

CARSON CITY PLANNING COMMISSION

Minutes of the February 27, 2002, Meeting

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A regularly scheduled meeting of the Carson City Planning Commission was held on Wednesday, February 27, 2002, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 3:30 p.m.

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

STAFF PRESENT: Community Development Director Walter Sullivan, Senior Planners Skip Canfield and Lee Plemel, Deputy District Attorney Neil Rombardo, Recording Secretary Katherine McLaughlin and Associate Planner Jennifer Pruitt (P.C. 2/27/02 Tape 1-0001)

NOTE: Unless otherwise indicated, each item was introduced by the Chairperson. Staff then presented or clarified the staff report/supporting documentation. Any other individuals who spoke are listed immediately following the item heading. A tape recording of these proceedings is on file in the Clerk-Recorder's office. This tape is available for review and inspection during normal business hours.

A. ROLL CALL, DETERMINATION OF A QUORUM, AND PLEDGE OF ALLEGIANCE -

Chairperson Christianson convened the meeting at 3:34 p.m. Roll call was taken. The entire Commission was present, constituting a quorum. Commissioner Farley lead the Pledge of Allegiance.

B. COMMISSION ACTION - APPROVAL OF MINUTES (1-0008) - None.

C. PUBLIC COMMENT (1-0020) - Chairperson Christianson explained for Pete Bellis that public comments are taken after the applicant has spoken.

D. AGENDA MODIFICATIONS (1-0035) - Mr. Sullivan explained staff's recommendation that Item G-2, a Growth Management Commission item, be continued due to the lack of information from the applicant.

E. DISCLOSURES (1-0041) - Commissioner Pedlar disclosed a meeting he had attended with the residents who reside in the Champion Speedway area. He had listened to the discussions. He did not feel that it would impact his decision. Commissioner Farley indicated that her daughter-in-law is present. Her attendance will not impact her decision. Commissioner Peery disclosed that he had had a conversation with the family of Dorothy Cliff, who had purchased property in the area of the speedway. Chairperson Christianson explained his attendance at a meeting on the speedway that had been attended by both Glen Martel and the residents living around the racetrack. He had received a full understanding from both sides.

F. CONSENT AGENDA (1-0060)

F-1. D-01/02-1 - DISCUSSION AND ACTION TO ACCEPT AN OFFER OF DEDICATION OF LAND FOR PUBLIC PURPOSES FROM THE BOARD OF REGENTS - UNIVERSITY OF NEVADA AT RENO

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F-2. D-01/02-2 - DISCUSSION AND ACTION TO ACCEPT AN OFFER OF DEDICATION OF LAND FOR PUBLIC PURPOSES FROM THE BOARD OF REGENTS -

UNIVERSITY OF NEVADA AT RENO

F-3.U-99/00-28 - DISCUSSION AND ACTION REGARDING THE REVIEW OF A PREVIOUSLY APPROVED SPECIAL USE PERMIT APPLICATION FROM SHIRLEY KERR (1-0061) - Commissioner Wipfli moved to approve the Consent Agenda Items F-1, 2, and 3 as read by the Chairperson. Commissioner Pedlar seconded the motion. Motion carried 7-0.

G. GROWTH MANAGEMENT COMMISSION - RECESS THE PLANNING COMMISSION AND CONVENE THE GROWTH MANAGEMENT COMMISSION (1-0095) - Chairperson Christianson recessed the Planning Commission and immediately convened the Growth Management Commission. For Minutes of this meeting, please see its folder.

H. PLANNING COMMISSION - RECESS THE GROWTH MANAGEMENT COMMISSION AND RECONVENE THE PLANNING COMMISSION (1-0180) - Upon completion of the Growth Management Commission items, Chairperson Christianson adjourned the Growth Management Commission and immediately reconvened the session as the Planning Commission. (The entire Commission was present, constituting a quorum.)

H-1. U-01/02-18 - DISCUSSION AND ACTION ON A SPECIAL USE PERMIT APPLICATION FROM GLEN MARTEL (1-0183) - Senior Planner Lee Plemel, Applicant and Champion Speedway Representative Glen Martel, Deputy District Attorney Neil Rombardo, Hodges and Champion Raceway Representative Jim Martin, Dean Heller's Representative Steve George, Brian Colodny, Tony Green, Juli McKean, Kate Schulz, Applicant's Attorney Scott Heaton, Dennis Conway, Mike Baxter, Janet Murphy, Dave Dieter, Don Schulz, Terry McTennis, Lisa Young, Walter Olson, John Griffin, William Kugler, Chamber of Commerce Chief Executive Officer Larry Osborne, Rosalie Dieter, Washoe Tribal Council Attorney Tim Seward, Allisa Andrews, Warren Andrews - Mr. Plemel's introduction noted the information contained in the packet. The current legal nonconforming uses will be allowed to continue. An extension/expansion of those uses, however, requires a Special Use Permit. The Special Use Permit process is being required for the commercial trailer which will be used as an office. The definition of nonconforming use and other Codes related to nonconforming uses were limned. The date of nonconformance was established as April 1978. Staff verified the zoning prior to that time. It would have allowed the racetrack activities and was under Douglas County regulations. Minor modifications or maintenance required for continuing the legal nonconforming uses are permitted. Minor building modifications requiring building permits are also allowed. The Commission may hear/consider both oral and written testimony regarding the uses which have gone on at the track. If the Commission feels that some of the proposed uses are minor modifications, those uses can be/are allowed. Conditions of approval appropriate for establishing both the legal nonconforming uses and expansion of the uses should be found. Facilities now located at the track were described. Aerial photos of the area indicates that these structures have been there since prior to 1978. Staff believes the auto racing is a grandfathered use and should be allowed. Motocross racing has occurred since 1979 as indicated by a 1979 schedule submitted by the applicant. Staff, therefore, believes motocross should be allowed to continue. The applicant submitted letters from Hodges Test Center indicating that they have tested vehicles on the track at least once or twice a year since before 1978. This would be a legal nonconforming use. The special events have been

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withdrawn by the applicant. Staff believes that these uses are not grandfathered. The new office trailer is an expanded use. Staff recommended approval of it due to the need to provide an office trailer and the feeling that the enclosed facility may reduce some of the noise problem. The applicant has indicated that the driver training and orientation school does not operate year-round and is not full-time. It is in conjunction with racing as it provides driver orientation and practice laps of a limited nature. He asked that the applicant describe this program. Staff's position is that racing on the track for this purpose is a reasonable person's assumption of racing activities required for the safe operation of the track. Written evidence supporting this use has not been provided. A lot of evidence has been submitted since the staff report. This material was given to the District Attorney's office and the Commission today. The staff's recommendation includes conditions which will limit the hours of racing for motocross and automobiles with two exception which were based on recent discussions with the applicant. This request is for discussion purposes and is supported in concept by staff. The original recommendation was that racing be on Saturday only. They have, however, requested that early in the season Sunday racing be allowed rather than on Saturday. The applicant has submitted supporting documentation indicating that racing has occurred on other dates besides Saturday and Sunday. If racing is held on Sunday, the applicant has agreed to conclude the racing at 7 p.m. and not race automobiles on Saturday and that the motocross will not occur on that Sunday. Staff had supported these exceptions. The applicant also wants a maximum of four weekend events per year which would allow auto racing on both Saturday and Sunday subject to the same time limits. No motocross racing will occur on those weekends. Staff supported this modification as motocross is closer to the residential area which creates more noise and dust impact on them. He clarified Condition 15 regarding the review of the Special Use Permit as applying to only those items which expand the use which is the commercial coach and trailer. Washoe Tribal's concerns regarding the driver's training and motocross were noted. Staff meet with the Washoe Tribe's representatives after the last meeting to update and discuss their issues. The Hodges Test Center's business was described and its letter reviewed. The E-mails were noted, specifically, Randy Roesser's who indicated he had moved there 18 years ago. The racetrack was there at that time. He was neither for or against it. The letter from Larry Burton, who is the racetrack property owner, was read into the record. It indicated the intent, in approximately five years or less, to develop the property into a residential land use designed to be consistent with and compliment the existing surrounding area. Warren Andrews' letter of concerns was noted. The District Attorney's Office memo was based on the original staff packet. The new information may change some of his concerns. Additional media articles and programs had been submitted by the applicant in an attempt to address the surrounding property owners' concerns. Copies are included in the packet. Mr. Plemel suggested that questions regarding this material be asked of the applicant.

Discussion ensued between Commissioner Pedlar and Mr. Rombardo regarding the legal standard which should be used to determine whether significant evidence has been presented. Mr. Rombardo explained that substantial evidence could include heresay, comments, news articles, media reports, etc. The preponderance of the evidence should be 51% of the testimony is on one side and 49% is on the other to be adequate. Commissioner Sedway asked Mr. Rombardo his current standing on the issues within the District Attorney's 11/16 memo. Mr. Rombardo indicated that the law states that they must have used the property in that matter at least once for every year since 1978. Nevada does not have any laws on this issue. There are, however, different laws in different States. Some require the use to be exactly the same every year since 1978. In some States any variance reducing the number of days reduces the future uses. Some States only require the use to have occurred one time during the year. As Nevada is a property rights

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state, he felt that this standard would be followed. His February 22nd memo spelled out his concerns. He also explained legal concerns regarding the term substantial evidence. Court rulings have indicated that the applicant's attorney's comments can be overlooked as evidenced due to his representation of the applicant.

Discussion between Mr. Plemel and Commissioner Peery indicated the 1979 issue regarding the continuing motocross activities had been addressed and that staff was comfortable with continuing those activities.

Mr. Rombardo then explained that if the Commission determines that it is reasonable to determine that the driver's training had occurred as racing had occurred, this is adequate to continue the use based upon the evidence as presented. He urged the Commission to apply its reasoning to the facts as presented.

(1-0594) Mr. Martel distributed a copy of "his talking points" to the Commission, staff and Clerk. (A copy is in the file.) He acknowledged that it had taken a long time to get all of the information together. After they had applied for a building permit to expand the office and moved the trailer to the site, they heard that the staff had concerns about the "expansion". The trailer is parked and has not been used to date. The auto racing activities were addressed in numerous articles. They concurred that auto racing is grandfathered and that some Sunday and two day events have historically occurred. Programs submitted by the Sierra Auto Racing Museum were displayed. A 1971 program shows that two day events occurred over Saturdays and Sundays. A 1974 program shows the same plus Wednesday racing in addition to numerous special types of racing including snowmobile, bed carts, go carts, etc. Photographs showing auto racing in 1964 and 1966 were contained in the 1974 program. A 1979 program indicates that Saturday, Sunday, and Wednesday auto racing and other activities were occurring that included jet cars, monster trucks, and go carts. The infield of the track was used for jalopy racing in 1977 and has been used for mud bogs, tractor pulls, and other special events since then. Use of that area is an issue due to the desire to continue its use for go carts. Mr. Sullivan had purportedly indicated that go carts are small autos. This allegedly occurred when the go carts were moved from Fuji Park. The infield of the track was used as part of the track and is not an expansion of the track after 1978. Therefore, those activities should be continued. Multi-day activities were found in a 1983 program and a 1994 article. The 1978 schedule included a Sunday opening, Friday racing, and August 7 and 8, a Friday and Saturday, race. In 1989 there were three weekend racing events in April, a one two-day event and a three-day event later in the year. A 1992 program shows a three day opening event on March 6, 7, and 8. This is the reason we want four special weekend events each year. This year we want to have two early in the year, one in the summer time, and one for Sunday during the Nevada Day weekend. There would not be any motocross on those weekends. The motocross documentation was felt to be quite extensive. He reviewed a 1974 program, which included mini-bikes, a 1975, a 1977, and a March 1978 news article illustrating the motocross use of the facility. The zone change occurred in October 1978. A 1979 program showed motocross from May to September. This program is 99 percent related to auto racing. A trophy was displayed which was for a race at the speedway in 1978. Two photographs were displayed showing a March 1979 development date. The photograph owner is not present, however, another individual will testify that the pictures are of the speedway. There is a 1980 news article. There are five or six affidavits from racers covering the timeframe from 1980 to 1984 or longer. There are owner's affidavits covering the timeframe 1981 through 2001 showing that the speedway was operated annually. A 1986 article and a 7/18/86 ATV trophy were

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read. He acknowledged the issue regarding ATV use. The 1985 and 1986 news articles mention that ATVs and Quads are being run at the speedway. He requested that the Commission recognize that ATVs, three-wheelers, and Quads are considered a part of the motocross as they are recognized by the sanctioning agency. This is a minor expansion of the equipment which has occurred overtime. He referenced 1987, 1988, and 1989 media clippings. The 1986 and 1987 promotion affidavits, racing schedules, and various earlier time schedules were noted. The 1987 to 1989 races were promoted on Fridays in the summertime and on Sunday the remainder of the year. Other affidavits supporting these schedules were described. The different events conducted during 1989 were limned. At that time there were two tracks but only one with lights. A 1990 affidavit and news articles and the 1991 to 1999 entry forms, flyers, and schedules documented the activities which occurred every month of the year during each of those years. He acknowledged that there is a wide range in numbers and dates when the events occurred. He felt certain that there was adequate documentation to indicate that motocross had been occurring from 1974 to 2001. He asked that the Commission recognize these events. They had agreed with staff to have motocross from March through October. He also asked that in recognition of the "swap" for the auto racing with motocross that if the auto racing does not occur, that the motocross racing could occur. A tradeoff would eliminate any auto trial laps during the week. Difficulties encountered in documenting the driver orientation/training/school were noted. They are learning to drive. They borrow a car and watch others before they begin racing. It is a normal accessory to racing. He asked the Commission to support that position. It has been occurring on an ongoing basis on different days of the week. During the last few years it has been from 12 noon to 5 p.m. Reasons for stopping at 5 p.m. were due to concerns for the neighbors. He asked that they be allowed to continue practicing during those hours during the weekdays. The purpose and limited number of individuals involved in these practices seasons were limned. Practices will not be every day but between 12 and 5. Testing and filming is substantiated by Hodges which they wished to continue. This testing is done with mufflerless vehicles only. Hodges no longer tests military vehicles or special vehicles without mufflers. We do not have a problem with the conditions related to the commercial coach. He offered to use a noise meter for testing and to keep the track noise at 95 dba at a 100 feet parameter. This is the standard used at similar tracks in Northern California which have suburban areas surrounding them. In 1980 the track had a muffler standard but not a noise standard. They had used 100 dba at that time but did not follow through with the restriction. The new track operator will monitor it. He described the dust control plan which included having water trucks stationed at the track. New signs are to be posted indicating the use of effluent water. They are similar to the signs used by the Parks Department. The signs will include reference to the City's mandate on water conservation. Watering complaints should not occur again. The truck drivers will be cognizant of this concern and smaller hoses will be used to reduce the potential of spraying residents, etc. He then described the plan to use "mag chloride" for dust control in the parking area, how the treatment is applied, and how it acts to hold the dust down. The track had installed silt fencing in the middle of the track and along the south part to stop the wind from blowing materials from the west. Hopefully, this will make a difference. He had read Mr. Burton's letter. A lot of things are occurring. The track manager wants to be a good neighbor. A telephone has been installed and will be staffed so that residents/individuals can call if they have a concern. It should improve the communication process.

(1-1038) Discussion between the Commission and Mr. Martel explained the testing performed by Hodges. A majority of the events are of short term durations with one or two that last for 24 hours. The vehicles are then tested and leave. Commissioner Mally suggested starting the races earlier and closing at 10:30

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p.m. Mr. Martel referenced a 1993 memo from City Manager Berkich stating that racing was to occur from noon to 11:30 when the engines are to be off. Some of the neighbors have said it is not that late. Some racers have said that is as long as they go. Some of events were done at 10:15 or 10:30 but others go until 11:30. The last one for last season, despite the efforts, went until 12:10 p.m.. Those efforts had included cutting classes. The historic time has been 11:30 p.m. When the cars stop, the fans and participants then must leave. This is a concern for the neighbors. Eighty percent of the time they are gone by 12:30 p.m. Some testimony has indicated that the individuals are still there until 3 or 4 a.m. Management will "hustle them out" and have them gone by 1:30 p.m. as a starting point. We want to find a time that works. We will make it as efficient as possible and minimize the impact as much as possible. Mr. Martel explained that this offer was an attempt to address the time issue. He had discussed it with the DA who noted that it will still be an 11-1/2 hour operation. Mr. Rombardo clarified his comments to indicate that the closing time could be moved to 10:30 p.m. but that the starting time should not be moved. Mr. Martel indicated that this suggestion had been discussed with the neighbors but had not been finalized.

Discussion with the Commission ensued on the reason for setting the dba at 95 and the type of tracks who use this rating. Mr. Martel was not sure what this rating compared to. He felt that a rock concert is in the 110 to 120 dba range. Jets may be above that range, however, he was not certain of its range.

Commissioner Pedlar explained that the dba ratings have different "weighing scales" and his experience in this area. He suggested that the standard "A" weighing scale be used. Mr. Martel assumed that the testing would be done at a distance of 100 feet from the east side of the track. He agreed to Mr. Pedlar's question that he stipulate that the same noise standard would apply to motocross.

Discussion then clarified the driver training process which is not to occur daily but would be between 12 and 5 p.m. Monday through Friday. It must be scheduled with the track staff before occurring as the staff will only be present during scheduled periods due to safety and monitoring concerns. Normally only one or two vehicles practice at a time. There will be no practice on Sunday if the race is on Saturday. Mr. Martel offered to work on the language with staff.

Mr. Martel felt that the "mag chloride" had lessened the dust problem. It was applied in May or June. Another layer will be applied in the next week or two in the parking lot and pit area. The application process was limned.

Discussion between Mr. Martel and Commission Pedlar explained that the Hodges' 24-hour testing varies in numbers per year. Mr. Martel felt that the maximum would be between 12 and 15 per year. He was willing to settle for 15 and come back if more or less are needed. He felt that the tests are performed on typical passenger vehicles who lap the track. They test the mileage, suspension, and handling. It is not flat out racing.

(1-1252) Mr. Martin clarified the testing process and described his employment. The vehicles are purportedly run for six to seven hours for three or four weeks during the mid-week in a figure eight pattern at 25 to 30 miles per hour. The tests are conducted on pre-production or production vehicles. The testing is on new suspension, shocks, or the steering mechanisms. He felt that only individuals within 200 feet you would know they were testing a vehicle unless they saw them.

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Mr. George explained Dean Heller involvement with the track. Copies of Mr. Heller's letter were distributed to the Commission, staff, and Clerk. (A copy is in the file.) His letter was read into the record.

Public comments were solicited. Mr. Colodny explained that he had raced at the track since 1991. He purportedly had practiced at the track every day of the week. His son had started racing there last year. The development on the east end of the track had caused concerns. The owner, Mr. Burton, had installed a large sign when development began occurring saying: "Buyer beware. The track is a racing facility with dust, noise and crowds." He urged the buyers to be aware of it before they purchase the land. Mr. Colodny felt that the sign was in full view and told what occurs. The buyers should have been aware of it before they bought. The race track may have been the reason the price was less than the norm for the community. He had hoped that race fans would purchase there. What is happening is what he had feared would unless the buyers were aware of the track. They had not objected at that time. The Commission should not be involved in the issue.. Your role as government is to build convention/community centers, interpret laws, and do other things. The race track provides entertainment and revenue for the community and is an outlet for adults, children, and families. The Commission should not fix people's mistakes that they made when they purchased their property.

Mr. Sullivan explained the decorum for the meeting and that applause, booing, and hissing would not be allowed.

Mr. Greene supported Mr. Colodny. The track has been there for 40 years and it is derelict for the homeowners to take umbrage at the facility. Individuals who do not like airports should not purchase land near an airport. The same is true of race tracks.

Ms. McKeen agreed that she knew the race track was there when she purchased her property. They were not out to put them out of business. Mr. Martel had spoken about the auto racing. They agreed that it is grandfathered. The motocross was not there in 1982 or 1983. If it is allowed, they asked that it be on Wednesday from 5 to 9 and on Fridays or Sundays. The racers had purportedly agreed. The conflict in the records concerning its operation was noted. Mr. Plemel had purportedly stated that it is covered. She was concerned about the extension in the time and the operation's intensity as the uses seem to keep growing. Mr. Martel had purportedly claimed that the intensity can be any amount they want. She asked that rules be clearly established as to what is to be allowed. If the grandfathered activities are not negotiable, why can the times be negotiated. She invited the Commission to come to her home and watch the testing/.driver training. It will be easy to learn what 95 dba is. She urged the Commission to set a schedule. Training had always been done on Saturday mornings. The racers allegedly did not have a problem with that time when it was done in 1982. The residents are afraid they will abuse our rights as citizens. The racers felt she was out to get them. The chemical provides dust control but heavy vehicles destroy it. She had not observed a change in the blowing dust except when the water truck is watering. Darrel Rasner from State Water Pollution had allegedly said that they cannot water in the wind. She purchased her property in 1977. The sign was installed in 1988. The residents are concerned with the schedule that they are now trying to change.

Mr. Rombardo reminded the Commission and audience that the issue is only the non-conforming uses and not other issues. The Commission has a chain of use which must be considered for the four or five different

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activities at the racetrack.

Ms. Shultz indicated that she represented three property owners and submitted a packet to the Commission. (A packet was not given to the Clerk.) They have owned 34 acres adjacent to and surrounding the racetrack since 1872. The material given to the Commission was described. Her study of the packet discovered that there were no published articles, ads, or fliers regarding the racetrack during 1982, 1983, 1984, and 1985. She questioned the use of testimonials containing illegible signatures. A November 28 meeting indicated there is no problem with the grandfathered uses, however, the "results" do not support the motocross use in 1982, 1983, 1984, and 1985 unless they withheld documents which will come forward later. This is a substantial shortage of information. At the November 28 meeting, a Commissioner asked that we meet and resolve the issues. Lumos Engineers asked Mr. Bawden to meet with us but Mr. Martel came instead. Other individuals who were present were explained. At that time Mr. Martel purportedly agreed to support the master plan amendment, which will be discussed later this afternoon. In November 2000 we worked with Larry Burton and had Lumos Engineers prepared the master plan amendment. Mr. Burton had indicated an intent to go with another group. She had asked for 24 hours to----.

Chairperson Christianson requested a brief recess to discuss the material with Mr. Rombardo and staff.

Break: A recess was declared at 5:08 p.m. The entire Commission was present when Chairperson Christianson reconvened the meeting at 5:12 p.m., constituting a quorum.

Mr. Rombardo stressed the need to stay on the agenda which is the uses and whether they are grandfathered. He also indicated that name calling would not be allowed.

Ms. Shultz explained that her reason for starting with the November 28 meeting had been an effort to show the attempt to reach an agreement. Mr. Martel had purportedly agreed to sunset the track in five years. A January 1 discussion with Mr. Bawden indicated that he would sunset it in a few years. She asked that Mr. Martel indicate if this is a true comment. Chairperson Christianson reminded her that this is not an agenda item. Mr. Rombardo indicated that the applicant could make such a stipulation if he wanted to, however, he could not ask him to do so. Mr. Martel said no. Mr. Heaton reiterated that that topic is not part of this process. Mr. Martel can tell you whatever he wishes. The Commission should not consider the January agreement.

Ms. Shultz indicated she would accept that. She did not have a problem with the truly grandfathered uses, which she felt is the motorcycle racing on a paved track and the stock car racing. There is no creditable evidence for four or five years regarding the operation of the motocross. The statements are questionable. You must look at what is grandfathered. Chairperson Christianson indicated that this is the point the Commission will consider.

(1-1714) Mr. Conway felt that one of the illegible signatures could be his and explained his racing experience at that facility which was from the late 1970s until mid-2001. The motocross had occurred during that time.

Mr. Baxter explained that he started racing motorcycles in 1978 at the speedway. He raced motocross there

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during 1978, 1980, 1981, 1983, and 1984.

Ms. Murphy explained her employment and involvement in Douglas County. She intended to testify for Champion Raceway. She liked hearing Mr. Heller's comments. She wanted equal recognition for all types of racing regardless of whether it is for cars or motocross. She did not want to rediscuss this when more is given to one portion than another. She believed in recreation and was glad that it had been established that the raceway had been in operation since before 1978.

Mr. Dieter referred to Mr. Martel's statement that the packet contained a 1979 program for motocross racing. He and several neighbors had spent hundreds of hours in the archives going through the Nevada Appeal looking for something to substantiate or deny the use. He had submitted a packet to the Planning Department and District Attorney. He had copied all of the articles and researched the issue thoroughly. Nothing was found for 16 months regarding the motocross. This was in 1980. There were no ATVS there. They had run once a year since 1978 according to the Municipal Code. They cannot substantiate that motocross had occurred there every year. There is no reason to grandfather it. The photographs of motocross do not support it as the date is no indication of when they were taken, where it was taken or if it was racing. Proof must be provided. They want March through October with special use permit for the motorcycles. It has never occurred for this length of time. The closure time is very ambiguous--11:30 p.m. but it may be 12:10 a.m. and partying in the pits occurring until 4 a.m. He urged the Commission to be definite as he wanted to sleep and go to church the next day. The Commissioners would complain if a neighbor had a loud party. The residents are in the wild west and cannot get help. The 90 dba is a very high noise level. In 1992 Bill English, who resided on Conte, which is 8,000 feet from the track, had people at his home to discuss the noise ordinance. He had a reading of 92 dba at that time. Jim Martin is a new manager. They tested the Jeep Liberty at that location. It was run 10 to 12 hours a day with the tires squeaking in the figure eights. They must do 100,000 miles. It goes on all day long. Although they claim to be controlling the dust and noise, the EPA had purportedly cited them on January 7 for nonconformance. They sprayed effluent on homes and people just last Saturday. They should speak to this issue. He asked that the Commission not expand the race facility.

In response to Commissioner Sedway's questions, Mr. Dieter indicated that he had moved there in 1992. He had understood what he was doing then and it was an acceptable level of usage. They left at 10:30 p.m. and had limited motorcycle racing. The participants and observers had always left at a reasonable hour. They did not have the crowds that they now want. They want 400 riders for the motorcycles races. It is not possible to enjoy our homes anymore. Their racing friends practice whenever they wish. It is in constant use seven days a week. Discussion ensued between Commissioner Farley and Mr. Dieter on the date when he purchased his property with Mr. Dieter explaining that he had purchased approximately 11 acres in the vicinity of the racetrack. His first purchase had been away from the racetrack. He has since purchased a lot on Saddlehorn which is next to the racetrack.

Additional comments were solicited. Mr. Conway indicated that one of the photographs with the dates is his and that he is the individual in the photographs. They were taken at "T-Car" (now known as Champion Speedway). The track is smaller than it was when the picture was taken. The track area had originally included crossing the creek and going to a portion of the Schulz property. Chairperson Christianson asked him to sign the picture. Mr. Martel stipulated to giving the Commission a copy of the photographs later.

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The photographs were dated March 1979.

Don Shultz asked the Commission to put on a five year or less extension provision on the uses which the owner could stipulated to which would be the same as the verbal agreement they had with Mr. Martel, who is Mr. Bawden's agent. Chairperson Christianson reminded him of the agenda and asked him to return to it. Mr. Rombardo indicated that they can stipulate to it but the Commission cannot ask or force it. Mr. Schulz can ask and they can refuse. Mr. Heaton indicated that they had spoken.

Mr. McTennis explained his knowledge and experience with ATVS. He had grown up riding motorcycles, ATVS, and three and four wheelers. He did not understand the concern about ATVS or Quads. They run the same parts and equipment as dirt bikes. The difference is that the dirt bikes have a better balance than ATVS. The noise level is the same. It is the same "CC" engines. A lot are four stroke engines. The four strokes engine is not noisier. The two stroke engine has a higher pitch compared to the four stroke engine.

Ms. Young asked that Mr. Dieter speak for her. Chairperson Christianson felt that if he had additional information that is germane he could do so. Mr. Dieter felt that the neighborhood was becoming more aware of what is occurring at the racetrack. The Youngs have lived in the area for quite a few years. They had known that it was there as well as he had. The expansion should not be allowed. Chairperson Christianson explained that the issue is expansion outside the normal things allowed there. If it can be proved that it happened there and is within the scope of the original use, then the use is grandfathered. They should be able to make money at racing there. Mr. Rombardo read the law regarding expansion of a use and that if the Commission is unsure whether the use has been expanded, then the use must be disallowed. It is not considered an expansion just because an individual/firm makes more money at the same use. That is their right and is the American dream. The use must be changed or new to be expanded. New uses cannot be allowed or expanded. Chairperson Christianson explained that the Commission should determine if this is an expansion of the use that was not there before and materially changes the uses. Mr. Dieter closed on that statement.

Mr. Olson, an employee of Michael Cycles, explained that the difference between two to four stroke engines should not be a problem as there will be decibel testing which handles both engines. Four stroke engines have a different pitch. He encouraged the Commission to consider the dba as other racing areas use dba's of 96 to 98. A jet at an airport is 130. A lawn mower is 99 or 100. It will impact the community in Carson City if the racing is curtailed there. People come into the shop who have raced there since the early 1970s. He felt that the use of ATVs is growing. They are considered part to of the motorcycle arena. When they do not have a class for them, if not enough vehicles show up, they race together in one motocross class without any separation.

(1-2167) Mr. Griffin, from the law firm of Allison, MacKenzie, Hartman, Soubeniotis and Russell, indicated he represented Bill Kugler, who owns 35 acres adjacent to the track. He agreed with Mr. Rombardo's legal opinion on the non-conforming use case. He then referenced the Peterson versus Ormsby County case. He felt that the driver training use is against that case. A majority of the other cases were felt to indicate that any increase in intensity, duration, character, frequency, or purpose of the historic usage of any kind violates the grandfathered rights provision.

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Mr. Kugler explained the location of his residence on Rabe Way. He had resided there for approximately 20 years. He agreed that the residents had known that the track was there. Different operators had run it in different ways. Right now there has been a great increase in the intensity of the operation. He had attempted to work it out with them but they want to run it seven days a week. Motocross practice is to occur once a week with racing. They also want the auto racing one night a week plus two or three special events and practices five days a day without a schedule. The neighbors feel that they will hear the noise seven days a week. The 1978 historical data should be analyzed to determine what they had raced. They raced stock cars, super stocks, hobby stocks, and jalopies. Now they are bringing in more and different, higher powered vehicle and types. This is the residents' concern. The vehicles have different configuration and fuels than in those in 1978. We should stay with the 1978 level as that will allow the neighbors to enjoy their property. Commissioner Pedlar asked if an agreement on the days, number of races, and decibel level is reached, why there would be a concern with the different type of vehicles. Mr. Kugler felt that the current cars are noisier than the original vehicle. Commissioner Pedlar pointed out that the noise dba level is an objective standard. Mr. Kugler responded that the memories mix the different operations. He recalled last year when the jet cars rattled his windows. This created a different environmental impact. Commissioner Pedlar reiterated that the dba level should address this concern. Mr. Kugler indicated that he needed to know what the 95 dba level related to and how it will be monitored before he could agree.

Mr. Rombardo agreed with Mr. Griffin's analysis of the case and pointed out that if the uses are not ancillary they could not be grandfathered, i.e., the driving school.

Mr. Martel corrected a statement/discussion by indicating that a 1978 news article indicates that there was motocross in March 1978. They propose to close at 11:30 p.m. as stipulated. We will exit as quickly as possible after that stopping time. With time the exiting time will improve. The palliative does not create a crust. It permeates into the surface of the soil so that when the parking lot is used it does not have to be maintained. It is a new product. On the dba testing we know where 100 feet is from the track. He acknowledged that he did not have a news article for each year of operation but had submitted other data to support his contention that the operation had been continuous since before 1978. He read from a 6/17/79 news article to indicate that weekly go cart rentals and motocross racing were occurring every other Sunday. Driver affidavits from four individuals had been submitted to indicate that driver training is ancillary to the use in 1971, 1969, 1973, and 1975. There are eight other signatures with various dates. Regarding the Qad types, the gentleman from Michaels had said it is the same equipment but with better balance. He then read a 1971 and a 1974 flyer to explain the type of vehicle which were being raced. The technology and engines have changed as time passed. In response to Commissioner Sedway's question Mr. Martel indicated that the racing dates and hours had changed throughout the years. The racing dates for 1971 and 1974 were noted as examples. Historically, the uses and days of the week and times have been there. Mr. Martel indicated that he understood Mr. Kugler's concern regarding it becoming a seven day a week operation. This is the reason they had agreed that if it is a two day event, there would not be any practice on Sunday. He pointed out that it may be possible with the two day event, practice on Monday through Friday, and racing on the following Saturday for it to be a seven days a week operation. This calendar would make it appear to be a seven day week operation. He stated this will not happen. They will not staff it to allow it to happen. They will break it up. He then stipulated that it would not happen and that they will monitor it to ensure that it does not happen. Mr. Martel explained the attempt to limit practice to two

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times per week or motocross. Safety concerns were created by having the two tracks run at the same time. They then tried to specify an evening for motocross and Wednesdays for cars but people felt that there was no quiet time for the residents. This is the reason for the 12 to 5 practice time. The practice will be completed by the time the residents get home from work.

Mr. Heaton explained that the purpose of the driver training and orientation is a safety concern. The drivers need to practice. It is difficult to spell out how much practice the drivers need due to the range in talent and expertise. Therefore, it is an ancillary use. Clarification explained that the driver's learn by driving on the track. It is not a "Petty" driving school. A test is not given to the drivers. They do monitor the drivers and will not allow people who pose a safety risk to drive. Practice at the Indianapolis 500 begins a month before the race. Mr Heaton stipulated that it is not a profit center for the track. According to Mr. Bawden they are charged a small fee to practice. Mr. Martel explained the need for the scheduling and monitoring of the practices due to liability concerns. It costs between \$10 and \$20 a session and is not a money making part of the track operation.

Mr. Heaton indicated that he had not read Mr. Rombardo's December 16th memorandum but felt that some of those comments were made before the recent information was submitted. He acknowledged Mr. Rombardo comments regarding the lack of case law on the interpretation of non-conforming uses. Other States have many rules on it. Examples were provided to illustrate the variety of rules in those States. The Nevada statute is very loosely constructed. He felt that as the use was there it could be run as much as desired at a later date. At some point if there is a substantial change to that use then the Commission can stop it but it is subjective decision. We tried to show that it was there for over 20 years. Sometimes the use was more significant than other times. The interpretation should not prohibit a use just because it did not occur on one specific date every year during that 20 year period.

Mr. Osborne pointed out the positive economic impact the racetrack had on the community. He also pointed out that as the economy had changed, so had the uses. Chairperson Christianson and Mr. Rombardo asked that his comments stay on the subject of the uses since 1978. Mr. Osborne indicated that he could not speak to that subject. Chairperson Christianson thanked him for his comments.

Ms. Dieter displayed a container that was alleged held the effluent from the Bigelow pond. The sample had purportedly been taken at 2:30 p.m. this afternoon. This is the "water" which is purportedly sprayed on the motocross track and spread onto the neighbor's homes and yards. She asked that it be tested. There was break in the motocross track usage between 1981 and 1982, which was submitted to Mr. Rombardo, according to the Nevada Appeal. This break covered a 12 month period.

Mr. Rombardo pointed out that this is a discrepancy between the opponents and proponent records. He also acknowledged that he had reviewed their documents.

Mr. Seward agreed that the issue is the non-conforming uses which are not in compliance with the zoning criteria. The applicant could apply for a special use permit through the normal planning process for those uses which are not grandfathered. Their letter was limited to the driver training and motorcycle uses, the duration of those uses, and the need for specificity. The reason for the process is to clarify the permitted items which may reduce the number of complaints. Driver training as indicated in Condition 16 does not

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provide any specificity as indicated in his reading of the condition. There is no evidence showing the training times and uses. Legal counsel had said a reasonable person standard could be used but that it needs specificity regarding the type of training which would be provided and the schedule. He felt that the Commission needed to spell out the number of annual days and could limit the days and months. (Commissioner Sedway stepped from the room--6:05 p.m. A quorum was still present.) He corrected his letter to indicate that the intent is to have motorcycle racing five days a week as there will be two practice days and three racing days. No evidence has been provided spelling out the days and hours. All of the information had been for racing on Saturday and/or Sunday. The discussion of allowing it to be five days a week should be considered as an expansion of the operation over the annual period.

Ms. Andrews explained for the record that the neighbors from the surrounding area had held two meetings since the last Commission meeting. Mr. Martel was invited to the second meeting. (Commissioner Sedway returned--6:07 p.m. The entire Commission was present, constituting a quorum.) She questioned the reasons for having to have repeated meetings to establish the race track hours. They should have set the hours the same as other businesses in the community do. She also asked that the Commission consider the prep time in the hours. Reasons for her concern were noted. She voiced her objection to the characterization of the individuals who had purchased in the vicinity of the race track as being poor, unintelligent, etc. She indicated her support for the District Attorney's December memo. She asked that speed limit signs be placed in the vicinity of the racetrack.

Mr. Andrews indicated that he had seen the sign alerting potential buyers to the racetrack. It had purportedly been on Racetrack Road before 1987. The sign's point is that "we are what we are". They are now changing it. He had purportedly sent the Commission/staff packets on Monday at 8 a.m. He asked if the Commission had read his letter. Commissioner Farley indicated she had. Mr. Andrews felt that if someone had presented documents showing the entry forms, bills of lading, salary sheets for employees, etc., from 1978 to 2000 and it would have been clear as to what happened. They were being forced to go to the Appeal and people in the community for statements which were being relied upon as the truth. Michael Baxter had testified that he had raced in 1978. His testimony in the packet says 1976. The point is we are relying on testimony and not facts. He urged the Commission to show him the facts that the motocross is legal. We can then negotiate on times. His knowledge of the activities in 1981 were described. He alleged that there is no evidence to support any motocross activities in 1981 other than a bicycle motocross at the track. This was a bicycle race. This is the only evidence that he had seen regarding the 1981 motocross activities. Before that the only motocross racing that occurred according to the packets is the "over-the-hill gang" that came to T-Car (now known as Champion Speedway) on November 7, 1980. He felt that when they had raced, it was printed. Every 1981 race is in this packet including that for the motocross track. Mr. Martel should show him proof then we could get beyond that. There is no evidence. Therefore, it is not grandfathered. In the 1990s when they raced the motocross bikes, it was always printed. This information is in the back of his packets. They raced in 1979 but there is no information on 1981. He had purchased his house six years ago. His real estate agent had allegedly told him that there was no legitimate motocross racing there. Mr. Andrews felt that they did not race like they do now. They should stay with what was there when he moved to the area and not how they indicate this evening.

Public testimony was then closed. Mr. Sullivan requested a break.

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BREAK: A recess was declared at 6:18 p.m. The entire Commission was present when Chairperson Christianson reconvened the meeting at 6:25 p.m., constituting a quorum.

(1-3125) Chairperson Christianson asked for additional public comments. He had closed public comments as he had not seen anyone coming forward. Mr. Conway indicated he had raced at the track in 1981 as well as from 1977 to the present. He had always raced on an established track. The track had originally gone into the area where the residents are now living to the east of the track. He felt that the size of the track had been reduced. There may be more participants now than there had been then. He also indicated that there had been quite a few other racers involved and that an effort would be made to find a trophy for that period.

Mr. Martin indicated that he had raced there and purchased a Yamaha in 1974. He recalled his accident in April or May of 1974. Racing had been there for a long time.

Mr. Kugler indicated that he did not recall motocross being there in 1974. This is the reason he wanted to see documentation. A business license and tax forms could be presented and investigated. Kafoury Armstrong can audit it. Chairperson Christianson pointed out that they had submitted signed statements. Mr. Kugler felt these were only their recollections. Staff had used the Appeal clippings as documentation. Chairperson Christianson pointed out that other forms of evidence could be used besides the newspaper clippings which are not considered hearsay. Mr. Kugler questioned their validity.

Additional public comments were solicited but none given. Chairperson Christianson closed public comments.

(1-3257) In response to Mr. Andrews' question, Mr. Rombardo explained that his November opinion still stands. It is his duty to explain the legal requirements and not weigh the evidence. His concerns regarding the go-cart remain.

Commissioner Farley responded to Mr. Kugler's comments on receipts. She was unsure whether Michael's Cycle would have records from that time. She asked that they check to see if there are any. Commissioner Pedlar explained his understanding that the Commission could consider all forms of the evidence including testimony and affidavits. The Commission must determine by a preponderance of that evidence whether a use had occurred or not. Mr. Rombardo indicated that this is the Commission's role.

Mr. Plemel then reviewed the conditions and stipulations. Conditions 1 through 5 are the standard ones. Additional City departmental conditions of approvals had not been attached. Condition 6 requires mufflers and limits the dba to 95. A stipulation had, as requested by Commissioner Pedlar, clarified that this is to be an "A" rated weighing of the dba. In response to Mr. Sullivan's question, Mr. Martel indicated that the track has the testing equipment and that its staff will conduct the testing during practice and time trials. Mr. Plemel continued with Condition 7, which establishes the automobile racing period as being from April 1 to October 31 of each year. A prior agreement between a former track operator and the City and articles, time trials, and racing documents before 1978 were used to establish this period. Condition 8 was amended to have the events start no earlier than noon and close at 10:30 p.m. on Saturdays or 12 p.m. to 7 p.m. on Sundays. Racing is to be limited to one day per weekend except for four weekends when there will be

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Saturday and Sunday events. No motocross activities will occur during those four weekends. Mr. Sullivan asked the Commission to consider whether the suggested Saturday race period should be modified to be from 11 a.m. to 10:30 p.m. Mr. Heaton explained their willingness to work on this program, however, it may be difficult to change the racing schedule this year. It may be possible to change it after the first few races. He also reiterated Mr. Martel statement that they will work toward getting the participants out by 1:30 a.m. The situation is such that you may not be able to push them out that fast. We know it is a problem and are willing to try to work with the City and the neighbors. We do not want post-race parties there. Mr. Martel indicated that the parking lot is locked. His discussions with the track staff indicated that, with the exception of a few events, it normally takes one hour to get them out. He also indicated that they do not want staff there that long. Commissioner Sedway pointed out that the exceptions are the problem for the neighbors. Mr. Martel agreed to endeavor to do their best effort to get them out in a timely fashion. He was willing to document who, when, etc., and close the gate as soon as possible. The documentation would hopefully show progress in getting them out. He agreed that occasionally, when two day events occur, people do stay over the weekend. They normally are pulling big rigs and they stay to watch the equipment. They are in the pit area. These people will not be parked on the fence line to minimize the impact. Chairperson Christianson noted that there had been a suggestion that a citizens advisory committee work with them on the problems. He also felt that if everyone calls the Sheriff's Office, they will respond. Mr. Martel was willing to meet with the Sheriff's Office on the problem and agreed to do it if the Commission directs it which may help obtain a response from the Sheriff's Office. He also agreed to do the signage, speed analysis, and work with the Street Department on the signage. He volunteered to install a sign at the entrance to the speedway welcoming the participants and visitors and reminding them to respect the neighborhood when they leave. Commissioner Mally asked him to stipulate to trying to get the time changed from 11 to 10:30. Mr. Martel explained that this offer had been made although the schedule has been developed. It may take several races before it can be accomplished. This would get the races completed earlier.

(2-0001) Discussion between Commissioner Wipfli and Mr. Sullivan indicated that it may be easier for the applicant to obtain enforcement and compliance if the Commission directs it. The item will be reconsidered at the one year review. Mr. Martel felt that 1:30 a.m. is a reasonable deadline. It will take time to change the "mind set" and obtain cooperation. He also pointed out that the larger events could require additional time. He asked that they be allowed to work with staff and try to show improvement. Mr. Sullivan pointed out that the 12 month review is only on the new special use permit conditions. His review of the documentation had indicated that people have stayed and watched their equipment. Therefore, he felt that this use is grandfathered. Mr. Martel agreed that the condition should apply that these individuals should not party all night long and generators should be turned off. These individuals should be in bed by 12:30 a.m. if the race ends at 10:30 p.m. Mr. Rombardo reminded the Commission that enforcement could not occur without the specific time limits. He also encouraged the Commission to not use the term "may" as it is difficult to enforce. Commissioner Wipfli explained his intent was to attempt to assist with getting a response from the Sheriff's Office, however, the applicant did not want a specific time restriction. Mr. Sullivan felt that the commitment was that if the race ends at 11:30 p.m., they should have the participants and visitors out by 1:30 a.m. This could vary somewhat but the overall effect would generally be 1:30 a.m. The amount of time necessary has not yet been determined. If there is a problem we may have to come back to the Commission. Commissioner Wipfli felt that 1:30 a.m. was reasonable and as a condition it should be discussed during the one year review. These are self imposed

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conditions. Mr. Heaton agreed to work with staff and shoot for that number. It may take time to educate the users. He asked that the time restriction not have a specific date for compliance. Mr. Sullivan pointed out that a six month review would be September 1, which is close to the end of the season. Mr. Heaton felt that this was a reasonable deadline with the caveat that the closing time would be two hours after the last racing event ends and that they would work with staff to move the 12 noon starting time so that the racing could start and end earlier.

Mr. Plemel indicated the next condition is that the racing period for motorcycles will be from March 1 through October 31, Friday through Sunday 12 noon to 8 p.m.. with two practice times which will be between 4 p.m. and 8 p.m. in conjunction with an event.

Mr. Sullivan explained the Commission's role in determining what activities are to be grandfathered. If an individual does not like the decision, he could file an appeal. The process for filing an appeal will be announced after that decision is made. He also reminded the Commission that they must weigh the evidence and make a reasonable decision.

Discussion between Commissioner Sedway and Mr. Plemel explained that the motorcycle racing period had been established from a review of the news articles. Mr. Plemel also explained case law regarding the limits which could be placed on expanding uses as well as the case law which allows growth for a business. The practice time is based on the fact that it has occurred during the week. It was felt that the proposed limits were reasonable. Mr. Martel explained for Commissioner Sedway that there were only three motocross events last year. The second and third races attracted a lot of attention and we stopped them. (Commissioner Farley stepped out of the room at 6:55 p.m. A quorum was still present.) A letter was received from Mr. Sullivan expressing concerns that the motocross activities had been expanded. Mr. Martel was unsure what the timeframe for these events had been. Mr. Martel then indicated that racing would not occur on Friday, Saturday, and Sunday. The offer is that if there is auto racing on Saturday, motocross will be on either Friday evening or Sunday with practice on being on Tuesday and Thursdays from 4 p.m. to 8 p.m. If auto racing is on Saturday and Sunday, a two-day event, there will not be a motocross event that weekend. Also, there will not be any motocross practice that week. Mr. Martel stipulated that with the exception of the two day events, there would only be one racing event on either Friday, Saturday, or Sunday and two practice sessions. If an event is not scheduled, there will not be any races or practices. Mr. Plemel then explained staff's position that the motocross is a legal non-conforming use. Mr. Martel then explained that he could not stipulate to no motorcycle practice. Commissioner Pedlar read the condition and expressed his feeling that it meant no practice without a scheduled event. Mr. Martel requested it be changed to allow two practices even if an event was not scheduled. (Commissioner Farley returned at 7 p.m. A quorum was present.)

Mr. Plemel read Condition 10 which prohibited offsite parking. Condition 11 requires that a general notice of the racing season be sent to all property owners within a half of a mile of the track and to anyone that requests it. The applicant must request the list prior to each racing season. It was felt that staff could identify the residents and generate the mailing list. Commissioner Sedway pointed out the need for signage and enforcement if the offsite parking is to be prohibited. Mr. Plemel explained the difference between offsite parking and onstreet parking. Mr. Sullivan agreed to check into these issues. If the streets are signed appropriately, the Sheriff's Office can ticket and tow. He also noted that this prohibition will stop

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the residents from parking along the streets. Resident only parking signs would create a need to determine who is a resident and if the vehicle is owned by him/her.

Mr. Plemel explained Condition 12 regarding the parking and landscaping requirements for expansion of the facility, which is the commercial coach. Condition 13 related to those events that are both racing and nonracing approved under the special use permit. Any expansion of those activities will require approval of additional special use permits. Condition 14 related to the expansion of facilities, lighting and seating or other expansion of the physical facility that is not covered by this approval. It requires an additional special use permit approval for the expansion unless it is a minor modification to the facility or maintenance. Condition 15 is the one year review of the expanded uses, like the commercial office coach, and the reservation of the right to expand the conditions due to health, safety, and public welfare concerns. Condition 16 was submitted for discussion. It was read into the record. It related to the driver training and orientation program and limited the number of cars which could participate at one time and the hours. The applicant had stipulated to narrow the time to Monday through Friday from 12 noon to 5 p.m. This could put cars on the track five days a week. Staff recommended the use be allowed as indicated while restricting the actual usage to a maximum of two floating days with a maximum of six hours a week. Enforcement concerns with the floating days was noted. Commissioner Sedway asked the applicant for his thoughts.

Mr. Dieter asked that he be allowed to speak. He referenced an August 1, 2001, letter which purportedly was a final order to halt the "old timers' race". The race was allegedly conducted in spite of the order. He questioned whether "we can work with him".

Mr. Martel noted the practice scheduled they had proposed--Monday through Friday from 12 noon to 5 p.m. This is like the closing time. They wanted to work with the users and come up with something else and come back in September. Commissioner Sedway indicated his objection to the September date. He suggested a July date be selected. Chairperson Christianson suggested it be the July Commission meeting. Mr. Sullivan suggested the dates be worked out at the staff level and that a memo be submitted to the Commission. Mr. Martel stipulated to having the issue resolved for the Commission by its July meeting. Mr. Sullivan indicated the cutoff date for that agenda would be July 15. Mr. Martel agreed to that date.

Discussion ensued between Commissioner Pedlar and Mr. Martel concerning Condition 9. Mr. Martel agreed to stay with the condition as contained within the staff report which would allow two practices before a motocross event. Mr. Heaton explained that the racers race in other locations and need to practice for those races. Even if Carson City does not have race, they will need to practice two days a week. Chairperson Christianson felt that his request would amend Condition 9. Mr. Sullivan asked the Commissioners to deliberate and make a motion on this point to clarify the issue. Mr. Rombardo explained that the request is to allow a practice even if the race is in Las Vegas or elsewhere. He asked that the Commission clarify whether the race is to be a Carson City event for the practice to be held. Mr. Heaton reiterated the need to have a practice so that people can race safely regardless of the location of the race. He asked that "in conjunction with an event that week" be removed from Condition 9. This would allow practice to occur two days a week. Commissioner Pedlar indicated that he understood the reasons for the request. Commissioner Farley pointed out that there are a lot of races in the surrounding area. If they race, they need to practice. It is a safety issue.

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Commissioner Mally moved to approve U-01/02-18, a special use permit request from Jim Bawden, owner Burton Family Holdings, to accept on-track automobile racing and testing including filming of various classes and types of vehicles, limited driver training and motorcycle motocross racing as existing legal non-conforming uses that may continue pursuant to the provisions of the Carson City Municipal Code including but not limited to Sections 18.05.071, Continuation of a non-conforming use, 18.05.072, Expansion of a nonconforming building, and 18.05.073, Abandonment of a nonconforming use, located at 1200 Racetrack Drive, APN 009-311-03, within the Mobile Home One Acre zoning district based on the evidence provided and subject to conditions of approval contained in the staff report with the understanding that any acknowledgements to the Commission by the applicants may be considered as further stipulations or conditions of approval on this application. Commissioner Wipfli seconded the motion. Commissioner Wipfli requested that Condition 9 be clarified to remove "in conjunction with an event". Commissioner Mally concurred and amended his motion to remove "in conjunction with an event" and added to the motion the 16 conditions which are shown here and have been debated for almost four hours are considered in this and that we are eliminating in conjunction with an event and changed Condition 8 to be as read by Lee Plemel and Condition 15 as amended by Lee (Plemel) to be changed from our original condition and also include in there that the applicant shall limit their racing from 11 o'clock in the morning to 10:30 at night. Chairperson Christianson asked if that was based on the six month review. Commissioner Mally agreed. Commissioner Wipfli asked if that item was to be discussed in the six month review and not be "rigid" in the motion. Commissioner Mally again agreed that it is not to be rigid in the motion but would be discussed in the six month review. Chairperson Christianson clarified that that would leave the condition as written. Mr. Heaton indicated that it would be with the stipulation. Chairperson Christianson asked what the stipulation to the six months was. Mr. Heaton felt that the stipulation had modified the six months to be July 15 and that they would work with staff on the areas of stipulated issues. Commissioner Pedlar felt that they had stipulated to two things. Chairperson Christianson asked Commissioner Pedlar to wait until the motion was completed. **Commissioner Wipfli concurred with the amendments.**

Commissioner Pedlar asked if the two stipulations made by Mr. Martel were clear and on the record. One is to have no more than one motocross event in any given week. Clarification indicated that there is not to be more than one race per week. This is not a practice. The second condition related to the driving training which will be run on week days between noon and 5 p.m. Chairperson Christianson felt that these were correct and that they were part of Condition 16. Commissioner Mally and Mr. Plemel discussed the amended Condition 8 to indicate that if a race is held on Sunday, the race should cease by 7 p.m.

Commissioner Sedway indicated that, should the motion pass, the Commission needed to clarify, as there will be a lot of scrutiny and a lot of concerns and feelings regarding what can and cannot be allowed, the process for documenting these items. Mr. Sullivan felt that the best way to document them would be to video tape the incident. For example, if people are leaving late, a video tape including a brief TV statement, which could be verified by staff to determine the approximate time, should be taken. The reporting party should also sign a complaint at his Department and submit the evidence.

Mr. Sullivan indicated the stipulation he had for people leaving at 1:30 is that the applicant has a September 1 deadline. The other timeframe is the July 15 deadline which is to be worked out with staff and Mr. Martel. Chairperson Christianson agreed although he had hoped to move both timeframes to July 15. Mr. Heaton

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stipulated that the date could be change to July 15 rather than the September 1.

Mr. Rombardo asked if go-carts are considered as auto racing on the inside dirt track and if ATV and Quads are motocross racing. He felt that the applicant believed that they are being grandfathered if the motion is approved. He reminded the Commission that it should consider whether the use has existed since 1978. It does not matter if it is a safety concern for the racers. They must prove that the use existed and had been there every year since 1978.

Commissioner Peery indicated that he had concerns with the motion which were similar to those expressed by legal counsel. Chairperson Christianson disagreed with counsel as he believed that there were continuations and that ATVs are the next step up from motocross racing. He also pointed out that they can appeal to the Board. Mr. Rombardo asked that Commissioner Mally include this in his motion. **Commissioner Mally indicated that the motion should indicate that he agreed that go-carts and ATVs and the Quads, or whatever they are, are grandfathered. Commissioner Wipfli seconded the amendment.** He felt that this issue had been answered by Mr. Sullivan and others as racing is racing and that Quads are a progression of that. He did not see any difference. Mr. Rombardo referenced his February 22nd memo in the first paragraph. The Indianapolis 500 could not be run at the track. Commissioner Wipfli believed that the people who moved next to the Indianapolis 500 understood that when they were racing four cylinder cars that a progression occurs. The cars advance. A four cylinder car at 58 miles an hour no longer exists. They are running 200 and some miles an hour now. That is a normal progression and it is fair to assume regardless of the mode. The go-carts were there. His reasoning had included a lot of thinking about it. Mr. Rombardo pointed out that the Indianapolis 500 is not in a mobile home zone.

Commissioner Pedlar agreed with Commissioners Wipfli and Mally. We are trying to determine the intensity of the use. If the hours and noise level are limited, which they have agreed to stipulate to, that will be a self-limiting effect. If the noise level cannot be limited to 95 dba, it will stop the use as you will not be able to comply with the special use permit conditions. It will also limit the type of uses. Otherwise, it would be an unreasonable restriction on the property owner if the four cylinder car Commissioner Wipfli had referenced was the grandfathered use. They do not exist any more. This is a normal progression. He did not have a problem with ATVs and go-carts. They are not a more intense use.

Commissioner Farley felt that it was a "he/she said" type of a fight. There are articles, tickets, posters, and lots of other documents. There is a year which purportedly cannot be proved but she had documentation for that year. She asked if the people who had signed statements that they raced during that period would sign a legal affidavit. This is a difficult decision for her. She is a property owner and believes in property owners' rights. The signs are there and we are wasting time and City money on something that has been going on for so many years for a few people who are unhappy and had put themselves in that situation. She felt for the residents who must live with the noise but it is business as usual and normal expansion of business is a fact of life. She was sad that this is occurring in Carson City.

Commissioner Sedway noted that the matter may be appealed. The Board needs to know our findings as it is easier for them to understand the Commissioners' positions. This is an incredibly difficult predicament. It reminded him of one when he first came on the Commission. He understood how the problem occurred, the progression of financial liability, and why it needs to continue operating. The residents knew what was there

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when they moved there although the intensity may have increased. The Commission had attempted to establish parameters on the use. He felt that he was relying on Mr. Plemel's efforts, for which he thanked him. There is an incredible amount of time, work and effort involved with this. He also respected the District Attorney's comments. He indicated he would support the motion but was not necessarily convinced that ATVs and go-carts should be part of it.

Mr. Sullivan asked Commissioner Mally if his motion had been to approve based on and subject to the findings in the staff report and all of the conditions of approval. Chairperson Christianson indicated that there were 16 conditions of approval. Mr. Sullivan noted that some of the conditions had been amended, which the applicant had agreed to, and that the applicant had made stipulations which are on the record. Chairperson Christianson felt that the two pages of conditions needed to be redrafted so that everyone can understand it. **Commissioner Mally indicated that the findings, conditions and stipulations were part of the motion.**

Commissioner Pedlar acknowledged Commissioner Sedway's point and disclosed that he had met with a number of the residents. It is a difficult situation. It is clear to him from the evidence that the speedway had been there a long time. He was disappointed that the residents think the only proof is something from the Nevada Appeal. This is not what the Deputy District Attorney had said. The Commission could use common sense, logic, and testimony indicating that racing had occurred at a specific time. Based upon all of the evidence that he had seen he had concluded that these uses had existed there before 1978 and had been there every year since that time. He also felt that there had been a good faith effort on both sides to provide some accommodation. He was certain that it would come back to the Commission for further review which places an onus on the current operator to do what is right. Therefore, he would support the motion.

The motion to approve the special use permit based on the findings, amended conditions, and stipulations was voted and carried 6-1 with Commissioner Peery voting Naye.

Commissioner Peery then moved to approve the use of a commercial coach as an office at the subject location based on the findings and subject to the conditions of approval contained in the staff report. Commissioner Mally seconded the motion. Motion carried 7-0.

Mr. Sullivan requested the audience remain for an explanation of the appeal process.

Commissioner Mally moved to deny a request for any other expansion of the facility or continuation of any other nonconforming uses including but not limited to special events such as tractor pulls, sand drags, rocket cars, fireworks, or other special events that create higher noise levels than approved racing, non-racing related events, and full-time, year-round driving schools, based on the lack of evidence provided to establish these uses or other uses as legal non-conforming uses and the inability to make the required special use permit findings pursuant to the provisions of the Carson City Municipal Code. Commissioner Pedlar seconded the motion. Motion carried 7-0.

(2-0929) Mr. Sullivan briefly explained the appeal process which must be completed within ten days from this date. The appeal forms are available in his office.

BREAK: A recess was declared at 7:35 p.m. The entire Commission was present when Chairperson

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Christianson reconvened the meeting at 7:40 p.m., constituting a quorum.

H-2. MPA-01/02-3 - DISCUSSION AND ACTION ON A REQUEST FROM DYNAMIC

DIVERSIFIED DEVELOPMENT AND DAVE PFLUM (2-0955) - Community Development Director Walter Sullivan, Deputy District Attorney Neil Rombardo, Senior Planner Lee Plemel, Applicant's Representative Julio Sandoval, Todd Warner, Jim Bawden's legal counsel Scott Heaton - Mr. Sullivan distributed a memo to the Commission. (A copy was not given to the Clerk.) This memo was purportedly from Development Services Director Andrew Burnham, Utility Operations Manager Tom Hoffert, Streets Operations Manager John Flansberg, and City Engineer Larry Werner and was regarding both Item H-2 and Item H-3. The memo was read into the record. They requested that the special planning areas (SPA) proposed by Community Development be undertaken. The need to understand the impacts the area(s) would have on the City's infrastructure as well as parks and schools were noted. Appropriate planning needs to occur before such a development begins. They asked that the applicants work with the impacted Departments/agencies. Parks and Recreation Director Steve Kastens allegedly supported combining Items H-2 and H-3 to make it a SPA. Mr. Sullivan's contact with Assistant Fire Chief Mihelic, Chief Deputy Sheriff Mather, and School District Operations Director Mitchell indicated that they had not been contacted by the applicants. They also supported the SPA process. Mr. Mitchell had advised Mr. Sullivan that children residing in this area would be sent to the Seelinger School. This may force it to go onto double track or special session. They also supported the SPA program. Clarification indicated that the Code referenced the SPA as a specific plan area. The Code requirements for such a specific plan was distributed to the Commission and Clerk. (A copy if in the file.) Clarification indicated that staff recommended the applications be continued or suspended and staff be directed to develop the SPA. Mr. Sullivan also indicated an intent to work with the State agencies and Douglas County. The applicants could request the continuance which would expedite the process this evening or they could request action be taken. Mr. Rombardo explained the legal options which would require the applicants to stipulate to the continuances and proceed with the "SPA" or they could require the applications to proceed due to the Statute requirement that master plan amendments must be considered within 45 days of the filing date. Mr. Sullivan asked that the public be allowed to be educated as to what is in a SPA. He also pointed out the letters in support and opposition to the applications. Planning issues which would be addressed under the SPA process were listed. Discussion between staff and Chairperson Christianson indicated that the public could attend the SPA meetings. Mr. Rombardo indicated that it is not required but could be done if the Commission directed it.

Mr. Plemel explained the contact which had occurred with the applicants prior to submittal of the applications. Issues staff has had with the proposal were also listed, including neighborhood compatibility, spot zoning, the infrastructure provisions, and land use conflicts. There is merit in considering the changes which have been occurring south of the county line. The proposed SPA process will provide for greater public participation and noticing. Workshops will be conducted on the plan. The SPA could include addressing any land use conflicts with buffer zones or inclusion of those property owners, and proper infrastructure planning. He felt that the applicants' agreed with the continuation. If not, then staff's recommendation would be for denial. Staff will move the SPA forward with the master plan amendments which will occur later in the year. The SPA is exempt from the master plan amendment time restrictions, which is August.

Mr. Sandoval indicated, regarding Item H-2, that they agreed to continuing it with the stipulation that they would be allowed to do anything that would expedite the process. Chairperson Christianson agreed and

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pointed out that there are things here that will take time to occur. Mr. Sandoval explained the reason for bringing the matter forward at this time and pointed out the need for studies to be conducted which will take time. Commissioner Sedway pointed out that people may have valid reasons for opposing the process.

Mr. Sullivan felt that the applicants supported the SPA concept and had been advised that staff would be taking it on in conjunction with its other duties. All agreed that it will take time. Mr. Sandoval and their planners, engineers, etc., will provide information to the City staff to help accelerate the process. Their assistance was accepted by City staff.

Public testimony was requested. Mr. Warner voiced his opposition to the increased density due to his desire to retain the one acre zoning and its lifestyle. Chairperson Christianson explained that the acceptance of the continuance does not mean there will be a vote on any change. Mr. Warner felt that the Commission should understand our reason for living there. Chairperson Christianson explained the conflict areas must be considered in the SPA process and that the property owners will have notice of future meetings. Mr. Sullivan thanked Mr. Warner for his comments and requested that he attend future meetings so that the residents' concerns could be addressed.

Discussion between Commissioner Farley and Mr. Sullivan explained the plan to notice all of the property owners from the Douglas County line north to the Stewart facility, that the east and west boundaries will be the county line, and that Douglas County and the prison on the east will be included.

Mr. Heaton indicated that Mr. Bawden did not have a problem with the continuance and asked that they be made a part of the process.

Mr. Plemel explained the letters which had been received regarding the items and read Phyllis Bateman's letter of opposition into the record as she had requested. Mr. Plemel expressed his feeling that the benefits of the SPA program supported the continuance. Additional public comments were solicited but none given.

Commissioner Pedlar moved to continue MPA 01/02-3 and direct staff to facilitate the establishment of a Specific Plan Area through the 2002 Master Plan Land Use Element update in order to explore the merits and impacts of higher density residential development in a comprehensive manner for the subject area. Commissioner Peery second the motion. Motion carried 7-0.

H-3.MPA-01/02-4 - DISCUSSION AND ACTION ON A REQUEST FROM LUMOS AND ASSOCIATES (2-1475) - Senior Planner Lee Plemel, Lumos and Associates and the Applicants' representative Carol Dotson, Pete Bellis - Mr. Plemel's introduction included the recommendation that the item be continued to allow the SPA process to occur. Ms. Dotson reviewed the history of the proposal. Growth in Douglas County caused the applicants to develop a vision for the area which included a concept of an 8,000 to 12,000 square foot development. They had worked with both staff and the racetrack property owner. They looked forward to working on the SPA. She was certain that they had the ability to work through the issues and ensure the continued compatibility with the other property owners in the area. The timeframe for its development was felt to be five years. She agreed to the continuance on behalf of her clients and looked forward to working with the staff on the SPA. This property is next to the Pflume and the Schulz properties. A map illustrating the location was displayed.

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Commissioner Sedway suggested that the two applications be considered as one. Mr. Sullivan indicated that this had been his intent and described the area which he proposed to include in the SPA. The applicants including Mr. Schulz agreed with combining the applications.

Commissioner Mally asked if Douglas County was forcing this consideration. Mr. Sullivan agreed that it was a portion of the consideration but not the entire reason. Commissioner Mally expressed his feeling that the State may force Douglas County stop its growth. Mr. Sullivan explained that Douglas County has a SPA to the west of this property and that he would discuss the matter further with Commissioner Mally. Mr. Sullivan also pointed out the changes which are occurring in the neighborhood and the status of a matter discussed earlier in the evening. These changes warrant analyzing the growth and developing the SPA once all of the work has been undertaken. Commissioner Mally urged staff to not base all of the opinions on what is occurring in Douglas County. Mr. Sullivan reiterated that there are other factors involved in the proposal.

Public comments were solicited. Mr. Bellis had seen some of the plans that were drafted eight years ago. They had been for one acre lots. That was the reason he had purchased his property on Rabe Way. This is a different proposal. This will create sewer and water problems and not allow wells and septic tanks. Money is the only reason to reconsider the zoning. This is a two step process of forcing the racetrack out so that a killing can be made on the property. Chairperson Christianson indicated that he would be notified about the future meetings. Mr. Bellis indicated that the notification process that had been indicated would include his residence

Commissioner Peery moved to continue MPA-01/02-4 and direct staff to facilitate the establishment of a Special Plan Area through the 2002 Master Plan Land Use Element update in order to explore the merits and impact of higher density residential development in a comprehensive manner for subject area. Commissioner Mally seconded the motion. The motion carried 7-0.

Commissioner Sedway indicated that anyone who wants to be notified who resides outside of the district should contact Mr. Sullivan. Ms. Schultz requested a copy of the Commission' packet. Mr. Sullivan agreed to have his office provide her with a copy.

H-4. M-01/02-16 - DISCUSSION AND ACTION ON A PROPOSED AMENDMENT TO A RESOLUTION FOR WAIVER OF FEES OF NON-PROFIT ORGANIZATIONS (2-1765) -
Community Development Director Walter Sullivan - Commissioner Sedway explained his employment by a non-profit organization and his intent to abstain on this item. Mr. Sullivan explained the current resolution allowing fees to be waived for a non-profit organization or an individual below the poverty limit by the Board of Supervisors. The Board has asked staff to handle these fee waivers. His problem with doing this outside the public meeting process was described. He asked that the Commission make the decision. Documentation would require submittal of appropriate State documents verifying the non-profit or poverty level status. The proposed process would have the Commission decide whether to waive the fee and then the Commission would hear the application. Public comments were solicited but none were given. Commissioner Wipfli moved to approve the attached resolution modifying past Resolution No. 2001-R-60 for the waiver of fees for non-profit organizations by the Planning Commission. Commissioner Peery seconded the motion. Following Mr. Sullivan's request for an amendment, Commissioner Wipfli amended his motion to include people under the poverty level. Commissioner Peery concurred. Motion was voted and carried 6-0-1 with Commissioner Sedway abstaining.

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I. INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS (1-1860)

1. STAFF BRIEFING ON THE STATUS OF COMMISSION RECOMMENDATIONS TO

THE BOARD OF SUPERVISORS (1-1838) - Discussion indicated that the Commissioners should contact staff regarding the various memos. Mr. Sullivan also explained the inclusion of the newest version of the Attorney General's Open Meeting Law manual in the Commissioners' packets. He encouraged the Commission to read and learn it. Discussion suggested a July training session be held on changes in the planning laws and the Open Meeting Law. Another item may be added. The date will be set in the future. It was felt that it would be a three to four hour session. Chairperson Christianson requested that the District Attorney's office know that any time the Commission receives documents from the District Attorney's office, they are taken seriously. He had discussed the unnamed issue with Mr. Rombardo and felt that education would address the situation. He encouraged the Commissioners to contact him if they needed additional information on the issue.

2. FUTURE COMMISSION ITEMS AND DATES (2-1907) - Mr. Sullivan felt that it should be a moderate agenda next month. Comments noted that this was the longest meeting the Commission had had in some time and the hope that the public felt they had a fair hearing. The issues were far reaching and everyone had had an opportunity to speak and debate the facts. Opinions had been provided by both the District Attorney's office and Community Development. The Commission had made its decision based on what it felt was fair. Chairperson Christianson reiterated the need that a final list of the amendments to be compiled and presented to the public. He also asked that a copy be sent to him. Mr. Sullivan agreed that the staff will go over the conditions of approval and file a corrected copy with the Clerk's office. If it is appealed, it will be sent to the Board of Supervisors. The Commissioners may receive phone calls regarding the conditions. Chairperson Christianson felt that the comments had repeated themselves and that enough stipulations were made on the record. Mr. Sullivan agreed that in his experience this had been one of the more difficult issues. He complimented the Commission on its professionalism in its decision making process.

J. ADJOURNMENT (2-1995) - Commissioner Wipfli moved to adjourn. Chairperson Christianson seconded the motion. Motion carried 7-0. Chairperson Christianson adjourned the meeting at 8:38 p.m.

The Minutes of the February 27, 2002, Carson City Planning Commission meeting

ARE SO APPROVED ON March 27, 2002.

/s/
Allan Christianson, Chairperson