

PUBLIC HEARING ON THE QUESTION OF NECESSITY
FOR THE CITY PUBLIC SERVICE BOARD'S TAKING
OF PROPERTY LOCATED AT BLANCO ROAD AND WEST
AVENUE AND BELONGING TO PARLIAMENT SQUARE.

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MAYOR CHARLES BECKER: This is a public hearing concerning property located at Blanco Road and West Avenue. That property belonging to Parliament Square. Who's handling that in the City staff?

CITY MANAGER SAM GRANATA: That will be, Mr. Seagal Wheatley will come on first then the members of the City Public Service Board will be here to handle the staff's part.

MAYOR BECKER: All right. Mr. Wheatley?

DR. JOSE SAN MARTIN: Mr. Mayor, may I ask if it's necessary that the Clerk read a caption on the hearing and the necessity of.....

ASSISTANT CITY CLERK: We don't have an ordinance or anything to consider.

DR. SAN MARTIN: This is not....Mr. Reeder, don't we have to make a statement?

CITY ATTORNEY CRAWFORD REEDER: You already passed the ordinance and Mr. Wheatley is just attacking it and saying we ought to repeal it, so you don't need any caption or anything.

MR. SEAGAL WHEATLEY: Your Honor and members of the Council. I would like to thank you for the time that you have set aside for us this morning to make this presentation. I would like to tell you that we have not had idle hands since we were here with you on November 29th, when we made our last presentation. I would like to, if I may, explain to you what we would like to try to accomplish with your courtesy this morning. I would like to make a few brief introductory remarks, which I assure you will be brief, and then introduce to you Mr. Ellis Wilson, Jr., who is one of the clients I represent in the development group to give you a brief history of the uses to which this land was designed to be put and what the plans are that have been proposed on it. Then I would like for you to meet, secondly, a very distinguished expert that I have brought to the Council meeting this morning by the name of Dr. William Espey. After we had our last Council meeting on November 29, 1973, and the technical matters came up which were raised by the Council members at that time, I thought it would be worth the time and I might add also the expense to call Dr. Espey, who is one of the recognized engineers in this part of the country on the subject of floodplains and who is President of Espey, Houston & Associates, Environmental Consultants firm in Austin, Texas, and I have asked Dr. Espey to present some data to you and to make some special reports along with another engineer which Dr. Espey has retained in his environmental consulting firm. Dr. Espey will present to you the subject of the adjoining tract which you will recall was at presently used for rifle range and dairy farm purposes.

The City Public Service Board, if you will recall, had advised the Council on the November 29, 1973, session that it was not possible to put a substation site on that adjoining tract because of the floodplain problem associated with the Salado Creek, which runs through that adjoining tract. This was a technical subject. We have come prepared to be

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helpful to you this morning by the engineers which we have retained to give you information which does clearly show that it is feasible to do that. Then I would like to, if I may, conclude at that point, your Honor, and try to recap and touch on some of the other points that Mr. Austin made at the last Council meeting and reply to those, if I may. At this time, therefore, I would like to, if I may, introduce and present to you Mr. Ellis Wilson, Jr., who will present to you the purposes for which this tract was designed and also in doing so try to contrast for you what appears to us to be the wholly unreasonable decision that was made by the City Public Service Board that for some reason this site, our site, is preferable over the dairy farm and the rifle range sites and I would hope that at the conclusion of our presentation that you, likewise, would be satisfied to that affect. So, Mr. Wilson, if I may your Honor, I would like to present Mr. Wilson at this time.

MR. ELLIS WILSON, JR.: Mr. Mayor and members of the Council. I'm Ellis Wilson, Jr., with Parliament Square Properties. I'd like to very quickly run through a little bit of the history behind our acquiring this property and what our plans were and where they progressed to at this time. We signed an earnest money contract for the approximate 68 acres on the right hand side of Blanco Road, looking at the plat up here, in September of 1972, and this is what we refer to as the Walker Tract. We began land planning, hired Mr. Ralph Bender, the Urban Land Consultant, and began land planning in October of 1972. We closed and took possession of the site on October 9, 1972. Shortly after that we signed an earnest money contract on what we call the Petty Tract which is on the left hand side of Blanco Road and that also is approximately 69 acres. We applied in December...actually on December 7, 1973, we applied for zoning of the entire tract. We had by then come up with our master plan and we applied for zoning with the Zoning Commission...Planning and Zoning Commission. On March 7, we received the zoning approval of the Planning and Zoning Commission. We submitted the next month or actually at that time, we immediately submitted for the final zoning with the Council and the next month, on April 5, we received the final zoning by the City Council. We at the same time submitted for replatting on the whole subdivision to the City which was circulated to the City departments. Finally, on July of '73 we received approval of the plat by the City.

In the meantime, and one point I want to bring out is that on April 23, 1973, we received a contract from Mr. Bob Calloway for the 20 acre somewhat site at the far right end of the property.

MR. WHEATLEY: If I may, your Honor, may I just demonstrate to the Council--This is the Blanco Road, this tract is not involved, the 68 acres over there, this is the 68 acres involved here. What Mr. Wilson is describing now is the land we had under earnest money contract to Bob Calloway which would start at this road and run down this way and you can't see it, of course, from where you gentlemen are, but the word apartment is written in here and the substation site that we're talking about which may be helpful for you as Mr. Wilson goes through his presentation--the substation site that the City Public Service Board proposes would come out of this area with the transmission line easement running along this property line so that you can be a little better orientated as we go.

MR. WILSON: Okay, I won't go into these because I think at my last hearing here a few weeks ago, we went into the various dates as far as condemnation being filed and so on and so forth, but I did want to get the order of what happened as far as we are concerned. We became

interested in this intersection of the City about five years ago and we at that time talked to the Petty people about the site on the left and we talked to Ganahl Walker about the site on the right. Neither one were interested in selling at that time. We felt like even five years ago that it was going to be a key intersection and a valuable piece of commercial, multi-family property. We stayed in touch all the time and finally, as I say, had the breakthrough back in September of 1972. Then a couple of months later bought the Petty property. That's how we arrived at acquiring the property.

After that time, as I mentioned, we got our plat approved. You can see the dark streaks--two on this side and two on the other side are dedicated city streets that at present are about...well, they're pouring curbs, base is in, all the utilities are in. We had a very extensive drainage situation in a part of the area which we're putting all underground. The brush has all been cleared from the site, and we have gone a long ways in developing the site. It will be a finished site in probably 60 days--everything completely finished. So, that's where we stand right now. I'd like to pass out to the Council for your reference some smaller pictures. I wanted to show this first. This is the same thing you're looking at up on the board, but you can refer to it as we go along.

Now, the thing that has amazed us in this whole situation as we've gone along is that when the Public Service Board representative, late in 1972, came in and saw us about a substation site, very frankly, we felt like when we explained to him what the plans were, that the property had been acquired for commercial use, multi-family use, that we had definite plans, and so on and so forth, we really felt like that they would look for a site that would be more reasonable. And we said, you know, we just don't want it on the site, because we already have the thing planned. We bought it with a particular purpose in mind and it just won't work for us on this site. We felt like when we explained to him the state of our development at that time that they would look into alternatives, but as far as we can tell the...as far as looking into alternatives we've never seen that there has really been much of an effort made in that line.

Now, the reason that we do not understand this whole thing, and I won't pretend to be any sort of technical expert on the engineering part as far as the electrical is concerned but I think I do qualify a little bit as an expert on real estate because I've been in that most of my life and that is it just seems unreasonable to us that you would take a piece of property that is zoned for certain uses, it's been master planned, it's contracts let and so on for the streets. There are contracts on the land that is sold for certain purposes and decide to put a substation on a site such as that when adjacent there is property that is unplatted that is being used for agricultural purposes or part of it--part of it down in an area next to a floodplain is being used for a rifle range, that has other restrictions on it such as the--you can't use it for housing uses because it's under the flight pattern, in other words, it's a far distance from the corner--I mean it makes sense from our standpoint that we wouldn't pay what we paid for the property for land further from the corner. That's the key intersection. That's what we were buying. People that have bought around for subdivision use for single family, but you don't pay for that what you pay for a corner site. So, there was land that was further from the corner. The further from the corner, the less expensive the land is going to be--the further from the key intersection. There were no plans as far as we know for the immediate

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development of the land next door and, really, it was unbelievable to us that they would take a piece of property when there were these alternatives. I think that's all of my presentation at this time. If anybody would like to ask any questions.

MAYOR BECKER: Anyone have any questions of Mr. Wilson? Thank you.

MR. WILSON: Thank you.

MR. WHEATLEY: May it please the Council, I would like to circulate and I apologize for not having any more copies of this, but an aerial photograph which was taken several months ago and as that is circulating I will explain to you what that shows. That's an aerial photograph of this entire area up to Churchill High School. Churchill High School, as you know, is off of Blanco Road and so I can locate it a little better. It would be up on this part of the diagram and the aerial photograph shows this entire area all the way up to Churchill High School, which is the big building on the left, and I have another aerial, it's the same aerial photograph but it has lines on it reflecting the particular tract involved. The lines you will see on the second photograph are just ink markings but they give you an aerial view. Councilman Mendoza, if you are looking at that...that first line is this road here. There's another line running off which would be the Callaway project.

Now, Mr. Wilson in his presentation stopped at a point relative to the problem that we have always had with the Board's decision to take this particular tract and that is the question of the reasonableness of that Board's decision when right next to it is the rifle range and dairy farm. We don't make decisions with the City, obviously, but it seemed like to us it was a rather foolish move by the City Public Service Board to take what all of you know had to be exceptionally valuable property. This property just on a flat acreage basis for the 3.2 acres that the Board wants, comes out to over \$60,000 an acre for the land that the Board has decided to condemn for this purpose. So, therefore, we have spent some time and effort to try to show you the choices that you have now that under the Burch case, you are charged with this authority, to look at the feasibility of the land for the dairy farm and rifle range as appropriate site. Now, when we did this, of course, one of the main and primary considerations we were concerned with was the floodplain analysis.

Now, as you know, the City Council, when Mr. Austin was here, inquired of the floodplain problems and Mr. Austin told the Council that it was really impossible for the City Public Service Board to put the substation on the rifle range and dairy farm tract because part of the Salado Creek ran through the adjoining tract and you don't mix water and electricity, I think were his words. Well, that's when I called Dr. Espey and, as a matter of fact, called him the same day that I got back to the office from our November 29 hearing and I said "Bill, I need your help because I want you to give a scientific approach to this conclusion that the Board has arrived at and tell us what the data shows. Now, I want you to look at this project from a floodplain analysis. And you tell me, based on your experience, whether or not the City Public Service Board can, in fact, put their substation and transmission lines along the site." So, Dr. Espey has prepared a report which I am going to have him present, which is entitled, "Floodplain Analysis in the Area of the Proposed and Alternate Location of Harmony Hills Substation and Transmission Easements." So that you may understand Dr. Espey's qualifications, I have asked him to attach to his report, not only his bibliography, but also that of Mr. Bergman, who is also an engineer, and Dr. Espey as I said, is President of Espey, Houston & Associates Consultant Firm in Austin. He has his

B. S. degree in Civil Engineering from the University of Texas, Masters Degree in Civil Engineering from the University of Texas, and also his Ph.D. Degree in Civil Engineering at the University of Texas at Austin. He has formally been a professor in the department of Civil Engineering at the University of Texas and Research Engineer there. He has been a hydraulic engineer with the water resources divisions of the United States Geological Survey in Austin and also a research associate in Civil Engineering at the University of Texas. He has written too many publications to get into. I counted approximately 43 scientific publications Dr. Espey has printed in his field of water engineering. He is also, of course, a member of the appropriate technical and professional societies including the American Society of Civil Engineers, American Geophysical Union, Texas Society of Professional Engineers, The National Society, and the Registered Professional Engineer for the State of Texas. He has associated with him Mr. Wallace Bergman, who is an associate engineer in his firm. He holds his B. S. degree in Civil Engineering from the University of Texas. And at this time, I would like to turn our presentation over to Dr. Espey and Mr. Bergman for their consideration and presentation to you of this so-called floodplain problem. Dr. Espey.

DR. WILLIAM H. ESPEY, JR.: Mr. Mayor and members of the Council, I'd like to present to you a report which I've prepared on the floodplain conditions in the Harmony Hills area. I have a hand out here I'd like to give to you in an attempt to highlight the essential points of this document with reference to alternative sites. We have on the easel, an aerial photograph with some possible alternative sites. These are only two, but I hope we'll demonstrate our particular point. It also shows the floodplain from the Corp of Engineers.

To review again, Blanco Road and West Avenue, this is the Parliament Square area. I've prepared an overlay of the floodplain as defined by the Corp of Engineers in their 1969 study on the Salado Creek. This is their 100 year floodplain, an event, on the average, that will occur once in 100 years or within a given year has a one percent chance of occurring. This is an extreme event. This shows the water level of the floodplain in the area in question. This is the proposed substation and transmission line location. This area here and this is shown in Figure 1 on page 3 if you would like to refer to that, is 2.02 acres. This transmission line here is 1.73 acres.

In looking at the available land northeast, it's quite apparent there is an area above the floodplain. We, therefore, have suggested possibly two alternatives shown in green and yellow. The green one could possibly be located as shown in your figure one. I suggest it has certain advantages. One, it's a straight line and there's no change in direction in the route, a relatively straight shot. It is 225 feet longer. The substation has moved out approximately 1,000 feet down West Avenue. The increased length has resulted in an increase in area of easements of approximately .4 acres. This transmission line would go through an open field, therefore, reducing the necessity to the destruction of trees and undercover.

The other alternative suggested is the yellow line which would be an increase in transmission line of approximately 900 feet. I believe that area increase again with regards to the transmission line of about 1.73 acres. This would move down approximately 1250 feet. This is a movement along the avenue. With regards to the possible alternative in yellow, it does encroach on the floodplain from a hydraulic and hydrology

viewpoint. I see no reason why some fill could not be placed in that area to further protect the substation. Based on the typography, this would be in the neighborhood of 2000 cubic yards. With regards to the floodplain, I have some details with regards to the volocities and the elevations within the floodplain in this area. Again, the data base that we have used is from the Corp of Engineers report. We have talked to these people and received additional data. They have been very timely and very courteous to us.

Another point to be made based on future flood control structures of strain. It certainly seems reasonable and I do not have all the details that this floodplain would be even smaller. That's all I have to say.

MR. WHEATLEY: Let me ask, if I may, Dr. Espey some questions about some other points. Now, Dr. Espey, the red overlay is the present proposed site, is that correct?

DR. ESPEY: That is correct.

MR. WHEATLEY: And the property line of my client, Parliament Square, would be immediately and adjacent to the right edge of the proposed substation where the Board wants to put it now.

DR. ESPEY: Right down the edge and extending across the top and this is about 68 acres.

MR. WHEATLEY: All right. Now, do you have property lines drawn on your figure for the adjoining tract which is the rifle range and the dairy farm?

DR. ESPEY: Yes sir. Those are extended right up here at the top, they're just an extension and you can't see them for the blue. It extends right here, which is essentially along the edge of the yellow alternative.

MR. WHEATLEY: So both of the proposed alternatives, the green and yellow, are in the adjoining tract.

DR. ESPEY: That is correct.

MR. WHEATLEY: Now, when the....did you make an onsite inspection of this property with Mr. Bergman?

DR. ESPEY: That is correct.

MR. WHEATLEY: Now, as to the green. Let's discuss that a moment so the Council will understand it as to the green alternative. I see a clearing area where the transmission lines would go on the green alternative.

DR. ESPEY: That is correct.

MR. WHEATLEY: That is the land which you described that would not need any clearing and there would...cause there are no trees there to clear.

DR. ESPEY: That is correct.

MR. WHEATLEY: Now, what is your understanding of what the City Public Service Board would intend to do with the trees that are on our property if they put a substation on it?

DR. ESPEY: Well, as I understand it, all the trees would be wiped out. This is based on the testimony that I read. This would be asphalt. They would pretty much destroy all the vegetation.

MR. WHEATLEY: Will all the trees be destroyed also on our property to suit the transmission lines easement coming out of that?

DR. ESPEY: Yes sir, that is my understanding. I might add, in our field trip a biologist accompanied me to look at some of these issues and certainly from his standpoint, this alternative has some very desirable affects.

MR. WHEATLEY: All right. Let me ask you to raise your voice a little bit so I can hear you a little clearer. Is the blue area on your diagram the floodplain as defined by the United States Corp of Engineers?

DR. ESPEY: That is right. The blue area is the actual floodplain. The area that would be inundated by this flood.

MR. WHEATLEY: By the 100 year flood?

DR. ESPEY: Yes sir.

MR. WHEATLEY: Is any of the green alternative site in the floodplain at all?

DR. ESPEY: No, sir.

MR. WHEATLEY: So that it will be feasible for the City Public Service Board to put an alternative site into the dairy farm and the rifle range property not even be in the floodplain at all and have a clear pasture by which to run their transmission line.

DR. ESPEY: Yes sir, that I think is apparent.

MR. WHEATLEY: And, as you indicate, it is a pretty straight shot for that transmission line that wouldn't even have to be doglog in it as they now propose.

DR. ESPEY: That is correct. I might add the proposed transmission line here is obviously already in the floodplain.

MR. WHEATLEY: All right. In other words, when the Board comes off our property on the proposed site in the pink, they would cross the floodplain for the transmission line on the next tract out that way. Now, let's look at the yellow alternative site which again is still in that same piece of property. About what percentage of the substation site, I note you have some blue under that, so there would be some flood plain involved in the construction of the substation site there.

DR. ESPEY: The yellow ones?

MR. WHEATLEY: Yes.

DR. ESPEY: Right.

MR. WHEATLEY: And you made some calculations on the amount of fill that might be necessary to come in within the order of the magnitude of cubic yards.

DR. ESPEY: Right. I think the maximum depth is about 3 feet here. Somewhere in the neighborhood, again we were using the U. S. Coast and Geodetic Contour maps with 10 foot contour intervals so we had to make a pretty gross estimate but in the neighborhood of 2000 to 3000 cubic yards.

MR. WHEATLEY: Well, if we would assume that you could bring in top soil or dirt and/or fill for 2000 or 3000 cubic yards even at the price of \$2.00 a cubic yard we may be looking at additional cost there as to fill of maybe \$6000.

DR. ESPEY: Yes, sir.

MR. WHEATLEY: Then under your yellow alternative also, the transmission lines would be in the floodplain?

DR. ESPEY: That is correct.

MR. WHEATLEY: Is there any problem or is that even more desirable for the transmission lines to be in that floodplain?

DR. ESPEY: Well, this is, as you can tell, done quite often. It is true that this line would be longer. It's also reasonable to me that there would be less cost involved in terms of, say, unit cost per acre.

MR. WHEATLEY: In other words, the City Public Service Board, even though they may be say \$6,000 cost for fill for the substation site they could acquire land that's in a floodplain a lot cheaper than they could acquire land where our clients are that's not in the floodplain.

DR. ESPEY: It seems reasonable to me Seagal. I guess that's a question you should ask the real estate people.

MR. WHEATLEY: All right. From an engineering standpoint, Dr. Espey, in connection with the yellow alternative, is there any engineering problem that would affect the ability or capacity of that substation to operate if you brought in that amount of fill and filled it up above the floodplain.

DR. ESPEY: Not from my background and my hydrologic viewpoint.

MR. WHEATLEY: All right. If you brought in the amount of fill which your calculation shows might be necessary even for the yellow sites, would that raise it above the floodplain level?

DR. ESPEY: I'm sorry Seagal, what.....

MR. WHEATLEY: If you brought in the amount of fill that your calculations reveal would that raise the substation site above the floodplain?

DR. ESPEY: Yes sir. That was my purpose in presenting that information.

MR. WHEATLEY: All right. What were your conclusions then, Dr. Espey, in regards to your study of this floodplain problem and whether it would be feasible from an engineering standpoint to build this on the adjoining tract?

DR. ESPEY: Basically, the conclusions can be summarized as follows: There's approximately 31 total acres above the floodplain in this general area that could possibly be used for an alternative site. Two alternatives were suggested. One of which we believe would impact in a lesser degree in terms of the devastation, the destruction to the vegetation and trees, that is the green. Secondly, we believe that the gold one would provide a possibly cheaper system in terms of lower value of land associated with that particular location.

MR. WHEATLEY: Thank you, Mr. Mayor. Those are the only questions we have for Dr. Espey.

MRS. LILA COCKRELL: May I ask one question sir. Just for clarification, as an engineer, do you foresee any problem in the fact that the CPSB plans to locate the actual transmission lines in the floodplain.

DR. ESPEY: No, madam.

MRS. COCKRELL: Thank you.

MR. WHEATLEY: May I expand on that a little bit, too. You will notice, Councilwoman Cockrell, the proposal, the red already proposes that the Board use the floodplain and.....

MRS. COCKRELL: I noted that and just for my own information wanted to have that point clarified as to whether there would be any problem in that.

MR. WHEATLEY: Right. Well, it has been pointed out too, and I'm sure that Mr. Henne will tell you that the reason on the present proposal that they want to continue the transmission lines in the floodplain above it, is primarily because you can buy the land a lot cheaper in the floodplain. It wouldn't cost the City Public Service Board nearly as much money and there is no danger in engineering problems involved in this.

MRS. COCKRELL: The danger would only occur in the actual substation site itself, if it were flooded?

MR. WHEATLEY: Yes, and that's why the green would not be in the floodplain at all, and the yellow would only be in to the extent of maybe 3,000 cubic yards which you could bring in the fill for about \$6,000.

DR. ESPEY: You could bring in fill - you could elevate the structure on some kind of concrete pad.

MAYOR BECKER: Dr. Espey, may I ask a question of Dr. Espey?

MR. WHEATLEY: Yes.

MAYOR BECKER: When they speak of the 100 year floodplain, it isn't a flood situation as we would know it, the Johnston flood or some situation like that. We're not speaking of raging torrents of water are we? Or is it in this particular case here more apt to be minimal depth, minimal current and that sort of thing.

DR. ESPEY: No, this is an extreme event. It is a 100 year. It is not some of these rather extreme maximum storms that we've seen up in San Marcos. We're not sure what the frequency of occurrence here is. This is called a 100 year. This is approximately 44,000 cubic feet a second will be flowing in this stream. The average velocity in the main stream would be on the neighborhood of 8 feet a second. This is a lot of water. That's a real gully washer. So, this, I think, in your terms, is an extreme event and generally this would provide us from an engineering standpoint some design criteria in terms of encroaching on the floodplain and if we are going to build homes to get up above it, this type of thing, flood insurance, etc.

MAYOR BECKER: It's a bench mark situation?

MR. WHEATLEY: I might add, excuse me Mr. Mayor.....

MAYOR BECKER: That's all right I'm finished.

MR. WHEATLEY: I'm gonna add something to that, too, that we've discovered and we haven't had the chance to explore fully. We understand that San Antonio River Authority has a flood control project proposed on the Salado Creek above us which would constitute, of course, even less likelihood of even this worse thing that we're projecting, with dams which would obviously reduce immensely the capacity of the flow of that water. Dr. Espey just noted that generally in his report because we just discovered it the other day but still that's another matter that was not explored and certainly could even affect the worse case basis

type of presentation that we're making.

REVEREND CLAUDE BLACK: May I.....at what point in the planning, it might have been stated but I missed it, at what point in the planning were you made aware that this was going to be done? I'm particularly interested in the planning process in terms of this kind of development and at this point having to deal with a critical issue that could have some economic impact upon your planning. At what point was this indicated in your planning that this would be located here?

MR. WHEATLEY: I have the chronology and I checked the dates to be sure that I gave you an exact date. It was after we bought the property that we became aware of it. Do you have those? Let me give you several dates to see if I can answer that for you. We acquired the property and took possession on October 9, 1972. Now, let me find the other date for you. On November 17, 1972, after we had negotiated and bought the property, and I'm giving you this date from the City Public Service Board's information, Mr. Herbert Karren, who is one of the investment partners, was asked for permission by the City Public Service Board to come out and survey this property. So it was not until after we had bought and purchased it and made our master plans that the Board made us aware of it. Does that give you the sufficient answer?

REVEREND BLACK: I was interested in the process that created the kind of difference and whether or not.....

MR. WHEATLEY: There were, Reverend Black, several proposals by the Board. In other words, the point where we are now, on November 20, 1972, the City Public Service Board wanted to put this thing right on the corner of Blanco and West Avenue, as you may recall. That was the first place they wanted. We told them we didn't want it at all. We asked them at that time to consider the adjoining tracts and then the Board says that they've considered putting it on other places on our property and I can't give you the exact date when this site way down at the property line was first proposed to us, but, at any event, there were throughout the periods here from November 19, 1972, various other places where they wanted to put them.

REVEREND BLACK: All right, then one other question. Is it your understanding that the only rationale for locating it at this point is to deal with the flood problem.

MR. WHEATLEY: Well, my understanding is this - we tried to get the Board to go out and explore alternative sites and I'll tell you in a moment what we tried to do to help them on that. We were met with just the kind of dead end answer, so to speak, which we didn't have the expertise at that time to deny, that, well, you can't put it over there on the rifle range site because it's in the floodplain. This is why, when Mr. Austin reiterated that position and we were at last going to get a hearing we hired this Dr. Espey to show that that's really not true. It can be done. We have had several discussions about this alternative site with the City Public Service Board to go out and buy that land if they would put the substation over there and we were willing to pay for it. We're willing to go that far with them. We went out and talked to the man and we had no success in getting him to sell us the property in a private situation. The City Public Service Board stated that if we would buy that land they'd put the substation there. After that occurred, we went to the City Attorney's office of San Antonio and we said, can a man even operate a rifle range in the City? Much to our amazement, I might add, there's no City ordinance preventing a man from operating a rifle range unless he discharges a weapon across the street. This was a very real problem to us because you see, that rifle range, that rifle range, you see that cleared pasture area, that's where shots are fired and we represent property owners out behind that Mr. Schaeffer and Mr. Shoan and they're going to be--shots fired off that rifle range onto our property out there. We talked to the City Attorney and we said what are we going to do? This thing is a real nuisance. We tried to get the City Attorney to introduce an ordinance and we couldn't prevail on

that. So, we discussed it at the firm and with our clients and decided that the only option left to do after trying to resolve it in a friendly way if possible was to see if we couldn't establish a legal basis for closing it down as a nuisance to us in view of, obviously, the very luxurious development that we hope to plan out there. So we filed a lawsuit against the West Avenue Northside Rifle Range in 166th District Court and we filed that suit on May 22, 1973. You will note and this is, I think important, from the chronology that's been presented to you by the City Public Service Board that it was right during the same period of time that the City Public Service Board went out and tried to buy the rifle range for the substation. We at least got them to go out and visit with the gentlemen who owns the rifle range to see if they could buy his tract. But something interesting happened about that time. City Public Service Board came back and said we're sorry but he doesn't want to sell it to us, for condemnation or for eminent domain purposes and that's the end of that. Well, what was a curious thing is that about this time, we filed a lawsuit to shut down the rifle range as a nuisance and the same lawfirm that represents the City Public Service Board filed an answer for the owner of the rifle range. I've brought certified copies of these legal documents from the District Clerk's office which I would like to distribute to you and I hope you can understand my frustrations when that happened, because here we're dealing with one lawfirm representing the condemning authority. We sued the rifle range to shut it down and the same lawfirm filed an answer for the owner of the rifle range. So when I tell you I'm glad we got an audience before the City Council I'm serious.

MAYOR BECKER: There's a certain ambivalence that's been manifested in this particular case that I find rather amusing and amazing at the same time. I must make mention of it since we've gone into this matter of the rifle range. The other day at the City Public Service Board briefing on the energy crisis, we were shown, as an Exhibit A, a spent bullet from a rifle that had been fired, I think, at Braunig Lake. That very bullet was being used as evidence as to why hunting and fishing privileges and things like that were detrimental to the Public Service Board's interest point of view. So I just - you just brought a certain recall to my mind.

MR. WHEATLEY: Well, we've been faced with some of the same problems, your Honor.

MAYOR BECKER: Because we were speculating as to what caliber it might be, I thought it was 264 and the other gentlemen thought it was probably 243 but nevertheless, there it was.

MR. WHEATLEY: So this - the question of this adjoining tract, Reverend Black, has been a problem that's been with us all along and you can, I hope, understand the problem we've had in trying to get it resolved and with no success. Does that answer your question though? If not, I'll be happy to go further.

MR. ALFRED BECKMANN: Mr. Wheatley, if the gentleman that owned the rifle range did not want to sell to the City Public Service Board and the people that owned the property where the intended substation is to be do not want to sell, what determines where the City Public Service Board puts the substation?

MR. WHEATLEY: Well, the City Public Service Board - we had tried to get the City Public Service Board to understand what appears to us to be the most obvious choice. I say that with full admission of our interest in protecting our property which I think is certainly a legitimate interest. But it seemed to us that the City Public Service Board which is spending the taxpayer's money, could buy that land cheaper in a floodplain. I don't think there's any doubt about it when you're paying over \$60,000 an acre for our property. Secondly, not only would you have cheaper acquisition costs but you would have cheaper site clearance costs particularly if the transmission line was put through that pasture land which is already cleared. Now, thirdly, I would think you would have probably less construction costs and less maintenance costs because you don't have to have a dogleg in your transmission line. I've always understood from the City Public Service Board that it is certainly more

preferable in a transmission line to just have a straight shot out without a lot of doglegs. This is why we were attempting to get the City Public Service Board to go out and make the gentlemen an offer, see if he would be willing to sell, and if not, to file condemnation proceedings against him. They never would file the condemnation proceeding.

MR. BECKMANN: My point is, that if they really wanted the land at the rifle range, they could get it just like they got the land or were trying to get the land.

MR. WHEATLEY: That's right. I would like to clear up just one or two other points, and then I will be through. Mr. Austin, on the November 29th hearing, made a rather broad statement in terms of the fact, he said that our clients knew that this property was going to be condemned when we bought it. That's the position that the Board has told me on a number of occasions and we've been in court on this case maybe five times and I've never heard a witness come up and testify to that because we didn't know about it. But I wasn't satisfied with that and I went out and got an affidavit which I want to pass out to this Council, if I may, from the man that sold us this property because I was tired of being made a scapegoat for this kind of contention which I've never had verified to me. It's an affidavit of C. Ganahl Walker, Jr., dated December 10, 1973, and it states this and sworn to by Mr. Walker, "on or about September 18, 1972, I was a party to a contract of sale to Ellis M. Wilson, Jr., Herbert E. Karren and Oak Hills Properties, a piece of real estate known as the Walker tract. The Walker tract is located at the corner of Blanco and West Avenue and it's presently being developed by the buyers mentioned above under the name of Parliament Square. The contract of sale was closed on October 9, 1972, and at that time, the buyers mentioned above took possession of the Walker tract. This affidavit is to certify that at no time did I tell the City Public Service Board representatives that I had advised the buyers mentioned above that the City Public Service Board intended to condemn the Walker tract.

Now, it's ludicrous to have to continue to answer these kind of things and that's why I got this affidavit which was reviewed and approved by Mr. Walker's attorney before he signed it. But I frankly get a little tired of having the Board come in and say, "oh well, you knew about it." Common sense would dictate otherwise. I tell you what we had to pay for that land. We bought it thinking the City Public Service Board was going to condemn it - even had a hint of it - it would certainly jeopardize our possibility of us buying that land and this is why since statements have been attributed to Mr. Walker, I wanted to have his affidavit passed out to you this morning.

DR. SAN MARTIN: Mr. Wheatley, to your knowledge has the City Public Service Board approached Mr. Walker before October 9 or September 18, 1972?

MR. WHEATLEY: I do not know, Dr. San Martin, I do not know. They say they did and in the chronology which I got from the Board for the first time last night, they stated that there were dates in here when they had talked to Mr. Walker but we never knew about that.

DR. SAN MARTIN: Well, what I'm trying to determine is that they approached him but he didn't tell the buyers.

MR. WHEATLEY: That's exactly right, definitely. There were some other technical questions, just one of which, I want to answer or attempt to answer and lay before you. You know, Councilman Morton was asking Mr. Austin at the last hearing about questions of load distribution and having....Mr. Austin was saying that this site had to be just where it is or they couldn't serve our development. Well, I found that a little hard to believe but I didn't know why because I'm not an electrical engineer. But the City Public Service Board has since that hearing, stated that this substation is to serve fifty square miles. I left here last time, frankly, thinking that this substation was just going to serve us because that's the impression I had and if it didn't go right there in the center, I remember the Mayor asked Mr.

Austin, "Well, if it ought to be in the - to serve it all - it ought to be right in the middle." We have done some calculations for you on that which, of course, are not difficult to do but to give you some idea, if this substation could serve 50 square miles our total acreage right here on both sides of Blanco is less than one fourth of one square mile. But we didn't stop there. I had an engineer, who's our consulting engineer on the project, prepare some calculations for you as to just how much of the electrical services out there we're going to use in terms of the total producing capacity of the substation. Now, may I distribute these to the Council, please? What is being handed out to you is a letter of December 12, 1973, from Silber and Associates Consulting Engineers and you will note attached to Mr. Silber's letter is an electrical demand estimate for all the uses which we intend, and let me say too, that these electrical demand estimates on page 2 are not just for the tract out of which the substation is going to come but our property on both sides of Blanco. In other words, about 140 acres altogether. Engineer Silber estimates that we will use 10,000 KVA in our project for Parliament Square. Well, what does that mean? We called the City Public Service Board and asked them how many KVA's were going to be generated or what would be the capacity in KVA's of their substation? There will be, if the information we received is correct, approximately 400,000 KVA's capacity generated by the substation. If we're using 10,000, mathematics tells me that we're using about 2½% demand for the capacity of that station. So you know, you try to shake these statements out and try to get to the bottom of them and things don't quite, at least our calculations come out to what we were led to believe, that we just weren't going to get any electricity out there if we didn't do it. I might add the Board has said, well if you all keep fighting this case and delay this project you're not going to have any electricity. Well, I don't know whether that's a threat or what. I know we've got a contract with the Board and we paid them \$19,000 cold hard cash for electrical services. The problem to my way of thinking, again I say I'm not an engineer, but if this is to serve 50 square miles and we're only using 2½% of it, I find it hard to find that we're the villains in this situation.

Now, in conclusion, let me just close by telling you that we tried to bring to you today and I hope you understand the problem of the landowner who's trying to go along about his business having to hire the consultants to do this and I don't mind doing it. It's stuff that, frankly, we have not had an opportunity to do before but it just simply does not wash, to my way of thinking, that the Board has made the right decision for any number of reasons. Economic - I got cheaper land acquisition in the floodplain. Feasibility - that's why we got Dr. Espey to prove to you that the site can be feasibly built in those other properties. Environmental or land site esthetics, if you will. We had an estimate of the trees that were going to be cut down on our property and their value by a tree service in San Antonio and the City Public Service Board is going to cut down about \$40,000 worth of trees on our property. This is why what happened on the Calloway Contract - see we had this contract with Mr. Calloway for about \$900,000 up there. He was going to build beautiful luxury apartments and he wanted the trees and we lost him. But I don't know what we're going to do with that property if the Board goes on it. You know, what can we build now with our land use plan with the substation right on the corner of West Avenue? But if you're going to.....yes sir?

MAYOR BECKER: I was going to say, wouldn't it have been coincidental if that had been named Sherwood Forest with these little hats here today instead of Parliament Square? It's still indigenous of that area. Coincidence.

MR. WHEATLEY: Yes, but if the City is going to look at these decisions concerned about what type of services we're going to render to the citizens and the best land uses that the land in the City can be put to, I think the decision is rather clear. The People's National Bank is going to come in and build on our property. We've got the luxury apartments. The streets are cut, the property's been platted. Contrast that to the rifle range where you've got some cows over there, and I might add too,

we were willing to have if we could buy the adjoining tract to set that fellow up with a dairy farm anywhere else and buy him another piece of land and that's how far we've been willing to go on this thing. But right now we're to the question, has the City Public Service Board to your satisfaction established that this particular tract is the one most desirable and needed for that substation? If you want to do it and pay the prices and ruin this thing, which is going to happen, then it's okay. But what I would specifically propose to the Council is this. By way of giving you something on the table that I think would be reasonable to consider - I would ask you to do this today, I don't think that in this type of hearing you could probably, if you're inclined, rescind the ordinance as to our property, but I do think you can instruct Mr. Reeder and I respectfully and sincerely ask you to do this, to instruct Mr. Reeder to take whatever steps would be necessary to post your notices of the meeting and to vote today after the time has passed to rescind the ordinance as to our property and instruct the City Attorney to in turn instruct the City Public Service Board to give the adjoining landowner notice in connection with whether his property should be the site for this substation. But I would specifically ask the Council today to pass a resolution asking the City Public Service Board or asking the City Attorney to prepare a revocation ordinance which would revoke that particular portion of the ordinance which you previously passed. I want to thank you for your time and I hope that we have done whatever we could to satisfy your questions on this and I'll be happy to answer any other questions you may like.....

MR. CLIFFORD MORTON: Mr. Wheatley, if I may, I'd like to ask you this. The statement was made that - by the representatives for the City Public Service Board on the November 29 meeting that this is just really a question of money, that you were about \$60,000 apart from what you had been awarded by the courts versus what you wanted. Would you care to elaborate on that?

MR. WHEATLEY: I'll be happy to because I heard that statement made at the last Council meeting and, of course, did not have a chance to reply. When that statement was made we had, prior to that, withdrawn any offers. The history of the negotiations in this case were like this. Initially, and for many months we never did even talk money. Well, that was not ever our problem. We were trying to explore with the Board, please go somewhere else and let's look at it, we'll help you, we'll buy it, anything and money was of no consideration whatsoever. The Board filed their suit and I made an offer to Mr. Austin of \$900,000 because we felt like that. We had lost the Calloway contract and we didn't know what we were going to do with the remainder of that acreage with that substation sitting right on there because Calloway didn't want to put apartments behind a substation. His idea for marketing those apartments was, they have what they call curb appeal. Many people rent or buy apartments in San Antonio by driving to an area of town they like, if they see something that looks good they will go in and inquire. He didn't feel it was a marketable project if you had the substation in front of it so we proceeded through the condemnation matter. Things were looking like land was going to be taken and I made Mr. Austin an offer of, as I recall, \$750,000 and whatever he would recall there I would, of course, honor. The commissioners went in and made the award. They awarded \$234,000. Things, again, were looking quite bleak as far as us ever being able to get somebody to look at this question of, is this the best tract? I offered Mr. Austin at that time - I told them that they were willing to pay \$300,000 that I would recommend it to my clients. He refused to pay it. Then the Burch case came down which gave us the ray of hope that we'd been looking for to get an initial review like we're having today by the Council. I withdrew my offers and if I'm to be faulted for taking advantage of a case that comes down that benefits my client, then you can fault me for that. That's why I withdraw all offers because the money is not the object. We have let the money sit in court. We have not withdrawn it which legally we could do under proper circumstances because that was not the issue and because of the Burch case which has given us the right to do this, which I have done and we have withdrawn any offers of settlement on this because we simply do not want it on that property.

MAYOR BECKER: Any other Council members have any questions to ask Mr. Wheatley. Dr. Espey or anyone?

MR. WHEATLEY: Thank you for your time, very much. We deeply appreciate it.

MAYOR BECKER: Thank you. Mr. Austin were you next on presentation?

MR. CRAIG AUSTIN: I believe I am your Honor. Your Honor, Ladies and Gentlemen of City Council, there are very serious questions that are raised about the procedure that is being followed in this case. They should be squarely and forthrightly dealt with at this time. First of all, let me point out the immediate difficulty that we have. Whenever we try a condemnation case it's customary to have a jury and panel. It takes three or four days to try the case. There are no surprises because you know who your witnesses are going to be beforehand. You have the right to cross-examine witnesses. You don't have to take what they say without having the right to cross-examine. Now here, in the space of a little more than one hour, the landowners who want the City Council to do what it would take a court three or four days to do with intensive presentation of evidence where all parties have the right to be heard and the right to cross-examine. I would respectfully submit to you that this question that they have raised is uniquely unsuitable for a resolution by the City Council. The legal question is whether the location of this substation site is arbitrary and capricious, and that question is tryable, it's cognizable in a court of law. But let me point this out, I think that the landowners avoidance of a court trial in this matter is extremely significant, extremely significant because they know that they can do more in here and get away with more in here and present more surprises and have less opportunity to have their witnesses cross-examined than they can in the courthouse and that's why they're here and why they're avoiding the courthouse. Now, yesterday the matter was taken up again with Judge Ball. If you'll recall, Judge Ball has decided to defer the hearing on this case, including the very issue that we're talking about today until the Burch case would be decided perhaps a year from now by the Supreme Court. He reversed this decision yesterday and set this case for trial on the merits on the 6th of March and I would submit that that is by far the better place for these two parties, the City Public Service Board and the landowners to resolve their differences.

MAYOR BECKER: Isn't it true though, Mr. Austin, that we were made a party to this thing, in a manner of speaking, by the decision in the Burch case and the subsequent action asking this Council to ratify all the various easement takings and all that sort of thing that.....

MR. AUSTIN: I think that's entirely true, your Honor. The point that I draw is that the better place for a more complete hearing and a more fair hearing to all the parties is in the courthouse which is where this case really belongs at this point.

DR. SAN MARTIN: Mr. Mayor, may I ask Mr. Austin if this Council were to deny the City Public Service Board the authority to condemn which cannot be delegated under the Burch case, wouldn't it be properly here anyway with a comeback and request?

MR. AUSTIN: Well, that raises an extremely good point that I was going to take up next anyway, Dr. San Martin. This would appear to you to be a two-way dispute between two parties. It is not. It's a three-way dispute and the third party is not here. He is not represented. He has no person to speak to this Council on his behalf. The third party is the gentleman that owns that land next door. Now, the simple proposition that is made to the City Council, is just get it off our land and put it on somebody else's and put it on the man's next door. Do you remember how bitter the complaints were that they had not been notified of the Council meeting of November 21st? Do you suppose that the man next door had he been notified of this proceeding in which the landowners that are involved here hope to take the burden off their land and put it on the man next door to

them? Let me submit to you very candidly, gentlemen, that this is a three-way dispute at this point and I'll show you why. This is the Parliament Square landowners property and this is the property next door owned by Mr. Tomerlin, I believe. Now, the proposition is that you relieve this landowner of the burden of having the transmission line on his land and put it instead on Mr. Tomerlin next door. Have we heard from Mr. Tomerlin or will we hear from Mr. Tomerlin? I rather doubt that we will unless he gets wind of this somehow and shows up prior to the time that the Council without even hearing him decides to put the transmission line on his land.

DR. SAN MARTIN: I question that statement, Mr. Austin. I don't think this Council would proceed along that line. I'm sure our legal counsel here will not let us do that.

MR. AUSTIN: I certainly hope not. I think that would be most unjust. Let me point out the problem that you have here with the Tomerlin tract. Now, I think probably that the Council is surfeited with testimony from lawyers so we're going to put on our testimony from our own electrical engineer in just a moment. But I wish to call to your attention several very dramatic, practical problems in doing what they want done. If you'll notice, the transmission line makes use of the floodplain which is permissible for a transmission line. The water around the footings of the tower doesn't hurt anything. At this point we leave the floodplain and go on to high and dry ground which is where the substation must be. In condemnation law and in the placement of the transmission lines, it is a great favor to all landowners to try to put takings and installations down property lines as we are doing with the Parliament Square people instead of cutting across the middle of somebody's land and leaving him with two triangles. Now, what they want you to do is to take off a property line taking on the Parliament Square tract and simply triangle the other gentleman's property goes diagonally across it from corner to corner. Let me also point out another thing. When these matters are tried in a court of law, the way the value of land is determined is to introduce comparable sales and you go all over this area and you find land that is sold and these are introduced into evidence then before the jury. Now, the same comparable sales that apply to this taking right here apply equally well to the takings right next door, and it is an act of supreme naivete indeed, I would say deception on the part of a lawyer who is familiar with condemnation practice to say that the land next door separated only by a thin line on a map from the land in question is any less valuable. I will guarantee that it's not - and besides you add the severance damages that arise from going across the middle and leaving the gentleman with two triangles whereas on this tract, the severance damages are much less simply because no land is severed off. You don't cut the land in two on the Parliament Square taking. You simply cut a segment off the edge of it. Moreover, if we take the yellow route as has been proposed in this instance, it turns into at least a four-way change because we have to acquire a new easement that the Council has not authorized us to acquire up in this area and then we to, in addition, acquire this land in the yellow so we have definite problems there. Now, you'll notice that I was not permitted to cross examine Dr. Espey. I don't know what his background was; who he works for; how much money he's received from these people on consulting fees, but one thing he didn't tell you was that there are restrictions against placing obstructions in the flood path of a river. What he wants to do in selecting the yellow site is to simply build up an embankment which constitutes a dam in the floodplain of this creek. Now, that, to my thinking, is bad public policy and all of this, mind you, to spare the people that are doing more than any others to increase electrical load in this area.

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Now, the difficulty is not simply relieving these land owners of the burden. If that were the problem and that were the only thing that was before this Council, that would be an easy matter. The fact is that it does have to go somewhere and if electrical service in that area is going to be adequate it must go on the adjoining land if it does not go on the Parliament Square land. I pointed out some of the difficulties in both the payment of severance damages, the diminishing use by triangling the remainder of the land next door, the problems that arise out of putting an obstruction across the flood plain of the river. So, I would say this, we don't even have an ordinance before us today. I thought this was an oversight. It's not an oversight, it's quite deliberate. What these land owners want this Council to do is to vote the line off their land and then later on let the City Council and the City Public Service Board and whoever else may be involved worry about where to put it. In other words, just get it off our land by your resolution and then later on we'll let you people worry about where to put it. I hope that the City Council won't do that. I hope that the City Council will take this problem as a package approach, and if they decide in their good conscience and their good faith that this is not the best place for it, that they will do us the courtesy of saving where is and that is the simple elementary, straight forward approach that does justice to everybody, and, moreover, I think that the fact that there was no ordinance presented to put the line on somebody else's land is very significant. They don't want the other land owners up here to protest what is being done. They'd much rather have a two-way hearing where they only are heard and where the people that are going to receive the burden have nothing to say.

Now, it has been implied that there is some improper influence existent in this case out of the rifle range litigation. Frankly, I never heard of the rifle range litigation until I went down to coffee one day and sat down and my partner started talking about it and I asked him what it was all about. Then he told me and it soon became apparent where the land was. So, I talked to him that day, and I said we've got conflict of interest here and one of us is going to have to withdraw from one of our representations. So, he called up the telephone and informed Mr. Tomerlin that he had to withdraw from his representation which he has done. I don't know who represents Mr. Tomerlin now. Apparently nobody does. I think if we represented Mr. Tomerlin, he'd certainly be here. Now, I certainly hope that whoever does represent him will show up and present what he has to say and how he feels and what his reaction is to having his land burdened so that these gentlemen can go about their merry way and make as much profit as they want.

Now, at this point, I am going to step down. Do you consider it significant that we have not heard from one electrical engineer in all this hullabaloo that's been going on over this thing. Essentially the placement of the transmission line and a substation is the problem in electrical engineering. The hydrologist just doesn't help you any. I'm going to step down and submit to the City Council the engineers that were responsible for this decision in the first place. This is not a decision of the City Public Service Board or of its lawyers so much as it is an accession to the recommendations of these gentlemen who are trained and experts in electrical engineering. I think that testimony hasn't been lacking so far that it should be extremely persuasive. Let me say this, this is an effort in my humble analysis of some powerful rich and influential land developers to rid themselves of the problem and put it on someone who is not developing his land and who is not even here to present his side of the case. I think that the good faith of the City Public Service Board turns upon the adequacy of analysis that has been carried out by its electrical engineers and I would urge you to listen carefully to the testimony of Mr. Henne who has worked with a large number of engineers in his department in placing this line long before any of this litigation ever occurred or before any of these parties that are now present even bought the land or perhaps even wanted to buy it. So, at this time I respectfully submit to you for your consideration, the testimony of Mr. Cecil Henne, the engineer in charge of overhead transmission and distribution at the City Public Service Board.

MR. BECKMANN: Mr. Austin, please, you accuse this Council of acting as a court of law. I think for a matter of the record, we are not acting as a court of law. We are merely trying to find out if an ordinance which I feel we were smothered with pretty rapidly is, in fact, just.

MR. AUSTIN: I think that your point is well taken, and let me explain the matter this way. We realize in the passage of that ordinance only a week after Burch had been handed down that we should not include any projects that were not already underway, and we were already in possession of this land at that time. I know that the circumstances there were extremely hurried and I do not deny the right of these landowners to come before the City Council and state their case. They have a right to do that, however, I would point out that a better remedy that they have and a more extensive remedy and one that affords everybody a better chance to be heard lies in the courthouse which will decide the same questions that we will be deciding here today. I would say that the City Council should take into cognizance these matters, but on the other hand I would say that the City Council would be wise to defer to the powers of the trial court which will try this issue in complete accordance with law and a full opportunity for everybody to be heard. That's the only suggestion I would make - it's simply a suggestion that the Council defer to the better forum that the landowner has in the courthouse.

MR. BECKMANN: The fact that this Council passed an ordinance that was in favor of the Public Service Board doesn't that tend to toss the verdict in favor of the Public Service Board, which, in fact, would tend to be less than fair, as far as the court case is concerned.

MR. AUSTIN: I don't think that.....

MR. BECKMANN: It is my opinion that the court could come to better decision, a more honest decision, if it did not have the burden of a Council ordinance.

MR. AUSTIN: Well, Mr. Beckmann, the point of that matter is and this is well known to the landowners, that the court is not going to come to any decision at all if this Council does not have an authorizing ordinance because the matter will be out of court.

MR. MORTON: Mr. Austin, really, what are you proposing - that this Council or any Council do in its deliberations as a result of the Burch case? Do we buy whatever you have to sell us carte blanche and say the issue should be tried in the courthouse?

MR. AUSTIN: I don't know.

MR. MORTON: It seems to me that's really the alternative that you're suggesting.

MR. AUSTIN: I don't know, but I would say this that is every condemnation case involving the taking of land occupies perhaps six hours of this Council's time as to whether an electrical improvement should go any particular place. You gentlemen are going to have your work cut out for you for the next several years.

MR. MORTON: But you haven't answered my question.

MAYOR BECKER: We've had our work cut out for us, Craig. This is just in addition to.....

MR. MORTON: You have raised the issue that this is not the proper place for these deliberations as a result of the Burch case I'll ask you again.

MR. AUSTIN: I said there is a better place.

MR. MORTON: What are you recommending that this Council do on issues of this kind?

MR. AUSTIN: I think that in the future a leisurely approach to condemnation cases on the basis of an entire project would be the proper thing to do - which is the procedure that is universally followed where you don't have the intervention of an emergency like the Burch case.

MR. MORTON: But we have the Burch case. It's here. What do you suggest that we do?

MR. AUSTIN: I would suggest that in the future the Public Service Board come to this Council with an entire project, post it several weeks in advance to afford adequate notice to everybody and go ahead and lay out the matter on an entire project basis - on the basis of the entire project. This project runs all the way from the outer loop in here - as I recall 8 or 9 or maybe 10 pieces of land involved. The better procedure, of course, would be to take the entire project at one time and then approve or disapprove the entire project.

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MAYOR BECKER: I'd like to point out if I may, Mr. Austin, one further fact that has a certain importance I think--the mention of rich and powerful and influential landowners and landholders and land developers. Subsequent to the last election, I think that that position on the part of the plaintiff was negated and minimized to some extent. Most anyone who is knowledgeable with respect to politics knows that that is an axiomatic fact. My interest in this thing is not from the standpoint of influence or anything else, it's merely from the standpoint of what's right and what's wrong, what's fair and what's equitable, and I think that feeling is shared by every person on this Council.

MR. AUSTIN: You are quite correct, Mr. Mayor. That is the only condition.

MAYOR BECKER: That's only proper to point that out.

MR. AUSTIN: I think that's a point that well taken and I'll say only in response that I just tell it like I see it.

MAYOR BECKER: Fine.

MR. MORTON: Mr. Austin, you complain about the lack of an opportunity to cross examination and so I would like to afford you the opportunity indirectly by just saying what points were made in his presentation that you might fault with, let's say starting with his contradiction of your statement of last week that these people knew all along that this property was being considered even prior to their purchase of it.

MR. AUSTIN: Our statement was that Mr. Ganahl Walker stated to a representative of the Board that he had informed the landowners of the pendency of this project.

MR. MORTON: So, in other words, what we're saying here is that either he's either lied to you or he has lied to us.

MR. AUSTIN: No sir, I'm not saying that. I'll tell you what--I'll tell you the point that that makes. It points out the difficulty of dealing with testimony before this Council. It's unsworn. You have no opportunity to cross examination. The only thing you can do is rely on hearsay and you don't know for sure who says what or when or to whom. I repeated to the Council the evidence that I had...

MR. MORTON: But we're saying...you're suggesting that we ignore this sworn affidavit, is that what you're saying?

MR. AUSTIN: I've never seen it.

MAYOR BECKER: May I ask this one question and then I think it bears on what Mr. Morton is saying, would it seem reasonable that testimony would be introduced at a public meeting such as this that would have to be honored and upheld at some later date in some court of law. Just to be capricious or in any way take advantage of a situation or be precipitous, I find that rather hard to comprehend for the simple reason that I was under the impression that we were dealing with responsible, intelligent people on both sides of this issue. It's for that reason that I'm inclined to believe both sides as to what they introduced, what they say, at least I'm willing to listen to them.

MR. AUSTIN: Well, I think that's entirely correct and within the medium that we have here, Mr. Mayor, that is what we must do.

MRS. COCKRELL: I did notice on this point that this affidavit was by Mr. Walker and in all terms used the pronoun I in mentioning his relationship to the purchaser but I believe the attorney mentioned the term a representative, and I'm wondering if in that area there could have been any misunderstanding.

MR. AUSTIN: Well, Mrs. Cockrell, in a matter as tenuous as this where you're receiving something from out of court--anything is extremely tenuous.

MAYOR BECKER: I don't believe there was a representative acting for Mr. Ganahl Walker in this particular transaction. What little I've known of this situation for the years that I've been following the ups and downs of that tract of land over there, because we've been waiting, needless to say, for someone to develop it. It was always to the best of my knowledge, at least, the fact was borne out that Mr. Walker represented himself in all these transactions, negotiations with various and sundry people. So, I just raised that point, Lila.

MR. AUSTIN: Well, I don't know, I can't say from the evidence that we have here precisely what happened. All I know is what I heard and that's all the Council knows is what they heard today, too. So, it's hard to say, but let me do say this in behalf of Mr. Walker there were a battalion of lawyers and real estate people and developers. They were all doing things for him--all making statements for him--looking after his interests. I don't know who said what and I can't find out from this.

MAYOR BECKER: All right, would you like to introduce your first guest?

MR. AUSTIN: Yes, I'd like for Mr. Henne to come forward if he would.

MR. CECIL HENNE: Mr. Mayor, members of the Council, good morning. My name is Cecil Henne. I'm Superintendent of Distribution Systems Designs Engineering Department, City Public Service. I'm here in response to your request at the Council meeting several weeks ago whereby eight or nine questions were raised and I have answers to these specific questions, and I have some pass outs here for each one of you. In addition, I have some larger maps over here. I'm sorry I couldn't get the projection type photo maps of these maps on it but they are not available. I have three extra copies that I could pass out to the Council if they'd like to use them. We can pin one up to the bulletin board over here and use this. I would like to take a few minutes to explain just a few details of our planning procedure. We use the selection of substations and transmission lines that accompany them. While they're getting these drawings up here, let me just start on the selection of substations.

First of all, as you all know, the Public Service Board is blessed with an eleven percent increase each and every year, and this necessitates, of course, an increase in our generation capability. What is often forgotten, though, is that there's an like increase required in the distribution and transmission facilities, even 11 per cent or even more. Of course, these are spread out throughout the entire service area. What this means this is that we have to install substations, transmission lines someplace in the service areas to

provide the reliable service the public requires. Now, this project planning, the substation planning, is a responsibility of our engineering department long range planning group. It's an adequately competent staff group that plans for all the future distribution substations, and this is the way they go about it quite simply. We have all the listings of all the various loads in the area through our residential demand meters. I mean residential KWH meters, meters on your homes, your various G-9 totalizing equipment, your thermal demand meters. All of this load analysis, in other words, data analysis is compiled, statistical studies are run on to it. This is put into a model, computer model, for a grid coordinate system and it winds up with a grid coordinate load plan. What this does--this pinpoints your various loads on each pole and each transformer. It gives you an area load and a pinpoint load so that you can take any area of the City, add to it, subtract it, check your feeder circuit. Now, this is a specific load on each pole, but what effect it has on the overall substation effect is also analyzed. As you all know, we have a very large gas electric operation facilities in our Jones Avenue site. We take readings of the various feeder circuits. These instantaneous readings or mike readings are taken compared to the area load from the grid coordinate plan and we have a diversity factor available to us on this basis. This is, again, applied to these various point loads, and we wind up with a finalized point loading by area. What this gives us then is a basis for the determination of load goal in any specific area, in any specific point to be exact.

Now, data over a few periods of years, in other words, four or five years like this can be trended and this trend is a fine factor in determination of what you need in any specific area. We trend it for four or five years. We like to find what we have there. Our present plan right now is a 20 year basis--a 20 year old plan--overall master plans that we're working on. This is the system that we use, in other words, determining it, the same type of device or system to plan up to 20 years. Of course, your accuracy is as much as you have data. If you have four to five years of data you can trend very accurately for four to five years. But you have to go even further and, frankly, right now we are working on our 1990 plan.

There are other things that are factored into the selection of substation sites. For example, we make on ground surveys, field surveys, to see just what the land use will lend itself to. This is needed because vacant land you can see that you see possibly that you can have certain areas developed in here, some you can't. In addition to that, we have commercial development to come in, for example, a USAA or a UTSA site being put into any specific area. Those are tremendous loads that can't be planned for on a trend curve. All these things are taken into consideration and when you wind up with final analysis of the load, you wind up with the first map that I have up here as Exhibit A. It gives you an area load and those circles represent future or positive type planned substations. You see, there's quite a number of them throughout the entire city. These are derived from this printed information we have. Buddy, point out the area of the Harmony Hill substation. The area we're talking about right now is located right there. I'd like to point this area out. This is the northcentral area of the City. As you all know, this is a vastly expanding, rapidly expanding area. Throughout this area over here, your census tracts, for example, has shown an indication of increase in population in the 1990's to 19,000 people. The Harmony Hills site will take over some 6,000 of these people right there just the area served by the Harmony Hills, so you are in a hot area.

The expansion rate, while low, which is a very accurate measurement, the load of the electricity increase, the usage increases, you can tell what's going to happen. It's growing. It's 15 percent in most of those areas, more than 11 percent. As a result, you have to wind up with your substations in the largest combined area right in there. There's more of them. So this is the basis that we use.

There's one more thing added to it that I'd like to show on this map over here. That is we have a new tool in our planning stages these days. It's called a higher distribution voltage. In the past, we've always incorporated or used a 15 KV, a 13,000 volt, in other words, substation as the primary feeder voltage. We now have available to us through the increase of the state of the art a 35,000 volt distribution circuit. We are a leader in this by the way. There are a few of them across the country that use them. (Inaudible) for example, is the largest one in the country. It's now developed so that it's available to us and what this means is this. First of all, it's more economic to use a higher distribution voltage but the prime interest we have in this is conserve $2\frac{1}{2}$ times the capacity that the 13 KV station serves. This means simply fewer substations and fewer transmission lines to feed substations. This is why we're so interested. We are cognizant of the effect of substations on the area and we'd like to lessen the number by all means and we're doing this simply by going to the higher voltage distribution type in addition to saving the money. So you have two tools that we're using, good positive data, modern tools to use the data and the new innovative 35 KV distribution voltage.

As far as what we do after we pinpoint an area, in other words, by pinpointing (inaudible) there is a little bit of leeway. I'd be wrong if I told you, "no, this can't be moved five feet one way or the other." It can have some leeway in it. But each one of these is an individual item and I think to point out the procedure we go through for that I'd like to show you the Harmony Hills or the Parliament Square type substations. I think if we run through this, you all can see what we use on any substation selection. This one is typical, in other words, if our investigative procedures, in other words, for siting it. I'm sorry I couldn't get any opaques for this. It would have been a lot easier. This is an area map over here and you see an irregular diagram, a polygram up there in the black lines. You see several small red dots indicating the substations. The irregular area right now is called a boundary area for the Harmony Hills substation site and I explain that in this way. The red dots you see are existing stations, 15 KV stations. They are in operation right now and they are loaded right now in other words. These predicted load curves that we have, in other words, in the various stations have now reached a point where we know that in the future these circuits will be loaded to their capacity. The 13 KV station, for example, has a maximum and ultimate low density, a maximum range with approximately $1\frac{1}{2}$ miles. So by taking this maximum distance and we have printed to see that we're going to have the maximum low density, you can draw a boundary area, in other words, where you cannot go any further from your 13 KV stations and this becomes an irregular polygram that you have up there. So your Harmony Hills substation, the new one, must be sited in there to feed to this boundary. This is the area surrounding all of it, having 8 to 10 or the 13 KV stations. As a result, we have selected an area right in there, this is where the circle was located for Harmony Hills, right there. This is going to be a 35 KV station and this is load center, low density center. Now, it doesn't necessarily have to be the center of the polygram, by the way. As you all know, the load center can be other than

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just the center of the polygram. A 35 KV station at ultimate low density can reach approximately 2.5 miles, 2.6 miles to be exact. This is circuit distance, not just as the crow flies, circuit distance. So to serve your area down towards the bottom, down toward the Central Park, the North Star Mall area, to serve in that area, the maximum distance we can get away from there because that is the load limit from the 13 stations which is about 2½ miles. So that points you into an arch 2½ miles from that area and that is where the substation has been sited. This is one constraint we have on the location of it.

The second constraint we have is the fact that we are now embarking on this 35 KV distribution system. Three stations are planned at present. One at the University of Texas site, Buddy, if you'll point to that one, one at the Harmony Hills site and one at our Nacogdoches or at our Tuttle powerplant is a better way of putting it. If you'll notice, the Harmony Hills site is almost directly in the middle. These three units are coming together at one time.

MAYOR BECKER: Let me ask you a question if I may, please. I don't mean to just unduly technical about this thing but you mentioned the Central Park/North Star Mall area. Now, in almost any installation like the regional shopping centers, high rise buildings, things that impose a tremendous load on the system and on the capability of that area, and I'm asking this question because I must confess I'm not an authority on this at all, but all these installations generally have transformer vaults in them, don't they?

MR. HENNE: Yes sir, they do.

MAYOR BECKER: Now, isn't that transformer vault there to take the power that's coming in from the power pole and to increase it, you magnify it times whatever it is, isn't that a fact?

MR. HENNE: Yes sir, it is. But quite frankly, it is a reduction in voltage, in other words, it's reducing a higher distribution voltage as we call it, the 13,000 volt line that I had. The 13,000 volt line, shall we call it a feeder line or an express line, it comes from the substation. For example, our Dresden Station, this is one that feeds the Mall area for example up there. This one line, the express circuit runs up there, 13,000 volts and then it is spread into various transformer vaults for reduction to a usable voltage by the various stores and concerns in the Mall. This would be the same, in other words, whether it would be a 35,000 express or feeder line or a 13,000 line. The transformer vault would still be there. But one thing I would like to point out in that respect, these vaults are existing. They are 13,000 volts. Conversion at 35 would be an expensive basis so we try to feed these if we can with the extremities of 13 KV existing station. But to do this and keep the load growth coming and by the way, they're growing every day, you have to take some of the load out and put it into the Harmony Hills area. What we're trying to do there is put it on 35 so we can go further with fewer substations.

MAYOR BECKER: Well, the question I'm trying to find an answer to is, if that area there between Central Park and North Star Mall and all that periphery around there were to suddenly develop such an additional load and requirement for power, how would you handle that with the station that you presently have that's serving that particular area?

MR. HENNE: Mr. Mayor, if we could add additional units to this we would for example in this area right here, we are loaded, the Dresden station has three units in it. We would simply have to find more space for substations. On a tremendous load increase is what you're saying. In other words, if we exceed the load density, for example, if a 13 KV station is good for about 20 MVA per square mile. If that load density exceeds that we simply have used up all our feeders. We have to have another substation. Our trend doesn't indicate this right now because quite frankly, there isn't enough available space out there to be put under the Mall of that size.

MAYOR BECKER: Thank you. Thank you very much.

MR. HENNE: Going on with this, if you see in that 35 KV area, we have the three stations being put in at the same time. The Harmony Hills site is in the middle, equi-distant, from the other two stations and, by the way, these three functions as a unit. They are a back-up to each other. If you lose any one of them, the other one contributes to it and keeps the load and keeps the people in power. We simply don't go dark. If you remove the Harmony Hills station and don't build it there, you're too far apart. There's no way you can feed from the UTSA back to the Tuttle Power Plant on Nacogdoches area. You've got to have all three. They're an integral unit. So there you have another constraint on the 35 KV, I mean on the Harmony Hills site.

As you also know, this is existing right in the middle of it, right under very convenient part for distributions lines. One other constraint I'd like to mention, as the area is one of the hottest areas and a heavily loaded area in the 1990's, we expected over 6,000 MVA load in the area, with 4200 of it being in this specific north central area, we have to feed this power from our generation station in our South Texas projects outside the area, through the north. It's generated in the south at our lakes. That is the only place you can have the lakes. You have to feed it through the outer loop up to the top to a site called Hill Country Estates or whatever you want to call it, Hill Country, the name has been finalized, and send it down into the area simply like a wheel. In other words, you have the spokes. You're going to have to bring it to the load. To do this, you have to build two transmission lines. The Hill Country site, Buddy, if you'll point to that, is located up there. This is in an outer loop, right in the entrance to Camp Bullis. It is under our transmission line, the outer loop transmission line, and from here we will have to build two transmission lines to feed the power that comes into the switching station down into the load areas. One load area is the medical center area. We'll have to build a double circuit, 138,000 volt line in that area to serve this area properly through the 1990's. The second one that has to be built is into the Harmony Hills site to serve that area properly. It will also be a double circuit area. In addition, it will also have to serve existing high lines. For example, the high line connecting our present Castle Hills and our Tuttle Power Plant which happens to run right down West Avenue in front of the proposed substation site. It has to tie into this so it can send the power into this and distribute over the other 138,000 volt lines. It's a matter of distribution. The reason we chose this point, these two lines are the only major transmission lines you will have to build to feed the power down into the area. We feel that this will take care of the situation. You will not...if you don't do it this way, you will have to scatter your transmission lines over the entire north central area. As far as the site is concerned.....

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MAYOR BECKER: Excuse me just one second, please sir. I'd like to make an announcement if I may. All you ladies and gentlemen who are here to make your presence known with respect to the closing of the St. Timothy Home Nutrition Center, we have a room downstairs that Mr. Madison will be happy to show you where you can sit down and relax so you won't have to stand forever because we apologize for taking up your time this morning here like we have but if you'd care to go downstairs and find a seat down there, we'll be happy to call you when we do deal with the St. Timothy's which will be the next item on the agenda. Any other that can find any space in this City Hall to sit down and make yourself comfortable, feel free to do so. Across the hall, in the City Council offices or anywhere else. We apologize for the fact that you have to stand but it's one of those things. We don't have all the space that we need. All right, sir, excuse me for interrupting.

MR. HENNE: Exhibit C is simply a line showing the transmission coming from Hill Country Estates down to the Harmony Hills site. I would like to point out the actual site that we are proposing to take in the Parliament Square Properties. They're rather bulky on it...can you all see this on the board? We have the sites as selected right in here, the Harmony Hills property showing alternative site selections that we have investigated. As you know, our first contact with Mr. Walker proposed a substation site near the intersection of Blanco and West Avenue. This was some 300 feet off the direct intersection--off of the corner. The reason this was selected we knew the impact of the corner was terrible, the impact off the corner is also not too good but this is similar to a substation we had built in the Walzem Road area. We'd worked with the developer out there and this has been very acceptable to him. One thing I'd like to point out any substation is, the transformers, the circuit breakers, the transmission towers you see are one thing but what is often overlooked is the fact that you have circuit feeders coming out of each station. Four for each transformer. We have four transformers. That means sixteen circuits that have to exit from this substation site. Sixteen circuits. It's very difficult to get these things out if you have just two exit points. The intersection contributes four points to us very easily on this. So the corner would have been an ideal exit. We could have bought right of way, in other words, to the Blanco Road area used the West Avenue area and our transmission easement. We could have gotten the sixteen circuits out very readily. When we talked to Mr. Walker, he said no, not all on this and possible down there. He didn't want it at all but he says not on the corner. So we proposed a site directly across from the Silver Sands Street. This site was basically a little bit different in size. We'd try to take the size down to bear minimum we need for four station units, 35 KV. But, again, basically it was a 275 X 320 foot substation site with the ensuing transmission easement behind it. This is the site which we first spoke to the Karren & Wilson people about after the property had been sold in October 1972. They did not approve of the site either on it. We told them that we had originally had one on the corner but we felt that the impact of the severance damage and so forth, damage to the remainder of the property warranted us moving down to the Silver Sands site. They at that time suggested we might move to the property line as shown by the orange or number 3 circle up there. This is on the northeast property line on the Karren-Wilson property, Parliament Square property. It is the same size 2.02 acres of substation, 1.73 for the transmission easement. It does not sever any of the property. It does go through the 20 acres that the Calloway people were interested in. There's no question about it. The location is right where they showed it.

Again, it was a move of about 300 feet down the line and this is where it becomes interesting. Nine of the feeder circuits that I spoke of a while ago are going to move toward the intersection of West Avenue and Blanco. This is four more than they're going to move in the direction to the northeast. So, in effect, you have a difference of four feeder circuits. A feeder circuit and the ensuing duct banks and these are varied...in other words, they leave the substation underground comes to what is called a riser pole, which is a transmission circuit from underground to overhead service. The pole with conduct running on the side, potheads and so forth. It is a transmission piece. The underground portion of this is well over a hundred dollars a foot simply for the first circuit. Each ensuing circuit can be classified until the bank is full at \$50 a foot. You're talking about several hundred dollars a foot each time you move this thing away. There was a difference of four feeder circuits in there a while ago, you can see that you're talking about moving it 300 feet, just 300 feet, this is quite a bit.

MAYOR BECKER: Let's just pursue that for a moment.

MR. HENNE: All right, sir.

MAYOR BECKER: How much if you if he moved it a thousand feet to a certain place down to where Mr. Wheatley and his group are suggesting it be moved, approximately how much does that cost?

MR. HENNE: A thousand feet, for one circuit with duct bank, Mr. Mayor is \$150 a foot. That will be \$150,000. That answer your question? It's an expensive proposition. First of all, the cable is a high voltage cable.

MAYOR BECKER: All right now, how many of those things do you have on there that you're talking about moving?

MR. HENNE: There's a difference of four. In other words, you do move closer to one area and you move further away from the other but there is a difference of four. There are nine going in one direction and five in the other direction.

MR. MORTON: So you're talking about four circuits?

MR. HENNE: Four circuit differential, if I may use that.

MR. MORTON: About \$600 a foot. Is that what you're saying? That totals \$600,000.

MR. HENNE: Mr. Morton, it's a little different on this, in other words, it all depends if the four circuits can be put in one bank and the bank comes to one point it would be roughly \$250.

MR. MORTON: Okay but in this \$250, you're talking about 25 thousand not 250. I think you missed a decimal place. You said a thousand feet would cost \$150,000.

MAYOR BECKER: I'm afraid he's right.

MR. HENNE: I am right I believe, Mr. Morton.

MAYOR BECKER: I multiplied the thing out here and unless I'm wrong, and that's the reason I did it, Cliff, so I could check on my own figures and it's \$150,000. I hate to say it but it's true.

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MR. HENNE: It's a very expensive proposition.

MR. MORTON: And the reason we're using four is because this is a differential between....

MR. HENNE: It's a differential, Mr. Morton. I could multiply it on the base of 9 to 5 but I'm actually reducing the difference in one direction and increasing it for the other with the differential of four. So I'd like to use the differential just for the sake of (inaudible). You can see the money involved in this moving of a thousand feet. If I had to move just one circuit, it's \$150,000. You can imagine if I had to move two of these, in other words, the cost could be possibly 5 to 7 hundred dollars a foot. These costs are legitimate costs. We're not padding these costs for you. The cable is expensive, very expensive, the duct bank work, the concrete, everything is expensive on it. So here we have, we were willing to move, in other words, for damages again on this property. We tried to work with the Karren-Wilson people on this and I think they will verify this that we did try. These are the three sites that we actually made real extensive study on. They came to us and asked us about flip-flopping this station across. Yes, we can flip-flop it on the Tomerlin property. We can put this in quite a few places it becomes a matter of dollars. If it's engineering we found then it boils down to just one of the problems--the money involved. If we have to move it too far, it gets real expensive in a hurry.

MAYOR BECKER: Of course, now when you are talking about moving too far--let me ask you. You may be getting too far from this place over here but you are getting closer to over here. Now, which is the most important direction that you'd be in in that area?

MR. HENNE: Toward the corner of West Avenue and Blanco.

MAYOR BECKER: Right at the intersection.

MR. HENNE: That would be a beautiful site. In fact, there's a grocery store across the way that we....

MAYOR BECKER: There's not enough money on earth for us to want that thing over there with us. We're not in the business of selling land for power stations. We make our money elsewhere. Anyway, you really figure that it's a total and complete imposition and almost an unworkable situation to move that substation a thousand feet from the location that you presently selected for it.

MR. HENNE: Technically, it could be moved that way without too many voltage problems. I cannot move it any direction a thousand feet, now I would have to limit my answer to this. I could not go up Blanco Road, for example. I'm at the upper limits of my 2½ miles right now to feed the area. The voltage constraint map that I showed you a while ago, I can't go much farther north. I could move a little bit in an arc but again, this would be an arc it couldn't be just out of the distance, in other words, I have to limit my length. The voltage constraint that I have to feed the load, where the load is are the two prime problems involved in locating a station. It has to be in this transmission line also because we are feeding the power down through our transmission line and splitting it off here again.

MAYOR BECKER: Well, let me ask you this then, and this doesn't have anything to do with electricity, and I don't want to place any burden on you because I don't know exactly what function, what role you play in all this business. I think we've been out there in that area now for some, I don't know, 8 or 10 years something, possibly 8. We thought then that it was going to be a good area and our locations not only in this city but in other cities where we feel the population is going to grow and all that sort of thing. I'm sure the Public Service Company engages in the same thing. Do you feel that in this particular instance that you've been current, you might say, or at least were you ahead of the hounds or were you operating after the fact?

MR. HENNE: Mr. Mayor, my wife says I have perfect hindsight, 20-20 vision.

MAYOR BECKER: I think that applies to both of us.

MR. HENNE: I think that applies to both of us. It's easy to look back and say yes and I will go along with the general premise. We are late on this station--if you consider the amount that we have to pay for it now--the \$234,000 the Commission has awarded for example. Had we looked at this 5 years prior to this time, bought it prior to that, we could have bought it for considerably less amount of money. There's no question about that. We'll go along with that. We initially started planning this thing in 1970 when we knew we'd need the station and a circle was put on the map. In 1972, when we started it, we could have been earlier on it, probably, but I won't say that we were extremely late on it, two years, in other words, we need the substation. We didn't need the substation in 1972, in February. We needed it in service in summer of 1974 for the load so we started approximately 2½ years ahead of time.

MAYOR BECKER: But you have to anticipate those sites in advance of the movement and the growth of the people, don't you?

MR. HENNE: Yes, sir, and we do this by tending and so forth, like the on-site inspection and so forth like this. We have embarked upon a new type of policy over there the past few years that we didn't have maybe back in 1970. We're trying to buy ahead, in other words, especially in areas where we're doing. This is something new. It hasn't been in operation that long but we are doing this and it's bad to say why we're doing it now, we didn't do it there but this is the case and I'd be remiss if I told you it wasn't. We are buying ahead now. We are looking further ahead. Our planning group has been buffed up, staffed up. We feel that we have a much better plan right now in the 20-year plan. It's flexible. It has to be because the impact of unknown circumstances like the UTSA coming on you. Something like this can upset the apple cart for us. But, yes sir, we are trying to improve this, hopefully. I'd hate to be here too often like this. But, anyway, we investigated these sites, getting back to them a minute, we also looked at a site toward the rear, in other words, up the transmission line on both of those cases. Right, this is poor property. It's in a hole but this doesn't present a problem. May I add this about the floodplain. We can build a substation most anyplace as long as it doesn't go 300 feet underwater, something like that, there's no problem we can fill in. It's just a matter of economics there for a small fill but still costs are negligible compared to running, for example now if you move that substation to the rear of the property 10 feeder circuits out for a distance of one thousand feet. Now, you've gone into a new ball park. That's

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\$700 a foot. Now we're talking about \$700,000. I don't think we can afford to move that substation to the rear. It doesn't take you long to get off of that site, which we did. You go down to the gravel pit, as we call it, the rifle range and it is a gravel pit by the way. It is in the flood stage, we concur with Dr. Espey on this one--the flood stage. We have the same ones from SARA, from the Corps of Engineers. The flood stage, the 100 year flood stage, comes right up to the level. There are two sites to be had. There are two things that really take us off of this site selection. The first thing is it's a thousand feet down the line, as he explained 900 to 1200 feet, depending on where you go. Multiply that by the \$200, \$250, \$150, whatever you want to, \$150 for one circuit is \$150,000. It doesn't take long to show you that you're going to eat up a lot of money there and that land down there may not be that much cheaper. I couldn't in anyway estimate that it'd be that much cheaper. The second thing to be involved in there is that you are triangulating like Mr. Austin said a while ago, some of that property over there and your severance damages are going to go up. These are two costs that have to be brought out in that site selection. We did look at them. The fact that the statement might have been made that we hadn't looked at alternate sites, we have looked at alternate sites. It may have involved only two people but there were six alternate sites.

MAYOR BECKER: Well, let me ask you a question here and I'm just trying to find out some answers. What's undesirable about a piece of property that's directly next door to the present site?

MR. HENNE: Only one thing, Mr. Mayor.

MAYOR BECKER: What's that?

MR. HENNE: We haven't got it either. We simply don't have it.

MAYOR BECKER: Well, by that statement though you mean to say really then that you don't have this one either.

MR. HENNE: We're trying to get one desperately right now.

MAYOR BECKER: But I mean that would not be an unworkable situation there, would it?

MR. HENNE: What you're saying is a very workable situation. Yes, it is. It's such a workable situation I can hardly see where that land is going to be worth any less over the barbed wire fence.

MAYOR BECKER: Well, I appreciate that when we're talking about the trees and all this and that, and apartments and the whole project.....

MR. HENNE: All right, another thing. The land next door is basically the same type of property. It's level, it has no trees. It's a field in the front. It does have something in the back. It has a rent piece of property in the back end of it. It has the same dip in the back and everything else. Basically, it's the same type of property as across the fence. No difference. It's owned by different owners is the only thing. We talked to him, as Mr. Wheatley told you. They had talked to him. He would not sell the land. We're willing to go there, by the way, and absorb the additional 300 feet to settle the case. The only trouble is he wouldn't sell to Mr. Wheatley and then we took it upon ourselves at Mr. Wheatley's request to go talk to Mr. Whealtey and then

we took it upon ourselves at Mr. Wheatley's request to go talk to Mr. Tomerlin. We talked to him and he said no, he's not interested in having a substation in front of his house. Just leave it where it is. So, he doesn't want the substation. I can guarantee you this. It would be condemnation with him also on it and as our legal people have told us before and my counsel, I don't know what our position would be if we moved off of one piece of property for strictly the reason that the man didn't want it other than technologically.

MAYOR BECKER: Hasn't experience generally shown that people like that that own property and have milk cows and things and used to farming and all that sort of thing, with all this growth and whatnot and demand occurs around them, it creates such a fantastic value on their land that a lot of them sell it and forget the dairy business and everything else.

MR. HENNE: This is true but I hunted deer on Mr. Walker's property about 10 years ago. So, it's the same thing.

MAYOR BECKER: Yes, I understand about that. Well, all right, sir.

MR. MORTON: Mr. Henne?

MR. HENNE: Yes, Mr. Morton.

MR. MORTON: Did you ever get to the stage in your negotiations where you made a firm offer to the adjacent land owner?

MR. HENNE: Yes, sir, we did. We made him the same offer we made the Karren-Wilson people.

MR. MORTON: What was that?

MR. HENNE: May I quote an approximate figure within the few thousand dollars--was a \$165,000, a round number.

MR. MORTON: \$165,000.

MR. HENNE: Yes, sir.

MR. MORTON: And he turned it down?

MR. HENNE: He turned it down flat. He didn't even want to consider it. In fact, he didn't want to consider it at any cost. We made him the same offer we made Karren-Wilson and this was based, of course, on the appraised value. We had two appraisers that came in and appraised the land for us. This is above their appraised value.

MR. MORTON: This is above their appraised value?

MR. HENNE: Yes, sir, it is. Their appraised value was about \$147,000. The rise might be different but the total about the same. I really don't have much more. The questions that you asked did pertain to the airport as far as the location is concerned. We do investigate this, of course, we're controlled by the City ordinances on this one. There are certain rules and regulations of imaginary surfaces. They are expressly explained in the code over there. They're very determinable and we investigate this. We are under the hazard area as it is called. Our towers will protrude in this area. We do have to get the permit, of course. In other words, we do have to notify the FAA which

is a normal procedure according to code also but if there should be a problem we have towers right now in front of this station site. I believe they reach 86 feet. These towers proposed here are approximately 90 feet. As far as being away from the airport, as far as the touchdown at runway, it is about 6000 feet. I believe someone on the Council asked that the last time. It is underneath the surface of the hazard cone.

MR. MORTON: So there is no problem with the transmission line?

MR. HENNE: No, we expect no trouble on that. It has been investigated. I think you will find all of the other answers in this. We have submitted with this our chronological report of the negotiations we had on the property with all parties. It is very coarse and there are some typographical errors. I hope you will accept it as it is. It is right out of our file.

MR. MORTON: Mr. Henne, I would like to ask you a couple of more questions. It was stated earlier that this substation would serve approximately 50 square miles. Do you agree with that statement?

MR. HENNE: Mr. Morton, I agree to that but may I qualify please, sir?

MR. MORTON: Okay.

MR. HENNE: In the second map we had here showing the irregular figure we had, a 35 KV station can only reach about 8 miles, normally 8 miles, in the diameter, in other words. Now this means the voltage will drop off after you get 8 miles. Looking at a circle with a diameter of 8 miles will give you a square mile area of about 50 square miles. This is ultimate. Now, this is light load density. We're talking about density based from 6 to 8. For example, the area you see up there where the Roaring 20's--that area up there. There's nothing there right now, but that doesn't mean that next there won't be. For example, the Zachary Properties are coming right across next to the Zoehler Lane. They're coming right next to that. The Shawn Properties, of course, all that, they're all being developed. So the load will come up. The ultimate load density of 20 MVA per square miles will limit the circuit of 2.6 miles, in other words, in a radius of five miles. You multiply that out, you get about 18 or 20 square miles. So my answer to you is yes, it would initially serve 50 square miles but you have to pull in. And if you'll look at that first map, Buddy, tear off that one page, you'll see a circle purposed right about Harmony Hills. Let me show this. This is where our long range planning comes in again. This is not hitting this way. We're trying to do this as best as we can and we feel we've done a good job on it. If you'll see the Harmony Hills site again, Buddy, point to Harmony Hills please, right up in the transmission lines going towards the Hill Country estate, you'll see Cadillac. See the circle Cadillac right there. This is on Cadillac Drive right off the Blanco Road are a where bends past Roaring 20's. This station will have to be put in because as that big area--we spoke about a while ago, the 50 square mile, in other words, if this pulls in the load, we'll have to pull in and we'll have to put in the new substation in as the Mayor asked a while ago, what happens when you get a load increase? So this is proposed in this line at this time. We know we're going to have to have it. Our trends indicate we need it around the 1985 something like this. We will buy this site a lot sooner than this one. hopefully.

MAYOR BECKER: Like today maybe.

MR. HENNE: If I get out of here I might start this afternoon.

MR. MORTON: On that question, as you know from our meeting last Monday afternoon, what criteria are we using from the time that you attempt to have a site acquired versus the time you want to have a substation operation. You say that you changed your criteria completely. What is the criteria that you're using today?

MR. HENNE: Mr. Morton, we're working very closely towards a five-year plan. We'd like to have everything bought for example, five years in advance right now.

MR. MORTON: Okay, in an advance of what? Start of construction?

MR. HENNE: On line date.

MR. MORTON: Okay, how many do you have bought that way today that falls within your criteria?

MR. HENNE: I've not counted these up but I can answer you like this, less than a half dozen.

MR. MORTON: Less than a half dozen. In other words, this is something that you want to do but you haven't done.

MR. HENNE: This is something that we started two years ago. We've used up what we bought ahead of time. For example, I have just closed negotiations with one of them right off West Avenue further down by Nausau. It's called our Buckeye Station. Boy, this is in the middle of population but that's the last part of open property. We bought this last week. So we closed negotiations for that. That's a 1980 station but we saw that this was closing up on us when they built the apartment complex next to it, we figured we'd better get in right quick. This was negotiated. There was no court action pending on this. We have obtained settlement on this. And this is what we intend to do. We have used up stuff that we've bought in the past. Right now, I have got less than a half of a dozen to go.

MR. MORTON: How long do you think it will be in the future before you will have this minimum criteria? At least having the land acquired five years prior to starting construction?

MR. HENNING: We can make great inroads by next year, within the next fiscal year, I think. We have money in the budget and so forth to go ahead on this. I would say we catch up with the five-year plan, grouping of five, within the next year. We certainly will try.

MAYOR BECKER: You probably wouldn't have a...if you bought all the requirements for the next 15 or 20 years...you probably wouldn't have but \$150,000 to \$200,000 tied up in land. That's because they're small tracts, aren't they? They're small parcels for the substation, I'm speaking of there.

MR. MORTON: This is the real crime that I see being perpetrated here, is to go out and pay \$70,000 plus an acre for a piece of land, granted you are only buying--three acres sold less than two years ago for less than \$6,000. I feel that's.....

MAYOR BECKER: You know, prior to that, you could probably have gotten it for \$500 or \$1200 or something like that. On a condemnation basis when it was just vacant land over there.....

MR. MORTON: This is the reason that I'm trying to get a commitment out of the City Public Service on getting these sites bought well in advance to where we're not paying \$70,000 an acre for a substation.

MR. HENNE: We definitely agree with you. This policy has changed. We are working on it and, like I say, we recognized it prior to this problem here by the way.

MAYOR BECKER: Well, the tails wagging the dog, you know, if you got an investment there that's worth however many hundreds millions of dollars that the Public Service says it's worth not to be carrying an inventory of a couple of hundred thousand dollars at the most worth of land for substations. To me it seems to be pennywise and pound foolish.

MR. MORTON: Well, I think it is and the thing I'm really concerned about is, you see, an error in planning that is so basic an element of your needs as this. I just wonder how many other areas....that also some policies.....that don't need to be changed on.

MR. HENNE: Mr. Morton, we're not infallible. We'll guarantee you that right quickly.

MR. MORTON: No, no sir, I'm just...it concerns me very deeply that you are just now in the process of acquiring this when I think it would be readily visible to anyone in the real estate business, as you people are, 10 years ago that you were going to need it and if the area that you can use is so limited that you can almost pinpoint it, why wasn't it done ten years ago? It's absolutely astounding.

MR. HENNE: Mr. Morton, we concurred with you Monday and we still concur with you today. We hope we have rectified the situation. We feel we have. We will invest this money and like you said, it will be a very prudent investment for us to buy ahead of time less impact than everything else. Again, we hope to do it, that's all I can say. Our intentions are honorable right now. We intend to do it.

MR. MORTON: There wasn't any consistency between the statement that Mr. Austin made and one that I believe another member of your staff made regarding a policy of following creeks and other depressions in the land to try to minimize the environmental impact of your transmission lines. Mr. Austin says that it would be against the public policy to dam the creek. Is that correct, sir?

MR. AUSTIN: I said it would be bad public policy.

MR. MORTON: On the other hand, someone on your level at the City Public Service said this was the policy that you tried to do it. Would you correct the inconsistency?

MR. HENNE: I think I understand the question of Mr. Morton. Let me see if I can answer.

MR. MORTON: Do you try to follow creeks with transmission lines?

MR. HENNE: Yes sir, wherever possible, we try to minimize the impact. I tell you what. I think it's proof right in here that we are in a creek. By the way, we are not completely cold to the environmental problem. Definitely we consider that. When we select the transmission and the substation site, you have your load---requirements, of course, that is the main thing that you want to serve. The people have to have the power, but we do look at the environmental impact on this thing. The impact on this whole surrounding service. In other words, you've got to find out what's going on. This is an area right in here for example, there is a planned sewer easement coming right down the side of that creek. We're following the sewer easements as far as we can. This is good use of the land. We also tried our substations and transmission lines, for example, the use of the land. In other words, for it to lend itself. For example, in the proposed Zachry Properties, we're dealing with them right now to make use of the green way on transmission line on the bottom. We're using creek bottom that he's going to fill in that, we're going to fill on top of it. There's lots of ways we can do this. We are cognizant of the environmental impact. We try to minimize the effect of any transmission line. Some people don't like them--about 300% of them. Not very well accepted but we do try to put them where they'll be the least obstructive.

MR. MORTON: One other question. If we can direct our attention to the photograph that was introduced by property owners wouldn't the location that is colored yellow have less of a visual impact than any other locations that we're looking at? In other words, we're in a tree area, next to the creek, there are trees behind you, trees on one side of you where visibility...you still have it from the streets but you only have one other side exposed, so from standpoint of visual pollution if that's the right word, it would seem to me that that would be the most desirable of all sites that could be considered.

MR. HENNE: On the basis, solely on the basis of visual pollution, yes sir, I agree with you. I really have nothing else, Mr. Mayor. I would like to point out that we do concur with the opinion expressed here. We should be ahead of time. We are trying to remedy that. I would like to express one other point that was brought out. We're not trying to hoodwink you or snow you all over any of this information but we feel here is honest engineering information on it. Our endeavors have been honest. There is nothing hidden or anything on this.

MAYOR BECKER: We accept that, Mr. Henne, we accept that. We believe that.

MR. HENNE: Anytime you have any questions, we'll be happy to answer any questions for you, anything pertaining to any subject. In the future we hope that we bring you up to date so we won't have to come up with this again.

MAYOR BECKER: Thank you, very much.

MR. HENNE: Thank you.

MAYOR BECKER: Thank you. We appreciate your honesty, candidness. All right, Mr. Austin, thank you very much. Mr. Wheatley, do you have any further comments to make?

MR. WHEATLEY: I'd also like to tell the Council also I think were very candid remarks for Mr. Henne as to the situation. The unique problem that's facing this Council, I think, is the ultimate question that what would be best for the citizens in this situation in order to get the electrical power to them that they need and we have never disputed that, but also not to make the landowners suffer as a result of the fact of planning by the Board. What we feel to be the unique problems associated with the adjoining tract. If this substation goes on our property where it's presently planned, it's going to ruin it for that section for the purposes which it is intended. All we're asking this Council to do and I would like to--so that you're not confused based on what Mr. Austin said--we're not asking you in any sense to take any vote today on the adjoining tract. I don't think that would be appropriate and I made that remark to you when I originally was here that that landowner should be entitled to notice and to be heard. What we are trying to show you though is that we do not feel that there is sufficient justification when you consider all factors that our site is the only site that should be taken or selected for this property. There's one very serious problem involved though with what Mr. Austin asked you to do from a legal standpoint and Councilman Beckmann hit on it. If you let this ordinance stand that you passed, it's going to kill us in the courtroom. Your attorney will tell you, Mr. Reeder, that that ordinance that you passed legally is presumed to be valid and you are presumed to have known everything that was involved in it. There is no way in God's green earth that we can overturn that ordinance in court, based on the hearing that you've had and we're going to be confronted with it. If the Council does not rescind that ordinance as to the part of this land then we're not going to get any fair hearing in court because that ordinance will be waved around and there's no way that we can really attack that ordinance. Mr. Austin, I think, also in another serious legal implication of what the Board asked you to do by leaving this alone is that Judge Ball set this case for trial on March 6. May I tell you that he also denied the City Public Service Board's request to modify the injunction and let them go ahead and proceed with the taking of this land and he has maintained in effect the injunction which is against not only this City but the City Public Service Board until this matter can be resolved.

Thirdly, if you allow the ordinance to stay on the books of the City, you have in effect, allowed the City Public Service Board to do an end-run around what we consider to be the implications of the Burch case, because you will have, by validating every decision they made thus far, permitted the condemnation to proceed so that we would not be able to overcome the implications of that ordinance. This is the thing about it that disturbs me more than anything else. If a landowner comes in there, develops his property, has plans for it, he gets it plat, he gets a zone, he gets a contract, \$900,000 contract and we lose it. I see no reason why the landowners ought to have to take the rap if the City Public Service Board, through advance planning or advance land acquisition has not been on the ball to foresee the electrical demands out there. If you don't take any action by rescinding that part of the ordinances to us, then you've got to rubberstamp that action. I don't deny the fact you've got a problem. What are we going to do with these imminent domain cases on us. I think what this case highlights, and what I think is essential to it is that the Council at this point, stand up and say, we're not going to let it happen here and we're all going to get together and we're not going to let it happen any more with the advanced planning that we want the City Public Service Board to do. The theory that you can just let this particular project slip through and not do anything about it, it's going to be an eternal monument out there to my client, of bad planning

which we've had to pay the price for and we would ask the Council as I did a while ago, your Honor, to vote today and pass a resolution instructing the City Attorney to prepare a revoking ordinance as to that part of your prior ordinance and also in conjunction with that, issue whatever notices would be proper to the adjoining landowner who does have a right to be heard and should be heard and make a decision on that basis.

MAYOR BECKER: One of the most salient parts of this whole thing in my own judgement is simply this, obviously, your client doesn't want to sell any land regardless of what price. In our case, across the street, diagonally across the street, we're not interested in selling any of our land. We don't have any to sell it if we did have it. We're not interested in selling. We're not engaged in that business. That's not our livelihood, selling, we're not...we don't buy land to sell it for substations. We're not interested in selling any land and then most of the rest of the area around there has plans for being occupied, is already occupied by apartments and things. It would seem to me that actually Mr. Tomerlin, or whatever the gentleman's name is, is really being kind of dealt out of a great opportunity if I am any judge of it. I believe, and I don't know his status at all, but I think if I had some milk cows and a rifle range and somebody could come along and almost instantaneously make me a well-to-do to say the least, you know, with my security for old age and all that sort of thing in mind and almost, and Lord, I'd like to have that taken care of now. I've been working on it for years, I still haven't succeeded; but in this case, it might be the case that it could just absolutely solve his problems forever. I think he's being slighted by not having an opportunity to manifest his own desires and we can't give him this opportunity as long as the ordinance stands as it is.

MR. WHEATLEY: That's right and we never intended the scope of this hearing to be a decision on whether to take Mr. Tomerlin's land. That would be most inappropriate. We want to present to you the facts that would show that our land is not the land that should be taken. But I do agree with what your Honor said.

MRS. COCKRELL: Mr. Mayor, I would like to ask Mr. Wheatley this question. You have advised us that if we fail to rescind this ordinance, it would put your client in a disadvantageous position. Let me ask this, if we do rescind the ordinance, would it not then completely undercut the position of the City Public Service Board in that you would then rely on the Burch case to state that they had a completely untenable position in pursuing their case any further.

MR. WHEATLEY: What I would hope to do is this. I would hope that this matter, and I think Judge Ball and Mr. Austin and I---there's a reason for the date way back into March 6, is that this matter would be resolved by if it's a Council judgement to commence proceedings on Mr. Tomerlin's land prior to that time so the issue would be resolved.

MRS. COCKRELL: The decision that will be made by this Council whether to rescind the ordinance or to leave it standing in effect is going to decide the law case, would you say that, Mr. Wheatley?

MR. WHEATLEY: It's certainly going to affect one side or the other, yes, there's no doubt about that. I agree with you.

MAYOR BECKER: That was the thing, Lila, that many of us were apprehensive about as you recall, when we passed that ratification because we were doing all these things pushing the baskets back (inaudible) and

we didn't have the specifics on any of it. I'm not polling the Council for that or anything else. It's just the way it was.

MR. WHEATLEY: May I say it's not an incurable situation. If the answer to your question is yes but the Council could certainly put any appropriate wording you felt desirable in any kind of action that you took.

MRS. COCKRELL: Mr. Mayor, I would like to speak to this issue and what I think the role of the Council should be. The Burch case was, of course, quite a shock to everyone. I'm sure all public utility boards and their appropriate City Councils, I don't know how many of them there are through the state but insofar as what the role of the City Council should be in view of the circumstances, I think that's what we need to address ourselves now. I may be in some disagreement with other members of the Council in how we view the procedure. My view of what is appropriate for this Council to do is that for any new taking that would come from now on that certainly we would have to review them in detail at least project by project. It's not individual property themselves but certainly to review by projects. If we at this time do not ratify items that are in the middle of judicial proceedings, we are then, I think, taking a position which I regard as not in the public interest. I think that when properties have been in litigation, when there have been judicial proceedings, when there are court decisions on the matter, when there are appeals being made, I think to go and treat this case as if it were a case of original jurisdiction again is not in the public interest.

Now, in listening to your case, let me say that if I were hearing this as a matter of original jurisdiction, I might find many of your arguments very persuasive and let me say that I regretted the fact that the attorneys of the City Public Service Board made any reference that might be considered a personal reference to your client whom I regard very highly. If I were going to vote simply on the basis of friendship, let me say that my friendship for some of your clients would make my vote go that way. So I think the fact that they were mentioned to be influential in this community or anything else, is certainly beside the point. My vote would have to be to leave the decision that this Council made stand because I think it means that we have accepted what has been done and the fact that we have accepted what has been done and the fact that something is in litigation and that it must be settled by the court. I simply think we cannot set aside proceedings of two and three years and at this point say that this is a brand new ball game simply because that in the middle of the lawsuit the Burch case intervened. And so, while I feel that you have made many very valid points that would be worth considering if we were starting the ball game, I cannot consider them because of my position on the matter.

MR. WHEATLEY: Well, although this may not change your mind, may I point out one thing to you that you said from a legal standpoint. When you have concern about the Council becoming involved at this point the special commissioners who heard this case do not, under law, have any jurisdiction to even hear the question of the wisdom of the original taking. We tried to raise that issue before the Commissioners and Mr. Austin rightfully objected and we were not permitted by law to try that issue before the Commissioners. All they decide is how much land is going to be taken and how much it's worth, you see. So when you talk about invoking your Council now in decisions that have already been made, that decision has never been by virtue of the court permitted to be made and that's the importance of getting the review at this level. That's why I

would hope that you would not feel the concern that you do about the Council's action in connection with this matter. We just did not have a chance to (inaudible). We couldn't.

MRS. COCKRELL: I understand your position.

MR. LACY: Seagal, what I was going to ask you is simply this, in other words, you urge that we rescind it today and....

MR. WHEATLEY: No, no, I ask that you pass a resolution today expressing your approval and directing your City Council to prepare whatever ordinance would be necessary for you to vote on at the proper time to rescind it. In other words, to rescind an ordinance, you've got to put up your notice but I do think the Council could certainly express judgement today to instruct the City Attorney.....

MR. LACY: If it remained, don't we soon reach a point of more litigation passed by...don't we reach a point where we're in a position where we can't very well do it because you're (inaudible)....certain things relying upon that and then we come along and rescind it which would be sort of jeopardizing the situation.

MR. WHEATLEY: I don't....I'm not sure I understand...

MR. LACY: Well, if we go ahead and we don't do that, up to some point you're going to have further litigation.

MR. WHEATLEY: On this tract....

MR. LACY: Yeah, because it's already set for March. If we waited until after it occurred and then try to go back and change the thing there would be certain interests that would change the picture. It would be too late.

MR. WHEATLEY: Well, if I may make a suggestion, which I think would cure that and to save you several steps; Step No. 1, devote your sentiment on your instructions to the City Attorney, instruct the City Attorney to have post notices in connection with the Tomerlin tract and hear Mr. Tomerlin just as soon as you could. Now, that could certainly be done before March 6 and that's what I was indicating to Mrs. Cockrell a while ago. You've got plenty of time before March 6 to make a final decision which would resolve it.

MR. LACY: Well, we should at least try.....

MR. MORTON: I move that we instruct the City Attorney to prepare an ordinance that would delete this particular action from the ordinance that we passed two weeks ago.

MR. MENDOZA: I'll second that motion, Mr. Mayor.

MAYOR BECKER: All right. Any further discussion? You want to call the roll on this one, Jake?

MRS. COCKRELL: No.

DR. SAN MARTIN: No.

MAYOR BECKER: Yes.

REV. BLACK: No.

MR. LACY: Yes.

MR. MORTON: Yes.

MR. BECKMANN: Yes.

MR. PADILLA: Absent.

MR. MENDOZA: Yes.

Motion prevailed.

MAYOR BECKER: Okay, gentlemen, you've heard the results of the vote and thank you very much for your time this morning. We appreciate your presentations. I don't think there's anything else to be said on this matter any further.

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