

CARSON CITY BOARD OF SUPERVISORS
Minutes of the Special June 17, 1987, Meeting
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A special meeting of the Carson City Board of Supervisors was held on Wednesday, June 17, 1987, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, beginning at 6 p.m.

MEMBERS PRESENT:	E. M. "Doc" Scrivner	Mayor Pro-Tem
	Ron Swirczek	Supervisor, Ward 1
	Tom Fetic	Supervisor, Ward 2
	Marilee Chirila	Supervisor, Ward 3
STAFF PRESENT:	L. H. Hamilton	City Manager
	Ted P. Thornton	Clerk-Treasurer
	Walt Sullivan	Community Development Director
	Charles P. Cockerill	Chief Deputy District Attorney
	Katherine McLaughlin	Recording Secretary
	(B.O.S. 6/17/87 Tape 1-0005)	

Mayor Pro-Tem Scrivner called the meeting to order at 7 p.m. by leading the Pledge of Allegiance. Roll call was taken and a quorum was present although Mayor Flammer was absent.

Mayor Pro-Tem Scrivner then explained the purpose of the meeting.

IV. RESOLUTIONS - COMMUNITY DEVELOPMENT DIRECTOR - PLANNING COMMISSION
REFERRALS - APPEAL AND REVIEW MATTERS - SPECIAL USE PERMIT APPLICATIONS TO ALLOW BILLBOARDS AS FOLLOWS:

- A. U-87-14 - NORRIS - ZONED GC - NORTHWEST CORNER OF U.S. 395 SOUTH AND HIGHWAY 50 EAST - PLANNING COMMISSION DENIED 6-1
- B. U-87-15 - ROSS - ZONED RC - WEST SIDE OF SOUTH CARSON STREET - APPROXIMATELY 500 FEET NORTH OF SONOMA STREET - PLANNING COMMISSION DENIED 6-1
- C. U-87-16 - TARP - ZONED GC - NORTHWEST CORNER OF U.S. 395 SOUTH AND HIGHWAY 50 WEST - PLANNING COMMISSION DENIED 6-1
- D. U-87-20 - CARSON VALLEY OIL - ZONED RC - 300 EAST EIGHTH STREET - PLANNING COMMISSION DENIED 6-1
- E. U-87-21 - FAZZIO - ZONED RC - EAST SIDE OF SOUTH CARSON STREET APPROXIMATELY 650 FEET SOUTH OF SONOMA STREET - PLANNING COMMISSION DENIED 6-1
- F. U-87-22 - FAZZIO - ZONED RC - EAST SIDE OF SOUTH CARSON STREET APPROXIMATELY 650 FEET SOUTH OF SONOMA STREET - PLANNING COMMISSION DENIED 6-1
- G. U-87-23 - ROE - ZONED GC - 3130 SOUTH CARSON STREET - PLANNING COMMISSION DENIED 6-1
- H. U-87-24 - HOLMES - ZONED RC - SOUTHWEST CORNER OF U.S. 395 NORTH AND GRAVES LANE - PLANNING COMMISSION DENIED 6-1
- I. U-87-25 - HOLMES - ZONED RC - 3660 NORTH CARSON STREET - PLAN-

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NING COMMISSION DENIED 6-1

- J. U-87-26 - ROSS - ZONED RC - NORTHEAST CORNER OF U.S. 395 NORTH AND GRAVES LANE - PLANNING COMMISSION DENIED 6-1
- K. U-87-27 - HARRAH'S CLUB - ZONED GC - 4900 SOUTH CARSON STREET - PLANNING COMMISSION DENIED 6-1
- L. U-87-28 - BRUNERYD - ZONED GC - 3400 HIGHWAY 50 EAST - PLANNING COMMISSION DENIED 6-1
- M. U-87-29 - ROSS - ZONED RC - NORTHEAST CORNER OF U.S. 395 NORTH AND GRAVES LANE - PLANNING COMMISSION DENIED 6-1
- N. U-87-30 - NEWMAN CONSTRUCTION LTD. - ZONED GC - EAST SIDE OF SOUTH CARSON STREET APPROXIMATELY 350 FEET SOUTH OF EAGLE STATION LANE - PLANNING COMMISSION DENIED 5-1-1
- O. U-87-31 - NEWMAN CONSTRUCTION LTD. - ZONED GC - EAST SIDE OF SOUTH CARSON STREET APPROXIMATELY 375 FEET SOUTH OF EAGLE STATION LANE - PLANNING COMMISSION DENIED 5-1-1
- P. U-87-32 - NEWMAN CONSTRUCTION LTD. - ZONED GC - EAST SIDE OF SOUTH CARSON STREET APPROXIMATELY 400 FEET SOUTH OF EAGLE STATION LANE - PLANNING COMMISSION DENIED 5-1-1
- Q. U-87-33 - ARRAIZ - ZONED GC - WEST SIDE OF SOUTH CARSON STREET - BETWEEN OVERLAND STREET AND APPION WAY - PLANNING COMMISSION DENIED 6-1
- R. U-87-34 - W. E. HALL CO. - ZONED GC - 4849 COCHISE STREET - PLANNING COMMISSION DENIED 6-1
- S. U-87-35 - NEVADA CHILDREN'S FOUNDATION - ZONED GC - WEST SIDE OF U.S. 395 NORTH AND EAST OF BONANZA DRIVE - PLANNING COMMISSION DENIED 6-1
- T. U-87-36 - ROSS - ZONED RC - WEST SIDE OF SOUTH CARSON STREET BETWEEN SONOMA STREET AND FAIRVIEW LANE - PLANNING COMMISSION DENIED 6-1
- U. U-87-37 - FELESINA - ZONED GC - SOUTHWEST CORNER OF BROWN STREET AND HIGHWAY 50 EAST - PLANNING COMMISSION DENIED 6-1

(1-0016) Gary Sheerin, representing Carl Norris and Harveys, introduced Dan Bowen, representing 3-M National.

Mr. Bowen: The Planning Commission's action was arbitrary and capricious. The ruling had been based on a misinterpretation of the Federal Highways Regional Council Administration's letter dated October 8, 1985, portions of which were read into the record. The signs could be removed only if compensation or an adequate amortization period is given. Reasonable requirements could be placed on a sign, i.e., requiring a Special Use Permit. Removal of all signs could be mandated by the general electorate. If the sign adjacent to a Federal Aide Primary Highway is removed without compensation, the State would lose ten percent of its Federal highway funds. Purportedly, Special Use Permits for billboards had never been issued and would not be issued in Carson City.

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Notice of non-compliance had been mailed on March 30, which did not allow adequate time to meet the May 1 deadline. Discussions with the District Attorney's office indicated that if an incomplete application was filed before May 1, supplemental information could be added to the application and the process would commence. Removal of the sign would be delayed and a special meeting would be scheduled to discuss the application. Removal of the signs without due process is illegal. Legal recourse would be taken if the signs are removed without just compensation. A letter from State Department of Transportation Director Garth Dull re-enforcing his comments concerning reimbursement and the loss of federal funding was read into the record. He felt that the Billboard Ordinance violated the First, Fifth, and Fourteenth Amendments to the Constitution. Several court cases were cited as support. He felt that the billboards are an integral part of the advertising and communication world. The public did not oppose the signs. He then reiterated his position that he had not missed the May 1 filing deadline and should not be required to remove the signs as the application for a Special Use Permit had been filed in a timely manner.

Supervisor Chirila explained that a "plea of surprise", such as Mr. Bowen's comments indicated the May 1 filing date was, was inappropriate and was an invalid argument.

Mr. Cockerill then explained his understanding of the Metro Media Incorporated versus San Diego, 453 US 490, case. He did not feel that this was a relevant case and noted the State Highway Department's support of the City and its Ordinance. The Board was considering the Special Use Permits and not the banning of signs.

Mr. Bowen repeatedly emphasized his position that the signs could not be removed without just compensation. To do otherwise would jeopardize Federal Highway Grants as well as create a legal battle.

Mr. Cockerill then explained that the State felt NRS 405.040, which in 1975 required obtaining a County building permit prior to construction, had not been complied with. Therefore, he felt that the signs had not been in compliance prior to 1975 and were still not in compliance. The purpose of the hearing was to give the companies an opportunity to prove that the signs complied with the Statutes and to obtain a Special Use Permit.

Mr. Bowen concurred with the statement that a Special Use Permit had not been requested, however, felt that to require removal of an illegal sign mandated "just compensation". If just compensation does not occur, a ten percent loss of highway funds would occur and the City would face a lawsuit. He then expounded on his feeling that the signs had been placed legally and were conforming.

Mr. Cockerill explained that the City had the right to declare the signs nonconforming and mandate a Special Use Permit. He also felt that the signs had been illegal since 1975, however, a grace period had been in effect until May 1, 1987, to allow the companies time to bring them into conformity. The City's process was reasonable. He again emphasized that the matter for consideration this evening was the applications for Special Use Permits. In order for the signs to be in conformance, the Special Use Permit must have been applied for and issued prior to May 1.

(1-0983) Raymond Pasque, representing 3-M as well as other firms, property owners, and sign lessees: The method under consideration was unreasonable, unconstitutional, illegal and posed a potential financial cost. Adoption of the Federal Beautification Laws would specific zones for signs. All of the current signs should be grandfathered, however, any structural changes should not be allowed. Eventually these signs would be removed due to age, deterioration, etc., as they could not be replaced or repaired whenever more than 50 percent of the sign is damaged. He could not allow the "taking of his property without just compensation". As a special use permit had never been assured for a sign, he did not feel that he would be successful in obtaining one now. Therefore, he considered the hearing as a "taking of his property". A Denver, Colorado, ordinance banning billboards was explained as being modified by the courts. the San Diego Metro Media case was cited as another example of the courts' position. Similar Oregon laws have been declared unconstitutional by the courts. Other ordinances and suits were also cited. He urged Mr. Cockerill to review these cases. As the State had issued permits for the signs, he felt that they were in fact legal and that the request before the Board was to deny the Special Use Permits, which would make the signs illegal. He urged continuance of the signs and time for community growth to force

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them out of the area. He emphasized that to do otherwise would create an expensive legal challenge and loss of ten percent of Federal highway funding. Additionally, as the signs met State and Federal requirements, a Special Use Permit from the city should not be necessary, however, in the interest of maintaining a good relationship with the City, applications had been submitted. The photographs submitted earlier had been purposely taken to depict the billboards as being "eye sores". Mr. Cockerill then explained how Douglas County had been able to remove all of the signs through an amortization period. The difference between Carson City and Douglas County was that Carson City allowed off-premise signs under a Special Use Permit.

It was pointed out that the Board was to consider the Special Use Permits this evening. A final decision was not required at this time and could be made at any time within 30 days. It was felt that the legal information having been discussed earlier was interesting, however, had little bearing on the Special Use Permit process.

In view of the lack of progress on the main issue and the length of the Agenda, Mayor Pro-Tem Scrivner ruled that future speakers would be restricted to eight minutes each.

(1-1877) Todd Russell, representing the Carson City Nugget and City Center Motel, expressed his feeling that the signs were a vital part of the advertising program and were essential to the growth and financial well-being of the City. He used the Sign Ordinance to emphasize his position.

Mr. Cockerill explained that the billboards had been declared illegal in 1975, however, a grace period had been in effect to allow time for compliance. Mr. Russell explained a law suit in which it had been determined that as an ordinance had been waived for a period of time, it was no longer valid. As there had been no enforcement of the billboard law for 12 years, the same could be true of Carson City's Ordinance.

Mr. Sullivan suggested that the comments and evidence be directed solely toward Item A. This would allow coverage for each Agenda Item.

(1-2064) Gary Sheerin acknowledged the lack of follow through on applying for the Special Use Permit until April 29, 1987, however, if the "government" had responded to the application quickly, it could have been processed prior to May 1. It was not necessary to have the finalized permit but rather to have merely applied for it. His signs had been constructed some time prior to 1975, were legal, and should remain. In 1975 they became non-conforming due to the ordinance. Any signs for which a building permit had been obtained, as was required prior to 1975, were legal signs and this question should be abandoned. In that his clients had filed an application for the Special Use Permit prior to May 1, 1987, the signs were non-conforming. This would be corrected when the application is approved. He then quoted from Mr. Dull's letter and elaborated on the need to compensate the billboard owner should the signs be removed as non-conforming. He felt that the Special Use Permits had been arbitrarily and capriciously denied by the Planning Commission. A reasonable approach was for the Board to establish standards which could measure the signs and, if this criteria is met, the signs should be allowed to exist. He then read from the Master Plan and expressed his feeling that this approach would "improve development requirements in the areas of sign controls and landscaping".

(1-2411) Discussion ensued concerning the fact that the City does not currently have standards establishing the number of signs allowed, maximum square footage, overall height, distance between signs, compatible land uses, setback requirements, appendages, or whether billboards could be the sole use of a lot. At this time the only standards were those found in the special use permit requirements concerning health, safety, and welfare of the community.

Mr. Sheerin responded by expressing his feeling that as none of the surrounding property owners had opposed the billboards, they were not offensive to the general public. Further, they had not affected the economic value of the surrounding property. Mr. Sullivan noted that only one letter had been received which was not related to Mr. Sheerin's clients.

Mr. Sheerin then explained his understanding that billboards do not contribute to the cause of vehicular accidents.

He again reiterated his feeling that just compensation should be made before removal of the signs occurs.

(1-2735) Harvey Hotel Vice President of Marketing Roger Derby explained an FCC prohibition on casino advertising on radio and television. Therefore, billboards are used extensively to reach the general public. The economic impact created by the tourists was noted as a justifiable reason for continuing the advertisements.

(1-2807) David Olive, Assistant General Council for Donrey Media: His firm had a "significant investment in outdoor advertising in Carson City". Special Use Permits had been applied for for each of the billboards. He asked the Board to study the matter carefully. Purportedly, his office had been told to "not apply for the Special Use Permit" and to "not waste their money or time" on the matter as the applications would be denied. Based on these comments, the appeals had been filed automatically. The Planning Commission had refused to listen to the plans for the signs. Currently, the City has an ordinance prohibiting upgrading signs, which is the reason some are in deplorable condition. If the City continues to hold the line, his firm would be "forced" to seek legal recourse. He had no problem with removal of all of the billboards provided just compensation is paid and cited a Supreme Court ruling to support his position.

BREAK: At 7:35 p.m. a fifteen minute recess was called. When the meeting reconvened at 7:50 p.m. a quorum was present.

(2-0002) Jay Meierdierck, a resident of Carson City, expressed his feeling that the billboards provided two services, "shade for cattle" and "nesting sites for pigeons". While he supported some advertising, he found billboards to be "ugly, intrusive, hideous, unsafe, unsightly, and unneeded". The billboard industry exploited his inability to avoid them or exercise his freedom of choice. His experience as a planning engineer was explained to support his position that billboards could be banned and eliminated from a community. He noted the public investment in a highway and expressed his feeling that billboards devalue a highway and this investment. Purportedly the Federal Highway Beautification Act failed to reduce the number or control billboards. His comments noted the legal threats made by the previous speakers. At present the State controls are mere tokens and enforced only because the Federal Aide Highway Funds required them as stated in NRS 41.2220, which he read. He urged the Board to adopt stringent zoning and sign ordinances and enumerated the items which he felt could be used to control billboards. The Planning Commission's actions had not been arbitrary. Douglas County had taken appropriate action and ridded itself of all billboards. At the very least, Washoe County's standards should be incorporated in the City ordinances if billboards must be allowed. Those standards included 2,000 feet spacing requirements, height restrictions to no taller than surrounding buildings, prohibition in areas not zoned commercial, restricted to an area of 300 square feet, no appendages, one free standing sign per parcel, consideration of surrounding uses, prohibition where adjacent residential homes could view the sign, prohibition of artificial lighting, in open space, or in vacant lots. He then expounded on his feeling that native landscaping was more beautiful and that the applicants had had adequate time to come into compliance with the City's ordinances. To continue to allow them to exploit the residents was unfair to the other businesses and occupants of the City. The billboards primary purpose was to attract attention including a driver's. He urged the Board to abolish the billboards and improve the City's quality of life.

(2-0415) Thelma Calhoun expressed her feeling that five years had been adequate to amortize the signs, specifically as it was in actuality 12 years. She felt that the threats were unjustified and urged the Board to maintain the line. She did not feel that the signs attracted tourists as indicated by the advertisers. The Board's intent had been to ban signs which were not necessary for the local businesses.

(2-0473) Brent Howerton, Supervisor and Right-of-Way Agent in Charge of Utility Section of Transportation, explained his role in overseeing the Highway Beautification Act. The State Department of Transportation does not enforce local ordinances but does enforce the State Beautification Act. The State sign permits admonishes the sign owner to comply with local ordinances. Sign owners are required to obtain a certified statement from local authorities indicating that the sign does comply with their ordinances. Many of the Carson City signs were in existence prior to the State program. These signs did not require local certification. The State's original requirements were that the property owner gave consent to the placement and proof that the sign did exist. There

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is one sign in the City over which neither the City nor State has jurisdiction. Discussion ensued concerning the definition of billboards and when the signs were constructed. The State permit is renewed annually.

Mr. Sullivan explained that during the 1970's building permits would have been required to construct a sign, however, copies could not be found in the records nor had the companies furnished copies. Whether the signs are legal under the County's Ordinances is a question for the Board to decide.

(2-0719) Conway Barlow, representing the Nevada Division of the Federal Highway Administration, explained that should the City determine the signs are illegal, regardless of the point concerning their legality at the time of construction, the signs could be removed without compensation. This would not violate the 78 amendments to the Federal act nor subject the State Department of Transportation to a penalty. The time at which the sign became illegal does not effect the requirements. The main point is that if they are determined to be illegal signs, they could be removed without compensation of any time. Nonconforming signs would require compensation prior to removal. He then explained his position with the State and that this opinion had been reviewed and approved by the Washington legal council.

(2-0850) Alan Gross expressed his feeling that the claim of ignorance during the 12 year amortization period was unbelievable. He felt that, as the majority of the individuals residing in the billboard neighborhood were tenants, they had not received notice of the meeting. Additionally, elected officials are the ones they look to "to buck big business". He then explained his feeling that signs are not necessary to tourism, citing Lake Tahoe and Hawaii to support his position. Signs signify blight. According to his understanding of the law, cities could control or remove signs.

(2-0995) Tim Grant, representing Dunn, Draper, Glenmars Advertising and Marketing from Reno, explained that he had received notice of the meeting only yesterday. He then entered into the record a written protest to the Planning Commission's denial.

(2-1035) Mr. Sullivan explained the matrix containing the permit numbers, applicant's name, and conditions under which a sign could be approved/denied. He then explained the Code requirements mandating obtaining a special use permit and a sign permit. In order for the billboards to be lawful, these permits should have been obtained by May 1. He then explained the supporting documents attached to the Board action request form and the conditions and findings necessary to approve the Special Use Permits.

(2-1343) Mr. Cockerill reiterated the purpose of the meeting as being to consider granting Special Use Permits to allow billboards, Code requirements to approve/deny those applications, and several court cases supporting the Board's ability to make such approvals/denials.

Supervisor Swirczek then expressed his feeling that the area was very tourist oriented and should consider the matter on a regional basis rather than city-wide. It appears that the City lacks standards for judging the merits of the signs which are allowed under the Code. In view of the lack of standards, he suggested that the matter be continued to allow staff time to prepare standards and have the Planning Commission consider them.

Mr. Cockerill requested that, should the Board elect this course, a stipulation be obtained from each of the representatives/applicants agreeing to the continuation and to those standards, which would be adopted by Ordinance.

(2-1678) Gary Sheerin agreed to the continuation and stipulation so that the matter could be continued until reasonable standards are developed and urged the Board to follow this path. This would place the applications on hold until the Code is amended. The standards would be considered by the Planning Commission. The companies would actively be involved in developing the standards.

Mr. Cockerill explained the process which would allow staff to develop the standards, have them evaluated by the Planning Commission, and considered by the Board. Then the Special Use Permits would be reconsidered by the

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Planning Commission and referred to the Board for final determination as to conformity.

Mayor Pro-Tem Scrivner expressed his feeling that the billboard companies had had adequate time to develop standards and his reluctance to continue the matter for three more months.

Mr. Sullivan expressed a willingness to work with the attorneys and develop the standards.

BREAK: At 8:50 p.m. a 25 minute recess was called to allow staff and the attorneys time to draft an acceptable stipulation for the continuance. When the meeting reconvened at 9:15 p.m. a quorum was present.

Mr. Hamilton explained the need to continue the matter for two weeks to allow time to draft the stipulation.

Attorney David Olive, representing Donrey, concerning Applications 87-20, 87-21, 87-22, 87-23, 87-24, 87-25, 87-26, 87-28, 87-29, agreed to stipulate to the continuance on the Special Use Applications until July 1, 1987, at 6 o'clock.

Attorney Dan Bowen, representing 3-M International, agreed to stipulate to the continuance of these proceedings until July 1, 1987, at 6 o'clock related to Applications U-87-14, U-87-31, U-87-32, U-87-34, U-87-35, and U-87-36.

Linda Bowman, representing Harrah's Club, Application U-87-27, agreed to the stipulation as made by Messrs. Bowen and Olive.

Gary Sheerin, representing Special Use Permit U-87-15, U-87-14, U-87-16, also agreed to the stipulation as suggested by the motion.

Discussion noted that Tim Grant had left.

Dan Bowen clarified his representation to include Permit U-87-33 and that 3-M owns the sign involved with U-87-14 even though it advertises Harvey's, who is represented by Mr. Sheerin.

Raymond Pasque, representing National Advertising Company, who holds the advertising contract for City Center Motel, agreed to the stipulation for Tim Grant on U-87-37.

Supervisor Swirczek then moved to continue the meeting to consider Special Use Permit Applications to allow billboards until July 1 at 6 p.m., specifically related to the Special Use Permit Applications U-87-14, U-87-15, U-87-16, U-87-20, U-87-21, U-87-22, U-87-23, U-87-24, U-87-25, U-87-26, U-87-27, U-87-28, U-87-29, U-87-30, U-87-31, U-87-32, U-87-33, U-87-34, U-87-35, U-87-36, U-87-37. Supervisor Feticc seconded the motion. Motion was voted by roll call with the following results: Ayes - Chirila, Feticc, Swirczek and Mayor Pro-Tem Scrivner. Nays - None. Motion carried unanimously and so ordered.

Supervisor Feticc then moved to adjourn. Supervisor Swirczek seconded the motion. Motion was voted and carried unanimously. Mayor Pro-Tem Scrivner adjourned the meeting at 9:25 p.m

The Minutes of the Special June 17, 1987, Carson City Board of Supervisors meeting

ARE SO APPROVED ON__February_18, 1988.

/s/_____
Dan Flammer, Mayor

ATTEST:

/s/_____
Alan Glover, Clerk-Recorder