CITY OF ELKO
CITY COUNCIL AND
PLANNING COMMISSION
SPECIAL JOINT WORKSHOP MINUTES
1:00 P.M., P.D.S.T., TUESDAY, SEPTEMBER 18, 2018
ELKO CONVENTION CENTER, RUBY MOUNTAIN ROOM #1B
700 MOREN WAY, ELKO, NEVADA

CALL TO ORDER

The Meeting was called to order by Mayor Chris Johnson at 1:22 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

City Council Present: **Mayor Chris Johnson**
Councilman Reece Keener
Councilwoman Mandy Simons
Councilman Robert Schmidtlein

Excused: **Councilman John Rice**

Planning Commission Present: **Chairman David Freistroffer**
Vice-Chairman Jeff Dalling
Evi Buell
John Anderson
Tera Hooiman

Excused: **Stefan Beck**
Ian Montgomery

City Staff Present: **Curtis Calder, City Manager**
Scott Wilkinson, Assistant City Manager
Cathy Laughlin, City Planner
Bob Thibault, Civil Engineer
Kelly Wooldridge, City Clerk
Dave Stanton, City Attorney
John Holmes, Fire Marshal
Shelby Archuleta, Planning Technician

INITIAL PUBLIC COMMENT PERIOD

Mike Lattin, Elko, NV asked if there were facilities for the hearing impaired.

He was provided an assisted hearing device.

I. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS AND COMMUNICATIONS

1. Workshop to discuss proposed amendments to Title 3, Chapter 3 of the Elko City Code, to include receiving input and comments from the public and members of the development community regarding possible changes to the proposed Divisions of Land Code, which may replace the chapter currently titled "Subdivisions," and matters related thereto, **FOR POSSIBLE ACTION.**

Mayor Chris Johnson announced that today was the workshop on the Subdivision Code. He explained that they would start with the history of subdivisions, then go over the revisions that are in place, there is a flow chart that will be presented, and then open it up to questions and comments from the public, the Planning Commission, and City Council.

Curtis Calder, City Manager, explained that he did some research on why the City Code looks the way it does today in its current form. He researched some old planning books and got online and found a report from 1953, from the American Society of Planning Officials, which was entitled *Performance Bonds for the Installation of Subdivision Improvements*. This issue had been studied in the 50's fairly extensively. It was republished by the American Planning Association. It provided considerable background regarding the evolution of Subdivision Codes in the United States since the 1920's. The City's current Subdivision Code, which has been in place since the 1950's, appears to be based, almost entirely, on the best practices of the era. The purpose that led to the use of Performance Bonds was the result of unbridled land subdivision in the 1920's, just prior to the Great Depression. There were many dead subdivisions that remained in both large and small cities until after World War II. Those were forming obstacles in the path of normal city growth. The process of uneconomic subdividing and premature platting had negatively affected city development and was considered gross negligence of city officials, because they failed to prevent it from occurring. In response, cities protected themselves from premature subdividing by insisting on assured land improvements, the performance bond being one of those assurances. The report pointed out that subdividing land was a risky business and that the profit to the developer was the payment for the risk undertaken. Further adding that it is illogical for the government to assume risk for which the developer receives payment. In other words, if the government was willing to assume all of the risk in land development there was no need for performance bonds or any other method of assuring the installation of improvements. The report concluded three things: that one, cities have a responsibility to prevent premature subdivisions; two, Assured installation of the improvements is a proven method for carrying out this responsibility; and three, some part, or all of the risks should be assumed by developers. That is the broad history that led up to the development of the City Code.

Cathy Laughlin, City Planner, discussed how the City Code came about. It started with Ordinance No. 115, which was passed on February 11, 1954. This was the first Subdivision

Code. A Performance Bond was in the original Ordinance, as well as a 12 month completion period for improvements. Then on May 16, 1973 the State of Nevada Urban Planning Division sent a letter stating that Senate Bill No. 460 was adopted and it established a subdivision evaluation procedure administered by the Urban Planning Division that would be available to all cities and counties except for the areas of Washoe and Clark Counties. Because the rural communities were small and didn't have planning staff, the State of Nevada Urban Planning Division provided communities with planning consultants, which was done through grants. Many of the small rural areas, such as Elko and Winnemucca have similar Subdivision Codes written after the SB 460 was adopted. That was due to the same consultant writing the codes for both Elko and Winnemucca. On November 6, 1974 the City of Elko's Planning Consultant, Mr. Tom Conger, presented draft copies of the proposed Subdivision Ordinance for the changes that were in relation to the Urban Planning Division sending out the letter. They had three different special workshop meetings that were held between December of 1974 and January of 1975. Those were for discussion of the ordinance and the proposed changes. On December 9, 1975 it was passed by City Council as Ordinance No. 226, which is the current code. There have been some minor modifications that have been made to the code. Ordinance No. 548 was approved in November of 2000, which was when the Performance Agreement was added to the Code. Ordinance No. 624 was done in 2004, Ordinance No. 739 was done in 2011, Ordinance No. 768 was done in 2013, and Ordinance No. 785 was done in 2014. Those were all minor modifications that were made to the current code.

Councilman Reece Keener, asked if Ms. Laughlin knew what the driver was for Ordinance No. 554 in November of 2000 that initiated the Performance Agreement.

Ms. Laughlin stated that she didn't have the minutes for the meeting that was approved at, but she stated that she would do some research on that.

Dave Stanton, City Attorney, explained that he would go through a power point that hit some of the high points of the Code revisions in the present draft. He wanted to let everyone know where he envisioned the process and what he saw the workshop being all about. He thought that the Code had become archaic in a number of ways. He thought the intent needed to be preserved, but having worked with the Code for a number of years and in a variety of different circumstances and situations he had run across areas that were capable of multiple interpretations and that is a bad thing in a code. You want a code to be very clear so that anyone, even someone without a lot of back ground in this area, could pick it up, read it, and understand what the requirements are. He didn't think the draft today was a finished product. He thought there were other things that could be done to the Code. When he reads through it he sees other things that could be cleared up even further. What he thought the workshop could accomplish today was to give the people working on it insight to the public concerns. Mr. Stanton stated that he wanted to hear what the public's issues were. He also wanted to hear proposed language, language that was unclear, and he wanted to be able to get input from everyone here and go back and address those concerns. The product that comes out of this needs to be clear, understandable, concise, and consistent with Nevada Law. If that's the Code that is ultimately adopted, he would consider it a success. He wanted everyone to approach this in a spirit of cooperation, and understanding that this was a draft and a working document, which is still capable of being revised and will be revised before it becomes final. He then went through the power point. He asked for comments and concerns on

the changes, so that the Planning Commission and City Council could make an informed decision on the direction they wanted the Code to go.

Ms. Laughlin explained that the flow chart was a draft and it would be modified with some additional information. This will give you the basic summary of how a subdivision is processed. She then went over the flow chart for the subdivision process.

Chairman David Freistroffer left the meeting at 2:05 p.m.

Scott MacRitchie, 312 Four Mile Trail, wanted to briefly get into what he thought were the most important parts of the changes. The Performance Agreement and the Performance Guarantee, as Mr. Stanton mentioned, would be an area where they think there is some room for some changes. Part of the problem they have with it, is the new flow. There used to be a mechanism whereby they would come in and get final approval, but not certification of the plat. That allowed them to build the development for cash. That may, or may not, be a possibility at this point in time. The bigger problem that he saw with the overall portion of this agreement is prior to commencement of construction of the subdivision improvements he must enter into the Performance Agreement, but he also must complete both the bond for the full engineer's estimate, pay that in any one of the three forms, and complete the maintenance bond and pay that. He asked if that was correct.

Mr. Stanton added that Mr. Wilkinson might want to refine that. It would be at different times, not all simultaneously.

Mr. MacRitchie asked what would not all be simultaneously, the payment of it?

Scott Wilkinson, Assistant City Manager, explained that they don't need to post the maintenance guarantee at the same time the performance guarantee is posted for the body of the work.

Mr. MacRitchie asked if that was done at the time it was accepted by the City for maintenance.

Mr. Wilkinson said that was correct.

Mr. MacRitchie said the biggest issue was the language that pretty much, in two locations, states that there is no ability to draw from a cash bond. Let's say he put in a cash bond. That cash bond might be $1 Million. He goes out and does some work and gets it certified. He should be able to draw from that, but this Code specifically states in two locations that he cannot. There is an additional provision, not withstanding, which is 3-3-21(B) that states: Addition Provisions: Notwithstanding any other requirements set forth is Subsection 3-3-21(A), the agreement to install improvements may, in the discretion of the City, also contain any of the following provisions and/or requirements. That allows for it in 3-3-21(B)(3): That upon a determination by the City that specific improvements have been satisfactorily constructed and completed, funds may be released from the performance guaranty either by refunding a portion of a cash deposit to the subdivider or by authorizing a reduction of a bond or other form of non-cash guaranty, so long as the foregoing release of funds does not exceed ninety percent of the value of the completed improvements that have been certified by the subdivider's engineer and approved by the City. But in two locations the Code specifically spells out that that is not allowed. To have

that subject to, and solely, in the discretion of the City to be able to be put in a Performance Agreement. That means that it might not be put in all Performance Agreements. It should be standardized in the Code. The Code should read, not that they can't draw down on that, but that they should be able to draw down on that, and it could be further explained in the Performance Agreement. As it stands, the Performance Agreement upon being executed would be in direct violation of the Code.

Mr. Stanton asked what other provision Mr. MacRitchie could direct him to that they should revise.

Mr. MacRitchie stated 3-3-21(A)(10): That a performance guaranty given in the form of a bond or irrevocable letter of credit shall not expire or be released prior to completion of all required subdivision improvements and written authorization by the City permitting the performance guaranty to expire or be released.

Mr. Stanton said since the entire performance guaranty can't be released, only 90% of it, this provision keeps the bond or the letter of credit active, right up until the time that all of the subdivision improvements have been completed. He thought they could clear this up by adding some language after the word released, which would say "subject to any reduction".

Mr. MacRitchie added any language that would not ban subdividers from being able to draw on any cash, reduce any surety bond or letter of credit would go a long way to make the developers more comfortable than specifically banning it in two locations.

Mr. Stanton stated that the intent was to do exactly what Mr. MacRitchie was describing.

Mr. MacRitchie asked why it was left up to the City's discretion, instead of putting the Code as to do that.

Mr. Stanton explained that the discretionary part was staff's job, they will decide whether they want it to be discretionary or mandatory. He stated what he was trying to do with Mr. MacRitchie is to get some language in, which would take care of what Mr. MacRitchie viewed as an ambiguity.

Mr. MacRitchie said that he didn't see it as an ambiguity, he found it as an absolute block to get any of the money back until all items are completed.

Mr. Stanton suggested adding after the word released, "subject to any reductions permitted under the agreement to install improvements."

Mr. MacRitchie said that would put it right back over to a performance agreement, which is subject to the City's discretion.

Mr. Stanton said that was a different issue.

Mr. MacRitchie said he didn't like that language, because it kept it in that framework of it being subject to a performance agreement instead of it being codified that you can have reductions in your bond. That's what he wanted it to state.

Mr. Stanton said let's get past the discretionary part of the performance agreement. If staff wants to take that out, and they direct us to take that out, then that's what we will do. Let's assume that that is in there. Mr. Stanton wanted to add a little language to 3-3-21(A)(10) that says that even though the bond or the letter of credit has to stay active until its done, that it will be subject to any reductions that are permitted. Hopefully that takes care of that section. Mr. Stanton thought the other section was in the performance guarantee.

Mr. MacRitchie said it was in 3-3-22(B) on page 80 and it stated: No Release of Funds from or Reduction of Performance Guaranty: Except as otherwise specifically permitted under Section 3-3-21 of this Code, once a performance guaranty has been delivered to the City, the City shall not thereafter release any funds from or reduce the amount of the performance guaranty except upon written certification by the City that all required subdivision improvements have been completed in conformance with the agreement to install improvements and that the release of funds is permitted the agreement to install improvements; provided, in no event shall the release of funds exceed the amount of the performance guaranty.

Mr. Stanton suggested that they replace the word "all required" with "the required".

Mr. MacRitchie stated that it wouldn't change the material, because "the required" is still required under what needs to be proved for the final approval. Until any/all/the requirements are completed that are in the agreement, no money could be received back from that. Let's say he went in and put in his sewer and water, or a certain amount of his infrastructure, he couldn't ask for a draw on that because he hasn't completed all of it. Let alone you would be in violation if you made a performance agreement that had him allowing to draw some of that out. It should state that he is allowed to reduce his bond by anything that is certified, accepted, completed by the City as certified.

Mr. Wilkinson thought if there was some language tying it back to the certification. Another reason they put this language in is, typically if you get a surety they'll issue them for one year. So we wanted to have some language in the Code, so that if someone obtained a surety we could point to the Code and say that surety will be in place, not just for a period of one year, and then automatically expire, because they have provisions that do that. It will have to stay active and stay in place until communication from the City of Elko that it could be reduced or eliminated in its entirety.

Mr. MacRitchie said in the form of a cash bond, which a lot of people use a cash bond in Elko, it is much easier to utilize cash if you have the luxury of doing it. When a Phase of a million dollars is put in, and then do several hundred dollars' worth of work that then can be certified completed, and the City does inspect that, and the engineer of record is providing all of that documentation, or testing companies like Thurston are providing all of the testing. There shouldn't be a blockade for a developer to be able to retrieve some of that money back in order to pay bills. What happens is it expands exponentially. For Mr. MacRitchie an $800,000

construct of a phase might effectively require him to put in a performance agreement that might be well over $1 Million. If that money can't be drawn on, his $800,000 construct would now cost him $800,000 plus $1 Million before he would get to the end of the line. That more than doubles the cost of entry into developing in Elko. In a town that has tough margins, it's tough to allocate that kind of resource for that kind of recovery.

Mr. Stanton said he heard Mr. MacRitchie and he didn't disagree with him. He suggested after the words "performance guaranty", at the end of (B) add "further provided nothing herein shall prevent the reduction of a performance guarantee, pursuant to an agreement to install improvements."

Mr. MacRitchie said or it should state affirmatively that the reduction in a bond or performance guarantee can be achieved and a cash draw can take place by providing the City with certified portions of completion of items as part of the total number of items to complete.

Mr. Stanton said it depended on how they wanted to structure this.

Mr. MacRitchie added that any release of funds or reduction would automatically be in violation of that.

Councilwoman Mandy Simons asked Mr. MacRitchie if he just wanted something in the Code that guarantees that if you provide X,Y, and Z you will be allowed to make a cash draw.

Mr. MacRitchie said certification of completion of individual item done. He wanted to be assured of that in a way that doesn't have in the Code stating specifically that he can't do that.

Councilwoman Simons asked Mr. MacRitchie if he didn't want it to refer back to the previous, where it provides for that.

Mr. MacRitchie said he wanted it directly, right up front. It shouldn't say no release of funds. It should say release of funds can only occur.

Councilwoman Simons asked Mr. MacRitchie if he didn't want it to say release of funds unless.

Mr. MacRitchie repeated that he wanted it to say that release of funds can occur, not cannot occur. They can occur but you have to meet certain criteria in order to have that happen. He said they just went through that with Tower Hill, it was pretty good. It wasn't what they expected in the middle of Tower Hill to be confronted with, but it worked out great. In the end they put 'X' amount of dollars into a cash bond and when they completed certain items, they applied to the City, and it wasn't unreasonably withheld, in fact it was ten times faster getting the money out that he thought it would be, but he was allowed to do that. In this particular code it makes it explicit that he is not allowed to do it, unless in the City's discretion in a private agreement that he can get it approved. The problem with that is that is arbitrary, it could be approved for him and not for someone else. It should be directly allowed by all people who develop in the City of Elko, not just those that he could convince to take his side on the issue.

Mr. Stanton said it seemed like there was two different things that Mr. MacRitchie was proposing, one is that the additional provisions section in the Agreement to Install Improvements that that become part of every single agreement to install improvements, as opposed to something that is put in some agreements and not in others; and also that the release of funds is mandatory, not something that is tied to the agreement.

Mr. MacRitchie said it could be tied to the agreement as well, but it should be mandatorily available to all who comply with what is required in order to get that released.

Mr. Stanton just wanted to say it so that everyone understood where Mr. MacRitchie was coming from.

Mr. MacRitchie said above and beyond anything else, that was the largest area that has remained unclear, and has even gotten cloudier in the new draft. It has become sediment that you cannot. His problem was with how it was worded today, if he had his performance agreement state that he could. The City could easily go back and say that the Code says under no circumstances can you do this. He wanted that to be altered, so that developers could have assurance that if they did the work and met the certifications of the City, and the requirements that they could expect to get some of their own working capital back, not the City's, in order to pay their development bills. He didn't want to guess or negotiate in the performance agreement, he wanted it written in the Code.

Mayor Johnson asked if he had anything else.

Mr. MacRitchie stated that he had a whole lot more, but he wasn't going to go in to a whole bunch of the little items. There used to be a process, they called it building for cash and then certifying the plat afterwards. He wasn't advocating that that needed to be done in this Code. He was explicitly explaining that that has been absolutely barred in this Code for a number of different reasons. Starting on Page 58 on 3-3-7(G)(5) where it states: Following approval of the final map by the City Council, the city clerk shall place upon the final map a certificate, signed by the mayor and the city clerk, stating that (a) the City Council approved the map. So, now they are certifying the map at the same time they are getting City approval. When he did Benti Way, he came through, got his approvals, didn't develop illegally, had approvals to do the development, paid cash for all the infrastructure improvements, and at the time he was nearly completed he came to the City to record his plat. The difference being is, you used to be able to get final approval without getting certification of the map. That may, or may not, become available in this environment, but it goes a long way to allowing for a developer, who knows that we have two year time periods to develop a particular phase in a development. Let's say he comes through the more lengthy process, 60 days for all of the different approvals. It could take him four to five months to get approval on things. The moment he gets that approval, let's say it's in the middle of February and he can't start his project until April or May. He has the right to do construction, but construction really just isn't feasible at that point in time. He gets his approvals done in February, he has to post his entire cash development bond, or one of the other two instruments allowed. That money would sit in that account for all that time until he can begin construction on a project, and he wouldn't be able to draw anything because he wouldn't be doing any work on it. But he has his approval. He would have no choice, he would have to put

the money in. He could tie up $1 Million for the greater part of six to eight months before he could get his first draw. That would be his risk and his problem. He would have to time approvals as best as he could. Where they could come in before and get final approval and begin construction with a performance guaranty, but without the money put into a bank account, and develop for cash. That was a luxury that he wasn't sure they would see again in Elko, although he would like to. He asked what everyone's thoughts were on that.

Mr. Stanton said Mr. MacRitchie talked about a number of things and he wanted to zero in. One of them was final map approval, final map certification, and when construction can begin.

Mr. MacRitchie said that construction could not begin, as Mr. Stanton has mentioned before, under the tentative map, nor have they treated it that way. They used to get final approval, then do their development, and come back in and get certification of the map. Mr. MacRitchie stated: You're creating a situation where every single developer is going to be a paper developer in this town.

Mr. Stanton wanted to talk about approvals and certifications, because to some extent the City is constrained by the NRS. There are two difference NRS Sections, 278.380, which deals with approvals, and 278.378 that talks about certifications. The section reads: A final map presented to the county recorder for recording must include a certificate by the clerk saying that the City approved the map.

Mr. MacRitchie interrupted with before recording. Those are the key words. They don't want to record before they finish the development and now they are going to be forced to.

Mr. Stanton explained that the City Clerk cannot certify the map without it being approved.

Mr. MacRitchie said you can get the map approved without certifying it until the infrastructure is complete.

Mr. Stanton asked if Mr. MacRitchie was talking about the timing of construction, when the construction can take place.

Mr. MacRitchie said in this particular instance he was talking about the fact that you can go and get approval from City Council for your map. For instance, in Tower Hill when he did the tentative on phase 1, they had it one way. When he came back for the final there were some changes that needed to be made, i.e. a dedication of land for a particularly deep storm drain that went through. So he came back, got his final, because there were some changes during the final that needed to take place for the City to accept his infrastructure plan for that phase. At that point in time he received final approval, but he didn't have certification. Final approval gives him the ability to go forth and develop, meaning construct the infrastructure within his project. Final map certification gives him the ability to sell the lots. He preferred the other way around. The safest bet from a City standpoint, that secures the City even more, is a developer who doesn't ask for certification. He can't go out and sell any of his lots until he completes all the infrastructure and goes through all the hoops of getting it certified. All of his infrastructure gets certified, the engineer's stamp goes on saying that it was built to standards, only then can he come in and say

now that he's all done does he wants certification for the map. He doesn't want to sell the lots before they are completed. That poses a riskier environment for the City. He could go out and sell 10 lots, take the money, and run. That is what has gone on all over America for a long time, and is part of the reason why some of these have tightened down. Now they are being required to literally record the map at the time they get final approval, before they have ever constructed. That eliminates any type of cash development going forward.

Mr. Stanton asked Mr. MacRitchie to point him to the section in the new Code that Mr. MacRitchie thought needed to be revised to distinguish between final map approval and final map certification.

Mr. MacRitchie said they could go right back to the start on Page 58, Section 3-3-7(G)(5) Following approval of the final by the City Council, the city clerk shall place upon the final map a certificate. If that was eliminated until such time that you would have at least two options. Not to put the certification on the map at this point in time, hold that off until the developer comes back in and states that the improvements are complete. At that point in time on the final map, that is the only time he wanted certification in the way he has developed in Elko in the past.

Mr. Stanton said the language in Number 5 that he was looking at was basically taken out of the NRS.

Mr. MacRitchie said if you look at NRS 278.380 it specifically gives two options, to develop for cash and then come in for certification, or not.

Mr. Stanton said to take a look at NRS 278.378.

Mr. MacRitchie said to take a look at NRS 278.380.

Mr. Stanton said that wasn't relevant, and it wasn't what they were talking about. Take a look at 278.378 and you will see where the language in the code comes from. Section 278.378 is regarding certification and 278.380 is regarding approval.

Mr. MacRitchie said what they were discussing was approval versus certification. There is a difference between the two. Mr. Stanton was going to certification, and Mr. MacRitchie understood that, but he wanted to go to approval, because he believed that there was a mechanism in NRS 278.380 that would allow him to gain approval, build for cash, then come back to get the certification, and record the map when he is complete.

Mr. Stanton stated that 3-3-7(G)(5) stated following approval, which was after approval of the final map.

Mr. MacRitchie asked if the City had any interest in that type of environment.

Mr. Wilkinson said the question was if the City Council and/or the Planning Commission considered alternatives, because you may have a developer that would argue differently because they want to record their lots, to sell their lots, to pay for their improvements. Mr. Wilkinson

thought Mr. MacRitchie's question to the Council, the City Attorney, and the Planning Commission is, does it make sense to have Code that allows for two different scenarios. Then the City Attorney would review the NRS and determine whether or not that is possible.

Mr. MacRitchie stated where he lives and does other projects, he has the option to do either one of those. He does have to post a restoration bond if he chooses to develop for cash and go in and has his map certified after the fact. He can also bond for it up front, complete the infrastructure, receive draws upon that bond, and then certifies his infrastructure to the municipality. He has two options available to him in Utah. He was asking the question if the City had any interest in that, not only do they have interest but the City has done that throughout the City's history, and Mr. MacRitchie's time here. He was asking if the City was at all interested in that type of development, because it seemed to be the most secure for the City.

Mr. Stanton said as long as it was consistent with 278.378 and 278.380, he didn't have an opinion either way. He thought that was open to discussion.

Mr. MacRitchie referred to NRS 278.380(1) and (2) and said that that gave developers the options to put in the improvements, or agree to put in the improvements with a performance agreement and a bond in place. It can be stipulated that a performance agreement must be in place. That might be a great way to go, but that performance agreement states that the developer agrees to put in the improvements and should they come in to full acceptance prior to every last item being done, which there is always time when you have to schedule Planning Commission or City Council. He didn't know if he would complete every last item of his development at that time. He might have a few hanging chads off to the side, that the City says you know you've got $40,000 worth of items that aren't complete you've got to bond for that. Up until that point he had paid cash for everything along the way, it's all certified and all there. Then he would enter into his maintenance period and pay the maintenance bond and any last remaining items that are left. That is one way that seems allowable under 278.380.

Mr. Stanton said that was something that was open for discussion. It's just not having a performance agreement at all under some circumstances.

Mr. MacRitchie stated that they could still have a performance agreement that would state that the map won't be certified until all the items are completed or bond for any items that aren't complete. He agreed with the performance agreement, it puts him under the gun to make sure he completes the items he agreed to complete. It has the City dictating all the items that need to be completed and the terms of the agreement. It could be written in such a way that allows the developer to pay out of pocket and not put the City at risk, and not sell any lots until the map is certified.

Mr. Stanton said it would do away with the guarantee requirement.

Mr. MacRitchie said it would do away with the initial part of the guarantee requirement.

Mr. Stanton asked if it would do away with the performance part.

Mr. MacRitchie said that was correct, unless certain items weren't completed at the end, then he would be responsible to put in a guarantee for whichever items are left.

Mr. Wilkinson thought a performance agreement was critical, because there is time for completion, requirements that needed to be required provisions, that a properly licensed engineer is hired, QAQC, and a variety of things. He thought everyone could agree that a performance agreement is required regardless of what scenario might be available under the Code. We're really talking about the level of performance agreement that would be required. We have to have time of completions, especially if you're into multiple phases. the NRS only allows for two years to record maps. Mr. Wilkinson thought there needed to be that contractual obligation between the parties.

Mr. MacRitchie said it was already in the Code. Twenty-four months is in the Code. A performance agreement is just duplication of what's already in the Code for 24 months.

Mr. Wilkinson added that it was also in the Code that the developer needs to hire an engineer. So a performance agreement is required.

Katie McConnell stated that she didn't think they were asking for the performance agreement to be taken away. What they were saying was that the NRS is flexible enough to allow for some of these options to be in the Code. It is not mandatory. It is permissive to allow for the option of what Mr. MacRitchie is talking about, or the option as the Code is written if other developers wanted it that way. She thought the initial question was if there was enough flexibility, and it's in their position that there is.

Mr. Stanton said it was a functional practicality issue.

Mayor Johnson asked for the next item.

Mr. MacRitchie wanted some clarification on 3-3-21(A)(2)(d), which states the cost to replace any existing streets, utilities or other improvements that are included in the required improvements as shown on the construction plans. What he gathered was if he had some offsite infrastructure that isn't currently in place and he needed to tear into a street in order to tap into something, it is his job to repair that. He asked if that was the intent of that section of Code.

Mr. Wilkinson said yes, and the way this was reworded is those offsite improvements would actually have to be shown on the construction plans.

Mr. MacRitchie added unless he damaged something.

Mr. Wilkinson didn't think it was practical to try and address anything that may, or may not happen. He thought they changed the language to address that.

Mr. MacRitchie referred to Section 3-3-21(A)(7) on Page 78. It states; In the event the subdivider fails to construct all required subdivision improvements according to the approved

construction plans and within the times set forth in a schedule. He said he had 24 months and he wasn't aware that the City was going to put a schedule of development activity in his way.

Mr. Wilkinson clarified that the agreement would stipulate the two years, and then typically in those agreements the City allows for a one year extension for cause.

Mr. MacRitchie asked what the Code meant by "a schedule determined by the City."

Mr. Wilkinson explained that it would be based on the two year time frame.

Mr. MacRitchie said so it is not a schedule to get certain things done laid out by the City.

Mr. Wilkinson said no, it would be based on the NRS requirement if you were in your final plat time requirements, where you have to meet that two year schedule. You have to meet that, record the subsequent final plat within a two year time frame. Initially under the existing code, that can be extended for one year, if that provision is in the performance agreement.

Mr. MacRitchie asked if Section 3-3-21(A)(14) was new on Page 79, which states That the parties acknowledge the City Council will only accept the subdivision improvement if (a) the subdivider's engineer certifies that the subdivision improvements are complete and (b) the City independently confirms that the subdivision improvements are complete. He thought that it had been there all along, but it was in red.

Mr. Stanton explained that this was a living document. Some of things that are seen in black are not in the old code, the old code is the strike out stuff. Some of the stuff in color is newer, more recent revisions.

Mr. MacRitchie asked if it was just revised.

Mr. Stanton said the old code worked that way.

Mr. Wilkinson added that it was a clarifying provision.

Mr. MacRitchie referred to 3-3-22(C), which reads: Penalty in Case of Default: In the event the subdivider fails to complete all required subdivision improvements in accordance with terms of the agreement to install improvements, the City may, in its sole discretion, complete the work at its own expense and thereafter reimburse itself for the cost and expense thereof from the performance guaranty. Any decision by City staff to complete the work in accordance with the subsection is subject to review by the City Council. At this point in time it brings up the question, on these particular things. Have they already dedicated over all of the land where City dedications are going to take place, where the City would be doing work; or does that still remain private property.

Mr. Wilkinson explained that if the map was of record it would have been dedicated.

Mr. MacRitchie asked if the map wasn't of record, but if the map is approved its not been dedicated.

Mr. Wilkinson said that would be private property.

Mr. MacRitchie said the developer would have to have an agreement with the City that that would be ok in the performance agreement.

Mr. Wilkinson said if the City Council and Planning Commission decide to initiate a variety of scenarios, these are the type of things that will take considerable amount of time for City staff to go back through this Code and address all these provisions that apply to the scenario that is envisioned under the Code.

Mr. MacRitchie said the City staff had already put a great deal of effort into it. He thought if they weren't allowed a little variety in the Code the way it is, specifically in the things Mr. Stanton and himself had talked about earlier, then this code would become somewhat unworkable anyways. He thought it would be worth the investment of figuring out how to make Section C fit in with that scenario, even if it just means in the performance agreement. If he signed the performance agreement that stated that he wasn't going to record the map, it would have a clause that gives that right.

Mr. Stanton asked Mr. MacRitchie if he thought 3-3-22(C) should be put into a performance agreement instead of code and be a performance agreement provision and there be some flexibility built into the Penalty provision to take into account different scenarios.

Mr. MacRitchie said he was saying that 3-3-22(C) becomes a problem for the City if there was a scenario in which he would get final approval but not record the map, because upon recordation of the map is where the City takes dedication of certain items, like roadways.

Mr. Wilkinson said that would be correct.

Mr. MacRitchie stated therein lies another cleanup problem. It was the only one he saw, that if he did a development in which he gained final approval, develop out of pocket, and ask for final certification and recordation of the map at the end. The City would want this clause hanging over his head in advance of him getting that far, he thought. If not the City would be developing on private property and there would be some issues with that.

Mr. Wilkinson added that the City wouldn't have a guarantee to reimburse itself from. This provision does not work under another scenario. There are probably other provisions in the Code that when the City Council and the Planning Commission decided to initiate alternatives in the Code. We will have to go through all of the Code to make sure there aren't other conflicts.

Mr. MacRitchie asked how this worked before, like with his development on Benti Way. How was this address on that particular development, because he developed it for cash?

Mr. Wilkinson stated that Mr. MacRitchie didn't default on that development, so there wasn't a penalty for default on Benti Way. (Correct)

Mr. Stanton pointed out as an aside, that this provision matches a provision in the old code, so this isn't entirely new. This is from the old Code Section 3-3-45(B). It has been reworded a little, but the intent is there. He then read the Section out of the old Code. Mr. Stanton said that if Mr. MacRitchie thought there was some other language that should be added in order to clear it up some more.

Mr. MacRitchie said no, it just referred back to the two main points that he had today, which were that there should be directly in the Code a mechanism, not in a performance agreement, that does not oppose the ability for a developer to draw cash on completed portions of infrastructure of the great total amount. The other point was the difference in today's version of the Code versus where things were before, where developers could get final approval without certification. That allowed for a gap in time for developers to have final approval, which allowed for them to go get building permit that allowed them to construct the project, and it allowed enough of a gap for them to construct the project and then come back for certification. This section would only be a problem in that particular scenario, to make sure that the City has rights in case the developer does default on doing the infrastructure within the two year time period. He thought those were the big items that he wanted to see some movement on. To have Code that states in two places that developers cannot draw against it until all items are completed goes directly against what he thought the intent of Council, Commission, and Staff is, which is that developers should be able to draw on it. If all the money has to be put up in advance, developers should be able to draw some of it down when items are completed. What he was referencing before when he talked about when to put that amount of money down, he thought it should state that it should be put down prior to the start of construction. Now with the larger dates developers have to plan more in advance. The minimum time now goes from two to three month to four to six months to get through the approval process, and that cannot line up with months of construction. In doing so that may mean developers have to put in a large cash bond at a time when they can't start construction, which that bond is there to protect against. The developer may have to let the bond sit there for months until construction can start. Mr. MacRitchie said he would prefer it be put in place prior to the start of construction, not when they get an approval date, which is out of the developer's hands.

Mr. Wilkinson said they could take a look at that. The problem he saw was once you get into that two year NRS requirement. Once you record a map you have two years to record the next map, so it is up to the developer to get their applications in, get the approvals moving, and get the construction done. The City may not have the flexibility to write an agreement that says you have two years and three months.

Mr. MacRitchie said he wouldn't expect any increase in the duration of time available. Let's say the map was approved in February, knowing that there are 24 months from that month, but the bond does no good for either party because construction can't start. The bond would be required to state prior to any mobilization of equipment on the project, or start of construction, the bond must be in place with the City of Elko.

Councilman Schmidtlein asked if would be a grace period.

Mr. MacRitchie said it's not a grace period at all.

Councilman Schmidtlein said he realized that, but prior to construction starting. He asked if Mr. MacRitchie would be willing to put the cash down 15 days prior to, or 30 days prior to the start of construction.

Mr. MacRitchie said he would be willing to do that.

Mr. Wilkinson said that may be possible. There is the two year time for completion, but we could probably add a provision that states the bonding would be in a place by a date certain that the developer could propose to the City Council.

Mr. MacRitchie added but not after construction begins.

Mr. Wilkinson said yeah, that was something that could probably be working into there.

The Mayor called for a break at 2:53 pm.

The meeting was called back to order at 3:28 p.m.

Spencer Defty, 32500 State Highway 16, Woodland, CA, stated that he had been investing in Elko for 4 or 5 years. As someone from California who is looking for an avenue to leave crazy land. They are in three western states California, Wyoming, and Nevada. He wanted to talk a little bit about his experience. He was asked by some of the local development community to come speak. They are in three western states doing business, five different counties, and five different cities. Within those they have seen a wide range. One of his concerns with where they are at is they have the local government trying to control the narrative and not reacting to the business and development community. They are king of the kingdom and there are people within staff who play king of the kingdom. It's very frustrating when you come in with your hard earned money and somebody gets some idea that they're going to put this regulation in place to protect against the what if, and it just adds nothing but parasitic load to the developer's cost to do business, whether it is development or business. This is the reason they are moving money into places like Wyoming and Nevada. He had heard people say that here they are doing this because this is the way everyone else is doing. That is exactly the reason he was coming here, because you're not doing it like everyone else. He cautioned the City on doing it the way everyone else does it, because it is a problem from where his standpoint was. They don't have that flexibility, they don't have that interaction that you have. Just in the short time he had been here today and talking to some of the people in here. The City has very bright people here that can help manage and drive this. He would propose what they had done locally in their county in Woodland. They now have a working group that meets quarterly. That working is group is private and public coming together and working out these types of issues. Staff is really driven by the private sector, they say that doesn't work and here's the reason why. As far as this bond issue, the question he had was what is the City's failure rate? Is there a statistical failure rate since 1954? How many times has the City taken over a subdivision and had to finish it?

Mayor Johnson said he didn't know about a specific subdivision, but the City has had to take over for public improvements outside of the subdivision.

Mr. Defty said at the risk of being subjective, it seemed like the City was making an Ordinance for what ifs. It doesn't seem like it's broken. The City has a good thing going here.

Mayor Johnson deferred to the City Attorney. The City is not changing the Ordinance that much from what has been in place since the 70's.

Mr. Defty said it sounded like a lot of parasitic load was being added to the development community. In his opinion, when you start trying to guaranty outcomes you lend it to more liability for the City. If you're going to guaranty an outcome and that subdivision fails, then the bond company fails, it's going to be on the City. They are moving their money out here because Elko is not like everyone else. If you want to break something that is running well, this sounds like it's a good start to it. There will be a vacuum created that will suck money out of Elko and it will go somewhere else. Whether you realize it or not, you are competing. You are not only competing locally in Nevada, but also with Idaho and Wyoming. There are people like himself that are looking for places to put their money. Mr. Defty stated that he was on a pathway to move about 70% of his wealth out of California right now. It was because of these types of narratives, where their staffs, in their counties and cities, have become what they think is smarter than the private sector. They come up with these different Ordinances and rules that become problematic for the developers, and they don't understand that parasitic load. We are in a very crucial time right now, the cost of money is going up hugely, and it's going to continue to go up. That will put a lot of people out of the game, and if you add to that load by elongating the process, it will stop development. He wants to come here and invest his money. He stated his experience in the City of Elko and the County of Elko had been nothing but good. Every one of the City staff members that he had talked to had been wonderful to deal with. They were open, collaborative, they want to see business, and the culture seems very strong to help. They seem to get that they are public servants. They are here to serve all of us, we drive the ship, and they are there to clear the way. He always tells people it is crazy the system that we live in, whereby the City, or the Government, is a basically an average 35% no risk partner with all of us in business. As a no risk partner, if he were in the City's position he would be trying to get his partners to make money. It seems like more times than not, Staff's ultimate job is to say let's put more stuff in the way of these guys, so they can't make money. He was just here to say that the City had a room full of bright people. Start a working group, where you guys work collaboratively with them.

Howard Schmidt, 1694 E Torrey Pines Circle, Draper, Utah, explained that he had a long history with Elko City and it had been really great. It has been 30 years since they started their first development here. They have done a lot of lots and have had a good relationship with the City. He appreciated the time and effort that had gone into this rewrite. There are a couple things that they really needed. They need a second option, not to have to bond a subdivision when they are ready to start. Take it through all the approval processes that are laid out, and then give developers the window to build the development and get it done, have the City come inspect it, turn in the certifications from the engineers, and then record the plat. He thought that was an option that made sense a lot of times. People say well just go get a bond for it. Well, not

everyone has the ability to get those bonds. They are tricky, and Elko is not the most attractive place for bonding agencies to want to put their money. If you have a relationship from another area of the world, or if you do a lot of bonding that is understandable, but typical subdivisions aren't doing a lot of that right now. He asked if there was an appetite for that. He wanted to know how the City felt about that.

Councilman Robert Schmidtlein stated he was in favor of entertaining the options on both of those items. As Scott said, on Page 78, Section 10, and Page 80, Section B, he was very much in favor of both of those. He hit multiple other items to retain the options. From the sounds of it, Mr. Stanton is in the process of potentially rewriting those, more or less in the flavor that the developers want it written, to give them the options. The City is here to encourage development, not to hinder it.

Councilman Keener said he concurred with what Councilman Schmidtlein said. When you look at the increase in housing prices in Elko, up 14% year over year for 2018 versus 2017. We need more inventory. There's only 3.5 months of inventory on the market right now. If the construction gets slowed down, it's only going to increase prices and push people out of the area. He thought it was crucial. We really need for the economy, here in Elko, a robust construction sector. It really helps the City a lot, in terms of sales tax revenues and jobs. He was all for responsible development within the City Limits. We have been doing a lot of annexations as well, and we need to continue to acquire more land to keep up with the number of developable lots.

Mr. Schmidt thought they needed that kind of partnership. That was really important to them. He stated he was spending less time here in Elko, but his partner, Dusty, is trying to do a lot. The other concern he had was the timing. It takes so long to get a subdivision approved. By the time you go through Stage I, and then move on to Stage II, the Code that is changing is lengthening the time, not shrinking the time. He thought one of the time periods was 45 days. Section 3-3-5, Page 48 talking about Tentative Map, in (C)(1). He then read through the section of Code. He thought 60 days was too long. He thought 30 days should be plenty of time to review the application and put it before the Planning Commission.

Ms. Laughlin explained that it was changed to 60 because the NRS allows the City to go up to 60 days on that. One of the issues that the Planning Department has come across is, right now they currently have 21 days prior to the Planning Commission meeting. The Planning Department has approximately 7 days before they have to get the item out for public hearing notices. If any member of the staff is out of town, and haven't had a chance to review the application, the notifications are going out to the Free Press, and spending hundreds of dollars, and maybe it's not a complete application. What we are really hoping is that if a very complete application gets submitted, it can get processed onto the next Planning Commission meeting, staff doesn't have a problem with that. What is happening is when they are incomplete, or there is questions on something, and we go back and forth and ask for revisions, then we had already advertised for the public hearing. The 60 days would allow staff enough time to do a complete review and get revisions if necessary, but it would be staff's goal to get it on the next Planning Commission Meeting.

Mr. Wilkinson added that the subdivision applications have to be complete enough to make some findings required for an approval. The findings are required as stipulated in the NRS and the City Code. The Planning Commission can't make a recommendation to the City Council unless those findings can be made. Many times we get applications that don't contain enough information to make those findings. The question Mr. Wilkinson had in response to that was why the developer can't plan according to the Code and make applications sooner rather than later. What is the inconvenience with being able to do that?

Mr. Schmidt said the tentative map had already gone through the Stage I Meeting and they have already addressed a lot of issues. He thought that the time wouldn't start until the City had a complete application.

Mr. Wilkinson explained that the tentative map was in the Stage II process. The Development Review Committee is in Stage I, which is an informal process without an application. The Tentative Plat for all subdivision is the most important review process in the entire subdivision planning and approval for the City of Elko. That's where all of the elements have to be addressed in order to make the findings that are required for approval of subdivisions. It's really about the construction season that Elko has to offer. He thought it was incumbent on the developer to take a look at those time frames and plan and make application according to the time frames stipulated in Code to meet the construction season.

Mr. Schmidt couldn't agree more. His concern was with building this time that it would become an assumed thing that that amount of time is going to be used. Maybe the clock doesn't start until the developer brings in a complete packet. That was a concern that he wanted to bring up. He felt like adding more time didn't help the developers. He wanted to ask about Tentative Map versus Final Map. Typically a tentative map may have three or four different phases on it. If it is a larger development the tentative map will have phases one, two, and three. In the even that you have a tentative map that is one phase. He asked if it was possible to run tentative map and final map at the same time. They do that in some cities, and some will not allow it.

Mr. Wilkinson didn't think under the NRS, and the requirements for State approval, that the City could do that. We could look at whether that is possible or not. What factors into all of the timing, and the timing for construction of projects, is the State approval. The tentative plat approval allows for the City of Elko to issue an intent to server letter. At that point, it allows for the State to review the tentative plat and go through its approval process. The State's approval process is documented in writing back to the City of Elko. He didn't believe that it would work for the City to approve both of the maps at the same time. He thought it would probably be in violation of the NRS and how the City works with the State. Once we have the tentative approval the State has actually approved it and then you are able to move forward with your final plat application and the final engineering design of the subdivision and make those submittals not only to the City, but to the State. Both of those, the final plat and the construction plans, run in conjunction with each other through the State approval process and with the City.

Mr. Schmidt said let's try and research that, because it would probably save the City a lot of time if they didn't have to go through two meeting processes. They do that in several cities that he works in.

Mr. Wilkinson imagined that the other cities took separate actions.

Mr. Schmidt said yes, but at the same meeting. They were separate agenda items, but at the same meeting.

Bob Thibault, Civil Engineer, asked if that took place in Nevada.

Mr. Schmidt said no.

Dusty Shipp, 959 Montrose Lane, said he was going to pick up on the timing situation. We have talked a lot about some of the new and clarified code writings, but timing has a lot do to development, because the amount of time the money is tied up. In Elko there are weather situations. If a subdivision records in certain times of the year, or can't record because they can't get asphalt, that is a big deal for the timing of the subdivision. When you start implementing bonding, performance agreements, and things like that and developers can't follow through on some of those, or it's difficult to, because of timing. It becomes very hard to do and then the money is tied up because of that timing as well. The other thing that is in Elko that is pretty unique is a lot of times the developers are developers, they come in and develop the land, but then the builder is someone else. In Elko, because it's hard to find both, the builder and the developer are the same. On Page 58, items 8 and 9 of the new proposed draft. In the current code, it doesn't really state this, but developers have been allowed to start and obtain building permits in conjunction with their subdivisions. So, they are building the subdivision out and they are building the homes in conjunction. In the new revision in Section 3-3-7(G)(8) states: The City shall not issue any building permits in accordance with Section 3-2-2(B)(4) and 3-2-3(B)(6) prior to completion, certification and acceptance by the City Council of the required improvements as shown on the construction plans. With this being the case, if you get a subdivision that can't get final certification and the developer can't pull building permits, developers could lose six to nine months of building time. A lot of times they will jump on an early spring, pull a permit, and get a foundation in the ground, so that people can be finishing up in the decent building weather. In theory, this kills some of that potential. The other problem with that is the market in Elko changes. The subdivision Mr. Shipp is currently working on, last year they had 20 people lined up that wanted to take lot reservations. For many reasons that subdivision has been delayed until next year, so they will have a change in who's lined up to do that, and then a market change that will probably happen during the course of building the subdivision. All those things add to the stress of getting things done. Timing is a big deal. He thought that item needed to be looked at again. There are some things they can do. If they are building the subdivision out of cash, if that gets allowed, then the City is not as protected if they started building homes. If they do bond that subdivision and they tried to pull home permits, then there would be no risk to the City at that point. He thought that needed to be reworded to allow some of that. Obviously there is some risk when you start building a home where you don't have a subdivision. Maybe there is a requirement that there has to be water and fire hydrants be alive. He thought not allowing that until the subdivision is certified is a problem.

Mr. Wilkinson clarified that Mr. Shipp suggested that if a subdivision is certified and bonded, because there would need to be lots of record to issue building permits, that that might be a way

to go. The City would also need State approvals to place the utilities into service, so that there would be fire protection for vertical construction. The City would need to figure that out. If a subdivision wasn't bonded and of record, it's not possible to issue building permits. Mr. Wilkinson asked Mr. Shipp if he agreed.

Mr. Shipp said yes. He clarified that timing is of essence. There are some things that can be done in the building process that wouldn't need fire protection. Maybe there is some give and take there that allows some of it to get started. You have a month of building that can be done prior to needing that.

Mr. MacRitchie stated that in areas that he had worked, if the subdivision is bonded for and the plat is recorded, the municipality will give a building permit, but not a Certificate of Occupancy until all of the items are completed and certified. The building permit can be had in order to be able to continue with work, but no occupancy can take place until that is done.

Mr. Wilkinson said that was in the Code.

Mr. MacRitchie said it goes back to the zoning. If you have a larger project, maybe it encompasses 100 acres, but you're considering only doing a tentative map that is only a small portion of that. The reason you would consider doing a small portion of that because the moment you get into a tentative map you're now on the clock. Every two years you've got to come through. In a town like Elko, where the absorption rates go up and down, you can't plan six years from now to make sure that you take an entire massive development, and have that on a two year schedule. You had mentioned that there are some areas for that currently in this Code, which would allow for the potential to rezone the area before submitting a tentative map.

Mr. Wilkinson explained that the Code allows for that under Section 3-2-21 before you get into a subdivision process. The zoning that they had talked about, related to a subdivision is under the subdivision process. Other zoning amendments occur under 3-2-21. If you are looking at zoning a larger area prior to subdividing property, that would be done under 3-2. Then once you get into the subdivision process, the zoning that is referenced is specific to the subdivision of that property under that application.

Robert Capps, Flagstone Drive, said he had heard a lot of really good points he felt were made this afternoon. He was happy with the response and the dialog that he heard. It's been a constructive afternoon and some progress was being made. He explained that he had been developing real estate for a long time. He wanted to tell everyone that developing real estate and building homes in Elko has been a pleasure, relative to other areas where he has worked. He hoped to continue to do so. There were a few things in the proposed Code revision that he thought were very important, primarily the performance bond. It was music to his ears to hear that there are some open ears as to having the two options, to either do the improvements or financially guarantee to do the improvements. Bonds aren't easy and there isn't a cost free approach to a financial guarantee, whether it be cash or borrowing. They are difficult to obtain and very expensive. Since the proposed Code change came up a few months ago he had been studying it himself thoroughly and looking at other Codes throughout Nevada to try brainstorm and come up with some solutions to make everyone comfortable. He thought they were making

some good strides. He was in favor of the City being assured that they are getting good quality improvements when they take them over, because they are stuck with them. He wasn't sure that a mandatory performance bond in every situation was the best way to get there. He wanted to touch on a few of the minor points. He thought some good points were made in regards to timing. It is interesting, and some other cities do it too, that you come in for a tentative map approval. That gets approved, then you go to work and start spending a ton of money. Then you come back for a final map approval, which in essence is the same approval twice. Nothing changes, you have a tentative map and construction drawings and that is what you build. He wasn't sure if it was a productive use of anybody's time to go through that same process, Planning Commission and City Council, twice. To him the final map was more of a surveyor's instrument, a map of recordation, so everyone knows property descriptions and things.

Mr. Wilkinson explained that the final map had to be consistent with the tentative map. The final map may be a portion, or part of, a tentative plat. All of that is dictated by the NRS. There is a process in the NRS. The Code follows the NRS, and follows the State approval process for subdivisions, which also follows the NRS. As part of that process the NRS requires a tentative process and a final plat process.

Mr. Capps said he wasn't 100% clear on the NRS code in that regard. He did know that other cities did that. It just doesn't seem like a very effective use of anyone's time. He understood that the Code needed to be consistent with the NRS. The project that he is involved with, and others that he has sat through at Planning Commission and City Council meetings, it is the exact same approval at the tentative map and the final map, so he didn't understand why it needed to go through two public hearings.

Mr. Wilkinson explained that a final plat may be portion of a tentative plat. Then if you're doing a phase of a tentative plat, of course, then under the NRS there is a two year period to continue recording the final plats until the entire tentative plat has been recorded. That is all dictated by the NRS.

Mr. Capps said he understood that. It would just be a shame if you get a tentative map approval and you're out doing work, and then additional things get added.

Mr. Wilkinson clarified that at the tentative plat stage, the engineering or construction plans have not been submitted. The tentative plat approval provides enough information to make the findings to approve the subdivision of the property. At the tentative plat approval you then have authorization to do the final design, the construction plans, engineering plans, and all the detailed plans. With any tentative plat the City doesn't get a full set of civil improvements. Those come with the final plat approval process.

Mr. Capps said he understood the process. If possible they might want to look at if it is necessary to go through two Planning Commission meetings and two City Council meetings for the same approval. He wanted to talk about the partial release of funds. The issue that you run into is, it is like a construction loan, the timing never works between a loan draw and when you actually have to pay subcontractors and material suppliers. That is a bit of an issue, but a necessary evil perhaps. In trying to come up with some solutions, understanding that the City needs to protect

itself from shotty improvements, so he has done a lot of research on this. He looked through the NRS, and Chapter 278.380 says as a condition precedent to the acceptance of streets or easements, require that the subdivider improve or agree to improve the streets or easements. He also looked through several cities and counties throughout Nevada; Minden, Douglas County, Carson City, Fernley, Churchill County, Yerington, Lyon County, Tonopah, Reno, Hawthorne, Sparks, Washoe County, Battle Mountain, and Humboldt County. They all say it in slightly different wordings, but in every one of them they have a second option, where you can either do the improvements or financially guarantee to do them. He hoped the City of Elko ended up being consistent with that.

Mike Lattin, 3250 Sundance Drive said in the way of background on the tentative map issue. He felt, having developed for over 40 years, that the tentative map was an important part of the process to protect the developer. Whether or not, after the initial public hearing, the final map needed to go back to the Planning Commission. He questioned the need for that. Whatever could be done to streamline the process is going to save the ultimate customer money. If the developer saves money, the home buyer is going to save money. Things are already expensive enough. He thought the two things he has heard this afternoon, which are absolutely necessary, was that there has to be a provision for draw down on the cash guaranty. It should probably be like a voucher control system off of the engineer's estimate. When that work is done, then the money is released to the developer. The second thing that he thought was critically important, and also helps keep the cost down, was what Mr. MacRitchie referred to as building with cash. There needs to be that option for developers to go in and front the cost, complete the improvements, and come in for the final map certification and recordation after it's all done. That was very important to him.

Jim Winer, 700 Idaho Street, thanked everyone for their time today. This is an important issue that will affect the community for years to come. He stated the same thing at the Planning Commission meeting a month ago. It has been 1970 something since this section of the Code has really been looked at. The decisions that you guys are going to collectively make and whatever comes out the other end is going to affect the City and how it grows for years. The President of the Elko County Association of Realtors was here, but she has State meetings tomorrow and had to drive to Reno, so he was going to say some things for her. Reece also mentioned come of the statics in the market right now. The National Association of Realtors says 3% to 5% is the growth rate that you like to see in a residential community on housing stock going up, as far as average increase in prices. We are sitting at about 14%, it is at 13.8%. That is in the City. The entire market, which is all of Northeastern Nevada from Wells to Carlin, is 10.8%, but the City itself is 13.7%. We are currently in a housing shortage. The topic at hand affects that for all the reasons that people mentioned before about cost, development, time is money, money is money, and supply issues. This issue has peaked the demand of the major employers in the area. He knew in the audience there were representatives from, and/or reached out to people directly to express their interest, Newmont and Barrick are tracking this, and also the hospital and the college. It's not too far back in history, 2006 and 2007, when there was such a housing crunch from apartments to houses, that Newmont and Barrick were forced into the housing industry. They don't want to be there again. Globally, the decisions that are about to be made, collectively affect the community on so many levels for so many years. The first time the topic came up about guarantees, as he recalled, was a meeting that Mr. MacRitchie was in front of the City on Tower Hill. It was at that meeting that Mr. Winer remembered Councilwoman Simons saying

that perhaps two paths or two methods are needed. He thought after a lot of good dialog today, he thought that's where they were headed. Two plans, two ways, each would be beneficial to the City to make sure the citizens are protected, and also that developers can develop with flexibility for some degrees of cost control. One of the things that plan B would allow, which is where you get your approvals, you build the stuff, get it certified, and then get your plat recorded. That allows for market slowdowns. If you're putting in all your money up front and the market slows down then you can pull back the reins on the expenditures, but if the money is in the hands of the City, or in bonding or financial instruments, all your cash is tied up. If you take away plan B you are taking away the potential for a developer to slow down the process and make prudent decisions on money. From the real estate industry standpoint those are the statistics that the community is looking at right now.

Mayor Johnson thought if everything remained the same, or not enough changes, the next step would be the Planning Commission meeting and then back to City Council.

Mr. Calder explained that City Staff was looking for some direction from the working group with regard to what types of revisions the Council and the Planning Commission would like to see. Once staff gets that direction they can make those revisions and then go back to the Planning Commission to show them the revisions for an initiation process. That process would ultimately lead to the City Council hearing it at a first reading.

Mayor Johnson thought it was sounding as though they wanted to see a two option path. For the developer to choose whether they are going to provide bonding or cash. He thought it was going along the lines of whether or not they wanted to sell property before the subdivision is complete or after. That might go hand in hand. He thought that was one.

Councilman Schmidtlein asked if they needed to make a decision on each change.

Mayor Johnson didn't think they needed to be specific, but here's the two path. He thought there was some great points regarding the tentative versus the final map. He thought there was something they could do there to help.

Councilman Keener thought Mr. Stanton was taking some pretty good notes. He thought that Mr. Stanton could put together a proposed draft, and then meet with a representative from the developers group, Planning Commission Chairman, and a member of Council to have a working meeting on that to see where things are at, how close things are, and make some revisions and have another meeting to go through and debate it.

Mr. Stanton asked if Councilman Keener was referring to another joint meeting.

Councilman Schmidtlein explained that Councilman Keener was saying to get a working group together. Have a member from the development, someone from the Planning Commission, and have a member of the City Council sit down so they weren't bringing 50 people together.

Vice-Chairman Jeff Dalling said he liked that idea.

Mayor Johnson thought the main thing that needed to happen, as Mr. Calder asked for, was what we want to do as elected officials and appointed officials. We need to define that. He thought they were willing to go with the two path. He wanted to see whether or not they could do something with tentative map versus final. He thought Mr. Schmidt brought up a good point with the 60 days. He also heard good comments from Ms. Laughlin on that. He thought that as long as the developer knows that it could be shorter than 60 days. Keeping that timeframe as short as possible, so that the development can happen as it needs to.

Councilwoman Mandy Simons asked if they could also include some language clarifying that the developers are able to draw down. If they present what the City requires, you will be able to draw down. She thought that was an important point.

Mr. Stanton wanted to make a couple of suggestions, because both the Planning Commission and the City Council were present. He thought that if they were going to take action, it would have to be done as separate bodies. We might get direction from the Planning Commission as one voter, and then the City Council would give direction in another vote, if it decided that it wanted to do that. He had been listening to the input from everyone, staff and developers both. He thought there were some areas where we could clean up the part about reducing cash bonds and how that works. He thought they could clean up other areas as well. In terms of the tentative maps, some of that is in the NRS. We really have to stick to the NRS scheme for how the tentative map/final map process works. What you're really talking about is reducing the 60 days back down to a shorter number of days to complete that tentative map process. He really thought that part of the working group needed to have Scott and/or Cathy involved as well, because they have to live with the Code changes. He thought staff needed to be involved in the working group, right alongside of us. He thought he had enough information to generate another draft, which would address the majority of the concerns that he heard subject to NRS restrictions. He didn't think he could change anything that the legislature is telling us that we have to do.

Mr. MacRitchie thought that it was fundamental that the language in the Code that currently states that you cannot drawn it down, be changed specifically. That is a fundamental point. Even if there is not two paths, although it would be great if there was, the inability for the language to change allowing for draw downs and making it specific only to a separate agreement, absolutely has got to change, or it could easily be tagged back to say that it couldn't actually be put in the agreement because Code specifically states no draw down ability.

Mr. Stanton thought Mr. MacRitchie brought up a good point. This was something that he could use direction on. He could clear up the language that talks about the draw down and make that clear that it works that way. What he thought Mr. MacRitchie was getting at was is the draw down going to be something that is in Code that works automatically, or is this going to be a provision that we have in a development agreement, and is enforced that way.

Mr. MacRitchie said but then it could be arbitrarily dispensed.

Mr. Stanton said that they could reword it so that that provision is in all development agreements. It seemed logical to include it in a development agreement.

Mr. MacRitchie said unless the Code specifically stated that you cannot do a draw down, which in two places in the Code it does.

Mr. Stanton thought they were past that.

Mayor Johnson said he understood what Mr. Stanton was saying. He thought that if it was in the Code that the developer had the option of drawing down, and then if there is some circumstance that the developer wanted to finish the project without a draw down, do they necessarily have to have it.

Mr. Stanton thought there was some flexibility built into this right now, the way it is drafted. So that not all circumstances are the same and you might not need to have that provision for a draw down in a development agreement. It might not even be relevant to it. The way it is worded now, if you're in a circumstance where it is relevant, then that can be added.

Mayor Johnson added as long as it is said that the developer has the option of whether they can draw down based on things within the performance agreement. That's what needed to happen.

Mr. Stanton thought that was the way it was written now, but there was some confusion about whether that is clear enough. He intended to clear that up and make it so there is no room for doubt.

Mr. MacRitchie said it wasn't confusing at all. It specifically bans that in the Code in two places. One other clarification that was that the tentative map does not give approval to start construction. Under no circumstance could you get a tentative plat that then allowed you to put a lot of money into construction before you had final plat approval. (Correct).

Mr. Stanton said he needed to know what direction the Planning Commission and the City Council wanted to take. If the direction is to have a working group composed of certain members and develop another draft to present to the Planning Commission.

Councilman Schmidtlein asked if the Council needed to initiate, or if the Planning Commission initiated that.

Mr. Stanton said that either the Planning Commission or the City Council could do it.

Mayor Johnson asked if there was a chance they could get to a Planning Commission meeting without having a workshop.

Mr. Stanton thought so.

Mr. Wilkinson thought if they could get direction, do they want to have options or alternatives. If they can get that type of direction, he thought they had had enough conversation and comment. That was the biggest issue that they would need to consider when going through this revision process to try to get it back to the Planning Commission for initiation. At that point in time we would have the ability to review that under a public hearing setting and even make additional

revisions between that meeting and a second public hearing with the Planning Commission before it went to the City Council. He thought that compressed the timeline a bit. Or there could be a working group, but he still thought they needed that type of direction for the working group to come up with a revision.

Mr. Stanton said if they were to have a working group they would need some direction on what they were going to do.

Mr. Schmidt said that they really never addressed if there was ever a circumstance where a person would have 110% bond in place.

Mayor Johnson said probably not.

Mr. Schmidt added because they did. That's what was after Scott MacRitchie that he threw the fit on last spring. That's what happened to them at Golden Hills. He was wondering, because that hadn't been addressed. That should never happen.

Mayor Johnson said that the discussion of the two paths should solve that.

Mr. Schmidt thought so, and the draw down should solve it.

Mr. MacRitchie thought Cathy and Scott specifically addressed that by saying not in addition to, and that clarified it enough to let everyone that the 100% contained the 10% maintenance bond. It removed the language of in addition to the 100% there's an additional 10%.

Mr. Wilkinson said it can. The Code allows you to draw down to 90%. Some surety companies issue a performance bond and they replace that with a maintenance bond. Under difference scenarios, however you have provided the guarantee, if its cash the Code allows it down to 90% envisioning that the 10% then becomes the maintenance guarantee upon acceptance of the improvements by the City Council. Under some sureties they'll reduce it down to 90%, a lot of the surety companies actually title the sureties "Performance" and "Maintenance" and then one replaces the other and the other one goes away.

Vice-Chairman Dalling stated that he was ready to make a motion.

***** A motion was made by Vice-Chairman Jeff Dalling, seconded by Evi Buell, to direct staff to create a working group consisting of one member of the Planning Commission, one member of City Council, a developer group representative, the City Planning, the City Manager, and the City Attorney; and direct them to work on the two paths for performance bonding, work on the draw down language, and also to discuss the 45 to 60 days for the application period.**

****Motion passed unanimously. (4-0, Jeff Dalling, Evi Buell, Tera Hooiman, and John Anderson voted yes)***

Robert Capps asked if anyone would be opposed to having two representatives from the development community.

Vice-Chairman Dalling said that two would be fine.

Commissioner Tera Hooiman asked if they had an idea of how the representatives could, or should, be selected.

Councilman Schmidtlein explained that the developers had a group among themselves.

Vice-Chairman Dalling amended his motion to include **"two representatives from developers groups."**

FINAL PUBLIC COMMENT PERIOD

There were no public comments made at this time.

ADJOURNMENT

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

Mayor Chris Johnson

Kelly Wooldridge, City Clerk

Jeff Dalling, Vice-Chairman

Tera Hooiman, Secretary