



CITY OF ELY

501 Mill Street Ely, Nevada 89301
City Hall (775) 289-2430 - Fax (775) 289-1463

ELY CITY COUNCIL & CITY PLANNING COMMISSION JOINT MEETING

January 29, 2018 5:00 p.m. – Ely Volunteer Fire Hall - 499 Mill Street-Ely, Nevada.

1. Mayor Van Camp called the Special Meeting of the Ely City Council to order at **5:00 p.m.** Chairman Jed Peeler called the Special Meeting of the City Planning Commission to order at **5:00 p.m.**, and Mayor Van Camp led in the Pledge of Allegiance and asked for Roll Call.

Council Members present:

Mayor Melody Van Camp
Councilman Ernie Flangas
Councilman Kurt Carson
Councilwoman Jolene Gardner
Councilman Sam Hanson

Council Members absent:

Councilman Tony DeFelice

Commission Members

Chairman Jed Peeler
Member John Charchalis
Member Gary Schielke
Member Roman Mariani

Commission Members absent:

Member Maureen Otzelberger

City Staff present:

City Administrator Robert Switzer
City Attorney Charles Odgers
City Fire Chief Ross Rivera
City Building Official Brad Christiansen
Deputy City Clerk Jennifer Lee

Also in attendance: George Chachas, Kerri Pintar, and Joe Dice.

2. PUBLIC COMMENT

George Chachas stated at your last meeting, January 25, 2018, agenda items B-4 and B-5 you talked about paying off-time firemen who come forth on an incident as volunteers and then paying them overtime; you need to look harder into that or the Fire Chief needs to set up a separate budget just for paying those guys. Anybody can volunteer their time. For them to be put under there, you're artificially increasing that budget because they want to come out and volunteer. You have the same situation with highway patrolmen. You have the same situation with Sheriff's deputies or police serving elsewhere and now we're doing the prevailing? If they're on the clock, it's a different story, but if they're as volunteers, you better have a separate budget because you are going to go down the tubes. That fire chief did not budget for that and if he knows about it, he needs to correct it. The same thing goes for the volunteers/EMTs; if they're there as volunteers, you don't have a line item on there to pay them as full-time employees. That's why you have volunteers. Without the volunteers, there isn't any budget that you guys are going to be able to stick with; you have to look at that again. You need a better clarification on

that stat that Janette brought back. Let me remind you your City Code says you need a treasurer who has an accounting degree, not some rookie off the street; that's the problem you guys have got and they're spending us into oblivion. On agenda item B-11, the change of elections should be a ballot question for the voters, not some self-serving politicians who are about to put us in the hole. On today's agenda you're going to be talking about the marijuana facility; I didn't believe it was under your jurisdiction, but after I read this handout today I understand it comes under a different regulation. My other concern is the amount of business license you're attaching to that request, \$3,000.00 and you're quoting an NRS. That NRS may be for a State license, but does it pertain to what a city must charge for a business license? You don't have any other business paying that kind of fee. I've yet to see anything in regards to Winter Road being addressed; part of that concern was you paved on Indian land.

Joe Dice stated I am a registered lobbyist for the Ely Shoshone Tribe. On the agenda item that's talking about the temporary business license, right now their program is on hold while they work through these misunderstandings on jurisdiction. They've already invested over \$50,000.00 based on previously coming to work with you guys. We are negotiating the compact. Highlights regarding the program: We already have a family that's moved to Ely that's supposed to be working there; the cultivation facility's scheduled for between six to ten employees; the dispensary out there employs six people; and the infused podding facility another six people, so we're eighteen to twenty-two jobs and people moving to Ely. You guys just paid a consultant asking to him how to do exactly that. This is generating revenue. From the Tribe's perspective, they've been coming to you guys for a year and a half now offering a compact; they want to work with the City and they want this to benefit everybody. Their main goal as another government is not to take in as much profits, but to generate tax revenue, which funds their government and that's what they've offered you guys. I hope we can work this out.

3. ITEMS FOR DISCUSSION/POSSIBLE ACTION OF THE ELY CITY COUNCIL AS RECOMMENDED BY THE CITY PLANNING COMMISSION.

1. Commission Members – Council Members – City Attorney Odgers– Discussion/For Possible Action – Approval of Temporary Business License for cultivation of marijuana by the Ely Shoshone Tribe, d.b.a. *Tsaa Nesunkua* at 16 Shoshone Circle, while the City of Ely and the Ely Shoshone Tribe continue negotiations on a possible marijuana cultivation compact.

City Attorney Odgers reviewed the Agenda Report appearing below and stated on inter local agreements are governed by NRS 172, but they're generally between one public agency and another public agency. The Tribe is federally recognized; they are a separate government, but the Inter State Compact Act does not allow us to enter into inter local agreements with them, but we can compact with them, which is what the State did. Neither the Tribe nor the City wish to take this matter to federal district court in order to resolve the issue of whether or not the City has the authority to impact their ability to grow on the Colony; that's not in anybody's best interests. Tomorrow at 4:30 Mr. Carson, the Mayor and myself will be meeting telephonically with the attorney and representatives from the Tribe to hammer out the last of the requirements. It is non-negotiable that the Tribe will have to meet the zoning requirements, building requirements and life/safety requirements in order to get a business license. For the purposes of today, I'm asking you to issue them a temporary license, so that the plants that they have there don't die. If the Tribe and the City can't come to an agreement on the non-negotiable issues, then the Tribe will need to do what they need to do and I will continue to represent to you that we're not going to back down on those requirements. They're going to have to install a backflow prevention device. They're going to have to have policies and procedures in place relative to disposal of the unusable portion of the marijuana plant that would include how to make it unusable and how we're going to process them when they come through at the Landfill, so we can immediately dig a hole, bury it, record it. In talking with Brad, the building has to go through zoning, but there's going to be a potential issue relative to the Fire Marshall based on the prior occupancy versus current occupancy for that facility. You're going from a building that was intended for essentially office use to a grow facility, a processing facility or both. So, there's going to be some challenges for the Tribe to address at that location just to bring it up to standard in order to do this safety for the people who own it and the people who are working there. Based on prior discussions with the Council, nobody wants to harm the Tribe, nobody wants them to lose the

investment they have so far into this; that's why the temporary license has been submitted at this point, so they can start tending to their plants and harvesting them. That's why I'm advocating on behalf of the City for the temporary approval.



**AGENDA REPORT
NEW BUSINESS
January 29, 2018**

To: Mayor and City Council
From: Robert Switzer, City Administrator
Through: Robert Switzer, City Administrator
Subject: **Marijuana Cultivation License Approve Temporary Business License**
Date: January 29, 2018

PROPOSED MOTION:

I MOVE TO APPROVE THE TEMPORARY BUSINESS LICENSE FOR CULTIVATION OF MARIJUANA BY THE ELY SHOSHONE TRIBE, D.B.A. TS:44 NESUNKUA AT 16 SHOSHONE CIRCLE, WHILE THE CITY OF ELY AND THE ELY SHOSHONE TRIBE CONTINUE NEGOTIATIONS ON A POSSIBLE MARIJUANA CULTIVATION COMPACT.

SUMMARY:

On December 5, 2017, the City of Ely served the Ely Shoshone Tribe with a Cease and Desist Operations Order at 16 Shoshone Circle upon learning from the Bureau of Indian Affairs (BIA) that 16 Shoshone Circle was not held in trust by the Tribe but rather held in fee simple status. The net effect is that the Tribe is a nationally recognized tribe and that it has the ability to exert its ownership rights on property held in trust, however, on fee land, the law appears to require them to comply with local and state laws pertaining to zoning, life-safety, building and business licensing. The Tribe has reached out to the City to obtain a temporary business license while the parties continue to negotiate a possible agreement pertaining to the cultivation, processing, and packaging of marijuana at the 16 Shoshone Circle location for wholesale sale.

Negotiations are on-going. However, the marijuana that is being grown and tended to is at a point when it must begin being processed to prevent losses due to spoilage. The sole purpose of this temporary business license is to allow the Tribe to process the marijuana for wholesale sale until the compact is completed and approved by the City Council and all building, zoning and other matters are brought up to code.

The Fire Department has been asked to conduct a life-safety review of the location and determine what if any immediate life safety issues must be completed prior to the processing beginning.

The Building Department has not received and will not process any applications for building permits, zoning changes or otherwise, until such time as the compact is approved by the City Council. There are building occupancy issues, zoning issues, building security issues, cross flow prevention device concerns, commercial water billing and other matters which still need to be processed by the City before a final Business License may be approved by the City Council.

BACKGROUND:

1. The City on December 5, 2017 served the Tribe with the Cease and Desist letter based upon documentation received from BIA informing us that 16 Shoshone Circle is not trust land. This generally means that the Tribal Enterprises at that location must meet City Codes, including zoning, building and business license codes. The City Attorney and the Mayor have been working with representatives of the Tribe in order to prepare an interlocal agreement (Compact) that will allow the Tribe to cultivate and process marijuana at 16 Shoshone Circle, if all other requirements, building, zoning and business licensing, are met.

However, when the City served the Cease and Desist Order upon the Tribe, they had already begun the process of growing marijuana at that location. The normal maturation time for marijuana is approximately 90 days. The Tribe has invested a great deal of money, time and effort into this enterprise. The City is concerned about life safety issues, security, water usage and installation of a commercial water meter, processes for handling waste from the cultivation and processing of the marijuana upon harvesting.

These issues have yet to be resolved, but to prevent the Tribe from losing their investment and the City potentially being held liable for potential losses, this is a conservative measure to be taken. The Tribe would need to agree that they cannot add new plants to what they have in place until the full process has been completed and approved by the Council.

But for the fact that the City obtained information pertaining to the cultivation facility location after the Tribe began cultivating at that location, this matter would not be before the City Council. Only after being informed by the BIA that the land was held in fee status did the City move to take any action to address this issue.

2. Recently the attorney for the Tribe contacted the City Attorney and notified him that the parties were close on a proposed resolution of the cultivation facility. Likewise, he informed the City Attorney that the Tribe needed to begin the cultivation process so as not to lose their product. Hence the reason for the Temporary Business License. The parties are attempting to resolve this matter in a manner that is respectful of the Tribe's right to govern with the City's right to govern.

CURRENT SITUATION:

If the Temporary Business License is not approved, the Tribe could lose its investment in this product. They are required to monitor and provide the State with information regarding the seed to sale process. At this point they are at the processing or harvesting of the product. If they are not allowed to process the marijuana, they would lose their investment.

ANALYSIS:

- A. **FINANCIAL** – The \$3,000 temporary business license fee will be entered into the General Fund Revenue line item 10-32-100, GENERAL BUSINESS LICENSES. If the temporary license is not approved, a refund would be issued to the applicant.
- B. **TIMING** – Timing on this matter is crucial to prevent losses due to spoliation of the marijuana which is located at 16 Shoshone Circle.

- C. **POLICY/LEGAL** – There are potential liability issues in the area of life-safety, building codes, zoning and related matters that must still be worked out with the Tribe. The City Attorney has been and continues to work with the Attorney for the Tribe to work out problems with the Compact. Once these matters are worked out, the Tribe will submit the Compact to the City Council for approval. The City Attorney recognizes that 16 Shoshone Circle does not meet any of the building requirements at this time. There is a potential issue involving life-safety issues that must be addressed before anyone can work inside the building long term. There are issues involving cross-connections, commercial water billing and disposal of waste generated at 16 Shoshone Circle. There are potential issues of liability in the event a federal court ruled that the City should not have prevented the Tribe from cultivation on their fee land. In order to reduce potential liability for losses, the City Attorney recommends approval of a temporary license, with an acknowledgment from the Tribe that no further expansion can occur until all life safety, zoning, building and licensing issues are resolved. Depending on how the negotiations with the Tribe conclude and approval by the City Council, the City could potentially earn up to 7.5% of the gross sale of wholesale marijuana from 16 Shoshone Circle.

ALTERNATIVES:

1. Do nothing or deny the Temporary Business License. By doing nothing or denying the Temporary Business License the City stands to lose potential revenue pertaining to the cultivation and wholesale sale of marijuana from 16 Shoshone Circle.
2. Approve a temporary business license for the Tribe, so they do not lose the investment they have made into this cultivation facility, but prohibit further expansion until all building, life safety and other regulatory matters are complied with by the Tribe. The City Council previously passed Resolution 2017-16 setting the fees. The Tribe has paid the \$3,000.00 for the temporary license and when/if a full license is granted, these funds will be transferred over to cover the cost of the license.

RECOMMENDATION:

I recommend approval of a temporary business license to allow the Tribe to process the marijuana they have invested in thus far. This will allow additional time to address other issues pertaining to the proposed Compact, which will be submitted to the City Council for approval once the parties have completed the discussions and negotiations.

ATTACHMENTS:

1. [Ely Shoshone Tribe Marijuana Cultivation application](#)
2. [Resolution 2017-16](#)
3. [Building Dept. Memo 16 Shoshone Circle](#)
4. [Guideline for Medical Marijuana Operations](#)

City Building Official Christiansen stated we have the guidelines that were approved on January 11th of this year. For us to approve this building, facility and this type of business, you first have to have the zoning, the Fire Marshall, and any building permits. Nothing has been submitted to us for review, so immediately when we attempt to do an inspection for this business license, as soon as we walk through the door, it fails: There's no building permit; The zoning's not correct; It hasn't been through a Fire Marshall review; so, I can't sign off on a business license knowing that.

Councilman Hanson stated they have plans to address the issues that you just raised.

City Attorney Odgers stated that is my understanding from the Tribe's attorney. We need to get through the compact negotiations first, so their engineers can do whatever they need to do relative to the building to meet Brad's side of it.

City Building Official Christiansen stated what happens is when they do a business license, Ross and I are going to be asked to look at this facility and it fails.

City Attorney Odgers stated the Tribe as a federally recognized Tribe is a sovereign government. We're here today based on a misunderstanding on our part and their part relative to what their authority was on the Colony. If Kurt were trying to open up a grow facility, then I would agree with Brad and the first thing you've got to do is get all those ducks in a row. The problem is we came in thirty percent (30%) downstream where some of that was already put into place before everybody realized the situation wasn't what they thought it was.

City Building Official Christiansen stated my job title is protected under NRS. If I knowingly sign off on something that's incorrect, I'd be putting myself in harms way. We have a dual occupancy the way it currently is: The office area is a B occupancy and the gymnasium area is an A-3.

Councilman Hanson asked is Brad compelled to sign off?

City Attorney Odgers stated no, he's not. They have to meet life/safety issues and the building code issues under Nevada Revised Statutes in order to go into full production.

City Building Official Christiansen stated with hemp involved, we have an extreme fire hazard.

City Attorney Odgers asked Ross, when you went through were there life/safety issues that had to be addressed immediately?

City Fire Chief Ross Rivera stated I don't know where my jurisdiction is. If it goes to the Fire Marshall, it will be them doing the life/safety inspection, not me. Just a quick walk through today, there's egress issues in some of the rooms, doors that need to open out. The main door isn't easy to get out the way it's bolted. This all should be drawn up by an architect. My other issue is there's no egress lighting, no exit lighting; I mean there's some there, but it needs to be updated or repaired. The Fire Marshall would look at the power racking because it's not anchored to the floor yet, so it's not stable and would need earthquake proofing. Also, the gym has no windows in it.

Joe Dice stated we can't change the exit lighting right now because we're in a Cease and Desist.

City Attorney Odgers stated we've got to give them room to work. This is only for processing what they have there. This allows them to begin the process of having the rooms inspected. This is not 'you can sell' the product.

Councilman Flangas asked a temporary license would be for how long?

City Attorney Odgers stated at least ninety days. I would say closer to a hundred and twenty days and come back in ninety days to see where they are.

Member Mariani stated I am a paid computer consultant for the Tribe, so I'm abstaining.

Member Charchalis moved to recommend approving a temporary business license for cultivation of marijuana by the Ely Shoshone Tribe, d.b.a. Tsaa Nesunkua at 16 Shoshone Circle for one hundred twenty (120) days. Member Scheilke seconded the motion. The motion carried with three Ayes, with Member Mariani abstaining.

Councilman Hanson moved to approve a temporary business license for cultivation of marijuana by the Ely Shoshone Tribe, d.b.a. Tsaa Nesunkua at 16 Shoshone Circle for one hundred twenty (120) days. Councilwoman Gardner seconded the motion.

Councilman Flangas requested a Roll Call vote.

Councilman Flangas voted Nay.

Councilman Carson voted Aye.

Councilwoman Gardner voted Aye.

Councilman Hanson voted Aye.

The motion carried 4 to 1.

4. PUBLIC COMMENT

Kerri Pintar stated Kerri Pintar, 1417 Mill Street. Giving them a hundred and twenty days to cultivate that is going to make the plants bigger and if it doesn't work in the end, then you have a bigger problem with disposing of it at the Landfill. Why is Mr. Odgers still sitting in front of you? He should be with this group.

George Chachas stated his ongoing concerns regarding Planning Commission members and Mr. Flangas in violation of City Code; the removal of a pole at 1080 Lyons Avenue; the removal of a pole at 1083 Campton; his October 2015 Public Information Request to the Railroad; turning down the three percent (3%) revenue from the Tribe and asking for a two percent (2%) increase in water/sewer; the sidewalk installation at 490 Avenue K; the encroachment on Avenue K and Park; and the 490' pipe from the Murry Street project. I appreciate you allowing these folks to move forward.

5. ADJOURNMENT: THE MEETING MAY BE ADJOURNED BY APPROPRIATE MOTIONS OF THE CITY PLANNING COMMISSION AND ELY CITY COUNCIL.

Member Schielke moved to adjourn the special meeting of the City Planning Commission at **5:57 p.m.** Member Charchalis seconded the motion. The motion carried unanimously.

Councilman Hanson moved to adjourn the special meeting of the Ely City Council at **5:58 p.m.** Councilwoman Gardner seconded the motion. The motion carried unanimously.

MAYOR

CHAIRMAN

ATTEST