

1 against what staff says, after they've
2 performed the research of the applicant
3 and the history behind that. The law is
4 the law. We don't have any -- we don't
5 have any substantial evidence that the
6 owner was tripped or duped.

7 They're a business owner, even though
8 they might not speak English, but that's
9 what you have attorneys for, to review
10 documentation, to discuss any risks. They
11 had an opportunity to address any
12 potential consequences with the City, if
13 they wanted to. So, I mean, you know,
14 buyer beware, business beware, you know,
15 things happen. There's consequences for
16 your actions.

17 So I think we're setting a dangerous
18 precedence for recommending to the City
19 Council to provide some type of special
20 relief from what the law says.

21 COMMISSIONER DAILEY: Does it go to
22 the Council, or is this our decision?

23 MR. RAMSEY: No. At this point, it's
24 your decision.

25 COMMISSIONER DAILEY: It's our

1 decision.

2 COMMISSIONER WOOTEN: Whatever we say
3 has to go to the City Council.

4 MR. RAMSEY: It can be -- if it goes
5 against them, they can appeal it to the
6 City Council.

7 COMMISSIONER DAILEY: Right. But
8 this is our decision.

9 COMMISSIONER WOOTEN: All right. So,
10 good comments, Mr. Johnson. And I
11 appreciate all of those. And I'll just
12 add to that, the direction the City is
13 going is west. Okay. That is our
14 commercial corridor. With the things that
15 are happening in our Town Center, I do not
16 believe, in my opinion, and it's only one
17 up here, that we need to set more
18 residential areas on Highway 90. That's
19 my opinion.

20 COMMISSIONER DAILEY: And I feel
21 we're not setting up a residential area on
22 Highway 90. We are allowing the land
23 owner that's paying taxes on the property
24 to use the property the way they intended
25 when they purchased the property and they

1 maintained, in my opinion, their
2 residential use. At some point, yes, it
3 definitely will be a commercial property.
4 But in this economy, I don't think now is
5 the time to fight that fight.

6 Concerning the law, you may have
7 heard something differently than I, but I
8 heard our attorney say that we can legally
9 reverse the staff's opinion under the law
10 for the reasons that we've stated, for the
11 findings that we've stated. It's legal
12 for us to do that.

13 And as far as going against staff, as
14 I said, I agree that staff acted
15 correctly. They have very strict
16 guidelines that they go by. We are
17 allowed a little more latitude and should
18 exercise more latitude and do additional
19 investigation, which I think we've done.
20 And I think it is our responsibility to
21 weigh all of those and make a decision.

22 And, again, I feel that this land
23 owner has maintained legally the
24 residential status of this property for up
25 until the last vacancy, and he's entitled

1 to continue the use of that property as a
2 residential piece of property.

3 COMMISSIONER JOHNSON: Commissioner
4 Daily, once again, you speak eloquently,
5 but your opinion is not the law. The law
6 is the law. I think we --

7 COMMISSIONER DAILEY: He said --

8 COMMISSIONER SPANIER: In my
9 opinion --

10 COMMISSIONER JOHNSON: Wait a minute
11 now. What he said was we could go ahead
12 and send the recommendation based on our
13 findings to the City Council.

14 COMMISSIONER DAILEY: It doesn't go
15 to the Council. This is our decision.

16 COMMISSIONER SPANIER: Only if he
17 appeals it does it go to the Council.

18 COMMISSIONER DAILEY: This is our
19 decision, unless he wants to take it
20 there. We have to that right. Please
21 help us.

22 MR. RAMSEY: Right. It's just like I
23 said --

24 COMMISSIONER JOHNSON: The question
25 is, well, then, show me in the ordinance

1 where we are allowed to go against what
2 the law says.

3 MR. RAMSEY: I don't have the
4 ordinance.

5 COMMISSIONER DAILEY: This is --

6 MR. RAMSEY: Listen, again. You've
7 got two options, basically. One, you can
8 affirm the decision of staff.

9 COMMISSIONER JOHNSON: Right.

10 MR. RAMSEY: Two, you can reverse the
11 decision of staff, if you make the finding
12 that, one, the residential character of
13 this property was its primary use from the
14 time they purchased it up to today. And,
15 two, that the lease that had the
16 commercial language in it, which is what
17 allowed the City to let them operate as a
18 commercial use, didn't -- I call it duped.
19 The architects talk a little nicer than
20 lawyers do. What was the language you
21 used? It did not -- the language in the
22 lease did not reflect the true intention
23 of the landlord.

24 But if you make those findings, and
25 the primary one being that the residential

1 character of the property never changed,
2 or the primary use as a residence never
3 changed, then you can reverse the decision
4 of staff.

5 COMMISSIONER DAILEY: And that was
6 the motion.

7 COMMISSIONER JOHNSON: And I
8 appreciate you're saying that, Mr.
9 Attorney, because that was some of the
10 points that were being brought out
11 earlier. So if we determine that the
12 primary use never changed, then by
13 suggesting that --

14 MR. RAMSEY: It's not a suggestion.
15 You have to make a finding.

16 COMMISSIONER JOHNSON: By making that
17 finding, the implication is that the City
18 erred in issuing a primary commercial
19 business license --

20 MR. RAMSEY: No. Because the
21 evidence that the City had at that time
22 was that the property owner gave written
23 permission for the property to be used as
24 a commercial use, where it's primary use
25 was commercial.

1 COMMISSIONER JOHNSON: I'm good with
2 that.

3 MR. RAMSEY: You're making a finding
4 that that was not so, because you have
5 additional information. But y'all -- four
6 of y'all have to agree on that.

7 COMMISSIONER SPANIER: Now,
8 apparently the business wasn't so good
9 since they couldn't pay their rent and
10 stuff, so it's not like they had a line of
11 cars. You're talking maybe one person
12 every three days. It was primarily a
13 residence. This was not a business, in my
14 mind.

15 COMMISSIONER JOHNSON: I wouldn't
16 argue that, either.

17 COMMISSIONER WOOTEN: The sign was
18 out there for two and a half said, I'm a
19 business. Good point.

20 COMMISSIONER SPANIER: I drive by
21 there and never saw cars there.

22 COMMISSIONER JOHNSON: But I would
23 say this, and, you know, y'all won't have
24 to deal with me but for one more month,
25 but just remember, this is for the record,

1 and now -- and even though this might
2 be -- this might be an appeal where we can
3 go ahead and decide after the fact that
4 things were different than what somebody
5 else thought they were, City officials who
6 are paid to do that, thought they were --
7 when they made a decision, now we're
8 becoming, you know, the judge, quasi judge
9 and jury and saying, well, that's kind not
10 what we're hearing right today. So we
11 think, our opinion is, that, no, that's
12 not the way it was. Well, guess what,
13 that's a slippery slope. That's all I'm
14 going to say about that.

15 COMMISSIONER WOOTEN: And where you
16 were going I think there, Mr. Johnson is
17 if we go against the code and allow
18 this -- wait, let me finish, please.
19 Somebody could come in my neighborhood and
20 apply to put a business in, if it was
21 zoned there, and you guys said no, and
22 here with a precedence set that we went
23 against a code. We're going to wind up
24 back in court. That's what this deal is
25 all about. This is not -- and I

1 appreciate your opinion, but the law is
2 the law here, guys.

3 MR. MEYER: We see a lot of attempts
4 to gain the sort of 60-day thing with
5 trailers. They'll leave the water going,
6 the power on, just to sort of pretend that
7 somebody is there. We have to document
8 that.

9 COMMISSIONER WOOTEN: You made your
10 point, and all the points are there out
11 there. Greg, you second the motion. I'm
12 fixing to call the question.

13 COMMISSIONER JOHNSON: Let's not make
14 an arbitrary and capricious decision,
15 guys.

16 COMMISSIONER WOOTEN: We're fixing to
17 find out. That's right. So we've had all
18 kind of deliberation and discussion on
19 this thing. So we had a motion by
20 Mr. Dailey to reverse staff decision,
21 second by Mr. Spanier. I'm going to call
22 a vote now. All in favor of reversing
23 staff decision and allow this property,
24 this owner, to go back the way it was,
25 raise their right hand.

1 * * *

2 (Commissioner Spanier so indicates.)

3 (Commissioner Dailey so indicates.)

4 * * *

5 COMMISSIONER WOOTEN: All against
6 that motion, raise their right hands.

7 * * *

8 (Commissioner Johnson so indicates.)

9 (Commissioner Torrey so indicates.)

10 (Commissioner Wooten so indicates.)

11 * * *

12 COMMISSIONER WOOTEN: What that says
13 is, Mr. Luong, we agree with the staff
14 decision.

15 MR. RAMSEY: They have the right to
16 appeal within ten days.

17 COMMISSIONER WOOTEN: Okay. You have
18 the right to appeal this within ten days
19 to where?

20 MR. MEYER: City Council.

21 MR. RAMSEY: City Council.

22 COMMISSIONER WOOTEN: To the City
23 Council.

24 MS. LOGAN: That wasn't a quorum,
25 though, was it? There was only three.