

No. 10-568

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**In the Supreme Court of the United States**

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NEVADA COMMISSION ON ETHICS,  
*Petitioner,*

*v.*

MICHAEL A. CARRIGAN,  
*Respondent.*

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**On Writ of Certiorari  
to the Supreme Court of Nevada**

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**JOINT APPENDIX**

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FIRST JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR CARSON CITY

No. 07-OC 01245 1B

MICHAEL A. CARRIGAN,

*Plaintiff,*

*v.*

NEVADA COMMISSION ON ETHICS

*Defendant.*

RELEVANT DOCKET ENTRIES

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No.	Filed	Action
--	9/5/07	Verified Petition for Writ of Mandamus & Prelim. and Permanent Injunctive Relief
--	9/05/07	Verified Motion for Temporary Restraining Order
--	9/07/07	Answer to Notice of Petition/Writ/ Mandamus and Preliminary and Permanent Injunctive Relief

No.	Filed	Action
--	9/20/07	Order
54	10/09/07	Petition for Judicial Review
53	10/09/07	Motion for Stay of Enforcement of Final Decision
50	11/29/07	Administrative Record on Appeal Certification of Official Records of Nevada State Commission on Ethics Volumes I
49	11/29/07	Administrative Record on Appeal Certification of Official Records of Nevada State Commission on Ethics Volumes II
47	11/29/07	Record of the Proceeding Under Review

No.	Filed	Action
45	12/07/07	Order Denying Motion for Stay of Enforcement of Final Decision
42	12/07/07	Reply to Respondent's Opposition to Motion for Stay of Enforcement of Final Decision
41	12/11/07	Notice of Entry of Order
40	1/07/08	Petitioner's Opening Brief in Petition for Judicial Review
36	2/25/08	Respondent's Answering Brief
33	2/25/08	Amicus Curiae Brief of Legislature of the State of Nevada
32	2/28/08	Petitioner's Corrected Opening Brief in Petition for Judicial Review

No.	Filed	Action
24	3/20/08	Order Granting the Motion of the Nevada Legislature for leave to File Amicus Curiae Brief and for Permission to Participate as Amicus Curiae in Any Oral Argument or Hearing
21	3/26/08	Petitioner's Reply Brief
20	3/26/08	Request for Hearing
19	3/27/08	Order
15	5/27/08	Transcript of Proceedings – Petition for Judicial Review 5/12/08



No.	Filed	Action
14	5/28/08	Order of Judgment Denying Petitioner's Petition for Judicial Review and Affirming the Final Decision of the Nevada Commission on Ethics
12	5/30/08	Notice of Entry of Order
11	6/20/08	Order Denying Pe[t]ition for Writ of Mandamus Prohibition
10	6/24/08	Notice of Appeal
9	6/24/08	Case Appeal Statement
6	7/23/08	Order Setting Expedited Briefing Schedule
3	8/25/10	Opinion

SUPREME COURT OF NEVADA

No. 51920

MICHAEL A. CARRIGAN, FOURTH WARD CITY COUNCIL  
MEMBER, OF THE CITY OF SPARKS

*Petitioner,*

*v.*

THE COMMISSION ON ETHICS OF THE STATE OF  
NEVADA,

*Respondent.*

RELEVANT DOCKET ENTRIES

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Date	Docket Entry
6/25/2008	Filed Certified Copy of Notice of Appeal/No Settlement. Notice of exemption from settlement conference program mailed to all counsel. (Docketing statement mailed to counsel for appellant.)
6/30/2008	Filed Motion. Motion for Expedited Appeal
6/30/2008	Filed Docketing Statement

Date	Docket Entry
7/16/2008	Filed Transcript. Proceedings: 08/29/07. Court Reporter: Eric Nelson
7/22/2008	Filed Order. We conclude that an expedited briefing schedule is appropriate, and therefore, we grant appellant's motion. Appellant shall have 30 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1). Upon the completion of briefing, we will expedite our resolution of this appeal as the court's docket permits.
7/24/2008	Filed Opening Brief
7/24/2008	Filed Joint Appendix. Vols. 1-4
8/25/2008	Filed Answering Brief.
8/25/2008	Filed Amicus Brief. Amicus Curiae Brief of the Legislature of the State of Nevada in Support of the Commission on Ethics of the State of Nevada
9/24/2008	Filed Reply Brief

Date	Docket Entry
9/24/2008	Filed Joint Appendix. Supplement to Joint Appendix
10/28/2008	Filed Order. Disclosure of non-disqualifying interest. I see no reason to recuse myself from consideration of this appeal. Ron Parraguirre
2/02/2009	Issued Notice Scheduling Oral Argument. Oral Argument is scheduled for 30 mintues in Carson City on March 3, 2009 at 10:30 a.m. (En Banc)
3/03/2009	Submitted for Decision
3/10/2009	Disqualification of Justice Parraguirre
7/29/2009	Filed Per Curiam Opinion. "Reversed." Before the Court EN BANC. Fn1 [The Honorable Ron Parraguirre, Chief Justice, voluntarily recused himself from participation in the decision of this matter.] Author: Douglas, Michael L. Majority: Douglas/Hardesty/Cherry/Saitta/Gibbons. Dissent: Pickering. 126 Nev. Adv. Opn No.28. EN BANC

Date	Docket Entry
12/27/2010	Filed Order Granting Motion to Stay Reissuance of Remittitur until final disposition has been rendered by the Supreme Court of the United States

*The City of Sparks*



*MAYOR  
Geno Martini*

*CITY COUNCIL  
John R. Mayer, Ward I  
Phillip Salerno, Ward II  
Judy Moss, Ward III  
Mike Carrigan, Ward IV  
Ron Schmitt, Ward V*

**SPECIAL CITY COUNCIL MEETING AGENDA**

6:00 P.M., Wednesday, August 23, 2006

City Council Chambers

Legislative Building, 745 Fourth Street, Sparks,  
Nevada

**Order of Agenda** - Items listed on the agenda may be taken out of order.

**Accommodations** - The Sparks City Council Chambers are accessible to individuals with disabilities. Reasonable efforts will be made to accommodate persons with special needs such as sign language interpreters. Please call the City Clerk (775) 353-2350 one week in advance of the meeting. TDD Line 353-2350.

**Rules - Addressing the Council** - The meetings conducted by the Sparks City Council in the City of Sparks Legislative Building are not public forums. The presiding officer will enforce viewpoint neutral procedural rules to ensure orderly conduct during

that portion of the Agenda set aside for Public Comment. In order to allow the City Clerk to properly document those individuals speaking to the City Council, persons desiring to address the Council shall first provide the City Clerk with a written request to speak so they may be recognized by the presiding officer.

**Manner of Addressing the Council** - In order to conduct orderly, efficient, effective and dignified meetings that promote a governmental purpose with a governmental process, public comment may address any agenda item or other public issue that the City Council has the authority to effectuate or exercise control over. Public comment on matters beyond the City Council's scope of authority is not relevant to Council business, does not invoke a governmental process nor serve a governmental purpose and is contrary to the effective, efficient and orderly business conducted by the Sparks City Council. Each person addressing the Council shall step up to the microphone, shall give his/her name and shall limit the time of his/her presentation to three (3) minutes. All public comment remarks shall be addressed to the Council as a body, and not to any member thereof. No person, other than members of the Council and the person having the floor shall be permitted to enter into any discussion, either directly or through the members of the Council. No questions shall be asked of the Council members, except through the presiding officer. Speakers shall avoid undue repetition of points previously presented to the Council.

**Sound Amplification** - The City of Sparks provides sound amplification during its public

meetings for the convenience of the speakers and the audience. Sound amplification, if enhanced by yelling or shouting can cause hearing and equipment damage. Public speakers using the sound amplification shall not disrupt the meeting by yelling or shouting into the microphone while addressing the City Council.

**Disruptive Conduct** - Any person who willfully disrupts a meeting to the extent that its orderly conduct is made impractical may be removed from the meeting by order of the presiding officer. A person willfully disrupts a meeting when he/she (1) uses physical violence, threatens the use of physical violence or provides the use of physical violence or (2) continues to use loud, boisterous, unruly or provocative behavior after being asked to stop, which behavior is determined by the presiding officer, or a majority of the Council present, to be disruptive to the orderly conduct of the meeting or (3) fails to comply with any lawful decision or order of the presiding officer or of a majority of the Council relating to the orderly conduct of the meeting.

**Action Items - Range of Possible Actions** - Those items NOT marked with an asterisk (\*) are items on which the Council may take action, which means that the Council may take any action, including, but not limited to, any one or combination of the following: (1) determine whether a business impact statement is required under NRS 237.080; (2) adopt, enact or approve the item as presented or recommended; (3) amend or make changes (substantial or minor) to the item as presented and then approve it as amended or changed; (4) approve



the item with substantial or minor conditions; 15) deny, reject or fail or refuse to adopt, enact or approve the item, with or without prejudice; (6) table or postpone consideration of the item; (7) refer the item to staff or another public body for more information, advice or decision; (8) make a decision on the item; 9) make a commitment or promise regarding the item; (10) take a vote on the item; (11) do nothing at all.

**Business Impact Statement** - A business impact statement is available at the City Clerk's office for those items marked with a "S."

**Posting** - I. Deborine J. Dolan, City Clerk of the *City* of Sparks, Nevada, do hereby certify that this agenda was posted at the following locations three or more working days before the meeting:

Sparks City Hall,  
431 Prater Way

Alf Sorensen Community  
Center, 1400 Baring  
Boulevard

Sparks Legislative  
Building, 745 4th Street

Sparks Justice Court,  
630 Greenbrae Drive

Sparks Police  
Department, 1701 E.  
Prater Way

Sparks Branch Library  
1125 12th Street

Sparks Recreation  
Center  
98 Richards Way

**Special City Council Meeting Agenda  
Wednesday, August 23, 2006**

1. \*Call to Order

2. \*Roll Call

\*Comments from the Public

3. P.H. PCN05073, Red Hawk Land Company, tentative approval of an amendment to a Planned Development Handbook (Tierra del Sol) to allow for a resort offering entertainment, dining, non restricted gaming, commercial, a 200 room hotel and a public facility, for a site approximately 57 acres in size in the PD (Planned Development — Tierra del Sol) zoning district generally located east of Pyramid Highway and north of Lazy 5 Regional Park

4. Comments from the Council and City Manager

5. \*Adjournment \* \* \* \*

*Agenda Item: Tentative Approval of Planned  
Development Handbook  
Meeting Date August 23, 2006*

City of Sparks  
City Council Item

Meeting Date: August 23, 2006

Subject: P.H., PCN05073, Red Hawk Land Company, for a site approximately 57 acres in size in the PD (Planned Development – Tierra del Sol) zoning district generally located east of Pyramid Highway and north of Lazy 5 Regional Park.

- A. Tentative Approval of an amendment to a Planned Development Handbook (Tierra del Sol) to allow for a resort offering entertainment, dining, non restricted gaming, commercial, a 200 room hotel, and a public facility.

Petitioner: Red Hawk Land Company

Recommendation: The Planning Commission and Community Development Department recommends denial of PCN05073; see suggested motion below.

Financial impact: N/A

Business impact (per NRS Chapter 237):

- A Business Impact Statement is attached
- A Business Impact Statement is not required because:
  - This is not a rule:  
(Term excludes vehicles by which legislative powers are exercised under NRS Chapters 271, 278, 278A, and 278B.)

Agenda Item Brief:

The Tierra del Sol Planned Unit Development Handbook was adopted on August 7, 2000. This planned development consists of 56.7 acres. Tierra del Sol is located along the Pyramid Highway, which is major arterial for the Spanish Springs Valley. The surrounding land uses are a mix of future commercial, regional park and single family homes.

This request is to amend the existing Tierra del Sol Planned Development Handbook. The proposed amendment includes updating the handbook to incorporate the existing development within Tierra del Sol planned development along with corrected acreages, changing the phasing, administrative corrections, revising the commercial section, and including new designations of Resort and Public Facility. The Resort designation would allow for a resort hotel and other uses associated with this type of use including non-restricted gaming, which is limited to a maximum area of 18,000 square feet. The Public Facility designation would allow for the

construction of a public services facility to benefit city residents. The site will have limited access from Pyramid Lake Highway and will also be accessible from both Tierra del Sol Parkway and Dolores Drive.

On July 17, 2006 the Planning Commission denied the requested amendment. Staff originally recommended approval of the proposal. However, the Planning Commission found that the project is not in the public interest as it relates to PD Findings 18 & 21. The project, as submitted and conditioned, is not consistent with the City of Sparks Master Plan as the graphic depictions of land use designations in the City of Sparks prevail over the text of the NSSOI Plan, and that graphic designations associated with the General Commercial land use designations do not permit resort hotels with gaming. Additionally, the proposed modification of the Tierra del Sol Planned Development does not further the interests of the City because the Master Plan serves as the ultimate policy and guidance for land use development within the City.

#### **Background / Analysis / Alternatives**

For more details refer to page 4 of the Planning Commission Staff Report attached to this Report.

#### ***ALTERNATIVES:***

1. The City Council can approve the application(s).
2. The City Council can remand the application(s)

back to the Planning Commission with direction.

***SUGGESTED MOTION:***

Tentative Planned Development Handbook:

I move to deny the tentative planned development handbook for Tierra del Sol (PCN05073). The project is not in the public interest as it relates to PD Findings 18 & 21. The project, as submitted and conditioned, is not consistent with the City of Sparks Master Plan as the graphic depictions of land use designations in the City of Sparks prevail over the text of the NSSOI Plan, and that graphic designations associated with the General Commercial land use designation do not permit resort hotels with gaming. Additionally, the proposed modification of the Tierra del Sol Planned Development does not further the interests of the City because the Master Plan serves as the ultimate policy and guidance for land use development within the City.

***ALTERNATIVE MOTION:***

Tentative Planned Development Handbook:

I move for tentative approval of PCN05073 to tentatively approve the amendment to the Tierra del Sol Planned Development Handbook. This recommendation adopts Findings PD1 through PD21 and the facts supporting these Findings as set forth in the Planning Commission staff report. The tentative approval includes the requirement that the applicant shall file the application for the final approval for the first phase of the planned development within one (1) year from the date of the City Council granting tentative approval of the planned development handbook. The tentative approval requires

that the Wingfield Springs Planned Development Handbook be amended to remove the resort complex and a development agreement to supplement the 1994 Wingfield Springs Development Agreement be approved by the city that must include the modification to the Wingfield Springs Handbook, provide socially beneficial contributions and details regarding the transfer of the gaming component to Tierra del Sol. These requirements are a prerequisite to Final Approval. Due to the nature of the tentative planned development, the Planning Commission does not recommend that the City Council require a bond at this point in time as stated in NRS 278A.490.

Respectfully submitted:      Approved:

 \_\_\_\_\_ 

Neil C. Krutz, P.E.  
Community Development  
Director

Shaun D. Carey, P.E.  
City Manager

Prepared by:

 \_\_\_\_\_ 

Karen L. Melby, AICP  
Manager of Current  
Planning

Tim Thompson, AICP  
Senior Planner

\* \* \* \*

Minutes of the Special Meeting of the Sparks City  
Council for August 23, 2006

3. P.H. on PCN05073, Red Hawk Land  
Company, Amendment to the Tierra del Sol  
Handbook, Tentative Approval, to Allow for a  
Resort/Hotel/Gaming Development

Time: 6:06:55 p.m.

An agenda item from Senior Planner Tim Thompson recommending the City Council conduct a public hearing and deny a request from the Red Hawk Land Company for tentative approval of an amendment to a Planned Development Handbook (Tierra del Sol) to allow for a resort offering entertainment, dining, non-restricted gaming, commercial, a 200 room hotel, and a public facility on a site approximately 57 acres in size in the PD zoning district generally located east of Pyramid Highway and north of Lazy 5 Regional Park.

Council Member Carrigan disclosed that Mr. Carlos Vasquez, a consultant for Red Hawk Land Company, is a personal friend and also his campaign manager. He also disclosed that as a public official he does not stand to reap financial or personal gain or loss as a result of any official action he may take tonight; therefore, according to NRS 281.501, he believed that this disclosure of information is sufficient and that he would be participating in the discussion and vote on this issue.

Mayor Martini disclosed that, although he did not have a vote in this matter, Mr. Vasquez was also a friend of his and his campaign manager and that he



did not stand to gain anything from this project, should it be approved.

Mr. Thompson noted that this proposed amendment includes updating the handbook to incorporate the existing development within the Tierra del Sol Planned Development, along with corrected acreages; changing the phasing; administrative corrections; revising the commercial section; and including new designation of resort and public facility. He said that the resort designation would allow for a resort/hotel and other uses associated with this type of use, including non-restricted gaming, which is limited to a maximum area of 18,000 square feet. He said the public facility designation would allow for the construction of a 4,800 square foot public services facility on the site.

Mr. Thompson displayed a map which showed where the project would be located in relationship to the Pyramid Highway and the surrounding adjacent land uses, which is retail, commercial, and business park.

Mr. Thompson said this is a unique situation; to staff's knowledge the City of Sparks has never embarked on anything quite like this before. He then gave a history of the project, stating that in 1994, the City Council adopted a development agreement with Loeb Enterprises to develop Wingfield Springs. Part of that agreement was an agreement between the City and the developer which included extending infrastructure into the Spanish Springs Valley, including a road network, sewer, and other utilities. Also in that development agreement was a provision that any portion of that entitlement could be moved

to another location within the City of Sparks. He said there has been a lot of discussion about the intent [of the agreement] in 1994. He said that as City staff they have looked at the agreement; however, many of the current staff were not employed by the City in 1994 and therefore they cannot speak to what the intent of the agreement was; they simply focused on the plain language of the agreement. He said essentially staff believes the plain language of the agreement is a transfer of development rights.

Mr. Thompson noted that before the meeting he passed out a copy of an e-mail from Senior City Attorney David Creekman which basically defines what a transfer of development right is. He said essentially the entitlement is attached to a certain property or a certain plan and that entitlement is detached from that plan and attached to another location. He said this is what the applicant is asking to do: essentially transfer his entitlement to build a resort in Wingfield Springs to Tierra del Sol. Mr. Thompson said the definition, as Mr. Creekman points out, is somewhat esoteric; however, he felt it did a very good job of explaining exactly what a transfer of development right is.

Mr. Thompson said the 1994 development agreement also locked in place the plans that were in effect at the time the development agreement was adopted; mainly the Tourist Commercial land use designation and the locational criteria associated with that. He said in 1991 the City adopted the NSSOI Plan; that plan, in essence, set forth a vision for Sparks' development into the Spanish Springs Valley and that plan included and always

contemplated a single node of Tourist Commercial use, up to 37 acres. He said the maps associated with the plan at that time, some believe, were conceptual and an argument could be made that the maps at that time show that this use would be located in proximity to Wingfield Springs.

Mr. Thompson said the locational criteria of the Tourist Commercial land use designation, at that time, essentially stated that tourist commercial activities, including hotels, casinos and nonrestricted gaming uses were appropriate along major arterials: that includes Pyramid Highway and Vista Boulevard, which is why it was originally approved within the Wingfield development.

Mr. Thompson stated there has been a lot of discussion about traffic in Spanish Springs and this project will actually reduce the amount of traffic. He said this site is already approved for 200,000 square feet of retail commercial uses and those uses generate average daily trips (ADT) in the neighborhood of 8,800 trips. This proposed project actually reduces the estimated amount of traffic down to 7,900 average daily trips. He emphasized that the traffic, with or without this project, is going to be there.

Mr. Thompson said that the NSSOI plan, coupled with the County's plan for Spanish Springs, estimates that there will be in excess of 50,000 residents in the Spanish Springs valley and we are close to being half way to that figure. He said that one of the things that the City has done in recent years was realize that people who live in Spanish Springs need a place to shop in Spanish Springs and

they need a place to work in Spanish Springs and staff worked very hard in the 2002 Regional Plan Update to get this area designated as an emergency employment center. He said that a jobs/housing balance is very critical because at 10 ADT per household and 50,000 residents, there will eventually be 250,000 ADT in and out of the valley: people having to go to work and shop outside the valley. He said Vista Boulevard, Sparks Boulevard, Pyramid Highway and Highland Ranch are the only four access points to the south from the Spanish Springs Valley and it is critical that we provide a place for residents in Spanish Springs to shop and work in the valley to help reduce traffic coming to and from the Truckee Meadows.

Mr. Thompson said that this project, in the proposed location, provides a natural buffer, being surrounded on all sides by roadways. He said the applicant has the entitlement to build this project in Wingfield Springs; however the current location of the resort complex in Wingfield Springs has homes constructed on it. But this does not mean that the entitlement is void and a simple handbook amendment to move that use somewhere else within the Wingfield Springs Development could allow this project to be built adjacent to our new Golden Eagle Regional Park facility. The developer is asking to move that entitlement to Tierra del Sol and staff believes that this is an appropriate location for this type of use because putting it along the Pyramid Highway allows for better access for everyone. It also keeps it out of the neighborhoods.

Mr. Thompson said the applicant is also proposing to use a statute from state law that deals

with density bonuses. Essentially the statute says that in exercising the powers granted in this section (278.250) the governing body may use any controls related to land use or principles of zoning that the governing body determines to be appropriate, including, without limitation, density bonuses, inclusionary zoning, and minimum density zoning. He noted that the next paragraph goes on to say that density bonus means an incentive granted by a governing body to a developer of real property that authorizes the developer to build at a greater density than would otherwise be allowed under the Master Plan in exchange for an agreement by the developer to perform certain functions that the governing body determines to be socially desirable, including, without limitation, developing an area to include a certain proportion of affordable housing. He said that the developer is proposing to construct, at no cost to the City, a 4,800 square foot community services building, as well as donate \$300,000 to the City for Affordable Housing purposes. Mr. Thompson emphasized that the City has not determined how the facility would be used, nor have we determined that the best way to use the donation for affordable housing.

Mr. Thompson said this provision clearly states that the developer could build at a greater density than what would be allowed in the Master Plan; hence a reason why staff has not required a Master Plan amendment in this case.

He said that in the past, as with The Foothills at Wingfield subdivision, when it was developed, it was developed under the NSSOI plan, which set forth land uses and maximum density for the area. When the developer came in, the City said they could change the land uses around, as long as they stayed within the plan area and as long as they didn't increase the density or change the intensity of the plan, the City would not require a Master Plan amendment. Mr. Thompson said the developer came in and moved the land uses around, refined those uses, and created a handbook and that is what you see out at The Foothills at Wingfield Springs today.

Mr. Thompson said the City has also allowed the applicant, several times, to amend the Wingfield Springs handbook to move uses around without requiring a Master Plan amendment as the intensity hasn't changed (increased). He said the applicant is arguing that within the NSSOI plan, it accounted for up to 37 acres of a single node of Tourist Commercial activity and they believe a Master Plan amendment is not required because it doesn't change the integrity of the NSSOI plan; it simply moves the use to, what staff believes, is a more appropriate location.

Mr. Thompson said that at the Planning Commission meeting there was a motion to remove the gaming component from this facility and approve, as such. In staffs opinion this would have changed the intensity and integrity of the plan and increased traffic. He said staff believes that if the gaming component were removed, based on Tourist Commercial land use, that the hotel component would also have to be removed, which would further

change the integrity of the plan being proposed by the applicant. He said that 278A states that a project can be approved, it can be denied, or it can be approved with conditions; however, by removing those uses, none of the three were being met.

He said that at the second meeting staff advised the Planning Commission that if they did not believe that gaming was an appropriate use, then they must remove the hotel component from this project as well; and the Planning Commission should recommend denial of this project based on PD findings 18 and 21, which essentially state that the project is not in conformance with the Master Plan, nor is it in the public interest.

Mr. Thompson said that staff made a recommendation to the Planning Commission for approval; however, in front of the City Council staff represents the Planning Commission and therefore they are recommending denial of this project based on PD findings 1 through 21 as listed in the Planning Commission staff report, He noted that findings 18 and 21 support denial and should the City Council uphold the Planning Commission's decision, staff is asking that they base their denial on PD findings 18 and 21. Mr. Thompson said that should the Council choose to overturn the Planning Commission's recommendation, staff suggests the Council use the PD findings listed in the Planning Commission staff report that support approval of this project.

The Planned Development Findings for PCN05073 are listed as follows:

**PD1 The plan is consistent with the objective of furthering the public health, safety, morals and general welfare by providing for housing of all types and design.**

This is a mixed use project incorporating residential, tourist commercial (entertainment) and general commercial components. The Tierra del Sol development has been developed to date with single family homes at the density at 4 dwelling units per acre which fits into the entire Northern Sparks Sphere of influence area as a component piece to offer housing of all types and design. The applicant will make a financial contribution towards affordable housing.

**PD2 The plan is consistent with the objective of furthering the public health, safety, morals and general welfare by providing for necessary commercial and industrial facilities conveniently located to the housing.**

This project consists of existing housing and proposed commercial and entertainment uses. The entertainment area within Tierra del Sol will provide dining and entertainment options plus a proposed movie theater and arcade in close proximity to many existing and proposed homes in the Spanish Springs Valley. It should be noted that both the Wingfield Springs Planned Development handbook and the Wingfield Springs Development



Agreement limits the amount of resort related commercial/casino uses to 100,000 square feet. Of the 100,000 square feet only 18,000 square feet can be non restricted gaming of which a maximum of 50% can be slot machine type gaming. Any change exceeding the square footage shall be required to be processed as an amendment to the Development Agreement, requiring public hearings and approval by the Regional Planning Commission and the Sparks City Council. Currently, the applicant proposes approximately 315,000 square feet of total area for the Resort site. Therefore, the non restricted gaming component will be approximately 5.7% of the total overall square footage proposed for the site. The applicant will also provide a community center and contributions to affordable housing.

**PD3 The plan is consistent with the objective of furthering the public health, safety, morals and general welfare by providing for the more efficient use of land and public or private services.**

The plan is designed to provide entertainment and some commercial resources for the surrounding residences in the Spanish Springs Valley which will reduce trips into the Truckee Meadows area.

**PD4 The plan is consistent with the objective of furthering the public health, safety, morals and general welfare by providing for changes in technology of land development so that resulting economies may be available to those in need of homes.**

The proposed Planned Development allows flexibility in development. There are existing homes at 4 du/acre, commercial and entertainment uses proposed as part of this PD. The size of the planned development restricts the ability to provide a wider range of housing types.

**PD5 The plan is consistent with the objective of furthering the public health, safety, morals and general welfare by providing for flexibility of substantive regulations over land development so that proposals for land development are disposed of without undue delay.**

The proposed amendment is to provide commercial and entertainment which is not provided elsewhere in the Spanish Springs Valley. This amendment will not hinder the development of surrounding lands.

**PD6 The plan does not depart from zoning and subdivision regulations otherwise applicable to the property and these departures are in the public interest for density.**

The amendment provides standards that exceed the zoning standards for development with additional landscape requirements, perimeter landscaping, and architectural standards for the buildings.

**PD7 The plan does not depart from zoning and subdivision regulations otherwise applicable to the property and these departures are in the public interest for bulk.**

Due to the property location, adjacent to Pyramid Highway, the site is best suited for high intensity development along the transportation corridor with stepped density to match proposed densities and facilities to the east and south.

**PD8 The plan does not depart from zoning and subdivision regulations otherwise applicable to the property and these departures are in the public interest for use.**

Due to the location of the property, along Pyramid Highway, the mix of uses from higher intensity commercial and medium density residential uses is appropriate. This project will provide entertainment facilities and some commercial resources in the Spanish Springs Valley that would otherwise be unavailable to the residents of the Valley. This will also help to reduce vehicle miles traveled.

**PD9 The ratio of residential to nonresidential use in the planned development is:**

Based on acreage the ratio is: Residential — 51.8% to Nonresidential — 48.2%.

**PDI0 Common open space in the planned development exists for what purpose,**

**is located where within the project, and comprises how many acres (or what percentage of the development site taken as a whole).**

The open space is located in the existing residential portion of this planned development with pedestrian corridors and open space areas. Within the resort and commercial area the minimum landscape required is 20% which complies with open space requirements for planned developments.

**PD11 The plan does provide for the maintenance and conservation of the common open space by what method.**

The open space within the Tierra del Sol Planned Unit Development will be maintained by an association to assure consistent and positive maintenance. Two separate associations (one for the residential area and one for the resort and commercial area) will likely be used.

**PD12 Given the plan's proposed density and type of residential development, the amount and/or purpose of the common open space is determined to be adequate.**

The requirement for open space in a Planned Development is 20%. The residential portion of the Tierra del Sol Planned Development meets or exceeds the requirement for "common open space" such as trails, linear parks, etc. The residential portion provides 6.0± acres or ±22% in common open space. This open space is provided as trail linkages to the Regional Trail System located at the

southeastern corner of the property. This meets the requirements set forth by Code. The resort and commercial areas are required to provide at least 20% of the site in landscape area. S.M.C. 20.18.030(C) (4) states: "For non-residential development the common open space requirement can be met by providing a minimum of 20% of the development as landscaped area." The landscaping will include perimeter landscaping and landscaping within the commercial, resort and public facilities areas amounting to a minimum of 20%.

**PD13 The plan does provide for public services. If the plan provides for public services, then these provisions are/are not adequate.**

The Handbook discusses the public services to be provided which include the street network and public facilities. The applicant is also proposing to construct, at no cost to the city, a 4,800 square foot community services building which may be used as a police substation, citizen service center, or for other civic purposes.

**PD14 The plan does provide control over vehicular traffic.**

Primary traffic facilities for this project are the Pyramid Highway, Dolores Drive and Tierra del Sol Parkway. Dolores Drive is identified to be signalized and to be a 4 lane roadway to serve the commercial and resort parcels of the Tierra del Sol PD. These planned improvements will help provide appropriate traffic capacities and control of vehicular traffic with the development of the Tierra del Sol project.

**PD15 The plan does provide for the furtherance of access to light, air, recreation and visual enjoyment.**

The project has been setback from the Pyramid Highway corridor so as to provide better views across the Spanish Springs Valley, eastward from the Highway. The combined benefits from setbacks, architectural theme and landscaping help to meet the requirement of providing a furtherance of access to light, air, recreation and visual enjoyment.

**PDI6 The relationship of the proposed planned development to the neighborhood in which it is proposed to be established is beneficial.**

The Tierra del Sol Planned Development provides a mix of uses with residential, commercial, public facility, and resort commercial uses. The commercial and resort commercial uses will benefit the residents in the Tierra del Sol community as well as those within the communities surrounding Tierra del Sol by providing convenient services and retail establishments. Also, the resort component will provide a benefit to those surrounding the Planned Development area with the entertainment component (restaurants, arcades, movie theaters, spa, etc.). A relatively small gaming component is included and this will meet the needs and desires of those who choose to gamble within the Spanish Springs area.

**PD17 To the extent the plan proposed development over a number of years, the terms and conditions intended to**

**protect the interests of the public, residents and owners of the planned development in the integrity of the plan are sufficient.**

The standards and phasing in the Planned Development Handbook addresses the development to retain the integrity of the plan and defines the responsible parties.

**PD18 The project, as submitted and conditioned, is inconsistent with the City of Sparks Master Plan.**

The Northern Sparks Sphere of Influence Plan (NSSOI), which serves as the Sparks Master Plan for both Tierra del Sol and Wingfield Springs, states that the plan is intended to identify general land uses to guide future development in the planning area (NSSOI pg. 2.199). Further, the plan states that its intent is to provide a mix of uses with an emphasis on master plan developments. The NSSOI clearly contemplated a tourist commercial use since it shows up on Table 1 (37 acres of tourist commercial) and is included as a planned land use (NSSOI pg. 2.205

Running contrary to the above stated intent, however, are the City's graphic representations of land use designations in the City of Sparks as contained in the City's Master Plan map. These graphic representations ideally are consistent with the plan's text. In this case, the text and representations do not match one another. Because of this conflict, the project is inconsistent with the Master Plan when such plan is viewed as a whole.

**PD19 The project is consistent with the surrounding existing land uses.**

The only existing land uses, adjacent to the Tierra del Sol Planned Development are residential to the west (across Pyramid Highway, a State Highway) and Lazy 5 Regional Park to the south. The proposed development pattern of the Tierra del Sol Planned Development locates the residential adjacent to the Lazy 5 Park Site, at the southern end of the project as the residents of the community will be some of the many that will use the adjacent Regional Park facility. Commercial and resort uses are proposed adjacent to Pyramid Highway as an appropriate location from the standpoint of traffic separation with the residential area. Pyramid Highway (carrying nearly 40,000 vehicle trips per day) presents a larger impact on the area than the proposed commercial and resort uses will.

**PD20 Public notice was given and a public hearing held per the requirements of the Sparks Municipal Code.**

Public notice has been distributed. The Planning Commission and City Council meetings function as public hearings for the matter. The Nevada Revised Statutes and Sparks Municipal Code public hearing requirements have been met.



**PD21 Modifications of the Tierra del Sol Planned Development do not further the interest for the city and the residents and do not preserve the integrity of the plan.**

The Tierra del Sol Planned Development provides a mix of uses with residential, commercial, resort, and public facility uses. However, the City's interests are not served due to the conflicts between the Master Plan's land use designations and the project's proposed land uses.

Mayor Martini asked if the Council had any questions for Mr. Thompson. Council Member Carrigan asked the Acting City Attorney David Creekman for a legal opinion on the development agreement and if it was binding to future City Councils. Mr. Creekman said it was the opinion of the City Attorney's Office that the 1994 development agreement, which is specifically authorized by statute and was specifically authorized by statute in 1994 when it was entered into, constitutes a binding contract. He said it is also the opinion of the City Attorney's Office that the development agreement is clear, on its face, and does not require the City Council, or anyone else, to resort to what is called extrinsic evidence in order to interpret it. Mr. Creekman said that further, upon entering into the development agreement, as part of the Wingfield Springs entitlement, the City agreed to develop or establish for the part of the development agreement transferable development rights, which constitute a valuable property right. He said that going even further, there are general prohibitions in America against what is called contract zoning and these

prohibitions exist because they tend to impermissibly limit the discretion of subsequent City Councils. But the law is pretty clear across the nation that development agreements, when they are drafted and reserve some government control over the agreement, do not impermissibly contract away the discretion of subsequent City Councils, but rather constitute a valid present exercise of that power. He said that the discretion that the Council gets to continue to exercise is enumerated or spelled out in Section 7 of the development agreement, which permits the City and the other party to the development agreement to review that agreement on a regular bi-annual basis in order to update the terms and conditions, if either party is inclined to do so.

Council Member Carrigan said because all of us have been inundated with ads, TV spots and letters to the editor, his follow-up question was if this issue goes to court, where does “intent” fall into the issue. Mr. Creekman said intent is only at issue if the Court determines that the language of the development agreement is not clear and if they determine that it is not clear, then they need to go to, what is commonly referred to as, intrinsic (outside evidence) in order to ascertain what the intent of the parties was. He said that again, from the City Attorney’s perspective, the language from the 1994 development agreement is clear. He said if this were a statute or city ordinance that we were interpreting, and assuming that it were unclear, the position or the statement of former legislators who had a role in enacting the statute, which he has successfully argued in the past, is irrelevant.

Council Member Carrigan asked for clarification that when staff brought this application before the Planning Commission their recommendation was for approval and the reason staff is now recommending denial is because the Planning Commission denied the application. Mr. Thompson confirmed that this was correct and Community Development Director Neil Krutz added that this is the process that staff is required to follow and staff is here tonight representing the Planning Commission and the decision they made.

Council Member Schmitt asked if there was anything different in the staff report tonight, from what was presented to the Planning Commission, other than the changes made to reflect the decision of the Planning Commission. Mr. Krutz said that both reports are the same, with the exception of the addition of the report of action from the two Planning Commission meetings.

Council Member Schmitt asked if staff had any legislative history of why the State of Nevada decided that density bonuses were important and what connection does it have to this project; or are we even concerned with density bonuses right now. Mr. Creekman said the foundational requirement in any zoning change is that the City Council believes that the proposed zoning is consistent with the Master Plan. There have been many arguments lodged about the believed inconsistency of this project with the City's Master Plan; however when you look at the statute which imposes that obligation on us, it provides an exception to the generally applicable rule that a zoning change be consistent with the Master Plan and that exception is found in

the density bonus chapter. He said it provides the legislative body, in this case the Sparks City Council, with the discretion to determine what might be a socially desirable project that the developer could contribute to the City in exchange for the strictest of compliance with the Master Plan. Mr. Creekman said the staff's original recommendation and belief is that the project is consistent with the Master Plan, but they have gone a step further and said that to the extent that there is a possible argument out there that there is an inconsistency with the Master Plan, let's exercise our prerogative under that statute to make use of the density bonus provisions so that we are certain that we have covered ourselves, in a legal sense, with respect to this action. He said the Planning Commission did not agree with this argument and for that reason staff is bringing forward the Planning Commission's recommendation tonight. Council Member Schmitt asked for clarification that the density bonus does not have to be part of this package and that the project conforms to the Master Plan. Mr. Creekman confirmed that it does not have to be, but the density bonus provision was included as an extra element of protection for what was originally brought forward by staff as a recommendation of approval.

Council Member Salerno asked how long an entitlement was valid. Mr. Krutz said that in this case it goes back to the development agreement and there was a term in the agreement that is out several years from where we are today, so we are still within the life of that agreement and the entitlement that was granted in 1994; however not all entitlements are like this. Mr. Thompson clarified

that the development agreement that was adopted in 1994 is valid until 2020 or 2021.

Mr. Carlos Vasquez, representing Red Hawk Land Development, the Peppermill, and Mr. Harvey Whittemore, introduced himself and explained that he would be speaking on some of the issues of why they want to move this project and some of the legal issues; Mr. David Snellgrove of Wood Rogers would be speaking about some of the planning and road use issues; Mr. Steve Mollath and Mr. Whittemore will then address the actual legal issues regarding moving the project and the development handbook; and then they would answer any questions the Council might have from the team.

Mr. Vasquez said one of the things he wanted to address, and something they have been asked a lot, is, "Why move it; you already have an entitlement in Wingfield, why not build it in Wingfield." He said the reason they are not building it in Wingfield is because it is a good business decision and it is also good planning: Wingfield is obviously a far more established neighborhood than where they are trying to go. He said back in 1994, Wingfield was out in the middle of nowhere... it was a different time and Sparks did not have the giant explosion it is having today and the City was trying to spur development and back then this was a risky project. However, today things have changed and the decision to move it to Tierra del Sol is based, primarily, on that change. He indicated a graphic on display and noted that the blue was Tierra del Sol and the yellow was approved commercial along the Pyramid Highway, which arguably has a much greater capacity for traffic than Vista Boulevard does, as it is currently

configured. He discussed the potential square footage of commercial uses currently approved along the Pyramid corridor and noted that the actual square footage of the proposed gaming floor (18,000) was less than 3/10ths of 1 percent of the total commercial use area approved to be built today.

Mr. Vasquez then provided a breakdown of the proposed uses of the Tierra del Sol project and noted that only 6% of the project is gaming floor. He emphasized that this project has been designed as an entertainment complex and they feel that this mix brings needed services to that area.

Mr. Vasquez then address a letter that the opposition has circulated to the community related to 12 issues that they felt were negatives to this project. He said in an effort to cut down the time of their presentation, they chose four of these issues to address because they are outside of the germaine planning and legal issues. He said that the first issue is that thousands of concerned citizens have signed a petition against the project, as well as the community Ad-Hoc Board. Mr. Vasquez said it was reported that 4,800 people signed this petition and they have been told that 1,100 of them are Sparks' residents and the rest are County residents. He said based on the current population of Sparks of 87,500 people, this is just under 1% of the actual population of the City.

The second issue he addressed was that the proximity of a casino to residential property decreases the value of the property. He said the reality is that this is unsubstantiated and there has been study after study on this issue and no one has

been able to prove this. He said that generally when there is commercial development, the property values dips slightly in the short term and then it goes back to a natural growth pattern which matches all the surrounding areas.

The third issue was that casinos on the Pyramid Highway will take away from the millions of dollars that have been invested to attract people to the downtown corridor. Mr. Vasquez said that with the original approval of the tourist commercial use in the NSSOI, the Regional Planning Commission made a finding that the proposed resort/casino would not threaten downtown Reno or Sparks casino interests. Additionally, the Regional Planning Commission said that a ceiling as to the size of a non-downtown casino at 20,000 square feet, further defining this as a limited resort gaming. He said the reason they did this was to protect existing gaming.

He said another issue he wanted to address, briefly, is the issue of casinos belonging in downtown and why didn't they put the casino in Victorian Square. Mr. Vasquez said this Council has already approved Phase I and Phase II of the Victorian Square Redevelopment Plan and with the other parcels of land owned by other gaming interests, there is no way that a gaming project will fit in the downtown area.

Mr. Vasquez said the final issue was that traffic issues including drunk driving and congestion, will increase if this project is allowed to move forward. He said the Peppermill, who will be operator of this property, and all formal casino projects, have policies in place to help regulate and control the

gaming/bar/restaurant environment, including the consumption of alcohol. He said that surveillance of parking lot areas and property grounds will be performed by private security patrols 24 hours a day, 7 days a week. Gaming properties have on-site security and they also have an enormous amount of oversight from gaming control and therefore they don't have the ability, like a neighborhood bar would, to allow people to come and go as freely as they would in a non-regulated environment. He described the current security parameters at the Peppermill casino and emphasized that they have learned what works with their other casino and they plan to incorporate those factors into the security for the Lazy 8.

Mr. Vasquez said the Lazy 8 obviously will have an enormous amount of fiscal impact on the City of Sparks and he then discussed the expected revenues versus the cost to the City to provide services to this facility.

Mr. Vasquez then provided a verbal history of this development by reviewing a timeline (and backup materials) which they had provided to the Council.

Mr. Dave Snellgrove with Wood Rogers Consultants, reviewed the traffic issues, noting that a lot of the local casinos are on State Routes and the reason for this is because the heaviest carrying capacity is on these roads. He pointed out that locating the Tierra del Sol project on the Pyramid Highway makes better locational sense than putting it out on Vista Boulevard. He also discussed the projected average daily trips this project will



generate versus the carrying capacity of the Pyramid Highway and the locational criteria for access to the project.

Mr. Vasquez then reviewed what they felt were some of the benefits of the project, including: reduced vehicle motor traffic through provision of varied services in Spanish Springs Valley; lower trip generation than the approved PUD; better roadway facility to carry the traffic; north central location for restaurants and the movie theater; provides hotel accommodations in an area where none are provided; provides a public facility; a density bonus to the City for affordable housing; tax revenue generated by the resort; creates a synergy to support uses that are delayed in typical land patterns.

Mr. Vasquez concluded the ultimate issue is the agreement. He said the development agreement in 1994 was a big risk for the developer and exchange he was granted certain things under the agreement to make the development worthwhile. He said the agreement outlined exactly what the developer could expect down the road and while a lot of time has passed since then, the agreement is still, and should be, just as binding today as it was then.

Mr. Steve Mollath, an attorney representing the Red Hawk Land Company, the Lazy 8 Ranch and the Peppermill in the area of land use development, asked the Council to recognize that we are not talking about neighborhood casino issue, but that they were here to establish a transfer of a use from Wingfield Springs under an October 1, 2004 request, pursuant to a development agreement under Section 308B, to move an entitlement from the Wingfield property to the Tierra del Sol site. He then discussed the development agreement, stating that a development agreement is something that the Nevada legislature saw fit to put into place under chapter 278 that allowed developers who are going to come to Cities and to afford Cities who want to establish growth patterns and benefits for the community to come together on an agreement and contract so everyone knows how the development will take place over the period of time of the development agreement. He said this is not new or magical, but something the legislature has had in place for many years. Mr. Mollath emphasized that a development agreement is the same as a contract and that the development agreement of December, 1994 specifically allows this transfer. He said they believe that the movement of this project from Wingfield Springs location over to the Pyramid Highway is a better fit under the Master Plan and that the placement of this use on this particular piece of property is in the public interest of this community; however, the Planning Commission found that this project did not comply with the Master Plan and that it was not in the public interest to allow this project to go forward.

Mr. Mollath said he felt the only reason they were having a problem with this development was because this opposition had been planned and orchestrated by John Asquaga's Nugget, whose sole purpose is to prevent competition to its business. He said they were told there was no problem with a casino on the Pyramid Highway as long as it has 200 rooms, so they did that and then the rules of the game, as dictated by the Nugget, were changed and now they are saying the development agreement is invalid; the locational criteria is incorrect; and that they should go back 12 years and undo the agreement. He said basically the Nugget is asking the City of Sparks to breach this contract and assume all the adverse financial consequences of a breach of this contract after 12 years.

Mr. Mollath said that under ordinary circumstances, on a discretionary type of approval, the Council would take the input and weight it in their discretion; however, in this case there is a development agreement and that agreement requires both the developer and the City of Sparks to live up to the terms of the contract. He then discussed what would happen if the Council denied the application and what would happen if they approved the project. He emphasized that should the Council deny the project, then the developer must, in order to protect the financial investment he has made over the past 12 years, sue the City to enforce the provisions of the development agreement, which would have a huge financial impact on the City of Sparks.

Council Member Carrigan explained that the City has a lot of development agreements and this one is

about 20 pages long and it is probably the easiest one he has read. He said to put it into perspective; we just signed a 113 page development agreement with 25 addendums for the RED project at the Marina. He said that had he been on the Council back then, he was not sure he would have signed that agreement, but those were different times. Council Member Carrigan said that in looking at Section 7, which talks about what happens if the City backs out of this agreement, or if the applicant backs out of the agreement, he wanted to ask what number the City would be looking at if this went to court. Mr. Mollath said this could be a \$100 million, plus cost to the City, because this is a very valuable entitlement. Mr. Harvey Whittemore said that they have had an analysis done which shows that the exposure could be as high, over a period of years, approaching \$300 to \$400 million dollars, but the bottom line is that this is a hugely important aspect of the entire development, because this development was unique because it was “front end” loaded, because the developer made it clear he was willing to incur that risk as long as he was going to be able to use 100% of the development rights, including the casino.

Mr. Whittemore said he wanted to make it very clear that they did not want to sue the City of Sparks; they want to enforce the existing agreement the way that it is.

Council Member Schmitt said there were a couple of comments made and he wanted to make sure that the City Attorney agreed with them. One was that if the project is approved, and someone files a law suit, then the applicant bears all court costs. Attorney

Creekman said that in past experience, if a law suite is filed against the City, always, the real party in interest is invited to participate. Sometimes they choose not to and they allow the City Attorney's Office to "carry the flag" on their behalf. He said based on what Mr. Mollath has stated, he sincerely doubted that this would happen in this case, so from that perspective he would anticipate that Mr. Mollath would be very active in the defense of the City and the City Council's action, thereby bearing the preponderance of the cost, although there would be costs to the City. Mr. Whittemore said that the City would enter into a joint defense agreement and 100% of the cost would be borne by the real party of interest, Red Hawk Land Company. He said he wanted to make it clear that they would not let the City suffer any financial loss with respect to defending this project. To supplement what Mr. Whittemore said, City Attorney Creekman said this offer was made to the City Attorney and the City Attorney rejected the offer during early discussions under the belief that it was inappropriate before there was an actual decision. Council Member Schmitt said he wanted assurance that there were no written agreements as to who was going to participate financially. Mr. Creekman assured the Council that there were no verbal or written agreements; and, in fact, it is precisely contrary: there was a verbal representation made which was expressly and explicitly rejected by the City Attorney.

Council Member Schmitt said he received a phone call regarding this issue, in that we don't have to worry as a City Council with a denial, that our

insurance company would pay any costs. He asked if Mr. Creekman could verify that our policy covers the City Council in terms of a decision like this and what the limitations would be. Mr. Creekman said he could not provide an answer because he was not familiar with the precise terms of the policy; however he could say that to the extent the matter is covered by our insurance policy, insurers base the premiums we will be paying in subsequent years on what they have had to pay out and he also concurs with Mr. Mollath's representation that the City's bond rating will likely suffer, having a tendency to make future projects more expensive for the City. Council Member Schmitt asked if staff could research this question and give him an answer later in the meeting.

Mr. Harvey Whittemore said this process has been extraordinarily difficult for a wide variety of people. He said he has been involved in the legislative process and planning and zoning issues all his professional life and he has never seen one that has resulted in the type of animosity, personal name calling, and the barrage of threats aimed at himself and his family. He said this project starts well before the early 1990's, as a result of his representation of a company called Howard Hughes in a project called Hughsight, which is now Summerland in Southern Nevada. As a result of their desire to enter into a major proposed development of over 250,000 people, they said that before we go through the process of developing a community of that size in the Las Vegas area, we are going to need some assurance that we are going to be able to build what we are going to be allowed to

build. As a result of that, development agreement statutes were passed in the State of Nevada.

Mr. Whittemore explained how he became involved in the Wingfield Springs project and the history of what occurred during the creation of the development agreement. He emphasized that the agreement clearly states that they can move development rights outside of the Wingfield Springs PC, but within the City. Mr. Whittemore then talked further about the development agreement and he was adamant about their right to build the casino at the Tierra del Sol location. He also mentioned that he would not benefit from the profits of the casino, but that they would go, in part, to fund UNR, disease research, and other charities.

Assistant City Manager Steve Driscoll said he had a response to Council Member Schmitt's earlier question regarding the City's insurance. He said that in our general liability insurance policies, there is a deductible on everything that goes through it, of \$300,000, so this would be the City's responsibility. He said they would have to research the particulars of this question as to whether we would be covered as far as anything in excess, but typically breaches that deal with these types of contract breaks would not be covered because they are typically excluded because they are large dollar amounts. He said this would have to be confirmed, but there is a good chance that if there was a breach and the City was determined to be at fault and there was a large dollar amount, the entire amount would have to be carried by the City.

Council Member Schmitt said his concern has

been the legal aspects of the issue and the City Attorney's office has gone on record as saying that the development agreement is legal, and he felt it was important for the Council to understand what liabilities fall back on the City Council at this point.

Mayor Martini said he would open the floor to public comments, indicating several stacks of comment cards, he stated that one stack was from those that wanted to speak; another stack was those that did not want to speak, but wanted to show their opposition or support for the issue. He noted that everyone was allowed three minutes, but they did not have to speak the entire three minutes. He also asked that the speakers that planned to not to belabor the points already made. He also asked the audience to be professional; to take into consideration other people's feelings; and not to make any personal attacks, on either the applicants or the Council Members. He then opened the public hearing.

Council Member Carrigan asked each speaker to let them know if they were a City of Sparks resident, or if they were a resident of the unincorporated Washoe County area.

The following individuals spoke in opposition to the project:

Lynne Collins, 45 Desertscape Court.

Sharon Stumpf, 1673 Sue Way.

Cindi Henderson, 3074 Diamond Dust Court (former Council Member in 1994). She asked that their letter to the newspaper be made a part of



the record and that she was not speaking for or against the project; she just wanted to clarify some of the intent behind what happened in 1994.

Vaughn Hartung, 200 E. Sky Ranch Boulevard.

Cathy Reiners, 288 Omni Drive.

Beth Cooney, 2871 Brillie Dove Court, representing the Nugget, raised the issue of future casino expansions once the use is established.

Larry Harvey, 2245 Frisco Way.

Michonne Ascuaga, 1100 Nugget Avenue, CEO of John Ascuaga's Nugget.

P. Sue Henderson, 5346 Santa Barbara Avenue.

John J. O'Leary, 1028 Sticklebrook Drive.

John K. Bradbery, 134 Andalucía Court.

Tom Flaherty, 7460 Adelaide Court.

Ted Krembs, 7440 Livi Court.

Malcolm Hall, former employee of Centex.

B. James Martin, 3269 Valley Forge Way.

Jim deProsse, 7390 Island Queen Drive.

Doug Flowers, 5441 Kietzke Lane, 2<sup>nd</sup> Floor, Reno.

Herman Stewart, 155 Stags Leap Circle.

Vernie McCrowhan, 309 Shelby Drive.

Roger White, 635 Valle Verde.

Melissa Clement, 3785 Erin Drive.

Joyce Field, 50 Harrison Pc.

Thomas Hullin, 2315 Contrail Street.

Mark Moser, 2720 Bankhurst Court.

Deborah Banks, 2541 Garfield Drive.

Jan McGinty, 55 E. Sky Ranch Boulevard.

Ira Hansen, 6500 Spanish Springs Road.

Roy Adams, 5655 Grasswood Drive.

Shirley Bertschinger, 832 Olanca Court.

Dee Parks, 15 N. Patterson Place.

Edes Hill, 2310 Adana Court.

Steven Peek, 1194 Mayflower Drive, Reno, an attorney representing the Nugget.

Marian Webb, 9435 Benedict Drive.

Jamie Singer, 715 Emerson Way.

J. Edward Parker, 6970 Pah Rah Drive.

Jim Robbins, 5245 Santa Rosa Avenue.

Viji M. Cox, 3755 Erin Court.

Beverly Johnson, 1358 Lubin Drive.

Rhonda Smithson, 245 Monumental Circle.

Neal Smithson, 245 Monumental Circle.

The following individuals spoke in support of the

project:

Ruby H. Anderson, 250 Veronica Avenue,  
(Washoe Co.)

Robert Derck, 6390 Black Deer Court.

Stacey Derck, 6390 Black Deer Court.

Terry Reynolds, 7473 General Thatcher (former  
City Manager) spoke to the validity of the intent  
of the development agreement.

Mike Hillerby, 914 Dolce Drive.

Lyle Mason, 7066 Poco Bueno Circle.

Heidi Loeb, 7495 Silver King Drive.

Natalie Okeson, 5949 Solstice Drive.

Karen Davis, 4580 Sillan Court.

Andrea Whitemore, 24660 Burtin Drive.

Don Lally, 5700 Falcon Ridge Court.

David Anderson, 6413 Adobe Springs Court.

Nicole Fontana, 7375 La Costa Street.

Tim Trimble, 2195 Rundy Way.

Pat Flynn, Sparks, representing the Peppermill.

Kim Stoll, 2707 S. Virginia Street, Reno,  
representing the Peppermill.

Skylo Dangler, 5929 Solstice Drive, Representing  
Wingfield Springs.

Martin Amba, 4711 Paso Robles Court.

Marc Johnson, 2460 Burtin Drive.

The following individuals were present in opposition, but did not wish to speak:

David West, 1205 Stanford.

Corwin West, 4716 Pradera Court.

Nick & Lorrie Turner, 5690 Dolores Drive.

John L. Sullivan, 85 E. Sky Ranch Boulevard.

Debra Kallas, 30 N. Desert Springs Circle.

Kathryn Trabitz, 4333 Bareback Court.

Elizaveta Rechetnik, 7380 Aquene Drive.

Nettie Hansen, 2105 Madera Court.

Adrian Eriksen, 235 Sunset Springs.

Jonathan Conley, 1507 G Street.

Michele Salonek, 1592 Satellite.

Danielle Donica, 25 N. Tropicana Circle.

Chris Donica, 25 N. Tropicana Circle.

Herbert Blanck, 6986 Poco Bueno Circle.

Olga Blanck, 6986 Poco Bueno Circle.

Philip Daly, 328 Quini Drive.

Thomas Jones, 5260 Mesa Verde Drive.

Michael Oltman, 1215 Turnberry Drive.

Melissa Taveria, 5540 Dolores Drive.

Karen Nance, 140 Landmark Drive.

Lawana Carter, 1506 Palmwood Drive.

Tom Comstock, 4475 Block Diamond Drive.

Ted Johnson, 1011 Sageview Drive.

Chris Johnson, 1011 Sageview Drive.

Lyly Gelles, 8865 Eaglenest Road.

William H. Kip, 3357 Toledo Court.

Vicki Pillers, 5515 Grasswood.

Tamara Root, 2323 Soar Drive.

Gregory Root, 2323 Soar Drive.

Bruce Root, 417 "H" Street.

Judy Root, 417 "H" Street.

Thomas L. Nickovich, 69 Palm Springs Court.

Tyson Andehr, 8100 Pyramid Highway.

Donna Hunter, 248 Prater Way.

Pablo and Diane Aguirre, 449 Gomez Court.

Mark Andiline, 8100 Pyramid Road.

Susan Roberts, 3225 Apio Court.

Carrie Wiker, 3347 Poco Dove Court.

Barandon Allen, 3240 Millstone Court.

Doug Stafford, 5565 Grasswood Drive.

Dawn Johansen, 330 Moonbeam Drive.

Shonda Williams, 9140 Benedict Drive.

Chris Obringer, 11075 Heartpine Street.

Lynn Vind, 345 Moonbeam Drive.

JoAnne Sunstrom, 335 Moonbeam Drive.

John Johansen, 330 Moonbeam Drive.

Karl E. Rodriguez, 365 Moonbeam Drive.

Nicolas Ruiz, 1924 Woodtrail Drive.

Jacob Singer, 715 Emerson Way.

Anita Phillips, 1140 Fuggles Drive.

Beth Lau, 4964 Hangarten Drive.

A. Lewis, 150 El Molína Drive.

Truman Mathews, 1072 Greenwing Drive.

Debbie Trambetta, 4891 Monte Rio Court.

Chase Whittemore, 2215 Hedgewood Drive.

Proctor Hug, 2260 Hedgewood Drive.

Ron Gribble, 6399, Toronto Court.

Joyce Eriksen, 235 Sunset Springs.

Connie Nevins, 175 Carlene Drive.

Cassandra and Ian Griere, 465 Tranquil Drive.

Dave Galleron, 635 Calle de la Plata.

Steven Thoma, 55 E. Sky Ranch Blvd.

Janean and Lynn Peterson, 906 Victorian Avenue.

Lillian Partos, 7874 Tormes Court.

Gerald Fassett, 40 N. Tropicana Circle.

Bonita and Robert Curtis, 30 N. Spring Mountain Circle.

Sarah Mahler, 340 Moonbeam Drive.

David W. Walker, 35 Geraldine Court.

Cheryl Benson.

G. Malcolm and Cindy Hall, 3775 Erin Drive.

Ralph A. and Wanda R. Prukop, 4985 Santa Barbara Avenue.

Michael Dillon, 65 E. Sky Ranch Blvd.

Jeanne Mullennix, 40 White Dove Court.

Chuck Clement, 3785 Erin Drive.

Jennifer O'Neil, 4325 Primavera Avenue.

Cindy Duer, 60 Carneros Drive.

Ken Mendenhall, 1075 Rheingold Court.

Cindy Kimball, 5565 Wedgewood Circle.

Ken Nevias, 175 Carlene.

Dennis Galleron, 240 Sunlit Terrace.

Roy Hall, 11765 Canyon Dawn Drive.

Trudy Trainor, 810 Leport Way.

Sandra Randall, 3430 Terishile Drive.

LaFern Mears, 6610 David James Blvd.

Wanda Little, 15 Valerie Circle.

Daisy Genio, 7455 Aftspring Drive.  
Davis Moore, 3350 Grove Springs Drive.  
Maria Rodriguez, 365 Moonbeam Drive.  
Vance Antonelli, 700 C Street.  
Frank Gonzales, 35 Alexis Court.  
Russell Pillers, 5515 Grasswood.  
Scott Franzwa, 240 Nicole Drive.  
Diana Exline, 6805 Eagle Wing.  
Donald and Robin Diehl, 91 Ringneck Court.  
Dennis L. Moore, 3350 Grove Springs Drive.  
Susan Sunday, 5650 Grasswood Drive.  
Steve Witt, 315 Tina Circle.  
Duane Brown, 150 Rosetta Stone Drive.  
Linda Joeline Jamieson, 8036 Miramar Court.  
Leopolda R. Barajos, 1877 El Rancho Drive, apt.  
54.  
Barbara Matlock, 2525 Westview Boulevard.  
Shirley O'Leary, 1028 Sticklebract Drive.  
Shannon Waldrop, 3631 Longridge Drive.  
Jean N. Lewis, 1012 Bradley Square.  
Elva Wells, 478 Steffain.  
Jerri Eby, 1184 Jason Drive.  
Chris Gann, 90 May Drive.



Bert Love, 155 Veronica Avenue.

Jerri McDonald, 5565 Grasswood Drive.

Kathy Maclosek, 510 Hawk Bay Court.

Rendell and Linda Banks, 2525 Westview  
Boulevard.

Jeannie Adams, 5655 Grasswood Drive

Suly King, 2525 Westview Boulevard.

H. Lawrence Fick, 1156 Dortmundeh Drive.

Dawn C. Hammond, 7436 Ash Peak Drive.

Paul Byers, 35 W. Sky Ranch Boulevard.

Debbie Barriault, 620 H Street.

Luella and Frank Hill, 4765 Goodwin Road.

Bobbie Barriault, 620 H Street.

LeNora Greenen, P.O. Box 743.

Cherri Fennel, 1503 G Street.

Lydia Gomez, 1503 G Street.

Leticia Miller, 7808 Bareback Drive.

Joy L. Harrison, 3251 Millstone Court.

Terry Maine, 701 Canyon.

Zac Cooper-Chadwick, 3140 Manzana Court.

Rodolfo Velaseo, 3146 Montezuma Way.

Barbara Heimerdinger, 2326 Ruddy Way.

Jamie Huff, 5396 Santa Lupe.

Bob Bertschinger, 832 Olancha Court.

Joy and William Naprstek, 4373 Bareback Court.

C.G. Cox, 3755 Erin Court.

David J. and Nancy Cencula, 9145 Cordoba Boulevard.

Sandy Richardson, 20 Bridle Path Court.

Joe Lopez, 20 Bridle Path Court.

Eleanore S. Collier, 49 Marilyn Mae.

Irene Connors, 2326 Abacus Court.

Wilma Bennett, 3683 MacArthur.

S. Herr, 316 California Avenue #878.

Marci Howser, 1680 Talking Sparrow Drive.

Randy Connors, 2326 Abacus Court.

Donna Green, 1800 Prater Way, #C6.

Joyce E. and John Baird, 4650 Sierra Madre Drive #813, Reno, 89502.

Pamela Riede, 625 Tranquil Drive.

Rita S. Kahl, 7828 Cangdejo Court.

Glenda Jacobson, 7455 Lorna Lane.

Barb Bauane, 7282 Little Casy Street.

Valerie Jakubos, 55 Valerie Circle.

Wayne P. Fitch, 45 Anthreka Court.

Jennifer Bascom, 2105 Stone View Drive.

Steven Asquaga, 1100 Nugget Avenue.

Dennis McCrohan, 309 Shelby Drive.

Ann Reiff, 5100 Wilcox Ranch Road.

Jacob C. Glass, 665 Tranquil Drive.

Valdine Renucci, 5213 Palo Alto.

Eugene L. Trabit, 4333 Bareback Court.

Marion R. Slay, 2594 Betsy Street.

Adam Bass, 4861 Monte Rio Court.

Carolyn N. Snow, 1456 Arona Drive.

Hardy Mullennix, 40 White Dove Court.

Michael Wessman, 237 Sunset Springs.

Paul Ortiz, 80 Saint Lawrence, Reno, 89509.

Miguel Villegus, 828 Woodglen Drive #5.

Dorothea Combs, 620 19<sup>th</sup> Street.

Dell Vargas Gomez, 6840 Prestwich Circle.

Lynette Halsey 6645 David James Boulevard.

Melina R. Rourke, 2780 Arrowsmith Drive.

Larry and Debbie Leukhardt, 7060 Annabelle Drive.

Traci Allen, 3240 Millstone Court.

Patricia Swain, 15 Desert Springs Circle.

Carolyn Lindsay, 15 S. Heena Court.

Thomas Jamieson, 8036 Miramar Court.

Teresa J. Rodriguez, 270 Veronica Avenue.

Fred Horlacher, 1395 Nightingale Way.

Ken Robbins, 815 Olanca Court.

Nina Hogan, 9220 Cordoba Boulevard.

Susan Weyl, 2230 Piedras Road.

Virginia Loessberg, 280 Veronica Avenue.

Pedro Rodrigez, 270 Veronica Avenue.

Donna and Eugene Whelchel, 325 Alamosa Drive

Olivia Bouch, 70 Horse Springs.

Emily Robbins, 816 Olanca Court.

Jesse and Paul Danen, 7889 Guerra Court.

Karla M. Rollins, 1100 15<sup>th</sup> Street #7C.

Janae and David Maher, 5635 Grasswood Drive.

John G. and Carolyn L. Williams, 220 Mystic Mountain Drive.

James Daria Wallace, 7808 Covered Wagon Court.

Sheryl and William Sherman, 6969 Jermann Court.

Kyle Labarry, 4344 Roundstone Court.

Angela and Andrew Morss, 329 Shelby Drive.

Harold Roberts, 3225 Apio Court.

Amy Obringer, 11075 Heartpine Street.

Patricia Buffington, 55 Cameros Drive.

Tim and Dawn Hunter, 79 Cadwall Court.

Linda and Norman West, 4716 Pradera Court.

Judy Harper, 3773 Arcturas Court.

Lourita Parker, 290 Omni Drive.

Linda Williams, 2230 Piedras Road.

Margaret McCarron, 1558 C Street.

Robert Gennette, 12 Lincoln Way.

Rose Marie Donohue, 4353 Bareback Court.

Desley Stafford, 5585 Grasswood Drive.

Mike Maciosek, 510 Hawk Bay Court.

Karl Kononchuk, 575 Tranquil Drive.

Mary Burlie, 4330 Bareback Court.

Maria Campos, 51 Badger Creek Court.

Melinda Campos, 51 Badger Creek Court.

Jess Campos, 51 Badger Creek Court.

Rusty Flowers, 51 Badger Creek Court.

Ray Duer, 60 Carneros.

Ouida W. Craddock, 675 Parlanti Lane #139.

Alice B. Yoakam, 675 Parlanti Lane #139.

Rose Baker, 15 Mac Street.

Steve Burlie, 4330 Bareback Court.

Leslie O'Day, 3430 Grove Springs Drive.

Harriet R. Duran, 148 Andalucia Court.

Nancy Trabert, 1755 Trabert Way.

Robin Helweg, 144 Andalucia.

Ann Foley, 1610 Billow Drive.

The following individuals were present in support, but did not wish to speak:

Rand E. Tanner, 7052 Cinnamon Drive.

Shen Hui, 5625 Vista Luna #103.

Niu Su Rong, 5625 Vista Luna.

Shen Hong Cheng, 5635 Vista Luna.

Shen Li, 5635 Vista Luna.

Jenny Shen, 5625 Vista Luna #103.

Mei Hu, 5725 Camino Verde Drive.

Andrew Briswalter, 5725 Camino Verde Drive.

Marita Pinedo Rodriguez, 185 E. 1<sup>st</sup> Avenue, Sun Valley.

Baldo Vargas 2159 Albatross Way.

Jenny Wilson, 6060 Ingleston Drive #1221.

Yvette Deighton, 10 Carefree.

Annette Whittemore, 2215 Hedgewood Drive.

Mike Wilson, 5300 Los Altos Parkway #183.

Beth Wilson, 5300 Los Altos Parkway #183.

R. Whittemore, 7019 Whitemare.

Janet DiGiulio, 6578 Aston Circle.  
Trevor Lloyd, 4161 Mystery Drive.  
Benedict DiGiulio, 6578 Aston Circle.  
Emily Cornwall, 5791 Ambush Ridge Court.  
David E. Snow, 1459 Aron Drive.  
Diane Dwyer, 2501 Garfield Court.  
Charles R. Carpenter, 1107 Bradley Square.  
Cathy Dangler, 5929 Solstice Drive.  
Ryan Marsh, 2851 Chavez Drive.  
Robert Coclich, P.O. Box 366, Sparks, 89432.  
Lynda Murdock, 2420 Burtin Drive.  
Earl J. and Dorris Crank, 23 Marilyn Mae Drive.  
Christia Ahl, 1800 Sullivan Lane.  
Rovalea Sauth, 1365 Russell Way.  
Stephanie Kolko, 2876 Granville Drive.  
Heidi Robbins, 5246 Canyon Rim Court.  
Greg Andrew, 1426 Talon Drive.  
Fred Harvey, 1391 Satellite Drive.  
Cari West, 2417 Lawry Drive.  
Clay Meininger, 6060 Ingleston Drive #122.  
Daze Rew, 5998 Solstice Drive.  
Dave Richardson, 6804 Cinnamon Drive.

Tom Steinberg, 54 Marilyn Mae Drive.

Nate Kaplan, 3275 Cashill Boulevard.

Carl Savely, 305 Alamosa Drive.

Debi Bladis, 10295 Mogul.

Ray and Nicole Fontana, 7375 LaCosta Street.

Mernie Irwin, 342 Jimmy Court.

Sherry Irwin, 342 Jimmy Court.

Dave and Bonnie Carsten, 1060 Mercedes Drive.

Garry Hill-Thomas, 565 Sparks Blvd.

James Wiggins, 565 Sparks Blvd.

Sean Paul, 1364 Buena Vista Avenue.

Maggie and Brandon Kingsbury, 3657 Hillsdale Court.

Al Karsuk, 5909 Solstice.

Roxanne and Mickey Doyle, 2390 Mammatus Drive.

Jerry and Kellen Monick, 3240 Dunbar Court.

Ann and Jim Fowler, 3662 Copernicus Court.

Rosa Torres, 4695 Aster Drive.

Remedios Guerrero, 185 Hubbard Way #B.

Maricela Villasener, 4760 Persimmon Road.

Herberto Moya, 350 E. Grove, Reno.

Bert and Andrea Soffiotto, 5935 Ingleston Drive.



Carmen and Molve Johnson, 8955 Spanish Trail.

Tim Trimble, 2195 Ruddy Way.

Jack Chesney, 20 Chesney Court.

Naoma, Cliff J., and Howard Luzier, 6643  
Dorchester Drive.

Kathleen Boyer, 1973 Rio Tinto.

Ursula Wellman, 2000 Bucky.

Drucilla Richardson, 2005 Haywood Drive.

Ronald and Mandy Robbins, 5240 Canyon Rim  
Court.

William Brainard, 7326 LaCosta.

Greg Deighton, 10 Care Free.

Katie Wilson, 3657 Hillsdale Court.

Aimee Giller, 2433 Lawry Drive.

Luz Carrenza, 555 Stokade Drive.

Mayor Martini noted he received a letter from Mr. and Mrs. Fred Barry in opposition to the project, citing traffic concerns.

There being no other individuals present who wished to speak, Mayor Martini closed the public hearing at 11:30 p.m. and returned the meeting to the Council for action.

Senior Planner Tim Thompson said there was a lot of talk tonight about “quality of life” and one of the indicators of quality of life is traffic and vehicle miles traveled. He said the City established the

NSSOI Plan in 1991 and this plan was a fairly good plan for 15 years ago and there was quite a bit of residential included in that plan; however with the number of residents we are expecting in Spanish Springs, it would be foolish for the City to not consider changing our Master Plan to allow the commercial businesses that we are now seeing come to fruition on the Pyramid Highway. He said that one of things that Sparks has done through the 2002 Regional Plan Update Process is to designate this area as an emerging employment center ... the idea being “Live/Work/Play” ... people can work where they live and shop where they live, and that is what we want to see. He said this reduces the number of miles vehicles have to travel and reduced vehicle miles traveled translates into a better “quality of life”.

Mr. Thompson pointed out that if Spanish Springs is only 50,000+ residents and there are no services or jobs, every one of those residents will be forced to drive along the Pyramid Highway, Sparks Boulevard, Vista Boulevard into Sparks and Reno to do their business.

Mr. Thompson emphasized that we change our Master Plan frequently and State allows us to change the Master Plan four times a year and staff consistently gets requests to change the Master Plan; however, we have not had a complete update of our Master Plan since 1991. He said that in those 15 years many things have changed and it is the job of staff to guide that change. He said Council Member Schmitt did a good job of discussing taxes and how taxes are distributed and what we, as a City are charged with, is finding the highest and best use for

a piece of property and that translates into high assessed value. He emphasized there needs to be a balance, because single-family residential development, in the long run does not pay for itself and that balance comes from projects that bring the City a high assessed value and those are commercial, industrial, business park, high density multi-family and office type projects.

He said there had also been talk about “family environment” and one of the things that the City required was that the developer make the movie theater, the restaurants and the hotel accessible from the outside without having to go through the gaming floor.

Mr. Thompson said someone also brought up the issue of lighting. He said this is addressed in the handbook and the standards in the handbook will ultimately guide this development. He said in the staff report there is a paragraph on lighting and the requirement for cut-off luminaries, no lighting directed up into the sky, etc. He said City staff is very aware of concerns with regard to lighting and one of the things that we would require, prior to the issuance of a building permit, is a photometric plan which shows the location of the lights, to ensure the lighting does not exit the parameter of the property. Mr. Thompson said that many people may or may not see the difference between the lighting at Kohl’s and Wal-Mart, but there is a clear difference in the lighting standards that were utilized by Wal-Mart and those used by Kohl’s. He said that since Wal-Mart installed their lighting, the City has really looked into making those types of fixtures a requirement because they severely reduce the

amount of lighting that projects up into the air.

Mr. Thompson said he also heard comments about the supplemental development agreements. He said this 1994 agreement does require that the City enter into a supplemental development agreement with the applicant which deals with the specifics of this project. He said this project is entitled in Wingfield Springs and in order to move this use to Tierra del Sol, essentially the use is detached from Wingfield Springs (or removed from the handbook) and it is then incorporated into the Tierra del Sol handbook. He explained that there are actually applications: one application to amend the Tierra del Sol handbook; the other application is to amend the Wingfield Springs handbook. He noted that in the staff's motion for approval to the Planning Commission, and should the Council chose to approve this project, staff's recommendation is that it be conditionally approved, subject to the City entering into that supplemental development agreement with the applicant and dealing with all these issues prior to the final approval process for the handbook.

Mr. Thompson pointed out that the property associated with the Tierra del Sol handbook was annexed in 1999 and the handbook was also adopted in 1999, so this is not something that is occurring now, it happened back in 1999.

Council Member Schmitt asked for clarification on the supplemental agreements that were required. Mr. Thompson said the intent of this supplemental development agreement is to nail down the specifics of the development and he would anticipate

including in the development agreement is the language that is included in the current Wingfield Springs handbook, which restricts the amount of casino related activities to 100,000 square feet and the amount of actual gaming floor to 18,000 square feet, of which only 50% can be slot machines. Council Member Schmitt asked if there were any Nevada Revised Statutes (NRS) or other procedures that outlines this process. Mr. Thompson said he believed there was some language in the Wingfield Springs handbook, under the resort designation, that does discuss how this would be processed.

Mr. Thompson further explained that say in 10 years, if they wanted to expand the 18,000 square feet of gaming floor, the handbook contains language, so that if this were to happen, there is a process established, which includes the City Council and the Regional Planning Agency. Council Member Schmitt asked if the Council could condition their approval so that the gaming floor was strictly restricted to 18,000 square feet and that it can't, under any circumstances, be increased.

Council Member Salerno said he was still confused about the traffic issue, stating he did not understand how it would not increase traffic. Community Development Director Neil Krutz explained that there is a forecasted reduction in traffic with this particular amended proposal when compared to the Tierra del Sol project that was approved in 1999, which can be contributed to the difference in the type of use proposed. It was originally proposed as a general commercial center (shopping, fast food, restaurants) with uses of relatively short duration. He said the entertainment

center would mean that the patrons would stay longer, so the number of trips on any given day would be lower, lower by about 1,000 trips. He said something else that would have to be considered is that with a general commercial project there was a more even split between trips in the morning peak hour and the evening peak hour; whereas with an entertainment complex, the trips would be more focused in the evening peak hours than in the morning [peak hours]. This would have to be considered when it came time to look at the design plans to provide the road infrastructure in and out of the center. He emphasized that it doesn't go toward the requirement for the number of lanes, but it goes toward how the intersections are designed: the length of the turn bays; how the intersections are timed, etc.

Council Member Mayer commented that he was upset that this issue seemed to have put a wedge in this community and he hoped that which ever way this project goes, that the damage done to our community would heal.

Council Member Carrigan, said he wished this was only about a casino, but the decision would be much easier; however, it isn't just about a casino, it's about honoring a contract the City Council signed in 1994. He said that according to both our legal staff and our community development staff, we need to honor the contract and one of his concerns was how many development agreements we have and if this issue will come up again. He said had he been on the Council in 1994, he would like to think he would not have approved an agreement like this. Council Member Carrigan asked the audience to understand

the decision the Council has to make and the consequences of their decision: if they vote yes, we're going to court; and if they vote no, we're going to court. He emphasized that his job was to protect the citizens of Sparks and make the best decisions he can.

Council Member Salerno commented that he felt this was really a regional issue that affected not only the citizens of Sparks, but also those in Washoe County, across the road from this project. He said it goes without saying that this will be a first class, quality product, but he felt that there was still a lot of confusion about what is the right thing to do.

Mayor Martini said he was very proud of all the City Council Members for taking in stride the "beating" they have been given [from the citizens] over the last few months on this issue. He said this issue has gone on long enough and one way or another it will be decided tonight. He thanked everyone who spoke for being respectful and acting with decorum, regardless whether they were for or against the casino.

Council Member Schmitt said that one of the things he loves in life is traveling, but best part of every trip he takes is coming home to what he considers the greatest City, in the greatest State, in the greatest County in the world. He said we all can be very proud of participating in democracy in action at this meeting.

Council Member Moss said she has given considerable thought to both sides of this issue and listened carefully to the arguments on both sides.

She said that regardless of what is built on this property, there will be traffic on Pyramid. She said that her hope is that the community is able to come back together on other issues and not remain divided.

Council Member Carrigan made a motion to grant tentative approval of PCN05073 and requested that this approval be a roll-call vote.

Council Member Schmitt said he wanted to make a couple of amendments to the motion: that it is made clear that there is to be no future expansion of the 18,000 square foot of gaming floor area; and that we work on a tax structure so that as taxes are generated by this project, that 50% of the tax revenues be diverted back to the downtown area to help support redevelopment and special events.

Attorney Creekman asked if the second part of Council Member Schmitt's motion was a merely a suggestion for staff to look into the possibility of doing this, or if it was an obligatory direction. Council Member Schmitt said this was a directive to staff to work out this agreement and bring it back to Council to approve. Attorney Creekman said that staff can certainly look at the possibility of doing this, but he had sufficient doubts about local government taxation at this time to commit that what he is proposing is legally permissible. Council Member Schmitt asked when Mr. Creekman felt we could get an opinion on the legality of doing this. Mr. Creekman said it would probably take six weeks or longer.

Council Member Mayer requested that



parliamentary procedures be followed and that Mr. Schmitt make a motion to amend Council Member Carrigan's motion and that Council Member Schmitt split his amendments into two separate votes.

Council Member Schmitt then made a motion to amend Council Member Carrigan's motion to make sure the 18,000 square feet is the maximum the gaming area, per in the agreement. The motion was seconded by Council Member Carrigan. Council Members Moss, Carrigan, Schmitt, YES. Council Members Mayer Salerno, NO. Motion carries.

Council Member Schmitt then made a motion to amend Council Member Carrigan's motion that if the project is approved tonight; an agreement be brought back to the Council, in whatever legal format that we can do, to redirect a percentage of the funds from the taxes that are generated from this project are redirected to downtown redevelopment. Attorney Creekman said it was not necessary to make a motion on this, that the council could simply direct the Attorney's Office to look into this.

Mayor Martini asked if there needed to be a motion to hold a roll-call vote. Attorney Creekman said he did not believe it was necessary.

Council Member Moss said that it was clear that Section 3.08 said that we would come back and talk about a supplement agreement within the City and her concern, and that of the Planning Commission, was that Tierra del Sol was not within the City in 1994; it was part of the Sphere of Influence, but not in the City. And if the other sections of the agreement are "frozen in time", then the boundaries

of the City when the agreement was signed should also be “frozen in time”. Mr. Thompson explained that essentially the agreement had a lock-in clause that freezes in time the plans that were in effect at the time the development agreement was adopted. It does not include the corporate boundary as well. He clarified that the agreement did not freeze in time the existing corporate boundary of the City in 1994.

Council Member Moss said the project is great; but the issue for her was whether this was the right place for the project. She said she also had some concerns about the Regional Planning Commission and what they originally said in November of 1994 related to the project and she felt this project needed to go through the Regional Planning Commission because it has been substantially changed. Mr. Thompson responded that staff does not believe that the project, as proposed in Tierra del Sol handbook, is required to go back to the Regional Planning Commission as a project of regional significance, or otherwise, because when Tierra del Sol was originally approved in 1999, it was approved for 200,000 square feet of commercial/retail use. He said a project of regional significance would be one that generated traffic in excess of 6,250 average daily trips and Tierra del Sol already went to the Regional Planning Commission and was subsequently approved. He said this change in the plan actually has fewer average daily trips than the original plan and because there is no increase in the intensity of the project, staff believes it is not required to go back for Regional Planning Commission approval.

City Clerk Debi Dolan then conducted a roll-call vote.

A motion was made by Council Member Carrigan, seconded by Council Member Schmitt for tentative approval of PCN05073, to tentatively approve the amendment to the Tierra del Sol Planned Development Handbook; limiting the allowed gaming floor area to 18,000 square feet now and in the future. This recommendation adopts Findings PD1 through PD21 and the facts supporting these findings as set forth in the Planning Commission staff report. The tentative approval includes the requirement that the applicant shall file the application for the final approval for the first phase of the planned development within one year from the date of the City Council granting tentative approval of the planned development handbook, and that the final handbook level of detail is equal to that which is required by a Special Use Permit, although a Special Use Permit is not needed. The tentative approval requires that the Wingfield Springs Planned Development Handbook be amended to remove the resort complex and a development agreement to supplement the 1994 Wingfield Springs Development Agreement be approved by the city that must include the modification to the Wingfield Springs Handbook, provide socially beneficial contributions and details regarding the transfer of the gaming component to Tierra del Sol; and that the supplemental agreement also include a condition that the architectural renderings displayed at tonight's meet are what is built; that the 200 room hotel and casino be built concurrently and that the movie theater and arcade be directly accessible by the public without going through the casino. These requirements are a prerequisite to Final Approval. Due to the nature of the tentative planned

development, the Planning Commission does not recommend that the City Council require a bond at this point in time as stated in NRS 278A.490. Council Members Carrigan, Schmitt, YES. Council Members Mayer, Salerno, Moss, NO. Motion Failed.

Senior Assistant City Attorney David Creekman said that since the last motion failed, someone should make a motion to the opposite effect. Mayor Martini asked if someone wanted to make a motion to decline. Mr. Thompson noted that on page four of the staff report there was a motion for denial. City Council Member Mayer asked Mr. Thompson read the motion from the staff report.

A motion was made by Council Member Mayer, seconded by Council Member Moss, to deny the tentative planned development handbook for Tierra del Sol, PCN05073. The project is not in the public interest as it relates to PD findings 18 and 21. The project as submitted and conditioned is not consistent with the City of Sparks Master Plan as the graphic depictions of land use designations in the City of Sparks prevail over the text of the NSSOI Plan and the graphic designations associated with the General Commercial land use designation do not permit resort hotels with gaming. Additionally, the proposed modification of the Tierra del Sol planned development does not further the interests of the City because the Master Plan serves as the ultimate policy and guidance for land use development in the City. Council Members Mayer, Salerno, Moss, YES. Council Members Carrigan, Schmitt, NO. Motion Carried.

Time: 12:33:44 p.m.

9. Comments from the Council and City Manager

None

Time: 12:33:50 p.m.

10. Adjournment

There being no further business, the meeting was adjourned at 12:33 a.m.

**August 23, 2006 Partial City Council Transcript****Mike Carrigan Disclosure**

6:07:11

*Thank you Mayor. I have to disclose for the record something, uh, I'd like to disclose that Carlos Vasquez, a consultant for Redhawk, uh, Land Company is a personal friend, he's also my campaign manager. I'd also like to disclose that as a public official, I do not stand to reap either financial or personal gain or loss as a result of any official action I take tonight therefore according to NRS 281.501 I believe that this disclosure of information is sufficient and that I will be participating in the discussion and voting on this issue. Thank you.*

**Geno Martini Disclosure**

6:07:47

*I also need to disclose, I don't vote, but, uh, disclose the same information, uh. Mr. Vasquez is a friend of mine also. Also my campaign manager. I do not stand to gain anything from this particular project should it be approved. Uh, I just wanted to have that on the record.*

RECEIVED  
OCT 30 2006  
COMMISSION  
ON ETHICS



Paid for by the Committee to Elect Mike Carrigan

October 26, 2006

L. Patrick Hearn  
Executive Director  
State of Nevada Commission on Ethics  
3476 Executive Pointe Way, Suite 10  
Carson City, NV 89706

Dear Mr. Hearn,

This letter will serve as a response to the request for opinion No.s 06-61, 06-62, 06-66 and 06-68. I hope that this letter will serve as a response to all four complaints since they are all worded similarly. If not, Mr. Hearn, I will be glad to provide a separate letter for each request for opinion.

In early August, I asked for a legal opinion from the Sparks City Attorney, Chet Adams, on an issue that was coming before the Sparks City Council that my friend Carlos Vasquez was the public relations consultant for. On August 17, 2006, the City Attorney supplied the mayor and city council with a memorandum, Enclosure 1. In the memorandum, it was made clear that I was not conflicted. Often times I have voted on issues that were brought before the city council by friends and members of the community. Sparks is a small community and at no point in time do I feel that my judgment was clouded because of these relationships.

According to the memorandum, if the personal relationships in which I am involved may give rise to allegations of bias against me, I should simply err on the side of caution and disclose the relationship before I vote on the issue. According to Enclosure 2, an email from the assistant city attorney David Creekman, I disclosed before the meeting that Carlos Vasquez is a friend of mine and that I was not going to gain financially and the personal interest I had would not cloud my judgment.

Thank you for the opportunity to respond to the allegations made against me. I am available to discuss the matter further.

Regards,



Mike Carrigan  
Sparks City Councilman



**Enclosure 2**

Creekman, David

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From: Carol Creekman [carolcreek1@charter.net]  
Sent: Thursday, September 21, 2006 5:33 PM  
To: Creekman, David  
Subject: Fw: Possible conflict of interest disclosures

—Original Message—

From: Mols, Sally  
To: Carol Creekman  
Sent: Wednesday, August 23, 2006 3:47 PM  
Subject: RE: Possible conflict of interest disclosures

David, I'm forwarding via email as requested and also putting hard copies on their respective desks. Randy arrives here shortly for an early dinner with Adam and Steve so I will hand him a copy.

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From: Carol Creekman [mailto:carolcreek1@charter.net]  
Sent: Wednesday, August 23, 2006 3:43 PM  
To: Mols, Sally  
Subject: Possible conflict of interest disclosures

3:40 p.m. Wednesday, August 23, 2006

Sally: I am at home just now preparing for tonight's meeting and ask if you please can do me a favor. Please forward this email to each member of the City Council, the Acting City Manager and the Mayor as soon as possible.

Thank you.  
David Creekman

Dear City Council Members:

I write to remind each of you, in accord with the legal opinion previously provided to you, to be certain to disclose any possible financial or personal interest you might arguably have with respect to the project (or the individuals involved in the project) you will be hearing tonight. Once that disclosure has been made, you need to conclude that the possible financial or personal interest will, or will not (as the case may be) cloud your judgment with respect to the issue before you. If you believe that your judgment will be impaired as a result of any financial or personal interest you might disclose, you should recuse yourself from the

**09/22/2006**

**Enclosure 1**

**MEMORANDUM**

TO: Geno Martini, Sparks City Mayor  
Shaun Carey, Sparks City Manager  
Sparks City Council Members:  
    John Mayer           Phil Salerno  
    Judy Moss            Michael Carrigan  
    Ronald Schmitt

FROM: David Creekman, Senior Assistant City  
Attorney  
Doug Thornley, Legal Intern

DATE: August 17, 2006

SUBJECT: Bias or predisposition as grounds for  
disqualification of elected official

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We have looked into the question of whether predisposition or demonstrable bias are grounds for the recusal of an elected official when that elected official is charged with responsibility for later deciding, in an official capacity, an issue relating to the subject matter where bias is alleged to exist. Because we are unaware of any facts establishing the existence of financial or personal gain or loss,<sup>1</sup> it

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<sup>1</sup> Other than the possibility of simple personal connections and friendships which formed the basis for an Opinion of the Nevada Attorney General, 98-27, issued on September 26, 1998, on this subject. That opinion concluded that abstention

is our legal conclusion that previously-revealed positions which may indicate a predisposition on a matter before the City Council do not require the recusal of an elected member of the City Council.

“Elected officials are presumed to act objectively,” and at least a minimal showing of bias must be made to warrant a remand. *See, Fairview Area Citizens Taskforce v. Illinois Pollution Control Board*, 198 Ill. App. 3d 541, 548, 555 N.E.2d 1178, 1182, 144 Ill. Dec. 659 (1990)(appeal of a decision of the Illinois Pollution Control Board upholding a previous decision of the Village of Fairview Village Board in which the appellants questioned whether the procedures employed by the Village Board were fundamentally fair due to preexisting bias on the part of members of the Village Board). In *Breakzone Billiards v. City of Torrance*, 81 Cal. App. 4<sup>th</sup> 1205 (2000), the city’s planning commission granted an applicant’s request for a liquor license. On appeal, the Court held that the plaintiff was not denied a fair hearing by the fact that four members of the city council had received campaign contributions from a donor who might have benefitted from the denial of the plaintiff’s request. The Court further held that the fact that a city council member who also sat on the planning commission brought the appeal to the city council in his capacity as a member of the planning commission, and then participated in the

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is only required where there exists objective evidence that a reasonable person in the public official’s situation would have his or her independence of judgment materially affected by a commitment in a private capacity to the tangible interests of others.

city council hearing, did not result in an unfair hearing. *Id.* at 1224.

An elected official's positions on certain matters are often the basis of that official's election in the first place. To disqualify these officials from voicing their opinions and fulfilling their duties accordingly would be contrary to the basic principles of a democratic and free society. *See, Wollen v. Borough of Fort Lee*, 27 N.J. 408, 142 A.2d 881 (1958).<sup>2</sup> In this regard, attention should also be directed to *Saks & Co. v. City of Beverly Hills*, 107 Cal. App. 2d 260, 237 P.2d 32 (2d Dist. 1951)(*disapproved of by City of Fairfield v. Hoover*, 39 Cal. 2d 260, 246 P.2d 656 (1952) and *City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543, 537 P.2d 375 (1975)), in which the court held that where three of five members of the city council were disqualified to vote

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<sup>2</sup> In the *Wollen* case, the issue at stake involved the validity of an ordinance purporting to amend and supplement the zoning ordinance of the Borough of Fort Lee. The amendment would reduce the land area of a zoning district previously restricted to one-family residence use and a minimum lot area of 10,000 square feet, and constitute in its place a new multi-story apartment district open to apartment houses not in excess of six stories in a portion of the zoning district and not in excess of 14 stories and elsewhere in the zoning district. As part of the appeal, arguments were raised that three members of the Borough's council "had, while they were candidates for election to the Borough Council...publicly announced that if elected they would vote in favor or rezoning...for multi-family dwellings," and that they were thereby disqualified from participating in the enactment of the ordinance. The Court rejected this argument, stating that it needed to do so because to decide otherwise "...would frustrate freedom of expression for the enlightenment of the electorate that is of the very essence of our democratic society...."

on a resolution and ordinance revoking temporary zoning variances either because they were biased and prejudiced and had determined in advance of the hearings and presentation of the evidence to vote for the revocation, based upon their campaign promises, or had not heard the evidence presented to the council. The resolution and ordinance in question resulted from granting numerous variances, including a parking lot variance at issue in the case, which inspired the voters to adopt an initiative revoking all variances. When enforcement of the initiative was enjoined, three of its proponents campaigned for the city council on a platform of revocation of the variances. In *City of Fairfield v. Superior Court*, 14 Cal. 3d 768, 122 Cal. Rptr. 543, 537 P.2d 375 (1975), California's Supreme Court disapproved of the *Saks* holding on the grounds that the Court of Appeals decision in *Saks* effectively thwarted representative government by depriving the voters of the power to elect councilmen whose views on important issues of civic policy corresponded to those of the electorate. The Court stated that campaign statements by candidates for elected municipal office do not disqualify a candidate from voting on matters that come before them after his election, thus permitting the conclusion that *Saks* was erroneously decided and must be disapproved.

Although facts substantiating financial or personal gain or loss are not now at issue and did not prompt this Opinion, if such facts were at issue we advise that Nevada's Ethics in Government Law, NRS chapter 281, would be implicated. In particular, we note that statute's stated dual

purpose is to prevent a public officer from seeking or accepting any gift, service, favor, employment engagement, emolument or economic opportunity which would tend to improperly influence the public officer and to prevent a public officer from using his position to secure or grant unwarranted privileges, preferences, exemptions or advantages to himself, any business entity in which he has a significant pecuniary interest or any person to whom he has a commitment in a private capacity to the interests of that person. NRS 281.481. A commitment in a private capacity includes a commitment to a person who is a member of his household, who is related to him by blood, adoption or marriage within a certain degree of consanguinity or affinity, who employs him or a member of his household or with whom he has a substantial business relationship. NRS 281.501(8).

The Nevada Ethics in Government Law further provides that if a financial or personal detriment or benefit which accrues to a public official is not greater than that accruing to any other member of the general business, profession, occupation or group, the public official may vote upon the matter. NRS 281.501(1). The statute goes on to require that the disclosure of sufficient information concerning the financial or personal detriment or benefit at the time the matter is decided upon. NRS 281.501(4).

For the foregoing reasons, it is our Opinion that prior statements of position on an issue of public importance by either a candidate or by an elected official do not require disqualification of that individual at the time the individual is charged with deciding upon the issue. The only type of bias which may lead to disqualification of a public official must

be grounded in facts demonstrating that the public official stands to reap either financial or personal gain or loss as a result of official action. Although, once again, we are unaware of the existence of any such facts<sup>3</sup> with respect to any member of the City Council on any issue the City Council is expected to soon consider if you anticipate that certain positions you may have previously taken or personal relationships in which you are involved may give rise to allegations of bias against you, you should simply err on the side of caution and disclose sufficient information concerning the positions or relationships before you consider and vote on the issue. This disclosure should be articulated on the record. However, if no facts exist demonstrating personal or financial gain or loss, disclosure is unnecessary. If you have additional questions, comments or concerns regarding this matter, please feel free to contact this office.

cc: Chester H. Adams  
City Attorney

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<sup>3</sup> See footnote 1.



AGO 98-27 ETHICS IN GOVERNMENT; PUBLIC OFFICIALS DISCLOSURE AND ABSTENTION: Abstention required when independence of judgment of reasonable person is materially affected by tangible interest of another.

Carson City, September 25, 1998

The Honorable Bradford R. Jerbic, Las Vegas City Attorney, 400 East Stewart, Las Vegas, Nevada 89101

Dear Mr. Jerbic:

You have presented your analysis and requested an opinion from this office in an attempt to provide some clarification to public officials who are members of boards and commissions as to when they would need to consider disclosing and abstaining from voting based upon ethical considerations.

**QUESTION**

When does a member of a board or commission need to disclose a possible conflict of interest and abstain from voting because of an acquaintance or friendship with a person interested in, but not a party to the outcome of an item before the governing body?

**ANALYSIS**

The requirements regarding disclosure and abstention in Nevada must be determined by analysis of Nevada's ethics in government laws as well as other relevant statutes, legislative history, opinions issued by the Commission on Ethics (Ethics Commission), and any applicable case precedent. As you know, these issues involve largely uncharted waters in our state due to the lack of relevant case

precedent available here or nationally to provide guidance. In the first instance, questions concerning ethical requirements should always be addressed to one's counsel.

In more difficult or complex matters, the next step is to consider seeking an advisory opinion from the Ethics Commission since that is the body vested by the Legislature with jurisdiction and responsibility to enforce the laws. The job of interpreting and enforcing the statutes is sometimes difficult in light of the often complex factual scenarios, which are presented to the Ethics Commission. As you have indicated the variety and breadth of questions has contributed to some growing confusion as to the applicability of the relevant statutes.

It is apparent from the increasing number of questions concerning these statutes that the Nevada Legislature will in all likelihood be asked to consider reviewing and refining the current laws so public officials will better understand and be able to comply with the rules. As you know, this office does not have authority to resolve these matters and can only address your question in an advisory capacity in the hope of assisting you and other lawyers who represent public bodies. Appeals from Ethics Commission rulings go to the district court in accordance with NRS 233B.130. The ultimate rulings and interpretations on these questions must come from the Ethics Commission, the courts and the Legislature.

In your request, you put forth the scenario of a personal friendship between a public officer and a person interested in, but not a party to the outcome of a matter upon which the public officer will be voting.

The friendship is a long standing one (the friend being a well-liked customer of the public officer in his private capacity), although the friends had not engaged in any social activities. The friend voiced his opposition to the matter to the public officer. The public officer consulted with counsel and disclosed the friendship on the record before voting on the matter. It is your conclusion that in such circumstances the public official's obligation was to disclose the matter, but that abstention was not required. This was the advice given by your office and followed by the public official. A question has now been raised as to whether the public officer should have abstained as well.

NRS 281.501(2) provides that a member of the legislative branch must abstain from a vote where he has a commitment in a private capacity to the interests of others "with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by" that private interest of others. This is the legal standard that governs whether a public officer must abstain from voting on a matter. "Member of the legislative branch" is defined under NRS 281.4355 to include legislators and members of boards of county commissioners, city councils or other political subdivisions. The requirement for disclosure set forth in NRS 281.501(3), prohibits public officers and employees from acting upon a matter unless they have disclosed the full nature and extent of any private interest which would reasonably affect their judgment. Also, NRS 281.481(2) provides, "[a] public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or

advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.” The language in these statutes is not clear and the terms are not specifically defined in NRS chapter 281 or in case precedent. In the absence of specific standards or definitions, the confusion you describe regarding the applicability of these statutes is understandable.

The Ethics Commission has articulated, in its recently issued opinion concerning the Clark County airport concessions at Terminal D, four considerations which it will use in its future analysis of the nature and impact of a public official’s personal relationships. Nevada Commission on Ethics Opinion (NCOE) Nos. 97-54, 97-59, 97-66, 97-53, and 97-52, (Terminal D Opinion). You have indicated that these criteria do not give sufficient guidance to either public officials or their lawyers who on a regular basis must make decisions about whether to make disclosures and when to abstain from voting on matters. As noted above, there is very little legal precedent to assist in providing guidance.

Our representative form of government is based upon our elected officials being typical of the constituents who elected them. Frequent contact between elected officials and their constituents is necessary for elected officials to truly represent their communities and is almost a daily occurrence in Nevada’s smaller communities. If elected officials do not communicate with their constituents, some of whom may be acquaintances and personal friends, the elected officials will not be as well informed. We do not believe that the ethics in government law was intended to prevent government officials from seeking or

receiving input from constituents who may also include acquaintances and friends. Rather, the law tries to strike a balance wherein public officials must disclose certain outside interests and in some cases abstain from voting where their independence of judgment is materially affected. The law places particular emphasis on the need for public officials to disclose conflicts or potential conflicts on the record, with abstention being required only in limited circumstances where the independence of judgment of a reasonable person would in fact be materially affected.

As stated above, the terms “materially affected by” or “commitment in a private capacity to the interests of others,” are not specifically defined by the Legislature or the Ethics Commission in the Terminal D opinion. Although the four personal relationship criteria are helpful in the analysis, they do not precisely fix the point at which a “personal relationship” will be considered to *materially affect* the independence of judgment of a public official.

The criteria provide no guidance regarding the specific meaning of the term “interests of others.” Does that term apply only to persons who are in fact impacted either directly or indirectly by the matter being voted upon by the public official? Or does this term mean simply that the other person has an opinion on the subject matter? Although NRS 281.501(2) contains some limiting language, these are questions which are not clearly answered and which have created a climate of some doubt and uncertainty.

Although the evaluation of ethical concerns is sometimes difficult and necessarily qualitative, public

officials, who consult with counsel to determine their obligations, should be able to carry out their public duties without concern that they may still be found to have acted inappropriately after the fact. As you know good faith reliance on advice of counsel after full disclosure of relevant facts can constitute a defense in criminal matters. *See, e.g., In the Matter of Vandelinde*, 366 S.E.2d 631, 637 (W.Va. App. 1988)(Defense of good faith reliance on advice of counsel can be established where there has been complete disclosure of facts and the advice given is not patently erroneous); *Bursten v. United States*, 395 F.2d 976 (5th Cir. 1968)(To assert the reliance defense, the defendant must establish good faith reliance on an expert coupled with full disclosure to the expert). A similar defense has been recognized in at least one published ethics decision involving an attorney. *See Committee on Legal Ethics of W. Va. State Bar v. Coleman*, 377 S.E.2d 485, 490, 500 (W.Va. App. 1988) (Good faith reliance on statutory interpretation was a defense to excessive fee allegation). Thus, the good faith reliance of a public official upon advice of counsel which has been rendered in a sincere attempt to help the public official comply with ethics provisions, we believe should be a defense in appropriate cases.

Nevada's ethics in government law recognizes consultation with counsel as a defense to the element of willfulness in ethics cases. NRS 281.551(6) provides:

An action taken by a public officer or employee or former public officer or employee relating to NRS 281.481, 281.491, 281.501 or 281.505 is not a willful violation of a provision of those sections if the public officer or employee:

- (a) Relied in good faith upon the advice of the legal counsel retained by the public body which the public officer represents or by the employer of the employer of the public employee;
- (b) Was unable, through no fault of his own, to obtain an opinion from the commission before the action was taken; and
- (c) Took action that was not contrary to a prior opinion issued by the commission to the public officer or employee.

This defense could be expanded to constitute a complete defense in appropriate cases as discussed above. Public officials who sincerely attempt to comply with the law by consulting with counsel, and completely disclose relevant facts to their counsel, and who receive and follow advice consistent with the ethics in government law should not be found in violation, even if there is some subsequent disagreement regarding the advice given. In such cases it may be more appropriate to give the public official instruction or direction for the future. A public officer's duty is defined in NRS 281.421, which provides:

1. It is hereby declared to be the public policy of this state that:
  - (a) A public office is a public trust and shall be held for the sole benefit of the people.
  - (b) A public officer or employee must commit himself to avoid conflicts between his private interests and those of the general public whom he serves.

2. The legislature finds that:

(a) The increasing complexity of state and local government more and more closely related to private life and enterprise enlarges the potentiality for conflict of interests.

(b) To enhance the people's faith in the integrity and impartiality of public officers and employees, adequate guidelines are required to show the appropriate separation between the roles of persons who are both public servants and private citizens.

NRS 281.421 creates an obligation on the part of the public officers to avoid conflicts between their private and public interests. To assist in assuring this, the Legislature, in NRS 281.501 as amended in 1997, set forth requirements as to when a commitment in a private capacity to the interests of others would require disclosure and even abstention. NRS 281.501, provides:

1. Except as otherwise provided in subsection 2 or 3, a member of the legislative branch may vote upon a matter if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business, profession, occupation or group is not greater than that accruing to any other member of the general business, profession, occupation or group.

2. In addition to the requirements of the code of ethical standards, a member of the legislative branch shall not vote upon or advocate the passage or failure of, but may otherwise participate in the



consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group.

3. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

- (a) Regarding which he has accepted a gift or loan;
- (b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or
- (c) In which he has a pecuniary interest, without disclosing the full nature and extent of the gift, loan, commitment, or interest. Except as otherwise provided in subsection 6, such a

disclosure must be made at the time the matter is considered.

If the officer or employee is a member of a body that makes decisions, he shall make the disclosure in public to the chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected.

4. If a member of the legislative branch declares to the legislative body or committee in which the vote is to be taken that he will abstain from voting because of the requirements of this section, the necessary quorum to act upon and the number of votes necessary to act upon the matter, as fixed by any statute, ordinance or rule, is reduced as though the member abstaining were not a member of the body or committee.

5. If a member of the legislative branch is voting on a matter which affects public employees, he shall make a full public disclosure of any personal pecuniary interest that he may have in the matter.

6. After a member of the legislative branch makes a disclosure pursuant to subsection 3, he may file with the director of the legislative counsel bureau a written statement of his disclosure. The written statement must designate the matter to which the disclosure applies. After a legislator files a written statement pursuant to this subsection, he is not required to disclose orally his interest when the

matter is further considered by the legislature or any committee thereof. A written statement of disclosure is a public record and must be made available for inspection by the public during the regular office hours of the legislative counsel bureau.

As long as the independence of judgment of a reasonable person would not be *materially affected* by a commitment in a private capacity to the interests of others, it appears a member of the legislative branch may vote. To determine whether the independence of judgment is materially affected by a commitment, the statute sets forth a presumption that the independence of judgment of a reasonable person would not be materially affected by his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. Under this statute, public officials are presumed not to be materially affected by a private commitment, unless there is some tangible extra benefit or detriment derived by either party (the official or the private person). Thus, before a public official may be required to abstain, we believe there must be some evidence of a benefit or detriment, which is greater than that experienced by similarly situated persons. Even if a greater benefit or detriment exists, the statute still may not require abstention unless the independence of judgment of a reasonable person in that situation would be materially affected by this tangible interest.

At the time of the creation of NRS 281.501 in 1977, the Legislature defined a conflict of interest to be when a legislator received some monetary benefit outside his salary for performing his official duty. The Legislature indicated that it did not want to prevent input from constituents. A legislative body is made stronger as a result of the input that it receives from a variety of people. Overly restricting the voting ability of legislative bodies would defeat the purpose of having such lay legislative groups. One legislator stated, “[I] do not believe that a legislator should be precluded from . . . voting on legislation merely because it is something that may be desirable to a client. Ethics should deal with the problems where a legislator is financially rewarded because of introducing a measure that a client wanted.” *Hearing on A.B. 450 Before the Senate Government Affairs and Assembly Elections Committee, 1977 Legislative Session*, 3 (March 28, 1977).

The statute was amended in 1991 to prohibit voting where a conflict of interest actually exists. The original law made abstention optional and in 1991 language was added to make abstention mandatory where a conflict of interest is found. However, in 1991 the Legislature also apparently sought to limit when abstention is actually required by adding a presumption that an official’s independence of judgment is not materially affected where a pecuniary benefit or detriment exists if the benefit or detriment is the same as that experienced by others similarly situated.

The then Chairman of the Ethics Commission offered the following advice:

Obviously, it is a question of degree and the particular circumstances. One should not have to abstain from voting simply for being personally representative of or in the same circumstances as one's constituents. That may be a reason why one is elected in the first place. That is in the very nature of a "Citizen Legislature."

However, where the circumstances change to such a degree that independence of judgment *is* in fact so materially affected or impaired, one should be required to abstain from voting even though the benefit or detriment accruing to him or her is the same.

*Hearing on A.B. 190 Before the Senate Committee on Government Affairs, 1991 Legislative Session, Exhibit 1 (May 8, 1991).*

In 1997, NRS 281.501(2) of the statute was further amended to expand the presumption against the existence of a conflict to include the situation where an official may have a commitment in a private capacity to the interests of others. In other words, there is a presumption against finding a conflict where a public official has a commitment to the private interests of others, if the resulting benefit or detriment is the same as others similarly situated.

Language broadening the abstention requirement could have been added, but the Legislature instead chose to narrow the abstention requirement. Expansion of abstention requirements can only be achieved through legislative action. Under the current statutory language of NRS 281.501 discussed above, if on an objective level it appears that a

reasonable person would not be able to separate himself from the tangible interest of another, such that his independence of judgment is materially affected, then he should abstain.

As discussed above, the Ethics Commission's evaluation of the impact of personal relationships on the independent judgment of public officials is most recently found in the Terminal D Opinion. In seeking to qualitatively adjudge such relationships, the Ethics Commission interpreted NRS 281.501 to require a look at the substance of the relationship itself, rather than the label on it. In doing this, the Ethics Commission came up with four factors to analyze a personal relationships for conflict of interest purposes. These factors are: 1) the length of a relationship, 2) the context of the relationship, 3) the substance of the relationship, and 4) the frequency of the relationship. Recognizing these personal relationships are difficult to adjudge, the Ethics Commission stated, "By legislative design, the determination of whether a given relationship would materially affect the independence of judgment of a reasonable person will always be a case-by-case examination." Terminal D Opinion, at 13.

Summarizing the Terminal D Opinion, significant personal relationships that required disclosure and abstention, were found under the following circumstances:

- (1) where one is considered a "best friend" in which the friendship is forged in the context of common political and philosophical beliefs that both parties felt strongly enough about to become politically active on behalf of;

(2) a “long-term very close friend with the spouse of the public officer” where the public officer knows little information about this person or the other applicants, yet votes for the friend of his spouse’s matter in front of the public body;

(3) a “long-term business relationship where reliance and trust have been such large factors that many facets of their lives intersect in their relationship,” and finally

(4) where there were “substantial efforts to support the public officer’s candidacy as evidenced by raising large amounts of money for the public officer combined with events such as the official’s daughter participating in the friend’s wedding” that the relationship has become a political alliance in which both were dedicated to common causes, one of which was the furtherance of the public officer’s political aspirations which in turn made the public officer beholden to her friend.

In each of these situations, the “friend” was directly interested in and significantly benefited from the matter being voted upon by the public official. The Ethics Commission found that the public officials had violated NRS 281.501(2) and (3), and NRS 281.481(2). This is quite different from the situation that you have outlined where the “friend” is not before the public body, but has privately expressed a strong opinion to the public official.

Although the close and long-term friendships at issue in the Terminal D matter required disclosure and abstention, under the analysis in the opinion it would be

reasonable to conclude that abstention would only be required where the other party to the friendship is actually before the public body or benefits from the particular vote. It does not follow that the comments of a friend who is not personally impacted by the vote would require disclosure and abstention. We agree with your suggestion that the legislative process could be entirely undermined if a member of a public body is required to abstain from a vote because he has an acquaintance or friendship with someone interested in a matter, but not actually affected (receiving a benefit or detriment greater than others) by the vote on the particular matter. If the Legislature intended otherwise, it would have expressed that intent in the language of NRS 281.501, which has been amended four times since its enactment. We can derive from the current NRS 281.501, the 1991 and 1997 amendments, and from the opinions of the Ethics Commission, that the law does not place a blanket prohibition on voting where an acquaintance or friendship exists. Only in circumstances, where it appears from objective evidence that as a result of the acquaintance or friendship, a reasonable person in the public officer's situation would have no choice but to be beholden to someone who has an actual interest in the matter, is abstention required. In such circumstances, the public official's independence of judgment would be materially affected.

According to other Ethics Commission opinions, a public officer was not required to abstain from a vote on a contract amendment and renewal matter which involved a friendship and business relationship with the person who came before the board because the matter before the board did not involve actually choosing the



candidate to be awarded the contract. NCOE Opinions 94-27, 94-30. In addition, an arms-length business relationship with one before the public body, such as a private business loan in the amount of \$200,000, does require disclosure but not abstention unless the relationship materially affects the independence of judgment of the public officer. NCOE Opinion 94-05. Finally, when a public officer considers a matter that is only tenuously related to a previous matter which required disclosure and abstention, the public officer may vote (the public body was deciding whether or not to seek review of a court decision). *Board of Commissioners of the City of Las Vegas, Nevada v Dayton Development Company*, 91 Nev. 71, 530 P.2d 1187 (1975).

Under Nevada's law, public officers have a responsibility to consider whether their private interests conflict with a public matter. Thus, whenever a public officer has reasonable notice a friend (or other private interest) may be involved in a matter on which they will be voting, the disclosure and/or abstention requirements must be taken into consideration. However, in this regard, the Ethics Commission has stated in the Terminal D Opinion:

In the future, deliberate ignorance of readily knowable facts will not be condoned by this Commission. We insist each public official vigilantly search for reasonably ascertainable potential conflicts of interest. The solution for a public official who knows that her best friend may end up appearing before her, or who is overwhelmed with the volume of her workload, is to task her staff with assisting her to root out potential ethical concerns.

Terminal D Opinion at 16. Thus, if a public officer knows his friend has a matter coming before the public body, the official clearly has an obligation to consider the relevant circumstances, disclose and abstain if the official's independence of judgment would be materially affected by the friendship. Public officials should always consult with counsel on these matters, and as noted in the Terminal D opinion, should never deliberately try to remain ignorant of potential conflicts.

However, we are concerned that this portion of the Terminal D opinion seems to suggest that staff should be tasked with conducting research if the public official is too busy to review agendas for potential conflicts. This language, as well as the reference to "conflict software" implies that all public bodies should have staff available to conduct research into all possible conflicts, and that public funds should be expended to obtain conflict software and any necessary hardware. Public bodies may not have budgeted for such software and hardware. This suggestion also raises some concern about the propriety of using public resources to research the private interests of officials and others.

### **CONCLUSION**

The Legislature should revisit these very complex and difficult issues to consider clearer guidance to all public officials. Although ultimately judicial interpretation of the relevant statutes may provide more definitive guidance on these matters. We recognize that the Ethics Commission's job of interpreting and enforcing the statutes is difficult in light of the often complex factual scenarios which are presented, and that through its decisions and

regulation drafting authority, the Commission continuously seeks to clarify the responsibilities of public officials under Nevada's ethics in government laws.

The ethics in government law is intended to prevent public officials from acting out of self-interest or from using their office to give unfair advantage to others. As the former chair of the Ethics Commission stated, "where the circumstances change to such a degree that independence of judgment *is in fact so materially affected or impaired*, one should be required to abstain from voting . . ." (emphasis added). Under NRS 281.501, and in light of the interpretation of this statute as articulated to the Legislature by the former chair of the Ethics Commission, abstention is only required where there exists objective evidence that a reasonable person in the public official's situation would have his or her independence of judgment materially affected by a commitment in a private capacity to the tangible interests of others. Public officials should always disclose any relevant private interests on the record and with the advice of counsel explore whether such an interest would require abstention. If it is determined that the independence of judgment would not be materially affected and/or that the friend or acquaintance has no tangible interest in the particular matter, the basis for such conclusions should be carefully articulated on the record.

In light of the variety and breadth of questions that have been recently raised, we believe all public entities and their counsel would be well advised to carefully review and reconsider the procedures used to evaluate contracts or other matters requiring a

public vote. Consultation with ethics experts such as the Josephson Institute in Los Angeles or others may also be helpful. Bidding and bid protest procedures from similarly situated public entities, as well as national or state organizations which provide training in this regard, should be considered as well. *See MCM Construction, Inc. v. City & County of San Francisco, et al*, 66 Cal. App. 4th 359 (Cal. App. 1998) (Detailed discussion of airport bid and bid protest procedures). Although our comments can only be treated as advisory, they will hopefully assist you and other lawyers in advising clients.

FRANKIE SUE DEL PAPA

Attorney General

**CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT** **State of Nevada**

MIKE CARRIGAN CITY COUNCIL WARD 4  
 Name (print) Office (if applicable) District (if applicable)

3393 ALPLAND LANE SPARKS, NV 626-6509  
 Mailing Address (include city and zip code) Telephone No.

WWCARRIGAN@AOL.COM  
 E-Mail Address

**Select Appropriate Box(es)**     CANDIDATE     PAC     BAG     POL PRTY  
 IND EXP     NONPROFIT CORP     AMENDED     ANNUAL FILING  
 PETITIONERS WHO INITIATE/CIRCULATE PETITION & RECEIVE OR EXPEND FUNDS IN EXCESS OF 10K

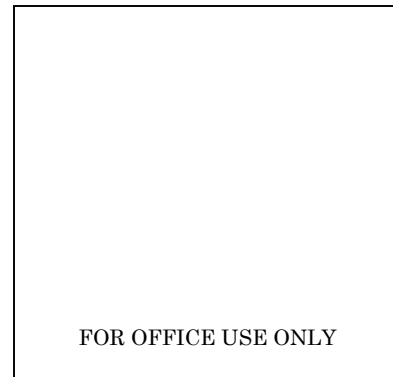
Annual Filing – Due January 15, 2006  
 Period: January 1, 2005 – December 31, 2005

Report #1 Due – August 8, 2006\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006

Report #2 Due – October 31, 2006\*  
 Period: Aug. 4, 2006 – Oct. 26, 2006

Report #3 Due – January 15, 2007 \*/\*\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006

Annual Filing – Due January 15, 2007  
 Period: January 1, 2006 – December 31, 2006



\* These Reports are filed by incumbents/candidates running for office in the 2006 election cycle

\*\*Third Report suffices for 2007 Annual filing if candidate also filed Report Nos. 1 and 2

<b>CONTRIBUTIONS SUMMARY</b>	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
1. Total Monetary Contributions Received in Excess of \$100 (See page 1 of instruction sheet)	\$25900	\$25900
2. Total Monetary Contributions Received of \$100 or Less (See page 2 of instruction sheet)	\$1125	\$1125
3. Total Monetary Contributions in the form of loans guaranteed by a third party (See page 2 of instruction sheet)	0	0
4. Total Monetary Contributions in the form of loans that were forgiven (See page 2 of instruction sheet)	0	0
5. Total Amount of Monetary Contributions Received (Add Lines 1 through 4) (See page 2 of instruction sheet)	\$27025	\$27025

	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
6. Total Amount of Written Commitments for Contributions (When commitment is funded report as contribution (monetary or in kind)	0	0
7. Total Value of In Kind Contributions Received in Excess of \$100 (See page 2 of instruction sheet)	\$825	\$825

**EXPENSES SUMMARY**

8. Total Monetary Expenses Paid in Excess of \$100 (See page 2 of instruction sheet)	\$11796	\$11796
9. Total Monetary Expenses Paid of \$100 or Less (See page 2 of instruction sheet)	\$134	\$134
10. Total Amount of All Monetary Expenses Paid (Add Lines 8 and 9) (See page 2 of instruction sheet)	\$11930	\$11930

11. Total Value of In Kind Expenses in Excess of \$100 (See page 3 of instruction sheet)	0	0
--	---	---

12. Disposition of Unspent Contributions (Only reported on Report #3, Annual Report or 15<sup>th</sup> day of the second month after candidates defeat or incumbent does not run for reelection) (See page 3 of instruction sheet)

CITY OF SPARKS  
OFFICE OF THE CITY CLERK

AUG 08 2006

**AFFIRMATION**

I Declare Under Penalty of Perjury That the Foregoing is True and Correct

/s/ Mike Carrigan	8-7-06
Signature	Date

**CAMPAIGN CONTRIBUTIONS**

**Report Period #1**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100

Transfer Total Amount of All Campaign Contributions to Line 1 of Contributions  
Summary

CONTRIBUTOR'S NAME AND ADDRESS	DATE OF EACH CONTRI- BUTION	AMOUNT OF EACH CONTRI- BUTION	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARANTEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN, IF DIFFERENT THAN CONTRIBUTOR
SEE ATTACHED					

This page may be copied or duplicated if additional space is needed.

**CAMPAIGN CONTRIBUTIONS 2006****(More than \$100)****#1**

	<b>Name</b>	<b>Address</b>	<b>Date</b>	<b>Amount</b>
1.	Gary Chetelat	401 Ringe Rd. Severn, MD	03/01/2006	\$250
2.	Lewis Investment Co	1380 Greg St, Sparks, NV	03/01/2006	\$2000
3.	RHE Trust	PO Box 2578, Reno, NV	05/20/06	\$750
4.	Pick n' Pull	2205 Larkin Circle, Sparks, NV	06/01/06	\$200
5.	AGC/PAC	PO Box 10291, Reno, NV	06/08/06	\$750
6.	Ryten Properties	16062 Woodbridge Ct., Truckee, CA	06/13/06	\$750
7.	Kiley Ranch Communities	201 W. Liberty St., Reno, NV	06/13/06	\$750
8.	Lewis and Roca	3393 Howard Hughes, Las Vegas, NV	06/13/06	\$500
9.	Comm. To Retain Chet Adams	PO Box 536, Sparks, NV	06/19/06	\$200
10.	GMB Realty	5405 Mae Anne Ave., Reno, NV	06/19/06	\$500
11.	Western Nevada Supply	PO Box 1576, Sparks, NV	06/20/06	\$500
12.	Q&D Construction	1050 21 <sup>st</sup> St., Sparks, NV	06/21/06	\$500
13.	Frank Caffaratti	3100 Truckee Lane, Sparks, NV	06/27/06	\$200
14.	Edna Etherton	1109 Harbor Cove Ct., Sparks, NV	06/27/06	\$950
15.	Stonefield	355 Boxington Wy, Sparks, NV	06/28/06	\$300
16.	CFA	1150 Corporate Blvd., Reno, NV	06/29/06	\$500
17.	Olsen & Assoc.	330 Liberty St., Reno, NV	06/29/06	\$500
18.	Solaegui Engineers	715 H St., Sparks, Nv	06/30/06	\$300
19.	RAN	1007 Nevada St., Carson City, NV	06/30/06	\$500
20.	Tropical Car Wash	7690 Deep Bay Dr., Reno, NV	07/05/06	\$1000
21.	Reno/Sparks Realtors	PO Box 70969, Reno, NV	07/07/06	\$2500
22.	RCM	5580 Mill St., Reno, NV	07/12/06	\$250
23.	Lifestyle Homes	PO Box 7548, Reno, NV	07/13/06	\$2500



24.	Dean Foods	3114 South Haskell, Dallas, TX	07/20/05	\$500
25.	Sparks McCarran LLC	PO Box 2888, Del Mar, CA	07/20/06	\$250
26.	D'Andrea Marketplace	PO Box 2888, Del Mar, CA	07/20/05	\$250
27.	Jesse Haw	144 Greenridge Dr., Reno, NV	07/25/06	\$250
28.	Somersett Llc	PO Box 34360, Reno, NV	07/25/06	\$1000
29.	Pacific West Service	8700 Technology Way, Reno, NV	07/25/08	\$500
30.	Northern Nevada Pac	1400 Wedekind Rd., Reno, NV	07/25/06	\$5000
31.	Jeff Codega Planning	433 W. Plumb Lane, Reno, NV	07/25/06	\$250
32.	SWC of Carpenters	501 N. Lamb Blvd, Las Vegas, NV	08/03/06	\$250
33.	Washoe Building Supply	1479 Hymer Ave., Sparks, NV	08/07/06	\$500

**WRITTEN COMMITMENTS**

**Report Period #1**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Written Commitments in Excess of \$100 or, When Added Together from  
One Entity Exceeds \$100

Transfer Total Amount of All Written Commitments to Line 6 of Contributions Summary

NAME AND ADDRESS OF PERSON WHO MADE THE COMMITMENT	DATE OF EACH COMMITMENT	AMOUNT OF EACH COMMITMENT
	N/A	

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**CAMPAIGN EXPENSES****Report Period #**

Name (print)

Office (if applicable)

District (if applicable)

**Expense Categories**

<b>CATEGORIES</b>	<b>CODE</b>
Office expenses	A
Expenses related to volunteers	B
Expenses related to travel	C
Expenses related to advertising	D
Expenses related to paid staff	E
Expenses related to consultants	F
Expenses related to polling	G
Expenses related to special events	H
**Goods and services provided in kind for which money would otherwise have been paid	I
Other miscellaneous expenses	J

\*\*NRS 294A.362 requires "In Kind" contributions and expenses to be reported on a separate form, which is attached.

**CAMPAIGN EXPENSES****Report Period #1**MIKE CARRIGANCITY COUNCILWARD 4

Name (print)

Office (if applicable)

District (if applicable)

Expenses in Excess of \$100

Transfer Total Amount of All Campaign Expenses to Line 8 of Expenses Summary

<b>NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE PAYMENT FOR THE EXPENSE(S)</b>	<b>CATEGORY (See Previous Page) NRS 294A 365</b>	<b>DATE OF EACH EXPENSE</b>	<b>AMOUNT OF EACH EXPENSE</b>
ART ASSOCIATES 5476 RENO CORPORATE DR RENO, NV 89511	D	5-18-06	\$4030
ART ASSOCIATES	D	5-25-06	\$1100
FAST SIGNS RENO NV	D	6-13-06	\$97
ART ASSOCIATES	D	7-13-06	\$2080
ART ASSOCIATES	D	7-26-06	\$3149
U.S. POSTAL SERVICE	D	7-26-06	\$1437
HOME DEPOT SPARKS NV	D	7-27-06	\$37

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## **IN KIND CONTRIBUTIONS AND EXPENSES REPORT**

---

**IN KIND CONTRIBUTION IS DEFINED AS THE VALUE OF SERVICES PROVIDED IN KIND FOR WHICH MONEY WOULD HAVE OTHERWISE BEEN PAID.**

*In kind contributions and expenses include: paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid paraphernalia that was printed or otherwise produced to promote a campaign and the use of paid personnel to assist in a campaign. An in kind contribution may also include but is not limited to goods and services such as billboards, office space, printing, food and beverage and yard signs.*

**The donor of in kind contributions shall furnish to the recipient (candidate or other person), a written statement setting forth the actual cost of those services or the fair market value with 30 days after the time he furnishes those services. (NAC 294A.43)**

**Examples of in kind contributions:** *(1) A person contributes billboard space and does not charge the candidate. The candidate would report the fair market value or actual cost of the billboard space as an in kind contribution; (2) A person pays for the printing cost of political signs for a candidate. The candidate would report the actual cost or fair market value of printing the signs as an in kind contribution.*

**Example of in kind expenses:** *(1) A person contributes the use of a large room to a candidate as an in kind contribution. Once the candidate utilizes the room it becomes an in kind expense to be reported.*

**IN KIND CAMPAIGN CONTRIBUTIONS**

**Report Period #1**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100

Transfer Total Value of All In-Kind Campaign Contributions to Line 7 of Contributions  
Summary

CONTRI- BUTOR'S NAME AND ADDRESS	DATE OF EACH IN-KIND CONTRI- BUTION	DESCRIP- TION OF EACH IN- KIND CONTRI- BUTION	VALUE OR COST OF EACH IN- KIND CONTRI- BUTION COMMIT- MENT	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARAN- TEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN
ART ASSOC. RENO NV	7-13-06	GRAPHIC ARTIST COMPUTER PRODUCTION	\$825			

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**IN KIND WRITTEN COMMITMENTS**

**Report Period #1**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

In-Kind Written Commitments in Excess of \$100 or, When Added Together from  
One Entity Exceeds \$100

Transfer Total Amount of All Written Commitments to Line 6 of Contributions Summary

NAME AND ADDRESS OF PERSON WHO MADE THE IN-KIND COMMITMENT	DATE OF EACH IN-KIND COMMITMENT	AMOUNT OF EACH IN-KIND COMMITMENT
	N/A	

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**IN KIND CAMPAIGN EXPENSES**

**Report Period #1**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**

Expenses in Excess of \$100

Transfer Total Value of All In-Kind Campaign Expenses to Line 11 of Expenses Summary

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE IN KIND GOOD(S) OR SERVICE(S)	DESCRIPTION OF EACH IN KIND EXPENSE	DATE OF EACH IN KIND EXPENSE	VALUE OR COST OF EACH IN KIND EXPENSE
	N/A		

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**CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT** **State of Nevada**

MIKE CARRIGAN CITY COUNCIL WARD 4  
 Name (print) Office (if applicable) District (if applicable)

3393 ALPLAND LANE, SPARKS, NV 626-6509  
 Mailing Address (include city and zip code) Telephone No.

WWCARRIGAN@AOL.COM  
 E-Mail Address

**Select Appropriate Box(es)**     CANDIDATE     PAC     BAG     POL PRTY  
 IND EXP     NONPROFIT CORP     AMENDED     ANNUAL FILING  
 PETITIONERS WHO INITIATE/CIRCULATE PETITION & RECEIVE OR EXPEND FUNDS IN EXCESS OF 10K

- Annual Filing – Due January 15, 2006  
 Period: January 1, 2005 – December 31, 2005
- Report #1 Due – August 8, 2006\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006
- Report #2 Due – October 31, 2006\*  
 Period: Aug. 4, 2006 – Oct. 26, 2006
- Report #3 Due – January 15, 2007 \*/\*\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006
- Annual Filing – Due January 15, 2007  
 Period: January 1, 2006 – December 31, 2006

CITY OF SPARKS  
 OFFICE OF THE CITY  
 CLERK

**OCT 31 2006**

FOR OFFICE USE ONLY

\* These Reports are filed by incumbents/candidates running for office in the 2006 election cycle  
 \*\*Third Report suffices for 2007 Annual filing if candidate also filed Report Nos. 1 and 2

<b>CONTRIBUTIONS SUMMARY</b>	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
1. Total Monetary Contributions Received in Excess of \$100 (See page 1 of instruction sheet)	\$21000	\$46900
2. Total Monetary Contributions Received of \$100 or Less (See page 2 of instruction sheet)	\$375	\$1500
3. Total Monetary Contributions in the form of loans guaranteed by a third party (See page 2 of instruction sheet)	0	0
4. Total Monetary Contributions in the form of loans that were forgiven (See page 2 of instruction sheet)	0	0
5. Total Amount of Monetary Contributions Received (Add Lines 1 through 4) (See page 2 of instruction sheet)	\$21375	\$48400

	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
6. Total Amount of Written Commitments for Contributions (When commitment is funded report as contribution (monetary or in kind)	0	
7. Total Value of In Kind Contributions Received in Excess of \$100 (See page 2 of instruction sheet)	\$0	

**EXPENSES SUMMARY**

8. Total Monetary Expenses Paid in Excess of \$100 (See page 2 of instruction sheet)	\$40406	\$52202
9. Total Monetary Expenses Paid of \$100 or Less (See page 2 of instruction sheet)	\$0	\$134
10. Total Amount of All Monetary Expenses Paid (Add Lines 8 and 9) (See page 2 of instruction sheet)	\$40406	\$52336
11. Total Value of In Kind Expenses in Excess of \$100 (See page 3 of instruction sheet)	0	0
12. Disposition of Unspent Contributions (Only reported on Report #3, Annual Report or 15 <sup>th</sup> day of the second month after candidates defeat or incumbent does not run for reelection) (See page 3 of instruction sheet)		

**AFFIRMATION**

I Declare Under Penalty of Perjury That the Foregoing is True and Correct

    /s/    Mike Carrigan    

Signature

    10-30-06    

Date

**CAMPAIGN CONTRIBUTIONS**

**Report Period #2**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100

Transfer Total Amount of All Campaign Contributions to Line 1 of Contributions  
Summary

CONTRIBUTOR'S NAME AND ADDRESS	DATE OF EACH CONTRI- BUTION	AMOUNT OF EACH CONTRI- BUTION	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARANTEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN, IF DIFFERENT THAN CONTRIBUTOR
See attached					

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**CAMPAIGN CONTRIBUTIONS 2006****(More than \$100)****#2**

---

	<b>Name</b>	<b>Address</b>	<b>Date</b>	<b>Amount</b>
1.	Olympia Land Corp.	Las Vegas, NV	8/29/06	\$2500
2.	Longley Town Center	9460 Double R, Reno, NV	9/02/06	\$1575
3.	SPPC	6100 Neil Road, Reno, NV	9/02/06	\$250
4.	South Meadows Prop	6420 Corporate, Reno, NV	9/10/06	\$2325
5.	Richard Hodges	6410 Zermatt Ct., Reno, NV	9/12/06	\$5000
6.	SW Regional Carpenters	501 Lamb, Las Vegas, NV	9/20/06	\$250
7.	Tanamera LLC	5470 Corporate, Reno, NV	9/22/06	\$1100
8.	Nevada Land Co.	3480 Richards, Carson City	10/04/06	\$500
9.	Vidler Water Co	3480 Richards, Carson City	10/04/06	\$500
10.	Lewis Investment Co	1380 Greg Street, Sparks, NV	10/20/06	\$2000
11.	Peppermill Casino	90 W. Grove St., Reno, NV	10/25/06	\$5000

**WRITTEN COMMITMENTS**

**Report Period #2**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Written Commitments in Excess of \$100 or, When Added Together from  
One Entity Exceeds \$100

Transfer Total Amount of All Written Commitments to Line 6 of Contributions Summary

NAME AND ADDRESS OF PERSON WHO MADE THE COMMITMENT	DATE OF EACH COMMITMENT	AMOUNT OF EACH COMMITMENT
	N/A	

This page may be copied or duplicated if additional space is needed.

**CAMPAIGN EXPENSES****Report Period #2**MIKE CARRIGANCITY COUNCILWARD 4

Name (print)

Office (if applicable)

District (if applicable)

**Expense Categories**

<b>CATEGORIES</b>	<b>CODE</b>
Office expenses	A
Expenses related to volunteers	B
Expenses related to travel	C
Expenses related to advertising	D
Expenses related to paid staff	E
Expenses related to consultants	F
Expenses related to polling	G
Expenses related to special events	H
**Goods and services provided in kind for which money would otherwise have been paid	I
Other miscellaneous expenses	J

\*\*NRS 294A.362 requires "In Kind" contributions and expenses to be reported on a separate form, which is attached.

**CAMPAIGN EXPENSES****Report Period #2**MIKE CARRIGANCITY COUNCILWARD 4

Name (print)

Office (if applicable)

District (if applicable)

Expenses in Excess of \$100

Transfer Total Amount of All Campaign Expenses to Line 8 of Expenses Summary

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE PAYMENT FOR THE EXPENSE(S)	CATEGORY (SEE PREVIOUS PAGE) NRS 294A 365	DATE OF EACH EXPENSE	AMOUNT OF EACH EXPENSE
ART ASSOCIATES 5476 RENO CORPORATE DR RENO NV 89511	D	8-4-06	\$2687
USPS	D	8-4-06	\$1435
ART ASSOCIATES	D	8-11-06	\$255
ART ASSOCIATES	D	10-03-06	\$1960
ART ASSOCIATES	D	10-03-06	\$14894
ART ASSOCIATES	D	10-06-06	\$2035
ART ASSOCIATES	D	10-06-06	\$524
ART ASSOCIATES	D	10-10-06	\$400
ART ASSOCIATES	D	10-12-06	\$3875
USPS	D	10-19-06	\$2768
ART ASSOCIATES	D	10-19-06	\$3335
ART ASSOCIATES	D	10-25-06	\$6238

This page may be copied or duplicated if additional space is needed.

## IN KIND CONTRIBUTIONS AND EXPENSES REPORT

---

**IN KIND CONTRIBUTION IS DEFINED AS THE VALUE OF SERVICES PROVIDED IN KIND FOR WHICH MONEY WOULD HAVE OTHERWISE BEEN PAID.**

*In kind contributions and expenses include: paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid paraphernalia that was printed or otherwise produced to promote a campaign and the use of paid personnel to assist in a campaign. An in kind contribution may also include but is not limited to goods and services such as billboards, office space, printing, food and beverage and yard signs.*

**The donor of in kind contributions shall furnish to the recipient (candidate or other person), a written statement setting forth the actual cost of those services or the fair market value with 30 days after the time he furnishes those services. (NAC 294A.43)**

**Examples of in kind contributions:** *(1) A person contributes billboard space and does not charge the candidate. The candidate would report the fair market value or actual cost of the billboard space as an in kind contribution; (2) A person pays for the printing cost of political signs for a candidate. The candidate would report the actual cost or fair market value of printing the signs as an in kind contribution.*

**Example of in kind expenses:** *(1) A person contributes the use of a large room to a candidate as an in kind contribution. Once the candidate utilizes the room it becomes an in kind expense to be reported.*



**IN KIND CAMPAIGN CONTRIBUTIONS**

**Report Period #2**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100

Transfer Total Value of All In-Kind Campaign Contributions to Line 7 of Contributions  
Summary

CONTRI- BUTOR'S NAME AND ADDRESS	DATE OF EACH IN- KIND CONTRI- BUTION	DESCRIP- TION OF EACH IN- KIND CONTRI- BUTION	VALUE OR COST OF EACH IN- KIND CONTRI- BUTION COMMIT- MENT	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARAN- TEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN
			N/A			

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**IN KIND WRITTEN COMMITMENTS**

**Report Period #2**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

In-Kind Written Commitments in Excess of \$100 or, When Added Together from  
One Entity Exceeds \$100

Transfer Total Amount of All Written Commitments to Line 6 of Contributions Summary

NAME AND ADDRESS OF PERSON WHO MADE THE IN-KIND COMMITMENT	DATE OF EACH IN-KIND COMMITMENT	AMOUNT OF EACH IN-KIND COMMITMENT
	N/A	

This page may be copied or duplicated if additional space is needed.

**IN KIND CAMPAIGN EXPENSES**

**Report Period #2**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**

Expenses in Excess of \$100

Transfer Total Value of All In-Kind Campaign Expenses to Line 11 of Expenses Summary

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE IN KIND GOOD(S) OR SERVICE(S)	DESCRIPTION OF EACH IN KIND EXPENSE	DATE OF EACH IN KIND EXPENSE	VALUE OR COST OF EACH IN KIND EXPENSE
	N/A		

This page may be copied or duplicated if additional space is needed.

**CAMPAIGN CONTRIBUTIONS AND EXPENSES REPORT** **State of Nevada**

MIKE CARRIGAN CITY COUNCIL WARD 4

Name (print) Office (if applicable) District (if applicable)

3393 ALPLAND LANE SPARKS NV 626-6509

Mailing Address (include city and zip code) Telephone No.

WWCARRIGAN@AOL.COM

E-Mail Address

**Select Appropriate Box(es)**    CANDIDATE    PAC    BAG    POL PRTY  
 IND EXP    NONPROFIT CORP    AMENDED    ANNUAL FILING  
 PETITIONERS WHO INITIATE/CIRCULATE PETITION & RECEIVE OR EXPEND FUNDS IN EXCESS OF 10K

Annual Filing – Due January 15, 2006  
 Period: January 1, 2005 – December 31, 2005

Report #1 Due – August 8, 2006\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006

Report #2 Due – October 31, 2006\*  
 Period: Aug. 4, 2006 – Oct. 26, 2006

Report #3 Due – January 15, 2007 \*/\*\*  
 Period: Jan. 1, 2006 – Aug. 3, 2006

Annual Filing – Due January 15, 2007  
 Period: January 1, 2006 – December 31, 2006

CITY OF SPARKS  
 OFFICE OF THE CITY  
 CLERK  
  
 JAN 11 2007  
  
 FOR OFFICE USE ONLY

\* These Reports are filed by incumbents/candidates running for office in the 2006 election cycle

\*\*Third Report suffices for 2007 Annual filing if candidate also filed Report Nos. 1 and 2

<b>CONTRIBUTIONS SUMMARY</b>	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
1. Total Monetary Contributions Received in Excess of \$100 (See page 1 of instruction sheet)	\$1000	\$47900
2. Total Monetary Contributions Received of \$100 or Less (See page 2 of instruction sheet)	0	\$1500
3. Total Monetary Contributions in the form of loans guaranteed by a third party (See page 2 of instruction sheet)	0	0
4. Total Monetary Contributions in the form of loans that were forgiven (See page 2 of instruction sheet)	0	0
5. Total Amount of Monetary Contributions Received (Add Lines 1 through 4) (See page 2 of instruction sheet)	\$1000	\$49400

	<b>This Period</b>	<b>Cumulative From Beginning of Report Period #1 through end of This Reporting Period</b>
6. Total Amount of Written Commitments for Contributions (When commitment is funded report as contribution (monetary or in kind)	0	0
7. Total Value of In Kind Contributions Received in Excess of \$100 (See page 2 of instruction sheet)	\$9000	\$9825

**EXPENSES SUMMARY**

8. Total Monetary Expenses Paid in Excess of \$100 (See page 2 of instruction sheet)	0	\$52202
9. Total Monetary Expenses Paid of \$100 or Less (See page 2 of instruction sheet)	0	\$134
10. Total Amount of All Monetary Expenses Paid (Add Lines 8 and 9) (See page 2 of instruction sheet)	0	\$52336
11. Total Value of In Kind Expenses in Excess of \$100 (See page 3 of instruction sheet)	0	0
12. Disposition of Unspent Contributions (Only reported on Report #3, Annual Report or 15 <sup>th</sup> day of the second month after candidates defeat or incumbent does not run for reelection) (See page 3 of instruction sheet)		\$1494

**AFFIRMATION**

I Declare Under Penalty of Perjury That the Foregoing is True and Correct

    /s/  Mike Carrigan    

Signature

    1-10-07    

Date

**CAMPAIGN CONTRIBUTIONS**

**Report Period #3**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100

Transfer Total Amount of All Campaign Contributions to Line 1 of Contributions  
Summary

CONTRIBUTOR'S NAME AND ADDRESS	DATE OF EACH CONTRI- BUTION	AMOUNT OF EACH CONTRI- BUTION	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARANTEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN, IF DIFFERENT THAN CONTRIBUTOR
RYTEN PROP 16062 WOODBRIDGE TRUCKEE, CA	11-13-06	\$500			
CHARTER COMM ST LOUIS, MO	12-06-06	\$500			

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**WRITTEN COMMITMENTS**

**Report Period #3**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100  
Transfer Total Amount of All Campaign Contributions to Line 1 of Contributions  
Summary

NAME AND ADDRESS OF PERSON WHO MADE THE COMMITMENT	DATE OF EACH COMMITMENT	AMOUNT OF EACH COMMITMENT
	N/A	

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**CAMPAIGN EXPENSES****Report Period #3**MIKE CARRIGANCITY COUNCILWARD 4

Name (print)

Office (if applicable)

District (if applicable)

**Expense Categories**

<b>CATEGORIES</b>	<b>CODE</b>
Office expenses	A
Expenses related to volunteers	B
Expenses related to travel	C
Expenses related to advertising	D
Expenses related to paid staff	E
Expenses related to consultants	F
Expenses related to polling	G
Expenses related to special events	H
**Goods and services provided in kind for which money would otherwise have been paid	I
Other miscellaneous expenses	J

\*\*NRS 294A.362 requires "In Kind" contributions and expenses to be reported on a separate form, which is attached.



**CAMPAIGN EXPENSES**

**Report Period #3**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

Expenses in Excess of \$100

Transfer Total Amount of All Campaign Expenses to Line 8 of Expenses Summary

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE PAYMENT FOR THE EXPENSE(S)	CATEGORY (SEE PREVIOUS PAGE) NRS 294A 365	DATE OF EACH EXPENSE	AMOUNT OF EACH EXPENSE
	N/A		

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## IN KIND CONTRIBUTIONS AND EXPENSES REPORT

**IN KIND CONTRIBUTION IS DEFINED AS THE VALUE OF SERVICES PROVIDED IN KIND FOR WHICH MONEY WOULD HAVE OTHERWISE BEEN PAID.**

*In kind contributions and expenses include: paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid paraphernalia that was printed or otherwise produced to promote a campaign and the use of paid personnel to assist in a campaign. An in kind contribution may also include but is not limited to goods and services such as billboards, office space, printing, food and beverage and yard signs.*

**The donor of in kind contributions shall furnish to the recipient (candidate or other person), a written statement setting forth the actual cost of those services or the fair market value with 30 days after the time he furnishes those services. (NAC 294A.43)**

**Examples of in kind contributions:** *(1) A person contributes billboard space and does not charge the candidate. The candidate would report the fair market value or actual cost of the billboard space as an in kind contribution; (2) A person pays for the printing cost of political signs for a candidate. The candidate would report the actual cost or fair market value of printing the signs as an in kind contribution.*

**Example of in kind expenses:** *(1) A person contributes the use of a large room to a candidate as an in kind contribution. Once the candidate utilizes the room it becomes an in kind expense to be reported.*

**IN KIND CAMPAIGN CONTRIBUTIONS****Report Period #3**MIKE CARRIGANCITY COUNCILWARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**Contributions in Excess of \$100 or, When Added Together from  
One Contributor Exceeds \$100Transfer Total Value of All In-Kind Campaign Contributions to Line 7 of Contributions  
Summary

CONTRI- BUTOR'S NAME AND ADDRESS	DATE OF EACH IN- KIND CONTRI- BUTION	DESCRIP- TION OF EACH IN- KIND CONTRI- BUTION	VALUE OR COST OF EACH IN- KIND CONTRI- BUTION COMMIT- MENT	CHECK HERE IF LOAN	NAME AND ADDRESS OF 3 <sup>RD</sup> PARTY IF LOAN GUARAN- TEED BY 3 <sup>RD</sup> PARTY	NAME AND ADDRESS OF PERSON WHO FORGAVE THE LOAN
ART ASSOC. RENO, NV	8-4-06	CONSULTING SERVICES	\$900			
"	9-27-06	"	"			
"	9-28-06	"	"			
"	10-9-06	"	"			
"	10-12-06	"	"			
"	10-13-06	"	"			
"	10-19-06	"	"			
"	10-23-06	"	"			
"	10-31-06	"	"			
"	11-02-06	"	"			

**IN KIND WRITTEN COMMITMENTS**

**Report Period #3**

MIKE CARRIGAN

CITY COUNCIL

Name (print)

Office (if applicable)

District (if applicable)

In-Kind Written Commitments in Excess of \$100 or, When Added Together from One Entity Exceeds \$100

Transfer Total Amount of All Written Commitments to Line 6 of Contributions Summary

NAME AND ADDRESS OF PERSON WHO MADE THE IN-KIND COMMITMENT	DATE OF EACH IN-KIND COMMITMENT	AMOUNT OF EACH IN-KIND COMMITMENT
	N/A	

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**IN KIND CAMPAIGN EXPENSES**

**Report Period #3**

MIKE CARRIGAN

CITY COUNCIL

WARD 4

Name (print)

Office (if applicable)

District (if applicable)

**IN KIND**

Expenses in Excess of \$100

Transfer Total Value of All In-Kind Campaign Expenses to Line 11 of Expenses Summary

NAME AND ADDRESS OF PERSON, GROUP OR ORGANIZATION WHO RECEIVED THE IN KIND GOOD(S) OR SERVICE(S)	DESCRIPTION OF EACH IN KIND EXPENSE	DATE OF EACH IN KIND EXPENSE	VALUE OR COST OF EACH IN KIND EXPENSE
	N/A		

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BEFORE THE NEVADA COMMISSION ON  
ETHICS

-oOo-

OPEN SESSION

Opinion Requests: 06-61, 06-62, 06-66, 06-68

WEDNESDAY, AUGUST 29, 2007

Legislative Building  
401 S. Carson Street, Room 3138  
Carson City, Nevada

Reported by: ERIC V. NELSON, CCR 57, RPR, CM

A P P E A R A N C E S

COMMISSION MEMBERS PRESENT

MARK HUTCHISON, Vice Chairman

TIMOTHY CASHMAN

WILLIAM FLANGAS

RANDALL CAPURRO

CAREN JENKINS

RICK HSU

\* \* \* \*

CARSON CITY, NEVADA,  
WEDNESDAY, AUGUST 29, 2007

9:32 A.M.

-oOo-

2. Open session to hear testimony, receive evidence, deliberate and render an opinion relating to Requests for Opinion submitted pursuant to NRS 281.511(2)(b), alleging that certain conduct of Michael Carrigan, Councilman, City of Sparks, violated the provisions of NRS 281.501(2), NRS 281.501(4), and NRS 281.481(2).

[4] VICE CHAIRMAN HUTCHISON: The next agenda item will be Agenda Item No. 2. This is an open session to hear testimony, receive evidence, deliberate and render an opinion relating to Requests for Opinions submitted pursuant to NRS 281.511 subsection (2)(b), alleging that certain conduct of Michael Carrigan, Councilman, City of Sparks, violated the provisions of NRS 281.501 subsection (2), NRS 281.501 subsection (4), and NRS 281.481 subsection (2).

Are there any disclosures to be made prior to moving forward with this agenda item?  
Commissioner Cashman.

COMMISSIONER CASHMAN: Thank you, Mr. Chairman. I do have a disclosure to make.

In reviewing the material for today's hearings, I discovered that Summerset, LLC, made a contribution to Mr. Carrigan in the amount of a

thousand [5] dollars in August of 2006. I'm a 12 percent owner in that real estate company and on its board of managers.

As such the board of managers provides strategic guidance to the company on a quarterly basis and does not involve ourselves in the company's day-to-day management.

Summerset, LLC, is directed on a daily basis by its managing partner who makes all the decisions relating to political contributions of the company. I have never met Mr. Carrigan, and I do not have any relationship with him either personally or professionally.

I have carefully reviewed these facts and feel that my consideration of this case will not be materially affected in any way and I can objectively rule on the merits without prejudice.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Cashman. Further disclosures?

COMMISSIONER HSU: Mr. Chair.

VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

COMMISSIONER HSU: Yes. I have never met Mr. Carrigan, do not know him personally, either, but I do have a disclosure to make.

As an attorney, I was involved in litigation involving a witness in this case, Carlos Vasquez, I think it was in 2005. I had brought litigation on behalf of [6] his father, Carlos Vasquez's father, Laurie Vasquez, and the litigation was against Art



Associates and Electrographics, which were two businesses that his father used to own. The litigation concerned his father's sale of stock back to those companies, and at the time both companies were controlled by Carlos Vasquez. That litigation was resolved quickly. I no longer represent his father on that.

Subsequent to that I found out that after the dispute, that Carlos Vasquez has apparently hired one of my law partners, Kurt Hunsberger, to do legal work for him, estate planning and corporate work. Kurt Hunsberger, I talked to him yesterday, he has not provided any legal advice on matters relating to the Lazy 8 project or any campaign work performed by Mr. Vasquez.

Under my firm's compensation arrangement, I do not share any fees that Carlos Vasquez would pay to my firm. My salary neither increases nor decreases if Carlos Vasquez pays my firm for any legal work that they provide. And again, I'm not involved in any of that kind of legal work that Kurt Hunsberger is doing.

I have looked at this pretty closely. I don't have any pecuniary interest in the outcome of the case. I do not believe the independence of judgment of a reasonable person in my situation would be materially [7] affected by my law firm's commitment to a witness in this case, Carlos Vasquez, regarding his estate planning and corporate matters. I think I can remain impartial.

I do think that Mr. Carrigan should have an opportunity if he wants to object to my service on

this Commission today, and I will not hold that against him if he does. I will certainly -- if he does want to do a motion to disqualify and this Commission agrees to disqualify me, that's fine, too. I can sit out, and I brought my laptop, I can do some other work.

So that being said, this is a fairly long-winded disclosure, but I do believe I could sit in and will respect the Commission if it decides otherwise. Thank you.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Hsu.

Mr. Carrigan and counsel, would you like to come up for just a minute? We can address the disclosures, disclosure matters. Both Commissioner Cashman and Commissioner Hsu have made disclosures, and both I believe intend to proceed with participation on the Commission's decisions today. And the question now before you is, do you have any objection to either Commissioner Cashman or Commissioner Hsu proceeding with their participation here.

[8] MR. THORNLEY: No, Mr. Vice chairman, we have no such objections.

VICE CHAIRMAN HUTCHISON: Counsel, can you identify yourself for the record, please?

MR. THORNLEY: My name is Doug Thornley.

VICE CHAIRMAN HUTCHISON: Doug Thornley?

MR. THORNLEY: Yes, sir.

VICE CHAIRMAN HUTCHISON: Thank you, Mr. Thornley.

MR. CREEKMAN: Mr. Vice chair, I'm David Creekman.

VICE CHAIRMAN HUTCHISON: Mr. Creekman.

MR. CREEKMAN: C-r-e-e-k-m-a-n.

VICE CHAIRMAN HUTCHISON: I know who you are.

MR. CARRIGAN: And I'm Mike Carrigan.

VICE CHAIRMAN HUTCHISON: All right. Thank you, Councilman. And Mr. Thornley, will you be representing Mr. Carrigan today along with Mr. Creekman, or is Mr. Creekman here more in the capacity as a representative and counsel for the City?

MR. THORNLEY: Mr. Vice Chair, you are correct with your first statement, we will both be representing Mr. Carrigan today.

VICE CHAIRMAN HUTCHISON: Okay. All right. Let me explain to you the process today that the [9] Commission will pursue. This will be an administrative hearing. A lot of us are trial lawyers, and perhaps those of you in the audience have seen courtroom drama play out, and there is all kinds of rules in the courtroom that don't necessarily apply here. The rules of evidence are much more relaxed and it is a more give and take I think relaxed atmosphere.

But there are still order that will be followed and protocol that will be followed as well as rules that will be followed. But we're not necessarily following the rules of evidence and civil procedures as we would in a trial.

Mr. Thornley, you will have an opportunity to make an opening statement if you'd like, sir. After your opening statement, if you choose to make one, then as the Chair I will call the witnesses, and the members of the Commission will have an opportunity then to question those witnesses. Once we have concluded our questioning, then, Mr. Thornley or Mr. Creekman, you can cross-examine the witnesses if you'd like. You then, after you have had an opportunity to cross-examine and the Commission has had an opportunity to examine witnesses that the Commission will call, then counsel for Mr. Carrigan will have an opportunity to call any witnesses that haven't already testified, if you wish.

[10] Following the witnesses's testimony, I will then close the testimonial portion of the hearing, and then I'll call for deliberation of the various Commission members.

Following our deliberations we will then call for votes on each of the alleged violations and the Commission will render its opinion on the issue of whether Mr. Carrigan violated any of the statutes involved in this hearing. A written opinion will be published and provided to Mr. Carrigan and his attorneys, and Mr. Carrigan has the right to subsequently request judicial review of the opinions

under the provisions of NRS Chapter 233B if he so chooses.

Are there any questions, counsel or Mr. Carrigan, about the proceedings today?

MR. THORNLEY: Mr. Vice Chair, before we get started, will we have an opportunity to discuss the motion to dismiss that was filed with your Commission?

VICE CHAIRMAN HUTCHISON: Yes, you will. Matter of fact, we can take up the motion in just a minute. I wanted to get to a couple of other items including stipulated facts that you had presented as well before we begin opening statements.

Why don't we go ahead and swear in the witnesses who will be presented today, and then we can [11] take those witnesses into the room and wait their testimony prior to counsel's opening statement. Is that the way that we should proceed, counsel?

MS. FRALICK: Yes, it is.

VICE CHAIRMAN HUTCHISON: Okay. I know that there are two witnesses who will be called today, Mr. Carrigan and Mr. Vasquez will be called by the Commission. I know that there will be Ms. Beth Cooney and Jeannie Adams will be called on behalf of Mr. Carrigan. So if those four witnesses could stand and be sworn in.

MR. THORNLEY: Mr. Vice Chair.

VICE CHAIRMAN HUTCHISON: Yes.

MR. THORNLEY: There are two more witnesses to be called by Mr. Carrigan.

VICE CHAIRMAN HUTCHISON: Please tell me who they are.

MR. THORNLEY: Mr. James Valline.

VICE CHAIRMAN HUTCHISON: I have it right here. James Valline and also James deProsse. So we have six witnesses then. And do we usually swear these all in together or individually?

Can you all six -- and I just want to make sure all six are in the room. Mr. Carrigan as well. Thank you. So we have all six of our witnesses. Can you [12] all please raise your right hand and be sworn in by the court reporter.

(Six witnesses sworn.)

VICE CHAIRMAN HUTCHISON: Thank you. Now we'd like to have the witnesses who will testify just wait in the room next door, and we will call you as your testimony is needed. Thank you so much.

(Witnesses excluded except for Mr. Carrigan.)

VICE CHAIRMAN HUTCHISON: We will take up the motion to dismiss. Mr. Thornley, I have had a chance to review this motion carefully. I think that there are many points that are made that are well taken and they present a lot of issues that the Commission I think needs to address after hearing testimony, and I think that once we conclude our testimony as well as our deliberations, we have dealt with all the issues that you raise in your brief, and I think in the interests of fairness and equity we will proceed with the hearings, we will hear testimony on that, and then we will render our decision.

If you still think that there are outstanding issues that we haven't hit, you can certainly bring it to my attention, but I believe we will hit them all, counsel, during the course of our deliberations. Therefore, I'm going to deny the motion at this point and allow the Commission to hear the evidence and then render [13] its decision.

MR. THORNLEY: Thank you, Mr. Vice Chair.

VICE CHAIRMAN HUTCHISON: You are welcome.

Now we have stipulated facts that were presented. Ms. Fralick, I believe that these are stipulated facts that are presented by Mr. Carrigan's counsel; is that correct?

MS. FRALICK: That is correct, Mr. Vice Chair.

VICE CHAIRMAN HUTCHISON: Has the Commission had a chance to take a look at the stipulated facts? I'll give you my thoughts about them, and I'm certainly happy to entertain any other thoughts that any of the members of the Commission may have.

I think that some of these facts are easily established and stipulated to, and we appreciate the expediency with which the hearing will progress if we do stipulate to some of these facts. Facts 10, counsel, 10, 11, 12, 13, 14 and 15 seem to be facts that are not really stipulated facts, facts that really require a factual analysis and the application of the relevant statutes and law to those facts. In addition, I don't believe that we have jurisdiction over

stipulated fact number 11 concerning reported campaign contributions.

So those are my thoughts. I'd certainly like [14] to hear any of the thoughts from the other Commission members concerning the acceptance of these stipulated facts. Any other Commissioners want to chime in? If not, then let me tell you what I suggest.

COMMISSIONER JENKINS: Did you include 10?

VICE CHAIRMAN HUTCHISON: I included 10 in my list of things that I think are questions of law and fact that we probably can't stipulate to.

Let me tell you what I think we can stipulate to, and Commissioners, you can tell me if you disagree. I think we can stipulate to 1 through 9, and we can stipulate to 6.

COMMISSIONER JENKINS: 16.

VICE CHAIRMAN HUTCHISON: Excuse me. 16 and 17.

COMMISSIONER JENKINS: So moved.

VICE CHAIRMAN HUTCHISON: Anybody second that motion to accept the stipulated facts, stipulated facts 1 through 9 and 16 and 17 as presented by counsel for Mr. Carrigan?

COMMISSIONER HSU: Second that.

VICE CHAIRMAN HUTCHISON: Seconded by Commissioner Hsu. Any discussion on the motion?

Let's go ahead and call for a vote. All those in favor say aye. Any opposed?



[15] (Whereupon, the motion was put to a vote and carried unanimously.)

MR. CASHMAN:	Aye.
MR. FLANGAS:	Aye.
MR. CAPURRO:	Aye.
MR. HSU:	Aye.
MS. JENKINS:	Aye.
MR. HUTCHISON:	Aye.

VICE CHAIRMAN HUTCHISON: All right. So for the record then, the facts as I have outlined them are stipulated. Facts 10, 11, 12, 13, 14 and 15 are not.

Let's see if we can get on the same page here and sort of focus our issues and our efforts here today and be as efficient as we can. We want to give everybody a full opportunity to be heard, examine the witnesses, really air these issues, and make sure that everybody feels like the process is fair and we have had a full opportunity to engage in the process and be heard completely.

The first issue that is before the Commission deals with NRS 281.481 subsection (2), and really a way to define that issue is did Councilman Carrigan use his official position to secure or grant unwarranted privileges, preferences or advantages for himself or a person to whom he has a commitment in a private capacity to the interests of that person when he voted on the Lazy 8 matter.

The second major issue before the Commission [16] deals with NRS 281.501 subsection (4), and that issue can be expressed, is Councilman Carrigan's

relationship with Mr. Vasquez a relationship enumerated in NRS 281.501(8). If so, did Councilman Carrigan fail to sufficiently disclose his relationship.

The third issue before the Commission deals with NRS 281.501 subsection (2), and that is should Councilman Carrigan have abstained from acting on or voting on the Lazy 8 matter.

And those are really the three major issues. I know that there will be sub points, sub issues, different permutations raised during the course of this hearing. But, counsel, would you agree that those are the major issues that we're dealing with in this case?

MR. THORNLEY: Yes, Mr. Vice chairman, I will.

VICE CHAIRMAN HUTCHISON: Thank you, counsel.

All right. We're going to go ahead and call our first witness on behalf of the Commission, unless I need to do anything else, counsel.

MS. FRALICK: Mr. Vice Chair, if you would like to have Mr. Thornley's opening statement at this point before we call the witnesses.

VICE CHAIRMAN HUTCHISON: Thank you. I forgot all about that. Mr. Thornley, will you please [17] provide us with your opening statement if you wish.

MR. THORNLEY: Thank you, Mr. Vice Chair. Good morning, Commissioners.

VICE CHAIRMAN HUTCHISON: Good morning.

MR. THORNLEY: As you know, Councilman Carrigan has been accused of violating three provisions of Nevada Ethics in Government law. But what you may not know is why the ethics complaints were filed in the first place. If you think the politics on a national stage are ugly, then you have never played ball at the local level.

Today you will hear testimony that Councilman Carrigan has committed no violation of NRS 281.481 sub (2), 281.501 sub (2), or 281.501 sub (4). You will learn that the complaints filed in this matter were an orchestrated political vendetta mounted by individuals and interests unhappy with Councilman Carrigan's position on the Lazy 8 project and exacerbated by Councilman Carrigan's recent reelection which demonstrates the City of Sparks apparent satisfaction with his representation.

At the conclusion of this proceeding I'll come back to you and together we will apply the facts of this case to the law in question. The overwhelming and undisputed evidence will show that absolutely no violation of Nevada's Ethics in Government law occurred in this case. Councilman Carrigan's role in government [18] is to provide a voice to the people he represents. That's what happened here and that's what the citizens of Sparks hope continues to happen. Thank you.

VICE CHAIRMAN HUTCHISON: Thank you very much, counsel. We will go ahead and have the

Commission call its first witness, which is Michael Carrigan.

MICHAEL CARRIGAN

called as a witness,  
was examined and testified as follows:

EXAMINATION

VICE CHAIRMAN HUTCHISON:

Q Mr. Carrigan, you have already been sworn in as a witness in this case. Each of the Commissioners will either ask you questions or not ask you questions sort of depending on what their feel of the facts is like and what issues that they have and what questions they have in mind.

I think first just sort of as an overview, I would like to ask you some questions, and I'm sure my fellow Commissioners will get into much more detail. But as you know, the heart of this matter is really going to get to your relationship with Mr. Vasquez.

Am I pronouncing that correctly?

A Vasquez.

Q Vasquez. Mr. Vasquez, and the extent of that relationship, how long lasting its been, the financial aspect of that relationship, the political aspect of that [19] relationship, the business aspect of that relationship. So I'd like to try to just get that out initially --

A Okay.

Q -- by asking you a series of questions now that you know where I'm going. Let's talk first about the

personal relationship or the friendship relationship or the family relationship that you have, that your wife has, that your family has with Mr. Vasquez and his spouse and his family. Just give me an overview there, please.

A Sure. 1991 I got stationed in NES Fallon, and my wife is a schoolteacher by trade. She got a job teaching with Carlos's wife. She team taught. That is when they first met. That is when I first met Carlos. That would have been probably October of 1991.

Q Okay. Now so the relationship with your families began with your spouses?

A Yes.

Q They team taught and that relationship started about in October of 1991?

A Correct.

Q And did that relationship with your spouses, to your knowledge, also involve social aspects or was it at that time, sort of focusing on October 1991, that [20] early time frame, was it pretty much they were team teaching and that was their relationship?

A Yes. They have gone of course to some of the school functions together. But that's how it started off is they were teaching together.

Q Did it progress then where they began to socialize, become more friends outside of the classroom and professional environment?

A I would say yeah, they became pretty good friends. They team taught. You are going to become

good friends or you are not going to get along very well when you are teaching.

Q When would you say that that friendship began to materialize beyond just simply being acquainted with each other and professionals in the classroom and really moved on and became good friends outside of the classroom? When did that begin?

A You know, I couldn't give you a time frame on that. I could just say it evolved into that they were friends.

Q Okay. And then did there come a time then when you began to be friends or become acquainted with Mr. Vasquez?

A Yeah. Usually what happened is that they had a Christmas party or something. Most of the spouses were [21] in the education field. I was in the military. Carlos was not in the education. So we kind of stayed together because the other people ignored us. If you have anybody that's in teaching, you know what I'm talking about. We kind of started talking.

Basically I was still in the military at the time, and he told me that he was in -- he ran campaigns, and offhandedly one time, and this was a long time ago, he said if you ever want to run for public office, give me a call because that is what I do for a living. And I'm sure he's regretting that I called him in 1999.

Q Now when do you recall first actually becoming acquainted then with Mr. Vasquez?

A I remember exactly, it was at the first Christmas party.

Q Would that have been in December of '91?

A 1991.

Q And then you continued to be acquaintances ever since December of 1991 and then that turned into more of a friendship?

A Yeah. It was kind of odd. The only time I ever saw him was at a school function.

Q Okay. So if there was a party, a gathering, open houses, whatever it was, you ran into each other?

A Generally he and I tried to stay away from those, but every once in a while we got lassoed into [22] going, and we kind of commiserated together in the corner.

Q Tell me when that relationship changed in any way from beyond commiserating with each other in the corner at these functions to something more than that?

A I think in 1999 when I asked him to run my first campaign, he became my campaign manager.

Q And what were you running for in 1991 -- 1999?

A 1999 I ran for Council Ward 4 in Sparks. That was my first election.

Q Were you successful?

A Yes.

Q All right. And can you tell me what type of an involvement you guys had as a campaign manager and as a candidate during the course of that 1999 run?

A I was a rookie. I had never run for political office. I retired out of the military in 1992. And so the city councilwoman who had that position decided not to run again, and I was complaining, and my wife said, quit complaining and run if you want to. So I called Carlos up and said, hey, remember in 1991 you said you could run a campaign, would you like to help me.

And he said, okay, let's do it. And I was probably -- there were seven people running, and I was the [23] biggest dark horse out of the seven.

Q And was Mr. Vasquez instrumental, in your view, in getting you elected?

A Yes.

Q Why?

A Because he is a good campaign manager.

Q And being a good campaign manager, what did he do to help get you elected with your experience with him in 1999?

A It was strategy, basically. Political strategy on what to do.

Q I want to stay with -- I want to take them in segments here. The 1999, he is your campaign manager, you are a dark horse, nobody gives you a shot. He's a very good campaign manager, good



strategy, good comments and good thoughts about how to win elections?

A Yes.

Q And in fact, you go on and win the election?

A I do.

Q Now how long does that campaign take where you are involved with each other on I'm sure a regular basis during that campaign?

A In 1999 Sparks elections were in the summer. We changed that a couple years ago because we want to go [24] in November with everybody else, because number one, it was cheaper for our citizens, and number two, we wanted a better turnout. So our elections were in June. We usually started probably April. So I would say April, May and June. So three months.

And at that time in 1999, it was a very small election. I mean, in other words, it was just the City of Sparks, there were no national issues and there were no other elections on the ballot.

Q It was a very parochial election?

A Exactly.

Q I want to stay with the 1999 time frame. Let me shift you now. Did Mr. Vasquez or his spouse or anybody that you know he controlled or directed do any more work for your campaign?

A No.

Q Did they provide any in-kind contributions in that 1999 time frame?

A You mean for the election?

Q For the election, either him or spouse or people he controlled or knew?

A Yes.

Q Can you describe those, please?

A Basically they were consultation. So we in kind the consultation fees. In other words, he told me [25] how much he generally charged other people, and we wrote that in as a campaign contribution.

Q As an in-kind contribution?

A Yes. Everything that he did for me in 1999 was in-kind. There were no money, he didn't --

Q No contributions?

A No. As a matter of fact, I financed my first election about 90 percent out of my own pocket.

Q So your testimony is then in 1999 the only contribution that Mr. Vasquez made to your campaign was in-kind consultation as you described as your campaign manager?

A Correct. And to go on to our spouses, his wife had quit the school district by that time because she was pregnant and had a child. So our two spouses didn't have any other formal I guess working relationship.

Q To your knowledge, did your wife's friendship with Mr. Vasquez's wife continue from October 1991 to the present?

A Sure, they call each other on the phone. As far as going out, no, they didn't do much. She was raising two children. So they didn't get out very much. Mrs. Vasquez didn't get out very much. It was still a phone call. They are professionals, and they would talk [26] about educational issues probably. I'd define it as on a professional level after that.

Q Now can you give us a period of time when they were more social-type friends?

A You know, I would have to say from '91 to whatever. You can ask Carlos when his wife quit because I'm not sure exactly of the date. But I would say while they were teaching they did go out on a few things.

Q But you know she quit before the '99 campaign?

A You know, I'm guessing. I think she did. I'm trying to remember. Their child is 12 years old. So I think so.

Q Okay.

A So if you back that up, I guess it would have been '93 maybe when she quit, I think. But you can ask Carlos.

Q Now any other contributions, efforts towards your campaign you can think of in 1999 that relates to Mr. Vasquez or his family or those that he had influence over?

A Everything that -- all the in-kind was noted on my campaign disclosure report in 1999.

Q Now let's move forward then. When do you next -- well, let me ask you: After the campaign, I'm [27] sure you are happy you are elected; correct?

A Correct.

Q Now what is your relationship like with Mr. Vasquez after 1999, immediately after the 1999 elections?

A Then our relationship got closer because he was my campaign manager. So at times I would ask him for political advice.

Q And this was after the '99 campaign, before the next campaign, you are close, you are good friends, you are asking him for some political advice as you are going through issues or matters as a city councilman?

A Correct.

Q Now when do you run again, what year?

A 2003. Once again it is a June election.

Q So walk us again through that process in terms of Mr. Vasquez's relationship with you in that process.

A I asked him again. I said I'm going to run for re-election, would you run my campaign, and he said, I sure will. So we started about three months before the election. And I have to point out that in 1999 I won by 41 votes.

Q In 1999 you won by 41 votes?

A In 1999 I won for 41 votes. In 2003 I won by [28] 65 percent to 35 percent.

Q So a big improvement?

A It was a very big improvement. But I bring that up because I think later on you know, the people seem to like the job I was doing.

Q Fair enough. So he continued to do the same type of things that he did for you in '99. He is a good campaign manager, he gets you good, astute, political advice, you take it up, you win, win big this time and you are happy?

A I'm very happy.

Q Now let's move to the contributions that he made or his spouse made or anybody that you know that he had influence over during the 2003 campaign season.

A Once again no money. But he did have consultations with me, and you don't really have to disclose that because, I mean, a meeting is a meeting, but we did because I like everything to be on board. I didn't want anybody to say you didn't disclose it.

So we have disclosed, and I can't remember what the in-kind disclosure was as far as how much it was. I really don't remember that one. And I think you have that.

Q We have all that information, right. But again, there was, as far as contributions, there was the [29] in-kind consultation as political advisor, campaign manager; correct?

A Correct.

Q No money, though, in 2003?

A No money. And I didn't have to put any of my own money into that race.

Q You were supported by campaign contributions?

A Yes.

Q Now what about his -- what about Mr. Vasquez's spouse or those that he knew that he had influence over or asked to contribute to you, did anybody that you know contribute to you financially or in kind to that 2003 campaign as a result of Mr. Vasquez's efforts?

A From his family?

Q Or from his friends or people he had influence over.

A I know that his family, it was only in kind from Carlos for his consultation services, and then I disclosed everybody else. And if he went and said, hey, Carrigan is a good guy, contribute to his campaign, I don't know who he did that to. Because they usually don't come up to me and say that. They say we would like to support your campaign and here is a contribution.

Q Right. In 2003, did you consider Mr. Vasquez's solicitation of campaign contributions to be [30] part of his job duties as your campaign manager?

A Yes.

Q Is the same true in 1999?

A Yes.

Q Now, 2003 election concludes, you have won big, you are even happier now. Now describe -- by the way, you spent three months again with him?

A About three months.

Q About three months during the campaign season with him? Now describe your relationship immediately following the 2003 election.

A It was the same as from 1999, the 2003. He was my campaign manager, he is a good political strategist. We became friends, and I asked him for advice, if I needed some advice, and we went out to dinner, and he became a good friend.

Q So similar type of relationship that you described following your 1999 campaign?

A Yes.

Q I mean, you are good friends, he's a trusted political confidante, a personal confidante that you seek for political advice and understanding; right?

A Yes.

Q You are social, have dinner together, you continue to socialize?

[31] A Correct.

Q Now during that time do your wives also socialize with you at dinner?

A No. At that time, no. She was still home with -- Mrs. Vasquez was still home with her children. So their relationship kind of parted ways. I mean, they still stayed friends, but it was more of a phone call, that type of thing.

Q Now when did you run again?

A 2006. We switched our election from June to November. So my term was only three and-a-half years.

Q Can you describe, please, your relationship with Mr. Vasquez during that 2006 campaign?

A Once again I asked him to be my campaign manager and he said yes. And this election is a little longer. This is the first time I had been in the deep end of the pool. We were running in a November election. There was everybody and their brother was running during the same election.

So the election season is a little bit longer, and since they moved the primary back to August, we had to start strategizing a little bit earlier. So it was longer than three months from that time. When did we start? February, January or February, something like that probably.

[32] Q So how many months would you estimate during the 2006 time period you were spending in close communication and work with Mr. Vasquez?

A Six months probably, I'd say. Give or take a month or two.

Q Now you were re-elected?

A Yes.

Q So you were happy about that?

A Yeah. I was very happy with this election because it got to be a very contentious election.

Q Why was that?



A Because one of the power brokers in Sparks, John Asquaga's Nugget, didn't like what I was doing as the City Councilman and basically went out and recruited, tried to recruit people to run against me and finally found one and poured a lot of money into the campaign, and basically they ran a campaign on one thing and that was a project that was in my ward. So he came out, my opponent came out against the project. I had voted for the project. And that was the biggest issue for the whole entire campaign.

Q During the 2006 election did the Lazy 8 project come up at all as a campaign issue?

A That was the campaign issue. My opponent came in front of us in the meeting that we were voting on [33] the Lazy 8 and basically said that 70 percent of the people in Sparks had told him that they didn't want the Lazy 8. That worried me.

Because I had the luxury this time of knocking on doors because I was running for election. A lot of times when you are voting on issues you can't talk to all your constituency. This time I could and I was knocking on doors. I knocked on 2500 doors with my wife. How do I know that? Because we made up 2500 fliers, and when they ran out, I was done.

Only one family said they didn't support the Lazy 8. So when I heard that I said, well, my constituency wants this. And I don't know where my opponent is coming from because his numbers were completely different than mine.

So yes, that whole campaign was run on one project. Now I have to tell you that I won that

election by 62 percent, 62 to 38. So it was a little bit closer to what I had thought than what my opponent had thought.

In other words, that campaign was strictly on one thing. If the citizens of Sparks didn't want that Lazy 8, they knew where I stood on it, I wouldn't be here. And the interesting thing is that a city councilwoman that did vote for the project got voted out of office -- or didn't vote for the project, got voted out of office.

[34] Q So your testimony, Councilman, is that the 2006 election really was a referendum on the Lazy 8 project?

A I didn't want to make it that, but my opponent did, and so that's where it went. And when he came out and was supporting against the casino, then he shifted the whole paradigm of the election, and that's all anybody wanted to talk about. They didn't want to talk about anything else. So I would have to classify it as yes, that was pretty much the whole election.

Q Now staying with our pattern here, can you talk about any contributions that Mr. Vasquez made during the course of the 2006 campaign, please?

A I remember all of these now because he gave in kind of about \$875 for a logo. In other words, his firm designed a new logo, because instead of saying Elect Mike Carrigan, it was Retain Mike Carrigan. We had to switch over to a new logo. So his advertising agency did that, and so we marked that down as in kind.

And then once again, it was all consultation fees and that was listed as in kind. So that was all I got from Carlos or anybody in his family or any of his businesses was only in kind.

And wasn't anything tangible either. In [35] other words, they didn't give me billboards or they didn't give me anything else. It was strictly advice, and once again, we didn't have to do that but I wanted to put it down.

Q During the 2006 campaign did your campaign pay Mr. Vasquez's ad agency?

A If you see in my campaign disclosure report that I wrote about \$46,000 worth of checks to Carlos's ad agency, but that was a pass through fee. In other words, we had -- this is the first time we had to go on TV, and if any of you have ever seen a campaign, it is very expensive. So they would buy TV time, and I would write the check to his company, and his company would write the check to whatever the outlet was.

So in other words, he didn't charge any kind of a commission fee or anything. It was all that money was a pass through. In other words, I wrote him a check for whatever it was, and he passed it through to the whatever agency needed to get paid.

Q How do you know that?

A How do I know he did it?

Q That it was a pass through. How do you know there was a pass through?

A Because of the books we kept.

Q That question has come up, and you asked and [36] inquired and you learned that it was a pure pass through, there was no -- a lot of times ad agencies will add on an administrative fee or add on some sort of profitability fee or a consultation fee.

A I looked at the books all the time. One of the reasons that we kept such good books is because it was a very contentious election. We wanted to make sure that we were above board with every single thing we did. We wanted to make sure that everybody knew that he didn't get paid. I mean, he ran every single campaign for free.

Q Now do you think or do you know whether as a result of his ad agency you were actually as a candidate able to get better deals on air time or radio time?

A I really wish that was the case, because during that election was also a presidential election and senatorial election. You couldn't buy time on Channel 8 or 2 or 4 because they had it all wrapped up. So I wish he did have a better -- it would have helped me out, but the answer to your question is no. We were just like everybody else.

Q So you're saying the demand was just too great, nobody was cutting you a deal?

A Exactly. The way you work is you get a hold of all the TV and a lot of the cable, there is a lot of cable. You get a hold of them and say do you have any [37] time and how much is it going to cost, and they say here it is and you just buy it. You have kind of no choice when they run it. Sometimes if you are up at three o'clock in the morning with nothing

better to do you will see an ad. Because it's the cheapest time.

Q Now following the 2006 election then, it is a contentious election, you win it still with what you feel is a pretty comfortable margin; right?

A If anybody in this state can win by 62 percent, it is more than comfortable.

Q You are happy at the end of the election?

A I'm very happy.

Q Your relationship with Mr. Vasquez is the same, that he continues to be a very good friend of yours, a trusted political advisor, somebody who you consult on political issues and subjects, and that relationship continues till today?

A Yes.

VICE CHAIRMAN HUTCHISON: That's the overview that I wanted to lay. And I want to now pass the questioning on to any other of my fellow Commissioners who would like to follow up. Commissioner Flangas.

#### EXAMINATION

BY COMMISSIONER FLANGAS:

Q Well, Mr. Carrigan, in looking at your – [38] just for clarification, in your original election you had a \$5,000 from the Art Associates and 5,000 each from Carlos and Laurie Vasquez. Now that was in kind?

A Yes, it was all in kind.

Q Do I have that right?

A Yes, sir.

Q Now my principal question here is on August 23rd, you had a Sparks City Council meeting, and from I have seen here, it was very contentious and fairly dramatic. Now in that meeting John Mayer, Phil Salerno and Judy Moss voted against the Lazy 8, and you and Ron Schmitt voted in favor.

A That is correct.

Q Now then on or about August 24th, 25th, the developer Harvey Whittemore threatened to sue Sparks for damages in the hundred million dollar range. The developer argued that he had the right to move a 1994 casino development approval from Whittemore's Wingfield Springs in Sparks to the Pyramid Highway. And in spite of the Sparks Planning Commission having voted four to three against the Lazy 8 a month prior to that.

So that took place in that time frame.

A Correct. The Planning Commission voted it down, and so did the City Council, against the advice of our attorney, by the way.

[39] Q Now on or about September 1st, a private vote was taken to settle the threatened lawsuit.

MR. CREEKMAN: Excuse me, Mr. Vice Chair, I'm going to have to object to this line of questioning. The incident which gave rise to this proceedings occurred on the 23rd of August.

Anything which occurred subsequent to the 23rd of August should, in my mind, have no relevance.

VICE CHAIRMAN HUTCHISON: The events in question that are being elicited by this line of questioning deal with events post August 23rd, '06?

MR. CREEKMAN: Yes, Your Honor. Council Member Flangas's question started or line of questioning started with the 23rd of August, moved to the 25th of August and to a lawsuit, this was brought against the City of Sparks on that date, and the latest question just went to activities or events which occurred on September 1st.

VICE CHAIRMAN HUTCHISON: Counsel, I would be interested to just kind of talk with you about this a minute. I could see where in a broad sense post August 23 events could have some impact on whether the Councilman had a particular type of relationship, business relationship, was involved in a financial arrangement, had an economic dependence on somebody. So [40] are you saying that no matter what the question is post August 23rd, that the Commission just cannot inquire? Is it sort of a blanket position or is it more of a fact specific?

MR. CREEKMAN: It is a blanket position that I'm taking. Whatever occurred after the 23rd of August should have no relevance to this Commission's proceeding today. It was the disclosure made by Councilman Carrigan on the 23rd of August which gave rise to the complaints which gave rise to all of us being here today.

VICE CHAIRMAN HUTCHISON: Go ahead. I'm sorry.

MR. CREEKMAN: Commissioner Flangas did ask a very relevant question of Councilman Carrigan, and that went to the question of his vote and Councilman Carrigan's response went to the fact that he voted on the losing side of the issue on the 23rd of August. Again, what happened in the Second Judicial District Court, what happened with the City Council at any point subsequent to the 23rd of August, in my mind, has no relevance.

If you were to expand the relevance, you would be -- you would expand this Commission's jurisdiction into proceedings that are now pending before the Nevada Supreme Court. I mean, the logical expansion of that argument or extension of that argument would take [41] you into the chambers of the Justices of our Supreme Court where the litigation presently resides.

VICE CHAIRMAN HUTCHISON: Counsel, I think your objection is well taken on a case-by-case basis and on particulars. But I can certainly envision where the issues are before this Commission dealing with a relationship between Mr. Vasquez and Mr. Carrigan to be relevant on post August 23rd issues. I mean, if there is some evidence that can be presented that may impact on that relationship. I do agree with you, though, in terms of getting into collateral matters that don't necessarily bear on the issues like relationship and what type of relationship that there is between Mr. Vasquez and Carrigan.

MR. CREEKMAN: I respect your conclusion, sir. But I do want it on the record that the City of Sparks on behalf of Councilman Carrigan is objecting to this



post August 23rd line of questioning and to any incidents which may have occurred after August the 23rd, which again, we feel have absolutely no relevance to this proceedings.

VICE CHAIRMAN HUTCHISON: Objection noted. Yes, counsel.

MR. THORNLEY: Mr. Vice Chair, I suppose I'm a bit confused. Are we here because of one instance that [42] something may have happened, or are we here to conduct an inquisition into Councilman Carrigan's entire life?

VICE CHAIRMAN HUTCHISON: Well, I think by your leading argumentative question, that we're not here to have an inquisition into his entire life. But I don't think -- if you want me to give an example of where I could easily see a post August 2006 event being relevant to this question I will. If you really want me to do that I'll do that. Or we can move forward. Because I don't think it is going to be particularly pleasant if we start getting into examples of where that could be relevant or not.

But suffice it to say, I think in terms of relevancy, it's going to be a case-by-case determination. I understand counsel's objection in terms of let's not get into collateral issues about lawsuits that are filed that are in the Supreme Court and things that happened a week ago that have nothing to do with this matter. I absolutely agree with that.

THE WITNESS: Sir, let me just say something. I know you are all attorneys --

VICE CHAIRMAN HUTCHISON: Actually, we're not all attorneys.

THE WITNESS: Most of you are. I'm not. I have no problem going wherever he wants to go with this [43] thing. I know that he's trying to protect the City. So I understand that.

But please put it on the record that I have no problem answering any single question you want to ask me because I'm not here to cover anything up. I will answer Mr. Flangas's questions on what happened after that with no problem.

VICE CHAIRMAN HUTCHISON: And I would just like to just have Commission counsel, if you want to chime in at all, or do you think it is necessary to chime in or should we just move forward?

MS. FRALICK: I just wanted to point out that we have Mr. Carrigan's Exhibit L is the stipulation and judgment and order that was filed on September 1st, 2006, and that is a matter that occurred after the date in question, and this is submitted, this was submitted for the consideration of the Commission. So just to have that on the record that we didn't just come up with any dates out of the clear sky. This is something that was filed on behalf of Mr. Carrigan. And it is in the exhibit book, and perhaps, I don't know, but I'm sure that Commissioner Flangas did look at that.

VICE CHAIRMAN HUTCHISON: So after having had said all that, counsel, is there anything else you think you need to say for the record?

[44] MR. CREEKMAN: One other point I would like to have included in the record. This proceedings was noticed under the Open Meeting Law with respect to an August 23rd violation. To the extent a decision is ultimately made with any basis from my perspective on events which occurred subsequent to August 23rd, I question this proceedings compliance with the Open Meeting Law. I just would like that established in the record also.

VICE CHAIRMAN HUTCHISON: Sure. And counsel, I'll just note that one of the statutes at issue here deals with whether or not the Councilman has a substantial or continuing business relationship with somebody, Mr. Vasquez in particular. Also there is a question as to whether or not he has a commitment or relationship that is substantially similar to interests that are disclosed in NRS 281.

So that's why I think there are some subjects that could in fact be relevant. But I think we ought to move forward with that.

With that, Commissioner Flangas, I'm sure you will limit your questioning to relevant matters regarding this occurrence.

COMMISSIONER FLANGAS: For the record, I thank Mr. Carrigan forthrightly agreeing that he will [45] answer any question that comes to him. Now getting back to my question.

VICE CHAIRMAN HUTCHISON: Go ahead.

COMMISSIONER FLANGAS: We're going to be dealing today with three potential violations of the ethics law.

VICE CHAIRMAN HUTCHISON: Yes, we are.

BY COMMISSIONER FLANGAS:

Q There is a sequence of events that took place within a month there that are interrelated and in no way that they can be separated. So when the meeting took place on or about September 1, 2, whatever that date was, that meeting was a secret meeting, it was not posted --

A Sir.

Q It violated the --

VICE CHAIRMAN HUTCHISON: Wait a minute. Let me just stop everybody for just a second.

Commissioner Flangas, if you have questions, let's go ahead and elicit questions from the Councilman. But really we shouldn't be making conclusions or drawing conclusions.

COMMISSIONER FLANGAS: I'll rephrase that.

VICE CHAIRMAN HUTCHISON: We should ask questions to elicit factual information.

BY COMMISSIONER FLANGAS:

[46] Q When that meeting took place did anybody on the Commission ask the question was this meeting posted, is it a legal meeting, does it violate the ethics --

MR. THORNLEY: That meeting was an attorney-client session.

THE WITNESS: Let me answer your question because this has been in the media 10,000 times calling it a secret meeting. If you want, some of you are attorneys so you will understand this because it was all about attorney-client privilege.

COMMISSIONER FLANGAS: You and I have something in common.

THE WITNESS: You and I aren't attorneys, sir. So I am going to tell you --

COMMISSIONER FLANGAS: We're not.

VICE CHAIRMAN HUTCHISON: Wait a minute. Let's just have some decorum, order. Nobody is to be talking over each other.

Commissioner Flangas, please yield the floor to the Councilman and allow him to speak.

THE WITNESS: First of all, according to our attorney, it wasn't a meeting, it was an attorney-client privilege. In other words, you don't have to post that because that's what our attorney said.

So to answer your question, no, because we [47] have done this many times before when we're settling lawsuits, he said, okay, come in, we have a lawsuit here, settlement agreement. Do you guys think that this is okay? Yes, no, whatever it may be.

Okay. We give him the direction, go ahead and settle it or not settle it. But as what happened in that meeting is attorney-client privilege.

So yes, there was a nonmeeting because that's what it was. I don't know what you call it. It was a gathering of --

VICE CHAIRMAN HUTCHISON: It was a meeting with your lawyers that was privileged.

THE WITNESS: That was privileged, exactly. And here is what happened. That if you are on the other side of this project and you don't want anything to happen, you get a hold of the press -- I happen to be a journalist, too, unfortunately -- and you get your PR team in place and you say let's tell them it was a secret meeting. Why? Because that looks bad.

So every single time they have come up and called it a secret meeting, our City Attorney and our Assistant City Attorney, whoever is sitting at the meeting, will get up and say, please, it was not a meeting, it wasn't secret. And kept going.

So that has been laid out a thousand times. [48] Once again, if it is in the press, it's got to be true.

VICE CHAIRMAN HUTCHISON: Councilman Carrigan, you have been very clear on that point, and in response to Commissioner Flangas's inquiry, that was a meeting that was held with counsel, it's confidential, it's privileged, and that's the makeup of the meeting. We understand that.

THE WITNESS: Correct. But if you notice, a week or two later we came into a Council meeting and we voted to settle the agreement. So we did it in public because of all the press and we said, okay, let's go in public and we vote on it in public.

VICE CHAIRMAN HUTCHISON: Counsel.

MR. CREEKMAN: And I will add that, and although I'm not testifying, I want to assist the

Commission in dealing with these issues, any action taken at what I prefer to call the attorney-client session, to avoid the use of the “meeting” word, I can represent to you was action taken by, coincidentally by our assembled City Council members, but it was action over which the City Council has no jurisdiction, control or supervision back on September the 1st. To which the Open Meeting Law does not apply.

Not only did it not apply by virtue of the fact that it wasn't a meeting, it was an attorney-client [49] session, any action that they took, and I can't go any further with respect to this issue, but any action they took was action over which the City Council has no jurisdiction, control or supervision. It was completely outside the ambit of the Open Meeting Law, contrary to representations that have consistently been made in the press.

VICE CHAIRMAN HUTCHISON: I'd like to try to avoid trying to respond to every point that's been made in the press or the media. And I understand there is a frustration level and you want to be able to express yourself, and I'm happy to allow that to occur to the extent it deals with these issues.

THE WITNESS: Well, sir, you know what, I don't mind answering those questions because it sure clears up a lot here for me rather than listen to the media or read it in the newspaper article. Because they got it wrong. I mean, that's as simple as that.

VICE CHAIRMAN HUTCHISON: Listen, we just want you, and I'm sure you are already doing

that, to respond to questions to the best of your ability, and to the extent that that requires you to elaborate in a way that is responsive to the question, great. I would rather, though, not go into, as your counsel has already pointed out, collateral matters that aren't important to [50] this hearing. So let's just stay with questions and answers.

Commissioner Flangas, do you have any further questions?

COMMISSIONER FLANGAS: No more at this time.

VICE CHAIRMAN HUTCHISON: All right. Any other Commissioner? Commissioner Jenkins.

#### EXAMINATION

BY COMMISSIONER JENKINS:

Q Welcome, Councilman Carrigan. I want to go back a little bit to our Vice Chair's questioning about the in-kind donations in '99, '03 and '06, if I may.

In 1999, when you were working with Mr. Vasquez, did you know anything about the plans for this Lazy 8 project?

A No.

Q Did you know Harvey Whittemore?

A No.

Q Did you know of any of Mr. Vasquez's other projects, other than working on your campaign?



A I was such a rookie, I didn't know anybody. The only person I knew in politics was Carlos, and that's why I asked him to be my campaign manager.

Once again, like I said, I was -- I got into the race two weeks before the filing date. So that was [51] kind of a last-minute decision.

Q Did Mr. Vasquez in '99 ever ask you to support any of the projects he was working on?

A Carlos has never lobbied me, ever. But the opposite is true. If you want to get on to that questioning, I could tell you how that works.

Q But you did ask him for political advice after you were elected?

A I wouldn't say -- I would say we sat down and talked about a few things. So I guess you could say -- I didn't flat out say how do you think I should vote on something, but we talked about politics. I wouldn't say I asked him about advice. I would say we discussed political matters.

Q Did you at any time after you were elected in '99 and before this 2006 campaign got going learn of the Lazy 8 project, Mr. Whittemore or Vasquez's involvement in the same?

A The Lazy 8 project, I'm not sure exactly. I think it was probably a year before it came before us. So it was probably in the summer before we voted on it. Carlos wasn't even working for Red Hawk Land Company at the time.

Q So it came to your attention in your capacity as a Council member?

[52] A Yes, it was because it was going into my ward. Actually, if you want to know kind of the background on it --

Q Actually I don't. It being the Lazy 8, the new location of the casino, was to go into your ward and that is the geographical area you represent; right?

A Correct.

Q And that was really the issue, was to whether to approve it for construction in your ward, was it not?

A Yes, ma'am.

Q So it was being proposed to be going into your ward in 2005 when it came to your attention?

A That's correct.

Q Now what did you do then in response to this proposal to determine the tenor of your constituency's response to that proposal?

A Like I said, I was telling the Vice Chairman, I was in a really great position because during that time I was running a re-election. And I got to knock on doors, and that's all anybody wanted to talk about. So when I knocked on their door, my first question was, hey, what do you think about the Lazy 8? Because I represent ward -- I'm sorry, go ahead.

Q Let me stop you really quickly because you have just told me that you learned about the proposal [53] about a year before the election.

A Correct.

Q Were you campaigning for reappointment or re-election in 2006, a year before that election took place?

A Actually, no.

Q So let's say your election in that year was in November, was it not?

A Correct.

Q So when approximately did you become aware of the proposed location of the Lazy 8 project?

A That was a year before.

Q And did you do anything to take the temperature of your constituency at that time before you started campaigning?

A I started to take -- actually that's why I want to go into a little background.

Q All right.

A They have a floating gaming license, and they could have put up a stand-alone casino, and the people in my ward did not want that. So I took it upon myself to go talk to Harvey Whittemore and say, look, you are never going to get this thing passed in the constituency of Sparks if it's a stand-alone casino.

I had also talked to the Nugget. The Nugget [54] told me we won't oppose this project if they build a 200-room hotel because we're on a level playing field. They later went back on their word, by the way. They said it on the record, and then they said it on

the record that, well, yeah, but now we're opposed to it.

But I went out there and said, look, if you build this, as a retail commercial area with more product to it, that's what the constituency of Sparks would like. The Nugget won't argue about it. So that is what I did up until I started knocking on doors.

Q At what point in your knowledge did Mr. Vasquez become involved with the Lazy 8 project?

A You know, you would have to ask him when they hired him. I don't know. But it had to do -- it was sometime between that summer and the next summer.

Q And when did it become known to you that your former campaign manager for two campaigns and personal friend, to an extent, was a part of this very contentious issue in your ward?

A Well, he called me up and said that he was hired by Harvey Whittemore. But he has a lot of other things he does. This is just one of them.

Q Okay. When you were talking with Mr. Whittemore and trying to figure out how to keep everybody happy, my characterization of your testimony [55] with regard to the Nugget and other large players in this game, was that a political discussion? Were you trying to balance the interests or were you -- what was your intention?

A My intent was to get the best product for the City of Sparks and my citizens, and my constituency were telling me what they want and I was trying to do that.

Q When you say that your constituency, your voters were telling you what they wanted, how was that communicated to you other than during the campaign?

A Telephone calls, e-mails, face-to-face, supermarkets.

Q So you had in your mind how you felt or how you intended to vote after considering all the information with regard to the Lazy 8 project well before Mr. Vasquez became involved?

A If all those pieces fell into place I was going to vote for the project because that's what 70 percent of the people I was talking to or more than 70 that I talked to, it turned out, I guess I could say 62 percent since that's how many points I got re-elected. Yeah, that's my intention.

Q So when Mr. Vasquez called you and said he was just hired, did anything run through your mind about, gee, I wonder how that might affect my opinion or my [56] actions with regard to Lazy 8 as a Council member?

A No. I have known Carlos for a long time. He has never ever asked me for anything. And so I didn't think he was going to start.

Q Did he at any time make it known to you that if this project went through, he'd have a boon to his business?

A I asked him -- I did ask him, I said, if this thing goes through or fails, does it matter to you financially. He said no. He was on a contract and --

well, and the good example is he is still working for him.

And you have to remember, in August of 2006, this thing failed. In other words, the City Council voted against it, and he didn't get fired. So I guess the answer to your question would be it didn't matter.

Q Now earlier in the questioning that I believe Commissioner Hutchison was going through you stated that you wanted everybody to know that Vasquez wasn't getting paid.

A Correct.

Q Why?

A Because I didn't want -- I'll give you a quick background for me. I graduated from the Naval Academy. We have an honor code that says you won't lie, you won't cheat, you won't steal, and [57] you won't tolerate anybody that does. And that's been ingrained in me.

I wanted to be above board with everything because I didn't want somebody to come back and say, oh, somebody got you elected, now you owe them something. And that's just in my character. That is one of the reasons I told Mr. Flangas, I don't care what questions you ask me because in my mind, I have done nothing incorrect and I'll answer anything you got.

So I just -- I'm above board on everything.

The other thing is when I was in the military I had a top secret clearance, I was cleared for the

ridiculous. I have probably 10 background checks on me. So my family is very used to people coming over and asking about us. I mean, my life is an open book. I mean, I have had my finances checked, my background checked ten times by government.

Q And Councilman, I want to assure you that I don't mean to infer that you have done anything wrong or right in this instance.

A Ma'am, I just wanted to let you know where I came from. That is why I wanted a report. That is why every single time I have a campaign disclosure report I report everything, in-kind. If he and I talk about something, to me, that is a consultation and I'm going to [58] report it.

Q Okay. Is it your -- I mean, is it typical in City Council races that, in your opinion, that the campaign managers don't get paid?

A You know, this one, I'm not sure. You can ask Carlos about it. I know he's run a couple or helped with a couple campaigns. I think he even helped with Kenny Guinn's campaign, and I don't think he got paid for that either.

I don't think you are -- what he does isn't for money. I think he does it for the love of the game.

Q My question really goes to whether there was any special provision of services to you even if it wasn't for compensation, so to speak. In your experience, that's typical?

A I think with Carlos it's typical. There may be some other campaign, run campaigns that get paid for it, but for him I think he does a lot of it for free.

Q Why did you go to your attorneys and ask for advice about disclosure and abstention as it related to the Lazy 8?

A Because Carlos got hired by the company that owns the Lazy 8 project. I asked our City Attorney for an opinion because I wanted to make sure that it was legal and proper for me to vote. So before the [59] election -- excuse me -- before the vote I asked our City Attorney for an opinion because I wanted to make sure that everything was out in the open.

Q What in your mind was the concern?

A My concern was I did not want somebody to think that I was voting in a certain way because Carlos is a friend of mine.

Q Have you ever asked the City Attorney for a similar opinion regarding any other vote?

A Yes.

Q I don't need to know what they were. And have you a history of abstaining from votes? In your recollection of your service on the Council, have there been significant number of disclosures and/or abstentions?

A I abstained once.

Q And have there been more than one disclosure?

A I disclosed -- no, I abstained once because of something that happened. I never had to make a disclosure because nothing has ever come up that I had to disclose.



Q But in this event you disclosed your relationship and then did not abstain from voting?

A I did not. And the reason I did that, if you want to know, is because with my attorney's advice, he [60] went over the NRS with me, and basically said if you don't have any financial dealings, if you don't think you are giving anybody a privilege that you wouldn't give any other citizen, and you think that you can vote, then you go ahead and vote. I properly disclosed.

Here is the interesting fact. The next day after I disclosed, we were on three channels, TV channels and in the newspaper as breaking news, they said this is breaking news. I said it the night before. So it wasn't that breaking.

I mean, you know, I admitted that he was a friend of mine, and I laid out the disclosure exactly like the City Attorney gave it to me. And then I said I'm going to vote on this, I'm not going to abstain.

And I have to tell you why another reason. My citizens, I represent 87,000 people. If you keep abstaining every time, I'm not doing them any good, and I'd quit if I had to do that.

COMMISSIONER JENKINS: Thank you, Councilman.

I don't have anything further at this time. I'll give someone else a chance.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Jenkins. Other Commissioners?

Commissioner Hsu. Commissioner Cashman, go right ahead.

[61] EXAMINATION

BY COMMISSIONER CASHMAN:

Q Thank you, and good morning, Mr. Carrigan.

A Good morning.

Q Councilman. You indicated to us that you are career Navy, I believe?

A Yes, sir.

Q What was your final rank? Can you give me a brief synopsis of your career?

A My final rank was commander. I was in the Navy for 24 years. And I was a naval aviator, and I have a subspecialty in intelligence.

Q That would explain your top secret clearance.

A Yes, sir.

Q You retired in 1993, you said?

A It was actually January 1st, 1992.

Q What did you do after that?

A After that I went back to the University of Nevada, Reno, and got a Master's Degree in journalism.

Then I went to work for a newspaper for a while, and then in 1997 after I received my Bachelor's Degree, University of Nevada, Reno, asked me to be

an instructor part time. So I teach media writing and ethics.

Q Do you still work for UNR today?

A Yes, sir, I do.

[62] Q Explain a little bit more to me how you decided to get into politics.

A Actually it was my wife. I had been retired out of the military, and the same reason I got into journalism because I didn't like journalists, because I didn't like the way they did some things, so she told me to get a degree and try to change it. Our City Councilwoman was not running again, and I said -- I was making a comment at dinner one night and said, boy, whoever gets elected, I hope they know what's going on. And I kept going and going. And because of my military background I follow politics a lot, and my wife said, well, if you think you can do a better job, why don't you try.

So I picked up the phone and said, Carlos, would you like to run my campaign, and that was seriously about two weeks before the filing date.

Q That was the beginning of your conversation with Carlos as it relates to the campaign there? You hadn't discussed with him in the previous to that running or politics or being elected or anything along those lines?

A No, sir.

Q I think it's fair, and tell me if this is true or not, that Carlos has been your campaign manager

[63] for your three campaigns and he is your primary political advisor?

A Yes, sir.

Q I think you said that he was instrumental in getting you elected in the first go round, and maybe so; is that correct?

A He was instrumental in all three elections.

Q Did he give you any political advice regarding the Lazy 8?

A No, sir, he did not.

Q You had indicated that he was a political advisor, and then I think to a subsequent question maybe that changed a little bit. Can you go into the background of political advice and the kind of advice that he has given you over the past seven, eight years?

A You know, I wouldn't say it was as much advice as it was we'd talk about certain issues. And we'd kind of work it out and say where are we. It's very rare that we ever talked about -- we never talked about anything that he worked on at all. In other words, if you are asking did he come up and say I'm working on this project and this is what I think you should do politically, he has never done that.

Q Did you ever bring issues -- and you have already answered the question relative to the Lazy 8 -- [64] but did you bring -- politics are full of thorny decisions and thorny issues. Did you ever go to him and talk through the relative merits of particular

decisions and things as one might expect you would with a political advisor?

A Yes, on certain issues.

Q Relating to the City?

A Relating to -- yeah. I'm trying to think of some specific to give, and I can't think of any right now.

Q But nothing specific to the Lazy 8?

A Nothing specific to anything he's done in the city.

COMMISSIONER CASHMAN: I think that's all my questions for right this moment, Mr. Chairman.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Cashman. Commissioner Hsu.

COMMISSIONER HSU: Thank you, Mr. Chairman.

#### EXAMINATION

BY COMMISSIONER HSU:

Q Good morning, Mr. Carrigan. Thank you for your patience during this proceedings. I want to try to put your testimony in context of some of the documents that we have been presented as exhibits.

Let's start with the Commission's exhibit [65] book. Do you have the materials in front of you somewhere? It would be the green hearing exhibit book, if you have that.

A Yes, sir, I have it.

Q And then you will notice that there's Bates stamp numbers on these documents. So if you go to Tab 2, and the Bates stamp 52. Are you there?

A Yes, sir.

Q And this is a letter -- it goes to the following page, but it is a letter that you signed; right?

A Yes, sir.

Q I guess there is no date on it. But it is a letter to Patrick Hearn, who was the Executive Director of this Commission, just so we are clear for the record.

But anyway, if you could go to the fourth paragraph where it says, "First, my business relationship with Mr. Vasquez is neither 'substantial' nor 'continuing.' My friendship with Mr. Vasquez can be so characterized, but not my business relationship."

Do you see that?

A Yes, sir.

Q And this is an accurate statement?

A That is very accurate.

[66] Q So the way I read this, then, is that you are saying you don't have a substantial business or substantial and continuing business relationship with Carlos Vasquez, it's intermittent because you only do campaigns every four years or so; would that be fair to say?

A That is fair.

Q With respect to the business relationship you have with Mr. Vasquez, you testified earlier that Carlos never got paid for managing your campaign.

A That's correct.

Q And do you know if that's basically his practice for all campaigns?

A You will have to ask him that. I'm not sure. I think I only know of one other one that I know he worked on the Governor's campaign, and I know he didn't get paid for that.

But you know, when you say business, to me it means that money goes back and forth. I really couldn't consider even when we run campaigns as a business relationship because there isn't any money involved.

Q Okay. So would it be fair to say that because there is no money involved where he gets paid from your campaign, that he is doing this based on his friendship with you?

[67] A I would say that is probably correct.

Q He doesn't have a substantial and continuing business relationship with you, but he would have a substantial and continuing friendship with you?

A That's correct.

Q Accurate statement?

A It is. I think that is what it says in there.

Q I just wanted to make sure.

A No.

Q I understood what you were saying there.

A I didn't mean to be derogatory. That's correct.

Q This friendship really took off in 1999 with the first campaign that Carlos worked on; right?

A Yes, sir.

Q I wanted to try to get a little bit of a flavor of that. You said you went to -- do you still go to dinners regularly?

A Not regularly. But we still go to dinner.

Q When is the last time you have gone to dinner?

A I'm trying to remember. A month ago maybe.

Q Do you have dinners at your home? I mean, do you guys go to each other's homes and visit family?

[68] A Generally it is go out to dinner.

Q Is it with family or is it just you two alone generally?

A Generally it's with family. So it's my wife. And he's been divorced recently. So his ex-wife doesn't come any more.

Q But previously when he was married, you would have dinners as a family?

A It wasn't that. She was basically raising children, so we didn't get out very much at all. We would be lucky if we got out once every six months to go to dinner only because everybody was too busy.



Q I guess where I'm getting at, were these dinners that you would go out with Carlos Vasquez, were they more social in nature?

A They were totally social.

Q So it wasn't necessarily to talk politics?

A You know, if you have been in politics eight years like I have, my wife doesn't want to hear any more about it when we go out to dinner. So we kind of have a pact if we go out to dinner you knock off talking about politics.

Q How about -- I mean, these are kind of maybe nitpicky questions, but I want to get a better idea. Like, for example, you have a cell phone; right?

A Yes.

Q Do you have Carlos on speed dial?

[69] A Yes.

Q It would be because of your friendship with him?

A Yes.

Q Have you ever referred business to Carlos?

A No.

Q In 1999, when he served as your campaign manager, do you know if Carlos was also in the lobbying business?

A In 1999?

Q Yes.

A I think he was.

Q You think he was? But you are not sure?

A I'm not sure. I really didn't know -- I didn't get into his business at all prior to that.

Q So at any point during this relationship from 1999 forward, did you become aware of more particulars with respect to some of the lobbying activities Carlos might be engaging in?

A Yes.

Q Can you give me a ballpark of when you started wondering about that?

A I think probably after I got elected. And [70] then I was plugged into the political arena. So you go to different things and hear different people talk.

Q After you got elected were you aware of Carlos engaging in lobbying activities on certain matters that went before the Sparks Council?

A He never come before the City Council. I think he did it before I got there, but since I was in 1999 on the first thing he brought forward, in other words, I guess one of his clients or whatever you want to call it was Red Hawk Land, and then later on he has another client that came in.

Q So the first client, so to speak, of Carlos that you were aware of that was coming before the City Council was Red Hawk Land, and that's essentially the proponents of the Lazy 8 matter; right?

A Correct.

Q And that would be in 2005, 2005 time frame?

A Yeah, I knew about the Lazy 8 before he got hired by Red Hawk Land because it was coming before the City before that.

Q Thank you. I want to switch directions real quick just to clarify the record and my own mind. If you could go to Tab 7 of the green book and Bates stamp 152. I'm sorry, Bate stamp 150. I just want to clarify things.

[71] Are these campaign contribution reports relating to your 1999 campaign? That would be fair to say; right?

A Yes.

Q If we look at No. 1, Bate stamp 150, about the in-kind contributions, there is an entry for Carlos Vasquez, Laurie Vasquez and Electrographics. Do you see that?

A Yes, sir.

Q Again, they are in kind. I think I remember hearing you testify that it was basically consulting time that was being reported as in kind.

A Correct. And then there was Electrographics is I think it was another designing the logo signs and all that.

Q Owned by the Vasquez family?

A Yes.

Q So when you look at that first entry Carlos Vasquez at \$2500 of in-kind contributions, that would be based on your conversations and consulting?

A Again, we listed all of our conversations or consultations.

Q So then when you get to the next entry of Laurie Vasquez, and as you heard my disclosure, I represented Laurie Vasquez, who is his father -- are you [72] aware of that?

A I am aware because his office was right next to Carlos at the time. And that once again, Laurie sat in on some of our campaign strategy, and so I wanted to list it.

Q And that is why he has a separate entry because he provided some kind of time?

A To the best of my recollection, that is why we did it that way.

Q And then as you have indicated, Electrographics is a company of Carlos Vasquez?

A Right.

Q And again, that was the in-kind contribution, there was some graphics?

A I think it was some printing and graphics.

Q Then there is also somewhere in these documents another company called Art Associates.

A Correct.

Q And that would be another -- was it a printing company?

A I think that is the advertising part of the company.

Q So just to distinguish for the record, there are two companies, there is Electrographics, which is print?

[73] A I think you can ask Carlos. I'm not sure. I think it is more they do design graphics.

Q And then there is the Art Associates which is the advertising?

A I think it is on the advertising. But once again, please don't hold me to that.

Q I'm trying to get your understanding, if you have an understanding about the difference between those two companies.

A Yes, I understand they are two different companies.

Q Now if you could go to Tab 2 of the green book, and Bates stamp 69. Do you see that? It is a memorandum from the City Attorney's office to the Mayor and Sparks City Council members?

A Yes.

Q Dated August 17, 2006?

A Yes, sir.

Q Now do you know what prompted the City Attorney to write this memo?

A I do. I asked for it, an opinion.

Q So it was you and not other people?

A No. It was just me.

Q It was with respect to the issues that we have been talking about today; right?

[74] A Yes, sir.

Q Your concern about having a relationship with Carlos Vasquez?

A Correct. And I wanted to make sure that I was okay to vote on it, so I asked for an opinion.

Q Based on your review of this legal memorandum, you acted accordingly?

A Yes, sir, I disclosed before the meeting and basically came out with the disclosure that said now that I have disclosed and, you know, kind of like what you did today, and said that I still can vote on this because it has not swayed me. And really the last, second to the last paragraph is the one that really kind of says it all, that it says, and this is out of your own --

Q On page 71 are you looking at?

A I'm looking at 71, the second paragraph. It says: "The Nevada Ethics in Government Law further provides that if a financial or personal detriment or benefit which accrues to a public official is not greater than that occurring to any other member of the general business," you can vote on it. And I felt that I wasn't any different than anybody else. So that's part -- that was part of the reason.

But if you read the entire -- it is kind of a [75] long opinion.

Q You read this pretty closely?

A Very closely.

Q So if you look at the last paragraph, for example, where it says, "For the foregoing reasons, it is our opinion that prior statements of position on an issue of public importance by either a candidate or by an elected official do not require disqualification of that individual at a time the individual is charged with deciding upon the issue."

I read that correctly; right?

A Yes, sir.

Q And is it your understanding based on that sentence I just read that -- actually let me rephrase that. Was the issue your relationship with Carlos Vasquez, or was the issue prior statements on a public importance? I see a little difference there.

A There is a difference. I asked because of my personal relationship with Carlos.

I also asked because whenever a City Councilman made a statement earlier in the year that he didn't care where this thing was going, he was going to vote no on it. And so that's why the City Attorney came up with this other part that said prior, I think prior [76] admittance is not bias.

Q And I understand that part of it. I mean, politicians will say certain things.

A Correct.

Q You are not acting as judges, you are acting on things of certain public --

A That was his opinion, and I'm sure that he had a good reason for it, just like I had a reason to vote for it. He thought he had a reason to vote against it, and that is why we get elected is to make those decisions.

Q With respect to the opinion on predisposition or prior opinions, that really wasn't something that you were concerned about?

A No, sir. I was only concerned with my personal relationship with Carlos and if there was -- whatever the opinion was. And whatever the opinion from the City Attorney I was going to follow. If he said you need to recuse yourself, I would have recused myself that night.

Q So if you go to the next sentence that we just read in the last paragraph, "The only type of bias which may lead to disqualification of a public official must be grounded in facts demonstrating that the public official [77] "stands to reap either a financial or personal gain or loss as a result of the official action."

Do you see that?

A Yes, sir.

Q I read that correctly?

A You did.

Q And is that a sentence that you took note of?

A Yes, sir, I did.

Q And then when we go into the actual, your actual disclosure, we have both minutes and



apparently a transcript. What I want to do is get you through the yellow exhibit book, which is exhibits presented by the City Attorney's office, and go to Tab K, and Bates stamp 62. On the top of that -- this purports to be a transcript. It says, "Mike Carrigan Disclosure." Do you see that?

A Yes, sir.

Q And then there is what appears to be you being quoted verbatim. Can you look that over and tell me whether or not this is an accurate reflection of what you disclosed on that day?

A Yeah. I told our City Attorney -- I don't remember saying all the "uh's" in there.

VICE CHAIRMAN HUTCHISON: None of us ever do.

[78] THE WITNESS: Did you all notice that, too? But yes, that is. It was written out for me and I read it verbatim. I added my own "uh's."

BY COMMISSIONER HSU:

Q Again, when you look at some of the language it says, "I do not stand to reap either a financial or personal gain or loss as a result of any official action." Do you see that language there?

A Yes, sir.

Q Was that directly from the legal opinion that you -- that we just read from the City Attorney's office?

A This was directly from the City Attorney that printed this up for me and told me to read it.

Q So did the City Attorney actually provide the written or draft this disclosure for you?

A Yes, sir.

Q With respect to this disclosure, we now know about your friendship, your substantial and continuing friendship with Mr. Vasquez. I'd like to kind of pose some hypotheticals in your mind. Let's say it wasn't Mr. Vasquez. Let's say it was your father who was the lobbyist for this project.

Would you have felt internally a need to abstain?

A Yes, sir.

[79] Q And why?

A Because, well, first of all, it's your father, and according to the ethics rules in the State of Nevada, that if you disclose that he's your relative, this isn't going to sway me. I would think that any reasonable person thinking about it would say that anybody that is in your household, unless it is your sister, would sway you. So I try to take the high road. If it would have been a relative, I would have stepped down from voting.

Q You joke about your sister, but if it was really your sister --

A It was, and I just made a joke.

Q I just wanted to make sure that --

A She doesn't live in this state either. So I can say that.

Q Okay. I mean, let me ask you this with respect to your relationship with Carlos Vasquez. I mean, he is a pretty close friend of yours now; right?

A Yes, sir.

Q I mean, close enough of a relationship like a brother?

A I wouldn't go that far.

Q Why not?

A Because he's -- we don't have that close of a [80] relationship.

Q Do you have a brother?

A No, I have a sister.

Q Who lives out of state?

A Who lives out of state.

Q Do you socialize with your sister?

A As little as possible, but yeah, once in a while I do.

Q Okay. I mean --

A No, I understand.

Q You confide on matters with Carlos Vasquez, do you not?

A I do.

Q And you confide in matters that you wouldn't normally confide with your sister on?

A Correct.

Q And I appreciate you being honest about this. I mean, I know this is a very difficult process here, and unfortunately, we're here to really look at what the laws require us to.

A I understand. I just kind of get confused on why I'm here. If somebody asked me the question I can explain that.

Q With respect to the Lazy 8 project, you said Carlos never talked to you about that issue, or the vote?

[81] A He never lobbied me at all. But the opposite is not true.

Q Meaning what, you talked to him?

A Meaning I went up to him and I said, if this thing is going to pass, this is what we need.

Q So you were basically advocating a City's position communicating through Carlos as to what --

A Before Carlos got in I was communicating with Harvey Whittemore. When Carlos came in I found it easier to talk to him.

Q And you were saying -- what was the nature of what you were telling him?

A The nature of what I was telling him, a stand-alone casino was not going to work, in my city. Because we didn't want it. The constituency didn't want that. What they did want is some entertainment.

So if you take a look at the evolution of this project, it started off as an 18,000-foot stand-alone

casino, and it is now a 300,000 square foot entertainment area that has a 14-screen TV -- or a 14-screen movie theater, 5 restaurants; made it so you can't come from the casino and go anywhere else, you either have to come in and out of the casino, because that is what some of the citizens wanted. In other words, they didn't want to be able to walk from the [82] casino to the movie theater because of kids.

They acquiesced to all of that. We asked for \$300,000 for them to donate for affordable housing, and we asked them to build us a 7400 square foot public facility for either a police substation or a fire station.

We also asked them to move a road and to buy some land behind it so we could square away the roads in Sparks. Somewhere along the line that project went from whatever it was going to be to about \$50 million more because of what I asked to be put into it.

So if you want to go over reverse lobbying, in other words, they started off a certain level and they ended up with 50 million or more because of what I asked them to put into it.

Q Why did you feel it was your role to be asking this as opposed to the City Manager or City staff, the Mayor or someone else?

A Because the entire project was going in my ward, and that's the -- well, it was in my ward.

COMMISSIONER HSU: Thank you, Mr. Chair. I don't have any other questions at this time.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Hsu.

We have talked about various exhibits. [83] Counsel, let me just make sure just for the record that we have these exhibits admitted. Do you have any objection to admitting the exhibits that are marked NCOE, Nevada Commission on Ethics exhibits, or obviously, your own exhibits?

MR. THORNLEY: No, Mr. Vice Chair, we don't.

VICE CHAIRMAN HUTCHISON: We will go ahead and admit those into the record.

Are there any further questions of the Councilman by any other Commissioners? Yes. Commissioner Capurro, please.

#### EXAMINATION

BY COMMISSIONER CAPURRO:

Q I just have a question. I'm not a lawyer.

A There are three of us here, then.

COMMISSIONER HSU: Four.

BY COMMISSIONER CAPURRO:

Q In hindsight, would you have done anything different regarding the charges that have been filed against you and the way you have handled this matter?

A Absolutely not. One of the things you have to look at is these five people that filed ethics complaints against me, which was in my opinion a political move to try to get me out of the office. If the

citizens of Sparks thought I did anything that was [84] inconsistent, I wouldn't have gotten 62 percent of the vote because you have to remember, this incident happened in August. There was a primary right afterward and a general election in November. And I won re-election. So 62 percent of the people in Sparks obviously thought that I was doing a good job.

COMMISSIONER CAPURRO: That is all I have.

VICE CHAIRMAN HUTCHISON: Let's go ahead and take a quick break. Commissioner Cashman.

#### FURTHER EXAMINATION

BY COMMISSIONER CASHMAN:

Q Thank you, Mr. Vice chairman. I have a follow-up to a question that Commissioner Hsu asked.

You indicated that you did significant reverse lobbying, if you will; is that correct?

A That is correct.

Q First through Harvey Whittemore and then through Carlos?

A Yes, sir.

Q How many conversations would that have been?

A I think I had two conversations with Harvey Whittemore before, and after that with Carlos probably maybe two or three. I don't think it was more than that. I laid out what we wanted, and this was about it.

Q Did he ever come back to you and say, boy, [85] you are really asking for the moon here, we can give you X but not Y and you know how much money this is going to cost us?

A Oh, yeah. He whined a lot.

Q In your mind, is his whining or his feedback to you lobbying?

A No, I think it was just whining.

Q I mean, in the give and take --

A In the give-and-take part of it they didn't take anything back. In other words, I said this is what we need and they said okay.

Q I'm having some trouble, because you have made a representation that Carlos never lobbied you on the project.

A Correct.

Q Yet there was substantial conversation between the two of you regarding the project, in which case you just indicated that he had feedback, and in my mind, any time that feedback occurs, that's lobbying.

A Oh, okay. Well, to me, lobbying is if he came up to me and said, look, I would like you to vote on this project and this is why I want you to vote on it. To me, he was just responding from the people that own the property on what I had told them that I wanted. And basically it wasn't really a give and take. It was more [86] of a they took. We didn't give anything, they took it all. And I did that. Not to say this is the first time that I have ever done that.



One of the things that a lot of people don't understand is when a project first comes in front of a city, it's probably a hundred percent of the time I would say never approved by the way the person puts it in. So there is a lot of things happen in the background, and if you are part of Summerset, you know exactly what I'm talking about.

Q There is a lot of negotiation. There is no question about that.

A And maybe I should qualify that as not lobbying but negotiation. Is that a better word?

Because I guess from my point of view, I was pretty hard lined with what we needed. So I'm not sure if that is the way -- I never lobbied before, so I'm not sure if that could be defined as lobbying. But that's what I told him we needed.

Q Would it be fair to say that at that time when you were having the conversations prior to the vote, that Carlos understood, either you told him or otherwise or maybe you had already formed your opinion based on what your constituents had thought that if you do this for me I will vote for the project?

[87] A That is a good question, and I could tell you that I was following more of what my constituency wanted me to do more than anything else. I got part of that from them, and so I guess the answer would be yeah. If they put that in there, and that would make my constituency happy, I would vote for it.

COMMISSIONER CASHMAN: Thank you. No further questions.

VICE CHAIRMAN HUTCHISON: Commissioner Jenkins.

FURTHER EXAMINATION

BY COMMISSIONER JENKINS:

Q I really like this format because I get to take many bites at the apple. In court you only get one, and this is really much better.

Councilman, when you first went to your attorneys for advice about whether you should participate in the Lazy 8 discussion, were you aware that you could come to this Commission for a confidential first-party opinion request?

A You know, I have read the -- there is a little pamphlet that the Ethics Commission sends out, and one of the things it says in there, if you are confused, look for your attorney, if you have a personal opinion, to ask them for your advice.

[88] So to answer your question, it was my understanding that if I asked for this from my City Attorney, if he had any problems, he would ask the Commission if he had any legal questions. So the answer to your question is I didn't come to you because we have a good City Attorney and good Assistant City Attorneys. That is the reality of it.

Q But were you aware that you could come to us for advice in addition to going to your attorneys?

A Yes.

Q And you chose not to do that at that time?

A I did because I thought my City Attorney had already done that. If you look at some of the things that he wrote in his opinion, he quoted some of the Ethics Commission rules and regulations.

Q Stuff.

A Stuff.

Q Got it. And after you received the opinion, the August 17th I think opinion from the gentlemen who flank you today, who did you ask to write out your disclosure for you?

A Mr. Creekman.

Q And did he do that?

A Yes, he did.

Q So the disclosure you read into the record [89] that was reflected in the transcript was written by your lawyer, Mr. Creekman?

A Yes, and he also sent out an e-mail right before we voted to say don't forget to disclose if you have anything to disclose.

\* \* \* \*

[93] BY MR. THORNLEY:

Q Councilman Carrigan, has Sparks grown since 1999?

A Yes.

Q How much?

A I think we grow at a rate about 4 percent a year. I think in 1999 it might have been 50,000 people and we're up to 87,000 now.

Q With that change in population, have the elections changed in that time?

[94] A Yes.

Q How so?

A They have gotten bigger, and especially since we're on the November ballot now.

Q You say they have gotten bigger. What do you mean by that?

A Well, we have more voters to reach. So in other words, there is more registered voters.

Q Would it be fair to say that as they have gotten bigger they have become more expensive?

A Yes.

Q Why have they become more expensive?

A Because in order to get re-elected nowadays you have to advertise. And so advertising fees generally go up during an election year, and so it's more expensive to get the word out.

Q Earlier you told us that you campaigned longer in 2006 than you did in 1999. Why did you feel a need to do that?

A Because they moved the primary election back, and so it made it a little bit longer of an election year.

Q Now each time you run for election Carlos has served as your campaign manager; is that right?

A That is correct.

[95] Q Did you ask him each time?

A Yes.

Q Why?

A Because I didn't think he was going to volunteer.

Q So is it your testimony that it was not understood between yourself and Carlos Vasquez that Carlos would represent you in each subsequent election?

A No, I think he dreaded the phone call every four years.

Q Councilman Carrigan, are you subject to term limits?

A Yes.

Q Are you able to run for City Councilman of Sparks again?

A No, I'm on my third term, so I'm termed out.

Q At the August 23rd, 2006, meeting of the Sparks City Council, did you disclose your relationship with Carlos Vasquez?

A I did.

Q Did you disclose your friendship?

A I did.

Q Did you disclose that he was your campaign manager?

A I did do that, too.

[96] Q At the time you made that disclosure did you believe that you could faithfully and impartially discharge your duties as an elected official?

A Yes.

Q We have talked in detail about campaign contributions that Carlos made to you; is that right?

A Yes.

Q Did you report every campaign contribution you received from Carlos in a complete and timely fashion to the Secretary of State?

A Yes, I did.

Q Have you ever accepted a gift from Carlos Vasquez?

A Yes, I have.

Q What was it?

A Before I got to elected office he gave me a model of an airplane I used fly.

Q Why did he give you that model?

A Because he thought it was kind of a neat gift.

Q Have you ever accepted a loan from Carlos Vasquez?

A No.

Q Do you measure your relationship with Carlos Vasquez by the amount of time he's donated to your [97] campaigns?

A No.

Q Has Carlos Vasquez ever contributed any type of cash to your campaigns?

A No, he has not.

Q Do you have a financial interest in the Red Hawk Land Company?

A No, I do not.

Q Are you affiliated with Red Hawk Land Company in any way?

A No.

Q Do you have any financial interest in the Lazy 8 project?

A No, I do not.

Q Is Carlos a member of your household?

A No.

Q Is he related to you by blood?

A No.

Q Is he related to you by marriage?

A No.

Q Is he related to you by adoption?

A No.

Q Does Carlos employ you?

A No, he does not.

Q Does he employ your wife?

[98] A No.

Q Does Carlos employ either of your daughters?

A No.

Q Do you have a business relationship with Carlos Vasquez?

A The only business relation I have with him is, if you can call it a business relationship, is when we run campaigns.

Q You say if you can call it a business relationship. How do you define a business relationship?

A Well, I'm not a businessman. I was former military. But I always thought in business you were there to make money. So I would say that if you make money or if money changes hands one way or another, then that would be a business relationship.

Q But you say that your relationship with Carlos as your campaign manager is not a business relationship. Or at least you wouldn't classify it that way. Earlier you said that each time he ran for election you asked Carlos if he would represent you; is that right?

A Yes.

Q So it wasn't a continuing relationship?

A No.



Q We have discussed a couple times now that you [99] and Carlos had conversations between elections. What types of things would you talk about?

A We used to talk a lot about the military, a lot about the Navy. It's interesting right now because my classmates from the United States Naval Academy are in every key position in the United States Navy, first time since 1944. By the way, the CNO is a classmate of mine, and all the fleet admirals. We talked a lot about local, national politics and state politics.

Q How did you vote on the Lazy 8 project?

A I voted to approve the Lazy 8.

Q What did you base that vote on?

A I based that vote more on what my constituency was telling me to do.

Q Did you ever receive any legal advice as it pertained to the Lazy 8 matter?

A Yes.

Q What was that?

A Well, it was the opinion from our City Attorney whether I could vote or not vote on the issue.

Q Did you ever receive any legal advice as it pertains to the project itself and not whether or not you could vote on the issue?

A Yes. Well, before any project comes before a city council it always has a legal stamp on it. So we

[100] did get a legal vote. Some of the questions were could they legally move it from one place to another and things like that. So yes.

Q What was the advice of the City Attorney in that case?

A The advice from the City Attorney, that they had the legal right to do what they were trying to do.

Q Did that influence your vote in any way?

A Yes, it did. One of the things is if it is legal to do, and according to NRS, if you are going to vote no on a project you have to stipulate why you are voting no. And I could not find any reason through the NRS to vote, to legally say no to the project.

\* \* \* \*

[101] CARLOS VASQUEZ

called as a witness,

was examined and testified as follows:

EXAMINATION

BY VICE CHAIRMAN HUTCHISON:

\* \* \* \*

Q \* \* \* \*

[102] Now why did you perform your campaign management services for no fees for the Councilman?

A A couple reasons. Primarily being which is that we have been long-term friends. Mr. Carrigan and his wife and my wife at the time worked

together in 1991, and we got to know each other very well, became friends, and when Mike decided he wanted to run for office, I believed he would be a great candidate and he would be a great Council person.

And I have been involved politically, Mr. Chairman, my whole life. I walked houses for Ronald Reagan's first campaign when I was 11 years old. So politics has always been a part of my life.

I donate my time to a variety of candidates, not just Mr. Carrigan, and I have virtually from middle school on. So it was not unusual or unique for me to do [103] so.

But I did so because I believed in Mr. Carrigan as a political candidate and as a City Council person, and I thought that the City needed some help at the time.

Q Since 1999, have you served as campaign chairman for any other candidates or politicians?

A Oh, sure, absolutely.

Q How many? I'm not talking about working on their campaign. I'm talking about campaign chairman, chair their campaign -- or manager. Sorry.

A I was just going to say, there is a big difference between chairman and campaign manager.

Q Campaign manager. The same position that you provided services for the Councilman. How many other candidates between the Councilman have you served in that position since 1999?

A I can't be accurate in the number without actually sitting down and writing it down. Since '99? 50, 60.

Q You served as the campaign manager --

A Yeah.

Q -- for 50 or 60 candidates since 1999?

A Uh-huh.

Q Have you been compensated for any of those [104] services?

A Some of them, yes, and some of them, no. It depends on the office and the candidate and what my role is.

Compensated, Mr. Chairman, and I don't want to step on anything here, but I own a couple of firms that provide services for these candidates. So when you asked me if I'm compensated, I'm assuming that if my printing company or my ad agency is compensated, that that is compensation.

In terms of compensation for actually managing the campaign as a campaign paid manager, very seldom has that ever happened for me. Usually I'm involved with campaigns that don't have those kind of resources. So no.

Q So how do you make your living or how have you made your living since 1999? Would you consider your political consultation services to be the source of your living since '99, or do you have another source?

A No, I have got a variety of different business interests. I own an ad agency, I own a printing company, I own an Internet firm, I own a gym. I own a variety of other things.

\* \* \* \*

[108] Q Now in 2006, the Councilman runs. You guys together put together a formidable campaign in what was my understanding to be a very contentious campaign season? Would you agree with that?

A Oh, absolutely.

Q And my understanding is it was contentious because of the Lazy 8 project; is that right?

A Largely so, yes. I think there were other issues that contributed to that also relating to a very organized opponent, well funded by a special interest. But yeah, it was a large part of it.

Q And then you continued on and up until the August 23rd meeting that we have been speaking about here today continued on and worked for the Lazy 8 project in the capacity that you just described; is that right?

A Yes. And it isn't fair to -- well, I just want to disclose, I have other responsibilities for Wingfield Nevada outside of Lazy 8. So it isn't my primary and only focus for them.

Q So you have extensive business ties, then, to the Lazy 8?

A No. Other than as the public relations, I [109] have no business tie to it. I'm a paid consultant through Wingfield Nevada.

Q And you do a lot of consulting beyond the Lazy 8, is that what you are saying, for the company?

A Other development projects, other things that the Whittemore family is involved with or Wingfield Nevada is involved with.

Q Now did you -- my understanding is that the Councilman actually talked with you about issues concerning the Lazy 8 after the 2006 campaign and before the August 23rd meeting; is that right? I'm trying to kind of narrow some time frames here.

A Yeah. The Council as a whole, each of the different Council people had talked to me at different times about the process, what was happening. We met with them to show them the project to take them through the scope of what we were trying to do.

When you deal with a plan development handbook, the City is very involved in the development of that project, and what you start with and what you end up with can be radically different as you go through kind of that process of working with the staff and then working with the elected officials, because they each have things that they think need to happen for the surrounding neighborhoods, the city and the impacted areas.

[110] Through that process we met with Mr. Carrigan and with all the Council people, and the project evolved enormously. And Mr. Carrigan put some pretty significant changes into this project that ended up costing a lot of money.

Q Right. During the course of your meetings with Mr. Carrigan concerning the Lazy 8, did you

both talk about what would be needed in order for Mr. Carrigan to support the project, needed in terms of characteristics of the project, amenities for the project, how the project would need to be developed? Were those subjects part of what you discussed with him?

A Not necessarily in that term. Each of the Council people, Mr. Carrigan included -- I'll give you a good example. Mr. Carrigan was very up front with us that this project would not have his support unless we built 200 hotel rooms to level the playing field with other properties. That's an easy thing to ask. It is a very, very expensive thing, particularly for a company that already has a grandfathered nonrestricted license that they just bought.

So that was -- and he had already had a previous discussion with Mr. Whittemore about that. So that was something that was presented to us that would have to change or he was not going to be supporting.

[111] At no point in time were we ever assured of Mike's vote or position, but we knew the things we had to change. We knew we had to change that.

We knew we had to build a public building. We were asked for a donation of \$300,000 to affordable housing. These were also things that came from different entities at the City demanding that these things be changed.

Mr. Carrigan was very clear our initial design of this project in his opinion was inappropriate for the area. And caused us to redesign the project.

Q Did you at any time ever ask Councilman Carrigan for his vote in favor of the project or that he support the project? Did you ever ask him to do that?

A No, sir. I never asked Councilman Carrigan for his vote on this project.

Q Did you ask Councilman Carrigan for his input in terms of what would need to happen from his point of view to make the project happen?

A Yeah, I asked him for his opinion on what it would take in his opinion to make this more ameliabile with the neighbors, what he thought would be -- it is in his ward. So the ward holder, if this project were in anybody else's ward, that is who we would have been spending more time with.

[112] But we met with every Council member. When you do PUD development, whoever's ward you are in has an enormous impact on the project, and it was no different than when we did the Sparks Galleria Mall down the road.

I have been involved with hundreds of these types of projects. And it's always a different council person or a county commissioner. And it you get to understand what it is that they want to have happen in their city and in their community, and you can either bring a project that is inappropriate, it isn't going to be good for anybody, or you can take that input from not only the elected officials but the staff and the public and try and create something that works ultimately.



It's a free market. If you build what nobody wants, it fails, even if you get it entitled. So yeah, we got a lot of input from not only Mr. Carrigan but the other City Council people and an enormous amount from the City staff.

\* \* \* \*

[115] Q Now one of the things that we will be looking at today is whether or not you benefited from any vote or action that the Councilman may have taken. And of course, the focus is on the August 23rd vote.

So I'll just ask you directly the question. What benefit did you gain when the Councilman voted in favor of the Lazy 8 project on August 23rd?

A Absolutely none. We lost. So I got absolutely no benefit.

Now my --

Q Now a critic may say or somebody who wanted to be a devil's advocate could say you lost but you also got some yea votes that ultimately have turned into a complete victory for your client. So maybe this was a progress. How would you respond to that?

A Well, I can tell you the night of the 23rd we didn't feel it was a progress.

Q I'm not asking about the night of the 23rd how you felt. What I'm saying is, did you benefit from Council Carrigan's --

A No.

Q -- vote in favor of the Lazy 8?

A No. Mr. Chairman, my role with Wingfield [116] Nevada is not predicated on a win or a loss. I'm not compensated more, I'm not compensated less. I bill either winning or losing. I don't have a win bonus, I don't have any kind of partnership, I don't have a piece of the equity. I'm a paid consultant, and I'm paid the same amount of money win, loss or draw or whatever happens. It doesn't change for my compensation.

\* \* \* \*

BY COMMISSIONER HSU:

[133] Q Mr. Vasquez, I just want to clarify. You testified earlier that you get no win bonus, you are a paid consultant, you get the same amount win, lose or draw on the result of the vote on the Lazy 8 matter.

A Uh-huh. Yes, sir.

Q So paid consultant, what does that mean? Is that hourly?

A No, no.

Q Retainer?

A It is a retainer.

Q And so whatever time, extra time you have to put on, you get paid that same amount?

A I do. I get paid that same amount each month. I keep track of my time, I bill back to the retainer and kind of show them where and what I'm doing on a variety of other projects.

My relationship with Wingfield Nevada and Harvey Whittemore and the Peppermill is not just about Lazy 8. I have other things that I work on, other responsibilities. There are other projects. There is a little, bitty one going down by Mr. Cashman I think in [134] Las Vegas, Coyote Springs. So I have involvement in a lot of these other projects.

So I'm paid a retainer to consult on all of those.

Q A global retainer relationship?

A It is. I don't get any bonus, any advantage on Lazy 8. And win, lose or draw with Lazy 8, my situation with my client would not have changed and did not change.

Q And when you say "retainer," is it a retainer to you or to Art Associates to Electrographics? Who is the retainer to?

A The retainer is to my entity Cat Strategies, which is my lobbying and public relations arm.

Q And do you mind if I ask how much that retainer is?

A No, not at all. Not at all. Wingfield Nevada pays me \$10,000 a month.

\* \* \* \*

[136] Q So I guess, then, the point I was trying to see if -- to explore is whether or not even if you don't get paid more or less on a particular City Council vote, you could potentially lose your long-term financial relationship with the Whittemore family if you start losing with the City Council, if you start having a bad track record, but what you

are telling me is that there is a lot of other things going on and you are on retainer for all that stuff.

A Oh, yes, Mr. Hsu. The Lazy 8 is the thing that gets all the attention and it's the thing -- it is the reason why I'm sitting here. But it isn't what I spend most of my time on for that client. There are a variety of other things.

Currently the King Triple 8 is now taking up most of my time. So it's one of many things.

And the interesting thing about the Wingfield Nevada group is the diversity of business interests they have, from energy drinks to bioceuticals. This casino [137] project is part of that.

\* \* \* \*

[141] Q I just have one quick question. We have an exhibit book, there is a green book, and if you could go to Tab 5 on that. It's not something you are going to have -- you would have been familiar with, but I'm going to use that as a basis to ask you a question.

A Sure.

Q Really it is the last sentence there, there [142] is a reference to a \$46,000 in campaign expenses regarding your activities on Mr. Carrigan's campaign.

A Uh-huh.

Q It says that this is a total, the 46,562 campaign expense total is a pass through, meaning Carlos Vasquez used this money to pay others for advertising services. Do you see that?

A Yeah.

Q Is that something -- do you agree with that statement?

A Oh, yeah.

Q So just to break that down, pass through to pay who? Advertising? Media?

A Well, we buy media. A lot of that money goes right back to the government in terms of postage to pay the mail houses, to pay the people who make the signs, to pay the guys who sell us the paper. It's all video placement.

In Sparks Council races, Commissioner, I know you are thinking media like in television, Mr. Carrigan only had one campaign that ever had television. Previous to that it was all mail. So the bulk of our expenses were postage and mail house related. And some printing. But the government makes the most money out of all this.

Q Did your companies retain some of that money? [143] You have two companies; right? Or you have more but you have --

A Yes, sir.

Q -- Electrographics?

A Electrographics.

Q That's the printing component?

A Printing company, and Art Associates is our ad agency.

Q Did any of those companies actually take a cut of this \$46,000?

A The printing we priced out at a below market rate, we took our profit off of it.

Q Essentially cost?

A Yeah. It was all cost. I never retained any money on any of this. Everything we did for Mr. Carrigan has always been for cost, always. Pass through money. If the postage is \$4,500, he gave me a check for \$4,500, I wrote a check for \$4,500 to the mail house, to the U.S. Post Office and then paid the mail house.

Q Was there an overhead component that you paid your company?

A No.

Q Just costs, pure costs?

A We had some stuff where we had some internal costs that we were trying to cover some of our salaries. [144] But it was pure internal costs, and I could easily display that to you.

Q What does that mean? Explain that a little bit more. Internal costs to cover salaries of who?

A The people working on this stuff. The designers and that kind of stuff. A lot of this stuff is stuff that we don't do in-house, we farm out to somebody, and we pass those costs on to the campaign. We don't do signs, we don't do mailings, and that kind of stuff we had to use vendors for. And we passed those costs directly on to the campaign.

\* \* \* \*

[166] VICE CHAIRMAN HUTCHISON: Thank you, Mr. Creekman; thank you, Mr. Thornley.

All right, we will go ahead and close then the receiving of evidence, testimony, comments by counsel, arguments by counsel, closing arguments, and we will now open the Commission for deliberations. This is a process that can sometimes be lengthy and can sometimes be expeditious depending on kind of what the issues are in the case. It's a public body's way of deliberating openly so you can hear what our thinking is.

It may seem like we are ignoring all the rest of you, but we're just talking among ourselves. That is the way the rules are established, and we have to talk and think and reason out loud and then ultimately come to a decision.

\* \* \* \*

[171] COMMISSIONER JENKINS: Good, thank you. Well, first I'd like to talk about a commitment in a private capacity to the interest of others. And so again, looking at the statute, it means a commitment to a person who is a member of his household or who is related to him within the third degree of consanguinity, but the Legislature also added any other commitment or relationship that is substantially similar to a commitment or relationship described in (a) through (d). And that means a person who is as close as a member of your household or a person who is just as close as a person related by blood or by marriage, a person just

as close as one with whom one has a substantial and continuing business relationship.

[172] In that capacity, with regard to commitment in the private capacity to the interests of another, I have some issues with both (d), the substantial and continuing business relationship, and (e), that just as close as, my words, provision of that definition.

With regard to the substantial and continuing business relationship, I disagree with the testimony of the interpretation by the public officer and the other witnesses in that one needs to be in the business of making money for it to be a business relationship. I think that perhaps when Councilman Carrigan testified that they wanted to make sure everybody knew that Mr. Vasquez wasn't being paid, that may have been an intention to avoid the definition of a business relationship, maybe directly, maybe indirectly, but we didn't get to that.

And I think that business is business. Business that Mr. Vasquez is in is to provide public relations and advertising services, whether he's paid or not, and but for his in-kind contribution, if you will, those services would have been a business relationship.

So that gives me pause, and I'm not certain where I land with regard to that subsection (d). But we did hear that Mr. Vasquez and Mr. Carrigan are friends and have been friends for years and years, and that [173] may -- that relationship may rise to a definition of just as close as a member of your household, a member of your family.



I found it interesting when Council Member Carrigan referred to his father or someone who lives in his household, he would definitely have abstained, but not his sister. He has two sisters. But when Commissioner Hsu was questioning him about, well, is Mr. Vasquez as close as a brother, his answer was no.

So I'm not certain where I am as far as the affinity or consanguinity, but any other commitment or relationship substantially similar to a substantial and continuing business relationship gives me pause. I hope that I made that clear. Because it is a little twisted.

And in that we might derive that Mr. Carrigan had a commitment in a private capacity to the interests of Mr. Vasquez resulting from their not for compensation but otherwise business relationship.

And I also disagree that starting and stopping every three years doesn't eviscerate the continuing nature of their relationship. Every time Mr. Carrigan ran for office he used the services of Mr. Vasquez. I consider that continuing.

And I also consider it substantial in that Mr. Carrigan's role as a Council member is reliant upon, [174] and he said he's a damn good campaign manager, reliant upon the services provided by Mr. Vasquez.

So the person to whom he has a commitment in a private capacity to the interests of might be Mr. Vasquez with regard to NRS 281.481 subsection (2).

However, there are two pieces of that statute that I find fail miserably, and that is not only was Mr. Carrigan unable to secure or grant those privileges, and I was among the camp that said you just have to attempt to, but I don't believe that those privileges, if you will, were unwarranted due to the resounding support in the ward for the project that Councilman Carrigan concluded from his personal interaction with his constituents. I find that on balance his responsibility to act as a representative in our representative form of government outweighs greatly any privilege, preference or exemption or advantage that might flow to Mr. Vasquez as a result.

So participating in the vote and representing his constituency says to me that any privilege that might have flowed would not be unwarranted. And with that, I would find that there was not a violation of 281.481(2).

\* \* \* \*

[192] COMMISSIONER JENKINS: Thank you, Mr. Chairman, Vice Chairman. Our abstention statute NRS 281.501 subsection (2) requires that the Councilman would have voted on a measure with respect to which the independence of judgment of a reasonable person in his situation, not necessarily him, but a reasonable person in his situation, which I would characterize as an elected official, not just a person in the community, would be materially affected by, and I'll skip to his commitment in a private capacity to the interests of others. And it's there that I should have been telling all of us the

story of the relationship similar to a [193] substantial and continuing business relationship.

So I won't go through that again, but my take on the facts that were presented in the materials and today is that Councilman Carrigan and Mr. Vasquez had a commitment in a private capacity to the interests – or Councilman Carrigan had a commitment in a private capacity to the interests of Mr. Vasquez by nature of his relationship similar enough to a substantial and continuing business relationship that the independence of judgment of a reasonable person, in this case an elected official, in his situation would be materially affected, and as a result, I would think that he would have been required to abstain.

VICE CHAIRMAN HUTCHISON: Commissioner Hsu.

COMMISSIONER HSU: Thank you, Mr. Vice Chair. I guess I have been calling you Mr. Chair this whole hearing. You are the Chair of the meeting.

VICE CHAIRMAN HUTCHISON: Call me Your Majesty if you like.

COMMISSIONER HSU: Your Highness.

I have a different take on the issue of commitment in a private capacity to the interests of others, that language. I don't necessarily believe that there was a substantial and continuing business relationship, but I do believe that it was similar to [194] that of a person -- similar to a household or family member. I'm trying to find my statutes real quick.

What we heard today is you heard Carlos Vasquez and you heard Mr. Carrigan say that Carlos Vasquez only charged his costs, he didn't make any money in serving on three campaigns as the campaign manager for Mr. Carrigan, and Carlos Vasquez actually said it right out. He said in addition to him thinking he has one of the highest standards of just being a good person, he said he is a friend of mine. And the relationship really is one of a close friendship.

And Mr. Carrigan joked that -- well, Mr. Carrigan talked about having to abstain if it was his father but not necessarily his sister. But when pushed on it, I mean, he wouldn't consider Carlos like a brother, but in terms of what they do and the amount of interaction, they go to dinner, he confides in Carlos Vasquez, he is a confidante, that relationship between Mr. Carrigan and Carlos Vasquez appears to be a lot closer than that of between Mr. Carrigan and his sister.

And so I think that the commitment in a -- I got to look at my statutes again -- I think that where the commitment in a private capacity exists is that it is substantially similar to a person who is related to Mr. Carrigan, not the continuing and business [195] relationship.

But that all being said, I think of my own experiences where I don't go to dinner with a lot of friends. I mean, there are different levels of friends. There are people you are acquaintance with, hence you call them your friends, and for politicians probably everybody is your friend to some degree who you have some kind of relationship with.

But I mean, this is a close relationship. It is substantial and continuing by Mr. Carrigan's own admission and Mr. Vasquez's own admission. Because of that close relationship, I think that's what would require an abstention.

What I'm struggling with is I think that he should have abstained on this, but what I'm struggling with is that he was reliant on counsel on this, and unfortunately, he got advice that was based on things that -- I mean, it didn't even mention the commitment in a private capacity, that statutory language, the subsection -- I keep missing it -- subsection (8)(e). And there is some history behind why subsection (e) came into play.

When I first started, there was a case that was going on, and I don't know the facts of it per se, I just heard of it, but in Las Vegas there was an Ethics [196] Commission hearing against Yvonne Atkinson-Gates, I believe is her name, and she was apparently doing -- awarding favors or something. There was contracts being awarded to her friends and maybe campaign people, cronies, whatever you want to call it, and that case, there was a finding of a violation against Miss Gates, but it was appealed, and on the judicial review the court said that the language was too vague because those people were not members of a household, they were friends, and there was some language in there that was vague. It just referred to any other person.

So this subsection (e) was specifically added in order to get rid of the unconstitutionality of the statutory language previously, and it was specifically

added to include the kinds of close friendships that would have applied in the Atkinson-Gates case.

So I think this is the first one in my seven and-a-half years doing this where we actually apply this language in subsection (e) of NRS 281.501 subsection (8), sub part (e). So I think it is the friendship that creates the commitment -- the very close friendship. Because not all friendships are going to do that, but it is the very close friendship that creates the commitment in a private capacity to someone else.

But again, I'm struggling with the fact that [197] he relied on his legal counsel and followed -- I mean, he basically said, Mr. Carrigan basically said that if he was told to abstain he would have.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Hsu.

Other Commissioners? Commissioner Cashman.

COMMISSIONER CASHMAN: I guess I'm going to take a little bit different slant at it, but I think the result is similar.

I personally believe that seven years of political advice and counsel and running campaigns makes it a continuing business relationship, whether there's money exchanged or not. Mr. Carrigan in his own words indicated that Mr. Vasquez was instrumental in getting him elected. That creates a significant bond. That creates in my mind a relationship that's greater than just a friend or is even greater than a business associate. It's a dependent relationship. It could potentially be a relationship that has a feeling

of debt or I'm here because this person got me elected and has kept me elected.

I think personally that it has done Commissioner -- Council Carrigan, he has been done a great disservice by even having to be here because I think having one's campaign manager and long-term [198] confidante on the other side of an issue puts him in a terrible position, one I think he should have abstained from, and for that reason I believe that a commitment in a private capacity in the interests of Mr. Vasquez does exist and would vote in the affirmative on a motion.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Cashman. Other Commissioners?

Let me tell you how I feel about this. I think that there is a commitment in a private capacity as well, and I'll tell you why. I reach it on a couple different levels.

One is that I think after my questioning it was clear to me that there was a substantial and continuing business relationship, as Commissioner Cashman has already disclosed, there was in fact the exchanging of business-type activities. There were even checks going back and forth. Whether or not somebody made a profit of it I don't think is the definition of business. I think there was even some testimony that to my mind business is when money exchanges hands. And in fact, money exchanged hands in this relationship.

Now, do I think it was a prime -- I mean, it was solely a business relationship? No. It was a very close friendship. It was also a very close relationship

with a campaign manager, the very person who got the [199] Councilman elected and helped him, was very instrumental in getting him elected. Mr. Vasquez was highly instrumental in that endeavor according to the testimony here.

Furthermore, Mr. Vasquez was also a political confidante and adviser, someone who you may think, hey, he helped get me into office, he can help keep me here if he keeps me on the straight and narrow and gives me continuing political advice.

I can't imagine a situation -- and I agree with Commissioner Cashman, that Councilman Carrigan was in a very tough position when Mr. Vasquez decided to get involved in the Lazy 8. Very, very difficult.

You got now appearing in front of you as a decisionmaker your very, very close friend, with whom you have had a close relationship for a very long time. You have got your campaign manager who got you into office to begin with. You got your political consultant and adviser and confidante with whom you on a regular basis consult in ongoing political matters.

Very, very difficult for me to then say, now, would a -- now when I say this, I want to say it with all due respect to the Councilman, because I believe he is not anything but an upright and honorable man.

But the test is -- and what he said here [200] today is absolutely true in terms of the effect that this situation had on him and his decision-making process and taking into account all of his political constituents's desires. But the test isn't whether or



not Mr. Carrigan was in fact influenced. The test is whether or not a reasonable person in his position would have been materially influenced. I'm paraphrasing the statute.

And I think that a reasonable person in that position would be materially influenced by his very close friend being in front of him, his campaign manager and his political confidante all wrapped into one person standing in front of me presenting something and presenting a position. I just think that's just for a reasonable person, very, very difficult to overcome and they would be materially affected.

So I think there is a commitment in a private capacity. I do think that it would have had a material effect on a reasonable person in Mr. Carrigan's situation.

I also think that it is instructive to look at what the Legislature intended when it included this statute in our reg -- in our laws here. Under Senate Bill 478 in 1999, which ultimately became NRS 281.501 subsection (8), or at least that bill included that, Mr. Scherer testified before the Government Affairs [201] Committee, and he said a couple things that I think are instructive in this matter. And in talking about the substantial and continuing relationship he says, quote:

“So the relationship would have to be substantial and continuing. Now if this was one where the same person ran your campaign, time after time after time, and you had a substantial and

continuing relationship, yes, you probably ought to disclose and abstain in cases involving that particular person.” Close quote.

He also went on to clarify that this section just doesn't talk about mere friendship. That is why I don't think mere friendship requires disclosure. It requires more than that, and we have that here. We have the close friendship and relationship of a campaign manager, of a political confidante and adviser as well.

The Government Affairs Committee legislative history also provides that Mr. Scherer stressed, quote:

“We are trying to leave the Commission, this Commission, some discretion in the extreme cases when he did not fall into one of these special specific pigeon holes, but they could nevertheless find that there was a relationship that was just as close or [202] closer. We don't want to get two friends per se.

“And I think the Commission, you know, there's been a lot of talk in the press about friendships, but I think if you read the Commission's decisions carefully, you will see they don't talk about just friendships. They talk about relationships that go beyond friendship.”

So I think the legislative intent is clear in terms of relationships that move beyond friendship, relationships that include more than just friendship and those friendships, and to me, that's present here. It falls then within NRS 281.501(8) subsection (e), any other commitment or relationship that is substantially similar to a commitment or a relationship described in this section. And my analogy is I believe that there is a substantial and continuing business relationship, but even if there wasn't, there certainly is a substantial and continuing political relationship and/or professional relationship that has continued to exist between the Councilman and Mr. Vasquez.

So I believe then that under NRS 281.501(2), that there was a commitment in a private capacity and that a reasonable person would materially have been affected by that private interest.

[203] I want to stress again to the Councilman and on the record that I don't for a minute think that he is not being accurate in his assessment and his testimony today in terms of the effect it had on him personally directly. But again, as I said, that is not the test under the statute. And so that is the reason that I get there, but I want to make my reasoning clear in terms of how I feel about the Councilman's testimony here today. Thank you.

Are there other comments? Yes, Commissioner Jenkins, please.

COMMISSIONER JENKINS: Now that we have thoroughly vetted the issue of a commitment in a private capacity to the interests of others, I feel that

we need to use Mr. Thornley's demonstrative, the one on the left and read the material in the final paragraph on the top left. It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons is not greater than that accruing to any other member of the general business, profession, occupation or group.

And this is where we have got a Hobson's [204] choice or Councilman Carrigan had a Hobson's choice, and that is do I go ahead and vote because I am committed to my constituents, despite the fact that I have a commitment in a private capacity to the interests of others. And would Mr. Vasquez's affect, if you will, on my judgment, if I were to vote in favor of something that might benefit him, benefit him more than the benefit accruing to any other public relations guy.

I don't know how to really deal with this. But the fact is, there is an out to the abstention requirement, and I don't think that I have ever done the analysis of that paragraph in a Commission on Ethics hearing.

VICE CHAIRMAN HUTCHISON: Well, let's do it.

COMMISSIONER JENKINS: Go ahead.

VICE CHAIRMAN HUTCHISON: Commissioner Hsu, why don't you take us through the statute and give us your thoughts.

COMMISSIONER HSU: Thank you, Mr. Chairman, Your Highness. I think people put too much emphasis on this language when I see people argue it when the resulting benefit or detriment accruing to him would not be greater than any accruing to any other member in a general business. There is only one lobbyist hired by Harvey Whittemore's group to do this, at least in terms [205] of what I heard. It's not like the entire business profession of lobbyists are being affected uniformly. That's kind of what that language is there for.

So I just don't see how that applies. I mean, we have one person, Carlos Vasquez is who is the spokesman or paid consultant for the Lazy 8 people, and he certainly gets the professional benefit by having this approved, and of course, the vote was that it got denied, the vote, but I just don't see how that language applies because it is not a broad application.

Again, not every lobbyist -- well, maybe there is testimony that could be had about Harvey Whittemore hiring every lobbyist, but I just don't see how every -- how the entire group of lobbyists is being affected by the passage or failure of this vote. Thanks.

\* \* \* \*

[206] COMMISSIONER JENKINS: No. We might consider that Councilman Carrigan is a resident of his ward and the decision to participate in the vote and his bringing [207] the motion and voting for it would not bring him or the project -- well, him any greater benefit than any other resident of his ward.

But you know, Vasquez just really throws a wrench in the whole thing, doesn't he?

VICE CHAIRMAN HUTCHISON: If I can comment, Commissioner Jenkins. We're really talking about it must be -- we're really talking about the independence of judgment of a reasonable person would be materially affected by -- would not be materially affected by his, we're not talking about pecuniary interest, we're talking about his commitment in a private capacity to the interests of others. So we're not talking about his interest as a citizen, we're talking about the private capacity interest to Mr. Vasquez.

So I think that Commissioner Hsu's reasoning does, I think, apply, and that is if you could say, look, the benefit that accrued to Mr. Vasquez was not any different than what accrued to everybody else. Then I think that you are fine. But Mr. Vasquez was in a different position than the general business, profession, occupation or group in terms of the Lazy 8 and the passage of the matter that was before the Council on August 23rd.

So I do think that Commissioner Hsu's reasoning makes sense to me and that paragraph does not [208] necessarily save the day.

COMMISSIONER JENKINS: If I could just throw one more thing on the record, and that is my analysis -- thank you, Commissioner Hutchison -- this is off the subject, but his acceptance of a gift or loan I eliminated because Vasquez's gift of free services was disclosed on his disclosure form and therefore it wasn't a gift. Pecuniary interest wasn't --

didn't apply here. So the commitment in a private capacity is the only one that did for me.

And I can't find any support for -- though I would like to think about it just one more minute -- but I can't find any support for that paragraph, you're right, about the benefit being more or less than anyone else in a group. Thank you for the time to think about it, though.

VICE CHAIRMAN HUTCHISON: Are you finished thinking?

COMMISSIONER JENKINS: Yes, thank you.

\* \* \* \*

[210] COMMISSIONER JENKINS: While it pains me greatly that we have made a finding of a violation, I sincerely believe that Councilman Carrigan had no intent or purpose to benefit anybody other than his constituents, that he did not attempt in any way to disobey or disregard Chapter 281 of NRS. He relied on the advice of counsel. He sought counsel's advice when he had a question, and he followed counsel's advice, regardless of other opportunities he may have had to seek an advisory opinion or ask for a second opinion or say, are you sure. He did what he thought, and what I [211] thought, think, shows a clear intent to do what he believed was within the statute, and as a result, I don't think he willfully violated it in any way.

I also don't believe that he fits the safe harbor provisions that are in the statute that was adopted, the three things that all have to be present in order to be, per se, not a willful violation. Because he

didn't seek an advisory opinion from the Commission, and the action that he took probably was contrary to a prior published opinion of this Commission. However, we have received evidence that his counsel didn't even consider those.

But regardless, so I don't think that it is an automatic not willful, but I don't see any evidence that he knew or should have known that his conduct was going to violate the statute. Of course, we all should have known because we can read the statutes and apply them to ourselves. But I think this is a particularly difficult one, and I don't think the man acted with any intent or purpose to disregard the Ethics in Government Law.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Jenkins. Other comments or discussion about the willful violation aspect of NRS 281.501(2)? Commissioner Hsu.

[212] COMMISSIONER HSU: Thank you, Mr. Vice Chair. Really what happened as I see it is that, unfortunately, Councilman Carrigan got incomplete advice. I don't want to say bad advice but incomplete advice.

When I look at the opinion letter from the City Attorney's office and the conclusion, it states, "The only type of bias which may lead to disqualification of a public official must be grounded in fact demonstrating that the public stands to reap either financial or personal gain or loss as a result of the official action." And Councilman Carrigan is pretty clear he didn't stand to reap any financial or personal gain on that.



But that is not necessarily what the statute -- that is not the only situation which requires an abstention, unfortunately. And Councilman Carrigan said if he would have been told to abstain he would have. And we have gone through the statutes, and there are other types of situations in which you should abstain. And actually Councilman Carrigan pointed it out, if it was his father he had said he would have abstained. If his father was there, that doesn't mean there is any financial or personal gain or loss to him.

So it's unfortunate that there is this opinion that he sought and it just didn't quite go far [213] enough, because I think that the facts have really been fleshed out that this is a pretty close relationship that would require an abstention, but would have followed what his lawyer would have told him. So I just can't find him being willful under the circumstances.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Hsu.

Other comments by Commissioners?  
Commissioner Cashman.

COMMISSIONER CASHMAN: I, too, don't believe that Councilman Carrigan did anything willful in this case. Although I am bothered by -- the reason I say that is because he did follow the advice of counsel, albeit incomplete.

I am concerned, though, that sort of the smell test, the reasonable person statute where somebody looks at it from an arm's length, and it is very difficult to do when you are dealing with personal

relationships, and I think that is where the rub comes in. The smell test just should have said, you know, I don't know that I can vote on this if my good friend is representing the other person on the other side. I think I got to abstain.

I mean, as difficult as it is and as much as you want to do what you think is right for your [214] community, I think that -- in my mind it is not willful but there is a smell test issue here that Mr. Carrigan certainly should have picked up on or should have known, and I just think that the analysis of these personal relationships like this are very difficult for individuals and create difficult situations and difficult choices.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Cashman. Commissioner Cashman, just for clarification, in addition to the good friend, of course, he was the campaign manager and the political confidante and all the comments you made previously as well. Is that also part of the concern expressed as well?

COMMISSIONER CASHMAN: It is the sum total of the relationship.

VICE CHAIRMAN HUTCHISON: Right, right.

COMMISSIONER CASHMAN: To me, it transcends just a business relationship and becomes more. But it is the sum total of the relationship as the consultant, as a friend, as a political confidante, and as somebody that he's relied on to put him in the position that he's in.

VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Cashman.

Commissioner Jenkins, please.

COMMISSIONER JENKINS: Here I go again. I [215] fear that if relying on so-called incomplete legal advice is the reasoning for the finding of no willfulness, that every elected official is going to go out and get a first year lawyer and get advice, and that lawyer will intentionally fail to review the Ethics Commission's written opinions and tell their clients go for it or don't, whatever you want to do, you can rely on my opinion. And I certainly, certainly don't want that to happen.

So when this opinion is drafted, I think it's going to be important that we say something about the Sparks City Attorney's office being on notice of the evaluation of the statutes with regard to abstention and disclosure, and place that squarely in the opinion if we find that there is no willfulness, that relying on counsel's recommendations in and of itself is not adequate for a finding of not willfulness.

I think that Councilman Carrigan's intentions were made clear through a myriad of evidence presented and not just his reliance on the advice of counsel, on his record, on his presentation, the presentation by the other witness, Mr. Vasquez, and the materials in our evidence books. So please, let's put the slippery slope argument out there because that certainly isn't going to fly more than once or so.

[216] VICE CHAIRMAN HUTCHISON: Thank you, Commissioner Jenkins.

For me, let me just begin where Commissioner Jenkins left off, and that is, to me, the reliance on counsel is just one of the facts that we look at. If you really want to evaluate willfulness, there are opinions on this, the McDonald opinion is a good one, and others, and I believe Commissioner Jenkins has already gone through the analysis.

Our opinion in McDonald says specifically it is on a case-by-case basis and that you want to take a look at the public official's activities and determine whether they acted voluntarily and with a specific intent and purpose either to disobey or disregard the NRS Chapter 281, what that requires, or do something which NRS 281 forbids.

I didn't find any evidence of that in this hearing. And I do think it is unfortunate, I think we're all saying it is unfortunate that you are here because you did go out and seek the advice of counsel. I think at least I found your testimony, Councilman, to be credible, that you relied upon that opinion, that you would have followed whatever your counsel told you to do.

COMMISSIONER JENKINS: We're not talking to him, we're deliberating.

[217] VICE CHAIRMAN HUTCHISON: But I'm just looking at him. I just found that that testimony was credible. I found that he would have followed the advice of his lawyer. Had he done so, and had been more completely informed, I'm confident that he would have done what they told him to do.

So I echo the sentiments of Commissioner Jenkins as well that we're not simply saying go out

and get a lawyer who may or may not do a good job. We're saying follow the opinions and the statutes that are already published and provided.

So I likewise do not find in the testimony a basis for willfulness or for intentional conduct, and therefore, I would not be able to support such a finding.

\* \* \* \*

[218] VICE CHAIRMAN HUTCHISON: So with those deliberations, Councilman, I can now turn my attention to you. Unless there is any other comments before we do so or other matters that need to be discussed, I believe we can close our deliberations and we will do so.

Councilman Carrigan, I'll just repeat what the Commission has decided. On the charge concerning your violation of NRS 281.481 subsection (2), regarding your use of an official position to secure or grant unwarranted privileges, preferences or advantage for yourself or person to whom you have a commitment in a private capacity, when you voted on Lazy 8 matter, the [219] Commission found that you did not violate that statute on a five-to-one basis.

Under the charge that you had violated NRS 281.501 subsection (4), regarding whether your relationship with Mr. Vasquez was a relationship under NRS 281.501 subsection (8) that needed to be disclosed and whether you sufficiently disclosed that relationship, the Commission found that you did not violate NRS 281.501 subsection (4) by a vote of four to two.

And finally with regards to NRS 281.501 subsection (2), the Commission found that you should have abstained from acting on the Lazy 8 matter and therefore violated NRS 281.501 subsection (2). However, on a vote of five to one, the Commission has found that you did not do so willfully.

That concludes our decisions and our deliberations. My question for you, Councilman, is do you have any questions or would you like to make any final comments.

MR. CARRIGAN: No, sir. I just thank you for your time.

VICE CHAIRMAN HUTCHISON: Thank you so much.

MR. CARRIGAN: I just want to say this was a great education here, and I just hope that other elected officials will take a look at this, because I'm not an [220] attorney, I relied on an attorney's opinion, and it bit me in the butt. And I just hope, you are talking about the slippery slope, I hope that even if you go out and find an attorney that's been around for 20 years, that if you are going to rely on their opinion, you have to take a look at the elected official.

You can read NRS all you want, but there is a lot of convoluted statements in there. So I would request that if you expect me as an elected official to take look at that, let's make it pretty easy for me to read.

Because you asked me, hey, I relied on my attorney. That is what the City of Sparks pays him for. And like I said, if he would have said, you know, you should abstain from this, I probably -- well, I already said I would have abstained.

But anyway, I thank you, Your Honor, for your time.

VICE CHAIRMAN HUTCHISON: Thank you, Councilman. Just final comment. You may want to take a look at NRS 281.551 subsection (5), and that does provide the safe harbor provisions where for sure if there is any questions in the future, you have a way of and a process to address that, and I do just want to reiterate, though, I think you heard the comments of the Commission in terms [221] of how we viewed you and your veracity and your honorableness, and your honor, and that was I don't think in any way degraded here or questioned here. So we thank you for your time and appreciate you going through a difficult process. Thank you.

MR. CARRIGAN: Thank you.

VICE CHAIRMAN HUTCHISON: You bet. And with that we will close Agenda Item No. 2. And we will give everyone a chance to get out of the room, and then we will take up Agenda Item No. 3.

(Matter concluded at 3:15 p.m.)

**DRAFT**

**BEFORE THE  
NEVADA COMMISSION ON ETHICS**

IN THE MATTER OF  
THE REQUEST FOR  
OPINION  
CONCERNING THE  
CONDUCT OF  
MICHAEL CARRIGAN  
City Councilman, City of  
Sparks

Requests for Opinion  
No. 06-61, 06-62, 06-66 &  
06-68

**STIPULATED FACTS**

COMES NOW, Michael Carrigan, by and through the undersigned counsel, and asks that the following facts be stipulated to by the Nevada Commission on Ethics, and entered into the record of the above referenced matter.

**FACTS**

1. Sparks Councilman Michael Carrigan is a public officer as defined in NRS 281.4365(1).
2. The Nevada Commission on Ethics has jurisdiction over this matter pursuant to NRS 281.511(2).
3. Councilman Carrigan and Carlos Vasquez have been friends since 1991.
4. Carlos Vasquez acted as Councilman Carrigan's campaign manager in 1999.
5. Councilman Carrigan was elected to the Sparks City Council in 1999.



6. Carlos Vasquez acted as Councilman Carrigan's campaign manager in 2003.
7. Councilman Carrigan was re-elected to the Sparks City Council in 2003.
8. Carlos Vasquez acted as Councilman Carrigan's campaign manager in 2006.
9. Councilman Carrigan was re-elected to the Sparks City Council in 2006.
10. The above listed professional relationships do not continue outside of each individual election, and therefore constitute three separate undertakings, not a single continuous business relationship.
11. Councilman Carrigan has properly reported all campaign contributions as regulated by NRS Chapter [2] 294A.
12. In anticipation of the August 23, 2006 meeting for the Sparks City Council, Councilman Carrigan asked Senior Assistant City Attorney David Creekman to provide a legal opinion regarding disclosure parameters and the applicable law on abstention from voting.
13. Pursuant to Councilman Carrigan's request, Mr. Creekman prepared a legal opinion entitled "Bias or Predisposition as Grounds for Disqualification of an Elected Official." Mr. Creekman's opinion is included at page 000038 of the NCOE's Exhibit List.

14. David Creekman summarized and reminded the entire City Council of the August 17, 2006 opinion via email approximately one hour before the August 23, 2006 meeting of the Sparks City Council.
15. Councilman Carrigan relied on David Creekman's advice when he fully disclosed his relationships with Carlos Vasquez. Further, Councilman Carrigan explained why his judgment would be unaffected by said relationships at the August 23, 2006 meeting. Councilman Carrigan's disclosures are included on page 000102 of the NCOE's Exhibit List.
16. Councilman Carrigan voted "yes" on the Lazy 8 agenda item at the August 23, 2006 City Council meeting.
17. The Lazy 8 agenda item failed at the August 23, 2006 City Council meeting.

Respectfully submitted this \_\_\_ day of July, 2007.

**CHESTER H. ADAMS**  
Sparks City Attorney

**DRAFT**

By: \_\_\_\_\_  
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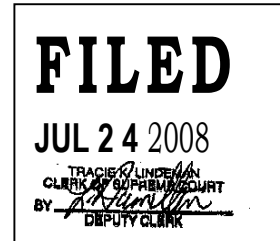
**IN THE SUPREME COURT  
OF THE STATE OF NEVADA**

**MICHAEL A. CARRIGAN**, Fourth Ward City  
Council Member, of the City of Sparks, Appellant,

vs.

**THE COMMISSION ON ETHICS OF THE  
STATE OF NEVADA**, Respondent

Docket No. 51920  
District Court No. 07-OC-012451B



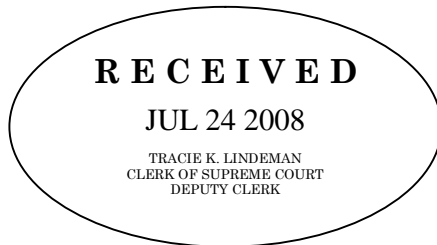
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**APPELLANT'S  
OPENING BRIEF**

\* \* \* \* \*

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**MICHAEL CARRIGAN**



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State statutes that burden political speech, such as NRS 281A.420(8) and NRS 281A.420(2), are subject to strict scrutiny, and the statutory restriction of speech is upheld only if it is narrowly tailored to serve a compelling state interest. *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995); *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 786, 98 S.Ct. 1407, 1421 (1978). The broad purview of NRS 281A.420(8) includes any actual or implied relationship that the Commission on Ethics arbitrarily determines to be “substantially similar” to any of the other relationships specifically enumerated in the subsection. Because of the uncertainty that accompanies these unconstitutionally vague standards, relationships that do not amount to a “commitment in a private capacity to the interests of others” but for the unfettered discretion and personal predilections of the Commission on Ethics, are necessarily encumbered, and the reach of NRS 281A.420(2), through its reliance on NRS 281A.420(8), is not restricted to a narrow category of unprotected speech. Accordingly, NRS 281A.420(8) and NRS 281A.420(2) are not narrowly tailored, and the statutes do not employ the least restrictive means available to regulate conflicts of interest. Therefore, NRS 281A.420(8) and NRS 281A.420(2) do not survive strict scrutiny and violate the First Amendment.<sup>4</sup>

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<sup>4</sup> The First Judicial District Court incorrectly applied the balancing test established in *Pickering v. Board of Education*,

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391 U.S. 563 (1968), to the situation in this case. JA 0391, lns. 14-17. When a court applies the *Pickering* balancing test, it must arrive at a balance between the interests of the employee, *as a citizen*, in commenting upon matters of public concern and the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees. *Pickering*, 391 U.S. at 568, 88 S.Ct. at 1734-1735 (1968) (emphasis added). Here, Councilman Carrigan is speaking as an elected representative of the citizens of Sparks, not as a private citizen.

To the extent this Court is inclined to consider the *Pickering* balancing test, the scales of justice still tip decisively in favor of Councilman Carrigan. Public officers in Nevada have a strong interest in voting their conscience on important issues without having to suffer retaliatory recriminations from the Nevada Commission on Ethics. *See, e.g., Connick v. Myers*, 461 U.S. 138, 149, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) (“It is essential that public employees be able to speak freely without fear of retaliatory dismissal.”). The public also has a substantial interest in members of public authorities being able to freely cast their votes in accordance with their best judgment, without fear of political interference and intimidation. *See Butz v. Economou*, 438 U.S. 478, 506, 98 S.Ct. 2894, 57 L.Ed.2d 895 (1978) (noting “public interest in encouraging the vigorous exercise of official authority”). Together, Carrigan’s interest and the public’s interests weigh heavily on Carrigan’s side of the *Pickering* balance. Although the State has an interest in securing the ethical performance of governmental functions, that alone is not strong enough to overcome the interest of the citizenry of Sparks in representative government. NRS 294A.100 limits the amount of money, or value of services, any person can contribute to a campaign for public office in Nevada.

Moreover, NRS 294A.100 controls the timeframe in which political donations can be made. Failure to comply with the provisions of NRS 294A.100 is a category E felony. Any concerns that the state may have regarding the campaign contributions made by Mr. Vasquez to Councilman Carrigan’s campaigns are mitigated by the limitations placed on campaign contributions by state law. By finding that Councilman

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Carrigan's vote on the Lazy 8 project accurately reflected the will of his constituents and that Carrigan sufficiently disclosed his relationship with Mr. Vasquez, the Commission on Ethics essentially found that no actual impropriety existed in this case. JA 0281, #15; JA 0289. Therefore, the notion that Councilman Carrigan should have abstained from voting on the Lazy 8 matter because of the political contributions from Mr. Vasquez - the government's interest in this case for purposes of *Pickering* balancing - is based entirely on a supposed appearance of impropriety. The contributions in this case did not violate NRS 294A.100, and were properly reported under NRS 294A.120. Accordingly, any concern that the government may have regarding the ethical performance of governmental functions is alleviated by the limitations imposed on campaign contributions by NRS Chapter 294A. If properly received and reported campaign contributions amount to a disqualifying conflict of interest under NRS Chapter 281, the Ethics in Government Law will serve as the de facto limitation on campaign contributions without specifically enumerating the point at which a contribution becomes a disqualifying conflict of interest. Therefore, if a *Pickering* balancing test is applied to this situation, the interests of Councilman Carrigan, Nevada's public officers, and the public at large overwhelmingly militate in favor of Councilman Carrigan's First Amendment right to vote on projects before the Sparks City Council.