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A special meeting and workshop of the Carson City Planning Commission were held on Thursday, July 11, 2002, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 5:30 p.m.

PRESENT: Chairperson Allan Christianson, Vice Chairperson Richard Wipfli, and Commissioners Gayle Farley, Mark Kimbrough, Wayne Pedlar, John Peery, and Roger Sedway

STAFF PRESENT: Community Development Director Walter Sullivan, Senior Planner Lee Plemel, Deputy District Attorney Jason Woodbury, Recording Secretary Katherine McLaughlin and Associate Planner Jennifer Pruitt (S.P.C. 7/11/02 Tape 1-0001)

NOTE: Unless otherwise indicated, each item was introduced by the Chairperson. Staff then presented or clarified the staff report/supporting documentation. 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.

A. ROLL CALL, DETERMINATION OF A QUORUM, AND PLEDGE OF ALLEGIANCE - Chairperson Christianson convened the meeting at 5:30 p.m. Roll call was taken. The entire Commission was present, constituting a quorum. Commissioner Wipfli led the Pledge of Allegiance.

B. PUBLIC COMMENTS (1-0013) - None.

C. DISCLOSURES (1-0021) - None.

D. PUBLIC HEARING - A-02/03-4 - DISCUSSION AND ACTION TO AMEND CCMC SECTION 18.03 (1-0023) - Senior Planner Lee Plemel, Community Development Director Walter Sullivan, Chris MacKenzie, Darren Selby, Betty Brinson - Mr. Plemel's introduction included a summary of the difficulties found in attempting to develop an ordinance using the neighborhood characteristics to restrict the childcare uses. Therefore, staff proposed an ordinance differentiating between residential and commercial facilities. The residential facility must be used as the owner/operator's primary residence with the childcare use being ancillary. It was felt that only Mr. Gutzman's operation would be impacted by the change as it was the only one located in a residential district. Mr. Gutzman's special use permit was obtained before the ordinance requiring the owner/operator to reside on the premise was adopted. Staff felt that research of the ordinance prohibiting the placement of two child care facilities within 500 feet of each other had been related to the residential operations although the ordinance itself does not distinguish between the two. Other ordinances/statutes control the number of children allowed in a facility. These restrictions are enforced by the Health Department and are based on the amount of space in the building that will be used for this purpose. The definition suggested for a commercial facility involves only Title 18. The other statutes and ordinances may have some different or additional descriptions. The ordinance will allow a commercial facility to operate adjacently to a residential facility or within 500 feet. Commission comments expressed concern about having a commercial facility located in a residential zone and commended staff on the effort to address a specific site. It was pointed out that the issue should not center on one location as the ordinance applies to the entire City. Commissioner Wipfli expressed his support for the 500-foot restriction in residential areas. He hoped that a difference could be found citing special circumstances with the road/street or commercial operation. Discussion

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explained that the ordinance would allow a hypothetical location on Highway 50 East and Nye/Sherman Lane to have both a residential facility and a commercial childcare facility. Supervisor Tatro's intent when including the 500-foot restriction was felt to have related to residential childcare facilities only. The ordinance defines and supports the intent while providing flexibility for commercial facilities as it would allow commercial operations in commercial zones to be adjacent to each other. Chairperson Christianson pointed out that the Roop location is in a residential zone. Staff reiterated the intent of the ordinance as being that it will allow two childcare facilities to be adjacent to each other if one is a commercial operation and the other is a residential operation. The difference is whether the owner/operator resides in the premise. The Reno ordinances do not contain a distance restriction. Their childcare facilities can be residential or commercial. The difference depends on the number of children. Carson City has the Health Dept. establish the number of children allowed in a facility. The Health Dept. uses the facility's size to establish the number of children that will be allowed. Discussion ensued concerning the number of commercial operations allowed in the community and those that were denied. Mr. Sullivan also explained the noticing that had been provided and that the agenda had been published in the Nevada Appeal on four occasions. Individual notices had not been mailed as the entire City is involved in the revision and not just one specific site. Discussion reiterated that only one facility would be impacted by the change. The requirement mandating that the owner/operator reside in the residential childcare facility was established in 1992-93. Prior to that time it was not required.

(1-0460) Public comments were solicited. Attorney MacKenzie explained that he represented Mr. and Mrs. Gutzman. They understood the distinction between residential and commercial operations. The Gutzmans do not live at their property on Roop Street. The function of the ordinance is to protect the residential character of the neighborhood. Allowing a commercial facility will mix the uses. This creates spot zoning which is illegal. Its approval could make the Commission/City subject to litigation. The Gutzmans have a special status as they were there before the restrictive ordinance was adopted. The ordinance eliminates the protection of the 500-foot distance. The original problems with the site were resolved. The ordinance now makes them the "bad guys". There are issues with the lease, the current tenant, and her adjacent location. An eviction of the current tenant has not occurred. If the current or future tenant wishes to live in the facility, does this make it a residential facility? The value of the special use permit is being impinged upon by the competition which will be created by the adjacent facility. The number of children had been restricted to 30 due to concerns regarding the traffic. The location of two facilities adjacent to each other fails to address this concern. The ordinance circumvents the original intent. Commissioner Pedlar did not feel that having the two childcare facilities adjacent to each other would be detrimental. The residential nature of the area could be detrimental. Mr. MacKenzie felt that it would create competition for the children in the neighborhood. Commissioner Peery pointed out that the process will preserve the Gutzmans' rights by allowing him to keep the commercial establishment. The tenant could leave. Discussion indicated that the facility could be operated by another tenant. Competition is everywhere in our society. Mr. MacKenzie voiced concerns regarding having the same pickup and drop-off times when the facilities are located adjacent to each other. Other facilities do not have this concern as there is the 500-foot prohibition. Commissioner Pedlar pointed out the feeling that the current tenant will take her clientele with her when she lives. This will require the new tenant to obtain her/his own clientele. For this reason he did not believe that it would create unfair competition or a threat to the business. Mr. MacKenzie felt that the normal childcare operation pulled its clientele from the surrounding area which would make it more difficult for the operator. There are still the traffic concerns including the pickup and drop-off times. This is the value that they were attempting to protect. Mr. Sullivan briefly noted the original Code concerns with this location. The facility currently meets all of the City's code requirements and standards.

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Mr. MacKenzie indicated that he understood those concerns and explained that their concern is regarding having the facility designated as a commercial operation and the standards and requirements for that designation.

Mr. Sullivan indicated that it would not be spot zoning. The ordinance clarifies and betters the situation.

Mr. MacKenzie expressed his feeling that it should not make any difference, regarding the use, whether someone resided in the facility or not. Chairperson Christianson voiced his concern about allowing a commercial operation in a residential zoned district. This topic is not agendaized for consideration. The traffic impact and the impact on the neighborhood remain the same. He suggested that the area be rezoned commercial. Commissioner Wipfli pointed out the location of commercial establishments across the street and supported rezoning the area to residential office or commercial as the character of the street has changed. These items should be used to define the area. Mr. Sullivan reiterated that the ordinance will allow two childcare facilities to be adjacent, one a residential facility and the other a commercial facility. The ordinance differentiates between the two uses and provides clear direction to staff. Commissioner Wipfli felt that the ordinance does provide clarity, however, the current problem remains. Mr. Woodbury explained the District Attorney's office support for the ordinance. He disagreed with Mr. MacKenzie's contention that it would be spot zoning as the ordinance will be applied throughout the City. Chairperson Christianson felt that the ordinance would not standup as it only defined the terms "commercial", "residential", "collector" and "arterial". It does not indicate whether the facilities could be side-by-side. Commissioner Sedway explained that he would support the ordinance due to his belief that Supervisor Tatro had wanted the 500-foot distance in the residential zone. He did not believe that it is necessary to include the fact that an operator/owner did not have to live on the premises of a commercial establishment. He would not support the ordinance if this clause remains. Commissioner Peery felt that the salient point is that the Gutzmans' situation could not be duplicated elsewhere in the community. This had, therefore, protected his rights. Chairperson Christianson disagreed with his point.

Commissioner Farley expressed her feeling that it may be spot zoning and pointed out the private property rights issue. She was concerned about the lack of neighbors at the meeting. She did not wish to consider the issue without those individuals. They had originally attended the other meetings. She wished to protect everyone and avoid a mistake. Commissioner Peery reiterated that counsel had advised that it is not spot zoning. Commissioner Pedlar felt that he did not have a problem with the definition of a commercial establishment as being one located in nonresidential zoning districts. A facility similar to the Gutzmans' would not be found anywhere else in the community. It is the only one that is grandfathered. The spot zoning issue had been removed. Noticing will be provided when the special use permit is requested. The special use permit will be discussed in an open meeting before it is approved/denied.

Mr. MacKenzie felt that the Commission should consider the equal protection issues, uniform application of the law, and rational treatment for not just the Gutzmans but all residents of Carson City. There should not be any different treatment for others in a commercial area.

Additional public comments were solicited. Mr. Selby pointed out that there are two childcare facilities on Procter which are across the street from one another. The individuals who had attended the last meeting supporting Ms. Henson of Little Tykes had been parents. None of the neighbors were present. The neighbors

had been noticed. Only the Gutzmans opposed the ordinance. Chairperson Christianson pointed out that he was discussing the previous issue and not the current topic. Commissioner Farley indicated that she had received two cards in opposition to the Commission's decision when the previous issue had been discussed. Mr. Selby felt that there had been 23 in support and one in opposition. Two childcare facilities located adjacent to each other would have competition which he felt was good. There are many gas stations, restaurants, etc., in the community that are located adjacent to each other. They do not feel that this is unfair competition or a punishment. Chairperson Christianson reiterated his concern about having a commercial facility in a residential neighborhood. The use is conditional which requires a special use permit and a public hearing. Mr. Selby pointed out that the Gutzmans lease their permit. Ms. Henson wishes to live in the premises. The proposal clarifies the ordinance. They had originally had questions concerning the arterial street and the separation. The Highway 50 and Nye site could be too close together, however, they are in different zoning districts. He did not feel that the facility pulled its clientele from just the immediate neighborhood. Their clientele came from Dayton, Reno, Gardnerville, and not just Colorado Street, Utah Street, Roop Street, etc.

Commissioner Farley expressed her desire to have staff look at the legal ramifications again. She did not wish to hurt anyone and wanted to be fair to all. Mr. Selby indicated that he understood and stated that Little Tykes had not gone out to get the Gutzmans. Ms. Henson only wanted to operate her own place and to own her property.

(1-0987) Additional public comments were solicited. Ms. Brinson indicated she owns Wee Express Day Care and has a special use permit. She had obtained it 35 years ago. There is a building across the street from her facility which is for sale and that Ms. Henson could move into. The traffic she encounters with her 45 children was described. She would oppose an operation in her vicinity due to her concerns about the heavy traffic volume that would be created. Her personal experience with a small licensed facility in her vicinity was described to illustrate this concern. She also felt that the average residential childcare operation stayed in business only five years. They are not required to obtain a special use permit. Mr. Sullivan indicated that the special use permit is required when more than four children are cared for in a home. Ms. Brinson felt that it was discrimination to refer to a residential childcare facility instead of a commercial facility and that she would oppose having one next door to her facility due to the traffic. She had been required to obtain 300 signatures in order to get her special use permit. Chairperson Christianson explained that this is no longer required. Ms. Brinson reiterated that she had obtained her special use permit 35 years ago. She supported the 500-foot rule. She was not opposed to having other types of commercial facilities adjacent to her facility nor would she be if she were in the motel/hotel, restaurant operation. Her facility has rules which restrict the parents pickup and drop-off times to eliminate the heavy traffic volume normally encountered at childcare facilities. Additional public comments were solicited but none were given.

Mr. Sullivan reiterated that the item had been noticed in accordance with the Code and Statute requirements. The agenda was also in the newspaper on three or four separate occasions. Chairperson Christianson pointed out that there had been several newspaper articles on the topic. The ordinance impacts the entire City, therefore, noticing had not been done to the 300-foot standard. Commissioner Peery pointed out that there is a wide alley between the two properties which could provide the necessary space between the two properties to handle the traffic. Commissioner Farley agreed. Discussion between staff and the Commission explained the reason staff had defined commercial and residential facilities. The Gutzmans' facility would not be

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prejudiced if the owner/operator chose to live in the facility as the special use permit indicates that they do not have to live on-site. At the current time only one site would be licensed as a commercial establishment that is located in a residential zone. A commercial facility could be located in the commercial, light industrial, residential office zones. Ms. Brinson's facility could be defined as commercial if she does not live there. The same would be true of any other establishment with similar conditions.

Commissioner Peery moved to approve an ordinance amending Carson City Municipal Code Title 18, Zoning, specifically Section 18.03.010 revising the definition of child care facility to include residential and commercial facilities, Section 18.11.020 revising the proximity of residential child care facilities to commercial child care facilities and allowing separation by a collector street or arterial street and revising the Carson City Development Standards, Section 1.6, Child Care Facilities Performance Standards, relating to commercial and residential child care facilities. Commissioner Wipfli seconded the motion.

Commissioner Kimbrough explained his lack of knowledge regarding the issues as this is his first meeting. When he had read the packet, he had been comfortable with the concept. He had carefully listened to the discussion but was confused with some of the terms. Commissioner Farley indicated her comfort level with the proposal except for the facts relating to the spot zoning issues. She asked that the record show this concern although she would agree with the motion. Commissioner Sedway felt that the original intent of the residential zone had been to provide a separation of 500 feet. Basing a change in designation solely on the place of residence does not "jive". The definition for commercial removes the requirement that the owner/operator live on the premise. This bothers him and will open the Commission/City to real problems. As long as that definition remains, he would not support the motion. Commissioner Kimbrough pointed out that the ordinances were to be for the good of the entire City. He felt that the proposal was for an individual or one specific situation. This is another reason he would not vote on the item without its history. Commissioner Pedlar expressed his difficulty in making a decision on the matter. The character of the area may no longer match the current zoning. He preferred an ordinance addressing Commissioner Sedway's concerns that will address the zoning for the street and elimination of the 500-foot restriction. The street is currently zoned residential although its character is such that it may no longer be a residential zone. Commissioner Sedway suggested that the one issue not be applied to the consideration, i.e., use any location in the community which does not include a borderline commercial site and apply the conditions. This would mean that an owner/operator would not have to live in a commercial childcare facility even though it is located in the middle of a residential area. Chairperson Christianson indicated that he was also having difficulty with the motion as he felt that it would create an impact on the residential character of the neighborhood when a nonresidential childcare facility is located within 500 feet of an existing or proposed residential facility. He did not see that by changing the definition of living there or not living there would really effect the original intent of the 500-foot restriction. He would, therefore, not support the motion. The motion was voted by roll call with the following result: Kimbrough - Abstain; Wipfli - Aye; Peery - Aye; Farley - Naye; Pedlar - Naye; Sedway - Naye; and Christianson - Naye. Motion failed on a 2-4-1 vote.

Following discussion between Commissioner Sedway and Mr. Plemel on a revised motion, Commissioner Pedlar moved to approve an ordinance amending Carson City Municipal Code Title 18, Zoning, specifically Section 18.03.010 revising the definition of childcare facility to include residential and commercial facilities with a commercial facility being defined as a childcare facility that is located within a nonresidential zoning district and a residential childcare facility being defined as a childcare facility that is located in a residential

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zoning district and, further continuing, amending Section 18.11.020 revising the proximity of residential childcare facilities to commercial childcare facilities and allowing separation by a collector street or an arterial street and revising the Carson City Development Standards, Section 1.6, Childcare Facilities Performance Standards, relating to commercial and residential child care facilities. Commissioner Peery seconded the motion. Motion carried 7-0.

Mr. Sullivan explained that the ordinance will be presented to the Board of Supervisors on July 18. The changes will be made to the ordinance as directed. (Commissioner Sedway stepped from the room—6:53 p.m. A quorum was still present.) Discussion between Chairperson Christianson and Mr. Sullivan indicated that the motion and discussion had clarified the Highway 50 issues. Mr. Sullivan was not certain how it would impact the Roop Street situation. The Commission's comments will be presented to the Board with the revision.

RECESS: A recess was declared at 6:55 p.m. The entire Commission was present when Chairperson Christianson reconvened the meeting at 7 p.m., constituting a quorum.

E.. PUBLIC WORKSHOP (1-1395) - Community Development Director Walter Sullivan, Associate Planner Jennifer Pruitt, Builders Association of Western Nevada (BAWN) Executive Officer Rick DeMar - During Mr. Sullivan's introduction Commissioner Farley left the room—7:02 p.m. (A quorum of the Commission was present.) Reasons for bringing the fee revisions to the Commission were limned. The Board of Supervisors will be asked to adopt the revisions by resolution. The fees were last revised in 1987 when a time and motion study was conducted. The Finance Department had participated in the revision process. The communities used for a comparison were noted. The differences in fees and staffing procedures, the City's General Fund support for the division, and for continuing its subsidy were explained. The formula used to establish the suggested rates and subsidy amounts was provided. The current fees provide only 4.3 percent of the funding necessary to maintain the Department. The typical range is between 60 and 90 percent. The processing cost fully absorbed all of the overhead, benefits, etc. An equitable funding source should include a General Fund subsidy with the applicants providing the balance. It was recommended that periodic fee increases include a cost-of-living index similar to the business license. The fees had not included special projects which should be assessed fees based on hourly rates. These fees will be brought back in the future. Staff felt that these fees should include such items as postage which varies from application to application. Ms. Pruitt explained reasons fees had not been assessed for the Downtown Design Review and the Historic Resources Committees, the initial Major Project Review, and the Hillside Ordinance Reviews. Noticing was provided. Initial discussions have occurred with the BAWN, the Chamber of Commerce, developers, sign companies, etc. Various meetings have and will be televised. Public comments are solicited. The fees are on the website. Staff felt that the General Fund subsidy should be reduced. It was estimated that the proposed fee increases would generate approximately \$500,000. City Departments, State Agencies, nonprofit organizations, and individuals below the poverty level are exempt from the fees. Their applications are counted for reporting purposes. Proof required for the exemptions was described. Justification for increasing the fees at this time included the loss of Walmart, budget concerns, the complexity and the time required to approve the applications, the failure to have increased the fees periodically, the difference in fees between Carson City and the surrounding communities/counties, and the service costs. Staff recommended phasing in the increases to avoid sticker shock. Staff thanked MAXIMUS for its assistance in developing the fee structure. Discussion indicated that it may take three to five years to implement all of the fees suggested. If the fee structure is

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approved, it will be effective January 1, 2003. Mr. Sullivan stressed that the time and motion study had been conservative but realistic in the hours used. Commissioner Pedlar asked that the impact be firmed up and provided to the Chamber of Commerce. It was felt that the fee increases would create a positive impact on the General Fund, including a potential increase to the ending fund balance that could be used for other items, such as additional deputies or firefighters. It was also pointed out that currently the General Fund supports 95 percent of the fees. The fee increase will provide a better balance between the applicants and the General Fund as well as regionally. It was also pointed out that the Commission had already sent small applications to the staff for processing. This is the reason staff recommended major and minor fees for some items, i.e., variances, special use permits, etc. Staff's comparison of other counties' procedures had included a review to determine whether Carson City's efficiency could be improved. Mr. Sullivan agreed that there may be other items which should be considered for review/approval at the staff level. Comments stressed that the applicant can appeal any decision without being assessed another fee. Staff had recommended that the neighbor be required to pay an appeal fee although the consultant's report had recommended that all appeals be handled without an additional fee. Commissioner Sedway explained his objection to having the Commission involved with the establishment of fees and indicated that he would not vote on anything dealing with fees. He also felt that all appeals should be handled without any additional fees as it will provide reasonable access to the Board of Supervisors. Mr. Sullivan explained that previous Commissions have set the fees and this is the reason staff brought the item to the Commission. Commissioner Peery indicated that he had no problem establishing the fees. The recommendation to tier the fees was felt to be reasonable, palatable, and a kinder move. Increases were justifiable, however, not in an amount as to create sticker shock. The public was asked to call or submit comments to the Department. Commissioner Kimbrough requested alternatives be submitted including tiering using percentages.

(1-2310) Mr. DeMar had read the report but had not had an opportunity to discuss it with his members. He asked that BAWN be allowed to bring comments back to the Commission at a future meeting. He supported tiering or an implementation period. Chairperson Christianson indicated his concern with the proposed fee increase for appeals. He also questioned the fee increase for lot line adjustments. Mr. DeMar indicated that they wished to work with staff and felt that the current relationship would allow them to work together on the fees. He also pointed out the fee increases which his members and other builders have been experiencing such the liability insurance premiums. Commissioner Pedlar and Chairperson Christianson supported tiering the rate increase. Mr. DeMar suggested different rates for large and small builders with larger projects paying higher fees. He also indicated that he would discuss the fees with his members and then with Mr. Sullivan before the end of the month.

Commissioner Sedway voiced his opposition to the report's comments that indicate the fee increases were warranted due to the amount subsidized by the General Fund and that it is an equitable source of revenue. These items should be considered by the Board of Supervisors and not the Planning Commission. Mr. Sullivan agreed that staff would continue to perform the duties and explained his reasons for bringing the matter to the Commission. Chairperson Christianson expressed his concern that the fees may be seen as a disincentive for builders to come to the City particularly in view of the Growth Management Ordinance. His support for the tiered program was reiterated. There should be some leeway with the appeals. Commissioner Pedlar felt that the appeals should be paid by taxes and go to the Board of Supervisors although he was amenable to a nominal fee which may discourage nuisance filings. He opposed the \$350 appeal fee required for the Champion Speedway issue. Mr. Sullivan explained that this is the balance that he is looking for from the Commission.

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Commissioner Wipfli explained his reasons for supporting Commissioner Pedlar's suggestion of a nominal fee for appeals as his personal experience indicated. He also pointed out that the Board of Supervisors rarely overturns the Commission. Not requiring a nominal fee will encourage the appellants to go direct to the Board. The process as established provides a fairer hearing and does not bypass the Commission. Mr. Sullivan limned the appeals which had been filed including the number overturned by the Board. He felt that the Board found the Commission to be credible and thanked the Commissioners for their comments. This was a discussion only item. No formal action was taken.

F. ADJOURNMENT - Commissioner Peery moved to adjourn. Commissioners Kimbrough and Wipfli seconded the motion. Motion carried 6-0. Chairperson Christianson adjourned the meeting at 8 p.m.

The Minutes of the July 11, 2002 Carson City Planning Commission Special Meeting and Workshop

ARE SO APPROVED ON July 31, 2002.

/s/
Al Christianson, Chairperson