



# CITY OF ELY

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

## ELY MUNICIPAL UTILITIES BOARD REGULAR MEETING AGENDA

December 13, 2018 8:00 a.m. – Ely Volunteer Fire Hall - 499 Mill Street - Ely, Nevada.

1. Chairman O’Flaherty called the regular meeting of the Municipal Utility Board to order at **8:07 a.m.**, led in the Pledge of Allegiance and asked for Roll Call.

- Chairman John O’Flaherty
- Member Ken Ross
- Member Dale Derbidge
- Members absent:
  - Member Paul Holdaway
- City Officials
  - City Administrator Robert Switzer
  - City Attorney Charles Odgers
  - City Engineer B.J. Almberg
  - City Water/Sewer Leadman Carl Siemer
  - Deputy City Clerk Jennifer Lee
- City Officials and Staff absent:
  - Councilman Kurt Carson

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

*Municipal Utilities Board* **ATTENDANCE LIST**

DATE: 12-13-18

Print name below \_\_\_\_\_

George Chachas \_\_\_\_\_

### 2. PUBLIC COMMENT

George Chachas stated ongoing concerns regarding the 490’ of Murry Street Project pipe; reimbursement for his work on the 681 Parker sewer; the City paying for a \$60,000.00 water line upgrade; his billings; the City hiring someone with a bachelor’s degree in accounting; whether a backflow prevention device has been installed at 7<sup>th</sup>/Clark and in the RV park next to the *Copper Queen*; and his public information request about Councilwoman Gardner receiving thousands for City encroachment on her property. You did not put Public Comment on some of the agenda items

### 3. ITEMS FOR DISCUSSION/ POSSIBLE ACTION OF THE UTILITY BOARD.

#### A. CONSENT AGENDA

**MOTION:** Move to approve the Consent Agenda item 3A-1 Minutes.

Moved by: \_\_\_\_\_ Second by: \_\_\_\_\_ Vote: \_\_\_\_\_

1. Discussion/For Possible Action –Minutes.
  - October 11, 2018

Deputy City Clerk Lee stated I transcribed the information from the October 11, 2018 meeting audio and it is an accurate representation of what took place.

Member Derbidge moved to approve the October 11, 2018 Minutes. Member Ross seconded the motion. The motion carried unanimously.

**C. NEW BUSINESS**

1. Board Members – City Administrator Switzer – Discussion/For Possible Action – Approval of Resolution 2018-06 approving a medium-term obligation in the amount of \$150,000.00 from the Landfill fund to line item 10-46-300 City Attorney Services and Supplies in the General fund.

City Administrator Switzer stated you have in your packet the invoice from our outside counsel, regarding the *S & S* lawsuit; I cannot pay that entire bill because we would be over in the Services and Supplies, specifically accounting code 10-46-300, which had a budget of \$51,350.00. As of today, we have spent \$27,995.59 out of that \$51,350.00.

City Attorney Odgers stated as the Utility Board is aware, we've been embroiled in a lawsuit with the lessee, *S & S Shortline Railroad*. In June 2013, a three cause of action Complaint was filed with the District Court. We've attempted on three separate occasions to resolve the matter, short of going to trial. Based on the evidence from the discovery process, we're owed a significant amount of money; the upper end is about 1.5 million dollars. It's costing us \$4,500.00 a day to do the oppositions, just in outside attorneys' fees. For the last three weeks we have either filed or responded to twelve separate motions, three of which would be case terminating if the Court grants the motions. We've done ten separate depositions and that's why you see the amounts the way they are. When we went into this at the budgeting cycle, it was hoped that the parties would be able to reach a settlement; that's the reason why the City Council only budgeted \$51,000.00. Unfortunately, *S & S* has taken the untenable position that it is not settleable. There are going to be three changes to the resolution and this is set forth by the State Department of Taxation, which notified me of this Tuesday; I was gone yesterday and got back to the jurisdiction about 12:30 this morning, so I will make the changes before City Council tonight. At the bottom of the resolution on the first page, there will be a change that says: "and Whereas final approval of this resolution is subject to approval by the Department of Taxation, State of Nevada," On the back page, first paragraph, third line, it starts with "\$150,000.00 from the Landfill Fund with": You will strike through the term "no interest" and write in the term "interest to be charged at the rate of three percent (3%), simple interest, to be charged." Even though Nevada Administrative Code and Nevada Revised Statutes do not dictate that interest must be paid, according to the Department of Taxation's communication with Mr. Switzer, we have to charge three percent. Then at the end of that, before "June 30, 2023", the Department of Taxation also requires periodic payment on no less than an annualized basis; so with that requirement, we're going to add the following: "with periodic payments due on or before June 30<sup>th</sup> of each year in the amount of \$32,340.00"; that is \$2,695.00 a month. The amount of the interest over the five years proposed here is \$11,718.00. If you go to the Promissory Note, on Paragraph two we're going to add the amendment with periodic payments due June 30<sup>th</sup> of each fiscal year. Then the current "3" through the current "15" will be renumbered "4" to "16" and the new paragraph 3 will be placed in there: "Interest to be charged at the rate of three percent (3%), simple interest, on the unpaid balance for \$32,340.00 per year." I am unsure, until I talk to the Department of Taxation, if I have to include the total amount repaid in the Resolution or the Promissory Note and if so, I'll have that modification as well. If the City were to default on their payment, the interest would go to five percent (5%) as the default rate. Presuming we are successful and the Court awards our reasonable attorneys' fees and costs, upon receipt of that we will pay this loan back in full.

City Administrator Switzer reviewed a portion of the Landfill Balance Sheet appearing below and stated McKay Hall, who is our outside CPA, and myself teleconferenced on a discussion of the line item right under "Assets", accounting code 54-10100 Cash – Combined Fund, we have \$1,623 million of accumulated cash in the Landfill Fund currently that is uncommitted or unreserved funds. So, that's where the \$150,000.00 funding will come from.

CITY OF ELY	
BALANCE SHEET	
NOVEMBER 30, 2018	
LANDFILL FUND	
ASSETS	
54-10100 CASH - COMBINED FUND	1,623,704.89

Member Derbidge stated I was on the City Council when the litigation was authorized, but that doesn't affect my ability to be neutral. It's a funding source the City should have had. I move to approve Resolution 2018-06. Member Ross seconded the motion.

George Chachas stated I'm unhappy we're at this point. I agree we need to litigate and get our money back. The Railroad Foundation put us in this boat and I see nothing where they're going to commit to help the City resolve this lawsuit; they get over \$200,000.00 just on room tax alone and need to step up to the plate, not just the citizens of Ely. Let's also look at departments we can cut back on in the City to help finance the thing. Cut out the building inspector, bring him on only as a part-time and pay him by the hour; maybe the engineer. Get half of that funding from the Railroad Foundation. Over \$200,000.00 doesn't include any grants they get.

City Attorney Odgers stated the Foundation is carrying their share of their bills.

Member Derbidge's motion carried unanimously.

2. Board Members – City Administrator Switzer – Discussion/For Possible Action – Approval for the Mayor to sign the Promissory Note in the amount of \$150,000.00 from the Landfill fund to line item 10-46-300 City Attorney Services and Supplies in the General fund, to be repaid within five years.

Member Derbidge moved to grant approval for the Mayor to sign the Promissory Note, with the changes noted by the Attorney. Member Ross seconded the motion. The motion carried unanimously.

George Chachas stated the same comments.

#### **4. CITY DEPARTMENT REPORTS**

##### **○ CITY ADMINISTRATOR**

City Administrator Switzer stated I've delivered the reports from the Utility Funds.

##### **○ CITY ATTORNEY**

City Attorney Odgers stated I am getting liens filed and then will start litigation. In the last thirty days, we've filed an excess of forty liens. We have received in one day over \$12,000.00 in lien payments for release of lien. Our liens filed have gone up to about \$300,000.00.

##### **○ CITY ENGINEER**

City Engineer Almberg stated we completed the landfill liner project and submitted the As Built report to the State and received acceptance back from the State this week; Tom and his guys did a good job building it and contractor commended the job they did. We are working on our Aultman Sewer/Water project. We also provided some other assistance to NDOT because they're looking at doing monitoring wells. We got a request for improvements at Animal Control and we're working on that. We assisted Bob getting information for CDBG applications.

City Attorney Odgers stated Engineer Almberg and I are working on annexation documents for the Georgetown.

#### **5. PUBLIC COMMENT**

George Chachas stated ongoing concerns regarding a lack of ADA access at 790 Avenue I; and the City encroachment on Park Avenue and Avenue K. In regards to some of the overcharges I'm suffering, 490 High Street I bought at a tax sale and made sure nothing was owed, but put the City on notice that I was the property owner; I never received a bill and thought it was going to my brother like my other bills do. Sometime in March I got my first bill; it showed that the water had been turned on and I've never turned it on. The people who lost that to County for tax lien never had it turned on for four or five years. The County never had it turned on. Yet, you've got me at \$1,044.00. I'm not paying it. You people owe you money. You've got to clear this up. You've got other properties you're doing this to me on.

#### **6. ADJOURNMENT: THIS MEETING MAY BE ADJOURNED BY APPROPRIATE MOTION OF THE MUNICIPAL UTILITY BOARD.**

Chairman O'Flaherty adjourned the regular meeting of the Municipal Utilities Board at **8:45 a.m.**

\_\_\_\_\_  
ATTEST

\_\_\_\_\_  
CHAIRMAN