

CARSON CITY REDEVELOPMENT AUTHORITY
Minutes of the Special June 22, 2000, Meeting
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A special meeting of the Carson City Redevelopment Authority was held during the special meeting of the Carson City Board of Supervisors on Thursday, June 22, 2000, at the Community Center Sierra Room, 851 East William Street, Carson City, Nevada, that began at 6 p.m.

PRESENT: Chairperson Robin Williamson and Members Ray Masayko, Pete Livermore, and Kay Bennett

STAFF PRESENT: John Berkich City Manager
Andrew Burnham Development Services Director
Walter Sullivan Community Development Director
Steve Kastens Parks and Recreation Director
Neil Rombardo Deputy District Attorney
Juan Guzman Senior Planner
Katherine McLaughlin Recording Secretary
(S.B.O.S. 6/22/00 Tape 1-0023)

NOTE: Unless otherwise indicated, each item was introduced by staff's reading/outlining/clarifying the Board Action Request and/or supporting documentation. Staff members present for each Department are listed under that Department's heading. 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.

Mayor Masayko recessed the Board of Supervisors session and passed the gavel to Redevelopment Authority Chairperson Williamson. Chairperson Williamson convened the meeting by indicating for the record that a quorum of the Authority was present. Member Plank was absent. (See Board of Supervisors Minutes of June 22, 2000, for discussion/action on the other Agenda items.)

APPROVAL OF MINUTES - None.

DISTRICT ATTORNEY - Deputy District Attorney Neil Rombardo - ACTION TO APPROVE A SETTLEMENT AGREEMENT BETWEEN CARSON CITY, CONSOLIDATED MUNICIPALITY AND POLITICAL SUBDIVISION OF THE STATE OF NEVADA, AND THE CARSON CITY REDEVELOPMENT AUTHORITY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, AND EUGENE J. LEPIRE, SR., AND JUDY L. LEPIRE, DOING BUSINESS AS COMSTOCK COUNTRY R. V. RESORT, SETTling THE APPEAL BEFORE THE BOARD OF SUPERVISORS REGARDING THE CARSON CITY PLANNING COMMISSION'S DECISION TO APPROVE SPECIAL USE PERMIT U-99/00-26, A SPECIAL USE PERMIT ALLOWING COSTCO TO BUILD A FACILITY OVER 50,000 SQUARE FEET AT 700 OLD CLEAR CREEK ROAD (1-0025) - City Manager John Berkich, Development Services Director Andrew Burnham, Community Development Director Walter Sullivan, Lepires' Attorney Rick Elmore, Eugene Lepire, Costco Legal Counsel Mike Alonzo, Costco Representative Tony Unan, Jay Dargert, Phil Williamson, Sandra Dargert, Judy Lepire - Mr. Rombardo highlighted the terms of the agreement. Discussion between the Board and Mr. Rombardo indicated that the easement the Lepires were to grant to Costco for construction of the soundwall had not been granted to Mr. Rombardo's knowledge. The receiving hours are between 5:30 a.m. and 11 p.m. The additional four feet being dedicated to the Lepires will be subtracted from the amount of property being acquired by Costco. The revised total costs, the location of the four foot sliver of property and its value were discussed. Mr. Berkich iterated the three remaining issues as being the failure to have a signed easement from the Lepires and the lack of a determination as to the color and surface that the soundwall is to be. The soundwall cannot be constructed until these issues are resolved. The Planning Commission's conditions required the wall to be constructed at the beginning of the construction, which means the first thing constructed and during the initial grading process.

Mr. Elmore indicated that the wall color and texture had been selected and were no longer an issue. He then explained the difficulty developing the easement agreement. He felt that the draft document he had just received should be acceptable and could be signed by Monday. The Lepires want the wall and want it built immediately.

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During discussion between Member Masayko and Mr. Elmore regarding a date when the easement would be signed, Mr. Elmore promised to have the document signed by Monday. Member Masayko felt that a ten day period for signing was reasonable and fair. Mr. Elmore then agreed to the ten day timeframe.

Additional discussion between Member Livermore and Mr. Sullivan on the term "beginning" and when the soundwall is to be constructed reiterated previous statements on when the construction would occur. Mr. Lepire felt that this was an unreasonable description as he had dust flying today. He felt the wall was to have already been constructed. Mr. Sullivan explained the need to grade the site before the wall could be constructed. The wall would be constructed as part of the initial grading project as stipulated to the Planning Commission.

Mr. Alonzo explained that there is a verbal agreement concerning the colors and design of the wall, however, the Lepires have not yet signed off on them. He could not commence the wall until they sign off on the colors and the easement. This holds up the entire construction program. His lack of faith concerning obtaining the signatures was described. He asked that Costco be allowed to continue construction until these documents have been signed.

Member Bennett pointed out the willingness to resolve these issues as expressed by Messrs. Elmore and Alonzo. Both Mr. Elmore and Member Masayko had stated that the easement could be signed within five days. Mr. Alonzo explained that the easement is on the Lepires' property and without the signed document, he could not construct the soundwall or proceed with his project. Member Bennett read Section 3.3 of the agreement between the City and the Lepires indicating that the City is not a party to the easement agreement. The negotiating efforts are proceeding with both sides regarding the easement. A commitment had been made that the easement will be signed within five or six days. Mr. Alonzo responded by restating his concern that if it is not, the lack of a signed document holds up his project.

Mr. Berkich suggested that Section 2.4 be revised to indicate that the soundwall will be constructed upon receipt of the easement. Mr. Unan asked if this would allow them to continue construction. The three to five day delay would be acceptable as it will provide time to grade the site and prepare the soundwall area. Mr. Berkich explained the need to begin construction as soon as possible. Discussion revised Section 2.4 to "require Costco, upon receipt of easement, to build the western soundwall at the beginning of construction of the Costco development". Mr. Unan felt that the term "beginning of construction" had been defined as at the start of construction which includes the grading.

Mr. Elmore then described the two sections of soundwall which were being discussed. One section goes from Old Clear Creek Road along the eastern segment of the parcel. The second section goes along the Forest Service section. Costco does not need an easement to construct the portion on its property. The portion north of the Lepires' residence and approaching Clear Creek is the part requiring the easement. Chairperson Williamson indicated that the easement is needed for maintenance and to construct the wall. Member Masayko also pointed out that until the four foot section is dedicated, the City owns the property and they could access it. Mr. Burnham indicated that the transfer of the property will not occur until closure and transfer of the property and lot line adjustment occurs. Chairperson Williamson suggested that Mr. Elmore and Mr. Alonzo discuss the issues in the hall while the Board discusses the issues with other Costco members.

(1-0541) Mr. Unan indicated that Costco is committed to doing the project whether the Board approves the settlement agreement or not. The schedule would not be impacted by the settlement agreement. Costco will continue to work under the early entry agreement approved at the last Board meeting.

Member Masayko pointed out that if the agreement is not approved this evening, the Special Use Permit issues will then be considered. The easement is not part of the matter. Mr. Unan agreed that without the settlement agreement, the easement would not be required. The Planning Commission had required the soundwall along the first 535 feet from Old Clear Creek Road. Mr. Unan indicated that there would be a retaining wall due to the grade difference. The soundwall along the Forest Service parcel could not be constructed without an agreement from the Forest Service. The settlement agreement requires the soundwall and creates the need for the easement. Member Masayko felt that withholding the easement should negate the need for the soundwall and that this indication should also be added to the agreement. Mr. Unan agreed to add this term. Mr. Rombardo explained that if the easement is not granted, then the agreement is breached. The settlement agreement determines where the wall will

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be constructed. Four feet to the west is City property. The four foot sliver is worth \$50,000 with which the City would be unable to do anything. Chairperson Williamson pointed out that the City could use this sliver as an easement to the Forest Service parcel when the City acquires that parcel.

(1-0656) Public comments were solicited. Mr. Dargert felt that the project should be constructed. Mr. Lepire should build his own things if he does not wish to sign the document. Mr. Williamson felt that Costco was committed to the project. The settlement and appeal should be denied. Ms. Dargert could not believe the problems created by the Lepires. She felt that a private business person should be required to make their own improvements. The City is doing some work on Minnesota near her residence. She had not demanded that the City construct a wall to protect her home. She felt it was shameful that the Board was allowing itself to be held hostage. Ms. Lepire felt that they had not delayed the process. They had been told numerous different things which are continually be changed. Mr. Lepire indicated it would cost \$92,000 to construct the "fence". No easement is needed. If the City gives him \$60,000, he agreed to construct the wall. This had purportedly been negotiated three weeks ago but had not been brought forward. Ms. Lepire continued her comments by noting the comments which had been made by the media and the City's failure to advise them that the entrance to the RV park would be closed/changed. She agreed that the City was being generous, however, it was a business deal and the public should be advised correctly of that relationship. They had suffered the same stress and pressure as the Board had encountered. The fence which is under debate was to have a four foot berm with an eight foot fence. Costco raised its building by seven feet. Adjustments must be made for the RV park. Fairness should be applied uniformly when representations are made. The Lepires had been long-time Carson City residents who had donated and given a lot to the City. They should not be made out to be the bad guy because they just happen to be at the wrong place at the wrong time. Additional comments were solicited but none given.

Member Masayko indicated that the agreement in its present form is as close as he could come to developing a settlement. The contract would be enforceable. It is a lot closer to having resolved all of the issues and less messy than denying the appeal of the Planning Commission's decision. It is fair although it costs too much. He offered to put the agreement on the table and deal with it. **Member Masayko then moved to approve a settlement agreement between Carson City, a consolidated municipality and political subdivision of the State of Nevada, and the Carson City Redevelopment Authority and Eugene J. Lepire, Sr., and Judy L. Lepire, DBA Comstock RV Resort, which settles the appeal before the Board of Supervisors regarding the Carson City Planning Commission's decision to approve Special Use Permit U-99/00-26, a Special Use Permit allowing Costco to build a facility over 50,000 square feet at 700 Old Clear Creek Road,** and noted for the record that he had a copy of an agreement that had a date of 6/21 faxed to him containing the signatures of Eugene and Judy Lepire, which is the document he was referring to. **Member Bennett seconded the motion** and asked for a revision to include the revised language in Section 2.2 on Page 5 regarding the easement as discussed. Member Masayko indicated that any change to the document would be different from the one the Lepires had signed. The document must go as written. Mr. Rombardo agreed. Member Bennett then rescinded her request. Mr. Rombardo then explained that the verbal agreements made regarding having the signed easement agreement within five to ten days could be legally binding upon Attorneys Elmore and Alonzo. He agreed that the enforcement of the verbal agreements would be based upon the commitments made during the meeting.

(1-0840) Mr. Williamson felt that a total agreement had not been reached. The Board should not approve the agreement as presented.

Mr. Unan expressed his concern that if the agreement is approved, he would not be able to do his work as desired. He acknowledged the verbal agreement but felt that past history with the Lepires, as well as his own personal experience as an attorney, indicated that it would take several weeks to finalize the document.

Mr. Elmore agreed that the settlement agreement committed the Lepires to signing the easement. Mr. Alonzo indicated that the easement is more specific and defines what can be done by Costco. Mr. Rombardo indicated that the early entry agreement had no bearing on the settlement agreement. Mr. Alonzo explained the intent and requirement that a wall be constructed. The wall cannot be constructed without the easement. If Costco constructs the wall without the easement, its construction workers would be constructing on the Lepires' property. Chairperson Williamson pointed out that this would not occur until the dedication has been recorded. Mr.

Rombardo pointed out that the City had 90 days to complete the dedication. This may be adequate time for construction of the wall. If the lot line adjustment is completed prior to that time and Costco has not completed the wall, Costco would be guilty of trespassing. The wall goes 386 feet before hitting the Lepires' property line and then 140 along the U.S. Forest Service property. At the Forest Service property line, they would be trespassing. Mr. Sullivan used Exhibit A of the agreement to explain the wall location and property ownership. The wall from Old Clear Creek Road north to the Forest Service property must be installed at the inception of the project. The remaining portion on the Forest Service and Lepires' property line will occur after the easement is granted. This is what staff proposes to enforce.

Mr. Unan felt that if this point is reached before the easement is granted, construction would be forced to halt until the easement is obtained. This could be problematic for the project. He had instructed their legal counsel to draft a fair easement which included provisions regarding maintenance obligations, insurance provisions, indemnity and mechanics liens. It was only two pages long and had been sent to them on Wednesday. He was skeptical whether it could be signed on Monday.

Mr. Rombardo also pointed out that a maintenance problem could arise on the portion of the wall which could be constructed without the easement, which could create additional problems.

Mr. Elmore reiterated that his clients had agreed to grant an easement as indicated in Section 3.3 of the agreement in front of the Authority. He then indicated that the May 1st draft of the agreement had included this same language. The document had been out for a long period of time. He then clarified his commitment concerning the five days for signing the easement agreement as being that he would give his comments concerning the easement language to Costco's counsel by Monday depending upon his ability to consult with his partners who work in the real estate section of his firm. His commitment to Member Masayko had been limited to areas under his control. The document should be completed within ten days. He thought that it would be completed by Monday or Tuesday.

Mr. Unan then requested clarification as to when he would be allowed to commence construction and particularly the amount of work which he would be allowed to do until the easement is signed. One of the comments concerning a drafted easement had been that before commencing any construction activities including any grading activities, the wall must be constructed. This is not consistent with the discussion.

Mr. Elmore indicated his understanding of the agreement is that they could do whatever grading/excavating that is necessary to create the foundation for the placement of the wall. There is to be no other general construction activity on the premises until the wall construction begins. This restriction provides the necessary barrier for noise and dust from the Costco construction site.

Mr. Alonzo read from the easement agreement that "prior to construction of Costco's property any improvements or of any grading activity". Mr. Burnham pointed out that the discussion involves a document to which the City is not a party. The only requirement from the City is that proof of the easement is given to the City. Mr. Alonzo agreed that the City is not part of the agreement.

Mr. Elmore responded by explaining that he had not seen the document nor had his clients. The statement does not match the verbal commitments or intent regarding the construction. He felt certain that the issue would be easily resolved once he reviews the document and talks with Mr. Alonzo.

Member Bennett noted that the Authority had signed the early entry agreement, that a grading permit had been issued, and grading has commenced. Mr. Burnham indicated Costco could begin initial construction as a result of the agreement. The wall is part of the first portion of the project. They would be able to do additional construction as well as the wall. This is how staff will enforce the condition. Chairperson Williamson pointed out that grading for a wall could not be done until additional grading of the surface occurs.

Mr. Elmore responded by explaining that great effort had been undertaken to define the grade and wall height within the agreement. Very little work is required before excavation for the wall foundation is commenced. Any other work would be done at Costco's own "imperil" and if the Lepires experience fugitive dust, they will be able to

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address it the same as any other person would from any other construction site. The agreement before the Board includes a waiver of any claims for dust as part of the settlement. If it is approved this evening, this claim goes away.

Chairperson Williamson explained her discussion with Northern Nevada Title Company which indicated that revisions would be required to the property description if the agreement is approved. Mr. Unan indicated that, if the agreement is approved and the lot line is adjusted, a new legal description and proforma title insurance policy would be prepared. This should be accomplished within two or three weeks. If the agreement is not approved, he was unsure when closing could occur. The construction schedule would be more definitive with the settlement agreement. A portion of the wall would be constructed and nothing more until an easement is obtained.

Discussion between Mr. Rombardo and Mr. Sullivan indicated that definition of "in the beginning" as being with the first phases of the project, which is grading. The wall must be installed as part of the initial grading/excavation on the southeastern portion of the property. The Planning Commission had required the soundwall on the first 345 feet. The agreement between the Lepires and Costco had added the 140 along the Forest Service parcel. The City is not party to this agreement. Both the Lepires' and Costco counsels had assured the Board that that easement is imminent.

Chairperson Williamson stated the motion as being to approve the settlement agreement between Carson City and Eugene J. Lepire and Judy Lepire. The motion was voted and carried 3-1-1 with Chairperson Williamson voting Naye and Member Plank absent.

There being no other matters for consideration, Chairperson Williamson adjourned the Redevelopment Authority and returned the gavel to Mayor Masayko.

The Minutes of the Special June 22, 2000, Carson City Redevelopment Authority meeting

A R E S O A P P R O V E D

ON _____ November 2__, 2000.

_____/s/_____

Robin Williamson, Chairperson

ATTEST:

_____/s/_____
Alan Glover, Clerk-Recorder