

CARSON CITY PLANNING COMMISSION

Minutes of the December 17, 2003, Meeting

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A regularly scheduled meeting of the Carson City Planning Commission was held on Wednesday, December 17, 2003, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 3:30 p.m.

**PRESENT:** Chairperson Richard Wipfli, Vice Chairperson John Peery, and Commissioners Allan Christianson, Mark Kimbrough, Craig Mullet, and Roger Sedway

**STAFF PRESENT:** Community Development Director Walter Sullivan, Principal Planner Lee Plemel, Senior Planner Rob Fellows, Deputy District Attorney Mary Margaret Madden, Recording Secretary Katherine McLaughlin, and Associate Planner Jennifer Pruitt (P.C. 12/17/03 Tape 1-0009)

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

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

Chairperson Wipfli convened the meeting at 3:30 p.m. Roll call was taken. A quorum was present although Commissioner Semmens was absent. Chairperson Wipfli lead the Pledge of Allegiance.

**B. COMMISSION ACTION - APPROVAL OF MINUTES - OCTOBER 29, NOVEMBER 10 AND**

**18, 2003 (1-0024)** - Discussion eliminated "He did not have a problem with it." from Paragraph 1 on Page 3 in Line 7 of the November 18, 2003, Minutes. Commissioner Kimbrough moved to approve the three sets of Minutes, October 29, November 10, and November 18, with the revision to the November 18<sup>th</sup> that deleted the sentence in Paragraph 1 on Page 3. Commissioner Peery explained his desire to abstain from the November 10<sup>th</sup> approval as he was absent from that meeting. He indicated that his vote would be on the other two sets of Minutes. Commissioner Mullet seconded the motion. Commissioner Mullet explained his desire to abstain from voting on the November 10<sup>th</sup> Minutes as he was absent. The motion on the October 29 and November 18 Minutes carried 6-0-0-1 with Commissioner Semmens absent and carried 4-0-2-1 on the November 10 Minutes with Commissioners Peery and Mullet abstaining and Commissioner Semmens absent.

**C. MODIFICATIONS (1-0071)** - Community Development Director Walter Sullivan described the

revision to the agenda which placed asterisks in front of items agenized for action. These items need to be appealed within ten days of the Commission's action. Individuals wishing to appeal these items should contact his office. He also pointed out that Item G-5, the Karen Kelly's Special Use Permit application, will not be heard before 5 p.m.

**D. PUBLIC COMMENTS (1-0065)** - None.

**E. DISCLOSURES (1-0090)** - Commissioner Mullet disclosed that he had a discussion with Assembly-

man Ron Knecht, Senator Mark Amodei, and Legislative Counsel Bureau Attorney Scott McKenna regarding Item G-5. These discussions will not affect his ability to make a decision on the application. Commissioner Christianson disclosed that he had received a number of telephone calls from the community regarding Item G-5. They will not

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impact his ability to make a decision on the application. Chairperson Wipfli indicated that he had also been contacted by a number of individuals on this item. They will not impact his ability to make a decision on the application. Commissioner Sedway indicated that he had not received any calls or had any contacts on this item.

**F. CONSENT AGENDA (1-0110)**

**F-1. U-01/02-1 - ACTION TO APPROVE A ONE YEAR REVIEW OF A PREVIOUSLY APPROVED SPECIAL USE PERMIT FROM DAVID LAWSON, SILVER STATE YOUTH SPORTS**

**F-2. U-02/03-18 - ACTION TO CONTINUE FOR ONE YEAR THE REVIEW OF A PREVIOUSLY APPROVED SPECIAL USE PERMIT FROM BLAINE HANSEN** - Commissioner Peery moved to approve the Consent Agenda. Commissioner Christianson seconded the motion. Motion carried 6-0.

**G. PUBLIC HEARING**

**G-1. SUP-03-153 - ACTION ON A SPECIAL USE PERMIT APPLICATION FROM SCOTT TATE (1-0149)** - Associate Planner Jennifer Pruitt, Scott Tate - Ms. Pruitt explained for the record that the applicant had included flags in his application, however, it was not included in the public notice to the neighbors nor the media. Approval today will not include the flags. An amendment to the Special Use Permit for the flags will be considered at next month's meeting. Discussion indicated that the sign will be 807 square feet and described the traffic speeds on College Parkway and Goni Road. The sign's purpose was limned.

Mr. Tate had read the staff report and concurred with it. Discussion explained that Mr. Tate had acquired his property from the individual who owns the parcel in front of his establishment. This individual wishes to preserve the value of his/her property and does not want Mr. Tate to place a sign on it. Mr. Tate hoped that the new sign will attract travelers on College Parkway. The effort is to attract local residents and not tourists on the freeway. At this time he is not interested in having a sign that will be seen from the freeway. He may expand the business in ten years. A description of the sign was provided. The lighting will not be directed upwards. The sign is changed electronically by computers. It should not create a safety hazard for the motorists. The sign will be one color and is not as expensive as ones similar to the Sparks Nugget's sign. Public comments were solicited but none were given.

Commissioner Kimbrough pointed out that this is the first request for a large sign since the Sign Ordinance was revised. The request is for double the allowed size. The information provided in the staff report and application was helpful as it indicates the distance between the building and the major roads. Ms. Pruitt explained that the Sign Ordinance was adopted in August. A building with enough square footage could have a 600 square foot sign. Chairperson Wipfli also felt that the staff report was informative. The Special Use Permit will allow a larger sign for a business which is difficult to be seen by the traveler. Commissioner Peery supported his comments and felt that the distance was an appropriate issue for the Commission to consider. Commissioner Christianson moved to approve SUP 03-153, a Special Use Permit request from Scott Tate and Northern Nevada Comstock Investments LLC to allow the increase of the permitted total sign area from 466 square feet to 807 square feet and to increase the permitted sign height from 20 feet to 30 feet for a commercial use on Assessor's Parcel Number 008-124-21 on property zoned Limited Industrial located at 3680 Goni Road based on seven findings and subject to ten conditions of approval contained in the staff report. Commissioner Peery seconded the motion. Commissioner Kimbrough expressed the hope that the property owner in front of Mr. Tate's business does not construct a two or

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three story structure which prevents Mr. Tate's sign from being seen. The motion to approve the Special Use Permit as indicated was voted and carried 5-1-0-1 with Commissioner Kimbrough voting Naye and Commissioner Semmens absent.

**G-2a. MPA-03-155 - ACTION TO ADOPT A RESOLUTION RECOMMENDING APPROVAL OF A MASTER PLAN AMENDMENT FOR PEAK CONSULTING ENGINEERS; AND G-2b. ZMA-03-156 - ACTION ON A RECOMMENDATION TO THE BOARD OF SUPERVISORS FOR A CHANGE OF LAND USE REQUEST FROM PEAK CONSULTING ENGINEERS (1-0421)** - Principal Planner Lee Plemel, Community Development Director Walter Sullivan, Applicant's Representative Keith Shaffer, Mark Ramsey - Mr. Plemel's introduction included disclosing Mr. Sullivan's discussion with Ms. Davis, an adjacent property owner, regarding the application. The proposed application does not impact her. Therefore, she was not opposed to the application. Discussion indicated that a variance could be granted for parcel 10-351-07 which will be impacted by the proposed zone change. Parcel 10-351-91 is split zoned Multi-Family Apartment and Industrial. Split zoned parcels need a Special Use Permit to allow either use. The proposal does not parcel the lot. Commissioner Mullet hoped that the sidewalk and street improvements are placed in the 20-foot setback when 10-351-07 is developed. Mr. Sullivan supported Mr. Plemel's belief that the proposed application solved more problems than the original plan for the site. It does not, however, solve all of the problems. The topography of the parcel and the setbacks will require the applicant to seek a variance when developing the one impacted parcel. The topography and setbacks could be used to find the hardship required in granting a variance. The parking and landscaping could be placed in the setback. Access to the parcel cannot be denied and may be located on its east side. It may be possible to keep the southern access if the topography issues are addressed.

Mr. Shaffer had read the staff report and agreed with it. The proposal was tailored to address the concerns which had been previously expressed including the 50-foot setback for industrial properties. He felt that the proposal is a good fix. Commissioner Peery concurred that it is a more reasonable approach. Clarification indicated that the plan provides for the trail for the Mexican Ditch as desired by the Parks and Recreation Department/Commission. Its actual width has not been determined. It was indicated that residential section found on Page 29 is for single family residential lots. They will be 6,000 square feet in size. Mr. Shaffer thanked staff for working with them. It was a difficult situation. The proposal is not the best solution for the applicant. It will cost a lot of money to develop but the applicant believes it is a good faith effort for the community and is reasonable. They can work within it. Public comments were solicited.

Mr. Ramsey listed the individuals whom he represented. He had not talked to the residents who was just moving into their home nor the owner of the quarry. The letter of support from the individuals he represented was read into the record. They did not object to the rezoning nor the storage units. He hoped that they will be able to work with the engineers. Additional public comments were solicited but none were given.

Commissioner Kimbrough moved to approve MPA-03-155 and adopt Resolution No. 2003-PC-3 recommending to the Board of Supervisors approval of MPA-03-155, a Master Plan Amendment to change the land use designation of APN 010-351-91 from General Industrial to Medium Density Residential on the easterly portion of the property, approximately 2.6 acres in area, and to change the land use designation of APN 010-352-04, -05, and -06 from Industrial to Low Density Residential, as shown on the maps submitted with the application, based on the

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four findings contained in the staff report. Commissioner Christianson seconded the motion. Motion carried 6-0.

Commissioner Mullet indicated for the record his opposition to damaging anyone's property. In this case, however, the damage is so minimal that it should not be a major problem. He complimented the Applicant for developing a proposal which the industrial community felt was a nice compromise. Commissioner Peery concurred with his comments and lauded the Applicant and Mr. Shaffer for proposing a project that is palatable to the community.

Commissioner Kimbrough moved to recommend to the Board of Supervisors approval of ZMA-03-156, a Zoning Map Amendment to change the zoning of APN 010-351-91 from General Industrial and Single Family 21,000 to General Industrial on approximately 3.3 acres and Single Family 6,000 on approximately 2.6 acres, and to change the zoning of APNs 010-352-04, -05, -06 from General Industrial to Single Family 12,000 as shown on the maps submitted with the application based on the four findings contained in the staff report. Commissioner Peery seconded the motion. Motion carried 6-0.

**G-3. MPA-03/04-4 - ACTION TO APPROVE RESOLUTION NO. 2003-PC-4, A MASTER PLAN AMENDMENT FOR APN 008-062-18 (1-0969)** - Community Development Director Walter Sullivan - Commissioner Sedway indicated that he will abstain on this item. Public comments were solicited but none were given. Commissioner Peery moved to adopt Resolution 2003-PC-6 to approve a Master Plan Amendment to change the land use designation for property located at Eagle Valley Ranch Road, APN 008-062-18, from Open Space-Recreation-Rural Residential to Commercial based on the findings contained in the staff report. Commissioner Mullet seconded the motion. Motion carried 5-0-1-1 with Commissioner Sedway abstaining and Commissioner Semmens absent.

**G-4. ACTION TO APPROVE JANUARY 22, 2004, AS THE PLANNING COMMISSION MEETING DATE FOR THE JANUARY 2004 PLANNING COMMISSION MEETING (1-1022)** - Community Development Director Walter Sullivan - Commissioner Mullet moved to approve the regular meeting date for the January 2004 Planning Commission for January 22, 2004, with the meeting commencing at 5:30 p.m. Commissioner Christianson seconded the motion. Motion carried 6-0.

RECESS: Following an explanation that the remaining item was agenzized for 5 p.m., Chairperson Wipfli recessed the meeting at 4:36 p.m. A quorum of the Commission was present when Chairperson Wipfli reconvened the meeting at 5 p.m. Commissioner Semmens was absent as indicated.

**G-5. SUP-03-122 - ACTION ON A SPECIAL USE PERMIT APPLICATION FROM KAREN KELLY (1-1064)** - Assistant Fire Chief Steve Mihelic, Community Development Director Walter Sullivan, Deputy District Attorney Mary Margaret Madden, Applicant Karen Kelly, Mark Heuett, Bruce Kittess, Homeowners Association President Linda Costa, Gene Paslov, Gil Yanuck, Bill Stumpf, Marty Schwedhelm, Paul Flynn, Linda Johnson, Ron McHenry, Captain Robert Setterfield, Janet McDonald, Mary Fischer, Bob Greene, Dana Johnson, Ronald Soule - Chairperson Wipfli explained Assistant Fire Chief Mihelic's request that the door and aisles be kept clear. He suggested that the individuals who were standing move along the sides of the room. He then read the Agenda item into the record. Mr. Sullivan read NRS 278.021 into the record. It was adopted by the Legislature in 1983 and amended over the years. Its last amendment was in 2001. It prohibits the City from

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looking at the residential group care facility as a commercial use. He explained that the Commission is considered the governing body unless its decision is appealed to the Board of Supervisors. Section 5 mandates the Commission's approval of the use if it meets City Codes regarding public health and safety standards. The definitions for disability and residential establishments were read. The seven findings in CCMC 18.02.080 required to issue the Special Use Permit were read. The Design Standards provide consistency and ensure compatibility within the neighborhood. The neighbors have expressed concerns regarding the subdivision's CC&Rs. Several District Attorney

opinions have dealt with this issue in the past. Former Deputy District Attorney Charlie Cockerill's 1989 opinion was read into the record. The District Attorney's office reviewed his opinion and indicated that it remains applicable. It indicated that the CC&Rs is a private agreement among the homeowners in a subdivision. The City cannot enforce CC&Rs as it is not a party to the agreement. The homeowners should enforce the CC&Rs and have legal recourse to do so. The Commission must act on the Special Use Permit application within a specified period or it is deemed approved without any conditions. He expressed his appreciation for the large turnout of residents. He had spoken or corresponded to many of them regarding the application. He then described the residence and the application. The State Bureau of Licensure and the State Department of Human Resources will review the details of the proposed operation and may place additional conditions on the license/operation that relate to medical issues. The Commission considers only the land issues. Late material had been distributed to the Commission and Clerk. (A copy is in the file.) Questions which had been asked during his discussion with different individuals were contained in his memo to various City and State Departments. Their responses were included in the staff report. Public noticing for the hearing was described. The Board of Supervisors policy requiring notification to 30 individual homeowners when large parcels are involved was described. This expanded the notification area to 530 feet. Reasons for not notifying everyone in the Lakeview Subdivision were explained. Mr. Sullivan then reviewed the land use issues and noted the 24 conditions of approval recommended by staff. The question regarding whether the seniors will drive should be asked of the applicant. Stipulations can be added to the conditions of approval. Condition 21 should be reworded to require annual reviews. Additional conditions of approval can be required at the time of the annual review. If the applicant fails to comply with the conditions of approval or issues arise, the Special Use Permit can be brought back to the Commission at any time under the show cause hearing process. If health or safety issues are involved, those processes for revocation of the license may be followed as it may provide a faster response. The show cause process is utilized to require compliance when deemed appropriate. He hoped that the Commissioners had reviewed the letters which were included in the packet. He described the process used to deliver the packets to the Commissioners. Copies of letters and emails received since then had been given to the Commission during the break. A majority of the letters/emails opposed the proposal. One letter of support had been received. He urged the Commission to remember the key point in NRS 278 which requires the Commission to determine whether the Applicant has met the public health and safety standards as well as the Special Use Permit standards. He introduced Assistant Fire Chief Mihelic, Public Health Director Winkelman, Environmental Health Specialist Boothe, Senior Engineer Fellows, Deputy District Attorney Madden, Associate Planner Pruitt, and Assistant Planner Green, who were present to answer questions. He then explained his commitment to Mr. Valentine who was concerned about the staff report's statements about the home occupation ordinances. Individuals have claimed that there are no commercial operations located in Lakeview which is zoned residential. He agreed that the subdivision is zoned residential, however, there were several home occupations in the subdivision. The difference between home occupations and the proposal was noted.

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(1-1514) Discussion between the Commissioners and Mr. Sullivan explained that the CC&Rs are a private issue and that the homeowners have the right to take any enforcement issues to the courts. The City provides planning through the Special Use Permit process without consideration of the CC&Rs. If the Special Use Permit is approved, the homeowners can then take the CC&Rs issue to court. The Commission should not consider the CC&Rs in its deliberations. A judge will consider the CC&Rs issues. The Commission may listen to the CC&Rs issues but cannot enforce them. Ms. Madden reminded the Commission that it considers and enforces City/County Codes and State Statutes. CC&Rs can be more restrictive than these laws. The Commission/City is not a party to the CC&Rs and cannot become one at this stage. She indicated that the Commission should not hear testimony on the CC&Rs. Mr. Sullivan reiterated his position that the Commission could hear testimony on the CC&Rs but it should not have any bearing on the decision. The CC&Rs are a private issue between the applicant and the homeowners which will be adjudicated by a judge. Chairperson Wipfli indicated that there is no need to go into the CC&Rs beyond a casual allowance.

Mr. Kittess claimed that there is something in the CC&Rs which staff has not heard. There are six other Association members who were given assignments for presentation to the Commission. His assignment was the CC&Rs. He had gone all over the City and he wished to speak on the CC&Rs. Chairperson Wipfli asked the audience to be more constructive and respectful to the speakers and to not hiss or clap. Mr. Kittess indicated that he is to be the second speaker. Chairperson Wipfli explained that the hearing protocol needed to be followed which would grant him a limited amount of time to make his presentation.

Discussion returned to the Mr. Sullivan and the Commission. It indicated that the level of care to be provided at the facility will be basic. The packet deals with the health and safety issues of the facility. When the application was received, copies were sent to the appropriate City and State Agencies. When Planning received more defined information from the applicant and questions from the residents, additional Agencies were contacted regarding their issues. Mrs. Costa's letter, for example, contained 14 questions which have been answered. Mr. Sullivan reminded the Commissioners that the Statute, which he read, prohibits the Commission from denying the special use permit for a residential establishment which meets the local and State public health and safety standards. The Commission's concern this evening is whether the applicant has provided a level of satisfaction that the request has complied with the public health and safety standards. All of the conditions of approval must be met before the establishment can open. This includes the State septic system, wheel chair ramp, and licensure requirements. Commissioner Peery pointed out that, even if the Commissioners approve the Special Use Permit, the State has authority over the license. The Commission's action will not negate that authority. The State can prohibit the operation. The Homeowners' Association can take civil action. Mr. Sullivan agreed that the staff report attempted to provide as much information as possible for the Commission. It is only one part of the process. Public testimony is another portion. The applicant's comments and this information should be weighed to determine what is best for Carson City in consideration of the public health and safety standards. Ms. Madden indicated that she concurred with the method of presentation of the facts and pointed out that the NRS 278 Section 5 mandates that the Special Use Permit shall be issued if the residential establishment meets health and safety standards. Chairperson Wipfli indicated that the Statute does not provide any latitude for the Commission to consider the compatibility issues. The Commission is restricted to health and safety issues. Ms. Madden concurred.

(1-1768) Ms. Kelly indicated that she had read the staff report and supported it. Mr. Heuett thanked the staff and Commission for the opportunity to present their side. He also thanked the audience for attending and hearing the

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item. He displayed a letter Ms. Kelly had written which included her telephone number and asked that anyone with questions or concerns contact her. Not one person had contacted her. Ms. Kelly's concern about the opinion and the attitude of the neighbors was indicated. She felt blind sided by the opposition. They had attempted to address the comments of the letters contained in the staff report. They had not had an opportunity to address the comments in the packet of letters that was just distributed. They had invited everyone to an open house yesterday. They had hoped to use it to mitigate some of the concerns. It is not going to be a halfway house as rumor claimed. Ms. Kelly's letter included some letters from residents living adjacent to her other residential care homes in Southern California and a letter from a realtor addressing the issue of real estate values. A poster board with photographs of these residential care homes was given to the Commission. Ms. Kelly has three residential care homes in nice neighborhoods in San Diego. The homes have between 4,000 and 6,000 square feet and 6 to 12 residents. They look like the homes adjacent to the proposed site. Nothing special is done to the outside. The inside is different. The only exterior changes will be the ramps and railings required for City and State Codes. He then read Ms. Kelly's letter which indicated that eight to ten seniors will live in the residence with two care givers. There will be one full time care giver and one who works shifts. The proposal provides full time personal care for the residents which he limned. The residents are encouraged to be as independent as possible with this personal care assisting and guiding them for safety reasons. The residents will be ambulatory and elderly without great physical disabilities. They will be selective about the resident allowed to live in the home to ensure compatibility with the other residents and the environment. No one will know from the outside that the home is being used for this purpose. The letters indicated an insinuation that the 1999 Legislature stroke language in NRS 278.021 which removed the intent to supersede CC&Rs. He felt that the intent was to eliminate retarded persons but not residential group homes. The letters also indicate that the snow berms left by the City snow plows will have to be cleared from in front of the driveway. They will use the same methods as the other residents to remove this berm. They had a pickup with a snow plow at the home two days ago. They will either use their own equipment or hire someone to remove the snow/berm. The school bus route goes by the house. The road is kept open for it. They were unaware of the statement that the roadway is not up to City standards. This is not an issue they can address. They have a four-car garage. There is lots of room on the two-acre parcel to provide additional parking spaces, if needed. The home is set back from the road with a parking area that can be used for disabled parking. There are two parking spaces behind the house that are paved and can be used. There are five spaces at the home now. Additional parking can be added behind the home if needed. Parking should not be a problem. At this time there is no intent to have any signage beyond that needed to identify the address for visitors. They do not advertise for patients with signs in front of the home. They will comply with the City Code. The signage will not be large. They intend to comply with the State Health Department and State licensing requirements. The septic system concerns relate to the drain field which may not be adequate or long enough for the home. They intend to extend or replace it. This does not pose a problem for them. He acknowledged that there will be comments concerning the property values which the Commission will hear. The poster board shows the resident homes Ms. Kelly owns in other locations. People do not know that the home is any different from the exterior than the surrounding neighborhood with the exception of the wheel chair ramp and rails which are required by Code. They should not be visible from the street. There will be no lighting changes. The driveway will be widened to 12 feet. It is 11 feet now. The neighbors may find value in having the local care home at the proposed location as indicated by one individual who had discussed his/her needs during Mr. Heuett's tour of the neighborhood. He suggested that it may be possible to fill the home with relatives of the residents currently living in the neighborhood and that relatives of the residents living in the home may want to purchase a home in the neighborhood to be close to their loved ones. This creates additional pressure for homes in the subdivision and may

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increase the property values. There should not be anything showing at the home that will detract or be a nuisance to the adjacent properties. The neighbors adjacent to Ms. Kelly's current residential homes have no problems with the facilities or their property values. They are her supporters and friends. Copies of letters indicating this support were read into the record and distributed to the Commission and staff. (A copy is in the file.) The letters were from neighbors and a realtor. Ms. Kelly has purchased the home and does not wish to have the property value lowered for any reason. He then expressed his intent to address the CC&Rs. Chairperson Wipfli indicated that his comments relating to them should be brief. Mr. Heuett felt that the proposed use will not open the floodgate to allow additional businesses in the area. The CC&Rs could be used to prevent a commercial business from operating in the subdivision and particularly those that are a nuisance or are objectionable to the neighborhood. The local planning commission and zoning commission are partners with Lakeview and other residential neighborhoods in maintaining commercial free residential areas. There are few commercial operations allowed in residential areas. These businesses are the type that the residents want and like in their residential areas. Residential care homes are the only use that the State has determined is noncommercial. Therefore, a flood of businesses will not be allowed. The State had recognized the need for this type of a facility in a residential area when it allowed the use. Seniors do not like to live in large institutions located in the center of a city. They prefer to remain in their own homes in a residential area. It is a trauma for them to have to be relocated to a large institutional setting. There is one other residential care home in the City. There are many residential care homes in the country and a real need for more. He then indicated that there are four licensed businesses currently operating in Lakeview. These businesses are apparently tolerated by the Lakeview residents. The CC&Rs clearly indicate in one sentence that a commercial activity cannot be an annoyance or nuisance to the neighborhood. This is the only sentence in the CC&Rs dealing with having a business in the subdivision. This sentence may prohibit the use of a garage for a business. The proposed business is allowed by City and State ordinances and will not violate the CC&Rs. He then read a letter from their legal counsel Michael Matuska. (A copy is in the file.) He indicated that Ms. Kelly is not attempting to circumvent the CC&Rs. The attorney supported her position that the use does not violate or circumvent the CC&Rs. He also offered to meet with the Commission at any subsequent meetings to address any questions. He felt that the Commission should not uphold the CC&Rs as they are a private civil matter. He supported staff's contention that NRS 278.021 mandates that the City shall grant the use if the health and public safety issues are addressed. Lakeview Estates had been developed in several phases. The home is located in Phase I. It has its own CC&Rs which are different from the other phases. Only residents located in Phase I have legal standing and can enforce the CC&Rs. Commercial activities are not allowed in the subdivision. The CC&Rs do not prohibit group homes. The proposed group care facility is allowed under CCMC 18.040.053 as an accessory to residential uses. The health and safety concerns have been identified and addressed by staff. The conditions of approval must be met in order to obtain the building permit and prior to implementation of the use of the home as a group care facility. It is a large house located on a large parcel and is well suited for the proposed use. It was felt that the staff and the number of residents residing in the group care facility would create less of an impact on the neighborhood than that found with a large family. (1-2525) Mr. Heuett then explained his definition of a nursing home as providing a high level of support for the residents. It has nurses and nonambulatory residents. The proposed facility is used by individuals who no longer want to live by him/herselves. They do not want to be alone or do the laundry, cooking, etc. They do not wish to live with their children, remain on their own, or be in an institution. It is a residential setting like they have lived in all their lives. They are in a home with other residents in similar shape as themselves. They have companionship. They can participate in cooking meals if desired. Medication will be controlled by the caretakers. It is a basic care level. It is not a nursing home. It provides basic hygiene. Being incontinent is not considered a "huge" thing and can be handled with basic care. If

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a person becomes nonambulatory, the care level will be changed and could place the individual at a higher care level. An example of this change was indicated as falling and breaking a hip. Nursing staff is not required at the home. Commissioner Christianson explained that in the insurance industry, the insured must not be able to perform two of six activities in order to have the insurance company to pay for the assisted living care. Mr. Heuett indicated that he could not answer the question as individuals living in Ms. Kelly's facility pay the costs themselves. The same requirement will be made of the residents living at the proposed site. Ms. Kelly explained that some long term insurance policies cover the facility. The majority of the residents do not have this type of insurance. They do provide for incontinent/urine care. They assist with the daily hygiene care and dressing. The residents are encouraged to be as independent as possible. They will provide the residents with guidance to ensure their safety. Discussion with the families includes a review of the insurance policy/program. Commissioner Christianson explained that statistics indicate that between 50 and 60 percent of the population will need some level of care in the future. Ms. Kelly indicated that the care level is personal basic-medication management, assisted bathing and dressing, and incontinent care. If arthritis prevents the individual from washing his/her hair, they provide assistance with it.

Mr. Heuett then expressed their intent to conform to the State and City laws and the CC&Rs. They expected the items listed in the conditions and will meet all of the 24 conditions indicated in the staff report. There are similar group homes in neighborhoods throughout the country. This is not a new proposal. It is easy to do and has been done repeatedly. They then thanked the Commission for its time.

(1-2738) Public comments were then solicited. The speakers were asked to limit their comments to five minutes and to be constructive. (Commissioner Sedway stepped from the room at 6:20 p.m. A quorum was present.) Ms. Costa explained that she represented the 250 homeowners who were in opposition to the Applicant's request. She had asked individuals to submit letters and emails if they could not attend the meeting due to the holidays and their travel schedules. She hoped that the Commission had read the letters and emails. A majority of the letters opposed the Applicant. A few supported her. (Commissioner Sedway returned at 6:22 p.m. A quorum was present although Commissioner Semmens was absent.) They do not want the resident care facility in their neighborhood. The CC&Rs were established to protect the residents. They relied on it to protect the value of their homes when they purchased them. The CC&Rs were approved by the Commission. The resident care facility is a commercial activity and a business. It is against the CC&Rs. Concerns for the residents safety was expressed due to the loss of power, the lack of gutters and sidewalks, and the snow removal issue. A majority of the audience also opposes granting the Special Use Permit. As President of the Homeowners Association she did not view the issue as a Lakeview one but rather as one for all homeowners associations in Nevada. If it can happen in Lakeview, it can happen elsewhere. She urged the elected officials to support and protect the CC&Rs. The CC&Rs were approved in 1979 in Carson City. Chairperson Wipfli indicated that they were approved for open space but not sign on to by the City. Mr. Sullivan explained that the Planning Commission approves CC&Rs for Planned Unit Developments and open space maintenance. It does not approve CC&Rs for subdivisions. Ms. Costa responded that the CC&Rs had been signed as approved by the Planning Commission. Commissioner Christianson indicated that they cannot do that. Mr. Sullivan indicated that he will check into it. He did not believe that the CC&Rs had been approved. Commissioner Peery pointed out that the CC&Rs and Municipal Code are both superseded by the NRS. NRS 278 mandates that they approve a special use permit for a residential establishment if the health and public safety standards are met. The CC&Rs are irrelevant. Chairperson Wipfli pointed out that the District Attorney had indicated that a group care facility is not classified as a commercial use. The NRS also indicates that the group care facility is not a commercial

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use regardless of what the Commission does. The residents were encouraged to contact their Legislators. The Commission has very limited parameters.

Chairperson Wipfli asked that the comments be brief as there are many individuals wishing to speak. Mr. Kittess read a prepared statement. (A copy was not given to the Clerk.) He explained that he had 40 years in land development and home building in California. They want their testimony on the record so that they will be able to say that they had given the Commission their testimony. He had purchased his home in Lakeview in 1998 specifically as it was a 25-year-old established neighborhood. The desirability of the neighborhood was principally due to the existence of the CC&Rs. His experience has enabled him to travel through a subdivision and indicate which ones have CC&Rs. Various subdivision maps in Lakeview were approved by the Commission in 1970. The District Attorney's office had purportedly reviewed the CC&Rs as the area was to be developed as a tentative master plan community. The practice was for the District Attorney's office to review and approve the CC&Rs. They are then recorded. He believed that the same process occurs today. He urged the staff/Commission to check this statement. The pertinent clause in the CC&Rs prohibits any and all commercial activities. There are four home occupation businesses located in Lakeview. One works on a computer and calls people. There are no deliveries to the home. There are 1,000 home occupation businesses located in the 16,000 residences in Carson City. This does not negate the CC&Rs. CCMC 18.03 allows four unrelated people or six unrelated retarded people to live together in a nonprofit single family dwelling. This Code appears to be an earlier version of NRS 271.021 as it contains a portion of the current Statute. Staff's findings on Page 15 are based on findings required by the current City Code which has been superseded. The City has not updated the ordinances. Page 10 of the staff report states: "Private covenants or deed restrictions which impose more restrictive conditions than herein contained are not superseded by this Title." He questioned the meaning of this clause and whether the CC&Rs prevail. If the Department cannot express an opinion on the restrictions, why not? The provisions of "MPS" (it is believed that he meant NRS) effective January 02, state: "Residential facilities shall not be deemed a home that is operated on a commercial basis for any purposes relating to building codes or zoning." They assert that the provision does not prevail over the CC&Rs. All parties engaged in real estate acquisition and ownership, which he listed, are all licensed and regulated by governmental agencies for the benefit of the home buyers. Page 10 indicates that enforcement of the CC&Rs is a civil matter and not reviewed for compliance by Carson City and Planning and Community Development. If this is the Commission's position and it approves the Special Use Permit, they assert that the action is governmental interference in a binding contract between the Lakeview property owners. This is a regrettable situation for many of the residents who appreciate living in Lakeview and Carson City. They must do what is necessary to protect their property and neighborhood. In the era of openness, fairness, and transparency, rules and regulations for this process are convoluted. He then referenced SB 100 which was introduced in the 2003 Legislature indicating that it had been overwhelmed by common interest subdivision problems in Clark County. Therefore, all sellers of common interest in a subdivision must advise buyers that they are agreeing to restrict their abilities to use their property. This document is called CC&Rs. A copy of it should be provided to the buyer before the buyer decides to acquire the property. It binds the buyer and all future property owners regardless of the buyer's opportunity to read or have the CC&Rs explained to him/her. The CC&Rs, along with Association bylaws and regulations and governing documents, are intended to preserve the character and value of the individual's property. It may restrict what can be done with the property to improve or change the property. It may limit your use and enjoyment of the property. The buyer should review it before deciding to purchase the property to ensure acceptability. Clarification indicated that Mr. Kittess had obtained his copy of SB 100 from the Legislative Council Bureau's library. Chairperson Wipfli

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explained that the Commission understood his frustration with the CC&Rs. The Commission cannot enforce them as it lacks the power to do so. The CC&Rs in this instance are superseded by the Statutes. Mr. Kittess indicated that he understood but disagreed with this statement. The statement is on the record. It sounds as if the Commission's hands are tied. They make the rules and regulations but cannot help the homeowners. Cities and counties encourage planned unit developments and homeowners associations as the density increases. It creates a monster such as the CC&Rs. The Commission created the monster. He was disappointed in the Legislature's failure to help the homeowners. The law causes the conflict. The CC&Rs have been enforced for 30 years without a disruption. Commissioner Peery complimented him on the eloquence of his argument. The fact is that CC&Rs in themselves have poor enforceability, have a poor record of being upheld, and are very difficult to use. It is a civil matter with a lot of hassle in the court process. Mr. Kittess acknowledged his point. Ten percent of the cases fail. Ten percent are winners. The remainder fall in the middle. With proper management they may prevail. Cities encourage neighborhoods for the people. Cities get into trouble when encroachment into the neighborhood occurs. This is an encroachment. Commissioner Peery questioned what the residents wanted. It appeared to him that they do not want the group residential care facility. Mr. Kittess indicated that they want their CC&Rs. He pointed out that there are grandparents present who are objecting to the request. He had left California when it became overrun with regulations. The neighborhoods had started out nice but were eroded by encroachments. They are not willing to leave this time.

(1-3290) Mr. Paslov indicated that he and his wife were 20 year residents who had purchased their home in Lakeview due to the CC&Rs and its zoning. It is a wonderful neighborhood and they want it to stay that way. They believe that the introduction of the group care facility is inappropriate for the neighborhood. A 4,000 square foot home sounds spacious, however, when 10 to 12 people are living in it may be cramped. Seniors more than 65 years of age and grandparents may not like this situation. The area does not have any sidewalks. It has icy roads in the wintertime which sometimes needs snow plows. His desire to walk and jog in the neighborhood was indicated. The residents of the facility may find this is difficult to do unless they are in good physical condition. The neighborhood character should be maintained and preserved. He understood the Statute and the Commission's reluctance to be involved in the Homeowners Association's CC&Rs. He urged the Commission to consider the public and neighborhood interests regarding having 10 to 12 elderly people residing in 4,000 square feet. This requires doubling the room occupancy. The home does not have individual restrooms. These living conditions could be less than desirable. He urged the Commission to not approve the request. Commissioner Peery pointed out that 10 people living in the home will each have 440 square feet of space. There are homes with only 950 to 1,000 square feet. These homes are adequate for families. It is an individual's choice. Mr. Paslov indicated that he did not feel that having 10 strangers in the proposed setting would be right for him. He would want more room and accommodations. Commissioner Peery agreed that he would like to have 2,000 square feet. Discussion between Commissioner Mullet and Mr. Paslov pointed out that local governments often find themselves mandated to do things that the local officials do not like or want. The Statute is mandatory and not permissive. Mr. Paslov felt that thoughtful policy makers should do what is best for their clients even when it disagrees with State and Federal laws. He urged the Commission to do what is best for the community. Commissioner Mullet explained his contact with Senator Mark Amodei who had referred his question to the Legislative Council Bureau and Attorney Scott McKenna. Mr. McKenna purportedly sent a written response to Senator Amodei, who is out of town at this time. Mr. Paslov should receive a copy soon. (2-0054) It is Commissioner Mullet's understanding that the Federal Fair Housing Acts and its revisions it had included disabled and no discrimination requirements. The State decided to do something rather than

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to fall under a judgement and have to fight that battle. So they enacted the regulation which had been read. He understood the need to document the neighborhood's concerns. Until the Statute has been through the court process, up to and including the Federal Supreme Court, the Commission does not have a lot of leeway. The Statute indicates that the Commission must consider it as a single family dwelling and cannot consider the operation to be commercial. He also indicated his concern with halfway houses and rehabilitation facilities. Mr. Paslov felt that the Commission could disagree and that Ms. Kelly would then have to bring legal action. If the Commission supports the staff's recommendation, then the neighborhood/Association will seek legal recourse. He urged the Commission to support the residents. He also felt that Ms. Kelly would be better off designing a building to meet her needs rather than rehabilitating the home. Chairperson Wipfli explained that in order to deny the application, the Commission must make findings to support the denial. He did not believe that it is possible to do so. The Commissioners are not attorneys. The CC&Rs cannot be used. Mr. Paslov reiterated his request that the Commission deny the request as findings could be made to support the neighborhood. They value the neighborhood and feel that the proposal is an intrusion. Commissioner Christianson explained that the Commissioners are appointed. The residents could apply for the positions. The meetings are televised. He resides in a neighborhood with CC&Rs. It does not have cable television. They are very careful about what happens with their CC&Rs, however, the use is mandated. There are other uses which have also been mandated and could be placed in the neighborhood, such as a group care facility. The Commission's quandary is whether to believe the NRS or the neighborhood. He felt that the neighborhood's concern is that it is a business intrusion into the neighborhood. His personal view about business intrusion into residential neighborhoods was described. Over the years he had modified his stand regarding allowing child care facilities in residential areas. The Association/residents can appeal the Commission's decision to the Board of Supervisors which he suggested they consider doing. Mr. Paslov reiterated his recommendation that the Commission deny the request. He felt certain that they will appeal and attempt to revise the Statutes. He hoped that they will have the Commission's support when they go to the Legislature in 2005. Commissioner Christianson explained the Board's desire to have the Commissioners provide reasons for their vote specifically if it is a split vote. Commissioner Sedway explained that, although Mr. Paslov may feel that the residence will be too small for the proposed number of residents, other individuals may want to live there. Mr. Paslov indicated that his concerns are with the small space being provided to the residents and the fact that the proposal is a business intrusion into his neighborhood. Commissioner Sedway indicated that the space is a Health Department issue. Mr. Paslov indicated that it is a quality of life issue and noted his safety concerns for the residents who may wish to take walks due to the lack of sidewalks. He was not concerned about the property values. It is an upscale neighborhood and will remain that. He was also concerned about the proposed use of a residence for a residential care center as it had not been designed for that use. There will be 11 or 12 people living there. The care will cost \$3,100 to \$3,500 a month which is pricey for a commercial enterprise. Commissioner Sedway pointed out that the price issue is a matter of choice. There are seniors walking throughout the area now. Mr. Paslov responded that they are healthy individuals. It is implied that the residents of the facility are not healthy. Commissioner Christianson explained that the cost to reside at the resident care facility at Ormsby Boulevard and College Parkway is \$4,500 to \$5,000. The care in a residence is usually higher. Mr. Paslov agreed that the care is expensive and indicated that the price is going up. He also felt that more facilities are needed. They should be made for this specific purpose. They can be made to be very attractive and not a dormitory. Commissioner Christianson indicated that there had been discussions regarding the possibility of converting the current hospital to a facility when the regional hospital is constructed.

Mr. Yanuck pointed out that the Statute has not yet been through the courts. When it is tested, its validity will be

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known. The Supreme Court will look at the intent and consider its constitutionality. He felt that a revision was made in 1999, as indicated on Page 11 in the third paragraph, which he read. This revision had allegedly been made to eliminate the need to discuss the mentally retarded. This indicated to him that they should have brought back the remainder of the language. He felt that it clearly indicated that this revision should not have removed all of the things that had been indicated such as: deed restrictions, restrictive covenants, etc. This matter needs to be tested to determine what is and what is not valid. He then pointed out that the 1999 revision to Subsection 4 also fails to mention deed restrictions or restrictive covenants. It does require the activity to conform to Building Codes and zoning regulations. It does not indicate that the Commission should ignore the deed restrictions or restrictive covenants which are on every parcel in the Lakeview subdivision. He also felt that the Code did not comply with the NRS. Commissioner Peery felt that he could have valid points, however, the appointed and elected bodies' role is not to challenge the law. Under English Common Law, that is the residents' responsibility. This is a civil matter and should be taken forward. This process will create the change desired. He wished him luck, however, did not feel that his argument was well founded. Mr. Yanuck stressed the importance that the Commission understands the residents' side of the issue. They have avenues of regress and can go to the Board of Supervisors and then the courts. It is important that they have a record showing the issues which they believe are important in order to do follow these avenues. It is also important that the reasons for the Commission's action be indicated for this purpose.

Chairperson Wipfli requested that the public comments be restricted and not repetitive if at all possible.

Mr. Stumpf explained his and his wife's experience in real estate in California and Nevada. His personal discussion yesterday with a local licensed real estate appraiser indicated that having a resident care facility at the proposed location will negatively impact the adjacent neighbors by 10 to 25 percent. The further away from the facility the residence is, the less impact will be felt. This will mean a loss in value of \$100,000 for a home worth \$400,000 located adjacent to the property. All potential buyers will have to be told about the facility and any other businesses in the subdivision by the realtor and the seller. Ms. Kelly will not lose value in her home. She will make money from the residents. She will be able to depreciate the property due to its commercial use. With its appreciation in value, she will make money. He felt that the fact that another facility could be located within 1300 feet will turn a lot of the homes in the subdivision into resident care facilities.

Mr. Schwedhelm indicated that he resides in Lakeview Unit No. 1 which gives him standing. His home is located three houses away from the proposed facility. His letter was read into the record. (A copy was not given to the Clerk.) His perspective is as a homeowner. He urged the Commission to use common sense in this matter. Both he and his wife oppose the application. They are not prejudiced against seniors. Many of their neighbors are seniors. He urged the Commission to preserve the quality of life found in the unique planned Lakeview area with its evergreen forest, grassy slopes, and blue skies. These attributes are not found in the valley. The CC&Rs, which were amended on September 21, 2000, had been approved by the Commission or registered by the City to protect their area and their investment. The CC&Rs restricts the size, construction, and aesthetics of each parcel. The residents have invested in the subdivision to keep the quality of life and to protect the neighborhood. They had agreed to the CC&Rs when they purchased their properties. Any variances should be considered initially by the Association. The Commission should send the request to the Association and then consider any appeal(s) as it has allegedly done for other subdivisions. There are many areas in the City without CC&Rs. The facility should consider locating in one

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of them. They want to keep their quality community. An affirmative decision will impact the residents for many years and may impact other subdivisions with CC&Rs. It will provide a foot in the door for other businesses. The homeowners will be forced to respond. Ms. Kelly is a new property owner and an absentee landlord. Her only attempt to integrate with the community was a letter which was sent to the residents one month ago. Regardless of the NRS, the proposal is a commercial activity. Ms. Kelly has a chain of these facilities. She has a profit motive for coming to Lakeview. The Legislature is forcing the use into their neighborhood. The home occupations and commercial activities that are in Lakeview are ancillary to the property. These businesses move with the owner. The residential care facility deals strictly with the property which is a major difference. The CC&Rs prohibit a business in the area. No signs will be allowed. The Commission's decisions should protect the neighborhood as indicated in Master Plan Policy 2.4. He questioned how the residential neighborhood will be protected and enhanced if the use is allowed. The use must be disclosed to all potential buyers in the subdivision. How can this protect their residential values? The buyers could demand a lower value due to the business. It is not fair or equitable treatment. He expressed concerns about the amount/number of ambulance trips which will be required at the site and the ambulance's ability to go to the site in the winter time. He questioned the septic system's ability to handle 12 people plus two care takers and a family's usage. His family consists of seven members. He suggested that the number be restricted to 12. He felt that the proposed use is out of character with the square footage allowed for family members and will require two adults to share a bedroom. He urged the Commission to deny the application. Approval should be based on additional subjective restrictions which will bring the use into conformity with the character of the area. Ms. Kelly should be required to personally live on site and to supervise the operation. This would meet the intent of the Statute which was to open a personal home to senior care. This will also integrate her into the community. He urged the Commission to reduce the number of resident patents allowed to live there to six which is equal to the number of bedrooms. This will maintain the quality of life characteristics found in the area and not cramp the residents. No signs should be allowed other than for the address or to meet emergency requirements. Clarification indicated that his suggestions were being made for himself and not the Association. He had discussed the suggestions with members of the Association's Board. He is not a Board member. He felt that the Commission could add to the staff's recommendations.

(2-0642) Discussion between Ms. Kelly and Chairperson Wipfli indicated her intent to be at the home as much as possible. This may be one week a month. The care resident who lives there will be a part owner of the business. Chairperson Wipfli explained the home occupation child care requirement mandating that the building primarily be used as a residence and that the owner/operator live there. This provides a service for the neighborhood and normally cares for six children. It makes them aware of the neighborhood needs and concerns. They are limited to the one residence. The neighborhood is concerned that Ms. Kelly may want a second facility in the vicinity. Ms. Kelly indicated that this is not her intent. She restated her intent to not live on the property. She then indicated that, due to the fire safety concerns, she had thought about reducing the number from ten to eight as a maximum. She also explained that they had returned to the City too late to change the application. She had been shocked by the concerns. A sign beyond that required for the address is not needed.

Discussion between Chairperson Wipfli and Mr. Sullivan indicated the show cause process for noncompliance with the Special Use Permit conditions takes approximately three months to complete. Clarification by Ms. Kelly indicated that she will provide management services and do all of the admissions. Discussion between Ms. Kelly and Commissioner Peery indicated that the facility will provide minimal assistance for adult personal needs. Intermediate

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or skilled care patients are sent to other facilities. The facility is for people who need guidance and some assistance as they have grown old or infirm. It is not a facility where the people need complete care. Ms. Kelly agreed and then stipulated to eight seniors. Mr. Sullivan indicated that this revises the application from ten to eight. Mr. Heuett indicated that Ms. Kelly is saying that they were offering to reduce the number to eight and can live with that number if it helps the Commission in its decision-making process. Discussion then indicated that in Ms. Kelly's ten year experience she had only had one person who was able to drive. Transportation is supplied by the facility to take the patients/seniors to the store, to the doctors, etc. There will be a minivan parked at the garage for this purpose. In the case of the individual with the car, the care provider had taken that one individual in the individual's car. The patients' ages range from 87 to 89. The patients need someone to help them with their meals and to be sure that they are safe. If they fall, there is someone there to help get them up. They do not eat well on their own so they need someone to help provide the meal. It is minimal care. The traffic is created by family members who visit the patient. She then agreed to Mr. Sullivan's statement that the people who reside at the facility will not be drivers. She also indicated that the residents/patients have sight impairments, hearing loss, arthritis, etc., and cannot pass the driver's exam. She then agreed that she would not have a patient who is a driver.

Chairperson Wipfli asked for additional public comments and requested that they be brief. He hoped that speakers would not repeat comments of others.

Mr. Flynn explained the location of his residence. His mother-in-law has resided at Nevada Cares for seven years. The traffic to this establishment is created by family members who take the relative to the doctor and do a lot of other ferreting of him/her around the community. They are seniors who are infirm. There are a lot of service vehicles going to Nevada Cares. Parking will be a big problem at the proposed site. They will need additional parking spaces which will turn the area around the house into a large parking lot. He felt that nine spaces were needed. There are five at the site now. The Lakeview residents have attempted to keep the outdoor storage of motor homes, campers, etc., out of the subdivision. The proposed use will change the character of Lakeview and be detrimental to the neighborhood. There are other locations where the use could go without impacting the neighborhood. There will be an immediate rush to market the homes in the neighborhood. (Commissioner Christianson stepped from the room at 7:34 p.m. A quorum was present.) It will be detrimental to their investment in their homes.

Ms. Johnson explained that her home is across the street from the proposed residential care facility. She felt that the Commission/City could not supersede the CC&Rs. This issue will be resolved in the courts. She pointed out that there is no cable television service in the subdivision. The water pressure fluctuates throughout the area. City staff is well aware of the fluctuation. She cannot take a shower before 10 a.m. during the summer irrigation period due to the lack of pressure. (Commissioner Christianson returned during her remarks—7:36 p.m. A quorum was present as indicated although Commissioner Semmens was absent.) She pointed out the need for additional heat to keep seniors warm. The Applicant's structure is similar to hers. It has high open beam ceilings without insulation. It may not meet the 1997 Building Code. She asked the City to look at the efficiency of the building and its heat loss. The home will be chilly for seniors as she learned when her mother-in-law visited her and her husband. She also indicated that the proposed structure does not have any air conditioning which she felt is needed in August as the house lacks cross ventilation. She described the problems a news reporter had encountered when attempting to leave the residence yesterday due to the icy driveway. The driveway descends into the house which is located at a lower elevation than the street. The news reporter was pushed out of the driveway. What will happen if an ambulance

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cannot make it up the grade? How will ambulance service be handled during icy conditions? Such access problems are common in Lakeview but not other areas of the City as it is above the snow line. The subdivision has snow four months out of the year during normal years. The access problem will be there during that four-month period. No amount of scrapping, cleaning or sanding will get rid of the ice or the snow berm. All of the residents in Lakeview face this challenge. Senior residents should not live in this location. The fire safety issues found with Lakeview were noted. The area is "ripe" for a forest fire. The residents are well aware of this potential. Her personal efforts to remove the snow/ice berms were described. Emergency vehicles cannot cross over the berm. She has been trapped in her residence for more than 24-hours by inclement weather. The City's snow crew removes snow from the streets in the Valley before coming to Lakeview as the businesses have a higher priority. This will limit the emergency vehicles' ability to get to the residence. She suggested that, if the Special Use Permit is approved, the City consider purchasing a better snow plow which will not create the berms. She acknowledged that such equipment is very expensive. It is irresponsible of the Commission to approve a Special Use Permit for the property without adequate consideration of emergency accessibility. Risk Management should be asked about the liability the approval could create for the City. She was certain that the City will be sued if medical assistance or fire equipment cannot reach the site. Commissioner Peery pointed out that predicting when a fire in that area will occur is like predicting when an earthquake will occur. Ms. Johnson indicated it is a question of accessibility. The area is inappropriate for seniors with special needs and infirmities. The subdivision is located on the "edge of civilization". She felt that it was clear that the Commission intends to approve the Special Use Permit based on the Deputy District Attorney's instructions regardless of the findings. The residents must, however, develop a record for an appeal. Chairperson Wipfli hoped that the comments will not create a negative impact on the home values in the area. Ms. Johnson felt that the residents and buyers are aware of the challenges found with the area. Chairperson Wipfli described his personal experience when he went to a friend's home in Lakeview who had described Levi Gulch as a "luge" run. Ms. Johnson limned the street in front of her property as containing ice all winter long. There allegedly are four or five spinouts a month in front of her property when the ice is there. The trees will have to be removed in order for the sun to warm the pavement and end the ice problem. Chairperson Wipfli felt that Ms. Johnson understood the Commission's position as she is an attorney. He also indicated that the residents are not opposed to seniors. They do not want the resident care facility in their neighborhood. The Commission, however, is stuck. Ms. Johnson felt, as an attorney, that the Commission does not have to approve the Special Use Permit. The health and safety issues which have been raised are adequate reasons to deny it. Commissioner Mullet also felt that her health and safety issues for the seniors, who do not drive and cannot get to a vehicle without assistance, and the water flow situation are appropriate concerns. His personal residence is above the snow line in Timberline. His personal experience with the berm created by the City's snow plow was described. It was unfortunate that the Applicant had not studied the neighborhood nor understood the concerns. The State Health Department should consider these concerns when deciding to license the facility. It may not understand the special issues of the neighborhood. Mr. Sullivan indicated that he will check the State licensing procedure to determine whether the residents have an opportunity to express their concerns. Ms. Johnson felt that the residents would feel better about having the establishment in the neighborhood if Ms. Kelly resided there. This would provide a higher quality of care and a better understanding of the access and winter conditions. (Commissioner Mullet stepped from the room at 7:51 p.m. A quorum was still present.) She then wished the Commission and staff happy holidays.

Chairperson Wipfli repeated his request that the audience refrain from clapping.

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Mr. McHenry explained that the City crews start plowing Lakeview first as it receives snow before the rest of the City. When it snows in the "Valley", however, the fire stations, hospital, and governmental offices are plowed before the rest of the City. On occasions, when there has been heavy snow, it has been days before the Lakeview area is plowed. This happened in 1997. This could be a concern for emergency vehicles. The City representatives have discussed the water system at Homeowners Association meeting(s). The system has been improved but it is not perfect. Septic systems are creating nitrate problems for the domestic wells in this area. The proposed facility with the proposed number of residents will add to the nitrate problem due to the increased laundry and domestic usage. The City sewer service will have to be extended to the area. The residents will have to pay for it and are going to be impacted. He felt that the operation is a commercial facility and not a single family residence.

Captain Setterfield indicated he had been a resident of Lakeview since 1976. He has been evacuated twice due to fires and snowed in twice—once for three days and once for two days. He owns the equipment necessary to clear the snow to the street. (Commissioner Mullet returned and Commissioner Peery stepped from the room—7:55 p.m. A quorum was still present.) He supported having Ms. Kelly reside at the facility in order to experience the wintertime conditions and to understand the concerns. The roads become impassable in the winter time. If a problem occurs at the facility, the Commission will be responsible due to its decision.

Chairperson Wipfli expressed a desire to complete the public testimony soon.

Ms. McDonald explained her education and training as a Certified Nurse's Assistant. She has worked at convalescent facilities in the "Valley". The majority of elderly people are incontinent. This requires the use of gloves and diapers. The area often has bears and bobcats who can spread trash and Hepatitis. Photographs of the bears and bobcats were given to the Commission. She felt that it was her constitutional right to insist that the request be denied. She will not feel safe living in the area due to the facility and this potential threat. Chairperson Wipfli indicated that the Commission knows about the wildlife that frequents the area. Ms. McDonald described the size of the bears and bobcats to emphasize her concern.

Ms. Fischer explained her residence adjacent to the proposed facility. She asked that the outdoor lighting be placed on motion sensors and not allowed to shine all night. She acknowledged Ms. Kelly's statement that she is not interested in opening other facilities in the neighborhood. She pointed out that the City is not governed by the Statute for communities with populations over 100,000. It controls the distance between facilities. This Statute had been implemented due to a neighborhood's concern about the loss of its residential character when facilities began to locate in it. (Commissioner Peery returned—8 p.m. A quorum was present as indicated.) She then described her safety concerns about allowing the patients to smoke outside due to the pine needles and their combustibility. Some of the patients may have dementia. They should not be allowed to smoke outside. Chairperson Wipfli explained that the lighting will have to be shielded and pointed downwards. Ms. Fischer explained the distance between her residence and the proposed facility. Although the lots contain two acres, they are narrow and long. Her experience with lights that are shielded was described. (Commissioner Kimbrough stepped from the room at 8:02 p.m. A quorum was present although Commissioner Semmens was absent.) Motion lights come on when motion is detected and eventually go out. The motion lights could provide added security as you are more aware of the lighting when it is on. The motion lights will provide her with an opportunity to see the night sky which was her reason for moving to the area.

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Mr. Greene questioned why the operation was considered noncommercial when it would have over \$400,000 in revenue a year. He, personally, would not pay \$3,500 a month to sleep with someone. (Commissioner Kimbrough returned at 8:05 p.m. A quorum of the Commission was present as indicated.)

Discussion between Ms. Johnson and Mr. Sullivan explained that if the group use is changed from seniors to any other facility or a new owner takes over, a new Special Use Permit will have to be requested and approved. The process will require public noticing to the residents the same as had been provided for this application. Ms. Johnson urged the Commission to modify Condition 17 to state that a new application is required. She explained her belief that, although the Applicant may have a right to do this, it is not the responsible thing to do. She then questioned Condition 22 and expressed her hope that the review period was every three months rather than annually. She hoped that the Commission indicates when a vote is taken that the Special Use Permit is approved as the Commission has no option or that there are concerns about the issues which have been raised. Chairperson Wipfli explained that the Commissioners will state their opinions before the vote. Commissioner Peery explained that a 12-month lapse in the use will automatically void the Special Use Permit. Failure to comply with any of the Conditions of Approval provides the staff with the ability to force closure of the facility based on noncompliance. The Commission's involvement in this process due to noncompliance at a childcare facility was described to illustrate how the process works. If the owner sells the facility, a new Special Use Permit application must be submitted. The only exception to this was felt to be a child care facility which was grandfathered. Its Special Use Permit stayed with the property. Ms. Johnson explained her concern with having a facility which does not operate for a year. She felt that it would be in violation of the licensure process if the license is not renewed. Her concern is due to the period of time required to complete the show cause hearing process. Commissioner Peery acknowledged that the show cause process could take a while to complete but is implemented quite rapidly. Mr. Sullivan explained that a second condition requires the facility to be licensed by the State to be in operation. Condition 22 indicates that if the facility is not operated for twelve months or the license is lost, the Special Use Permit is voided. Ms. Johnson felt that Condition 22 should state this. She also felt that it should require having a State license prior to occupancy. Commissioner Peery reiterated the time required to conduct a show cause hearing is lengthy and the process is very detailed. Chairperson Wipfli then closed the public testimony portion of the hearing.

Mr. Heuett explained that the CC&Rs are drafted by the developers and are revised and enforced by the homeowners. They are not considered by the Cities nor the Legislature. They are not enforced by the Cities or the State anywhere. He also felt that NRS 278.021 is clear and not open to various interpretations as had been indicated. He found it interesting that, although the residents were concerned about the icy roads and the berms, they continue to reside in the area. There are 250 homes in the Lakeview area. In this day and age snow berms are not felt to be detrimental to a person's ability to get to his/her home. He, personally, resides in an area which gets more snow than the City. Existing single family residences are retrofitted for group care facilities all the time and more times than construction of a new facility occurs. He pointed out the number of facilities found in Washoe and Douglas Counties as indicated in the staff report. These numbers indicate that the conversion/use is not rare. There is a need for this type of facility.

Mr. Sullivan asked the audience to be respectful and to allow rebuttal the same as the audience had been given an opportunity to provide its concerns. Interruptions should not be tolerated.

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Mr. Heuett explained that if he experienced the water pressure problems indicated by the audience, he would, personally, install a booster pump under his home. He has one in his current residence. The proposed facility has the best heating system possible. He described the three systems in the building and the three fireplaces. There is no problem with the insulation. The house is well built. It has two separate air-conditioning units. There should be no problems with them. He then described the problem encountered by the news reporter who drove an old car with "bald" tires. He had parked on a patch of ice. He had him "back up" and take a run at the grade to get out of the driveway. He was able to do so under his own power. He felt that, as there are 250 residences in the subdivision, access should not be a concern. Their ability to come and go at times may be restricted, however, it should not be a problem. Ambulances are not required daily. Laundry will be handled on site. There will be few service vehicles. The lighting will be that required by the City and State. He questioned the fairness of placing additional conditions on the facility which the other homeowners do not have. It is a nonsmoking facility for both the residents and staff. This should not be an issue. They are required to have five parking spaces. Four of them are in the enclosed garage. Additional spaces can be provided behind the garage and will not be seen from the street or by the other homeowners. There are trees all over the property. He urged the Commission to visit the site and house. He hoped that the Commission could see the benefit of the facility and its need. It will be a valuable asset to the neighborhood and not an intrusion. He was certain that it will be filled instantly and that a lot of the residents will be from the community. Copies of Ms. Kelly's letter, the reference letter and their attorney's letter were given to the Commission. (A copy was later given to the Clerk and is in the file.)

In response to Commissioners' questions, Mr. Heuett explained that Ms. Kelly has a home at South Lake Tahoe which has a lot of snow. She deals with the snow berms without any problems at that location. Like other individuals who had relocated from California, she looked for a location with a more rural atmosphere, and a lower crime rate. She felt that there is a desire by seniors to live in a similar residential care facility in such a community. Seniors need the ability to be in a residential setting and not be required to live in an institutional setting. Ms. Kelly likes the area. He was representing her as she does not like to speak publicly. Ms. Kelly purchased the home one-and-a-half years ago with an intent to live there. Her group homes in prestigious California areas do well. The same should be true of the proposed location. Commissioner Christianson explained the Commission's policy to have Applicants discuss their proposals with their neighbors. When the adjacent neighbors support a proposal, the Commission can too. When they do not, however, it is used for a denial. The neighborhood is overwhelming in its opposition to the use. The Statutes had provided a loop hole for the use. It may not be a happy situation for her. The Commission does not feel good about having to grant the Special Use Permit in view of the overwhelming opposition. Mr. Heuett indicated that they had discussed this situation. They did not experience any problems at the other locations. They would have preferred to have known about the problems a month ago and had an opportunity to meet with the residents. The concerns appear to be "grabbing at straws". There are snow and bad road concerns but all of the residents deal with them, even the older residents. So it cannot be that tough. The patients will not be expected to drive themselves. It would be unfair for the City to place so many restrictions on the facility that it denies them the use. Staff's recommended conditions were expected. It would be unfair for the Commission to restrict the number of patients to make it economically unfeasible for them. The State establishes the square footage requirements for the occupants. The Commission cannot restrict the use beyond what is allowed in the Code, Statutes, and by State licensing. The Statute restricts the Commission to health and safety standards. To do otherwise would set a precedence for future applicants. Commissioner Sedway pointed out that a lot of the neighborhood concerns dealt with the need to establish a record. The neighborhood feels that allowing the use will set a precedence for other

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business uses to encroach on the area even though this is not indicated in the Statutes. The impact on the property values should be acknowledged as it will be impacted by the business usage. Although the use may often occur in Mr. Heuett's/Ms. Kelly's area, the concept is new to the City. Acknowledgement of the concerns and the proposed use may help create a mutual understanding between the Applicant and the neighborhood. Mr. Heuett explained that he is a contractor and developer with a large development in Washington. It has CC&Rs which he wrote. He believes in CC&Rs. They respect the Lakeview CC&Rs. He did not believe that they were violating it. The one sentence dealing with businesses in it was read to indicate that there shall not be any commercial business that is an annoyance or nuisance in the subdivision. The group home will not create an annoyance or a nuisance. Exclusion of a group care facility in the subdivision should have been stated in the CC&Rs if it is to be prohibited. They are prepared to go to court and defend their position. Courts are the proper location for the discussion regarding the CC&Rs and not before the Commission. He indicated that Ms. Kelly was upset that the neighborhood feels they are circumventing the CC&Rs. She had merely wanted to open a facility for seniors of the area. They would not have proposed the use if they had known about the opposition. They will move forward and hoped that the Commission will approve the Special Use Permit with the conditions indicated by staff. Chairperson Wipfli expressed his wish that they had been in the area a month ago. The neighborhood is full of good people. It would have provided an opportunity for them to address their concerns. Mr. Heuett explained that they had heard that there was to be a boycott of the open house. His experience when he had personally visited some of the homes in the neighborhood was limned. Some of the residents came to the open house. He felt that, although they had opposite positions, an understanding had occurred at the open house with those individuals who had availed themselves of the opportunity to visit the site. It was an unfortunate adversarial position to be in. He agreed that if they had been in the area a month ago they may have been able to defuse some of the opposition. They had not encountered any problems with the California facilities. Chairperson Wipfli reiterated that a lot of the discussion is needed for the record.

Mr. Soule indicated his opposition as an adjacent neighbor. He was concerned about an expansion of the septic system and the impact it will have on his property values.

(2-2140) Mr. Schwedhelm reread the CC&R condition. He indicated that it prohibits any commercial activities. He felt that this was more than Mr. Heuett had indicated which was the prohibition of any commercial operation that creates a nuisance or annoyance. Chairperson Wipfli pointed out the Statute's prohibit calling the use a business activity. Mr. Schwedhelm felt that the use is out of character with the neighborhood. Chairperson Wipfli indicated that the public testimony portion of the meeting is closed.

Discussion between Commissioner Mullet and Mr. Sullivan indicated that neither the City Code nor the State Statutes allow the Commission to require Ms. Kelly to reside at the facility. Commissioner Mullet explained his wish that the opposition had not been so one sided. He felt that he would have the same concerns about having a similar facility in his neighborhood. His intent to look into SB 100 was indicated. He looked forward to receiving the letter from Mr. McKenna. At this time he did not feel that he had a lot of leeway. He also had concerns about such commercial operations going into a neighborhood with CC&Rs. He indicated for the record that he is concerned with these issues which place the proposed type of a facility in a residential neighborhood in opposition to the City ordinances and zoning codes. He felt that he had no leeway at this time. He hoped that something happens before the matter is appealed to the Board of Supervisors.

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Commissioner Kimbrough explained his personal involvement with his neighborhood's Association and its "battles". He felt that the Lakeview neighborhood had the resources to fight the "battle" which his Association had lacked. The Commission will be sued by one side or the other regardless of its decision. His professional experience indicates that it is a bad decision to go against his legal counsel. He also did not wish to be in court against the City. All laws are not firm until tested in the courts. The discussion had established the necessary record for the battle. The Commission is a regulatory body which must follow staff's recommendations. The NRS placed the Commission in a position of being the bad guys. The disagreement will be resolved in the courts. He was uncertain how the City's defense will occur. He had looked for the health and safety issues to find a method to prevent the use. The Fire Department trains its staff in removing people from such areas as indicated in the public concerns. He would like to be able to require a new snow plow for the neighborhood, however, this is not possible. He must follow legal counsel's advice and trust the system to support the decision. He supported amending the conditions to limit the number of patients to eight without cars. They had agreed to no signage. Chairperson Wipfli felt that the statement regarding eight patients had been a comment. Commissioner Kimbrough felt that it should be a stipulation.

Commissioner Peery felt that the Applicant had been blind sided by the comments/opposition. She may encounter an uphill public relations problem. Seniors have the right to live in an upscale facility particularly if they have the financial means to do so. Their living arrangements should be a matter of choice. Not everyone should be confined to little rooms in institutional boxes. The Applicant had agreed to no signage, no driving residents, no smoking, and a 20 percent decrease in the number of patients. This indicated to him that Ms. Kelly wants to fit in the neighborhood. Some of the issues which had been raised were valid. Others were not reasonable. He could not find a reason to vote against the facility. He had repeatedly stated that the CC&Rs issues are not relevant. The Statute is specific. They must approve the Special Use Permit. The balance is governed by the licensure division and limited to health and safety issues. There had been valid points regarding the laundry, sewage, nitrate, and leaching into the water system. On rare occasions when there are access issues, they are the extremes. The Fire Department trains for such occasions. People living at the top of the hill know the risks involved and will make the appropriate decisions for their loved ones. Therefore, he intended to support the issuance of the permit.

Commissioner Sedway pointed out that the City ordinances allow six residents. The NRS says 10. He understood the aspects related to the CC&Rs concern. It will be decided during an interesting "battle". Property values are an issue the Commission hears a lot. The amount of opposition is a concern to the Commission and weighs heavily on the decision. The NRS and the Deputy District Attorney's direction are clear. There is a need for this service. Comments indicate that the community needs protection from the proposed use which had been described as a monster and an intrusion. Reasons for these comments had not been described. There will be seniors living there who will probably remain indoors the majority of the time. The variety of people who are presently living in the neighborhood was noted. When these individuals, who love the area, become infirm and unable to remain in their homes, they may wish to remain in the area. The proposal will provide them with this opportunity. The only option at this time is to become a "flat lander". The City staff, the licensure departments, the Fire Marshall, and others associated with the technical issues related to safety will be involved and cover the concerns. He found it distressing that there was such a strong degree of opposition. The area is very coveted and nice with a lot of personal investments. It will be interesting to see how the facility will impact the neighborhood. He indicated that he will vote to approve the request.

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Commissioner Christianson explained his belief when he arrived at the meeting that the die was cast. The Commission could only approve the application. The Board of Supervisors will have to hear an appeal. The use is an intrusion into a residential area. The facility is a commercial money making business. The residents have a right, when they purchase in a subdivision with CC&Rs, to expect certain things. They should take the issue beyond the Commission and Board of Supervisors. The CC&Rs were written for the protection of the buyers. They should not expect a business to be located next door. The Commission has discussed this issue before. He has established a record of opposition to such an intrusion into the single family zoned district regardless of the use. He also pointed out that a manufactured home is now allowed to go next door to a stick built home. The State Legislature had passed this Statute. This could be the next occurrence. He will consider voting against the Applicant. He hoped that he could remain friends with those in opposition. He also indicated that Ms. Kelly should recognize that the application may be tied up in court for such a long period that it will not be worth doing.

Chairperson Wipfli indicated that he had similar feelings when he came to the meeting. The proposed use is an intrusion. He had looked at everything in an attempt to find something that would fit the health and safety restrictions. He was offended by the Statutes mandating the placement in the neighborhood. This is not a drug rehabilitation facility. It is a mom and dad thing. He could not find any loop holes. The fight is beyond the Commission level. Carson City should look at its ordinances as it had the childcare ones where a requirement was added mandating that the owner be in residence. This requirement makes the owner-operator part of the neighborhood. Both of his parents are over 80 years old. There is a huge need for this type of service. He wished that the applicant had walked the neighborhood a month ago. His oath of office was to uphold the Codes and Statutes. He found the circumstances to be very unsettling. He felt that if Ms. Kelly moved into the residence, she would find the neighborhood to be as good as he personally believed it to be. As he must support the Statutes and Codes, he felt he had no choice except to approve the application.

(2-2610) Commissioner Sedway moved to approve SUP-03-122, a Special Use Permit (request) from Karen Kelly to allow a group care facility as a conditional use accessory to residential use on property zoned Single Family Two Acre, SF2A, located at 4150 Numaga Pass, APN 007-121-13, based on seven findings and subject to 24 conditions of approval contained in the staff report. Commissioner Peery seconded the motion. Mr. Sullivan indicated that Condition 21 was modified to require an annual review. Commissioner Sedway concurred. Mr. Sullivan also indicated that additional conditions could be attached if so desired. There had been several stipulations including basic level of care, only ambulatory persons will reside there, no signs, a maximum of eight patients, the patients will not be allowed to drive, and that no smoking will be allowed. He clarified Condition No. 17 for Ms. Johnson by explaining that if the facility/business/parcel is sold, the new owner will be required to apply for a new Special Use Permit. Its conditions will be pertinent to that application. Condition 22 indicates that if there is a 12-month lapse in the operation, the use permit will become null and void. There is a condition mandating that the facility must be licensed by the State. Ms. Kelly has acknowledged these requirements. Mr. Heuett expressed concerns regarding the requirement that the patients be ambulatory. The intent is to have ambulatory patients, however, it is possible for a patient to be nonambulatory for brief periods. The State licensing requirements spell out the training and licensing levels. A temporary use of a wheelchair would be prohibited by the ambulatory requirement. He suggested that this requirement be left to the State based on its training restrictions. Elderly people do fall and sometimes break a leg. They recover and become ambulatory once again. Chairperson Wipfli expressed a desire "not to go there". Commissioner Peery felt that the level of care should be left at basic care. Mr. Sullivan explained that Ms. Kelly indicated that nonambulatory patients would be moved to another facility. Chair-person Wipfli reiterated

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his desire not to consider this short-term, long-term issue. Basic care is the intent. Commissioner Mullet indicated that he agreed with Chairperson Wipfli. Discussion among Commissioner Mullet, Chairperson Wipfli and Mr. Sullivan indicated that, if the ownership is a family trust and a child is the heir to the estate/trust, the Special Use Permit is to be reconsidered as it is a change in ownership. The house can be sold but not the business portion. A new application is required for the business. Mr. Sullivan then explained the ten-day period for appealing the Commission's decision. There are requirements which must be adhered to. The paperwork can be obtained from the Planning Department. Commissioner Sedway explained that this process sends the item to the Board of Supervisors. Mr. Sullivan indicated that the Board makes the final decision. Commissioner Sedway agreed to the stipulations/changes. Commissioner Peery concurred. The motion was voted and carried 5-1-0-1 with Commissioner Christianson voting Naye and Commissioner Semmens absent.

Ms. Costa placed on the record that the Homeowners Association will submit a letter of intent to appeal the decision. Chairperson Wipfli indicated that she should meet with Mr. Sullivan. Mr. Sullivan indicated that he will contact her. The Board of Supervisors will consider the item on January 15.

**H. ACTION TO ADJOURN (2-2867)** - Commissioner Peery moved to adjourn. Commissioner Mullet seconded the motion. Motion carried 6-0. Chairperson Wipfli adjourned the meeting at 9:05 p.m.

The Minutes of the December 17, 2003, Carson City Planning Commission meeting

ARE SO APPROVE DON January 22, 2004.

/s/

Richard Wipfli, Chairperson