

1 saying it says. Is it reasonable for a
2 tenant to be able to execute a change of
3 use that affects the land owner? I mean,
4 is that the way other municipalities
5 handle this kind of stuff?

6 MR. RAMSEY: They would not -- if a
7 tenant came in and said, I want a home
8 occupation, okay, they would let them --
9 if they showed that they owned the
10 property or had a lease on a property,
11 then the City would let them go through
12 the process of getting a home occupation.

13 MR. MEYER: The renter acts as the
14 agent to go through the process.

15 MR. RAMSEY: Now, if someone came in
16 and said, I want to operate a commercial
17 enterprise here. I don't want a home
18 occupation. I don't want to be limited by
19 what home occupation limits me. I want to
20 do a commercial enterprise. Then they're
21 going to have to bring in either a deed
22 showing they own it or a lease saying
23 that -- if it's a residence and been used
24 as a residence, that the lease says that
25 they could use it as a commercial

1 enterprise, which they did.

2 COMMISSIONER DAILEY: And you're
3 saying that happened?

4 MR. RAMSEY: That pretty much tells
5 me that everybody knew it was going to be
6 a commercial enterprise and they put a
7 commercial sign out there for two and a
8 half years.

9 COMMISSIONER DAILEY: Except that I
10 would also maybe suggest that a psychic
11 reader may not be as sophisticated about
12 how to do this legally. I mean, I don't
13 know the individual at all, but I can
14 imagine that they took the simplest most
15 direct route without having any
16 understanding what they were giving up,
17 what they were gaining, that they just
18 said I want a business.

19 MR. RAMSEY: I tell you what I think
20 happened, the psychic reader wanted a
21 sign.

22 COMMISSIONER DAILEY: Maybe so, and
23 maybe they knew that.

24 MR. RAMSEY: Because everybody that
25 runs a business, the biggest fuss we have

1 to deal with is how big a sign that they
2 can put up.

3 COMMISSIONER WOOTEN: And not only at
4 this point, Mr. Dailey -- I mean, the fact
5 is that's what the law says. Okay. And
6 if we don't like what that law says, we
7 need to change that code and add the
8 language that says, a leasee cannot change
9 the purpose of the structure without the
10 sole agreement of the owner. I mean,
11 that's another battle to fight.

12 MR. RAMSEY: If it had been written
13 that way, that lease says that they could
14 do it.

15 COMMISSIONER SPANIER: Did the mother
16 write this? Who wrote that in?

17 TONY LUONG: They wrote it with her.
18 They filled it out and she said, okay,
19 she'll sign it.

20 COMMISSIONER SPANIER: See what I'm
21 saying. They duped her.

22 COMMISSIONER DAILEY: It has that
23 flavor to me, as well.

24 MR. RAMSEY: Well, and thinking from
25 the point of the psychic reader, say they

1 knew everything, they came in here and
2 said, all right, here's your two options.
3 If it's a residence, you can operate your
4 business there as a home occupation, but
5 these are the limitations. You can't have
6 traffic normal -- outside what is normal
7 for a residence. You can't have a sign.
8 You know, it's got to be limited to a
9 certain percentage of the floor space.

10 Or, you can operate it as a
11 commercial, since you're in a commercial
12 zone, and you can have a big old sign out
13 there. And they said, that what I want,
14 because to do that, they didn't have to
15 come before the Planning Commission and
16 ultimately the City Council.

17 COMMISSIONER DAILEY: And the lease
18 has been --

19 MR. RAMSEY: But the psychic reader
20 knew it the day they signed that lease,
21 because they signed the lease the same day
22 they applied for the business license.

23 COMMISSIONER DAILEY: I mean, is
24 there a legitimate legal conflict between
25 the fact that they may have been also

1 residing there, creating --

2 MR. RAMSEY: No. No. Because you
3 can have -- like I said, there's a primary
4 use. We have home occupations all over
5 the City and the primary use of those
6 structures is residential. And we have
7 had more --

8 COMMISSIONER DAILEY: I can view
9 that, though, that the primary use was
10 residential.

11 MR. RAMSEY: We have had more than
12 one case where we had a business operating
13 and we allowed the owner/operator,
14 whatever, to also reside there. But the
15 primary use of that structure was
16 commercial.

17 COMMISSIONER DAILEY: And I can make
18 the argument that that primary use of that
19 house was a residence and whatever the
20 lease says that they had a psychic reading
21 studio in there, as well. And you're
22 saying that your leasee resided in that
23 the full time they were there?

24 TONY LUONG: Yeah, lived there. I
25 never saw anybody come there to do

1 psychic --

2 COMMISSIONER DAILEY: It means
3 something to me that the rest -- that it
4 was primarily a residence. The rest of
5 this is just manipulating that so that the
6 tenant, not the land owner, can get
7 whatever they can get, at the detriment of
8 the land owner in this case.

9 COMMISSIONER WOOTEN: And at the same
10 token, this proceeding will allow that
11 owner to continue on earning money on it
12 as a residence until somebody walks along
13 and hands them a million bucks for that
14 piece of property.

15 MR. RAMSEY: It wouldn't cost that
16 much. He'd sell it for a lot less than a
17 million dollars.

18 COMMISSIONER WOOTEN: There's got to
19 be a balance there.

20 MR. RAMSEY: Especially after going
21 through all this mess.

22 COMMISSIONER WOOTEN: But I'd also
23 bring to your attention that, you know,
24 about a year ago we turned down a cottage
25 retirement community over there that was

1 pictorially and aesthetically a lot better
2 looking than this residence, and we turned
3 it down.

4 MR. RAMSEY: That was three and a
5 half years ago.

6 COMMISSIONER WOOTEN: Time flies when
7 you're having fun. Same situation.
8 Somebody come in here and wanted to put a
9 bunch of residences in and nice little
10 cottages, put some shopping in, and we
11 said no, because that is the corridor to
12 the City, the commercial corridor and it
13 needs to stay commercial.

14 MR. MEYER: How did y'all handle -- I
15 understand there's an area up in Hickory
16 Hills that was zoned R-1 and you still
17 have some trailers in there that are
18 preexisting non-conforming?

19 COMMISSIONER WOOTEN: We had a
20 situation where we had a realtor sold a
21 piece of property to a homeowner, to a
22 family, went to get power turned on and
23 wouldn't turn it on. It had changed from
24 R-3 to an R-1 and the realtor didn't tell
25 them. And we said, we're sorry. It's

1 their job to know. We have residences all
2 over the City. I'm sorry, Mr. Luong, it's
3 your job to know if you lease this
4 property and ask them to use, the law says
5 in my opinion, this has -- I have to go
6 with the Planning Department on this.
7 We'll come to a vote in a. But the law
8 says, he's doing the right thing. Okay.

9 COMMISSIONER JOHNSON: Mr. Chairman,
10 with regard to that cottage application on
11 Highway 90, you're right, one of the
12 reasons why we denied it, or we
13 recommended it to be denied, was because
14 we were concerned about the type of
15 tenants that would be renting because of
16 the small square footage, and we had
17 information that said that that's not
18 enough square footage to live in based on
19 how many people we projected would be
20 there.

21 But more importantly than that, we
22 denied it because based on a finding from
23 the Southern Planning District, that
24 manual they put out, they said that we
25 were overbuilding in the area and that

1 would hurt homeowner value.

2 And as it turns out, if you look
3 around, we have overbuilt and there's a
4 lot of apartments that have been built in
5 this area and they're half vacant. So
6 we're in an overbuilt situation right now.
7 So I think that denial by the -- ultimate
8 denial by the City Council was a wise
9 decision. I think it was a good decision.

10 But I also agree with you,
11 unfortunately, that, you know --
12 unfortunately for the applicant, you know,
13 when you own a business, it's your
14 responsibility -- it's the owner's
15 responsibility to understand the
16 consequences of their -- of any legal
17 document that they sign.

18 TONY LUONG: But we didn't come and
19 change it. It was a tenant that came and
20 changed it.

21 COMMISSIONER JOHNSON: Right, but
22 didn't the owner sign the lease?

23 COMMISSIONER SPANIER: I believe that
24 the owner was duped by these people, and I
25 think if this gentleman was present at the

1 time that would not have been written in
2 there. And I understand, they're the
3 owners and they have a responsibility.
4 But I also understand where she's coming
5 from and her background.

6 COMMISSIONER WOOTEN: Okay. All
7 right.

8 COMMISSIONER DAILEY: And the fact
9 that they maintained the residential
10 status of that building.

11 COMMISSIONER JOHNSON: Okay. Let's
12 say that's true, but the cat's already out
13 of the bag. It's already been done.
14 What's done has been done. So if I was to
15 ask the City, can you undo what you have
16 already done, meaning you have already
17 granted a business license, a business
18 permit, the business has operated, is
19 there any way that we can undue what you
20 did so that it could go back to being a
21 preexisting non-conforming use?

22 TONY LUONG: Is there a waiver?

23 COMMISSIONER SPANIER: According to
24 this, you can.

25 COMMISSIONER JOHNSON: I mean, is