



360 Main St. • Delta, Colorado 81416 • Phone (970) 874-7566 • Fax (970) 874-8776

Council may take formal action on any item appearing on this Agenda. However, formal action WILL NOT be taken at this meeting on any item of business first identified during the course of the meeting as a change to the Agenda, other business, or Citizen, Councilmember and Staff Comments.

A G E N D A

**Delta City Council
Regular Meeting**

**April 7, 2015
7:00 p.m.**

- A. Pledge of Allegiance**
- B. Changes to the Agenda**
- C. Minutes**
- D. Citizen Comments**
- E. Public Hearing: Hotel/Restaurant Liquor License Application; Opa's**
- F. Retail Liquor Store Renewal; D&B Liquors**
- G. Hotel/Restaurant Liquor License Renewal; Stockyards**
- H. Colorado Parks and Wildlife Special Event Request**
- I. Upper White ranch Grazing Lease**
- J. Hawkins Indemnity Agreement**
- K. City Attorney Comments**
- L. City Manager Comments**
- M. Councilmember Comments**
- N. Executive Session:**
For discussion of a personnel matter under CRS Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees.
- O. Resolution #1, 2015; Appointment of Interim City Manager**

Item A:

Pledge of Allegiance



Item B:

Changes to the Agenda

Mayor Ed Sisson called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Robert Jurca, Mary Cooper, and Ray Penick. A meeting notice was posted in the south window at City Hall at least twenty-four hours prior to the meeting.

It was moved by Councilmember Penick and seconded by Councilmember Jurca to convene an Executive Session for discussion of a personnel matter under CRS Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. All in favor, motion carried.

At 6:01 p.m., Mayor Sisson recessed the Regular Meeting and convened the Executive Session.

At 6:42 p.m., the Mayor reconvened the Regular Meeting and announced that the Executive Session had been concluded. He stated that in addition to himself, the participants in the Executive Session were Councilmembers Mary Cooper, Robert Jurca, Ray Penick and Bill Raley. For the record, the Mayor asked any person participating in the Executive Session who believed that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated.

The meeting was immediately adjourned.

Jolene E. Nelson, CMC, City Clerk

Mayor Ed Sisson called the meeting to order at 7:00 p.m. Also present were Councilmembers Bill Raley, Robert Jurca, Mary Cooper, and Ray Penick along with City Manager Justin Clifton and City Attorney David McConaughy. A meeting notice was posted in the south window at City Hall at least twenty-four hours prior to the meeting.

Pledge of Allegiance

The Mayor led everyone present in the Pledge of Allegiance.

Changes to the Agenda

The public hearing for the Sales and Use Tax can be taken off the agenda.

Minutes

It was moved by Councilmember Jurca and seconded by Councilmember Raley to approve the minutes of the March 3, 2015 regular meeting as submitted by the Clerk. All in favor, motion carried.

Citizen Comments

Pam Sallee, 212 Columbia Street, commented on the feral cats in her neighborhood.

Councilmember Penick questioned what Ms. Sallee is claiming to be feral cats.

Ms. Sallee stated that these are cats that are just rooming and being fed on city property by Fran Goetz. However, she believes these cats are now the pets of Ms. Goetz due to the fact that they go up to her and they let her pet them. Ms. Sallee would like to see the cats trapped and moved.

Appointments to the Planning Commission

City Manager Justin Clifton stated that there are a few vacancies on the Planning Commission.

Community Development Director Glen Black reported that there are currently three openings on the Planning Commission. Staff has received two applications from Richard Simmons and Carl Jahn. Mr. Simmons has served previously on the Planning Commission and has served two terms (six consecutive years). Mr. Jahn was appointed in May of 2013 to fill a partial first term. Mr. Black summarized the section of the Charter regarding terms of Planning Commissioners which states "no commissioner eligible to serve more than six consecutive years. Therefore, it appears that Mr. Simmons would not be eligible at this time to be appointed.

Mr. Black stated that staff will continue to advertise for the open positions.

Mayor Sisson questioned if Mr. Simmons is termed out.

Regular Meeting, Delta City Council, March 17, 2015 (cont.)

Appointments to the Planning Commission (cont.)

Mr. Black stated Mr. Simmons is term out. He explained Mr. Simmons is willing to be appointed to an additional term. He proposed an option to let Mr. Simmons' term expire and then have some kind of a term period and then have him apply at that time; which Council has done in the past. There has been some discussion in the past to remove the terms limits; however, it would have to go to a vote at the next election for approval.

Mayor Sisson questioned if legally Council can appoint Mr. Simmons at this time.

Mr. Black stated that at this meeting probably not.

City Attorney David McConaughy stated that Council could read it as long as it is not consecutive maybe that would be alright. He stated that his concern is that Council may be exposing a Planning Commission decision to a challenge. He suggested advertising for a period of time to see if there are any additional applicants.

Councilmember Penick questioned if the Planning Commission has items scheduled for the next few months.

Mr. Black reported that there are just a few things like the three mile plan and they have an application for a rezone. There is not a lot going on.

Attorney McConaughy also suggested appointing a Councilmember to the Planning Commission if need be.

Mr. Black stated that if Council should choose to appoint Carl Jahn the commission would still have a quorum.

There was a discussion to continue to advertise and wait to appoint Mr. Simmons.

It was moved by Councilmember Cooper and seconded by Councilmember Penick to appoint Carl Jahn to the Planning Commission and continue to advertise for the additional two seats. All in favor, motion carried.

Delta County Historical Society Civil War Commemoration Request to Waive Fees

Manager Clifton stated that this was presented at the last meeting. There was some conversation regarding the fees and the possibility to waive those fees.

Parks, Recreation and Culture Director Wilma Erven reported that a copy of the contract for the Civil War Commemoration Community has been presented to Council in their packets. There is a total fee of \$250, mainly because the city would not be able to rent out the Lion's Pavilion during the event.

Councilmember Jurca questioned if the fee would allow the use of the parking lot.

There was discussion regarding having Council waive the fees.

Regular Meeting, Delta City Council, March 17, 2015 (cont.)

Delta County Historical Society Civil War Commemoration Request to Waive Fees (cont.)

Attorney McConaughy stated that \$50 of the fee is for a deposit.

Councilmember Raley suggested requiring them to submit proof of insurance.

Councilmember Cooper also suggested requiring them to pay the deposit.

It was moved by Councilmember Raley and seconded by Cooper to waive the fees for the use of the commons area at Lion's Pavilion, with the applicant paying the \$50 deposit and submitting proof of insurance. All in favor, motion carried.

Tavern Liquor License Renewal; Hoolie's Place

The Clerk reported that Hoolie's Place has submitted their annual Tavern Liquor License Renewal. The application is complete and all fees have been paid. The police department is recommending renewal.

It was moved by Councilmember Jurca and seconded by Councilmember Penick to approve the tavern liquor license renewal for Hoolie's Place. All in favor, motion carried.

Approval to Submit a DOLA Grant for Broadband

Manager Clifton stated that staff is seeking approval to be part of a regional broadband grant with the Department of Local Affairs. Partners in Montrose and Delta County (perhaps others) would like to submit the grant by the April 1, 2015 deadline to take advantage of \$20M that has been set aside for broadband projects. Although the cost is greater than any previous allocation in the budget, Mr. Clifton believes some of the costs may be inflated based on the consultant using a standard formula for build-out without consideration that the City owns poles and is capable of hanging line. Council could allocate funding over the next two fiscal years and use some of the Tri-state buy back funding in Municipal Light and Power. This might mean refraining from or delaying one of the anticipated acquisitions from Delta Montrose Electric Association.

If Council is inclined to move forward he suggested to include in the motion approval to participate in the grant with the contemplated scope of work and anticipated cost as presented.

It was moved by Councilmember Cooper and seconded by Councilmember Jurca to approve submitting of a DOLA Grant for broadband and also approved participating in the grant with the contemplated scope of work and anticipated costs.

Appointment of Interim City Manager

Mayor Sisson stated that Council had a special meeting last Thursday and there was consensus to move forward with appointing Glen Black as Interim City Manager.

Councilmember Penick suggested possibly looking outside of staff for the Interim City Manager. Since the meeting last Thursday there have been some items to consider. There are a few individuals in the County that may be interested in being appointed.

Regular Meeting, Delta City Council, March 17, 2015 (cont.)

Appointment of Interim City Manager (cont.)

Councilmember Cooper disagreed with not appointing Mr. Black. She stated he currently is involved in a lot of the contracts the city is evolved with at this time.

Councilmember Penick stated that the Interim City Manager can let Mr. Black continue with those items. He believes with the current situations that Council look at going outside of staff.

It was moved by Councilmember Cooper and seconded by Councilmember Raley to appoint Glen Black as Interim City Manager.

Councilmember Jurca questioned if there is any interest outside of staff.

Councilmember Penick stated it has not been advertised to get interest.

Councilmember Cooper called for a roll call vote: Councilmembers Cooper, aye; Jurca, nay; Penick, nay; Raley, aye; and Sisson, aye. Motion carried.

Discussion Regarding the Process for Filling the City Manager Vacancy

Mayor Sisson stated that Council has decided to advertise for the City Manager vacancy in-house. Staff will prepare the advertisement and submit it at the direction of Council.

Councilmember Cooper stated that Council retains the right to take a different route should they not be successful in getting applicants in-house.

It was moved by Councilmember Penick and seconded by Councilmember Jurca that the search for the new City Manager be conducted in-house with the closing date of the applications being April 24th, 2015 at 5:00pm. All in favor, motion carried.

City Attorney Comments

There were one.

City Manager Comments

Manager Clifton stated that his priorities over the next few weeks is just to tie up any lose ends. There will be a vacancy with the Human Resources position. It has been posted internally for one week. If there is not any interest staff will start advertising next week.

Councilmember Comments

Councilmember Cooper commented on the upcoming Delta County Economic Development annual meeting on April 20th, 2015.

Councilmember Penick and Raley commended Justin Clifton for his time with the City of Delta.

Mayor Sisson also thanked Mr. Clifton.

Regular Meeting, Delta City Council, March 17, 2015 (cont.)

Executive Session

It was moved by Councilmember Cooper and seconded by Councilmember Jurca to convene an Executive Session for a conference with the City Attorney for the purpose of receiving legal advice on specific legal questions under CRS Section 24-6-402(4)(b) and for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under CRS Section 24-6-402(4)(e). All in favor, motion carried. All in favor motion carried.

At 7:30 p.m., Mayor Sisson recessed the Regular Meeting and convened the Executive Session.

At 7:44 p.m., the Mayor reconvened the Regular Meeting and announced that the Executive Session had been concluded. He stated that in addition to himself, the participants in the Executive Session were Councilmembers Mary Cooper, Robert Jurca, Ray Penick and Bill Raley, as well as City Manager Justin Clifton, City Attorney David McConaughy and Community Development Director Glen Black., For the record, the Mayor asked any person participating in the Executive Session who believed that any substantial discussion of any matters not included in the motion to go into Executive Session occurred during the Executive Session in violation of the Open Meetings Law, to state his or her concerns for the record. No concerns were stated.

Approval of Settlement Agreement with Hamon

It was moved by Councilmember Jurca and seconded Councilmember Cooper to accept the change order request #34 final settlement agreement with Hamon Contractors, Inc. dated March 17, 2015. All in favor, motion carried.

The meeting was adjourned at 7:45 p.m.

/s/ Jolene E. Nelson
Jolene E. Nelson, CMC, City Clerk

Item D:

Citizen Comments



MEMO

To: Mayor and City Council
From: Jolene E. Nelson, City Clerk
Date: April 7, 2015
Subject: Hotel and Restaurant Liquor License;
Angela M. Lindberg dba Opa's



Office of the City Clerk

Recommendation:

Staff recommends approval of the Hotel and Restaurant Liquor License for Angela M. Lindberg dba Opa's located at 440 Main Street.

Background:

Angela M. Lindberg dba Opa's has applied for a Hotel and Restaurant Liquor License. The application was filed on February 18, 2015 and is complete. An investigation on the premises was conducted and it is determined that the license locations will be compliant with the liquor laws. Ms. Lindberg's fingerprints were submitted to CBI for a background investigation, which has turned up no criminal history. The building at 440 Main Street is currently being renovated. The building is owned by Ms. Lindberg.

A notice of public hearing was posted at the site and was also published in the Delta County Independent as required by law. The clerk has not received any comments.

Cost:

There is no cost to the City. The applicant has paid the \$1200 fee to the State and the City fee of \$250 and the City's \$400 liquor occupation tax.

Alignment With Strategic Planning:

Per Delta Municipal Code 5.10.010 "the Delta City Council is hereby designated the local licensing authority for the purposes of exercising the duties and powers provided for in the Colorado Beer Code and the Colorado Liquor Code."

Actions To Be Taken if Approved:

The Mayor and Clerk will sign the applications, and the Clerk will mail them to the State, who will review them and issue the permits.

Colorado Liquor Retail License Application

New License
 New-Concurrent
 Transfer of Ownership

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: www.colorado.gov/enforcement/liquor
- Local License Fee \$ _____

1. Applicant is applying as a/an Individual

Corporation Limited Liability Company
 Partnership (includes Limited Liability and Husband and Wife Partnerships) Association or Other

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation FEIN Number
Angela M. Lindberg 47-2705116

2a. Trade Name of Establishment (DBA) State Sales Tax Number Business Telephone
Opa's 30299009 (970) 874-7316

3. Address of Premises (specify exact location of premises, include suite/unit numbers)
440 Main

City *Delta* County *Delta* State *CO* ZIP Code *81416*

4. Mailing Address (Number and Street) City or Town State ZIP Code
440 Main *Delta* *CO* *81416*

5. Email Address
emeraldkey@aol.com

6. If the premises currently has a liquor or beer license, you must answer the following questions

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date

Section A Nonrefundable Application Fees	Section B (Cont.) Liquor License Fees
<input type="checkbox"/> Application Fee for New License..... \$ 600.00	<input type="checkbox"/> Liquor Licensed Drugstore (City)..... \$227.50
<input checked="" type="checkbox"/> Application Fee for New License w/Concurrent Review \$ 700.00	<input type="checkbox"/> Liquor Licensed Drugstore (County) \$312.50
<input type="checkbox"/> Application Fee for Transfer \$ 600.00	<input type="checkbox"/> Manager Registration - H & R \$ 75.00
	<input type="checkbox"/> Manager Registration - Tavern \$ 75.00

Section B Liquor License Fees	
<input type="checkbox"/> Add Optional Premises to H & R.....\$100.00 X _____ Total _____	<input type="checkbox"/> Master File Location Fee\$ 25.00 X _____ Total _____
<input type="checkbox"/> Add Related Facility to Resort Complex.....\$ 75.00 X _____ Total _____	<input type="checkbox"/> Master File Background\$250.00 X _____ Total _____
<input type="checkbox"/> Arts License (City)\$308.75	<input type="checkbox"/> Optional Premises License (City).....\$500.00
<input type="checkbox"/> Arts License (County)\$308.75	<input type="checkbox"/> Optional Premises License (County)\$500.00
<input type="checkbox"/> Beer and Wine License (City).....\$351.25	<input type="checkbox"/> Racetrack License (City).....\$500.00
<input type="checkbox"/> Beer and Wine License (County).....\$436.25	<input type="checkbox"/> Racetrack License (County).....\$500.00
<input type="checkbox"/> Brew Pub License (City)\$750.00	<input type="checkbox"/> Resort Complex License (City).....\$500.00
<input type="checkbox"/> Brew Pub License (County).....\$750.00	<input type="checkbox"/> Resort Complex License (County).....\$500.00
<input type="checkbox"/> Club License (City)\$308.75	<input type="checkbox"/> Retail Gaming Tavern License (City)\$500.00
<input type="checkbox"/> Club License (County)\$308.75	<input type="checkbox"/> Retail Gaming Tavern License (County)\$500.00
<input checked="" type="checkbox"/> Hotel and Restaurant License (City)\$500.00	<input type="checkbox"/> Retail Liquor Store License (City).....\$227.50
<input type="checkbox"/> Hotel and Restaurant License (County)\$500.00	<input type="checkbox"/> Retail Liquor Store License (County).....\$312.50
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City)\$600.00	<input type="checkbox"/> Tavern License (City)\$500.00
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises(County).....\$600.00	<input type="checkbox"/> Tavern License (County).....\$500.00
	<input type="checkbox"/> Vintners Restaurant License (City)\$750.00
	<input type="checkbox"/> Vintners Restaurant License (County).....\$750.00

Questions? Visit: www.colorado.gov/enforcement/liquor for more information

Do not write in this space - For Department of Revenue use only

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total
			\$

7. Is the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager under the age of twenty-one years? Yes No

8. Has the applicant (including any of the partners, if a partnership; members or manager if a limited liability company; or officers, stockholders or directors if a corporation) or manager ever (in Colorado or any other state):

(a) Been denied an alcohol beverage license?

(b) Had an alcohol beverage license suspended or revoked?

(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?

If you answered yes to 8a, b or c, explain in detail on a separate sheet.

9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.

10. Are the premises to be licensed within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?

Waiver by local ordinance? or
Other: _____

11. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.

12. Does the Applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement?

Ownership | Lease | Other (Explain in Detail) _____

a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:

Landlord	Tenant	Expires

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 13.

c. Attach a diagram and outline or designate the area to be licensed (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

13. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies), will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business. Attach a separate sheet if necessary.

Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

Attach copies of all notes and security instruments, and any written agreement, or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

14. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:
Has a local ordinance or resolution authorizing optional premises been adopted?

Number of additional Optional Premise areas requested. (See license fee chart)

15. Liquor Licensed Drug Store applicants, answer the following:
(a) Does the applicant for a Liquor Licensed Drug Store have a license issued by the Colorado Board of Pharmacy?

If "yes" a copy of license must be attached.

16. Club Liquor License applicants answer the following: Attach a copy of applicable documentation

(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?

(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?

(c) How long has the club been incorporated?

(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?

17. Brew-Pub License or Vintner Restaurant Applicants answer the following:
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)

18a. For all on-premises applicants.
(If this is an application for a Hotel, Restaurant or Tavern License, the manager must also submit an individual History Record - DR 8404-I)

Last Name of Manager <i>Lindberg</i>	First Name of Manager <i>Angela</i>
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18b. Does this manager acts as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.

Type of License	Account Number

19. Tax Distraint Information. Does the applicant or any other person listed on this application and including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?

If yes, provide an explanation and include copies of any payment agreements.

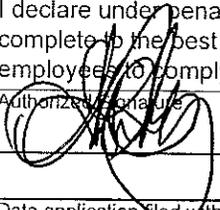
20. **If applicant is a corporation, partnership, association or limited liability company, applicant must list all officers, directors, general partners, and managing members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% of more in the applicant. All persons listed below must also attach form DR8404-I (Individual History Record), and submit fingerprint cards to their local licensing authority.

Name	Home Address, City & State	DOB	Position	% Owned

** Limited Liability Companies and Partnerships - 100% of ownership must be accounted for on question #20
 ** Corporations - The President, Vice-President, Secretary and Treasurer must be accounted for on question #20 (Include ownership percentage if applicable)

Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature:  Printed Name and Title: Angela Lindberg (owner) Date: 02-18-15

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority: 2/18/2015 Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application 12-47-311 (1) C.R.S.):

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) has:

- Been fingerprinted
- Been subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with, and aware of, liquor code provisions affecting their class of license

- (Check One)
- Date of inspection or anticipated date _____
 - Will conduct inspection upon approval of state licensing authority

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S. Therefore, this application is approved.

Local Licensing Authority for		Telephone Number	<input type="checkbox"/> Town, City <input type="checkbox"/> County	
Signature	Print	Title	Date	
Signature (attest)	Print	Title	Date	

**BEFORE THE CITY COUNCIL AS
LIQUOR LICENSING AUTHORITY
FOR THE CITY OF DELTA, COLORADO**

IN THE MATTER OF THE APPLICATION)	
FOR A Hotel/Restaurant Liquor License)	PRELIMINARY
BY Angela Lindberg,)	FINDINGS AND REPORT
DBA Opa's)	

TO THE APPLICANTS ABOVE-NAMED AND OTHER
INTERESTED PARTIES; GREETINGS:

You are hereby advised that with regard to your application for a Hotel and Restaurant Liquor License, an investigation has been made, and based on the results thereof, the following has been determined:

- (1) There has not been a denial of an application by the Liquor Licensing Authority, the City Council of the City of Delta, for a Hotel and Restaurant Liquor License at the location for which you make application for the reason that the reasonable requirements of the neighborhood were satisfied by the existing outlets.
- (2) It appears from evidence submitted by you that you will be entitled to possession of the premises where you propose to exercise the license applied for.
- (3) Selling spirituous liquors in the manner proposed in your application is not in violation of the zoning, fire, and other applicable laws of the City of Delta, or any laws, rules or regulations of the City/County Health Department or the laws of the State of Colorado.
- (4) The property where you propose to exercise the privilege of selling liquors does not appear to be within 500 feet from any public or parochial school or the principal campus of any college, university or seminary.
 - a. The location is 440 Main Street, Delta, Colorado.

(5) Within the corporate limits of the City of Delta, there are the following existing liquor outlets:

Beer and Wine	1
Club	1
Hotel & Restaurant	9
Retail Liquor Store	5
Tavern	3

(6) Has the applicant been convicted of a felony in Colorado or elsewhere within fifteen years prior to the filing of this application?

A background investigation was completed on Angela Lindberg and no records were found.

A public hearing on your application will be held at the City Council Chambers, 360 Main Street, on the 7th day of April, 2015, at 7:00 p.m. At said hearing, you will have the opportunity to be heard regarding all matters touching upon your application, including all matters set forth herein, and to present evidence, including petitions, in support of your application.

Dated the 20th day of March, 2015.

FOR THE CITY COUNCIL OF THE CITY OF DELTA



Jolene E. Nelson, CMC, City Clerk

MEMO

To: Mayor and City Council
From: Jolene E. Nelson, City Clerk
Date: April 7, 2015
Subject: Retail Liquor Store Renewal; D&B Liquors



Office of the City Clerk

Recommendation:

Staff recommends approval of the retail liquor store renewal for D&B Liquors located at 201 Main Street. The Police Department's report and recommendation is attached.

Background:

The current liquor license expires May 14, 2015.

Cost:

There is no cost to the City to renew this license. The applicant has paid the \$327.50 renewal fee to the State, and the City renewal fee of \$97.50 as well as the City's \$300.00 liquor occupation tax.

Alignment With Strategic Planning:

Per Delta Municipal Code 5.10.010 "the Delta City Council is hereby designated the local licensing authority for the purposes of exercising the duties and powers provided for in the Colorado Beer Code and the Colorado Liquor Code."

Actions To Be Taken if Approved:

The Mayor and Clerk will sign the renewal application, and the Clerk will mail it to the State, who will review the application and issue the State license.

LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

D&B LIQUORS
 201 MAIN ST
 DELTA CO 81416-1814

Fees Due	
Renewal Fee	\$227.50
Storage Permit \$100 x <u>1</u>	<u>100.00</u>
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
Amount Due/Paid	\$ 327.50

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name D&B LIQUORS INC		DBA D&B LIQUORS		
Liquor License # 12360240000	License Type Liquor Store (city)	Sales Tax License # 12360240000	Expiration Date 5/14/2015	Due Date 3/30/2015
Street Address 201 MAIN ST DELTA CO 81416-1814				Phone Number (970) 874 7280
Mailing Address 201 MAIN ST DELTA CO 81416-1814				
Operating Manager Keith Johse	Home Address 8689 2100 Rd Austin Co 81410			Phone Number 778-7980

1. Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *If rented, expiration date of lease 2020
2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO

NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.

3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
6. **SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Charles Keith Johse	Title V-pres - sec - treas.
Signature Charles K Johse	Date 3-23-15

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For	Date
Signature	Title
	Attest



360 Main St. • Delta, Colorado 81416 • Phone (970) 874-7566 • Fax (970) 874-8776

LIQUOR LICENSE RENEWAL RECOMMENDATION

To: City Council

Re: Application of D&B Liquors, Inc.
DBA: D&B Liquors

The report sheets show the following liquor violations for the past twelve months for the above named applicant:

No liquor violations in the past twelve months.

Remarks:

Police Department recommendation:

Recommend liquor license renewal.

Robert Thomas, Chief of Police

MEMO

To: Mayor and City Council
From: Jolene E. Nelson, City Clerk
Date: April 7, 2015
Subject: Hotel/Restaurant Liquor License Renewal;
The Stockyards Restaurant



Office of the City Clerk

Recommendation:

Staff recommends approval of the Tavern License Renewal for Stockyards Restaurant Inc. dba The Stockyards Restaurant located at 1205 Main Street. The Police Department's report and recommendation is attached.

Background:

The current liquor license expires April 9, 2015.

Cost:

There is no cost to the City. The applicant has paid the \$500 renewal fee to the State and the City renewal fee of \$150 as well as the City's \$400 liquor occupation tax.

Alignment With Strategic Planning:

Per Delta Municipal Code 5.10.010 "the Delta City Council is hereby designated the local licensing authority for the purposes of exercising the duties and powers provided for in the Colorado Beer Code and the Colorado Liquor Code."

Actions To Be Taken if Approved:

The Mayor and Clerk will sign the applications, and the Clerk will mail them to the State, who will review them and issue the permits.

LIQUOR OR 3.2 BEER LICENSE RENEWAL APPLICATION

Fees Due	
Renewal Fee	500.00
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Amount Due/Paid	500.00

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

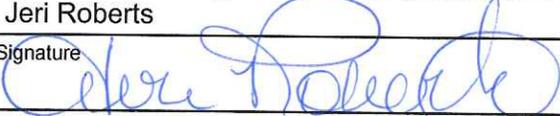
RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name Stockyards Restaurant, Inc.		DBA The Stockyards Restaurant		
Liquor License # 28440860000	License Type Hotel/Restaurant (City)	Sales Tax License # 28440860000	Expiration Date 04/09/2015	Due Date 02/23/2015
Street Address 1205 Main Street, Delta, CO 81416-1850				Phone Number (970) 874-4222
Mailing Address 1205 Main Street, Delta, CO 81416-1850				
Operating Manager Jeri Roberts	Home Address [REDACTED] 5275 Hwy 348, Delta, CO 81416	Phone Number (970) 874-4222		

1. Do you have legal possession of the premises at the street address above? YES NO
 Is the premises owned or rented? Owned Rented* *If rented, expiration date of lease _____
2. Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. YES NO
NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS: If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
3. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. YES NO
4. Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. YES NO
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. YES NO
6. **SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and **attach a copy of their driver's license, state-issued ID or valid passport.**

AFFIRMATION & CONSENT

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business Jeri Roberts	Title President
Signature 	Date 4-1-15

REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

Local Licensing Authority For	Date
Signature	Title
	Attest



360 Main St. • Delta, Colorado 81416 • Phone (970) 874-7566 • Fax (970) 874-8776

LIQUOR LICENSE RENEWAL RECOMMENDATION

To: City Council

Re: Application of Stockyards Restaurant, Inc.
DBA: The Stockyards Restaurant

The report sheets show the following liquor violations for the past twelve months for the above named applicant:

No liquor violations in the past twelve months.

Remarks:

Police Department recommendation:

Recommend liquor license renewal.

Robert Thomas, Chief of Police

MEMO

To: Mayor and City Council
From: Jolene E. Nelson, CMC, City Clerk
Date: April 7, 2015
Subject: Colorado Parks and Wildlife Special Event Request



Office of the City Clerk

Recommendation:

Staff recommends approving a special event permit to allow the Colorado Parks and Wildlife to use their portable trailer used for hunter safety training.

Background:

For the past four years the Colorado Parks and Wildlife has requested approval to use their portable trailer within City of Delta to conduct hunter safety classes with the use of their portable trailer. Council has approved those requests. This is a good opportunity to learn about gun safety and how to fire a weapon in a safe and secure manner.

Cost:

There is no cost to the City .

Alignment With Strategic Planning:

The Delta Municipal Code 9.04.100 Discharge of guns prohibited states the following “C. This section shall not apply when a permit has been granted by the City Council for a special event. No permit shall be granted unless the Council determines that no nuisance, unreasonable noise or safety hazard will be created.”

Actions To Be Taken if Approved:

If Council approves the special event permit staff will notify the Colorado Parks and Wildlife.

MEMO

To: City Council
From: Steve Glammeyer, Utilities/PW Director
Date: April 7, 2015
Subject: Upper White Ranch grazing lease



Utilities/Public Works Department

Recommendation:

It is recommended that the Council approve the lease agreement with Mr. Dan and Roy Long and Mr. Rolf Sanburg for the use of the Upper White Ranch property for grazing purposes.

Background:

The attached lease is for the use of the Upper White Ranch property for grazing purposes. We have historically had a lease agreement with the Longs and Sanburgs to use this land for this purpose. The current lease expired on November 30, 2014 and the new lease would start on June 1, 2015. Both parties would like to continue this lease for 2015. The lease provided anticipates keeping the lease amount at \$750.

Cost:

There is no cost to the City.

Alignment With Strategic Planning:

While we cannot find a clear statement covering City owned property and our strategic plan for it, we feel we should capture some revenue from the ownership of this property and this lease allows us to do that.

Actions To Be Taken if Approved:

The City Manager and each of the parties will need to sign the agreement for it to be in effect.

LEASE AGREEMENT

THIS LEASE AGREEMENT is made and entered into this ____ day of _____, 2015, by and between the City of Delta, Colorado, a municipal corporation, having a business address of 360 Main Street, Delta, Colorado 81416, (hereinafter referred to as "Lessor") and Dan Long, and Rolf Sanburg, (all of which are U. S. Forest Service point allotment permittees), of 1668 - 2020 Lane, Eckert, Colorado 81418 (hereinafter collectively referred to as "Lessee").

The Parties agree as follows:

1. Premises. On this date, Lessor has leased unto Lessee the real property described on Exhibit A attached hereto and incorporated herein by this reference. Lessee is accepting the Premises on an "as-is" basis in its current condition and without any representation or warranty from Lessor, including as to suitability for a particular use or purpose.

2. Term of Lease. The term of this lease shall commence on June 1, 2015, and end on November 30, 2015.

3. Rent Payable. Rent for the lease shall be paid by Lessee to Lessor in the lump sum amount of Seven Hundred Fifty Dollars (\$750.00) due on or before the commencement of the term, June 1, 2015.

4. Lessee Duties in Occupying Premises.

A. The Lessee further agrees that he will perform and carry out the stipulations below at Lessee's sole cost and expense:

- (1) To use the Premises only for livestock grazing as a livestock pasture and for no other purpose.
- (2) To maintain the forest boundary fence.
- (3) To prevent all unnecessary waste, or loss, or damage to the Premises and any property of the Lessor.
- (4) Lessee shall not remove or allow the removal of any fences, trees, shrubs or other improvements.
- (5) To comply with provisions of all applicable state, local and federal laws regarding the leased premises.
- (6) To avoid overgrazing and to use the premises in a good and farmlike manner consistent with BLM grazing requirements.

B. The Lessee further agrees, unless it shall first have obtained the written consent of the Lessor, not to erect or permit to be erected any fence, structure or building.

C. Any alteration, addition or improvement made by Lessee after any required consent by Lessor is given, and any fixtures installed as part thereof shall, at Lessor's option, become the property of the Lessor upon the expiration or other sooner termination of this lease; provided, however, that Lessor shall have the right to require Lessee to remove such fixtures at Lessee's cost on termination of this lease.

5. Surrender of Premises. At the expiration of the lease term, or upon earlier termination of this lease as hereinafter provided, Lessee shall surrender the leased premises in the condition in which the same existed at the beginning of the lease term, reasonable use, wear, and damage by the elements excepted.

6. Lessee Default. If the Premises shall be deserted or vacated, or if proceedings are commenced against Lessee in any Court under a bankruptcy act, or a Court appoints a trustee or receiver of Lessee's property either before or after the commencement of the lease term, or if there shall be a default in the performance of any other covenant, agreement, condition, rule or regulation herein contained or hereafter established on the part of Lessee for more than twenty (20) days after written notice of such default by Lessor, this lease may be declared null and void and Lessor shall have the right to reenter or repossess the Premises, either by force, summary proceeding, surrender or otherwise, and dispossess and remove therefrom the Lessee and other occupants thereof, and their effects, without liability to Lessor. In such case Lessor may, at its option, re-let the Premises, or any part thereof. Lessee hereby expressly waives service of notice of intention to reenter or of instituting legal proceedings to that end. Lessee waives and will waive all right to a trial by jury in any summary proceeding hereafter instituted by Lessor against Lessee in respect to the Premises.

7. Lessor's Right of Entry. Lessor and its representatives may enter the Premises at any reasonable time for the purpose of inspecting, performing any work which Lessor elects to undertake. Lessor reserves a right of ingress and egress to, from and across said lands.

8. Mineral Rights. Nothing in this lease shall confer upon the Lessee any right to oil, gas or minerals underlying the Premises. Such oil, gas and mineral rights are hereby reserved by the Lessor together with the full right to enter upon the Premises to bore, search, excavate, work, and remove the minerals, to deposit excavated rubbish, to pass over the Premises with vehicles, and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose. The Lessor agrees to release the Lessee from this Lease if and when the development of mineral resources interferes materially with the Lessee's opportunity to use the premises.

9. Lessor's Additional Reserved Rights. Lessor expressly reserves the following additional rights with respect to the Premises:

A. To sell all of the same to third parties of its choosing subject to the lease terms and conditions. Prior to such sale, Lessor may list and show the Premises for sale purposes.

B. To develop any portion of the Premises for such purposes as Lessor may deem necessary. For such purposes, Lessor may construct or modify roads, water lines, reservoirs, utility lines, ditches and irrigation systems. Lessor may conduct or allow such operations in any reasonable manner even if it materially interferes with Lessee's operations.

C. To terminate this lease for any reason prior to expiration of the lease terms; provided, however, that in the event of such premature termination, Lessee shall be permitted a period of thirty (30) days in which to remove its personal property including machinery, trailers, sheep pens and stored feed; and provided further that, in the event such premature termination occurs, Lessee shall be entitled to a prorata refund of rent actually paid to Lessor.

D. Lessor shall retain all hunting rights and may allow the public access to the Premises for hunting purposes.

E. Lessor shall have the right to operate, use, modify, improve, and maintain existing ponds, ditches, pipelines, reservoirs, and appurtenances on the Premises as it deems appropriate.

10. Compensation for Damage to Property. At the end of this lease, the Lessee shall pay to the Lessor a reasonable compensation for any damage for which the Lessee is responsible, after due allowance is made for damage resulting from ordinary wear and depreciation or from causes beyond the Lessee's control.

11. Insurance Provisions. Lessee shall carry any and all liability insurance that they deem necessary for the protection of their operations under this lease.

12. Indemnity and Waiver. Lessee assumes all risk, waives all claims and covenants not to sue Lessor for loss, theft, damage or destruction of property, and for bodily injury to persons, including death, in, upon or about the Premises from any cause whatsoever other than as a direct result of the negligent act or omission of Lessor, its employees, agents, or contractors. Lessee shall protect, defend, indemnify and hold Lessor (and Lessor's agents and employees) exempt and harmless from and on account of personal injury, loss of life, and all damage to, destruction, theft and loss of property, caused by or resulting from Lessee's use or occupancy of the Premises; and such indemnification shall include protection against all costs, attorney fees, expenses and liabilities incurred due to any claims, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any judgments, orders, decrees or liens resulting therefrom, and any fines levied by any authority for violation of any law, regulation or ordinance by virtue of Lessee's use and occupancy of the Premises or underlying land. Lessor (and its agents or employees) shall not be liable to Lessee (and its employees,

agents, contractors, guests, customers, invitees and licensees) for loss, theft, damage or destruction of property or for bodily injury including death.

13. Subletting. Lessee shall not assign, mortgage or encumber this lease, nor sublet nor permit the Premises, or any part thereof, to be used by another without the prior written consent of Lessor in each instance. If this lease is assigned or the Premises, or any part thereof, is sublet or occupied by anyone other than Lessee, Lessor may, upon any default by Lessee, collect rent from the assignee, sub-tenant or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant or the acceptance of the assignee, sub-tenant or occupant as tenant, or a release of the Lessee from the further performance. An assignment or subletting shall not be construed to relieve Lessee from obtaining the consent in writing of Lessor to any further assignment or subletting.

14. Binding Effect. All terms, covenants and conditions hereof shall be binding and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto, provided that nothing in this paragraph shall be deemed to permit any assignment, subletting, occupancy or use contrary to the provisions of paragraph 12 above.

15. Litigation Expenses and Attorney Fees. In case Lessor shall, without fault on its part, be made party to any litigation commenced by or against Lessee, Lessee shall pay all costs and reasonable attorney fees incurred by or against Lessor or in connection with such litigation and indemnify and save harmless Lessor for all liability incurred. Lessee shall also pay all costs incurred for Lessor's enforcement of any of the covenants, terms and provisions of this lease, and Lessor shall be entitled to reimbursement for those litigation costs and attorney fees.

16. Water Rights. Lessor reserves all water rights connected with the Premises.

17. Lease Renewal. This lease may be renewed only upon mutual written agreement of the parties and no holdover by Lessee shall be permitted.

18. Breach of Lease. Breach of this lease agreement by either party shall entitle the non-defaulting party to all consistent legal and equitable remedies afforded by Colorado law including particularly those expressed herein.

19. Taxes. The Lessor is exempt from ad valorem and other taxes. If any taxes are assessed as a result of this lease, they shall be paid by Lessee.

20. TABOR. No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate Lessor to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant by Lessor to or in aid of any person, company or corporation under applicable law.

21. Governmental Immunity. The Parties hereto understand and agree that the Lessor is relying on and does not waive or intend to waive by this Agreement or any provision hereof, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* as amended from time to time or otherwise available to the Lessor.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

LESSOR:
City of Delta, Colorado

LESSEE:

By: _____
City Manager

Dan Long

ATTEST:

City Clerk

Rolf Sanburg

Exhibit A

Upper White Ranch Only

The following described real estate located in Delta, Colorado, to wit:

Range 96, Township 13 South

Section 24 Lots 6 and 7
 NE¹/₄ of the SW¹/₄
 W¹/₂ of the SW¹/₄
 SE¹/₄ of the SW¹/₄

Section 25 W¹/₂ of the NW¹/₄
 NW¹/₄ of the NE¹/₄
 NE¹/₄ of the NW¹/₄

Section 26 N¹/₂ of the NW¹/₄
 SE¹/₄ of the NW¹/₄
 NE¹/₄

MEMO

To: Mayor, City Council & City Manager
From: Glen L. Black *GLB*
Date: April 7, 2015
Subject: Hawkins Indemnity Agreement RE: Access for Mining Operations



Community Development

Recommendation: Consider approving the indemnity agreement executed by the Hawkins and prepared by City Attorney, David McConaughy indemnifying the City of Delta against any claims or demands by the West Winds Home Owner's Association or any other third party disputing the rights of the Hawkins or the public to traverse and utilize Falcon Road, or any portion thereof, to provide access from U.S. Highway 50 to Hawkins Subdivision One, Lot 1.

Background: The Planning Commission held a hearing and approved a conditional use on July 7, 2014 to allow mining operations on the property with the following conditions: the operations be according to State regulations and that staff receive a copy of the State mining permit before mineral extraction and processing commences, access agreements from CDOT and West Winds Subdivision and/or Delta County and any other conditions.

The City is in receipt of a letter from the Westwinds Association, Inc. (the "Association") dated January 26, 2015, refusing to acknowledge or agree to any existing or new access over Falcon Road to the Property.

The Hawkins attorney has provided a copy of a deed to the Association for Falcon Road which purports to reserve access rights to the Applicant notwithstanding any objection from the Association.

The recorded final plat for Westwinds Planned Unit Development includes a certificate of dedication indicating that the roads depicted thereon, including Falcon Road, were dedicated in 1998 as public rights of way to be privately maintained.

The Westwinds Planned Unit Development including the roads therein were subsequently annexed to the City of Delta.

The City takes the position that Falcon Road is a public right of way and is therefore willing to waive any requirement for an access agreement from the Association, subject to the terms of the agreement.

Cost: There is no cost to the City.

Alignment With Strategic Planning: The execution of this agreement indemnifies and holds harmless the City.

Actions To Be Taken if Approved: If approved by the Council, approve that the Mayor sign the Indemnity Agreement as presented and signed by the Hawkins.

INDEMNITY AGREEMENT

This Agreement is made and entered into this 2 day of April, 2015, by and between JACK L. HAWKINS and CAROLYN HAWKINS (collectively "Applicant") and THE CITY OF DELTA, COLORADO, a Colorado home rule municipality.

WITNESSETH:

WHEREAS, Applicant is the owner of certain real property in the City of Delta described as Hawkins Subdivision One, Lot 1 (the "Property"); and

WHEREAS, Applicant submitted an application to the City of Delta Planning Commission for approval of a conditional use to allow mineral extraction and processing on the Property; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on July 7, 2014, to consider the application and passed a motion for approval, subject to certain conditions including but not limited to receipt of "access agreements" from CDOT and Westwinds Subdivision [a/k/a Westwinds Planned Unit Development] and/or Delta County; and

WHEREAS, the City is in receipt of a letter from the Westwinds Association, Inc. (the "Association") dated January 26, 2015, refusing to acknowledge or agree to any existing or new access over Falcon Road to the Property; and

WHEREAS, the Applicant's attorney has provided a copy of a deed to the Association for Falcon Road which purports to reserve access rights to the Applicant notwithstanding any objection from the Association; and

WHEREAS, the recorded final plat for Westwinds Planned Unit Development includes a certificate of dedication indicating that the roads depicted thereon, including Falcon Road, were dedicated in 1998 as public rights of way to be privately maintained; and

WHEREAS, the Westwinds Planned Unit Development including the roads therein were subsequently annexed to the City of Delta; and

WHEREAS, the City takes the position that Falcon Road is a public right of way and is therefore willing to waive any requirement for an access agreement from the Association, subject to the terms of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The preceding recitals are incorporated by reference as material acknowledgments and representations of the parties, except that nothing herein shall be construed as a legal opinion or title opinion by the City as to the status of Falcon Road.

2. Indemnity by Applicant. The Applicant, on behalf of themselves and any successors or assigns holding any title interest in and to the Property, hereby agree to indemnify and hold harmless the City against any claims or demands by the Association or any other third party disputing the rights of the Applicant or the public to traverse and utilize Falcon Road, or any portion thereof, to provide access from U.S. Highway 50 to the Property. In the event of any such claim against the City, the City shall promptly notify the Applicant, and the parties shall cooperate in the defense of such claims at the Applicant's expense, including legal fees and costs that may be incurred by the City.

3. Waiver. The City hereby waives any condition of the Planning Commission requiring the Applicant to produce an access agreement with the Association and CDOT with respect to the conditional use permit for mineral extraction and processing on the Property. All other conditions of approval remain in effect.

4. Miscellaneous. This is the entire agreement of the parties concerning the subject matter hereof and supersedes any prior understandings or agreements, written or verbal. This Agreement shall not be modified except in writing signed by all parties. In the event that any provision hereof is found to be unenforceable, all remaining provisions shall remain in effect. In the event of any breach of this Agreement by the Applicant, the City shall be entitled to recover its attorney fees and costs in addition to all other remedies available at law or equity. Nothing herein shall be construed as a waiver of the City's governmental immunity. This Agreement shall be binding on the successors and assigns of the Parties, shall be deemed a covenant running with title to the Property, and shall be recorded in the real estate records of Delta County, Colorado.

SO AGREED as of the date first written above.

Jack L. Hawkins
Jack L. Hawkins

Carolyn K. Hawkins
Carolyn Hawkins

CITY OF DELTA

By: _____

Attest: _____

City Clerk

Items: K, L & M

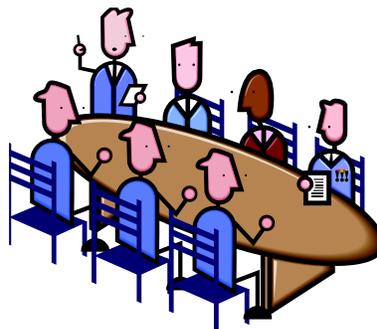
Attorney Comments



City Manager Comments



Councilmember Comments



Item N:

Executive Session:

For discussion of a personnel matter under CRS Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees.

Resolution #1, 2015

APPOINTING GLEN L. BLACK AS
INTERIM CITY MANAGER

WHEREAS, On March 17, 2015, the City Council named Glen L. Black Interim City Manager. Mr. Black will assume the position of Interim City Manager on April 8, 2015 following the resignation of Justin Clifton on April 7, 2015.

WHEREAS, Mr. Black will serve as the Interim City Manager until such time as a permanent replacement for Mr. Clifton is named.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DELTA, that Glen L. Black is appointed as Interim City Manager for the City of Delta, including terms of employment as approved by City Council or its designee.

Adopted this 7th day of April, 2015.

Mayor

Attest:

City Clerk