

# CARSON CITY BOARD OF SUPERVISORS

## Minutes of the January 3, 2008 Meeting

### Page 1

A regular meeting of the Carson City Board of Supervisors was scheduled for 8:30 a.m. on Thursday, January 3, 2008 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

**PRESENT:** Mayor Marv Teixeira  
Supervisor Robin Williamson, Ward 1  
Supervisor Shelly Aldean, Ward 2  
Supervisor Pete Livermore, Ward 3  
Supervisor Richard Staub, Ward 4

**STAFF:** Alan Glover, Clerk-Recorder  
Andrew Burnham, Public Works Department Director  
Joel Benton, Senior Deputy District Attorney  
Kathleen King, Recording Secretary

**NOTE:** A recording of these proceedings, the Board's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are public record, on file in the Clerk-Recorder's Office. These materials are available for review during regular business hours.

**CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, AND INVOCATION (8:32:17) -** Mayor Teixeira called the meeting to order at 8:32 a.m. Roll was called; a quorum was present. Mr. Burnham led the pledge of allegiance. Calvary Chapel Pastor Patrick Propster wished everyone Happy New Year, quoted from Proverbs 23:7, read from Philippians 4:8, and gave the invocation. Mayor Teixeira observed a moment of silence in honor of Supervisor Aldean's mother.

**PUBLIC COMMENTS AND DISCUSSION (8:34:30) -** Sam Dehne discussed the reasons for his absence from the last Board of Supervisors meeting. He suggested removing the Christmas decorations from along Carson Street. He discussed the possibility of the town of Dayton becoming a municipality.

Supervisor Staub advised of having recently learned of Don Brooks' death. He provided background information on former Deputy Sheriff Don Brooks' service to and residence in Carson City. He offered condolences to the Brooks family.

Mayor Teixeira called for additional public comment; however, none was forthcoming.

**1. ACTION ON APPROVAL OF MINUTES (8:34:26) -** None.

**2. CHANGES TO THE AGENDA (8:38:40) -** Mayor Teixeira withdrew item 11(C) from the agenda. Planning Division Director Walter Sullivan acknowledged that item 3(A) should be withdrawn. (8:39:40) In response to a question, Mayor Teixeira advised that item 12(B) was agendaized time certain at the request of the applicant. Supervisor Aldean suggested modifying the agenda to address item 12(A) prior to the lunch break. Mr. Benton reviewed the provisions of the Nevada Open Meeting Law pertinent to time-specific items.

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 2**

**LIQUOR AND ENTERTAINMENT BOARD**

Mayor Teixeira recessed the Board of Supervisors and convened the Liquor and Entertainment Board at 8:39 a.m. A quorum of the Board was present; Member Furlong was absent.

**ACTION ON APPROVAL OF MINUTES (8:41:35) - None.**

**3. DEVELOPMENT SERVICES - PLANNING**

**3(A) ACTION TO APPROVE A PACKAGED LIQUOR LICENSE AND A PACKAGED BEER AND WINE LIQUOR LICENSE FOR BERRY-HINCKLEY INDUSTRIES, LIQUOR MANAGER: JERRY EDWARD HERBST, DBA WINNERS CORNER, LOCATED AT 1615 EAST FIFTH STREET, CARSON CITY, NEVADA; 1400 RAND AVENUE, CARSON CITY, NEVADA; AND 1102 NORTH CARSON STREET, CARSON CITY, NEVADA - Withdrawn.**

**3(B) ACTION TO APPROVE A DINING ROOM WITH BEER AND WINE LIQUOR LICENSE FOR CESAR L. ACOSTA (LIQUOR MANAGER: CESAR L. ACOSTA) DBA PANITHIAS GRILL, LOCATED AT 2000 NORTH CARSON STREET, CARSON CITY (8:41:41) -** Planning Division Director Walter Sullivan introduced this item and reviewed the agenda materials.

(8:42:38) Cesar L. Acosta introduced himself for the record, and acknowledged this was his first liquor license application. Mr. Acosta responded to questions regarding the name of the establishment. He acknowledged the understanding that a liquor license is a privilege, and the requirement to do everything in his power to ensure no liquor is sold to minors. He further acknowledged that he serves as the on-site manager. Chairperson Teixeira recommended that Mr. Acosta enroll all his employees in the servers education course offered by the Sheriff's Office.

Chairperson Teixeira called for Board member and public comments. When none were forthcoming, he entertained a motion. **Vice Chairperson Staub moved to approve a dining room with beer and wine liquor license for Cesar L. Acosta, liquor manager, dba Panithias Grill, located at 2000 North Carson Street, Carson City, including the non-refundable investigation fee of \$500, the original new application fee of \$500, and the liquor license per quarter fee of \$150. Additionally, all sellers and servers of liquor must attend the Sheriff's Office Servers Education Class within three months of the business opening. Member Aldean seconded the motion. Motion carried 5-0.**

Chairperson Teixeira wished Mr. Acosta good luck, adjourned the Liquor and Entertainment Board at 8:44 a.m., and reconvened as the Board of Supervisors.

**4. BOARD OF SUPERVISORS CONSENT AGENDA (8:45:00) - Mayor Teixeira entertained requests, of the Board members and the public, to hear items separate from the consent agenda. When none were forthcoming, he entertained a motion. Supervisor Livermore moved approval of the consent agenda, consisting of four items: item 4-1, Assessor's Office; item 4-2, City Manager with recognition to four individuals for appointment to the Board of Appeals: William Miles, David Saarem, Brett McElhaney, and Karen Purcell; item 4-3, Development Services; and item 4-4, District Attorney, Resolution No. 2008-R-1, as presented. Supervisor Staub seconded the motion. Motion carried 5-0.**

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 3**

**4-1. ASSESSOR - ACTION TO APPROVE THE PARTIAL REMOVAL AND REFUND OF \$202.61 FROM THE 2006 / 07 TAX YEAR AND THE REMOVAL OF TAXES / PENALTIES FROM THE 2007 / 08 TAX YEAR FOR PARCEL NUMBER 010-011-10 (LOCATED IN EL DORADO CANYON) PER NRS 361.050**

**4-2. CITY MANAGER - ACTION TO APPOINT THE FOLLOWING TO THE BOARD OF APPEALS, RE-ESTABLISHING THEIR INITIAL TERMS: WILLIAM MILES TO FILL THE GENERAL CONTRACTOR POSITION FOR A TWO-YEAR TERM ENDING JANUARY 1, 2010; DAVE M. SAAREM TO FILL THE MECHANICAL ENGINEER POSITION FOR A THREE-YEAR TERM ENDING JANUARY 1, 2011; BRETT McELHANEY TO FILL THE STRUCTURAL / CIVIL ENGINEER POSITION FOR A THREE-YEAR TERM ENDING JANUARY 1, 2011; AND KAREN PURCELL TO FILL THE ELECTRICAL ENGINEER POSITION FOR A THREE-YEAR TERM ENDING JANUARY 1, 2011**

**4-3. DEVELOPMENT SERVICES ENGINEERING - ACTION TO APPROVE DEDICATION OF LAND FOR JOHN MANKINS PARK FROM PROPERTY OWNER GARTH RICHARDS, PRESIDENT OF SILVER OAK DEVELOPMENT COMPANY, LTD. TO CARSON CITY FOR A PARCEL OF LAND CONTAINING 2.99± ACRES IN SILVER OAK PLANNED UNIT DEVELOPMENT**

**4-4. DISTRICT ATTORNEY - ACTION TO ADOPT A RESOLUTION ADOPTING AND APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE STATE OF NEVADA, ACTING BY AND THROUGH ITS DEPARTMENT OF PUBLIC SAFETY, DIVISION OF RECORDS AND TECHNOLOGY, RECORDS AND IDENTIFICATION BUREAU, AND CARSON CITY TO PROVIDE FOR THE AUTOMATED EXCHANGE OF LAW ENFORCEMENT, CRIMINAL JUSTICE, PUBLIC SAFETY, MOTOR VEHICLE AND DRIVER LICENSE INFORMATION THROUGH THE NEVADA CRIMINAL JUSTICE INFORMATION SYSTEM ("NCJIS"), AND OTHER MATTERS PROPERLY RELATED THERETO**

**ORDINANCES, RESOLUTIONS, AND OTHER ITEMS**

**5. FINANCE - ACTION TO ADOPT THE CARSON CITY PLAN OF CORRECTIVE ACTION FOR FY 06 / 07 STATUTORY VIOLATION INCLUDED IN THE ANNUAL AUDIT (8:46:05) -** Mayor Teixeira congratulated Nick Providenti on his promotion to the position of Finance Department Director. Mr. Providenti reviewed the agenda report and the attached December 20, 2007 memo. Supervisor Staub inquired as to the issue of internal controls, as noted by Kafoury, Armstrong in their audit report. Mr. Providenti advised there was no apparent violation of the statute. He acknowledged an intent to address the observation, and advised he will be working closely with Internal Auditor Sue Johnson and Kafoury, Armstrong representatives.

Mayor Teixeira called for additional comments by the Board members and comments from the public. When none were forthcoming, he entertained a motion. **Supervisor Aldean moved to adopt the Carson City Plan of Corrective Action for FY 06 / 07 statutory violations included in the annual audit. Supervisor Williamson seconded the motion. Motion carried 5-0.**

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 4**

**6. PUBLIC WORKS TRANSPORTATION - ACTION TO APPROVE A POLICY AND PROCEDURE FOR ADA INQUIRIES AND REQUESTS TO IMPROVE THE CITY'S RESPONSE TO SUCH INQUIRIES AND REQUESTS, AS RELATED TO PEDESTRIAN FACILITIES**

(8:49:12) - Transportation Program Manager Patrick Pittenger provided an overview of the agenda materials, reviewed the agenda report, and provided background information on this item. In reference to the proposed form included in the agenda materials, he advised that requests will be handled systematically and improvements prioritized by the Public Works Department Director. He further advised that the form would be distributed to Public Works Department and other pertinent City staff.

Mayor Teixeira entertained questions or comments from the Board members and from the citizens present. When none were forthcoming, he entertained a motion. **Supervisor Williamson moved to approve a policy and procedure for ADA inquiries and requests to improve the City's response to such inquiries and requests, as related to pedestrian facilities. Supervisor Aldean seconded the motion. Motion carried 5-0.**

**7. CLERK RECORDER - ACTION TO ADOPT, ON SECOND READING, BILL NO. 143, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE, TITLE 2, ADMINISTRATION AND PERSONNEL, CHAPTER 2.28, COMPENSATION FOR ELECTION OF BOARD OFFICERS, BY DELETING SECTION 2.28.010 IN ITS ENTIRETY AND REPLACING WITH "THE COMPENSATION AND CONDITIONS OF EMPLOYMENT FOR VOTING BOARD OFFICERS, COUNTING BOARD OFFICERS, THOSE EMPLOYED FOR THE PURPOSE OF CONDUCTING EARLY VOTING, SPECIALLY APPOINTED DEPUTY SHERIFFS, AND OTHER ELECTION BOARD OFFICERS, SHALL BE FIXED BY RESOLUTION OF THE BOARD OF SUPERVISORS," AND OTHER MATTERS PROPERLY RELATED THERETO**

(8:51:59) - Mr. Glover advised of having received no written or verbal comments since the first reading of this item, and reviewed the agenda report. Mayor Teixeira entertained comments or questions of the Board members and the public. In response to a question, Mr. Glover advised that the compensation amounts would be established at the same rate as the last four years. He listed the specific compensation amounts for each position.

Mr. Glover acknowledged that the City Elections Division will have nothing to do with the upcoming Nevada caucuses. He referred any interested individual to the Secretary of State's website for information. At Supervisor Williamson's request, he reviewed the dates for the regular primary election and the general election: August 15<sup>th</sup> and November 4<sup>th</sup>, respectively.

Mayor Teixeira entertained a motion. **Supervisor Staub moved to adopt, on second reading, Bill No. 143, an ordinance, 2008-1, amending the Carson City Municipal Code, Title 2, Administration and Personnel, Chapter 2.28, Compensation for Election Board Officers, by deleting 2.28.010 in its entirety and replacing with "The compensation and conditions of employment for voting board officers, counting board officers, those employed for the purpose of conducting early voting, specially appointed deputy sheriffs, and other election board officers, shall be fixed by resolution of the Board of Supervisors," and other matters properly related thereto. Supervisor Aldean seconded the motion. Motion carried 5-0.**

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 5**

**8. DEVELOPMENT SERVICES - ACTION TO ADOPT, ON SECOND READING, BILL NO. 144, AN ORDINANCE REPEALING ORDINANCE NO. 2007-30, BILL NO. 129, AND AMENDING TITLE 17, SUBDIVISION, CHAPTER 17.03, PARCEL MAPS, LOT LINE ADJUSTMENTS, AND DELETIONS, REVERSION TO ACREAGE MAPS, AND MERGER AND RESUBDIVISION OF LAND, SECTION 17.03.010, APPLICATION AND REVIEW, SECTION 17.03.015, APPLICATION AND REVIEW, SECTION 17.03.020, APPLICATION AND REVIEW, SECTION 17.03.025, REVERSION TO ACREAGE MAPS, AND SECTION 17.03.030, MERGER AND RESUBDIVISION MAPS; CHAPTER 17.04, LAND DIVISION MAPS, SECTION 17.04.005, APPLICATION AND REVIEW; CHAPTER 17.05, TENTATIVE MAPS, SECTION 17.05.005, APPLICATION PROCESS, AND SECTION 17.05.025, FEES AND SERVICE CHARGES; CHAPTER 17.06, SUBDIVISION FINAL MAPS, SECTION 17.06.005, MAP SUBMITTAL FOR APPROVAL; CHAPTER 17.09, PLANNED UNIT DEVELOPMENT, SECTION 17.09.040, APPLICATION FOR TENTATIVE APPROVAL; CHAPTER 17.11, IMPROVEMENT AND PROCEDURE, SECTION 17.11.035, INSPECTION FEE, BY DELETING ANY REFERENCE TO FEES BEING SET BY RESOLUTION OF THE BOARD OF SUPERVISORS AND AMENDING SECTION 17.11.035, DEVELOPMENT FILING AND CHECKING FEES, BY ADDING REFERENCES TO TITLE 18, ZONING, AND TITLE 18, APPENDIX - DEVELOPMENT STANDARDS FOR FEES TO BE CHARGED BY THE CITY, AND OTHER MATTERS PROPERLY RELATED THERETO (8:56:12) - Planning Division Director Walter Sullivan introduced this item and advised of having received no comments since the first reading. Mayor Teixeira called for comments by the citizens and the Board members and, when none were forthcoming, entertained a motion. Supervisor Aldean moved to adopt, on second reading, Bill No. 144, Ordinance No. 2008-2, repealing Ordinance No. 2007-30, Bill No. 129, and amending Title 17, Subdivision, Chapter 17.03, Parcel Maps, Lot Line Adjustments and Deletions, Reversion to Acreage Maps, and Merger and Resubdivision of Land, Section 17.03.010, Application and Review, Section 17.03.015, Application and Review, Section 17.03.020, Application and Review, Section 17.03.025, Reversion to Acreage Maps, and Section 17.03.030, Merger and Resubdivision Maps; Chapter 17.04, Land Division Maps, Section 17.04.005, Application and Review; Chapter 17.05, Tentative Maps, Section 17.05.005, Application Process, and Section 17.05.025, Fees and Service Charges; Chapter 17.06, Subdivision Final Maps, Section 17.06.005, Map Submittal for Approval; Chapter 17.09, Planned Unit Development, Section 17.09.040, Application for Tentative Approval; Chapter 17.11, Improvement and Procedure, Section 17.11.035, Inspection Fee, by deleting any reference to fees being set by resolution of the Board of Supervisors and amending Section 17.11.035, Development Filing and Checking Fees, by adding references to Title 18, Zoning, and Title 18, Appendix - Development Standards, for fees to be charged by the City, and other matters properly related thereto. Supervisor Williamson seconded the motion. Motion carried 5-0.**

**9. PUBLIC WORKS**

**9(A) ACTION TO ACCEPT THE RECOMMENDATION OF AND AUTHORIZE PUBLIC WORKS STAFF TO BEGIN THE PROCESS OF ENTERING INTO AN AGREEMENT WITH A "CONSTRUCTION MANAGER AS AGENT" FOR THE DESIGN AND CONSTRUCTION OF THE PROPOSED CITY INDOOR RECREATION CENTER /MULTI-PURPOSE GYM PROJECT (8:58:39) - Mr. Burnham introduced this item, and reviewed the agenda report. Parks and Recreation Department Director Roger Moellendorf acknowledged the City is working with the Boys and Girls Clubs of Western Nevada on the gymnasium project. In response to a question, he advised that the City had allocated \$25,000 to \$30,000 toward the recreation center project in former partnership with Western**

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 6

Nevada College. He acknowledged that any recommendation by the Parks and Recreation Commission would be submitted to the Board for approval. He advised that an item would be agendaized for the Board's review following the request for qualifications process. In the meantime, Parks and Public Works staff will continue working with Boys and Girls Clubs representatives. Mr. Moellendorf advised that the partnership concept would be presented to the Parks and Recreation Commission at their first meeting in February. He anticipates the City will suffer no financial loss "between now and then if the partnership, for some reason, doesn't materialize or dissolves."

Mr. Burnham acknowledged that requests for qualifications would be sent out. He advised of having reviewed the draft request for qualifications process yesterday, and acknowledged the process is open and competitive. Supervisor Livermore reviewed details of the request for qualifications process. Supervisor Aldean inquired as to the timing of the process when the scope of work has not yet been well defined. Mr. Burnham explained that a general scope of work was defined through the previous partnership with WNC. "We have a fair definition of what the building will be." Mr. Burnham explained the recommendation to hire a construction manager to assist in evaluating construction costs throughout the design process in order to ensure the project scope remains within the available funds. "That's been successful on the last several projects, more so than coming at the end of a project ..." Mr. Burnham advised there is no need to have the design complete in order to hire the construction manager. He explained, "It's fairly inexpensive initially. The construction manager becomes more expensive ... when we get into ... actually managing construction. They just participate in the costing process in the early design stages."

In response to a question, Mr. Moellendorf advised that the architect will become part of the construction management team. The facility at the Boys and Girls Clubs site is a completely new conceptual design. It's similar in that some of the basic design components are included, but this is a scaled-down version of the project considered in partnership with WNC. Mr. Burnham acknowledged the construction manager will work on a time and materials basis. Mayor Teixeira entertained additional comments and, when none were forthcoming, a motion. **Supervisor Livermore moved to accept the recommendation of, and authorize Public Works staff to begin the process of, entering into an agreement with a construction manager as agent for the design and construction of the proposed city indoor recreation center / multi-purpose gym project. Supervisor Staub seconded the motion. Motion carried 5-0.** Mayor Teixeira recessed the meeting at 9:07 a.m. and reconvened at 9:14 a.m.

**9(B) PRESENTATION BY PUBLIC WORKS STAFF OF PROPOSED RATE CHANGES FOR SEWER, EFFLUENT, STORM WATER, AND WATER UTILITIES (9:14:12)** - Mr. Burnham provided background information on this item, and reviewed the agenda report. He narrated a PowerPoint presentation of the water, storm water, sewer, and reclaimed utilities rate adjustment proposal, a copy of which was provided for the record. He responded to questions regarding the actual effect of the rate increase in terms of user fees. In response to a question, Mr. Providenti explained the method by which the six percent increase was determined.

Supervisor Aldean advised of having reviewed the business impact statement associated with the 2005 rate increase. At that time, staff advised that new water conservation programs, options, and measures would be evaluated to reduce capital requirements in the future, thus minimizing future rate adjustments. In response to a question, Deputy Public Works Director Ken Arnold advised that the same programs are in place. He commented on the "wild swings" in peak demands between winter and summer. Staff is aggressive as possible with the water wasting program, and the results are evident at the treatment plant.

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 7

Mr. Arnold advised that consumption fluctuates from “5 to 6 million gallons in the wintertime to 26 million gallons in the summer.” He suggested further consideration could be given to development standards landscape requirements. In response to a question regarding capital improvement projects, Mr. Burnham advised that a capital projects update would be presented to the Board of Supervisors in February. “The main projects ... going forward right now are new test wells and the arsenic treatment plant. We’re also looking at the potential of a uranium treatment plant in the future ...”

Mr. Burnham acknowledged the radical fluctuations in demand will continue in the future. Supervisor Aldean inquired as to the method by which the City will prepare to meet increased demands. Mr. Arnold noted many “large projects ... because of the uranium / arsenic levels that EPA lowered us to meet. Those are really driving a lot of it. There’s always going to be infrastructure replacement ...” Mr. Arnold advised that staff is working to complete the water model. The uranium and arsenic plants “is the biggest hit.” Mr. Arnold noted the importance of careful consideration “because EPA is apt to lower ... the limits again.” He discussed the importance of treating the wells impacted with uranium and arsenic because the water will be needed. He anticipates a leveling off of capital projects once the uranium and arsenic plants are operational. Mr. Burnham explained that the largest costs “are not growth related but quality related in order to keep the water in the pipelines we have.”

Mayor Teixeira noted the less than 1 percent growth rate last year and the current construction slump. Mr. Burnham acknowledged the lack of utilities connections. In response to a question, Mr. Providenti advised of having factored in the reduction in connection fee revenues. He further advised of having reviewed the figures earlier in the day, and that the factor may need to be further reduced. “In order to do these projects, we need the increases.” Mr. Burnham acknowledged that decreased consumption translates to decreased revenues. He noted a history of the summer peak being higher than the building growth. Recent trends over the last several years have indicated stabilization of the demand. Mr. Burnham clarified that the water quality issues to be addressed translate to large dollar figures. He commended the agreement entered into between the City and Vidler Water Company at the last meeting as this may provide an opportunity to use Lyon County and River water rights “in the interim.”

Mr. Burnham acknowledged the subject item represented a preview of a request to be presented to the Board of Supervisors at a future meeting. He requested Board direction at this meeting. He acknowledged the intent to hold public meetings during the remainder of January. In response to a further question, he advised of the intent to re-agendize an item before the Board in February. Mayor Teixeira requested the Public Works staff to take more time in order to ensure sufficient public notification. Mr. Burnham advised of the need to meet with representatives of the Chamber of Commerce, the Builders Association, the reclaimed water users, and others.

Mr. Burnham narrated that portion of the PowerPoint presentation relative to the storm water utility, and advised of a request to increase rates by five percent “basically ... to keep up with inflationary costs.” He acknowledged the storm water utility is another federally-mandated program adopted by the Board in 2003. Rates were adjusted in 2005, and the subject item is the first rate adjustment request since then.

Mr. Burnham narrated that portion of the presentation pertinent to the reclaimed water utility. He explained that the user agreements are now expired, requiring a modification of the ordinance or the proposed rate increase. He acknowledged a previous situation wherein there was an excess supply of reclaimed water, “and now we find ourselves on the other end of that ...” He advised that the Brunswick Reservoir is at the

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 8

lowest level ever. Mr. Burnham reviewed the recommended “phased-in approach” to the rate increase. In response to a question, he advised that the user agreement with the Department of Prisons is valid for another twelve years. He further advised that the City uses all its reclaimed water. In response to a question, he reviewed the annual cost to various users and the effect of the proposed rate increase. Discussion followed. In response to a question, Mr. Providenti advised of having spoken with Eagle Valley Golf Course Manager Jim Keppler earlier in the day. Based on the conversation, Mr. Providenti expressed certainty that Mr. Keppler will be contacting the Public Works Department. Kyle Menath reviewed fees for reclaimed water in other counties and states, and commented that reclaimed water has become a commodity.

Supervisor Williamson expressed an interest in reviewing costs associated with treating the reclaimed water, as related to the proposed fees. Mr. Burnham explained that simply pumping reclaimed water costs approximately \$450,000 per year in electricity alone. Other labor and chemical costs are estimated at \$100,000 “in dealing with water lines and pump stations ...” Mr. Burnham noted that the proposed rate increase would generate a very small percentage of those costs. He clarified that reclaimed water revenues would be allocated to the sewer fund. Supervisor Williamson expressed the understanding that many institutions install their own effluent water pipes. “That was ... the rationale for not charging them because they had an investment.” Mr. Menath acknowledged that some of the golf courses have on-site pumping costs. “Empire Ranch has the biggest reward because they actually take pressure off the Brunswick Canyon pipeline. ... Each course is different and each one has different costs incorporated with repressurizing.”

Mr. Burnham narrated slides pertinent to the sewer utility, and reviewed the proposed rate increases. He advised that the City’s rates are typically “much less” than the adjacent counties “because of the nature of our facility.” He advised that effluent discharge limits continue to be met. Sufficient planning has been completed to ensure treatment needs will be met through build out of the City. Influent has been relatively constant over the last several years. Mr. Burnham acknowledged that a wet winter will affect the sewer treatment plant. Mr. Menath explained the effect of flooded streets on the sewer treatment plant. He advised that City crews have done a good job of keeping storm drains clean over the last few storm events. Improvements have been made to slip lining and old sewer pipes have been replaced. All this has improved the infiltration and inflow. “We don’t see the spikes in storm events like we used to.”

Mr. Burnham advised that the existing sewer treatment plant “is getting old,” and there are portions which need to be replaced immediately. Consideration needs to be given to expansion and upgrade of the treatment process. Mr. Burnham advised that pollutant concentrations are increasing which is typical of the entire country. This is due to low-flow toilets and drought conditions. In response to a question, Mr. Menath advised that increasing odors are relative to climate and increased “BOD loading.” He further advised that the odors seem to stay relatively close to the treatment plant. Mr. Burnham continued narrating the PowerPoint presentation pertinent to the sewer treatment plant. He advised of plans developed to address total nitrogen concentrations in the future. He anticipates being able to complete the permitting process in the spring without having to immediately address the total nitrogen concentration issue. At Mr. Burnham’s request, Mr. Menath discussed an operational change to the plant made at the recommendation of an engineering firm. The change increased the nitrogen, but also resulted in increased operational efficiency. Mr. Menath assured the Board there are no issues which would require decreasing the nitrogen levels, and expressed the opinion the sewer treatment plant is “operating real well.” He acknowledged that contingency plans are in the process of being developed.



## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 9

Mr. Burnham anticipates sewer treatment plant upgrades and expansions over the course of time. He reviewed the improvement and expansion project time line, together with cost estimates, in conjunction with displayed slides. In response to a question, Mr. Menath advised that the best method for removing nutrients is biological, although some cities are considering reverse osmosis systems. In response to a further question, he advised that pharmaceuticals are an escalating issue “which ... major cities throughout the world are trying to get a handle on.” No predictions have been made, but he anticipates “major process changes if that ever comes about.” Mr. Burnham explained that the issue is typically dealt with “at the tail end of the process, usually with ozonation, ultraviolet, and chlorination.” He estimated the cost of addressing the problem at more than \$10 million, but advised there are no standards yet. The EPA is just beginning to consider the issue. Mr. Burnham narrated the summary of activities for the Wastewater Management Program, and reviewed planned activities for 2008 based on the proposed rate increases.

Mayor Teixeira entertained questions or comments of the public; however, none were forthcoming. Mr. Burnham advised that a community workshop will be scheduled. He acknowledged that staff will agendize a presentation to the Board following the public meeting process. Supervisor Livermore recommended holding meetings similar to those scheduled for the federal agreement, which process he commended. Mr. Burnham agreed to do so. Supervisor Williamson expressed a preference for not increasing rates and for decreasing rates whenever there is the opportunity, represented by incoming revenues. She noted the City’s commitments in terms of bond payments and the improvement and expansion program, as outlined by Mr. Burnham. She noted the importance of pragmatism to meet operational and federal obligations. She encouraged the citizens to contact the Board members or the Public Works Department, and to attend the public meetings. The Board members thanked Mr. Burnham and the Public Works Department staff for their presentation.

**10. DISTRICT ATTORNEY - POSSIBLE ACTION TO DECLARE THE SEASONS LIMITED PARTNERSHIP IN BREACH OF THE GROUND LEASE BETWEEN CARSON CITY AND THE SEASONS LIMITED PARTNERSHIP FOR A PORTION OF APN 002-121-09 IN CARSON CITY, NEVADA FOR FAILURE TO PAY PROPERTY TAXES AS REQUIRED PURSUANT TO THE TERMS OF THE LEASE, AND TO AUTHORIZE STAFF TO SEND A NOTICE OF DEFAULT TO THE SEASONS LIMITED PARTNERSHIP (9:56:06)** - Mr. Benton reviewed the agenda report. He introduced Hale, Lane, Peek, Dennison, & Howard Attorneys Tim Clausen and Scott Scherer. He acknowledged that Community Development Inc. (“CDI”) President Brett Cornforth stipulated to pay property taxes. In addition, the lease agreement provides for CDI to pay the real property taxes. In response to a question, Mr. Benton advised that filing a notice of default doesn’t translate to the City pursuing legal remedies. The lease provides sixty days for the Seasons Limited Partnership to remedy their default, with the possibility of a one-year extension. Mayor Teixeira called for Board member questions; however, none were forthcoming.

Mayor Teixeira invited Mr. Scherer and Mr. Clausen to the meeting table. (9:58:25) Attorney Scott Scherer introduced Attorney Tim Clausen, and advised of representing CDI, doing business as West Coast Affordable Housing, Inc., the managing general partner of the Seasons Limited Partnership. Mr. Scherer provided background information on development of Autumn Village I and II. He expressed understanding for the “concerns and position of the City that certain promises were made to pay real property taxes.” He advised of having only been involved in this matter for a little over a week. He reviewed statements by Attorney Gary Sheerin, included in the minutes of the January 6, 2005 Board of Supervisors meeting, and suggested the record is “somewhat ambiguous” with regard to potential abatements and exemptions. He

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 10

provided background information on the ground lease agreement, a “proposed” copy of which was included in the agenda materials. He read a portion of paragraph 3, Taxes, Assessments, Etc. into the record. He advised “it’s common in any lease that’s standard boilerplate to apportion the payment of ... taxes and other charges between the landlord and the tenant.” He suggested the language of paragraph 3 is “standard boilerplate.” “If there are taxes imposed, it’s up to the tenant to pay them. Another provision of the lease requires the tenant to pay actual charges for utilities. Again, standard boilerplate language. It’s not a commitment to pay taxes that are not lawfully imposed in the first place.” Mr. Scherer suggested his interpretation was supported by other provisions of paragraph 3 of the lease. He read a portion of paragraph 3(b) Assessments, into the record, and referred to paragraph 3(d). He suggested, “In this case, the tenant is only responsible for the actual taxes due and not responsible for paying taxes that are not lawfully imposed by any governmental or public authority any more than it’s responsible for paying utility charges that are in excess of what the utility has the right to charge.” He noted that nothing in the provisions of the lease precludes the tenant from seeking exemptions or abatements. “Tellingly, the lease specifically provides, in section 15, that the tenant may not have any abatement of rent.” He reiterated there are no provisions for the abatement of taxes.

Mr. Scherer referred to NRS 361.082, and read a portion of the same into the record. He advised that Autumn Village I and II meet federal exemption requirements and are, therefore, exempt from property taxes. “Since Autumn Village is exempt from property taxes under state law, a local government or taxing district is not authorized to impose property taxes on the project and the lease does not require the payment of taxes that are not lawfully imposed.” Mr. Scherer advised that the Seasons Limited Partnership could legally claim the exemption for both Autumn Village I and II as long as the projects are used for low income housing. “But that’s not the desire of the Seasons Limited Partnership. Despite the fact that it’s not legally obligated to pay property taxes on Autumn Village, where it is economically feasible for it to do so, the Seasons Limited Partnership wants to voluntarily make payments equivalent to the taxes that would have been due but for the exemption.” Mr. Scherer advised that CDI paid the requested amounts for Autumn Village for FY 2006 / 2007. CDI requested and was approved for the exemption for 2007 / 2008. At this time, the Seasons Limited Partnership is continuing to voluntarily make the requested payments on Autumn Village II “because that project ... is doing better financially. ... They want to contribute where possible.”

Mr. Scherer advised that Autumn Village II is meeting its pro forma financial projections and its budget. He provided background information on the budget process, as submitted to the State of Nevada Housing Division and to the Department of Housing and Urban Development. When the original budget was submitted for Autumn Village I, “the Seasons Limited Partnership was stuck with that budget. Autumn Village I is not meeting its initial pro forma projections or its budget, in part due to miscalculations of various fees ...” which Mr. Scherer reviewed. He advised that the Seasons Limited Partnership wants to make a contribution to the community, but also has an obligation to its investors and its limited partners. “Due to the delays and increased costs, Community Development, Inc. has already paid substantial sums out of its own pocket and has not received fees that it is contractually entitled to under the documents that created this project. Altogether, CDI is already out hundreds of thousands of dollars to which it would otherwise be entitled ...”

Mr. Scherer noted the recommended Board action to declare the tenant in default under the lease. He advised that CDI “has tried to see this matter from the City’s perspective.” He reiterated understanding for “what the City believes were promises made on the part of the developer.” He advised of certain proposals

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 11

made by CDI, and counter-proposals by the City. He reiterated the short period of time in which he's been involved in this matter, and advised of having only recently reviewed the correspondence in this matter. He requested additional time to resolve the issue between the City and CDI "rather than forcing us into a default and towards a litigation posture." He explained, "Declaring the tenant to be in default under the lease is only going to push it toward litigation. That's going to increase the costs that Autumn Village I is incurring. That's going to result in them falling further behind their budget and having more difficulty making payments the City's requesting. It's going to be time consuming for both parties and, if litigation ensues, we'll have no choice but to claim additional exemptions to cover those costs and to raise all claims and defenses to which the developer is legally entitled." Based on the language of the lease, Mr. Scherer expressed the belief that CDI has "a very strong case." He advised of having been authorized to attempt to resolve this matter. He reiterated CDI's interest in contributing to the community, and understanding of the costs involved with the residents "that weren't there when the BLM owned it."

Mayor Teixeira deferred to Supervisors Aldean and Staub who had been working with CDI. He advised of other examples of property tax abatement. He stated, "This was a business deal. I thought that we had a win-win for the community, for CDI, for all the parties involved. You got the land for nothing right next to a senior citizens center. Couldn't be better. ..." Mayor Teixeira was certain of a specific commitment from CDI "because had that answer been 'no' from CDI, that project probably would have never gone forward." He expressed understanding for the concern over the investors, but noted the Board's fiduciary responsibility to the citizens.

Supervisor Aldean noted the City's consistency in attempting to negotiate reasonable settlements rather than entering into litigation. She advised of attempting to enter into good faith negotiations with the developer, and of having been "stonewalled. ... It was basically, 'We're going to do it our way. We're going to take this 36-month abatement and then we'll consider starting to pay taxes.' And there was very little room for negotiation." Supervisor Aldean was uncertain as to what could be accomplished by delaying issuance of the Notice of Default. She noted the subject item had already been delayed for two weeks, and advised of having hoped that some offer would have been forthcoming from the Seasons Limited Partnership as to how to amicably resolve the matter. She advised that Greg Urrutio had represented the Seasons Limited Partnership at the January 2005 Board of Supervisors meeting. She acknowledged that Mr. Sheerin was the primary spokesman, but "Greg did not refute anything that Gary said. And, at one point, he said they must pay ad valorem taxes on the apartments." Supervisor Aldean read a portion of the minutes into the record. She advised that City representatives were taken by surprise by the Seasons Limited Partnership applying for the abatement at the state level. "There was ... very little communication, if any, with the City." Supervisor Aldean expressed the opinion this was a breach of good faith. "The expectation of the parties is very important ... and the intent is important regardless of the actual language in the lease." Supervisor Aldean expressed the opinion the City had done everything possible to negotiate a reasonable settlement, including an offer to structure repayment of the taxes. She anticipates the utilities will be repaid, in July, pursuant to a negotiated payment plan. She suggested, at that time, negotiating with the Seasons over reimbursing the City the unpaid property taxes. She agreed with Mayor Teixeira's statement regarding the Board of Supervisors' fiduciary obligation "to keep the City whole." She advised of having based her approval of the project on the developer's commitment to pay taxes "and now they're reneging on that commitment." Mr. Scherer expressed understanding for Supervisor Aldean's position, and suggested the commitment should have been specifically set forth in the lease.

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 12

Supervisor Staub expressed understanding for Mr. Scherer's brief involvement in the subject matter, but advised of having been involved for quite a while. He further advised of having attended two meetings to negotiate a resolution of this matter. CDI was requested to provide a proposal at the end of the first meeting; however, nothing has been received by the City. Additional time was provided, at the request of CDI, in addition to continuing the subject item by two weeks on the Board of Supervisors agenda. At the last meeting with Mr. Sheerin, Supervisor Staub advised of having provided an offer which, he believed, could not possibly be refused by CDI representatives. "Again, we have heard nothing." Supervisor Staub clearly recalled representations that CDI would pay taxes; that no abatement application would be filed. He suggested the City was fraudulently induced into the contract. "If so, ... it takes us back to square one because, if it's going to be your position that the lease, as written, is the entire agreement between the parties, then ... the City has an excellent argument for fraud in the inducement of this contract." Supervisor Staub advised that, if pushed, the City's desire to amicably resolve the matter will be diminished. He noted the "clear lease that requires CDI to pay the ad valorem taxes and everyone knew that when they went into this lease." He advised of the requirement to issue the Notice of Default "that begins the process of the lease going forward. If we can resolve it, that's fine." He further advised that, based upon his last offer to CDI representatives, "the cost of litigation and [attorney] fees will far outweigh the difference between our positions ..." He expressed concern over the continued lack of communication from CDI. He offered a motion to issue the Notice of Default.

Mayor Teixeira entertained public comment and additional comments from the Board members. When none were forthcoming, he entertained a motion. **Supervisor Staub moved to declare the Seasons Limited Partnership in breach of the ground lease between Carson City and the Seasons Limited Partnership for a portion of APN 002-121-09 in Carson City, Nevada, for failure to pay property taxes, as required pursuant to the terms of the lease and to authorize sending a Notice of Default to the Seasons Limited Partnership. Supervisor Aldean seconded the motion.** Mayor Teixeira requested a roll call vote. **Supervisors Staub, Aldean, Williamson, Livermore, and Mayor Teixeira - yes. Motion carried 5-0.**

#### 11. BOARD OF SUPERVISORS

**11(A) ACTION TO APPOINT MEMBERS OF THE BOARD OF SUPERVISORS TO VARIOUS BOARDS, COMMISSIONS, AND COMMITTEES (10:16:45)** - Mayor Teixeira introduced this item, and entertained input of the Board members. Since her appointment to the Nevada Association of Counties Executive Committee, Supervisor Williamson advised that Carson City is entitled to a second representative. She suggested appointing Supervisor Livermore as the second representative to the Nevada Association of Counties. Supervisor Livermore accepted the appointment. Mayor Teixeira entertained additional changes and, when none were forthcoming, a motion. **Supervisor Livermore moved to approve the committee assignments for calendar year 2008, with modification of his name being added as second representative to the Nevada Association of Counties, as suggested. Supervisor Staub seconded the motion. Motion carried 5-0.**

**11(B) SUPERVISOR LIVERMORE - ACTION TO INTRODUCE, ON FIRST READING, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE, TITLE 2, ADMINISTRATION AND PERSONNEL, BY ADDING CHAPTER 41, CARSON CITY CULTURAL COMMISSION, AND ADDING SECTION 2.41.010, PURPOSE OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.020, FINDINGS SUPPORTING THE CREATION OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.030,**

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 13**

**CREATION OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.040, MEMBERSHIP AND TERMS OF OFFICE OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.050, REQUIREMENTS FOR MEMBERSHIP ON THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.060, DUTIES OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.070, FUNCTIONS OF THE CARSON CITY CULTURAL COMMISSION, SECTION 2.41.080, COOPERATION OF CARSON CITY CULTURAL COMMISSION WITH OTHER PRIVATE AND PUBLIC ENTITIES, SECTION 2.41.090, DUTIES OF CARSON CITY TO SUPPORT THE CARSON CITY CULTURAL COMMISSION AND OTHER ARTS AND CULTURAL ENTITIES, AND OTHER MATTERS PROPERLY RELATED THERETO (10:18:18)** - Supervisor Livermore introduced this item, reviewed the agenda report, and provided background information on the Arts and Culture Coalition. He invited Business Development Manager Joe McCarthy to the podium.

(10:21:09) Mr. McCarthy thanked Supervisor Livermore for championing the formation of the Cultural Commission over the last eighteen months. He commended Supervisor Livermore's clear understanding of the importance of the cultural community to the quality of life of Carson City citizens, as well as the economic benefit that will result from continuing to foster arts and culture. He referred to Supervisor Livermore's previous presentation to the Board, together with citizen comments, relative to the importance of arts and culture in the community. He advised that passage of the ordinance, on second reading, will begin the process of selecting the seven members of the Cultural Commission. He reviewed the responsibilities of the Cultural Commission to serve as the Board's "principle advisor in all art and cultural matters related to Carson City's cultural community." He reviewed information on the Brewery Arts Center's history as the community's "local arts agency ... since 1978."

Mr. McCarthy anticipates the Cultural Commission will meet quarterly, and advised it will be staffed by the Office of Business Development. In conjunction with quarterly meetings of the Redevelopment Authority Citizens Committee, he expressed the opinion that Office of Business Development staff can efficiently staff the Cultural Commission without any fiscal impact to the community.

Mr. Benton acknowledged the commission would be subject to the requirements of the Nevada Open Meeting law if the commissioners are appointed by the Board. In response to a question, Mr. McCarthy and Supervisor Livermore provided background information on the Arts and Culture Coalition's consideration of forming the commission subject to the Nevada Open Meeting Law. Supervisor Livermore discussed the benefits of the Cultural Commission operating in an advisory capacity to the Board, including opportunities for state and federal funding. He suggested the formation of the Cultural Commission, under the ordinance, serves as "a formal recognition" of the value of arts and culture to the community. Supervisor Staub discussed his experience as a member of the Community Council on Youth in relation to the subject topic. He noted the importance of adequately representing the various formal and informal youth organizations in the community, and avoiding duplication of efforts while communicating with a "united voice that represents the totality of the community." He expressed support for formalizing the Cultural Commission, under the ordinance, to provide unanimity of the community's approach to arts and culture. He noted that the Cultural Commission will serve as a forum for various organizations to communicate their respective visions. In reference to Section V, 2.41.040, he suggested staggering the

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 14**

initial membership terms, as follows: two members elected for one year, two members elected for two years, and three members elected for three years. He further suggested considering the language of Section 2.41.040(4) to provide for unexcused absences. In reference to Section VI, 2.41.050(1), he inquired as to the definition of a “resident of Carson City in good standing.”

Mr. McCarthy thanked Supervisor Staub for his suggested revisions, and Mr. Benton for his assistance in preparing the proposed ordinance. Mr. Benton acknowledged the ordinance could be approved with Supervisor Staub’s suggested revisions. In reference to the agenda report, Supervisor Staub expressed the opinion there’s always a fiscal impact. In response to a question, Mr. McCarthy advised that Office of Business Development staff would work hard to keep the fiscal impact neutral. Supervisor Livermore advised “the only reality of fiscal impact right now, besides the publishing of the agenda, the recording of the minutes,” is the requirement to develop an annual report to the Board. Supervisor Aldean suggested clarifying the language of Section X, 2.41.090, to indicate “Carson City shall provide *staff* support to the Carson City Cultural Commission ...”

Mayor Teixeira opened this item to public comment. (10:34:47) Nevada Arts Council Community Arts Developer Robin Hodgkin suggested revising Section VIII, 2.41.070(8), to read: “... grants-in-aid to individual and group of artists ...” She expressed support for previous comments that “creation of a city-based arts commission gives ... leverage for all kinds of funding ...” In reference to the most recent Nevada Arts Council newsletter, she advised of an historic precedence of businesses supporting the arts. In conjunction with the list of top ten corporations supporting the “arts which impact economic development and quality of life and make communities richer,” she discussed a dream to see a Nevada company listed.

(10:37:14) Capital City Arts Initiative (“CCAI”) Executive Director Sharon Ross provided background information on her organization. She advised that CCAI is a member organization of the Carson City Arts and Culture Coalition, and commended the Cultural Commission as a “a natural outgrowth of the grass roots organization.” She encouraged the City to emphasize arts and culture in the same manner that parks and recreation has been emphasized. She emphasized the “healthy and vital life” which arts and culture helps to support in a community.

(10:38:25) Dave Morgan discussed performing arts in the community, and expressed support for the Cultural Commission “accelerating this kind of fusion of disciplines and artistic expressions.” He expressed support for the Cultural Commission in terms of “enhancing collaboration and pioneering new artistic expression in the community.”

(10:39:56) Jim Peckham, of the Northern Nevada Children’s Museum, discussed his involvement with the arts community and the potential of arts and culture events as a benefit to the community. He discussed the success of the recent *High School Musical* presentation at the Children’s Museum. He encouraged the Board’s approval of this item.

Mayor Teixeira called for additional public comment; however, none was forthcoming. Mr. McCarthy advised “this wouldn’t have happened without the energetic push ... from Stephanie Arrigoti at the WNC. Her musical theater program is one of the stellar arts programs in this community.” Supervisor Aldean suggested giving consideration to provisions for an advisory committee. Mr. Benton acknowledged that language could be incorporated into the proposed ordinance, and a brief discussion followed.

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 15**

Mayor Teixeira entertained a motion. Supervisor Livermore discussed his support of community quality of life over the years. He related his experience at a recent presentation of *High School Musical*. **Supervisor Livermore moved to introduce, on first reading, Bill No. 101, an ordinance amending the Carson City Municipal Code, Title 2, Administration and Personnel, by adding Chapter 41, Carson City Cultural Commission, and adding Section 2.41.010, Purpose of the Carson City Cultural Commission; Section 2.41.020, Findings Supporting the Creation of the Carson City Cultural Commission; Section 2.41.030, Creation of the Carson City Cultural Commission; Section 2.41.040, as amended, Membership and Terms of Office for the Carson City Cultural Commission; Section 2.41.050, Requirements of Membership of the Carson City Cultural Commission; Section 2.41.060, Duties of the Carson City Cultural Commission; Section 2.41.070, Functions of the Carson City Cultural Commission; Section 2.41.080, Cooperation of the Carson City Cultural Commission with Private and Public Entities; Section 2.41.090, as amended, Duties of Carson City Staff to Support the Carson City Cultural Commission and Other Arts and Cultural Entities; and other matters properly related thereto. Supervisor Staub seconded the motion. Motion carried 5-0.**

**11(C) MAYOR TEIXEIRA - REVIEW OF THE CITY MANAGER'S PERFORMANCE FOR THE PERIOD DECEMBER 1, 2006 THROUGH DECEMBER 31, 2007 - Withdrawn.**

**11(D) NON-ACTION ITEMS:**

**INTERNAL COMMUNICATION AND ADMINISTRATIVE MATTERS (10:46:25) -** Mayor Teixeira advised of a closed session, and recessed the meeting at 10:46 a.m.

**CORRESPONDENCE TO THE BOARD OF SUPERVISORS - None.**

**STATUS REPORTS AND COMMENTS FROM THE MEMBERS OF THE BOARD - None.**

**STAFF COMMENTS AND STATUS REPORT - None.**

Mayor *Pro Tem* Staub reconvened the meeting at 1:31 p.m., noting Mayor Teixeira's absence due to illness. A quorum was present.

**12. DEVELOPMENT SERVICES - PLANNING AND ZONING**

**12(A) ACTION TO ADOPT BILL NO. 145, ON SECOND READING, AN ORDINANCE AMENDING CARSON CITY MUNICIPAL CODE, TITLE 18, ZONING, CHAPTER 18.16, DEVELOPMENT STANDARDS, DIVISION 4, SIGNS, SECTION 4.4.7, EXEMPTIONS, MODIFYING THE PROVISIONS FOR OPEN HOUSE SIGNS BY ADDING REGULATIONS TO ALLOW OFF-PREMISE "OPEN HOUSE" SIGNS WITH CERTAIN LIMITATIONS, AND OTHER MATTERS PROPERLY RELATED THERETO (1:31:52) -** Planning Division Director Walter Sullivan introduced this item, and reviewed the agenda report. He advised of having received no comments in the interim on this subject matter.

Mayor *Pro Tem* Staub entertained questions or comments from the Board members or the citizens. When none were forthcoming, he entertained a motion. **Supervisor Livermore moved to adopt Bill No. 145, on second reading, Ordinance No. 2008-3, amending Carson City Municipal Code, Title 18, Zoning, Chapter 18.16, Development Standards, Division 4, Signs, Section 4.4.7, Exemptions, modifying the**

**CARSON CITY BOARD OF SUPERVISORS**

**Minutes of the January 3, 2008 Meeting**

**Page 16**

provisions for open house signs by adding regulations to allow off-premises open house signs with certain limitations, and other matters properly related thereto. Supervisor Williamson seconded the motion. Motion carried 4-0.

**12(B) ACTION REGARDING AN APPEAL OF THE PLANNING COMMISSION'S DECISION TO REDUCE THE REQUESTED SIGN HEIGHT FOR A FREESTANDING SHOPPING CENTER SIGN FROM 65.5 FEET TO 45 FEET, AS PART OF AN APPROVAL OF A SPECIAL USE PERMIT, SUP-07-161, TO ALLOW A THIRD FREESTANDING SHOPPING CENTER SIGN WITHIN THE NORTH CARSON CROSSING SHOPPING CENTER NEAR THE FUTURE HOME DEPOT STORE ADJACENT TO THE FREEWAY, ON PROPERTY ZONED LIMITED INDUSTRIAL (LI), LOCATED ON MARKET STREET ON THE SOUTH SIDE OF COLLEGE PARKWAY, APN 002-755-161 (1:33:42)** - Planning Division Director Walter Sullivan introduced this item, and reviewed the agenda report and accompanying materials. At Mayor *Pro Tem* Staub's request, Mr. Sullivan acknowledged the Board's purview to make a determination based on the evidence presented to the Planning Commission. He further acknowledged the Board would not hear any other or additional evidence not submitted to the Planning Commission. Mr. Sullivan reiterated the issue before the Board was Mr. Kent Witt's appeal of the approved height of the sign. He advised that the Planning Commission had approved the special use permit application at a sign height of 45 feet. Mr. Witt had applied for a sign at 65.5 feet in height. In response to a question, Mr. Sullivan explained that new information which was not available at the time of the Planning Commission meeting can be submitted to the Board of Supervisors. He clarified that Board of Supervisors policy, in such a case, has been to remand the matter to the Planning Commission.

Principal Planner Lee Plemel provided background information on the original special use permit application and appeal, as outlined in the December 20, 2007 memorandum included in the agenda materials. He narrated pertinent slides. In response to a question, he pointed out the start of the northbound exit ramp on a displayed slide. He reviewed the statutory requirement for the Board of Supervisors to render a decision on the appeal within sixty days of submittal, by February 2, 2008, unless the appellant waives that right. He noted the appellant was present to address the specifics of the appeal.

In response to a question, Mr. Plemel advised that the Holiday Inn Express and the Hampton Inn signs are less than 45 feet in height "because that's the maximum height limit of the buildings." Mr. Sullivan advised that the three existing North Carson Crossing signs were approved at a height of 35 feet with a special use permit. He pointed out, on a displayed slide, the recently-approved Harley-Davidson sign at 30 feet.

Mayor *Pro Tem* Staub called for additional comments or questions from the Board. When none were forthcoming, he invited Mr. Witt to the podium. (1:54:47) North Carson Crossing, LLC Managing Partner Kent Witt introduced himself for the record. He advised that North Carson Crossing, LLC is a local developer, and that he has "been in Nevada since 1968 ..." He further advised of having developed a shopping center in south Reno, and that the North Carson Crossing property was purchased three and a half years ago. "We haven't made a dime yet. We've got over \$10 million invested in the property and the work. We own the property free and clear and I don't know how many shopping center developers do that." Mr. Witt advised that the developer of Carson Valley Plaza had the shopping center pre-sold before it was ever opened. He further advised that his company owns the previously-mentioned Reno shopping center, and that he manages it. He advised of plans to manage the North Carson Crossing shopping center.



**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 17**

He expressed the desire to “be good neighbors. We love Carson City.” Prior to purchasing the property, he advised of having met with City representatives to discuss “a three-way pylon sign. It’s never been a secret that we intended to have a ... pylon sign along the freeway to help capture tenants.”

Mr. Witt described a conceptual photograph which he intended to circulate among the Board members. He explained that the top portion of the pylon sign was already contracted to Wal-Mart and The Home Depot. Limiting the height of the sign would cause the tenants under The Home Depot sign panel to “go away.” Mayor *Pro Tem* Staub cautioned Mr. Witt that circulating the conceptual sign would render its contents public record. He advised Mr. Witt that the agenda materials contained a rendition of the sign with some tenant names. Mr. Witt circulated among the Board members the conceptual sign with the names of possible future tenants. In reference to the special use permit conditions of approval, Mr. Witt advised of his agreement. He explained he was in the process of negotiating with some of the tenants displayed on the conceptual photograph. “I didn’t want you to think ... we wanted this big sign on the freeway to put a lot of ‘mom and pop’ things. We’re ... going after some national and regional tenants that will be ... in Carson City for a long time.”

In reference to his company’s Reno shopping center, Mr. Witt advised that the traffic on South Virginia Street decreased from 45,000 to 16,000 trips per day with the extension of the freeway. He predicted the same thing will happen in Carson City with the opening of the freeway. “There’s no question that you’re going to lose business on Carson Street when that freeway gets completed all the way to Costco. Whether you lose that business to yourself or whether you lose it to Douglas County is going to be your decision. We know that when that freeway goes in, a lot of your commerce is going to congregate at the interchanges. We also know that having Wal-Mart and Home Depot as the number one and number two retailers in the world at this interchange, in general, most of the local people, over a reasonable period of time, ... will know what’s there and they’ll come back and they’ll shop there.” Mr. Witt anticipated the number of tourists which will use the freeway upon its completion, and noted the importance of recognizing the anchor tenants while traveling north on the freeway. He discussed the importance of brand recognition, and advised that potential tenants don’t usually ask technical questions. “They ask, ‘Can I be on that sign?’” Mr. Witt described the signage as a “tool to bring national and regional tenants to Carson City.”

Mr. Witt reviewed statistical information regarding the volume of traffic from Highway 50 and from Reno, and the daytime population in Carson City. He noted that his “job would be a lot easier” if the freeway bypass was already complete. “But we’ve got three more years to go before the freeway is done and we’re going to be competing with Douglas County for many of the same tenants.” Mr. Witt commented, “So far, we’ve put our money where our mouth is. We’ve invested \$10 million. This sign that we’re proposing costs \$200,000.” He expressed the hope to take down part of the freeway sound wall, representing an additional cost, and discussed associated details.

Mr. Witt discussed details of the proposed signage, and emphasized that not all the panels will be readable and visible in time for vehicles to exit the freeway. “That’s not the [primary] purpose.” Mr. Witt expressed the opinion that the economic importance of the sign to Carson City and the North Carson Crossing shopping center “over the long term ... is serious.” He reiterated, “It’s a tool that we need to help get the tenants.” He further reiterated the previously-reviewed statistical information. “We have all the ingredients for success. We’re patient and methodical and we’re going to make it happen. And we’re trying to be good neighbors ...” Mr. Witt advised that the shopping center is approximately four feet higher in elevation than the backyards of the single-family homes. Most of the single-family homes are single story; there are some

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 18**

two story. The Planning Division staff and the Planning Commission required the south property line wall to be at least 16 feet above the ground floor elevation of the single-family homes. In some places, it's higher. "When you put in front of that another building that's even 30 feet tall, then the impacts of this sign are practically nil. This sign has no moving parts. We're going to go with the darker panels until they're occupied by a tenant. There's no outdoor lighting. There's no flashing lights. It's fluorescent tubes behind the flex space; it's diffused lighting; it doesn't cause a lot of glare. We don't really see any true objectionable feature ... other than you're going down a freeway and all of a sudden you see a sign."

Supervisor Aldean expressed appreciation for the extent of Mr. Witt's investment and the "heartfelt efforts to help ... address some of our economic challenges by bringing new tenants into the area." She noted Mr. Witt's testimony indicating a contractual obligation to Wal-Mart and The Home Depot to "locate them on this freeway pylon sign." She read a portion of the November 28, 2007 Planning Commission meeting minutes into the record and, in response to a question, Mr. Witt advised that Wal-Mart and The Home Depot "paid their pro rata share" of the sign. He acknowledged the contractual obligation was based on approval of the sign. In consideration of the possibility of compromise, Supervisor Aldean suggested lowering the sign by ten feet from the top, thereby reducing the size of the Wal-Mart sign. She clarified her suggestion was not to decrease the overall height of the sign. "The panels would still project over the sound wall and be seen at a certain distance from the pylon sign, but it would make it a little less visually obtrusive." In reference to the conceptual photograph, Mr. Witt explained that decreasing the sign height by ten feet from the top would make offering "those four panels to prospective tenants ..." impossible. He advised of having informed Planning Division staff that if he was "really doing what [he] wanted ..., [he] would have come in with an application for a higher sign." He advised of having been cautioned by Planning Division staff that height was an issue for signage. He suggested it would be impossible to establish a precedent in consideration of North Carson Crossing being the "largest shopping center in the foreseeable future for Carson City. It's over fifty acres and we just happen, unfortunately, to be four feet lower than the freeway which has a 17-foot sound wall. So, we're 20 to 25 feet ... just to get to the bottom of the readable part of the sign."

Supervisor Aldean further clarified her suggestion that the base of the sign would still be 17 feet, equivalent to the height of the sound wall. She reiterated her suggestion to reduce the sign height from the top. In response to a comment and in conjunction with the conceptual photograph, she offered further explanation of her suggestion. In response to a further comment, she explained her suggestion would reduce the sign's obtrusiveness without reducing the height of the sign from 17 feet at the base. Mr. Witt explained that the current proposed size of the Wal-Mart and Home Depot signage make them more legible from the freeway. He advised of the preference to keep the "minimum panels at 4 by 10." Supervisor Aldean expressed understanding for the psychology involved, in consideration of the tenants. She suggested the anchor store signage would still not be as small as the other national retailers depicted on the sign. She reiterated the suggestion was offered only as a possible compromise to address some of the concerns that the proposed signage is "extremely obtrusive as you are moving down the freeway and the concerns from the adjacent property owners." She expressed a preference to meet North Carson Crossing requirements in consideration of the economic health of the community, and to address the concerns of the residents to the south.

In response to the concern over establishing a precedent, Mr. Witt reiterated there is no other shopping center in Carson City to compare in size to North Carson Crossing. He didn't see any purpose in reducing the top of the sign by ten feet. Supervisor Aldean reiterated the purpose to reduce the visual impact of the sign, thereby addressing the neighbors' concerns. She noted the Planning Commission's approval of a 45-

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 19**

foot sign. In response to a question, Mr. Witt described the signage program contracted privately between tenants and the State and Federal governments. "They're only for certain uses like food, gas, and lodging."

Mayor *Pro Tem* Staub inquired as to how the Planning Commission determined to approve a height of 45 feet. He expressed concern over an arbitrary determination. Mr. Witt expressed appreciation for the question, and provided background information on his work with Mark Lipkowitz, of Custom Sign and Crane, to develop the proposed signage. He advised that Wal-Mart's contract provides for the top 25 percent of all pylon signs for the project. Mayor *Pro Tem* Staub reiterated concern over the Planning Commission arbitrarily establishing the height of the sign at 45 feet "without any specific criteria on why 45 isn't as obtrusive as 65." In response to a further question, Mr. Witt explained the configuration of the tenant signage on the pylon sign. He acknowledged that availability of the pylon sign to tenants will be on a "first come, first served" basis.

Mr. Sullivan noted the discussion reflected in the November 28, 2007 Planning Commission minutes comparing the proposed North Carson Crossing shopping center pylon sign with the previously-approved Harley-Davidson pylon sign. Mr. Witt argued, before the Planning Commission, that the 65-foot sign would display signage for multiple businesses at the North Carson Crossing shopping center as opposed to the "sole source" Harley-Davidson sign. Mr. Sullivan advised of discussion to reduce the proposed 65-foot height throughout the Planning Commission meeting. He further advised that the Planning Commission action took place to approve the sign height at 45 feet without "any discussion afterward to clarify anything beyond that." He reiterated "there was discussion, during the Planning Commission meeting, relative to a lower height for the 65 feet and there was discussion or exchange between the many businesses versus the one parcel and the comparison to the" Harley-Davidson sign.

Supervisor Livermore noted the motion, made at the Planning Commission meeting, to approve the sign at 65 feet in height which failed on a vote of 2-5. A recess was taken and the motion to approve the sign at 45 feet in height passed on a vote of 5-2. He inquired as to what took place during the Planning Commission recess, and how a determination was made to approve the sign height at 45 feet. Mr. Sullivan advised of having informed the Planning Commission of the need for an affirmative motion, with supportive findings. He advised that staff had been surprised at the motion which indicated approval of a 45-foot sign height "because we didn't know that they were going to go there. They did approve the special use permit. They did use all the findings that are in the staff report, all the conditions of approval, but they reduced the height, in their mind, based on the discussion at hand ..." Mr. Sullivan advised that three people had testified at the meeting in opposition to the proposed 65-foot sign height.

Supervisor Aldean expressed the opinion that the Planning Commission's decision was consistent with Division 4, "to protect and enhance the character of residential and commercial neighborhoods, open views and vistas, and property values by prohibiting signs that are obtrusive or incompatible with the immediate surroundings." She assumed that, in part, the Planning Commission's decision to limit the height of the sign was based on an attempt to meet that criteria. Mr. Sullivan acknowledged agreement with the statement.

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 20**

In response to a question, Mr. Witt advised of not having been involved in the Planning Commission's discussions as he had to leave the meeting early to accommodate an airline reservation. In response to a further question, he advised that Mark Lipkowitz, of Custom Sign and Crane, was present at the meeting but had no authorization to negotiate on Mr. Witt's behalf. Mayor *Pro Tem* Staub entertained additional questions of the Board members; however, none were forthcoming.

Mayor *Pro Tem* Staub opened this item to public comment. (2:28:03) Bud Boyer, a resident of the Northridge subdivision, displayed a Wal-Mart advertising circular and noted the absence of a telephone number, street address, or city location. He noted the two anchor tenants at North Carson Crossing, Wal-Mart and The Home Depot, and suggested that if these two tenants cannot draw other national tenants, "the biggest sign in the world won't work." He acknowledged that Mr. Witt may not have a responsibility to the adjacent neighborhood, but charged the Board of Supervisors with the responsibility. He suggested that the investments made by the homeowners in the adjacent neighborhood are "just as important as [Mr. Witt's] \$10 million." He advised that "local people" who "already know that shopping center is there" travel the freeway. He noted the location of Wal-Mart, facing College Parkway, and suggested that signage should be located on College Parkway. He further suggested that Mr. Witt consider the possibility of freeway signage through the Nevada Department of Transportation. He acknowledged objection to the sign at any height. He expressed concern over aesthetics, and safety issues associated with the nearby airport and wind. In response to a question, he advised his residence is located directly behind The Home Depot.

(2:32:18) Gary Nigro distributed to the Board members an aerial photograph of the site. He read prepared remarks into the record, a copy of which was provided to the recording secretary together with forty signed letters. In response to a question, Mr. Nigro advised that the signed letters "were made subsequent to the Planning Commission." He acknowledged the letters were not submitted to the Planning Commission for their consideration of this matter. He objected to the public noticing process which "only went out 300 feet. This monster ... is affecting a lot more people than within 300 feet." Mayor *Pro Tem* Staub explained the provisions of the applicable ordinance. In response to a question, Mr. Nigro expressed objection to the sign at any height over 30 feet at its current location. He suggested re-locating the sign to the northeast corner of the property or near the intersection of "Highway 50 and Highway 395." In response to a further question, he advised that the Northridge subdivision does not currently have a homeowners association. Mayor *Pro Tem* Staub inquired as to whether Mr. Nigro had appealed the Planning Commission's decision. Mr. Nigro advised of having recently been involved in cancer treatment for his wife between Carson-Tahoe Regional Medical Center and UCLA Medical Center.

Mayor *Pro Tem* Staub called for additional public comment. (2:50:04) Rose Boyer, a resident of the Northridge subdivision, advised that "signatures and our comments probably would have been in front of the Planning Commission if we knew or if we even had any inkling that the sign was going to be approved even at 45 feet." She read prepared remarks into the record, which noted the responsibility of the Board, the Planning Commissioners, and the Planning Division staff to the "voters of Carson City." She discussed the importance of "common sense in your votes and in your approvals." She discussed the importance of "quality community aesthetics consistent with the goals and policies of the master plan." "You should be aware of sign clutter." Ms. Boyer noted the two existing signs at North Carson Crossing, and suggested "a good example of sign clutter" could be seen along Highway 395 in Carson City. She expressed opposition to "any more signs, especially to block what view we have left of the mountains." She requested the Board to review the size of the proposed sign "which is out of proportion to the surrounding developments." She referred to a "freeway oriented sign comparison table," and advised that "half the

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 21**

cities listed have an average of 230 square feet of a standard size.” She noted the developer’s request for an 800-square-foot sign. She discussed the negative impact of the sign on the surrounding residential properties. She suggested that approving a 65.5-foot high, 800-square-foot sign will establish a precedent for future signs. “If you approve this appeal, I guess you can say to yourself that you didn’t violate any standards because they don’t exist at this time, but you would be remiss in your duty to the community.”

(2:53:20) Bill Kappus, of 1452 North Hill Drive, pointed out “a few fallacies in the logic ” presented by the developer. He suggested Mr. Witt’s “biggest reason for having the tall sign was for all of these tourists that are traveling through town and will be in the future when we develop. Well, we’re not a Los Angeles and we never will be.” Mr. Kappus suggested that “everybody in Dayton Valley, Douglas County, and Carson City will know within a month of opening of any store in this shopping center. They will not be looking for a sign.” Mr. Kappus advised that tourists are the reason for the gas / food / lodging freeway signage. He inquired as to an analysis of “where all this light would fall within our neighborhood.” He advised that the sign would be “71 feet above our community.” He inquired as to how bright the sign will be and “what kind of light pollution that would put into our neighborhood.” He anticipates that “a complete sound analysis” will be conducted prior to removing any portion of the freeway sound wall. He requested a similar analysis with regard to the light from the proposed sign.

(2:55:24) Scott Tate, general manager of the Comstock Casino and Cactus Jack’s Casino, expressed support for the sign, as proposed by the developer. He expressed sensitivity “to people who make substantial investments in communities” to create employment opportunities and improve the economy. He expressed sensitivity to the “small representations on the sign because I’m a big supporter of small business.” He expressed appreciation for the sizeable investment in Carson City. He suggested considering “shopping centers of this magnitude along freeways in other communities,” and expressed the belief the proposal is “very comparable.” In response to a question, Mr. Plemel advised there is no sound wall in front of the Harley-Davidson store. Mr. Tate suggested keeping this in mind as “a different kettle of fish” in that the Harley-Davidson store doesn’t “have that wall to compete with.” He reiterated the belief that the proposal is reasonable. He advised of a business relationship with one of the principles of North Carson Crossing LLC, whom he has found “to be nothing but honorable, honest dealings, looking to always do a fair deal, what’s in the best interests of the community, the project, and the people that are affected by it.” He thanked the Board members and staff for their time, effort, and concern.

Mayor *Pro Tem* Staub entertained additional public comment. (2:59:07) Mark Lipkowitz, owner of Custom Sign and Crane, advised of having been attending meetings such as these for “a little over 25 years.” In reference to the difference in height between 45 feet and 65.5 feet, he advised of having “worked through these same issues in Reno, sat on two boards and two committees that addressed sign height in Reno when the City started to build the elevated highway.” He advised there were many studies and “a lot of angst, ... a lot of people that were opposed, a lot of people that were pro the signage.” One of the studies conducted as part of the meetings was on the John Ascuaga’s Nugget sign, the results of which indicated “that part of the freeway actually got safer when people slowed down to read the sign.” An additional result was development of a special use process. “Over the last seven to eight years, all that process is gone. The angst is over. The freeway is in. It’s an economic center.” Mr. Lipkowitz advised of having been excited when the Carson City Planning Commission wanted to convene a study group, on which he served “with a couple of Supervisors.” He further advised of having come to an objective conclusion, based on “a lot of people having a lot of good input with Lee’s direction on what we’re going to do with the signs here on the freeway.” He commended the “great ... special use process” which came out of the

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 22

study group meetings. “You have to come in and prove the need for a sign because, as you drive down this freeway, every commercial property is different.”

Mr. Lipkowitz advised of having presented the Harley-Davidson sign to the Planning Commission. The initial proposal was for a 40-foot high sign. Following discussion and Planning Division staff bringing to the attention of the property owner and Mr. Lipkowitz that a certain resident would be able to see the sign from his back yard, “we agreed on 30 feet. But we could agree on that 30 feet because there’s no sound wall in front” of the Harley-Davidson store. “A 50-acre shopping center with a sound wall ... is the problem. The additional height is structure. The sign itself is going to look no different than any other 40-foot sign in Carson City.” Mr. Lipkowitz listed several 40-foot signs, including “Northgate, North Town, Fandango, Bodine’s.” “It’s going to look no different than all those signs because it’s going to sit at that height above the sound wall.” Mr. Lipkowitz advised that “only the side of the sign is visible from the residential area. It’s over 300 feet away, it’s diffused in its lighting and there is a sound wall that blocks all the back yards ... except one two-story house.” Mr. Lipkowitz further advised that Mr. Witt had agreed to further diffuse the light, if necessary.

Mr. Lipkowitz commented, “We went on a journey on this project.” He commended Principal Planner Lee Plemel, “because I don’t think in the beginning staff believed that 65 feet was necessary for this sign. After all the calculations were done and all the speed and all the getting on and off the freeway, staff agreed that this was the correct height for this sign.” Based on his 25 years of experience, Mr. Lipkowitz expressed the belief that the type of tenants being solicited for North Carson Crossing will not “come there without the correct size tenant panels.”

(3:04:56) In reference to Mr. Lipkowitz’s comments, Gary Nigro advised that the 40-foot visibility of the sign would be from the “freeway height approaching northbound on the freeway. There’s a 71.5-foot difference between that sign and my ground level.” He expressed the opinion that, although the light from the sign will be diffused, “it’s going to seem like we’re going to have a permanent full moon on the eastern sky.” He expressed opposition to sitting in his backyard and having “to look at this advertising.” He expressed concern over the aesthetics of the “skyline of Carson City.” He expressed further concern that allowing the sign at the requested 65.5 feet will set a “possible precedent for future signs.” He referred to the anticipated future development of the Lompa Ranch, as a possibility. He reiterated the request for the Board of Supervisors to remand the matter to the Planning Commission for action “after comprehensive code has been developed that can be applied equally to everyone.” In response to a question, Mr. Nigro advised his backyard “borders Mr. Witt’s property ... by The Home Depot.” He pointed out his residence on the aerial photograph he had previously distributed to the Board members. He acknowledged that the sound wall between The Home Depot and the residential properties is completed.

Mayor *Pro Tem* Staub called for additional public comment. (3:07:44) Craig Mullet advised he was present on his “own behalf, as a resident of Carson City.” He described Carson City as an “historic, beautiful gem with gorgeous scenery around it.” He expressed the opinion that a 65.5 foot sign “will be our version of a Space Needle.” He expressed understanding for Mr. Witt’s desire for the sign, but advised he was not convinced it was necessary. He circulated photographs among the Board members and, in response to a question, advised the photographs were not available at the time of the November Planning Commission meeting. He acknowledged he is a current Planning Commission member, and reiterated he was representing himself “as a very concerned citizen ...” He described displayed photographs depicting a crane and retaining / sound walls which were taken from the Arco gas station on the corner of Lompa Lane and

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 23**

Highway 50. He agreed that “signage could be an economic benefit,” but expressed the opinion that, “as Mr. Witt has already admitted ... at 60 miles an hour ... you’re traveling about 1,000 feet a second. By the time you even see those little signs at the bottom, within one second you’re past the off-ramp. [Mr. Witt] has admitted that ... they’re a subliminal message. After you’ve gone by that shopping center a number of times, you will get to know those stores, but the larger anchor stores are a destination.” Mr. Mullet noted that Wal-Mart is already open. “Home Depot’s already decided to build without the sign. Round Table is there. Chili’s, Starbuck’s, Del Taco. ... All of these locations chose that site without that sign.” Mr. Mullet continued narrating the photographs he had circulated.

In reference to the adjacent residential area, Mr. Mullet noted Mr. Witt’s claim that “only a couple of the homes would have second floor view of his sign. But at 65 feet, it’s hard to believe.” Mr. Mullet pointed out that bedrooms are typically located on the second floor. He suggested that Mr. Witt has choices, and referred to the shopping center plot plan. He agreed with the suggestion that Mr. Witt move the location of the sign to the northeast corner of the property. “He would be beyond the sound wall, 45 feet would be more than adequate, and the store would actually obscure the sign ... for most of those homeowners if not all of them.” In reference to his experience in other communities, Mr. Mullet advised, “None of them have large freeway signs.” He expressed the belief that the communities have determined “either the economic value isn’t there ... or their scenery and the [lack of] sign clutter are more important than the economic value.” He expressed concern over the possibility that “any one of these stores ... can choose to move, ... go bankrupt. And then we’d have a sign, 65-foot high, with the two anchor signs on the top gone. What a blight that would be.” Mr. Mullet requested the Board to carefully consider “what our community is going to look like in the future and that this, although it may not set the precedent for the rest of the freeway, it will start some standards that will be hard to argue against for future developments.” “As a resident,” he expressed opposition to the proposed 65-foot sign. He acknowledged support for a 45-foot sign “because the two anchor stores could be seen ...”

Mayor *Pro Tem* Staub called for additional public comment. When none was forthcoming, he closed public comment.

(3:19:40) Business Development Manager Joe McCarthy discussed his experience, over the last 3½ years, in the area of retail recruitment. He noted the “lively, friendly, but aggressive competition” with Douglas County to locate retailers in Carson City. He advised that one of the “deal breakers” for retailers is “in fact quality signage along the transportation corridor.” In response to a question, he advised that Mr. Witt and the North Carson Crossing team strategically “picked the most viable spot to capture traffic going both north and south.” Mr. McCarthy advised of a lengthy conversation, earlier in the day, with regard to the importance of capturing traffic. “Really, what we’re doing is marketing to retailers. Retailers don’t ask ... what the braking requirements are, what the speed requirements are. For us to be able to put a package together to entice them to come into this trade area and to come to Carson City as opposed to a neighboring county, they want their name on a sign.” Mr. McCarthy expressed the opinion that the proposed location is the most prudent “for us to be able to capture that visibility.”

In consideration of the premise that most retailers are primarily interested in representation on a freeway sign, Supervisor Aldean suggested taking the opportunity to lessen the impacts to the adjacent residential uses. Mr. McCarthy commended Supervisor Aldean’s proposal as very logical in the sense that marketing

## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 24

the shopping center to potential retailers will include transportation corridor signage. He reiterated that the proposed location for the pylon sign is the most advantageous because of serving the local shopping community as well as the potential for capturing both north and south bound traffic.

Mayor *Pro Tem* Staub agreed to reopen public comment. (3:25:21) Craig Mullet pointed out an alternative location on a displayed aerial photograph. Supervisor Williamson advised that the property identified by Mr. Mullet was not owned by Mr. Witt's partnership. Mr. Mullet clarified that the "northern property line makes so much more sense and does not have the obstruction of the sound wall."

Mr. Sullivan advised that Mr. Plemel had pointed out, at the Planning Commission meeting, that the property "in the northeast corner" is not owned by Mr. Witt. He further advised of discussion at the Planning Commission meeting which indicated the freeway begins to elevate as it moves further north. Therefore, the sign would have to be even taller than 65.5 feet to meet the freeway elevation. Supervisor Livermore expressed appreciation for the public comment, and concern over a Planning Commissioner making public comment at this meeting.

Mayor *Pro Tem* Staub provided Mr. Witt an opportunity to make a final statement. (3:29:35) Mr. Witt displayed a site plan depicting surplus NDOT property which "we've been trying to buy ... for a couple years." He suggested "it's beside the point because ... when you get up to the very northeast corner of the property, the sign would have to be 145 feet tall. The further you get to the overpass, the higher you have to go to get any visibility." Mr. Witt expressed the opinion that the proposed location is the best. He reiterated that the majority of the neighbors will only view the side of the sign. He acknowledged the sign is perpendicular to the freeway. He discussed a line of sight study, conducted in consideration of the adjacent residential area, which was provided to the Planning Division.

(3:32:33) Mr. Nigro advised of not having seen the line of sight study referenced by Mr. Witt. He offered to withdraw his objections if Mr. Witt could demonstrate, using engineering methods to determine line of sight, "that none of the homes in the Northridge development other than that one ... on the second floor would have any impact." He expressed the belief that Mr. Witt would be unable to prove a negligible impact to the adjacent residents.

Mayor *Pro Tem* Staub again closed public comment. He discussed the responsibility of the Planning Commission and the Board of Supervisors to act within the authority and parameters of the law and, after that, to "do our best to balance the interests of diverse parties that may be involved in an area like this." He noted a preference to avoid "this kind of clash of two different uses of land. Usually there's some buffering involved." He expressed the opinion the Northridge residents have been substantially impacted by the North Carson Crossing development. He noted, however, that "a little bit of research would have told any of the Northridge buyers that the particular area ... was going to be ... a prime piece of commercial real estate."

Mayor *Pro Tem* Staub acknowledged the desire of tenants for signage. Considering the process, he was uncertain as to the reason the Planning Commission didn't address the fact that the proposed location for the pylon sign couldn't be more adverse to anyone's interests. He commended Mr. Witt on his attempts to acquire the property in the northeast corner based on the belief that both north and south bound traffic have to benefit from the pylon sign. Based on the evidence provided, Mayor *Pro Tem* Staub expressed the belief that the matter should be referred back to the Planning Commission "in order to air out some of the



## CARSON CITY BOARD OF SUPERVISORS

### Minutes of the January 3, 2008 Meeting

#### Page 25

new evidence ... submitted.” He strongly recommended to the Planning Commission to work with Mr. Witt and the residents to identify an alternative location for the pylon sign. He suggested that “somewhere north” of the proposed location “would hopefully remedy most of the individuals’ objections while accomplishing the same desires.” He noted the substantial amount of new evidence not provided to the Planning Commission and reiterated the recommendation to remand the matter. Due to continuance of this matter from the December 20, 2007 Board of Supervisors meeting, Mr. Sullivan acknowledged it could only be referred back to the Planning Commission with concurrence of the applicant.

Supervisor Livermore expressed the opinion there was no evidence to indicate the necessity of referring the matter back to the Planning Commission or to deny the applicant’s appeal. He referred to his retail experience, and discussed the importance of signage to a retail establishment. He noted the proposed signage along the freeway corridor, and that “this is not what we’re accustomed to or how we’ve lived with surface streets and traffic ...” He further noted that Carson City is beginning to “condense its open space into more commercial.” He referred to the recent Planning Commission approval of a 50-foot sign for the Bodine’s Casino. He suggested the nature and benefit of the freeway corridor is more conducive to accommodating Mr. Witt’s proposal. He agreed with the suggestion to possibly move the proposed sign further north, but only by approximately 20 feet. He reiterated there was no new evidence, other than the letters submitted by the homeowners, and advised he was ready to decide on the matter at this meeting.

Mayor *Pro Tem* Staub called for additional comment and, when none was forthcoming, entertained a motion. **Supervisor Livermore moved to reverse the Planning Commission’s decision and approve the special use permit, SUP-07-161, as recommended by staff based on the findings for approval, and with the recommended conditions contained in the staff report to Planning Commission. Supervisor Williamson seconded the motion.** Supervisor Aldean noted the diverse interests represented at this meeting, and advised of not having reviewed the results of a line of sight analysis. She suggested that review of the line of sight analysis would be critical in consideration of potential impacts to the adjacent residential properties. She referred to Mr. Nigro’s offer to withdraw his opposition if a line of sight analysis could demonstrate no impact to the adjacent residential area. She expressed the opinion there are other alternatives with less impact to the Northridge subdivision residents. She advised of having fielded calls regarding the impact of Wal-Mart to the adjacent Northridge residents, and the effect of The Home Depot construction. She noted that the property will eventually be fully developed, with additional impacts. She suggested that reaching a reasonable consensus on the pylon sign “would go a long way to improving the relationship between the developer and his neighbors to the south.” She reiterated the opinion there are alternatives to be explored. Mayor *Pro Tem* Staub agreed with Supervisor Aldean’s analysis, and expressed concern over establishing an adverse precedent which will be impossible to overcome in the future. Mayor *Pro Tem* Staub requested a roll call vote on the pending motion. **Supervisors Livermore and Williamson - yes; Supervisor Aldean and Mayor Pro Tem Staub - no. Motion failed 2-2.**

Mr. Benton acknowledged Mr. Witt’s option to request the Planning Commission to reconsider the matter. In response to a question, Mr. Witt advised of no interest in requesting the Planning Commission to reconsider the matter. In response to a question, Mr. Benton explained the appeal had, in effect, been denied and that the previously-approved 45-foot height would stand. In response to a question, Mr. Witt reiterated he was not interested in going back before the Planning Commission. In response to a further question, he advised there may not be a sign. “We came here, we stated our case, we did our homework, we had a recommendation from staff for approval, and I’ll have to talk to my partners and ... to Wal-Mart and ... to the tenants and see if we want to do a 45-foot sign.” Mr. Witt reiterated no interest in “going back

**CARSON CITY BOARD OF SUPERVISORS**  
**Minutes of the January 3, 2008 Meeting**  
**Page 26**

to the Planning Commission. The chairman of the Planning Commission ... doesn't want a sign anywhere. I don't want to waste my time with those guys." In response to a comment, Mr. Witt advised of having submitted the line of sight analysis to the Planning Division. Mayor *Pro Tem* Staub noted that the appeal had been denied, and Mr. Witt acknowledged his options, as previously stated.

**13. ACTION TO ADJOURN** (3:46:50) - Mayor *Pro Tem* Staub entertained a motion to adjourn. Supervisor Livermore moved to adjourn the meeting at 3:46 p.m. Supervisor Williamson seconded the motion. Motion carried 4-0.

The Minutes of the January 3, 2008 Carson City Board of Supervisors meeting are so approved this 18<sup>th</sup> day of September, 2008.

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MARV TEIXEIRA, Mayor

ATTEST:

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ALAN GLOVER, Clerk - Recorder