

# CARSON CITY BOARD OF SUPERVISORS

## Minutes of the March 3, 2011 Meeting

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A regular meeting of the Carson City Board of Supervisors was scheduled for 8:30 a.m. on Thursday, March 3, 2011 in the Community Center Sierra Room, 851 East William Street, Carson City, Nevada.

**PRESENT:** Mayor Robert Crowell  
Supervisor Karen Abowd, Ward 1  
Supervisor Shelly Aldean, Ward 2  
Supervisor John McKenna, Ward 3  
Supervisor Molly Walt, Ward 4

**STAFF:** Larry Werner, City Manager  
Alan Glover, Clerk - Recorder  
Randal Munn, Chief Deputy District Attorney  
Kathleen King, Deputy Clerk / Recording Secretary

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

### **1 - 4. CALL TO ORDER, ROLL CALL, INVOCATION, AND PLEDGE OF ALLEGIANCE**

(8:30:00) - Mayor Crowell called the meeting to order at 8:30 a.m. Roll was called; a quorum was present. First United Methodist Church Retired Pastor Bill McCord reminded the Board members, City staff, and citizens present to remember our military men and women serving across the world, and provided the invocation. Supervisor McKenna led the pledge of allegiance.

**5. ACTION ON APPROVAL OF MINUTES - February 3, 2011** (8:31:48) - Supervisor Walt moved to approve the minutes. Supervisor Abowd seconded the motion. Motion carried 4-0-1, Supervisor Aldean abstaining.

**6. ADOPTION OF AGENDA** (8:32:22) - Mayor Crowell entertained modifications to the agenda and, when none were forthcoming, deemed it adopted.

**7. PUBLIC COMMENTS AND DISCUSSION** (8:32:32) - Mayor Crowell entertained public comment. (8:32:41) Maurice White inquired as to when the Board decided upon which bills to support at the legislature. Mayor Crowell advised there had been not yet been any Board action on any particular bill.

(8:33:26) Carol Howell advised that she had been following the City Center project for "almost a year now, attending most all of these meetings and the ones from the advisory committee ..." She reminded the Board that "the last time the library project was brought before the people of this City, it was voted down." She expressed the opinion that Mr. Neighbors' gift has "about \$76.8 million worth of strings." In reference to the feasibility report presented at the last Board meeting, she suggested there were "several changes, several contradictions, ... and was filled with comments from our City Manager, library staff, district attorneys." She expressed the opinion that the report was not "worth the \$166,000 that we paid for as either an item that we were going to have for future use or to see if it was something that they could feasibly do." She objected to the feasibility report "not being done by a third party, but instead an interested party in the project; one that wants to take on the role of designer, contractor, and end up owning a portion of the property." She further objected to "some of the things that have taken place during the process ... mainly

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the lack of answers to questions or half answers or vague answers.” She related details of a conversation with Mr. Werner relative to the cost of the land lease, and alleged that the information was withheld when a question was asked during the open meeting. She advised that 35 people testified during presentation of the feasibility report. “Nineteen of us opposed the project. The remainder were either library staff, union representatives looking for additional construction jobs, and then there were two [she] wasn’t quite sure which way they were voting.” She objected to the project “for many reasons. Cost, economy, land, usage, location.” She requested that the Board “start using the true figure instead of \$31 million for this project to the figure we’re going to be paying for it over the 30 years which, according to that feasibility study is \$76.8 million.” She suggested that “many, many more people” would have been in attendance to testify “but for the lack of trust in this Board.” She expressed concern that the project is being “push[ed] to the next level with the idea that we haven’t committed to anything yet.” She suggested that the Board should have “given that report back to P3 and told them to come back with a report that wasn’t full of discrepancies, that fell within the budget parameters you gave them, but instead, now we’re taking money out of our general fund to pay for this project.” She inquired as to the reason the feasibility study was not presented to the advisory committee. She inquired as to how a 30-year lease is not considered a “long-term debt.” She suggested that City employees must not have enough work if there are a sufficient number available to review “the contracts and paperwork” associated with the City Center project. In consideration of the office building, she noted that “the state backed out of any negotiation for the office building so the City moved in to take over part of the office space and Mr. Neighbors now has ... Carson Careers to put in that office. She expressed objection, and stated, “If this project is worth doing, then it’s worth taking the report back to the advisory committee; it’s worth taking the time to ask the citizens ... if we want the project. If it is just a turnaround for the Nugget, a way to get them a parking lot so Mr. Neighbors can do what his job is ...” She advised that she would hold the Board accountable “for the statements you have made that this project had to stay within the parameters of our budget and not cost our general fund.” She expressed concern over redevelopment and general funding being allocated to the project, and inquired as to the reason the Board “didn’t send [the feasibility report] back and get a report within your parameters.”

In reference to the question relative to the lease, Mayor Crowell advised that every lease with a government entity is required to include a non-appropriations clause which creates a substantial difference between a bond indenture or indebtedness and a lease transaction. He further advised that the cost of the feasibility study was covered by the Nugget Foundation and the City, of which a portion was allocated from a gift to the library. In response to a question, Mayor Crowell expressed the opinion that many of Ms. Howell’s questions had been previously answered. “Now, maybe the answer didn’t satisfy you. Maybe it didn’t satisfy me or the Board, but ... rather than debate what the answers were,” Mayor Crowell expressed understanding for Ms. Howell’s concerns. He expressed concern over debating, during public comment, the accuracy or quality of the answers. He advised that the Board will have to consider how the feasibility report fits with the direction of the project. Mayor Crowell entertained additional public comment; however, none was forthcoming.

**8. CONSENT AGENDA (8:47:51) - Mayor Crowell entertained requests to hear items separate from the consent agenda and, when none were forthcoming, a motion to approve. Supervisor Aldean moved to approve the consent agenda, consisting of one item from the Assessor’s Office, one item from Finance, two items from Purchasing and Contracts, one item from the District Attorney’s Office, one item from the Fire Department with an associated resolution, 2011-R-6, and one item from the City**

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Manager's Office, with recognition to the reappointment of Carole Brewer, Terrill Ozawa, and Roy Trenoweth to the Shade Tree Council. Supervisor McKenna seconded the motion. Motion carried 5-0.

**8-1. ASSESSOR - ACTION TO APPROVE THE REMOVAL AND REFUND OF A PORTION OF THE TAXES FROM PARCEL NUMBERS 008-531-05, 008-531-39, 008-531-40, 008-541-73, 008-541-92, 010-011-26, 010-011-27, AND 010-021-55 (PARCELS LOCATED ON OR NEAR NORTH DEER RUN ROAD) FROM THE 2010 / 2011 REAL PROPERTY TAX ROLL PURSUANT TO NRS 361.060 IN THE AMOUNT OF \$778.78**

**8-2. FINANCE DEPARTMENT - ACTION TO ACCEPT THE REPORT ON THE CONDITION OF EACH FUND IN THE TREASURY THROUGH FEBRUARY 22, 2011, PURSUANT TO NRS 251.030**

**8-3. PURCHASING AND CONTRACTS**

**8-3(A) ACTION TO APPROVE CONTRACT NO. 1011-202, PURSUANT TO NRS 354.624, WITH KAFOURY, ARMSTRONG & CO. TO PROVIDE AUDITING SERVICES AND TO DESIGNATE KAFOURY, ARMSTRONG & CO. AS THE AUDITING FIRM FOR FY 2010 / 2011 FOR A NOT-TO-EXCEED AMOUNT OF \$118,000.00, AND A CONTINGENCY AMOUNT OF \$25,000.00 (IF NEEDED FOR AUDITING ADDITIONAL MAJOR FEDERAL GRANT PROGRAM) TO BE FUNDED FROM THE BELOW-LISTED FUNDING SOURCES, AS PROVIDED IN FY 2010 / 2011**

**8-3(B) ACTION TO ACCEPT THE WORK AS COMPLETED, TO ACCEPT THE CONTRACT SUMMARY AS PRESENTED, AND TO APPROVE THE RELEASE OF FINAL PAYMENT, IN THE AMOUNT OF \$56,936.00, FOR CONTRACT NO. 1011-073, TITLED CARSON CITY PUBLIC WORKS SOLAR PHOTOVOLTAIC SYSTEM TO RELIANT ELECTRIC**

**8-4. DISTRICT ATTORNEY - ACTION TO APPROVE, PURSUANT TO SECTION 3.070(3) OF THE CITY CHARTER, AN INDEPENDENT CONTRACTOR AGREEMENT BETWEEN THE DISTRICT ATTORNEY AND THE LAW FIRM OF ARMSTRONG TEASDALE, LLP, FOR SPECIAL DEPUTY DISTRICT ATTORNEY SERVICES TO REPRESENT THE PUBLIC WORKS DEPARTMENT IN CONTRACT MATTERS PRIMARILY INVOLVING A COST OVERRUN CLAIM BY PEEK CONSTRUCTION COMPANY DBA EL CAMINO CONSTRUCTION IN THE NORTH / SOUTH WATER TRANSMISSION MAIN PROJECT, PHASE I**

**8-5. FIRE DEPARTMENT - ACTION TO ADOPT A RESOLUTION ADOPTING AND APPROVING THE CARSON CITY HAZARD MITIGATION PLAN, AND OTHER MATTERS PROPERLY RELATED THERETO**

**8-6. CITY MANAGER - ACTION TO REAPPOINT CAROLE BREWER, TERRILL OZAWA, AND ROY TRENOWETH TO THE SHADE TREE COUNCIL FOR TWO-YEAR TERMS THAT WILL EXPIRE ON JANUARY 1, 2013**

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**9. RECESS BOARD OF SUPERVISORS (8:48:56)** - Mayor Crowell recessed the Board of Supervisors at 8:48 a.m.

**LIQUOR AND ENTERTAINMENT BOARD**

**10. CALL TO ORDER AND ROLL CALL (8:48:59)** - Chairperson Crowell called the Liquor and Entertainment Board to order at 8:48 a.m. A quorum was present, including Member Furlong.

**11. ACTION ON APPROVAL OF MINUTES - February 3, 2011 (8:49:20)** - Member Walt moved to approve the minutes. Member Abowd seconded the motion. Motion carried 5-0-1, Member Aldean abstaining.

**12. PUBLIC WORKS DEPARTMENT, BUSINESS LICENSE - ACTION TO APPROVE KRISTI PATTISON AS THE LIQUOR MANAGER FOR BRUGO'S PIZZA CO., LIQUOR LICENSE NO. 11-27495, LOCATED AT 3228 NORTH CARSON STREET, CARSON CITY (8:49:48)** - Chairperson Crowell introduced and provided background information on this item. Principal Planner Jennifer Pruitt reviewed the agenda materials, noting staff's recommendation of approval.

(8:50:52) In response to a question, Kristi Pattison discussed Brugo's business philosophy. She advised that the service of beer and wine is "just to add to the experience. It's not the sole purpose for the business itself." Chairperson Crowell thanked Ms. Pattison for her investment in Carson City. In response to a question, Ms. Pattison advised that her staff is "fully aware of the age requirement for serving alcohol." She further advised that her manager has "taken the courses that ... govern the guidelines for checking to make sure that they're not underage." She further advised that her staff will be required to take the alcohol server training courses, and that she will attend as well. Chairperson Crowell entertained additional questions; however, none were forthcoming. Member Furlong acknowledged having conducted a background investigation "and found it very, very clean."

Chairperson Crowell entertained a motion. **Member Abowd moved to approve Kristi Pattison as the liquor manager for Brugo's Pizza Co., liquor license no. 11-27495, located at 3228 North Carson Street, Carson City. Member Aldean seconded the motion. Motion carried 6-0.** Chairperson Crowell thanked Ms. Pattison and wished her well.

**13. ACTION TO ADJOURN LIQUOR AND ENTERTAINMENT BOARD (8:53:37)** - Chairperson Crowell adjourned the Liquor and Entertainment Board at 8:53 a.m.

**14. RECONVENE BOARD OF SUPERVISORS (8:53:44)** - Mayor Crowell reconvened the Board of Supervisors at 8:53 a.m.

**ORDINANCES, RESOLUTIONS, AND OTHER ITEMS**

**15. ANY ITEM(S) PULLED FROM THE CONSENT AGENDA WILL BE HEARD AT THIS TIME (8:53:50)** - None.

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**16. CITY MANAGER - PRESENTATION AND REPORT ON NEVADA DIVISION OF FORESTRY'S WILDLAND FIRE MANAGEMENT ACTIVITIES IN CARSON CITY (8:53:56)** - Mayor Crowell introduced this item, and Nevada Division of Forestry ("NDF") Fire Management Officer Michael Klug reviewed the report included in the agenda materials. He acknowledged that once fuels are removed from a private property, the property owner is responsible for maintenance. He further acknowledged that the property owner is not compelled to maintain the fire breaks. In response to a further question, he advised of having experienced "good compliance." He further acknowledged that the NDF will continue to work with the Open Space Program regarding fuels management. He anticipates the fuels management project will begin in the spring. In response to a further question, he anticipates an "above normal" year for the snow pack. "It's really hard to say as far as the fire season. ... it depends on what precipitation we have in the spring, how warm it is." He reiterated concerns over a "bad fire season ... sometime in the near future." In response to a further question, he advised that Open Space Program staff coordinate the fuels management project on the west side with support from the NDF. He responded to additional questions of clarification relative to pre-emergent products for fuels management. He was uncertain as to whether any acreage in Carson City has been treated with pre-emergent, and responded to additional questions relative to the application of pre-emergent products. Mayor Crowell entertained public comment and, when none was forthcoming, thanked Mr. Klug for his presentation.

**17. FINANCE DEPARTMENT - PRESENTATION BY THE CARSON CITY MUNICIPAL GOLF CORPORATION OF A STATUS UPDATE OF ACTIVITIES AT THE EAGLE VALLEY GOLF COURSE (9:04:39)** - Mayor Crowell introduced this item, and Finance Department Director Nick Providenti reviewed the agenda report. In response to a question, Mr. Providenti reviewed the ownership status and operation of the Eagle Valley Golf Course. In response to a further question, he advised of bonded indebtedness that is not directly attributable to the golf course. He provided historic information on the City's mitigation of the golf course's debt service payments. He acknowledged that the City has a lease agreement with the Carson City Municipal Golf Corporation. In response to a further question, he advised that the lease agreement provides for the Carson City Municipal Golf Corporation to maintain all the facilities. He was uncertain as to whether the lease agreement assigns responsibility for capital improvements. As an asset, he suggested that the City has a fiduciary duty toward maintenance if the Carson City Municipal Golf Corporation is unable to do so. He acknowledged that the Eagle Valley Golf Course budgets are reviewed annually by City staff. He further acknowledged that adequate capital reserves are required to be maintained "but if there's no money, there's just no money." Supervisor Aldean noted the importance of determining the priority between "cosmetic upgrades or putting money away for a rainy day." In response to a further question, Mr. Providenti advised that the original lease agreement was executed in 1997, renewed in 2002. "They're basically five-year terms with rolling renewal terms."

(9:10:17) Carson City Municipal Golf Corporation Board Chair Gordon Allen introduced Eagle Valley Golf Course General Manager / PGA Golf Professional Jim Kepler. Mr. Allen provided background information on his residence and business in Carson City, and background information on Mr. Kepler's experience.

Mr. Kepler provided background information on his experience at the Eagle Valley Golf Course, and narrated a SlideShow presentation, copies of which were included in the agenda materials. In response to a question, Mr. Kepler reviewed the reasons that Eagle Valley Golf Course is able to serve more golfers than any other area course. In response to a further question, he explained the lease agreement provision to submit fee increase recommendations to the Board of Supervisors. In response to a further question, he

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discussed Eagle Valley Golf Course rates in comparison with other area golf course rates. Mr. Allen advised of the Carson City Municipal Golf Corporation's mandate to keep golf affordable for the citizens of Carson City. In response to a question, Mr. Kepler advised that rates are different throughout the year, and reviewed current rates. In response to a further question, he discussed the goal to diversify the golf course revenue streams through "food, ... beverage, ... fees for using your facility, ... teaching facilities." He acknowledged that out-of-the-area golfers are charged higher fees than residents. He described the "quality of the west golf course ... as good as any top golf course in the area and ... some of the courses in the area that are equivalent charge \$120 for the same type of golf course."

Supervisor McKenna inquired as to the reason that payment was not timely made to the City, whether the arrangement between the golf course and the City is unfair to private golf courses, and whether the Eagle Valley Golf Course competes fairly with the other courses. Mr. Kepler expressed a willingness to answer the questions during the presentation. In response to a comment, he expressed a willingness to review the golf course financial information. In response to a further question, he advised that any Carson City resident over the age of 80 and volunteers are allowed to play free on the east course. Discussion followed.

(9:41:38) Steve McIntyre provided background information on his residence in Carson City and the number of years he's been playing at the Eagle Valley Golf Course. He discussed the purpose for the Carson City Municipal Golf Corporation to be organized as a 501(c)(3) corporation, and discussed the golf course use by the Boys and Girls Clubs of Western Nevada and area high schools. He discussed the First Tee program to introduce young people to golf.

Mr. Kepler provided a status report on the Men's Club and the Ladies' Club in conjunction with the SlideShow presentation. Mr. Allen provided additional information relative to the history and current status of the Men's Club. Mayor Crowell inquired as to Mr. Allen's opinion of whether there is room in Carson City for three golf courses. Mr. Allen provided historic information on development of Eagle Valley Golf Course west, the Dayton Valley Golf Course, and the Silver Oak Golf Course, and expressed the opinion "it's overbuilt. ... There's only so many people that play golf and ... sometimes business decisions are made ... that are not always good ..." He expressed the opinion that the Eagle Valley Golf Course is "a great product for the public of Carson City." In response to a comment, he advised that play is increasing at Eagle Valley Golf Course and decreasing at other community golf courses. In response to a question, he expressed the opinion that other golf courses are not disadvantaged by not being owned by the municipality. He expressed the opinion that Eagle Valley Golf Course is "doing better ... because we have a great general manager. We have a board of directors now that really understand what we're trying to do for the right reasons for Carson City." Mr. Allen reiterated the Carson City Golf Corporation mandate to provide affordable golf. Mayor Crowell commended Mr. Allen's corporate chairmanship.

Mr. Kepler continued reviewing those portions of the SlideShow presentation relative to local customers, economic impact, planned improvements. In response to Supervisor McKenna's previous questions, Mr. Kepler advised that when he "came on board, there was very little cash in the bank and ... in the eleven years ... we've paid over \$3 million back to the City." He was uncertain as to how much of the bond proceeds this represented. He provided a brief overview of the financial history, the subsequent deterioration of the golf course, and the request to the Board of Supervisors for "relief for a year or two to get it to go forward ... and ... refinance it to \$120,000 a year. And we did that. ... We didn't not pay. We came to [the Board of Supervisors] and asked for relief and you gave us relief." He advised that "to date, we've only paid \$26,000 of the \$120,000 we owe. Our intent is to pay it all off by the end of June, this

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fiscal year. Realistically, it may be a little tough, but that's our intent." Mr. Kepler advised of having decreased costs by \$100,000 last year. He anticipates needing "help in the future," but reiterated the intent to "pay it back." He clarified that no payments have been missed. "We're a little bit behind on the current payment. ... And our business plan is to continue to make improvements, generate more from the banquet side and ... the golf courses." He advised of the need to increase rates "a little bit."

Supervisor McKenna reiterated the question relative to fair competition with other area golf courses. Mr. Kepler was uncertain as to the meaning of the word "fair." He advised that the Eagle Valley Golf Course is "a better product at a better price." He further advised that "golf courses have no value right now. ... You can no longer be a developer and borrow to build a golf course right now. ... And it has nothing to do with the golfer. It has to do with the fact that the housing industry fell apart. And we don't know who to blame yet, but they're still trying to blame somebody. I don't know if it's unfair. It's a different product. We don't sell land to get money to put into a golf course. We're trying to provide a service to the community ..." Mr. Kepler invited Carson City Municipal Golf Corporation Board member Marv Teixeira to the podium.

(10:07:53) Mr. Teixeira discussed his interest in serving as a Carson City Municipal Golf Corporation Board member; provided background information on his involvement with the Eagle Valley Golf Course over the years; discussed his service on the grand jury which investigated the Eagle Valley Golf Course, the Senior Citizens Center, and other issues; and discussed the history of the Carson City Municipal Golf Corporation. He commended Jim Kepler's management skills and experience, and expressed the opinion that the Eagle Valley Golf Course "from course condition, aesthetics, the clubhouse, the pro shop, the level of service, and value is the best." He requested the Board to continue working with the Carson City Municipal Golf Corporation.

(10:20:08) Mr. Kepler thanked the Board, and expressed the opinion that the Eagle Valley Golf Course provided the opportunity for development of other golf courses in the area. He expressed the further opinion that the Eagle Valley Golf Course "is a big part of the community ... one of the biggest assets," and requested the Board's support.

Mayor Crowell entertained public comment. (10:20:54) Mark Turner expressed no disagreement with the presentation, and agreed that "Eagle Valley has been turned around." He expressed concern over the "forbearance ... offered to them in order to do such things." He discussed the importance of all the golf courses competing "on the same playing field. There shouldn't be one course that is going to use my tax dollars ..." He provided a brief history of golf in Carson City, and acknowledged Mr. Teixeira's comments that "it was a risk investment on the part of various developers ... to put these golf courses in." He advised that the Silver Oak developers were "required to do something with that open space that we were required to have as part of our PUD agreement. We built a golf course. We brought recreational opportunities ... to Carson City. We operate our golf course as efficiently as anyone else does." Mr. Turner expressed the opinion that the Silver Oak Golf Course staff is "just as good as the staff at Eagle Valley. They've been in the business a long time. We've got the best greens keeper around. He's very knowledgeable, and we've done everything in the world to trim our costs." He requested the Board to focus on ensuring "an environment that does allow for the private investment and the private businesses in this town to succeed. ... There needs to be a level playing field and when they're able to reduce their rates and have the City pay for the infrastructure improvements at their facility; we don't have those options available ..."

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Mayor Crowell expressed the desire for all the community businesses and golf courses to do well. He noted that the golf courses are used as a repository for the treated effluent, “so we have a vested interest in seeing all the golf courses in this community do well.” He assured Mr. Turner that the Board is considering the issues and expressed appreciation for everyone’s cooperation. Mr. Turner commended the Eagle Valley Golf Course’s involvement with youth programs, and advised that “all three of the golf courses in Carson City are capable of providing those services too.” He expressed a willingness to provide those opportunities “if the need arose for us to do that. We’re part of the community here and we want to make sure that those opportunities are available.”

In response to a question, Mr. Turner advised that there are a number of Silver Oak residents who live on the golf course that don’t play golf. As the Silver Oak Homeowners Association President, he advised that he knows most of the neighborhood residents and “there’s only a few people ... that are golfers that don’t play there.” Supervisor Abowd inquired as to Mr. Turner’s opinion of an effluent subsidy. Mr. Turner advised that such a thing wouldn’t be turned down. In response to a request for clarification, Mr. Turner expressed the opinion that the method by which the Eagle Valley Golf Course is competing is “troublesome ... that there was an agreement in place ... that in order to keep operating, the City reduces the payment that’s required. That’s not the way it works in the real world. ... There’s no one there to extend special circumstances so that you can keep going on. That allows them to be more competitive with their rates. It may allow them ... the ability to provide more subsidized or free golf and then we’re stuck having to compete in a more hard world.” Supervisor McKenna inquired as to Mr. Turner’s suggested solutions. Mr. Turner expressed the opinion that there are many ways “to make the situation better.” He expressed the further opinion that “the reason for the existence of the Eagle Valley Golf Courses, in the first place, had to do with the fact that there was not adequate golf available for the citizens ... at the time those courses were built. And, in that situation, it was the responsibility of the municipality to provide recreational opportunities for its citizens. That situation no longer exists. ... The private industry, in Northern Nevada ..., are providing the jobs. ... Our ability to provide ... a variety of jobs ... is dependent upon the economy and our ability to sell our product in a fairly competitive environment where we don’t have to worry about one particular provider being able to lower their costs and do things financially that we’re not able to do on the private side ...”

Supervisor Aldean expressed appreciation for the commitment expressed by Mr. Kepler and Carson City Municipal Golf Corporation Board Member Teixeira to “pay what they owe the City by the end of this fiscal year.” Supervisor Aldean noted that the Empire and Silver Oak Golf Courses were built to “spur on the sale of the homes within those developments. Typically, that’s what happens. You develop the golf course as an amenity for the people who live there.” She expressed concern over insinuations that the municipal course should be closed in that the City has control over its continued operation. “Silver Oak, Empire, a number of the other private golf courses could close their doors tomorrow because they deem it to be no longer economically feasible ... to continue; in which case, we would have a void.” Supervisor Aldean expressed serious concern over closing the City’s municipal course, “not having any control over the private sector and what the private sector may do to meet its financial obligations.” She expressed a willingness to consider creative alternatives, and certainty that closing the municipal course is not a viable one. Mr. Turner expressed understanding for Supervisor Aldean’s comments, and advised that Silver Oak is committed to “keeping our doors open.” He expressed a preference to “be able to improve our business. There’s too much golf in the market for the number of players that are here in Northern Nevada and it’s probably going to remain that way until the economy forces ... some of those courses to close their doors.” He expressed doubt that the City would ever “be back to just Eagle Valley.” He reiterated the commitment



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to provide “golf for the community at rates that are reasonable and affordable and, in some cases, free golf for certain types of uses, whether for senior citizens or youth sports.” He requested the Board to keep this in mind “about how to make this a little bit more competitive environment when we’re all struggling to pay our bills through our operations and there is a finite number of golfers out there. We’re competing for them all. We want to be competing on a level playing field. We don’t want one golf course to be able to offer lower rates because they are able to adjust their cost structure by not making payments on time ...” In consideration of the Silver Oak Golf Course marketing program, Supervisor Aldean pointed out that permission from the Board to offer free golf is not necessary. In consideration of the struggling economy, Mr. Turner requested the Board’s consideration of “some sort of adjustments or changes ... to make the playing field more even.”

Mr. Werner inquired as to whether the Silver Oak Golf Course is required to remain open pursuant to the CC&Rs of the development. Mr. Turner expressed the opinion that the “legal repercussions” of closing the course “would make the decision for us. We pretty well have to keep that open.” Supervisor McKenna advised of a golf course in northwest Reno which was allowed to revert to the wild. “Now it’s just a regional park for rabbits and coyotes.” Supervisor McKenna inquired as to whether this is a short-term problem which will go away when the economy improves or a long-term problem which needs to be dealt with. Mr. Turner advised that the “housing problem” was anticipated to have been short-term. “And, at this point in time, ... our housing problem is as severe as it has been throughout the last four years.” Mr. Turner anticipates the problem will likely be more long term, and suggested there are other recreational opportunities for which the golf course property could be used. Supervisor McKenna inquired as to Mr. Turner’s suggestions for the Board to proceed and the associated time frame. Mr. Turner suggested “there are a number of different solutions; some that we like more than others.” He further suggested converting the Eagle Valley Golf Course to another recreational use. “There are ways that are going to be more palatable to us and there are going to be ways that are more palatable to others.” If converting the Eagle Valley Golf Course to another recreational use is not a possibility, Mr. Turner suggested “creating some sort of means of leveling the playing field, whether ... through property tax abatement, rebate, or effluent assistance ... Those things would help us to be more in line with what’s going on at Eagle Valley where they play with a different set of rules because they are a municipal course. But it’s affecting your private businesses here who have invested a lot of money in these facilities, not just for our own benefit but for the benefit of the community too.” Supervisor McKenna inquired again as to the suggested time frame. Mr. Turner expressed a preference “to see something implemented within the year, if that’s possible.” He acknowledged the need for discussion and requested to be able to participate.

In response to a question, Mr. Turner estimated that the difference in rates between the Eagle Valley Golf Course and the Silver Oak Golf Course is “probably within \$5 of everyone else’s. ... We don’t have the latitude to raise rates. Once one particular player in the industry starts setting the bar with rates, it’s like the airlines ... everyone’s got to drop their rates. That’s what we’ve had to do.”

Mayor Crowell entertained additional public comment. (10:38:05) Dwight Millard expressed admiration for the Eagle Valley Golf Course representatives’ presentation, and complimented Mr. Kepler for “bringing Eagle Valley back over the past few years.” He commended the Eagle Valley Golf Course as a “formidable competitor,” and noted “that really is what’s important to the City.” He provided background information on the 1993 feasibility study relative to the Empire Ranch Golf Course, and advised of the “indication that Eagle Valley was doing 110,000 rounds a year on the two courses.” He advised that the Dayton Valley Golf Course is offering “\$15 golf” to casino workers on Mondays and Tuesdays. He further advised that

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the feasibility studies done in the 1990s “just literally said that golf was going to, like housing, go through the roof and it didn’t do that.” He expressed the hope that the three Carson City courses can continue to compete with adjacent counties, and a preference for “a solution that says, ‘Let’s enhance the three courses. Let’s make them all viable in the community and make them what they should be,’ as opposed to saying, ‘Okay, we need to close them because they’re municipal or we need to close because we’re private and we can no longer pay the property tax.’” Mr. Millard noted the importance of the Board understanding “what we’re really trying to accomplish ...” He advised that at the time the municipal course concept was presented to the Board, he agreed “it was a good idea.” He expressed the understanding that the City is required to apply the effluent water, and suggested that the effluent subsidy could be considered a waste water treatment plant operational cost.

(10:43:38) In reference to previous comments, Silver Oak Golf Course General Manager / Golf Superintendent Tom Unruh advised that the effluent pipeline to Silver Oak was paid for by Garth Richards. “Nobody else, in the private sector, has made such an investment to deal with wastewater.” He advised that the requirement to apply effluent water “doesn’t require a golf course,” and suggested “com[ing] up with solutions on ... how to get rid of it.” In consideration of the municipal golf course rates and the “free lunch with a round of golf” offering, he stated, “that is in direct competition with all the restaurants in town.” He suggested that establishing rates requires first determining the cost of golf. “If you’re losing money on every round, volume isn’t going to help you.”

Mayor Crowell entertained additional public comments and additional comments from the Eagle Valley Golf Course representatives. When no comments were forthcoming, he recessed the meeting at 10:46 a.m. and reconvened at 11:04 a.m.

**18. PUBLIC WORKS DEPARTMENT, PLANNING AND ZONING DIVISION**

**18(A) ACTION TO APPROVE A REQUEST FOR A TWO-YEAR EXTENSION OF THE FINAL MAP FOR A PLANNED UNIT DEVELOPMENT KNOWN AS ROSS PARK, WHICH CONSISTS OF 23 DETACHED DWELLING UNITS ON 1.24 ACRES WITH 36 PERCENT OF THE SUBJECT SITE DEVOTED TO OPEN SPACE, LOCATED AT 4749 SNYDER AVENUE, APN 009-193-01 (TPUD-07-010) (11:04:51)** - Mayor Crowell introduced this item. Planning Division Director Lee Plemel reviewed the agenda materials, noting staff’s recommendation of approval. Mayor Crowell entertained public comment and, when none was forthcoming, a motion. **Supervisor Aldean moved to approve a request for a two-year extension of a final map for a planned unit development, known as Ross Park, located at 4749 Snyder Avenue, APN 009-193-01. Supervisor Abowd seconded the motion. Motion carried 5-0.**

**18(B) ACTION REGARDING AN APPEAL OF THE PLANNING COMMISSION’S DENIAL OF A SPECIAL USE PERMIT FOR VARIATIONS OF HEIGHT, SETBACK, AND NOISE STANDARDS, PURSUANT TO CCMC 18.05.080, FOR THE INSTALLATION OF A WIND ENERGY TOWER AT 160 FEET AND A REQUEST TO LOWER THE PROPOSED HEIGHT TO 111 FEET, ON PROPERTY ZONED SINGLE FAMILY 6000 (SF6), LOCATED AT 7300 SCHULZ DRIVE, APN 010-671-02 (MISC-11-009 / SUP-10-114) (11:07:20)** - Mayor Crowell introduced this item, and explained the method by which the item would be presented and subsequent testimony received. Mr. Plemel introduced Principal Planner Jennifer Pruitt and provided an overview of staff’s presentation. Ms. Pruitt reviewed the agenda materials in conjunction with displayed slides. In response to a question, she reviewed staff’s recommendation to uphold the Planning Commission’s denial

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of the special use permit at the 111-foot height. In response to a further question, she suggested the applicant would likely be able to address whether a reduced height would decrease wind turbine efficiency. In response to a further question, she advised that the Carson City Municipal Code provides for a 60-foot tall wind turbine.

Supervisor Aldean provided background information relative to the public process associated with the current ordinance. In response to a question, Mr. Munn advised of having reviewed the legislative history relative to alternative energy devices. The Nevada State Legislature did not establish a height, intending that local governments would impose their restrictions and “essentially preserve their right to control that. ... the testimony was that windmills create more conflict or problems for the adjoining property owners than maybe solar did and so ... it was left more wide open for the promulgation of code at the local government level.” Mr. Munn expressed the opinion that the 60-foot height is consistent with the legislative history and the law.

(11:17:43) Luke Busby, representing the Rainbow Conservation Corps, commended Ms. Pruitt’s presentation and reviewed the information presented to the Planning Commission by his client, as included in the record. Citing portions of the January 26, 2011 Planning Commission minutes, and expressed the belief that the record indicates “the major concern of the Planning Commission and that of the concerned citizens who attended the meeting was the noise the turbine would generate. The height of the turbine seems to be an afterthought in the discussion.” Mr. Busby read into the record a portion of the Carson City Municipal Code relevant to findings on variances, a portion of Section 18.02.085(6), and the standard for special use permits. He cited NRS 278.02077 and 278.580(4) and (5), and read portions of the same into the record. He expressed the belief that “the fundamental question before the Board today is whether the application of the standards of the Carson City Code constitute a reasonable restriction on Mr. Goni’s substantial property rights under state law to install a wind energy system.” He advised that the Notice of Decision issued by the Planning Commission “does not provide any of the reasons why the commission denied the request. It merely states that a variance was requested, a hearing was held, and that the request was denied.” He distributed copies of the Notice of Decision to the Board members and the Clerk, as Exhibit 1.

Mr. Busby advised that his clients had submitted “substantial evidence showing that without a variance, the existing restrictions significantly decrease the efficiency or performance of the system and does not allow for the use of an alternative system at a substantially comparable cost and with substantially comparable efficiency and performance.” He further advised that the “evidence ... presented to the Planning Commission in opposition to the project largely did not address the specific project at hand.” He cited the evidence presented by Ms. Essex-Bankston on noise test data for the 10kw Bergey Excel Wind Turbine, and advised that it is “out of date and does not apply to the model of turbine that Mr. Goni seeks to install at his property. It applies to an older model of the Bergey turbine.” Mr. Busby distributed to the Board members and the Clerk a letter from the President of Bergey Wind, as Exhibit 2, and reviewed the same. He advised that “because this evidence was presented at the hearing, [his] clients didn’t have an opportunity to examine it and to rebut it, but it’s clearly erroneous. It doesn’t apply to the project that they want to build.”

In consideration of statements by Planning Commissioners relative to “different wind turbines and problems that those turbines may have caused,” Mr. Busby advised of two main points. “Number 1, the noise restriction of 25 dB contained in the Code is a de facto prohibition of wind energy systems in the City

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where a property owner's land abuts land that is less than one acre. The record before the Planning Commission, including the sound report conducted by the civil engineer, shows this fact conclusively. In fact, [his] client has conducted further studies that show that from 12:00 a.m. to 1:00 a.m., ... the average hourly sound dB rating for the property is 35 decibels." Mr. Busby introduced the referenced study as Exhibit 3, and distributed copies to the Board members and the Clerk.

Mr. Busby stated that "the evidence submitted to the Planning Commission regarding the actual turbine [his] client does seek to install shows that it meets the strenuous standard of 50 dB at all property lines even when measured from a 100-foot tall height. Further, the request for a 160-foot tower will actually reduce any noise impact from the turbine on neighboring properties which seems to be, again, the main concern and the focus of discussion before the Planning Commission." Mr. Busby suggested that "statements by Planning Commission members about personal experiences with other turbines suggests that the decision to deny the variance is based upon evidence not submitted in the record but upon personal opinions as to the impacts of different wind energy systems that use different technology in the community." He further suggested, "My clients cannot possibly have a fair opportunity to rebut such assertions or to show how the project they seek to build is different from the ones referred to by the Planning Commission." He advised that his clients requested the Planning Commission to consider a variance of a tower at 111 feet, "but the Planning Commission never formally considered this option." He referenced the motion and corresponding discussion in the Planning Commission minutes. He advised that his clients "requested to be allowed to use an alternative system at a substantially comparable cost with substantially comparable efficiency and performance, but the Planning Commission did not consider the request."

Mr. Busby recognized the concerns of adjacent neighbors and Planning Commissioners relative to the "potential impacts that small wind projects can have on communities." He advised that Mr. Goni's statements at the Planning Commission indicate his deep concern relative to neighborhood impacts, "and that he and the Solar Store have done extensive research to ensure that the turbine meets the most stringent standards possible in order to avoid any adverse impacts. The record also shows that Mr. Goni's motivations for building the turbine have benefits not just to himself but for the greater community. The project balances the right of neighbors to the quiet use and enjoyment of their property with Mr. Goni's right, under state law, to install a wind turbine without unreasonable restrictions." Mr. Busby noted that the Solar Store's ability to "build projects such as the one Mr. Goni seeks is the only way they can stay in business. Strict application of the standards in the Code makes it impossible to build systems that consumers demand. Without the ability to build these systems, the Solar Store will be another small business that will dry up and disappear, taking along with it tax revenue and jobs." Mr. Busby requested the Board to "base its decision on the applicable law and the facts considered in the record about the specific project that [his] clients applied for." He expressed the belief that the facts and the law both indicate the request for the variance, "especially as modified before the Planning Commission, is justified and reasonable."

Mr. Busby respectfully requested the Board to grant his client's request for the variance for the reasons presented. "If the Board believes that the request for a 160-foot tower is unreasonable, then we request that the Board consider, in the alternative, the request for a tower at 111 feet." Mr. Busby respectfully requested the Board to take action at this meeting. He explained the NV Energy Renewable Generations Program incentive which Mr. Goni received and which will expire in July 2011. "Without the rebate, the project can't be built." Mr. Busby introduced Solar Store representative, Mr. Goni, and Mr. Swann "who prepared the original noise data report for the property." Mr. Busby thanked the Board for their time.

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Mayor Crowell inquired as to the nature of the appeal; whether denying the special use permit is contrary to the law. Mr. Busby expressed the belief that the denial “violates the language as well as the intent of the state statute.” In response to a further question, he expressed the opinion that the sound requirement was “the primary rationale for denying the variance.” In response to a question relative to Mr. Busby’s Exhibit 2, he advised that the “Notice of Decision cites what was requested and states that there was a denial but it doesn’t state the reason why it was denied. The reason why it was denied is in the record ... Close examination of those minutes reveals that the noise was the issue. The height was an afterthought.” In response to a further question, Mr. Busby reiterated the belief that “the minutes show ... the request for the variance was denied because of the noise.” Mayor Crowell emphasized the importance of staying within the record.

Supervisor Abowd inquired as to the efficiency of the wind turbine at a 111-foot height. Mr. Busby advised that the efficiency would be reduced “by a specified amount.” He referred to a chart, in the applicant’s presentation materials, indicating “how much efficiency is lost relative to the different heights of the tower.” Supervisor Abowd advised of having reviewed the chart, and inquired of Mr. Munn as to the appropriateness of the Board ruling on the subject appeal “based on NRS 278.02077 which dictates that we cannot restrict or relegate someone to a different unit or a different height because of efficiency.” Mr. Munn advised that the key words are “unreasonably restricts. So the issue ... is what is reasonable. The Planning Commission spent a lot of time developing this Code section, took a lot of testimony in doing that, and felt that they needed to rule consistent with their existing Code. Any variances from that would definitely have to come from this body. [The Planning Commission] followed the Code and ... established a decision based on the height. The testimony in the record ... was that there were accusations that the sound would be greater than what would be allowed by the Code. ... No decision regarding sound was ever really made because ultimately they were seeking a variance on three requirements from the Code and they stuck with the Code.” Supervisor Abowd expressed concern over the Board “pushing someone into a lesser degree of efficiency for a particular wind turbine.” She requested clarification. Mr. Munn advised that the statute indicates “significant decrease. That’s a question of fact.”

Supervisor Aldean pointed out that the Planning Commission’s motion was based on the inability to make the required findings for approval as identified in the staff report. Supervisor McKenna requested Mr. Busby to restate the basis for the appeal, and expressed concern over Mr. Busby’s discussion of sound. He inquired as to whether Mr. Busby was deeming the Code invalid and whether he was requesting the Board to rule on that. Mr. Busby explained, “You’re really dealing with two requirements in the statute. One says that you can’t unreasonably restrict the owner from using a system. We believe that that’s what happened when the Board of Supervisors [sic] issued its decision on the request for a variance. The statute also says that a local government can ... place reasonable restrictions on height, noise, and safety. Our contention is that the restrictions that ... are in the Code, as applied to this project, are unreasonable. And to support that contention, we used the definition that’s actually included in the statute.” Mr. Busby read a portion of the applicable statute into the record. “The record shows ... that if my clients are forced to comply to the letter of the Code, which is 60 feet, the efficiency will be substantially compromised. You can’t create an alternative machine that has substantially comparable efficiency and performance. Therefore, we believe, according to the definition of ‘reasonable’ included in the statute itself, that for this project, the Code goes beyond the language of the statute.” In response to a question, Mr. Busby advised that the evidence indicating there is no comparable machine was “included in the record before the Planning Commission in the form of testimony by [his] clients.” He expressed the belief there was no testimony that contradicted that evidence.

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Mayor Crowell noted that the statute provides for reasonable restrictions on noise, height, and setback. In response to a question, Mr. Busby argued that “a reasonable person in the same or similar circumstances would make the same determination for the proper height of a wind tower at Mr. Goni’s property in this case.” Mayor Crowell pointed out that the ordinance was crafted around the statute. “And if the ordinance is statutorily lawful, ... then the next step is ... the grounds for granting or denying a special use permit are different than what’s set forth in the ordinance. There’s a different set of criteria there.” Mayor Crowell inquired as to whether Mr. Busby was arguing that those criteria are inconsistent. Mr. Busby read into the record a portion of the Carson City Municipal Code relative to the provisions for granting a variance. He expressed the belief that, under state law, Mr. Goni has a substantial property right to use wind energy. Mayor Crowell pointed out that the property right “comes by virtue of the ... state law and the ordinance that we enacted. You don’t get a property right for ... the right to have a special use permit granted. You have an argument and you have theories about why you should have it, but ... a special use permit ... doesn’t grant you a property right.” Mr. Busby acknowledged the accuracy of the statement, but expressed the belief that the statute grants the property right in this case. “If, in a certain context, as speaking to the height restriction itself, if certain applications of the City Code contradict the statute, then the statute prevails. Also, ... as to the sound restriction,” Mr. Busby expressed the belief, “that it is a categorical prohibition of wind energy on certain properties in Carson City. So, as to that provision of the ordinance, we believe that it contradicts the terms of the statute directly.” Mayor Crowell suggested that the issue is not noise but a denial based on height.

Mayor Crowell suggested supposing the installation of a wind turbine on the east side of the State Capitol to power the capitol annex and, in order to catch the wind stream, the wind turbine had to be 300 feet in height. He inquired as to whether this would constitute a property right “granted to someone to drive a wind energy system that high.” Mr. Busby suggested Mayor Crowell’s supposition was “an excellent example of the slippery slope that statutory logic, based on reasonable standards, implies ...” He expressed the opinion that the question before the Planning Commission “was whether the restriction was reasonable in this case. And we think we have substantial evidence which shows that it is. He’s not asking to build a tower that’s going to violate even the very restrictive 50 decibel requirement. And part of the reason why he wants to build it so high is the increases in efficiency and also the impact on neighbors. It’s going to create less noise.” He expressed the belief that there would be no property right created under the circumstance described by Mayor Crowell’s supposition. He expressed the belief that Mr. Goni’s request is reasonable.

In response to a question, Mayor Crowell cautioned Mr. Plemel against taking a position. Mr. Plemel explained the purpose of the Notice of Decision to convey the decision of the Planning Commission. “That’s not the place to look to see what the basis for the findings were, but if you look at the minutes, the actual motion was based on the findings in the staff report, which can be found on page 31 of your packet. ... So the basis for the Planning Commission denial is based on these findings, that the project will be detrimental to the use, peaceful enjoyment, economic value, and development of surrounding properties; the proposed height causes visual impacts to the adjacent parcels and does not meet the required noise or setback at property lines.” Mr. Plemel acknowledged the discussion relative to noise at the Planning Commission meeting, “but these are the findings that were made for the record.”

In reference to Planning Commissioner Shirk’s inquiry relative to considering a 111-foot tower during discussion of the motion, Mr. Plemel noted that “there was silence at that point ... But that was not the only time it was considered.” He referred to various portions of the Planning Commission minutes indicating

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discussion of a 111-foot tower. In response to a question, he read into the record a portion of the minutes relative to the applicant returning to the Planning Commission with “a proposal to install a wind turbine according to the existing ordinance regulations.”

In response to a question, (11:52:14) Rainbow Conservation Corps Co-Owner and Engineer Dennis Madeiros advised of two wind turbines installed in Washoe Valley, “one of them ... on an 80-foot tower and one of them up near the Chocolate Factory is on a 100-foot tower.” Prior to the last storm, “in one 24-hour period, the one on the 80-foot tower produced more energy than about 35 solar panels.” Mr. Madeiros compared the wind in this area to the wind at the coast or in the plain states. “We tend to get gusting-type winds. ... Those heights clearly showed that it really did give us the benefits that were anticipated by the homeowner. In fact, ... one homeowner has a bill of \$9.” In response to a question, Mr. Madeiros advised of having started the project with an independent wind study, “and we showed that the difference between having a turbine at 60 feet versus one at 140 feet was about 50 percent more energy produced.” He explained that “even a 20 percent increase in the wind velocity could mean a 70 percent increase in power and the reason is ... a cubit relationship. ... wind is not down low. The wind is captured higher.” He further explained two reasons for determining turbine height. “First of all, the manufacturer, Bergey, and others of this type of wind turbine, which is a 10kw do not even produce a tower that’s less than 60 feet. You can get a tower that’s 60 feet but the way the Code reads, the height is to the ... tip of the blade when it’s pointing straight up. ... if we use a 60-foot tower, it would be 71 feet. That already exceeds the ordinance. There’s nowhere to go. There’s tower lower unless one were to manufacture a custom tower which would be prohibitively expensive. So, given that we had to go for a variance and knowing the topology of the area, namely Sunridge and the report that we have from Three Tier shows the dominate winds from the south, south west which is right over that area, going as high as possible minimizes the turbulence, number one. Number two, structures in the area, ... the highest one is ... 37 or 38 feet, cause turbulence and you want to be at least 35 or 40 feet above that structure from the tip of the lowest blade. That already gets us up at 91 feet. ... So those two things drove us to go as high as permissible, but ... as was shown in the record, we want to be reasonable. If you were at 100 feet, you’d probably lose about 25 percent performance in terms of output compared to ... being at 140 feet.”

In reference to the Planning Commission motion, Supervisor McKenna inquired as to the possibility of any commissioner having moved to amend the pending motion. Mr. Plemel explained that, “there was, at the time, as a matter of procedure, ... a motion and a second on the floor and it was under discussion.” He expressed the belief that the commission would have needed to revise the motion if they wanted to consider a different motion. In response to a question of clarification, Mr. Munn interpreted the procedure relative to the Planning Commission’s motion and the possibility for amendment.

Mayor Crowell provided Mr. Busby an opportunity for rebuttal. Mr. Busby advised that he would address the “issue of the height versus the noise restriction.” He noted that recommended Planning Commission motions are written by Planning Division staff. “If the Planning Commission were considering ... a different wind turbine and the entire discussion on the record was about the noise and then, at the end, when the motion is made, the only thing that’s considered is the height, then the basis for the decision contained in the record contradicts what was contained in the motion. It’s our assertion that that’s happening here.” Mr. Busby acknowledged that height was considered, “but the gravitas of the decision was the noise.” He read the title of the subject agenda item, and expressed the opinion “the noise was the central issue and, it’s our position that that was the basis for denial.” In consideration of the 111-foot tower, he acknowledged discussion on the record. His client offered to decrease the height of the tower during the Planning

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Commission meeting. He read into the record the statutory definition of “unreasonably restricts,” and advised that his clients were “willing to abide by the ... letter of the law here and it was never considered by the Planning Commission.” In reference to the Planning Commission’s action, he expressed the opinion that an alternative height was never considered. He advised of having watched a video of the meeting, and related details of the motion made and Commissioner Shirk’s suggestion to consider a lower tower height.

Supervisor Aldean pointed out that “had there been an appetite to amend the motion, the motion that was made by Mr. Wendell would have failed and then somebody, probably Commissioner Shirk, would have offered an alternative motion which would have been voted on by the commission.” She expressed understanding for the significance of the record, but noted that she doesn’t “always express [her] opinion on every aspect of an issue. ... it doesn’t mean that it isn’t a legitimate concern that affects my ultimate vote.” She suggested the inaccuracy of assuming that the Planning Commissioners didn’t consider all the issues “even though the dominant concern happened to be related to noise, based on experience that we’ve had with other installations in town.” Mr. Busby referred to the Code provisions relative to variances, and read a portion of the same into the record. Supervisor Aldean noted that the record was “offered by staff as a justification for approval or denial. That’s not the idle conversation that occurs during the course of deliberation.” She expressed the opinion “we’re talking about two separate issues.”

At Mayor Crowell’s request, Mr. Plemel referred to that portion of the agenda materials containing the special use permit application. Mayor Crowell noted that the special use permit indicated a height variance. Mr. Busby acknowledged the accuracy of the statement, but reiterated that “the noise issue was raised at the hearing.” Mayor Crowell entertained additional presentation from the appellant; however, none was forthcoming.

Mayor Crowell entertained testimony from the adjacent property owners. (12:06:28) Ann Essex-Bankston advised that she lives directly across “from where the wind tower will be put in.” She referred to information she submitted at the Planning Commission meeting, specifically a study conducted by scientists at Lawrence University in Michigan, and provided an overview of the same. She expressed understanding that the Planning Commission had denied the special use permit application on the basis of height, setbacks and noise. “None of the three were met. This round, height, noise, and one of the setbacks is not met. On the north side, it’s two feet short. I think that can be corrected, but the height and noise are still an issue and continue to be ... an issue.” Ms. Essex-Bankston expressed the understanding that a great deal of “money and time” were invested in developing the ordinance “and we’ve only had two wind towers go up in the area under this ordinance and there’s no real reason for them not to meet the 60-foot requirements and the sound requirement.” In reference to Mr. Busby’s comments, Ms. Essex-Bankston acknowledged some of the information she submitted was “older, but ... it’s only within five years of this date.” She was uncertain of the date of the Lawrence University study, but pointed out, “noise doesn’t change over the years. The dBs are still the same.” She advised of also having learned in her research “that sound is interpreted differently by every ear here. ... There’s a lot of variables,” and she expressed the belief that “noise is subjective to everyone.” She expressed concern that the noise levels are uncertain until the tower is installed, “so that’s one of my biggest reasons for staying within the City Codes. ... those Codes were made for a reason and ... everybody can stay within them.” She advised of having obtained information from the Bergey website which Mr. Busby determined to be “out of date.” She further advised that the Bergey wind towers have been improved “and the sound is better than it was before. So that’s newer information and that was actually submitted with the first SUP.” She requested that her comments from the Planning Commission meeting be incorporated “because the things are not being met to the City



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ordinances ...” She advised that Bergey sells 60-foot wind towers that do work in our area. She advised of “mountains near us,” and estimated their distance at 3 to 5 miles from her residence. She described the topography around the residences as a “flat area and then there’s a hill between us and Topsy Lane, ... but it shouldn’t affect the tower and that was my belief from the beginning.” She advised that a former sound engineer testified at the Planning Commission “that he did not believe that the information that the Solar Store was giving was correct and that the Planning Commission should check into that.”

(12:11:54) Sandra Reed advised that her property is “fairly close to Mr. Goni’s.” She further advised of an elderly neighbor who is “quite concerned about ... the different aspects of this wind turbine, especially the noise.” She stated that “many of the neighbors are disappointed that Mr. Goni has decided to continue his push against the residents’ objections to his attempt for the height variance which is two times the Code allowance. Mr. Goni already has the tallest building in the area and wants a tower and turbine five times higher than his building ...” Ms. Reed expressed serious concern over the height, both in consideration of aesthetics and “because of the birds.” She advised of two pairs of nesting golden eagles in the area, and expressed the hope that more eagles will nest in the area in the future. She discussed concerns relative to noise, advising that she and her husband are raising grandchildren. She advised that the noise study was conducted on a Saturday “and weekends have a lot more noise around the neighborhood than during the week.” She expressed appreciation for the Board’s consideration of “all your citizens.”

(12:17:52) Ruben Bankston described the location of his property “directly across from Mr. Goni.” He expressed the opinion that the Code is in place “for a reason ... because that’s what the City has implied that we need to do.” He stated, “[The Planning Commission] spent a lot of time and a lot of the county’s money sitting around making up these ordinance. Why should we go ahead, on the third one, and start changing it? ... it doesn’t make any sense ...” He expressed the opinion that the Code should be followed “because they’s why they’re put in place.”

At Supervisor McKenna’s request, Mr. Busby restated the appellant’s request for relief in order of preference. “The first preference ... is that the Board would reverse the decision of the Planning Commission and go ahead and let [his] clients build the tower at 160 feet. In the alternative, we’d like a tower of 111 feet. We may be amenable to something less. So, if the Board can’t make that decision today, then, of course, referring the issue back to the Planning Commission is preferable to ... getting it just denied. Because then we’re just back to square one.” Mr. Busby expressed the opinion that his clients are amenable to further negotiations with the Planning Commission, “but the problem is, we have to do this really quickly because it takes four months to put in a turbine and the rebate expires in July ... It has to be energized, installed, and producing electricity for the NV Energy representative to come out and provide the rebate to the customer.” Mr. Busby advised that the request for the Board to take action today is “based on just the underlying facts. We don’t want to be pushy. We don’t want to push you into a decision that doesn’t make sense, but we want you to understand ... the problems that [the] client is facing in this situation.”

Mr. Busby acknowledged that the tower, at the proposed decreased height, is 100 feet and the blade in its upright position is 11 feet tall. “The Carson City Code specifies that it’s from the top of tallest tip of the blade of the turbine. Typically, for most ordinances, they measure it at hub height, but there’s a lot of variation out there. ... That’s the standard that we’re applying to the request for the variance.”

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Mayor Crowell advised of citizens wishing to testify who were not present at the Planning Commission meeting. In response to a question, Mr. Busby advised that he would have no objection to the public testimony if allowed to respond to the comments and if they reasonably reflect the Planning Commission record.

Mayor Crowell entertained additional comments from the appellant, the adjacent property owners, and the Board. A brief discussion took place regarding the Nevada Open Meeting law relative and the Board's past practices relative to public comment on appeals. Mayor Crowell entertained public comment. (12:23:19) Bruce Kittess advised of having participated in the Planning Commission and Board of Supervisors hearings relative to development of the wind turbine ordinance and of having appeared before the Assembly last Monday. He expressed no surprise over the subject appeal. "Part of this problem we're going through is because ... the original legislation is permitting this to happen because if 60 feet doesn't work, then 160 will work and then we'll be back here next year and it'll be 260 feet. There is no number because technology will keep changing." If Rainbow Conservation Corps and the Solar Store are one and the same, "then Solar Store isn't going to go out of business because they'll sell solar. ... I haven't heard any controversy about solar." Mr. Kittess suggested that "the benefit of approving 160 feet will actually help us because it will make a lot of people really upset and we'll get the law changed." He volunteered to "raise money and we can litigate it because we elected you." He discussed concerns over wind turbines in neighborhoods.

Mayor Crowell provided direction with regard to public testimony. (12:26:33) James Swan, a civil engineer, stated, "We have a choice in energy and I made that choice 25 years ago and stepped off the grid and I have solar panels and I am very appreciative of those facts. It keeps my utility bill down to \$20 a month and I am very happy with that." He advised of having installed a wind turbine approximately 10 years ago and that it was "extremely noisy." He explained the purpose of the wind turbine "because it snows, covers up the [solar] panels and stops the production of electricity which is required for the computers and other things." He advised of having purchased a new wind turbine approximately one year ago. "It is directly attached to the house. It is 50-foot tall and the reason for not having to go higher is I am on a very flat area where there are really no obstructions. This new wind turbine is considerably quieter." Mr. Swan advised that the distance between the wind turbine and his bedroom "is only 35 feet and I do not have problems sleeping at night." He expressed the opinion that changing the ordinances to reflect that wind turbines shouldn't exceed normal ambient noise would be reasonable. He expressed the further opinion that Mr. Goni's proposed wind turbine "would be well under the ambient noise." He acknowledged the choice over tower height, but expressed the opinion that the Code "as stated is appropriate by just saying no wind turbines at all."

(12:29:18) Tim Howard advised that he owns a wind turbine under the existing Code restrictions. He further advised that "voice and communication is already at 50 decibels. ... Decibels should be set at ambient noise ... which ... is wind, traffic, everything in the neighborhood." Mr. Howard expressed the opinion that "the 50 decibels should be set at ambient noise. You can set that down for quieter times at ... night ..." He expressed the opinion "this is a no brainer," and related details of "a factual event that occurred at his residence," involving a meter reader who was unaware of the wind turbine despite being in close proximity. He expressed the further opinion that "the restrictions by Carson City do not follow federal law of the [inaudible] Act. That's the basis of the law and ordinance making."

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Mayor Crowell provided Mr. Busby the opportunity for rebuttal. Mr. Busby expressed a *pro forma* objection against consideration of these points as to the decision of the Board. He expressed the opinion that the Board's decision should be based upon the appeal from the Planning Commission, "although [he] thought the comments were extremely valuable."

Mayor Crowell entertained additional public comment; however, none was forthcoming. Mr. Busby advised of six points of rebuttal. "Number one, the standard in the Carson City Code for variances and special use permits is that the decision has to be based on the evidence in the record. We think that clearly shows, if you look at the minutes, the issue was sound. That was the basis for denial." Mr. Busby expressed certainty that Ms. Essex-Bankston obtained her data in good faith. "We just did further investigation and found that it was wrong. It just applied to a different turbine." Mr. Busby advised of a statutory requirement. "The legislature made a decision on this issue. It was a policy decision. Renewable energy is incredibly important to the future of this state." Mr. Busby requested the Board to "weight that in its decision ..." In consideration of the 25dB requirement, he advised that the Planning Commission would be allowed "to deny any application for a wind turbine." He expressed the opinion that this contradicts the policy and the actual written language of the statute, and the belief that the height request fits within the definitions provided "for what is reasonable in this case." He expressed the opinion that the appellants "provided a lot of good, technical data that explains exactly why we need the height restriction, background on the sound issue, compromised on the setback issue even though there's a question as to whether the City can even regulate that." He requested the Board to keep the issues in mind as it makes a decision and, "of course, the effect on [his] clients."

In reference to the Planning Division's response relative to the 111-foot tower height meeting setback requirements at all property lines being incorrect, Supervisor Aldean inquired as to whether the Board should take action on the item or send it back to the Planning Commission for reconsideration. Mr. Plemel advised that one alternative, at 111 feet, would be to also grant the exception to the setback requirement. "It's very close. It could either be modified a little bit to meet that setback or you can approve it in the location that it is where it almost meets the setback but not quite." In response to a question, Mr. Munn advised that the Board can modify what was decided at the Planning Commission if, in that modification, the conditions are established. "And they would have to conform." Supervisor Aldean suggested that remanding the matter to the Planning Commission may be more efficient. Mayor Crowell suggested that "this is an appeal ... of denial of a special use permit for a height variance. And we ought to stick to that. That's the formal grounds of where we are ..." He referred to assertions that the underlying ordinance is flawed because of the 60-foot height restriction, but expressed the opinion that the law allows reasonable restrictions on height. He expressed uncertainty that there had been any evidence to indicate anything over 60 feet meets the requirements of a special use permit. He expressed the belief that the ordinance is not flawed. "It was crafted with the idea of trying to comply with" the legislation. In response to a comment, Supervisor Aldean clarified her intent to understand the Board's options.

Supervisor Aldean expressed agreement with the Mayor's comments in consideration of the amount of time and energy invested in drafting the ordinance. In consideration of the two 45-foot wind turbines installed successfully, she noted that the ordinance provisions are not unreasonably restricting people's rights. She suggested the biggest problem for Mr. Goni is his "topographically challenged" property. She pointed out that the Board represents a more broad constituency. She expressed understanding for the importance of alternative energy, but suggested "this is about profit making. This is about a business selling alternative energy devices." She commended the Solar Store on its capital ventures and Mr. Goni for wanting to

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forego paying additional energy costs, “as long as he can do it without negatively affecting his neighbors.” She expressed the belief that the current Code is enforceable and “we should adhere to it.”

Supervisor Abowd expressed agreement with Supervisor Aldean’s comments, and the opinion “this all comes down to the type of wind turbine. The height and the type make a difference. There are other types of wind turbines that don’t require the same sort of height regulation. We are not consistently a wind volume area and, that being the case, there are other turbines that pick up wind velocity with much more ease than this particular model might.” She expressed the opinion that “we need to adhere to the Code.”

Mayor Crowell entertained a motion. **Supervisor Aldean moved to uphold the Planning Commission’s decision to deny special use permit SUP-10-114, for variations of height, setback, and noise standards, pursuant to Section 18.05.080, for the installation of a wind turbine at 160 feet and a request to lower the proposed height of 111 feet, on property zoned single-family 6,000 (SF6), located at 7300 Schulz Drive, APN 010-671-02, based on the inability to make the required findings for approval. Supervisor Abowd seconded the motion.** Mr. Plemel requested Supervisor Aldean to modify her motion to indicate the basis for upholding the Planning Commission’s decision to deny the special use permit as the inability to make the findings included in the staff report. **Supervisor Aldean so modified her motion. Supervisor Abowd continued her second. Motion carried 5-0.** Mayor Crowell thanked Mr. Busby for his articulate argument, and reviewed the exhibits submitted as part of the record. Mayor Crowell recessed the meeting at 12:44 p.m. and reconvened at 12:51 p.m.

**19. PUBLIC WORKS DEPARTMENT - STAFF REPORT REGARDING THE WASTEWATER RECLAMATION PLANT (12:51:51)** - Mayor Crowell introduced this item, and Public Works Department Director Andrew Burnham provided background information. He introduced Eric Leveque, of Carollo Engineers, who narrated a PowerPoint presentation, copies of which were included in the agenda materials.

In response to a question regarding annual capital expenditures, Mr. Burnham clarified that costs are “additive.” In response to a further question, he recommended spending capital sequentially “because you don’t need to spend dollars until you need to spend dollars. So, the time value of money, you’d want to spend the least amount today so that you can continue to operate the facility and only bring on facilities as you need them in time.” Mr. Burnham acknowledged that clean drinking water “would change the equation.” Supervisor McKenna suggested this would “do away with some of our discussions as to dumping treated effluent on golf courses ...” He further suggested the possibility of selling water to other counties. Mr. Werner advised of “ten years’ worth of debate on how we do that and we’ve shifted gears several times because of these very, very similar dialogues. The one thing that always hangs out there ... is we’re not quite sure what comes down from the federal and state level.” Mr. Werner provided background information on previous discussions with adjacent county representatives relative to effluent water. Mr. Burnham noted a key to planning is flexibility, and a brief discussion followed.

In response to a question, Mr. Burnham discussed the potential for a rapid infiltration basin pump station. He acknowledged that such a process is relatively cost effective, and that the flexibility has been retained in the planning process. Mr. Werner discussed the issue of infrastructure. In response to a question, Mr. Burnham advised that the City was required, as a sample community for an EPA study, to evaluate pharmaceuticals in the wastewater supply. “Our pharmaceutical [levels] weren’t out of the ordinary.” In

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response to a question, Mr. Leveque discussed the intent to “plan for a scenario that we can at least provide facilities and dollars that if we have to address it, but ... by no means address it if we don’t have to.”

Mayor Crowell entertained additional questions or comments and, when none were forthcoming, thanked Mr. Leveque and Mr. Burnham for their presentation.

**20. DISTRICT ATTORNEY - ACTION TO ADOPT BILL NO. 102, ON SECOND READING, AN ORDINANCE AMENDING THE CARSON CITY MUNICIPAL CODE, TITLE 2, ADMINISTRATION AND PERSONNEL, CHAPTER 2.35, FEES ON COURT ACTIONS TO SUPPORT PRO BONO PROGRAMS AND TO PROVIDE LEGAL SERVICES TO ABUSED OR NEGLECTED CHILDREN OR VICTIMS OF DOMESTIC VIOLENCE, BY CHANGING THE NAME OF CHAPTER 2.35 TO FEES ON COURT ACTIONS TO SUPPORT PROGRAMS FOR LEGAL AID, PRO BONO PROGRAMS AND TO PROVIDE LEGAL SERVICES TO ABUSED OR NEGLECTED CHILDREN OR VICTIMS OF DOMESTIC VIOLENCE, AND BY AMENDING SECTION 2.35.010, FEES IN DISTRICT COURT, AND BY AMENDING SECTION 2.35.020, FEES IN JUSTICE COURT, TO PROVIDE FOR PAYMENT OF FEES TO ONE OR MORE ELIGIBLE ENTITIES, AND BY AMENDING SECTION 2.35.030, COLLECTION - PAYMENT TO TREASURER, TO PROVIDE FOR PRO-RATA PAYMENT OF FEES TO ELIGIBLE ENTITIES, AND OTHER MATTERS PROPERLY RELATED THERETO (1:21:32)** - Mayor Crowell introduced this item, and Mr. Munn advised that all the changes recommended at first reading had been included. Mayor Crowell entertained public comment and, when none was forthcoming, a motion. **Supervisor Aldean moved to adopt Bill No. 102, on second reading, Ordinance No. 2011-2, an ordinance amending the Carson City Municipal Code, Title 2, Administration and Personnel, Chapter 2.35, Fees on Court Actions to Support Pro Bono Programs and to Provide Legal Services to Abused or Neglected Children or Victims of Domestic Violence, by changing the name of Chapter 2.35 to Fees on Court Actions to Support Programs for Legal Aid, Pro Bono Programs and to provide Legal Services to Abused or Neglected Children or Victims of Domestic Violence, and by amending Section 2.35.010, Fees in District Court, and by amending Section 2.35.020, Fees in Justice Court, to provide for payment of fees to one or more eligible entities, and by amending Section 2.35.030, Collection - Payment to treasurer, to provide for pro-rata payment of fees to eligible entities, and other matters properly related thereto. Supervisor Walt seconded the motion. Motion carried 5-0.**

**21. CITY MANAGER - REVIEW OF THE CARSON CITY OPERATIONS SCORECARD (1:22:59)** - Mr. Werner acknowledged that this item would be deferred to a future meeting. Mayor Crowell requested Mr. Werner to agendize the operations scorecard for earlier in the meeting.

**22. BOARD OF SUPERVISORS NON-ACTION ITEMS:**

**STATUS REVIEW OF PROJECTS (1:23:26)** - None.

**INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS (1:23:32)** - None.

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

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**STATUS REPORTS AND COMMENTS FROM THE BOARD MEMBERS (1:23:34)** - Mayor Crowell advised of having provided the welcoming address at the Governor's Arts Awards ceremony held at the Brewery Arts Center.

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

**23. ACTION TO ADJOURN (1:23:59)** - Supervisor Aldean moved to adjourn the meeting at 1:23 p.m. Supervisor Walt seconded the motion. Motion carried 5-0.

The Minutes of the March 3, 2011 Carson City Board of Supervisors meeting are so approved this \_\_\_\_\_ day of April, 2011.

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ROBERT L. CROWELL, Mayor

ATTEST:

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ALAN GLOVER, Clerk - Recorder