and it could be towed. It isn't over crowded. The parking has been there for 30 plus years and we have never had to regulate it.

Councilman Perry said in front of the Romero Building and over towards the right there was an RV that had been parked and covered as if it was RV storage. The parking area was also being used as an employee parking lot where people were carpooling. We need to do something. Business owners complain that large vehicles destroy the curbs and trees. The City has rebuilt and re-landscaped some. He struggled with the 72 hours too.

Mr. Still said there are renters there (above Sabala's) with vehicles that don't move very often. Are we going to have people move their vehicles one space over? Some businesses don't have any other parking options. He agrees that there shouldn't be any semis and you shouldn't pull a tractor in there. Are we going to put up posts like we did and then had to take them out at the other shopping center? RV's should not be allowed and unlicensed vehicles will be towed. He has been monitoring the area for about three weeks. He has witnessed some tractors in there going to safety meetings. They are running over the curbs but they don't have many options of where to park.

Councilman Perry thanked Mr. Still for going down to the corridor and doing that work. What if the RV that was parked there in permanent storage was licensed?

Councilman Rice understood the point but part of it is there are people that are taking advantage of the City. This gives us a tool that when someone throws a tarp on an RV we can remove it. This will give us some tools to help maintain the redevelopment area.

Councilman Schmidlein said when RTW and Gold Canyon were down there they had company vehicles parked down there. The goal is to give the Police Chief leeway to move things forward. He needs a tool to monitor the parking lot for the City.

Councilman Perry asked can the CBD be used for residential parking. We know commercial parking is allowed.

Mr. Andreozzi answered in some cases you have a grandfather clause. This exemption for the public parking lot is only for businesses within 400 ft. of the corridor. They can still provide their own off-street parking, but they don't have to. In the streets the whole idea was storage vs. parking. On a public street today in the code is 24 hours. We need to be able to provide maintenance in these areas. We are trying to differentiate between parking and storage. It is a fine line but that is the spirit of what we are trying to do.

Councilman Perry said we can't change this now in second reading.

Mr. Andreozzi said if you change it now it would go back to first reading.

Councilman Rice said he is fine with the 72 hours. It seems reasonable. It is about storing vehicles and we know who is using it legitimately.

Councilwoman Simons asked on the streets how many vehicles are called in that you have to do something about.

Chief Zumwalt answered we only take action after we are called to a problem. In the summer we get more complaints of storage on the streets.

Councilwoman Simons noted this won't happen a lot.

Chief Zumwalt said there are occasions that we go out and look and pay attention to what is on the streets. This isn't something that will happen very often.

Councilman Schmidlein asked if the residential people are grandfathered in.

Mr. Andreozzi answered that would be his determination at this point. This is a public parking lot so it isn't regulated as to who can park there or not. In terms of property development there is an exception for businesses within 400 feet. There is nothing in the Code that gives the same exception to a residential development.

**\*\* A motion was made by Councilman Rice, seconded by Councilman Perry, to conduct the second reading and public hearing and adopt Ordinance No. 765.**

*The motion passed. (4-1 Councilwoman Simons voted no.)*

- C. Second reading, public hearing, and possible adoption of Ordinance No. 768, an ordinance amending Title 3, Chapter 3, Sections 20 and 70 of the Elko City Code entitled "SUBDIVISIONS", by adding additional provisions for permitting modification of subdivision standards which are inconsistent with other portions of the Elko City Code thereby clarifying the modification of subdivision standards, and matters related thereto. **FOR POSSIBLE ACTION**

The code amendment is proposed to eliminate any ambiguity with regard to modifications of standards under Chapter 3 of City Code which may be inconsistent with other Chapters of City Code. Chapter 3 provides for modification of standards under the subdivision process stipulated in that chapter. The proposed amendment clarifies the modification of standards that may apply to other chapters of City Code as appropriate to meet the intent of the code. SAW

**\*\* A motion was made by Councilman Rice, seconded by Councilman Schmidlein, to conduct second reading, public hearing and adopt Ordinance No. 768.**

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

### III. NEW BUSINESS (Cont.)

- B. Consideration and possible approval of a license agreement between the City of Elko, and Joe's Hauling, LLC for the use of 1.59 acres of City owned property located at the west end of the Elko Regional Airport, parcel number 006-09G-008, and matters related thereto. **FOR POSSIBLE ACTION**

City Council held a public auction for the lease of City owned property on December 11, 2012, and awarded the only bid that was received from Joe's Hauling in the amount of \$750.00 a month. This amount was also the appraised lease value. SO

Shanell Owen, City Clerk, explained the license agreement is included in the packet. Representatives from Joe's Hauling have reviewed it and they have no changes or comments.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Rice, to approve a license agreement with Joes Hauling, LLC.**

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

- C. Review, consideration, and possible re-appointments of four (4) positions to the Golf Course Financial Advisory Committee, and matters related thereto. **FOR POSSIBLE ACTION**

The terms for Committee Members Tony Araquistain, Clair Morris, Wil Moschetti, and Janet Davis expired on December 31, 2012. All four (4) members are interested in serving another term on the committee, and are eligible for re-appointment. JW

James Wiley, Parks and Recreation Director, explained the last meeting was held in November. When we looked at the bylaws we found that four member's terms expired at the end of 2012. We either need to reappoint these members or appoint four new ones. They have all expressed an interest in serving another two year term. Three gave their written interest and one gave it verbally. The committee wants to maintain continuity. This committee operates very well. He recommended reappointing all four members.

Mayor Johnson asked is there any requirement that says the City has to advertise.

Mr. Wiley didn't believe so. The bylaws state that all members are eligible for reappointment.

Councilman Perry asked do you have staggered terms such that not everybody is going to come due at the same time.



Mr. Wiley answered in this instance we do not. We have a five member committee and we have four that have termed out. He isn't sure how we adjust that without amending the bylaws. That is a problem they face and a big reason they want to reappoint these four at this time.

**\*\* A motion was made by Councilwoman Simons, seconded by Councilman Schmidlein, to reappoint four members to the Golf Course Financial Advisory Committee; Tony Araquistain, Clair Morris, Wil Moschetti, and Janet Davis.**

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

- E. Review and discussion of possible City of Elko goals and objectives for Calendar Year 2013 and beyond, including possible budgetary priorities for FY 2013/2014.  
**ACTION WILL NOT BE TAKEN**

City Staff has begun the budgeting process for FY 2013/2014. This agenda item is intended to elicit discussion and ideas for future projects, land acquisitions, and/or significant capital items for future budgetary consideration. CC

Mayor Johnson explained this is an item that he asked be included so the Council members would have an opportunity to express some goals. We are all coming in to what we are seeing and we all have different ideas. In the end we want to make it so we get it to a majority vote and plan it out.

Mayor Johnson said he felt the City should take a look at:

- Secured financing for construction of a new police building.
- Financial plan for the Herrera sports complex with the expansion to a 4-plex.
- Define the scope of the capital improvements to the golf course irrigation.
- Secure of Section 18 to open up opportunities for the City.
- Water and sewer lines to Exit 298.
- Regional traffic flow plan.
- RDA scope of work.
- A two year plan to solve bigger problems.

Councilman Rice gave a presentation (See Exhibit "C"). His points of interest were:

- Construction of a new Police Station.
- Matters related to non-English speaking prostitutes.
- Acquisition of State lands on Elko's eastside.
- Further consideration of infrastructure development at Exit 298.
- Partnership with NNRDA
- Work with ECVA on Forest Service initiative to increase public access to the Ruby Mountains.
- Construction of a recreation center.
- Initiate "grants" program through the Arts and Cultural Advisory Committee.
- Stream Council meetings on the internet.

Councilman Schmidlein gave a presentation (See Exhibit “D”). His points of interest were:

- General maintenance of sidewalks.
- Weed control.
- Have a structural engineer look at the 9<sup>th</sup> Street Bridge.
- Infrastructure (sidewalks) around schools.
- Maintain and install infrastructure (crosswalks and lighting) in fully developed and undeveloped areas.
- Graffiti.
- Potential building permit issues.
- Fencing issues between commercial and residential.
- New water tank at the 5600 level.
- Relieving downtown traffic.
- Police Station.
- Recreation center.
- RDA development and the railroad right-of-way.
- Reduce spending.

Councilwoman Simons said her points of interest were:

- Safety and growth.
- The Police station.
- Should our growth continue we need to look at another Fire station north of the interstate.
- The downtown corridor/train park problems.
- School safety and missing infrastructure around the schools.
- Recreation facility.
- Housing issues.
- Exit 298 water and land acquisition.

Councilman Perry said his points of interest were (using an operating and capital approach):

- No net increases in personnel. Challenges City staff to look at possible improvements and possible cross training.
- New world needs to start to pay off.
- Develop and utilize in-house training resources wherever possible.
- No net fee increases this year.
- Street inventory repair program.
- Police budget for foot patrols in downtown area.
- Increase revenue stabilization fund balance.
- New Police building.
- Exit 298.
- Finish up the WRF upgrade project.
- Traffic concerns and railroad right-of-way.
- Downtown corridor and the acquisition of the railroad property.
- RDA and Park and Recreation committee come back to Council with their priorities.
- Maintain existing buildings first before building new ones.

- No major park projects until we get through with the Police station.

Mayor Johnson asked when we will have the first Council meeting on the budget.

Dawn Stout, Administrative Services Director, answered their plan is have to the first staff meeting by February 2. The first Council meeting that she will have anything to them will be the first meeting in March. The tentative budget needs to be approved before April 15<sup>th</sup>. The final budget needs to be done by the third Tuesday in May.

Mayor Johnson said as we evaluate the comments that have been made, Council members have the opportunity to let the City Manager know more input or other priorities that may be of interest. It is important to spend the time on this but it doesn't mean that we have covered everything. As we get further into the budget process there will be other priorities that will surface.

#### **IV. RESOLUTIONS AND ORDINANCES**

- A. First Reading of Ordinance No. 767, an ordinance amending Title 3, Chapter 2, Subsection 10. B. of the Elko City Code entitled "C General Commercial District" by removing Section 3-2-10 B. 8. Mobile Homes, filed and processed as Zoning Ordinance Amendment No. 4-12, and to direct Staff to set the matter for public hearing, second reading and possible adoption. **FOR POSSIBLE ACTION**

This item was tabled during the December 11, 2012 and January 8, 2013 City Council Meetings.

The Planning Commission determined that it is necessary to amend the zoning regulations of the Elko City Code to remove Section 3-2-10 B. 8. Mobile Homes of the C General Commercial District due to the fact that a recent amendment to the C General Commercial District prohibited all residential uses other than multiple family residential developments which contain five or more units located on a single lot or parcel; townhouse or condominium or attached housing developments subject to the conditional use permit process and provided for other allowable mobile home uses under conditional use permits, and pursuant to Section 3-2-21 made a motion to initiate the process at its regular meeting of November 7, 2012. The Planning Commission held a public hearing on December 4, 2012, and took action to forward a recommendation to City Council to approve the amendment. SW

Scott Wilkinson, Development Manager, explained he put together a memo dated January 14, 2013 that recapped the legislative history for the Commercial District. Initially when we went through zone changes in 1978 we created residential districts and we created the general commercial district and a lot of other districts. When we did that initial general commercial zone we specifically prohibited mobile homes in that district for any type of use. As we went through some changes in 1980 we allowed for mobile homes to be placed in the C district as long as the structure was set on a permanent foundation. If you look at that code you can almost interpret

the code as referencing a single use. The code at the time didn't specify any development standards. Over time, it looks like there was some public pressure for some reason where they attempted to address this issue. More recently we brought back some issues with the commercial district zone. Under Principal Use we had a limited residential use. He believed the limited residential referred to more intense residential uses which would seem logical. It wasn't clear when they drafted that code. We have had some developers come in and have viewed having limited residential as allowing a single family development in commercial zones. We felt it was appropriate to address those issues in addition to having some landscaping requirements addressed in the general commercial district that we didn't have before. The way the previous code was structured we had a lot of conditional uses that were listed and they were listed in different sections. We went through and cleaned that all up. What we presented for residential uses is consistent with what is allowed in commercial transitional use. There are no residential uses allowed in commercial transitional district. When we did the revision in August we addressed a mobile home use for offices for certain types of businesses under a conditional use permit only and specifically prohibited a mobile home for a residential use in the general commercial district but we inadvertently left in Section 8. At the last meeting one task he was given was to note the businesses that would be impacted by this change. He noted the businesses on his memo. Using the overhead projector he indicated the businesses in question. Almost all the issues are on S. 5<sup>th</sup> St. If you look at the commercial designations that are along S. 5<sup>th</sup> St. a lot of the mobile home uses that are along those districts have been there for a long time. We actually have some of the C district that was expanded away from S. 5<sup>th</sup> into areas along Grant and up to Washington Avenue. These areas are fully developed. He doesn't see any ability for the mobile home parks in there to do much in the way of expansion where it is even going to be an issue. Even if they need to re-develop the area should be rezoned to an RMH district and develop under those standards. He asked that Section 8 be struck out as it was overlooked previously.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Schmidlein, to conduct first reading of Ordinance No. 767 and direct staff to set the matter for Public Hearing, Second Reading and Possible Adoption.**

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

- B. First reading of Ordinance No. 769, an ordinance approving an amendment to the development agreement between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada ("City"), and Copper Trails LLC, a Nevada limited liability company ("Owner"), specifically to reduce the principal building front yard setback from 15 feet to 10 feet, and to direct Staff to set the matter for second reading, public hearing and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to N.R.S. 278.0205 and Section 3-2-26 F. of the City Code, Council may amend or cancel binding development agreements by mutual consent of the parties to the agreement or their successors in interest if it finds that the amendment to the agreement is consistent with the Master Plan. The amendment shall be approved by adoption of an ordinance. In this instance, the owner has

requested the City amend the approved development agreement and Staff is in agreement. SW

Mr. Wilkinson explained as we went through the subdivision process the developer proposed smaller lots. We entered into this development agreement with Exhibit D: Special Development Standards. We actually required a garage setback of 20 feet with a front setback of 10. The house could be forward as long as the garage is setback 20 feet. That front yard setback was all going to be 10 feet. There was a typo that said 15 feet. This will correct the typo.

Councilman Schmidlein asked if that puts the actual structure within ten feet of the sidewalk and then you have another four feet there or is that from behind the curb.

Mr. Wilkinson answered the setback is from the property line.

Councilman Rice asked this is housekeeping. (yes)

**\*\* A motion was made by Councilman Rice, seconded by Councilwoman Simons, to conduct first reading of Ordinance No. 769 and direct City staff to set the matter for Second Reading, Public Hearing and Possible Adoption.**

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

- C. First reading of Ordinance No. 770, an ordinance approving cancellation of the development agreement between the City of Elko, Nevada, a municipal corporation and political subdivision of the State of Nevada (“City”), and The Pointe at Ruby View, LLC, a Nevada limited liability company (“Owner”), and to direct Staff to set the matter for second reading, public hearing and possible adoption, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to N.R.S. 278.0205 and Section 3-2-26 F. of the City Code, Council may amend or cancel binding development agreements by mutual consent of the parties to the agreement or their successors in interest. The cancellation shall be approved by adoption of an ordinance. In this instance, the owner has requested the City cancel the approved development agreement and Staff is in agreement. SW

Mr. Wilkinson indicated on the overhead projector where the proposed lots (The Pointe Patio Home Subdivision) were going to be. They would like to cancel the agreement in the entirety due to lack of interest. This was a 99 year agreement. In the agreement you cannot merge lots and you had to adhere to whatever development standards are approved. They tried to make application for subdivision which would include more lots. He asked Mr. Stanton if they could cancel the agreement with some conditions but then realized the conditions were already included in the Ordinance.

Dave Stanton, City Attorney, thought everything was okay as far as open meeting law.

**\*\* A motion was made by Councilman Perry, seconded by Councilman Rice, to conduct first reading of Ordinance No. 770 and direct City staff to set the matter for Second Reading, Public Hearing and Possible Adoption.**

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

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

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

Councilman Schmidtlein asked about a purchase of a 60 inch TV for around \$5,600.00.

Mayor Johnson noted it was for the Fire Department out of the General Fund.

Ms. Stout explained that was for training purposes. They do a lot of training to large groups so they needed a large TV. It is also interactive with video systems and the internet.

Councilman Perry asked about geothermal. There is a \$30,000.00 bill for geothermal. Is that for heating the pool? He also noted the payment is to the school district.

Mr. Calder said that is the geothermal users group and that is the annual maintenance contract.

Councilwoman Simons disclosed that her husband's department (municipal court judge) is included. She abstained from the vote.

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

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

## **VII. REPORTS**

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

*Councilman Rice commended everyone working at the Snow Bowl. He also noted skiing at the Golf Course is terrific.*

*Councilman Perry reported on a dinner he attended for the Lee Engine Company.*

### **B. City Manager**

*Mr. Calder reported on the agenda for next Monday January 28, 2013 which will be advisory training open to the Council, Planning Commission and Advisory Board members. The quarterly Nevada League of Cities meeting is tomorrow at Griswold Hall room 31 at 2:00pm via video conference.*

### **C. Assistant City Manager**

*Mr. Andreozzi reported the RDA met on the 17<sup>th</sup> and they did take some action that will be reported to Council hopefully at the next meeting.*

### **D. Utilities Director**

*Mr. Limberg reported the annual water quality report will be coming out the next few weeks and the water looked good last year.*

E. Public Works

F. Airport Director

G. City Attorney

*Dave Stanton reported he attended a homelessness taskforce that morning.*

H. Fire Chief

*Mike Hecht, Deputy Fire Chief, reported the fire department has been busy.*

I. Police Chief

*Chief Zumwalt apologized for his mistake on his PowerPoint presentation and noted when he gives statistics he does match apples to apples. The graffiti statute does include clean up required to be completed by the offender(s). He also agreed with the idea of the school infrastructure brought up by Council.*

J. City Clerk

*Ms. Owen reported the city website is down right now and the provider is looking into the problem. Also there are new personal amplifiers available for the public to use during meetings.*

K. City Planner

L. Development Manager

*Jeremy Draper reported new flyover came in and he showed the difference between now and the last flyover (2010).*

M. Administrative Services Director

*Doug Gailey, Human Resources Manager, reported they did have the City Planner interviews using Skype for the interviewees across the country. The Airport Director interviews will be next week and they will be using Skype for that too.*

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**

*There were no public comments.*

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

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Mayor Chris Johnson

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Shanell Owen, City Clerk