

MINUTES

Las Vegas, Nevada
February 9, 1977

A Special Meeting of the Board of City Commissioners of the City of Las Vegas, Nevada, held this 9th day of February, 1977, was called to order by his Honor Mayor Pro Tem Ron Lurie, at the hour of 10:00 A.M.

Mayor Pro Tem
Commissioner
Commissioner

Ron Lurie
Paul J. Christensen
Myron E. Leavitt

ABSENT(excused)

Mayor
Commissioner

William H. Briare
Roy A. Woofter

STAFF PRESENT

City Manager
Chief Civil Deputy City
Attorney
Director, Department of
Community Planning &
Development
Director, Department of
Public Services
Acting City Clerk

William E. Adams, P.E.

Jan Stewart

Donald J. Saylor

Laurence Hampton, P. E.
Ruby M. Eaves

The meeting was called to order by His Honor,
Mayor Pro Tem Ron Lurie.

RESOLUTION
Approved

"WHEREAS, Nevada Power Company has continually made applications for rate increases averaging forty (40) requests for rate increases since July, 1973, many of which the basis therefor have been constantly denied in previous rate increases by the Public Service Commission; and,

WHEREAS, Sierra Pacific Power Company has likewise made continual applications for rate increases in the Northern part of the State; and,

WHEREAS, the citizens of Las Vegas, Nevada and the Board of City Commissioners for the City of Las Vegas have been vitally concerned with such repetitious rate increases, the hearings for which cost the taxpayers time and money, and have become suspect as to the efficiency of which the said utility companies are being managed as well as the continued bases upon which rate applications are requested.

NOW, THEREFORE, BE IT RESOLVED, that the Board of City Commissioners of the City of Las Vegas on behalf of the citizens of the City of Las Vegas, and the citizens of Nevada, hereby request the Legislature to appoint a commission or committee to investigate business practices and operations and the actual need for rate increases by Nevada Power Company and the Sierra Pacific Power Company."

Mayor Pro Tem Ron Lurie: The first item that I would like to take up before we get into the agenda is a Resolution that I would like to present before the Board this morning and ask your approval so that I might take this to the Legislature, and the Resolution reads as follows:

RESOLUTION
(Continued)

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Dated this 9th day of February, 1977."

M o t i o n
(Mayor Pro Tem
Ron Lurie)

I would move that we adopt this Resolution so that we can present it to the Legislature. Is there any discussion. If not, would you cast your vote on the motion, please.

The motion is approved and the Resolution will be carried up to Carson City.

Commissioner Leavitt: I would like to inquire of the City Manager and the City Attorney whether or not it's necessary to have an authorization on behalf of the City Commission for the City Attorney to appeal the applications of the rate increase hearings...have we given him a blanket authority to appeal so that it won't be necessary for us to make a motion everytime one of these things come up?

Mr. Adams: In essence, there was a blanket order by the Board to go ahead and pursue on behalf of the citizens of the City.

Commissioner Leavitt: Is that the understanding the City Attorney has that everytime we have one of these rate hearings that the City Attorney's Office would proceed on behalf of the people of the City of Las Vegas to protest the rate increase?

Jan Stewart: Yes, that's my understanding.

Commissioner Leavitt: OK. I wanted to make sure that that was clear because if there is any need for additional authority, we should take it up.

V-95-76
Denied

APPEAL FILED BY BURL J. KINNEY

to action of the Board of Zoning Adjustment in denying his application for a Variance to allow an accessory structure of 1,650 sq. ft. where a maximum of 1,213 sq. ft. is permitted and to allow a portion of the accessory structure to extend into the side yard area where no accessory structures are allowed on property located at 500 East Oakey Boulevard on the southwest corner of Beverly Way and Oakey Boulevard . R-1 Zoning.

Mayor Pro Tem Lurie: The first item on the agenda this morning is an appeal filed by Burl J. Kinney to the action of the Board of Zoning Adjustment denying his application for a variance.... Mr. Saylor.

Mr. Saylor: Mayor, it is my understanding that the attorney for the appellant is going to request that this be held in abeyance so rather than me giving my remarks, you might wish to hear that request first.

Mayor, I am John O'Brien, attorney, 225 Bridger Avenue, Suite 210 here in Las Vegas, Nevada. I am the attorney for Burl Kinney, applicant and in view of the fact that this is an appeal, we would request that this matter be held in abeyance til the next regular meeting so that the full Board of City Commissioners could vote and pass on the matter, and we think it is an important enough matter that the entire Board of City Commissioners should be here to review the matter and respectfully request that of the present members.

Mayor Pro Tem Lurie: Well, what about the members that are out in the audience that came here to protest this application, do you think that's fair to them that they have to make two trips down to another scheduled meeting

Mr. O'Brien: The problem....we would go ahead, well, we had the drawings that we have not received back from the architects and I think that they would be helpful to the Commissioners, seeing exactly what the accessory building would look like with the variance and what it would look like without the variance and I really feel that that would be of great help to the Commission in passing on the matter. I would also respectfully request that the full Board pass upon the matter and I recognize that there would be an inconvenience to any of the protesters and I would have notified them in advance if some prior - if some way of determining whether the request was going to be granted and it takes the present members to vote on it so

Mayor Pro Tem Lurie: Well, let me see how the other Commissioners feel. Do the Commissioners want to hold this item til the next regular meeting or do you want to proceed now with the hearing this morning as it was set for?

Commissioner Christensen: Why don't we find out who's here to appear also, whether they are willing to wait to another meeting and reappear or what, let's find out how the other side feels about it. They may be perfectly willing.

Commissioner Leavitt: What could happen, technically, I guess, no matter which way the vote went, if the person that won only got two votes he could still lose before a full Board, it's a possibility. If the vote was two to one either way it could be that two other Commissioners could side with the minority and it would be a three /two vote I don't know whether that's going to be the situation cause I don't know what the other Commissioners are going to do, but I know what I'm going to do at this point but that is a possibility that could affect either side so it's a question of whether you want to go ahead.

Mayor Pro Tem Lurie: Mr. Allen, do you want to make a

comment?

Mr. Harry Allen: I would like to make a comment. I think it would be an inconvenience to those of us that are protesting this hearing. One gentleman has a business and he had to hire another person to come in and take care of the business while he came to the City Commission meeting. Another gentleman said that it's an inconvenience for him to be here, he's employed by a transportation company here. It's an inconvenience for the protesters and I personally feel that we should go ahead with it and if the situation develops that the Commissioner speaks of why then that is up to the protesters to follow through.

Commissioner Leavitt: Well, if somebody gets a three - zero vote it won't make any difference, but if it's a two - one vote it will affect you too, it's not necessarily going to be one way but if you want to go ahead and proceed due to the fact that you're here, then I wouldn't (unable to hear)

Mayor Pro Tem Lurie: Do you want to proceed with the hearing?

Commissioner Leavitt: If you understand that the protester realize that should there be a two to one vote that its possible and they are on the minority end or on the majority end, either way that it could be a different vote with the full Board, but if somebody gets three - o then it wouldn't make any difference.

Jan Stewart: Commissioner, we have a very peculiar provision in our ordinances that deals with the BZA appeals in that an appeal requires a majority vote of the entire Board which means you're going to have to have three votes to take any action. I don't know what the votes are here today but it may be that the matter can be resolved if there are three votes one way or the other. If there is not three votes, you -the appeal will have to be held.

Commissioner Christensen: Then what you're saying Jan, is this doesn't, after alls said and done and we don't have the three - o vote, it carries over to the next meeting anyway.

Jan Stewart: Yes.

Commissioner Christensen: Well, then let's go

Mayor Pro Tem Lurie: We will then proceed with the hearing Mr. Saylor.

Mr. Saylor: This involves a variance to allow an accessory building on property generally located, not generally, but specifically located at the southwest corner of Beverly and Oakey in an R-1 Zone. This is the parcel in question this being Oakey and this being Beverly, this is the lot the orange is the existing dwelling, the red is that which has been constructed. Our ordinance has two restrictions on the size of accessory buildings. Number 1, they may not be larger than the main dwelling or the main building, number two, they cannot occupy more than 50% of the rear yard area. The...a permit was properly taken out for an accessory building which met the ordinance requirements, in other words, it was not larger than the house and did not occupy more than 50% of the main...rear yard area. However, it was constructed in violation of the code and that made it in violation of the ordinance, it is larger than 50% of the rear lot area. The construction I believe has been stopped but it is in fact violative there, not fully completed. Various applications were sought to remedy the situation and it was denied by the BZA and appealed to you. There are two other ramifications involved not in connection with the variance that is before you in terms of any code violations but I am sure they are

going to be brought up into the discussion. Number one it involves a guideline from the power line that is in fact constructed into the building and that is a problem between the applicant and the Power Company. The other is that the...it appears that this line of the building and a portion is right over an existing sewer line. Now you might say, how can that happen? Generally speaking that sewer lines are not located in the interior, they are in an alley or either in the streets; however, when this plat was recorded it showed the sewer line, I mean, an easement but the wording on the plat in fact took away the easement so there is a question as to whether or not there really is an easement there. At the time the footing was put in there was no evidence of the sewer line and probably safe to presume that there has been no damage to but there is no guarantee of that. Nonetheless, that is not part of the variance action. The variance is simply whether or not to allow the building to be larger than 50% of the yard area and one of the minor things is that it was extended up into what is the required side yard which is not permitted; however, that is only a small portion of the building as shown there.

Mayor Pro Tem Lurie: Mr. Saylor, in your comments that you just presented to the Commission, you stated that you did not know how the building was allowed to be constructed with these violations and I would like to know, for my own clarification, how this project got so far along before the four walls were erected.

Mr. Saylor: The people from the Public Services Department and the Building Division here perhaps can provide that information to you.

Bob Weber: I'm Bob Weber with the Public Services. Actually, there was a correction notice that was placed on the facility to make some of the corrections on the (unable to decipher) back lot line. There was an opening in the back of the building, there were doors and windows that was boarded up also, there was an eaves extension that was beyond that allowed by the code and that was corrected, that was back in September, excuse me, October 15th. So that brought it back within code at that time as could be determined. There was this extension that comes back to the side yard was not (unable to decipher) at that particular time approximately 72 feet. In the meantime, there was a modification that was started to enlarge the carport as you now see it in this particular area which is in here and he's removed this portion of the carport 225 square feet and is making a carport in this area and there would be a breezeway in here. This is a variation from what was originally submitted to the City and

Commissioner Leavitt: The breezeway wasn't in the original plan?

Mr. Weber: Ok, there was a combination type of thing as I understand it. There was a carport here which is approximately half of the 225 square feet, originally.

Commissioner Leavitt: Well, if it had been built according to plans submitted, it would have been built over the sewer lines.

Mr. Weber: Yes, it would have.

Commissioner Leavitt: Still would?

Mr. Weber: That's right. That did happen to be an oversight at that particular time and the footing is over the sewer line and it's existing. At the particular time the foundation was excavated, talking with Mr. Kinney and our inspector there was no evidence of the sewer line and it's probably down in the order of a foot or so below the foundation.

Commissioner Leavitt: Well, how did you find out about the sewer line later?

Mr. Weber: By additional research, actually there is a manhole that is out in the street and it was an "eyeball" type

Commissioner Leavitt: Well, does the sewer line go on through the next property owner, or what.....

Mr. Weber: Ok, instead of being in the street as is typical it runs along the back lot line and here is Mr. Kinney's lot right here (pointing to drawings) which he has a lot and a half and it runs along the back of this lot.

Commissioner Leavitt: Does it go into St. Louis?

Mr. Weber: I don't know if it goes that far. Canosa.... if does extend that far, I don't know. This particular drawing that I have with me doesn't show whether it goes that far. It does drain and flow into Oakey.

Commissioner Leavitt: But, where does it go south?

Mr. Weber: I know it picks up here (pointing to drawing) but I'm not sure of that right at this moment.

Commissioner Leavitt: There are homes facing St. Louis and it might be going through somebody's side property line, that's why I'm asking. In case the problem comes up again somewhere along in there, they have to find out where that sewer line goes.

Mr. Weber: A block to the south Commissioner has, this block has an alley unit. Now whether or not sewer lines are in the alley, I don't know(inaudible) Let me check the drawing, just a moment. Do you happen to know Bill (Purvis)?

Bill Purvis: No. I don't know.

Mr. Weber: At this particular time, we are not looking at the flow that is coming through this 8 inch line. If the building is in position and if there is a repair in either case, we're going to have to go back in and do the repair work or whatever the flow is that's coming through that 8 inch line.

Commissioner Leavitt: If you need to repair that sewer line and the building is left up, you're going to have to tear down building won't you?

Mr. Weber: It could be re-routed, it is a problem certainly.

Commissioner Leavitt: Well, if you build there, you're going to have to re-route the line.

Mr. Weber: That's true. If it does happen to break under neath that area.

Commissioner Leavitt: Does anybody know if it is or isn't?

Mr. Weber: It is exactly underneath the footing, there is no doubt about it.

Commissioner Leavitt: If there is a break in the sewer line you're going to have to re-route the sewer line.

Mr. Weber: That's true.

Commissioner Leavitt: Cause you can't tear down the place to get to it.

Mr. Weber: That is exactly true, yes sir. And that is an 8 inch sewer line.

Mayor Pro Tem Lurie: Even if the sewer problem and the carport problem, you're still about 250 square feet larger than what was allowed or could be built in that rear yard. Now, I'm still not, excepting the fact that our inspector on the job could not notice that and by the permits that were issued, why were they allowed to continue to build?

Mr. Weber: It's a two-part item. The original structure was started in the beginning, ok, now, let me point out that is, this structure from here on back was in the beginning, ok, then this was a modification up in this area for a carport.....

Commissioner Leavitt: Was a permit taken out on that? for the carport?

Mr. Weber: No it was not. That's when the variance came up and there was a short period after that in which there was a red tag placed on the property to stop construction.

Commissioner Leavitt: When they constructed the lower part, it was ok, right?

Mr. Weber: This 12 x 6 foot dimension, it's 6 feet too far into the side yard area. This is the side yard (pointing to drawing) cause this is the legal front.

Commissioner Leavitt: This was illegal from the beginning then?

Mr. Weber: That is correct. It was over the size of the (inaudible) that was authorized.

Commissioner Leavitt: The size alone it was illegal from the beginning.

Mr. Weber: That is true.

Commissioner Leavitt: Forget about sewer lines

Mr. Weber: So this piece that was in here 72 square feet was in the side yard and illegal.

Commissioner Leavitt: What I am getting at is, when he made his application, was it legal?

Mr. Weber: No. Well, in proper dimensions there were 1,300 square feet that is identified on the building....

Commissioner Leavitt: Then when he found that ...inaudibleon the application, that's when he made ...I see. that's what I was trying to clarify in other words when he made application he was within the ordinance but when he went to build he was without the ordinance and that's why he needs the variance, is that it?

Mr. Weber: That's exactly it but there is a two part variance, Commissioner.

Commissioner Leavitt: Ok, what's the other variance?

Mr. Weber: Inaudible - is the side yard, and that's square feet....square footage and the fact that it's on the side yard. Ok, the other one is the carport which is out front and this now framed at this point and he has his trusses up.

Commissioner Leavitt: What is he asking for now in the variance.

Commissioner Christensen: He wants to build a carport.

Mr. Saylor: It is shown here on the map which is in violation of the ordinance two ways - it's larger than the area permitted in the rear yard but this portion is extended to the sideyard.

Commissioner Leavitt: That doesn't solve the sewer problem?

Mr. Saylor: No. It has no connection to the variance which is the action before you and the sewer problem.

Commissioner Leavitt: Except that it is another problem.

Mr. Weber: The sewer is in place in either case and the structure is over it.

Commissioner Leavitt: Well, let me ask you this, what happens if he built the building different than the application, in other words, the way I understand it the application was ok but when he built it, he built it different than the application and got an excess number of square footage than what he should have had.

Mr. Weber: That is true.

Commissioner Leavitt: His problem is that he built a bigger one, not ours.

Mr. Weber: That's true.

Commissioner Leavitt: That's all I wanted to know.

Mayor Pro Tem Lurie: Thank you Mr. Weber. Mr. O'Brien?

Mr. O'Brien: First of all gentlemen, I would want to state at the outset in reference to the matter, the subject of the sewer, my client advises me that he has no knowledge of that particular sewer line. If there is any problem with the sewer line and as part of the granting of this variance we would be willing to sign some indemnification agreement that in the event it had to be re-routed, then it would be re-routed at his expense if there is any breakage or necessity for that. The second matter I would like to first take up the point on the extension into the sideyard. It's a very... according to my client, he will verify this here, that extension was, there's no deliberation to circumvent any of the municipal code requirements and it approximately according to our figures 5-1/2 feet, the City says it's 6 feet, I don't want to quibble over inches but there is an additional 70 feet between the extension and the block wall and since...the location (walked over to the map/drawing - inaudible in areas) from here all the way down to the block wall. The point I want to make is that this extension is in violation admittedly but I think the violation is relatively minor. To remove that will cost according to my client, somewhere between \$1,500. and \$2,000. It - aesthetically, it doesn't create any problem in the area at all. Now in reference to...going up to the area of the carport, I think I'll let Mr. Kinney..... he does have one drawing and explain to you how that particular point came up...came about so that you can see that, I think aesthetically is going to improve the value of his property. He already has an investment of around \$12,000. into his attached garage.

Mr. Burl J. Kinney: I'll try and explain how I came about to be in the position where I requested more space than what was allowed originally on my plan. This plan, as I show it to you here, this is the main portion of the building and I realize that this is a little small but I'm going to ask you to try and look closely at it. I found that if I would lay the trusses in all one way and come up to the front of the building that would be as the plan called for originally. I discovered in the building, I designed the building myself, that if I would come to about 10

or 15 feet back from the front of the building that I would at that point take the trusses and turn them at right angles to the way that I had been laying them that I would then gain a shaded area here in front and also with a complete roof line which would be more attractive to the overall building. This is an artists conception of how the building would look. Over here on my right , to your left, is a portion in question... right in this area here. Now, without continuing that roof line I would be exposing the gable end and would be set back approximately 10 to 12 feet from the house. To my way of thinking, it is much more attractive to put it this way plus I also gain some shaded area which is very valuable in this area of desert. These are the two reasons that I wanted to make that change. On the day that I decided to make that change and turn the trusses at these right angles, myself and my friends men who were helping me, construct the building were putting up the trusses and the suggestion was made and I said "that's a good idea." At that time, I had no idea that I would be in violation of the number of square feet so I said that I'm going down there right now and see if I could get a permit to make this change. I did go down to the Planning Department and make application on a drawing board that I was going to make this change. They took a look at it and said that , "Well, they had a little problem with the number of square feet in excess of what you applied for." So, that I wouldn't be able to do it until I got a variance. I immediately returned to the building site and said stop the construction and hold it right now, until I can get a variance on it. So, inasmuch as I was ignorant of the fact that I was exceeding the number of square feet. I did , as soon as possible, on my own volition, stop the building and immediately set up to apply for the variance and submit the proper drawings to show the ...what I ordered changed. So that's the reason for being in excess of the number of square feet and the two reasons are mainly to gain some shaded area, additional parking of automobiles and to make a much more attractive front to the building and homesite.

Mayor Pro Tem Lurie: Do the Commissioners have any questions of Mr. Kinney or Mr. O'Brien?

Commissioner Leavitt: What's the status of the construction now?

Mr. O'Brien: We're about 90% completed and if the Commissioners want, we can turn the trusses back around, it's not that much. We personally feel that it's going to enhance the value of the property and it's going to be of benefit to the entire area, it's going to look much, much nicer and I want to say here, Mr. Kinney paid \$40,000 for this property and it's his home and he wants to make it as nice a home as possible and it was...I did see the home prior to it being purchased and it was deteriorated and it was the worst looking home in the neighborhood. He's going to improve the building tremendously and I think really help the entire area. As far as his building and working here , I discussed this with members of the Building department and I specifically asked "did he act in good faith ?" and the answer was "yes". There was no , I want to make it clear that there was no attempt here "Well, I'll submit this plan but then go do something else." That just did not happen. There was problem on the ...some of the windows and door on the eastside of the building (pointing to the drawing) in that area and Mr. Elder requested that those be blocked in and they were blocked in and are blocked in at this time.

Mayor Pro Tem Lurie: Can I interrupt and ask a question? As far as I.....I've been by there and looked at the building from that side, I have not been inside but what were you planning to put into that building and what

type plumbing do you have inside that building?

Mr. Kinney: I have a quite a number of vehicles, I have several automobiles and several motorcycles and just a lot of...quite number of vehicles and at present, I either have to park on the street or in the circular driveway which is to my way of thinking and to my neighbors a very unattractive way to handle that many vehicles. The original reason for having the large garage area which is what it is, is so that I can get these vehicles off the street and so that I can handle also a place to build a small woodworking shop so that I could go about and improve the rest of my property myself. I want this building essentially for a garage and workshop area. The reason that I would like to have some plumbing in it and the reason I requested it in the original plan to have some plumbing in it so that I could wash up and clean up, that's the reason.....

Mayor Pro Tem Lurie: The reason I asked the question is there was some question on whether or not you were going to lease that building as a rental and you were going to use as a studio, you're in the motion picture business and.....

Mr. Kinney: I do have a small motion picture business but..

Mayor Pro Tem Lurie: Well these are the questions that I would like answered so that I can be clear in my mind what you're going to use that building for.

Mr. Kinney: Right, I have no intention of using it for any commercial purpose whatsoever. I do make motion picture this is how I make my living but it's ...I make my living on locations in other words I perform my services to a motion picture company who come into this area and so my services performed for them wherever they are shooting so I have no need for a studio. As a matter of fact, when I...occasionally I do have a small interest in a studio and Global Productions, with whom I have worked with in the past, I designed their studio at their location and they've made those studios available to me whenever I want them and they are of the professional nature. There really is no way that this garage could be used as a studio in the professional motion picture sense of the word. It's just not adequate. I have no intention to lease it out, it's against the City regulations for me to lease that and it's not zoned property for it and we've even signed an agreement with my neighbors stating that fact that we will not, myself and my lawyer when I say we, that I will not lease that building for any purpose whatsoever, I have no intention of that. I have no intention for leasing, have no intention of using it for any commercial way whatsoever.

Mayor Pro Tem Lurie: Do the Commissioners have any other questions of Mr. O'Brien or Mr. Kinney before we hear from the protesters.

Commissioner Christensen: How wide is the building?

Mr. Kinney: Square feet wide, sir?

Commissioner Christensen: Yeah. How wide, how long?

Mr. Saylor: Inaudible

Mr. Kinney: 1,650 - I believe the notice said

Commissioner Christensen: What are the dimensions?

Mr. Kinney: 24 by 60

Commissioner Christensen: 24 by 60?

Mr. O'Brien: The main portion of the building. If I might in reference to Commissioner Lurie's question about using

the premises...the use of the premises ..back in late October, Mr. Harry Allen, who is present here today several of the neighbors brought an action in District Court against Mr. Kinney in which they sought to in fact, restrain further construction of the building and thereby requiring him to be torn down . We litigated this matter and when we went to court on the hearing on the temporary restraining order we had lengthy discussions in the hallway and I explained to the attorney for the plaintiffs what our position was and what was going to be done and we entered into a stipulation and the grounds of the complaint by the plaintiffs in that particular case was a violation that we had violated certain covenants, conditions and restrictions that I believe there was a violation of some architectural committee prior condition and easement that we were on Nevada Power's easement . Well, the stipulation and I did give a certified copy to Mr. Clemmer and I believe it's in the file along with a copy of the court order dismissing that case and essentially we agreed to comply with the City Code and we further agreed that there be no residential use of the premises nor commercial use. There is no intent and we have agreed with these people and we've given them our word in writing and whether we gave it in writing or verbally, we intent to stand by it. I think that somebody is, that that is just an incorrect statement that has been made to the Commissioners about the improper use of the ...there is just no way.....

Mayor Pro Tem Lurie: Ok, I would like to proceed with this and hear from the protestors but just to clarify a couple of things ... you agreed that you would do certain things so that you won't have to tear down the building if this Commission saw fit that you were in violation toyou would take care of the portion that extends over the rear portion that's in violation and that you would, if there was a sewer problem, you would pay to repair, and that you would turn the trusses in the other direction in order to correct carport situation. Isn't that what you said?

Inaudible.

Mayor Pro Tem Lurie: I mean these are things that you said and I'm just making notes in case the Commission....

Mr. Kinney: To the extension in the rear, the cost of correcting that

Mayor Pro Tem Lurie: You mentioned \$1,500....

Mr. O'Brien: \$1,500 is the estimate and I would just say that admittedly it is in violation but just to my way of thinking trying to be impartial, I think it's as far as the violation ...if that extension ran down to the fence then I would say that it is way over but there is 6 feet over and almost negligible....so that to correct that would be a real hardship. In reference to the area on the trusses those can be turned around and put back as originally planned. We just feel that aesthetically this is going to look a lot nicer and improve the value of the premises and I ...we would request that if there is a choice between the two, we would prefer , we'll turn the trusses around because the cost would be negligible in that.

Mayor Pro Tem Lurie: Do the Commissioners have any further questions?

Commissioner Leavitt: John, obviously, you're going to need a variance and variances are difficult to receive due to the fact that the neighbors are protesting in this case. You're putting us right on the spot. Now, we have a choice to whether to force this man to tear down his building or give him a variance that the people in the neighborhood don't want. Now, is there any way, I assume you've had lawsuits, you've been to court, is there any way a compromise can be worked out between the parties and

your client?

Mr. O'Brien: Well, I would certainly hope so. When we walked out of the courthouse, we walked out shaking hands...

Commissioner Leavitt: Obviously, you didn't compromise because you're here.

Mayor Pro Tem Lurie: We'll have to hear from the compromisers and see if they want to buy a compromise.

Commissioner Leavitt: This kind of reminds me of the tennis courts, but if we can resolve it, we'll resolve it but what I'm saying is that if the parties themselves can't resolve the situation in the neighborhood, then it's up to us to make a decision. But you're asking for a variance of county ordinances and you've got people in the area who don't want the variance.

Commissioner Christensen: City ordinances.

Commissioner Leavitt: I meant City ordinances, correct me.

Mayor Pro Tem Lurie: Why don't we hear from the protestors then we'll have to determine whether or not we can resolve it or whether you can resolve it with them.
Mr. Allen:

Roger Unger: My name is Roger Unger and I live at 1706 South 6th Street. Although Mr. Kinney's property is not adjacent to my property two doors to the corner three doors to the corner, my backyard is a solid wall. I'm not concerned so much as the present situation is when Mr. Kinney sells it or if there is a problem with the water or sewer line. Now, it's over and under that property and the power line and if the property is sold anybody then can come in and use that building later on. And if the sewer line breaks they, of course, have to come through my yard as well as Harry's and anybody else's in that whole district...and what is the problem in getting to and how long the delay and so forth but they would have to go around or re-route whatever the case is to his property. As for the power line, at least through the Planning hearing, the powerline can be removed from my understanding but the cost of that would be up to Mr. Kinney...the thing is so that they have to then restring the powerline to run the underground up to my property where I have a powerpole and then my property could be disturbed as far as putting the lines in and so forth.

Mayor Pro Tem Lurie: Do the Commissioners have any questions?

No response.

Pete Kelesis: My name Pete Kelesis. I live 1700 South 6th Street. I no agree for nothing anything Mr. Kinney make it, you know. Against to the sewers, against the water line, against to the powerline, against to the everything. And I open to the Commissioners if you like it for my own expenses for everybody to see that if you like it, I like it. If everybody, he like it, this a stinks, this building. Mr. Kinney, he make it, I like it too. For my own expenses, everybody move up there in the cellar. If Mr. Kinney he like it then on my side I open hot dog house in the cellar, I do that. It is exactly like this. No improve this section, it lose its value. And Mr. Leavitt, he know already. Stop for a minute and see that, Mr. Leavitt. That's all I say.

Mayor Pro Tem Lurie: Thank you very much.

Harry Allen: Gentlemen, I think you have before you the

statements which I would like to read into the record if I may that you might be familiar with the whole case. Mr. Kinney was doing some excavating in his back yard with backhoe in the early part of September, about September the 11th and 12th. I was out in my back yard and we introduced ourselves to one another. I asked what he was planning. He said a garage and store room. I said you had better check the easements before you proceed. He said, Oh I have done that and there are no easements shown on my deed. I said, well you should convince yourself. He said I have checked with the Water District, they are going to put the mains down on the street. I subsequently checked with the Water District and no one gave Mr. Kinney this information. Then I left on vacation on September 17. On October 1, I returned home to find a large building had been constructed and plumbing was stubbed out in the back. One of my neighbors came over and said what can we do about this, this is a disgrace. At the same time I noticed that one of the anchors or guide wires holding the pole was cut or broken near the ground. I was very much concerned as within the last eighteen months a wire fell on my home and burned out all the contacts in my air conditioning unit as well as doing considerable damage to the house. This happened on a day when there was not a strong wind, so I was very much concerned as to what would happen with the down guide cut. On October 5 I called Mr. Adams and asked if this party could build such as he was doing. He said he would check into it and let me know. He later called and said that Mr. Kinney could, he was within his rights as far as the building permit was concerned. I then checked the City building code, called the City Building Department, talked with Mr. Fitzgerald. He informed me that the building was according to code and that a 3' setback was required by the code. I said yes, I know if there is a fire wall. He said that is correct. I then asked if a fire wall had windows and doors in it. He said just a minute I'll let you talk to somebody else. I don't know who the second person was, but his answer was I will check. Then on October 8, I again called Mr. Fitzgerald late in the day. He said he was going to go out as soon as he hung up and red tag the building and insist that a survey be made. The red tag was either not put on the property or it was ignored as work continued after that date. I contacted the City Building Department and was told that the permit was granted for a garage and was in compliance with the city code. The drainage of the roof which was right on the property line according to a survey made only had one way to seep, that is right on my property and my neighbors property. This can undermine the concrete block fences on both properties. My neighbors and myself feel that this structure has devaluated the sale value of our home. In fact, one neighbor adjoining Mr. Kinney has put the house up for sale and, incidentally, has been unable to sell it. It was necessary for my neighbors and myself to bring a court action against Mr. Kinney. On October 21, 1976 a temporary restraining order was granted by the Court restraining Mr. Kinney from any further construction. On November 5, a stipulation was entered into by my neighbors and myself because the City Building Department had told us that the garage was in compliance with the code and, incidentally while we were in the courthouse, Mr. Elder was there stating that is in compliance with the code, you should agree with this and that and the other.

We now find that the building is not. The building should have required a variance before it was ever started. There are stipulations which we requested that Mr. Kinney would not stipulate to. If all of the facts had been known to us, I question that we would have agreed to the stipulation as granted. I cannot understand how the City Building Department allowing any property owner to build on any easement reserved for a sewer line. I am sure the City Building Department is aware that the sewer line is in the rear of the property in question. Furthermore, if something does happen to this sewer line under his property, a blockage occurs or something such as that, the sewer is going to back up into all of the houses in that particular block. I didn't know until today what the flow was, the direction of the flow in that sewer line, but it is important. I feel if we in turn are going to have to go out and defend through the court the action that we have to take, I don't think this is quite fair, gentlemen. I think that we pay taxes. We in turn have the City respective departments to guarantee that the City code is upheld and while we went to the Building Department four, five different times, we were continually told that this was all right. They were going to allow them to go ahead, in spite of the fact that the man had built a roof, the anchors to a pole holding up a pole were in the middle of the roof, in the middle of the slab which he in turn had laid. Now, we had to go to court to have the, and it wasn't until such time as the restraining order was issued in court, that Mr. Kinney stopped any construction. He and his friends were doing work on Saturdays and Sundays on this particular job.

Mayor Pro Tem Lurie: Do any of the Commissioners have any questions of Mr. Allen.

Commissioner Christensen: I would like to ask a couple and I am sure Mr. Allen can answer them for me. Number one, this anchor line and this pole, this guide wire disturbs me somewhat. What is the procedure where you have one of those in your yard. Does the power company maintain an easement for a guide wire?

Mr. Allen: Yes it does.

Commissioner Christensen: Is that on the deed that they have an easement for not only, I'm not talking about the line running in and the placement of the pole, but if there is a guide wire holding up the pole, does that require a separate easement? What's the mechanics in that? How do they work that?

Mr. Allen: In this particular case, Mr. Commissioner, there is an easement going north and south along his property line. There is another easement going east and west along inside his property. In other words, he has a lot and a half along the first....

Commissioner Christensen: I see, so the easement runs along the edges of the first lot, then he's adding a half to that which would put the easement in the middle of the yard somewhat. That's what I wondered, how that guide wire got in the middle of his yard that way. That's what I was curious about. I see you have now mentioned water lines. I didn't hear anything about water lines previously. Is there a water line easement here that is being violated also.

Mr. Allen: I think Mr. Welsh is here from the Water District who can speak on that. That is correct, this easement that is on record is for all utilities.

Commissioner Christensen: I see, the one that runs for the sewer and the water and all of them, so what we are talking about here is we have an easement for running

sewer, power, and water lines through, so if he is violating the sewer, he is also violating the water easement. Is there a water line in there? There is not a water line in there.

Unidentified gentleman: We have a ten foot easement that runs down the center, 5' on Mr. Kinney's lot. The water line is actually physically located in the east side of that easement.

Commissioner Christensen: Then technically he has violated the easement, but as far as the water line being in there, there's no problem with the water line, that's in the other 5'.

Unidentified gentleman: Only its effect on our maintaining that line.

Commissioner Christensen: Do you normally use ten feet to maintain a water line?

Unidentified gentleman: Normally, now we ask for twenty feet, but this was granted back in 1953.

Commissioner Christensen: I know, but doesn't your maintenance require less space than it used to?

Unidentified gentleman: Not really. We have an extremely difficult problem in this area in these older homes because more things get built on that easement. This is not an inclusive easement. All it says is that we have a right to place the water line there. As more things are built on this easement, eventually...

Commissioner Christensen: It is my understanding from the pipeline contractors and so forth that I know, it requires less space to go for to place water lines now than it used to because the equipment is more sophisticated, they drill with it, they dig a narrower and steeper trench and all of these things, and the people I have talked to indicate that you can put

Unidentified Gentleman: We still have to get a backhoe in there, still have to have a trench next to the backhoe.

Commissioner Christensen: How big is the water line?

Unidentified Gentleman: Six inches.

Commissioner Lurie: Myron, isn't that wall there right down the line now. There is a block wall now. So you have the line on the easement. So the wall still has an effect on maintenance anyway, wouldn't it.

Mr. Welsh: It's just one more thing. Eventually we have got to go out in the street. We just let a contract last week. We're looking at about \$27 a foot to move these lines back out in the street.

Commissioner Christensen: Do you anticipate ever increasing the size of that water line behind those houses?

Mr. Welsh: Eventually it will no longer be feasible to maintain them back there and we'll have enough breaks where we'll move it out in the street.

Commissioner Christensen: What you are telling me is that eventually the water line will go out in the street, so there really isn't too much of a problem with the building as far as the water line is concerned.

Mr. Welsh: Only getting into that easement today.

Commissioner Christensen: Do you normally dig with a backhoe in an area like that.

Mr. Welsh: We doubt we would be able to in there.

Commissioner Christensen: Even if you could get in there to dig with a backhoe. I've never seen them dig with a backhoe in the streets unless it's a fairly large deal.

Mr. Welsh: I'd say it would be hand dug. It's usually a case of (unintelligible).

Mayor Pro Tem Lurie: Any further questions, Commissioner.

Commissioner Christensen: I've got one other one. You said the guy's house was for sale but he hasn't been able to sell it. Do you attribute that to the construction on the Kinney house?

Mr. Allen: I attribute it partly to that, yes Commissioner.

Commissioner Christensen: How did you arrive at that conclusion.

Mr. Allen: Because of the fact that it has not been sold, shall we say, and the real estate agent that has the home told me that the construction that is going on next door has not helped her situation in selling it.

Commissioner Christensen: Who's the real estate agent, do you know?

Mr. Allen: Doris Evans. I would like to make one other statement for the Commission's information. That is, that is, that while the statement was made to you that they voluntarily stopped construction, it was not until the court order was served on him that construction was stopped.

Commissioner Christensen: Do you feel there is any way that a compromise could be worked out without tearing the building down?

Mr. Allen: I don't know, Mr. Commissioner. You have heard two of the neighbors. I received a letter from the other property owner that brought suit against Mr. Kinney and she said she was unable to be here, but she opposed what was being built there. She hoped that I could speak for her.

Commissioner Christensen: What I am trying to get at is there's reasons here that the variance has to be granted or else the building has to be torn down. One it's too big and the other one, it encroaches on the property line. The question in my mind is I'm not clear exactly what it is that affects the other property owners that makes them dislike this building. Is it because it's ugly. Is it because it's fear that it's going to be rented. Is it because they are very jealously guarding the codes of the city and want them to be adhered to, or I'm trying to determine the real motivation. In other words, if you had a nuisance across the street that's making a lot of noise, you could say it's the noise. Or you could say it's shutting out the sunlight, or it's killing my trees, or something like that. But, I'm still not clear exactly what it is other than the power line and the sewer, but I'm just trying to understand, are there others? That's my question.

Mr. Allen: Mr. Commissioner, I think in trying to answer your question, I would be very unfair if I were to say that the neighbors didn't like the architecture, didn't like the product that was being built there, because it hasn't been finished. All that is there now is the brick wall and some trusses and plywood has been put on

the roof, so I don't think that is it. When we went to district court, we were asked not by the judge because we agreed to certain stipulations, which Mr. Kinney refused on some of the stipulations that we wanted. But, they asked the question has there been any other building like this built in this district or in this particular block. Mr. Kinney maintained there was a swimming pool put in without any...but there has been no other building built such as this. Now, allowing one building to be built sets a precedent. Then, what can happen in that particular area. If you are going to allow one person to do this, I don't know how you can discriminate and say his next door neighbor can't do it.

Commissioner Christensen: My question borders right along that. What I am trying to figure out in my own mind, and don't let me lead you to believe that I am an advocate for Mr. Kinney, because I'm not, I'm just trying to phantom this in my own mind. One of the gentlemen mentioned that he didn't agree to all these things, but what happened if he sold the house. Of course the question that came to my mind immediately is what happens if anybody sells a house. You know, I could conceivably sell my house and somebody could put it into a manufacturing plant provided they could get the permit, but that's not reason to prevent me from building a house for fear it might become a manufacturing plant somewhere down the line. So, it gets back to the same question and I think you hit on it a little bit. There's not been another structure like this built in the neighborhood, then my immediate reaction again is what difference does it make. There isn't another structure like this in the area. What difference does it make if he's moving in a band of thirty gypsies to occupy it, that's one thing. But if he is building a large garage on his lot to house his automobiles, which I also have done even though I have a bigger lot and my drive isn't as big as his, but I have also done the same thing. It hasn't increased the population of my lot; it hasn't increased the density; it hasn't shut out sunshine. It hasn't done all of these things and it comes back to the same question, there has not been another structure built like this in the neighborhood, what difference does it make. That's my question. Why make a fuss about it unless there is another fear there that isn't really coming to the surface.

Mr. Allen: The fear is that this is just setting a precedent for the entire area.

Commissioner Christensen: Of course, the precedent is already set because anybody can come in and ask for a variance if they want. They have to meet the criteria and be passed by the Commissioners and he could do the same thing tomorrow for that matter if he wished.

Mr. Allen: Yes, but we would all have a chance to be heard on it, Commissioner and here is a case where a building has been built. They, in turn, the attorneys asked the question has there been any other building. They, in turn, were taking pictures of the area to determine whether there was any other building. As a matter of fact, Mr. Kinney had photographer down there taking pictures of a building that was a Sears and Roebuck mobile building and saying, now that is a permanent building. Therefore, they set a precedent in doing it. And I think one other thing in answer to your question that the court order in turn has been filed and goes along with the deed to that property so I have no say.

Commissioner Christensen: Well, I understand that because it is in violation and that's unfortunate for all of us that we have to be here because the building's in violation.

Mayor Pro Tem Lurie: Then you don't agree with the stipulations from the court.

Mr. Allen: We would have asked for more stipulations, Mr. Commissioner, rather than we in turn were asking for these stipulations, why Mr. Elder was saying you are unreasonable. That building is in compliance. We said the roof is going to drain over onto our property.

Mayor Pro Tem Lurie: I understood that they recommended this morning that they were willing to do additional stipulations that weren't in here, as far as trimming the trusses, as far as tearing down the six feet that overhangs in the yard that doesn't comply with the code. Would you agree to those stipulations as additional stipulations?

Mr. Allen: I cannot speak for all my neighbors.

Mayor Pro Tem Lurie: I mean for yourself; I'm just asking you.

Mr. Allen: No, the roof has not been fixed as they in turn spoke in terms of it having been done.

Mayor Pro Tem Lurie: They said they would be willing to do that as a condition to allow the building to stay.

Mr. Allen: Well, there was one other thing that the foyer out in front was to be (this was Mr. Elder talking, saying if you do this, it will comply. If you disconnect this part from your house, it will comply) and there was one particular stipulation that we requested in court and that was that the plumbing be taken out of that building entirely.

Commissioner Christensen: Then what you are asking for in stipulations, you are asking for more than what the code requires, because the code would let you have plumbing in a building as long as it was not used for habitation. What you want is stronger than the code.

Mr. Allen: Myself and my neighbors, this a request that we asked him to stipulate to and he would not stipulate.

Commissioner Christensen: There has got to be a reason for that. What's the reason for that stipulation?

Mr. Allen: We wanted to be assured of the fact that it wasn't going to be used as a residence or someone living in there. And, as far as the doors and windows being blocked up, they are blocked up.

Commissioner Christensen: You see, that's the part that bothers me, because what you want to do is you want him to guarantee, by not putting in the plumbing, that he will never rent that. How many people in a neighborhood would be willing to guarantee that they would never rent a room inside their house.

Mayor Pro Tem Lurie: Actually Commissioner, that's one of the stipulations in the court order that the defendant agreed that he wouldn't use....

Commissioner Christensen: That's what I mean. They want the added stipulation that in order to assure that that stipulation would be met would be to tear out the plumbing and that's what I wonder. I'm trying to get to the point of what they don't like about the place and apparently one of them is the fear that it is going to be rented. You can fear that in any place.

Mr. Allen: I don't think in that particular area,

there are anybody renting rooms in their home.

Mayor Pro Tem Lurie: Any further questions? Do you have any further comments, Mr. Allen.

Mr. Allen: No

Mayor Pro Tem Lurie: Is there anyone in the audience that would like to speak on this matter before the Commission takes action?

Gene Matteucci: I'm general counsel for Nevada Power Company. Nevada Power Company appeared to protest to this variance at the Zoning Board of Adjustment for the reason that the building as constructed in deregation and contrary to the building plan materially affects one of the major 12,000 kilovolt distribution systems in the southeastern part of Las Vegas. That distribution line serves on the east, Sixth Street, on the west Rexford, on the north Oakey, and on the south St. Louis. This particular pole is a corner pole where the line turns to the south. We're talking about good faith. Representatives from Nevada Power, on September 28 before there was anything up except for the foundation, met with Mr. Kinney in the field and advised him of the easement that Nevada Power Company had concerning that distribution line confirming in writing, a copy I believe was submitted to the Zoning Board of Adjustment, I would like to file one now with your Clerk, which gave him the page, paragraph and document number of those easements. He indicated he was going to contact the company to see about relinquishing those easements, relocating the lines so it could go on. That was in September. To this date, he has made one telephone call, asking for a cost estimate, but has never entered into any agreement with respect to the relinquishment or relocation of the power line that services that area. We are only concerned about the integrity of that distribution system. With that power line in the middle of the garage, if it were knocked down and if the pole went down, there is no other alternate services with respect to distribution without calling out and switching the entire circuit onto the next circuit north which serves Oakey on the south, Charleston Boulevard on the north, Sixth Street on the east, and Las Vegas Boulevard South on the west. That materially affects the integrity of the distribution system for the entire area. That is why we are here complaining. When contacted with the Board of Zoning Adjustment, Mr. Kinney indicated that the reason he hadn't attempted to make an effort for the relinquishment of the easement and relocation of the service line was that he didn't want to do it until after he got the variance. The condition still exists. We believe that we have been more than fair in giving him an opportunity to solve this problem and I am not really threatening or anything, but until it is solved, we have only one alternative and that is to go get an injunction in court ourselves. We have been relying on his word and the fact that he did have a case in court in which it said we would be satisfied. But, to this date, we have had no effort by Mr. Kinney to solve it. I appreciate that to relinquish that easement and to relocate that particular portion of the distribution line underground entails substantial cost, but the costs would be no different for anybody. They are no more or no less for Mr. Kinney. I'm certain that this Commission has been called upon after Nevada Power has relinquished easements in this community before to abandon them, allow alleys and so on for the property owners. These are the sole costs that anybody would pay. We are treating him no different, no better or no worse. But, to relocate that distribution line to protect the integrity of the two circuits I referred to does require that it go underground, up to Oakey and tie onto the circuit across the street on Sixth Street, thereby making both circuits for that particular

south part of town interrelated so that it would just be a matter of switching in the event that either of them went out or something was damaged on that particular pole as a result of this construction.

Mayor Pro Tem Lurie: How much are we talking about as far as the cost.

Mr. Matteucci: Our estimate for Nevada Power costs that would have to be reimbursed are approximately \$3,900. There are additional costs which would have to be done for trenching and so on by the property owner. Until the man is billed, I can just tell you what the work order for our costs is and it's \$3900 and some change. Until actually it has been satisfactorily arranged as far as Nevada Power Company is concerned, we would oppose it. If need be, we will have to go to court. We hope that we won't have to go to court, that it could be worked out, but there is no way that we could recommend to the Board of Directors relinquishing the easement and the encroachment until a satisfactory rearrangements have been made.

Mayor Pro Tem Lurie: Do you have any questions of Mr. Matteucci. (No response). Thank you very much. Mr. O'Brien, do you have any further remarks to make.

Mr. O'Brien: Yes. I'll be very brief. In reference to, Mr. Allen mentioned about a red tag in October. I was unaware of that and I don't believe...

Mr. Kinney: I had never received a red tag or a stop work order until I applied for this variance before the Board of Zoning Adjustment and the next day I did receive a red tag because of the excess number of square feet and have not built on it since.

Mr. O'Brien: In reference to the question on the trusses, and any representations made by Mr. Elder at the time we went to court around the 10th of November, the trusses were not...there was nothing mentioned in reference to the trusses because there was no change made until I believe some time in later November or early December. Mr. Allen and the other plaintiffs in the case were represented by their own individual counsel and there was no misleading by either myself or Mr. Kinney or Mr. Elder as to the back. As far as other building in the neighborhood, this was one of the points that we had raised in the actual lawsuit and I had subpoenaed Mr. Elder to bring evidence of other modifications in this particular tract, which he brought and some of which have been done without any City approval. In reference to the question of the roof overhang, it is my understanding and I did ask the Building Department that, that the roof overhang matter had been corrected as far as Mr. Kelesis is concerned. The question on the guide wires, going back just a moment. Here are a number of other building permits which have been granted in this particular tract and at the time we went to court we made up a map of that area showing each home when each other little addition had been made either with or without approval. I don't have the map with me, but there were substantial numbers. But, in reference to this question on the guide wire and I am only representing what Mr. Kinney has told me, that he did call Nevada Power Company in reference to the problem on the wire and spoke with a Mr. Jack Green who came out and at that time, it was represented that they could go over the roof with the guide wire. (Pointing to map) Wherever it is, it could be extended over. In other words, a footing is made over here and extension line run down in here. It would be a very minor price.

Commissioner Leavitt: The guide wire would be put over the house? The wire that holds the pole goes over the

house and fastened down on the other end?

Mr. O'Brien: I have already checked to find out if there is any safety violation or code violation in doing that and there appears to be none. I've been told that it can be done very easily.

Mayor Pro Tem Lurie: What you are saying is that you do not want to put the power underground.

Mr. O'Brien: If we have to, we have to. Here is the situation. I wanted to correct our version of the representation that Mr. Kinney was told as to what was going to have to be done and that he almost in arrogance went ahead. It was our understanding that the guide wire could be put over the roof. Thereafter, we were told that it could not be done because it was Nevada Power's policy not to do that. We estimate the cost of re-routing that line to be approximately \$7,000; \$3,900 for the power company, \$1,200 for the phone company and \$2,000 for the trenching. All I would say in reference, if we have to go around, then we are going to have to go around. As far as Nevada Power wanting to take us to court, then that's their prerogative.

Mayor Pro Tem Lurie: Mr. O'Brien, we would like to conclude and I think the Commission is ready to make a motion on this so that we can proceed with our agenda. Commissioner Christensen.

Commissioner Christensen: Under the circumstances, I hesitate to be put in a position that we are put in all the time with neighborhood squabbles. But, we have a problem here in that I think this matter is going to end up in court with the Power Company and I think that we should look at it from the legal sense. There has been a violation and the building is bigger than required. It looks to me like if takes off the area that extends into the side yard and takes off the front which was added later and goes back to the original building plans, and satisfies the code requirements, he doesn't have to tear down the major portion of his building and then the fight is between him and the Power Company and the easements, and it is out of the City's hands, then. So I would move for denial of the appeal.

Mayor Pro Tem Lurie: That would be in effect upholding the action of the Board of Zoning Adjustment.

Commissioner Christensen: That's correct.

Mayor Pro Tem Lurie: Also, in the motion, he has to correct those necessary violations.

Commissioner Christensen: That's automatic. That means that he has got to take off that piece and he's got to not do the carport in front. That's automatic because that's the only way he can meet the code. He doesn't have the variance.

Mayor Pro Tem Lurie: Cast your vote on the motion, please. The motion was approved by unanimous vote.

Mayor Pro Tem Lurie: There will be a five minute recess and then we will proceed.

Appeal filed by Fremont West Shopping Center to action of the Board of Zoning Adjustment in denying their application for a USE PERMIT to allow a customer operated car wash on property generally located on the southwest corner of Casada Way and Torrey Pines Drive, C-1 Zone.

Mr. Saylor: This property is zoned commercial and you

can have this type of a car wash in this zone by means of a use permit. The general property is located on West Charleston and Torrey Pines. There is commercial development on a portion of it. The applicant for the car wash owns the remainder of it which goes up to Casada Way which is undeveloped. This is a small piece that he wants to put the car wash on. He also has additional commercial property to the west of it. This is a plot plan of the proposed car wash. It is to the rear of the existing building. In other words, (pointing to map) there is a building here and the car wash is to the rear. To the north on Casada on the other side, on the north side, there is apartment house zoning and development. It is completely developed with four plexes. This is a photo of this type of car wash anticipated. It is called a quickie car wash. There was a protest from the owner of the apartments, Mr. Hernsted, who owns all of these and I believe that three of the tenants, or several of the tenants, protested also. Eventually, all of this will be developed which will mean that the car wash will be completely isolated from any exposure in any direction. However, the BZA did deny it. The applicant is appealing that action.

Mayor Pro Tem Lurie: I would just like to ask a question before we get started. On the picture here, it shows a lot of nice landscaping and I don't see any on the plot plan. Will there be landscaping and a block wall erected around that property?

Mr. Ernest Becker: We were asking to have a wire or a chain link fence put up with the pyracantha on it because we have a more decorative type wall. What I would like to do if possible, I don't think per se and I would want to come back in the rebuttal maybe of the car wash itself being there. If any of the protestants bring that up, then I would like to speak on that. Primarily, at the Board of Zoning Adjustment, it was the traffic that would be generated, traffic coming out on Casada Way. There is a misunderstanding. That driveway for the apartments could also be a driveway for the car wash. The business will have no access at all and I am sure we would never have gotten anything passed through the zoning department when we come in for a plot plan because this has been zoned for a long time, and we would never have been able to get a driveway on a small residential type street. At the last meeting we were here, which I think was two meetings ago, we had that one driveway where it was only 125' off of Charleston Boulevard. I don't think we have any problems at all on saying there is no access and we do not intend to have any access on Casada Way. Our access to this little shopping center and the one that is attached to it there is on Charleston will have all its access on Charleston, on Torrey Pines, and a little bit on Scholl. There is a problem, as I understand it at the present time, since the high school has gone in. The way that we have had to curve Torrey Pines because of the change in the township and range, we have had to meet Charleston. It seems like we in the City never have the County change any of their streets to match where our lines go straight. We always have to curve the darn things to match theirs. That is a problem. I have talked to the people in the audience about that in that Torrey Pines is only developed on a 40' piece of an 80' street because it is only developed on one side. I think the Highway Department, Regional Streets and Highways, when they developed Charleston, made a full intersection and then they triangled it down to where it gets to the existing pavement, it doesn't go back far enough. But, where the big problem is, Don, on Torrey Pines and Casada, that curve in there from that standpoint with the kids going to school, that becomes a big traffic problem. We basically are going to be increasing the traffic in that area and our access will be almost down to where the blue line is on the bottom (reference the map) is where the entrance way would be at this time before the street is a full street.

We are only going to generate the maximum 160 cars. They don't come all at one time. They come during the time. The one we now lease at another location. It is very seldom, there are stalls for four cars at one time, and about the most they have ever done in one day is 180 on their big days. Some days they do much less than that. All I can say is that from the traffic deal, the 80' street is there to take the traffic. It is very small center at the present time, although there is traffic congestion at that point, we don't think it is our center that is the main cause of it. It's just a fact that the 160 acres in that area actually comes out to Torrey Pines. That's the only access it has at this time. As you cross the freeway on Fremont, the only access you have if you are going to Bonanza High School is to get on Torrey Pines and you will probably stay on Torrey Pines coming out. I think it is a problem other than that caused by our zoning of the car wash.

Mayor Pro Tem Lurie: What you are saying that with the car wash there's no traffic going to be generated on Casada Way. It's all going to go to either Torrey Pines or Charleston.

Mr. Becker: Right. Their problem that they have in their apartments in the rear is the intersection at Casada Way and Charleston. It is not a T-type deal because as you curve the street, the City engineer makes you tee the curve and not necessarily the parallel street coming out. So, as you see, on the east side of the street the intersection is further to the north so that it makes an odd-ball deal and you're on a curve when you make this and this becomes their problem, they say in that area, and they will probably in here after our discussion today to maybe get a stop sign put on Torrey Pines to slow it down at that point because while they have a 25 mph zone in there, it is too hard to police the area. It's not being policed as a 25 mph zone.

Mayor Pro Tem Lurie: Are you speaking of around the curve?

Mr. Becker: Pointed out on the map (unintelligible).

Mayor Pro Tem Lurie: Larry, can you answer a question as far as when is that scheduled to be improved to four lanes? Is there a problem why that section hasn't been improved from Charleston going north to Casada.

Mr. Hampton: It's on the list; however, it's quite a number of years away I believe on the Regional Streets and Highways.

Mr. Becker: We are probably two years away or so, within a year to two years away, of having the center on the east part of it. We are negotiating now with a drug store and a market to get that off its feet and going and when we put that in, of course, we will be putting the asphalt and curb and gutter and sidewalk in on that side.

Mr. Hampton: It's just a matter of timing. I believe it would be desirable to have it in right now.

Mayor Pro Tem Lurie: I'd like you to report back to this Board on the cost and time when that can be done because that is a dangerous curve with the kids going to school there, and with the increased development there, we should be considering that. To go from four lanes to two lanes is quite dangerous.

Mr. Becker: Larry, does a ten foot strip help any in there for that type of deal?

Mr. Hampton: It costs almost as much to get a 10' one in there as it does to put the 20' on the other side.

Mr. Becker: Other than that, the people are here to talk maybe against it. I don't think they are per se against it.

Mayor Pro Tem Lurie: The petition that was presented to us is sort of misleading too, because the persons who signed it, so maybe we should hear from the persons in the audience who are protesting the application. Is there anyone in the audience to protest this application?

Mr. Barber, 6400 Casada Way, at the intersection of Torrey Pines and Casada Way. My first question to the Commission is why was the petition misleading?

Mayor Pro Tem Lurie: Why was it misleading to the public who signed it? Number one, you have the car wash being located on a blind curve and based on the map presented to us, it is not on a blind curve, it is behind the shopping center where the 7-Eleven is located. The people who signed this petition weren't aware that the location was behind the 7-Eleven store.

Mr. Barber: We found that out now.

Mayor Pro Tem Lurie: The first question is misleading. I don't have to go through the other five points because I could take those apart also.

Mr. Barber: What we are really interested in is the traffic on that curve and I believe Mr. Becker, we spoke to Mr. Becker and it was the first time I ever met the gentleman in the audience while the first deal was going on here. I think he has just about summed it up. If they had a stop sign or a red flashing light at that curve, something, until they widened that street from Casada to Charleston, they wouldn't have that problem. I sit there in my office which faces Torrey Pines on that curve and every day that Bonanza lets out, cars go, the kids, side by side, thirty-five, fifty miles an hour through there now. With the additional traffic we are going to have on there now, and the additional pedestrian traffic, somebody is going to get killed. That's what we're interested in is safety of the people, not so much the noise factor because the way it is proposed now, the car wash is going to be directly behind the proposed apartments. If there is not going to be major egress from this car wash out to Casada Way to come down to that blind corner, there's not going to be the problem as far as additional traffic. However, the proposed apartments are coming out on Casada Way. They're not going to go up to Scholl and go down Charleston and go that way, they're going to come back down Casada. So, really the whole problem is that corner on Casada and Torrey Pines. I don't know who this gentleman is you asked if it was supposed to be widened, five years hence. A lot of people could lose their lives and a lot of accidents could happen between now and five years. You know, the widening of Torrey Pines from Torrey Pines to Charleston. Two years ago I finally got the City to put a twenty-five mph school zone sign in. The following day, I observed as did my neighbors and several other of my tenants, two sixteen year olds, or seventeen, ripping it out of the ground and throwing it in the street. I asked them why are you doing that, they are trying to slow the traffic down so the people won't get hurt. Well, what they said, of course, isn't repeatable here. But, that's the general consensus of opinion out there. Nobody seems to care.

Mayor Pro Tem Lurie: I agree with you that that's a dangerous intersection and that the City should take immediate action because of future and present development going there at that property to make signs and flashing

lights there to make people aware that there is a curve there and aware that there is another street intersecting. I agree with that and I am sure that our Public Works Director will see to this request because you are absolutely right because that is a dangerous intersection, especially when there's a car parked by your office there maybe showing an apartment. You have to swerve around to miss that car. It puts you in the other lane of traffic sometimes if you are going over the speed limit. I agree with that it needs attention. Mr. Hampton, who is director of our Public Services Department, will see that that is looked into and taken care of.

Mr. Barber: We don't object as far as the noise factor is concerned. The noise is going to be there and we are not going to stop development, we know that. As long as it is not going to be on the corner, we misunderstood and we were misled to believe that it was, we're not really that worried about it.

Mayor Pro Tem Lurie: Thank you, Mr. Barber. Would anyone else in the audience like to speak on this application.

MOTION

Commissioner Leavitt: I move the Use Permit be allowed.

Louis Sistek, 6344 Casada: Inasmuch as the petition was written by many people rather than an attorney, I think that the intent of the petition should speak for itself. A number of people who signed the petition are very much concerned.

Commissioner Christensen: Did the people who signed the petition think the car wash was going to be on the corner?

Mr. Sistek: I think they were more concerned with... I don't know if it was specifically stated that it was going to be on the corner or 50' back from the corner.

Commissioner Leavitt: That was what the gentleman before you said, that that was his understanding and now that it is somewhere else, he didn't have any objection to it. Most the objection is gone. I was just wondering about the other people who signed the petition.

Mr. Sistek: I don't think so.

Commissioner Leavitt: You didn't talk to everyone of them, of course. Did you pass the petition around.

Mr. Sistek: No I didn't. As far as the traffic on that curve, we have a high school that was just put up, Bonanza High School. There is a junior high down the road and an elementary school. We get an awful lot of traffic. Yesterday, there was a spinout on the curve. I was up in my apartment and I could see it. There was a kid coming from high school and he spun out right there. Now, if there is more traffic, right now the way this thing is laid out, if they are coming in and going out they are going to have to go through the 7-Eleven Store. Getting out from that 7-Eleven store right now, you go and try it. You take your life in your hands. If you put a car wash in behind there and they have to go between that Jack-in-the-Box and that 7-Eleven Store to get back to that car wash, you are going to have trouble.

Commissioner Christensen: Are you familiar with the car wash that's located at Decatur and Alta?

Mr. Sistek: Yes I am. That car wash at Decatur and Alta has got access from Alta in two places and also you can come around. You can get in the direct access

to the car wash or else you can go in the driveway that goes in by the gas station. You can get in either of those two ways, or else you can come off of Decatur and come through the shopping center.

Commissioner Christensen: If you come off of Decatur you go into the car wash the exact same way you would come off if you go through the grocery store. So you are calling that access too. You can either come into the car wash behind, north of the Stop 'N Go, through the parking lot or you can come in off Alta. I use it all the time.

Mr. Sistek: Then you know there are four driveways, four possible accesses to that car wash. In this case.... Two on Alta, three on Alta actually if you consider the gas station driveway and then there is access from Decatur. If you take into consideration the access to this one, the way it is going to be located, unless you decide to go through the desert and come around Casada which is probably equally as dangerous.

Commissioner Christensen: The property at the car wash at Alta and Decatur is serviced by only two driveways. Everything else is fenced off. You either come in off Alta or you come in through the shopping center. You can take sixteen ways to get through the driveway to the shopping center. You can come in from the car wash on down the street and pass the oil place and pass in front of those businesses and turn down there if you want to. But that doesn't mean there are sixteen ways in there because you can come from sixteen directions to the get to the driveway. There are only two.

Mr. Sistek: What's your point, sir?

Commissioner Christensen: I was just curious if you were familiar with that place because I don't see that it generates the kind of traffic you are talking about. What you are saying is that there is so much traffic on Casada Way you don't want no more construction in there.

Mr. Sistek: I think you need to order your priorities.

Commissioner Christensen: It should have been widened before they put the apartments there because they generate that kind of traffic.

Mr. Sistek: I think the traffic has increased for a number of reasons. The apartments were there first. I have no vested interest in this except from a safety standpoint. I live right there and I see it every day. I live right there on the corner. I think that the High school has contributed greatly to the traffic problem. The children hang out over there.

Commissioner Christensen: Then we shouldn't have built the high school until they built that Casada corner.

Mr. Sistek: You need to order your priorities and fix the road.

Commissioner Leavitt: The question is, if we denied zoning on traffic alone on grounds that it is going to create traffic, we would never change anything in this town. And, as Commissioner Christensen always likes to say, when he and I were young, Fremont Street would still be residential. If you don't change. I can understand your concern about having increased traffic in the area. It is a problem, but is that a legitimate reason to deny commercial development. I think it's a problem we have to solve. We have a traffic problem there and this is going to create more traffic. Ok, out streets people will have to go out and correct that situation

But, is this, as far as zoning is concerned, a proper place to put a car wash. To give up traffic for a minute, have you any other objections to it?

Mr. Sistek: I think that the land can be used in better ways.

Commissioner Leavitt: Ok, but the owner says he wants to use it this way.

Mr. Sistek: The petition stated I think five or six different reasons...

Commissioner Leavitt: Noise was one of the reasons. I've read the petition, 24 hour operation, water runoff, that you're going to have slippery surface. Ok, that's a streets problem. Narrow road, Ok we have to widen the road. The safety hazard, traffic. That is something for our Public Works Department to work out. Twenty-four hour operation, waste factor, and there are children in the area.

Mr. Sistek: I think they are the main concerns that the residents in the area have and I am just asking the Commission to take a look at this as well as the builder's rights.

Commissioner Leavitt: You said you just wanted to talk for yourself. You indicated this traffic. That is a problem that needs to be resolved. What other problems do you see.

Mr. Sistek: I think that pretty well sums it up. You've got the traffic, you've got the children, you've got the safety hazard and I think that until you order the priorities of fixing that road, I don't think that the development should be allowed. That's really all I have to say.

Commissioner Leavitt: A lot of times, you know, you can't fix the road until you have commercial properties that can pay the assessments.

Mayor Pro Tem Lurie: We have requested from the Public Works to give us a figure and a time that we can get this road repaired. I agree that it has to be done and it should have been done when the High School opened, when the same time the traffic light. This Commission saw fit as a priority to install a traffic light at Torrey Pines and Charleston which wasn't on the priority list for another four years. That's just a temporary signal because the permanent signal installation, the funds are not available for that for another three or four years. That's just a temporary situation. Again, it takes planning and I agree that one intersection is a bad intersection and we will give it attention.

Commissioner Leavitt: You've got that problem now whether the car wash goes there or not. You have a lot of children in the area, whether the car wash goes there or not. That should be taken care of, whether you put the car wash in or not.

Mayor Pro Tem Lurie: On Torrey Pines now, you are getting a lot of it, because they are detouring around because of the construction of the freeway. They are all coming down to Charleston and taking Charleston into town.

Mr. Sistek: Is that freeway going to be an offramp at Torrey Pines.

Mayor Pro Tem Lurie: No. The interchange is going to be at Jones.

Mr. Sistek: Do you expect additional traffic on Torrey Pines as a result of that being... (inaudible)

Mayor Pro Tem Lurie: Probably less. The traffic will be on Jones.

Mr. Saylor: There will be an additional way to get out of the car wash and that will be through the Jack-in-the-Box to Charleston.

Mayor Pro Tem Lurie: Is there any further comments on this application. If not, we have a motion. Would the Commissioners cast their vote on the motion.

Mr. Barber: In other words, I can tell the people that signed this petition, all the people that talked to me personally, that the Commission....

Mayor Pro Tem Lurie: The Commission is taking action on the widening of the street, the signing of the area, and we will notify you of the time. When I get the information I will notify you personally. We ought to have a report back because obviously the conditions exist now regardless of whether the car wash is there and if it is as bad as the people say, it ought to be looked into right away.

Motion for approval carried by unanimous vote.

VAC-1-77

Petition to vacate that portion of Alturas Avenue lying between Rose Street and a point 240 feet east of Tonopah Drive, by Southern Nevada Memorial Hospital.

VAC-6-76

Petition to vacate submitted by J. Gaughn, Las Vegas Club, Inc. to vacate a portion of the alley running south from Ogden Street, between 1st Street and Mail Street.

Mayor Pro Tem Lurie: Items 3 and 4 are set dates for public hearings. Mr. Adams, do you have a date.

Mr. Saylor: March 16, I believe. Also, item 6 on the third page, Commissioner. All three of them and it would be March 16.

VAC-5-76

Petition to vacate the east/west alley between "F" Street and "G" Street and Bonanza Road and Wilson Avenue and southeast corner of Lot 24 of Block 6 of Original Las Vegas Townsite, initiated by the City of Las Vegas.

Mayor Pro Tem Lurie: The public hearings will be set for March 16. Will you see that everyone is notified.

Z-95-76
APPROVED

Request by Ernest A. Becker for reclassification of property generally located on the southeast corner of Scholl Drive and Casada Way from R-3 and C-1 to R-4.

Mr. Saylor: This again puts us right back in the location of the proposed car wash. Mr. Becker owns this vacant piece of property which is zoned R-3 at the present time. He is asking for a change in zoning to allow R-4 to allow relatively high density apartments as shown on this plot plan. In essence, the change in zoning would allow about twice as many as what he could put in under the R-3. He does have adequate parking. Planning Commission has recommended denial of the application. It is contrary to the recommendations of the general plan. There were no protestants, however, at the Planning Commission meeting. Mr. Becker has many acres of R-3, vacant R-3 zoning to the west of the particular piece in question.

Mayor Pro Tem Lurie: You don't plan in coming in and changing that other R-3 to R-4, do you?

Mr. Becker: No. Theoretically, when you are R-4 zoned, it is between an R-3 zone and a business zone. R-4 creates a different type of apartments. It's a bachelor

typ, its a one bedroom type apartment, not two and three bedrooms. Theoretically we will have less people in these apartments, even though we will have more apartments, because the bachelor apartments. With the car wash, if it were successful, we would bring that little 87' strip over here to this area here (referring to map). We have had 40 or 50 acres of R-4 many years ago when we first came in between Decatur and Jones. We have rezoned it back to R-3 and R-1.

Mayor Pro Tem Lurie: My main concern is since I've been on the Board we have not approved any R-4. In 1974 we had seven applications to reduce R-4 down and in 1975 we had twelve applications that reduced from R-4 down. And in 1976, we had another application to reduce R-4 down. If all of the R-3 that is in that area is developed, then it goes against what our General Plan calls for and I know it is just a general plan as far as the density, but if R-3 is developed as such, it would exceed the recommended density in that particular area. That's my concern and I cannot support an R-4 application.

Mr. Becker: We have just taken some of the R-3 and made it into C-1 to take some of the R-3 out of that density figure you are using. By the time the whole Charleston frontage gets developed, there won't be that much R-3, there won't be that much density.

Commissioner Leavitt: The way I understand the plot map you have in front of us here, this whole area where we approved the car wash, the whole area is commercial in this block, from Charleston to Torrey Pines and Casada and Scholl. The whole block here is going to be all commercial except for those apartments. It's commercial all in front, you have apartments in the back. There is apartments across the street on Casada so this is apartments between the apartments across the street and the commercial in effect; now you have Charleston.

Mr. Becker: Yes, if you take all this and say it is going to be R-3 at that density, this is going to be business.

Commissioner Leavitt: Well, West Charleston will be commercial in all probability further down.

Mr. Becker: This is what R-4 is for, to get in there and take care of these people.

Commissioner Leavitt: There's a buffer between the commercial and the other apartments. It looks to me like that's what it is.

Mr. Saylor: In terms of our General Plan, that is not the purpose of R-4.

Commissioner Leavitt: The whole block is commercial except for this little strip of apartments on the plot plan that I have here.

Mr. Saylor: That's right, this whole piece is commercial.

Commissioner Leavitt: Where would you put R-4 if you didn't put it right next to commercial?

Mr. Saylor: Under our General Plan and under our philosophy of zoning, we have not allowed R-4, the high density, out in the outlying areas. We have tried to concentrate them more closely to the downtown area.

Commissioner Leavitt: When you have R-4 in the downtown area isn't it next to commercial?

Mr.-Saylor: The general commercial is downtown, right; not the neighborhood.

Commissioner Leavitt: I understand this is because it's suburban or neighborhood is why you recommended against it. Normally, the use for R-4 is right next to commercial. Isn't that where you usually put is in your planning?

Mr. Saylor: General commercial, not neighborhood.

Commissioner Leavitt: I see, this is neighborhood.

Commissioner Christensen: What's the parking requirement on R-4.

Mr. Saylor: The same as R-3. It's 1-1/2 to 1. He has adequate parking.

Mayor Pro Tem Lurie: Do the commissioners have any further questions? What action do you want to take on this application?

Commissioner Leavitt: I'll move for approval.
Motion was approved with Commissioner Lurie voting "no".

Mayor Pro Tem Lurie: Is there any other items to come before the Board this morning. No further business before the Board, this meeting is adjourned at 12:10 p.m.

APPROVED



MAYOR PRO TEM RON LURIE

ATTEST:



BETTY JO WINTER, CPS
ASSISTANT CITY CLERK

APPROVED BY REFERENCE at a Regular Meeting of the Board of City Commissioners held on the 16th day of March, 1977.