

SPECIAL MEETING OF THE SPARKS CITY COUNCIL

September 20, 2006

3:00 p.m.

1.

Call to Order

Time: 3:02:49 p.m.

The regular meeting of the Sparks City Council was called to order by Mayor Geno Martini at 3:02 p.m. in the Council Chambers of the Legislative Building, 745 Fourth Street, Sparks, Nevada.

2.

Roll Call

Time: 3:02:58 p.m.

Mayor Geno Martini, City Clerk Debi Dolan, Council Members John Mayer, Phillip Salerno, Judy Moss, Mike Carrigan, Ron Schmitt, City Manager Shaun Carey and City Attorney Chet Adams, PRESENT.

Staff Present: David Creekman, John Dotson, Steve Driscoll, Joyce Farley, Bob King, Neil Krutz, Adam Mayberry, Linda Patterson, Tim Thompson and Lenda Ulrich.

Invocation

Time: 3:03:12

Mayor Martini noted that it was not on the agenda, however, he asked Pastor Brad Dyrness of Sparks First Church of the Nazarene to give an invocation.

Comments from the
Public

Time: 3:05:22 p.m.

Mayor Martini noted that although it was not published as a public hearing item, he would allow comments from the public under item 5.

Nancy Price, 1536 "D" Street, Sparks, spoke regarding the lack of parking in the downtown area during special events. Ms. Price requested her comments be put in the minutes, verbatim; however, that is not the Clerk's policy.

Gary Schmitt, 505 Main Street, Gerlach, called the current Washoe County Commission the most dysfunctional commission he has seen in decades and urged the public to support Gary Ferrell, the Independent candidate for County Commission in District 5, Sam Dehne, the Democratic candidate for County Commission in District 2, and the Libertarian candidate Tom Kozzio for County Assessor.

Sharon Stumpf, 1673 Sue Way, chastised the Council for tarnishing the image of City Government in the eyes of the Boy Scouts of America and her son, who attended the Council meeting of August 23, 2006.

Jan McGinty, 55 E. Sky Ranch Boulevard, said she attended the meeting of August 23, 2006 in opposition to the casino and she

was very happy when the Council voted no, but she now feels betrayed and feels the Council has sold out to Mr. Whittemore in secret and she urged the Council to hire independent legal counsel to examine this issue.

Jeannie Adams, 5655 Grasswood Drive, spoke against the settlement and offered several options for defending the suit. She requested that the Council get a second legal opinion on the enforceability of the agreement.

3.
Possible Motion to
Adjourn to a Closed
Session

Time: 3:06:22 p.m.

An agenda item requesting consideration of a possible motion to adjourn to a closed attorney-client session to receive information regarding existing litigation and to deliberate toward a decision on the matter (NRS 241.015(2)(b)(2)).

Council Member Carrigan asked the City Attorney to explain why the Attorney General authorizes a public body, like the City Council, to go into a closed door session with the Attorney. City Attorney Chet Adams said he believed this stems from the traditional privilege where the law recognizes that certain conversations are entitled to confidentiality; privileges which typically apply to situations such as conversations between doctors and patients, husbands and wives or clergy and individuals in their congregation. He said the law recognizes the public is not entitled to attend when conversations between a doctor and his patient are being conducted and accordingly, when conversations between an attorney and their client are on-going. Mr. Adams said generally speaking, conversations between an attorney and their client involve matters of litigation. He said that in matters of civil litigation, an attorney is often called upon to present very difficult situations to the client and at that time information is usually presented that can be not only embarrassing, but legally damaging to the client's interests. He said an attorney has to discuss litigation strategies with their client: litigation strategies that take the form of how much is this litigation going to cost; what are the attorney's fees; what are the court costs; how long will the litigation last; what happens if your client loses the law suit; will insurance be able to cover the loss; is your client able to pay an adverse judgment, plus the other side's attorney's fees and costs.

Mr. Adams said the next question is whether or not this traditional protection of confidentiality concerning attorney/client privilege applies to governmental entities such as the City of Sparks. He said Nevada law does recognize and promote the confidentiality between a government attorney and their client, which in this case is the City Council. In fact, Nevada law goes one step further and states that an attorney/client session between a government

attorney and their clients is not defined as a meeting under Nevada's open meeting law. This means that no notice needs to be given about an attorney/client session; no agenda needs to be prepared; no public comment is allowed during the attorney/client session; and the public is not entitled to attend an attorney/client session between a governmental entity and their client.

Attorney Adams went on to clarify that if your attorney is conveying to you fairly confidential and candid information about the merits of a particular lawsuit and is trying to explain a litigation strategy to minimize the potential liability to their client and that information is publicized, it works a hardship on the governmental entity and undermines its ability to defend itself in a court of law. Mr. Adams said the statutorily created attorney/client session that not only Nevada law allows, but is encouraged by the Nevada Attorney General, is exactly what the Sparks City Council did on September 1st. He emphasized that the meeting was not called on his behest, but rather at the request of a Council Member.

Mr. Adams then addressed the issue with the Attorney General; stating that the Attorney General has issued an opinion that the Sparks City Council has violated Nevada's open meeting law. He said that, as is typically the case, when two lawyers meet they seldom agree. He said he takes issue with the opinion and disagrees with the Attorney General. Mr. Adams said he felt the City of Sparks has always attempted to be up front and open in its affairs and the City Council has always looked to the City to conduct its business in the open. He said he has recognized what the City Council does and he is probably the only elected attorney in Washoe County that publishes their legal opinions on line, provides the public with an avenue to not only contact the City Attorney, but to seek and acquire public documents through the City's website.

Attorney Adams said that the Attorney General has a good point in that despite the fact that what we have done in the past has not been objected to and despite the fact that everyone else does it, if what the Attorney General is saying will bring even greater openness to our government, then he is not adverse to that. And, in the future, should we meet in accordance with the statutory provisions of Nevada law, Mr. Adams said he has no objections to leaving that session and then coming out to a public meeting to discuss or make any type of decision the Council wishes, pursuant to that attorney/client session, in a public forum.

Mr. Adams said this was irrespective of the City's laws and the City's charter, which specifically grants the executive branch of

the City's government to handle the litigation of the City. It also dovetails with the City Council's enactment of an ordinance which gave up the Council's authority to settle lawsuits under \$25,000. All this aside, as a matter of policy, and if it will assist our community and the City Council in conducting their business, if there was, in fact, a violation of Nevada's open meeting law, then as the Chief Legal Officer of the City of Sparks, Mr. Adams said he was responsible and he would accept that responsibility.

Attorney Adams said that for the purposes of today's agenda, he would ask the City Council to totally disregard the information that was provided to them on September 1st and in furtherance of that advise, he has provided to each Council Member a copy of the proposed settlement in this matter for them to independently review and independently act upon under Agenda Item 5.

Mr. Adams noted that the agenda does allow the Council to adjourn now and reconvene with legal counsel in a session behind closed doors and they could do this, or they could also choose to not adjourn to a closed session. He said if they chose to convene behind closed doors, he would advise them as to the merits of the case and his reason why he felt we should settle this litigation. However, if the Council felt Mr. Adams had provided them with sufficient information during prior privileged meetings, memorandums, letters, and documents, then the Council could go directly to Agenda Item 5. He stressed that if the Council wanted to conduct an attorney/client session during the course of an open meeting, then he would have to ask the Council to waive their attorney/client privilege, because much of what he had to say is confidential information and, more importantly, very detrimental to the City's interests for this litigation and also for any subsequent litigation that is brought forward as a result of the matter we are here today to discuss. Attorney Adams said he strongly advised the Council not to waive their attorney/client privilege.

Mr. Adams said he has discussed this issue with the Attorney General, who had no problem with the Council doing any of the three items on this agenda: adjourn to a closed attorney/client session; waive or preserve the attorney/client privilege; or go directly to Agenda Item 5 with little or no input from the City Attorney.

Council Member Salerno asked if a motion was necessary for Item 3. Mayor Martini said if there is no motion, then no closed session would be held.

Mayor Martini noted that he had a speaker card for Item 3; however this is not a public hearing item. He said the only item

that will be opened as a public hearing would be Item 5.

Council Member Schmitt asked for clarification as to whether we actually had a lawsuit in place at this moment. Mr. Adams responded that for purposes of this meeting, the Council should consider that we have a lawsuit in place and the purpose of the meeting is to discuss pending or threatened litigation. He said the Council is being asked to authorize the City Attorney to settle litigation known as the Red Hawk Land Company, LLC v. City of Sparks, et al.

Council Member Schmitt asked Mr. Adams that, assuming we have a lawsuit against the City right now, did Mr. Adams believe he had the ability to settle this lawsuit with or without Council action, based upon our present laws in the City of Sparks, that allow the City Attorney to settle lawsuits under \$25,000 in damages. City Attorney Adams said for purposes of the agenda tonight, he is asking the City Council to authorize him to settle this lawsuit. He said his interpretations and applications of the Sparks City Charter and the Sparks ordinances are not necessarily germane as to why this meeting is being held.

Council Member Schmitt then played the “what if” card, saying if the Council failed tonight to authorize settlement of this lawsuit, what is the procedure the Council would have to follow to undo what has already been done, or is that automatically undone. Attorney Adams then said that particular issue is not on the agenda and he asked the Council deem that to be a collateral matter and not part of the considerations tonight.

Council Member Carrigan said he received several e-mails that suggested that the City Council fire our City Attorney and Mr. Carrigan wanted to let everyone know that the only people that can fire the City Attorney are the citizens of Sparks because he is an elected official.

Council Member Schmitt asked if the City Attorney felt there is any appropriate information that has not already been given to the City Council that needed to be discussed [in a closed session]. Attorney Adams said he did not have any additional information to add to what he had already provided to the Council.

There was no motion to adjourn to a closed attorney/client session.

4.
Possible Motion to
Adjourn to Waive
Attorney/Client Privilege

Time: 3:35:15 p.m.
An agenda item requesting consideration of a possible motion to waive the attorney-client privilege between the City Council and the City Attorney to receive information in an open meeting

regarding the settlement of Red Hawk Land Company, LLC V. City of Sparks, et al.

There was no motion to waive the attorney-client privilege.

5.
Possible Motion to
Authorize the City
Attorney to Settle a
Lawsuit

Time: 3:35:31 p.m.

An agenda item requesting consideration of a possible motion to authorize the City Attorney to settle a lawsuit: Red Hawk Land Company, LLC V. City of Sparks, et al.

Mayor Martini asked Mr. Adams if he needed to make a presentation; if the Council had any questions; or if they could go directly to public comment. Attorney Adams said he had provided the Council with sufficient information; there were no questions from the Council Members; Mayor Martini then opened the a public comment session on Agenda Item 5, after first cautioning the audience to keep public comments on the consideration of authorizing the City Attorney to settle the lawsuit: Red Hawk Land Company, LLC V. City of Sparks, et al. and that while he would allow some latitude, if any speaker strayed too far from the subject matter, he would interrupt and ask that speaker to stick to the subject matter or leave the podium.

The following individuals were present and spoke in opposition to authorizing the City Attorney to settle the lawsuit:

Brenda McCortylee, 6390 Voltice Court.
Dennis McCrohan, 309 Shelby Drive.
Lynn Collins, 45 Desertscape Court.
Shirley Bertschinger, 832 Olanca Court.
Vija Cox, 3755 Erin Court.
Roy E. Adams, 5655 Grasswood Drive.
Rudy Viola, 4435 Dancing Moon Court.
Kathy Souviron, 1375 Bodega Court.
Herman Stewart, 155 Stags Leap.
Fred Horlacher, 1395 Nightingale Way.
Ed McCaffrey, Publisher of the Sparks Tribune.
Pamela Riese, 625 Tranquil Drive.
Stephen Peek, 1194 Mayflower Drive.
Roger Trounday, 850 Huffaker Estates Circle.
Cindy Hall, 3775 Erin Drive.
Bob Price, 1536 "D" Street.
Ira Hansen, 6500 Spanish Springs Road.

The following individuals did not wish to speak but were in opposition to authorizing the City Attorney to settle the lawsuit:

Cindy Hall, 3775 Erin Drive.

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J. Edward Parker, 6970 Pah Rah Drive, submitted a letter in opposition.

Herbert F. and Olga Blanck, 6986 Poco Bueno Circle.

Karl E. and Maria Rodriguez, 365 Moon Beam Road.

Nicolas Ruiz, 1924 Woodtrail.

Michele La Brie, 7373 Matisse Court.

Bob Bertschinger, 832 Olanca Court.

Donna Green, 1800 Prater Way #C6.

Dorithen Combs, 620 19th Street.

Rebecca Woods, 533 E. Quail Street.

Wilma Bennett DuBose, 3683 MacArthur.

Susan Herr, 316 California Avenue.

Nettie Housen, 2105 Modena Court.

Teresa Schwartzman, 5054 Dubonnet Drive.

P. Sue Henderson, 5346 Santa Barbara Avenue.

Diane Dwyer, 2501 Garfield Court.

Marion R. Slay, 2594 Betsy Street.

Vernie McCrohan, 309 Shelby Drive.

Terry Maine, 401 Canyon Way #15.

Jerri Eby, 1184 Jason Drive.

Cassandra and Ian Grieve, 465 Tranquil Drive.

Hugh Stone, 395 Lane.

Julie Campbell, 605 Valle Verde Drive.

David and Janae Maher, 5635 Grasswood Drive.

Mary Odom, 5645 Wedgewood.

Bob Spencer, 622 Northwood Drive.

Jon Snyder, 5875 Starcrest Avenue.

Nancy Trabert, 1755 Trabert Way.

Dennis Hegemann, 350 Sells Street.

Emily Robbins, 816 Olanca Court.

Michele Salonek, 1592 Satellite Drive.

Jonathon Lau, 4479 Steeple Court.

Beth Lau, 4964 Hallgarten Drive.

Jen Lau, 520 S. Crane.

Michelle Chambers, 5680 Grasswood.

Nancy Koering, 3279 Bunkerhill.

Leopolda Barajas, 1877 El Rancho #54.

Margaret Ruhne, no address given.

Debbie Trombetta, 4861 Monte Rio Court.

John Hays, 882 Glen Martin Drive.

Vinubhai Pater, 14 E. Paul's Way.

The following individuals were present and spoke in support of authorizing the City Attorney to settle the lawsuit:

Richard Daly, 2180 4th Street.

Tom Brucklacher, 2824 Orion Drive.

The following individuals did not wish to speak but were in support of authorizing the City Attorney to settle the lawsuit:

Zelalem and Suta Bogale, 1670 Crestside Court.
Tsige Gesit, 1670 Crestside Court.
Ralph Bertoli, 2749 Silverstone Way.
Edward P. Anderson, 360 York Way.
R. Whittemore, 7019 Whitemare.
Fred Harvey, 1391 Satellite Drive.
Willard J. and Ruby Anderson, 250 Veronica Avenue.
Kellen Manick, 3240 Dunbar Court.
Marcy Taylor, 361 Taryn Drive.
Heidi Loeb, 7495 Silver King Drive.
Mike Ellena, 6296 Poco Bueno Circle.
Glen Moyle, 3394 Ten Mile Drive.
Jenny Wilson, 6060 Ingleston Drive #1221.
David Richardson, 6804 Cinnamon Drive.
Marsha Wagner, 6804 Cinnamon Drive.

Council Member Mayer said that while he felt that Mr. Adams and his staff could beat this lawsuit, he would like to hire an outside attorney to review this situation. Council Member Schmitt said he did not believe the Council had the ability to hire outside counsel, according to our present ordinances and the City Charter. Attorney Adams said this was correct and reminded the Council that he has been representing the City Council for a great number of years and his record indicates that the plaintiffs against the City have received less than ½ of 1 percent of all claims requested in litigation. He said it was not only inappropriate to ask for outside counsel, but he felt it would also be against the public interest.

City Attorney Adams reminded the Council that he is the Chief Legal Officer for the City and he said he would stand by his legal decisions. He asked that the Council respect his position as the Chief Legal Officer and said he concurred with Council Member Schmitt's conclusion that the City Council does not have the authority to independently hire outside counsel.

Council Member Mayer said he thought Mr. Adams was a fine attorney and offered the comparison that his doctor had never killed anyone on the operating table, but he still likes to get a second opinion. He said he felt that the City Council should be able to direct the City Manager to hire outside counsel for a second opinion on this issue. He also said he voted to deny this project and he felt that Mr. Adams, Mr. Creekman and the rest of the City Attorney's Office could win the lawsuit.

Council Member Schmitt said this was a very sore subject for him because two years ago he tried to bring a Nevada State Legislative Counsel Bureau opinion into this chamber and he was denied bringing that opinion in because he did not have the authority as a Council Member to ask the LCB for any opinions. He said he would take the responsibility of not following through, at that time, with a charter change. He said he can't support the motion today because he is being told it was against our City Charter. He requested that at the next city council meeting there be an item to discuss what steps need to be taken so that we have the ability in the future to make this decision as a Council.

Attorney Adams said he was at a loss to understand why the City Council was asking for outside counsel; because they have known since at least two years ago, what the City Attorney's legal position was on this issue. He said this Council has been consistently warned that it is facing litigation on this particular issue and what the City's legal position was. He said that when asked, in public, by the City Council, what his legal position was on this issue, he gave the Council his legal opinion. He said he offered to provide the City Council with his legal position in writing, but his offer was never taken up.

Council Member Carrigan said the citizens of Sparks elected the City Attorney and if the City Attorney says we can't do it because it is against the law, then we can't do it; and he was going to vote no on this motion.

City Manager Carey clarified that the City Attorney has always authorized his office to engage outside legal services when he perceived that it was in the best interest of his office to do so. Mr. Carey said he has not engaged outside legal services independent of approval from the City Attorney's Office.

Council Member Moss said that the Council has been accused of not acting in the best interest of the public and while we may have made some mistakes, we all want to do what is best for Sparks. She said that when they voted to deny the application, the Council was right to agree with the Planning Commission, because she did not believe that the applicant had followed the proper process for the land use and zoning. However, the action of the 1994 Council, even if it was not their intent, left this Council "hamstrung" and seriously affected what we can and can't do. She said she did not like the lawsuit or the casino; however she did not feel that she could not go forward with the settlement, because that is what the City Attorney has ultimately recommended.

Attorney Adams reminded everyone that this lawsuit was not about Harvey Whittemore, the Nugget, or any other entity; it is a result of a business decision that was made in 1994 between the Sparks City Council and Loeb Enterprises. As a result of that business decision, certain contractual rights were provided to Loeb. Why were those rights given to Loeb? In 1993, when Wingfield Springs was nothing more than cow paddies and mosquitoes, an individual came into town offering to build an award winning, first class development and the Council at that time wanted this development and they wanted it so bad that they were willing to freeze the land use designations as they existed in 1994, as applied by the NSSOI and give up a contractual right to transfer unused development rights. Mr. Adams said that the agreement was drafted and redrafted and various meetings were held between the Council Members, Loeb and staff and staff's recommendation was to limit the transferability of these development rights in the Wingfield Springs area only. However, staff and the City Attorney do not make these decisions and the transferability of development rights was not limited to Wingfield Springs. Mr. Adams stressed that the agreement was not cart blanche, but was conditioned upon the developer securing adequate land use entitlements and that is what the Tierra del Sol project is; an attempt to secure those development rights. He said that the law requires the City Council to base a denial of the tentative handbook on reasonable and substantial evidence and the law suit essentially says that the City Council did exactly what the public asked them to do; deny the resort project because of the casino component. He said that unfortunately this conflicted with the law, because the law says there needs to be something more than public opinion. Mr. Adam said one of the grounds to deny the project was traffic concerns; but, unfortunately, the evidence presented to the City Council showed that the traffic actually will be less because of the casino. Mr. Adams pointed out that the law will not tell you this is good or bad for a community; a court of law will simply ask if the City Council was justified in its decision, and if not, then the decision is overturned.

Council Member Mayer asked Mr. Carey if this motion passed, would he go against the wishes of the City Council and not hire outside counsel. Mr. Carey said if there was a successful motion by the City Council to hire outside legal counsel, then he would pursue that to the best of his ability, until told he could no longer proceed.

Mayor Martini reminded everyone that there was a motion by Mr. Mayer, seconded by Mr. Salerno, to hire outside counsel and asked if there was any other discussion. There being none, Mayor Martini asked for the vote.

A motion was made by Council Member Mayer, seconded by Council Member Salerno, to not take any action on the settlement and to appoint outside counsel to look at this issue and report back to the Council. Council Members Mayer, Salerno, YES. Council Members Moss, Carrigan, Schmitt, NO. Motion failed.

Council Member Schmitt addressed the issue of the attorney/client meeting on September 1st between the Council and the City Attorney, stating he apologized to the citizens of Sparks, stating he does have a difference of opinion with the City Attorney; he believed the meeting was legal but that at some point in time it did turn into an illegal meeting. He said he did not attend the meeting, but he was in contact via the phone. He said he had no excuses, but he would not put himself in that situation again. Council Member Schmitt said truly only a judge would be able to determine the intent of the 1994 Council. He said he had an attorney review the lawsuit and advise him on what to do and he was told it was a very well-written lawsuit and wished the City good luck.

Council Member Carrigan explained that he received a call to attend the attorney/client meeting, which was requested by a member of the City Council. He said that in order to have an open meeting violation filed against you, you have to knowingly go into a meeting that had not been advertised and he said none of them went into that meeting thinking it was a meeting, but that it was a session with our attorney, and he has attended numerous sessions both as a Council Member and as a member of other boards and commissions on which he serves.

Council Member Carrigan emphasized that he represented the citizens of the City of Sparks and that while a lot of people have a Sparks address, they live in the Sparks Sphere of Influence, but they don't actually live in the incorporated City limits. He said he has to look after the best interest of the citizens of the City of Sparks and in his opinion (which is drawn from the advice of our City Attorney) the best thing we can do is settle this lawsuit.

Mayor Martini said this is not about a \$100 million lawsuit; it is not about the Whittemores; and it is not about the Nugget. It is about the City of Sparks entering into a contract. Mayor Martini said in his former life he was a banker and as a banker he entered into tens of thousands of contracts. He said one of the speakers said it was okay to break a contract, but Mayor Martini said he did not believe it was okay. He said there were many people who he loaned money to and most of them paid it back: some of them did not. He said they entered into a contract, he felt, with him

personally and he was personally offended when they didn't pay him back and to him this all boils down to a contract. He said he is not blaming the 1994 Council and he did not know what their intent was. But you can go to the grocery store and put all the intent you want in a bag and go home and you won't have any dinner. He said he felt we were obligated to enforce that contract: someone loaned us money and now it is time to pay them back.

A motion was made by Council Member Carrigan, seconded by Council Member Moss to authorize the City Attorney to settle a lawsuit: Red Hawk Land Company, LLC V. City of Sparks, et al. Council Members Moss, Carrigan, Schmitt, YES. Council Members Mayer, Salerno, NO. Motion carried.

4.
Comments from the
Council and City
Manager

Time: 4:55:28 p.m.

Council Member Schmitt asked that the Council get a complete explanation as to what we can do and what we can't do with attorneys and what our possibilities are and how we need to go about changing that if this Council decides to put itself in a position, in the future, where we can ask for an outside attorney. Mayor Martini asked if he wanted this information from our City Attorney. Council Member Schmitt said he would trust our City Attorney to provide the information requested.

5.
Adjournment

Time: 4:58:09 p.m.

There being no further business, the meeting was adjourned at 4:58 p.m.

Mayor

City Clerk

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