MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
April 6, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8:16 a.m. on Wednesday, April 6, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A was the Agenda. Exhibit B was the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Kelly Lee, Committee Counsel
Johnnie Lorraine Willis, Committee Secretary

OTHERS PRESENT:

Weldon Havens, M.D., Chief Executive Officer and Legal Counsel, Clark County Medical Society
Scott Craigie, Nevada State Medical Association
Brad Selgestad, M.D., J.D., Senior Staff Physician, University Medical Center
Raymond “Rusty” McAllister, Professional Firefighters of Nevada
Jennifer Lazovich, American Council of Engineering Companies of Nevada
Ivan R. “Renny” Ashleman, Southern Nevada Home Builders Association; Vice Chair, State Public Works Board
Paul Georgeson, Attorney, Associated General Contractors Nevada Chapter
Steve G. Holloway, Associated General Contractors, Las Vegas Chapter

Timothy J. Nelson, Evans Creek Limited Liability Company
Frank Thompson, Attorney, Evans Creek Limited Liability Company
Michael G. Chapman, Attorney, Washoe County
Karen Mullen, Director, Department of Regional Parks & Open Space, Washoe County
Steven Meyers, Redevelopment Agency, City of Reno
Joe L. Johnson, Toiyabe Chapter Sierra Club
Steve Walther, Protect Our Washoe

Chair Amodei opened the hearing on Senate Bill (S.B.) 316.

SENATE BILL 316: Limits civil liability of certain persons providing gratuitous services under certain circumstances. (BDR 3-739)

Senator Nolan explained S.B. 316 was requested by a constituent and Weldon Havens, M.D. He said the bill addressed three issues involving limiting liability for volunteers who work with charitable organizations, for attorneys who provide pro bono legal services and physicians who provide pro bono work. Senator Nolan said the Nevada Trial Lawyers Association had indicated that they might not want to be included in the bill.

Weldon Havens, M.D., Chief Executive Officer and Legal Counsel, Clark County Medical Society, said the Volunteer Protection Act of 1997 was a federal act signed by former President William Clinton that provided limitations of liability for volunteers rendering gratuitous services to nonprofit organizations and governmental entities. He said all states had been covered by the act and the act preempted state law; the problem was volunteers had greater protection under state law. Dr. Havens cited the Volunteer Protection Act of 1997 (Title 42 U.S. Code, sections 14501 through 14505 et seq) as the relevant United State Code. He said the problems arose when State law was inconsistent with the U.S. Code. Dr. Havens identified the current state law that was applicable was *Nevada Revised Statute* (NRS) 41.505, subsection 5. He said that passage provided protection to physicians or dentists who gratuitously furnished care in a health care facility of a nonprofit organization or governmental entity. He pointed out the problem was that these patients may be referred to the physicians' offices for care, and under those circumstances, physicians were not covered, as opposed to seeing such patients at the location of the nonprofit organization or governmental entity.

Scott Craigie, Nevada State Medical Association, suggested that Dr. Havens point out the passages in S.B. 316 about which Dr. Havens was speaking. Dr. Havens said the revision on page 6, line 20 would allow physicians to see referred patients in their offices gratuitously for a governmental agency or nonprofit organization. He said that passage would correct the issue of coverage for those physicians or dentists. Dr. Havens indicated, from a medical perspective, it was important to physicians.

Dr. Havens explained the Clark County Medical Society's elected secretary, Dr. Florence Jameson, had formed a committee in which the Clark County Medical Society, the United Way of Southern Nevada and the Southern Nevada Area Health Education Center were coordinating a program where patients could be referred from a governmental entity or nonprofit organization. When the need arose, the committee could check its list of volunteer physicians to obtain services for a patient. Dr. Havens emphasized it was difficult to get physicians to volunteer to see gratuitous patients in their offices unless they had the same protections they had when seeing the patients on the premises of the governmental entities or nonprofit organizations.

Senator Wiener asked whether S.B. 316 made Nevada's statute comparable to the federal law. Dr. Havens replied it made the portion that involved physicians consistent with the federal Volunteer Protection Act (VPA) of 1997. Dr. Havens pointed out section 1 of S.B. 316 generalizes the coverage to all volunteers of charitable organizations, which makes it consistent with the VPA.

Brad Selgestad, M.D., J.D., Senior Staff Physician, University Medical Center (UMC), said he had been with the medical center for over 15 years. He claimed 99 percent of his patients were people with limited resources, which put him in the front line for primary health care services for people who could benefit from the provisions of S.B. 316. Dr. Selgestad said he could use his abilities to work up a diagnosis for a patient, but often he needed to consult a specialist. He explained the UMC had intermittent clinics for specialists to see patients, but there was a severe limitation on the amount of services that could be provided to these patients. Dr. Selgestad noted it would be extremely convenient if patients could be sent for consultations with experts in those physicians' offices. He said the law does not cover these situations; the physician has to leave his or her office and personal staff and spend time in the governmental entity's or nonprofit organization's facilities, with an unfamiliar staff. He said many times, in fields such as neurology, dermatology, or

infectious disease, the patient only needed to be seen once or twice, and the rest of the evaluation or treatment could be ordered and supervised by a primary care physician. Dr. Selgestad said he had a patient with a chronic infection who was homeless and had been in and out of hospital facilities; however, what she really needed was an infectious disease consultation. He expressed these kinds of problems cannot be solved unless there were resources to call upon. Dr. Selgestad said he had patients who needed neurological evaluations, but it would take months for them to be seen with the resources available to the UMC.

Raymond "Rusty" McAllister, Professional Firefighters of Nevada, said they had taken an issue related to this bill to Senator Nolan. He said Senator Nolan allowed them to offer a proposed amendment (Exhibit C) to S.B. 316. Mr. McAllister explained the fire codes had changed to include having automatic, external defibrillators as requirements for buildings which have over 1,000 people. He stated the codes were being changed so these automatic external defibrillators would be within three minutes' reach anywhere in the facility. He said under current statute, a person had to be trained and certified to be able to use the defibrillator. He said no matter how many defibrillators a building might have, the defibrillators would be of no use if there was no one trained and certified to use them. Mr. McAllister said the Professional Firefighters were asking for a modification in the requirements so that "Joe Citizen" could, in an emergency and in good faith, render aid to a person in need by using one of the defibrillators and not be held civilly liable.

Senator Nolan added that over the last four years there had been a number of demonstrations of these devices, and the technology on them had advanced to a stage that rendered them almost foolproof. He stated these devices were color-coded in such a way that an individual could push one button and the device then instructs the user on how to use it. Senator Nolan said the defibrillators should be hanging on the walls of almost all of the State buildings, including the Legislative Building. He told the Committee that about four years ago, legislation was instituted providing the same type of liability protection for people who instruct people on how to use the machines. He said this bill was trying to extend that coverage to include these life-saving devices.

Senator Nolan said using a defibrillator within 3 minutes of the event increased the chances of survival of a cardiac arrest patient by 70 percent, making these machines very important. He said that was the reason for the amendment, and

the proponents of S.B. 316 were amenable to the change. He noted there had been no objections to the amendment from the Nevada Trial Lawyers Association.

Senator Care commented it was not clear to him whether the policy behind the bill was that unless you have a statute like this one enforced, there would not be enough volunteers, or if it was simply that no one who was just trying to do the right thing should be liable. He said that distinction had not been made, to his mind. Senator Care pointed out even though he was an attorney, he did not handle personal-injury litigation. He asked what would happen in the case of a person who was damaged by an act of negligence where the volunteer was acting in good faith. He inquired whether the bill was saying those persons had no remedy. Dr. Havens responded under the Volunteer Protection Act and under this bill, a plaintiff could sue the facility, whether it was a nonprofit organization or a governmental entity. He said this bill only protects the medical provider who was providing gratuitous service. He explained the only change would be from the health care provider's point of view, in that instead of the provider having to go to the nonprofit or governmental facility, that physician could have the same protection when providing gratuitous service in his or her office. Dr. Havens pointed out an orthopedic surgeon requires a trained staff and lots of special equipment that would be hard or next to impossible to transport from the physician's working office to a nonprofit facility. He said as an ophthalmologist, it was impossible to carry his equipment from place to place. Dr. Havens reiterated the changes S.B. 316 requested were to allow the governmental entity or nonprofit organization to refer the patient to the office of a specialist who was willing to provide pro bono service.

Senator Care said as he understood it, the provider himself would not be a party to any subsequent litigation. Dr. Havens responded the provider would not be subject to civil damages. He said the doctor might be a party in litigation, but would not be subject to civil damages, as the current law reads.

Dr. Selgestad noted as the statutes currently stand, there were no providers to see his patients who were without resources. He said he had many patients who were fixable, if they could just see a specialist to work up a plan of care; however, these patients could not get in to see a specialist.

Chair Amodei closed the hearing on S.B. 316 and opened the hearing on S.B. 191.

SENATE BILL 191: Makes various changes concerning actions against certain design professionals for constructional defects in nonresidential buildings or structures. (BDR 3-897)

Jennifer Lazovich, American Council of Engineering Companies of Nevada (ACEC), said the bill before the Committee was substantially identical to a bill, A.B. No. 133 of the 71st Session, that was passed by the Legislature in 2001. She said that bill dealt specifically with the requirement that an attorney file concurrently with the commencement of an action against a design professional an affidavit with the pleading that says the action has a reasonable basis in law and fact. Ms. Lazovich stated that bill was passed and became NRS 40.6884 and NRS 40.6885. She explained S.B. 191 uses the same process outlined in those two provisions, but applied them to nonresidential construction defect claims. Ms. Lazovich said the ACEC membership wanted this bill because there had been an increase of these types of claims against them. She asserted the process had worked very well on the residential construction-defects claims. She said those statutes had made the whole process more efficient and streamlined. Ms. Lazovich explained the process documented in NRS 40.6884 and NRS 40.6885 shifted the resources to the beginning of the case to assess who should be involved rather than waiting until the middle of the case to prove who should not be in the case.

Ms. Lazovich said the ACEC worked with Judge Nancy M. Saitta of the Eighth Judicial District in Clark County on the language in the bill. Ms. Lazovich commented the Judge had authorized her to tell the Committee that the Judge was comfortable with the language in S.B. 191. Ms. Lazovich asserted the system worked and did the things it was designed to do, which was to make the system more streamlined and efficient.

Ivan R. "Renny" Ashleman, Southern Nevada Home Builders Association; Vice Chair, State Public Works Board, asked whether there had been an amendment offered for S.B. 191. Chair Amodei responded there was the "Mock-Up Proposed Amendment to Senate Bill No. 191" (Exhibit D).

Mr. Ashleman said he was just checking to be sure the proposed amendment was the only one brought forward. There was a considerable distinction between the problems in residential construction litigation and the problems in complex commercial litigation. He said in residential construction, there was

some argument that it might not be fair to drag the architect or the engineer into every case, despite the fact the case often goes in that direction, even in simple matters such as not having something installed correctly.

Mr. Ashleman stated, as vice chair of the State Public Works Board, he heard cases that were complex construction battles. He said it was very rare to have those kinds of problems without having some errors by architects, engineers or design professionals. He said it was onerous to require an affidavit from an expert just to commence litigation or steer the cases toward settlement or et cetera.

Mr. Ashleman explained the amendment would change the bill to say that these experts can only be brought in on a construction-defect basis. He said the contract was usually for delivery of something without construction defects. Mr. Ashleman indicated the amendment required even if the construction defects where done in violation of the law, including local codes or ordinances, and caused physical damage to the building or structure or an appurtenance of the real property, and which was not completed in a good, workman like manner in accordance with the standard of care in the industry for that type of design, or if it presents an unreasonable risk of injury to a person or property, if no one was hurt, it was not litigable. He explained, it did not matter that the design professionals did not design what was asked for or the engineer did not find out whether or not the structure would support the load that needed to be supported. It did not matter because no one had been injured; the defect was caught and corrected, so it was no longer a constructional defect as it related to the designer.

Mr. Ashleman claimed that attitude was simply unreasonable and unfair as far as the customer was concerned. He said if someone had designed a structure improperly and caused a problem such as an uneven floor so the occupants could not move bookshelves and do other things that would normally occur in the building, the fact that no one got injured did not mean it was not a defect. He said the amendment was an effort to slant the playing field in order to get the designer off the hook for his or her design deficiencies. Mr. Ashleman said the amendment should be rejected from both his viewpoint as an individual and from that of the Southern Nevada Home Builders Association. He commented the homebuilders had a stake in S.B. 191 as many of them build shopping centers, high-rise buildings and apartment houses.

Chair Amodei inquired as to whether Mr. Ashleman's comments were Senator Care only in reference to Exhibit D. Mr. Ashleman replied he was representing the Nevada Home Builders Association, and they were opposed to not only the amendment, but also the bill, as it required obtaining of the affidavit before litigation could start.

Chair Amodei inquired whether Mr. Ashleman said the getting of an affidavit from another design professional would be onerous. Mr. Ashleman replied, "Yes, that was correct; it is not nearly as likely that they, the designers, are not going to be involved intimately in the case." He said although he did not agree with the original legislation, he understood the rationale that the designers had been dragged in on these residential cases where, in fact, the designs had nothing to do with the problems. He commented that, in his experience, it was far less likely that would be routinely true in commercial litigation. He stated he had seen very few of these cases where the design professionals were not, to some degree, part of the problem and, in some cases, a large part of the problem; it simply put them to more expense.

Chair Amodei asked Mr. Ashleman if he believed the situation in a residential offense was much less likely to involve a mistake in terms of geotechnical analysis on soils or low calculations for a home than it was in a commercial context. Mr. Ashleman replied:

> "Yes, and I also think that litigation involves less money. Making someone sure you are chasing them was worthwhile, and the marshaling of the insurance and grouping of all the culpable parties together early in these other cases was a key to settling them. It was much more of a concern in the commercial area."

Paul Georgeson**,** Attorney, Associated General Contractors Nevada Chapter, said the Nevada Chapter of the Associated General Contractors (AGC) was opposed to S.B. 191. He said he concurred with Mr. Ashleman, and was opposed to the amendment as well. He said his client's opposition to the bill was because of the differences in residential construction-defect cases and industrial-defect cases. He said in commercial cases there were no class-action lawsuits, multiple plaintiffs and some of the perceived problems that arise with construction defects that NRS chapter 40 was intended to fix. He said the commercial defects were very different with different situations such as limited parties and often, the type of claims that were made in those were not the type

in which everybody who had come anywhere near the property was sued. He explained there was generally more of a view toward finding what the problem was or what caused the problem. Mr. Georgeson said he did not see a crisis in commercial situations as there were, arguably, in the chapter 40 situation. Therefore, there was no reason to change the system under the commercial-industrial statutes.

Mr. Georgeson said the second point the AGC made was that architects and engineers were already in an interesting position on these projects. He explained because they had contracts with the owner and there were contracts between the owner and the contractor, usually if there was a problem on the project they would submit that problem to the architect. The architect would be the one to decide whose problem it was or what was the cause of the problem. So, there could be a situation on a commercial project in which a problem arose and the contractor would raise the issue and the person who decided who was at fault was the architect who could be the very person responsible for the situation. The contractor was often already behind the eight ball because the architect was making the decision, pointing the finger and advising the owner as to whose problem it was. Adding another layer of protection for the architects was unfair to the construction community when often the problems were a combination of design error and construction error. However, he said, it took time to figure out whose responsibility it was.

Mr. Georgeson noted that Rule 11 of the *Nevada Rules of Civil Procedure* already offered some protections. He explained for the filing of lawsuits, for instance, Rule 11 required an attorney who was filing a complaint to make a reasonable inquiry into the circumstances of the complaint to determine that the complaint was not being made for an improper purpose, the complaint was warranted under existing law and the allegations in the complaint had evidentiary support. So, he said, they were already threshold requirements before a lawsuit could be brought against a designer, without having to hire a pre-complaint expert to determine whether the designer had failed, when there was not the same standard for the contractors.

Mr. Georgeson said in summation, the contractor community did not see why the architects and engineers should have preferential treatment over and above any other potentially responsible party when there was a problem on a commercial-industrial project.

Mr. Georgeson affirmed for those reasons, the AGC opposed S.B. 191 and the amendment for it. He said the amendment was even worse than the bill in that it substantially changed Nevada law. He said it substantially limited the architects' and engineers' liability under common law and contract law. Mr. Georgeson continued, stating there were a lot of situations where an architect or engineer had improperly designed a building and there were potentially millions of dollars of exposure and expense to the owner to fix it, even though the defect had not caused any actual property damage, personal injury or loss of life.

Steve G. Holloway, Associated General Contractors, Las Vegas chapter, said he concurred with the two previous testifiers. He pointed out the amendment placed the exemption for engineers and architects under chapter 40 of NRS. He claimed this was significant for two reasons. He said the first reason was nonresidential projects were not subject to construction-defects suits under chapter 40 and had not ever been, and he hoped they never were. He said engineers and architects were subject to construction-defect suits under common law, contract law and court law. Mr. Georgeson asserted by placing the change under chapter 40, this could be an inroad giving some reason or some further support, in the future, for making nonresidential or commercial projects subject to chapter 40, which was anathema to the entire industry.

Chair Amodei asked Mr. Ashleman and Mr. Georgeson if they had a chance to discuss their position on this issue with Judge Saitta or anyone else on the Eighth Judicial District bench for determining the basis of their opposition to S.B. 191. Mr. Ashleman replied he had attended seminars with members of the "specialty bench" and had discussed the issue in detail with them. He said he did not receive a copy of the proposed amendment until late afternoon on the day prior to this meeting, which limited the opportunity to talk to anyone concerning the problems.

Mr. Georgeson said he had not had any such discussion and indicated that he did not believe there was the same kind of crisis with commercial-construction defects as with all those mass class actions regarding residential defects. He said he practiced mostly in northern Nevada, so he was not conveniently located to seek input from the Eight Judicial District. He said he had not seen any such crisis in the nonresidential-construction defect cases which were not covered in chapter 40 of NRS.

Mr. Ashleman said most of the large, complex litigations were handled by arbitrators. He said even the ones in litigation went to mediation and settlement conferences. He said he did not think the numbers of those were burdening the courts; it was the residential cases that were burdening the courts. He said nonresidential construction had a lot of litigation in regard to liens, but that was a different subject than construction defects.

Chair Amodei closed the hearing on S.B. 191 and opened the hearing on S.B. 326. Chair Amodei told the Committee it had received a letter from the Las Vegas Chamber of Commerce dated April 6, 2005 under the signature of Christina Dugan, Director, Governmental Affairs, Las Vegas Chamber of Commerce (Exhibit E), which indicated the Chamber's support of S.B. 326 and requested the letter be made a part of the record.

SENATE BILL 326: Makes various changes to provisions governing eminent domain. (BDR 3-78)

Senator Care told the Committee that sometimes an individual's vision of basic rights conflicted with the powers of the government, such as the power of incarceration. He said everyone understands that bad guys have to go to prison, and there were steps that had to be followed along the way. It was not possible to pick someone up off the sidewalk and take that person to prison; there were processes that had to be followed. He pointed out another power of the government was the power of conscription, which this country had not used since the early 1970s. He said this power had appeals and processes that had to be followed. He pointed out there was also the power to tax and, ranking with the other governmental powers, was the power to exercise eminent domain.

Senator Care said the Fifth Amendment to the *Constitution of the United States of America* addressed the exercise of eminent domain. He noted the Fifth Amendment said governmental entities could take private property for public use, but there had to be just compensation. Senator Care stated there were strings attached to the exercising of that power. He said governmental entities cannot just go out and take someone's property, it had to be for public use and there must be just compensation; there was a mechanism for "due process" along the way.

Senator Care explained S.B. 326 did a couple of things that arose from two specific instances that happened in Nevada. He said the first part of the bill was intended to clarify in Nevada, the process of condemnation by governmental agencies was not permissible to acquire someone's property for the purpose of using it for open space or wildlife habitat. He said the second part of the bill came from the Fremont Street Experience and was intended to prohibit a redevelopment agency from taking land for public use without specific findings of blight, if blight was the theory upon which the land was to be taken.

Senator Care said everyone had read about recent abuses by local and state governments all over this country. He said some people may have read in February about a case before the U.S. Supreme Court regarding the Kelo situation. He said the case, *Kelo v. City of New London* Docket Number (04-108), came from Connecticut, but was not unlike what was happening in many parts of the country. He said these cases arose when a government entity instituted eminent domain to take land from a private party with the ultimate purpose of turning it over to another private party. Almost everyone understands that sometimes the government needs to construct a highway, and that highway may need to go through private property. He explained the owner may not like it, but everyone understands it happens. Senator Care affirmed sometimes a governmental entity needs to take land to build a school or firehouse. He said that was public use, as most people understand it.

Senator Care explained the Kelo case was different. He said the government basically said it needed to get rid of these businesses and those homes over there because it had another redevelopment project in mind. He said the governmental agency was doing this in the name of creating jobs, economic development, and so on an so forth. Senator Care conveyed that as a result, the government was going to take the land and turn it over to someone else. He said he had read cases were Wal-Mart Incorporated had gone into towns and said it would like to build a superstore, then told the town it had to get rid of the video store, shoe store and other businesses in an area because it wanted the land. In those cases, the government was more than happy to accommodate the corporation.

Senator Care indicated he was hoping the U.S. Supreme Court would address several issues in the Kelo case, one of which would be when was it appropriate to take land from a private party and turn it over to another private party on the theory that was economic redevelopment.

Senator Care said at present, *Nevada Revised Statutes* did not address condemnation proceedings for use as open space or wildlife habitat. He said a lot of people buy homes with a wonderful view and hope that other people do not move in to obscure the view. He said the statutes were silent on taking private property for open space if the purpose was to save the view for the current residents.

Senator Care said Evans Creek Limited Liability Company (LLC), owns a 1,000-acre piece of land southwest of Reno. He said in 1998, Evans Creek bought the land, the Ballardini Ranch, and intended to build houses on the property. However, the Washoe County Board of Commissioners had other ideas. He said Evans Creek had to file a civil rights suit in Federal Court shortly after Washoe County announced it was instituting an eminent domain proceeding to take the Ballardini Ranch for open-space use.

Senator Care said he first learned of Evans Creek in a newspaper article, contrary to the suggestion that he was “in cahoots” with the Evans Creek LLC people. He said it was absolutely not true, and he believed some people could not fathom the idea that a Legislator could introduce a bill simply because he or she believed it was the right thing to do. He explained that during a deposition in the federal court action, one of the people from Evans Creek LLC was asked a question about his communications with Senator Care. Senator Care said he did not understand what Washoe County was after in that line of questioning, but he wanted to assure Washoe County officials this bill was his idea, and he had pursued contact with Evans Creek LLC once he discovered what had happened.

Senator Care stated what was happening was a case where there were more than 1,000 acres of pristine land around the Reno area. He emphasized S.B. 326 was not intended to be anti-environmental or anti-outdoor use and urged everyone to not forget the fundamental issue in the bill. He said if an individual owns a piece of property and wants to use that property for a lawful purpose, there were sometimes very powerful people who went to their governmental representatives to prevent the owners from doing so. The

governmental entity then decides to use the power of eminent domain in order to satisfy its constituents. Senator Care suggested that was an abuse of the eminent domain process. He affirmed that use of open space was not specified in statute, and the purpose of section 1, of S.B. 326 was to clarify that the power of eminent domain could not be used for that purpose. He pointed out the governmental entity was not considering building a bridge, school, city hall or fire station. He stated Washoe County was simply saying it wanted to keep that space the way it was and since all else had failed, the County was just going to take it.

Senator Care said there was a proposed amendment to section 4 of the bill (Exhibit F).

Vice Chair Washington said he did not believe the description of blighted area defined the Evans Creek property and asked Senator Care what was his definition of blighted area. Senator Care responded that section 2 of the bill covered blighted areas and he agreed with Vice Chair Washington, a finding of blight was not applied to the Evans Creek area.

Senator Care said the second part of the bill addressed the issue of blight. He said in 1985, the Las Vegas City Council created a redevelopment agency to determine whether redevelopment was necessary to combat physical, social or economic blight in part of downtown Las Vegas. He explained the theory, of course, was that gaming revenues had been dropping and could continue to drop along Fremont Street. He said the city wanted to know what could be done about it, and the planning commission then came up with a plan. He explained in the plan it was determined it was too expensive for the City of Las Vegas to take the project on by itself, so it had to partner with the private sector.

Senator Care asserted that was the beginning of the Fremont Street Experience LLC, a consortium of downtown casinos. He said that was not really a governmental agency, it was a hybrid arrangement. He said the Fremont Street Experience included a block of land that contained 32 parcels. Senator Care affirmed when the purchase negotiations failed, the city agency instituted eminent domain proceedings. He said this case had gone to the Supreme Court and back again, several times. He explained one of the issues was whether it was lawful to take land from a private party to give to another private party. He said the blight issue in the Fremont Street Experience majority

opinion addressed an individual property. He said the owners conceded that maybe there were blighted areas in the redevelopment area, but their land itself was not blighted. He said eventually the Nevada Supreme court ruled against the owners involved. He said a dissenting opinion noted there was no evidence of blight in or around the property in question, thus the goal of eliminating blight, which in some cases may be a legitimate public use, was not applicable in this case. Senator Care said S.B. 326 states that henceforth, a redevelopment agency could not take property on a theory of blight unless there was a specific finding of blight to each parcel, which was the purpose of the second part of the bill.

Vice Chair Washington said, in his mind, blight would constitute a grounds for condemnation of a dilapidated building, infested or not being of use anymore. He asked whether his thoughts were off base. Senator Care said he agreed that most people considered blight that way, and NRS 279.388 gave a definition of blighted areas. The subject was more complex than most people thought.

Vice Chair Washington asked whether it could include a parcel with a building or structure that was uninhabitable or unused. Senator Care said, “Yes, it could.” Senator Care said the point was the legislation said that even if blight existed in some parts of a redevelopment area, it had to exist on a specific parcel before the government could take it. Vice Chair Washington said he agreed with Senator Care, and the Legislature had been working on this issue for a long time. Vice Chair Washington said in other areas, such as the redevelopment of downtown Reno, there were a couple of parcels that did not fit the description of blight, but the city used eminent domain to take the property anyway in an effort to redevelop downtown Reno. Senator Care pointed out there had also been a lot of litigation in southern Nevada on the same eminent domain issue. Vice Chair Washington said he wanted to make it clear for the record that blight could include a building.

Senator Care said it was not his usual procedure to enact legislation that affects the outcome of current litigation, but in this case, he believed there was an abuse of power that needed to be addressed immediately.

Senator Wiener commented this subject was of particular interest to her because owners involved, the Pappas family, lived in her district. She asked what the Pappas family used the parcels for. Senator Care said it was for commercial use and consisted of 3 of 32 parcels that ran along that block.

Timothy J. Nelson, Evans Creek Limited Liability Company, said he was appearing because the company was in litigation against Washoe County's abusive and unlawful exercise of eminent domain to seize the Ballardini Ranch property. He said Evans Creek LLC was in support of S.B. 326 because its property was the target of abusive eminent domain using the pretext of open space and wildlife habitat. He stated Washoe County was wrongfully trying to use the power of eminent domain for the benefit of a handful of wealthy, neighboring landowners at the expense of county and federal taxpayers.

Mr. Nelson explained his partner in Evans Creek LLC was Jeffrey L. Nielsen. He said they bought the Ballardini Ranch in order to develop it with the plan that Mr. Nielsen had. He explained the Ballardini Ranch was a 1,019-acre working cattle ranch fronting on McCarran Boulevard, Reno's ring road, in the southwest Truckee Meadows. He said in 1998, the Nielsens bought the ranch for cash, hired multiple consultants and began the planning process to develop the property into a quality, master-planned residential community with the goal of helping to meet Reno's need for housing to fuel its continuing growth.

Mr. Nelson stated the Ballardini Ranch was surrounded on three sides by some of the highest-quality residential neighborhoods in Reno. He said the ranch had a residential land-use designation, the highest and best use for residential development. Mr. Nelson explained it was Evans Creek's plan to develop the property and provide much-needed housing for the community of Reno.

Mr. Nelson said Washoe County had a different plan. The county's plan was to acquire the property at the behest of special-interest groups through any means possible, including unlawful means. He said the county's first plan was to make the owners' lives miserable, so they would eventually be worn down and sell the property to the county for a fraction of its value. He claimed the county violated and abused the owners' rights in order to manipulate the process.

Mr. Nelson voiced some examples of the county's abuse of the Nielsen's property and constitutional rights. He said the county advocated the wrongful exclusion of the southern 600 acres of the property from the Reno sphere of influence and the Truckee Meadows service area overlay. He said the service area overlay indicated the properties were expected to be developed with community water and sewer as part of an urban/suburban

development process. He said there was no planning rationale whatsoever, for the obvious purpose of depressing the value of the property in order to facilitate public acquisition.

Mr. Nelson explained the second strategy Washoe County used was obstruction and wrongful withholding of development approvals on the property, while approving, at the same time, numerous other residential subdivisions throughout Washoe County. He said those approvals included higher densities on properties much more remote from the center of town.

Mr. Nelson continued, saying Washoe County had attached extraordinary conditions and discriminatory requirements on Evans Creek LLC applications that were not imposed on other developers' applications. He said one of the conditions was a presumed public road across the property extending to the national forest, when there was no history or documentation whatsoever of any historic, public-road access through any portion of the property.

Mr. Nelson said the County then submitted a fraudulent application to the Southern Nevada Public Lands Management Act program. He said that act was the program allowing the federal government to sell federal land around Las Vegas at auction, which allowed Las Vegas to expand. He commented one of the purposes for the uses of the funds generated by the sales was to acquire environmentally sensitive lands in Nevada. Mr. Nelson said the County submitted an application for that funding to the Bureau of Land Management without Evans Creek LLC's knowledge, without its consent and without talking to the owners. He said Washoe County submitted a fabricated estimated purchase price for the property of $15 million. He asserted Washoe County knew $15 million was nowhere near the true market value of the property. Mr. Nelson said Washoe County proceeded to process the application, deceiving the public and deceiving the federal agencies for over 15 months after Evans Creek had withdrawn from the process. He said Evans Creek had to inform the federal agency of that fact. Mr. Nelson commented Washoe County declared to the public, through public representatives and the neighborhood opposition group, that progress toward a purchase was proceeding, and that a purchase was imminent.

Mr. Nelson said another example of the County's deceitful stratagems was the County's attempt to use the southern Nevada funds to finance not only the purchase but also the condemnation of the Ballardini Ranch, when an express provision in the statute said those funds could only be used when the sellers were consenting or willing.

Mr. Nelson stressed when Evans Creek LLC refused to be bullied, the County moved to another plan, which was to wrongfully seize the property under eminent domain using the bogus basis of open space and wildlife habitat. He said the herd of mule deer being cited in the eminent domain seizure documents was nonexistent. He said there were no legitimate planning studies or wildlife studies that showed a need for wildlife habitat. The County's open-space plan was replete with evidence that the Ballardini Ranch did not fit the open-space requirement. He stated the property was not even part of Washoe County's plan.

Mr. Nelson indicated he would like the Committee members to take the time to view the video of the Washoe County Board of Commissioners' meeting of August 2003 (Exhibit G, original is on file at the Research Library). He said this meeting took place 15 months after Evans Creek LLC had informed Washoe County, via two letters and an e-mail, that it was not going to participate in the program from southern Nevada, and Washoe County should withdraw and cease its efforts. Mr. Nelson said on the video of the County Board meeting, Evans Creek LLC owners were accused of being welshers, withdrawing from the program in the eleventh hour. He stated no one pointed out that the process had been pursued despite Evans Creek's objections.

Mr. Nelson showed a county parcel map with the Ballardini Ranch highlighted in purple (Exhibit H). He pointed out the map showed developed and approved subdivisions on three sides of the property, including dense suburban developments. He said on the east and north sides of the ranch, there were suburban areas, and on the south side was the "ranchette" area, where people lived on three- to five-acre properties. Mr. Nelson commented most of the opposition to the project came from the south-side-ranchette area, so these owners could preserve their views by not having any development there. He pointed out that to the east and south, there were multiple other subdivisions with suburban density. Mr. Nelson said even a layman could clearly see the property was an infield property.

Chair Amodei asked Mr. Nelson to point out on Exhibit H the 600 acres that was removed from the Reno sphere of influence. Mr. Nelson pointed out a section line that ran through the map. He said the north 419 acres had been in the sphere of influence of Reno for many years and was anticipated to be annexed to the City of Reno. He said this property had been designated by the City as suburban development with up to three housing units per acre. Mr. Nelson, indicating the map, said the south 600 acres of the property was in the unincorporated county as part of a 2-year-long process of updating the regional plan. He said starting in 2002, the first 5 or 6 drafts of the regional plan had the entire Ballardini Ranch, including the south 600 acres, in the sphere of influence of Reno and the Truckee Meadows service area. He stated that inclusion indicated the area was intended to be served by community sewer and water.

Mr. Nelson stated a few weeks before the final vote on the plan, the neighborhood group got wind of what was happening and presented their opposition and their claim that the Ballardini Ranch needed to be preserved from development and bought by the public for open space. He said these individuals in opposition to developing the Ballardini Ranch were successful in persuading the county representatives to exclude the south part of the ranch from both the sphere of influence and the service area. He claimed Washoe County also made an effort to exclude the north 419 acres from the service area and the sphere of influence. However, he said the County did not succeed in that effort.

Mr. Nelson said the County had used the exclusion of the southern part of the ranch from the service area as the basis for not providing development approvals or for applying conflicting and extraordinary conditions to the development application for the property. He said, for example, the County told the company because the south part of the ranch was excluded from the service area, Evans Creek LLC could not connect to community water and sewer under the regional plan, but because it was located near community water and sewer, it had to connect to community water and sewer. He said they were informed they could not develop the land with wells and septic tanks, which was what Evans Creek LLC had applied for on the south part of the ranch. He stated the part of the development plan constituted a 40-lot subdivision averaging 15 acres per lot.

Vice Chair Washington asked whether the properties in area 41 of Exhibit H were on city water and sewer or if they were on wells and septic tanks. Mr. Nelson said many of the properties in area 41 were on septics and wells, but all of those properties were included in the Truckee Meadows service area and were intended to be served by community water and sewer. He commented that many of the properties were larger-acreage properties that could be further developed with greater densities.

Vice Chair Washington asked whether, under the regional plan, the Ballardini Ranch would be under the sphere of influence of Reno. Mr. Nelson replied the first six or seven drafts of the regional plan included the entire ranch. He stated the outcome, based on the last three weeks before the vote, was, at the behest of the neighborhood group, that the southern part of the ranch was excluded from the service area and sphere.

Vice Chair Washington inquired whether the Reno City Council was part of the exclusion. Mr. Nelson replied the representation on the regional board involved the Washoe County Commissioners, Reno City Council and the Sparks City Council. He pointed out that there was a majority vote to exclude the southern part of the ranch from the service area. Mr. Nelson said from the view of Evans Creek LLC, Reno was doing some political trading off or giving a window of opportunity to the County to see if it could pull off the public acquisition. He stated the vote was clearly at the direction or the request of the County for that effort.

Vice Chair Washington, indicating on Exhibit H, parcel 33 to the west of the Ballardini Ranch, asked whether it was already a developed area and if it was part of the master plan. Mr. Nelson replied parcel 33 was part of the Caughlin Ranch Development, which had residential-development entitlement for well over 20 years. He indicated the subsection in that parcel was around 40-acre properties, but the northeastern corner was subdivided for denser population. Mr. Nelson stated there had never been any suggestion that property or any property other than the Ballardini Ranch be preserved and purchased for open space or wildlife habitat.

Vice Chair Washington said it looked as though the ranch area would be surrounded by developments, and the Ballardini Ranch would be open space with nothing there. Mr. Nelson responded, “Correct.” He said that included the ranch, several hundred acres of County open space to the south ringing the ArrowCreek development and the 6 million acres of national forest.

Mr. Nelson showed the Committee a blowup of the approved 2002 regional plan, which showed the Truckee Meadows service area, which was intended to be served by community water and sewer. He indicated a small section on the parcel and stated that was the only private property excluded from the service area in the whole southwest Truckee Meadows area other than the national forest. He said even though a lot of the properties in the area were multi-acreage properties of three, five, or more acres being served by wells and septic tanks, those properties were included in the service area, as was the Washoe County open space.

Senator Nolan, indicating Exhibit H, asked how many homeowners in the area were opposed to the Evans Creek development. Mr. Nelson replied there was no exact count, but there were at least several hundred. He said when the opposition rallied the troops for a public meeting, it found a couple of hundred people and claimed they represented the will of all the people in Washoe County. He pointed out Washoe County voters defeated an initiative which would have provided sales-tax revenue for the purpose of purchasing open space.

Senator Nolan asked whether the organization that was opposing the Evans Creek development opposed every other sub-development around the area. Mr. Nelson replied generally they had not opposed each and every project, but no one had raised the issues of open space and wildlife habitat in other areas of Washoe County. He explained those homeowners had opposed some recent projects, but there were numerous projects that had not engendered any interest or plans to acquire or seize those properties for open space. Mr. Nelson affirmed there were always objections to projects, which come with the territory of being a developer. He said there were reasonable objections and concerns, and there were many unreasonable objections. He stated the Evans Creek development was a prime example where the unreasonable and irrational requests and complaints had taken control of the situation, and the County had gone along with it.

Vice Chair Washington asked whether those individuals who purchased lots in parcel 41 were given a disclosure that Ballardini Ranch would be developed and there would be homes and lots parceled out. Mr. Nelson replied there was a regional plan, a County master plan and a city master plan. He said the Ballardini Ranch had been designated and planned for residential development for many years. Vice Chair Washington said it appeared the purchasers of those other properties knew the Ballardini parcel was going to be developed sooner or later. Mr. Nelson responded they should have. In fact, most of those properties had been existing, developed properties much longer than Evans Creek's acquisition of the Ballardini Ranch, and it should have come as no surprise that the property would be developed at some time.

Mr. Nelson explained that one of the plans for the area which covered the northern 419 acres was in the Reno sphere of influence and in the service area and included about 1,275 units, which would be about three units per acre. He said the plan included about 500 acres of open space as part of the plan. He pointed out that would provide public trail access to the national forest. He declared none of the plans were good enough for those who opposed the project.

Mr. Nelson said if Evans Creek had fair treatment in approvals, it would be much farther along in the construction of the plan. He said Evans Creek had spent millions of dollars on planning consultants and entitlement work to try to meet the discriminatory requirements of County officials. He avowed that when Washoe County realized Evans Creek was going to meet its conditions and requirements for a tentative subdivision map for 40 lots on 600 acres, a lower density than most of the complainants in the area had, the Evans Creek owners got the ultimatum that either they sell the property to Washoe County at its price, or Washoe County was going to condemn it.

Senator Amodei asked who pronounced that ultimatum to Evans Creek and what were the positions they held. Mr. Nelson replied the Washoe County Board of Commissioners voted to do so in an action taken at a county board meeting on July 27, 2004. Senator Amodei asked whether Evans Creek had a copy of the minutes of that meeting. Mr. Nelson replied, "We certainly do." Senator Amodei asked if Mr. Nelson would provide copies of those minutes to the members of the Committee. Mr. Nelson replied he would.

Mr. Nelson continued his testimony with the information that after issuing the ultimatum, Washoe County then refused to continue Evans Creek's entitlement application, based on the fact that the County intended to proceed with condemnation. Mr. Nelson stated currently Evans Creek was embroiled in an expensive, lengthy litigation to defend its property and constitutional rights. He said this was an example of a governmental entity far exceeding what the Legislature had authorized in its eminent domain statute. He said Washoe County was way out of line.

Mr. Nelson requested that the Legislature send a message to Washoe County, along with other local governments, with S.B. 326 and the proposed amendment reinforcing and clarifying existing State law, which did not allow condemnation for open spaces and wildlife habitat. He acknowledged allowing condemnation for open spaces and wildlife habitat was an invitation for abuse to facilitate eminent-domain seizures of property at the behest of special-interest groups. He said these special-interest groups could claim there were snails that needed protecting on a property. He affirmed there were other mechanisms to deal with endangered species and things like that. He said eminent domain should not be used to seize people's property under those circumstances.

Mr. Nelson emphasized this legislation would be helpful in sparing property owners from the unnecessary expense and ordeal of abusive condemnation.

Senator Nolan asked what year the property was purchased. Mr. Nelson responded it was bought in 1998. Senator Nolan said that was relatively recent, and asked if at the time the property was purchased, was there any indication that the purpose for which Evans Creek LLC was purchasing the property would be granted without issue either by the seller or when the company did its due diligence. Mr. Nelson replied when Evans Creek did its due diligence, representatives met with county planning staff and city planning staff to get the lay of the land on the existing zoning and designation in the entitlement process. He said there was no commitment to a particular plan approval. Mr. Nelson said it was understood going into the project there were always issues and concerns in addressing a development plan, and they were prepared to comply. He said the initial meeting with the planning consultant indicated this property was appropriate for 2,000 housing units on 1,000 acres, which was a lesser density than many of the other developments that Washoe County had approved. He said the most recent plan was for 40 lots on the southern 600 acres, which did not include the north part of the property. Those were

15-acre lots with wells and septic tanks. He said even that plan was not good enough for the neighborhood group or Washoe County. He commented the special-interest group was still trying to block that.

Senator Wiener asked what would happen in a subsequent sale of private property seized by eminent domain and sold to another private party, and she asked how the Legislature should address that issue. Senator Care replied there had been all manner of abuses of eminent-domain proceedings in many ways. He said S.B. 326 did not address a taking from a private party to give to another private party; he had confined the bill to condemnation for open space and wildlife habitat. He said the bill mandates a specific finding of blight for every parcel taken for eminent domain on a theory of blight. Senator Care stated he thought the question correctly recognized that there were other abuses that need to be addressed. He said he had not wanted to get too complex with S.B. 326.

Chair Amodei asked what the present zoning was on the property. Mr. Nelson replied on the south side, the zoning permitted 40 lots; the north side was zoned for at least 144 lots under the existing County land-use designations.

Chair Amodei asked Mr. Nelson to describe the water rights. Mr. Nelson replied with the purchase of the ranch, Evans Creek purchased around 600 acre feet of surface water rights, which Washoe County, in its action, was claiming had no value. He said Evans Creek was required to show evidence of ground water rights to support 40 wells. He said Evans Creek purchased $2.9 million worth of ground water rights on the open market to meet that requirement, only to be told by Washoe County that the County could not accept the evidence of water rights because, due to the condemnation action, they would not further consider the application.

Frank Thompson, Attorney, Evans Creek Limited Liability Company, said Evans Creek contends in both pending lawsuits, one a civil rights case in the United States District Court and one a condemnation action in State court, that Washoe County was using the power of eminent domain wrongfully on the pretextual grounds of open space and wildlife habitat in order to acquire the Ballardini Ranch. He said this property had been targeted and singled out for discriminatory treatment. Mr. Thompson said all adjacent properties to the north, east and the south had been treated differently than the Evans Creek property. He asserted the fact that the southern portion of the Ballardini Ranch

being excluded from the Truckee Meadows service area demonstrated how the property had been treated differently than other properties in the area. He said in fact, the only other property to the south that had been excluded from the service area was 6.3 million acres of national forest.

Mr. Thompson said, "We believe that S.B. 326 simply clarifies and reinforces existing law." He said as the Committee was aware, the State had the power of eminent domain, which was inherent in the State itself, but local government entities could not use or exercise the power of eminent domain unless it was specifically allocated to them by the State Legislature; it had to be a specific grant of authority. He said NRS 37.010 contained a long list of specific, enumerated reasons for which the power of eminent domain could be used. Mr. Thompson pointed out open space and wildlife habitats had never been grounds for the exercise of eminent domain. He said Evans Creek was not asking the Legislature to change existing law, but simply to clarify it. He said even though open space and wildlife habitat were not stated in the list of eminent domain options, Washoe County saw fit to go forward with an eminent-domain action based on grounds not listed in the statute. Mr. Thompson said he believed Washoe County would try to shove open space and wildlife habitat into another category to justify its actions. He said Evans Creek supports S.B. 326, which would prevent all governmental agencies from pretending to have the power to condemn property on the grounds of open space or wildlife habitat.

Mr. Thompson said these two particular justifications were so expansive, they would give any governmental agency the opportunity to use them as a pretext to acquire property by eminent domain under questionable reasoning. He said as with any other discrimination case, this case also contained an ulterior motive. Mr. Thompson stated that like all discrimination cases, the discriminators stated reason was not the true reason. He said the reason stated by the County was for preservation of open space without any studies to support it when, in fact, the property was surrounded by developments on all sides, and the property in question was fill-in property that should be developed. He said the real reason for the actions by the county was that a few wealthy, surrounding landowners had prevailed on the local governmental authority to create for them a private park in southwest Reno at the expense of Washoe County taxpayers.

Mr. Thompson called attention to NRS 376A and the fact that the statutes provided for the consensual acquisition of open-space property through use of

sales and use tax revenues. He emphasized NRS 376A.030 specified local governments could acquire property through contracts of purchase and could use those revenue funds. Mr. Thompson asserted the statute showed the Nevada Legislature had previously considered this issue and had refused governmental agencies the right to exercise the power of eminent domain for the acquisition of properties for open space.

Mr. Thompson indicated he believed Washoe County would attempt to use that statute to springboard its argument that it can use the power of eminent domain to acquire properties for open space and wildlife habitat when there was no legitimate statutory basis for it.

Vice Chair Washington asked Mr. Thompson if the Legislature passed S.B. 326 and the proposed amendment, how would it affect his case. Mr. Thompson replied it would be brought to the attention of the judge, and the judge would rule on it one way or another. Vice Chair Washington said it appeared that would force some action from the courts, based on the approval of this bill and its amendment. Mr. Thompson replied the lawsuit could not be dismissed without an order by the court.

Chair Amodei, referring to Exhibit H, asked if Mr. Nelson could tell the Committee the ownership, the land-use designation and the sphere of influence statues in the orange area of the map. Mr. Nelson replied the orange property was land kept by the Ballardini Ranch's previous owners. He said they had owned over 1,200 acres and had retained 222 acres for their personal use. He explained that land was in the Truckee Meadows service area and was undeveloped land being used for cattle grazing. He said there was one home on it and was designated for residential development with higher densities than Evans Creek's south 600 acres.

Mr. Nelson said the yellow property on Exhibit H was currently owned by Washoe County and designated for county open space, which was also included in the Truckee Meadows service area. He stated neither one of those properties was included in the Reno sphere of influence.

Chair Amodei asked who the utility provider was for the Evans Creek property. Mr. Nelson replied water would probably be the Truckee Meadows Water Authority, and sewer could be the City of Reno or Washoe County, depending on where the connections were made. He commented there were already utilities provided on three sides of the property.

Michael G. Chapman, Attorney, Washoe County, said the purpose of S.B. 326 was to effect the rights of the parties in the Ballardini Ranch litigation, Party 1 being Washoe County, Party 2 being the landowners, Evans Creek LLC. He said three legal cases were currently pending on this issue. He said one case was a lawsuit brought by the owners of the Ballardini Ranch to determine the accuracy of a county determination of a historical road through the property. He said that was pursuant to state law to determine whether roads may have existed back in the 1800s and so on and still provided public access.

Mr. Chapman explained the second case was a civil rights case brought in federal court for the purpose of defeating the upcoming condemnation case to be filed by Washoe County.

Mr. Chapman said the third case was the eminent domain case to acquire the entire ranch, which was authorized by the Washoe County Board of Commissioners in July of 2004, filed on August 31, 2004. He explained this case was moved to federal court and then remanded to state court when designated a state matter. He said there had been a motion to dismiss the civil rights case and that ruling was pending.

Mr. Chapman stated if S.B. 326 was made retroactive, to change the rules of the game after the condemnation action had been filed, it unleveled the playing field. He said the bill would make an action improper retroactively. At one time the action was proper. This exposed Washoe County to a claim of $50,000,000 in damages from Evans Creek. Mr. Chapman said:

> While they come here and put on their closing argument for the case, I think it is important for the Committee to know that by changing law retroactively in its effect and making something that would be fine at the time not okay presently, you upset rights and perhaps change exposure levels and evaluations of cases. So, I think that needs to be kept in mind.

Mr. Chapman commented an important legal point was that Evans Creek claimed it was not there to change the law about whether open spaces are public use. If it were already the law that condemning for open space was not a public use, they would not need legislation to give them a leg up in their lawsuits and Evans Creek LLC would not be testifying before the Legislature.

Chair Amodei pointed out that he was looking at chapter 37 of NRS and his understanding was that Evans Creek LLC wanted a narrowing of the articles in chapter 37. He asked Mr. Chapman to summarize where in the law it clearly states that governmental entities can condemn for open space and wildlife habitat. Mr. Chapman replied eminent domain was a civil action and was similar to other areas of the law in a sense that you must have several components, which are liability, causation and damages. He said in eminent domain, it was called public use, necessity and just compensation. He stated the Legislature had declared in NRS 361A.090, in its declaration of intent, that open space was important.

Chair Amodei asked whether the statute Mr. Chapman referred to was a tax statute. Mr. Chapman replied it was. Chair Amodei asked where in chapter 37 of NRS did Mr. Chapman see the authorization to use eminent domain to acquire property for open space. Mr. Chapman responded the authority led from the two statutes that dealt with open space, which were NRS 361A.090 and NRS 376A.010. He said NRS 376A.010 defined open space and provided a mechanism for tax monies to be applied for that purpose, so it was a public use.

Chair Amodei asked Mr. Chapman whether his comment concerning a mechanism for tax money referred to the agricultural and open-space deferral programs in statute. Mr. Chapman indicated his comment referred to chapter 361A of NRS which reflects legislative intent to preserve open space for agriculture, view sheds and water sheds. He emphasized the importance, validity and public purpose of the legislation. Chair Amodei said he was familiar with the statute and asked how the application for tax money connected to the current issue. Mr. Chapman said NRS 376A.010 defines open space and states what it includes. He said the gist of the statute was that it provided a mechanism for voters to approve tax money to be used to purchase open space. Mr. Chapman said that was a 1999 statute and in the year 2000, under that authority, the voters of Washoe County approved the issuance of a bond to raise money for the purchase of open space. He said $4 million was allocated

specifically by ballot to the Ballardini Ranch. He said $4 million was not enough to purchase the ranch, but it was the beginning of the funding for that purpose and demonstrates pursuant to the legislative act and the county follow-up on it by election, it was a public use to which this property was intended to be put.

Chair Amodei suggested Mr. Chapman move to chapter 37 of NRS and finish up his eminent domain triad of chapters. Mr. Chapman said it was three different NRS chapters and sections of *Nichols on Eminent Domain*. He said *Nichols on Eminent Domain* was the main treatise used in the field. He stated it was a generally accepted concept that preservation of open space for various reasons was for a public purpose and justified the use of the power of eminent domain. Mr. Chapman claimed this was not just Nevada law.

Chair Amodei indicated he had *Nichols on Eminent Domain*, NRS chapter 176, NRS Chapter 361A and he wanted to know where in NRS chapter 37 it gave counties the authority to exercise the power of eminent domain for the purpose of open spaces. Chair Amodei pointed out the bill sought to amend chapter 37 of the *Nevada Revised Statutes*. Mr. Chapmen replied NRS 37.010, subsection 3, was the first section that authorized eminent domain for county activities and lists a series of activities, but did not contain the two words "open space." He said it did say all other public purposes for the benefit of any county or the inhabitants thereof. He stated he had shown by quoting the other statutes and general law that the property seizure in question was for a public purpose and for the benefit of the inhabitants of the county. Mr. Chapman said NRS 37.010, subsection 11, authorizes the acquisition of land for public parks. He explained the definition of public parks was contained in the Nevada Supreme Court case of *Bushard v. Washoe County*. He said the definition included things such as recreation facilities, picnic grounds and so on, which was what the case was regarding. He said in 1951, 120 acres of Slide Mountain was condemned from H.B.R. Bushard and L.V. Redfield interests, and the challenge in that case was whether it was a public use. He said the Nevada Supreme Court ruled that it was a public use.

Mr. Chapman said the words "open space" were not used in that case, but at the time, the open-space statutes were not on the books. He said Washoe County's argument was that the Nevada Supreme Court had ruled that an acquisition for the same thing the county was going to use the Ballardini Ranch for was a public use. He said the court specifically documented judicial knowledge of the fact pine, fir, cedar, spruce, chaparral, manzanita, springs,

streams and other natural beauty things that were of benefit to the public. He said there were 120 acres acquired and 38 extra acres for access, so the public could get to the area. He said the county not only had legislative authority and general authority, it had a Nevada Supreme Court case whose findings granted public-acquisition authority under the public-park language of the statute for that exact purpose. He stated he had no doubt that if the case were to be argued to a court without the benefit of the amendment sought by Evans Creek, a judge would rule there was a public purpose.

Chair Amodei asked Mr. Chapman to share the facts of the Supreme Court case regarding prior applications for development on that 120-acre piece of property and asked whether it was in the Reno sphere of influence or out of the sphere of influence. Mr. Chapman claimed that in 1951, planning was not what it was currently. He said there were no spheres of influence in 1951.

Chair Amodei asked whether there had been any applications to develop the property before it was condemned. Mr. Chapman said he did not think so, according to the decision. He said he did not see anything in the decision regarding development intent.

Chair Amodei asked whether the property had zoning in 1951. Mr. Chapman said it was zoned something and, in fact, part of the property was at the base where the Slide Mountain ski area was now located. Mr. Chapman said there was a ski area or something similar at the time. He added he believed so because when the 1960 Olympics were held, that was where they were going to hold the downhill part of the skiing competition, because there was not enough snow at Squaw Valley.

Chair Amodei asked whether there had been any thought given to try exercising the ability to take possession of the property. Mr. Chapman replied Washoe County had not taken possession of the property under the court case. He said it had simply filed the action and was proceeding toward determination of just compensation at which time there would be a jury verdict and Washoe County would then pay the money plus interest. Chair Amodei asked when did he think interest would start to run. Mr. Chapman said he believed interest was already running.

Chair Amodei asked whether the intention was to go back into the planning process after the constructive condemnation. Mr. Chapman indicated there were

two things to consider. He said under the condemnation statutes, interest would begin to run at the service of the complaint, which was August 2004. He said there were allegations to settle as to whether it was a federal or state case, a civil rights case or a pre-condemnation case. He stated as a lawyer he believed those categories were more properly classified as pre-condemnation damage claims as opposed to civil rights complaints. He said in any event, there might be an argument if Evans Creek LLC could prove improper pre-condemnation activity, they would be entitled to some additional damages or interest. Mr. Chapman said it was difficult, while sitting at the testifying table, to say exactly how that would play out because Washoe County did not agree with those claims.

Chair Amodei asked whether the complaints were already in play. Mr. Chapman replied they were in play in the pleadings.

Mr. Chapman said in addition to *Nichols on Eminent Domain*, other states also had legislation which declared open space was a public use and that was a good thing. He noted among those states were California, Florida, Georgia, Illinois, New Jersey and others.

Mr. Chapman expressed the necessity for acquiring the property had been known for a while. He said when Evans Creek began its due-diligence process on the property, it was delayed because when it first made its inquiry, the property was under an option to be purchased by the American Land Conservancy. He said that organization had an option to purchase the land for open space with Julius Ballardini and Angela Percival, the previous owners of the Ballardini Ranch. Mr. Chapman stated that purchase was unsuccessful and Evans Creek bought the property.

Chair Amodei asked why the purchase was unsuccessful. Karen Mullen, Director, Department of Regional Parks & Open Space, Washoe County, replied the owners of the property did not want to wait long enough to go through the exchange of property with the United States Forest Service and wanted to move on with the sale of the property. She said at the time, the American Land Conservancy did not have the ability to look for other funding sources, so was trying to do a land exchange on the property.

Mr. Chapman said due to the circumstances, Evans Creek was aware of the interest to use that land for open space. He said most of the things he was

talking about occurred in 1997, and Evans Creek LLC closed the purchase in 1998. Mr. Chapman claimed that Evans Creek met with a lot of people and among those was a consulting engineer who described to them the process of getting any approvals and the fact that there was a group who would protest the development. He said Evans Creek knew that there would be opposition to the project, and that was also known to the owners of the Ballardini Ranch.

Mr. Chapman said Evans Creek's first attempt to develop the property was prior to the time they closed on the sale. He said they proposed 2,000 housing units on the property, not the 184 they said they were proposing now. Mr. Chapman said the proposal for 2,000 units generated resistance, and they withdrew their application prior to the time it was to be acted upon. He said he also thought it was important to note that while Evans Creek LLC complained the sphere of influence line was drawn down the middle of its property, leaving 600 acres outside the Reno sphere of influence, that was the way it was when Evans Creek bought the property. Mr. Chapman expressed that Washoe County did not change what existed when Evans Creek bought the property.

Mr. Chapman said on August 14, 2001, the Washoe County commissioners issued a resolution stating the Ballardini Ranch offered the last and best access to the Sierra mountains. He said Washoe County staff was directed to make efforts to buy the property and the Commissioners requested help from the City of Reno. He said this was a public action, and it was the opinion of the Commission that it would be a good idea to acquire the ranch on behalf of the citizens.

Chair Amodei asked whether it was a resolution from Washoe County. Mr. Chapman replied yes. Chair Amodei asked Mr. Chapman to read the resolution again. The Senator said he heard last and best access to the Sierra Nevadas but wanted to know some of the other components of the resolution. Chair Amodei pointed out there had to be other parts of the resolution besides access because it did not take 1,000 acres to get across that section. Mr. Chapman replied the resolution went on to state it was a critical area for a successful wildlife refuge in conjunction with the ArrowCreek open space property. He pointed out the surrounding property that fronted up against the range was developed. He said there were open spaces in those developed properties and the fact that this was the last place to be developed did not mean it should be developed. He said there was an equally valid concern to say maybe this was the one that should remain undeveloped.

Mr. Chapman said the gist of any eminent domain suit was there would be a trial before a jury to determine what the just compensation should be. He said this was not a seizure because there would be a payment at the end, determined not by the County but by the court.

Mr. Chapman said in the resolution, the County commissioners also stated that it was a high priority for acquisition of open space, directing the staff to use the $4 million. He said it was mentioned it was important to preserve the valuable heritage of this open space for public use by all the citizens of the Truckee Meadows. He said it was part of an overall plan; it was not just the Ballardini Ranch, but included adjacent open space in ArrowCreek. Mr. Chapman explained the resolution designated the area as having a very high priority.

Mr. Chapman pointed out that the U.S. Supreme Court decided a case in 1999 called *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, which was about whether there should be a jury trial in a federal eminent domain case. He said the directions to the jury included the following:

> Public bodies, such as the city, have the authority to take actions which substantially advance legitimate public interest, and legitimate public interest can include protecting the environment, preserving open space agriculture, protecting the health and safety of its citizens, and regulating the quality of the community by looking at development.

Mr. Chapman noted that was to the district court, as referenced by the U.S. Supreme Court in the Del Monte Dunes case. He said that was what the Legislature had done in the sections of statutes he cited by acknowledging this was a public use and important public policy. He stated Washoe County's point was legal. He stated that without the Legislature specifically excluding this process from eminent domain, the general presumption of the courts would include it within the public authority, as cited by the statute. He said the court would apply a principle of statutory construction, which stated the Legislature would have clearly stated otherwise if it did not intend for entities to have the power of eminent domain or if it did not want a particular thing to be the subject of eminent domain. He contended the statute did not do that, rather the statute labels it as a public use, a county use, and it specifically allowed county uses and park uses, which was what was intended. He said plans

included things such as trails, interpretive centers with bathrooms, picnic areas, and similar things to the Bushard case, which was also approved by the Nevada Supreme Court.

Mr. Chapman expressed Washoe County had a different view of what took place during the pre-condemnation of the property. He said that in 2002 there was a regional plan update as required by State law. He noted that periodically the regional planning department in Washoe County had to update the regional plan. Mr. Chapman stated the three entities affected were Washoe County, the City of Reno and the City of Sparks, and they would meet. He said it was a statutory governmental nondelegable duty. He pointed out that at the same time Evans Creek was planning the amendment, there were settlement discussions and purchase discussions amongst the Ballardini owners, Evans Creek LLC and Washoe County. Mr. Chapman said Evans Creek believed when the County advocated to keep the sphere of influence line where it was, with 419-acres in the Reno sphere of influence and 600 outside the Reno sphere of influence, that it somehow violated the spirit of the discussions. He said Evans Creek LLC then terminated the discussions and revoked its willing-seller eligibility under the Southern Nevada Public Land Management Act. He said Evans Creek maintained that Washoe County pulled the plug at the eleventh hour, but Evans Creek actually did so at the third or fourth hour. He said Evans Creek pulled the plug on that funding to make it harder for Washoe County to get the money.

Mr. Chapman explained Evans Creek also filed a tentative map application with respect to the southern 600 acres which were totally within Washoe County jurisdiction. He said the county processed the map, and there were conditions imposed resulting in the application being sent back to get more information. He said the Washoe County staff felt the application was incomplete. He said Evans Creek felt it had been required to meet certain conditions in the tentative map stage that should have been in a final map stage, such as demonstrating an availability of water, quality of the water and other things. Mr. Chapman reasoned that was a legitimate request to verify that a future subdivision had quality water and that septic tank systems would percolate as required by State health codes, and Washoe County was willing to let a judge or jury decide whether it was acting within its required regulations.

Mr. Chapman said when the Washoe County commissioners considered in 2004 whether to condemn the Ballardini Ranch itself, in whole or in part, the decision was to buy in whole and the direction to staff was "do not file the eminent domain case right away." He said staff was directed to give the Evans Creek owners another chance to negotiate with the County.

Mr. Chapman said despite the fact Washoe County had been talking off and on with the Evans Creek owners since 2001-2002 in regard to purchasing the ranch, Evans Creek LLC had never offered its own appraisal or information for the County to base its estimation on. He asserted Washoe County had an appraisal that was within the effective date of January 2004, performed by Lou Smith, who was an experienced appraiser. Mr. Chapman explained that appraisal was for $18,600,000 against a purchase price of $8,500,000 in 1998. He said Washoe County offered that appraisal with the stipulation that it would be supplemented because the appraisal was out-of-date. He pointed out Washoe County left the offer open, subject to an updated appraisal which would offer more money. Mr. Chapman said Evans Creek was encouraged to offer its own appraisal, so Washoe County could gauge where the negotiations were. He said that was where the County stood at that time.

Chair Amodei said the policy issue before the Committee was a piece of legislation that sought to add specific language regarding open space and wildlife refuge in chapter 37 of NRS. He said although there were people in the audience who felt strongly one way or the other about this piece of property and the prospective application of this bill, the Committee would have to decide a policy issue. The policy issue was twofold: open space and wildlife preserve, and the narrowing of the urban application concerning specific parcels. He said the hearing was not to approve or deny the Ballardini Ranch issue, it was in the context of chapter 37 of NRS. He said he did not want to do planning and zoning in the committee room of the Legislature.

Mr. Chapman commented if the bill was made retroactive, as the proposed amendment was asking, it would change the way the game had already been played. He said the Committee knew from testimony that there had already been an eminent domain case on file which had been to the federal court and was now back to the state court. He said certain action had been taken relying on the law as it existed. He stated changing the rules and changing the balance of the situation without extracting a commitment from Evans Creek to drop its civil rights case was changing the playing field. He said if the goal was to put

people back to where they were in a certain period of time, it had to be done evenly. He said Washoe County opposed the bill and especially opposed the amendment that made it retroactive.

Chair Amodei inquired whether Mr. Chapman thought the statute written was clear enough about open space and wildlife preservation. Mr. Chapman replied in terms of it being a public use and that governmental entities could use eminent domain to obtain such property, he did believe it was clear. He stated when he read the statute he had no doubt that eminent domain under those statutes as currently written could be used to purchase open space.

Ms. Mullen said as the Committee left the Legislature that day, she wanted them to look at the Sierra and think about the fact that in the 1950s and 1960s the majority of the Sierra was mostly private property. She said that through a host of acquisition methods or tools, we now enjoy these public lands along with those who visit our communities. She said there had been the use of land exchanges, federal legislation for land in lieu of taxes, purchase-acquisition methods, donations, density transfers, conservation easements and eminent domain acquisition. Ms. Mullen stated there were a number of issues brought up stating Washoe County was not working well with the development community, and she felt she needed to counter that point of view. She pointed out Washoe County worked with the development community to accomplish not only the community goals but also the developer's goals. Ms. Mullen stated there was evidence of land exchanges and density transfers to accomplish those goals.

Ms. Mullen said the Evans Creek people brought up the ArrowCreek development and used the word, "extraction." She said Washoe County had worked with the ArrowCreek development even though the group Protect Our Washoe opposed the development. She explained the County worked on a land exchange, trading County property for federal property, to provide a better main access into that project. She said Washoe County also worked with that developer through the planning process, as they wanted to move their commercial land down to the Mount Rose Highway-U.S. 395 junction. She said the developers received a density quota, and they chose to put it into a density transfer area to provide 1,500 acres of open space which included two golf courses and a lot-unit allocation for the area. Ms. Mullen said Washoe County staff believed it was appropriate to work with the development community to obtain these community goals and to work together to find solutions.

Ms. Mullen said another instance where Washoe County facilitated a land exchange to further development goals was in Spanish Springs Valley. She said in return, the developer provided 520 acres for public use that was important to the community for access to a canyon and mountain range. Ms. Mullen said there was a unique situation with this particular development where private land abutted federal land, and the county desired to find access points that would make sense and, in the long term, would make sense to the community.

Ms. Mullen said her point was that Washoe County strived to work with developers and private landowners to make the community goals a reality, and it was only on a rare occasion that Washoe County had sought eminent domain as a means to obtain property.

Ms. Mullen said the legislation was overly broad and vague in using the term open space; open space could be utilized for recreational purposes such as picnicking, hiking, mountain biking, horseback riding, environmental education and wildlife viewing. She said it could be used as a passive park. Ms. Mullen pointed out that open space could be used to protect the watershed, stream corridors, wetlands and flood-control areas. She said, for example, Washoe County was working along the Truckee River to acquire lands, and in those areas there were issues of natural attenuation of the flood areas. Ms. Mullen stated that would be a cost-effective approach to flood control. She said her question was who would make the decision whether the property was open space for flood control, recreation or some undefined notion of open space.

Ms. Mullen enjoined the Committee to consider the term “open space”. She said open space was a broad term, encompassing more than just how the land was utilized. She pointed out the open space was acquired to do good for communities in a number of ways.

Chair Amodei said no one had testified that 1,000 acres were needed for access. He asked Ms. Mullen to describe to him why Washoe County needed the whole 1,019 acres of Ballardini Ranch to provide access to the Sierra Nevada Range. He pointed out there were references to wildlife and parks, but this property was not a linear project for transportation purposes, not a 10-acre parcel for a school, the land was not designated for a city hall or jail

facility, this was a four-figure parcel that must be unique for something other than access to the Sierra Nevada Range. Mr. Chapman referred the Committee to NRS 376A.010, subsection 3, which states what open space included.

Chair Amodei stated he knew what the statute said, but he wanted know how it applied to that parcel of land. Mr. Chapman responded the answer to the question was the whole parcel was needed to effectuate the goals as set forth in the statute and as identified by the Washoe County commissioners. Chair Amodei inquired whether the County just wanted 1,000 acres of open space. Ms. Mullen said the county was looking at the parcel for broader purposes than just access. She said Washoe County was interested in the preservation of the watershed, preservation of the wildlife area and other things beyond recreational use and beyond just a trail system up to the national forest. She commented the County was considering the area to have picnicking and recreational access for the community. She said it was not just a corridor. Ms. Mullen was asked whether the developers could cluster the development. She told the Committee that Washoe County had only been recently advised about the requested 184 lots; the County had previously only known about 38 lots.

Chair Amodei stated he was not trying to make suggestions as to a compromise, but the bill came with an action pending to condemn the whole ranch, not to condemn access to the Sierra Front. Mr. Chapman replied, "Correct, for a variety of those reasons."

Ms. Mullen said open space was broad terminology and could affect Washoe County's flood control projects if the bill were passed with the term included. She said she had indicated to Mr. Chapman that the term could impact the airport authority if it were to need more property for flight paths. She commented some people would consider that open space and not the need for a flight path. Ms. Mullen stated it was critical to define the term open space because it could impact other communities and other projects.

Chair Amodei asked what coordination, if any, Washoe County had implemented with the Toiyabe National Forest officials regarding Washoe County's plans for the Ballardini Ranch and how it would integrate into the Forest Service's land. Ms. Mullen said the forestry people met with Washoe County years ago and wanted to know at the time what the County's plans were regarding the Ballardini Ranch. She said the County was already

seeking good access to the Sierra Nevada mountains. She noted at that time the American Land Conservancy was working with Washoe County and with the United States Forest Service on trying to acquire the property through land exchange or acquisition.

Steven Meyers, Redevelopment Agency, City of Reno, indicated he wanted to speak only to subsection 2 of S.B. 326. He said his experience had led him to believe the Senator was correct in his characterization of the use of the power of eminent domain. He said it was an extreme measure and for that reason it was used only as a last resort when it was necessary to acquire a piece of property for a redevelopment plan. He stated the City of Reno had guidelines for the use of the power of eminent domain which were stricter than the State statutes, and those guidelines very clearly made the use of the power a last resort. He said it was important to have that power available in the event a parcel of property needed to be acquired from an unwilling seller. He said an example would be the downtown events center in Reno. That plan required the acquisition of ten parcels. He explained none of those parcels required a formal filing of an eminent domain complaint; however, all of those parcels were acquired with the threat that eminent domain could be used. He stated all of the parcels except one were blighted parcels. Mr. Meyers said the one parcel not blighted was an existing service station that could have continued as a service station; however, that parcel was critical to the building of the events center and was a key parcel that had to be acquired. He asserted fortunately, the property was acquired consensually.

Mr. Meyers pointed out the City of Reno had used the power of eminent domain only twice in its history. He said the downtown events center was assisted by the Legislature with special legislation and was a successful operation. He noted the first night the event center opened, it generated 3,000 room-tax nights. Mr. Meyers urged the Committee not to require a finding of blight to be necessary for the acquisition of property within a project area. He said in order to create a project area, there had to be a finding of blight. He said the findings of blight were extensive and were subject to judicial review. He continued, saying once those blight findings had been established, any property within the project area should be eligible for acquisition to use as necessary to carry out the development plan.

Mr. Meyers pointed out there was a provision in existing law, NRS 279.488, that addressed some of the issues raised by the proposed legislation. He quoted:

> Without the consent of an owner, an agency may not acquire any real property on which an existing building was to be continued on its present site and in its present form and use unless such building requires structural alteration, improvement, modernization or rehabilitation, or the site or lot on which the building is situated requires modification in size, shape or use or it was necessary to impose upon such property any of the standards, restrictions and controls of the plan and the owner fails or refuses to agree to participate in the redevelopment plan.

Mr. Meyers argued that section of existing law provides some protection to a property owner who was concerned an agency might acquire his or her property simply for the purpose of turning it over to a Wal-Mart.

Vice Chair Washington said he was curious about the language in S.B. 326 which said the agency would adopt a resolution including written findings by the agency for the condition of blight for each individual parcel, and he asked whether this would prevent governmental agencies from acquiring parcels that were not blighted under the power of eminent domain. The Senator said he wondered why Mr. Meyers' office would be against that section of the bill. Mr. Meyers replied parcels in a redevelopment plan might not need to be blighted. He said if a majority of the property was blighted and there were prevalent conditions of blight throughout the area, then that justified the creation of a redevelopment project area. Mr. Meyers acknowledged there were times when an individual parcel might not exhibit conditions of blight.

Vice Chair Washington asked if that applied to the gas station previously mentioned. Mr. Meyers said the gas station was the best current example of what he was trying to communicate to the Committee. He commented the property was acquired consensually, and no eminent domain power was required; however, had the gas station owner not been willing to sell his property, the agency would have resorted to the power of eminent domain to make the events center site work. He said if S.B. 326 were law, Reno would not have been able to use eminent domain to create the project.

Vice Chair Washington inquired whether under S.B. 326 Reno was prevented from providing a written resolution to the individual parcel owner indicating the City's intent of using that parcel for a redevelopment project and then claim eminent domain. Mr. Meyers responded, "Senator, we would be able to do everything this statute currently provides with the exception of making a finding of blight."

Chair Amodei asked Mr. Meyers how he would feel about an amendment to the bill stating, if the parcel was not blighted, there must be a finding that there were no other reasonable planning options available. He said as it stood now, it was the decision of a developer with no specific finding to justify the acquisition of the land. Chair Amodei pointed out the concern was the continuing horror stories that were saying "Well, if you don't take the offer...." It was the same old story over and over; governmental agencies would just condemn the property to do whatever they wanted. He affirmed some people were more evenhanded in how they engaged in negotiations, but there had been occasions where earnest redevelopment projects were being done and people came to the negotiation table with the threat of "Here was the deal, and if you don't like it, we will do the condemnation thing." He said the threat of condemnation for purpose of eminent domain restricted the property owner's rights and took away the negotiations for fair value of the property.

Chair Amodei asked Mr. Meyers whether he objected to language that would require a report of some specific finding on the property, at the very least, before a governmental agency could use the power of eminent domain on a nonblighted parcel. Mr. Meyers answered the statute in Nevada was a good statute, containing the necessary findings to protect property owners. He said he understood there were instances of abuse of the power of eminent domain. However, he asserted, governmental agencies must be able to assemble the needed land. He said the Reno redevelopment agency's viewpoint was that it was critical for undertaking a redevelopment project, whether the project was for a public facility or a private development. He said one of the characteristics of blight, in fact, was excess parcelization. Mr. Meyers explained a critical factor was where there were too many paper subdivision lots when the agency needed to acquire enough of the block to get an economic reuse of the property. Mr. Meyers continued, if there was a situation in the eminent domain law that prevented the City of Reno from acquiring that one key parcel because it might not be blighted, then the benefits and goals of redevelopment would not be accomplished. He said the specific answer to the question would be

"certainly," if there was a provision which required the agency to determine the parcel was absolutely necessary for achieving a redevelopment project and was consistent with the plan, Reno could use it. He commented he preferred the language as it already was, but adding that requirement would be fine.

Senator Care inquired in the case of the gas station, if part of the compensation was "loss of goodwill." He said the Nevada Supreme Court issued an opinion regarding the loss of goodwill. Senator Care said the case involved a business that was doing fine and did not have anything to do with blight, but the Nevada Department of Transportation just needed to widen the road. Senator Care explained that in the lower courts, the decision was there would be no compensation for loss of goodwill; the Supreme Court, however, said there was compensation for loss of goodwill. He said when settling for a nonblighted parcel within a redevelopment project, there should be mention and compensation for the loss of goodwill. Mr. Meyers responded goodwill was included in an evaluation, and if the law in Nevada says a property owner was entitled to business goodwill, then an offer made by the city exercising its power of eminent domain that did not include that component would not be valid. He said he did not recall whether or not the property owner of the gas station received compensation for the goodwill component. He noted the acquisition was over $1 million. He explained goodwill in a business was difficult to prove because it was related to excess profitability of the business and, in some instances, it simply did not exist even though it was a going concern.

Joe L. Johnson, Toiyabe Chapter Sierra Club, said he wanted to add the Sierra Club to the list of opponents to S.B. 326, especially section 1. He said the Sierra Club felt if there were wrongful actions in the case of Evans Creek LLC, then they should take their claims to the courts.

Mr. Johnson pointed out the Committee had been given a flat map of the parcel in question, but a topographical map would show separations in the topography of much of the ranch that added to the unique character of the area.

Mr. Johnson asserted the Sierra Club would like to go on record as supporting open spaces and the purposes of protecting and conserving wildlife habitat as the existing statute provides.

Steve Walther, Protect Our Washoe, said many people had a strong belief they should do their best to preserve the heritage they had as children. He said the discussion today was about special legislation to solve what was perceived to be the use of unfair tactics. Mr. Walther stated courts were specially designed to deal with those kinds of problems. He noted there were three cases on the subject in two different courts, one State and one federal. He said the process should be allowed to work the way it does.

Mr. Walther conveyed a little history to the Committee about the Ballardini Ranch. He said the Ballardini Ranch was known to everyone in the valley for many years, and the family held the property as a operating ranch through all those years. He claimed it was a wonderful thing to have. Mr. Walther explained that in the late 1970s, a process began to look at various parts of the Truckee Meadows. The process was originally set up to study the transportation system through the Truckee Meadows. He said from that process, Washoe County wanted to form land-use and transportation plans for certain quadrants of the area, and southwest Truckee Meadows was one of those quadrants. Mr. Walther said in the planning, there was a recognition that the rural, residential character along the foothills was desirable to maintain, and strong decisions were made by the County to fulfill that plan. He commented since that time, the plan had maintained that integrity with the potential high risk of losing it in the case of development of the Ballardini Ranch.

Mr. Walther cited on Exhibit H where the Ballardini Ranch lay and explained at the time of the development of ArrowCreek in the early 1980s the Ballardini Ranch was held by the family, and there was no indication that situation might change. He said attention was given to the ArrowCreek-Redfield property and the desire to develop their southwest property in the late 1950s. He said the group in the valley agreed with ArrowCreek, and former State Senator Hugh D. McMullen of Elko said "… there was no opposition to the final compromise that was made." Mr. Walther added there was no density change from the original plan. He stated not one house was removed because of density in the existing rural-residential character of the ArrowCreek development. He commented it was a wonderful development. Mr. Walther said the agreement was for 1,019 homes in a configuration thought to work with 1,400 acres devoted to open space. He sited on Exhibit H where the Mt. Rose Highway lay along the foothills to the McCarran property as part of the long-term plan to provide open space and wildlife refuge all the way down. He explained the deer did not need the refuge every day, but it was needed

when the winter was particularly tough. Mr. Walther said a report from Professor Paul T. Tueller, Department of Natural Resources and Environment, clearly pointed out the area had valuable habitat for the deer herds as well as other wildlife, especially in times of difficult winters. He said the national forest did not provide the refuge because it was all high range. He pointed out the lower elevations of the Ballardini Ranch area provided more protection and water year around. Mr. Walther asserted the two refuge areas of the national forest and the Ballardini Ranch area complemented each other. He said the need for the refuge area came to the County's attention when it became apparent that the owners of the Ballardini Ranch were interested in selling the property. He said the American Land Conservancy had an option to acquire the property for a period of 18 months to 2 years. He explained that at the time, there was a plan to trade the land under the federal land exchange program. Mr. Walther stated the land exchange program came under scrutiny because of the concern that the values given to property in southern Nevada were not high enough, so there was not a fair trade in some of these exchanges. He stated the Ballardini owners could not wait for the problem to be resolved.

Chair Amodei asked various potential testifiers to check with Nicholas Anthony, Committee Policy Analyst, and to return the following day to continue the testimony on S.B. 326 because the Session bell had rung and the Committee needed to adjourn for the day.

Chair Amodei adjourned the meeting at 10:58 a.m.

RESPECTFULLY SUBMITTED:

Johnnie Lorraine Willis,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: