

In re: World Wide Video v. City of Spokane

CITY COUNCIL MEETING 1-29-01
ORDINANCES C32778 & 32781

City Clerk: S-1 relating to adult entertainment facilities, amending SMC 11.17.426, adding to SMC Chapter 10.08, a new article and a new section and adding to SMC 11.19, a new section, first reading held January 8, 2001, city priority—growth management.

Would you like me to go ahead and read S-2 as well?

Rob Higgins: Why don't we take them one at a time because we have people that want to speak to these items. So, the clerk has read special consideration, S-1. I am now going to ask for those who have signed up to please come up and speak to this issue.

Unknown: But, if they want, can they speak to both issues?

City Clerk: I think we should read both issues.

Rob Higgins: Go ahead and read them both. Let's do it this way since we got it started.

City Clerk: S-2, regulating live adult entertainment establishments providing for the licensing, inspection, regulation and standards of conduct for adult entertainment establishments providing for other matters relating thereto and repealing SMC 10.08.070 through 180. First reading on 1/22/2001 City priority: Public safety.

Higgins: Okay, so we have two items before us, but we are conducting one hearing on them under special considerations both S-1 and S-2...

Greene: Excuse me...

Higgins: Excuse me, Ms. Greene?

Greene: Is it possible that we could have, um, Attorney Patty Connelly Walker come forward and brief us, and the audience also, on the two items involved...

Connelly Walker: Sure. What I anticipated this evening was to present both, what I call the Adult use Retail ordinance and the city's nude dance ordinance at the same time. I will mention, though, as I am going through the issues that I think are pertinent to the council's review tonight, issues that pertain specifically to one business or the other. We have had those discussions in the past in terms of looking at them as two separate issues—two separate ordinances, but I think the council is mindful that many of the adverse secondary effects that I would mention would apply to both types of businesses. So I think it would be expedient and appropriate to hear both issues at the same time because there is a lot of cross over in the testimony. And what I had anticipated was

presenting some of the general issues to the council, and I know there are a number of citizens that would like to speak to the issues tonight as well.

Higgins: Why don't you go ahead and give us some background on the ...

Connelly Walker: I will. Thank you. I'll start first with the city's nude dance ordinance because we haven't had a lot of public discussion about this recently. Last summer I went before the public safety committee and then later before the council in a meeting, in here, on this issue to give the council an overview of what we would be looking at and to bringing before you. But its been quite some time since we have done that. So, I will give you a little bit of history again on this issue. In 1997, the City of Bellevue enacted a nude dance ordinance that ours is patterned after. They were subsequently challenged over the Constitutionality of that in a case of *Ino Ino v. City of Bellevue*. Its kind of a landmark case in this area and many other cities and counties have followed suit in enacting ordinances that are very closely tailored to Bellevue's ordinance and we are one of those. In fact, what I did when I prepared for this county, the nude dance ordinance a couple of years ago, I included the legislative record from Bellevue, Federal Way, Renton and little bits and pieces from other cities and counties over on the west side because they had already done a lot of the work engaged in a lot of studies, and put together a very good legislative record. So, what we did, we gathered up that information, studied it and then added to it with our own local legislative record. Some of the cases we have looked at are *Deja' vu v. Everett*, *Deja' vu v. Federal Way*, *Deja' vu v. Bellevue* and then in the county we enacted our nude dance ordinance in 1997, we were challenged in federal district court and we prevailed at summary judgment over the constitutionality of that ordinance. Essentially, the court said that *Deja' vu* litigated, re-litigated, re-litigated and re-litigated this issue and found there is nothing more to look at in terms of the issues that they raise. So, we are very good solid legal ground with this nude dance ordinance. It has been tried in the State of Washington and it has been upheld repeatedly. In fact, Spokane County's case was a published case, so we've got very direct authority and ability to review and utilize those decisions, should the City of Spokane be challenged. It should be noted that Spokane at this time does not have any nude dance facilities. That does not mean the city can't legislate in this area. Courts have permitted that it's prudent and a lot of times if you legislate, then you won't have those businesses bring with them the adverse secondary effects, knowing they have to comply with certain regulatory and licensing provisions and you don't see those same kinds of adverse secondary effects. So, when we were developing this ordinance, we relied a lot on what I've done for the county and what other cities and counties have done so we weren't reinventing the wheel—tired to narrowly tailor it so that we could rely very directly on the holdings that we already had. When I say that we also studied our own local issues, over the last three years, I have had the benefit of working with *Deja' vu* after the enactment of the ordinance and also before the enactment of the ordinance and have prosecuted them on a number of occasions for violating that ordinance—both the managers and the dancers of those facilities. In fact, we currently have, I believe its cases with six *Deja' vu* dancers pending and two managers, they are criminal misdemeanors and they are being prosecuted for violating the four foot rule that got a lot of attention. That is typically what we see in terms of challenges with this type of an ordinance—is a challenge to the

four foot rule that says dancers have to stay four feet back from their customers when they are giving them a lap dance or a couch dance. There can no longer be a lap dance. They have to be four feet away from the patron they are doing the dance for and the managers are responsible for insuring that that provision is complied with. So when the managers fail to do that and the dancers engage in the activity, then we charge both of them. So, we have as part of our legislative record, and I should indicate that the clerk has that legislative record, much of which you have seen before, it includes I believe its 7 binders of studies and cases, that have developed over the years as well as police reports from a number of different jurisdictions including our own. There are also a number of videos. These videos are of violations in a number of cities over on the west side that we have gathered at the Deja' vu here locally, as well as a copy of the testimony that was before the county commissioners when they enacted their ordinance. I would like to incorporate by reference that entire legislative record but I thought it would be helpful to specifically the testimony that the county commissioners heard. It was, as you will hear tonight, very indicative of what our local issues are and I think helpful in terms of having an understanding as to why and how these adverse secondary effects occur when you have this kind of facility in your community. The issues typically associated from a legal standpoint with the nude dance ordinance are violation of regulatory provisions or standards of conduct. That is typically what we are sued over and that would be the four foot rule that I referred to earlier. We have had 10 foot rules upheld in this state, since that time. So there is really very little room to litigate in this area any more because we have a number of published opinions and in this state and in our federal circuit out of our Washington cities. So there isn't as much issue anymore with respect to the nude dance ordinances. The adverse secondary effects that I referred to that we typically see out of these facilities, really to a large extent, mirror those that we talk about with regards to the adult retail book stores. They are somewhat aggravated because the onsite activity of dancing tends to encourage or promote additional secondary effects within the business that you might not see in an adult bookstore. We see criminal activity such as prostitution or sexual acts on the premise itself as a result of operating the business, so that is a secondary effect that is not always seen with respect to adult bookstores. Sometimes, adult book stores will be set up in such a way that you will have criminal activity on the premises but the adverse secondary effects that tend to be common in both nude dance establishments and adult retail use facilities are more typically the economic downturn issues such as property values decreasing when a business of this sort locates next to residences or other retail uses. There is the blight on the surrounding community in terms of things we have discussed before, paraphernalia being left in the area, sexual acts in the parking lots, disturbances in the neighborhood, sometimes due to the hours of operation, the sexual material being displayed in the window of the facility, doors being left open, general behavior by the patrons once they left the facilities—that type of an urban blight situation tends to occur. We also have a heightened criminal activity in the area often times, although, its not as typically occurring within the facility as much as outside the facility. So, we have a number of adverse secondary effects when adult use retail businesses come into a city, we often see prostitutes patronizing in the area. I have used the phrase before, "if you build it, they will come." We saw that with the county's retail use ordinance and the studies that we did in the county regarding the adverse secondary effects specifically associated with

those types of businesses. We also with respect to the retail use ordinance, as you will recall dealt with zoning adult bookstores, 750 feet-- it's a disbursement model which disburses them 750 feet from other adult entertainment facilities, schools, churches, parks, residences, that type of thing. The adult retail ordinance is different from the nude dance ordinance because the nude dance ordinance that we are dealing with here tonight is not a zoning ordinance. We already have a zoning ordinance with respect to adult dance facilities that was enacted in 1986. The nude dance ordinance is a regulatory and licensing ordinance. The retail use ordinance is strictly a zoning ordinance with one provision that speaks to a regulatory issue which is the hours of operation provision. So we have those issues which are somewhat separate, but as you see, they are quite a bit of overlap as well. We have talked a lot at previous meetings about the adverse secondary effects, I just went basically or very generally over. In addition to the legislative record that the plan committee reviewed, the retail use ordinance, I have added an update essentially, contains photographs of the facilities that we have in the city, also some additional materials that I received from the city of Federal Way and the city of Blaine and their efforts in this area. There was some original legislative history pertaining to those facilities and this is essentially an update of that. I also offer for the council's review some additional citizen's complaints. In addition, there is also a video that came out of the county's efforts in this area to assist in the incorporation of that record as well. I would like to incorporate by reference, the county's efforts in the adult use retail enactment. I think all of the issues that they faced are pertinent to the issues that this council will be examining to determine if it wishes to proceed. As we have discussed before with respect to adult use facilities, is the issue of whether to go with the six months or one year amortization provision. So do these places need to close and move within six months or a year in they are out of compliance with the zoning issue. I also want to speak very briefly to that issue. I know Mr. Eugster in the past has had some concerns with the argument that there is a property taking by enacting this type of ordinance and I did want to indicate to the council that in this area, and I have mentioned this before, but I want to be a little more specific about it, the courts have not looked at this type of ordinance as a property taking. Um, in the same way that they might with other ordinances. That is for two reasons. Under the federal law, there is no physical invasion of property here and the regulation doesn't deny all economic benefits of that property. There is still a productive use for that land. So under the federal analysis, and this council could be sued in federal district court or in state court over these issues (both Constitutions apply and there are a number of options that can occur in that regard.) Under federal law, the analysis is that there is no taking from a property standpoint. Under Washington law, a taking only occurs if the regulation destroys or derogates any fundamental attribute of property ownership. We don't have any of those circumstances with this particular ordinance. This ordinance simply requires these facilities to locate in a place that is 750 ft. from the named uses. It doesn't say you can no longer use that property. It doesn't say that you are zoned completely out of the City of Spokane. These businesses are afforded alternative avenues of communication. We've shown there is a substantial governmental interest and that the ordinance is narrowly tailored to accomplishing that important governmental interest. There are really only two adult zoning cases that have dealt with this issue. They dealt with very similar zoning provisions in an adult entertainment context. One of them is out of New York, it's a

1999 case. *801 Conklin Street v. Babalon*, the other one is a 1988 5th circuit case, *FDA Inc, v. Houston*. In both of those cases the courts found that there was no property taking and in fact the individuals had not clearly articulated a property taking, but they looked at the issue because they think that is where they were going. When I represented the City of Spokane, _____ v. City of Spokane in 1996, that was when the published decision came out. The court found that there is no Constitutional right to make a profit in this area and that was the 9th Circuit Court of Appeals. We have a long history of cases that have built up to that decision and now we have some cases that deal with the taking of property issue in this very narrow area of adult entertainment zoning. So, its our position that we are on very good solid ground with both of these ordinances. That we have, on the nude dance ordinance cases that have been tried in Washington, many of them with business owners that we will be seeing this evening, if we are challenged and then also on the adult retail entertainment side, we have some cases that have upheld the one year amortization provision and have spoken to the issues generally, and then of course the property takings argument that seem to be of concern to the council in the past, are also addressed in this area. So, it is our position, on a local legislative record, even if you don't look at what has happened across the nation, and the council is certainly entitled to consider all adverse secondary effects, the efforts of other cities and counties across the nation, even if you limited your analysis to what we have here locally, because unfortunately, we do have a very plentiful record of secondary adverse effects both on the nude dances establishments and for the adult retail use establishments, its my position that this council would be on very solid ground enacting both of those ordinances. Coupled with that you have a very plentiful national record in this area, some twenty years of decisions in this area and studies by many jurisdictions on many different issues and then a legal response to that, It is also our position that you also have no insurmountable hurdles on the adult retail use end of this ordinance. I will indicate though that we have discussed the fact that this council will likely face a lawsuit as a result certainly of the retail use ordinance so I certainly did want to indicate that there is a great likelihood that that will happen.

Higgins: I have a question. Will you be around to help us on that.

Connelly-Walker: Unfortunately, I will be around to witness for the City or the County on those issues and that is not uncommon where cities and counties will farm out the defense of these suits to private firms or have somebody else handle the case and then bring in the attorney that did the background work, even though I have had the luxury of enacting the ordinances or working on an enactment of them and then trying them as well which is nice from a control stand point for an attorney, I certainly will be available to assist.

Higgins: Congratulations by the way.

Connelly-Walker: Thank you.

Higgins: Mr. Eugster?

Eugster: I have several questions. Are you familiar with a case out of Boise that was decided last week regarding nude dancing?

Connelly-Walker: "Uh, what was the name of the case?"

Eugster: I don't have the case, I saw it in Lawyer's Weekly last week. I can't get to the... it was just a trial court decision so its not a reported decision, but in that case, apparently they held that Boise's nude dance ordinance was unconstitutional and Boise is incurring exposure of substantial attorney's fees because I think the case has been brought as a 1983 case.

Connelly Walker: I will say that because of the length of time that I have been doing these cases for ten years, I have a lot of really good sources and I will typically see arguments on cases that are not even yet before the trial court and certainly not before the appellate court, so that is why I ask for the case, because I will receive on a weekly basis emails from all over the country on cases that are pending...

Eugster: Well we certainly understand that you are the local expert in this area.

Connelly Walker: And I guess.

Eugster: I appreciate that you may well be, however, I see a headline in the Boise Idaho Statesmen that says, Ban on Public Nudity Violates First Amendment. I read the story and it caused me to be somewhat concerned. So you are not familiar with the case?

Connelly-Walker: I am not, but I will say this. A couple of things come to mind as you are raising that as potential issues, banning public nudity is not what we have done with our ordinance, so I don't know if the caption appropriately reflects what occurred in that case, but assuming it did, that is not a concern for this council because we are not banning public nudity. People are still entitled to provide entertainment in the nude in a controlled facility.

Eugster: Let me ask you this. What is your role here? Are you and advisor to this council or are you and advocate for this legislation?

Connelly-Walker: I am an attorney for the City Attorney's Office whose been asked to prepare and present this material and that is what I am doing.

Eugster: All right. Now the second question I have, In your Adult Entertainment Facilities Ordinance, apparently you have drafted, you say that an adult retail establishment is an enclosed building, blah blah blah, in which any portion thereof for money or for any other form of consideration devotes a significant or substantial portion of stock in trade to the sale, exchange, rental, loan, transfer or viewing of adult oriented merchandise. What is the meaning of significant or substantial>

Connelly-Walker: We have had a number of courts who have looked at that language in other jurisdictions, and, uh there was three that have specifically dealt with that language. I would submit, and we have had...

Eugster: I don't care what the courts have said, what is the meaning of it? I mean you are asking us to adopt legislation, so tell us what is the meaning of significant or substantial?

Connelly-Walker: It means that when you have a facility whose predominant or primary purpose is to sell adult oriented merchandise to patrons then...

Eugster: All right, let me stop you right there.

Connelly-Walker: If I could finish, then that is one of the factors that the Court will look at in determining whether the city in slotting a facility as an adult retail use ordinance made an appropriate decision.

Eugster: All right. That doesn't seem to comport with the statement, "devotes a significant or substantial portion of stock and trade." Your definition certainly did not fit the definition of significant or substantial. You have far gone beyond that.

Connelly-Walker: Yes and that is one of the interpretations that the courts have made. To answer your question, a lot of people say, well why don't you put a percentage in there, wouldn't that be a lot easier, say 50% of your merchandise is adult entertainment merchandise and therefore you are an adult use retail establishment. The reason we haven't done that is because of the way the courts have looked at these issues. Number one, you don't have to do that and they have suggested why it may not be prudent to do that. The first reason being that if you pick a number and you draw a line in the sand, say 50%, then its very easy for an adult entertainment facility that really as its purpose for being caters to people who want to buy adult entertainment merchandise, they will just have 49%. They will have a ton of lingerie that will kick them out of that category. So, what we know...

Eugster: Can I stop you right there?

Connelly-Walker: If I could just finish, because I don't want you to have one piece of the puzzle, I want you to get the whole picture, what we do know is that in the State of Washington, 10% is too low given a certain set of criteria given the legislative record. So one of the things that I wanted to point out, the courts are going to look at what you the council have done from a wholistic perspective. The aren't going to require that you give them a number of set items...

Eugster: Counsel, counsel, I am not asking you what the courts are going to do, I am asking you what I would be adopting were I to adopt this legislation. Are you talking 10%, 20%, 50%, 60%--what are you talking about?

Connelly Walker: A substantial portion.

Eugster: Okay, let me ask you this then. There are, let's see, I know that there are various video stores that we all shop at that have rooms specially designated for adult videos. Is that an adult use retail establishment?

Connelly-Walker: No, because it isn't a substantial portion of their stock and trade.

Eugster: But it says significant or substantial. Obviously if they rent adult videos, that is a significant portion of their stock and trade.

Connelly-Walker: That is not how the courts have interpreted it.

Eugster: Well, how are we interpreting it? Are we interpreting it how the courts are interpreting it and if that's the case did you give us the opinion so we know..

Connelly-Walker: As you will recall, if I could just respond to this, I did over a month ago leave you a voice mail inviting you to meet with me and to go through the decisions with me. The decisions are all in the legislative record. They are all in the record that was provided to the City Plan Commission which this council has had for a number of weeks. So I would invite you to review those because what I am proposing to you here today is an ordinance that I believe comports with those decisions and the only interpretation...

Eugster: But counsel, you are not telling us what we are enacting.

Connelly-Walker: I just told you. I would be happy to go into greater detail.

Eugster: Let me. Let me go on to the next question. Let me go on to the next question. Um, in 11.19.143, you have a provision that says they will not be located or maintained within 750 feet, and measured from the nearest property line, of an agricultural zone?

Connelly-Walker: What we have done is adopted, uh, we have tried to be very consistent with our approach on this issue. And, we use the same provisions that were in effect in other places.

Eugster: But, in order, let me, I understand what you are trying to do here, but what is an agricultural zone? What is a country residential zone? What is a residential suburban zone. I am not aware that we have a country residential zone or a residential suburban zone in the city land use code.

Connelly-Walker: The residences, which of course is a concern to,

Eugster: Why don't you say, R-1, R-2, R-3, R-4 zone?

Connelly-Walker: I suppose we could redraft it.

Eugster: I think you have to. I think you have to, because you don't have a country residential zone. I know that you are going to other legislation, but we have to draft legislation that works for the City of Spokane.

Connelly-Walker: Right and we did that and this went the Plan Commission and they reviewed it and they made changes as they felt necessary.

Eugster: We all make mistakes and this is not well drafted. Let me ask you, what is the purpose, what is the legislative purpose for locating or not locating lets say, one of these establishments within 750 feet of an agricultural zone?

Connelly-Walker: Well, I suspect that if an individual had an agricultural residence then they would feel the same way if they were within 750 feet for one of these facilities as somebody that lived in the city would, so there is no distinction from my standpoint. A residence is a residence no matter what zone its located in.

Eugster: Now, another question that I have, you mentioned, that apparently, your understanding of the legislative history on something like this is that we can consider the impact that this use may have on the value of adjoining properties, is that correct?

Connelly-Walker: Yes.

Eugster: Do you think that is ever an appropriate consideration in a land use decisions?

Connelly-Walker: I think its appropriate consideration..

Eugster: In this case?

Connelly-Walker: In these types of cases. The courts have reviewed those issues very specifically.....

Eugster: I understand that you've got all the Court's in the world behind you. I am just asking for an explanation.

Connelly-Walker: Yes, I do, to answer your question.

Eugster: That you understand you think that you have all the courts in the world behind you. Ahhh, now, you went into a long discussion about their not being a taking of property under this statute. Now, I can understand that there might not be a taking with regard to how the legislation might apply to land which is not currently being used as an adult establishment, but, if you have property that is now being used as an adult use establishment, what you have is a vested use. You have a vested property right. Are you aware of all the cases in Washington that refer to vested property rights?

Connelly-Walker: I don't understand your hypothetical.

Eugster: Norco Construction Company and others?

Connelly Walker: Um, you are asking me about non-adult entertainment property or probably its use and non adult entertainment uses?

Eugster: No. Maybe I miss used..

Connelly-Walker: Because this doesn't apply to them.

Eugster: No. I can understand that with respect with property that is currently not being used as a retail adult establishment, you can enact a zoning code that might limit those establishments from other establishments in other areas. But, you said that is not a taking, and I agree with you, but if you have a vested use. If you have somebody that is already using their property appropriately under the land use code and you now say that that use is a non-conforming use, you have engaged in a taking of that use of that property right.

Connelly-Walker: Are you talking about an adult use entertainment facility?

Eugster: Yes.

Connelly-Walker: Then, no. Under the case law that deals very specifically with this type of ordinance, there is not taking.

Eugster: So, you...

Connelly-Walker: So, regular land use law does not apply.

Eugster: Please let me finish.

Connelly-Walker: Sure.

Eugster: So, you can, what you're are saying is that the City can say that a use in six months will no longer be a permitted use and that does not consist of a taking?

Connelly-Walker: If its an adult entertainment use, no.

Eugster: What's the difference between that and an office building?

Connelly-Walker: Because the Courts have looked at these issues over the last twenty years and determined that there is such a significant compelling governmental interest that its permissible for cities and counties to legislate this way. We have a narrow set of circumstances and the law applied in a very narrow way. So its different from an office building because your average office building doesn't have these kinds of adverse secondary effects. It would be more similar to a bar which historically we know we will

have secondary adverse effects so there are certain liquor laws and rules that apply to them.

Eugster: So you are saying that because this falls into a category of supposedly a nuisance, you can bring the use to a halt.

Connelly-Walker: It doesn't have to rise the level of a nuisance before you can legislate like this.

Eugster: Now, how many judicial decisions have held up a six months amortization time period that you have encountered in your experience?

Connelly-Walker: With respect to adult retail use establishments, there are none that I am aware of.

Eugster: How many courts have dealt with a one year amortization period?

Connelly-Walker: Three have very directly addressed the one year period, others have had one year amortization provisions, but have not spoken to it in their decisions. You know, sometimes cities and counties enact things and the proponent of the suit will choose to fight on you know, A and B which might leave C which might be the amortization alone so we have that kind of situation as well

Eugster: Let me, one final question and then I'll be finished. I see no legislative history set forth in the preamble of this ordinance.

Connelly-Walker: What ordinance?

Eugster: The ordinance that you are proposing regarding adult entertainment facilities.

Connelly-Walker: The retail use or the nude dance?

Eugster: The Adult Entertainment Facilities Ordinance. The nude dance ordinance you have a bunch of whereases, none of which we have read, I am sure. But be that as it may, in the adult entertainment facility you have no whereas—none of the legislative.

Connelly-Walker: This body has before it the plan commission's recommendation that came with a number of findings that would encompass the preamble, the whereas...

Eugster: But wouldn't you , in order to protect, wouldn't you suggest to this body in order to protect itself and the citizens from lawsuits that we adopt at least the Plan Committees legislative findings on this ?

Connelly Walker: Well, it would be my recommendation.

Eugster: But you don't have that here.

Connelly-Walker: The Plan Commission made that recommendation.

Eugster: But the Plan Commission is a separate entity.

Connelly-Walker: My recommendation of course is that this council adopt their recommendations and their findings which would be the purpose for them to go through that procedure before you and I would be asking to incorporate their record as a whole record of the county planning commission and the county commissioner by reference. Much of that has already been included in this legislative record.

Eugster: You recommend that, but its not there, so shouldn't we defer this until its there?

Connelly-Walker: No. Because I don't have to bring in, I already brought in a banker's box full of materials. Its not required that this body see every little word that every other body has considered before it makes that determination. The Courts have determined that its perfectly appropriate for staff to study the issues, to summarize and to provide a digest version for this body because there is no way that each of you could consider all of the detail that the staff that you charge with developing the record would know. Its not expedient. Its not required and so I think I have provided more of a legislative record than you will see in most of your ordinances without bringing every record that I considered without every study that I have considered. I have bookcases full of material that I considered in preparing this.

Eugster: It is not an issue of you.

Connelly-Walker: No.

Eugster: Its an issue of the legislative history of this council and the protection of the citizens of this city from lawsuits that it might lose.

Connelly-Walker: Right. And it is an issue of me because you are entitled to rely on what staff has done in bringing this before you without specifically and individually considering every study, dotting every I and crossing every T.

Higgins: Mr. Eugster, can I.

Eugster: You overstate the point. All I am trying to suggest to you is that before you have us adopt the ordinance, it would seem appropriate that this body have some findings as to why its adopting the ordinance. It has nothing to do with you. It has everything to do with the legislative history you are suggesting...

Connelly-Walker: I would suggest that you have those findings, Mr. Eugster.

Higgins: Any questions from council members?

Eugster: I would like to ask Mr. Piccolo what his thought is concerning the failure to place legislative findings in the preamble to this ordinance.

Piccolo: At this point, I would certainly have to defer to Ms. Walker's expertise in this area. But any assistance she may need in finalizing this ordinance, we could provide.

Eugster: Well, my problem with Mr. Walker is she is obviously an advocate for this legislation and you are our counsel. I am concerned that we are walking down a real slippery slope here. I would like to defer this. I think that this is wrong. But, I think that if the council is going to protect its citizens, that it ought to have a whole series of whereases here so that we can at least, when we go to the court, say that we did understand, that we had a legislative record, we did approve the actions of the plan committee.

Higgins: We have had a couple of briefings by the

Eugster: Well, Rob, its not a matter of having briefings, it's a matter of making a record.

Higgins: Make your motion. There are a lot of people here that wish to speak. You would like to make a motion to defer?

Eugster: Well, I think we continue the hearing tonight, but I think that we need to defer the final adoption of this until we can explore the need to have legislative findings. I appreciate Ms. Walker's zeal here, but quite frankly I am not enacting what courts are doing, I am enacting what I think I am doing—not what some Judge that's getting paid a \$125,000 is telling me I am doing. So,

Higgins: Any other council members with questions?

Eugster: I move that we defer the final adoption of this until after we've heard from Mr. Piccolo on whether I am right or wrong on the whereias.

Rodgers: I will second that for the sake of discussion.

Higgins: There is a motion to defer this item. A number of people have shown up to speak to this item. Even if we vote to defer on those grounds, we will continue with the hearing. Mr. Corker.

Corker: I have one concern about the six months and a year.

Greene: But that is something we can...

Higgins: Excuse me, we have a Motion on the table to defer. Are you speaking to that Motion?

Corker: I guess I am speaking in support of it because I have some questions that I need to have answered, so I guess so.

Higgins: Is there anybody in the audience that wishes to speak to the council on the Motion to defer legislative action on this item to no specific date but until, as I understand it, some legislative findings can be...

Eugster: To determine if we have findings, I think we should. We clearly have them in the other one and I think this is the critical one.

Higgins: Is there anyone that wishes to speak to the deferral? You may speak to that Motion to defer.

Wakeman: I am Bruce Wakeman, 7616 E. Baldwin, Spokane. I think that this matter of the questions of the findings is a matter of turnover that we have on the council. Mr. Eugster missed a few of the council meetings during the time that the findings were coming in and being recorded. As a citizens whose been to the meetings that pertain to this issue, I have heard and I've heard submitted to this council many findings.

Higgins: So you are speaking against the Motion? I take it from your comments?

Wakeman: I think we should not defer the action.

Higgins: Thank you. Anyone else wish to speak , just to the deferral issue. It would be nice to move on with this, just so we can discuss the issue with some substance.

Jester: I am Dan Jester. I am a voter in Spokane. I uh, urge you to defer this. I was going to speak to the other forum after this and my last sentence in my presentation is that I also ask you to delay this decision until you have the time to read these statements for your consideration. I will read that again when I have the chance.

Higgins. Thank you sir. Please state your name and address for the record.

Talbott: My name is Glenn Talbott. I live on 1631 E. Queen. And I would like to see this pursued and not deferred for the reason it's a typical maneuvering of those that want these kinds of establishments to grow to keep deferring as we have seen in about the last, what 15 years, to get the doors off of the booth. I mean that did not happen over night and it happened with a lot of legality. I hope you guys that we elected to stand for this community have the gumption to carry this through and not just put it on hold because that is the biggest tactic of those purveyors of this kind of activities.

Higgins: Thank you sir. That's gals and guys. We like council members, okay. Would you like to speak to this?

Drake: My name is Kimberly Drake and its PO Box 13036 and I live in Spokane County and I will speak more directly to this issue, but I also believe that this definitely needs to be pursued this evening. There are businesses who are already feeling the effects because of this kind of Motion to Defer. Please don't do that. You must make some sort of a decision here this evening.

Higgins: Thank you.

My name is **Ron Belile** (phonetic). I live at 4122 W. Fremont Rd. I work for Mukagowa and I strongly urge you to stop this kind of adult entertainment and not defer it anymore. We just had two students who were brutally hurt by people who were incited by this kind of behavior. Please do not defer this action anymore. Thank you very much.

Hansen: Hi. I am Ron Hansen. I have a business at 3809 N. Division. One selfish reason I would like it not deferred tonight, I left two little girls out in Colbert on Daddy-Daughter date night—uh, they are up there waiting for their date which is me and I like to see some resolution. I appreciate Mr. Eugster's questions and I believe they were asked with sincerity trying to get an amendment to the ordinance that can be defended properly. But in my business, we have been seeing an accelerated problem—an aggressive behavior of the people that are going into the business next door to my office and I had to do a police report this weekend on some thefts, My own kids that I actually pay to clean my office, I can't let them do it because they are having to do with an increased amount of used condoms in my parking lot and I am in a situation where time is of the essence for my own business survival. So I just want you to know that I know we gotta follow proper legal steps to try to avoid litigation or be able to defend litigation the best we can. But we know we are going to face litigation and we are not trying to boot somebody out on a new ordinance that is taking their property. We are trying to reinforce an ordinance that has been in place since 1988.

Higgins: Stick to the deferral.

Hansen: So, I am going back to the deferrals because 1988 is a long time to defer enforcement. We have deferred enforcement on the business next to me on an ordinance that already exists. So, I would appreciate it guys, I understand you are trying to be careful and do the right job, but I believe that Patty has done a really good job in preparing the amendment to this ordinance and between the Plan Commission and the City Council has provided the information needed and so I hope you will agree to continue tonight.

Connelly Walker : If I may offer a solution to the council. I have just reworked the Plan Commission's findings with essentially what I would bring back to you if the council directed me to prepare a preamble, or findings or whereases and they can come in any form. My understanding that there is no magic wording to this. So what I have done referred to this as Attachment A to the ordinance that is before the council. I have entitled it Preamble/Findings and it consists of nine different provisions that refer to what the Plan Commission looked at. I crossed out conclusion and Phyllis Meyer's signature

line and I would ask that council to adopt these preamble findings as part of the legislative record and as part of this ordinance.

Higgins: And in fact, that was part of our packet that you provided.

Connelly –Walker: It was?

Eugster: I so move. That might correct the problem here. I will withdraw my Motion if, I will withdraw my Motion for the time being and then I move that we add the reference in the ordinance to the findings of the plan commission.

Second.

Higgins: We remove the deferral ordinance and replacing that with this amendment to include it as part of our ordinance. And there has been a second to that. I am going to call for the question, all those in favor. All say ay. Let the record show it passed unanimously. Mr. Corker?

Corker: Again, I am still concerned about the six months and one year. This is going to be a long legal battle. With the history of the one year supporting us, I am afraid that 6 months would seriously jeopardize our effectiveness.

Cherie Rodgers: I have some of the same concerns and I assumed that after we heard some testimony we probably going to hear from folks that object to the six months and we still have the right to amend that if we want to after the testimony.

Higgins: Ms. Walker, can you, that was an issue of concern to me as well. Do you feel confident that the six months is something that we could pass and you could defend and you could be successful?

Connelly Walker: Yes. The council is aware that I will be leaving my position, so I won't be defending it and you may find that other council may not feel as strong about the defensibly so that is certainly an issue the council could consider when deciding who will be doing this work. So...

Higgins: Okay, thank you. We are going to give the public another opportunity to speak regarding the ordinance that is before us. First, we are speaking on the final reading of Ordinance C32778. Mr. Ron Hansen?

Hansen: My name is Ron Hansen. My home address is North 8419 Whitehouse and I have a business on 3809 N. Division and I will be brief. The, my biggest concern is I believe that there is a fairly good consensus about wanting to have an ordinance to address these issues and I think that some of the disagreements come around because of the amortization period, and the issue of 6 months or a year. I would like to reiterate what I have said about, we are not coming in trying to take somebody's livelihood in a situation where they moved into a business zone that supported the type of business that

they wanted to operate and we have come back after they have invested money and come to them and said, no, you are outta here. This amendment to an ordinance from 1988 which was a fairly clearly worded ordinance where the perimeter for the distance of the use is the exact same as it the new ordinance, but we do have an amortization period inserted and some changes in the wording to make it more defensible. The hardship that has been placed on the citizens, whether they are businessmen like myself and I have talked to a number of them during the last 7 or 8 months or on the neighbors who own residential homes directly behind my office has been significant. The owners of the business next to me went into that building knowing full well that they were in violation of the existing ordinance and I believe they are hoping the city will not find the will to be able to enforce any ordinance. They have already started their intent to litigate and that will happen regardless of whether that is a six month or one year amortization. I appreciate Patty standing strong, through the first time she came here and through the Plan Commission and again tonight for her affirmation that a six months amortization is defensible. I know that there is some concern that she won't be here, I found that out just a moment ago I guess listening to her testimony. But I believe that the fairness issue in these particular situations in our city are just going to show that our city is trying to restructure and existing ordinance so that we made it better, more defensible so that we are not trying to make somebody lose a livelihood here. My personal feelings about this type of operation have really changed, before I was all for them and now I am totally against them. I didn't think they were a good thing to have around, especially around me but now that I see the people that are going to these places, I feel for them. I really do. This is, you talk about an addiction to this pornography. I have seen some people that look like a grandpa that you respect or that you would go to for advice or the young couple you think had all the promise in the world and I have seen everything in between go into the facility next door to me and continually come back and I really believe that it's a public duty that you have as a city council to bring about the will that brought about the first ordinance. Obviously, there was a public will to regulate these types of businesses. I think to be overly concerned about their compensation because their investments that they have in these properties is to ignore the damage that has already been done and is heaping more damage upon the business people and the residents in that community and to ignore the losses both emotionally and financially that they have incurred. I hope that you would take that into consideration because there is nothing on the table here tonight being considered on how we are going to remunerate the businesses or the residences for the losses they have incurred. I hope you will take that into consideration when you are thinking about extending the amortization period because I think that its something that has been left out of the conversation a little bit. Anyway, that's all I have. If there is no questions, I want to get to two little girls.

Higgins: Thank you very much. Get to the two little girls. Uh, Dan Jester.

Jester: Good evening, council president, council members. My name is Dan Jester, 31 E. Euclid Ave in East Spokane. I would like to read you a statement from Judy Carren the Executive Director of Sexual Freedom in Washington, D.C.

This was faxed to me today. The National Coalition for Sexual Freedom opposes the opposed retail use establishment reordinance and asks the City Council to vote against it. NCSF is concerned that the proposed ordinance will have a chilling effect on the sale, rental and/or lending educational materials and other sexually explicit but Constitutionally protected goods. The vague definitions of SMC regarding the "economical areas" has specified sexual activities. They do not provide a clear definition on what constitutes adult use materials. For example, a city official or public citizen with homophobic views could use the ordinance to demand the removal of establishments who sell books or magazines with homosexual themes despite the City's ordinance against discrimination and on the basis of sexual orientation. Educational materials designed to teach safe, sane, and consensual forms of alternative sexual expression are sometimes confused with violence and sexual abuse and could thus be targeted as pornography and their distribution subject to the proposed. Perhaps more chilling, the ordinance would intrude on the privacy of married heterosexual couples who simply seek to purchase marital aids sold by local citizens in legitimate local retail establishments. Finally, since the City of Spokane does not distinguish what it deems obscene and other constitutionally protected adult entertainment, the NCSF holds that the adult retail use establishment threatens personal sexual privacy and restricts freedom of choice by permitting the City of Spokane to decide what is best for all adults. As Supreme Court Justice Thurgood Marshall wrote, "if the First Amendment means anything, it means that a state has no business telling a man, sitting alone in his own home, what books he may read and what films he may watch. The NCSF also questions the conclusion of the evidence of the adverse secondary effects of adult use retail establishments. The claim that local public safety is imperiled by the mere existence of such stores is seriously undermined by crime statistics of the FBI and the Washington Assoc. of Sheriffs and Police Chiefs. Reports of Rape and Aggravated Assault in Spokane County in 1999 were significantly less. Almost half than the predicted mean for similarly sized metropolitan areas. There is some foot notes to that. In addition, the SPD reports that these crimes continue to decline significantly down to 62 reported rapes in the year 2000 and that is documented. Further, NSFS examined several adult oriented businesses in Spokane and found that their current locations allow that their patronage and close observation by average citizens who are likely to zealously look after their neighborhood interest. Enactment of the ordinance would force adult establishments to move to isolated locations that would hinder surveillance by law enforcement officers. More conclusive, drawing on the SPD own crime statistics and mapping data, there is no evidence to support that Spokane Plan Commission findings that adult oriented retail establishments are responsible for higher crime rates in their vicinity. In December, 2000, all incident reports within the three block area surrounding these stores did not exceed the median range—there is more documentation. For these reasons, NCSF, urges the city council to reject the proposed ordinance. Um, I am asking that a copy of this be included in the record. I am asking, Dan Jester, that you vote against the adult use establishment ordinance. The reason I am asking, is because I feel this is a backdoor way of closing these businesses and in doing so an erosion of my First Amendment Rights of Free Speech. This ordinance is an incremental way of denying my rights as written in our Constitution. Our new president just took an oath of office and he said, "to preserve and protect the Constitution of the United States and as elected officials, I would expect

nothing less of you. And once again, I would urge you to delay this decision until you have the chance to read all of these documents for your consideration. Thank you.,

Higgins: Thank you Mr. Jester. Rev. Don Anderson?

Anderson: I am Rev. Don Anderson I am the Pastor of the _____ Church of God which is a Jewish congregation here in Spokane. I am also the founder of the Coalition of Parents which is one of largest civil rights protecting, suing welfare depts.. for the taking of kids unconstitutionally and disrupting file. I am also the found of Legal Eagle Investigation which investigates the corruption within City, County, State and Federal governments. I am also a member of the ACLU, but the difference is that I am 100% against adult entertainment on the grounds, first of all the nation was founded, it was founded as a Christian nation and not a Humanist Nation as Human Rights Commission seems to be a liberal and a humanist organization. It was also found on the First Amendment. The First Amendment does not protect, if the founding fathers were here today, they probably would run for fear of being put behind bars for standing against such indecent exposure. Such things as pornography, adult entertainment and I also believe that they would not say to you today not that the First Amendment protects such things. As Herbert W. Armstrong and I am a great follower of the late Herbert W. Armstrong who was an ambassador for the World Wide Church of God , he said, "with every cause there is an effect." Think about that tonight as you go to sleep and I pray that you won't sleep tonight if you do pass this ordinance tonight. As Jeremiah and Isaiah would say today, and Hezekiah would say because God has made me a messenger to this nation and to this council. This is the message that God has me give you tonight. Pass it. And as God destroyed Sodom and Gomorrah, your day of judgment is coming on God's time clock. You are supposed to protect the morals of these people. You are supposed to be a Christian that mentions Jesus in your prayers not trying to delete these away from prayer. How dare a person would say he is a Christian and won't use the name of Jesus. I am proud of being a Jewish Christian. I am proud of the Messiah Jesus because he is my Messiah and I don't think a person can be a Christian unless he includes Jesus in his prayer.

Higgins: Sir. Speak to the ordinance.

Anderson: Okay. This is what I am boiling down to. Pass it and you will stand in judgment before God Almighty and the _____. If you don't pass it, God will continue to bless you according to Deuteronomy 28 and Leviticus 26.

Higgins: Victoria Allen? After Victoria Allen, Kimberly Drake so you can be ready to come up.

Allen: My name is Victoria Allen, 10820 East 18th, Spokane. I grew up in Spokane and I want my children to grow up in a community where this type of business is not around their neighborhoods, their parks, their churches. It concerns me that children are exposed to sexual paraphernalia from patrons of these retailers. And that neighborhoods and businesses next to these stores are in danger, especially at night because of the kind of

criminal activity that is prone to take place. These stores stay open later than the businesses around them so there is normally activity at these places. Thank you for considering this ordinance and I would ask that you enforce it as expediently as possible. It concerns me that we haven't done it more expediently and for the sake of our children's future, I ask that you would consider this ordinance and pass it quickly. Thank you.

Higgins: Thank you. Kimberly Drake? And after Ms. Drake, Glenn Talbott.

Drake My name is Kimberly Drake and my address is PO Box 13036, Spokane. First I want to just say as a citizen that there is utmost confidence from the citizenry in Patty's expertise and knowledge in putting this thing together. She is being sought by national organization for her advice and her extensive research in this area and so we believe she knows what she is doing. I am going to state for the legislative record, my experiences, many of which you have heard before. I can speak to the statistics, but I don't think that is what you need to hear here today. First, I am going to speak to the adult entertainment ordinance and I want to talk to you about the harms from my experience. I would urge you to review the County video tape that has been submitted by Patty. There has been extensive testimony that I gave in November, 1997, just six months after I came out of the industry. As you know, I am former stripper from the Deja' vu and although I have a background in business management and sales and marketing, I made that choice because my husband was addicted to pornography and I wanted to be the centerfold of his life. I thought that this job would be glamorous and that it would fulfill my husband's needs and mine to need know that I mattered and that I was truly significant. I thought that if I could become what it was that he was looking at, that he would no longer purchase the pornography. After about 90 days of being in the industry, I discovered that it was not as glamorous as the porn industry made it out to be. It was dark and it was dirty. It was a place of shame and humiliation. I was loved for my body parts and not my character. It was a place of prostitution and drug addiction. And let me tell you that when those lap dances took place in the Deja' vu prior to the ordinance that is now in place, there was penetration happening on those couches in front of the managers, in front of the patrons on the floor. The girls got very good at it because they got paid well for it. I purchased drugs, sold drugs and participated in drug activity, with not only with the girls and patrons, and also with the managers. And then the managers stood before the County Commissioners and said that they never allowed that when in fact they sold drugs to me and bought drugs from me. There was also direct harm to the girls. I was bit, pinched, hit, grabbed. The public health and safety to these girls is very very important. This is a public health and safety issue. We can stand here and talk about morality but I don't think that is what we are talking about here today. We are talking about the safety and health of our citizenry. These establishments are green houses for STD's. And I traveled around the country and this didn't just happen in the Deja' vu. This happened in many places that I worked all across the country. I am now involved in helping women out of the industry and I get calls from gals all over the place all over the U.S. This doesn't happen just in Spokane, but I can tell you that it does happen in Spokane. Now, I want to talk to the zoning ordinance for the retail establishments. When I was using pornography and my husband and I would use pornography, we went into these establishment very very late in the evening. We left our children, home alone.

Pornography—there is a story of a couple who put a sock in their baby's mouth because the baby was crying—the baby suffocated and died. They wanted to view their pornography that was more important to them than their own child. This is stress management. Pornography is or can be an addiction for some people. It can escalate into very dangerous choices. When we went in the late hours, I am speaking specifically to the decision that you close these businesses and regulate the hours of operation. I don't know what's in the ordinance, but definitely, very very important that you close these stores. That they shouldn't be open 24 hours a day. There were individuals who I knew who were in criminal activity that would go into these establishments very late at night. One of the statistics is that if there are bars next to these establishments, within 500 feet of these establishments, the rape rate increase by 50%. I think its absolutely incumbent that you protect the citizenry. This is taking anybody's choice away. They will still have the opportunity to go into these book stores. They just have to manage their time a little better and go in during the times these businesses are open. And they will have to travel away from schools and churches and parks and residential areas. They will just have to go a little out of their way and I don't really think that that is a big issue. This is not infringing on anybody freedom of choice, not for the sexually oriented bookstores and not the adult entertainment establishments. You have a very unique opportunity as elected officials here tonight by choosing the how, when and where, which is what the law allows you to do, to make a difference to raise community standards and to protect the children and families in our community. If you do not set strict standards today, I guarantee you that the porn industry will set the standards for you and you will not like the outcome much. Thank you very much.

Higgins: Thank you Ms. Drake. Mr. Talbott? Followed by Penny Lancaster

Talbott: My name is Glenn Talbott, as previously said, Can I have your indulgence to give about half a minute to 45 seconds to speak to one previous issue? Thank you. Concerning the issue of beginning your session with prayer, I would like to say that if that is wrong, then the President who started and ended his inaugural with prayer. He was very wrong.

Higgins: Okay, that is enough. You got your point across.

Talbott: Okay, back to the ordinance. Concerning the issue, I think its very important and I support Patty Walker. I am sorry to see her going. It's a sad day for our city. I wish you would reconsider. I support her motion entirely. If 30% of the definition of obscenity is community standard, we need to set our community standard high for our children and that is what we are all concerned about as much as anything. As well as the adults as well as the fact that the more we allow these businesses to promote these wears, the more likely we are to have the secondary effects. The two lovely ladies that were sexually mutilated and abused and it was all for pornography. I think that anything we can do to regulate it, slow it down, stop it, is in the best interest of our children. Because pornography is like a little puppy dog. You let him. You think he is cute and then he grows into a monster like Damer—like we know who not only mutilated young boys, but he also cut them up and ate them. And I think they were made that way and

what we are trying to regulate is what started them on the pathway. Anything we can do to raise our community standard is a value to the City of Spokane and maybe we can stop this stuff like what happened at the college with the Japanese ladies. I guess that's it.

Higgins: Very good. Thank you. Penny Lancaster followed by Kathy Nester.

Lancaster: Penny Lancaster, East 14816 Farwell, Spokane. Today's testimony and the testimony before the Plan Commission on 11-29 clearly substantiates the risk that these businesses pose to public health, safety, morals, general welfare of the citizens of Spokane. I have interviewed people who have been living near these bookstores. In every case, the comments include complaints of men parking away from the stores and walking down the alley to access the business. Offensive video wrappers found in their yards, late night traffic, doors slamming, fear of using their own yards for relaxation, concern for young people waiting for the bus in front of the bookstore, fear of accessing other businesses near by at night and children looking in garbage cans for materials from the stores. These are serious impacts and families and businesses should not have to put up with it another day longer. However, the proposed ordinance is not scheduled to take effect for six more months. It is true that the courts have required municipalities to give businesses time to recoup the costs in establishing their businesses in their present location. If the amount of traffic is any indication of income, the Erotic Boutique on Garland, the most recent establishment, has surely recovered its expenses it this past year. In defense of the proposed ordinance, lets take a look at a Washington State Case, *North End Cinema v. Seattle*. Where a 90 day amortization period was upheld. The Washington Supreme Court made these three points:

1. Each case must be determined on its own merits. I submit to you that you have ample evidence that the nonconforming bookstores have caused enough harm in their present location and pose a substantial threat to the community if they remain located close to parks and churches, etc.
2. The economic hardship of the business must outweigh the benefit to the public to be gained from termination of the use if the business is allowed to remain. It has been shown that the Spokane businesses have not invested a great deal of money into their property. That they have recovered their expenses, through profit or depreciation and that they don't own these property. Further it was pointed out that the property could easily be converted to another business—even a non adult retail bookstore. Remember, even our ordinance has a provision for an extension for extreme economic hardship.
3. The court said that they were mindful that the North End Cinema knew that the zoning ordinance was pending. And for the last 8 years our 6 adult use establishments have been operating the 1989 ordinance that was not enforced by the city. And they also knew that the county had passed an updated ordinance zoning 1000 feet. On behalf of the public welfare the court found that "protecting neighborhood children from increased safety hazards and offensive and dehumanizing influences created by adult use establishments in residential areas were an important part of the city's long range land use planning effort. This certainly has to be true for Spokane.

I want to thank you for your consideration and hopefully you will pass the ordinance as it was written with a six months amortization period today.

Higgins: Thank you. I just want to ask Ms. Walker if you can comment on that 90 days?

Lancaster: I have additional information and court cases in this handout.

Higgins: Thank you very much.

Connelly Walker: Ms. Lancaster addresses a case that does not deal with adult use retail establishments. We do have a number of opinions out of this state as well as across the nation with amortization periods as low as 30 days for regulatory and licensing provisions of the type we are dealing with tonight in terms of the nude dance establishments. We do not have case law that deals with retail use establishments that's less than one year.

Lancaster: The similarity is that they are sexually oriented businesses.

Higgins: We understand that. Mr. Corker?

Corker: She made a comment that the ordinance wouldn't take effect for six months. My understanding is that it would take effect when passed.

Connelly-Walker: It would but the amortization provision would not require relocation for existing businesses. I thought I would mention the gentleman who spoke in opposition to this ordinance raised the issue of obscenity. I did want, we have talked in the past as this ordinance, both of these ordinances being content neutral and proceeding with the assumption that all of these materials in these establishments are protected by the First Amendment and is non-obscene material and obscenity is not protecting the State of Washington and there is a separate legal definition for that. So, I did want to bring to the Council's attention that these ordinances are both considered to be content neutral ordinances.

Higgins: Mr. Piccolo, I just would ask your comment on this ordinance should it pass, takes effect 30 days from passage?

Piccolo: Correct, if its not an emergency ordinance it takes effect in 30 days and then the six months would start from that point.

Higgins: Okay. Next up is Kathy Nester. Marilyn Lawson and then Paul Unger.

Lawson: My name is Marilyn Lawson and I reside at 4917 East 17th in Spokane. I want to publicly thank Patty Walker for the work that she has done for our community in the area of pornography. Why are we trying to zone sexually oriented businesses away from

day care and residences? The answer, is children, children, and yes, families. Let me give you a picture of the victims. Boys and girls who have lost their innocence by viewing pornography at an early age. Children used for the sexual satisfaction of fathers, step fathers and men they trusted. Young men exposed to a false image of sexuality. Men who cannot stop using pornography because they are trapped in a secret life of addiction to pornography. Women and men preoccupied with pornography and the sex industry. Women who are being treated with disrespect and sexually abused. Young women trapped in an industry that traps them and uses them as mere sex objects. Neighbors that have increased crime and decreased property values because of the proliferation of pornography in their communities. Society that has become desensitized to the pure nature of sexuality. These are real people with real faces. The general public is unaware of the sky rocketing numbers of people in their own neighborhoods that are affected by rape, molestation, disrespect is in most part due to the tidal wave of porn and sexually oriented business in the community. I urge you to adopt these ordinances. Our families can use all the protection they can get sooner the better.

Rob Higgins: Mr. Paul Unger:

Paul Unger: Paul Unger, 3328 West Second. I hope the council has a biased and perhaps zeal for protecting neighborhoods and decent businesses like Mr. Hansen's realty business and the dentist who testified before the Plan Commission and that you will adopt this ordinance including the six month moving period. It seems more than fair. Thank you.

Higgins: Bruce Wakeman, 7616 East Baldwin. I also ask that both ordinances be adopted pertaining to the live adult entertainment and it being under growth management, I think its conducive to growth management that people will want to come to Spokane if they know that there are protections in place against having to live in the midst of so many corruptions. There is so many posturing about who is the underdog and who is the dominant or the minor culture. I think that those that are Godly and moral are having more and more challenges that we have to contend with that we didn't have to in the past.. Therefore, we have to proceed very quickly and adopt these ordinances.

Higgins: Thank you. Kathleen Gray? Kathleen you are the last to speak so then the council will take action afterward.

Gray: My name is Kathleen Gray and I live at 5118 North Lincoln and when I signed in, I thought I was just signing in, I didn't know I was signing in to talk, but I do have a thought. I live close to three of these shops and its just gives me an awful feeling each time I drive by them. I wish they weren't here and in my perfect world they wouldn't be and I just wish we could get rid of them. Thank you.

Higgins: That concludes public testimony unless there is anyone else. There is more. Please come forward and state your name and address for the record.

Anderson: Thank you for the opportunity to address the council. My name is John Anderson. I live at 819 South Cowley. I have just moved here from New York City and I work at the Heart Institute. I feel very privileged to have moved here, although I love New York City. As a Nebraska born New York, I guess I just wanted to state that I have been a witness for ten years to the tremendous economic benefits from the New York City leaders saying no. And as someone once told me, you are not able to be a leader unless you are able sometimes to say no. So, I just urge you to listen to your conscious and certainly a lot of the problems that are being discussed before you, you are not able to reverse them and certainly restricting the shops is not necessarily going to solve all the problems and dilemmas that exist here as well as in large city, but it will go along way to showing very dynamic leadership and it will take a stand and it doesn't impinge on the diversity that I think you do want to show respect for as well.

Higgins: Thank you sir. Please come forward and state your name and address for the record.

Barret: My name is Pam Plese Barret. I own the property directly north of the property that you are speaking of now. We will lose the value substantially on that piece of property and I urge you to please pass this ordinance. Also, as a citizen of Spokane city, I live at E. 727 Gordon, so I also live within 12 blocks of this questionable property, so it's a concern to me as far as the neighborhood is concerned. As far as the property is concerned, and I know as a mother, who raised children, as you drive them back and forth through the city, the notice things. They see these signs and they question it. I don't think it's a wholesome environment for our children—especially close to a park on a major arterial that all children travel with their families. Thank you.

Higgins: Thank you Ms. Barret. Next.

Rasmussen: My name is Michelle Rasmussen. I live at 8221 E. Liberty in Spokane. If I heard correctly, Mr. Eugster, you said something about attending a meeting tomorrow night regarding the use of county funds and I thought I heard you say something about that they hadn't been used in such places as women's shelters. I think sometimes we are looking at some things backwards and maybe sometimes we are too busy putting fires out and perhaps we should look at things as preventing the fires and I think that is what this ordinance is all about—preventing it so we don't have to spend those funds on women's shelters. Thank you.

Higgins: Thank you.

Parker: My name is Holly Parker. I live at East 617 Providence. I am the head manager of the Spokane Deja' vu. I have worked there four years now and I understand the council's concerns and I even understand the community's concerns about secondary effects that occur but in the four years I have been working in that club, doing everything from waitressing, to bar tending, to dancing, to now being a manager, I have never seen prostitution in that building. I have never seen prostitution on the street outside that building. I have heard a lot today of people blaming child molestation, rape, sexual

abuse, demeaning women on industries like this and I am not even going to say that they don't play a factor because I am sure they probably do. But you cannot blame the whole problem—people that are going to molest children and rape women are mentally ill people. Maybe the pornography may contribute to their actually acting out on that, I don't know because I am not a psychiatrist but I think its wrong for the city council to blame one particular business for the actions of sick people. Its not our fault people are going out and doing these things and in the four years the only time the police have ever been called was when there is someone and they are drunk because some bar let them drive drunk and come to our business and we wouldn't let them in and they try to cause a problem.. In the four years I have been there. That's a long time to be there with that few a problems. So, that's all I have to say. Thank you.

Higgins: Anyone else? We have one more person and they we will have council's thoughts.

Olsen: My name is Theresa Olson and I live at 4034 East Fifth. I have two children and I am concerned that if you keep the adult book stores and the different things around that it could effect them like many people have spoke have the different effects on them and I just hope you guys will consider it and stop it. That's all.

Higgins: Thank you. Thank you very much. Mr. Eugster you have your button pushed first.

Rodgers: Mine has been on for a long time.

Eugster: Go ahead then. That's all right. I have motions.

Rodgers: I just have some clarifying questions I need to ask Patty. On the non-conforming use section, which includes the recommend six month period that the Planning recommended, but it talks about the Planning Director being able to extend that time, but I don't see what the extension could be granted for.

Connelly-Walker: It would be at the discretion of the Planning Director and dependent on the circumstances presented. So we would envision individuals coming forward indicating that the provision being forced against them that they would suffer extreme economic hardship. The Planning Director would then make a determination as to what length of time in terms of an extension would be appropriate.

Rodgers: Was there any, I guess, well there is two questions, I will ask them both at the same time. The first question is, if we saw fit to change that six months to say, one year, then we would still include that discretion on the part of the Plan Director and was there any discussion about if there is any extension granted, in any way capping that so there is a way of capping so that there was an absolute...

Connelly-Walker: That is certainly an option for the council to consider. I will indicate that initially when we were looking at a one year amortization provision rather than

having a requirement that the individual come before the Planning Director, one month or 30 days prior to the six months running. When we were looking at one year, we had envisioned a 90 day period, so requiring individuals who were going to seek an economic hardship extension to do that 90 days before the one year period as opposed to the 30 days that we submitted in the six month scenario. That's to give the Plan Director additional time to consider the issue prior to the one year period and because we have a longer period, it's our position that it's reasonable to require an application earlier. We had not looked at the option of putting a cap on any extension provision, but the council after hearing the testimony and examining the legislative record can certainly make that kind of guidance or restriction for that Planning Director.

Rodger: Okay I have one more question, Well, I guess I have two questions, Because I would like some feedback. No, I don't think it's necessary, I was going to say feedback in terms of the cap and what that might mean in terms of litigation. But we have already dealt the litigation with the whole issue anyway so it's a minor piece. But then if I can go to the next section, it's unclear to me who might appeal. Because it talks about, precluding reasonable alternative uses of subject property and what I am envisioning what if the person who is actually in business is a tenant in a property and not the owner of the property and he is unable to claim economic hardship when it's really not his problem whether or not that building could be re-rented in a timely way. See what I am getting at? There is kind of a disconnect there.

Connelly-Walker: Yes, there is an argument that can be made by tenants and we often see this kind of scenario. Um, where a tenant will make the argument, "well I entered into a 25 year lease with this building and I am only in the second year, so I don't know if I can get out of my lease so that puts me in a precarious position. The Courts have looked disfavorably upon those kinds of leases for this type of argument for the obvious reason that otherwise every adult entertainment facility would do that—lock themselves into a 50 year lease so they could make that argument. The courts will look to the bottom line which is that facility viable for any other use. So you are going to have a very narrow circumstance where the individual paid so much in improvements that they can't recoup their losses in a reasonable amount of time or they can't then have someone else come in and rent that facility for any other use. The typical scenario is that the business is so tailored in the way that it is set up that no other business could come in and use that particular facility. I haven't seen any cases that were successful with that type of an argument. The courts have looked at those kinds of arguments and said, no, if it's available for any other use than we aren't going to find that it's not economically feasible so therefore it's not a property taking. So we are getting back to that taking argument.

Rodgers: Okay, so basically we have before us the six months with the 30 day request. You discussed the one year with the 90 day advance request for extension. We also have the possibility of putting that cap on the extension.

Connelly-Walker: I would indicate for the council that if you chose a cap, you may want to consider the kinds of scenarios that we just discussed in terms of what kinds of individuals would come before you and what types of economic hardships they might

argue. Certainly, we wouldn't want to be in a position to defend an arbitrary number, that was you know, picked out of the air. I think so long as the council has considered those issues and are mindful of the facts that might be presented to the planning director that it could come up with a cap. My assumption is, in considering a cap, that without a cap it could be an indefinite extension and certainly the council is also able to provide some guidance within that provision that extensions shall not be indefinite but for a fixed time period.

Rodgers: But I think that what I am hearing you saying is that the ordinance is somewhat more defensible without a cap.

Connelly-Walker: It does give the Planning Director the opportunity to look at each case on its own merits.

Rodgers: You have answered all my questions. Thank you.

Higgins: Any other questions? Mr. Eugster?

Eugster: I would move that, look at page 2 of the proposed ordinance. S-1. Look at page 2, section 3 of the ordinance, subparagraph B-2. I move that we take out paragraph A, B, and C and renumber the last four ABCD. After A would be one family resident, R-1 zone. B, two family residence (2 zone) ; F Multiple family residence (R3 and R4 zones) and G any residence office (RO) zone. We do not have a country residential zone, we don't have a country suburban zone and I see absolutely no reason to protect a cow.

Rodgers: But Latah Creek has some agricultural zoning and Five Mile Prairie has a zone. It's the only two cities I know in the city.

Higgins: Well there is a motion to make those changes. Is there a second? Is there a second to that motion. Here and done. It dies for a lack of a second. Mr. Eugster?

Eugster: I move that, on page 5, section 7, same ordinance, be amended to read 12 months as opposed to 6 months.

Rodgers: I will second that.

Higgins: The move has been seconded. We have a motion to make the ordinance to make it a 12 month amortization as opposed to 6 as proposed. In the original ordinance. Is there anyone that would like to speak to this? There are none. Are there any council that would like to speak to it Ms. Greene?

Greene: Thank you. This is the one part of the ordinance that is causing me any kind of pause. Everything else that you have done, and the planning commission has done is acceptable. The reason for this I just want to make sure that when we put something down, its not going to be in concrete but it will be as close to that as possible and I know Patty, your abilities and qualifications in this issue, but your statement that other

attorneys who might be city attorneys, might not feel that that portion is defensible is something that is adding even more concern for me. So, I am tipping her right in the middle, trying to decide, because I did think the one year is the better recommendation. So I am going to have to listen to the others because right now I am still wavering.

Holmes: I have the same concerns but I would suggest that if we are going to consider the 12 months that at the same time that motion include 90 days to file written application with the planning director for an extension rather than the one month that is currently part of the proposal and I don't know if the maker of the motion would consider that.

Eugster: No I won't.

Higgins: Okay, so the Motion is just for the 12 months. Ms. Rodgers?

Rodgers: I also support the 12 month period because I know this is going to lead to litigation and the city is involved in many many lawsuits and you learn better be safe than sorry because we are facing a lot of costs with litigation because previous councils didn't think out the situation so I think we have to be overly carefully in this situation and this will probably be tied up for years in the courts.

Corker: I spent some time trying to read on some of what other cities have done. I am fully aware that this litigation could cost Spokane literally hundreds of thousands of dollars and I want to make sure that we have something that is defensible in court that prevented us from acting earlier that we needed to strengthen this ordinance and I remember counsel saying that this was a concern even though I know there were representations made before the planning commission and I share that same concern with the city that is very fragile with its budget and its ability to afford defense, so I am sharing the same concern that the six months might make the case if not harder to defender, lengthier in its defense. So I am just sharing my concern with the other council members.

Higgins: Anyone else wish to speak? I will call for the Motion before us—to amend the ordinance from six months to twelve months. I will speak against the ordinance. I have put a lot of confidence in Ms. Walker and I asked her pointedly if that could be defensible and she said she thought it could and you being the expert in this I will defer to your judgment on that. And I know from my communications that is what the citizens of Spokane desire. So I feel confident that the six months is something we should keep in the ordinance. Now, I will call for the question, all those in favor of the Amendment, say ay. Those opposed say no. Let the record show passed with a 4 to 2 vote. So we have 12 months on the ordinance. Ms. Holmes?

Holmes: I move to further amend by changing the terminology from 30 days to 90 days prior to the end of such 12 months.

Higgins: Is there a second to that Motion? The Motion dies for lack of a second. Are there any other motions to amend the ordinance.

Eugster: Just a clean. Lets say you want to leave the Ag in there. Can we take out the country residences and the residential suburban and have the R1, R2, and RO zones put in there. Leave the Ag zone, but we just don't have those zones folks.

Higgins: I really don't have a problem with that because when I saw that country residential. That is a county zone. Is that something we just transcribed over the ordinance Ms. Walker?

Walker: Um. Much of the ordinance was transcribed over. However, I do recall specific changes prior that we believed were in conformance with the city's and I know that was an issue before the Plan commission and some changes were made. I don't recall on that specific issues whether there were any recommended changes. The only thing that I would offer, my assumption would be that if those provisions don't currently exists, perhaps the Plan Commission was anticipating the possibility of those types of zones in the future. Simply because we don't have those types of uses doesn't mean we couldn't address those for future purposes. But I would leave it to the council.

Higgins: Would you have a problem with Mr. Eugster's proposal? I personally don't like crafting the ordinance while we sit here. I understand what you are saying and I tend to support what he is saying.

Eugster: Well, if we end up with a country residential, we'd amend this ordinance.

Connelly-Walker: I guess, my assumption is the Plan Commission addressed those issues, but assuming they did not, an amendment at a later date could be accomplished one way or the other. Either you take it out by amendment or add it in later if you chose to delete it now.

Eugster: Well, my problem if you want this to be specific and you want it to apply to an R-1 zone, you call it an R-1 zone or two family, you call it an R-2 and a residence office, I think we have a problem if we don't say any residence office because we have a whole slug of RO zones, ROL positions, you know limitations placed on them, which are intended to not include the limited residential office?

Higgins: Would you have a problem passing the ordinance as it is presented and referring this matter to the Plan Commission for their recommendation.

Eugster: To me it's a sloppy drafting, that's all. I am just trying to clean it up.

Higgins: I tend to agree with you.

Eugster: I will withdraw the Motion if its going to be that complicated.

Higgins No, its not. Any other comments. I think its something the Plan Commission should be looking at.

Eugster: Well, they've got the plate full Rob.

Higgins: Then I will call for the vote on S-1, Ordinance C32778 under special considerations, all those in favor, please signify by saying ay. Let the record show that the ordinance passed unanimously as amended. And Now we have Ordinance C32781. Anyone wish to speak to this?

Move approval.

Second.

Higgins: Its been moved and seconded that we pass Ordinance C32781. Any council member wish to comment: All those in favor signify by saying Ay. Let the record show the Ordinance passed unanimously.

Eugster: One other thing. I think for a legislative record, I would like to make a statement. The ordinance that we just passed has seven pages of whereas, it has a specific statement of purpose and it has specific statement of findings. In adopting the first ordinance, I had in mind the whereases and the purpose of and finding of the second ordinance and I would just like to say that. I think it would be important if others of you felt the same way, that is you were looking to those whereases in the second ordinance and you were looking to the findings and would recognize that that had an impact on your adoption of the first ordinance we might be in a bit better position on the legislative history issue.

Higgins: Thank you. It has been brought to my attention that these special considerations under our recommendation calls for a roll call vote. So I am just going to make sure that we don't have problems later on. I am going to ask that council members to please record your vote on C32778. Please record your votes. Let the record show it passed unanimously. And now on Ordinance 32781, please record your vote it passed unanimously. Thank you.