

CITY COUNCIL MEETING OF
August 1, 2007
VERBATIM TRANSCRIPT ITEM 124 [RESCIND PREVIOUS ACTION RQR-20054]
and 125 [RQR-20054]

RESCIND PREVIOUS ACTION - RQR-20054 - PUBLIC HEARING - APPLICANT: LAS VEGAS DEVELOPMENT COMPANY - OWNER: CARDAN LINDELL NORTH, L.L.C. - Required Six Month Review of a Variance TO ALLOW A PROPOSED 100-FOOT TALL FLAGPOLE WHERE 40 FEET IS THE MAXIMUM HEIGHT ALLOWED at 5550 West Sahara Avenue (APN 163-01-404-022), C-2 (General Commercial) Zone, Ward 1 (Tarkanian) and

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Appearance List:

OSCAR GOODMAN, Mayor

GARY REESE, Mayor Pro Tem

EDDIE REEDUM

RICKI BARLOW, Councilman

DAVID CHESNOFF, Attorney on behalf of the applicant

BILL HENRY, Senior Litigation Counsel

BRAD JERBIC, City Attorney

AL GALLEGO, citizen of Las Vegas

LOIS TARKANIAN, Councilwoman

STEVE WOLFSON, Councilman

STEVEN ROSS, Councilman

LUKE SAXELBY, Senior Consultant with J.C. Brennan and Associates

JIM MURREN, President and Chief Financial Officer, MGM/Mirage

PERRY ROGERS, 3000 Arabian Road

DAN TOWBIN, owner and operator of Towbin Hummer

MARGO WHEELER, Director of Planning and Development Department

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BRYAN SCOTT, Assistant City Attorney

BEVERLY BRIDGES, City Clerk

STEVE SANSON, President of Veterans in Politics

GARY PECK

ED MULLER, VFW Post 1753

GARY SWANCIGER, 2270 Westwind Road

LARRY BROWN, Councilman

CONITA JONES 5645 Obannon Drive

PAUL OBANNON, 5710 Obannon Drive.

JOSEPH PIRACCI, 2330 Westwind Road

TOM MCGOWAN, Las Vegas resident

CONNIE KLING, County resident

WAYNE EARL, Las Vegas resident

JOHN BAIETTI, 2001 Red Rock Street

TED RUSSELL, Las Vegas resident

2 hours 45 minutes

Typed by: Carmel Viado/Lean Coleman

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MAYOR GOODMAN

We go to 124. One twenty four is RQR-20054, public hearing. The applicant is Las Vegas Development Company. The owner is Cardan Lindell North, LLC. Required six-month review of a variance to allow a proposed one hundred-foot tall flagpole where forty feet is the maximum height allowed at 5550 West Sahara Avenue in Ward 1. The staff recommends denial. Its a public hearing which I now declare open.

I see that Mr. Chesnoff is representing Mr. Towbin and I have a property interest with Mr. Chesnoff in Elgin, Nevada. I really believe that the interest is of such a de minimis status that it should not cause my recusal because I really want to sit on this matter. I have some very strong feelings about this, but Im advised by the City Attorneys Office that it would be a conflict and that I have to abstain. And I do so really, very reluctantly, but I dont have a choice. So Im outta here.

MAYOR PRO TEM REESE

Your Honor, did you read Item 125 in the record also?

MAYOR GOODMAN

I did not.

MAYOR PRO TEM REESE

Ill read it.

MAYOR GOODMAN

Why dont you take that over, okay?

MAYOR PRO TEM REESE

One twenty four was a (sic) order to rescind previous action. Item 125 is RQR-20054 or two zero zero five four. Applicant, Las Vegas Development Company. Owner, Cardin linden (sic), Lindell North, LLC. Required six-month review to, for, of a variance to allow a proposed one hundred-foot tall flagpole where forty feet is the maximum height allowed at 5550 West Sahara Avenue. And for those participating today, we have heard this item. We did go to court. Through their attorneys, we was (sic) told that we needed to allow Mr. Towbin to have legal representation at this meeting.

Sir, are you part of this presentation?

EDDIE REEDUM

The public hearing part of it, yes, Sir, if Im a citizen and have that right.

MAYOR PRO TEM REESE

Well, this is not the time for citizens participation. You will be notified at that time when you can come forward.

EDDIE REEDUM

May I stand over here in the corner so I can be the first to speak?

MAYOR PRO TEM REESE

No. This what are you here for?

EDDIE REEDUM

Im here, I wanna comment on this public issue of the Towbins, the flag, the issues regarding Towbin.

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MAYOR PRO TEM REESE

Okay. Thank you. You can stand down there and you'll be notified when we have public hearing.

COUNCILMAN BARLOW

Mayor Pro Tem.

MAYOR PRO TEM REESE

Thank you. Yes.

COUNCILMAN BARLOW

I've been advised also by Counsel to not participate in this segment of the meeting due to my background knowledge of not participating in the first portions of this conversation. And so for that, I've been advised to not participate.

MAYOR PRO TEM REESE

That's understandable, Mr. Barlow. I appreciate that very much.

DAVID CHESNOFF

I

BILL HENRY

If I could further expand the record, with the permission of Mayor Pro Tem and Councilman Barlow. The order of remand from the District Court provided that the Council at this hearing could consider everything that had happened before. And I believe the notion that Councilman Barlow is trying to express is that because he was not sitting on the Council when this occurred before and has not reviewed the transcripts of the proceedings, he would not have the same basis of knowledge that the rest of you have.

MAYOR PRO TEM REESE

Thank you for that clarification.

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DAVID CHESNOFF

Mayor Pro Tem, may I be heard on

MAYOR PRO TEM REESE

In just a moment, please. On

DAVID CHESNOFF

that issue only.

MAYOR PRO TEM REESE

Yes.

DAVID CHESNOFF

Kay. We believe that Councilman Reese had an opportunity; Councilman Barlow had an opportunity to review the entire record. The judge remanded this for consideration by the entire City Council. Ive just lost Mayor Goodman who wanted to participate, but couldnt for reasons that, I agree with him, probably shouldnt apply because the relationship is de minis especially since we

MAYOR PRO TEM REESE

Well, I can certainly appreciate that, but I feel Mr. Barlow has the opportunity to make up his own mind. He doesnt feel confident in doing this, so hes recused himself from that so thats what its gonna be.

DAVID CHESNOFF

Well

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MAYOR PRO TEM REESE

Thank you.

DAVID CHESNOFF

For the record

MAYOR PRO TEM REESE

Thank you, Sir.

DAVID CHESNOFF

No, but I wanna make a record for the Court. I would say that since the Court gave time to the Council to reconsider this, that for the record, Mr. Barlow, most respectfully, should have taken the time or asked that this be heard at a point in time where he could have reviewed the record, so that all the people of Las Vegas City are represented on this vote which is a very important vote involving the First Amendment. And therefore, I would ask that you consider our arguments today, but that you give Councilman Barlow an opportunity to review the entire record as everybody else has had to do and then participate in the vote.

MAYOR PRO TEM REESE

He didnt participate in the last meeting. I dont feel that its up to him to sit at this meeting. Ill ask Mr. Jerbic.

BRAD JERBIC

Id be happy to, Mr. Mayor Pro Tem. The, I think its the Councilmans call on this particular case. I think that the Court would expect that anybody who votes either have been here at the last meeting and participated or at least have reviewed the record in order to be able, be aware of everything that happened in the past to participate. In this case, the Councilman has indicated that he has not reviewed the record. He has not prepared to participate and, as a result of that, he has not. And I think at this point, the matters closed and I think Mr. Chesnoff has an opportunity to make his arguments for the record and its time to move on.

MAYOR PRO TEM REESE

Okay. And at this time, I wanna ask those not participating in the discussion to be seated til we ask for public comment, please.

AL GALLEGO

Councilman Reese, Im only gonna ask a little request

MAYOR PRO TEM REESE

No.

AL GALLEGO

You have

MAYOR PRO TEM REESE

No.

AL GALLEGO

Get those policemen outta here. It, your, there

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MAYOR PRO TEM REESE

Mr. Gallegos (sic), Im gonna ask you

AL GALLEGO

I want those policemen to get outta here. This one can stay, but not those two over there. Theyre enticing the people. Okay. Thank you.

MAYOR PRO TEM REESE

I would ask those not participating in this to please take a seat until we have public comment. Thank you. As I was starting to say, we have heard this. We did take a vote on it. The Court sent it back to the Council because they didnt have legal representation here at that time. This proceedings (sic) is going to go according to and through me. I feel its important that we dont have a dog and pony show here. I think this is very important. I think theres been a lot of misrepresentation on this item, ever since we heard it the last time. Were going to allow public comment when that time comes. Were gonna allow two minutes. We will allow Mr. Henry as well as Mr. Chesnoff to present their cases. I feel its up to us to allow Mr. Henry to go first, present his case through Councilwoman Tarkanian. And then we will have rebuttal from Mr. Chesnoff.

BRAD JERBIC

Mr. Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

BRAD JERBIC

If I could make a couple suggestions, one, we have two line items on today. I think in order to follow the directive of the Courts

MAYOR PRO TEM REESE

Yes.

BRAD JERBIC

itd be important to take a vote on the first item, that is to rescind the vote, which

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MAYOR PRO TEM REESE

Yes.

BRAD JERBIC

gets us back to a level playing field

MAYOR PRO TEM REESE

Thank you.

BRAD JERBIC

and then move on to the second item. And before moving on to the second item, Id like to make a few comments and recommendations.

MAYOR PRO TEM REESE

Well make the vote on Item 124

COUNCILWOMAN TARKANIAN

Mr. Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

COUNCILWOMAN TARKANIAN

Ill move to rescind.

MAYOR PRO TEM REESE

Thank you. You heard the motion. Please cast your vote.

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COUNCILMAN WOLFSON
(Inaudible)

BRAD JERBIC

I think as you cast your vote on this particular item, its my understanding that the Court felt an abeyance should have been granted the last time so that applicant could have been represented by counsel. We are back here for that opportunity. Therefore, in order for applicant to be represented by counsel in any meaningful way, we need to have a level playing field which means you have neither voted for nor against, which means you have to rescind the original vote, which brings us back to zero, as if the item were being heard for the first time. And as you get to the item, Ill explain the ground rules.

MAYOR PRO TEM REESE

Thank you. Youve heard the motion. Please cast your vote. Please post. **(Motion carried UNANIMOUSLY with GOODMAN and BARLOW abstaining)**

AL GALLEGO
No public meeting.

MAYOR PRO TEM REESE
Thank you.

AL GALLEGO
No public meeting.

MAYOR PRO TEM REESE
Mr. Gallegos (sic)

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AL GALLEGO
No public meeting.

MAYOR PRO TEM REESE
Please sit down.

AL GALLEGO
The agenda.

MAYOR PRO TEM REESE
Please. On Item 125, I would ask Mr. Jerbic to please explain what its gonna take from the sitting Board for this to pass.

BRAD JERBIC
Thank you, Mr. Mayor Pro Tem. As youre aware, the Mayor has recused himself on this item under NRS 281 which is the Nevada Code of Ethics. Under our law and the State of Nevada, you can reduce the size of the quorum for every person who recuses themselves for violation or potential violation of State Code, if they have a written opinion in advance. The Mayor has received written opinion and, therefore, that would reduce the number of the Council from seven to six. Councilman Barlow is abstaining because he has not read the prepared record and that is not a 281 abstention and, therefore, the quorum is still six.
As a result, its gonna take four votes to move this item. In my opinion, the way I read the Courts order, it will take four votes to take the pole down. It doesnt take four votes to leave the pole up. The failure to achieve four votes to take the pole down is the same as leaving the pole up. So I cant put it any more bluntly than that. Its gonna take four votes. If theres a desire to remove the pole, if theres a desire to let the pole stay, anything less than four votes and the pole stands.
The, with respect to the order of the witnesses, the, or the order of the presentation, I think because the Court found that the applicant should have been represented by counsel at the last meeting, its incumbent upon Mr. Chesnoff to go first and present his case to the City Council, with all due respect. Then at that point in time, Mr. Mayor Pro Tem, to open it up for any witnesses that Mr. Chesnoff wishes to call or anybody who wishes to comment on this, and then to allow Mr. Henry to present his case.
I think that based on the fact that the Court didnt find anything wrong, technically, in the previous hearing, you are allowed to consider all the previous testimony that occurred, the recommendation of the Planning Commission and the testimony at the past City, the previous City Council meeting when this item was voted on. If you have any questions regarding those or if any of the attorneys at the podiums have any questions regarding those ground rules, this is an opportunity to ask those questions.

COUNCILMAN WOLFSON
Mayor Pro Tem.

MAYOR PRO TEM REESE
Yes.

COUNCILMAN WOLFSON
Are we, in essence, back to our six-month review, Mr. Jerbic? Is that what youre saying we are?

BRAD JERBIC
Thats correct.

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COUNCILMAN WOLFSON
Thank you.

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BRAD JERBIC

And out of the six of you, again, its gonna take four votes to say, upon this review, we dont want it. Or you could make a motion, say, upon the six-month review, we do want it. But the only way the pole would be removed with be with a four vote majority voting to remove the pole.

MAYOR PRO TEM REESE

Thank you. I do have some letters Id like to put into the public record on, to our City Clerk. I have a letter here from Mr. Chesnoff regarding Elena Milano. Mr. Chesnoff asked this to be filed with the City Clerk. Its a letter in favor of. Also have a letter, this is the same letter. I have some other letters attached from Ms. Milano. I will submit those also. Then I have a letter here from a noise study that was done by J.C. Brennan Associates in regards to the noise from the flag. I present this to the City Clerk for public record. Mr. Chesnoff, we will change the ground rules, I guess, because Mr. Jerbics, I was under the impression that we still needed to allow City staff the time to put forth on record the reason why were here for the six-month review, how we got here today from point zero, so I guess we dont need to go there again, so Mr. Chesnoff, please.

DAVID CHESNOFF

Thank you. Mayor Pro Tem, City Councilpersons, the first thing that Id like to say is that, on behalf of my client, we are, we would like, out of respect to the flag and the issue thats involved, not to have this contentious. That was never anybodys intention. Mr. Towbin has sent a letter to you which he plans on reading into the public record, in which he takes responsibility for not having followed through on some matters that the Council thought were important and consistent with the original passage. He does that, that was provided to every member and through the, and to the Clerk. Well, if the City Councilmen dont have it, Ill be happy to give them a copy, but we received file-stamped copies from the Clerk, Mr. Wolfson.

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MAYOR PRO TEM REESE

No, Mr. Chesnoff, I think its, it behooves me to clarify one statement you made. This is not about the American flag either. This is about the height of a pole that the American flag sits on and I think thats been misrepresented from day one.

DAVID CHESNOFF

Well

MAYOR PRO TEM REESE

We did not ask that the flag not be placed at this location. It was a height that came in here and we asked, you asked for the variance for the height. We allowed the height with certain conditions and certain, a review and at that time, but again though, it is not about removing the American flag from the Towbin dealership.

DAVID CHESNOFF

Well

MAYOR PRO TEM REESE

Its about the height of the pole. So Id like you, to when you make your comments and stuff to address the height of the pole, not the American flag.

DAVID CHESNOFF

Well, most respectfully, Mayor Pro Tem, I understand your position and I understand that the issue is about the height of the flag but, for example, your staff gave me a report today in which previously, the City Council has repeatedly provided and passed the height of the flag of a hundred-foot for Mr. Herbst and the Terrible Herbst Corporation. The practical effect, Mayor Pro Tem and the rest of the Council, is the removal of the flagpole removes the thirty by sixty-foot flag which Mr. Towbin has chosen at great expense to express his patriotism and his love for his country. And we understand that the vote, that there is, that were asking for a variance. We understand that, Mayor Pro Tem, and fortunately for Mr. Towbin, you were kind enough to give him that. And for over a year, that flag has flown proudly over the dealership. As a result of some mistakes by my client which I acknowledge, certain things were not accomplished that you hoped would be. He comes with his hat in his hand and expresses, and Im gonna get you a copy of the letter which we have file-stamped, in which he apologizes and he plans on reading that to you as well.

Our pro, our point here is this. Mr. Towbin, at, as an act of patriotism, decided that he wanted to put a hundred-foot flagpole up with a thirty by sixty-foot flag, which is consistent with some other businesses, some in his locale. Chevron has one. Terrible Herbst has one and the list goes on. He came to you; some representations were made that there will be a memorial placed there. I have had an opportunity to visit with several of the Councilpeople and shown you a picture of the memorial that is now in place. At the last hearing, the Mayor suggested that we meet with the veterans group that spoke. We went and had a meeting that night or its the next day, Im not sure of it right now, but I believe it was the next night, with the veterans group. And rather than put the words on the plaque that Mr. Towbin had chosen which were a patriotic expression, Mr. Towbin agreed to put the words on the plaque in the memorial that the veterans group asked for. He did that in the spirit of cooperation, out of respect to the veterans group and his belief that, as veterans, they had a right to have some input. We actually, at the conclusion of the decision to put those words on the plaque, had a prayer service at the facility in which I actually participated as a person who was present, along with the other members of Mr. Towbins company and the veterans, all, once again, in the spirit of cooperation, in an effort to show good faith and the true intention of Mr.

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Towbin. That occurred.

He has repeatedly been involved in this community in acts of citizenship. If there is any suggestion at any point in time that Mr. Towbin's motivations are (sic) purely crass commercialism, his own character, his own actions in this community bespeak the fact that he is one of our leading citizens.

Present today to speak on his behalf is Mr. Jim Murren, who's the Chief Financial Officer for MGM/Mirage. He's gonna talk about his civic responsibility. Perry Rogers from the Andre Agassi Foundation is present. He intends on speaking on his behalf. We have letters that I am going to read at the appropriate time from Colonel Bartley, who's the Installation Commander at Nellis Air Force Base, who's going to attest to the many contributions that Mr. Towbin has made to the Air Force men and women stationed at Nellis. Mr. Joe Schwartz, who was the President of the Jewish War Veterans, has written on his behalf, and that letter has also been supplied as part of the record and filed with the Clerk of the court.

Mr. Schwartz is interesting to me because one of the finest moments that I had was after Mayor Goodman was elected for the first time. He called me up and asked me if I wanted to join him at a veterans celebration that Mr. Schwartz was involved in. And I was so proud that I was able to go, that the Mayor was able to go, and it was actually like a perk for me that Oscar was now in a position where he was invited to such a beautiful ceremony. And I remember being there, and there were veterans of World War II. There were veterans of the Korean War, the Vietnam War. And when I spoke to Mr. Schwartz about this issue, he wrote the following: My name is Joe Schwartz, and I have been actively involved with the Jewish war veterans for many years. I am also an officer of the Purple Heart Society, have been wounded three times during World War II as a decorated member of the 82nd Airborne, the United States Army.

I've been following the discussion of whether or not Towbin can fly a flag on a hundred-foot pole. I know with interest that a group representing veterans has spoke out against this expression of pure patriotism. I cannot imagine how anyone saying that they represent a veterans group could possibly object to such a beautiful expression of patriotism, especially at a time when American men and women are sacrificing their bodies and their lives in the war overseas. When people drive by the Hummer store and see the flag blowing majestically in the sky, they focus on the flag and what it represents.

I am a very long term resident of Las Vegas, and I have been involved in veteran activities here in Clark County and the City of Las Vegas for many, many years. It would break my heart to see a government body force a citizen, especially one who has contributed so much to the Las Vegas community over the years to take down Old Glory. My understanding is this flag has been flying proudly for over one year. And it is disheartening to me that a public official would be considering a complaint that the American flag was too noisy. In this day and age, with enemies attempting to attack us on our soil, who have already done so, maybe it's a good thing for our enemies to hear that our flag flies over Las Vegas, Nevada.

I implore you to permit the pole to continue, the flagpole to continue to fly, no matter what your personal feelings are regarding the history of this controversy. Those people driving by the flag are being sent an important message, that we are the land of the free and the home of the brave. Very truly yours, Joe Schwartz. This is a gentleman who was wounded three times defending our country, who's been active in veterans affairs and is aware of Mr. Towbin's contributions to this community and felt it appropriate to write.

You know, we heard about the noise the last time we were here, and that the neighbors were concerned that when it's very windy the flag makes a great deal of noise. We tried by presenting to you, which are part of the record, twoish, two things that we sent over. One is a flag study which has been conducted by a company called J.C. Brennan and Associates, which goes, which in the western part of the United States, conducts noise studies for cities and governments. And they went out to the location and, in fact, one of the neighbors who had complained about the noise was

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gracious enough to allow them to set their sound equipment at his property. And he told them that the day he remembers it being particularly bad was May 2nd. So the sound company checked with the National Weather Service and found out that on May 2nd, the wind was blowing at fifteen miles an hour. In the report that we've submitted to you, they did a study at fifteen miles an hour, and they found out that the noise level was not discernable at the levels that even rise to a potential complaint. And, in fact, the noise from traffic and airplanes was louder than the noise coming from the flag. As part of their study and they're present, and Mr. Luke Saxelby of the company will tell you that in a three hundred and sixty-four-day period in 2006, the weather service said that of the days where the wind is over fifteen miles an hour, it only amounts to two to three percent of the entire year. So we're talking about maybe ten to fifteen days where the wind creates a speed of above fifteen miles an hour. So our report shows that the level of noise that's generated by the flag on the average day, or above average day, because the average day is much less, is non-discernable.

The other thing that we submitted to you, Mayor Pro Tem and City Council, was an analysis of the residents who had previously complained. And while we recognize that they are neighbors in the sense that they are physically neighbors, they are not City residents. They are County residents by majority. Now, I don't know whether or not that really impacts because I believe as public servants you'd be concerned about anybody. But the people that sent those letters in to the vast majority live in a portion of the valley that is not in the City; it is in the County.

And so, if we're looking at rational reasons for taking down the pole that's been up for a year, and we're concerned with noise, and we now know that the noise is not quite what it appears to be at first blush by scientific study as opposed to just a person complaining about it. And we know that most of the people who are neighbors, and I believe there are neighbors who do live in the City who are present, who are not affected by the noise.

I think that, in considering what vote you take, now that we are all trying to sit back and rationally decide the question of whether this hundred-foot pole should remain, that we know that the impact on the neighborhood while perhaps affecting some people in some way, and I don't want, I'm not disparaging those people's complaints. I'm not disparaging their patriotism, anything like that. But when you look at the broader picture of what this flag represents and we know that if you lower the flag, the flag, the pole, the flag will be flying lower to the ground and, therefore, the noise will be more perceptible because it will be closer to the people involved. I'd ask you in rationally considering what you do on this particular vote that you take into consideration that the real evidence is that this flag is, when you look at the benefits versus the burden, the beauty of this flag, the message that this flag sends, and the fact that most of the days of the year, it has no visible impact in terms of, or noise impact. And you weigh that against the burden, which is a complaint of some people who don't even live in the City. As rational policy makers and law makers, you should say when we're talking about the flying of the American flag, we should not do something to take it, take this pole down after all this time.

Now, I would like to read to you, if I could, a letter from Michael Bartley, Colonel U.S. Air Force, Nellis Air Force Base Installation Camp Commander. Members of the Las Vegas City Council, I'd like to thank you for this opportunity to say a few words about Dan Towbin and his direct association with our military, specifically with Nellis and Creech Air Force Bases. I would like to have been here in person; however, a family vacation to Alaska prevents my presence today. I met Dan Towbin over a year ago. As one of two of my honorary wing commanders, I have maintained both a professional and social relationship with him. As such, I am aware of the lingering debate concerning the flagpole and the American flag displayed in front of one of his Las Vegas dealerships. Just over a year ago, prior to his Hummer dealership grand opening, Dan made an official request through myself asking if the Nellis Air Force Base Honor Guard might be available to participate in a flag raising ceremony to honor veterans. Despite my support, military honor guards are not permitted to support private organizations so I politely declined the invitation.

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Furthermore, it should be pointed out that Mr. Towbin is an active, steadfast and contributing member of the Nellis Air Force Base support team, the NST. The NST memberships consists of non-uniform leaders within the Las Vegas community who strongly support the military and the Nellis mission. Their charter is simple: to help Nellis airmen in many ways they cannot help or support themselves.

For years Mr. Towbin has been directly involved in activities that impact our airmen. Just over two years ago, he donated over a hundred thousand minutes in prepaid phone cards for Nellis airmen deployed overseas, fighting in the global war on terrorism. While this may seem small to some, the impact to our airmen and their families was enormous. Additionally, the NST just donated over a hundred and twenty-five thousand to the Base for our newly renovated airmens center. This self-help project directly benefits our youngest single airmen, providing them an alcohol-free social environment. It was built by airmen, its run by airmen, but it would not have been possible without Mr. Towbins contribution.

Lastly, Id like to comment on Mr. Towbins support to me as Honorary Wing Commander. Ive called on him for assistance, advice and, oftentimes, just to stay in touch with whats going on at Nellis. Each and every time, he has offered nothing but his complete and generous support for me and for our airmen. I and Nellis Air Force Base are grateful to his commitment to the military and our mission and are proud to call him a true American patriot.

Mayor Pro Tem, Id ask you for some guidance. There are, theres a gentlemen from the noise study whos available to talk to you. There is Perry Rogers from the Andre Agassi Foundation who wanted to talk about Mr. Towbins contribution to the community and the flagpole. And theres Mr. Jim Murren who represents MGM/Mirage as the Chief Financial Officer, who also wants to talk about Mr. Towbins contributions to the community. If you would, if you would like to hear from them now, I can do that. I leave it to your judgment.

MAYOR PRO TEM REESE

Well, I think its imperative that we at least hear from the person that did, this is the person from J. C. Brennan that did the sound study, we need to put that on the record. If you can do it (inaudible), anyhow, you can do it quickly. And then, I think, we should allow you to give your other speakers a few minutes to speak, if you would

DAVID CHESNOFF

I appreciate that.

MAYOR PRO TEM REESE

if they dont repeat the same things.

DAVID CHESNOFF

Then Im gonna call Mr. Saxelby up.

COUNCILMAN ROSS

Mayor Pro Tem, if I may.

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MAYOR PRO TEM REESE

Yes.

COUNCILMAN ROSS

Im a little confused. I, Im, arent we talking about a flagpole height? Mr. Towbins charitable contributions to this community is not in question. Hes an absolute community activist and I think we all recognize that. What were talking about here is a Code issue with regards to a variance for a pole height on a flagpole. I mean, how long are we going to allow this to be drug (sic) out. Im confused.

MAYOR PRO TEM REESE

Well, no. I think we need to have this, the sound study, because that was part of the complaints. As far as him allowing Mr. Rogers and the other two people to take a minute to say something, I think its appropriate.

COUNCILMAN ROSS

Thank you, Your Honor.

MAYOR PRO TEM REESE

Yeah.

DAVID CHESNOFF

Thank you. Mr. Saxelby, could you introduce yourself to the

LUKE SAXELBY

Sure.

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DAVID CHESNOFF

Mayor Pro Tem and Councilpeople, explain your background and what your company is.

MAYOR PRO TEM REESE

And for your edification, we do have a copy of your report. I did submit a copy of that to the City Clerk.

LUKE SAXELBY

Sure. Good afternoon, my name is Luke Saxelby. Im a senior consultant with J.C. Brennan and Associates and were consultants in acoustics and noise control. My background is I have a Bachelors of Science in mechanical engineering. And I kinda got into this field, which is an interesting niche, there arent a lot of people that do what we do. My company is located in Auburn which is near Sacramento. So we were hired to come down and do this study and, no, weve never done a noise study for flag noise. This is kinda unique to us, but were happy to do it, kinda an interesting project for us.

We did do noise measurements for the flag. The wind speeds were, varied between ten and fifteen, or, excuse me, fourteen miles per hour. Under wind speed conditions of about ten miles per hour, which we felt are more typical wind speed conditions for this area, actually for 2006, the average daily wind speed conditions, as reported by the National Weather Service, were seven miles per hour during the day time. Under the flag

MAYOR PRO TEM REESE

Sir, I dont mean to interrupt, but

LUKE SAXELBY

Sure.

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MAYOR PRO TEM REESE

We went through this with Mr. Chesnoff, so I think if you just come to bottom line

LUKE SAXELBY

Yes.

MAYOR PRO TEM REESE

Is the flag a nuisance or isnt a nuisance?

LUKE SAXELBY

Im sorry.

MAYOR PRO TEM REESE

I said, is the flag a nuisance or isnt a nuisance as far

LUKE SAXELBY

From what we observed, the flag was not a nuisance, no.

MAYOR PRO TEM REESE

Thank you.

LUKE SAXELBY

Any other questions?

MAYOR PRO TEM REESE

Any questions?

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COUNCILMAN WOLFSON

Yes.

MAYOR PRO TEM REESE

Yes. Got a question.

LUKE SAXELBY

Okay.

COUNCILMAN WOLFSON

If you dont mind, Mayor Pro Tem.

MAYOR PRO TEM REESE

You bet.

COUNCILMAN WOLFSON

How many days were you out there, sir?

LUKE SAXELBY

We were out there for twenty-four hours, little over twenty-four hours.

COUNCILMAN WOLFSON

Sorry. So you measured the effects of the flags movement, based upon wind, during one twenty-four hour period.

LUKE SAXELBY

Thats correct.

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COUNCILMAN WOLFSON

Okay. Thank you.

BILL HENRY

Mayor Pro Tem, may I ask a couple of questions, please?

MAYOR PRO TEM REESE

Thatd be fine.

BILL HENRY

Thank you. Mr. Saxelby.

LUKE SAXELBY

Yes.

MAYOR PRO TEM REESE

Through me, please.

BILL HENRY

Through you.

MAYOR PRO TEM REESE

You dont have to look at him to talk to him.

BILL HENRY

All right. Then Ill, Mr. Saxelby, do you know where the National Weather Service measures wind speed?

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LUKE SAXELBY

I was told that the weather data was from the McCarran International Airport.

BILL HENRY

Do you know how far the McCarran International Airport is from Towbin Hummer?

LUKE SAXELBY

I believe its approximately three miles. Im not sure exactly how far it is.

BILL HENRY

What, if any, reason do you have to believe that the wind speed at McCarran International Airport is representative of the wind speed at Towbin Hummer?

LUKE SAXELBY

Thats a good question. We did wind speed measurements using a handheld anemometer. An anemometer is calibrated using, it is calibrated and certified accurate to, I believe, three percent. Id have to check my calibration certification, but we did wind speed measurements at, I believe, three or four different times during the day. And then we looked up that data from, versus the National Weather Service data, to make sure the wind speed measurements we took were close to the National Weather Service data and they were within one mile per hour.

BILL HENRY

And this was for one day out of the year?

LUKE SAXELBY

Yes, the day that we visited the site.

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BILL HENRY

Thank you.

MAYOR PRO TEM REESE

Thank you. Thatll be all.

DAVID CHESNOFF

Thank you, Sir.

LUKE SAXELBY

Yep.

DAVID CHESNOFF

At this time, Mayor Pro Tem, Id like Mr. Murren to come up and address the

MAYOR PRO TEM REESE

One minute, please, on the clock.

DAVID CHESNOFF

Mr. Murren, if youd be kind enough to introduce yourself and who youre with.

JIM MURREN

Yes. Mayor Pro Tem, City Councilmembers, Im Jim Murren, the President and Chief Financial Officer of MGM/Mirage. This is obviously a hotly debated issue. Im here, solely, to speak to the character of Dan Towbin and also as a resident of Sahara Avenue. I drive by this dealership, happens every day. Dan, in my mind, best personifies patriotism in my mind because patriotism is defined by people who, in acts of courage and generosity, give to a community and to protect our way of life. This is a very difficult and disappointing circumstances when I read commentary that this is somehow meant to be a commercial statement by somebody who has given more to the community than most anyone here that lives in our valley. Dan, Ive known for nine years, has given to every cause that I am aware of, has been very generous to causes that are important to my company and to myself, personally, and Im here to speak to his character, to his generosity, to his intent which is to display his generosity and patriotism to our country.

MAYOR PRO TEM REESE

Thank you, Sir.

JIM MURREN

Thank you.

DAVID CHESNOFF

Id like to call Perry Roger (sic) now, please.

PERRY ROGERS

Perry Rogers, 3000 Arabian Road. Mayor Pro Tem, members of the Council, Councilman Ross, actually, to your point, which is whether or not this is really about Mr. Towbins generosity and, or whether its about the height of a flagpole. Reason that his generosity is relevant to the issue is because the claim that this is for commercial purposes really speaks to what his intentions are and what his desires are for the community itself. Ive known Mr. Towbin for fifteen years. He has helped in every cause I have ever seen him get involved with and hes never asked for a thing. As a

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matter of fact, I asked Mr. Towbin and Mr. Chesnoff if I could be here today. Theyve never come to me once for any acknowledgement of what theyve done. Thats relevant to what this mans really about. Hes about trying to better his community and this is one of the ways he articulates that. I hope that given that I was born here and raised here and Ive seen a bunch of flagpoles around town that are a hundred feet high that well be consistent with such an important representation of our nation. Thanks.

MAYOR PRO TEM REESE

Mr. Roger (sic), if I could. Have you learned how to hit a tennis ball yet?

PERRY ROGERS

Well, you know, I had until I shattered my shoulder and then it all went away. Thanks.

MAYOR PRO TEM REESE

Thank you.

DAVID CHESNOFF

One letter that I would like to read into the record, if I could. Theres a letter that we received from Senator Townsend and it states the following, Mayor Pro Tem

MAYOR PRO TEM REESE

We have it.

DAVID CHESNOFF

You have it? Its a very short letter and it just states that he gives unqualified support to Mr. Towbin. Dan did not solicit the letter from him. He felt compelled to write it. And hes fully supportive of Mr. Towbins efforts here to keep

MAYOR PRO TEM REESE

Its

DAVID CHESNOFF

the pole up.

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MAYOR PRO TEM REESE

Its on the record.

DAVID CHESNOFF

Okay. Id like to ask you, Mayor Pro Tem, if, is it, if Mr. Towbins letter has not been received by you or the other Council people?

MAYOR PRO TEM REESE

We have it also.

DAVID CHESNOFF

Okay.

COUNCILMAN WOLFSON

Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

COUNCILMAN WOLFSON

Im sorry. I have not received that letter.

DAVID CHESNOFF

Then may I provide this

MAYOR PRO TEM REESE

Its submitted in the backup.

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COUNCILMAN WOLFSON

Thank you.

DAVID CHESNOFF

Do you have a copy now, Mister

COUNCILMAN WOLFSON

I do. Thank you.

DAVID CHESNOFF

Okay. At this time, Id like to call on Mr. Towbin to say a few words, if thats okay, Mayor Pro Tem.

MAYOR PRO TEM REESE

Thatd be fine.

DAN TOWBIN

Good afternoon, Mayor Pro Tem, members of the City Council. I have been a resident here and a business man in the community for, since 1986. Ive raised my family here and happy that both of my children work with me. Ive tried to contribute to the Las Vegas community through various community charities such as Nevada Cancer Institute, Larry Ruvo Brain Institute, Andre Agassi Foundation, University of Nevada Health Services Foundation, Boys and Girls Clubs of Las Vegas. Ive been a recent recipient of Las Vegas Dozen Award and the James Cashman Community Leadership Award. In addition, I have received, recently received the General Motors Dealer of the Year Award and I have just been nominated for Time Magazine Quality Dealer of the Year. Not only am I proud to be a Las Vegan, but I am proud to be an American and wake up every day that I live in the greatest country, thankful that I wake up every day in the greatest country in the world.

Ive always been a very patriotic man and Im very active in local, state and national politics. I have actively participated as community leader in support of Nellis Air Force Base. As you know, I am the owner and operator of Towbin Hummer. The Towbin Hummer, the Hummer, rather, began as a military vehicle and there is a close connection between the company that manufactures Hummer and the U.S. Armed Forces. As an expression of my pride in being an American, the connection between the Hummer and the military and to express my support for young men and women fighting overseas, I decided that I would fly, with the Citys permission, a flag on a hundred-foot flagpole.

For your information, we originally received the Planning Commissions approval. The flagpole was designed and fabricated at a significant expense. And we understood we would need a variance in order to install it. This body was kind enough to approve our installation of the flagpole with the understanding there would be a subsequent review. I understand and accept full personal responsibility for the fact that we indicated to this body that we would not only install the flagpole, but place a memorial at the base of the flagpole for our fallen service personnel, and it would have a ceremonial (sic) marking the occasion with the Color Guard from Nellis Air Force Base.

First and foremost, I want to express my apology for not having installed the plaque on the memorial in a timely manner. The actual memorial was constructed out of concrete but the installation of the fabricated brass plaque was delayed. And for that, I again repeat, I am sorry. As for utilizing a (sic) Nellis Air Force Color Guard, it was always my intention to do so, but I learned that Nellis could not send the Color Guard to our commercial establishment. We had intended on having the Mayor officiate and had discussed scheduling with his office. Unfortunately, through no fault of anyone but me, we did not follow-through as you anticipated. I simply thought that

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after your final approval, we would complete the memorial. While it was always our intention to do so, we recognized that we did not follow-through as we understood you anticipated. And again, I am sorry.

Since our last meeting, we have met with the veterans group that spoke here and have placed on the memorial, wording consistent with their desires. And I would state differently, different from the words we had planned on placing there. But in the spirit of cooperation, we chose to use their language on the memorial. I thought the meeting with the veterans went very well and was hopeful that our willingness to immediately meet with them would be seen as an act of good faith by us, which is what it was intended to be.

We have taken the time to do a scientific study of the impact of the noise on the area and we will present that to you today. Of course, we did. I sincerely ask as a community-minded person with deep patriotic feelings, that you excuse the mistake we made with respect to the memorial, accept our humble apology and allow us to fly our beautiful expression of patriotism. I want to assure you that the flag is flying because of my love of the country and I do not really believe that any of you think that someone is purchasing a vehicle from me because I fly the flag. I would hope that you would allow me to keep Old Glory flying high. Thank you.

MAYOR PRO TEM REESE

Thank you. Are there any questions of Mr. Towbin? Thank you. Chesnoff.

DAVID CHESNOFF

At this time, I would just end by saying the following. I don't know if Mr. Peck is still here. He is. Okay. Then I don't have to say that. My position is, is about, it's actually, believe it or not, got me a little choked up here, frazzled. I have represented amongst the most unpopular positions or people in my career as a lawyer and I find myself in a position where I'm representing the flagpole, in this case, and ostensibly, the flying of the flag. And I'm proud that I'm able to do that. I have members of my own family have served, brothers, nephews, all my uncles were Marines in World War II. I know Dan Towbin. I know the kind of man he is. I know that he's sincere in his expression of patriotism. I know that he meant what he said about saying he was sorry that things did not go as smoothly with this as it should have. But I really believe, in light of the real lack of evidence of the noise, and the fact that it's been up for over a year and the fact that you have approved hundred-foot flagpoles in other locations throughout the City as evidenced by the report that the staff was kind enough to give me beforehand, that I would ask you to, please, allow the flagpole to remain at its present height. Allow Mr. Towbin to continue to fly the flag and allow all those people who have the pleasure of seeing it, especially as it be, as the sun goes down and you're driving up Sahara, it's particularly moving. It is really a beautiful flag. And I would like to thank the City Attorneys Office for their professionalism in dealing with the issues that have arisen. They've been nothing but first class. And I appreciate the opportunity that I've had to visit with the Council folks that I have and I understand that this is a Council that is serious-minded, wholly patriotic, without any question. And understand that in circumstances like these, these are difficult decisions but I would ask you, in light of the fact that it's been up for the time that it has and the evidence that we've been able to show you, including the fact there cannot be a question about Mr. Towbin's patriotism, that you allow him to keep the flag flying on that hundred-foot pole.

MAYOR PRO TEM REESE

Thank you.

DAVID CHESNOFF

Thank you.

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MAYOR PRO TEM REESE

Are there any questions of Mr. Chesnoff?

COUNCILMAN WOLFSON

Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

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COUNCILMAN WOLFSON

Thank you. Its not so much for Mr. Chesnoff, but if we could get some basic facts answered. Margo, if you dont mind, do we know, and I did drive Sahara last night about seven oclock and there are a number of American flags in the same vicinity as Mr. Towbins, but if I can ask you, Director Wheeler, do you know how many flagpoles the City of Las Vegas has allowed to exceed the forty-foot limit?

MAYOR PRO TEM REESE

Forty-five.

COUNCILMAN WOLFSON

Forty-five.

MAYOR PRO TEM REESE

Forty-five.

MARGO WHEELER

We show twelve, Mayor Pro Tem and Councilman, to

MAYOR PRO TEM REESE

Yes.

MARGO WHEELER

the best of our records, we have found twelve that have been approved.

COUNCILMAN WOLFSON

And those twelve date back how many years?

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MARGO WHEELER
1996.

COUNCILMAN WOLFSON
So for the last nine years or, excuse me, yeah, nine years or so, weve allowed about twelve poles to exceed the forty-foot Code requirement.

MARGO WHEELER
Yes.

COUNCILMAN WOLFSON
How many of those twelve poles are one hundred feet?

MARGO WHEELER
One, two, three, four, five, six, seven, nine.

COUNCILMAN WOLFSON
And how tall is this pole, Mr. Towbins pole?

MARGO WHEELER
It is approved for a hundred feet. Based on the survey done by our City Surveyor, it is a hundred and nine feet in height.

COUNCILMAN WOLFSON
Thank you.

DAVID CHESNOFF
Mayor Pro Tem, may I talk to that last comment?

MAYOR PRO TEM REESE
Yes.

DAVID CHESNOFF
Okay. We did a survey also and we find that were three feet over a hundred, but I have a letter which I can provide to the body from the company that actually fabricates, that says that when they fabricate, they fabricate from a hundred feet from the top of the flag and that theres always a overage. So I dont know this for a fact, but I would venture to guess on the, and I think theres ten a hundred-foot poles, not nine.

MAYOR PRO TEM REESE
Were not gonna were not gonna argue that.

DAVID CHESNOFF
On the nine or ten poles, I think that as a matter of the way theyre fabricated, you would find that if you surveyed them, they would be above a hundred feet. But not as a result of Mr. Towbins actions, but rather as a result of the fabricator and how they do it in terms of sway and things like that.

MAYOR PRO TEM REESE
Thank you. Any other comments? Mr. Henry, please.

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BILL HENRY

Could I have the overhead camera, please?

MAYOR PRO TEM REESE

Overhead.

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BILL HENRY

Id like to start out by showing you some photographs of the flagpole, flying the flag that is the subject matter of todays hearing. Could we focus the camera or zoom in on

MAYOR PRO TEM REESE

Focus and zoom. Were being presented some copies of flow, flags. Can you zoom in on the overhead, please? Clear it up. Just the picture. Beverly.

BILL HENRY

Heres another photograph. Heres a photograph of the flag being lowered. Heres yet another photograph of the flag being lowered. You see that a mans lowering it to put it in the back of a pickup truck. And this is the next and last photograph. You can see, he, hes lowered the flag. He has it in the dirt and hes maneuvering it into the back of the pickup truck. Id like to lodge these photographs

MAYOR PRO TEM REESE

Could you give those to

BILL HENRY

with the Clerk, please.

MAYOR PRO TEM REESE

Mr. Chesnoff, please.

DAVID CHESNOFF

Thank you.

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BILL HENRY

Now, if I might, this matters been going on for eighteen months and Id like to take a moment to go through the chronology. It begins February 6th of 2006 when the application by Towbin Hummer is for a one hundred and thirty-foot flagpole, flying a thirty by sixty-foot flag. That application goes to the Planning Commission which hears the matter on March 23rd, 2006. Theres a staff recommendation of denial. Planning Commission grants a variance to, for a one hundred-foot flagpole with a six-month review. That matter is brought before the City Council May 3rd, 2006, to appeal the decision of the Planning Commission and at that time, we have the discussion about the possibility that the flag, when it flies, because it is so large and so high, will create loud noises. There is a motion to give a variance for a seventy-five foot flagpole. That fails and then theres a motion for a one hundred-foot flagpole with a six-month review. And that passes.

That takes us to May 2nd, 2007, which youll notice, almost a year later, not six months. But interestingly enough, the way City procedures work, when the Planning Commission has a review date calendared, they send a letter out to the holder of the variance. In this case, saying your review dates coming up, provide us with these materials and also a check for three hundred dollars. That letter went out. It wasnt responded to. The materials werent provided. The money wasnt provided and the way City procedures work, the matter was not brought before the Council in a timely fashion because of that.

However, ultimately, May 2nd, 2007, it did become before the City Council. There is a request by Towbin Hummer to abey the matter and that request was granted. So finally, it came before the Council May 16, 2007, on the six-month review. There were twenty-four letters of protest. There was a staff report recommending denial and there were a number of people that testified. Conita Jones testified and she told the Council, its loud. I wrote a letter June 27, 2006, shortly after it went up, copying Dan Towbin. Each one of you should have received one stating that we had a problem. The flag was loud. It pops. Its like fireworks. Good on 4th of July, not a daily thing. Connie Kling appeared before you on May 16th of this year and she testified. I dont often hear the noise, but I am an insomniac. I am up in the wee hours of the night and when it is windy, I do hear it. Now I dont live next to it and I dont, its not that much of an issue for me. I have to say initially, I thought that was gunshots in the neighborhood and we dont live in a neighborhood where we hear gunshots. Gary Swanciger testified. He told you, but for me, five hundred feet away, when the winds blowing, this is a twenty-four/seven flag. They dont take it down during inclement weather. I dont know how they could. It probably takes eight men to take it down. This flag is brutal. Its woken me up on numerous occasions and I really think its just not appropriate.

Allow me then, turning once again to the overhead, show you some exhibits. Id like to start out, answering a question thats often put to me by Councilman Wolfson in these proceedings. Who has the burden of proof? And Title 19 tells us that the applicant bears the burden of proof to establish if the approval of a variance is warranted. Thats what I would call the legal burden of proof.

Theres something else I came across in preparing for this hearing which was a portion of the testimony of Dan Towbin to this Council on May 3rd, 2006, when you gave the variance with the six-month review on appeal. And theres an interchange between Bryan Scott from my office, the Mayor and Mr. Towbin. Bryan Scott says: If Mayor, I could just, before you vote on that, during the six-month review, is the applicant agreeing that if there are issues, theyre gonna take it down. Is what the six-month review is gonna be for. Mayor Goodman: thats why the, if in fact, no, when they come to us, we could take it down if the neighbors say that its creating a bad situa (sic), condition in the neighborhood. Bryan Scott: Okay. Dan Towbin: I would, obviously you have the right, but I would say publicly, whatever this body decides to do at that six-month review, I will live by. Bryan Scott: So that means. Mayor Goodman: He wont have a choice. Dan Towbin: Okay. Without any question. So

DAVID CHESNOFF

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Mayor Pro Tem, may I ask you a question?

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MAYOR PRO TEM REESE

He

BILL HENRY

I did not interrupt his

MAYOR PRO TEM REESE

Mr. Henry, Ill take care of it. Kay.

BILL HENRY

Okay.

DAVID CHESNOFF

May I just ask a question?

MAYOR PRO TEM REESE

No. Not at this time.

DAVID CHESNOFF

Okay. At an appropriate time?

MAYOR PRO TEM REESE

Yes.

DAVID CHESNOFF

Thank you, Sir.

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BILL HENRY

At that initial appeal on May 3rd, 2006, they got a right to fly a flag from a hundred-foot flagpole. I would ask you to remember back to what their original application was in February of 2006. It was for a thirty by sixty flag from a hundred and thirty-foot flagpole. They were told, you can have a hundred foot flagpole. They agreed to that. We caused to be surveyed on May 29th, 2007, the height of the flagpole. Allen Rieeki, R-i-e-e-k-i, whos the City Surveyor and his Nevada Surveyors Certificate is one two four six nine, did that for us. He used two different methods. This is the first method which, as I understand it, is the coordinate system measurement method. I have him here to answer questions if you want to hear more about this. But youll see that he measured from the top of the planter where the base of the flagpole is to the top of the ball on the flagpole. And he found it to be one hundred and nine point eight feet by that method. I think as a cross-check, he then used something called the angular measurements method. And youll see from the top of the planter to the top of the ball on the flagpole, he found it to be one hundred and nine point five feet.

So you gave them the right to put up this flag on a hundred-foot flagpole to try it out. They immediately put up a hundred and ten-foot flagpole. Perhaps at some appropriate time, you would ask Mr. Chesnoff or Mr. Towbin what they did with their hundred and thirty-foot flagpole. Did they send it back and get this hundred and ten-foot flagpole or did they just have it cut off. And you might also ask them, having found that a thirty by sixty-foot flag, in their estimate, was appropriate to be flown from a hundred and thirty-foot flagpole, when they were limited to a hundred and thirty, to a hundred feet, on a temporary trial basis, did they get a different flag or did they keep the same flag.

Now May 3rd, 2006, when they were first before you, there was much conversation about building a memorial to recognize the patriotic aspects of this large flag flown from this tall flagpole. And when the matter was approved, it was approved with a six-month review, but in the way that you approve all these matters, you also told them that they have to comply with all City laws and conditions. One of the City laws and conditions is they had to submit plans for what they were going to build. That became one of the conditions on their variance these plans included a memorial. But yet on May 16th, a year later when they came back, there was no memorial. We know that from inspection, but we also know that from a gentleman from Towbin Hummer, Carl Marcello, and hes test, his testimony was this: We were gonna wait, get it approved. We never had the intention of not building that memorial and thats whats trying to take place here today. Thats wrong. We had it designed and its ready to go and if its ready to start construction tomorrow. But we just didnt want to spend the money, you know, if we were gonna have the flagpole come down.

Let me turn to the law. The law of variance in the City of Las Vegas is found in our land use chapter, Title 19. And as it has to do with flags, its found in a couple places. The first place is at 19.14.040(C) (1) and it provides that as a matter of right, people can fly flags for any purpose, certainly including being patriotic, from a flagpole not to exceed forty feet, as a matter of right. The other place that Title 19 refers to flags and also variances, is at 19.08.050(C) (1) (Note2f) and (3). And once again, it says that flags up to, flagpoles up to forty feet in height are permitted as a matter of right. And any request to deviate from these standards shall require the submittal of a variance application. Guess everyone knew that. Towbin Hummer knew it. Thats why they submitted the application in February of 2006.

Lets look at the law of variance in the City of Las Vegas, your Las Vegas Municipal Code, the laws that empower and bind us. 19.18.070(B) (1) and (2), a variance, two, shall not be granted in order to relieve hardship which is solely personal, self-created or financial in nature. This, in essence, the desire to have a flagpole more than forty foot high is personal, it is self-created, it is something that he wanted to do as a matter of desire of willfulness. A variance cannot be granted under these conditions. Its against the law.

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That's also set forth at LVMC 19.18.070(L) (1) and (2). This is important because this section of the City Code was called out in the Planning Staff report that was given as backup to the Planning Commission and to this Council each time this matters been on, including this time. And if you'll bear with me, in order to recommend approval of, or to approve a variance application, the Planning Commission or City Council must determine that the Variance is wanted both under State law and this section. The minimum State law standards are set forth in Subsection 2 below. Two, where by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the enactment of the regulation, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property, the strict application of any zoning regulation would result in peculiar and exceptional practical difficulties to, or exceptional and undue hardships upon the owner of the property, a variance from that strict application may be granted so as to relieve the difficulties or hardship, if the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources and without substantially impairing the intent and purpose of any ordinance or resolution. Let me take you back again to your Ordinance 19.18.070(B) (1). A variance shall not be granted in order to relieve hardship which is solely personal, self-created or financial in nature. Finally, I have perceived in the swirl of discussion about this over the last many months and dealt with briefly in State District Court, a claim by the applicant that there is a First Amendment right to fly a thirty by sixty-foot flag from a hundred and ten-foot flagpole, as we now know it to be, that this is symbolic, patriotic communication and because of that, the government may not restrict it. This claim is unsupported by the law. This claim is contrary to controlling Supreme Court Authority. Let me read to you from a case known as Ward against Rock against Racism, a Supreme Court Case, United States Supreme Court Case. The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The governments purpose is the controlling consideration. A regulation that serves purposes unrelated to the content of expression is deemed neutral. I have not heard from Mr. Chesnoff nor do I expect to hear from him that this City Council has acted, in creating the laws of variance, or has acted the last time around in denying the variance because it disagreed with speech. It disagreed with the right of the citizen to speak symbolically and express his patriotism. Hes not going to say that because it is not the case. Ward against Rock against Racism tells you the governments purpose is the controlling consideration. So where you have enacted land use laws that have nothing to do with the content of speech, there is no First Amendment claim. I found and I present to you a case from the Fourth Circuit Court of Appeal (sic) from seven years ago, American Legion Post 7 of Durham, North Dakota versus City of Durham, because its a flagpole case that went through the Federal District Court and to the Circuit Court of Appeals, just one step below the United States Supreme Court case. And that Circuit Court of Appeals wrote that it was dealing with a flagpole with a maximum height of seventy feet bearing a flag or flags of up to two hundred and sixteen square feet is permitted, in Durham. In a residential district, such as the one in which the Legions property is located, flagpole height is limited to twenty-five feet and thus, flag size is limited to 40 square feet. So this is a flagpole case. What do they have to say about the challenge from the American Legion Post 7 to this regulation on the height of flagpoles? The Circuit Court of Appeals says this: The district court correctly found that under relevant Supreme Court and Fourth Circuit precedent, a communitys interest in preserving its aesthetic character is indeed a substantial interest. And they refer to a United States Supreme Court case, Members of the City Council of Los Angeles versus Taxpayers for Vincent. They go on to write: Vincent, the Supreme Court case, clearly forecloses the argument that the Citys interest is insubstantial. The Vincent Court stated that municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression sufficient to pass muster

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under the time, place and manner test. There is no First Amendment claim to be made here. Granting a variance under these circumstances, under two sections of your own law, is against the law.

In the past, the applicant promised you that when he came back for six-month review, if you had any problems, he would abide by the will of the Council. He didnt do that. He lawyered (sic) up and he sued you. He promised you that he would cut his flagpole from a hundred and thirty feet to a hundred feet during this trial period. He didnt do that. He flew the thirty by sixty-foot flagpole, or flag from a hundred and ten-foot flagpole. For all of these reasons, I submit to you that if you look at 19.18.070 and remember that the applicant bears the burden of proof to establish the approval of a variance is warranted, he hasnt carried the burden of proof. He cant carry the burden of proof. He ought to be held to his word. Thank you.

MAYOR PRO TEM REESE

Thank you. Are there any questions or comments of Mr. Henry, please?

COUNCILMAN WOLFSON

Mayor Pro Tem.

MAYOR PRO TEM REESE

Councilman Wolfson, please.

COUNCILMAN WOLFSON

May I please just ask a question or two?

MAYOR PRO TEM REESE

Yes.

COUNCILMAN WOLFSON

From a procedural standpoint, we are here today on a six-month review because this Council already granted the variance. A year ago, we said in our wisdom that we think its okay to grant this variance to allow him to construct a one hundred-foot pole. Now whether its one hundred feet or one hundred and nine feet, we can debate the propriety of that, but its not whether or not to grant the variance. Its weve already granted the variance. The question is on a six-month review, have conditions changed or should we go back a year and say, the conditions have changed such that we want to take back the variance weve already granted. Isnt that right?

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BILL HENRY

Councilman, it is the case that the law recognizes that human beings are mortal, that we all make mistakes and what I am here to tell you today is that as a matter of law, when you gave him this conditional variance, you violated the land use law of the City of Las Vegas.

COUNCILMAN WOLFSON

But we grant variances all the time. Every meeting, this Council grants variances for different things, especially in the land use area. So my point and Im not trying to indicate which way Im going cause at this moment I still dont know. But its not that we have to decide whether to grant the variance because weve already granted a variance, and youre basically asking us to reconsider our decision of a year ago and

BILL HENRY

No, Im not doing that.

COUNCILMAN WOLFSON

Okay. Let me finish, please. Because the way Im reading it is that youre basically telling us that we made a mistake a year ago, by granting the variance.

BILL HENRY

Im telling you that you made a mistake as a matter of law, that your decision exceeded your authority under your own Municipal Code.

COUNCILMAN WOLFSON

But do we not, as a body, albeit in your words, against the law, grant variances, especially in land use things, on a regular basis?

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BILL HENRY

I am not down in the afternoon sessions. I would hope that when you grant variances, on a regular basis that you grant them in conformance with the law, that you grant variances to people to relieve a hardship which isnt solely personal, self-created or financial in nature. And I would hope that you grant variances for geographic disabilities under 19.18.070(L) (1) and (2) for pieces of property that because they are uniquely small, oddly-shaped, and narrow, they suffer under our land use code, a geographical disability. Those would be examples of granting variances.

MAYOR PRO TEM REESE

Mr. Henry, if I could interrupt just for a moment, please. Could you restate your question for Mr. Scott and Mr. Lewis?

COUNCILMAN WOLFSON

Sure. I accept what youre saying, Mr. Henry. Perhaps my question would have been better put to Director Wheeler or Mr. Scott because they are our land use advisors. So if I need to restate my question, I believe my question is this: Were not here today to determine whether or not to grant the variance because we granted this variance a year ago. Were here in essence on a six-month review which empowers us with the decision of whether or not conditions have changed or otherwise, to reverse our decision from a year ago.

BRYAN SCOTT

Youre here to

COUNCILMAN WOLFSON

Thats the first part of my question. The second part is, do we not, on a fairly regular basis, grant variances for land use things.

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BRYAN SCOTT

The answer to the second question is yes, that we do, on a frequent basis, grant variance on various land use issues. The answer to the first question is you're here today to determine whether or not the applicant met the conditions of approval for the variance that you granted and whether or not there had been neighborhood opposition, or neighborhood protests, or neighborhood complaints as a result of the variance you granted a year ago.

COUNCILMAN WOLFSON

We haven't even, cause I'm sure Councilwoman Tarkanian's gonna present information, we haven't even gotten to the point to hear whether or not neighbors or others have indicated that there have been problems with the noise. Would that be a fair characterization that we haven't even gotten to that point yet?

MAYOR PRO TEM REESE

I'd say so.

COUNCILWOMAN TARKANIAN

We haven't gotten to it yet.

COUNCILMAN WOLFSON

Okay. Well, I think it's good that we're, at least for me, that we're isolating the decision that this Board has to make.

MAYOR PRO TEM REESE

Thank you. Are there any other comments or questions of Mr. Henry?

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BILL HENRY

Mayor Pro Tem, if I could, I would lodge a copy of the exhibits that I've utilized with the Clerk and ask that she make it part of the record.

MAYOR PRO TEM REESE

Thank you. At this time, could we have, by show of hands, how many people want to speak on this subject?

DAVID CHESNOFF

And Mayor, you were gonna give me a chance, Mayor Pro Tem, a chance

MAYOR PRO TEM REESE

When we get through with public comment.

DAVID CHESNOFF

Oh, after that.

MAYOR PRO TEM REESE

Yes.

DAVID CHESNOFF

Okay. Fine. Thank you, Sir.

MAYOR PRO TEM REESE

If you come up here to the left of the podium, please, and Beverly, I noticed when, last time, I asked for a one minute clock, my clock didn't show up here.

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BEVERLY BRIDGES

Its not working.

MAYOR PRO TEM REESE

Its not working. For those in the audience, our timer is not working today, but I am going to limit those speaking to one minute.

EDDIE REEDUM

To one minute?

MAYOR PRO TEM REESE

Yes.

EDDIE REEDUM

It was two minutes you promised earlier.

MAYOR PRO TEM REESE

Its gonna, the meeting has gone further. We have allowed, on this subject, we had another meeting, two meetings, three meetings, four meetings, where we allowed public comment. And, so I dont feel like we need to berate the matter any further, so were gonna allow one minute, please.

EDDIE REEDUM

And I accept, even though the publics importance is equally as important as those gentlemen.

MAYOR PRO TEM REESE

We need to have your name.

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EDDIE REEDUM

My name?

MAYOR PRO TEM REESE

Please.

EDDIE REEDUM

My name is Eddie Reedum. There's two things I'd like to say. First, the flag is one of the more honorable things that Mr. Towbin is doing and in relation to his character, I can personally attest to that. I'm one of his number one customers. My mom was in the old folks home. I was trying to get her out so I purchased my first Jeep Grand Cherokee and it was thirty-five hundred dollars. They demanded another thirty-five hundred within days. Turned out to be a damaged former rental vehicle. They wouldn't honor the warranty and so I came back within nine months, telling them I want out of this. I ended up getting a 2001, brand-new, thousand down. Then within days, they demanded another five or six thousand. It turned out to be, eventually, when it (inaudible) they put me in a used one when they got fifteen more hundred out of me. So I lost about ten thousand dollars total. My mom died seven months into the first deal. And the second vehicle turned out to be another damaged rental vehicle. As Mr. Towbin stated to the Review Journal in a news article, where he acknowledged that there had been altered applications, but he said there were no other complaints of that nature, he lied. He knewed that I had wrote them about forty, fifty letters in regards to my situation. And the second vehicle, when it was repossessed eleven months later, it wouldn't shift out of gear for three months before I lost it. I ended up losing credit cards, everything, because the payments, the debts and everything exceeded my income cause they changed my income the first time from fifteen hundred to four

MAYOR PRO TEM REESE

If we could, please, Mr. McGowan,

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EDDIE REEDUM

And, can I close this?

MAYOR PRO TEM REESE

Absolutely.

EDDIE REEDUM

Okie-dokie.

MAYOR PRO TEM REESE

Continue, please.

EDDIE REEDUM

Oh, yes, Sir. And what happened was within a year or two into the deal, I developed intestinal bleeding. That's why I was carrying this stupid sign around. It's serious. The Mayor's son is a cancer specialist. I may well be dying of cancer. It's extreme intestinal bleeding. I would like to make that for the record. If you could put that on your overhead view, in case I should die before I get over here to see you guys again, cause I've been pleading in this issue. And you see these teeth, I've been going through excruciating tooth pain, abscesses

MAYOR PRO TEM REESE

Okay.

EDDIE REEDUM

tooth coming out, but Mr. Towbin would do nothing. I begged and pleaded with him. They assaulted me twice. One went before the District Attorney

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MAYOR PRO TEM REESE

Okay. Thats

EDDIE REEDUM

They kicked my vehicle

MAYOR PRO TEM REESE

Thats fine.

EDDIE REEDUM

Okay.

MAYOR PRO TEM REESE

Thats fine, Sir. Thank you.

EDDIE REEDUM

So anyway, thats what hell do

MAYOR PRO TEM REESE

Sir

EDDIE REEDUM

Hell let you die and hurt.

MAYOR PRO TEM REESE

Thats fine. Thank you.

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EDDIE REEDUM

Okay. Hes a very cruel and brutal man.

MAYOR PRO TEM REESE

Sir.

STEVE SANSON

Is this

EDDIE REEDUM

Let me get my camera. And forgive me. Its hard to hold such pain back

STEVE SANSON

Steve Sanson

BRAD JERBIC

If I could

STEVE SANSON

President of Veterans in Politics, former United States Marine, served in Desert Storm. Your Honor, Im gonna need two minutes, if you may

BRAD JERBIC

If I can, before Mr. Sanson talks, with no disrespect, I do want to advise the Council that as a matter of law, the last speaker, in my opinion, spoke to issues completely irrelevant to the flag. I understand that its public hearing and you can say whatever you want on public hearing, but those comments should not be considered for or against extending this variance.

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MAYOR PRO TEM REESE

Thank you.

STEVE SANSON

Your Honor, Im gonna need two minutes.

MAYOR PRO TEM REESE

Thats fine.

STEVE SANSON

Thank you, Your Honor. As an American, what does it mean to be patriotic? What does it mean to be a good American? After September 11 terrorist attacks, people are asking themselves how they should respond in support of our nation. We should not wait to be attacked and then become patriotic. Patriotism should be something we grew to believe in from childhood. Here are some things we believe are important for all Americans to address. Support the values of America. Be informed and vote. Protect our civil liberties. Sustainable future. Eliminate dependency on the Middle East. Be willing to die for something. Show compassionate and consideration to all people. If the United States Senate approves a constitutional amendment to prohibit flag burning, commercial alert is urging United States senators to define commercializing the flag as a form of desecration of the flag. The flag burning amendment empowers Congress to define and prohibit the physical desecration of the flag. Physical desecration of the flag should include the use of the flag for commercial advertising or marketing. We should not allow companies to trample on the Stars and Stripes for commercial gain. In the aftermath of September 11th and the after, afterwards, several companies used American flags in advertising and marketing. U.S.A. Today reported on October 15th, 2001, marketers such as Anheuser-Busch and Kmart prominently featured the American flag in recent ads. Advertising Age reported on September 24, 2001, that two days after September 11 attacks on the World Trade Center and the Pentagon, posters showing a bold graphic of the American flag with the tagline, slightly alerted on how it appeared in the past advertising campaign where huge in windows of Kenneth Cole stores nationwide. What we stand for is more important than what we stand in. In the article titled, Madison Avenue Rides Wave of Patriotic Fever, in the New York Times reported that the flag were unfurled in television commercials and printed ads as well as on websites, banners, signs and billboards. Just

MAYOR PRO TEM REESE

Steve, could you get to the point, please?

STEVE SANSON

It is not the size or height of the American flag, it is what we believe. The American flag stands for integrity. If Towbin placed the memorial when they first made the presentation to this City Council, I would not be here on behalf of the Veterans in Politics. In our views, we cannot undo what has already taken place. Thank you so much for your time.

MAYOR PRO TEM REESE

(Inaudible) Appreciate it.

GARY PECK

Thank you very much, Mr. Mayor Pro Tem, members of the Council. I very much appreciate the opportunity to speak to this issue. I will be mercifully brief. I think that I can actually do this in a minute. The problem isnt so much about the law of variances on the books. Its the way in which this Council actually implements those laws. And I think Councilman Wolfsons questions were

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good ones. The fact of the matter is there is a certain arbitrariness to the way these variances are granted and denied. Indeed, we've heard already that ten variances have been granted with respect to flagpoles and flagpoles that exceed the height restrictions. Of course the First Amendment is implicated here. It was implicated by this Council when it attached a condition to the variance regarding the placement of a plaque that I presume was about an expression of patriotism. It was also insinuated when people began asking questions about whether or not Mr. Towbins expressions of patriotism and the symbol he was flying

MAYOR PRO TEM REESE

Okay.

GARY PECK

is really genuinely patriotic or commercial.

MAYOR PRO TEM REESE

Okay, Sir.

GARY PECK

We've pledged our support to Mr. Towbin and to Mr. Chesnoff and we would hope that the variance would be granted just as its been granted in any number of

MAYOR PRO TEM REESE

Thank you, Sir.

GARY PECK

other instances.

MAYOR PRO TEM REESE

Thank you.

GARY PECK

Thank you very much.

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MAYOR PRO TEM REESE

Next, please.

ED MULLER

My name is Ed Muller. I live at Local Weed Court, Las Vegas. Im the outgoing commander of the VFW Post 1753 which is the oldest VFW down here, and Ive consulted my people and the veterans are behind this. Ive talked to Mrs. Tartanian (sic) once and she sent some records and everything. And I know the height is a big thing and the noise. I personally have gone down there at one oclock in the morning when that flag was stretched completely out cause I wanted to make sure and I dont hear that much noise. Theres a little noise, but theres not that much. I mean, I cant believe anybody is hearing gunshots because I stayed down there for two hours. But the American Legion also wants to support Mr. Towbin on this and the VFW supports him. Thank you very much.

MAYOR PRO TEM REESE

Thank you.

GARY SWANCIGER

Good afternoon, Mayor Pro Tem

COUNCILWOMAN TARKANIAN

Excuse me, could I just ask

GARY SWANCIGER

Councilmembers

COUNCILWOMAN TARKANIAN

Could I just ask, was that Mr. Janda?

ED MULLER

Im sorry.

COUNCILWOMAN TARKANIAN

What was your name again?

ED MULLER

Muller. Remember Im the one, you sent me the email and everything.

COUNCILWOMAN TARKANIAN

Right. Thank you very much.

MAYOR PRO TEM REESE

Yes, Sir.

GARY SWANCIGER

Hello, my name is Gary Swanciger. I reside at 2270 Westwind Road.

MAYOR PRO TEM REESE

(Inaudible)

GARY SWANCIGER

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Excuse me?

MAYOR PRO TEM REESE

Margo.

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GARY SWANCIGER

Id like to start off by saying that the issue before you today is not about patrism (sic). The issue before you today is about quality of life and a neighborhood defending itself from abuse of privilege. There was a presentation made about the noise. I happen to be the individual that allowed them to set up the equipment, but what he forgot to tell you is that May 2nd, the winds were gusting at 44 miles an hour. Its not the sustained winds. Its the direction of the winds, and the wind speed and the gusts of the wind that causes the popping. This is a six, thirty by sixty flag. This is not a standard flag for a private individual. This is called a personal flag and it should be by three by five. The maximum size this flag should be is thirty by fifty. The extra ten feet creates the snapping and popping effect throughout the neighborhood.

Please, I also, my neighbors and I had a survey done on this flagpole, and Id like to present that to the City Council at this time. This was done by another independent surveyor. The first copy is an original. The others are copies for the City Council. He found that this flagpole from the base, from the ground, to the top of the ball was one hundred nine point four seven feet tall. The reason the flag is that tall

MAYOR PRO TEM REESE

Sir, weve been all the way through that. We understand the height of the pole.

GARY SWANCIGER

Let me, please let me finish. I spent a tremendous amount of time on this issue. The reason the flagpole has to be that tall for a thirty by sixty flag was because the diagonal of this flag, once its still, is sixty, over sixty-seven feet long. So on a hundred foot flag, if this flag was flown at half-mass (sic), seventeen feet of this flag would be lying on the ground. So Mr. Towbin decided instead of using an appropriate-sized flag, he had the pole adjusted, in order to fly this flag at half-staff. There is provisions to, for modifying that, it should be, it could be lowered one, equal to the height of the flag which is thirty feet, even at that height. The flag still flies very close to the ground.

MAYOR PRO TEM REESE

Thank you, Sir.

COUNCILMAN WOLFSON

Mayor Pro Tem

MAYOR PRO TEM REESE

Yes.

COUNCILMAN WOLFSON

May I ask.

GARY SWANCIGER

Yes.

COUNCILMAN WOLFSON

Your last name is Swanger (sic)?

GARY SWANCIGER

Swanciger.

COUNCILMAN WOLFSON

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Im sorry.

GARY SWANCIGER

Yes, your

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COUNCILMAN WOLFSON

I chopped it up pretty good. I apologize. We havent really seen a map during this discussion of where the flagpole rests in relation to the homeowners. And Id like you to identify, if you have one. If you dont, I have one.

GARY SWANCIGER

Okay. I, if you

COUNCILMAN WOLFSON

Where you reside, lets wait til it comes up on the screen.

GARY SWANCIGER

Okay. I dont know if thats how this is positioned. The, coming up, do I have it positioned correctly? If you bring up

MAYOR PRO TEM REESE

Yes.

GARY SWANCIGER

I dont know how I can point this out to you. My home is, this way?

MARGO WHEELER

Right in the center; there you go.

GARY SWANCIGER

Does that show up? Okay. All right. Zoom in.

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COUNCILMAN WOLFSON

The other map was better.

MARGO WHEELER

Maybe we should

MAYOR PRO TEM REESE

Yeah, but its on the overhead. You cant get that.

GARY SWANCIGER

Its coming. A little focus. Okay. If you can find it

MAYOR PRO TEM REESE

Zoom in, please, a little bit.

MARGO WHEELER

Upside down.

GARY SWANCIGER

Am I upside down?

MARGO WHEELER

There you go.

GARY SWANCIGER

Okay. All right.

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COUNCILMAN WOLFSON

What I'd like you to do first, with the aid of Mr. Chesnoff, is identify the dealership, identify the location of the flag, then identify your home, please.

GARY SWANCIGER

Okay. The dealership shows the subject property. I positioned the flag approximately where the zero is on property. You see I darkened that.

COUNCILMAN WOLFSON

Yeah, were still focusing.

GARY SWANCIGER

Okay.

COUNCILMAN WOLFSON

Hold on, please.

DAVID CHESNOFF

Its that?

GARY SWANCIGER

No.

DAVID CHESNOFF

Wheres Sahara?

GARY SWANCIGER

This is Sahara right here.

DAVID CHESNOFF

Oh, okay. Im sorry.

GARY SWANCIGER

See thats Sahara

DAVID CHESNOFF

Yeah, gotcha

GARY SWANCIGER

Kay. This is approximately the position of the flag, where the zero in property is. My home is where the x is at. My home is five hundred and forty feet from this flag pole. That was verified by your own City Planning Department by GPS.

DAVID CHESNOFF

Okay, cause hes not pointing at the picture, here

COUNCILMAN WOLFSON

Yeah, hold yeah, the

DAVID CHESNOFF

Ill help you out there, Mr. Wolfson.

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COUNCILMAN WOLFSON

Thank you.

DAVID CHESNOFF

This is where the

GARY SWANCIGER

Scuse me. This is my presentation.

DAVID CHESNOFF

Sorry.

GARY SWANCIGER

Right here

DAVID CHESNOFF

Oh, boy. Ill tell you.

GARY SWANCIGER

is where my, where the x is, is my home. Okay. And right adjoining to this is Dr. Piraccis home. His house is four hundred and four feet from the flagpole. We were told

COUNCILMAN WOLFSON

With your permission, is this the best we can do in our tech

MAYOR PRO TEM REESE

Were trying.

COUNCILMAN WOLFSON

Yeah, cause its not focused so

MAYOR PRO TEM REESE

Were trying

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COUNCILMAN WOLFSON

Yeah, I understand. I couldnt see where you were pointing so lets give em another minute.

DAVID CHESNOFF

Try that other one?

COUNCILMAN WOLFSON

The other map was better.

MAYOR PRO TEM REESE

We couldnt get it.

GARY SWANCIGER

Can I pass it around?

DAVID CHESNOFF

Theres a to-scale map.

MAYOR PRO TEM REESE

Can you turn it, please?

DAVID CHESNOFF

Can I

MAYOR PRO TEM REESE

Can you zoom in on that, can we

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DAVID CHESNOFF

It has his house on it as well, which was, I believe, there. Is that correct, Sir, I dont wanna

GARY SWANCIGER

Yeah. Thats it. As a matter of fact

MAYOR PRO TEM REESE

This is terrible.

COUNCILMAN BROWN

This is terrible.

COUNCILMAN WOLFSON

I think we need to do an audit of our tech department.

DAVID CHESNOFF

They never let me near the AV equipment.

GARY SWANCIGER

If youd like to see the copy I didnt know I needed to make copies of that. I assumed that we could see this.

DAVID CHESNOFF

Would you like me to hand this picture to you, Councilman Wolfson?

MAYOR PRO TEM REESE

Please. This is his house right here.

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COUNCILMAN WOLFSON

Number one.

DAVID CHESNOFF

Number one is

MARGO WHEELER

If I may, Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

MARGO WHEELER

If you look at your vicinity maps that each of you have in your packets

MAYOR PRO TEM REESE

Yes.

MARGO WHEELER

the gentleman has put an x on the property that is immediately adjacent at the northwest corner to the box called: Subject Property. So it is that property, if you go to the subject property, the northwest corner, that is his property that touches there, the residential property.

COUNCILMAN WOLFSON

Mayor Pro Tem, with your permission, what was handed up to me is a clear map. Its got a designation of a triangle with the number one inside of it and that designates your house.

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GARY SWANCIGER

Yes, it does.

COUNCILMAN WOLFSON

Okay. Thank you very much. I was out there last night. I stood on the wall that's the eastern boundary of your property. But I just wanted to get a real good idea of which house is yours. Thank you very much.

GARY SWANCIGER

Okay.

MAYOR PRO TEM REESE

Angela.

GARY SWANCIGER

Again, on the question of noise, I had, I allowed Luke to set up his equipment on my patio

MAYOR PRO TEM REESE

Yes, we went all through that. Thank you.

GARY SWANCIGER

I wanna make one comment. The wind on those two days was coming from the east so the noise was blowing down West Sahara. The prevailing winds in that neighborhood are from the south. I have records from the Weather Department. I, for both May and July, and over two thirds of the days the winds comes from either the southeast, south or southwest, which blows into our neighborhood.

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MAYOR PRO TEM REESE

Thank you, Sir.

GARY SWANCIGER

Kay.

MAYOR PRO TEM REESE

Yes, Maam.

CONITA JONES

Conita Jones, 5645 Obannon Drive. Good afternoon, Council. Most of us fighting the size of this flagpole are veterans, myself included. We all show our patriotism in ways that does not victimize others. Let Dan Towbin put his flagpole of this size in your neighborhoods and then tell us we are not victims. I dont care of Dan Towbins patriotism or charity. It means nothing to me what his wealth has made at the expense of others. Other flags of any height in this City that I have seen are not placed over neighborhoods. Theyre in commercial locations. The City has allowed this man to terrorize our small community. He was not made to put a buffer up and hes still allowed another variance. When does this all stop? It is time that the Council recognizes that all the residents of this City. My address says Las Vegas. It does not say County. And not just a select few should have, you should listen to, recognize all of us. If this is not stopped here, now, you are setting a precedence for more of these over-sized flagpoles to be put in along Sahara and the continued destruction of neighborhoods. Thank you.

MAYOR PRO TEM REESE

Maam, where, whereabouts do you live?

CONITA JONES

I live right on the corner of Westwind and Obannon.

MAYOR PRO TEM REESE

Thank you.

CONITA JONES

And my neighbor who lives further north of me had the cops up, the police out one night. You have a letter stating that cause of the, she thought it was gunfire in the neighborhood.

MAYOR PRO TEM REESE

Thank you.

COUNCILWOMAN TARKANIAN

And, Councilman Reese, Ill give you a copy of that letter if you want.

MAYOR PRO TEM REESE

We got a copy.

COUNCILWOMAN TARKANIAN

Oh, you

PAUL OBANNON

Paul OBannon, 5710 Obannon Drive. Once again, the issue here is the neighborhood. Im not sure if everyone is familiar with our area. Were in that little City/County hub between Decatur and

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Jones and between Sahara and Oakey. Fortunately or not, Sahara Boulevard between Decatur and Jones has turned into an automobile mega-zone, as you all well know. Its one car lot after the other. This flagpole, if precedence is set here, I can visualize all of the car dealerships between Decatur and Jones flying one-hundred-foot flags. Its a nuisance to the neighborhood. Its very noisy. I live close and in the neighborhood. I hear the flag. The wind is not always seven miles an hour in Las Vegas. And its very disturbing to the neighborhood. I couldnt even imagine living next door to this flag. Let alone, we have traffic issues from the car dealerships. Were having to fight, trying to get road closures. Now were having to try to fight five to six hundred-foot poles that are gonna go up as soon if this variance gets approved. Real quick, youve heard this before, but its important that you know how the neighborhood feels. Also, the initial purpose of this for Mr. Towbin was a Vietnam memorial, if I understand correctly. United States Commission of the Fine Arts approved the flag and its recommendation for the Vietnam Memorial in Washington, D.C., which Im sure many of you have had the opportunity to see. That flag is sixty feet and it is twelve by eighteen. The United States Marine Memorial, War Memorial, has a sixty-foot flagpole. The National World War II Memorial has a seventy-foot pole. And the tallest I could find was the Arlington Cemetery. All of these are monuments and memorials in Washington, D.C., has a ninety-foot pole. Now the initial purpose of this for Mr. Towbin was for a memorial that never got completed until recently

MAYOR PRO TEM REESE

Okay, Sir. We got to cut you off.

PAUL OBANNON

so why we need a car dealership to have a hundred-foot pole when the United States of America doesnt have one in Washington is beyond me. Thank you.

MAYOR PRO TEM REESE

Thank you.

JOSEPH PIRACCI

Im Joseph Piracci. I live at 2330 Westwind. My house is closest to the flagpole. I wrote a letter submitted to Council on the 27th of May

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MAYOR PRO TEM REESE

Can you pull the mic down, please.

JOSEPH PIRACCI

Yeah. 27th of May, 2007. Ill just read a portion of it. Concerning the flag and pole, an exception to the height and size requirements as granted with the follow, was granted with the following two provisions. A war memorial would be constructed at the site. A review of the impact would be made in six months. No memorial was constructed in over twelve months, and there has been significant auditory impact to the neighbors. The matter should have been closed. Instead, a campaign was initiated alleging that the City of Las Vegas and, by implication, its Mayor is unpatriotic and doesnt respect the flag. This campaign has been successful. The very fact that this meeting is taking place is proof of its success. We only ask the size of the flag and pole be reduced to a realistic and lawful level. Now I live four hundred feet from the flag. There are days when its very windy and I dont hear anything. There are other days when theres just a slight wind and its very disturbing, it just depends on the direction of the wind. If you do your study on a day when its, the wind is going in a different direction, itll have, itll show nothing.

MAYOR PRO TEM REESE

Thank you, Sir.

JOSEPH PIRACCI

But Im just here to say its very disturbing.

MAYOR PRO TEM REESE

Thank you very much.

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TOM McGOWAN

Tom McGowan, Las Vegas resident, American veteran, proud American, and proud to honor the American flag, properly displayed. I note with interest you have attorneys on this dais, at least one of em whod know immediately that when you failed to allow public comment on Item 124 and voted without public hearing, that constituted a disorderly meeting. All actions taken during a disorderly meeting are unlawful actions, null, void and non-binding. So that says the point here. Youre not gonna decide this issue today. It was decided a long time ago. Gentleman by the name of Roger Williams, who wrote the letter to the townsmen of Providence, Rhode Island, a hundred and twenty-eight years before the signing of the Declaration of Independence. He said: Liberty is not license. Thats the whole issue here. Its not about the flag, not a flagpole. Its not about Hummer or Towbin. But its about all of you. Where do you get off? If you can say free speech, you can say anything. Wrong. You have to keep it within bounds. And think about the people. And I may do that too someday. Thanks.

CONNIE KLING

Hi. Im Connie Kling. I live in the County section, around the corner from the Towbin dealer. Once of the things that I wanted to bring up is the fact I did some research on flagpoles of this size. These flagpoles start at a hundred-foot. They go up to two-hundred feet. The recommended size flag, and thats the maximum recommendation, for a hundred-foot flagpole is thirty by fifty. And even at that, I have been told that you cannot fly the flag at half-mast, which is the way it is supposed to be flown when theres, say, the death of a president or a national situation, which they encourage for that. Now one thing that I also learned is that these people have two hundred-foot flagpoles in front of their business and the flag size they fly is twenty by thirty-eight. They fly it that way for appearance and also for the fact that they can lower it to half-mast without it being a problem, because that is the correct way to fly the flag. I am encouraged, I have to say, by hearing of Mr. Towbins previous patriotic acts. To me this indicates that he is concerned about flying an appropriate-sized flag in an appropriate fashion, and showing the proper respect and care for that flag. Previously Ive seen that flag tattered and torn, I admit, in windy times of year. However, its not supposed to be flown that way. Perhaps with a smaller flag, it wouldnt be as prone to tear. Perhaps it should be changed more often. I dont, not sure where to put this at this moment. Okay. This is, I dont know if you wanna, get in on that. This is another picture, when it, fine tunes there.

MAYOR PRO TEM REESE

We, weve seen that picture, Maam.

CONNIE KLING

Yeah. Okay. Then you can see that taking this flag down, they are completely disrespecting and disgracing the flag. The flag is never supposed to touch the ground. The people taking the flag down are supposed to stand at attention if they are not military. This does not happen. My biggest concern, Mr. Towbin has the flagpole up, let him keep it, but go to a smaller flag. Reduce the noise in the neighborhood. Maybe you can kill two birds with one stone there.

MAYOR PRO TEM REESE

Thank you, Maam.

COUNCILMAN WOLFSON

Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

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COUNCILMAN WOLFSON

Question for staff? Margo and Brad, I guess, or Mr. Henry? The lady raises a great point and I know this is something that's been wearing on us a little. We've been talking about the height of the pole for a year, a year and a half now, but we really haven't been talking as a Council on a ruling, one way or another, on the size of the flag. Are we supposed to get into the size of the flag? Because when I drove Sahara yesterday, there were different-sized flags. Logic would suggest the larger flag has the potential for making more noise, whereas a smaller flag, less noise. Are we supposed to get into a discussion on the size of the flag?

BRAD JERBIC

In my opinion, no. I think that all we're dealing with is the height of the pole here, but Margo is agreeing with me.

MARGO WHEELER

If I may, the zoning ordinance does not speak to the size of the flag and, frankly, I've never seen a zoning ordinance that does speak to the size of the flag. Only the permanent structure of the pole is what is governed by Title 19.

MAYOR PRO TEM REESE

Thank you. Yes, Sir.

COUNCILMAN WOLFSON

We don't even get into that discussion at all?

MAYOR PRO TEM REESE

I think it'd be up to Councilwoman Tarkanian, if she wants to get into the size of the flag. Yes, Sir.

WAYNE EARL

My name is Wayne Earl. I've been a resident of Las Vegas since 1940. Some of you don't remember those days. I knew a lot of the mayors. I knew a lot of the City Councilmen. I've never seen so much squirming in my life as I've seen in this particular Council Chamber. The issue is clear. It's the size of the flagpole. The Code says the flagpole should not be over forty feet tall. So somebody asks for a variance and you guys are willy-nilly about it. And you get yourselves in a jackpot like you're in now. Another issue that I, occurs to me that is important in this particular case is perjury. If I stand here and lie to you people, I'm liable for perjury. I was at the meeting on May the 16th, when the Mayor pointedly asked Mr. Towbin how much he expected to spend on this memorial. Towbin's answer was twenty thousand dollars. Well, he's not near the shrewd businessman that I think he is if he paid twenty thousand dollars for something that's two and a half feet tall and a foot and a half wide.

MAYOR PRO TEM REESE

Thank you, Sir, appreciate it. Yes, Sir.

JOHN BAIETTI

I'd like three points made, John Baietti, 2001 Red Rock, I want to rebuttal my lovely and gracious neighbors here. I live about three blocks from the Towbin store and I've lived there for the better part of a year. So I'm involved in this thing and I drive Westwind every single day. I drive Obannon almost every single day. I bothered to park by the dealership on a windy day, over twenty miles an hour, and I bothered to get out of my truck and I bothered to stand there for about

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thirty minutes and I noticed the following. Number one, every single car that went by was louder than the flag. Number two, I noticed that when the flag moved, which is only a small percentage of the time, the noise, you could barely hear it. Can you hear it? Yes, you can. So are they telling the truth, can you hear this flag? Yes, you can. But you can hear a lot of things. Again, if anybody bothers to go out there, I know you guys are too busy, you'll notice that there's noises everywhere. And I can't imagine a better noise than the flag. The second thing I wanna say is that the reason the flag has to be a hundred feet is just like at the nation's capital. The flag represents patri (sic), you know, a freedom over everybody. So the higher the flag, its freedom around, its freedom that is spread around, that's why you want your flag high. And I agree with the Towbins, they should get this.

MAYOR PRO TEM REESE

Thank you.

JOHN BAIETTI

Everybody else has it.

MAYOR PRO TEM REESE

Thank you.

AL GALLEGO

Al Gallego, citizen of Las Vegas. It's the flagpole, this is the issue, not anything else. Well I'm American. That's why I'm wearing my American hat, but I'm gonna take it off for respect for the City Council. Two years ago, I went to Fort Bragg, North Carolina, and I got this hat. And every single day I wear it, the 82nd Airborne Division. So I'm gonna take it off in respect to the City Council. It's a flagpole. It's nothing to do with anything else. They just put a new flagpole over here on Veterans Memorial. This gentleman that, I don't know what he is, says he doesn't hear it. I live about a hundred yards from there and I hear it every single day, when the wind blows a certain way. It's not the way the wind blows, just the certain way, the way the wind blows. And it's nothing to do with anything else. You know what it is, money. This man wants to show that he has some money, and he's got to shove it to you people and you better think about it. Thank you.

MAYOR PRO TEM REESE

Thank you.

TED RUSSELL

Good afternoon, my name is Ted Russell, resident of Las Vegas. Mr. Lincoln warned us that patriotism is the last refuge of scoundrels. I see no scoundrels here, but I'm disappointed in our republic in that, the last time I checked the First Amendment, there was nothing about motive, as if there are forensics involved, or some kind of criminal complicity or what is his motive. Mr. Towbin was doing quite nicely before he put this flagpole up. When I buy a car, I buy a car. Flags don't influence me one way or the other. I'm very much in favor of his being granted an extension.

MAYOR PRO TEM REESE

Thank you, Sir.

TED RUSSELL

Thank you.

MAYOR PRO TEM REESE

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Miss (sic) Tarkanian. You have any comments or questions before we allow Mr. Chesnoff a couple minutes?

COUNCILWOMAN TARKANIAN

Well, a few things I do wanna clear up. First of all, about some of these citizens living in the County, this is a County island surrounded by the City and thats why you wouldnt actually

MAYOR PRO TEM REESE

Do you wanna let Mr. Chesnoff have a couple minutes?

COUNCILWOMAN TARKANIAN

Oh, let him have it. Certainly.

MAYOR PRO TEM REESE

Yeah. Okay.

COUNCILWOMAN TARKANIAN

Thats fine.

MAYOR PRO TEM REESE

Mr. Chesnoff, two minutes, please. Mr. Henry, youre through.

BILL HENRY

I am through.

MAYOR PRO TEM REESE

Youre through.

DAVID CHESNOFF

Thank you, once again, for listening to me.

MAYOR PRO TEM REESE

At this time, I will close the public hearing.

DAVID CHESNOFF

Thank you. The first thing I wanna say for the record is I was somewhat startled that the City Attorneys Office was taking a position as though they were speaking for the City since its the City thats about to vote on what we do. I will, in essence, they were taking a position as an advocate against my client when reality the question before you is whether youre going to approve what youve already approved and then if theres a need for a lawyer, I guess in Mr. Henrys words, you could lawyer up. But it was a little startling to me to hear the City Attorney taking a position, Im surprised if he feels as strongly as he does, that these variances have been given out illegally, that he hasnt brought Mr. Herbst in to take down his ten flagpoles, and indicated to you in a legal opinion that all these variances that you given out have been illegal. Now that seems to be the position that he took.

MAYOR PRO TEM REESE

Beverly, two minutes.

DAVID CHESNOFF

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In addition, I'd like to say the following. As far as Mr. Sanson from the veterans group, I wanna make part of the record a CD which contains an advertisement that Mr. Sanson participates in. He was seeking a position as the public administrator, a paying job, and in that he is shown with the American flag flying behind him. Make that part of the record. We've never had a hundred and thirty foot flagpole. Never had one, never cut it down to size as Mr. Henry said. We have what we got from the company where we ordered it. We've never had a bigger flag and cut it down. Everything has been just the way Mr. Towbin has described it, he ordered what he ordered. The flag company made what they made. I'm gonna make, for part of the record, an explanation on the question of why it's over a hundred feet and how that happens in the trade so that you'll see that there wasn't any attempt on Mr. Towbin's part to do anything inconsistent with the variance that you approved.

I think you need to focus on the fact that you did grant the variance, that you did it for the right reasons, originally, that Mr. Towbin fulfilled now his responsibilities. The reason it was twenty thousand dollars is the actual, final bronze plaque, which is gonna be there, has been fabricated. What you see on there now is the prototype. The rest has been contracted for as we explained. That's why it's twenty thousand dollars, to answer the last gentleman's question. I can only ask you that you follow your initial instincts, that the hundred-foot flagpole was an appropriate manifestation of patriotism. I think that if somebody really believes there was a noise problem, a scientific study like the one we presented would have been an appropriate way to respond. I agree with the Councilwoman that this is an island of County people in the City, but that's just what it is. They're members of the County, not the members of the City. I live in a similar one. I'm out on Deer Spring. Appreciate all the consideration we've received and I hope that at the end of the day, you will continue to allow Mr. Towbin to express his patriotism and express his First Amendment rights which we believe are implicated by this by showing the flag and the words on the memorial. Thank you.

MAYOR PRO TEM REESE

Thank you. Councilman, are there any comments by the other board members? Councilman Brown, please.

COUNCILMAN BROWN

Thanks, Mayor Pro Tem. I just have a couple initial questions for clarification since, obviously, we're making a public record, both the applicant and the City. And I apologize if I have the speaker wrong, but there was a comment made regarding the First Amendment and the statement that the City Council imposed on the applicant the construction of the monument. And I just wanna clarify, I don't think we imposed that, I think that was indicated by the applicant. He was willing to put that as part of the application and the City included that in the conditions.

BILL HENRY

That's what the record reflects.

COUNCILMAN BROWN

Okay.

BILL HENRY

From the previous meetings.

COUNCILMAN BROWN

I appreciate that. And then, is the gentleman with the sound still here?

DAVID CHESNOFF

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Yes.

COUNCILMAN BROWN

Is he available? So I understand your conclusion in the report and your verbal comments, you indicated that the decibel readings of the flag versus the norm of the background on Sahara, the flag was less than Sahara?

LUKE SAXELBY

Yes.

COUNCILMAN BROWN

Now, in the report, I looked at it, but I didnt see it. Does it take into, factor, does it factor in the height there also, the norm on Sahara, Im guessing, is at ground level, and the difference in measuring ground level noise ambience versus a hundred feet up.

LUKE SAXELBY

Okay. We dont measure noise, certainly, a hundred feet up in the air. I dont really understand the question, I guess.

COUNCILMAN BROWN

Well

LUKE SAXELBY

Are you asking

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COUNCILMAN BROWN

If someones standing a hundred feet away on the ground making noise and I hear that, if that same person is on a platform a hundred feet up, making the same amount of noise, am I hearing the same,

MAYOR PRO TEM REESE

Good question, Councilman Brown.

COUNCILMAN BROWN

the same amount, the same noise level?

DAVID CHESNOFF

Are you, if somebodys shaking a noisemaker a hundred feet away from you

COUNCILMAN BROWN

On the ground.

DAVID CHESNOFF

and the identical noisemaker is being shaken a hundred feet in the air

COUNCILMAN BROWN

Right.

DAVID CHESNOFF

based on your scientific knowledge, will the person hear the noise up top the same as hell hear the noise on the ground, correct?

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COUNCILMAN BROWN

I believe, one of the key issues is the, and part of our record on approving it back when, was very clearly stated by the Mayor and certainly the Council, the impact on the neighborhood was one of the things we would review when it came back in six months. And I believe what the neighbor said. There's obviously conflicting statements from various neighbors, but those that hear the flag are hearing the flag. But your report and you're hired as the expert, from a record, if this goes further than the Council, I just need to understand. I appreciate what you said about it being less, the flag being less noise recorded versus the background on Sahara, but I'm still trying to figure out if that background norm on Sahara is different from a hundred feet up in the air where you're registering the flag noise.

LUKE SAXELBY

The, you know, if you measure the noise up in the air, a hundred feet up in the air, the traffic noise would be about three dB louder. So if you're measuring the flag noise up in the air, the flag noise would be louder, about three dB louder also. So it would be a wash. The net difference would be the same. The flag noise would be louder up in the air. The traffic noise would be louder up in the air. So the two would blend together. The net difference would be a wash, hundred feet up in the air.

COUNCILMAN BROWN

And it's your

LUKE SAXELBY

Does that answer your question?

COUNCILMAN BROWN

It does.

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LUKE SAXELBY

Great.

COUNCILMAN BROWN

Its your opinion that despite what way the winds blowing or the intensity of the wind, thats going to be the same. The norm on Sahara and the hundred-foot flag is going to be the same recording, regardless of

LUKE SAXELBY

I cant answer the question regarding different wind conditions. We reported the noise levels for the wind conditions that we saw, certainly. So I can only answer the question relative to the wind conditions that we saw.

COUNCILMAN BROWN

Okay. And then

COUNCILWOMAN TARKANIAN

Mr. Mayor Pro Tem, before we leave this, could I just interject

MAYOR PRO TEM REESE

Yes.

COUNCILWOMAN TARKANIAN

to Councilman Brown, as someone whos been a certified, nationally certified audiologist for many years of my life, I would like to say its extremely difficult. Id be glad to show you my certificate, if youd like. The, its extremely difficult to use that type of measurement in outdoor situations. For example, the questions Councilman Brown had were very good, but a gust of wind here is, as the one gentleman explained, if it comes from this direction or that direction and the ambient noise. The ambient noise has a lot to do with it, you know. You might be taking a getting a little bit more from Sahara. It seems most of our problems are coming in the latter hours of the day. And I think that, I thought of taking, quite honestly, a noise analysis, but I didnt feel it would be beneficial because its a certain period of time with a lot of complications and you dont know if the gusts are going this way. I mean, you could have a gusty day, but its not coming from the right direction to affect the flag that much.

LUKE SAXELBY

Sure.

COUNCILWOMAN TARKANIAN

But I think thats just an important thing to know. Im sorry for interjecting.

COUNCILMAN BROWN

Appreciate that. Two other questions, to clarification (sic). One is an obvious one, I think. Councilman Wolfson touched on it a little bit. If this public record is being scrutinized later on, Mr. Henry, I just need to understand this variance. What youve indicated, and I understand your overheads, the question would be if, in fact, our action violated both City and State law, then how do we remedy or justify the decisions on at least these other twelve flags that are listed on the handout that was part of the record. I mean, as far as our discretion

BILL HENRY

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Well, off the top of my head, and perhaps the Planning Director could help out or correct me if I'm wrong, but I seem to recall that the Code provides that variances are granted not permanently, but for two years at a time. Not so?

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MARGO WHEELER

If I may, there are exactly and I am getting it right, eight variances for flagpoles over a hundred feet or over. In each of those cases, of course, following public hearings whereby the neighborhood has been advised and then the Council ultimately takes into consideration that individual flagpole in that individual location and makes a determination as to whether or not that variance is appropriate at that location. So while it is interesting, of course, to have this information before you, the decisions is made by the Councils at that time over the last decade, have been based on those individual circumstances at those individual locations.

COUNCILMAN BROWN

Our ability as a Council to use discretion and avoid being arbitrary and capricious, that has been a governing tenet, at least, since Ive been on this board. And yet Im not real comfortable with being told that weve violated the law.

BILL HENRY

Councilman, Title 19 has changed over the years that youve been on the Board. Generally, when you first took the Board, your seat on the Board, Title 19, in many areas, provided for, legally, provided for the Council exercising more discretion. There came a time when the Council directed staff to rewrite Title 19 and you went through a process more than a year long, and as part of that, and part of the direction, we took a lot of the discretion out. The variance area of Title 19 seems to limit your discretion substantially or even channel it. It tell you that you cant grant it just to relieve a personal or self-created hardship. And then it also tells you that its available to deal with geographical hardships, where someone has a piece of property that is uniquely small or oddly shaped or narrow. And that appears, to me, to be the limit of your discretion. And that as far as I can tell, that manifestation of the limit of your discretion is written into your backup documentation by Planning, I think, every time.

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COUNCILMAN BROWN

And perhaps we need to evaluate the timing of some of these and, looking into the future, separate from where we are today, I think we need some clearer guidance on that Title 19 in our ability to act on variances. My last question of clarification and Im not sure if anybody has the answer, maybe one of the veterans that are in the room. Are flags supposed to be flown twenty-four/seven? I want

MAYOR PRO TEM REESE

You asked one of the veterans. Mr. Sanson, please.

COUNCILMAN BROWN

Well

STEVEN SANSON

The answer is no. And one of the things I saw in the picture

COUNCILMAN BROWN

Well, what do you

STEVEN SANSON

is when they took the flag down

COUNCILMAN BROWN

Well, that

STEVEN SANSON

the flag hit the ground

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COUNCILMAN BROWN

Just the question.

STEVEN SANSON

The answers no. The flags not supposed to be flying twenty-four hours.

COUNCILMAN BROWN

And is that, and I ask with all due respect, is that

ED MULLER

No, Sir. Flags can be flown twenty-four/seven, as long as its properly flown.

STEVEN SANSON

No

ED MULLER

Flag can be flown as long as it (sic) properly lit

MAYOR PRO TEM REESE

Sir

ED MULLER

flown twenty four/seven.

MAYOR PRO TEM REESE

You need to come over here and state your name and address again for the record, or name again for the record.

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ED MULLER

My name is Edward Muller. I live at Local Weed Court. Last years commander of the VFW. Flags can be flown twenty-four/seven if theyre flown properly. Thats all it says.

AL GALLEGO

Wait a minute

ED MULLER

I will, Ill get you a copy

MAYOR PRO TEM REESE

No, Mr. Gallegos (sic)

ED MULLER

of the manual on how to fly a flag. If you need it, I can go get it and bring it back in another half hour.

COUNCILMAN BROWN

What I, you dont need to do that, but again, for future, helpful to me as far as flag decisions. This manual, is it put out by the federal government? Is it put out by a veterans group? Is it

ED MULLER

No, its put out by the federal government.

STEVEN SANSON

Government.

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COUNCILMAN BROWN

And thats considered, basically

ED MULLER

Yes, Sir.

COUNCILMAN BROWN

the proper way

ED MULLER

I have a flag, when I first got here, I moved here three years ago. And I bought my flag, my twenty-foot flagpole with an eagle on the top of it and everything. And I started to dig a hole, this guy says, what are you doing? You cant do that. I didnt I never lived in a, what do you call, a homeowners association. He says, youre gonna have to get permission to do that. I said, like hell, I am. I put the flagpole up. I got a light on it. I fly it twenty-four/seven. I tell, I will say one thing, some days I take it down when the gust of winds are forty, fifty miles an hour. I mean, flags cost some money, so it tears em up pretty bad, but I fly mine twenty-four/seven, Sir. And I fly it according to the U.S. Government rules.

MAYOR PRO TEM REESE

You got your questions answered, Larry?

COUNCILMAN BROWN

Thank you.

MAYOR PRO TEM REESE

Thank you.

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STEVEN SANSON
Councilman Brown

MAYOR PRO TEM REESE
No.

STEVEN SANSON
I just wanna interject just a little bit, if you take a look at any United States Post Office, they take their flags down.

MAYOR PRO TEM REESE
Thats fine. We, Councilman Brown says he got his questions answered.

AL GALLEGO
No, he hasnt, Sir.

MAYOR PRO TEM REESE
Thank you, Al.

AL GALLEGO
Councilman Brown, it hasnt been answered.

COUNCILWOMAN TARKANIAN
Mr. Pro Tem, Mr. Mayor Pro Tem, I would just like to say that we have a number in our office that if anybody wants to know those rules and regulations, we can give it to you. And then you can call and find out all that information and well be sure to give it to Councilman Brown. But it is a little confusing because sometimes you get one little booklet here and it isnt quite the same as the others. So you have to go right to the federal standards because the size of the flag and how you fly it is all federal regulations.

MAYOR PRO TEM REESE
Thank you.

MARGO WHEELER
If I may, Mayor Pro Tem, just very briefly, I posit one sentence. In answer to the Councilman Browns questions, to get us on the record, I wanna make sure that were discussing all the variances that have been granted, we have on the record that two variances have been denied for over-height flagpoles and one was withdrawn. Additionally, in answer to the question where the issue of the monument first came forward, it was in a letter dated February 06, 06, submitted by Mr. Marcello on behalf of the applicant, was the first reference to the monument. Thank you.

MAYOR PRO TEM REESE
Thank you. Mr. Jerbic.

BRAD JERBIC
I just wanna put a couple things in the record real quick. One, before you may get caught up in whether the American flag should be flown after dark or before dark, this flagpole is not tied to an American flag. This is a flagpole. This could have any kind of flag on it imaginable. It could have a white flag of surrender on it. This is not content specific. This is merely the height of a flagpole and so I didnt want the record to reflect that you were basing a decision based on a content specific

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decision. And I dont think that the Court allows government to make those decisions. They should just be based upon the flag, the pole and the impact it has on the neighborhood.

The second, to answer the question regarding variances at other locations, I think Margo gave the correct answer. Every site is unique and specific. Its entirely possible that all of those sites meet some hardship burden. Its entirely possible that none of them do. But thats not relevant to the Council today. Those would have to be looked at on an individual basis if they came up for review.

DAVID CHESNOFF

Mayor Pro Tem, may I ask a question of the City Attorney?

MAYOR PRO TEM REESE

One question.

DAVID CHESNOFF

Mr. Jerbic, you would agree, though, that whatever application is made, there has to be a guarantee of equal protection, that the same standards apply to our application for a variance that applied to the other people that have already gotten em, including the eight or so from Mr. Herbst.

BRAD JERBIC

I agree that, yeah, the law on variances is the same for any application

DAVID CHESNOFF

Right.

BRAD JERBIC

the same for you and for anyone else.

MAYOR PRO TEM REESE

Mr. Jerbic, it seems to me like, though, that we have the ability to discern on each application for a variance or special use permit separately from one up the street, down the street or across town. We have the ability to look at how its gonna impact each and every neighborhood differently. I know we have a Herbst station down on Nellis Boulevard on the Citys side, down close to, north of Charleston, that theres not a neighbor within, probably, at least half a mile. And so that application be, come forward, we didnt have any neighbors coming there, we didnt have people asking us, we didnt have any problems or concerns about whether this was gonna impact a neighborhood. And I think some of these applications definitely have to pass that muster how it is gonna affect a neighborhood. And its, it really is too bad that Sahara Avenue does have some of these flags, applications for flags on it because of the dealerships. And again, weve had many issues and, about the dealerships being on Sahara. But I think that we, I feel comfortable in being able to discern whether this flag or any flag should receive a variance, whether its for the shape of the lot or for the, whatever reasons that it may be. And I feel comfortable in saying yes on one and maybe no on another because of those conditions that surround each and every individual application.

BRAD JERBIC

I think youre correct, absolutely. The land use impact is a factor in every application, so even if somebody met the requirement of a variance, you could always deny it because you felt that the impact on adjoining land uses was adverse.

MAYOR PRO TEM REESE

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Thats right. Thank you. Councilwoman?

COUNCILWOMAN TARKANIAN

Id like to get back to the fact that the reason why we have County people who have been involved in this is we are a small County island surrounded by the City and there are items there that I work with the County, with Chip Maxfield, on. And these are just all the citizens together. You noticed you had almost every citizen, you had twenty-four people who had protested just in one set that was to you. I dont know if the same ones, some of them were, but I dont know if all of them were, that came here. You have almost an entire older little neighborhood that was there a long time before car dealerships, tucked in there. And one reason why we, I feel, just as you said, Councilman Reese, that you have to look at each individual situation, we have in Ward 1 one other one hundred-foot flagpole and it is on a Herbst. And that Herbst, however, the subject property of Herbst is not directly adjacent to any homes. Whereas here, this is adjacent to several homes and theres where a difference comes in as far as decision-making, I think.

I also wanted to just get back a tiny bit. Please understand that the, these little machines that you judge the sound with and everything, they dont just even stay in one place, you know. You can see the sound according to if a car goes by, if the wind blows in another tree near you. It and one of the TV programs within the last year, it showed that type of thing as they were measuring the sound. It didnt stay steady. It goes back and forth so your day is one day and its an average of that day which would be sometimes below the average and sometimes above the average.

The flagpole is the issue. Its, but the flag its flying, the thirty by sixty, is eighteen hundred square feet. And as you saw in those pictures, thats like a small house. And thats why I think if the wind hits it right, that theres, that you have that noise problem. And I noticed on some of the TVs that the situation that I saw, that the flag was tattered. And I know, maybe it was the same lady that had come to us before and mentioned that. And at the time, I must tell you, I didnt think that it would get tattered that soon. But it might be, as she said today, because of the size, where the height is on the flagpole because on television, it is very obvious that the flag has tatters. It looks like a new flag, but its tattered right up and down the line.

Now the popping sound that sounds like a gun, somebody else that spoke said that I dont know how that could be. Well, I want you to know weve had two or three calls and theyve given the same description, and I know you already have the letter from that lady, but Id like to pass down to you, this is the lady who said she called the police. I just want you to see, she did call the police and she did say it was gunshots. And this was some time ago. So there has been a problem with some consistency there.

Id like to also say that, begin by saying that hearing sound depends on your hearing ability, depends on the ambience or your environment, how much noise is there, whats coming in. Its just like our case with the FAA which I know Councilman Wolfson has been very interested in. Im sure you, we all receive the same letters. Some people, it bothers a lot and some, it doesnt. But thats because at certain times, it hits the right way where it may bother certain areas a lot and not the others.

I would like to begin by saying I respect the patriotism of everybody here, everybody. And I know very well how patriotic this City Council is. It took steps that other government agencies hadnt taken to protect homeowner association members so that they could fly their flag (sic). And they did that some time ago. When I look at the American flag, it, to me, I think of honor and honesty. I think of living with equality under the rules and laws of our elected government, so we all have a fair chance. So our chances dont depend on power or money, but on the rules our elected officials have put together. We have residents in our area, this area were talking about, who have trust in our words and in our laws and our regulations. The applicant at the Planning Commission meeting on March 23rd, 06, after questions of noise were brought up by the Commissioners Truesdell and Evans and some members of the public, that applicant representative, Mr. Marcello said, to the

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neighbors and to the Commission, that if the neighbors came to realize that the sound of the flag during the evening hours is disruptive, quote, he would agree to a condition requiring that the flag be taken down, unquote. That was in March of 06.

A similar statement was made at the City Council meeting of May 3rd, 07, by Dan Towbin when Bryan Scott asked, what is the, oh, no, excuse me, of 06. When, what is the six-month review going to be for, and this was mentioned earlier. What is the six-month going to be for? And that's when Oscar Goodman, our Mayor, mentioned that if it came back to the Council, we could make a decision and Mr. Councilman Reese, I have a videotape, I would like to show, if we could, of that, which shows that a second time, they were told that they would take it down. Would you mind if we showed it? I think it's a couple minutes.

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MAYOR PRO TEM REESE

You think its appropriate?

COUNCILWOMAN TARKANIAN

Well, its, you already have the quotes given to you by the other people, I could, and I, fact, I think they were given to you by Mr. Henry so you dont have to show it if you feel theres too much time being taken up.

MAYOR PRO TEM REESE

Oh, no. We got all night. I just wanna feel like, I just wanted to ask you if you felt like its imperative that we listen to the

COUNCILWOMAN TARKANIAN

Well, I think it shows that the Mayor has stated strongly that yes, you wont have any choice.

MAYOR PRO TEM REESE

Well, but again, though, with all due respect, you know, the Mayor has abstained on this item today.

COUNCILWOMAN TARKANIAN

Okay.

MAYOR PRO TEM REESE

So I dont believe that would be

COUNCILWOMAN TARKANIAN

Well, the main part of it is Mr. Towbins comment anyway.

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MAYOR PRO TEM REESE

We will allow it then.

COUNCILWOMAN TARKANIAN

So if we could begin that.

MAYOR PRO TEM REESE

Yes.

DAVID CHESNOFF

Mayor Pro Tem, since this is new

MAYOR PRO TEM REESE

This is not the courtroom.

DAVID CHESNOFF

No, I understand. Will I get a chance to respond in any way because

MAYOR PRO TEM REESE

Yes, absolutely.

DAVID CHESNOFF

Thank you, Sir.

COUNCILWOMAN TARKANIAN

But Mister

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MAYOR PRO TEM REESE

Yea, thats fine.

COUNCILWOMAN TARKANIAN

Pro Tem. This is not new. This has been on the record all the time.

DAVID CHESNOFF

Then why are we playing it?

COUNCILWOMAN TARKANIAN

Because I wanna re-emphasize everybody up here was present during it.

MAYOR PRO TEM REESE

Councilwoman, well hear the tape. Lets see the tape. Roll the tape, please.

COUNCILWOMAN TARKANIAN

Oh, my.

MAYOR PRO TEM REESE

Where is Mr. Riggleman when you need him? Youd think it was in the County or something.

COUNCILWOMAN TARKANIAN

If we cant show it

MAYOR PRO TEM REESE

I see the Mayor there. Its on there.

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COUNCILWOMAN TARKANIAN

Is it showing?

MAYOR PRO TEM REESE

We need sound, please.

DAVID CHESNOFF

We dont have a visual, Mayor Pro Tem.

MAYOR PRO TEM REESE

Mr. Henry, can you see it up there?

BILL HENRY

No.

DAVID CHESNOFF

Its not showing on the

COUNCILWOMAN TARKANIAN

Well, while were waiting for that, could I add something else?

MAYOR PRO TEM REESE

Absolutely.

COUNCILWOMAN TARKANIAN

I would like to say that I did ask because I was concerned about the noise factor and I did ask Mr. Marcello and Mr. Towbin if we could reduce the size of that flag, if you may recall, I made that motion at seventy-five feet. And at that time, the almost exact quote of Mr. Marcello was, well, before the vote was taken, just before the vote was taken, he asked if he could say a few words and he said that theyd rather not have the seventy-foot flag, they would rather have it denied if it could be a hundred foot.

MAYOR PRO TEM REESE

Okay. Were ready for the tape now. Can we show the tape, please?

**(VIDEO PRESENTATION FROM THE MAY 3, 2006 CITY COUNCIL MEETING
RESUME DISCUSSION)**

COUNCILWOMAN TARKANIAN

I think that shows the commitment that was made by the applicant as well as the other time it was stated that it would be taken down during the Planning Commission. And what happened was, it wasnt taken down. We went to court. And I think that this is a problem that we face all the time and I know we need to address it.

DAVID CHESNOFF

And now may I respond, Mayor Pro Tem?

MAYOR PRO TEM REESE

Yes.

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DAVID CHESNOFF

Thank you. I dont think theres any question that Mr. Towbin said he would take it down if there was a reasonable basis to take it down, but having complaints from people that dont live in the City as a basis for the City Council voting to rescind the variance that they granted is not a reasonable basis. And secondly, I think if were gonna talk about honesty in politics

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MAYOR PRO TEM REESE

Mr. Chesnoff, I really gotta

DAVID CHESNOFF

I really wanna finish, Mayor Pro Tem

MAYOR PRO TEM REESE

Well

DAVID CHESNOFF

cause I have a record to make.

MAYOR PRO TEM REESE

Okay.

DAVID CHESNOFF

Councilwoman Tarkanian, if were gonna talk about honesty in politics, then we should also point out that all those complaints came in about a three to five minute period of time, at the same time, which suggests that those complaints from non-City residents were orchestrated.

MAYOR PRO TEM REESE

Now, were not

DAVID CHESNOFF

So I

MAYOR PRO TEM REESE

Were not gonna go down that path. Absolutely not.

DAVID CHESNOFF

Excuse me?

MAYOR PRO TEM REESE

No were not going down that path.

DAVID CHESNOFF

No, Mayor Pro Tem

MAYOR PRO TEM REESE

No.

DAVID CHESNOFF

I tried to raise the level of this and not make it

MAYOR PRO TEM REESE

No.

DAVID CHESNOFF

contentious.

MAYOR PRO TEM REESE

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No

DAVID CHESNOFF
But were hearing the past.

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MAYOR PRO TEM REESE

Mr. Chesnoff, please.

DAVID CHESNOFF

Mr. Towbin apologized for what happened.

MAYOR PRO TEM REESE

Thats fine.

DAVID CHESNOFF

Okay.

MAYOR PRO TEM REESE

But what were not going down them kind of paths. And to clarify things, we represent cross-sections of this whole valley in the City of Las Vegas. We have working agreements with the County. We dont look at anybody that lives next door to our, or across the street from a City park, they cant go into it because they live in the County. We dont distinguish between this Arbys over here and an Arbys over here because its in the City. Theres no distinction when were in the boundaries of the City. We have many County pockets, and we have one here and so we look at this as protecting those people that live within the, they got the jurisdictional boundary, but they live close enough to the City of Las Vegas where we feel responsible to them. And so thats to clarify the record. And I feel like its, these people are just as important to us as people that live next door to me in the City.

DAVID CHESNOFF

And I respect that.

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MAYOR PRO TEM REESE

Thank you.

DAVID CHESNOFF

I was just suggesting that perhaps it would have been pointed out earlier and didnt take us to point it out.

MAYOR PRO TEM REESE

Thank you.

COUNCILWOMAN TARKANIAN

Mr. Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

COUNCILWOMAN TARKANIAN

Id just like to say that this problem emanates in the City and if we have something thats in the City causing problems in the County, we do listen to other County people in addition to what you said. I never heard, at any time, mention that if there was a reasonable basis, it would be taken down. All I hear from the quotes, all I see from the tape and whats in the transcripts is that it would be taken down if neighbors had concerns or complaints. And as far as honesty in politics, Mr. Chesnoff, I did not tell anybody to write a letter here. Excuse me.

MAYOR PRO TEM REESE

Councilwoman

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COUNCILWOMAN TARKANIAN

Okay. Im sorry.

MAYOR PRO TEM REESE

I never let him go down that path, so Im not gonna let you go down that path

COUNCILWOMAN TARKANIAN

Okay.

MAYOR PRO TEM REESE

either.

COUNCILWOMAN TARKANIAN

Okay. Winding down. This is not about patriotism. Its not about Mr. Towbin or myself. Its about our City Council representing our citizens. A variance was granted with the neighborhood, understanding that if there were problems, and being told twice, the flag would be taken down. Now they came back and said there were problems and instead we have the lawsuit. And I just think this is our own honor and our own integrity in representing our citizens. Thats how I feel.

MAYOR PRO TEM REESE

We allow Mr. Chesnoff two minutes to wrap it up and then were gonna ask for a motion.

DAVID CHESNOFF

Thank you. Mr. Towbins intentions have been pure. Mr. Towbin came to you and you approved the hundred-foot flagpole. Although this is a vote about a hundred-foot flagpole, there is no question that everybody understood that Mr. Towbin was gonna fly the American flag on that flagpole and underneath it, the State flag of the State of Nevada. There were concerns about whether or not neighbors were affected. We have provided you, at least in part, evidence that the noise is not as great an issue or doesnt rise to the level that a governing body would say the noise of the American flag is so loud that it should be taken down. Our study shows quite clearly to the contrary especially on the reference day that the citizen complained about, May 2nd, wind temperature, wind velocity fifteen miles an hour. And we showed what the sound is. Were not relying on hearsay. Were relying on scientific study, and we brought the gentleman here and anybody could ask him any questions. And this body or the City Attorney or Mrs. Tarkanian could have commissioned their own sound expert if they felt it was appropriate.

Now Mr. Towbin did this for a reason, to express his patriotism. You approved it. One of the issues dealt with the memorial. Hes apologized. What I tried to say a few moments ago is we came in here with our hat in our hand and accepted responsibility for mistakes that were made. But that doesnt mean that Mr. Towbin didnt want to fight for his right to keep the flag flying if he didnt believe that the last hearing when he was told he was doing it for commercial purposes, not because it was a reason, he was told by this body, in no uncertain terms, that he was flying this for commercial purposes and that was the complaints that was mostly aired the last time, not the noise. So he felt he had to defend his patriotism by challenging this. And really what he asked for last time was a chance to make a presentation and Judge Villani agreed that thats what should have happened so that we could have this free expression of dialogue about the most important symbol of our country, the American flag. And thats what weve had. And I ask every one of you to understand that when Mr. Towbin put this flag up, he did it for the right reasons and when you approved it, you approved it for the right reasons. And there has been no difference between what you did for Mr. Towbin on this record and what you did for Mr. Herbst. You can talk about the fact that there may have been differences, but nothings been put in this record to suggest there were any

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differences. And Im suggesting to you that if you deny Mr. Towbin, you are denying him the equal protection of the law based on unsound scientific evidence and based on the concerns of people who are not folks that elected this particular body.

MAYOR PRO TEM REESE

Thank you. Okay. Councilwoman Tarkanian, can we have a motion, please.

COUNCILWOMAN TARKANIAN

I move to, **I move for the flagpole to be removed.**

COUNCILMAN WOLFSON

Before we take a vote, Mayor Pro Tem

MAYOR PRO TEM REESE

Yes.

COUNCILMAN WOLFSON

Before we take a vote, I would like to voice some final observations because Im going to vote a certain way and I want whomever (sic) is listening to know why I voted. So may I have that opportunity?

MAYOR PRO TEM REESE

Absolutely.

COUNCILMAN WOLFSON

for just a minute. Im about to cast a vote because I think in the final analysis, I think that Mr. Towbin should be treated fairly and like anyone else. And this agenda item proves to me, once again, that you really dont know whats going on unless ya visit the site yourself. And I went out last night with my wife at about seven oclock and parked my car on Lindell which is the street immediately east of where the flagpole is located. And I sat there for about ten minutes and listened and I observed that it was a windy night. It wasnt a gusty night, but that, it was windy enough where the flag was moving, the bushes were moving. So I took my unscientific analysis. I then drove around in the back and I parked my car in the back at a point that I believe is closest to Mr. Towbins northwest property line. And I sat there for another ten or fifteen minutes, just to listen to the flag to, in my own mind, see what was going on. I also observed when I drove down Sahara Avenue that theres a lot of flags on Sahara Avenue and you really dont notice it until you have a reason to notice it. You know three months ago, six months ago, two years ago, Im a patriotic person, Ill notice the flag, but in an instant, you move on. But when you have to consider the issue, you look at how many flags there are. Theres a lot of flags. Now I dont know that theyre all a hundred and nine feet. I dont know that the Herbst flags, cause some of them are on the other side of Sahara, so I dont know if those are City or County authorized flags. Councilwoman Tarkanian says that theyre County, so they may not even be the number were talking about. So these are other flagpoles that have been authorized to be at a certain height. And I dont know if they were a hundred feet, but they were up in the air pretty high, seventy, eighty, ninety feet. A year ago we, for better or for worse, Mr. Henry, for whether we were acting lawfully or not, we granted the variance. Mayor Goodman made a motion to allow this flagpole, the flagpole to be at a hundred feet. Interesting question, I asked Mr. Jerbic an hour and a half ago, do we have any authority over which flag flies. The answers no. Were not discussing which flag, although it is the paramount issue because weve been accused of being unpatriotic. You know, every year for the last five years, my wife and I have a July 4th party at our house. We have a bunch of flags everywhere. I walk in the parade the next day. So its insulting that this Council and us as

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individuals be accused of being unpatriotic. Thats a disingenuous and ridiculous statement. But at the same time, you know, if Mr. Towbin wants to fly the American flag or the Nevada flag or any flag, the flag advertising your business, you could do that. Its not about the flag. Its about the height of the pole, that you just happen to fly an American flag.

Back to the six-month review. Thats what were doing right now. And we were very particular in our analysis of what is our role today, what are we supposed to decide today. Once again, we already granted the variance. We already said to Mr. Towbin a year ago, you can have a hundred-foot pole and fly a flag. And now were gonna come back today, its supposed to be a six-month review but in my briefings yesterday, we learned that its as much the Citys fault, in my opinion, that instead of having a six-month review, were having a year review. We sent Mr. Towbin a letter. He didnt respond, whether he got it, I dont know. But I dont like that method. I, from now on, and I recommended this to my colleagues, when we have a six-month review, lets schedule it now. Lets not send a letter asking you to schedule it. We need to do the responsible thing, but be that as it may, here we are, a year later, even more than a year later. But the issue is, as a six-month review, what has changed. Now we had a couple of neighbors come forward, and Im sorry for being so wordy, but this is my lawyer personality coming out. We had a couple of neighbors come out and the one gentleman thats the closest spoke and I certainly respect his opinion. But there are homes on Lindell that are nearly as close as this gentlemans home, none of them came forward. Whats directly east of the dealership is commercial. Whats directly west of the dealership is commercial. Whats directly north, I believe, is a church. So its not like we have a lot of adjacent homes. The homes are kind of spotted and theyre north. And we didnt have twenty-five homeowners in the area come in and say that in the last six months, the last twelve months, its been hell. I cant sleep. Now we had that with the FAA. We had two hundred and fifty people.

COUNCILWOMAN TARKANIAN

We also

COUNCILMAN WOLFSON

If you dont mind. We didnt have a lot of the surrounding neighbors so in my analysis, it comes down to has anything changed. Mr. Towbin, its a hundred and nine feet, it shouldnt be. It should be a hundred feet and I dont buy the analysis. I mean, maybe thats the way it is, but its your responsibility. It should have been a hundred feet. Now am I gonna make a big deal over nine feet? No, but it should have been a hundred feet. Im not convinced that so much has changed from my decision of a year ago and my vote will reflect that.

MAYOR PRO TEM REESE

Thank you.

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COUNCILMAN WOLFSON

Thank you.

MAYOR PRO TEM REESE

Any other comments? Councilman Brown. You got any comments?

COUNCILMAN BROWN

No.

MAYOR PRO TEM REESE

Any other comments? Okay. Please cast your vote.

BRAD JERBIC

I would ask the maker of the motion, before you cast the vote, to clarify it. I think I know the intention is to remove the pole, but I think to do that, if I could, Mr. Mayor Pro Tem, the motion needs to be a motion to deny the required six-month review based upon the record developed by the Planning Commission, the previous record of the City Council and the arguments and record developed here today. Is the maker of the motion comfortable with that motion?

COUNCILWOMAN TARKANIAN

Im comfortable with that motion and I would make that motion.

MAYOR PRO TEM REESE

Thank you. Please cast your vote. Please post. **(Motion carried with Wolfson voting NO and GOODMAN and BARLOW abstaining)** Motion carries.

COUNCILMAN BROWN

Mayor Pro Tem.

MAYOR PRO TEM REESE

Yes.

COUNCILMAN BROWN

Two things. One, either Ms. Wheeler and/or the Attorney, Id like to, some staff member at the City whos been watching the hearing sent an email address that has, by executive order, how a flag should be displayed, taken down, flown, everything. I would like, since this may not be the last flag we handle, somehow to incorporate the appropriate handling of a flag into our City Code. So we can be consistent because according to this executive order, flags that are touching the ground, flags that are flying at night have to be flown a certain way. Flags that are in disrepair need to be taken care of. And I would like to see that incorporated somehow in the future into our Code. I would also like to state for the record that its not about a flagpole and a flag at these dealerships. Its about the size and the impact and I would encourage, if Mr. Towbin truly wants, perhaps a more appropriate flag, then the opportunity is there to come back to this Council. I would certainly support seeing a different application in the future. Thank you.

MAYOR PRO TEM REESE

Thank you.

(END OF DISCUSSION)

/cv;lc