



Board of Adjustment Staff Report

Meeting Date: June 2, 2016

Subject: Appeal of Administrative Decision Case Number AX16-002
Appellant(s): Garrett Gordon, Lewis, Roca, Rothgerber, Christie, LLP
Agenda Item Number: 8E
Project Summary: Appeal of the administrative decision by the Director of the Planning and Development Division to reject an abandonment application for Mil Drae Lane
Recommendation: Denial
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Description

Appeal of Administrative Decision Case Number AX16-002 (Mil Drae Lane) – Hearing, discussion, and possible action on an appeal to reverse an administrative decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway Mil Drae Lane for being incomplete.

- Appellant: Lewis, Roca, Rothgerber, Christie, LLP
Attn: Garrett Gordon
- Location: Mil Drae Lane, approximately 1,500 feet north of the intersection of Huffaker and Del Monte
- Assessor's Parcel Number: 040-581-20
- Parcel Size: 2.523 acres
- Master Plan Category: Rural Residential (RR)
- Regulatory Zone: High Density Rural (HDR)
- Area Plan: Southwest Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 806, Vacations and Abandonments of Easements or Streets
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 1, T18N, R19E, MDM,
Washoe County, NV

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Exhibits Contents

Appeal Letter dated March 24, 2016 and appeal materials Exhibit A

Incomplete Application Letter from Washoe County Exhibit B

Background

On February 16, 2016, the firm of Lewis, Roca, Rothgerber, Christie, LLP, on behalf of several property owners, submitted an application to abandon a 2.523 acre property identified as Mil Drae Lane, which is used as a roadway/access for up to 13 parcels.

The abandonment application involved a two part request. The first part of the request asked Washoe County to accept an offer of dedication for the subject property - Mil Drae Lane. The second part of the request involved Washoe County abandoning Mil Drae Lane immediately after accepting the dedication. The abandonment application requested that Mil Drae Lane be abandoned to the following seven abutting properties/owners:

- 1) Ryan M. Dolan Family Trust (APN 040-582-02)
- 2) Roland and Tina Scarselli (APN 040-582-03)
- 3) Nunnally Family Trust (APN 040-582-04)
- 4) Ernaut Family Trust (APN 040-581-19)
- 5) Faulstich Family Trust (APN 040-581-12)
- 6) Herbert and Susan H Family Trust (APN 040-581-13)
- 7) Herbert and Susan H Family Trust (APN 040-581-14)

As to the abandonment request, Nevada law generally allows any property owner to file a petition for the abandonment of any street or easement owned by the city or county. The local government is empowered to create a procedure for the processing of abandonment requests. Once a valid request is filed, the matter is set for a hearing and the local government can abandon the property if it determines the public will not be materially injured by the proposed abandonment.

As to the request to accept the offer of dedication for the roadway itself, when a final subdivision map is filed, Washoe County generally must accept or reject all offers of dedication in the map. If rejected, however, the County can rescind its rejection at any time and accept the offer of dedication by action of the Planning Commission or governing body per NRS 278.390. To date, Washoe County has not accepted the offer of dedication for Mil Drae Lane and it is currently held in private ownership.

The Director of the Washoe County Planning and Development Division rejected the abandonment application due to insufficient submittal requirements. Specifically, the application did not contain the required signed owner affidavits for the property subject to the abandonment request. Washoe County Code (WCC) Section 110.806.10 enables the Director to prepare supplemental guidelines for the submission of applications for abandonments. Submittal requirement number 3, of the Abandonment Development Application Submittal Requirements sheet, states that "*the Owner Affidavit must be signed and notarized by all owners of the property subject to the application request.*" The owners of record, as specified by the Washoe County Assessor's records, differ greatly from the owners identified within the application. As shown below, the names of the signed owner affidavits (numbered 1 to 7 above) differ greatly from the official ownership records provided by the Washoe County Assessor's Office. The Assessor's Office lists Mil Drae Lane (APN: 040-581-20) under the following ownership:

- 1) Ernaut Family Trust (appears on the signed affidavit)
- 2) Darrell Bennett
- 3) Wilma Bennett
- 4) Timothy and Marsha Grant
- 5) Herbert and Susan Nichols Family Trust (appears on the signed affidavit)
- 6) Robert and Jerrady Hawkins

- 7) Larry D. Klaich Family Trust
- 8) William and Sally Burrows
- 9) William and Catherine Lore
- 10) Allyene Milabar

WCC Section 110.806.05 states “No application shall be processed when the information necessary to review and decide upon it is deemed incomplete by the Director.” Therefore, the Director of the Planning and Development Division has rejected the application as incomplete (see Exhibit B).

In their appeal, the appellants contend that owner affidavits are not necessary because the application was submitted as a two-step process and there is an existing offer of dedication for Mil Drae Lane and that Washoe County has the authority to accept the offer of dedication without the owner affidavits. The appellants also contend that a similar abandonment was approved on a short roadway off of Mil Drae Lane, known as Milabar Way several years ago, and that any abutting property owner can petition Washoe County for such an abandonment. See Exhibit A for the complete letter and materials for this appeal.

Staff does not agree with the appellants’ contention that the owner affidavits are not necessary. Even though there is an offer of dedication for Mil Drae Lane, Washoe County has not accepted that offer of dedication. At this time, the property is privately owned and Washoe County cannot proceed with a discretionary permit application without the written approval of all required owners of the property for the proposed action (i.e., the abandonment).

Per WCC Section 110.912.10, the Board may reverse, modify or remand a decision (of the Planning Director) if the decision:

- (a) Was made contrary to the constitution, a statute, an ordinance, or regulation, or the law of the case;
- (b) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (c) Was made on unlawful procedure;
- (d) Is affected by an erroneous interpretation or other error of law;
- (e) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Is arbitrary or capricious or characterized by abuse of discretion

Recommendation

After a thorough analysis and review, Appeal Case Number AX16-002 is being recommended for denial. Staff offers the following motion for the Board’s consideration.

Motion

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Appeal Case Number AX16-002 for Lewis, Roca, Rothgerber, Christie LLP and affirm the decision by the Director of the Planning and Development Division to reject an application to abandon the privately owned roadway, Mil Drae Lane.

Appeal Process

Board of Adjustment action will be effective 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant, unless the action is appealed to the Washoe County Board of County Commissioners, in which case the outcome of the appeal shall be determined by the Washoe County Board of County Commissioners. Any appeal must be filed in writing with the Planning and Development Division within 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant.

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