A regular meeting of the Carson City Board of Supervisors was scheduled for 8:30 a.m. on Thursday, March 18, 2021 in the Community Center Robert "Bob" Crowell Boardroom, 851 East William Street, Carson City, Nevada.

PRESENT:
Mayor Lori Bagwell
Supervisor Stacey Giomi, Ward 1
Supervisor Maurice White, Ward 2
Supervisor Stan Jones, Ward 3
Supervisor Lisa Schuette, Ward 4

STAFF:
Nancy Paulson, City Manager
Aubrey Rowlatt, Clerk-Recorder
Stephanie Hicks, Deputy City Manager
Dan Yu, Assistant District Attorney
Tamar Warren, Senior Public Meetings Clerk

NOTE: A recording of these proceedings, the Board's agenda materials, and any written comments or documentation provided to the Clerk, during the meeting, are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours. All meeting minutes and audio recordings are available for review at: https://www.carson.org/minutes.

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

(8:30:50) – Mayor Bagwell called the meeting to order at 8:30 a.m. Ms. Rowlatt called roll and noted that a quorum was present. Hilltop Community Church pastor Don Baumann provided the invocation. At Mayor Bagwell's request, Northern Nevada Development Authority Deputy Director Andrew Haskin led the Pledge of Allegiance.

5. PUBLIC COMMENT

(8:33:07) – Mayor Bagwell entertained public comments. Carson City Chief Technology Officer James Underwood read a prepared statement, attached, in memory of Desi Navarro who passed away two weeks ago.

(8:35:25) – Krista Leach introduced herself and spoke in opposition to item 13.A. Ms. Leach referenced her email (attached) regarding the Attorney General's opinions on zoning map amendments (also attached) on Nevada Revised Statute (NRS) 278.250. She believed that many of her questions were not answered including the following: a gradual transition for Center Drive residents from low-density to high density neighborhoods; research on the Southpointe subdivision mandates; research on "irregularities Mike Tanchek has found regarding change from SF1A to SF21 on the West side of Center Drive; what is the hurry in approving the zoning map amendment?" Ms. Leach requested to deny or continue the zoning map amendment to allow for further research and due diligence.

(8:38:43) – Michael Tanchek expressed his agreement to Ms. Leach's comments and read excerpts from his written comments (also attached) and highlighted the lack of a transition zone, the close connection between Silver View Town Homes and Borda Crossing, and the issue of retention basins posing "a hazard to City groundwater resources through possible contamination."

6. FOR POSSIBLE ACTION: APPROVAL OF MINUTES – FEBRUARY 18, 2021

(8:42:06) – Mayor Bagwell introduced the item and noted two previously submitted typographical corrections by the Deputy Clerk. She also entertained a motion.

(8:42:25) – Supervisor Giomi moved to approve the February 18, 2021 minutes as amended. The motion was seconded by Supervisor Jones and carried 5-0-0.

CONSENT AGENDA

(8:42:48) – Mayor Bagwell introduced the item and entertained requests to pull items from the Consent Agenda and when none were forthcoming, a motion.

(8:43:03) – Supervisor Giomi moved to approve the Consent Agenda consisting of items 7.A, 8.A, and 9.A as presented. The motion was seconded by Supervisor Schuette and carried 5-0-0.

7. CITY MANAGER

7.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION ON RATIFYING THE APPROVAL OF BILLS AND OTHER REQUESTS FOR PAYMENTS BY THE CITY MANAGER FOR THE PERIOD OF FEBRUARY 6, 2021 THROUGH MARCH 5, 2021.

8. FINANCE

8.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE REPORT ON THE CONDITION OF EACH FUND IN THE TREASURY AND THE STATEMENTS OF RECEIPTS AND EXPENDITURES THROUGH MARCH 4, 2021, PER NRS 251.030 AND NRS 354.290.

9. TREASURER

9.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE TREASURER'S MONTHLY STATEMENT OF ALL MONEY ON DEPOSIT, OUTSTANDING CHECKS AND CASH ON HAND FOR FEBRUARY 2021, SUBMITTED PER NEVADA REVISED STATUTE ("NRS") 354.280.

*****END OF CONSENT AGENDA*****

ORDINANCES, RESOLUTIONS, AND OTHER ITEMS

10. ITEM(S) PULLED FROM THE CONSENT AGENDA WILL BE HEARD AT THIS TIME.

No items were pulled from the Consent Agenda.

11. HEALTH & HUMAN SERVICES

11.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING DIRECTIVES AND RECOMMENDATIONS CONCERNING CARSON CITY DEPARTMENTAL AND STAFF FUNCTIONS IN CARSON CITY AS A CONSOLIDATED MUNICIPALITY IN RELATION TO THE EXERCISE OF EMERGENCY POWERS PURSUANT TO NRS CHAPTERS 244 AND 414 AND CCMC CHAPTER 6.02 FOR THE PURPOSE OF ENSURING THE HEALTH, SAFETY AND WELFARE IN CARSON CITY IN RESPONSE TO THE GLOBAL CORONAVIRUS (COVID-19) PANDEMIC.

(8:43:26) – Mayor Bagwell introduced the item. Carson City Health and Human Services (CCHHS) Director Nicki Aaker provided the following update to the Board for the two-week period of February 28, 2021 until March 13, 2021:

- 94 confirmed COVID-19 cases (37 percent of all Quad-County cases).
- A 16 percent decrease from the previous two-week period.
- Five daily cases reported, based on a seven-day average.
- Five case investigations completed within the schools.
- Exposures: 37 percent household and 33 percent community, with workforce being the third highest.
- Four long-term care facility cases (reduced significantly from the previous two-week period).

(8:45:20) – Ms. Aaker also provided an update on COVID-19 vaccinations, stating that three events were planned in Carson City in March and more will be added as more vaccines become available, adding that CCHHS would comply with the directives from the Governor's last press conference. Ms. Aaker noted that the medical offices, local pharmacies (Walgreens, Walmart, and Smith's), and the local federally qualified health center are also vaccinating patients. She also responded to clarifying questions. Supervisor Giomi reminded the public to cancel their vaccination appointments if they cannot keep them, to ensure someone else has the opportunity to receive the vaccine.

(8:49:01) – Mayor Bagwell inquired about large gatherings, as she had received many phone calls regarding the topic, and recommended waiting until the end of June to decide whether to exceed the 250-person maximum (based on venue size). Supervisor Schuette was also in favor of a gradual increase. Supervisor Giomi recommended tracking the number of vaccinations and reevaluating in late May. Ms. Hicks received clarification that the 250-person capacity for inside gatherings was dependent on the venue size. Supervisor White stated, "I don't have any interest in complying with or forcing the Governor's mandates, in particular when it comes to those activities within private property." Ms. Aaker was in favor of "taking this slow…and I don't want to go back to where we were at." Mayor Bagwell thanked Ms. Aaker and acknowledged the hard work by the CCHHS staff.

12. PUBLIC WORKS

12.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE ADOPTION, ON SECOND READING, OF BILL NO. 103, A PROPOSED ORDINANCE AMENDING TITLE 12 AND TITLE 18 APPENDIX OF THE CARSON CITY MUNICIPAL CODE ("CCMC") TO ESTABLISH VARIOUS PROVISIONS IMPLEMENTING LOW IMPACT DEVELOPMENT STANDARDS, ESTABLISHING GENERAL REQUIREMENTS FOR COMPLIANCE WITH LOW IMPACT DEVELOPMENT STANDARDS, AUTHORIZING EXEMPTIONS TO COMPLIANCE WITH LOW IMPACT DEVELOPMENT STANDARDS UNDER CERTAIN CIRCUMSTANCES, ADOPTING AND INCORPORATING BY REFERENCE THE CARSON CITY DRAINAGE MANUAL AND REPEALING VARIOUS PROVISIONS OF DIVISION 14 OF TITLE 18 APPENDIX.

(8:53:31) – Mayor Bagwell introduced the item and inquired whether comments or questions had been received regarding the item. Public Works Director Darren Schulz stated that they had not; therefore, Mayor Bagwell entertained a motion. She also thanked the Public Works staff and the members of the community for working together on the item.

(8:54:05) – Supervisor White moved to adopt, on second reading, Bill No. 103, Ordinance No 2021-3. The motion was seconded by Supervisor Giomi.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor White
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

13. COMMUNITY DEVELOPMENT – PLANNING

13.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION TO ADOPT, ON SECOND READING, BILL NO. 104, AN ORDINANCE RELATING TO ZONING AND ESTABLISHING VARIOUS PROVISIONS TO CHANGE THE ZONING FROM SINGLE FAMILY 1 ACRE (SF1A) TO SINGLE FAMILY 6,000 (SF6) ON PROPERTY LOCATED AT THE NORTHEAST CORNER OF SILVER SAGE DRIVE AND CLEARVIEW DRIVE, APN 009-124-03.

(8:54:28) – Mayor Bagwell introduced the item and entertained disclosures. Supervisor Giomi read into the record a prepared disclosure statement, advised of no disqualifying conflict of interest, and stated that he would participate in discussion and action. Mayor Bagwell received confirmation from Associate Planner Heather Ferris that Staff had read and heard the public comments provided telephonically during item 5 of the agenda, and inquired whether "a change is needed in any of the approvals." Ms. Ferris stated that "findings can still be made." Mayor Bagwell entertained questions from the Board. Supervisor Schuette explained that she had reached out to neighbors and Staff regarding the item and referenced the morning's invocation, noting her appreciation on the

wisdom of "how to make a decision that really is the right decision in the face of not being able to make everyone happy." Supervisor Schuette noted that researching the Master Plan and the Zoning led her to the decision she would be making, based on the three findings, adding that "while there are some areas of this that are inconsistent perhaps with what was zoned just north in Southpointe, it is in substantial compliance [with] the Master Plan in terms of that transition area." She also assured the neighbors that she was "not taking this lightly" and that "what is being presented is the most balanced, under the circumstances…and it helps promote community."

(9:02:48) – Supervisor Giomi noted that Supervisor Schuette's comments were "a well stated, objective look at things" and complimented her for "articulating what all of us go through when we approve subdivisions tentatively…none of us up here take it lightly." Mayor Bagwell stated "we take public comment seriously. We have Staff do the research for the items that you bring up, and I'm sorry that the reality is [that] you're not getting the result that you want. I understand and have empathy for that, but we have to do the job of reviewing each project on its face." She also addressed a question that was brought up regarding the connection between the two properties and assured the neighbors that "each decision is unique unto itself…[and] the ownership of two properties is not something in code that is utilized for us to make a decision." Mayor Bagwell also addressed a comment regarding the Board having "an abuse of discretion" and referenced several hearings including ones in the Planning Commission meeting. She believed the property owner listened to the public and reduced the number of homes allowed, but did not meet what the neighbors had wanted. Mayor Bagwell thanked the Board for looking at the item independently. Supervisor Jones indicated that he trusted Staff to have given the Board accurate information and he was appreciative of the input he had received. Mayor Bagwell entertained additional comments and when none were forthcoming, a motion.

(9:06:09) – Supervisor Jones moved to adopt, on second reading, Bill No. 104, Ordinance No. 2021-4. The motion was seconded by Supervisor Giomi.

RESULT:	**APPROVED (4-1-0)**
MOVER:	Supervisor Jones
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, and Mayor Bagwell
NAYS:	Supervisor White
ABSTENTIONS:	None
ABSENT:	None

13.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A PROPOSED ORDER OF ABANDONMENT FOR THE ABANDONMENT OF A PORTION OF A PUBLIC RIGHT-OF-WAY TOTALING APPROXIMATELY 0.39 ACRES ALONG THE SOUTH SIDE OF BEVERLY DRIVE AND THE EAST SIDE OF N. ROOP STREET, ADJACENT TO PROPERTIES LOCATED AT 911 AND 1101 BEVERLY DRIVE, APNS 002-121-15 AND 002-121-16.

(9:06:43) – Mayor Bagwell introduced the item and entertained Board questions or comments; however, none were forthcoming. Mayor Bagwell entertained a motion.

(9:07:06) – Supervisor White moved to approve the Order of Abandonment based on the findings and subject to the conditions of approval contained in the Order. The motion was seconded by Supervisor Jones.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor White
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

14. CITY MANAGER

14.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE APPOINTMENT OF ONE MEMBER TO THE CARSON CITY CULTURE AND TOURISM AUTHORITY ("CTA") AS A REPRESENTATIVE FOR OTHER COMMERCIAL INTERESTS, FOR A TWO-YEAR TERM EXPIRING IN JULY, 2023.

(9:07:34) – Mayor Bagwell introduced the item. Ms. Paulson invited the first applicant, Deborah Billings, to be interviewed first, followed by the second applicant, Steve Reynolds. Mayor Bagwell outlined the process to each candidate and each Board member asked the same question to both candidates after which the Board participated in discussion to reach a decision.

(9:25:31) – Supervisor Jones called the responses by the candidates "great"; however, he favored Mr. Reynolds' response of mentioning families. He also encouraged Ms. Billings to apply for other opportunities as they become available.

(9:26:00) – Supervisor Jones moved to approve Steve Reynolds [to the Carson City Culture and Tourism Authority [as a representative for other commercial interests], with a two-year term expiring in July 2023. The motion was seconded by Supervisor White for discussion.

(9:26:06) – Supervisor White was in favor of adding new people to Boards; however, he praised Mr. Reynolds for his solid decision making coupled with his embracing of new ideas, and recommended appointing Mr. Reynolds to the position. Supervisor Schuette also believed the decision was close; however, she was in support of appointing Mr. Reynolds for his input regarding tying the bicycle races to other events and opportunities to keep visitors in the community longer. She also thanked Ms. Billings and invited her to attend the meetings and provide comments and new ideas. Supervisor Giomi thanked both candidates and stated his continued amazement at the quality of the applicants. He also explained that as the Board's representative on the Culture and Tourism Authority (CTA), he agreed with Mr. Reynolds on using scientific data and indicators for "spending the money wisely," which he believed the CTA was already doing. Mayor Bagwell thanked both applicants for being "wonderful additions to our community" and invited Ms. Billings to reapply in the future. She also called for the vote.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor Jones
SECONDER:	Supervisor White
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

15. CARSON CITY AIRPORT AUTHORITY

15.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE PROPOSED ACCEPTANCE OF A FEDERAL AVIATION ADMINISTRATION ("FAA") GRANT AWARD IN THE AMOUNT OF $23,000 TO THE CARSON CITY AIRPORT UNDER THE CORONAVIRUS RESPONSE AND RELIEF SUPPLEMENTAL APPROPRIATIONS ACT (PUBLIC LAW 116-260) ("CRRSA").

(9:31:02) – Mayor Bagwell introduced the item. Carson City Airport Manager Ken Moen clarified for Supervisor Giomi that this grant would offset airport expenses as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. He also noted that the grant was provided by the Federal Aviation Administration without applying for it. Mayor Bagwell entertained additional questions or comments and when none were forthcoming, a motion.

(9:34:08) – Supervisor White moved to accept the grant as presented and to authorize the execution of any documents as may be necessary to receive the funds on behalf of the Carson City Airport Authority. The motion was seconded by Supervisor Giomi.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor White
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

15.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING AUTHORIZATION OF A PROPOSED OPTION, LEASE AND EASEMENT AGREEMENT BETWEEN THE CARSON CITY AIRPORT AUTHORITY ("CCAA") AND T-MOBILE WEST, LLC TO GIVE T-MOBILE: THE OPTION, FOR $1,000 FOR A PERIOD OF 1 YEAR, TO INSTALL A CELLULAR ANTENNA ON THE AIRPORT ROTATING BEACON MONO POLE (A PORTION OF APN 005-011-01) AND A GROUND LEASE OF APPROXIMATELY 625 SQUARE FEET FOR ASSOCIATED CELLULAR SUPPORT EQUIPMENT AND, IF THE OPTION IS EXERCISED, A LEASE AND EASEMENT ACROSS THE REFERENCED PROPERTY FOR $2,020 PER MONTH, INCREASING BY

3% EACH YEAR, FOR AN INITIAL 5-YEAR TERM, WITH 5 SUCCESSIVE AUTOMATIC RENEWAL TERMS OF 5 YEARS EACH AND THEN 9 SUCCESSIVE AUTOMATIC TERMS OF ONE YEAR EACH, FOR A TOTAL POTENTIAL TERM OF 39 YEARS.

(9:34:40) – Mayor Bagwell introduced the item. Mr. Moen presented the agenda materials and noted several amendments to the agreement as follows:

16. Indemnification.

b) To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, Tenant shall indemnify, hold harmless, and defend, not excluding Landlord's or Carson City's right to participate, Landlord and Carson City from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of Tenant, its officers, employees, agents, contractors, ~~servants, invitees, customers~~, or employees where related to this lease; any breach or default by Tenant in the performance of its obligations under this Lease; and Tenant's possession, use, occupancy, management, repair, maintenance, or control of the Premises or any portion thereof.

Mr. Moen also noted that on page 11 of the agreement (on the signature line) the word *Airport* will be replaced by the word *Landlord.*

(9:35:47) – Mayor Bagwell entertained additional questions and when none were forthcoming, a motion.

(9:36:40) – Supervisor White moved to approve the lease agreement as presented, with the corrections read into the record by Mr. Moen. The motion was seconded by Supervisor Jones.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor White
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

16. FINANCE

16.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING AMENDMENT NO. 1 TO CONTRACT NO. 1718-137 FOR INTERNAL AUDIT SERVICES WITH EIDE BAILLY, LLC, TO EXTEND THE CONTRACT TERM FOR AN ADDITIONAL YEAR THROUGH JUNE 30, 2022 AND FOR A NOT TO EXCEED AMOUNT OF $110,000.

(9:37:07) – Mayor Bagwell introduced the item and read into the record a prepared disclosure statement, advised of a disqualifying conflict of interest, and stated that she would not participate in discussion and action. She also

turned the gavel over to Supervisor and Mayor Pro Tem Giomi. Carson City Chief Financial Officer Sheri Russell gave background and presented the Staff Repot and the proposed Contract Amendment, both of which are incorporated into the record. She also responded to clarifying questions by the Supervisors. Supervisor White expressed concern about the one-year extensions and wished to understand "going forward, how are we going to avoid this coming together again at the same place…at the end of these next contracts?" Ms. Russell explained that the Eide Bailly, LLC contract was being extended by a year and that a Statement of Qualifications would be needed next year. Mayor Pro Teem Giomi entertained a motion.

(9:41:40) – Supervisor Jones moved to approve the amendment. The motion was seconded by Supervisor Schuette.

RESULT:	**APPROVED (4-0-1)**
MOVER:	Supervisor Jones
SECONDER:	Supervisor Schuette
AYES:	Supervisors Jones, Schuette, White, and Mayor Pro Tem Giomi
NAYS:	None
ABSTENTIONS:	Mayor Bagwell
ABSENT:	None

16.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING THE RECOMMENDED DESIGNATION OF HINTONBURDICK CPAS & ADVISORS AS CARSON CITY'S AUDIT FIRM FOR FISCAL YEAR ("FY") 2020-2021 PURSUANT TO NRS 354.624, AND WHETHER TO AWARD CONTRACT NO. 20300264, EXTERNAL AUDIT SERVICES WITH HINTONBURDICK CPAS & ADVISORS, FOR A TOTAL NOT TO EXCEED AMOUNT OF $296,750 FOR THREE YEARS AND TERMINATING ON MARCH 31, 2024, WHICH INCLUDES AN ANNUAL CONTINGENCY AMOUNT OF $3,000 IF NEEDED FOR THE AUDITING OF ANY ADDITIONAL FEDERAL FUNDING PROGRAMS, FOR THE AUDITS OF FYS 2021, 2022 AND 2023, PLUS TWO ONE-YEAR RENEWAL OPTIONS BY MUTUAL CONSENT IN THE AMOUNT OF $98,250 FOR FY 2024 AND $100,750 FOR FY 2025.

(9:42:01) – Mayor Bagwell introduced the item and entertained Board questions/comments and when none were forthcoming, a motion.

(9:42:30) – Supervisor Giomi moved to designate HintonBurdick CPAs & Advisors as Carson City's audit firm for Fiscal Year 2020-2021, and to approve the contract as presented. The motion was seconded by Supervisor Jones.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Jones
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

17. CITY MANAGER

17.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING A REQUEST TO ACKNOWLEDGE AN APPLICATION FROM REDWOOD MATERIALS, INC. FOR STATE INCENTIVES THROUGH THE GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT ("GOED").

(9:42:56) – Mayor Bagwell introduced the item. Northern Nevada Development Authority Deputy Director Andrew Haskin presented the agenda materials which included an overview of Redwood Materials, Inc., and its application for state incentives. Supervisor White believed that "providing special advantages to privileged companies is an insult to our founders." Mayor Bagwell encouraged the Board to tour the facility, calling it phenomenal. She was also in favor of holding a community event to recycle old equipment such as cell phones. Mayor Bagwell clarified that the agenda item was about acknowledging the application. She also entertained a motion. Mr. Haskin invited the Board to contact him to set up a tour.

(9:46:41) – Supervisor Giomi moved to acknowledge the application and authorize the Mayor to sign the letter of acknowledgement to GOED. The motion was seconded by Supervisor Schuette.

RESULT:	**APPROVED (4-1-0)**
MOVER:	Supervisor Giomi
SECONDER:	Supervisor Schuette
AYES:	Supervisors Giomi, Jones, Schuette, and Mayor Bagwell
NAYS:	Supervisor White
ABSTENTIONS:	None
ABSENT:	None

17.B FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING: (1) A PROPOSED RESOLUTION CREATING THE SUBCOMMITTEE FOR THE REVIEW OF CARSON CITY ZONING AND DEVELOPMENT STANDARDS ("ZONING SUBCOMMITTEE"); AND (2) THE APPOINTMENT OF A SUPERVISOR FROM THE BOARD OF SUPERVISORS ("BOARD") TO THE ZONING COMMITTEE PURSUANT TO THE RESOLUTION.

(9:47:14) – Mayor Bagwell introduced the item and acknowledged that Community Development Director Lee Plemel had received comments from this Board and the Planning Commission and had been working on rewrites with Mr. Yu. She noted that the subcommittee would create an opportunity for public comment and for both boards to ensure "we didn't miss anything." Supervisor Giomi was informed that the subcommittee would "finish the process" and not start over. He was also in favor of a joint meeting with the Board and the Planning Commission to review the draft ordinance instead of creating a separate entity. Mr. Yu clarified that since the Board had appointing authority over the Planning Commission, the hybrid board would create logistical and hierarchical issues. Supervisor Giomi was in favor of the overall concept but not this particular tactic. Mr. Yu clarified that the subcommittee would provide an opportunity for public input and transparency. Supervisor White was in favor of the subcommittee and believed they would be able to produce a more reliable and official record. Supervisor Jones believed the subcommittee would create an additional layer. Supervisor Giomi noted that the

Board has provided direction to Staff and was uncomfortable that "things may get inserted or stricken at this proposed body's level that then become difficult to change."

(10:09:55) – Supervisor White moved to approve the resolution and appoint Supervisor White to the Zoning Subcommittee. The motion was seconded by Mayor Bagwell who also entertained discussion.

(10:10:13) – Mayor Bagwell acknowledged the complexity of the Title 18 discussion and called the Supervisors' points valid. She believed that the subcommittee would give the public an opportunity to address both the Planning Commission and the Board of Supervisors at the same time. She also saw opportunities for corrections and for providing a forum for the public to address both the Board of Supervisors and the Planning Commission at the same time. Supervisor Schuette wished to see a more unified voice but was not in favor of not having both full boards. Mayor Bagwell called for the vote.

RESULT:	**FAILED (2-3-0)**
MOVER:	Supervisor White
SECONDER:	Mayor Bagwell
AYES:	Supervisor White, and Mayor Bagwell
NAYS:	Supervisors Giomi, Jones, and Schuette
ABSTENTIONS:	None
ABSENT:	None

17.C FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION ON THE SELECTION OF A PROCESS BY WHICH TO FILL AN ANTICIPATED VACANCY IN THE OFFICE OF CARSON CITY TREASURER.

(10:14:44) – Mayor Bagwell introduced the item. Ms. Paulson provided background and cited the NRS 245.170(1) which requires the Board to appoint a person to fill the anticipated vacancy for the remainder of the Treasurer's unexpired term. She also reviewed the Staff Report, incorporated into the record, which included the timelines for the application review, interviews, and appointment. Supervisor Giomi expressed concern about the condensed timeline. There were no additional questions; therefore, Mayor Bagwell entertained a motion.

(10:17:31) – Supervisor Giomi moved to direct the City Manager to open the application process for the Treasurer position, and to follow the following timeline and the process read into the record by Ms. Paulson. The motion was seconded by Supervisor White.

1. Vacancy announcement to be posted for the submission of application packets from interested persons, to be accepted by HR from the period of March 19, 2021 to 5:00 p.m. on April 19, 2021. Completed application 1 packets and supporting material submitted by candidates to be published as public records on the Carson City website at www.carson.org.

2. The Board to receive all candidate information on April 20, 2021.

3. At its May 6, 2021 meeting, the Board to determine which candidates will be invited for an interview.

4. At its May 20, 2021 meeting, the Board to hold interviews for the selected candidates and appoint a Treasurer to fill the vacancy, at which time the oath of office will also be administered. A draft vacancy announcement is attached to this agenda item for the Board's consideration.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor Giomi
SECONDER:	Supervisor White
AYES:	Supervisors Giomi, Jones, Schuette, White, and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

17.D FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION: (1) REGARDING A BUSINESS IMPACT STATEMENT CONCERNING A PROPOSED ORDINANCE REPEALING THE SHADE TREE COUNCIL; AND (2) TO INTRODUCE, ON FIRST READING, A PROPOSED ORDINANCE REPEALING THE SHADE TREE COUNCIL.

(10:18:05) – Mayor Bagwell introduced the item and entertained Board questions/comments; however none were forthcoming. Mayor Bagwell entertained a motion.

(10:18:38) – Supervisor Schuette moved to approve the business impact statement as presented and introduce the ordinance on first reading. The motion was seconded by Supervisor Giomi.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor Schuette
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

18. BOARD OF SUPERVISORS

18.A FOR POSSIBLE ACTION: DISCUSSION AND POSSIBLE ACTION REGARDING COORDINATION OF LEGISLATIVE ACTIVITY ON PENDING STATE LEGISLATION BEFORE THE NEVADA LEGISLATURE AND WHETHER TO ADOPT AN OFFICIAL POLICY POSITION OR DIRECT STAFF AND CARSON CITY'S RETAINED LOBBYIST TO ADVOCATE FOR OR AGAINST ANY SUCH LEGISLATION, INCLUDING THE SUBMITTAL OF PROPOSED AMENDATORY LANGUAGE.

(10:18:59) – Mayor Bagwell introduced the item. Ms. Paulson reviewed SB156, incorporated into the record as late material, and noted the recommendation of support by Carson City's retained lobbyist. Mayor Bagwell indicated she had been in discussion with Carson Tahoe Health staff, adding that they had brought this bill forward. She was in favor of other hospitals doing Medicaid billing for these services, and wished to support the bill. She also entertained a motion as there were no additional comments.

(10:20:40) – Supervisor Jones moved to support SB156 as presented. The motion was seconded by Supervisor Schuette.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor Jones
SECONDER:	Supervisor Schuette
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

(10:20:59) – Ms. Paulson introduced AB270, incorporated into the record as Late Material. Mayor Bagwell entertained disclosures. Supervisor White read into the record a prepared disclosure statement, advised of no disqualifying conflict of interest, and stated that he would participate in discussion and action. Mayor Bagwell entertained questions and/or a motion.

(10:26:02) – Supervisor White moved to support AB270. The motion was seconded by Supervisor Giomi.

RESULT:	**APPROVED (5-0-0)**
MOVER:	Supervisor White
SECONDER:	Supervisor Giomi
AYES:	Supervisors Giomi, Jones, Schuette, White and Mayor Bagwell
NAYS:	None
ABSTENTIONS:	None
ABSENT:	None

(10:26:31) – Supervisor Giomi announced that Storey County had issued a public position on the Blockchains Bill Draft Request (BDR), calling it well-written and recommended that Ms. Paulson's Office forward it to the Board.

19. BOARD OF SUPERVISORS – NON-ACTION ITEMS

FUTURE AGENDA ITEMS
STATUS REVIEW OF PROJECTS
INTERNAL COMMUNICATIONS AND ADMINISTRATIVE MATTERS

CORRESPONDENCE TO THE BOARD OF SUPERVISORS
STATUS REPORTS AND COMMENTS FROM THE MEMBERS OF THE BOARD
STAFF COMMENTS AND STATUS REPORT

(10:27:34) – Supervisor Giomi congratulated Fire Captain Jonathon Pedrini for his promotion to Battalion Chief and Firefighter/Paramedic Matthew Cooper to Captain. He also provided an update from the Carson Water Subconservancy District meeting he had attended with Supervisor Schuette, noting "we're behind about five inches over the 20-year average." Supervisor Giomi also announced that SB98, the bill to add Storey County as an official member of the Carson River Subconservancy District had passed unanimously in the State Senate and anticipated it passing in the State Assembly as well.

(10:29:33) – Ms. Paulson updated the Board on the State COVID-19 Task Force activities including the City's proposed Mitigation and Enforcement Plan which Staff was developing "in anticipation of receiving authority from the Governor on May 1." She also noted that the Task Force had no recommended changes to the plan. Ms. Paulson stated that they were developing "an easy-to-read matrix that will provide industry guidance to our businesses." She stated that a draft would be presented to the Board on April 1, 2020 with the intent of having the final plan reviewed during the April 15, 2020 Board meeting.

(10:31:00) – Ms. Hicks announced that a public outreach postcard had been made available for the public housing project on Butti Way. She stated that a Zoom meeting will also be hosted to provide information to the public and receive feedback. Ms. Hicks believed that the Development Agreement will be presented to the Board in April or May 2021. Additionally, a Memorandum of Understanding may be needed for the title transfer.

(10:32:25) – Supervisor White clarified the comments he had made during the discussion of item 17.A, stating that they were not meant to disparage any of the hard work done by NNDA and Redwood Materials, Inc., noting they were meant to be "philosophical."

20. PUBLIC COMMENT

(10:32:58) – Mayor Bagwell entertained final public comments; however, none were forthcoming.

21. FOR POSSIBLE ACTION: TO ADJOURN

(10:33:45) – Mayor Bagwell adjourned the meeting at 10:33 a.m.

The Minutes of the March 18, 2021 Carson City Board of Supervisors meeting are so approved on this 15th day of April, 2021.

Lori Bagwell
LORI BAGWELL, Mayor

ATTEST:

Aubrey Rowlatt
AUBREY ROWLATT, Clerk – Recorder

Attachments: Emailed public comments
Mr. Underwood's public comment

LATE MATERIAL
Item #: Public Comment
Meeting Date: 03/18/20

BEFORE THE CARSON CITY BOARD OF SUPERVISORS
OBJECTION TO SECOND READING OF ZONING ORDINANCE
BORDA CROSSING: ZA-2020-0005 and SUB-2020-0016
March 18, 2021

Public Comments (2) for 3/18/2021 BOS meeting.

Michael Tanchek
Tanchek Family Trust
740 E. Clearview Dr.
Carson City, NV 89701

We own the property described as W1/2, SW1/4, SW1/4, SE1/4, S29, T15N, R20E, MDB&M, located at the northeast corner of Clearview and Center Drive intersection. This has been our primary residence since April, 1991. Our property is designated as Low Density Residential on the Master Plan and zoned SF 1A. We are adjacent to Borda Crossing for approximately 300 feet on the east side of Center.

We are objecting to both the proposed rezoning of APN 009-124-03, as well as the tentative plan for what is now called "Borda Crossing." For a variety of reasons, we believe that the actions of both the Planning Commission ("Commission") and the Board of Supervisors ("Board") have been arbitrary and capricious, constitute an abuse of discretion, and do not comply with all of the relevant statutes, ordinances, and regulations, including the City's Master Plan. Therefore, I am submitting the following alternative recommended motion to be considered by the Board.

> **I move to deny the Zoning Map Amendment for APN 009-124-03, originally filed as ZA-2020-0005, because the required findings are insufficient to justify the amendment and the Planning Division Staff and applicant have failed to bring forth either an alternative zoning or a lot layout that would address the concerns raised at the June 18, 2020 Supervisors' as directed by this Board.**

I first testified regarding this proposal at the February 26, 2020 meeting of the Commission when I raised an objection to the connection between State Street Development's ("State Street") Silver View Townhomes project and what became their Borda Crossing project. The Planning Division staff took the position that there was no connection between the two and that my testimony should be discounted on that basis. There have been so many "coincidences" since that February 2020 meeting that I no longer believe that Staff's representations to the Commission to be credible. At this point, I also believe that Greg Short's description of the approval of the application as being a "done deal" following his conversation with one of the principals of State Street, Rob McFadden, was an accurate representation. All that remained was a pro forma rubber-stamping of the proposal.

Since that time, we have filed comments and provided testimony at the Commission meetings on May 27, 2020 and January 27, 2021 and the Supervisors' meetings on June 18, 2020 and February 18, 2021.

In order to avoid findings of arbitrary and capricious behavior agencies often disguise their findings and

decisions in technocratic, statutory, or scientific language. Mere conclusory statements that lack substantial evidence to sustain findings are not sufficient. This is particularly true in a case like this one, where the evidence weighing in favor of denying the application is ignored. In addition, failing to disclose or affirmatively hiding political influences and personal biases often factor into the mix. This lack of true transparency allows agencies to achieve plausible deniability and avoid accountability for their decisions. While administrative decisions are accorded deference based on substantial evidence, the standard is not "any excuse will do."

A more detailed explanation of the grounds for our objection follows.

1. Due to the lack of clear transition zones on both Center and Clearview Drives, the proposed conversion of the Borda Crossing zoning to SF 6 adjacent to one SF 21 two SF 1A zoning districts does not comply with Title 18 of the Carson City Municipal Code.

A real transition zone between SF 6 and SF 1A should be either SF 21, SF 12 or a combination of the two. The proposed donut-shaped common open space development lacks reasonable transition zones between the SF 1A to the south and east and the SF 21 to the northeast. CCMC 18.03.010 defines a "Transition zone" as "...**a zoning district** that permits uses compatible with uses permitted in 2 adjacent zones that, without the transition zones, could be considered incompatible to each other." (emphasis added) Streets, a sidewalk, some vegetation, and setbacks might be a screen or a buffer, but they are not a "zoning district." As a result, there is no transition zone between the SF 1A and SF 6.

2. Rezoning the entire Borda Crossing parcel as SF 6 is arbitrary and capricious because it is inconsistent with the established policy and practice of both the Board of Supervisors and Planning Commission for the properties on the west side of Center Drive.

I believe it was Supervisor White who said he would like to see some consistency. According to State Street, "Our alternative would also correct an inconsistency between the zoning and the master plan and *is consistent with the past policy and prectice of the Board and Commission."* We dispute this claim because the zoning change is clearly inconsistent with the Board's past policy and practice.

Borda Crossing comprises about 5 1/4 acres of the 25 1/2 acre tract bounded by Koontz, Silver Sage, Clearview, and Center Drives. The tract was apparently reclassified as medium density residential (MDR) in 1996, most likely to accomodate higher density residential intrusion into the more rural community south of Koontz.

In the late 1990's, the northern 20 acres, now called Southpointe, was developed by Landmark Homes. Only the western portion of the tract was rezoned as SF 6 and consistent with the MDR designation. Except for the half acre reduced to accomodate the retention basin at Mayor's Park, the remaining parcels along Center were left in SF 1A zoning. Center remained zoned consistent with the original low density residential (LDR) designation on both sides of Center from Koontz all the way down to Snyder. When the Master Plan was updated in 2006, the LDR compatible zoning on Center was retained.

The zoning was changed on the west side of Center in early 2008 when Jim Schneider filed an application

to rezone his parcel at 4094 Center from SF 1A to SF 21. (The relevant Commission minutes from December 2007 and January 2008 are included as Attachment 1.)

The real estate website, Zillow, provides detailed information concerning this property as a "Rare one acre lot in Carson, has been approved to be sub-divided into two 1/2 acre lots. Main home and detached garage is situated on one half an acre to accommodate another home or maintain the one acre." The key word is "rare" which strongly indicates that the zoning on this property is not like other similarly situated properties. In a word, it is "inconsistent."

While Schneider knew only one house per acre was permitted, he built a house on the north half to justify building a second house on the south. The Commissioners were aware of both the existing zoning and master plan designation on Center. They were concerned that they would be "spot zoning" if they changed Schneider's parcel to SF 21 for his benefit while leaving the the parcels to the north and the south (Borda Crossing) as SF 1A. As a solution, the Commissioners directed the Staff representative, Mr. Plemel, to amend the application to rezone the two properties to the north as SF 21 as well. During the discussion, Commissioner Mullet proposed that the southern parcel be "split zoned" as SF 21 between the back lot line of the existing houses and Center in order to maintain the consistency of the transition zone on Center. His call for consistency was ignored and the parcel remained SF 1A.

At the following Commission, the three properties on the west side of Center were recommended for rezoning as SF 21. This was con sistent with LDR and was considered by all involved to be a "good transition" between the SF 6 at Southpointe and the SF 1A on the east side of Center. Unlike the Schneider rezoning, State Street's proposal omits any transition zone between the SF 6 and the SF 1A, contrary to Board's established policy and practice for properties on the west side of Center between Koontz and Clearview.

Furthermore, adopting the established SF 21 zoning on the west side of Center would provide a direct benefit to State Street because they would no longer need to undertake the expensive improvements such as widening the street on their side and adding sidewalks, curb and gutter. In addition, they could limit the width of the emergency access portal from Bayonne to Center to a single driveable lane, reducing their costs even further.

3. Failing to adequately consider reasonable alternative recommendations from the surrounding residents is a clear abuse of discretion by both the Commission and the Board.

The Commission and Board have all taken the position that they are bound by statute to consider only the Master Plan in determining whether this property should be rezoned as requested. We disagree. When I got sued over the Cabela's project in Reno, I also took the position that my hands were tied by the statutes. The Supreme Court felt otherwise, pointing out that there was sufficient authority to take action outside those particular statutes. Failing to act was an abuse of discretion.

Krista Leach and I made at least four alternative zoning proposals in line with what the Board asked in June. The first being as far back as May 26, five months before State Street took control of the property

away from JJ Summers. At the minimum, our proposals would have agreed to seven SF 21 lots around the perimeter and as many SF 6 and SF 12 lots as State Street could squeeze into the remaining interior space.

Along with the Planning Staff and Legislative Council Bureau, we agree that the Board has the authority to either amend the proposed zoning or amend the Master Plan to place part of the property into LDR. While State Street says their *"...alternative would also correct an inconsistency between the zoning and the master plan..."*, we maintain that split zoning or amending the Master Plan would, likewise, correct the inconsistency between the zoning, the Master Plan, and what actually exists in the neighborhood.

4. Because both the Commission and the Board failed to consider all of the relevant evidence and relied on incorrect and incomplete information prior to making the decision to approve the zone change there has been a clear error of judgment.

Perhaps the most egregious example, was when State Street's representatives, Mr. Turner and Mr. Carriola, as well as Commissioners Killgore and Wiggins took the position that the only alternative to State Street's SF 6 proposal was to leave the property vacant because it wouldn't be profitable otherwise. At an earlier hearing, Commissiomer Perry asserted that there is no demand for SF 1A residential and all the developers are building is SF 6 or higher density. Ignoring that profitability may be considered an impermissible consideration, reality simply doesn't bear out these assertions.

Dynamic Diversified Developers and the Canyon Vista development built and sold around 26 residences adjacent to East Clearview about five or six years ago. Right now, there are two newly built homes and one lot being cleared on the east side of Center with a fourth on Ponderosa. On the other hand, the high density projects along Silver Sage haven't met with the same success. After 15 years, none of the 23 units at Ross Park have been built. Jackson Square, the recipient of a special use permit nine years ago has finally gotten around to completing about 25 out of 41 units. State Street's Silver View Townhomes-Borda Crossing project has yet to be fully vetted.

It was asserted that "Per Chapter 3, Land Use Planning, of the Carson City Master Plan, MDR land use is compatible with zoning designations with density ranges of 3 to 8 du/acre. SF6 zoning allows for a maximum density of 7.26 units per acre (while SF1A permits 1 unit per acre)." That is true as far as it goes However, omitted was any consideration of the facts that the SF 21 and SF 12 transition zones allow for roughly 3 or 4 du/acre which could mean between 15 and 20 residences. With SF 6 available in the interior portion, this would easily fit with the number of homes Supervisor Giomi said he envisioned when he inquired about split zoning at the June Board meeting.

5. Changing the zoning would allow the developer to move forward with a project that is not in substantial compliance with the goals, policies and action programs of the Carson City master plan.

At the February 18 Supervisors' meeting, the project was referred to as "infill." As such, it would meet one of the goals of the Master Plan. However, if you put lipstick on a pig it is still a pig. Later on at the meeting, Hope Sullivan correctly pointed out that much of the friction being generated by this entire proposal was because it was, in fact, an "edge" proposal. The goals and policies for projects taking place at the "edge" between the urban parts of Carson City and the more rural areas bear an increased level of protection and

scrutiny.

Another word for the "edge" is the "friction zones" discussed by Supervisors Schuette and Giomi while discussing the annual review of the Master Plan at the January 21 Board meeting. In a section entitled "Land Use Friction Zones" the Master Plan says to *"Discourage rezoning of properties that create "friction zones" between land uses—for example, placing incompatible land uses such as industrial and residential adjacent to one another. Enforce standards for transitions between residential and commercial uses and develop standards for mixed-use development to address compatibility issues."*

"Residential *land use categories are intended to protect the character of established neighborhoods* and provide opportunities for new residential neighborhoods." Goal 9.4 of the Plan clearly states *"(T)he character of existing rural neighborhoods will be protected"* and *"(T)he quality and character of established neighborhoods will be maintained."* 9.4a goes on to state that the policy is to *"(E)nsure that infill and redevelopment is designed in a manner that minimizes impacts on the character and function of rural neighborhoods."*

Furthermore, the neighborhood where the project is slated is on then edge of one of the old Ormsby County communities. People down here have all manner of livestock from chickens and goats to horses and cows. Condition of approval 24 states:

> Prior to recording the final map, the applicant shall provide the Community Development Department with a disclosure statement or similar instrument for review and approval. The document shall be recorded and *provide for disclosure that properties in the vicinity are permitted to keep horses and other livestock and that there may be inconvenience or discomfort (e.g., noise, dust, and odors) that may arise from living in close proximity to such properties.*

That is pretty substantial evidence that the City considers the adjacent land uses to be different from and in conflict with what is proposed at Borda Crossing that is is necessary to warn potential purchasers about their more ruralneighbors.

6. The Board has failed to consider an important aspect of the issue, the close connection between Silver View Town Homes and Borda Crossing.

Without mentioning that both projects were proposed by the same developer, Supervisor Jones cited the "project just across the street" as one of the reasons he was supporting the zoning change. State Street controls both projects and given the involvement of Mr. McFadden and State Street's consultant, Manhard Consulting, long before State Street took ownership of Borda Crossing, a reasonable person could easily conclude that they are directly connected. The Board should have considered that very real possibility.

Silver View is a high density residential project with a special use permit in an area zoned retail commercial. Borda Crossing is a medium density project dependent on the rezoning of a SF 1A parcel. Both are

ostensibly individually permissible the two separate applications. This is similar to a situation in Las Vegas when the Union Pacific pursued a gravel mining operation by filing three separate applications that were each permissible if you ignored the other two applications.

Viewing the Silver View Townhomes and Borda Crossing projects as part of a common scheme, the project would be an impermissible intrusion of a high density residential project adjacent to low density residential. Sixty-four dwelling units on 8 acres exceeds the maximum allowable number for medium density residential.

7. In order to approve a zoning map amendment, the Board of Supervisors must make several fundamental findings of fact. I objected to several of the required findings in comments filed prior to the February 18, 2021 Board meeting and am incorporating them by reference.

In conclusion, the application to rezone the parcel (APN 009-124-03) should be DENIED.

Michael Tanchek
February 16, 2021

ATTACHMENT 1

December 19, 2007 Planning Commission minutes

H-2. ZMA-07-175 ACTION TO CONSIDER A ZONING MAP AMENDMENT APPLICATION FROM WESTERN ENGINEERING (PROPERTY OWNER: JAMES SCHNEIDER) TO CHANGE THE ZONING FROM SINGLE FAMILY ONE ACRE (SF1A) TO SINGLE FAMILY 21,000 (SF21), ON PROPERTY LOCATED AT 4094 CENTER DRIVE, APN

009-775-27 (3:51:47) - Chairperson Peery introduced this item. Mr. Plemel oriented the commissioners to the location of the subject parcel, and noted the medium density residential master plan designation in place since adoption of the 1996 comprehensive master plan. He further noted the current single family one acre zoning designation. He narrated pertinent slides, and reviewed the staff report.

In reference to an aerial photograph included in the agenda materials, Chairperson Peery suggested that rezoning would provide no benefit to "the properties in the middle" and that "it's almost a neutral argument." Mr. Plemel advised of having received no public comment at the time the staff report was prepared. However, just prior to distributing the agenda materials, the letter from Margaret O'Driscoll was received. Mr. Plemel referred to the letter in opposition to the rezoning, which was included in the agenda materials, and provided an overview of the same. In response to a question, he advised that the parcels to the north of the subject parcel are proposed for rezoning. Commissioner Mullet suggested considering rezoning the parcel to the south to ½ acre "along ... Center Drive for the depth of those lots and then the front part of that larger lot could then go down to the six ... to match the neighborhood to the north of it. ... kind of split that large one up ... so you have some consistency on Center." Mr. Plemel acknowledged this would be a possible direction. He advised that the parcel to the south is not yet subdivided; however, and would likely be considered as part of a development application.

(4:04:40) Dennis Smith, of Western Engineering representing the applicant, acknowledged agreement

with the staff report. He advised of having represented the South Pointe Development application, and discussed design and construction of the development. He provided historic information on the four parcels south of Mayor's Park. He noted the long and narrow lot configuration of the four parcels, and that the placement of the structures in the middle of the two center parcels precludes subdividing them. He advised that the owner of the subject parcel had placed his residence on the north portion of his property with the intention of someday subdividing the lot. He anticipates that the property to the south will be developed at a higher density. He expressed the opinion that staff's findings for approval of the application are very good. He expressed the further opinion that the "hodge podge of lot sizes and different rural uses" represented by the properties adjacent to the subject property accommodate the requested ½ acre zoning. He expressed disagreement that the requested rezoning will detract from the neighborhood. He expressed the opinion that the ½ acre zoning is a suitable land use for the area and compatible with the surrounding uses in the neighborhood. He advised that the neighborhood was originally a land grant area. Lot sizes varied and have been further divided over the years. Mr. Smith expressed the belief that the comprehensive master plan accommodates approval of the application. He expressed the opinion that the application represents "a good use of the property and a reasonable request." He requested the commissioners' approval.

Mr. Plemel acknowledged the requirement for development of single-family dwelling units on an SF21 zoned parcel. Chairperson Peery opened this item to public comment and, when none was forthcoming, entertained additional comments or questions of the commissioners. In response to a question, Mr. Plemel advised that property owners to the north of the subject property were provided notice of the hearing.

There has been no response from the property owners and staff would only solicit their individual input if directed to do so by the commission. In response to a question, Mr. Sharp advised the parcels are connected to City utilities. In response to a question, Mr. Smith advised of no opposition to continuing the item to provide staff an opportunity to contact the property owners to the north of the subject parcel. He expressed the opinion that direct contact may not be productive "given the development of those two properties" in the middle. Chairperson Peery expressed an interest in receiving input from the neighbors.

In response to a question, Mr. Sullivan explained that the applicant submitted the application for his property and Mr. Plemel considered the overall area. He expressed appreciation for the applicant's concurrence to allow staff to contact the property owners to the north, to consider rezoning the properties to ½ acre, thereby establishing a pattern.

In response to a question, Mr. Smith expressed the belief that there is sufficient time to explore zoning issues. "Time is not of the essence." Commissioner Wendell suggested that a unanimous decision would make the rezoning much smoother. Mr. Smith advised of having participated in a similar process with other properties. "Most of the time ... the property owners don't understand ..." Mr. Smith expressed a willingness to send letters to the adjacent property owners requesting their cooperation. He suggested this could be accomplished within thirty days, but expressed skepticism over a favorable response.

Commissioner Wendell suggested that spot zoning would be a concern of the commission and of staff. He advised that the commission often receives feedback that property owners have been unaware of certain

applications. He suggested providing the information and requesting feedback with regard to the adjacent property owners' interest in participating.

In response to a comment, Mr. Plemel advised that the Planning Division would send notice to the specific property owners, if directed by the commission, and provide pertinent information. In response to a question, he provided additional clarification on the noticing process. Commissioner Vance suggested that some of the property owners on the east side of Center Street may be encouraged to participate as well.

In response to a question, Mr. Plemel advised that this had not been considered. He suggested it may be a little premature to start designating specific zoning for the larger parcels that may not develop for years.

Zoning around the parcels may change over time and therefore present a different situation at the time of development. Commissioner Vance expressed concern over continuing the item and thereby "opening a can of worms." Commissioner Wendell expressed the belief that staff was trying to alleviate the concern over spot zoning. The approach would be to consider the parcels as a transition area. Chairperson Peery agreed that continuing the item would provide the opportunity to consider "a different type of buffer."

Chairperson Peery called for additional discussion and, when none was forthcoming, entertained a motion. Commissioner Reynolds moved to continue ZMA-07-175, with the applicant's concurrence, and to direct staff to include the three parcels to the north of the subject parcel in a request to change the zoning from single family one acre to single family 21,000, depending upon the approval of those property owners, and to have the item reagendized for the January commission meeting.

Commissioner Wendell seconded the motion. Motion carried 6-0.

January 30, 2008 Planning Commission minutes

H-4. ZMA-07-175 ACTION TO CONSIDER A ZONING MAP AMENDMENT APPLICATION FROM WESTERN ENGINEERING TO CHANGE THE ZONING FROM SINGLE FAMILY ONE ACRE (SF1A) TO SINGLE FAMILY 21,000 (SF21), ON PROPERTY LOCATED AT4094 CENTER DRIVE, APN 009-775-27, AND INCLUDING THREE PARCELS LOCATED AT 3820 - 4040 CENTER DRIVE, APNs 009-775-24, -25, -26

(5:00:18) - Chairperson Peery introduced this item. Mr. Plemel reviewed the staff report in conjunction with displayed slides. He provided a brief overview of the written responses to the public noticing process, one which was included in the agenda materials and another which was provided to the commissioners and staff prior to the start the meeting.

(5:06:59) Dennis Smith, of Western Engineering representing the applicant, expressed agreement with the staff report and provided background information on this item. He expressed agreement with changing the zoning designation of the subject parcels, and the opinion "... it's a good transition zone between the 6,000 square foot lots in the South Pointe subdivision and the one acre lots across the street."

Chairperson Peery opened this item to public comment and, when none was forthcoming, entertained additional comments, questions, or a motion of the commissioners. Commissioner Wendell moved to approve ZMA-07-175, a zoning map amendment to change the zoning from single family one acre to single

family 21,000, on property located at 4094 Center Drive, and including three parcels located at 3820 through 4040 Center Drive, APNs 009-775-24, -25, -26, and -27, based on the findings contained in the staff report and on the testimony provided by the staff and the applicant's representative.

Commissioner Vance seconded the motion. Motion carried 7-0.

From:	Andrew Swann
To:	Public Comment
Subject:	Comment on N104 Ordinance
Date:	Wednesday, March 17, 2021 1:11:00 PM

"A discussion and possible action will be held relating to the adoption on second reading of Bill No. 104, an ordinance relating to zoning and establishing provisions to change the zoning from Single Family 1 acre to Single Family 6,000 on property located at the northeast corner of Silver Sage Drive and Clearview Drive. "

I Andrew Swann resides at 1550 Valleyview DR and strongly opposes any change to zoning from Single family 1 acre to single Family 6,000 on property located at the northeast corner of Silver Sage Drive and Clearview Drive. The city already accommodates many sub parcels of land for development of Single family 6,000 properties in the surrounding area. The location should continue to be zoned at 1 acre lots and remain the last stronghold of the beautiful feeling of living in Carson City. The change will negatively affect the area and create a feeling of living in a crowded and congested area and no longer have open space between neighbors .The area should remain without housing & traffic congestion with the current zoning in place. Also not to mention the safety concern with two four way stop signs within a half mile regarding traffic. Please deny the zoning Change !

Sincerely,
Andrew Swann

Public Comment
Board of Supervisors Meeting of 3/18/2021
From Carson City Chief Technology Officer, James Underwood
Read into the record

For the record:

This is James Underwood and I would like to make a public comment about Desi Navarro.

2 weeks ago we received the devastating news that our co-worker Desi Navarro had passed away.

To me, 2 weeks feels like 2 months with all of the emotions and after-affects from his loss.

I can only imagine the impact this has had on his family, and our thoughts and prayers continue to go out to them.

I was Desi's coworker and indirect supervisor and I knew him for 3 years, a short compared to many of you in the City. But in that time, I grew to know Desi and like him very much.

We didn't always get along perfectly. He could be a bit stubborn and so can I. He also didn't like to be told what to do. But, we learned to appreciate each other and work together well.

Desi grew up in Carson City and loved working for the City.

He was passionate about things he believed in and the people he cared about. You could hear his voice get lower and a bit of moisture build up in his eyes at times. His passion was obvious. Give him a little support for his ideas or get him on board with your ideas and he was unstoppable.

Desi's loss is felt throughout the City and especially within our IT department. How he contributed is oh-so-obvious in his absence, where the rest of us pick up the pieces.

Let us remember his smiling face, his positive attitude, and his eagerness to help.

His time with us will have a lasting impact on Carson City and he will be missed.

Thank you.

You could hear his voice get lower and a bit of moisture build up in his eyes at times. His passion was obvious.
Give him a little support for his ideas or get him on board with your ideas and he was unstoppable.
Desi's loss is felt throughout the City and especially within our IT department.
How he contributed is oh-so-obvious in his absence, where the rest of us pick up the pieces.
Let us remember his smiling face, his positive attitude, and his eagerness to help.
His time with us will have a lasting impact on Carson City and he will be missed.
Thank you.

From: Tamar Warren <TWarren@carson.org>
Sent: Thursday, March 18, 2021 8:39 AM
To: James Underwood <JUnderwood@carson.org>
Subject: Your Public Comment

Thank you James for the nice comments about Desi. At the last meeting, the pastor mentioned it as part of the invocation but the mic was not on so I don't think anyone heard it. If you would like all your comments to be part of the record, would you send it to me so I can include it with the minutes? Thank you. ☹

Tamar Warren

From: Larry <lllvfr@sbcglobal.net>
Sent: Thursday, March 18, 2021 7:45 AM
To: Public Comment
Subject: Fw: Zoning Map Amendment ZA-2020-0005, APN 009 124-03 (Borda Crossing) - Second Reading, Board of Supervisors 3/18/2021, Agenda Item 13.A - NRS 278.250 Attorney General's Opinion
Attachments: Attorney General's Opinion No. 84-6.pdf

Follow Up Flag: Follow up
Flag Status: Completed

3/18/2021 BOS public Comments

FYI - This has not been included in Late Material although I sent it on March 12th. Thank you.

----- Forwarded Message -----
From: Larry <lllvfr@sbcglobal.net>
To: Lori Bagwell <lbagwell@carson.org>; Stacey Giomi <sgiomi@carson.org>; Stan Jones <sjones@carson.org>; Lisa Schuette <lschuette@carson.org>; Mo White <mwhite@carson.org>; Jason Woodbury <jwoodbury@carson.org>; J. Daniel Yu <jdyu@carson.org>; Nancy Paulson <npaulson@carson.org>
Cc: Michael Tanchek <mtanchek@yahoo.com>; Connie Creech <connielou@prodigy.net>
Sent: Friday, March 12, 2021, 03:37:15 PM PST
Subject: Fw: Zoning Map Amendment ZA-2020-0005, APN 009 124-03 (Borda Crossing) - Second Reading, Board of Supervisors 3/18/2021, Agenda Item 13.A - NRS 278.250 Attorney General's Opinion

Dear Board of Supervisors,

I have discovered that there is, indeed, already an Attorney General's Opinion, No. 84-6 attached, regarding NRS 278 in general and NRS 278.250 in particular. Also, for your reference, are the NRS 278.250 annotations supplied to me by the Legislative Counsel Bureau. All of the highlighting is mine.

Please note the first highlighted annotation below: Although zoning regulations must be in substantial agreement with a master plan, strict conformity is not required. The court did not perceive a legislative intent of the statute to require strict conformity between master plans and zoning ordinances. A master plan is a standard that commands deference and presumption of applicability rather than a legislative straight-jacket from which no leave may be taken. The Attorney General's Opinion is very clear on this as well.

Therefore, just because the subject property is currently designated as Medium Density Residential in the Master Plan, the underlying zoning does not have to conform to that designation and the Master Plan can be amended to conform to the current zoning. The Master Plan and zoning can also be split designated/zoned to allow for the "gradual transition" from our Low Density Residential neighborhood to the extremely high density development of the Silver View Townhomes to the west of the property as set and afforded to the Schulz Ranch Specific Plan Area in the Master Plan.

Respectfully submitted,
Krista Leach

NRS CROSS REFERENCES.

Population defined, NRS 0.050

REVISER'S NOTE.

Ch. 425, Stats. 2005, which amended this section, contains the following provision not included in NRS:

"The Legislature hereby declares that wind energy is a clean, renewable energy source, the use of which must be promoted. Regional planning is needed for communities to choose good turbine locations where wind is available. The provisions of this act allow the governing bodies of cities and counties to promote the use of this renewable resource while promoting the general welfare by regulating the location, height and noise level of wind turbines, as well as the parcel size on which turbines may be placed. The provisions of this act require cities and counties to balance the effects that wind turbines have on the environment through the existing master plan and zoning process."

NEVADA CASES.

Zoning is matter of legislative discretion to be upheld unless such discretion is abused. Under the police power, zoning (see also NRS 278.250) is a matter within sound legislative action and such legislative action must be upheld if the facts do not show that the bounds of that discretion have been exceeded. McKenzie v. Shelly, 77 Nev. 237, 362 P.2d 268 (1961), cited, Nova Horizon v. City Council, Reno, 105 Nev. 92, at 94, 769 P.2d 721 (1989), County of Clark v. Doumani, 114 Nev. 46, at 53, 952 P.2d 13 (1998), City of Reno v. Citizens for Cold Springs, 126 Nev. 263, at 270, 236 P.3d 10 (2010)

Injunctive relief to restrain pursuit of application for rezoning was improperly granted. Where a municipal zoning ordinance in compliance with the authority granted in NRS 278.250 and 278.260, authorized a person to seek a change of land use 6 months following the denial of such a request, and did not limit the number of applications or require the applicant to show a change of circumstances, and where applicant met the requirements of the ordinance, injunctive relief to restrain the pursuit of the application for rezoning was improperly granted because zoning is a legislative matter. Eagle Thrifty Drugs & Mkts., Inc. v. Hunter Lake P.T.A., 85 Nev. 162, 451 P.2d 713 (1969), cited, Board of Comm'rs v. Dayton Dev. Co., 91 Nev. 71, at 75, 530 P.2d 1187 (1975)

Ordinance regulating location of sexually oriented businesses is not preempted where generally authorized and State does not intend to occupy field exclusively. It was not an excessive exercise of municipal legislative power for the City of Las Vegas to enact an ordinance pursuant to NRS 278.0222 regulating the location of sexually oriented businesses where NRS 278.020 and 278.250 granted local governments a general authority to regulate such matters as they saw fit and the statutes did not indicate an intent by the State to occupy the field exclusively. Flick Theater, Inc. v. City of Las Vegas, 104 Nev. 87, 752 P.2d 235 (1988), distinguished, Douglas County Contractors Ass'n v. Douglas County, 112 Nev. 1452, at 1464, 929 P.2d 253 (1996)

Although zoning regulations must be in substantial agreement with a master plan, strict conformity is not required. NRS 278.250(2) provides that zoning regulations shall be adopted in accordance with a master plan for land use. The statute suggests that municipal entities must adopt zoning regulations that are in substantial agreement with a master plan, including a land-use guide if one is also adopted by the city council. The court did not perceive a legislative intent of the statute to require strict conformity between master plans and zoning ordinances. A master plan is a standard that commands deference and presumption of applicability rather than a legislative straight-jacket from which no leave may be taken. Nova Horizon, Inc. v. City Council, Reno, 105 Nev. 92, 769 P.2d 721 (1989), cited, American West Dev., Inc. v. City of Henderson, 111 Nev. 804, at 807, 898 P.2d 110 (1995), Enterprise Citizens Action Comm. v. Clark County Bd. of Comm'rs, 112 Nev. 649, at 659, 918 P.2d 305 (1996), City of Reno v. Citizens for Cold Springs, 126 Nev. 263, at 267, 236 P.3d 10 (2010), see also Clark of Clark v. Doumani, 114 Nev. 46, 952 P. 2d 13 (1998), Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, at 64, 128 P.3d 452 (2006), Redrock Valley Ranch v. Washoe County, 127 Nev. 451, at 458, 254 P.3d 641 (2011)

Discretion of municipality to permit specific use as among several allowed uses. Once it is established that an area permits several uses (see also NRS 278.250), it is within the discretion and good judgment of the municipality to determine what specific use should be permitted. City of Reno v. Harris, 111 Nev. 672, 895 P.2d 663 (1995), cited, Stratosphere Gaming Corp. v. City of Las Vegas, 120 Nev. 523, at 527-28, 96 P.3d 756 (2004)

Ruling of the state engineer relating to the usage of water does not preempt the county from enacting zoning ordinances which are more restrictive. On appeal from the district court's denial of the appellant's petition for writ of mandamus to compel the county to approve the appellant's application to develop a subdivision, the appellant argued that, because the appellant had previously received approval for the subdivision from the state engineer regarding water rights and usage for the proposed subdivision, the county erred in rejecting the application on the basis that development of the subdivision was inconsistent with the long-term comprehensive plan for usage of water in the area. The supreme court affirmed the ruling of the district court, finding that although the state engineer may rule on usage of water in this State (see NRS ch. 533), such ruling does not preempt the county from enacting zoning laws in accordance with the long-term comprehensive plan (see NRS 278.250) which impose limitations on use of water that are more restrictive than those of the state engineer. Serpa v. County of Washoe, 111 Nev. 1081, 901 P.2d 690 (1995), cited, Pyramid Lake Paiute Tribe of Indians v. Washoe County, 112 Nev. 743, at 750, 918 P.2d 697 (1996), AGO 97-19 (6-2-1997), Redrock Valley Ranch v. Washoe County, 127 Nev. 451, at 457, 254 P.3d 641 (2011)

Commissioners erred in granting three separate applications for change in use of property where effect of applications amounted to nonconforming use of property in violation of a master plan. Rather than submitting an application to rezone property to allow manufacturing, a landowner and operator of a sand and gravel pit submitted applications (1) to "down-zone" property from a designation of rural estates to rural open land, (2) for a conditional use permit to operate the sand and gravel pit, and (3) for a variance to operate a plant to manufacture concrete and asphalt. Although the area was zoned in a master plan for rural estates, and the applications, if taken individually, were minor changes, the applications when taken as a whole amounted to a nonconforming use of the property in violation of the master plan (see NRS 278.250) because their effect would allow manufacturing in an area where manufacturing was expressly prohibited. Therefore, the course chosen by the landowner and operator was an improper attempt to circumvent the master plan and the decision of the county commissioners to grant variance completely ignored the master plan. Enterprise Citizens Action Comm. v. Clark County Bd. of Comm'rs, 112 Nev. 649, 918 P.2d 305 (1996)

A growth initiative adopted by the voters was required to substantially comply with the master plan. Douglas County voters adopted a growth initiative limiting the annual number of new dwelling units in the county. The Nevada Supreme Court rejected the contention that the initiative was a new legislative policy that need not substantially comply with the county master plan. To have legal effect, the initiative had to be enacted as a zoning ordinance under the county development code, and the initiative expressly called for the county to adopt an ordinance amending the code. As a zoning ordinance, the initiative was required to substantially comply with the master plan. (See NRS 278.250 and Nev. Art. 19, § 4.) Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006)

A summary judgment striking down a growth initiative as noncompliant with the master plan was erroneous. After Douglas County voters approved a growth initiative to adopt an ordinance limiting the annual number of new dwelling units in the county, the district court granted summary judgment in favor of the initiative's challengers, holding it void because it did not substantially comply with the county master plan. (See NRS 278.250 and Nev. Art. 19, § 4.) The Nevada Supreme Court reversed. The relevant inquiry is not whether there is a direct conflict between a master plan provision and an ordinance, but whether the ordinance is compatible with, and does not frustrate, the master plan's goals and policies. In this case, the initiative's annual cap on dwelling units, which reflected approximately a 2-percent growth rate, was consistent with the master plan's growth rate of between 2 and 3.5 percent annually, even though the level of growth under the initiative might fall below 2 percent in the future. The challengers also failed to meet their burden of demonstrating as a matter of law that the initiative did not substantially comply with the master plan in the areas of natural resource conservation, public facilities and fiscal responsibility, affordable housing, and transferable development rights and development agreements. (See NRS 278.020, 278.0201 and 278.160; Nev. Art. 1, § 15.) Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006)

A growth initiative was facially constitutional. The district court did not err in finding that a growth initiative, which adopted an ordinance limiting new dwelling units in the county, was facially constitutional solely for the purpose of a summary judgment proceeding. First, a zoning ordinance has a presumption of validity; thus, the initiative's challengers bore the burden of proving it constitutionally unsound. Second, a zoning ordinance is unconstitutional only if its provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. In this case, the 280-unit per annum cap was not arbitrarily and capriciously arrived at, but was based on a 2-percent growth rate that comported with the master plan. Evidence was presented that the cap would protect water resources, which is a legitimate state interest. Supporters additionally asserted that it would protect the county's rural

character, and protection of a community's character is substantially related to legitimate state interests. (See also NRS 278.250 and Nev. Art. 19, § 4.) Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006), cited, Ransdell v. Clark County, 124 Nev. 847, at 859, 192 P.3d 756 (2008)

A growth initiative did not require improper amendment. A district court found that a growth initiative would improperly require amendment by an ordinance within three years because of its brevity and its inconsistencies with the county master plan. (See NRS 295.180 and Nev. Art. 19, § 2.) The Nevada Supreme Court disagreed. Contrary to the district court's concern, nothing on the face of the initiative precluded the board of commissioners from allocating the limited building permits between various types of housing or offering incentives to developers to create affordable housing. As a matter of law, the initiative was not inconsistent with the master plan. (See also NRS 278.250 and Nev. Art. 19, § 4.) Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, 128 P.3d 452 (2006)

The board was authorized to enact a procedure for waiver of development standards. A county board of commissioners waived development standards in approving a nonconforming zoning application. A petitioner for judicial review challenged the board's decision on two grounds: (1) it did not meet the narrow criteria for granting variances under NRS 278.300; and (2) the board lacked authority to enact a waiver of development standards. The Nevada Supreme Court disagreed. First, because NRS 278.300's narrow criteria applied only to boards of adjustment and the county had not created such a board, they did not limit the authority of the board of commissioners to grant variances. Second, NRS 278.250, 278.260 and 278.315 granted the board the authority to regulate zoning, to amend the regulations and to provide by ordinance for the granting of "special exceptions" to the regulations by the planning commission. In this case, the board acted within its authority when it provided for a special exception to the zoning regulations through an ordinance that permitted the planning commission to approve alternative development standards through the granting of a waiver of standards. Kay v. Nunez, 122 Nev. 1100, 146 P.3d 801 (2006)

City violated former section of municipal code under circumstances. The former provisions of Reno Municipal Code 18.06.404(d)(1)(b) (see also NRS 278.250(2)) stated that, in approving any zoning map amendment, the planning commission and city council were required to find that "the change in zoning represents orderly development of the city and there are, or are planned to be adequate services and infrastructure to support the proposed zoning change and existing uses in the area." Where the city: (1) passed an ordinance, the effect of which was to change an area's rural zoning designations to primarily urban designations; (2) did not find that the area's existing water services and infrastructure were adequate to serve the potential growth on the property; (3) did not make a finding specifying plans to supply additional water services and infrastructure to the subject property to meet the anticipated demand caused by development; and (4) made statements regarding future infrastructure needs that amounted to no more than deferral of the issue and broad, evasive conclusions, the Nevada Supreme Court determined that the city had failed to comply with the former provisions of the municipal code section when it passed the ordinance, as there was no substantial evidence showing that the city made an adequate finding about planned water services and infrastructure. City of Reno v. Citizens for Cold Springs, 126 Nev. 263, 236 P.3d 10 (2010)

ATTORNEY GENERAL'S OPINIONS.

School district's discretionary authority to construct traffic control devices does not prohibit or preempt county's authority to impose requirement. Under NRS 278.580, a board of county commissioners may require a school district to construct and maintain traffic control devices near a proposed school as a condition for the issuance of a special use permit for the construction of the school (see NRS 278.250 on zoning). Provisions of NRS 393.155, which provide a school district discretionary authority to construct traffic control devices, do no prohibit or preempt a county's authority to impose the requirement. AGO 80-29 (8-21-1980)

All local zoning ordinances remain effective until amended by local government. An amendment of a plan for the use of land which is part of a master plan adopted by a local government does not require an immediate amendment of existing local zoning ordinances adopted pursuant to NRS 278.250, which do not strictly conform to the amended plan. All ordinances remain effective until they are amended by the local government. AGO 84-6 (4-11-1984)

OPINION NO. 84-6 Planning and Zoning: Amendment of land use element of master plan does not require immediate amendment of pre-existing zoning ordinances that are not in strict compliance with amended master plan.

LAS VEGAS, April 11, 1984

THE HONORABLE ROBERT L. VAN WAGONER, *City Attorney, City of Reno,* Post Office Box 1900, Reno, Nevada 89505

DEAR MR. VAN WAGONER:

This is in response to your March 12, 1984 request for advice on behalf of your client, the Reno City Council, concerning several provisions of Chapter 278 of the Nevada Revised Statutes. You have asked several questions regarding the same issue, and we believe they may all be answered by a response to the following:

QUESTION

Does an amendment of the Reno City Land-Use Plan map invalidate existing zoning ordinances that are in conflict with the amendment or, alternatively, require the Reno City Council to amend any existing zoning ordinances not in strict conformity with the newly-adopted map?

ANALYSIS

The Nevada Legislature has enacted a comprehensive statutory scheme authorizing cities and counties to plan and zone land use in their respective jurisdictions for the purpose of promoting health, safety, morals and the general welfare of the community. NRS 278.020. As noted by our Supreme Court:

> The State of Nevada has delegated comprehensive powers to cities and towns in the area of zoning regulation. The legislative body of a city or of a county of at least 15,000 people must, under Chapter 278, create a planning commission which in turn must adopt a long-term plan of physical development. NRS 278.030, 278.150. Elements of the plan include community design, conservation, economics, housing, land use, public buildings, public services and facilities, recreation, streets and highways, transit and transportation.

NRS 278.160. The commission may adopt the plan in whole or in part after prescribed notice and public hearing and by a two-thirds vote. NRS 278.170, 278.210. The legislative body may adopt all or any part of this plan after giving prescribed notice and holding a public hearing; any change or addition must be referred to the commission. NRS 278.220.

Pursuant to this legislative directive the City of Reno adopted a comprehensive land-use program embodied in Title 16 of the Reno Municipal Code.

Forman v. Eagle Thrifty Drugs and Markets, 89 Nev. 533, 538, 516 P.2d 1234 (1973).

You have informed us that the Reno City Council is presently considering adoption of an amended map which is to become part of the "land-use plan" element of the Reno City Master Plan. The starting point for an attempt to determine the legal effect of such an amended map must, as always, be with the intent of the legislature in enacting the provisions of Chapter 278. *Acklin v. McCarthy,* 96 Nev. 520, 612 P.2d 219 (1980); *Thomas v. State,* 88 Nev. 382, 498 P.2d 1314 (1972); *Ex parte Iratacable,* 55 Nev. 263, 30 P.2d 284 (1934). Additionally, the Nevada Supreme Court has delineated the guidelines for such an inquiry.

> Our prime concern is to ascertain the intent of the legislature. The court must, if possible, and if consistent with the intention of the legislature, give effect to all the statutory provisions in controversy, and to every part of them. It is our duty, so far as practicable, to reconcile the various provisions so as to make them consistent and harmonious. The court, in interpreting these provisions, must also have in mind the purposes sought to be accomplished and the benefits intended to be attained.

School Trustees v. Bray, 60 Nev. 345, 353-4, 109 P.2d 274 (1941).

With these requirements of statutory construction in mind, we turn now to consider the pertinent provisions of Chapter 278.

As noted above, NRS 278.020 provides a statement of the purpose of the legislature in enacting Chapter 278 and giving authority to regulate land-use control to the local government entities. Under the Nevada statutory scheme, once a "Master Plan" has been adopted by a planning commission and that plan or any part thereof has been adopted by the governing body, there is a duty for the local government entity to determine the means of putting the plan into effect. NRS 278.230 provides:

> 1. Whenever the governing body of any city or county shall have adopted a master plan or part thereof for the city or county, or for any major section or district thereof, the governing body shall, upon recommendation of the planning commission, *determine upon reasonable and practical means for putting into effect the master plan or part thereof, in order that the same will serve as a pattern and guide for the kind of orderly physical growth and development of the city or county which will cause the least amount of natural resource impairment* and will conform to the adopted population plan where required, and as a basis for the efficient expenditure of funds thereof relating to the subjects of the master plan.
>
> 2. The governing body may adopt and use such procedure as may be necessary for this purpose. (Emphasis supplied.)

Aside from this general grant of authority to implement the master plan as a pattern and guide, the legislature has also provided specific power to local government entities to create zoning districts and enact zoning regulations. NRS 278.250 provides, in pertinent part:

> 1. For the purposes of NRS 278.010 to 278.630, inclusive, the governing body

may divide the city, county or region into zoning districts of such number, shape and area as are best suited to carry out the purposes of NRS 278.010 to 278.630, inclusive. Within the zoning district it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land.

2. The zoning *regulations shall be adopted in accordance with the master plan for land use* and shall be designed:

. . . .

3. The zoning regulations shall be adopted with reasonable consideration, among other things, to the character of the area and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city, county or region. (Emphasis supplied.)

In attempting to construe these two statutory provisions (NRS 278.230 and 278.250) with an eye towards harmonizing them, we are also required to give the language used by the legislature a reasonable and common sense construction.

> In construing statutes, the court must consider sections together and place upon language the interpretation which will give to each section of an act its proper effect, and which at least will make it compatible with common sense and plain dictates of justice.

Gruber v. Baker, 20 Nev. 453, 467-8, 23 P. 858 (1890).

It has always been the rule in Nevada that when language is plain and unambiguous in a statute there is no room for construction. *Brown v. Davis*, 1 Nev. 346 (1865); *Lynip v. Buckner*, 22 Nev. 426, 41 P. 762 (1895); *Seaborn v. District Court*, 55 Nev. 206, 29 P.2d 500 (1934).

NRS 278.230 provides that the master plan shall be a "pattern and guide" for the development of cities, counties or regions. "Pattern" is defined by *Webster's New World Dictionary*, p. 1042 (2d ed. 1980), as:

1. a person or thing considered worthy of imitation or copying;
2. a model or plan used as a guide in making things; . . .

"Guide" has been defined, in relation to the question presented here, as "applied to various contrivances intended to direct or keep to a fixed course or motion." *Webster's Encyclopedic Dictionary*, p. 867 (1967).

NRS 278.250 provides that zoning regulations be adopted "in accordance with the master plan for land use." "Accordance" has been defined as "agreement, harmony, conformity." *Webster's New World Dictionary*, p. 9 (2d ed. 1976). We believe the above-cited language is clear and unambiguous and requires a local government entity to adopt zoning regulations that are in substantial agreement or conformity with the principles, directions and general provisions of the adopted master plan for land use. It should be noted, however, that the agreement or conformity is not required to be strict or absolute.

> Moreover, a zoning ordinance must be pursuant to, and in *substantial conformity with, the zoning or enabling act authorizing it.* 8 McQuillan, Municipal Corporations, Sec. 25.58. The legislature has delegated the power to zone to the legislative bodies of cities and towns, *so that the need for a comprehensive plan might be met,* and has provided means for the protection of private property through notice and public hearing. (Emphasis supplied.)

Forman, supra, at 539.

In 1977 the Nevada Legislature expressly declared its intention that zoning ordinances take precedence over provisions contained in a master plan. 1977 Nev. Stat. Ch. 580, §§ 4-10, at 1496-1500. This recent enactment buttresses our conclusion that the Nevada Legislature has

always intended local zoning ordinances to control over general statements or provisions of a master plan. This express declaration is contained in the statutory requirements for approval of a tentative subdivision map contained in chapter 278 of the Nevada Revised Statutes. Pursuant to these provisions any person wishing to subdivide land in Nevada is required to take specified steps and prepare various maps for approval by the local government entities. NRS 278.349 sets out the procedure for action by a local governing body on a tentative map submitted by any person wishing to subdivide. The pertinent language of NRS 278.349 provides:

> 1. Except as provided in subsection 2, the governing body shall, by a majority vote of the members present, approve, conditionally approve, or disapprove a tentative map filed with it pursuant to NRS 278.330 within 30 days after receipt of the planning commission's recommendations.
>
> . . . .
>
> 3. The governing body shall consider:
>
> . . . .
>
> (e) *General conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;*
>
> . . . .
>
> (Emphasis supplied.)

A further rule of statutory construction requires that statutes are to be construed and harmonized so as to avoid absurd results. Thus, the language of this statute must also be given meaning and effect. *School Trustees v. Bray, supra; Lynip v. Buckner,* 22 Nev. 426, 41 P. 762 (1895); *Corbett v. Bradley,* 7 Nev. 106 (1871). We, therefore, view the statutory provision of NRS 278.349(3)(e) as providing that local zoning ordinances enacted pursuant to the "guide" of a master plan take precedence until modified or amended in a particular zoning or rezoning case. To interpret the statutory scheme in any other manner would be to leave this statutory provision devoid of any meaning.

We are aware of the recent Supreme Court decisions of the State of Oregon which judicially construed their statutes as requiring strict compliance of zoning ordinances with a comprehensive plan, even to the extent of requiring amendment of local zoning ordinances in light of the later adoption of a plan or an amendment to a plan *Fasano v. Board of County Commissioners,* 507 P.2d 23 (Ore. 1973); *Baker v. City of Milwaukie,* 533 P.2d 772 (Ore. 1975). We are also aware of a trend amongst a minority of states to legislatively require strict compliance of local zoning regulations with a comprehensive plan. (See generally J. Sullivan and L. Kressel, *Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement,* 9 Urban L. Ann. 33 (1975); D. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation,* 74 Mich.L.Rev. 899 (1976); Note—*Developments in Zoning,* 91 Harv.L.Rev. 1548-1550 (1978). However, in our opinion, the Nevada Supreme Court would not undertake such judicial activism without first recognizing a clear legislative initiative to modify our existing statutory framework.

The Nevada Supreme Court has long recognized that zoning is a matter properly within the province of the legislature and that the judiciary should not interfere unless it is proven to be clearly necessary. *Henderson v. Henderson Auto,* 77 Nev. 118, 359 P.2d 743 (1961), (judicial interference justified to correct a manifest abuse of discretion); *McKenzie v. Shelly,* 77 Nev. 237, 362 P.2d 268 (1961), (judiciary must not interfere with board's determination to recognize desirability of commercial growth within a zoning district); *Coronet Homes, Inc. v. McKenzie,* 84 Nev. 250, 439 P.2d 219 (1968), (judiciary must not interfere with the zoning power unless clearly necessary); *Eagle Thrifty v. Hunter Lake P.T.A.,* 85 Nev. 162, 451 P.2d 713 (1969), (it is not the business of the judiciary to write a new city zoning ordinance, overruling the court's opinion in *Eagle Thrifty v. Hunter Lake P.T.A.,* 84 Nev. 466, 443 P.2d 608 (1968)); *Forman v. Eagle Thrifty Drugs and Markets,* 89 Nev. 533, 516 P.2d 1234 (1973), (statutes guide the zoning

process and the means of implementation until amended, repealed, referred or changed through initiative); *State ex rel. Johns v. Gragson,* 89 Nev. 478, 515 P.2d 65 (1973), (court will interfere where administrative decision is arbitrary, oppressive or accompanied by manifest abuse). As stated by the court:

> Zoning is a legislative matter, and the legislature has acted. *Eagle Thrifty v. Hunter Lake P.T.A.,* 85 Nev. 162, 451 P.2d 713 (1969). It has authorized 'the governing body' to provide for zoning districts and to establish the administrative machinery to amend, supplement and change zoning districts. NRS 278.260. *As a general proposition, the zoning powers should not be subjected to judicial interference unless clearly necessary. Coronet Homes, Inc. v. McKenzie,* 84 Nev. 250, 439 P.2d 219 (1968). (Emphasis supplied.)

Board of Commissioners v. Dayton Dev. Co., 91 Nev. 71, 530 P.2d 1187 (1975).

In view of the above-described history of judicial restraint, it is our opinion that the Nevada Supreme Court would more likely adopt the judicial reasoning of the Supreme Courts sitting in the States of Washington, Colorado and Montana which have recently considered this exact question.

> It may be argued that the purpose of the act assuring the highest standards of environment for living—is defeated when the plan is not strictly followed. However, since planning agency reports and recommendations on proposed projects and controls—which must indicate conformity or nonconformity with the comprehensive plan—are 'advisory only' (RCW 36.70.650 and RCW 36.70.540), it is evident the legislature intended that nonconformance with the plan should not necessarily block a project. *South Hills Sewer District v. Pierce Co.,* 22 Wash.App. 738, 745-46, 591 P.2d 877 (1979). *This is confirmed by the admonition that the comprehensive plan shall not be considered other than a guide to development and adoption of official controls.* RCW 36.70.340.
>
> Appellants argue that the court should follow Oregon by holding that the plan should be given preference over conflicting ordinances. But Oregon's statutory scheme substantially differs form Washington's. (Emphasis supplied.)

Barrie v. Kitsap County, 613 P.2d 1148 (Wash. 1980).

At least one of the differences between the Oregon statutory scheme and that of Nevada is the former's requirement that a master plan can only be adopted by a planning commission which then recommends zoning ordinances to be enacted by the governing body of a county to carry out the objectives of the plan. *Fasano, supra,* at 27. In Nevada, however, statutes give the local governing body the discretion to adopt or not adopt all or part of a master plan that has previously been adopted by a planning commission. NRS 278.220. Only after adopting all or part of a master plan is a governing body required to adopt regulations to implement it as a pattern and guide for development. NRS 278.230.

The Colorado Supreme Court addressed the issue of requiring strict compliance of zoning ordinances to the master plan in *Theobald v. Board of County Commissioners*, 644 P.2d 942 (Colo. 1982), and determined:

> The master plan is the planning commission's recommendation of the most desirable use of land (citations omitted). *Conceptually, a master plan is a guide to development rather than an instrument to control land use. R. Anderson, American Law of Zoning,* §§ 21.15, 22.12 (2d ed.); *E. McQuillan, Municipal Corporations, Zoning,* § 25.08 (3d ed., 1976 Repl. Vol.).
>
> The general rule is that zoning should be enacted in conformance with the comprehensive plan for development of an area, *Fasano, supra; Harr, In Accordance*

with the Comprehensive Plan, 68 Harv.L.Rev. 1154 (1955); 1 E. *Yokely, Zoning Law Practice,* § 2-1 (4th ed. 1978). *However, the Master Plan itself is only one source of comprehensive planning and is generally held to be advisory only and not the equivalent of zoning, nor binding upon the zoning discretion of the legislative body.* 1 & 2a. *Rathkopf, Law of Zoning and Planning,* § 12.01, *et seq.*, § 30.02 (4th ed.); *State ex rel. Rochester Ass'n of Neighborhoods v. City of Rochester,* 268 N.W.2d 885 (Minn. 1978); *Holmgren v. City of Lincoln,* 199 Neb. 178, 256 N.W.2d 686 (1977); *Todrin v. Board of Supervisors,* 27 Pa.Cmwlth. 583, 367 A.2d 332 (1976); *Coughlin v. City of Topeka,* 206 Kan. 552, 480 P.2d 91 (1971); *Sharninghouse v. City of Bellingham,* 4 Wash.App. 198, 480 P.2d 233 (1971).

This rule is embodied in our statute. While the statute provides for master planning on a county level, the board of county commissioners is specifically empowered, by majority vote, to disregard the recommendations of the planning commission as set forth in the master plan. (Citations omitted.) (Emphasis supplied.)

Id. at 948-949.

It should be noted that a local governing body in Nevada may also disregard the recommendations of a planning commission as set forth in a master plan. NRS 278.220-278.240.

The court went on to consider what standard of review was appropriate when confronted with an amendment to a master plan.

The Barries third argument that the council acted arbitrarily and capriciously presents this question: Does a comprehensive plan amendment require a showing of changed circumstances and, if so, has this showing been made? *A comprehensive plan amendment, the Barries argue, affects landowners' property rights so a showing that conditions have changed is necessary. This court, however, has only required this showing where a municipality rezones property.* (Citations omitted.) (Emphasis supplied.)

Theobald, supra, at 1154.

In reviewing the statutory scheme for planning and zoning in the State of Montana, their Supreme Court determined that substantial conformity to a master plan was required of zoning ordinances but strict compliance was unnecessary and unworkable.

The first phrase of section 76-2-304, sets the tone for all that comes after it. It states that '*the zoning regulations shall be made in accordance with a comprehensive development plan . . .*' (emphasis in original). We assume here that the term 'zoning regulations' is also meant to cover the term 'zoning districts.' We cannot ignore the mandatory language ('shall') of this statute.

. . . .

The vital role given the planning board by these statutes cannot be undercut by giving the governing body the freedom to ignore the product of these boards—the master plan. We hold that the governmental unit, when zoning, must substantially adhere to the master plan.

To require strict compliance with the master plan would result in a master plan so unworkable that it would have to be constantly changed to comply with the realities. The master plan is, after all, a plan. On the other hand, to require no compliance at all would defeat the whole idea of planning. Why have a plan if the local government units are free to ignore it at any time? *The statutes are clear enough to send the message that in reaching zoning decisions, the local governmental unit should at least substantially comply with the comprehensive plan (or master plan).*

> This standard is flexible enough so that the master plan would not have to be undergoing constant change. Yet, this standard is sufficiently definite so that those charged with adhering to it will know when there is an acceptable deviation, and when there is an unacceptable deviation from the master plan.
>
> . . . .
>
> *We are aware that changes in the master plan may well be dictated by changed circumstances occurring after the adoption of the plan. If this is so, the correct procedure is to amend the master plan rather than to erode the master plan by simply refusing to adhere to its guidelines.* If the local governing bodies cannot cooperate to this end, the only alternative is to ask the Legislature to change the statutes governing planning and zoning. (Emphasis supplied.)

Little v. Board of County Commissioners, 631 P.2d 1282 (Mont. 1981).

These courts' opinions have been well reasoned and reflect the majority view. We find no reason to believe that the Nevada courts would take any different position.

CONCLUSION

An amendment of a land-use map, which is part of a Master Plan as that term is defined in NRS 278.150 and NRS 278.160, does not require immediate amendment of all local zoning ordinances which are not in strict conformity with the map as amended. Additionally, all ordinances that exist at the time of a land-use map amendment remain in effect until modified or amended by the local governing body.

BRIAN MCKAY, *Attorney General*

By: MICHAEL D. RUMBOLZ, *Chief Deputy Attorney General*