

CARSON CITY BOARD OF SUPERVISORS
Minutes of the January 15, 2004, Meeting
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A regularly scheduled meeting of the Carson City Board of Supervisors was held on Thursday, January 15, 2004, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 8:30 a.m.

PRESENT:	Ray Masayko	Mayor
	Pete Livermore	Supervisor, Ward 3
	Robin Williamson	Supervisor, Ward 1
	Shelly Aldean	Supervisor, Ward 2
	Richard S. Staub	Supervisor, Ward 4
STAFF PRESENT:	Linda Ritter	City Manager
	Alan Glover	Clerk-Recorder
	Ken Furlong	Sheriff
	Al Kramer	Treasurer
	Lisa Roth	Human Resources Director
	Mark Forsberg	Chief Deputy District Attorney
	Cheryl Adams	Deputy Purchasing Director
	Ray Saylo	Lieutenant
	Katherine McLaughlin	Recording Secretary
	Kathy Heath	Sheriff's Office Business Manager
	(B.O.S. 1/15/04 Tape 1-0007)	

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

CALL TO ORDER, ROLL CALL, INVOCATION AND PLEDGE OF ALLEGIANCE - Mayor Masayko convened the meeting at 8:30 a.m. Roll call was taken. The entire Board was present, constituting a quorum. Rev. Ken Haskins of the First Christian Church gave the Invocation. Mayor Masayko led the Pledge of Allegiance.

CITIZEN COMMENTS (1-0028) - None.

1. APPROVAL OF MINUTES - 8/26/03 WORKSHOP - Supervisor Aldean moved to approve the Minutes of the August 26, 2003, as presented. Supervisor Williamson seconded the motion. Motion carried 5-0.

2. AGENDA MODIFICATIONS (1-0045) (1-2356) - Item 10-A for Redevelopment was deferred for additional discussion. It will be considered by the Board at a future meeting. Mayor Masayko also indicated that two items will be removed from the Consent Agenda for discussion.

LIQUOR AND ENTERTAINMENT BOARD (1-0053) - Mayor Masayko recessed the Board of Supervisors session and immediately convened the Liquor and Entertainment Board. The entire Board was

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present including Member Ken Furlong, constituting a quorum.

3. BUSINESS LICENSE - Treasurer Al Kramer - ACTION TO APPROVE A BEER AND WINE LICENSE FOR CHICAGO EXPRESS, INC., DOING BUSINESS AS KIM LEE'S SUSHI AND TERIYAKI, LOCATED AT 111 EAST TELEGRAPH STREET, DEBORAH PASTINI WILL BE THE LIQUOR MANAGER (1-0058) - Chairperson Masayko explained the requirement that applicants for liquor licenses appear before the Board, thanked Ms. Pastini for attending the meeting, and explained the location. Ms. Lee indicated that she and her employees will be familiar with the liquor laws including identification requirements and will refrain from serving minors and intoxicated individuals. She acknowledged the requirement that the Sheriff's Office be allowed access to the establishment at all reasonable times. Member Furlong noted the favorable Sheriff's Investigative Report. Ms. Pastini explained that she has been employed at the establishment for two years and is taking it over the business. Member Williamson thanked her for her investment in the downtown area and wished her success. Member Williamson moved to approve a beer and wine license for Chicago Express, Inc., doing business as Kim Lee's Sushi and Teriyaki located at 111 East Telegraph Street, Deborah Pastini will be the liquor manager, fiscal impact is \$500 original new fee, \$500 investigation fee, and \$150 quarter fee. Member Aldean seconded the motion. Motion carried 6-0.

4. BOARD OF SUPERVISORS (1-0146) - There being no other matters for consideration by the Liquor and Entertainment Board, Chairperson Masayko adjourned the Board and immediately reconvened the meeting as the Board of Supervisors. The entire Board was present constituting a quorum.

A. ACTION ON APPOINTMENTS OF MEMBERS OF THE BOARD OF SUPERVISORS TO VARIOUS BOARDS, COMMITTEES, AND COMMISSIONS (1-0151) - Mayor Masayko indicated for the record that appointment terms not imbedded in the Statutes and Municipal Codes expire on the date the Supervisor's term expires. All other appointments remain in effect in accordance with the Statute or Code. Supervisor Williamson explained her appointment of Open Space Manager Juan Guzman to the Carson Valley Conservation District. She recommended that Supervisor Livermore remain as Mayor Pro-Tem. Mayor Masayko agreed and indicated that he had appointed Deputy City Engineer John Flansberg to the Statewide Transportation Advisory Committee. Reasons for this appointment were noted. Mayor Masayko also indicated that he will no longer participate in the program to allocate ISTE grant funds. No other changes were suggested/requested. Mayor Masayko also noted that his term on the V&T Railroad Commission expires in 2006. His term as Mayor expires in December. His intent to resign at the end of his term was indicated due to the Board's policy. Public comments were solicited but none were given. Supervisor Livermore moved that the Board of Supervisors approve the appointments of members of the Board of Supervisors to the various committees and commissions so noted in the packet form with the exception of Mayor Masayko's appointment to the Statewide Transportation Technical Advisory Committee and Supervisor Williamson's appointment to the Carson Valley Conservation District both with alternative names as submitted for them. Supervisor Staub seconded the motion. Motion carried 5-0.

B. NON-ACTION ITEM - INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS (1-0242) - Supervisor Williamson reported on meetings/discussions regarding Redevelopment, its incentive programs, efforts to obtain Tobacco Funds for HealthSmart, the local health board meeting, an advertisement campaign for Western Nevada Community College's athletic fund-raising program and reasons for having a College athletic program, a tour with Glen Martel and Supervisor Aldean of the Silver Oaks area near the Eagle Valley Children's Home and efforts to preserve for open space 76 acres along the former V&T

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Railroad right-of-way, and a Redevelopment Authority Citizens Committee meeting including the expiration of four members' terms. She thanked them for their dedication and support of its activities. She indicated she had received many contacts from the community regarding the group home issue which is scheduled for this evening. The discussion will occur in the Sierra Room, however, there will be chairs and televisions set up for the public's viewing in both the Community Center lobby and the hallway outside the Sierra Room. Supervisor Aldean reported on a meeting with Judge Griffin, Supervisor Livermore, Health Director Daren Winkelman, and Marsha McDonald on health issues and a mental health program; a meeting with Supervisor Staub regarding the auto mall; her role in the Western Nevada Community College athletic foundation and its efforts to expand its curriculum to have four year programs; a TRPA meeting; the meeting with Supervisor Williamson and Glen Martel regarding development plans for the area abutting the new regional hospital site; and the RTC meeting. Mayor Masayko reported on meetings regarding the V&T Railroad and its fund-raising activities; and the Builders Association of Western Nevada (BAWN) installation of new officers banquet including BAWN's plans to assist the Boys and Girls Club in constructing its new building. He announced the new Convention and Visitors Bureau Chair and Board members and his plan to attend the U.S. Conference of Mayors in Washington, D.C., on Wednesday. He briefly outlined its agenda and indicated an intent to return to Carson City on Friday. He indicated he had received a significant number of telephone calls and communications from the Lakeview Homeowners Association and property owners regarding the group care issue which is scheduled for this evening at 6 p.m. Supervisor Livermore reported on his family activities; a meeting with City Manager Linda Ritter and Health Director Daren Winkelman regarding the Sierra Family Health Center and the Ross Clinic; Hospital meetings including a proposal to expand its Board to 50 members which will include representatives from Lyon and Douglas Counties and asked the Supervisors to review and give him feedback on the information he had given them on the proposal; a Youth Sports Association meeting including his reelection as Chair; and an Economic Vitality meeting. He announced the opening of registration for Little League and Babe Ruth commencing on January 31. He referenced a media report on an individual who had found and turned in \$88,904 to the Sheriff's Office. He asked that formal public recognition be given to this individual. Supervisor Staub and Mayor Masayko supported his proposal. Supervisor Staub also indicated that Governor Guinn had not approved the Marlette lease. Mayor Masayko indicated that this is due to the need for additional information. Supervisor Staub explained the RTC recommendation to rename College Parkway/Graves Lane/Edmonds/Fairview. He also encouraged the public to attend the public meeting on the Walmart project between 4 and 6 p.m. in the Bonanza Room this afternoon.

C. NON-ACTION ITEM - STAFF COMMENTS AND STATUS REPORTS (1-0691) - City Manager Linda Ritter introduced Human Resource Director Lisa Roth and indicated that the staff retreat was held on Friday. The Board welcomed Ms. Roth.

5. CONSENT AGENDA (1-0706)

5-1. DEVELOPMENT SERVICES - PUBLIC WORKS OPERATIONS - ACTION TO APPROVE AND AUTHORIZE THE MAYOR TO SIGN THE ASSIGNMENT AGREEMENT THAT ASSIGNS PRINCETON DEVELOPMENT CORPORATION'S RENEWABLE ENERGY DEVELOPMENT CONTRACT, CONTRACT NO. 2002-085 TO ENERGY NEVADA LLC

5-2. PARKS AND RECREATION

A. ACTION TO APPROVE THE PARKS AND RECREATION COMMISSION'S RECOMMENDATION TO NOT MAKE ANY CHANGES TO RESOLUTION NO. 1995-R-41, A RESOLUTION CHANGING EXISTING OR ADDING NEW GENERAL FEE POLICIES FOR

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PARKS AND RECREATION FACILITIES, EQUIPMENT, AND SERVICES PROVIDED

B. ACTION TO APPROVE A RESOLUTION AMENDING RESOLUTION NO. 1995-R-42, A RESOLUTION CHANGING EXISTING OR ADDING NEW SPECIFIC FEE POLICIES FOR PARKS AND RECREATION FACILITIES, EQUIPMENT, AND SERVICES PROVIDED

5-3. CITY MANAGER

A. ACTION TO APPROVE A REVISED COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CONSOLIDATE MUNICIPALITY OF CARSON CITY AND THE CARSON CITY SHERIFF'S PROTECTIVE ASSOCIATION FOR THE PERIOD JULY 1, 2003, THROUGH JUNE 30, 2004

B. ACTION TO APPOINT STEVE KASTENS TO SERVE AS CARSON CITY'S SECOND ALTERNATE REPRESENTATIVE ON THE TAHOE REGIONAL PLANNING AGENCY GOVERNING BOARD - The Board pulled Item 5-3A for discussion. Items 5-2A and B were deferred to a future Board meeting so that a full discussion could occur and directed that they not be included on the Consent Agenda. Mayor Masayko expressed his appreciation for Mr. Kastens' offer to take on the Board's representation at the TRPA meetings and hoped that he would continue this effort after he retires. Supervisor Livermore moved to approve the Consent Agenda's remaining two items, Items 5-1 Development Services and 5-3B City Manager. Supervisor Aldean seconded the motion. Motion carried 5-0. Mayor Masayko indicated for the record that Items 5-2A and B were to be deferred to a future Board meeting and that they will be listed on the regular agenda at that time rather than on the Consent Agenda to allow a full discussion on the issues, policies, and philosophies.

5-3A (1-0795) City Manager Ritter explained a wording change on Page 45, Article 33, Paragraph a, that removed the words "appears and/or" from the first line. Two unnamed typographical errors which had been pointed out by Supervisor Aldean were to be corrected in the final agreement. Mayor Masayko noted that it had taken some time to complete the negotiations. Supervisor Aldean moved to approve the revised Collective Bargaining Agreement between the Consolidated Municipality of Carson City and the Carson City Sheriff's Protective Association for the period July 1, 2003, through June 30, 2004, with the minor clerical changes and the change to Article 33 Subparagraph a in which the language appearing in the draft before the Board removes "appears and/or" and leaves "the employee who testifies". Supervisor Williamson seconded the motion. Motion carried 5-0.

6. SHERIFF - Ken Furlong - ACTION TO APPROVE THE AWARD OF CONTRACT NO. 0304-049 INMATE PHONE SYSTEM TO SBC NEVADA FOR OPTION 2 OF THEIR BID RESPONSE AS THE HIGHEST RESPONSIVE AND RESPONSIBLE BIDDER PURSUANT TO NRS CHAPTER 332 AND PURSUANT TO THE BOARD'S FINDINGS THAT IT IS IN THE PUBLIC'S BEST INTEREST TO ACCEPT THE BID EXCEPTIONS, SBC NEVADA WILL PROVIDE THE INMATE PHONE SYSTEM WHICH WILL NOT INCLUDE THE INSTALLATION OF A STATE-OF-THE-ART VOICE RECOGNITION SYSTEM AND PAY CARSON CITY A COMMISSION OF 45% (FORTY-FIVE PERCENT) FOR LOCAL/INTRALATA CALLS, 45% (FORTY-FIVE PERCENT) FOR INTERLATA/INTERSTATE CALLS; AND A \$20,000 (TWENTY THOUSAND DOLLARS) BONUS THROUGH JANUARY 15, 2006, WITH PROVISIONS FOR TWO (2) ONE-YEAR AUTOMATIC EXTENSIONS UNLESS EITHER PARTY GIVES 90 (NINETY) DAYS NOTICE OF ITS INTENTION NOT TO RENEW (1-0840) - Mayor Masayko noted the lengthy discussion held previously on the voice recognition system and indicated for the record that the voice recognition issue had

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been “side stepped” and that the City will proceed with issuance of a contract for an inmate telephone system. Sheriff Furlong described the intent to provide the inmates with a telephone system that enhances commissary fund revenue and provide a reliable service for the inmates and the community. The system must provide a friendly secure system that will assist investigators in crime prevention and investigations. Four bids were received. Two were rejected as they failed to meet specifications. Value added charts were used to evaluate in six primary areas the two remaining bids. Based on this scoring system, the Sheriff’s Office recommended awarding the bid to SBC Nevada. Justification for the recommendation was provided. Mayor Masayko indicated that the record should clearly show that the voice recognition system is an alternate in the bid packet. Sheriff Furlong agreed and indicated that it was a low priority in the scoring system. Reasons for deciding to not include voice recognition in the telephone system at this time were provided. The evaluations had established a 67.5 score for SBC Nevada and a 32.5 score for T-Netix. Discussion pointed out that elimination of the voice recognition system had increased the bonus value from \$5,000 to \$20,000. The voice recognition system may be added in the future after an indepth evaluation of its usability, advantages, and the District Attorney and Judges’ legal questions. The contract is for two years. A new contract will be considered in 2006. The telephone system and the purpose of the commissary fund were described. SBC Nevada is paying a higher commission percentage without increasing the telephone costs. The system allows an inmate to make a telephone call without assistance from a Jail Deputy/Sheriff’s personnel. Cell phones are not allowed in the jail. Public comments were solicited but none were given. Supervisor Staub moved to approve the award of Contract No. 0304-049 Inmate Phone System to SBC Nevada for Option 2 of their Bid Response as the highest responsive and responsible bidder pursuant to NRS Chapter 332 and pursuant to the Board’s findings that it is in the public’s best interest to accept the bid exceptions; SBC Nevada will provide the inmate phone system which will not include the installation of a state-of-art voice recognition system and pay Carson City a commission of 45 percent for local/intraLATA calls, 45 percent for interLATA/interstate calls; and a \$20,000 bonus through January 15, 2006, with provisions for two one-year automatic extensions unless either party gives 90 days notice of its intent not to renew; and noted that there is no fiscal impact. Supervisor Livermore seconded the motion. Mayor Masayko indicated that there is no “outgoing fiscal impact but may be some incoming fiscal impact”. Motion carried 5-0.

7. INTERNAL AUDITOR - I. Steve Wolkomir - INTERNAL AUDIT QUARTERLY STATUS REPORT FOR THE FOURTH QUARTER 2003 AND RECAP OF CALENDAR YEAR 2003 (1-1054) -

The need to ensure the business processes utilized by the City are appropriate was stressed by both Mr. Wolkomir and Mayor Masayko. Mayor Masayko also pointed the need for the Board to recognize the staffing level of Mr. Wolkomir’s Department and to know what he is doing. The strategic directions given to Mr. Wolkomir should not change annually. It is also important for the other City Departments to understand his purpose. They should understand that it is not necessary for them to wait for Mr. Wolkomir to analyze their Departments before implementing changes. The staff should think outside the box as part of its separate performance evaluation. Departments should feel free to implement Mr. Wolkomir’s audit recommendations for other Departments/Divisions if benefits are provided. Changes should be encouraged, specifically if benefits are evident. The Department Heads/City Manager are to provide followup status reports on the unimplemented audit recommendations. Mayor Masayko pointed out that only 98 audit recommendations remain open from the original 239 recommendations. This is a measure of progress. He asked Mr. Wolkomir to include these figures in his report in the future. A score board of efficiency and dollar savings should be provided. Mr. Wolkomir complimented City staff on its reception and implementation of his recommendations. Supervisor Aldean pointed out that the 98 remaining recommendations have been accepted in principal. Reasons for not implementing these recommendations were noted. Mr. Wolkomir felt

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that 35 of the recommendations for the microcomputer division are in the process of being closed. Mayor Masayko pointed out that some of the recommendations need funding and indicated concerns regarding pay back/cost benefits. The budget process will include discussion on these items. It will be the "milestone" for decisions on their implementation. Ms. Ritter indicated that the action plan includes this information. Information Services needs to conduct a complete analysis of the recommendations which will take to complete. Mayor Masayko agreed that the strategic approach must determine if the investment will be made with current or additional funding. The City Manager and Elected Officials should point out the funding needs to the Board. Ms. Ritter indicated that three months after acceptance of Mr. Wolkomir's recommendations, a status report is to be given to Mr. Wolkomir. Mr. Wolkomir will present this report to the Board. Mayor Masayko felt that if the recommendations require a large funding source, it may not be implemented and will be removed from the list. Mayor Masayko thanked Mr. Wolkomir for his report and requested public comments. None were given. No formal action was required or taken.

RECESS: A recess was declared at 10:10 a.m. The entire Board was present when Mayor Masayko reconvened the meeting at 10:20 p.m., constituting a quorum.

8. DEVELOPMENT SERVICE - PUBLIC WORKS OPERATIONS - Deputy Environmental Health Director Ken Arnold

A. ACTION TO APPROVE A FINDING THAT THE PROPOSED ORDINANCE WHICH ADDS A FEE FOR THE DISPOSAL OF LIQUID CONCRETE AND LOADER ASSISTANCE AT THE CARSON CITY SANITARY LANDFILL DOES NOT IMPOSE A DIRECT AND SIGNIFICANT ECONOMIC BURDEN UPON A BUSINESS OR DIRECTLY RESTRICT THE FORMATION, OPERATION OR EXPANSION OF A BUSINESS (1-1690) - Mayor Masayko explained that the statement is not needed. The statement indicated that the proposed fees do not impose a direct or significant economic burden upon a business. Public comments were solicited but none were given. Supervisor Williamson moved to approve a finding that the proposed ordinance which adds a fee for the disposal of liquid concrete and loader assistance at the Carson City Sanitary Landfill does not impose a direct and significant economic burden upon a business or directly restrict the formation, operation or expansion of a business. Supervisor Livermore seconded the motion. Mayor Masayko restated the motion indicating that the impact statement is not required. The motion was voted and carried 5-0.

B. ACTION TO INTRODUCE ON FIRST READING AN ORDINANCE AMENDING TITLE 5 (PUBLIC UTILITY FRANCHISES AND REQUIREMENTS), BY DELETING CHAPTER 5.11 (LANDFILL RATES AND FEES) AND AMENDING TITLE 12 (WATER, SEWERAGE AND DRAINAGE), CHAPTER 12.12 (SOLID WASTE MANAGEMENT) BY ADDING SECTION 12.12.047 (LANDFILL RATES AND FEES) WITH ADDITION OF FEES FOR LIQUID CONCRETE AND LOADER ASSISTANCE AND SECTION 12.12.048 (OUT-OF-COUNTY RATES) AND OTHER MATTERS PROPERLY RELATED THERETO (1-1731) - The process used to develop the fees was limned. Chamber of Commerce Chief Executive Officer Larry Osborne and Builders Association of Western Nevada Executive Director Rick DeMar have discussed the ordinance with Mr. Arnold and purportedly approved it. Concrete purveyors are aware of the charge. A loader fee will not be assessed for small disposals. The amount of liquid concrete disposed at the landfill is small. The proposal is to encourage the use of the landfill rather than allow illegal dumping of "tailings". Individuals who dump illegally are pursued whenever possible. The out-of-county charge is not being for out-of-county contractors who use the landfill

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due to the imposition having to haul the material to Lockwood creates and the City's ability to use the material in the City's recycling program. Public comments were solicited but none were given. Supervisor Aldean moved to introduce on first reading Bill No. 101, AN ORDINANCE AMENDING TITLE 5 (PUBLIC UTILITY FRANCHISES AND REQUIREMENTS), BY DELETING CHAPTER 5.11 (LANDFILL RATES AND FEES) AND AMENDING TITLE 12 (WATER, SEWERAGE AND DRAINAGE), CHAPTER 12.12 (SOLID WASTE MANAGEMENT) BY ADDING SECTION 12.12.047 (LANDFILL RATES AND FEES) WITH ADDITION OF FEES FOR LIQUID CONCRETE AND LOADER ASSISTANCE AND SECTION 12.12.048 (OUT-OF-COUNTY RATES) AND OTHER MATTERS PROPERLY RELATED THERETO. Supervisor Staub seconded the motion. Motion carried 5-0.

9. FINANCE - Tom Minton

A. ACTION TO ADOPT A RESOLUTION TO AUGMENT AND AMEND THE CARSON CITY FISCAL YEAR 2003-04 BUDGET (1-1890) - Mayor Masayko indicated for the record that there is no magic in the process. The Board will consider the resolution for the Redevelopment Authority augmentation and when the Redevelopment Authority is convened, the resolution will be considered by it. The Board Members for both entities are the same. Mayor Masayko reminded Mr. Minton to number the pages for easy referral. Discussion pointed out that the V&T Railroad bonds and the RTC bonds are included in the augmentation. The augmentation removes \$200,000 from the ending fund balance. The remaining funds will be allocated by the Board at a future meeting. Last year's audit was clean with minor over-expenditures. Mayor Masayko directed that the record should show that the augmentation replenishes the Contingency Fund. It was originally funded at a \$500,000 level. The \$200,000 augmentation increases the funding level to \$700,000. The \$200,000 is meant to carry the City through to the next fiscal year. Supervisor Williamson moved to adopt Resolution No. 2004-R-1, A RESOLUTION TO AUGMENT AND AMEND THE CARSON CITY FISCAL YEAR 2003-04 BUDGET in the amount of \$31,300,655, which is the fiscal impact. Supervisor Aldean seconded the motion. Motion carried 5-0.

B. ACTION TO ADOPT A RESOLUTION TO AUGMENT AND AMEND THE CARSON CITY REDEVELOPMENT AUTHORITY FY 2003-04 BUDGET (1-2018) - Supervisor Williamson moved to adopt Resolution No. 2004-R-2, A RESOLUTION TO AUGMENT AND AMEND THE CARSON CITY REDEVELOPMENT AUTHORITY FISCAL YEAR 2003-04 BUDGET in the amount of \$1,857,848. Supervisor Aldean seconded the motion. Motion carried 5-0.

REDEVELOPMENT AUTHORITY(1-2050) - Mayor Masayko then recessed the Board of Supervisors session and passed the gavel to Chairperson Williamson who convened the Redevelopment Authority. For Minutes of the Redevelopment Authority, see its folder.

BOARD OF SUPERVISORS (1-2355) - Following adjournment of the Redevelopment Authority, Chairperson Williamson returned the gavel to Mayor Masayko who reconvened the Board of Supervisors session. The entire Board was present, constituting a quorum.

10. REDEVELOPMENT/ECONOMIC DEVELOPMENT MANAGER - Joe McCarthy

A. ACTION TO APPROVE THE REPORT ON THE PRELIMINARY PLAN THAT PROVIDES FOR THE USE OF REDEVELOPMENT IN THE CORRIDORS BY ADOPTING, AS A

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PILOT PROJECT, A REDEVELOPMENT PROJECT AREA ALONG SOUTH CARSON STREET AND, IF THIS PHASE ACCOMPLISHES ITS INTENDED PURPOSES, THE NEXT PHASES MAY BE PRESENTED TO THE AUTHORITY FOR CONSIDERATION (1-2356) - Deferred.

B. ACTION TO ACCEPT THE REDEVELOPMENT AUTHORITY CITIZEN COMMITTEE'S RECOMMENDATION TO AWARD INCENTIVE FUNDING TO JENNIFER VIRIVE AND GARY CAIN IN AN AMOUNT NOT TO EXCEED \$41,000 OR NOT TO EXCEED 20 PERCENT OF THE PROJECT COSTS ASSOCIATED WITH PHASE 1 OF THEIR IMPROVEMENT PROJECT FOR THE HYMAN OLCOVICH HOUSE, 412 NORTH CURRY STREET, APN 003-225-08 (1-2360) - Supervisor Williamson moved to accept the Redevelopment Authority's recommendation to award incentive funding to Jennifer Verive and Gary Cain in an amount not to exceed \$41,000 or not to exceed 20 percent of the project costs associated with Phase 1 of their improvement project for the Olcovich House, 412 North Curry Street, APN 003-225-08 and the fiscal impact is \$41,000. Supervisor Livermore seconded the motion. Motion carried 5-0.

C. ACTION TO ACCEPT THE REDEVELOPMENT AUTHORITY CITIZEN COMMITTEE'S RECOMMENDATION TO AWARD INCENTIVE FUNDING TO BOB LAMKIN OF BOB'S TEXACO SERVICE NOT TO EXCEED \$14,645 OR NOT TO EXCEED 20 PERCENT OF THE PROJECT COSTS ASSOCIATED WITH AN IMPROVEMENT PROJECT FOR BOB'S TEXACO SERVICE, 705 NORTH CARSON STREET, APN 004-261-02 (1-2392) - Supervisor Williamson moved to accept the Redevelopment Authority's recommendation to award incentive funding to Bob Lamkin of Bob's Texaco Service not to exceed \$14,645 or not to exceed 20 percent of the project costs associated with an improvement project for Bob's Texaco Service, 705 North Carson Street, APN 004-261-02 with a fiscal impact of \$14,645. Supervisor Livermore seconded the motion. Motion carried 5-0.

Mayor Masayko thanked Ms. Verive, Mr. Cain, and Mr. Lamkin for their investment in the Carson City properties and for attending the meeting.

RECESS: A recess was declared at 10:51 a.m. The entire Board was present when Mayor Masayko reconvened the meeting at 1:30 p.m., constituting a quorum.

11. REDEVELOPMENT/ECONOMIC DEVELOPMENT MANAGER - Joe McCarthy - ACTION TO APPOINT SIX (6) MEMBERS TO THE REDEVELOPMENT AUTHORITY CITIZENS COMMITTEE FOR STAGGERED TERMS ENDING JANUARY 1, 2005, 2006, AND 2007 (1-2420) - The membership criteria was noted. Mayor Masayko suggested that, if individuals are eligible for more than one category, they be considered for all categories including the one they listed on the applications. The Board thanked each of the Applicants for applying. The Board interviewed (1-2464) Janice Shafer; (1-2722) Mike Cowan; (1-3095) Howard Tooley; (1-3373) Gene Munnings; (2-0178) Bill Stumpf; (2-0475) Robert "Chet" Alexander; (2-0697) Jim Wallace; (2-0929) Stan Jones; (2-1160) Rodney McGillivray; (2-1471) Gigi Valenti; and (2-1795) Don Bruce. Brad Linn had appeared for an interview, however, was unable to wait for the Board to interview him. Neil Rombardo was unable to attend the interviews. He had applied under the at-large classification. Discussion explained the process for selecting candidates and the reasons for the different membership criteria. The Board was polled to select the nominee for the business operator within the district. Supervisor Livermore moved to appoint Stan Jones to fill the position of business operator from the district for a two-year term ending January 1, 2006. Supervisor Williamson seconded the motion. Motion

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carried 5-0.

Supervisor Aldean moved to appoint Gigi Valenti to fill the position of property owner from the district for a two-year term ending January 1, 2006. Supervisor Livermore seconded the motion. Motion carried 5-0.

Discussion ensued on the process to select the remaining nominees. The Board was polled for each term. Supervisor Williamson moved to appoint Mike Cowan to fill a three-year term ending January 1, 2007. Supervisors Staub and Aldean seconded the motion. Motion carried 5-0.

Supervisor Livermore moved for approval of Jim Wallace's appointment to fill a three-year term expiring January 1, 2007. Supervisor Aldean seconded the motion. Motion carried 5-0.

Mayor Masayko indicated that this is an unexpired term. Supervisor Aldean moved to appoint Don Bruce to fill a two-year term ending January 1, 2006. Supervisor Williamson seconded the motion. Motion carried 5-0.

Supervisor Williamson moved to appoint Janice Shafer to fill a one year term ending January 1, 2005. Mayor Masayko indicated that she will fill an unexpired term. Supervisor Livermore seconded the motion. Motion carried 5-0.

Mayor Masayko thanked the other candidates for applying and indicated that it was a difficult decision to make due to the slate of good qualified applicants.

RECESS: A recess was declared at 4:21 p.m. The entire Board was present when Mayor Masayko reconvened the meeting at 4:26 p.m., constituting a quorum.

12. DEVELOPMENT SERVICES - PLANNING AND COMMUNITY DEVELOPMENT - Community Development Director Walter Sullivan

A. ACTION TO APPROVE MPA-03-155, A MASTER PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION FOR PROPERTY LOCATED AT 823 NORTH EDMONDS DRIVE AND 4051, 4063 AND 4075 LEPIRE DRIVE, ASSESSOR'S PARCEL NUMBERS 10-351-91, 10-352-04, 05, AND 06 FROM INDUSTRIAL TO MEDIUM DENSITY RESIDENTIAL AND LOW DENSITY RESIDENTIAL (FILE NO. MPA-03-155); AND B. ACTION TO INTRODUCE ON FIRST READING AN ORDINANCE EFFECTING A CHANGE OF LAND USE FROM GENERAL INDUSTRIAL (GI) AND SINGLE FAMILY 21,000 (SF21) TO GENERAL INDUSTRIAL (GI), SINGLE FAMILY 6,000 (SF6) AND SINGLE FAMILY 12,000 (SF12) ON PROPERTY LOCATED AT 823 NORTH EDMONDS DRIVE AND 4051, 4063, AND 4075 LEPIRE DRIVE, APNS 10-351-91, 10-352-04, 05, AND 06, AND OTHER MATTERS PROPERLY RELATED THERETO (FILE NO. ZMA-03-156) (2-2612) - Applicant's Representative Keith Shaffer, Mark Ramsey - Mr. Sullivan indicated that the adjacent residents do not oppose the project. Mr. Ramsey spoke at the Planning Commission meeting in support of the project. He also submitted a letter signed by the residents supporting the project. Ms. Davis' property will not be impacted by the proposal. The original concept would have required a larger setback on her property. The GI parcels with increased setbacks are owned by the Applicant with the exception of Parcel 10-351-07 at the south end of Lepire. It currently has a 30-foot

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setback. It is across the street from residential property and will be required to have a 50-foot setback. The topography aligns this parcel to having the setback area in the front yard. The setback area could be used for parking. This property owner was noticed but did not respond. The other two parcels north of APN 10-351-07 are owned by the Applicant. Discussion expressed the feeling that a Code revision may be warranted when there is a street between the uses and particularly when the street is 50 feet wide. Mr. Sullivan explained that the Planning Commission had expressed a similar feeling. Mayor Masayko directed that the record reflect that the Board looked at APN 10-351-07 and recognized the impact to that one parcel. If this property owner desires to put storage units on the parcel, it should be allowed. He has sympathy for this property owner and

if he/she feels imposed upon in the slightest manner, he/she should feel free to approach the Board and allow the Board to solve it. He urged the owner to not wait ten years to solve the matter as the history of the item will be lost. He suggested that Mr. Sullivan write a letter to this effect to the property owner.

Mayor Masayko then disclosed that he had engaged Keith Shaffer in a professional capacity to do some structure work on a set of house construction plans that he is doing. It was done under the same conditions and terms as any other individual does who engages Mr. Shaffer's services. He has no personal interest in his other clients.

Discussion indicated that parcels 05 and 07 are zoned General Industrial (GI). The zone change creates 50 foot setbacks for the GI parcels that abut adjacent residential parcels. Supervisor Livermore felt that Mayor Masayko's suggested mediation was appropriate. Mayor Masayko indicated that Mr. Sullivan should also notice these property owners of the Board's willingness to grant a variance or revise the Code so that none of the property owners' rights are lost.

Supervisor Aldean applauded the developer and the homeowners for their ability to compromise. Mayor Masayko agreed and indicated that the new project is different from the original concept.

Mr. Shaffer explained that the applicant, Nevada West Lands, had approached the referenced property owner(s) of the other three GI parcels, however, he/she/they were not interested in selling at this time. He felt that it could have been a better project. Supervisor Livermore pointed out that the original proposal was for residential sites. The present project is for commercial development. This may mean a different offer should be considered. Mr. Shaffer indicated that the present request is for a zone change and master plan amendment. They require a preliminary plan. There is no time restriction for the actual development to occur on the remaining southern properties that are not part of this project. He agreed that the potential remains for their development at some future date. He also indicated that Nevada West Lands has accepted the increased setbacks on its GI property that abuts residential parcels and are part of the project. Public comments were then solicited.

Mr. Ramsey indicated that the residents have not had a meeting since before the Planning Commission meeting as they have all become involved with their own "projects". The group and Mr. Shaffer had worked hard "to fix the mess they didn't make". Mayor Masayko agreed. Mr. Ramsey "had encouraged them to help as much as possible" and indicated that the neighbors whom he represented did not oppose the project. Mayor Masayko referenced for the public record an email dated 12/17 from Mr. Ramsey, which was the date

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the original plan was denied. He also noted that Mr. Ramsey representation is limited to those individuals whom he can represent. Individuals whom he does not represent should speak for themselves.

Mayor Masayko noted the request for a zone change and commended Mr. Shaffer and his clients on their project. Mr. Shaffer thanked staff for its assistance. He pointed out that the project has been scaled down tremendously from the original concept. The Funks, who are the property owners, believe that it will be a good project and that it will be possible to break even. They may return with another project in the future. The plan calls for the units to be owner occupied. Public comments were solicited but none were given.

Supervisor Aldean moved to approve MPA-03-155, a master plan amendment to change the land use designation for property located at 823 North Edmonds Drive and 4051, 4063, and 4075 Lepire Drive, Assessor's Parcel Numbers 010-351-91, 010-352-04, 05, and 06 from Industrial to Medium Density Residential and Low Density Residential, based on the findings contained in the staff report to the Planning Commission dated December 17, 2003, File No. MPA-03-155. Supervisor Livermore seconded the motion. Motion carried 5-0.

Supervisor Aldean moved to introduce on first reading Bill No. 102, AN ORDINANCE EFFECTING A CHANGE OF LAND USE FROM GENERAL INDUSTRIAL, GI, AND SINGLE FAMILY 21,000, SF21, TO GENERAL INDUSTRIAL, GI, SINGLE FAMILY 6,000, SF6, AND SINGLE FAMILY 12,000, SF12, ON PROPERTY LOCATED AT 823 NORTH EDMONDS DRIVE AND 4051, 4063 AND 4075 LEPIRE DRIVE, APNS 010-351-91, 010-352-04, 05, 06, AND OTHER MATTERS PROPERLY RELATED THERETO, File No. ZMA-03-156. Supervisors Livermore and Staub seconded the motion. Motion carried 5-0.

RECESS: A recess was declared at 4:45 p.m. The entire Board was present when Mayor Masayko reconvened the meeting at 6 p.m., constituting a quorum. Staff members present included City Manager Linda Ritter, Community Development Director Walter Sullivan, Chief Deputy District Attorney Mark Forsberg, Recording Secretary Katherine McLaughlin, and Assistant Planner Kathe Green.

13. DEVELOPMENT SERVICES - PLANNING AND COMMUNITY DEVELOPMENT - Director Walter Sullivan - **ACTION REGARDING 11 APPEALS OF THE PLANNING COMMISSION'S DECISION TO APPROVE A SPECIAL USE PERMIT REQUEST FROM KAREN KELLY (PROPERTY OWNER: KAREN KELLY) TO ALLOW A RESIDENTIAL GROUP CARE FACILITY FOR UP TO EIGHT SENIORS AS A CONDITIONAL USE ACCESSORY TO A SINGLE FAMILY RESIDENCE IN SINGLE FAMILY 2 ACRE (SF2) ZONING LOCATED AT 4150 NUMAGA PASS, APN 7-121-13 (FILE NO. SUP-03-122) (3-0008)** - Chief Deputy District Attorney Mark Forsberg, Applicant's Attorney Michael Matuska, Applicant's Friend/Representative Mark Hueutt, Martin Schwedhelm, Lakeview Property Owners Association's Attorney Tom Patton, Ron Kendall - Mayor Masayko asked that the exits be kept open. Televisions and chairs had been located in the hallway and lobby for the audience. No additional chairs can be added to the Sierra Room due to the Fire Code. He asked that, when public comments are requested, the speakers return to the Sierra Room to put their comments on the record. He then read the agenda item into the record. He thanked the audience for attending. He described the protocol to be followed during the meeting. He explained that the Board has a letter from the Carson City District Attorney regarding issues and powers which the Board may address. It may be that the Board does not have the power that was indicated during the Planning Commission meeting. He indicated his intent to

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ask the Applicant questions regarding the issues which the Board may and not be able to address. The key issue relates to individuals with disabilities. His intent to ask a pertinent question regarding individuals with disabilities was noted. Public comments will be requested if the hearing proceeds. He acknowledged that there were several individuals present who were represented by their attorneys. Their comments will be heard if the meeting reaches that phase. He asked the audience to understand that this is a country with laws. There are certain laws which are open-ended and others that are restrictive. The audience has the right to petition its government which is the purpose of the meeting. The audience's comments should be heard specifically if it assists with the deliberation and decision making process. If the issues are restricted, it is not as a result of something the Board did legislatively. The Board Members took an oath to uphold the laws of the State of Nevada and the ordinances of Carson City. As a legislative body, this is their duty. The Board takes its representation very seriously. He also understood that this is an emotional issue but the audience should also understand the Board's authority may be limited. The audience still has the ability to pursue the matter through other venues.

Supervisor Williamson disclosed that she lives in Lakeview Estates, is a member of the Homeowners Association, is a past-president of the association, is no longer on the association's board, has a District Attorney's opinion that she could participate and vote, and intended to do so.

Mayor Masayko reiterated the request that the audience observe the life safety Fire Code requirements and keep the exits open. There is adequate space in the hallway and lobby for people to sit and watch the television airing of the meeting. Speakers should return to the Sierra Room and raise their hands to signal an intent to speak. There is no signup sheet for the speakers. He asked that the speakers identify themselves for the record and spell their name if necessary. He also indicated that people who have been involved or appealed, have standing. Other individuals will also be allowed to give comments.

Mr. Sullivan then introduced the item. Eleven appeals had been filed. A synopsis of the Planning Commission meeting was given including a brief summary of the stipulations and conditions that were added. The Board's options were limned. He referenced the District Attorney's opinion which was issued on Tuesday. Correspondence received since the Planning Commission's meeting was briefly noted. Copies of correspondence received since the Board's packets were distributed and received before 5 p.m. today had been given to the Board. The correspondence included letters, emails, and faxes. Mr. Sullivan summarized the contents of these items. Mayor Masayko indicated that a Mr. Schwedhelm had indicated in his letter that he had been present at the Commission meeting but could not stay to participate. Mr. Schwedhelm is present and should be allowed to participate. Mayor Masayko also disclosed that the Board Members have received lots of letters and held numerous conversations with individuals regarding the item. All inquiries, protests, or testimony in the record is part of the record and did not have to be repeated. He also asked that the speakers not repeat comments made by others. The speakers should put their names and comments on the record. He also indicated that he had looked at the Nevada Revised Statutes and the written record but had not viewed the video tape. He appreciated the District Attorney's opinion as the Planning Commission's discussion on the Statutes was felt to be unclear. The record needs to include clarification of these issues as the discussion and deliberation process hinge on them. He also indicated that the District Attorney's opinion is a public document and should be given to anyone wanting a copy.

Mr. Forsberg paraphrased his letter by explaining that the City must act in a manner that is permitted in the Statutes. NRS 278.021 relates to the issue of having a facility for groups in a single family neighborhood.

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It provides a definition for single family residences, which must be adopted by ordinance, that allows groups of ten or fewer unrelated individuals with disabilities to reside in a home. It also allows the house parents or guardians to live in the home with these individuals as well as individuals related to the house parents and/or guardians. The use is to be considered a primary permitted use in residential districts. A special use permit is not required for primary permitted uses. The property is zoned single family two acre which allows residential uses including the group care home for disabled individuals. The application is confusing as it does not mention individuals with disabilities. A condition contained in the staff report for the Planning Commission requires the occupants to meet the definition for disabled persons, which he read into the record. The Board could not require a special use permit for the home if it is used by ten or fewer disabled individuals who meet the disabled criteria. Testimony at the Commission meeting suggested that the individuals who will be living at the home are disabled as well as others who were there for companionship. If the home is occupied by individuals who are lonely or simply old, then the Board's ability to deny the special use permit is restricted to using local health and safety standards. He then explained that the Board could not deny the special use permit for any other planning, land use, or compatibility reasons. The arguments in the appeals deal with the lack of sidewalks, the large volume of snow received in the area, wild animals, etc. These issues are not health and safety standards. Standards are rules which provide individuals with notice that this is what must be met. The use of unwritten standards is abuse of discretion and provides arbitrary and capricious standards. The standards must be in writing so that they can be looked at and applied to everyone. If healthy elderly individuals are residing there, the special use permit can only be denied if health and safety standards are not met. The normal special use permit addresses these issues, i.e., the Fire Department considers the Fire Code. The Health Department considers the Health regulations. The Building Code considers the building's safety structures, etc. He then explained the issue that had been raised regarding the Covenants, Conditions and Restrictions (CC&Rs). They are contracts between private parties and are not included in the application for a special use permit. He urged the Board to not consider them this evening. The Statutes tell the Board what it must do. CC&Rs are contracts that allow anyone who is a party to them to use other remedies, i.e., the courts, for enforcement. He also advised the Board that it should not consider the issues of constitutionality related to NRS 278. This issue should be determined by a judge. It is presumed to be valid until a judge says otherwise.

Mayor Masayko explained that Mr. Forsberg is the Board's legal counsel. The Board should follow his advice regardless of its own feeling. He acknowledged that the Board is not obligated to follow his advice but there are consequences if the Board does not. The Board must decide whether the consequences are worth the risk taken when not following legal counsel's advice. He also indicated that legal counsel's advice had included the power of the legislature, NRS 278 language, and the fact that the 2003 session placed additional prohibitions on local government's latitude. The Board had no control over this revision. The Statutes supersede the City Code.

Discussion between the Board and Mr. Forsberg indicated that the Statutes prohibit the Board from having a definition making the group home use discretionary. This is the intent when the Statutes states that a special use permit cannot be required as it is a primary permitted use by right. The State will regulate the number of individuals who reside in the home. The City's Health Department, Fire Department, and other regulatory departments may inspect the home to insure that City Codes are being adhered to that apply to single family residences. It is also possible to regulate them like a commercial business. They will need a business license and must comply with any other similar business regulations. If the group home is located in a district that is not primarily residential, i.e., a commercial district, a special use permit could be required. State

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regulations, local health and safety codes must be followed. They must restrict the number of individuals to the number allowed by Statutes and the individuals must meet the disabilities definitions.

Discussion between the Board and Mr. Forsberg indicated that questions regarding the type of care which will be provided must be addressed by Ms. Kelly. Questions regarding whether Ms. Kelly could revise the application were deferred. Mr. Forsberg had included the condition mandating disabled residents in his opinion as he felt that Ms. Kelly had agreed to restrict the residents to comply with NRS 278 for this reason. He advised that if it is a facility in which persons with disabilities reside, Ms. Kelly can go and do it. The process will then be rendered moot. Discussion then explained the licensing and special use permit obtained for a group care facility that was located on Empire Ranch Road. Supervisor Livermore expressed his desire to be able to control the facility in the same manner as that used for child care facilities. He suggested that before the business license is issued, the Codes be updated to allow for such regulations. Mr. Forsberg indicated that he, personally, was not aware of there being another similar facility in the community. If a special use permit had been required for the Empire Ranch Road facility, it should not be used as a reason for requiring a special use permit of Ms. Kelly's establishment. He also felt that anyone with knowledge about NRS 278 may not have notified staff before opening a group care facility. Mr. Forsberg also opined that the special use permit questionnaire was inappropriate due to the prohibition against requiring a special use permit. Business License Compliance Officer Kevin McCoy spends a great deal of his time dealing with people who operate a business without a license. Mr. Forsberg agreed that it will be an enforcement problem for Mr. McCoy to try to detect such businesses. This is no different than that confronted for other ordinance/law violations. Staff attempts to be very diligent in its efforts to find violations to business license, fire and health codes. Signage for such group establishments is prohibited. They must register with the State. Supervisor Aldean pointed out that if they violate City Codes/ordinances, a violation of the State registration requirement may also occur. Mr. Forsberg was not sure whether the City communicates with the State on the registration requirement. Supervisor Livermore pointed out that anyone in business must have a business license. He also suggested that they may need a health permit as they will be preparing food for the residents. Ordinances regulating the proposed establishment should require the same health standards as those mandated for commercial food establishments. Mr. Forsberg agreed that any establishment that prepares food for others should be inspected and regulated the same other food establishments. He also suggested that the Fire, Health, and Business License ordinances and Title 18 should be reviewed to determine any conflicts with the Statutes and to ensure that the establishments are being regulated to the extent possible under the health and safety standards. Comments also pointed out that these ordinances/standards should have been on the books before the application was submitted in order to be effective. It was also felt that the "trickle down effect" of the Statute had the community in disarray.

Mr. Sullivan explained that Ms. Kelly had pointed out NRS 278.021 to the staff. The City's Code on group care facilities allowed six residents. Ms. Kelly had indicated her intent to have ten seniors and that the residents were to be disabled. She also mentioned this intent at the Planning Commission meeting. This is the reason for the condition of approval that restricted the residents to disabled individuals. Supervisor Williamson explained her concerns with the application's indication that the residents will be individuals who do not wish to live alone or do the laundry. It is for a basic care level and not a nursing home. At Ms. Kelly's open house she had indicated that it is a residence for active adults who are lonely, will play cards, will not be walking outside, no Alzheimer patients, no disabilities, no walkers, no anything else. Frequent comments allegedly indicated there were to be no disabled residents. They were to be active elderly citizens. Supervisor Williamson was concerned that staff may have coached the Applicant to say it would not work unless they

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were disabled seniors. Mr. Sullivan reiterated for the record that Ms. Kelly had informed staff about NRS 278. Staff had not coached her. She brought it to staff's attention that she was going to have seniors with some type of disability. Alzheimers had been discussed. Mr. Sullivan believed that this type of individual would not be at the facility due to Ms. Kelly's indication that this type of patient needed a skilled care facility. The seniors may not be able to feed themselves or dress themselves. Supervisor Williamson read from the Minutes that "Ms. Kelly indicated that the care level is personal basic, medication management, assisted bathing and dressing, and incontinent care. If arthritis prevents an individual from washing his or her hair, they provide assistance with it. They do not have nurses on staff." Mr. Sullivan indicated his belief that the nurses had not been mentioned. Supervisor Williamson rhetorically questioned what disabled person would pay \$3,500 per month for a facility without medical staff. Mr. Sullivan explained staff's concerns related to NRS 278 and the type of disabilities that the residents will have. Ms. Kelly had made the statements as indicated at the Planning Commission meeting. His rationale for requiring the special use permit was based on the type of resident and the requirement that they be disabled. Ms. Kelly had pointed NRS 278 out to staff twice. Supervisor Williamson then read from Mr. Forsberg's opinion that "a person with a disability is defined by NRS 278.021.7.c as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the person or one with a record of such an impairment or one who

is regarded as having such an impairment." The public representation has been that the care level is basic personal care. Mr. Sullivan agreed that Ms. Kelly had put this statement on the record.

Mr. Forsberg indicated that the definition of a person with disabilities is extremely broad. It was taken from Federal regulations. The definition of a major life activity is: "caring for oneself, walking, seeing, hearing, speaking, breathing, learning, working". He cited a case where an insulin dependent diabetic was held by a court to have a disability. A person who needs help getting dressed, washing his/her hair, taking medicine, or going to the bathroom will meet the definition. Discussion between Supervisor Williamson and Mr. Forsberg indicated that NRS 278 does not reference Federal law although it had mirrored it.

Mr. Sullivan indicated his belief that the group care facility on Empire Ranch Road is still in operation. He intends to check with the Business Licenses Division tomorrow to determine its status. He felt that it had a State license. He explained that a second group care residence had operated in the Lewis Homes Subdivision for several years, however, had been out of operation for four or five years. Mayor Masayko indicated that these facilities had commenced operation before 2002 when NRS 278 was revised.

Supervisor Livermore explained the public concerns about having a proliferation of the group care facilities and the lack of control over their operations. The lack of oversight could allow the owner/managers to take advantage of people. These are public safety and welfare issues. The Business License should be used to monitor the operation and insure the health and safety of the residents. The early facilities were required to obtain a special use permit which had provided this oversight. Without conditions or a special use permit, the only control would be through the Business License. The ordinances should be revised to provide the necessary health and safety standards.

Discussion between Mayor Masayko and Mr. Sullivan explained Mr. Sullivan's belief that the City Code required a Special Use Permit. He had taken the item to the Planning Commission for its recommendation based on restrictive Statutory time lines mandated for Special Use Permits. He did not have Mr. Forsberg's

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opinion at the time the Planning Commission reviewed the application. Statutes also indicate that when there is a conflict between State and local laws, the more stringent law prevails. The Special Use Permit questionnaire is required of all Special Use Permit applicants.

Supervisor Staub pointed out that the questionnaire is not restricted to the health and safety standards. Therefore, the questionnaire could not be used to support the Special Use Permit application. Mr. Sullivan explained that he was being conservative and required everything of the Applicant and had not restricted the questions. Therefore, all aspects of the use were analyzed. Mayor Masayko felt that the Code will be revised after this evening's meeting. He also indicated that the Statute may be revised again in 2005. Mr. Sullivan then explained that there are a number of group care facilities in the community. A majority of them are located in commercial districts. A few are located in residential districts. He also admitted that staff, including Mr. Forsberg, have discussed several revisions which are needed in NRS 278.

Mr. Matuska indicated that Ms. Kelly will provide basic care level that will assist arthritic individuals with washing their hair and bathing. The residents will be disabled. Mayor Masayko explained the need for clarity due to NRS 278 as it involves how the application is to be handled. Mr. Matuska agreed that all of the individuals involved have struggled with NRS 278. Mr. Sullivan, Mr. Forsberg, and the Applicant have all dedicated themselves to understanding NRS 278, but confusion remains. Supervisor Livermore explained that the trickle down effect of the Statute has created community-wide concerns. It was felt that all of the residents in other group care facilities meet the disabled standards. It is difficult to say that all of Ms. Kelly's residents will be disabled. He agreed that a wife should be allowed to live with her disabled husband for whom she is no longer physically able to provide care. She fits the definition of someone who needs companionship. If the individual is disabled by arthritis and becomes cured, he did not believe that they should be forced to move out. He supported proceeding with the Special Use Permit. Mayor Masayko also supported the Special Use Permit as it allows more flexibility. Mr. Matuska indicated that the present plan does not restrict the resident to only disabled individuals. Mayor Masayko indicated that this removes the primary permitted use concerns and that the Special Use Permit appeal should proceed.

Discussion between Mr. Matuska and Supervisor Staub indicated that the Special Use Permit included a condition requiring the residents to be disabled. This condition had not been appealed by Ms. Kelly. Mr. Matuska felt that it is an improper condition. Supervisor Staub explained that the Applicant should have appealed the condition as it could not be changed at the Board level without an appeal. The appellants are appealing the Planning Commission approval of the Special Use Permit. The condition requires all of the residents to be disabled. Supervisor Aldean indicated that if Ms. Kelly decides to not have able-bodied individuals, she can withdraw the application and proceed. Mayor Masayko felt that Supervisor Staub's point is valid. The condition had not been appealed. The Board's policy is to not negotiate the conditions but to return the item to the Commission.

Supervisor Williamson read Condition 13 on Page 122 of the packet regarding the definition of a disabled individual. Board comments felt that the condition meant that the individuals are disabled. Mr. Forsberg agreed that it is a conundrum. The conditions of approval require all of the residents to be disabled. If the residents meet the definition of disabled, a Special Use Permit is not required. He supported Supervisor Staub's position that if the application is for a facility without the disabled restriction on the residents, which would not be limited to ten or fewer residents, the Board could not address its Special Use Permit application as it is a different type of facility. It would be evaluated differently and have different conditions/restrictions.

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The Board should not proceed to hear an appeal of a decision that should neither have been made nor is wanted. Supervisor Williamson pointed out that representation that was made to the Planning Commission was that there were no other options due to the Statute that required approval for seniors with disabilities. Mr. Sullivan agreed that this was the basis of NRS 278.021. He also noted that the last paragraph on Page 6 of the Minutes states that Ms. Kelly indicated she accepted the conditions, had read the staff report and supported it. Mr. Sullivan also indicated that the Condition that there will be ten or fewer disabled people was in the staff report when it was presented to Ms. Kelly.

Mr. Matuska felt that the entire process is confusing and complete with errors. He suggested that the Board decide whether someone should be penalized. Ms. Kelly has been pressured to obtain approval for a Special Use Permit which could be withdrawn. The residents are disabled and need a basic level of care. The intent has never been to refuse the disabled resident's spouse. It is also unfair to limit Ms. Kelly's ability to move forward with the Special Use Permit based on the errors that have permeated every step of the process. He asked that the errors be clarified. He supported the District Attorney's opinion as it put the process on track. Mayor Masayko agreed and indicated that the opinion should have been available at the Commission meeting. He then explained the Board's policy which allows the Commission to receive and act on Special Use Permits. If an appeal is not filed, the permit is effective. New information is not heard by the Board. It is a fairly tight process. The Board only considers the information the appellant puts in his appeal and the Commission's record of the meeting. He agreed with Mr. Forsberg's term "conundrum". He was not sure what options are available, if any. He was reluctant to allow Ms. Kelly to change the process by asking that the condition be waived. The review should not happen in this fashion. Mr. Matuska indicated that so far the approach has been that they need a Special Use Permit for disabled people. Their analysis has not been refined enough at this point to pursue any other avenue. Mayor Masayko reiterated that it is a conundrum and indicated an option is to return the matter to the Commission, which is the normal process. He admitted that the audience will attend the meeting. Returning it to the Commission does not mean the appellants have prevailed. Mr. Matuska felt that there is confusion regarding whether the Special Use Permit is required. He asked for clarification as to what is needed. Mayor Masayko explained that a Business License will be required. Discussion ensued concerning whether they will need a building permit as no construction is occurring. Mayor Masayko felt that a check list should be developed for them. He also indicated an intent to take a ten minute recess.

Mr. Hueutt indicated that he also represents Ms. Kelly. He then requested clarification of Condition 13 mandating the residents be disabled. Discussion indicated that NRS reference in Condition 13 should be 278.021.7.c. and that the written language is the same even though the referenced number is wrong.

RECESS: A recess was declared at 7:38 p.m. The entire Board was present when Mayor Masayko reconvened the meeting at 7:50 p.m., constituting a quorum.

(3-1887) Mayor Masayko indicated that Mr. Forsberg is looking at Condition 13. He also explained that during the recess he had overheard questions regarding whether the Statute applies to counties with a population of more than 100,000. Mr. Forsberg then explained that the condition requires the facility to have residents who meet the definition of disabled as defined in the Statutes, which he read. If that is a condition, a Special Use Permit is not required for the facility. If the residents are not required to be disabled, the condition cannot be a part of the Special Use Permit. This creates the conundrum. Mayor Masayko agreed with his opinion and felt that the matter could not be resolved this evening. Mr. Forsberg indicated that

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Statute 278.021.1 does not include language regarding the size of a city/county. The confusion is created in NRS 278.021.7.d. which defines a residential establishment, which he read. The proposed facility is not a home for individual residential care. It is a residential care facility for groups. The comma makes the population requirement applicable to only the portion of the clause discussing individual residential care. Mayor Masayko then explained that Carson City and 16 counties are all subject to the revised provisions in 278. This is the first time the City has been through the process since the 2003 Legislature revised the Statute. He then indicated the conundrum remains. He did not wish to deny individuals the ability to speak. He also recognized the need to preserve the record and that it be as clear as possible. The Board must follow the law. The meeting is not a court of law although he felt the issue will wind up in a court of law. He hoped that the record is clear enough that the City will not have to be a party to any lawsuit due to an oversight made before the Planning Commission. He recommended that the Board return the matter to the Commission without prejudice for clarification of the record. The rights of appeal will not be infringed upon. Everyone's rights will be preserved. The record will be preserved. A different outcome is needed from the Commission. The application must be clear as to what the Applicant is requesting and what the reaction to it will be. The Board cannot solve the issue tonight. He did not wish to hear issues regarding the constitutionality, CC&Rs, or whether the Legislature acted properly. The Board is bound by the Statutes which it did not create. He requested a motion to remand the item to the Commission without prejudice.

Supervisor Williamson expressed her regret at not making decision when the room is full of individuals. In this case, however, it is necessary. What the Applicant got is not what she wanted. Clarification by the

Applicant will give the Commission more latitude in its vote and provide a cleaner process. Everyone will be given an opportunity to voice his/her opinion. The vote will not be compelled by the Statutes.

Mayor Masayko then explained his intent to allow public comments. The speakers were reminded that the Board had already been in session for 12 hours. The Board wants to hear any points they wished to make. He asked that the comments be necessary for the record and be minimized. The three minute per speaker rule was applied.

Mr. Schwedhelm indicated that he would refrain from discussing the CC&Rs issues. He supported Supervisor Staub's point. The application was submitted indicating that it was to be a board and care home. He had been very involved with the process from the beginning. Problems involved with the entire process were noted. He felt that the application is not for a group home. There will be for eight to ten individuals who have lost their loved ones and are lonely. There is no difference between a group care facility and an individual residential care facility. The application was completely redone. The use approved by the Commission was not what was requested. This creates the conundrum. The appellants have arguments about the District Attorney's opinion that a Special Use Permit is not required for a facility for disabled groups. He questioned the reasons NRS 278.021.5 prohibits the denial of a Special Use Permit. The implied process allows the Commission and Board to look at health and safety standards. He questioned how these standards will be met without the Special Use Permit and Planning Commission processes. The issue in NRS 278.021.7. regarding a residential establishment has been discussed. It is a group facility. The Commission and Planning staff changed the application to group facility from the board and care home. Therefore, the 100,000 population restriction is involved. Mayor Masayko agreed that Mr. Schwedhelm could argue this point, however, the Board must follow its legal counsel. Mr. Schwedhelm felt the District Attorney's opinion to the staff was that the home could not be deemed a commercial enterprise for zoning or building code

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purposes. It does not say anything about CC&Rs or health and safety issues. For this reason the Environmental Health Department is relying on that opinion to not consider commercial standards for the facility. This is a big issue. He expressed his appreciation of the time allowed for him to make his comments.

Mr. Forsberg explained that a home for individual care is limited to two people. A reading of the section on groups which is other than several individuals means a basketball team or some group of associated people rather than a series of individuals. He was unpersuaded that the ten people who will be at the facility were not a group. The inference that Subsection 5 requires the Special Use Permit process is wrong as it defines a different class of care facility. One of the defined classes is a facility for group care which is not limited as indicated in Section 1. There is a residential facility for groups which includes: mentally retarded, aged, and infirmed people as well as a number of other categories. Its numbers are not limited. If this is the type of facility that is desired, a Special Use Permit is required that cannot be denied if the facility meets local health and safety standards. NRS 278.021.1 takes the definition of residential facility for groups and limits it to ten individuals who have disabilities. This is a subset of the larger group in Subsection 5. Subsection 1 allows the facility without a Special Use Permit if there are ten or fewer individuals who are disabled. This is the reason Subsection 5 allows a Special Use Permit while Subsection 1 does not. Mayor Masayko felt that it may sound incongruent but they are separate circumstances. One is a primary permitted use while the other is a special use.

Mr. Patton indicated that he had submitted a supplemental letter to the Association's appeal. There are a lot of people who are very, very, very interested in the issue. He introduced the Association members by having them raise their hands. He felt that a majority of his comments had already been stated. Supervisor Williamson had covered his issue regarding what had been applied for. He had circulated a notice to 30 residents with the agenda for the December 17 Commission meeting. It had not been included in the staff report. (A copy was given to the Board and Clerk. It is in the file.) A home for disabled persons was not applied for. It was not what was noticed. Everyone I confused as to what had been applied for including the Fire Department as indicated on Page 162. The statements he had heard this evening indicated that all or most of the individuals may or may not meet the definition. The result may be a "hybrid" which will require a Special Use Permit for those individuals who are not in the exempted class. He did not disagree with the Board's decision to remand the matter back to the Planning Commission. His concern is that the health and safety issues have not been developed. The Association members have raised many, many specific issues such as fire safety and emergency vehicle access during snow periods which were felt to be health and safety issues. Page 162 indicates that the Fire Department is not sure what the application is for and could not respond to those safety and access concerns. The residents have testified that they have been snowed in between one and four days. The only City response was a reference to the February/March 2004 Capital City Focus newsletter indicating the area is a priority one on the snow removal list. He asked that there be specific consideration of these health and safety issues. Mayor Masayko felt that Mr. Patton had raised a valid point and directed the District Attorney to put these matters in writing. He felt that under similar circumstances the Board will have had to have said that a similar home would be denied due to the snow conditions. He urged Mr. Patton to develop his theory and to give it to the Commission. The Board must use the standards that it has. It can't be a developing theory. He did not feel that a condition will be created in order to raise the bar for the Applicant. Mr. Patton reiterated his point that the health and safety issues were not adequately addressed and developed. They need to be. CCMC 18.020.36 says that nothing in the minimal standards limits the Board's legislative discretion to further restrict the uses when protecting the health, morals, safety,

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welfare, and residential neighborhoods are concerned. Reasons for his concern are that Mayor Masayko's comments indicate that this Code is in excess. The safety standards are legislated by the Board. The Code Section is a common sense catchall that allows the Board to raise the bar when the minimal standards do not cut it. Mayor Masayko agreed with him and noted the public hearing and publication process required to raise the minimal standards. This process does not occur overnight. Additional comments were solicited.

(3-2505) Mr. Kendall explained that the Board has previously validated items receiving great community support. The audience is evidence that the proposed use has no place in Lakeview Estates. The Board's common sense has served the community well in the past. He urged the Board to use its common sense, deny the application, and move onto more compelling issues such as those of the Community Council on Youth.

Mr. Matuska indicated that he had not made his points. He understood that the item would not be heard this evening and respected the Board for its decision to return the item to the Planning Commission. He hoped that it will provide a better and clearer process. He could not escape without stating that there is nothing more compelling than deciding how to implement an important public policy on taking care of the health and welfare of seniors. He suggested that the discussion address how to make health care more accessible for the seniors rather than creating more restrictions and burdens on the facility. The ability to oversee and regulate the facility and the resident's health and welfare is included in the Nevada Administrative Code. Its Code is quite extensive. It includes nutrition, the number of beds per square foot, number of kitchen spaces per square foot, staff training, the staffing level for the residents, and other items. The Board should realize that these items are already in place when it considers development of additional regulations. Duplication of regulations could create difficulties when both the City and State attempt to regulate the facility. He indicated that they did not oppose the decision to remand the application for a Special Use Permit for a residential group care facility for up to ten people without any conditions stated at this time to the Planning Commission. Mayor Masayko corrected him to indicate that there will not be a disability condition. Mr. Matuska agreed. This is the only condition that he was discussing. The facility will be subject to the normal health and safety conditions of a Special Use Permit. He thanked the Board for its consideration. He then addressed the audience by expressing disappointment that the facility could not be presented in a favorable light and show that it will be an asset for the community. He offered to attend meetings with or without Mr. Hueutt to make presentations to the community/area regarding the facility. The CC&R concerns and other fears could be addressed at these meetings. This type of a presentation would be good for the community if done in an open-minded setting. Mayor Masayko thanked him for his comments and the offer. He hoped that the community takes him upon the offer and listens with an open mind.

Mayor Masayko felt that Ms. Kelly will bring the application back. He apologized for the delay and confusion. The process is new to the Board. Remanding the application to the Board will allow a clear record to be established. He acknowledged that the process may not be easy. The audience may show up again. The process will be clearer and adhere to the law. The issues will be considered strictly on their legal merits.

(3-2657) Supervisor Staub moved to remand to the Planning Commission its decision to approve a Special Use Permit request from Karen Kelly, property owner Karen Kelly, to allow a residential group care facility for up to eight seniors as a conditional use accessory to a single family residence in Single Family 2 Acre, SF2, zoning located at 4150 Numaga Pass, APN 007-121-13, File No. SUP-03-122. Following a request for an amendment, Supervisor Staub continued his motion to include based upon the record and findings on the record this evening. Supervisor Williamson seconded the motion. Mayor

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Masayko explained the Board's policy to remand to the Commission the item as agenized with the record that goes with it. Mr. Matuska indicated that he understood the Board was remanding it as agenized, however, they will ask the Planning Commission to restrict the conditions to those for the normal health and safety standards and that the facility be for ten people. Mayor Masayko responded that the Board understood. He also indicated that the request for the Special Use Permit for the facility could go to ten beds, may be for people not necessarily handicapped, which requires the Special Use Permit, and that the terms and conditions will be in compliance with the State Law that limits the City's findings in granting that Special Use Permit. Mayor Masayko also indicated that this clarification is to be on the record. It should not be part of the motion. **The motion was voted and carried 5-0.**

Mayor Masayko asked Mr. Sullivan to move the process forward as rapidly as possible. He asked that Ms. Kelly be accommodated as much as possible as it was not her fault that action was delayed. He thanked the audience for attending. It is a complicated and convoluted issue.

There being no other matters for consideration, Supervisor Aldean moved to adjourn. Supervisor Livermore seconded the motion. Motion carried 5-0. Mayor Masayko adjourned the meeting at 8:28 p.m.
The Minutes of the January 15, 2005, Carson City Board of Supervisors meeting

ATTEST:

ARE SO APPROVED ON April 15, 2004.

/s/
Alan Glover, Clerk-Recorder

/s/
Ray Masayko, Mayor