



CITY OF ELY

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

ELY CITY COUNCIL MEETING

May 23, 2019 5:00 p.m. – Ely Volunteer Fire Hall - 499 Mill Street-Ely, Nevada.

1. Mayor Van Camp called the regular meeting of the Ely City Council to order at **5:05 pm**, led in the Pledge of Allegiance, and Mayor Van Camp asked for Roll Call.

Members present:

- Mayor Melody Van Camp
- Councilman Ernie Flangas
- Councilman Kurt Carson
- Councilman Tony DeFelice at 6:35 p.m. on.
- Councilwoman Jolene Gardner
- Councilman Sam Hanson

City Officials and Staff present:

- City Clerk Jennifer Lee
- City Attorney Charles Odgers

Also in attendance: Members of the Public signed in (appears below).

Ely City Council **ATTENDANCE LIST**

DATE: 5-23-19

Print name below	Print name below
<u>Nathan Erickson</u>	
<u>Todd Huggie</u>	
<u>Brian Huggie</u>	
<u>Laura Cook</u>	
<u>JEFFREY MANDEL</u>	
<u>MAUREN OTZELBERGER</u>	
<u>Linda Derbidge</u>	
<u>Dale Derbidge</u>	
<u>STEVE LEITH</u>	
<u>Bill Hohlt</u>	
<u>George Chachon</u>	
<u>RIGER POWERS</u>	
<u>JOAN BASSETT</u>	
<u>MARK BASSETT</u>	
<u>Laura Brown</u>	
<u>MIKE COSTER</u>	
<u>Toni Dohy</u>	
<u>SHADRACH MICHAELS</u>	

2. PUBLIC COMMENT

John Gianoli stated I am a resident of the City of Ely and the Chairman of the Nevada Northern Railway Foundation. Haste makes waste. In 2009, we entered into an agreement with S & S; this latest offering is also ambiguous. If you transfer your leased rights, that includes the historic part of the line. My strong

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suggestion is that you hire an STB attorney; this is an extremely difficult part of NRS 268. This offer is a very simple lease and sale of real property. There are exceptions such as if you own a public utility – S & S is not or if you're using it for a public purpose. Going out to bid: There is obviously interest in the northern line. We have the Thayer group that has shown interest in the line. The City would be remiss in their duties if it is not put out to bid. Your responsibility: Selling or leasing of assets that you don't fully own. Assigning City interest is clearly unworkable. Legal costs For Bad Faith settlements and violations of NRS 268.

Ian Thayer stated we fully intend to present an offer to the City for their portion of the rail. We feel it would be much better than what's offered currently. We would be further along in this process, but we didn't know this would come up. We will get a viable offer back to you by the 4th Thursday in June.

City Clerk Lee read 5-23-19 email from David Steffensen, J.D., L.L.M. (appears below) into the record.

Ms. Lee,

At the Thursday, May 23, 2019 City of Ely City Council Meeting, please read into the Public Comments with regard to the Section 10.B. New Business items, the following statement:

I represent Edgar Investments, LLC, and its principals, including Ian Thayer. I am providing comment in connection with Items 10.B.1 and 10.B.2, which Items involve a potential approval of a proposed Settlement Agreement for the City of Ely, et. al. v. S & S Short Line Leasing, LLC.

Edgar Investments, LLC intends to submit a much better offer to the City of Ely than is proposed by S&S in the Settlement Agreement for the lease/sale of all of the City's interests and assets in the Northern Nevada Railway when the City of Ely conducts a properly noticed and held public bidding/sale process as required under NRS 268. If Edgar Investments, LLC's offer is accepted, Edgar Investments, LLC will also maintain and expand the operations of the railroad, as a key strategic component of its long-term business plans in Nevada. I have represented Edgar Investments, LLC, its principals and funding partners for many years, and they have the financial resources, business experience and acumen to fully perform on any offer that Edgar Investments, LLC makes to the City, and to also profitably operate the railroad.

The City should therefore not hastily approve a bad financial settlement agreement with S&S. In fact, and with respect, the City cannot legally approve the Settlement Agreement and the provisions in it for the lease/sale of City assets and property without first complying with the NRS 268 public bidding procedures. The City believes it is resolving litigation by approving the Settlement Agreement with S & S. This is not true, however. If the City does not comply with the public bidding process for the lease/sale of its assets and property in this matter, the City will be sued by other stakeholders, other interested buyers, and again by S&S for being unable to perform the Settlement Agreement.

Rather than hastily approve a bad financial settlement agreement employing illegal procedural short-cuts, the safer, more efficient, and cost effective course of action for the City would be to table Items 10.B.1 and 10.B.2 until the City has properly considered S&S's Settlement Agreement proposal in connection with other competitive bids the City will receive from other interested buyers, including Edgar Investments, LLC.

Please therefore table or deny Items 10.B.1 and 10.B.2.

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NNRY President Mark Bassett stated I was stunned when I received the emails Monday morning. The first email was canceling the joint litigation agreement. The second was a letter from Donald Carano. The Foundation thinks the S & S offer is a bad offer: 1. The proposal for sale or lease of the assets will violate Chapter 268 of Nevada Revised Statutes and other relevant law. The City is entering into a long-term lease with a private/for profit entity without following the required procedure; this is the opinion of four different attorneys. If you vote Yes on item 1, you're throwing the Foundation under the bus. Under the proposal, the City assigns S & S all of its rights. Now S & S is not only a member of the agreement, but a tenant on the track; that puts the Foundation at a severe disadvantage from any negotiations. At your May 9th meeting, you had a situation for the lease for the Georgetown Ranch; Councilman Carson suggested that all leases go out for bid and in fact, that's on tonight's agenda. You want to advertise all leases prior to their expiration. The S & S lease has not yet expired. The S & S proposal is asking the City to sell assets that do not fully belong to them. Essentially the City is selling one rail that's 128 miles long because the Foundation owns the other rail and we're not interested in selling. This process will only invite further litigation because the City can't deliver full title and possession to S & S. Finally, tonight there are eight agenda items raising fees on City services. Our calculation on the worth of the track is \$3,986,065.30. The City's share of the track is \$1,993,032.65. If the City accepts this offer from S & S, they're receiving 26 cents on the dollar. You're leaving 4.1 million dollars on the table.

George Chachas stated you need to start cleaning up the staff. On agenda items 10B1 and 2, those issues should be considered by the newly elected mayor and council. First the money, then the consideration. The historical railroad board must be brought back under the Council's oversight. Failure to collect proper fees has brought us to this point. The Railroad needs to pay its share of the litigation. Item 10-3 to amend 2016 Development Agreement should be considered by the newly elected mayor and council. The business known as *Wolfie's* needs to be cleaned up by the owner of Wolfies; he had failed to pay his utilities and shouldn't have been given consideration for a Home Occupation.

3. Mayor – Discussion/For Possible Action – Approval of Agenda, including removal of agenda items.

Councilman Hanson moved to approve the agenda as presented. Councilman Carson seconded the motion. The motion carried unanimously.

4. CITY DEPARTMENT REPORTS

• CITY CLERK

City Clerk Lee reviewed the absentee ballot appearing below and stated last week I attended a CDBG workshop on administration, environmental review and application; that was very worthwhile. They gave us the news that Ely as a whole is out of the LMI map, but sections may be; we're hoping Murry Street is because the environmental review Basin Engineering is taking care of right now is good for five years and we can complete those phases. They have changed the requirements and now you have to submit that environmental review with the application, not afterward. I would like to note that this is Mayor Van Camp's and Councilwoman Gardner's last meeting; I would like to thank both of them for their dedicated service to the City of Ely.

5. REPORTS

MAYOR

Mayor Van Camp stated she participated in the SBA rural tour, reviewed her report appearing below, thanked City staff and stated Winston Churchill said "Success is not final. Failure is not fatal. It's the courage to continue that counts."

6. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A PUBLIC HEARING AT 5:30 P.M. ON THE FOLLOWING TOPICS.

1. Chairman Peeler – Public Hearing – Discussion Only – Consideration of an application for Reclassification of Property Zoning. The applicant wishes to re-zone the property from the current M-2 Zone (Heavy Manufacturing District) to an R-1-50 Zone (Residential District). The general location of the property is 18th Street North of Avenue M (APN 002-271-13, 002-271-14 and 002-271-15) in Ely, Nevada. The applicant is White Pine County Commissioners.

George Chachas stated I am against the zoning request. There is plenty of land for housing development. The County refused to sell me lots, but now the County may assist a private developer and the City may discount hook-up fees. You're here to serve the taxpayer. That property is zoned heavy industrial.

2. Chairman Peeler – Public Hearing – Discussion Only – Consideration of an application for Conditional Special Use Permit. The intent is to construct the Learning Bridge Charter School on the property. The property address is 1400 East 13th Street, (APN 002-271-11) in Ely, Nevada. The applicants are Dale Lee and Linda A. Derbidge/Derbidge Family Trust.

Teri Doty read her letter appearing below into the record.

My name is Teri Doty and I live at 1280 Avenue L. We received a letter from the City regarding the plan for relocation of the Learning Bridge Charter School, and I felt it warranted comment.

While I'm not a giant fan of the likelihood of increased traffic to the new school site, I do 100% support the relocation of Learning Bridge Charter School to the proposed location on 13th St. To me the Charter School represents choice for families, and that is something that has been sorely lacking in our community since I moved here in 1996. If the Charter School had been in operation when my children were young enough to attend, I would have cheerfully enrolled them there. If the White Pine County School District was adequately serving all families, no one would need to seek an alternative like Learning Bridge or home school type education. I sincerely hope this variance is granted, as Learning Bridge Charter School has been a Godsend to the families of children in attendance there.

George Chachas stated I own property at the end of Avenue M. I would support the proposed change.

3. Council Members – McKay Hall, CPA, CISA, CITP, CFE, of *Hinton Burdick CPAs & Advisors* – City Clerk Lee – Public Hearing – Discussion Only – Adoption of the Tentative Budget for the fiscal year ending June 30, 2020 as FINAL. Budget to be submitted to the Department of Taxation pursuant to NRS 354.598.

George Chachas stated on page 37 concerning regarding \$30,000 monthly auditing services, you need to hire an accountant with a Bachelor's degree. I also have a concern with the \$5,758.00 fee for the annual audit for the Railroad. The City pays for their insurance. I'm concerned about the \$6,000 for the Fire Hall. You've got the former National Guard armory you own, so hold your meetings there. I have a concern in regards to the engineering. Your Building Inspector is not adhering to ADA. Do engineering on a monthly basis, bring them in as you need them.

7. DISCUSSION/POSSIBLE ACTION ITEMS PERTAINING TO THE PUBLIC HEARING.

1. Chairman Peeler – Discussion/For Possible Action – Consideration of an application for Reclassification of Property Zoning. The applicant wishes to re-zone the property from the current M-2 Zone (Heavy Manufacturing District) to an R-1-50 Zone (Residential District). The general location of the property is 18th Street North of Avenue M (APN 002-271-13, 002-271-14 and 002-271-15) in Ely, Nevada. The applicant is White Pine County Commissioners.

Councilman Hanson moved to approve reclassifying the zoning of APN 002-271-13, 002-271-14 AND 002-271-15 from M-2 to R-1-50, with the caveat of a 200' buffer zone. Councilman Flangas seconded the motion. The motion carried unanimously.

2. Chairman Peeler – Discussion/For Possible Action – Consideration of an application for Conditional Special Use Permit. The intent is to construct the Learning Bridge Charter School on the property. The property address is 1400 East 13th Street, (APN 002-271-11) in Ely, Nevada. The applicants are Dale Lee and Linda A. Derbidge/Derbidge Family Trust.

City Attorney Odgers stated Mr. Derbidge is a member of the Utilities Board, but that should have no impact on any of your decisions relative to this matter. The Planning Commission's recommendation was to approve; they recommended that the developers follow through on the traffic study.

Councilman Hanson moved to approve the Conditional Special Use Permit to 1400 East 13th Street to construct the Learning Bridge Charter School. Councilman Carson seconded the motion. The motion carried unanimously.

3. Council Members – McKay Hall, CPA, CISA, CITP, CFE, of *Hinton Burdick CPAs & Advisors* – City Clerk Lee – Discussion/For Possible Action – Adoption of the Tentative Budget for the fiscal year ending June 30, 2020 as FINAL. Budget to be submitted to the Department of Taxation pursuant to NRS 354.598.

McKay Hall stated the tentative budget was submitted to the State and the City has received its determination letter back. Since then, the City has had significant changes with the Fire Agreement and Taxation said we could make no changes. Going forward, we will be able to do budget augmentations and reallocations. The Tentative budget has not changed since it was sent to the State.

Councilman Hanson moved to adopt the Tentative Budget as final. Councilwoman Gardner seconded the motion. The motion carried unanimously.

8. THE MAYOR WILL RECESS THE REGULAR CITY COUNCIL MEETING FOR A MEETING OF THE ELY LIQUOR LICENSING BOARD.

1. Board Members – Discussion/For Possible Action – Approval of Class IV Liquor License to Jeffrey G. Manuel d.b.a. *JH Gaming, LLC* d.b.a. *Jailhouse Motel & Casino*, located at 211 5th Street, Ely, Nevada.

Councilman Hanson moved to approve a Class IV Liquor License to Jeffrey G. Manuel, d.b.a. *JH Gaming, LLC*, d.b.a. *Jailhouse Motel & Casino*, located at 211 5th Street, Ely, Nevada. Councilman Carson seconded the motion. The motion carried unanimously.

9. ITEMS FOR DISCUSSION/POSSIBLE ACTION OF THE ELY CITY COUNCIL AS RECOMMENDED BY THE ANIMAL CONTROL ADVISORY BOARD.

1. Chairwoman Roberts-McMurray – City Animal Control Officer Hayes – Discussion/For Possible Action – Approval of draft Volunteer Guidelines.

Councilman Hanson moved to approve the Volunteer Guidelines. Councilman Carson seconded the motion. The motion carried unanimously.

2. Councilman DeFelice – Discussion/For Possible Action – Approval of First Reading of Ordinance 721, Bill No. 2019-04, An Ordinance establishing City Code Title 5, Chapter 3, Article D an Ordinance establishing the City of Ely’s Trap Neuter, Release program for feral cats.

Councilman Hanson moved to approve the First Reading of Ordinance 721. Councilman Carson seconded the motion. The motion carried unanimously.

10. ITEMS FOR DISCUSSION/POSSIBLE ACTION ONLY OF THE ELY CITY COUNCIL.

A. CONSENT AGENDA

MOTION: Move to approve the Consent Agenda item 10A-1 Minutes and 10A-2 Bills.

Moved by: Councilman Flangas Second by: Councilman Hanson Vote: Unanimous

1. Discussion/For Possible Action –Minutes.
 - April 11, 2019
2. Discussion/For Possible Action –Bills.
 - May 9, 2019
 - May 14, 2019

B. NEW BUSINESS

1. Council Members Gardner and Hanson – City Attorney Odgers – Discussion/For Possible Action – Approval of Settlement Agreement for the City of Ely, et. al. v. *S & S Short line Leasing, LLC*.

Mayor Van Camp stated this has nothing to do with the historical line.

Rory Kay, Esq., *S & S* legal counsel, stated the City gets a \$700,000 injection of funds immediately. You have an asset that is generating no revenue for the City. My client cannot get anyone to store cars on the line with the lawsuit going. If my client gets up and running, the City will share in the revenue. Absent this settlement, my client feels comfortable of his position and intends to follow through.

City Attorney Odgers stated even if we win the lawsuit, we can’t evict Mr. Williams from the line for thirty-three years.

Councilman Hanson moved to approve the Settlement Agreement for the City of Ely, et. al. v. *S & S Short Line Leasing, LLC*. Councilwoman Gardner seconded the motion.

Councilman Carson stated I don’t want it to impact our right-of-way; at the end of the day, it’s the most valuable thing we have.

Councilman Hanson’s motion carried 3 to 1, with Councilman Flangas voting Nay.

2. Council Members Gardner and Hanson – City Attorney Odgers – Discussion/For Possible Action – Approval for the Mayor to sign Settlement documents in the City of Ely, et. al. v. *S & S Shortline Leasing, LLC*.

Councilman Hanson moved to grant approval for the mayor to sign Settlement documents in the City of Ely, et. al. v. *S & S Shortline Leasing, LLC*. Councilwoman Gardner seconded the motion. The motion carried 3 to 1, with Councilman Carson voting Nay.

3. Council Members – City Attorney Odgers – Discussion/For Possible Action – Approval of First Amendment to 2016 Development Agreement between Nevada Northern Railway Foundation, Inc. and the City of Ely.

Councilman DeFelice joined the meeting at 6:35 p.m.

Councilman Hanson moved to approve the First Amendment to 2016 Development Agreement between Nevada Northern Railway Foundation, Inc. and the City of Ely. Councilman Carson seconded the motion. The motion carried unanimously.

4. Council Members – City Attorney Odgers – Discussion/For Possible Action – Approval of Resolution 2019-03, A Resolution pursuant to NRS 268.061 declaring that it is in the best interest of the City of Ely to lease certain real property known as the Georgetown Ranch, with a BLM grazing allotment known as the Georgetown Allotment.

Lance Gale stated the BLM allotment was not listed in previous items of leasing the ranch. On May 9th, the City Council decided to lease the ranch. We feel like the cart was put before the horse. I understand we have to bid on the ranch.

Councilman Carson moved to approve Resolution 2019-03. Councilwoman Gardner seconded the motion. The motion carried unanimously.

5. Councilman Carson – Discussion/For Possible Action – Approval for the City of Ely to advertise all leases prior to expiration.

Councilman Carson moved to direct the City Attorney to do all work necessary to advertise all leases prior to expiration. Councilman Hanson seconded the motion. The motion carried unanimously.

6. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of Resolution 2019-04, A Resolution from the City of Ely to increase the business license rates effective July 1, 2019 for all business licenses New and Renewal by 3% per year for the next three fiscal years.
7. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of Resolution 2019-05, A Resolution from the City of Ely to increase the Water and Sewer rates effective July 1, 2019 for all customers, including businesses, by 3% per year for the next three fiscal years.
8. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of Resolution 2019-06, A Resolution from the City of Ely to increase the Landfill rates effective July 1, 2019 for all customers in the City of Ely, including businesses, by 3% per year for the next three fiscal years.
9. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of Resolution 2019-07, A Resolution from the City of Ely to increase Liquor License fees, Bar Card fees, Server Card fees, Gaming Card fees and Investigation fees by three percent each fiscal year for the next three fiscal years effective July 1, 2019.
10. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of First Reading of Ordinance 722, Bill No. 2019-05, An Ordinance amending Title 3, Chapter 3, Section 4 entitled COIN OPERATED AMUSEMENT MACHINES, License Fees, changing the rate for non-gaming coin operated amusement machines by three percent per year for the next three fiscal years, beginning July 1, 2019, with all other provisions not designated shall remain unchanged.
11. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of First Reading of Ordinance 723, Bill No. 2019-06, An Ordinance amending Title 3, Chapter 5, Section 4 entitled Gambling, License Fees, changing the rate for all gaming card games, gaming machines and coin operated amusement machines by three percent per year for the next three fiscal years, beginning July 1, 2019, with all other provisions not designated shall remain unchanged.

Councilman Carson moved to approve Items 6-11. Councilman Flangas seconded the motion. The motion carried unanimously.

12. Mayor Van Camp – [Discussion/For Possible Action](#) – Approval of First Reading of Ordinance 724, Bill No. 2019-07, An Ordinance amending Title 3, Chapter 6, Section 10 entitled Prostitution, License Fees, making this provision consistent with other provisions of the City Code for business license categories, calculation of points, and the date upon which renewal licenses are due.

Councilman Carson moved to approve First Reading of Ordinance 724. Councilwoman Gardner seconded the motion. The motion carried unanimously.

13. Council Members – City Attorney Odgers – [Discussion/For Possible Action](#) – Approval for City Clerk, City Attorney and City Utility Clerk (Licensing) to sign Civil Fingerprinting Based Background Check User Agreement between the Nevada Department of Public Safety and the City of Ely.

Councilman Hanson moved to approve the Civil Fingerprinting Based Background Check User Agreement between the Nevada Department of Public Safety and the City of Ely. Councilman Carson seconded the motion. The motion carried unanimously.

14. Council Members Carson and Gardner – Discussion/For Possible Action – Approval to reorganize the City of Ely Street Department, eliminating the position of Street Department Leadman, reclassifying positions and transferring personnel.

Councilman Hanson moved to table this item. Councilwoman Gardner seconded the motion. The motion carried unanimously.

11. PUBLIC COMMENT

George Chachas stated ongoing concerns regarding fence heights in the City of Ely. The State has started work along Veteran’s Boulevard and I’ve seen nothing in regards to a center turn lane at Bobcat Boulevard; if you had that turn lane, you’d have better flow. I’ve yet to see any correspondence regarding the widening of Great Basin and Campton Street; all the racers had to turn into the traffic flow.

12. ADJOURNMENT: THE MEETING MAY BE ADJOURNED BY APPROPRIATE MOTION OF THE CITY COUNCIL.

Councilman Hanson moved to adjourn the regular meeting of the Ely City Council at **6:54 p.m.** Councilwoman Gardner seconded the motion. The motion carried unanimously.

MAYOR

ATTEST