



# Community Development

*"Dedicated to Excellence in Public Service"*

Adrian P. Freund, FAICP, Community Development Director  
Nathan Edwards, Legal Counsel



## Washoe County Board of Adjustment

Richard "R.J." Cieri, Chair  
Philip J. Horan, Vice Chair

Mary S. Harcinske  
Robert F. Wideman  
Kim Toulouse

## WASHOE COUNTY BOARD OF ADJUSTMENT

### MINUTES

June 3, 2010

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, June 3, 2010 at 1:30 p.m., in the Washoe County District Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

### DETERMINATION OF QUORUM

Chair Cieri called the meeting to order at 1:31 p.m. The following members and staff were present:

Members present: Richard "R.J." Cieri, Chair  
Robert Wideman  
Mary S. Harcinske  
Philip Horan

Members absent: Kim Toulouse

Staff present: Adrian Freund, Director, Community Development  
Kimberly H. Robinson, Planning Manager, Community Development  
Roger Pelham, Senior Planner, Community Development  
Sandra Monsalvè, Senior Planner, Community Development  
Eva Krause, Planner, Community Development  
Don Morehouse, Planner, Community Development  
Trevor Lloyd, Senior Planner, Community Development  
Nathan Edwards, Deputy District Attorney, District Attorney's Office  
Dawn Spinola, Recording Secretary, Community Development  
Kimble Corbridge, Public Works

### PLEDGE OF ALLEGIANCE

Member Horan led the pledge to the flag.

### APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Horan moved to approve the agenda of June 3, 2010. The motion, seconded by Member Harcinske, passed by a vote of four to zero (Member Toulouse absent).

## **APPEAL PROCEDURE**

Ms. Robinson recited the appeal procedure for items heard before the Board of Adjustment.

## **APPROVAL OF MINUTES**

Member Harcinske moved to approve the minutes of April 1, 2010. The motion was seconded by Member Wideman and passed unanimously.

## **PUBLIC COMMENT**

None

## **CHAIR AND BOARD ITEMS**

None

## **DIRECTOR'S ITEMS**

Ms. Robinson informed the Members that elections for Chair and Vice-Chair would be held at the August meeting.

## **CONSENT ITEMS**

None

Deputy District Attorney (DDA) Edwards reminded the Members that, under each of the Project Review items, at the time the item is called any member has a pecuniary interest in the matter, a commitment in a private capacity to the interests of others or if they have received a gift or loan in connection with the matter they have an obligation to disclose that. If they do make a disclosure, they need to state on the record whether or not their independence of judgment would be materially altered by any of those conflicts and if so, they will need to recuse themselves and not participate in consideration of that matter. If not, they need to state that it is their decision to participate nonetheless and if they have any questions when those disclosures are made, he was there to help with that analysis.

## **PROJECT REVIEW ITEMS**

### **AGENDA ITEM 1**

**PUBLIC HEARING:** Special Use Permit Case No. SB10-002 - (Hiram Palomo) (Continued from April 1, 2010) – To request approval for a block wall built in a Critical Stream Zone as authorized in Section 110.418 of the Washoe County Development Code. The project is located at 120 Andrew Lane on the southwest corner of the intersection of Andrew Lane and US 395. The ±1.2-acre parcel is designated Low Density Suburban (LDS) in the South Valleys Area Plan, and is situated in a portion of Section 5, T17, R20, MDM, Washoe County, Nevada. The property is located in the Galena Steamboat Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN: 017-430-17)

Ms. Krause stated the staff report dated March 22, 2010 and originally presented at the April 1, 2010 meeting had not changed. She reiterated the questions at the meeting had been whether or not the wall would survive a flood of the same or greater severity as the 1997 flood or a similar event and what would the effect be to the stream flow if the wall were to collapse.

Chair Cieri stated to Mr. Corbridge that his concern was the wall could be undermined and wash down, affecting the bridge downstream. Mr. Corbridge replied the applicant's representative was present and had done a study which had not been presented to the Engineering Department for analysis.

Applicant Hiram Palomo explained he had hired Civil Engineer Ron Anderson to do the study as requested by the Board. Mr. Anderson indicated there was no net impact on the 100-year flood area. The slight impact of the wall would be mitigated when the owner removes existing debris along the creek as agreed.

Mr. Anderson went on to explain that during a flood, the highest velocity is centered in the main channel and decreases as the water gets further from that channel. He stated that even if the wall were undercut and fell over, he would not expect an impact on the 100-year flood cross section.

Chair Cieri verified with Mr. Anderson the wall was constructed with rebar and, were it to collapse, it would all go over in one piece.

Chair Cieri opened the public hearing.

Mr. Palomo stated he was satisfied with the conditions and confirmed he would remove the debris.

Chair Cieri closed the public hearing.

Member Wideman moved to approve conditionally Special Use Permit Case No. SB10-002. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. That the proposed use does not impact or restrict the flow of Steamboat Creek, and the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Forest Area Plan;
2. Improvements. The wall as built does not create a need for utilities, roadway improvements, sanitation, water supply, drainage, or other necessary facilities; the proposed improvements are properly related to existing and proposed roadways; and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable to support a wall, and is suitable for the intensity of such a development;

4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or, detrimental to the character of the surrounding area;
5. Effect on a Military Installation. There are no military installations within 3,000 feet of the site, so issuance of the permit will not have a detrimental effect on the location, purpose or mission of a military installation; and,
6. In addition to the five standard findings, development in the Critical Stream Zone buffer area require the applicant demonstrates that the following special review considerations are addressed (*responses shown in italics are the applicant responses [Exhibit E ]*):
  - (a) Conservation of topsoil (*top soil was retained and used on site*);
  - (b) Protection of surface water quality (*no soil or equipment was allowed in stream*);
  - (c) Conservation of natural vegetation, wildlife habitats and fisheries (*creek bed and embankments were not altered, no vegetation was removed*);
  - (d) Control of erosion (*site was not left open for extended periods and disturbed area was reseeded at completion of wall*);
  - (e) Control of drainage and sedimentation (*no changes were made to stream or embankment*);
  - (f) Provision for restoration of the project site to predevelopment conditions (*vegetation was not disturbed, no restoration needed*);
  - (g) Provision of a bonding program to secure performance of requirements imposed (*project is complete, will bond if necessary*); and
  - (h) Preservation of the hydrologic resources, character of the area and other conditions as necessary (*wall is parallel to stream and does not affect hydrologic resources*).

## AGENDA ITEM 2

PUBLIC HEARING: Administrative Permit Case No. AP10-002 (Mike Cummings) –To allow the operation of an Automotive Repair business in accordance with Washoe County Code 110.302.05.2. There will be no new construction associated with this request, only existing facilities will be used. The project is located at 9205 Lemmon Drive, approximately 350 feet south of the intersection of Limber Pine Drive and Lemmon Drive. The parcel is 0.45 acres and is designated General Commercial (GC) in the North Valleys Plan Area. The property is within the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5 (APN: 080-191-05) and is within Section 34, T21N, R19E, MDM, Washoe County, Nevada.

Chair Cieri opened the public hearing.

Ms. Krause reviewed the staff report dated June 3, 2010. She explained that although the property had been used as an automotive repair shop in the past, more than a year had elapsed since it was used for that purpose, so it required the new Administrative Permit. She outlined the approved landscaping, pavement striping and screening plan. District Health and Water Resources had addressed the tire storage and oil storage and provided conditions. She pointed out the North Valleys Citizen Advisory Board (CAB) had recommended approval of the project and the zoning did allow it.

Chair Cieri asked if the ingress and egress was on Lemmon Drive. Ms. Krause explained that was one and there was a side entrance off Deli Street, which is an easement, not a legal street. Chair Cieri asked who maintained Deli Street and Ms. Krause replied she did not know, but confirmed the main access was off Lemmon Drive.

Applicant Mike Cummings stated he had operated the same type of business in the same location for three years in the past and was familiar with the regulations. He noted all tires would be stored inside the building.

Chair Cieri closed the public hearing.

Member Harcinske moved to approve conditionally Administrative Permit Case No. AP10-002. The motion was seconded by Member Horan and passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. The proposed use is consistent with the policies, action programs, standards and maps of the Comprehensive Plan and the North Valley's area plan;
2. Improvements. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities exist for the proposed location, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. The site is physically suitable for the type and intensity of the proposed use;
4. Issuance Not Detrimental. Issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Effect on a Military Installation. There are no military installations within 3000 feet of the proposed Automotive Repair shop. The issuance of the permit will not be detrimental to the location, purpose and mission of the military installation.

### **AGENDA ITEM 3**

**PUBLIC HEARING:** Administrative Permit Case No. AP10-004 (N.E.A.T.) – To establish a horse boarding operation for an equine assisted therapy program. The operators will board up to 6 horses and conduct activities that may include grooming, ground work and supervised

riding for individual and groups with the potential for limited special events. There will be no new construction associated with this request; only existing facilities will be used. The project is located at 300 Davis Lane on the south side of Davis Lane between Lakeside Drive and Del Monte Lane. The parcel size is 8.37 acres, is designated High Density Rural (HDR) in the Southwest Truckee Meadows Area Plan, and is within Section 1, T18N, R19E, MDM, Washoe County, Nevada. The property is within the Southwest Truckee Meadows Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN: 040-572-11)

Chair Cieri opened the public hearing.

Mr. Lloyd reviewed the staff report dated May 21, 2010. He pointed out the property had formerly been used as a breeding operation and had housed significantly more horses than the six proposed by the applicant.

Member Horan asked if the prior operation was commercial. Mr. Lloyd replied research did not show any commercial horse boarding activity.

Applicant Bambi Spahr described the project in more detail. She noted a business license had been issued in the past for a home office on the property. She opined the proposed use was very low-impact and would not disturb the surrounding homeowners.

Member Harcinske requested examples of what Ms. Spahr had described as an event. Ms. Spahr replied one possibility would be an open house for up to 50 people.

Member Horan verified with Ms. Spahr that they had a commercial lease with the property owners and were not residents.

Ruth Kelly stated this was a commercial venture and the area was not suited for it. She noted it was against the restrictions. Member Horan asked her to clarify and she explained they were deed restrictions. Nola Pirruccello wished the applicants well but agreed the Covenants, Conditions and Restrictions (CC&Rs) precluded commercial enterprise. She expressed concern about equine activities on the narrow, busy road while accessing Bartley Ranch.

Chair Cieri closed the public hearing.

Mr. Lloyd clarified the property is zoned High Density Rural (HDR) zoning, and equestrian facilities are allowed with the approval of an Administrative Permit. He stated the type of property and the use were not unique to the area.

Member Harcinske pointed out that if there had been breeding operations on the property there had to have been some component of commercial to them. She opined equine-related commercial businesses had existed on the property in one form or another, so she would support the application.

Member Wideman pointed out it was not within the purview of the Board to enforce CC&Rs, so whether they were there or not had no bearing on the decision. He also supported the application.

Member Wideman moved to approve conditionally Administrative Permit Case No. AP10-004 (N.E.A.T.). The motion was seconded by Member Horan and passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Southwest Truckee Meadows Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for type of use, and for the intensity of such a use;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

Chair Cieri stated the hearing was open.

#### **AGENDA ITEM 4**

**PUBLIC HEARING:** Special Use Permit Case No. SB10-007 (STMGID Well House #12) – To construct a production well, well house, pipeline and associated appurtenances as authorized in Section 110.810 of the Washoe County Development Code. The project site is located at the western end of Rock Haven Drive. The ±33.75-acre parcel is designated Low Density Suburban (LDS) in the Southwest Truckee Meadows Area Plan, and are situated in a portion of Section 24, T18N, R19E, MDM, Washoe County, Nevada. The property is located in the Southwest Truckee Meadows Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APNs: 152-020-91)

Chair Cieri opened the public hearing.

Member Harcinske disclosed that up until April she had been the Director of the Golden Valley Property Owner's Association. They have a recharge program and have leased water from South Truckee Meadows General Improvement District (STMGID). She stated she had received no economic gain and had no personal interest, so did not feel it would affect her decision making.

DDA Edwards asked Member Harcinske to clarify her when she left the position and her length of service. He asked if she was or anticipated seeking reappointment to the position and she said she was not. She verified she owned property in that area and clarified there were wells that served the area but the water for recharge came from STMGID. DDA Edwards asked

if the well being discussed was to be a part of that recharge program and Member Harcinske replied she did not know.

DDA Edwards opined there was a possibility her involvement could be construed as having a commitment in a private capacity to the interests of others. He went on to explain the standard was whether or not a reasonable person's independence of judgment would be materially affected by her relationship and past work with that homeowner's association and STMGID. The decision was to be made by the member of the public body. He offered to provide his opinion regarding whether or not Member Harcinske should recuse herself and she requested that he did. His recommendation was for her to recuse herself.

Member Harcinske left the room for the remainder of the hearing of the item.

Mr. Lloyd reviewed the staff report dated May 20, 2010. He noted that the property would be split so the well would be on a separate 14,000-square-foot parcel. The neighboring property owner had requested the well be relocated 30 feet farther to the north and the applicant had agreed. A request for more screening would be considered when the project is heard by the Design Review Committee, who will also discuss colors and materials that ensure compatibility with the surrounding architecture.

Mr. Lloyd noted that at the CAB meeting concerns had been raised regarding impacts to well levels and noise. He had spoken with the applicant who assured him that the hum from the pump was very negligible from even a short distance away.

Member Horan asked Mr. Lloyd if the well level concern had been addressed. Mr. Lloyd replied he knew there were no domestic wells near the site and his understanding was that this was a peak source well site, offering redundancy through the system.

Dwayne Smith, Acting Senior Licensed Engineer with the Department of Water Resources, representing STMGID, reiterated the well was backup for periods of peak demand and helped to provide alternative strategies for system management. He acknowledged there was noise emanating from the wells but that they were considerate of that in residential areas and were fully compliant with Washoe County sound restrictions.

Chair Cieri asked if there were any wells that would be threatened. Mr. Smith replied the nearest one was the Department of Water Resources Thomas Creek well, approximately 1,650 feet to the south. The nearest domestic well was approximately 3,500 feet to the north and the geohydrologist working on the project had determined the impact to that well would be negligible. The primary impact would be to the municipal wells.

Chair Cieri closed the public hearing.

Member Horan moved to approve conditionally Special Use Permit Case No. SB10-007. The motion was seconded by Member Wideman and passed by a vote of three to zero (Member Toulouse absent, Member Harcinske recused).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Southwest

Truckee Meadows Area Plan;

2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a well house and associated equipment, and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

At 2:37, Chair Cieri called a 10-minute break.

Member Harcinske returned to the room and the meeting resumed at 2:46.

#### **AGENDA ITEM 5**

**PUBLIC HEARING:** Variance Case No. VA10-003 (Barranger Residence) – To reduce the side yard setback from 15 feet to 11 feet as authorized in Section 110.804 of the Washoe County Development Code. The project site is located at 7420 Pinehurst Circle several hundred feet south of the intersection of Pebble Beach Drive and Pinehurst Circle. The subject parcel is ±.429 acres and is designated Medium Density Suburban (MDS) in the Southeast Truckee Meadows Area Plan, and situated in a portion of Section 22, T19N, R20E, MDM, Washoe County, Nevada. The property is located in the Southeast Truckee Meadows Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN: 051-144-23)

Chair Cieri opened the public hearing.

Mr. Lloyd reviewed the staff report dated May 20, 2010. He noted that Hidden Valley Area modifiers required a 15-foot setback for properties over .4 acres in size. Properties that were .4 acres or less require an 8-foot setback. Since the property was over .4 acres, the 11-foot setback the applicant was requesting for the addition to the home triggered the Variance request. If the applicant wished to build a detached garage instead of adding on to the existing structure, the modifiers stated the setback would only need to be 5 feet. Mr. Lloyd opined the detached structure would not have the architectural consistency and neighborhood compatibility that the applicants are requesting.

Mr. Lloyd stated staff was recommending denial as there were other locations where the garage could be built. The CAB had voted in favor and received many comments in support of the project as proposed. The surrounding neighbors had also expressed their strong support.

Member Horan noted information in the staff report that indicated a 10-foot utility right of way had been added to the parcel. He asked how the utility easement became part of the parcel. Mr. Lloyd explained Sierra Pacific transferred the ownership to all of the properties that

abutted the utility line but maintained a utility easement. He acknowledged that prior to that the parcel had been less than .4 acres. Member Horan opined that all abutting owners would have had to agree to accept the easement and Mr. Lloyd stated that was his understanding.

Member Harcinske asked if the Hidden Valley modifiers were a result of the most recently updated area plan and Mr. Lloyd replied they were not, they dated back to the early 1990s.

Applicant Loretta Barranger introduced her husband Mike Anderson and displayed drawings of the proposed construction. She noted that when they bought the property it was designated as being two separate parcels, but the county has it listed as one. She explained special circumstances regarding the septic system that limited where they could build an addition or detached unit.

Ms. Barranger displayed a drawing of what the detached building would look like and emphasized it would not be aesthetically pleasing. She pointed out the proposed construction would give them an 11-foot setback as opposed to only 5 feet. The neighbors felt the detached structure would downgrade their property values.

Chair Cieri closed the public hearing.

Member Wideman stated he appreciated the need to follow the rules that had been adopted. He recognized that no matter how hard one tries to adopt rules or codes that apply to all circumstances that inevitably sometimes unintended consequences will be created, and he was struck that this might be one of those times. It seemed to lack a level of common sense that it would be permissible to build a detached structure closer to the neighbor's property and that the attached piece would require a greater setback.

Chair Cieri asked what the conditions would be if they were to vote in favor of the project and as Mr. Lloyd waited for them to come up on the screen, Member Harcinske stated she agreed with Member Wideman, that it did not make sense. She opined there must have been a reason for the rule to be written the way it was and it would make the decision easier if she knew what that was. Mr. Lloyd speculated there had been a desire for more significant separation between homes. He was fairly positive it had been a request from the community.

Mr. Lloyd read the proposed conditions of approval for the Board:

- a. The applicant shall demonstrate substantial conformance to the plans approved as part of this variance. The Department of Community Development shall determine compliance with this condition.
- b. A copy of the Final Order stating conditional approval of this variance shall be attached to all applications for administrative permits, including building permits, issued by Washoe County.

Member Harcinske asked what would happen if they built the detached garage and came back later with a proposal to attach it to the house. Mr. Lloyd replied they would be denied.

Chair Cieri asked DDA Edwards to state whether or not an approval of the project would be setting a precedent. DDA Edwards stated that each case was handled on a case-by-case basis and would not have any binding effect going forward for different cases.

Member Harcinske asked if the applicants had knowledge of the conditions they would be asked to comply with if the permit was approved. Ms. Barranger stated that they did not have a problem adhering to the conditions.

DDA Edwards noted Washoe County Development Code Section 110.804.25 sets forth the standards and findings. The first is special circumstances required to approve a Variance and it reads as follows under subsection a "Special Circumstances: Because of the special circumstances applicable to the property including either: 1) the exceptional narrowness, shallowness or shape of the specific piece of property, or 2) by reason of exceptional topographic conditions, or 3) other extraordinary and exceptional situation or condition of the property and/or location of surroundings, the strict application of the regulation results in exceptional and undue hardships upon the owner of the property." He suggested they consider the third portion of the standard in the context of the current discussion.

Member Horan agreed it was a law of unintended circumstances and felt sympathetic towards the applicant's situation but was unable to make the findings. He spoke of the difficulty in making the determination of what is or is not a special circumstance when deciding on different cases. Member Harcinske agreed, although she stated she could see both sides. She felt the modifiers had been important to the community and that was why they were in the plan.

Member Wideman, while being mindful of the community interest in the attempt to establish setbacks for the benefit of all, suggested that in this case the building of an acceptable detached dwelling was less protective of the community interest than a change and the allowance of the attached garage.

Chair Cieri stated he agreed with all of the discussion but was inclined towards Member Wideman's position.

Member Horan moved to deny Variance Case VA10-003 because no special circumstances applicable to the property including exceptional narrowness, shallowness or shape of the specific piece of property, exceptional topographic conditions, extraordinary and exceptional situation or condition of the property and/or location of surroundings the strict application of the regulation results in exceptional and undue hardships upon the owner of the property. The motion was seconded by Member Harcinske.

Members Horan and Harcinske voted in favor, Member Wideman and Chair Cieri against. Ms. Robinson explained to the Board the motion failed.

Member Wideman moved to approve Variance Case VA10-003 in accordance with findings that an exceptional or extraordinary situation exists based on the conflict in sense of the allowance of a detached garage closer to the neighbor's property than the requested attached garage. The motion was seconded by Chair Cieri. The motion passed by a vote of 3-1-1 (Member Horan voting against and Member Toulouse absent).

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including the concern that an allowed accessory structure can be located within 5 feet of the side yard property line creating a much more impactful use than the 11-foot setback requested, the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property;
5. Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

#### **AGENDA ITEM 6**

PUBLIC HEARING: Special Use Permit Case No. SB10-008 (Granite Hills Baptist Church) – To develop a new multipurpose building of 7,250 square feet adjacent to the existing church facility (religious assembly use type) as authorized in Table 110.302.05.2 of the Washoe County Development Code. The project is located at the northeast corner of Red Rock Road and Custer Road. The ±4.7-acre parcel is designated Low Density Suburban (LDS) in the North Valleys Area Plan, and is situated in a portion of Section 25, T21N, R18E, MDM, Washoe County, Nevada. The property is located in the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 086-340-22)

Chair Cieri opened the public hearing.

Mr. Pelham reviewed the staff report dated May 17, 2010. He noted a multi-purpose building had been approved for the church at the time of original construction but the approval had lapsed due to the construction time limits imposed by the approved permit. Mr. Pelham stated the Engineering department was requiring construction of a sidewalk along the frontage of the project and Red Rock Road. He noted there were no other sidewalks in that area and the logic behind the decision was that, as new development takes place, more sidewalks would be constructed in a piecemeal fashion and eventually all tie together.

Mr. Pelham noted North Valleys Area Plan (NVAP) development standards stated the use of curb and gutter should be minimized and traditional sidewalks should be avoided. Typically the area plan would prefer to see some alternative types of construction and design. He stated he had recently received a letter from the airport authority noting the proximity to the Reno-Stead airport and recommending noise-controlling construction techniques.

Pastor Mark Morton explained some of the types of services the church provides to the neighborhood and asked that the Board vote in favor of the expansion.

Applicant's Representative Harold Graham addressed the required sidewalk, suggesting an alternative design such as decomposed granite walkway. He pointed out the new volunteer fire station recently built nearby had not been required to install a sidewalk. He noted the church was surrounded by large residential parcels unlikely to be developed and sidewalks installed.

Chair Cieri asked Mr. Graham what the length and cost of the sidewalk would be. Mr. Graham required it would be approximately 450 feet long. They had not determined the full cost but anticipated it would require curb and gutter and street improvements. The existing drainage swale along Red Rock Road would need to be redesigned and culverts installed.

Chair Cieri asked if the sidewalk was a requirement and Mr. Pelham replied it was a recommended condition of approval from the Engineering department. He pointed out that if they felt a sidewalk was inappropriate, that decision would be supported by Policy 2.1 of the NVAP and it was well within their purview to require an alternative facility. He went on to explain the NVAP was a series of policies that are meant to provide a vision going forward that has been developed by the citizens in that area. He reiterated the makers of the NVAP would prefer the traditional sidewalk be avoided, and if an applicant wished to install curb and gutter, they would need to be able to justify it by demonstrating benefit to the health, safety and welfare of the community.

Member Harcinske noted she had helped write the language being discussed. She pointed out Red Rock Road was designated a rural highway and to the best of her knowledge there were no plans to change it to any other designation. She explained ditches run along the sides and many of the roads in the North Valleys are similar and the residents would like to keep it that way. She opined the condition should be deleted and discussion regarding alternatives commence in the future if necessary. Members Horan and Wideman agreed, Member Wideman noting the NVAP policies as valid support for the decision.

Chair Cieri closed the public hearing.

Member Harcinske moved to approve conditionally, as amended, Special Use Permit Case No. SB10-008. The motion was seconded by Member Horan and passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the North Valleys Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;

3. Site Suitability. That the site is physically suitable for expansion of the church facility, and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

Ms. Robinson informed Chair Cieri portions of Item 7 were being discussed by staff and requested it be heard after Item 8. Chair Cieri stated for the record Item 7 would be heard last.

#### **AGENDA ITEMS 8a and 8b**

**PUBLIC HEARING:** Special Use Permit Case No. SB10-005 (Black Rock City, LLC) – To allow for storage of operable vehicles on three separate parcels pursuant to Table 110.302.05.3 and Article 810 of the Development Code (Washoe County Code Chapter 110). The three parcels are located on the north side of Main Street (SR 447) in Gerlach. The requested parcels are 0.19, 0.24, and 0.18 acres in size for a total of ±0.61 acres. The parcels are designated General Commercial (GC) in the High Desert Area Plan, are located within the jurisdiction of the Gerlach/Empire Citizen Advisory Board, and are in Washoe County Commission District No. 5. The properties are within portions of Section 22, T32N, R23E, MDM, Washoe County, Nevada. (APNs 071-265-01, 071-265-02, and 071-265-08)

AND

Administrative Permit Case No. AP10-003 (Black Rock City, LLC) – To allow for temporary meeting facilities on four separate parcels pursuant to Table 110.302.05.3 and Article 808 of the Development Code (Washoe County Code Chapter 110). The three parcels are located on the north and south side of Main Street (SR 447) in Gerlach. The requested parcels are 0.26, 0.19, 0.31, and 0.25 acres in size for a total of ±1.01 acres. The parcels are designated General Commercial (GC) in the High Desert Area Plan, are located within the jurisdiction of the Gerlach/Empire Citizen Advisory Board, and are in Washoe County Commission District No. 5. The properties are within portions of Section 22, T32N, R23E, MDM, Washoe County, Nevada. (APNs 071-265-03, 071-265-07, 071-266-03, and 071-266-06)

Chair Cieri opened the public hearing.

Mr. Morehouse reviewed the staff report dated May 10, 2010. He noted the original project description for Case No. SB10-005 had stated the project would be located on three parcels. It had been determined the use was not allowed on one of them so the request was revised to only include two. He explained the uses would be temporary, supporting the Burning Man event each year, starting eight weeks prior and ending six weeks after the event.

Mr. Morehouse noted that while no CAB meeting had occurred since the receipt of the application, the CAB had been provided copies and the opportunity to comment. They provided a recommendation of approval and a brief list of concerns. The first was fire and Mr.

Morehouse stated that item had been thoroughly addressed and conditioned by Fire Services Coordinator Kurt Latipow. The second was to have Black Rock City LLC contribute extra water usage fees to the City of Gerlach General Improvement District (GID). Mr. Morehouse suggested Black Rock City, LLC (BRC) and the GID meet to discuss these items as they would not be addressed under the special use permit (SUP). The third item on the CABs list was a request for BRC to build a public restroom, which also would not be addressed under the SUP or the Administrative Permit (AP).

Member Harcinske asked what defined a temporary rather than permanent use. Mr. Morehouse reiterated that in this case, temporary referred to 8 weeks prior to the event and 6 weeks after. Member Harcinske stated the CAB comments indicated this was a year-round business and asked for the definition of temporary versus permanent, from the standpoint of the regulating agency. Mr. Morehouse stated he did not know but noted Ms. Robinson was reviewing the Development Code for an answer.

Member Horan asked what part of the recommendation had the CAB agreed with. Mr. Morehouse indicated the chair of the CAB was available to answer the question.

Chair Cieri asked Mr. Morehouse if they were asking for a permanent public restroom facility and who would maintain it. Mr. Morehouse replied the CAB and the citizens would appreciate it being constructed but did not know the answer regarding maintenance. Chair Cieri asked if Mr. Morehouse were suggesting that requirement be attached to the current cases and Mr. Morehouse said he was not.

Member Wideman noted Burning Man (BM) was a recurring event and asked if they would recur this temporary use every year. Mr. Morehouse replied that was correct and Member Wideman asked if it would need to be heard every year. Mr. Morehouse replied the conditions included with other BRC SUPs indicate they are ongoing, not for just one year. He noted BRC was working on a Development Agreement (DA) as an overarching document that would govern many aspects of the event such as the Black Rock Station and the Gerlach operations. The approval of the cases before the Board would be ongoing.

Member Wideman asked for how long they were being asked to authorize a temporary activity that occurs before and after the BM event each year. Mr. Morehouse stated he did not know if there would be a limit on the number of years the permits would be valid. Ms. Robinson asked Mr. Morehouse if there were a start and end date and he replied there was not. Ms. Robinson clarified it was an unending SUP, but that it was within the purview of the Board to consider a certain time period. That avenue had been utilized for SUPs in the past.

Director Freund explained the Board may establish a review period or time to determine if there are any issues. Typically if there were no issues staff would come back to the Board simply to deliver a report. Ms. Robinson pointed out prior BM permits have had a three-year review period.

Member Horan asked if BRC was a for-profit enterprise requesting the permits for property they own in Gerlach and Mr. Morehouse stated that was correct.

Ms. Robinson stated she had discussed the question of temporary versus permanent with the Director and looked at it in the Development Code. She clarified that both the SUP and the AP were discretionary permits for usage for a certain period of time. Although the SUP and

AP say temporary in the description to help identify that it would have a beginning and ending period, it is not a Temporary Use as identified in Article 310 of the Washoe County Code.

Member Harcinske asked what Article 310 said. Ms. Robinson replied it addressed a variety of things around temporary usages depending on what the type of use is. There are different time periods for different usages. Member Horan asked if the uses were recurring and Ms. Robinson replied they could be but do not have to be.

DDA Edwards pointed out a recent example of a temporary use was the Worker's Camp for Ruby Pipeline, as it was not going to be recurring.

Director Freund stated that Article 310 speaks to specific and specified temporary uses that are allowed for specific periods of time, such as a construction trailer that would act as an office during the development of a subdivision and is removed when the subdivision is complete. Another example was agricultural sales, by which a person could sell produce off their property for 31 calendar days per year. He suggested the word "temporary" for this case was perhaps not the best choice.

Applicant's Representative Mike Railey indicated BRC had been working with Washoe County for approximately 10 years and suggested their event requirements did not ordinarily fit well within standard County regulations. He reiterated BRC had submitted a DA outlining a planned unit development. He pointed out that parcels to be included in the DA must have discretionary permits.

Mr. Railey acknowledged BM did have a year-round presence in Gerlach, but the uses being discussed were just those that were necessary to ramp up for the event and ramp down during the cleanup. He stated they agreed with all of the conditions and were not asking for any deviations from required health or fire codes. They would be providing temporary restroom facilities during the event. He stated that, regarding the extra water fees, they were on meters also and paid their fair share. He opined that some felt the water trucks were being filled free of charge from Gerlach GID wells but they paid the metered rate.

Gerlach CAB Chair Karen Valitzski approached the podium and Member Horan reiterated his question regarding what it was the CAB had approved, considering the number of negative comments they had presented. Ms. Valitzski stated they supported BM but believed it had become more than temporary in nature and she felt they should start investing in capital improvements. Member Horan asked if a member of BM staff had been at the meeting and addressed these concerns and Ms. Valitzski stated they had been and had addressed every concern or question she given them. She felt the application was incomplete because the answers indicated there was no construction or improvements required because it was temporary. Member Horan pointed out this was an attempt to legalize what had been happening for years and Ms. Valitzski stated it was the first time they had applied for a permit for property in town.

Member Harcinske stated she would like to see a timeframe set for the permits to come back to the Board for review. Member Horan agreed.

Chair Cieri noted the issue of the public restroom kept coming up. He asked Mr. Morehouse if the Board could insist a public restroom be constructed. Mr. Morehouse opined they could not, considering the type of permits being reviewed. Ms. Robinson explained staff

had not been able to find valid reason, considering the types of the two permits, that gave them the ability to add the condition requiring construction of the public restroom.

Mr. Railey opined the restroom was more of an issue when outsiders were coming in, not part of the BM work crews or organization. The buildings BM owns contain restrooms that their crews use. He felt the public restroom was an event-related issue that was being dealt with separately.

Member Wideman suspected there were members of the community who would like to use the opportunity of the application process as leverage in support of construction of a public restroom. He noted what was being requested was a 14-week period use for equipment parking, and there was no connection between the equipment being parked for 14 weeks and a need for a permanent restroom.

Member Wideman pointed out two issues being discussed, one being the recurring 14-week temporary use and the other being the period of authorization for the permits and period of potential review. He stated he also would support a finite period for review.

Member Horan agreed with Member Wideman and felt an appropriate review period would be two years. He suggested it was incumbent upon BM and the Town of Gerlach to continue their dialog and move forward in the best interests of all involved.

Member Harcinske noted she was still having difficulty with the term "temporary" because code defined temporary for uses like Christmas Tree lots which happen at the same time for the same period year after year. She asked DDA Edwards if the definitions of the term "temporary" as referred to in the Development Code should be used for these permits and uses.

DDA Edwards noted there were multiple approaches that could be taken for a particular desired use or project. He stated he thought this one, from what he understood to be the situation, appropriate for the ordinary SUP or AP that was currently being discussed. That was not to say they could not conceivably be handled by some other approach. He explained recently an item had come up in which someone wanted an abandonment of an easement but another way of handling it was not to obtain an abandonment, but to get a variance from the setback. He was not aware of anything that made it inappropriate to be handled this way.

Director Freund pointed out the High Desert Area Plan (HDAP), through policy, encouraged temporary uses such as BM. He noted staff shared the Board's concern regarding the definition of "temporary" and noted that section of the Code would need to be updated.

Member Wideman acknowledged the public restroom would be a benefit to the community but did not feel the Board could apply the requirement to the cases being heard.

Member Horan asked if the two items needed to be voted on separately and DDA Edwards replied they did not. He asked that, if they were to add a condition requiring a review period, what the condition number would be. Ms. Robinson indicated she had crafted proposed language for the additional required Condition 1e and asked how many years the Board would like the review period to be.

Member Horan indicated his motion would include a recommendation for a review period of two years. He moved to approve conditionally, as amended, Special Use Permit Case No.

SB10-005. Added Condition 1e reads as follows: "This discretionary permit will be brought back to the approving body every two years for review of conditions and compliance." His motion also clarified Parcel 071-265-08 was not included in the recommendation.

The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the High Desert Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for an educational facility, in that there are no other facilities that might be utilized in this location;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of any military installation, as there are no military installations in that area of Washoe County.

Chair Cieri reopened the public hearing.

Vernon Fry expressed concerns the item had not been heard during a regularly scheduled CAB meeting. He understood the meeting was to be held sometime in the near future, and that a number of citizens had intended to attend that meeting to discuss the matter with the representatives of BRC.

Ms. Robinson pointed out the CAB in Gerlach meets quarterly and the time frame between the time the applications were received and when they are required by state statute to be heard before the Board of Adjustment is 65 days for an SUP and 50 days for an AP. There was not time in the quarterly CAB time frame for the item to be heard by the CAB. She explained copies of the applications were sent to each of the CAB members and their comments were requested.

Mr. Fry asked if there were any way the decision could be deferred and Chair Cieri explained that could not be done without the consent of the applicant. Mr. Fry stated specific concerns regarding dust mitigation and Chair Cieri directed that to the Health Department, and went on to inform him that the decisions made at the meeting were not going leave the citizens without any recourse should negative impacts arise.

Director Freund expressed that the decisions made and the uses being requested were very narrow in scope. He stated the county was aware that there was a lively debate about the role and purpose of BRC in the community and that that discussion will go forward. Perhaps that would result in BRC requesting approval of additional facilities or uses, but those were unrelated to the items being heard at this meeting.

Director Freund went on to explain the method used to obtain the CAB input is becoming increasingly common because budgetary concerns have caused the CABs to have to cut back their meeting schedules significantly. He also noted there was an appeal procedure.

Mr. Railey clarified they were on the CAB agenda of the 17<sup>th</sup> for the pending DA. He opined that since it was more far-reaching, that was where many of the community's concerns were coming from. He reiterated that was a separate application and process than what was being decided upon at the current meeting. He pointed out that every citizen in Gerlach had received notice of this meeting.

Chair Cieri closed the public hearing.

The motion to approve Special Use Permit Case No. SB10-005 as amended passed by a vote of four to zero (Member Toulouse absent).

Member Horan moved to approve conditionally, as amended, Administrative Permit Case No. AP10-003. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Toulouse absent).

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the High Desert Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for an educational facility, in that there are no other facilities that might be utilized in this location;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation, as there are no military installations in that area of Washoe County.

#### **AGENDA ITEM 7**

PUBLIC HEARING: Special Use Permit Case No. SB10-006 (Luckey Residence) - To construct a Detached Accessory Dwelling unit, limited to a maximum of 1,200 square feet of habitable space, above a new detached 4-car garage. The subject property is located at 5275 Cross Creek Lane, approximately one (1) mile east of Callahan Ranch Road. The subject parcel, totaling approximately ±2.25 acres, is designated Low Density Suburban (LDS) in the Forest Area Plan, and is situated in portion of Section 2, T17N, R19E, MDM, Washoe County, Nevada. The property is located in the Galena/Steamboat Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN: 045-722-01)

Chair Cieri opened the public hearing.

Ms. Monsalvè reviewed the staff report dated May 20, 2010. She noted a 100-foot drainage easement recorded across the property which limited the available potential building areas. She explained the proposed location of the new structure may have to be altered due to Health Department requirements for septic and leach lines.

Ms. Monsalvè read two Health Department conditions that had inadvertently been excluded from the staff report:

3. The onsite sewage disposal system cannot be located in the drainage easement.
4. A variance granted by the District Board of Health is required to cross the drainage channel and easement with the building sewer.

Ms. Monsalvè stated the Health Department was unable to support the current proposed location. Doug Coulter, District Health, had indicated he supported conditional approval of the project with the understanding the applicant needs to work with the District Health Department to find the best location for the septic system and repair field and where the unit would be located on the property.

Mr. Coulter explained the challenges in determining an acceptable location based on the specific aspects of the property. Ms. Robinson explained to the Board the conversation regarding the size and location of the structure typically occurs at the building permit stage, not at the discretionary permit stage. There would be no point in having the conversations regarding size and location before the Board approved the structure. It would have to meet Health Department regulations in terms of site.

Director Freund pointed out the key elements of the Board's decision included whether or not the lot size was adequate, setback and height standards were maintained and that the structure is between 640 and 1,200 square feet or 50% of the main residence or whichever is less. The Health Department conditions must always be met. The issue today was the approval of a detached accessory dwelling. Meeting the Health Department regulations may cause a reduction in the size of the unit.

Applicant's Representative George Smith stated the applicant was aware of the issues surrounding the placement of the unit and fully intended to work with the Health Department to meet all of their requirements.

Chair Cieri closed the public hearing.

Member Harcinske moved to approve conditionally, as amended, Special Use Permit Case No. SB10-006. The motion was seconded by Member Horan

Mr. Smith observed the language of Condition 4a was written more like a statement than an actual condition and was confusing to him and his clients. He suggested it could be taken as a finding that the unit must be moved.

Member Harcinske stated she would like to amend her motion to remove Condition 4a. Ms. Monsalvè explained the Board did not have the authority to change Health Department conditions, but since Mr. Coulter was present, it could be discussed with him.

Mr. Coulter suggested a condition that stated the applicant will meet Health Department requirements would satisfy everything that was being discussed.

Ms. Robinson suggested substituting the existing conditions with the following:

4a. The applicant must meet all the requirements and/or standards of the District Health Department prior to the issuance of building permits.

Members Harcinske and Horan agreed with the change in conditions.

The motion passed by a vote of four to zero (Member Toulouse absent).

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Forest Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a detached accessory dwelling as part of the newly proposed garage;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

#### **OTHER ITEMS**

None

#### **ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting adjourned at 4:56 p.m.

Respectfully submitted,

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Dawn Spinola, Recording Secretary

Approved by Board in session on August 5, 2010

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Adrian P. Freund, FAICP, Director  
Secretary to the Board of Adjustment