

CARSON CITY BOARD OF SUPERVISORS
Minutes of the June 4, 1998, Meeting
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A regularly scheduled meeting of the Carson City Board of Supervisors was held on Thursday, June 4, 1998, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 8:30 a.m.

PRESENT:	Ray Masayko	Mayor	
	Tom Tatro		Supervisor, Ward 3
	Greg Smith		Supervisor, Ward 1
	Jon Plank		Supervisor, Ward 2
	Kay Bennett		Supervisor, Ward 4
STAFF PRESENT:	John Berkich	City Manager	
	Rod Banister		Sheriff
	Dan St. John		Deputy City Manager
	Mary Walker		Finance Director
	William Naylor		Information Services Director
	John Iratcabal		Purchasing Director
	Paul Lipparelli		Chief Deputy District Attorney
	Tim Homann		Deputy Public Works Director
	John Flansberg		Streets Superintendent
	Vince Pirozzi		EMS Battalion Chief
	Katherine McLaughlin		Recording Secretary
	Fran Smith		Deputy Clerk
	Beth Huck		Business License Compliance Officer

(B.O.S. 6/4/98 Tape 1-0001.5)

NOTE: Unless otherwise indicated, each item was introduced by staff's reading/outlining/clarifying the Board Action Request and/or supporting documentation. Staff members present for each Department are listed under that Department's heading. Any other individuals who spoke are listed immediately following the item heading. A tape recording of these proceedings is on file in the Clerk-Recorder's office. This tape is available for review and inspection during normal business hours.

CALL TO ORDER, ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE - Mayor Masayko convened the meeting at 8:30 a.m. Roll call was taken. The entire Board was present constituting a quorum. Rev. Al Tilstra of the Seventh Day Adventist Church gave the Invocation. Mayor Masayko lead the Pledge of Allegiance.

CITIZEN COMMENTS (1-0025.5) - None.

1. APPROVAL OF MINUTES - May 5, 1998, and May 13, 1996 (1-0027.5) - Supervisor Smith moved to approve the Minutes as presented. Supervisor Bennett seconded the motion. Motion carried 5-0.

LIQUOR AND ENTERTAINMENT BOARD (1-0042.5) - Mayor Masayko recessed the Board of Supervisors session and immediately reconvened the session as the Liquor and Entertainment Board. The entire Board was present including Sheriff Banister, constituting a quorum.

2. TREASURER - Business License Compliance Officer Beth Huck - ACTION ON A BEER AND WINE LICENSE FOR CARSON CITY RECREATION DEPARTMENT, JOEL JAMES DUNN, LIQUOR LICENSE MANAGER (1-0048.5) - Mr. Dunn indicated he was familiar with Nevada Liquor Laws and that his employees would receive training in them. Clarification indicated that only beer will be served at this time. Wine may be served at some future date. The license will be issued for both. Member Smith moved that the Liquor and Entertainment Board approve a beer and wine license for Carson City Recreation Department with Joel James Dunn acting as the Liquor License Manager pursuant to Carson City Municipal Code 4.13.100 with the fiscal

impact of \$500 investigation fee, \$500 new fee, and a \$150 quarterly fee. Member Plank seconded the motion. Member Banister noted the favorable Sheriff's report. The motion was voted and carried 6-0.

BOARD OF SUPERVISORS (1-0081.5) - There being no other matters for consideration as the Liquor and Entertainment Board, Chairperson Masayko adjourned the Liquor and Entertainment Board and immediately reconvened the session as the Board of Supervisors. The entire Board was present constituting a quorum.

3. CONSENT AGENDA (1-0087.5)

A. TREASURER - ACTION ON PARTIAL REMOVAL AND REFUND OF 1997-1998 REAL PROPERTY TAXES FOR APN 10-271-21, 10-072-06, 10-121-33, and 10-121-34 DUE TO UNITED STATES OF AMERICA ACQUISITION OF PROPERTY

B. INTERNAL AUDITOR - ACTION TO APPROVE CHECK DISBURSEMENT REGISTER FOR THE MONTHS OF JULY 1997 THROUGH MARCH 1998

C. CITY MANAGER

i. ACTION ON APPROVAL OF LEASE BETWEEN DAVID H. BOWERS REVOCABLE TRUST AND CARSON CITY FOR A LEASE OF PROPERTY AT 675 FAIRVIEW DRIVE, SUITES 224 THROUGH 229A, 247 AND 248 FOR USE BY THE CITY OF CARSON CITY COOPERATIVE EXTENSION

ii. ACTION ON APPROVAL OF LEASE BETWEEN FRANCENE GAIL MERTINS FAMILY TRUST AND CARSON CITY FOR LEASE OF PROPERTY AT 111 WEST TELEGRAPH STREET, SUITE 100 FOR USE BY THE DISTRICT ATTORNEY

iii. ACTION ON APPROVAL OF LEASE BETWEEN FRANCENE GAIL MERTINS FAMILY TRUST AND CARSON CITY FOR LEASE OF PROPERTY AT 111 WEST TELEGRAPH STREET, SUITE 101 FOR USE BY THE JUSTICE COURT

D. PUBLIC WORKS DEPARTMENT - ACTION ON APPROVAL OF A WESTERN NEVADA DEVELOPMENT DISTRICT FLOOD PLANNING PROGRAM GRANT APPLICATION

E. PURCHASING DIRECTOR

i. ACTION ON CONTRACT NO. 9798-259 - LONE MOUNTAIN CEMETERY RECLAIMED WATER EXTENSION (AWARD)

ii. ACTION ON CONTRACT NO. 9798-276 - APPROVAL OF PAYMENT FOR A RENTED BULL DOZER

iii. ACTION ON CONTRACT NO. 211 - BREWERY ARTS CENTER PHASE III, REQUEST FOR FINAL PAYMENT

iv. ACTION ON CONTRACT NO. 9798-260 - IBM HARDWARE MAINTENANCE

v. ACTION ON CONTRACT NO. 9697-14 - 1996 STREET OVERLAY PROJECT, REQUEST FOR FINAL PAYMENT

vi. ACTION ON CONTRACT NO. 9798-274 - SURPLUS AND DISPOSAL OF AS/400 EQUIPMENT - Deputy District Attorney Lipparelli pulled Items C. ii. and iii. for discussion. Supervisor Smith moved to approve the Board of Supervisors Consent Agenda as presented with the exception of the two leases between Francene Gail Mertins Family Trust and Carson City for the lease of property at 111 West Telegraph, Suites 100 and 101. Supervisor Tatro seconded the motion. Motion carried 5-0.

C. ii. AND iii. (1-0125.5) - Mr. Lipparelli explained revisions on pages 10 and 11 and gave the revised contracts to Recording Secretary McLaughlin. Discussion indicated the facilities will be occupied by the City Departments until the new Public Safety Complex is completed next Spring. Payments and lease monitoring is conducted by the leasing department. Unfortunately, the City's copy of the lease had been mislaid and the property management firm had overlooked the original leases' expiration dates. The same firm also manages the Cooperative Extension's lease. Supervisor Bennett suggested a staff member be assigned to track these leases. Supervisor Tatro moved that the Board approve the lease between Francene Gail Mertins Family Trust and Carson City for lease of property at 111 Telegraph Street, Suite 100, for use by the District Attorney, fiscal impact is \$35,897.76 per year from the building rental account of the District Attorney's budget, with the replacement of pages 10 and 11 as presented by the District Attorney and the addition of Schedule 1. Supervisor Plank seconded

the motion. Motion carried 5-0.

(1-0202.5) Supervisor Tatro moved that the Board approve a lease between Francene Gail Mertins Family Trust and Carson City for the lease of property at 111 West Telegraph Street, Suite 101, for use by the Justice Court, fiscal impact is \$13,214.40 per year from building rental account of the Justice Court budget, with the changes of the insertion of replacement pages 10 and 11 and the addition of Schedule 1, as presented by the District Attorney. Supervisor Plank seconded the motion. Motion carried 5-0.

4. BOARD OF SUPERVISORS

A. ACTION TO APPROVE LETTER OF SUPPORT TO THE BUREAU OF LAND MANAGEMENT REGARDING PLANS FOR THE PINE NUT MOUNTAIN RANGE (1-0210.5) - Parks and Recreation Director Steve Kastens - Discussion between the Board and Mr. Kastens explored the reasons the Carson River Advisory Committee (CRAC) had closed the area between the powerline road and River to all OHV users. Registered and licensed vehicles could continue to use the designated roadways and established trails. The term "OHV" was explained. Mayor Masayko voiced his objection to the closure of established roadways, trails, and other accesses to the River to all quad-runners, mopeds, etc. Mr. Kastens indicated that he felt these vehicles had to be licensed, however, would check the CRAC Master Plan and CRAC's intent. Comments also explained the areas which CRAC had closed and that proposed by BLM to be closed. The public process used by BLM was questioned. Mr. Kastens described the public process used by CRAC. Supervisor Plank explained his contact with CRAC Chairperson Mark Kimbrough regarding the contact between the Committee and the motorcycle enthusiasts. Supervisor Plank also explained contact from a Mr. Dart about his involvement with organized OHV events in the Pine Nuts. He had read/faxed copies of the CRAC Master Plan and the proposed letter to Mr. Dart but had not received a response. He also pointed out that BLM could ignore the Board's recommendations. The proposed letter is only conveying the information contained in the Master Plan and requesting an extension of 60 days to the public hearing process. Mayor Masayko explained his desire to review the details behind the Master Plan relating to the OHVs. Mr. Kastens agreed to provide this information.

(1-0398.5) Bill Dart briefly described his employment, residency in Lake Tahoe, and his involvement with motorcycle clubs, BLM and its land use issues related to OHVs and the Pine Nuts. He had purportedly submitted a letter regarding some suggested changes to the BLM plan. (A copy was included with the Board packet.) Reasons for these suggestions were explained. He recommended changing the term "designated roadways" to "designated routes". He felt that natural events are the major cause of sediment/erosion problems and not the OHVs. He suggested amending Recommendation No. 4 to include at the end "in residential areas that the use of the non-registered vehicles be prohibited". He agreed that the Carson River corridor itself was privately owned. The area between the powerline roadway and the River is accepted by the riders as the designated restricted area. He agreed to restrict travel to designated routes between the powerline and ridge. Goal No. 3 should be dropped due to the feeling that there is no substantiated evidence that OHVs had caused deterioration of the area. Science purportedly supported the finding that the trails deteriorate due to the layout and not the use. He also noted that the BLM plan would eliminate his event(s) and requested that it/they be allowed to continue. The northern portion of the area used by the events had been studied and environmental documents could be provided to support their position that deterioration is not caused by OHV usage. Economic impacts generated by the events were cited to support his request that they be allowed to continue.

Mayor Masayko indicated that the recommended changes to the Master Plan could not be considered at this time as the Plan had already been adopted by the Board and Committee. An amendment would have to be requested from the Committee. The agenda was explained. He encouraged Mr. Dart to contact BLM and to keep the Board posted on the results. The Board could consider his requests for the area east of the powerline road if the public input period is extended.

Supervisor Bennett expressed her recognition of AMA's prospective, however, as a member of both the Board and the Carson Subconservancy and due to her work to establish the Carson River Advisory Committee, she intended

to continue the fight to protect the watershed. Motorcycles, automobiles, horses, etc., are impacting it. This impact is, specifically, created by the indiscriminate use of OHVs, etc., and is definitely felt when a storm occurs. This issue had been discussed for months at the Committee meetings. The plan had been well thought out and is sound. She recognized the economic potential major recreational events may create for the area. She also questioned the expense of such events. She would continue to fight to preserve the watershed. She then introduced CRAC Chairperson Kimbrough, who was in attendance. Mayor Masayko indicated that there would be a hearing on the CRAC Management Master Plan. Supervisor Plank thanked AMA for its information and CRAC for its work and suggested that CRAC revisit the issue. Mayor Masayko supported his recommendation and suggested that this occur in the next 60 days.

BLM Representative Arthur Callan indicated that BLM was considering extending the public hearing process for 60 days or re-issuing the proposed plan. A decision is to be made next week. A public notice regarding this decision is to be provided.

Supervisor Plank moved that the Board of Supervisors approve the transmittal of the correspondence from Mark Kimbrough and its attachments and the letter from the Mayor asking for the extension of the public comment period for 60 days to the Bureau of Land Management. Supervisor Smith seconded the motion. Motion carried 5-0. Mayor Masayko thanked Messrs. Dart, Kimbrough, and Callan for attending. Additional discussions will occur on this subject. They were requested to keep the Board informed about the progress.

11. INTERNAL AUDITOR (1-0645.5)

- A. STATUS REPORT OF FISCAL YEAR 97-98 AUDIT PROJECTS**
- B. CLOSED SESSION - ACTION TO RECESS INTO CLOSED SESSION PURSUANT TO NRS 241.030 TO CONSIDER THE PROFESSIONAL COMPETENCE OF THE INTERNAL AUDITOR**
- C. OPEN SESSION - ACTION REGARDING BOARD REVIEW OF THE INTERNAL AUDITOR'S PROFESSIONAL COMPETENCE AND SETTING OF COMPENSATION - Deferred to the next meeting.**

4. B. NON-ACTION ITEMS - INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS (1-0678.5) - Supervisor Plank reported on a meeting with the Parks and Recreation Department concerning adaptive programs for challenged individuals, the Senior Follies, a Youth Sports Association meeting regarding Sierra Pacific Power Company's proposal to run transmission lines across the Edmonds Sports Complex, the Company's commitment to analyze other options, Carson High School's Lady Senators Softball Team banquet, and announced Carson High School graduation activities and the agenda for the Convention and Visitors Bureau. He also expressed an intent to work with Mayor Masayko and the Fire Department on a potential ballot question. He indicated that he would miss the annual Western Nevada Development District meeting in Fallon and that Supervisor Smith had expressed an intent to attend in his place. He will be attending with Supervisor Bennett a staff meeting on Highways 395 and 50 beautification programs. Supervisor Smith reported on the Subconservancy meeting and its selection of an executive director, announced the June 17th at 6 p.m. RTC meeting, and described its agenda. He also urged drivers to be careful when driving on the streets as schools close tomorrow for the summer. Supervisor Bennett reported on the Tahoe Transportation District meeting and thanked Marc Reynolds and the Forest Service for their roles in the shuttle/transit program. She then reported on the Tahoe Conservation District, the Hospital Board meeting, the Hospital's need for a property manager and an enterprise fund for revenue generated from the lease of these properties, and the healthy communities initiative. Supervisor Tatro reiterated the announcement for the RTC meeting and expressed his desire to resign from the Commission. Mayor Masayko added this item to the June 18th agenda and requested a volunteer to serve on this Commission. Mayor Masayko then reported that the Senior Follies had been success and on a meeting with the State Coordinator of Veteran's Affairs, a Mr. Abbott, who had requested that Carson City consider establishing an Area Veterans Coordinator position/office. This position could be combined with other entities and had been authorized by the previous Legislature. He indicated a desire to contact Churchill County regarding its process. He then reported on the status of the Freeway/Bypass issues which had dominated the media and, specifically, the status of the butterfly, etc. He indicated there may be an need to include additional issues besides the Arrowhead on/off ramp on the

RTC agenda. These additions were being created by the lack of information from NDOT on the Bypass and its status. A timetable/calendar of Bypass major events is to be drafted by NDOT. He intended to continue to monitor the progress/events as well as to provide meetings whenever warranted. He then reported on the visit by the "Sister City" Chinese delegates and described the program. He invited the Board to participate in the events which will be scheduled later in the month.

C. STAFF REPORTS (1-1022.5) - Deputy Public Works Director Homann explained his attendance at a Western Nevada Resource Conservation Development meeting on the Carson River Corridor. A request has been made for a \$200 per year donation from each of the participating Counties. He then explained its work on a bio-mass project which uses forest bi-products for power generation. The organization approved a motion to continue this effort. Another motion had supported Carson City's efforts to obtain upstream detention basins. The organization provides staff support and funding research. The next meeting was scheduled for June 23 at 9:30 in Dayton. He then explained that he had provided Mark Kimbrough with information on the Tahoe bond act. Mr. Kimbrough's staff will be holding a workshop on a unnamed Carson City project in an effort to obtain some of these bond funds.

5. TREASURER - Finance Director Mary Walker

A. PUBLIC COMMENT; AND B. ACTION ON A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ARRANGE FOR THE SALE OF THE CARSON CITY, NEVADA, GENERAL OBLIGATION (LIMITED TAX) SEWER BONDS (ADDITIONALLY SECURED BY PLEDGED REVENUES); AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH (1-1082.5) - Mayor Masayko requested public comments three times without success. The public hearing was then closed. Supervisor Tatro moved to adopt Resolution No. 1998-R-26, A RESOLUTION AUTHORIZING THE FINANCE DIRECTOR TO ARRANGE FOR THE SALE OF THE CARSON CITY, NEVADA, GENERAL OBLIGATION (LIMITED TAX) SEWER BONDS (ADDITIONALLY SECURED BY PLEDGED REVENUES); AND PROVIDING OTHER DETAILS IN CONNECTION THEREWITH; fiscal impact is \$6.1 million bond sale. Supervisor Plank seconded the motion. Motion carried 5-0.

C. ORDINANCE - FIRST READING - ACTION ON AN ORDINANCE AMENDING SECTION 4.04.107 OF THE CARSON CITY MUNICIPAL CODE TO INCREASE THE TELECOMMUNICATIONS BUSINESS LICENSE FEE TO FIVE PERCENT (5%) OF THE TOTAL GROSS RECEIPTS AND OTHER MATTERS PROPERLY RELATED THERETO (1-1135.5) - Deputy District Attorney Lipparelli revised the ordinance title. Supervisor Bennett moved that the Board of Supervisors introduce on first reading Bill 116, AN ORDINANCE AMENDING SECTION 4.04.107 OF THE CARSON CITY MUNICIPAL CODE TO INCREASE THE TELECOMMUNICATIONS BUSINESS LICENSE FEE TO FIVE PERCENT (5%) OF THE TOTAL GROSS RECEIPTS AND OTHER MATTERS PROPERLY RELATED THERETO. Mayor Masayko seconded the motion. Motion was voted and carried 3-2 with Supervisors Smith and Tatro voting Naye.

6. FIRE DEPARTMENT - EMS Battalion Chief Vince Pirozzi - ORDINANCE - FIRST READING - ACTION ON AN ORDINANCE AMENDING CHAPTER 5.18 OF THE CARSON CITY MUNICIPAL CODE (AMBULANCE SERVICES) BY AMENDING SECTION 5.18.040 (FEES AND RATES) TO INCREASE THE EXISTING FEES FOR CERTAIN AMBULANCE SERVICES, AND TO ESTABLISH A RATE FOR NITROUS OXIDE, AND OTHER MATTERS PROPERLY RELATED THERETO (1-1208.5) - Finance Director Walker - Discussion ensued between the staff and Board on the fiscal impact, the General Fund's \$230,000 subsidy, the ambulance service, the cost for an ambulance trip, the billing process, the ambulance subscription service, the transfer service, efforts to keep the transfer costs down while maintaining adequate service levels for the community, and the use of volunteers to conduct the transfers. Mr. Lipparelli explained a typographical error on Page 2 which corrected the effective date to be July 1, 1998. Supervisor Plank moved to introduce on first reading Bill 117, AN ORDINANCE AMENDING CHAPTER 5.18 OF THE CARSON CITY MUNICIPAL CODE (AMBULANCE SERVICES) BY AMENDING SECTION 5.18.040 (FEES AND RATES)

TO INCREASE THE EXISTING FEES FOR CERTAIN AMBULANCE SERVICES, AND TO ESTABLISH A RATE FOR NITROUS OXIDE, AND OTHER MATTERS PROPERLY RELATED THERETO, fiscal impact is undetermined at this point. Supervisor Tatro seconded the motion. Motion carried 5-0.

7. PUBLIC WORKS DEPARTMENT - Building Official Phil Herrington

A. ORDINANCE - FIRST READING - ACTION ON AN ORDINANCE AMENDING SECTION 15.05.010 OF THE CARSON CITY MUNICIPAL CODE (AMENDMENTS TO CHAPTER 1 OF THE UNIFORM BUILDING CODE) AND SECTION 15.05.018 OF THE CARSON CITY MUNICIPAL CODE (AMENDMENTS TO CHAPTER 1 OF THE UNIFORM BUILDING CODE) TO INCREASE THE VALUATION BASE FOR THE COLLECTION OF BUILDING PERMIT FEES AND OTHER MATTERS PROPERLY RELATED THERETO (1-1438.5) - Discussion between the staff and Board indicated that the fee increase would provide funding for additional staff as had been recommended by the One Stop Shop Team and the Western Nevada Builders Association. The new building for the One Stop Shop had not been approved. Discussion also noted the ordinance would be effective on second publication, which should be June 29th. Therefore, the July 1 effective date was not changed. Ron Kipp explained the Builders Association and the Team's support for the valuation increase of 16 percent for both this year and next year. Mayor Masayko expressed his desire to tie the fee increase to an increase in the service level and indicated that this issue will be evaluated during next year's budget process. He also pointed out that if additional enhancements are required, the funding will be available to do so. He thanked the Association and Team members for their work on the program. Supervisor Bennett moved to introduce Bill 118 on first reading, AN ORDINANCE AMENDING SECTION 15.05.010 OF THE CARSON CITY MUNICIPAL CODE (AMENDMENTS TO CHAPTER 1 OF THE UNIFORM BUILDING CODE) AND SECTION 15.05.018 OF THE CARSON CITY MUNICIPAL CODE (AMENDMENTS TO CHAPTER 1 OF THE UNIFORM BUILDING CODE) TO INCREASE THE VALUATION BASE FOR THE COLLECTION OF BUILDING PERMIT FEES AND OTHER MATTERS PROPERLY RELATED THERETO. Supervisor Smith seconded the motion. Motion carried 5-0.

B. ACTION ON THE CARSON CITY REQUIREMENT FOR ROADWAY FRONTAGE IMPROVEMENTS IN FRONT OF 5159 ARROWHEAD DRIVE (1-1608.5) - Mr. Berkich indicated that an agreement on this issue had been reached and asked that action be deferred at this time. Mayor Masayko commended Mr. Homann on his efforts on this issue.

BREAK: A 15 minute recess was declared at 10:10 a.m. The entire Board was present when Mayor Masayko reconvened the meeting at 10:25 a.m., constituting a quorum.

8. UTILITIES DEPARTMENT - Deputy Utilities Director Jay Ahrens

A. ACTION ON AN ADDITIONAL EXPENDITURE FOR SEWER MAIN REPLACEMENT NOT INCLUDED IN THE DEVELOPMENT AGREEMENT BETWEEN CARSON CITY AND MICHAEL BELL AND ED WENINGER REGARDING ASSESSOR'S PARCEL NO. 4-021-08 LOCATED AT 1501 EAST FIFTH STREET, CARSON CITY, NEVADA, FOR SEWER MAIN PARTICIPATION (1-1635.5) - Supervisor Tatro suggested this type of an item be placed on the Consent Agenda. Supervisor Tatro moved to approve the additional expenditure of \$13,738.28 for sewer main participation not included in the development agreement between Carson City and Michael Bell and Ed Weninger regarding Assessor's Parcel No. 4-021-08 located at 1501 East Fifth Street, Carson City, Nevada, for Sewer Main Participation; the agreement was Bill No. 169, which passed on December 18, 1997; fiscal impact is \$13,738.28; funding source is 515 Participation. Supervisor Smith seconded the motion. Motion carried 5-0.

B. ACTION TO APPROVE AGREEMENT WITH WELLINGTON CRESCENT HOMEOWNERS ASSOCIATION FOR TEMPORARY CONSTRUCTION EASEMENT OR LICENSE ACROSS CERTAIN PORTIONS OF WELLINGTON CRESCENT FOR CONSTRUCTION OF WATER TANK IN ASH CANYON (1-1725.5) - Mr. Lipparelli distributed a new agreement to the Board and Clerk and

explained its purpose and the changes. He also thanked Association President Mary Keating and her attorney for their cooperation and work on the agreement. He gave the Clerk the original of the document. The Association had purportedly approved the agreement. Mayor Masayko pointed out a typographical error on page 5 line 1 which should read the "easterly" boundary. Discussion between Parks and Recreation Director Kastens and the Board explained the pylon costs and status of the ISTEAN/NDOT V&T bicycle trail. The City will still retain its access to the tank for maintenance. The agreement is to handle the volume of trips which would be required for construction of the additional tank. Association President Mary Keating indicated that the Homeowners Association did not object to access for maintenance for the soon to be two tanks. She also thanked City staff for its assistance throughout the process and apologized for the time it had taken to complete the agreement although it was felt that their efforts had been done diligently. She indicated that an earlier draft of the agreement had been signed by the Association Board and that she would work toward getting their signatures on the final document. Mayor Masayko also commended her on her efforts. Ms. Keating indicated that if the agreement is approved, the appeal of the special use permit would be withdrawn. Mr. Lipparelli then explained Steve Hartman's role in the process and thanked him for his participation. Supervisor Smith noted that this type of an agreement is a prime example of the reasons all parties should attempt to work together and thanked all of the participants. Supervisor Smith moved to approve the agreement as presented with Wellington Crescent Homeowners Association for temporary construction easement or license across certain portions of Wellington Crescent for construction of a water tank in Ash Canyon. Supervisor Bennett seconded the motion. Following a request for an amendment, Supervisor Smith amended his motion to include the correction to the typographical error on Page 5, Line 1 to "easterly" and that the final version which was being approved is the original which Ms. McLaughlin has. Supervisor Bennett concurred. Motion was voted and carried 5-0. Mayor Masayko again thanked all of the participants for their efforts.

9. COMMUNITY DEVELOPMENT DIRECTOR - Senior Planner Juan Guzman

A. ACTION ON U-97/98-31 - AN APPEAL OF THE REGIONAL PLANNING COMMISSION'S DECISION TO APPROVE A REQUEST FROM MARK BRETHAUER, CARSON CITY UTILITIES DEPARTMENT (PROPERTY OWNER: STATE OF NEVADA) TO ALLOW AS A CONDITIONAL USE A 3 MILLION GALLON WELDED STEEL WATER TANK JUST NORTH OF AN EXISTING 3 MILLION GALLON STEEL WATER TANK ON PROPERTY ZONED CONSERVATION RESERVE (CR), LOCATED AT 3490 ASH CANYON ROAD, APN 7-101-09 (PLANNING COMMISSION APPROVED 6-0-0-1) (1-2185.5) - Supervisor Smith moved that the Board of Supervisors accept the withdrawal of the appeal of the Wellington Crescent Homeowners Association. Supervisor Plank seconded the motion. Motion carried 5-0.

B. ORDINANCE - FIRST READING - ACTION ON A-97/98-10 - AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE TITLE 18 (ZONING), SPECIFICALLY SECTION 18.03.470 (PRIMARY USES) TO INCLUDE PARCELS THAT ARE LOCATED CONTIGUOUS AND ADJACENT TO PARCELS WHERE SINGLE BUSINESSES UTILIZE MULTIPLE PARCELS, AND OTHER MATTERS PROPERLY RELATED THERETO (1-2225.5) - Supervisor Tatro moved that the Board of Supervisors introduce on first reading Bill No. 119, AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE TITLE 18 (ZONING), SPECIFICALLY SECTION 18.03.470 (PRIMARY USES) TO INCLUDE PARCELS THAT ARE LOCATED CONTIGUOUS AND ADJACENT TO PARCELS WHERE SINGLE BUSINESSES UTILIZE MULTIPLE PARCELS, AND OTHER MATTERS PROPERLY RELATED THERETO. Supervisor Bennett seconded the motion. Motion carried 5-0.

BREAK: A ten minute recess was declared at 10:55 a.m. The entire Board was present when Mayor Masayko reconvened the meeting at 11:05 a.m., constituting a quorum.

10. DISTRICT ATTORNEY - Deputy District Attorney Mark Forsberg - DISCUSSION AND ACTION TO APPROVE THE GROUND LEASE BETWEEN CARSON CITY AND BAR-ONE ENTERPRISES, INC. CONSISTENT WITH RESOLUTION 1995-R-61, A RESOLUTION DECLARING CARSON CITY'S

INTENT TO LEASE DESIGNATED PORTIONS OF THE CARSON CITY FAIRGROUNDS/FUJI PARK FOR THE PURPOSE OF CONSTRUCTION OF AN EVENTS CENTER, AND OTHER MATTERS PROPERLY RELATED THERETO (1-2275.5) - Mr. Forsberg reviewed the negotiation process and the contract terms. The significant areas of disagreement had been related to the revenue terms, specifically, the definitions of gross and net revenue. The impact of these definitions were explained. Recently Bar-One agreed to the global definition of gross revenue and to the payment of the percentage rents as contained in the Resolution of Intent and Bar-One's initial proposal. He was unsure whether the document before the Board actually included all of the revisions and met all of the conditions spelled out in the Resolution of Intent due to the late hour at which an agreement had been reached on some of the terms. He represented that an agreement had been reached on all terms which were consistent with the terms of the Resolution of Intent. Mayor Masayko noted that on the date the agreement is executed, the ground lease rental payments begin. Mr. Forsberg agreed and explained reasons for this requirement and the term which allowed Bar-One to recoup this fee when the percentage rents exceed the base rent.

Mr. Berkich indicated a "red lined" copy of the agreement had been given to the Board. (The Clerk did not have a copy of this agreement.) He requested the Board extend the deadline for finalizing the agreement to provide additional time for Bond Counsel to review the final document. Justification for his request was explained.

Discussion ensued between the Board and staff on the experts who had assisted staff with the agreement review. These individuals were identified. Both Mr. Forsberg and Mr. Berkich indicated for the record that they were very familiar with the document. The document complies with the terms of the Resolution of Intent adopted by the Board of Supervisors. Purportedly, the "experts" had not voiced "shock or disapproval" at the numbers contained within the document. The actual revenue stream could not be predicted at this time beyond the minimal rate. The gross revenue terms had been globalized until it is evident that the City will be paid a percent of all revenue. This should allow for an easy audit and management. A significant difference between the examples which the City had reviewed and the proposed contract is the lack of City funding for construction of the facilities and operation. Discussion reiterated the bond concern and the need for additional review and a written opinion from bond counsel.

Mr. Berkich then indicated the desire to have one more review of the final, final document to make sure that all of the terms are contained within the agreement. Mr. Forsberg reiterated his comments concerning the feeling that all of the substantive issues had been negotiated and resolved. The latest draft of the agreement still does not include all of these terms/issues. The final document will comply with all of the terms contained in the Resolution of Intent. Staff felt that the final version and bond counsel's opinion would be completed by June 18.

Supervisor Bennett referenced a June 1 memo from Internal Auditor Kulikowski regarding the need to have additional information in order to provide a pro forma review of the final document. (The Clerk did not have a copy of this memo.) Mr. Forsberg responded by emphasizing that staff had done all that was required within the Resolution of Intent and according to the Board's motion when Bar-One was selected. He also pointed out that, at the time Mr. Kulikowski had written his memo, all of the final issues had not been resolved. Examples were given to illustrate those issues. These issues have since been resolved and the terms complied with as the Board had directed. Supervisor Bennett agreed that staff had met the terms of the Resolution, however, the Board is required to assure the public that the proposed entity would be successful. The contractual period is lengthy and contains a potential for financial failure. Mr. Forsberg agreed that Bar-One should be responsible for bringing to the Board indications that it is able to perform. The agreement protects the City as far as is possible to assure that the Bar-One has this ability.

Internal Auditor Kulikowski explained his memo including his concern about the agreement's percentages which deviated significantly from the Resolution of Intent and the need for pro forma information. He assured the Board that his intent had been to verify that the terms were beneficial to both the City and the Lessor and to protect the City's interest over the lease's lengthy term. He urged the Board to allow the City Manager and staff to analyze the final version. He also expressed a desire to allow the City's financial consultants/Department to project the

finances as far into the future as possible. He was unaware of these projections but felt the assumptions should be made known so that the projections could be analyzed appropriately. The financial consultants were Jim Kelly and Finance Director Mary Walker. Mr. Kulikowski also expressed a desire to review the financial information. As far as he was aware, this financial information had not been provide to the City.

Mr. Forsberg reiterated his statements that the agreement had adhered to the Resolution of Intent. The Resolution is binding to both the City and Bar-One. He also indicated that it may be possible that the financial rewards spelled out in the Resolution may not in fact occur. If the terms, however, meet the Resolution of Intent requirements, he did not feel that the City could change the percentages at this stage.

Mr. Kulikowski pointed out that when he had written the memo, the City had been working with different figures than those developed recently. The original figures, in his opinion, had not complied with the Resolution and without the additional information he would not have been able to determine whether the agreement would have complied with the Resolution. Since the memo was written, these points had been "ironed out". He had not seen the final draft. If the Resolution has been complied with, the new agreement terms would provide a better measurement process than he had originally analyzed. It may not be possible to establish the actual dollar amounts beyond the base rent at this point in the process based on the need to use percentages to arrive at the sum.

Supervisor Bennett indicated her concern was based on the length of the contract and urged the Board to take the appropriate amount of time necessary to diligently analyze the contract and make a well-informed decision. She questioned how the Board could make an informed decision if so much had changed during the three days since Mr. Kulikowski had written his memo. She also expressed her support for Mr. Berkich's request to continue the matter.

Mr. Kulikowski indicated that he had observed the thorough and extensive review process undertaken by the City Manager and his team. He, too, felt that the final contract should be analyzed one more time to assure that all of the points of contention had been correctly stated. His request for pro forma information had been based on numbers which he did not feel had complied with the terms of the Resolution.

Supervisor Bennett pointed out a previous Board discussion concerning the lack of supporting staff signatures on the Board action request form and the fact that the Board action request for this item contained only one signature. This clearly indicated to her the need for additional work to be performed on the agreement.

Mr. Berkich indicated that he had received the pro forma information late yesterday. The team had not had an opportunity to analyze this information.

Supervisor Plank supported Mr. Berkich's request for a continuation due to his desire for all parties to review the final document and match it against the Resolution of Intent. He also expressed his feeling that the Parks and Recreation Director should be involved in the review process. Mr. Berkich indicated that Mr. Kastens had been involved in the process due to the desire to be sure that future park operations and park users are considered. He reiterated his desire to take the time, have bond counsel issue an opinion on the agreement, and have staff again analyze the document to be sure that all of the terms and issues were included correctly and complied with the Resolution. Also, the projections had been received and time was needed to analyze them. Both Supervisor Plank and Mayor Masayko supported the continuance. Mayor Masayko also pointed out a commitment for the Parks and Recreation Commission to be included in the review process. He objected to receiving material at the 11th hour and on a decision-making date. Supervisor Smith felt that staff and the discussion today appeared disjointed. This was caused by the need to react to a June 4th deadline. He appreciated all of the hard-work and effort committed to meeting this deadline. He agreed to establishing a different deadline and questioned whether two weeks/ten days would be appropriate. He also expressed a feeling that the Board may need more than a week to read/study the agreement. He requested an historical review of the process which would include the Resolution of Intent and the RFP. He agreed that the Board needed to include in the process an evaluation of the venture's ability to succeed due to the 70 year life of the agreement.

Supervisor Tatro expressed his feeling that the Board was changing the rules by again moving the target. He felt that the need for the agreement to be analyzed by the Parks and Recreation Commission had never been discussed. The Commission had considered the Resolution of Intent and the lease concept. It was unnecessary for him to personally review the agreement and Resolution of Intent. He was willing to accept the Deputy District Attorney's and City Manager's representations that the agreement met the requirements. The Board had established the deadline for Board review as well as the compensation requirements in the Resolution. The City was not investing in the facility/operation nor is it at risk of losing money. The lease contains a guaranteed income level for the City regardless of the firm's fiscal resources. The Board had set the firm's solvency as a requirement to prove that the firm had the ability to perform and construct the facilities. Now, the Board/staff is requiring pro forma information. Due to this requirement, Bar-One changed its leasing structure back to that which had been contemplated in the Resolution of Intent. He agreed that Bond Counsel should issue an opinion and felt that none of the reasons for delaying the contract were reasonable.

Supervisor Plank indicated that he had not intended to have the Commission approve the agreement line by line but merely to be given a status report on the terms. Reasons for his recommendation were noted. Mr. Kastens indicated that a report had been given to the other Commissioners. He had not given Supervisor Plank a copy as he was to have received the same information as part of the Board packet. Documents in the Commissioner's packet were explained. Mr. Forsberg indicated that Bar-One would still be required to amend Fuji Park's Master Plan in order to implement the program. This guarantees that the Commission will be able to analyze the lease. Supervisor Plank reiterated his support for continuing the item until a final review can be completed.

Supervisor Tatro expressed his frustration with the lease and its progress. He requested the team provide him with its professional assurance that the lease met all of the requirements of the Resolution. He opposed adding additional requirements to the process. The document provides the base. He felt that staff could complete the process by June 18. Supervisor Smith agreed that the Board relied upon the "Team" and other staff members for a lot of information every day. He was opposed to using the excuse when something goes wrong "that staff had told him it complied with the terms...". He needed to feel comfortable with some things so that he could say that staff had made the recommendation and that he had reviewed it. Otherwise, it would always appear as if the Board is "rubber stamping" items. He was not attempting to add new terms and conditions. He wanted to be confident that everything was done. All of the ducks are in a row, etc., without any more last minute changes. He was opposed to receiving the final document stamped "late material" like the one provided for this meeting. He wanted the final document with adequate time to read, ask questions, and to analyze it.

(2-0106.5) Bar-One's attorney George Keele paraphrased from Stephen Covey's book Seven Habits to illustrate the shift in paradigms from being offended by the delay in the process to one of becoming fully informed. He then displayed a booklet which Ms. Barone had purportedly made available to the Board three months ago. Documents included in that booklet were listed. He felt certain that Mr. Kulikowski had not seen the booklet as it contained the pro forma. (Copies of the booklet were distributed to the Board and Clerk.) He would have issued a memo similar Mr. Kulikowski's if he had been brought into the process at the late date which Mr. Kulikowski had joined the team. The Board's principal players had always been Mr. Berkich and Mr. Forsberg. Negotiations had resolved approximately 56 items. Two weeks ago he was able to take that concept to the lenders and obtain a commitment and definition of gross revenues along with an alternative. He then explained the alternative which would guarantee rent payments beginning 30 days from the date of execution of the lease. The guaranteed rent payment would have been between \$169,000 and \$400,000 a year. He acknowledged that if the Board accepted the \$400,000 guaranteed rent, the Board would have to "give up something on the other end". He conceded to staff yesterday and was willing to accept the City's definition of gross revenue if the Board did not wish to accept this alternative. It was a shock for him to learn at this date that Finance has a problem with the lease. Finance has been participating throughout the negotiations although their points have not been brought to the Barones for consideration. The original RFP had included a term of 60 years. The negotiation process on the period was described. He agreed that there had been negotiated changes since the RFP had been issued. He hoped that the City had used the \$10,000 deposit made by Ms. Barone to pay for experts to analyze and advise the City on the agreement. He had retained financial expert Dan Evans in the process which had resulted in a revision to the contract not covered in the RFP or Resolution of Intent regarding the timeframe for contracting the financing and

construction of the facility. The proposed lease agreement included a commitment mandating a payment of between \$15 and \$30,000 per month commencing 30 days after the execution date. Ms. Barone is risking these payments in the hope that she will be able to obtain the financing. No refunds or reimbursements will be given to her for this money. He was surprised to learn there is a concern regarding the financing paragraph known as 5.01.b. Ms. Barone felt that financing would be available within 30 days after the lease is signed. He agreed to allow staff and the Board additional time to analyze the final document. He commended the Board on its position that the time should be taken to analyze the final document. He also felt that the Board's duty at this point is to lease the property and that it could not consider the merits of having the property leased. He commended the Team/staff on its ability to negotiate for four or five hours and remain individuals of "good will" at the end of that period.

Mayor Masayko reviewed the history of the negotiations and need to develop a lease document. If the project is completed, it will be great for the City. He, too, felt that there had been a paradigm shift since the December meeting where the financial commitment had been requested. The Board is now considering the contract rather than asking about the financing. He was willing to accept the commitment that financing would be available within 30 days of executing the lease. He felt that the ground lease payments support the promises which have been made to the residents for a product. Without a commitment indicating that the financing is possible, the property should not be transferred. If construction commences, but is not finished, the residents could inherit a significant cost for returning the property to its original state or for completion of the facility. This is the reason for his concern with paragraph 5.01.b. He was willing to grant an additional six month period but stressed that something must begin to happen. Mr. Keele agreed. Mayor Masayko also indicated that there had been a great deal of progress since August 3, 1995.

Mr. Keele then indicated that Ms. Barone and North Star Gaming had formed an alliance by North Star's purported "purchase into" Bar-One Enterprises. A prospectus was distributed to the Board and Clerk. Ms. Barone's financial recruitment during the last two months was described. He expressed the hope that the final documents could be signed within two weeks. He, too, felt that the final document should be considered rather than the work copy. The only difference between the proposed document and the final document would be the guaranteed base lease clause which he had described earlier. This clause was further delineated.

Mayor Masayko expressed his feeling that the Board should remain with the original RFP and Resolution of Intent terms. Negotiations could not reasonably occur with the Board at this point without rebidding the project.

(2-0479.5) Mr. Keele then described the negotiated terminology for gross receipts which would be in the final lease document. He commended staff on its tough negotiating stand.

Supervisor Smith, Mr. Keele and Ms. Barone discussed the booklet which had been in the City Manager's office and available for the Board/staff to review over a year ago. This booklet had contained all of the information originally described by Mr. Keele. Comments indicated that Ms. Walker and Mr. Kulikowski may not have seen this booklet. Mayor Masayko then explained Mr. Kulikowski's function in the City. It was felt that Mr. Kulikowski had performed this function correctly in his review of the lease.

Discussion ensued concerning whether the June 18th date could be met and whether the negotiations had been completed. Mr. Keele felt that it would be better for his client to make the first payment on August 1 rather than July 1 which would be the date if the agreement is signed on June 18. Mr. Forsberg felt that staff would have the final document completed by Monday and apologized for the failure to relay adequate information to the Board to indicate that the final document would not be ready for signing at this meeting. Efforts had been made to attempt to keep the Board apprised of the status. He also felt that Bond Counsel had completed an analysis of the lease and that it should not take a long period of time to receive his written opinion. He agreed that the final document would be available for the Board on Monday along with copies of the Resolution of Intent and the RFP. The staff was directed to provide its comments before Friday. Any final changes to the document will be distributed on Friday. Mr. Berkich committed to meeting the June 18th deadline.

Supervisor Tatro moved that the Board continue this item until the meeting on June 18 and that, with the continuance, is the extension of the Board's deadline of June 4th as established some months ago. Supervisor Smith seconded the motion. Supervisor Smith then indicated that the Board would receive a final document on Monday but the final, final document will not be ready until Friday. It is not anticipated that there will be any major comments or substantive changes, or things of this nature. Therefore, Supervisor Tatro's motion is attempting to indicate that there will be a document which the Board can start analyzing on Monday with all of the information which Ms. Barone had provided and that by Friday any and all final comments, which is the normal Board day for picking up the packets for the following Thursday meeting, will be available to the Board and the Board can review any changes in the document. Mr. Berkich indicated that the copy which would be delivered to the Board on Friday would be the one that would be available for signatures. Mayor Masayko indicated that this would indicate that there are "no show stoppers" or substantive changes or things which will take a lot of discussion; however, if there are, Mr. Berkich should inform the Board as soon as it/they becomes apparent. His clarification indicated this is for any item which may create additional delay or consternation. Mr. Berkich agreed. Supervisor Plank indicated that everything in the motion and all of the discussion since the motion should include the understanding that the Bar-One people would be provided the same information at the same time as the Board. Mayor Masayko agreed and directed Mr. Berkich to provide this information to both Mr. Keele and Ms. Barone. Mr. Berkich agreed to do so. The motion to continue the item until June 18 and provide the documents as indicated was voted and carried 5-0.

BREAK: There being no other matters agendized until 6 p.m. a recess was declared at 12:40 p.m. The entire Board was present at 6 p.m. when Mayor Masayko reconvened the meeting, constituting a quorum. Staff members present included: City Manager Berkich, Community Development Director Sullivan, Chief Deputy District Attorney Lipparelli, Street Superintendent Flansberg, and Recording Secretary McLaughlin.

12. PUBLIC WORKS DEPARTMENT - Street Superintendent John Flansberg - ACTION ON A REQUEST FOR THE ASPHALT OVERLAY OF DEER RUN ROAD FROM DEER RUN ROAD BRIDGE TO APPROXIMATELY 1.5 MILES SOUTH (2-0662.5) - Tom Quigley, Marilyn Paine - Mr. Flansberg's introduction included a description of two problem areas, the traffic volume, and speed. A video was shown and explained which had been taken of the roadway earlier in the day and had included the problem areas. Supervisor Smith reviewed the history of the road since 1991-92. There are 11 miles of unpaved roadway in Carson City. Issues used to justify paving these roads were described. He had supported paving one-third of Deer Run initially with the intent to continue the one-third paving program during the following two years. Reasons for using asphalt grindings to pave Deer Run Road were noted. The video had failed to illustrate the surface roughness. His remorse at allowing the use of the grindings on what is now a collector road was indicated. He did not feel that RTC had ever given Mr. Quigley a commitment to pave the entire road. He had given Mr. Quigley his personal commitment to attempt to find funding to complete the project. The residents may feel that the grindings are better than a dirt road but not by much and that the traffic volume may justify upgrading.

Discussion ensued between the Board and Mr. Flansberg on the cost for an overlay, compared Deer Run Road with other residential streets, the criteria used since the mid-80s to prioritize street overlays and other improvement programs, reasons Mr. Flansberg had only considered this street for an overlay for the year 2000 or 2002, and reasons for this road to deteriorate in the middle more rapidly than elsewhere. Mr. Flansberg's explanations repeatedly emphasized the need for additional traffic and heat on the roadway to help "set/settle/age" the road and that the road not be overlaid until next summer.

(2-1005.5) Mr. Quigley read Tom and Joan Dotson's letter dated June 4, 1998, into the record, noted another unidentified letter dated June 24, 1968, and indicated he had a letter from Harry Bufkin, who could no longer attend the meetings. Ronnie Johnson's letter was read into the record. Photographs of the roadway were explained and given to the Board. The photographs purportedly illustrated that the quality of the roadway was not that which had been promised to the residents. The "experiment" had been worth the test but now is the time to face the problem and do it correct. A letter indicating that Deer Run would be paved in 1970 was read. Minutes from a 1969 Board meeting indicated the earth work and drainage would be performed during the year and that paving

would occur in 1971. Mr. Quigley alleged that he had first brought the issue to the Board on August 1, 1985. A letter from the State Department of Transportation concerning the specifications for using the grindings was read. Purportedly, the grindings had been mixed with old radial tires and after being laid, tire chunks could be pulled from the roadway. No new asphalt had been mixed with the grindings. January 20, 1993, Minutes were referenced which indicated that the roadway may be phased. The road patching does not work as the holes continue to grow. It cannot be compacted any more than has already occurred as it now is down to bare dirt. He agreed that the accident rate had decreased. His personal review of the 1997-98 priority list did not show him one street which was in Deer Run Road's poor condition. He felt that unless he continued to remind the Board of the need, action would not have occurred in the past nor would it occur in the future. The public is using the area more and more. This will create even more use and support for the upgrade. He polled the audience to determine opposition to his request. Thirty years had been long enough. It is time to pave the road correctly. (Copies of documents were periodically given to the Board but not the Clerk.)

Discussion ensued between the Board and Mr. Flansberg on the status of this year's overlay projects, the timeframe for actual paving if approved in the budget for the next fiscal year, and reasons Mr. Flansberg felt Deer Run should be allowed to "season" for another year. Mr. Quigley continued to express his feeling that it should be paved now and questioned the justification for allowing the roadway to "season". He was willing to allow the overlay to wait until next spring if absolutely necessary. Supervisor Plank explained his personal tour of the roadway. Supervisor Smith pointed out the concern regarding establishing a precedence and that the uniqueness of Deer Run Road is the attempt to use an innovative, experimental program which failed. There is no other road meeting this criterion. Mayor Masayko also pointed out the desire to keep the advantages provided by the experiment. Discussion pointed out the cost savings provided by the "experiment". Mr. Flansberg indicated the overlay would be placed on top of the current roadway. Mayor Masayko suggested the project be scheduled for an overlay during the next fiscal budget. Additional public comments were solicited but none given.

Supervisor Tatro stated that, based on the fact that we have a type of asphalt on the road that does not exist anywhere else in Carson City and that the performance of the asphalt, while it is holding together and has continued to cure, the surface is not comparable to the rest of the roads within the County--this is how it is made non-precedent setting--he moved that the Board direct staff to schedule the overlay of Deer Run Road from 1.5 miles from the bridge to Sedge Road, that is the length. Following discussion on the location and distance, Supervisor Tatro amended his motion to be from the Deer Run Road Bridge to 1.5 miles south. Following additional discussion on the distance/location, **Supervisor Tatro began the motion over by moving that the Board directed staff to schedule the overlay of the Deer Run Road from the bridge going south approximately 7,000 feet in fiscal year 98-99; fiscal impact is approximately \$110,000; and that the funding source is the previously approved street maintenance asphalt overlay line item. Supervisor Bennett seconded the motion.**

Mr. Quigley questioned whether the prevailing wage requirements for any project over \$100,000 would delay the project. Mayor Masayko indicated that the project would be included in a \$750,000 project.

(2-1520.5) Ms. Paine expressed her feeling that it was time the Pinion Hills area received a benefit for its tax monies. She then described her employment with the Alaska State Department of Transportation, questioned the subgrade/base, and urged the City to test it before placing the overlay. She felt that her husband, who purportedly is a transportation engineer, would support her request. She urged the Board to continue to recognize the Pinion Hills by either installing additional infrastructure improvements or adjusting the tax base. Additional comments were solicited but none given.

The motion to direct staff to schedule the overlay of Deer Run Road commencing at the bridge and running south approximately 7,000 feet in the fiscal year 98-99 projects was voted and carried 5-0. Mr. Quigley took back all of his documents and photographs. He commended the Board on giving the public an opportunity to air its concerns and being respectful to him when he contacts them. Supervisor Bennett commended Mr. Quigley and his constituents for their tenacity and willingness to actively support their cause. Mayor Masayko expressed the

feeling that Mr. Quigley would remain active and involved with other community projects.

BREAK: An 11 minute recess was declared at 6:55 p.m. The entire Board was present when the meeting reconvened at 7:06 p.m., constituting a quorum.

13. DISTRICT ATTORNEY - Deputy District Attorney Paul Lipparelli - HEARING AND ACTION ON RESOLUTION WHETHER A NUISANCE EXISTS ON PROPERTY LOCATED AT 900 AND 904 MINNESOTA (2-1580.5) - Mr. Lipparelli explained the Statute and the process used when a nuisance complaint is filed with the Clerk, the definition of a nuisance, the City Code regarding a process whereby the Public Works Director could be directed to abate the nuisance, and reasons he felt the Board should not use this process. A draft resolution had not been included in the packet due to the need to include findings which Board had not yet made. Discussion ensued between the Board and Mr. Lipparelli on the definition of the terms "public" and "few", and the complainants' ability to seek legal recourse through the courts. (2-1860.5) Supervisor Bennett suggested the process be analyzed and revised so that future situations could be dealt with in a more user friendly fashion. Mayor Masayko felt that this should be part of the Title 18 revisions. He then described the "hearing" process.

Complainants' attorney Jim Puzey gave the Board and Clerk two packets of information, briefly described the documents, and introduced Robin Eppard. Ms. Eppard described the contents of the larger of the two documents. Her description included a thorough review of the chronology of events leading up to the hearing and the discovery of a discrepancy in the property line between her parcel and Mr. Genescritti's parcel which compounds the situation. She then explained the purpose of the photodocumentation section and reviewed the charges against Mr. Genescritti. April Bruchett had purportedly given her a memo to give to the Board. This memo had allegedly been written after 2 a.m. during a period when Mr. Genescritti was working on his site. The lighting from his construction project allegedly was shining into the duplex in which she resides. (The memo was not given to the Clerk or Board.)

(2-2530.5) Jon Minnich explained the acquisition of his property, his intent at that time, and his occupation. His parents and grandmother also reside with him. His backyard is unsafe and cannot be used as the hillside has failed as a result of Mr. Genescritti's project. A willow tree in his yard had laterally moved three feet. He was concerned that if the slippage is not halted, his home may also slide down the hill. The neighborhood allowed Mr. Genescritti to work at all hours of the day and night in the hope that he will complete the project. His parents and grandmother share his concerns. His property was losing value as a result of the slippage. He could not repair his yard until Mr. Genescritti completes his project. He questioned the length of time he would be required to wait. Damage to his yard and his contact with Mr. Genescritti were described. His health problems caused by an allergy to mosquitoes and the mosquitoes which are present in the yard as a result of the damage and spring were explained. He felt that Mr. Genescritti was not capable of repairing/completing the project or stopping the slippage. The present situation is hazardous to both the immediate neighbors, the entire neighborhood, and the City. The time is right to correct the situation. Delays should not be allowed to continue. The current situation has been very stressful to both himself and his family. Restitution was requested for the damage he had suffered. The City should take over the project and correct/complete it.

(2-3058.5) Linda Marrone indicated she represented the neighborhood. She had resided in the neighborhood for 24 years. She emphasized the feeling that the neighborhood was the public and that the project had been an ongoing eyesore for over a year. Vehicles in front of his property are parked illegally and posed a hazard to pedestrians using the area designated for sidewalks. Her contact with Principal Planner Rob Joiner in July was explained and supported her contention that the site was a public nuisance. As a result of this contact, she had called Public Works and signed a compliant. She had circulated a petition which all of the neighbors had signed. (A petition was not given to the Clerk.) The noise and lights were "terrible" and go on at all hours of the night. The neighbors had taken the issue to court twice. Mr Genescritti had claimed that he was unable to complete the work because of the complaints. Therefore, the neighbors had stopped complaining. Mr. Genescritti had contacted her in January and asked to meet with the neighbors to discuss the situation. Mr. Genescritti purportedly failed to attend the meeting due to the animosity which had been created in the neighborhood. She urged the

Board to do something about a situation which had been going on for over a year. All other avenues had failed. She also pointed out that there had allegedly been over 200 phone calls to the Sheriff's office about his property.

(2-3220.5) Vern Peter, a Senior Engineer with Resource Concepts, referenced City Senior Engineer John Givlin's November 10, 1997, letter which indicates the project is subject to the Hillside Ordinance. He then explained the ordinance, Vector Engineering's soil report, Mr. Givlin's request for geological and hydrological reports, Mr. Genescritti's failure to give the City such reports, his failure to acknowledge an earthquake fault known to be in the area, the lack of a topographic map extending 20 feet beyond the site in the grading plan, the lack of compaction reports, their purpose, the lack of revegetation plans or preservation plans for existing vegetation, the dirt tracks found three City blocks from the site, the lack of a phasing plan to minimize erosion, and the risks imposed on the City due to the lack of these documentations. He also questioned the safety of the cement joints in the retaining wall as well as the stability provided by the backfill material and its compaction. Discussion between Mr. Peter and Supervisor Bennett indicated that the Hillside Ordinance does not provide a restriction on working within a set parameter of an earthquake fault.

(2-3436.5) Mr. Puzey then explained his listing of the Statutes mandating the procedures for abatement of a nuisance, several descriptions of a nuisance, the Hillside Ordinance, and (3-0001.5) various public nuisance tort cases. (A copy is in the file.) The cases supported his position that the property was a public nuisance as indicated in the failure to comply with the Hillside Ordinance requirements. He also felt that Mr. Genescritti may not be able to financially afford to complete the project due to his problems with the IRS, over back child support, and Justice Court fines. Mayor Masayko pointed out that the hearing is informal and urged him to restrict his comments to the agendized issue. Mr. Puzey then explained his reasons for questioning Mr. Genescritti's construction experience by describing a project he had undertaken in Glendale, California, in the mid-1980s and a 1990 Carson City project on Hillview. This same property was also involved in a rental situation which was investigated by the Community Development Department in 1990. Mr. Puzey questioned whether the Minnesota Street property would be used in the same fashion. Reasons he felt the property fell within the description of a public nuisance were explained. He requested the Board find that it does meet the description of a public nuisance and order its abatement.

(3-0170.5) Frank Genescritti expressed his feeling that everyone was guilty of creating a public nuisance as described by Mr. Puzey. He then indicated that he had also circulated a petition which purportedly contained 115 signatures supporting him. (A copy was given to the Clerk.) He then explained his project, reasons he had not attended Ms. Marrone's meeting, that his project was not a hazard to Ms. Eppard's tenant as evidenced by the tenant's signature on his petition, and his original contact by the Building Department. He had purportedly not been cited for working without an excavation permit. He allegedly submitted plans to the Building Department which were denied originally due to the need to have a variance. A second plan was then submitted. The Building Department requested a "geo-tech", engineer, surveyors, and other items. He had hired the recommended firms. Those plans were submitted to the Building Department on October 3rd. These plans purportedly sat there for three months. A permit was issued on 1/9/98. In order for the "geo-techs" to do their work he had had to cut further into the hill. When this cutting occurred, the problems began. He felt that he now has a felony record as a result of the Building Department requirements. The entire process had been frustrating as he cannot do anything without interference from the Building Department. He felt that he had had one year to complete the work stipulated in the building permit, however, the City had indicated that it was valid for only 30 days. Now his neighbors are mad at him as they felt he was "dragging his feet". The Building Department should be cited for causing the hazards. His contracting experience was briefly noted. Letters from individuals for whom he had done construction work could be provided if so requested. He felt that the hill slippage had been an "act of God", which he sincerely regretted, but the heavy rainstorms had caused the problem. He had told the neighbor that he would fix it. He originally felt that the retaining wall could be completed for \$15,000 or so, however, he now has well over \$40,000 tied up in the project. He agreed that he does not have the funds now to complete the project due to all of the problems created by Ms. Eppard. He felt that she should remove her retaining wall so that he could utilize his property. Reasons the fence had not been replaced were explained. Ms. Eppard allegedly is harassing the Building Department on a daily basis in order to halt his project. He also indicated that he had not been served with any court documents about back child support payments. Mayor Masayko indicated that this is irrelevant and

cannot be discussed. Mr. Genescritti indicated the "garage" will provide a place for him to work on his vehicles which is not in the driveway. Photographs illustrating he had cleaned up the site were distributed and explained to the Board. The photographs also illustrated other sites which he felt were nuisances.

Discussion between Mr. Lipparelli and Mr. Genescritti indicated Mr. Genescritti had seen the complaint. Mr. Lipparelli explained the request for the Board to determine if the facts described in the complaint are true and if the site is in fact a public nuisance. Mr. Genescritti reiterated his feeling that the site could not be a nuisance as he had obtained over 115 signatures on a petition. Mr. Lipparelli explained the Board's role in the process. Mr. Genescritti explained the reasons he had not retained an attorney to represent his case. If the Board decides to support the petition and cause him to lose or lien his home, a continuance was requested so that he could retain an attorney. Mayor Masayko indicated that this potential is quite possible. The other Board options were also noted. He requested that Mr. Genescritti provide any information he wished for the record which would indicate that there were mitigating circumstances. Mr. Genescritti reiterated his comments about the Building Department/City's stop work orders pending receipt of another engineering report on the hill's stability. The compaction and soil testing are not required by City Code. The current stop work order was purportedly caused by unsafe working conditions created by the hill slipping. He also felt that the constant surveillance which he was contending with created problems for him in completing the project. He alleged that Mr. Minnich uses his backyard and that Mr. Minnich had played with his dog just this evening in the backyard.

(3-0485.5) Pat Genescritti questioned the reasons an attorney could bring up unrelated issues. She felt that Mr. Genescritti's ex-wife's mother had a personal vendetta against her son. Mayor Masayko noted that he had stopped Mr. Puzey as quickly as possible and that the Board would not consider those comments in its deliberations.

(3-0505.5) Judy Genescritti felt that a house five doors down from their property had had the same water problem two years ago. At that time the City had provided a drainage plan. She questioned the reasons they were being singled out. The entire west side of the street has the same water and runoff problem. They should not be required to address the entire problem. A court case was cited indicating that it is the State's responsibility to resolve the hillside and the water issues.

(3-0545.5) John Higgins also felt that the Genescrittis work at night to avoid being stopped by the City. Mr. Genescritti was described as a hard worker who was attempting to do the best he could. Mr. Higgins urged the Board to remember that they could cause him to lose his house as a result of various "loopholes in the law" which are preventing him from working on his home. The engineering requirements are very expensive and are limiting Mr. Genescritti's ability to repair the site. Mr. Higgins urged the Board not to consider Mr. Puzey's statements which are unrelated to the project. He also felt that Mr. Genescritti could not afford an attorney.

Mr. Genescritti felt that Ms. Eppard had created the entire problem as illustrated by her filing a restraining order. He had never threatened her even though she is constantly in "his face". He also indicated that the restraining order prohibits his "turning on lights at night to work or for otherwise". He offered to discuss the restraining order if the Board so desired. Mayor Masayko indicated that the restraining order did not have any bearing on the issue before the Board.

(3-0622.5) Bill Pattison explained his experience as a contractor. He also owns a home in the vicinity and indicated that he is running a sump pump at that house due to the high groundwater table. He felt that the hillside needed to be "dried out", which requires time.

(3-0645.5) Steve Woods indicated he lived directly north of Mr. Genescritti. In response to previous comments, he indicated that there is no sidewalk in front of Mr. Genescritti's property. The structure had been removed from the street when Mr. Genescritti was asked to do so. His children are not allowed to play on the "dirt hill". They are only allowed to play in their yard or house. He questioned where the pictures were of children playing on the "dirt hill". The water in the driveway is runoff from a natural spring. The "dirt hill" does not create a problem for either his family or his mother whose bedroom looks directly at the "dirt hill". Mr. Genescritti had been working very hard to construct a building. He questioned why the Board should care about the "dirt hill" which gets higher

every day if his family did not care about it; why Mr. Genescritti would store a \$10,000 motorcycle in the backyard if it is such a problem; and the nuisance created by an individual taking pictures of the yard for three hours. There should be "peeping laws" to prohibit this. Mr. Genescritti had indicated that his insurance company would reconstruct the neighbor's property. This could not occur until the retaining wall is constructed. Mr. Minnich could avoid the emotional stress by not going into his backyard. Mr. Woods indicated the "dirt hill" does not create emotional stress for him or his family as they stay away from it. He had only seen approximately 30 or 35 vehicles in an eight hour stretch on the street and felt that these vehicles were primarily neighbors who live in the area. Supervisor Bennett indicated that she frequents the area and walks there "a lot". Mr. Woods also felt that there were few children in the area other than his children and the neighbor's to the south. These children all play in his driveway. His family had not been approached by Ms. Marrone to sign the petition nor had they been notified about the public nuisance other than by the newspaper and Mr. Genescritti. His mother is purportedly home 20 hours a day, seven days a week. He questioned why the City or engineers had not contacted him about the safety problem. This failure could be considered neglect on the City's behalf. He questioned how the "RCS" (RCI) engineer had seen the dirt from the runoff three blocks away. Today was the first time his mother had observed anyone playing on the "dirt hill". He also felt that Mr. Puzey's definition of a nuisance did not apply to his family. He then indicated for the record that two of the pictures within the photodocumentation had been taken from his yard. These referenced point number 2 and had only been taken yesterday. He questioned the timeframe used for the complaint, the reasons he had not been approached by Ms. Eppard, and where the pictures were of the children who purportedly play on the hill. He asked to be shown these pictures so that he could determine if it is his children.

(3-0820.5) Bill Better felt that the entire problem was created by some "good old boys/girls" who had had a dispute with a property owner and decided to use their power to complicate or "bleed dry" the small property owner's resources for their own personal gain. He questioned whether "power corrupts or does corruption empower".

(3-0835.5) Building Official Phil Herrington then explained his knowledge of the only stop work order issued by his Department. This had been done in an attempt to obtain conformation of the work which was being done on the small addition to the duplex. The Building Department had requested Mr. Genescritti obtain grading and building permits sometime before March 1. His Department had red tagged the property on March 5 and required him to obtain the grading and building permits. He then reviewed the timeline for Mr. Genescritti's plans which were submitted on May 6, 1997. Several meetings were held on those plans and the building permit was finally issued on January 9, 1998. The delayed had been caused by the lack of response to informational requests such as the engineering requirements. He felt that the Public Works Department had corrected a drainage situation on another parcel south of Mr. Genescritti's property. Mr. Genescritti had purportedly been cited for making "vertical cuts" in the hillside which is in violation of the Building Code. He had used the citation process as an attempt to motivate Mr. Genescritti. Reasons for this decision were noted. He then explained that the building permit would have included the grading permit needed for the building under construction. Mr. Genescritti does not have a building permit for the building and the plan in plan check has expired. The building permit which had been issued was for only the retaining wall and had been issued due to concerns about the bank and its sloughing. Mr. Genescritti's engineer has indicated he would address the finished grading once the retaining wall is constructed. Clarification reiterated that the Department had issued a grading permit only for installation of the retaining wall and not for anything else. A permit had not been issued for either the small building attached to the duplex nor the garage which he proposed to constructed against the hillside. Mr. Herrington then explained his understanding of the Code requirements when constructing on or near an earthquake fault which indicated that the "geo-tech" may recommend a 15 foot setback on some faults and may provide a determination on the age of the fault. The type and activity of the fault is used to determines the setback requirements. As of this date the City does not have a defined setback from the fault line.

(3-1004.5) Community Development Director Walter Sullivan indicated that a special use permit would not be required as the slope is only 20 degrees. Building requirements had been given to Public Works Engineer John Givlin. There is an earthquake fault on the property and Mr. Givlin had been advised. Mr. Givlin's letter included a request for information about the fault. Mr. Sullivan agreed that the "geo-tech" would stipulate the setback requirement which could range from five to 50 feet. He did not feel that a "geo-tech" report had been provided.

Supervisor Bennett questioned the liability which the City would incur as a result of the retaining wall being constructed right on the fault line. Mr. Sullivan reiterated the requirement for the report due to the fault line.

Mr. Herrington reiterated the requirement for a "geo-tech" report and to have a professional engineer design the retaining wall, requirements which are based on the known fault line.

(3-1068.5) William Mally indicated he was speaking as a private citizen who resides in the neighborhood and not as a Planning Commissioner. He felt that a permit should not be issued and questioned whether the hillside could be stabilized. His review of a report was described and indicated that the construction which had occurred would have to be removed in order to install the wall correctly. He also felt that the City had failed to follow through on the project and that the project had been allowed to continue much too long. He suggested that the State Contractor's Board be contacted and asked to investigate the licensed contractor. Mayor Masayko did not feel that the project had been undertaken by a licensed contractor. Discussion between Mr. Mally and Supervisor Bennett indicated his concern about the lack of adequate engineering information on which the permit could have been issued. Mr. Mally suggested installing pylons to stabilize the hillside which is based on his personal experience in the construction field.

BREAK: A fifteen minute recess was declared at 9:20 p.m. The entire Board was present when the meeting was reconvened at 9:35 p.m., constituting a quorum.

Mayor Masayko attempted to explain to Mr. Genescritti the gravity of the situation including the potential need for an attorney to respond to the charges. Mayor Masayko felt that Mr. Genescritti had failed to respond to the charges. This may force the Board to make a ruling based on the information provided this evening. He suggested that Mr. Genescritti agree to a ten day or two week continuance, cease working on the site, and obtain experts in both engineering and legal fields. He felt that it would be more beneficial to all parties if a compromise could be reached. Mr. Genescritti responded by indicating that he did not wish to lose his property and acknowledged that there is a serious problem with the property. He expressed his feeling that he could not wait twelve days to resolve the problem. Such a delay would only compound the problem. He felt that he was "attacking the problem in a fashion which would accomplish his mission". Mayor Masayko indicated that he was not convinced of this point. Mr. Genescritti indicated that he had a building permit to install the retaining wall. He had purportedly obtained all of the proper City approvals and retained all of the necessary experts. Reasons for the stop work order at this time were questioned. He also questioned who would be liable if the house slips down the hill in the 12 day delay period. Mayor Masayko responded by questioning his responsibility if Mr. Genescritti begins work again tomorrow and the house slips down the hill. He reiterated his suggestion that Mr. Genescritti seek additional experts to assist with the project. Mr. Genescritti suggested that he be allowed to continue working if his experts indicate he could. Mayor Masayko indicated that his compromise is for Mr. Genescritti to stop all work if the hearing is to be continued. He felt that City staff would work with Mr. Genescritti and develop a plan. Mr. Genescritti indicated he had never had a problem working with City staff. Mayor Masayko reiterated his concerns and reasons for urging Mr. Genescritti to agree to stop work on the project and obtain expert assistance. He also emphasized that if Mr. Genescritti did not agree to voluntarily stop work, the Board would be required to evaluate each of the charges and make a ruling. This would only give him five days in which to abate the nuisance if a nuisance is determined. The City will then step in and abate the nuisance. His offer was based on Mayor Masayko's feeling that there was a degree of culpability between the City staff and Mr. Genescritti. Mr. Genescritti indicated that he had cut the slope at the "geo-tech's" request and the three month delay in getting his plans approved had created the slippage problem. He expressed his desire to keep his home without a \$40 to \$50,000 lien. He agreed to work with the City if he did not lose his home. Mayor Masayko reiterated his reasons for suggesting the compromise and further defined it. He pointed out that he was unsure whether the other Board members would be willing to accept his compromise. Mr. Genescritti then indicated that he would accept the offer.

Mr. Herrington then advised the Board of the Building Department's May 29 letter, i.e., Item 3, requesting engineering information regarding the method which will be used to stabilize hillside on the northwest corner. A meeting had been held with Mr. Genescritti's engineer on Tuesday at 3 p.m. The engineer had not provided the

report as of 5 p.m. today. Mr. Herrington had attempted to contact him earlier in the day. He lacked any hope of being able to successfully resolve the problem as Mayor Masayko had indicated. There had been delay after delay throughout the entire process. Mayor Masayko indicated he understood Mr. Herrington's position.

Supervisor Bennett indicated that she had not been aware of any discussion/comments between the other Board members and Mr. Lipparelli. In all candor and frankness, Mayor Masayko was not speaking for her. The entire matter is very frustrating and growing more so. Many people have had just cause for filing the complaint for a nuisance and had gone to a great deal of energy and effort to do so. The City had unsuccessfully attempted to work with Mr. Genescritti. She was disappointed that a permit had ever been issued even though it had been issued in the hope that Mr. Genescritti would move forward and correct the situation. Too many delays had already occurred. The extra mile--five miles--had already been traveled. She regretted Mr. Genescritti's lack of comprehension/understanding of the gravity of the situation; although it is possible that he does comprehend/understand. It is time for him to take responsibility for the situation. She supported the complainants contention that the public health, safety, and welfare had been endangered. She also regretted her feeling that the City's own counsellor was indifferent to their contentions and for their inability to use City Codes to enforce the mitigation process which forces them to use Statutes. It was also unfortunate that it must take two years for this process to occur. She indicated her opposition to any discussion of a continuance.

(3-1438.5) Supervisor Plank noted the purpose of the session as being to determine if there is a public nuisance. Unrelated issues are not to be considered in the deliberations. The unstable bank is a nuisance but only to the immediate neighbors and not the public-at-large. This situation is compounded by the City's failure or lack of action. He, too, felt that the City staff could not have dealt with the situation in any fashion other than as had occurred due to the lack of Codes empowering them to do so. This issue must be addressed in the future. The offer to continue the matter was an attempt to help Mr. Genescritti address the unstable bank in a satisfactory manner to both the City and surrounding neighbors. This would require the Board to determine the City's culpability as well as Mr. Genescritti's culpability. He, too, felt that Mr. Genescritti and the City should work together to resolve the issue. This issue, however, is not defined as a public nuisance as indicated by Mr. Lipparelli. The public nuisance issues are related to the tree on the telephone line, the debris on Minnesota Street, the noise and lights at night, water and sediment going into the street at the rate of 1500 gallons a day, dirt and dust on the street, unsightly situations in the neighborhood, and all of these negative impacts on the neighborhood. Any continuance should allow the neighbors, the City, and Mr. Genescritti to work on a resolution plan for these situations.

(3-1512.5) Supervisor Smith noted his numerous discussions with various individuals on the situation and understanding of their frustrations with the process. He agreed that the process is laborious. There should be a better process, however, this may not be possible due to the need to protect everyone's rights. His assessment of Mr. Genescritti during the meeting, as he had never met nor talked to him prior to the meeting, indicates he is an honorable, caring individual who wishes to do the right thing, and one who did not wish to have a large lien on the property. He felt that Mr. Genescritti had indicated three or four times his frustration with the entire process. Supervisor Smith was concerned about the magnitude of the situation and the fact that Mr. Genescritti's supporters continued to minimize the situation. He appreciated the cleanup effort which had occurred. He was concerned with the back hillside. He had visited Mr. Minnich's home in March, saw pictures of the crack which had been taken at 10 a.m. on that date, and observed its width at 4 p.m. The slippage is a big deal which has caused the yard to be declared a hazard. He was also concerned about the telephone lines and the potential impact on additional neighbors. This is a nuisance. He questioned whether Mr. Genescritti's best is good enough to rectify the situation or if he was in over his head and whether the City had contributed to allowing him to get in over his head. He was unsure whether he could support the continuance suggested by Mayor Masayko as he was unsure whether Mr. Genescritti was in a position to deal with the situation financially or if he had the wherewithal to address the situation of this magnitude--1500 gallons of water per day, the slope, and the slippage rate. He reiterated his feeling that Mr. Genescritti did in fact care but Supervisor Smith was also concerned about the possibility that any additional work which Mr. Genescritti may do would only worsen the situation rather than the concern that failure to do something would cause the situation to worsen. He acknowledged Mayor Masayko's purpose in offering the compromise, however, this had been part of the reasons for the delay in agendizing the matter for consideration as

it had forced the neighbors to pursue legal recourse as established within the Statutes. This process had provided Mr. Genescritti with adequate time and noticing to mitigate the situation.

(3-1636.5) Supervisor Tatro then indicated that his discussion with the Deputy District Attorney during the break had been about his feeling that the process did not work well this evening. This was the first experience he had had with this type of a situation in his eight-and-a-half years on the Board. Reasons which he had originally run for office were noted and were for the betterment of the community as a whole and not related to such issues. The Board was being asked to function in a quasi-judicial capacity. This required a fair and complete hearing of the issues upon which a decision could then be made. He agreed that all of the proper legal notices had been made. Everyone was aware that the Board would be considering the issue. This evening there had been a presentation by one side which was clearly prepared with documentation and a well-planned presentation and another side which had not addressed anything within the complaint. The Board had failed to question Mr. Genescritti about his knowledge of the charges alleged in the complaint. In order for the Board to fulfill its quasi-judicial role, this must occur. He then expressed his feeling that the City, and specifically Public Works, had failed to furnish adequate information about the situation from any Department except the Building and Safety Division. He noted the lack of documents which had been sent to Mr. Genescritti which he wished to review to assist in his evaluation. Reasons for his concerns related to the quasi-judicial process were explained. He urged Mr. Genescritti to seriously consider Mayor Masayko's offer of a continuance. He urged the Board to evaluate each of the charges with Mr. Genescritti point by point before making a determination. He then indicated that his only discussion with other Board members during the break had been with the Mayor and in response to his question concerning whether he was attempting to formulate a motion to which he had responded no.

Mayor Masayko reiterated his offer to Mr. Genescritti that would have Mr. Genescritti stop work on the project, obtain expertise in responding to the complaint, work with staff to develop a solution, and return in ten days or two weeks. Discussion between Mayor Masayko and Mr. Genescritti indicated that Mr. Genescritti would not be in any more difficulty with the City staff than is currently involved. Mayor Masayko then explained his reasons for feeling that Mr. Genescritti should obtain expert assistance. He pointed out Mr. Mally's comments and the need to use experts to establish the method to do the work correctly. Mr. Genescritti indicated he understood the reasons for requiring a "geo-tech" engineer and that all of the work had been approved by the City. A City inspector is on the site every day. He questioned why he was here today. Mr. Genescritti indicated he "had no problem" with Mayor Masayko's suggestion. Clarification between Mr. Lipparelli and Mr. Genescritti indicated that Mr. Genescritti's photographs and petitions were to be given to the Clerk for the record. These records would be available to him at any time if he contacted the Clerk. Mr. Lipparelli then explained the Statutes enabling the Board to continue the matter for a period not to exceed 14 days. This would be the Board's next meeting date. Clarification for Mr. Berkich indicated that Mayor Masayko's suggestion would require completion and approval of the engineering studies by City staff and a determination that Mr. Genescritti had the resources/monies, manpower and expertise to complete the project. Mr. Genescritti indicated he had an approved set of plans with him. Mayor Masayko indicated that Mr. Genescritti would have to deal with the City's Engineering Division on the plans and not with the Board. Supervisor Plank questioned whether the Board could act on this recommendation as amended. Direction could be given to staff to proceed along those lines and to continue the issue related to a public nuisance. He also questioned who was at fault if Mr. Genescritti had failed to represent himself during the procedure.

Mayor Masayko requested a motion. Upon hearing none, he passed the gavel to Mayor Pro-Tem Tatro. Mayor Masayko then moved that the hearing on the public nuisance for 900 and 904 South Minnesota be continued until June 18. Mayor Pro-Tem Tatro requested a second. Upon hearing none, he ruled that the motion had died for lack of a second. He then returned the gavel to Mayor Masayko.

(3-1966.5) Mayor Masayko then indicated to Mr. Genescritti that the Board would proceed with the hearing and that action would be taken on the charges.

Supervisor Bennett indicated her regret at making the following motion but believed that there were hundreds of contractors in the community who approach the City for permits who take full and knowledgeable responsibility

for their actions. It is in their behalf, the people who work hard, play by the rules, and understand the rules, that she was making the motion. She was really, really sorry that he did not seem to grasp how important it is to be truly accountable for the impact of your efforts and of the action which the Board would be taking and for which he was responsible. She indicated to Mr. Genescritti that she was not making the motion lightly. Supervisor Bennett then moved that the Board of Supervisors adopt Resolution No. 1998-R-27, A RESOLUTION DECLARING THAT A PUBLIC NUISANCE EXISTS ON PROPERTY LOCATED AT 900 AND 904 SOUTH MINNESOTA STREET pertinent to the representations that were before the Board this evening. Mr. Lipparelli then explained the need to fill in the blanks related to the findings in the draft resolution included in the Board's packet and reasons for requesting the motion include this direction. The findings should be based on the charges in the complaint, a determination by the Board as to whether these charges were in fact true, and whether the charges were a nuisance as defined in the Statutes. This would require a thorough review of the complaint charge by charge. Justification for this request was explained as being related to the five day deadline for correction of those issues and the requirement that the City would correct any outstanding issues remaining after that date. He indicated a willingness to take oral direction from the Board on his draft resolution to compose another resolution which the Mayor could either sign at the end of the meeting or at another date or take oral direction and compose a resolution which would be considered at a future meeting. Supervisor Bennett expressed a desire to meet with counsel and draft a resolution with appropriate findings and offered to withdraw her motion if another Board member was better prepared at this time. Mayor Masayko summarized Mr. Lipparelli's recommended procedure for establishing the findings.

Supervisor Smith questioned whether Mr. Genescritti was entirely culpable and financially responsible for the abatement or a lien against the property, whether the City was also partially responsible, or whether this issue remains for Mr. Genescritti to pursue. He felt that the City may be responsible for having allowed the process to get this far before the problem's magnitude was addressed. Mr. Lipparelli responded by explaining the normal lawsuit process during which all of the parties are named, the noticing process, and the defendants' duties to defend themselves against those claims. The decision is based upon the complaint as written and is against the named parties. In this case the complaint is against Frank L. Genescritti, Patricia A. Genescritti, Judy Ann Genescritti, and Frank Genescritti and the alleged wrongs are contained therein. The Board is to decide whether those allegations against the named parties are true and if they are true whether they constitute a public nuisance. The order to abate the conditions which constitute the nuisance and the people so named in the complaint who are alleged to have caused the nuisance are the ones who are ordered to abate the nuisance.

Supervisor Plank then expressed his feeling that the Board could identify those issues which were public nuisances and his willingness to attempt such a motion. Issues which he felt could be identified as public nuisances could be addressed by Mr. Genescritti by himself prior to any date the Board would establish for a meeting with staff on the slope. He questioned whether the hillside could be determined a "public nuisance" although it is a nuisance to the adjacent property owners. There may be some culpability on the City's part about the hillside, therefore, the City should help resolve the problem. Mr. Mally had suggested that pilings be installed. Pilings are not at this time included in the plan. The plans may be deficient as this issue should be considered in it. The hillside is not a "public nuisance"

Mr. Lipparelli indicated that the Board is to determine what items are a public nuisance and which are not. Mayor Masayko indicated that if the Board desired it would be ruled that only charges/issues considered a true public nuisance were to be discussed and included in the resolution and the motion declaring the public nuisance. The other charges would be dropped.

Supervisor Bennett then indicated as a point of order that her motion was still on the floor as it had been interrupted by the District Attorney's explanation of the need to make specified findings. Based on that direction, Supervisor Bennett then continued her motion to include by adding the facts as presented on Page 2 of the first claim of a nuisance, which is at Line 14. Mr. Lipparelli felt that the motion had been withdrawn and suggested that for clarity the motion be started over. Mayor Masayko agreed.

Supervisor Bennett then moved that the Board of Supervisors adopt Resolution No. 1998-R-27, A RESOLUTION

DECLARING THAT A PUBLIC NUISANCE EXISTS ON PROPERTY LOCATED AT 900 AND 904 MINNESOTA STREET, that the allegations as presented in the claim against Patricia Genescritti, Judy Ann Genescritti, and Frank Genescritti are true and Frank L. Genescritti are true, and that the above named individuals have cleared, excavated, and graded the western portion of the slope of their property so as to cause soil and other debris to be deposited on the northern portion of Mrs. Eppard's property such that runoff water from the lot entered into the Eppard property; that the above named individuals appeared to have cleared, excavated, graded, and otherwise constructed upon the lot without first securing appropriate construction, grading or excavating permits; that they have further failed to construct a retaining wall upon the property allowing the runoff of waters to be discharged on the northerly portion of Mrs. Eppard's property; and that the individuals have further caused detriment to the property of Mr. Jon Minnich. These were her findings to be included in her motion. Anyone wishing to do so could add to the motion but this was the limit of her motion. Mayor Masayko requested a second. None was made. He then ruled the motion had died for lack of a second and expressed a desire to take a break to consult with the District Attorney. Supervisor Smith explained his reasons for not seconding the motion as being based on his feeling that the Board needed to incorporate findings that were contained in the complaint. The motion had "wandered off" of those findings by adding names and individual properties. In order to declare an issue a public nuisance, it should stay closer to the items involved within the complaint and not on a personal nature between one property owner and another. Mayor Masayko supported his comments and declared a recess.

BREAK: A ten minute recess was declared at 10:50 p.m. The entire Board was present when Mayor Masayko reconvened the session at 11 p.m., constituting a quorum.

Discussion between Mr. Lipparelli and the Board directed him to prepare a resolution after the meeting based upon the direction provided within the motion and on the record. The Mayor was to sign the resolution as prepared rather than delay the process further. Supervisor Plank prefaced his motion with this direction. He felt that all of the details were contained within the complaint, therefore, there is no great opportunity for a mistake to occur. The direction is contingent upon adoption of his motion.

Supervisor Plank then moved that the Board of Supervisor adopt Resolution No. 1998-R-27, A RESOLUTION DECLARING A PUBLIC NUISANCE ON PROPERTY LOCATED AT 900 AND 904 MINNESOTA STREET; that the complaint is against Frank L. Genescritti, Patricia a. Genescritti, Judy Ann Genescritti, and Frank Genescritti, who are the property owners at 900 and 904 South Minnesota, Carson City, Nevada; the above named individuals have cleared, excavated, and graded the western portion of the lot so as to cause soil and other debris to be deposited upon the northern--, on the lot; the above named individuals have further failed to construct a retaining wall upon the property allowing dirt and other debris to be pushed onto adjacent property--clarification indicated the first finding was No. IV, the second was a portion of No. X of the second claim of a nuisance; the third claim of a nuisance is No. XIV--the above named individuals have further failed to construct a retaining wall upon the property allowing dirt and other debris to be deposited upon the--block access to the sidewalk and public road in front of the parcel; the fourth claim of a nuisance is No. XVIII, the above named individuals have further failed to construct a retaining wall upon the property allowing portions of the adjoining uphill Minnich property to subside and render a large tree in eminent danger of falling into the utility lines serving the community; the fifth claim is No. XX, the above named individuals have allowed for several months on the property the accumulation of debris, litter, garbage, and other rubble and have stored heavy equipment on the property so as to create safety and health hazards; and to include a sentence that they are ordered to abate the above identified public nuisances within five calendar days. Following Mr. Lipparelli's request that an element be added, Supervisor Plank amended his motion to include that if the order is not obeyed, that the City staff is ordered to abate the nuisance through any reasonable means and make the cost of the abatement a special assessment against the real property located at 900 and 904 Minnesota Street. Supervisor Bennett seconded the motion. Discussion between Supervisors Bennett and Plank indicated the first claim was to have read "the above named individuals have cleared, excavated, and graded the western portion of the lot so as to cause soil and other debris to be deposited upon the northern portion of the adjacent lot and to cause runoff of water from the lot". Supervisor Bennett concurred with this reading.

Supervisor Tatro indicated that Claims IV, VI, X, and XIV all dealt with the retaining wall. No. XX does not. Public comments had indicated that the water issue will not be solved until the hillside dries out as one individual is running a sump pump and as long as the water table is so high this may not be very successful. He questioned the amount of work which could be accomplished in five days. Clearly, a retaining wall could not be constructed in five days. A retaining wall may not even be designed in five days to correct the problems which have already occurred. Mr. Mally is correct. The plans which Mr. Genescritti has will not work. The motion does not tell him what the Board is looking for beyond correction of the claims. Supervisor Tatro questioned what would constitute the abatement? Is it the actual construction of the retaining wall? Is the design and contracting for a retaining wall? Is it the restoration of the backyard above? Is it repairing the fence? He felt that it should be clear what must be done in order for this to be satisfied and what the corrective measures are. Number XIV has a factual error in it as there is no sidewalk so a blockage of the sidewalk cannot occur. He also noted that the photographs of the area indicated that this debris is no longer there. Supervisor Plank indicated that it was part of the solution even if it had been dealt with previously. Supervisor Tatro then questioned who would determine the appropriate process for dealing with the tree and utility lines? Would they use a chain to pull the tree back into place? Do you chop it down? Is it up to Mr. Genescritti to decide that he has five days to cut it down? This is a tree which Mr. Minnich may wish to keep and maybe he could save? He repeated his desire to better understand the motion.

Supervisor Plank felt that the abatement should be under the direction and supervision of the City staff. He understood Supervisor Tatro's concerns. The water should at least be put into the gutter so it will run straight out and not into the neighbors. He did not feel that it would be reasonable to require a water tank and that the runoff be pumped into a water tank to be periodically hauled off. He then questioned how the other parcel's runoff had been solved.

(3-2685.5) Ralph Marrone explained his personal knowledge of how the former Utilities Director Dorothy Timian-Palmer had solved the problem when a four-plex was constructed with heavy runoff from the same system two years ago. Purportedly the City had directed that the water be put into the street as it could not go directly into the storm drain. This process sent the water across Minnesota Street, then along it to Division, and into that storm drain. This was done at a cost of over \$10,000 for only one little piece of water. The entire hill is covered with water as there is water on Genescritti's property, on the old nursery property where they just built duplexes, adjacent to his property at the end of the street as well as on his property. He owned the water rights to the water on his property. His lot is large enough to allow him to dispel the water, have more grass, a garden, whatever. He liked the free water. He had run his house off of it for 23 years. Only a few years ago had he connected to City water. He felt the City should send the water from Mr. Genescritti's property down the street and into the Division Street storm drain. The cost to do this is unknown but the process is what Ms. Timian-Palmer had indicated should have been done all along.

Supervisor Bennett expressed her feeling that the Board had been agendaized to determine whether a nuisance existed at 900 and 904 South Minnesota. Action by the Board should declare whether or not it exists. The Board should not consider the abatement of the nuisance as such deliberation would be beyond that agendaized. It is possible that any abatement would take years to accomplish. She felt that the findings had been made to indicate that there is a nuisance. Mayor Masayko agreed that Board action should be restricted to the agenda, however, a response to Supervisor Tatro's question should be allowed. The motion could stand on its own.

Mr. Herrington indicated that his Department had already directed the engineer to start a temporary retaining wall for the embankment. Mr. Genescritti was notified of this requirement on May 29. He felt that "Rob" had already initiated the temporary shoring for the embankment retention. Mr. Genescritti had also been asked to keep the drainage within his property. This is also contained in the May 29 letter. Engineering has indicated that if he cannot do that, then Mr. Genescritti will be required to put it into a storm drain which runs along Minnesota. Mayor Masayko expressed his feeling that the Board wished for the motion to stand on its own.

(3-2800.5) Supervisor Smith indicated his reasons for not supporting the suggested continuance had been based on his feeling that the continuance would not have been very productive. Although 14 days may not have been the "kiss of death" for the project, it would have been 14 wasted days. He felt that one side had been extremely well

prepared when speaking to the issue. This had been one of Supervisor Tatro's concerns. This side had been well prepared with a lot of documentation and spoke directly to the complaint. One side did not. Supervisor Smith had "gotten off of the train" when Mr. Lipparelli had asked Mr. Genescritti if he had in fact received a copy of the complaint. He did not feel that it was incumbent upon the Board to draw out from Mr. Genescritti a response to every one of the items. There had already been too much hand-holding. The complaint had been filed. Due notice had been given. It is Mr. Genescritti's job to respond to the complaint. He did not do that adequately. Again, it does not mean that Supervisor Smith did not feel bad for this entire situation. But Mr. Genescritti did not respond adequately. In response to Supervisor Tatro's concern, Supervisor Smith did not feel that he should penalize one side for coming well prepared because the other side did not. He had mentioned this to Mr. Berkich earlier that if you are playing a basketball game and one team is ahead at the end of the game by 20 points, you don't say, let's play another couple of quarters and see if you can even it up. The fact is that we had the hearing. He felt that the majority were in agreement that something needed to be done. When Supervisor Tatro asked the questions about how to do this and that, Supervisor Smith could appreciate it but it is not his concern. What next? Does he have to go over and help Mr. Genescritti build it? It is time now for Mr. Genescritti to get on the ball and for him to say how he is going to begin to fix these problems. If he can't do it, then the City will do. Maybe, 11 o'clock was his frustration point but he felt that any more of the "hand-holding" and trying to answer questions on Mr. Genescritti's behalf and trying to make this any more fair than it already is----. He felt that it ready is fair and that it had been fair for quite some time. He felt bad--actually he felt terrible but he also felt bad for the other folks who have gone through the process, done everything that they were required to do, wanted to deal with this issue two months ago, had to hire an attorney, had to file a complaint, had to go through all of this other stuff, and for him, it is time to do something now.

Supervisor Tatro indicated that his question is that if nothing happens in five days, what should City staff do? If something happens in five days, how does City staff know that it is enough unless the Board tells them? If the Board felt he was wrong, that is fine. There are three of them as he counted it and it does not matter. Mayor Masayko expressed his feeling that the motion spoke for itself. It does not matter what he and Supervisor Tatro thought. Supervisor Tatro then added an additional comment that he had conducted administrative hearings and when he does so he receives instructions that he needs to go through and extract information from both sides if they did not capably present it themselves. The Board had decided not to do this.

Supervisor Plank pointed out that Supervisor Tatro had indicated earlier in the day regarding the Fuji Park situation that the Board must trust the staff, take their word that everything is in it, and that in this case the Board needs to depend on staff to say what is appropriate and fits the motion as far as taking care of the public nuisance on this Minnesota piece of property. If it is not dealt with to staff's satisfaction, then they should submit recommendations to the Board, and the Board should determine what should be done. Mayor Masayko indicated that staff would have to act based upon what is on the record. While this may not be crystal clear, it does stand on its own and is clear enough to establish an action plan.

Mr. Lipparelli questioned, in order to ensure due process in the proceedings as the motion is oral and there will be no written form of the motion until he drafts it and the Mayor signs it, the commencing date for the five day period. Board direction indicated that the five day period is to begin on the date that Mr. Genescritti is given a written copy of the Resolution so that he will know what he was being asked to do. Mr. Lipparelli then pledged to have the written resolution drafted by tomorrow and available for the Mayor's signature. Mayor Masayko indicated that he would be available tomorrow to sign it.

(3-2950.5) Supervisor Plank then amended his motion to include that the nuisance be abated within five days after it is delivered to Mr. Genescritti. Supervisor Bennett concurred. The motion to adopt Resolution No. 1998-R-27 which finds that a public nuisance exists at 900 and 904 Minnesota Street based on the enumerated findings and directs that such nuisances be abated by Mr. Genescritti within five days commencing the date the resolution is delivered to Mr. Genescritti and for staff to abate it thereafter was then voted by roll call with the following result: Tatro - No; Plank - Yes; Smith - Yes; Bennett - Yes, and Mayor Masayko - No. Motion carried 3-2. Mayor Masayko indicated the resolution would be drafted, signed,

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and delivered personally by City staff to Mr. Genescritti tomorrow.

There being no other matters for consideration, Supervisor Plank moved to adjourn. Mayor Masayko seconded the motion. Motion carried unanimously and Mayor Masayko adjourned the meeting at 11:30 p.m.

The Minutes of the June 4, 1998, Carson City Board of Supervisors meeting

1998.

ARE SO APPROVED ON _____October_1____,

_____/s/_____

Ray Masayko, Mayor

ATTEST:

_____/s/_____
Alan Glover, Clerk-Recorder