



WASHOE COUNTY BOARD OF ADJUSTMENT DRAFT Meeting Minutes

Board of Adjustment Members

Lee Lawrence, Chair
Kim Toulouse, Vice Chair
Kristina Hill
Brad Stanley
Clay Thomas
William Whitney, Secretary

Thursday, June 2, 2016
1:30 p.m.

Washoe County Administration Complex
Commission Chambers
1001 East Ninth Street
Reno, NV

The Washoe County Board of Adjustment met in regular session on Thursday, June 2, 2016, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

1. *Determination of Quorum

Chair Lawrence called the meeting to order at 1:35 p.m. The following members and staff were present:

Members present: Lee Lawrence, Chair
Kristina Hill
Brad Stanley
Clay Thomas

Members absent: Kim Toulouse

Staff present: Lora R. Robb, Planner, Planning and Development
Eric Young, Senior Planner, Planning and Development
Trevor Lloyd, Senior Planner, Planning and Development
William H. Whitney, Director, Planning and Development
Nathan Edwards, Deputy District Attorney, District Attorney's Office
Donna Fagan, Recording Secretary, Planning and Development

2. *Pledge of Allegiance

Chair Lawrence led the pledge to the flag.

3. *Ethics Law Announcement

Deputy District Attorney Edwards recited the Ethics Law standards.

4. *Appeal Procedure

Mr. Whitney recited the appeal procedure for items heard before the Board of Adjustment.

5. *Public Comment

As there was no response to the call for public comment, Chair Lawrence closed the public comment period.

6. Possible action to approval Agenda

In accordance with the Open Meeting Law, Member Stanley moved to approve the agenda of June 2, 2016. The motion, seconded by Member Hill, passed four in favor and none opposed.

7. Possible action to approve April 7, 2016 Draft Minutes

Member Hill moved to approve the minutes of April 7, 2016, as written. The motion was seconded by Member Stanley and passed four in favor, none opposed.

8. Public Hearings

- A. Variance Case Number VA16-002 (Ufer)** – Hearing, discussion, and possible action to approve a variance reducing (a) the front yard setback on the north side of the parcel from 20 feet to 18 feet and (b) the front yard setback on the west side of the parcel from 20 feet to 14 feet to accommodate a new manufactured home with carport.

- Applicant: Phil Hosking
- Property Owner: Dixon W. Ufer Testamentary Trust
- Location: 120 Malcom Avenue in Grandview Terrace
- Assessor's Parcel Number: 082-262-14
- Parcel Size: ±0.115 acre
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)/Trailer Overlay
- Area Plan: North Valleys
- Citizen Advisory Board: North Valleys
- Development Code: Authorized in Article 804, *Variances*
- Commission District: 5 – Commissioner Herman
- Section/Township/Range: Section 16, T20N, R19E, MDM,
Washoe County, NV
- Staff: Lora R. Robb, Planner
Washoe County Community Services Department
Division of Planning and Development
- Phone: 775.328.3627
- Email: lrobb@washoecounty.us

Chair Lawrence opened the public hearing. Lora R. Robb reviewed her staff report dated May 12, 2016.

Member Thomas asked Ms. Robb if there was existing Grandview Terrace municipal water and sewer, as shown on the site plan and if it was just for that site or for the development. Ms. Robb said the services exist from a previous manufactured home that was on the property. Member Thomas' concern was the possibility of the home being placed over water and sewer lines that would feed the community.

Chair Lawrence opened public comment.

Cathy Brandhorst spoke about items of interest to her.

Chair Lawrence closed public comment.

There were no disclosures.

Member Hill asked why the best management practices (BMP's) sent in by Kevin Rourke, with Washoe-Storey Conservation District, were not listed in the conditions of approval. Ms. Robb noted, on page 8 of the staff report, there is a summary of the agency comments which will be forwarded to the applicant.

Member Hill moved 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 approve Variance Case Number VA16-002 for Phil Hosking on behalf of Dixon W. Ufer Testamentary Trust, with the conditions included as Exhibit A to the staff report for this matter, having made all four required findings in accordance with Washoe County Code Section 110.804.25. Member Thomas seconded the motion which carried unanimously. **(four in favor, none against)**

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including either the: exceptional narrowness, shallowness or shape of the specific piece of property, or; by reason of exceptional topographic conditions, or; 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;
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.

B. Amendment of Conditions Case Number AC16-002 – To amend the approval of Special Use Permit Case Number SB12-007 (Hidden Valley Fire Station) – Hearing, discussion, and possible action to extend the time allowed for the temporary expansion of a Safety Service facility by installing a manufactured home (built to commercial coach standards) to be used as living quarters for professional firefighters from July 1, 2016 until July 1, 2021.

- Location: 3255 Hidden Valley Drive, approximately 100 feet west of the intersection of Hidden Valley Drive and Pelham Drive
- Assessor's Parcel Number: 051-122-10
- Parcel Size: 0.326 acres
- Current Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Southeast Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Commission District: 2 – Commissioner Lucey
- Development Code: Authorized in Articles 302, Allowed Uses; 810, Special Use Permits; 410, Building Placement Standards; and 804, Variances
- Section/Township/Range: Within Section 22, T19N, R20E, MDM Washoe County, NV
- Staff: Roger Pelham, MPA, Senior Planner Washoe County Community Services Department Division of Planning and Development
- Phone: 775.328.3622
- Email: rpelham@washoecounty.us

Chair Lawrence opened the public hearing. Eric Young reviewed Roger Pelham's staff report dated May 12, 2016, in Mr. Pelham's absence. Mr. Young noted an additional condition, a(h), to make parking locations more clear and install boulders or bollards to control parking.

Chair Lawrence asked if fire personnel live at the location. Mr. Young said yes.

Vance Taylor, Captain of Truckee Meadows Fire, said they have been at the location since July 2012. It is used as a full service 24/7 fire station occupied by three firefighters a shift, sometimes four, if a reserve is on shift to help supplement the staffing. Member Stanley asked if Captain Taylor was involved in outreach to the Citizen Advisory Board (CAB). Captain Taylor said no but Angela Fuss, with CFA, was. Ms. Fuss stated she was at the South Truckee Meadows/Washoe Valley CAB meeting and there were no questions or comments about the request. She also went to the Hidden Valley Homeowners Association (HOA) where there was good feedback. Many attendees like the fire station at the current location. Members had suggestions on future locations. The current location has a 15-foot utility easement and 20-foot storm drain easement that leave little room to building a permanent structure at this location.

With no response to the call for public comment, Chair Lawrence closed public comment.

Member Thomas disclosed he has a family member who is a Captain with the Truckee Meadows Fire Protection District who is not assigned to this station. There were no further disclosures.

All Members agreed this case should be approved.

Member Stanley moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public hearing, the Washoe County Board of Adjustment approve Amendment of Conditions Case Number AC16-002, with amended conditions as included in Exhibit A, for the Truckee Meadows Fire Protection District, having made all four findings in accordance with Washoe County Development Code Section 110.810.30. Member Hill seconded the motion which carried unanimously. **(four in favor, none against)**

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 Master Plan and the Southeast 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 the existing fire truck garage and temporary living quarters, and for the intensity of such a development; and
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.

C. Variance Case Number VA16-003 (Fleming Front Yard Setback Reduction) – Hearing, discussion, and possible action to approve a variance to allow the reduction in the front yard setback from 15 feet to approximately 10 feet and 13/16 inches, to facilitate the expansion of the existing dwelling.

- Applicant: Elise Fett, and Associates

- Property Owner: Attn: Julie Rinaldo
PO Box 5989
Incline Village, NV 89450
Thomas and Susan Fleming
5111 Alta Canyon Road
La Canada Flitridge, CA 91011
- Location: 715 Cristina Drive, approximately 750 feet southeast of its intersection with Eagle Drive, in Incline Village
- Assessor's Parcel Number: 126-251-06
- Parcel Size: ± .363 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Berkgigler
- Section/Township/Range: Section 10 & 11, T16N, R18E, MDM, Washoe County, NV
- Staff: Roger Pelham, MPA, Senior Planner
Washoe County Community Services Department
Division of Planning and Development
- Phone: 775.328.3622
- Email: rpelham@washoecounty.us

Chair Lawrence opened the public hearing. Trevor Lloyd reviewed Roger Pelham's staff report dated May 12, 2016, in Mr. Pelham's absence.

Member Hill asked Mr. Lloyd to go over the code that allows the garage to be built in the setback if there is a slope of 20% or greater and how it does or doesn't apply to this case. Mr. Lloyd said if a property has a front yard slope that exceeds 20% there is a reduction of the setback within the Medium Density Suburban (MDS) regulatory zone. Typically, the setback is 20-feet but in order to help accommodate such slope conditions the code has established a reduced setback of 15-feet. All the neighbors have complied with the same requirement and such a request can be met within the confines of both this lot and setbacks. Member Hill asked if granting the 15-foot setback requires a variance. Mr. Lloyd said no it does not it is allowed by right. Member Hill asked what the applicant was requesting. Mr. Lloyd said 10-foot 13/16-inches.

Elise Fett, the applicant's representative, opined there are several exceptional situations. She noted it was stated the property has a 24% slope but submitted a map showing at 11-foot 13/16-inches, in 4-feet there is a 2-foot drop, which would be 50% slope. Then, it comes down to where it is about 24%. The northwest part of the property has a 24% slope. Ms. Fett explained the property has an exceptional view corridor and that is what Andy Wolfe was referring to in his CAB comment. Ms. Fett said when you consider the detached garage option, there would be far less snow storage available, referring to Traffic Engineer, Clara Lawson's, snow storage comments, compared to the proposed garage option. Ms. Fett also addressed Ms. Lawson's comment regarding a car getting too far out in the road, noting there is 18-feet from the edge of the pavement to the front of the proposed garage, whereas, the average car is 16-feet. She understands the need to pull off the road and have the garage door open so people are not waiting, causing a traffic problem. Ms. Fett brought up concern from the CAB about distance inside the garage in they had allowed for 24-feet. Ms. Fett said they have 21-foot front to back, which is somewhat tight and there is a small amount of storage at the northwest side of the garage area. They are not asking for something that is exceptional. Ms.

Fett also noted concern from the CAB about not having room for storage. They wanted the garage to be so small the applicant didn't need a variance but then there wouldn't be room for storage. But if there wasn't room for storage then the garage would be used for storage not for cars. If the property is steep enough to allow for a 0-foot setback, if the garage is detached, then it doesn't seem to follow suit that it's not steep enough to be considered exceptional for a variance. Ms. Fett stated neighbors had provided two letters in support, which are included in the staff report. The applicants are trying to do something that is in support of the neighbors not just themselves. The proposal is a minimal footprint. The other option is a bigger impact in that they would be using all of their allowable coverage, there would be no view corridor, there would be less snow storage, and there would be less of a setback. Ms. Fett submitted photos of the current home, proposed plan, and setbacks of properties farther down the street. She said this property previously had a variance provided when the applicant's sister owned the property.

Member Hill asked Ms. Fett if she had given any consideration to adding on to the rear of the property which appears to give enough room for a garage in the front without intruding into the setback. Ms. Fett said there is an existing structure which has very specific load bearing walls they are trying to maintain. In order to build onto the back they would be poking into a nice vaulted wood ceiling that is part of the house and removing a load bearing wall at the front of the house. Member Hill asked if there was living area above or below the wall. Ms. Fett showed the existing living area which they are trying maintain. They will be adding more space below the garage but will keep the load bearing wall going down which will require popping a hole in to get underneath. Because it is so steep, there is a lot of room under there. Member Hill noted if they put a garage over the existing parking deck they wouldn't need a variance if it was a standard sized garage. Ms. Fett replied it is a standard sized garage they are asking for. She reiterated, if they did a detached garage it would double the width of the house, double the driveway width, they would have to take out trees, and it would impact the view corridor. Member Hill asked if they wanted to reduce coverage to leave space for something later. Ms. Fett said no it is to reduce costs. Member Hill said there were options that wouldn't require a variance.

Member Stanley asked if Mr. Pelham suggested any alternatives other than the detached garage. Ms. Fett said no. Member Stanley noted other structures Ms. Fett submitted that had setbacks similar to this request. Ms. Fett said the ones she submitted have gone farther into the setback than their proposed request. Member Stanley asked how the ones that had a variance are or aren't consistent with the one they are requesting now. Ms. Fett said they are two car garages, they are similar in slope. Member Stanley asked about time, when the variances were granted. Ms. Fett said she didn't have the dates. She opined the ones she had pictures of were done in the last 10 years. Member Stanley noted the conditions of a variance had been met by the other homes, whereas, the proposed project has not. What differences in constraints on the lot did they have that you don't? Ms. Fett said she didn't see any differences. They're similar in steepness. Member Stanley asked Ms. Fett if she had a chance to look at the variances regarding the findings. Ms. Fett said she did not.

Chair Lawrence opened public comment.

Thomas Fleming, the applicant, stated he and his wife have owned the property for 10 years and it is in dire need of repair. They have had ties to the Reno area since 1969 and they plan to retire to this property. They plan to build a responsible remodel, meaning to stay within the footprint of the existing house. Mr. Fleming responded to Member Hill's question about pushing the home back and said they'd have to scrape the entire structure because of the way the roof and living areas are configured. It could be done to eliminate the need for a variance but it is not practical or economical and would result in more of the coverage of the forest floor. There is an exposed parking deck in front that is an eyesore and somewhat dangerous. That is where they propose to put a covered garage. They are trying to avoid the unnecessary removal of trees which they would have to do if they build a detached garage, which would also block the view of the forest and the lake from neighbors and pedestrians. Mr. Fleming opined this project

raises extraordinary circumstances in justifying a variance; for the applicant it would be more expensive to build a detached garage and his wife carrying groceries from a detached garaged to the home would be inconvenient and dangerous, the view would be obliterated, and noted he believes the only negative comment has been from Planning. Mr. Fleming reminded the Board a variance was granted for this property in 2001. He asked the Board to look at the unique circumstances.

Member Hill asked Mr. Fleming if he attended the CAB meeting. Mr. Fleming said if he'd have known about it he would have but noted Mr. Wolf's CAB comment.

Chair Lawrence closed public comment.

Member Stanley asked Mr. Lloyd what may have changed in code, constraints, or opinion between the granting of the variance in 2001 and this variance application. Mr. Lloyd said he didn't do any research considering the time he had to prepare for the presentation but said that every property and variance needs to be looked at on a case-by-case basis. They are not a one-size fits all. They have to look at the merits of each particular request and determine whether or not, in those instances, they meet the findings. He'd be happy to take a look and provide the information at a later date. But, there are a number of things that come into play; for example a change of personalities that sit on a Board. It is very likely that in 2001 an interpretation could have been made that may be different than this Board's. He would have to look at the very specific details pertaining to each property and request.

Chair Lawrence asked Mr. Whitney if he had anything to add regarding Member Stanley's question. Mr. Whitney had no direct answer on the 2001 variance that was granted but not used. Generally, in Tahoe, variances in the past were being issued maybe when they shouldn't have been that is why you find an exception in the Tahoe Area Plan that allow 15-foot front yard setback instead of 20. That was to address the variances and make it so there didn't need to be so many applied for, considering the topography in the area. Mr. Whitney said that may be why some of the properties down the street could have had variances and have the same general circumstances as this property. He reiterated Mr. Lloyd's answer that every property is looked at individually with a variance.

Member Thomas asked Mr. Fleming why the 2001 variance was not used. Mr. Fleming said he acquired the property from his sister. She had planned a more expansive remodel but before that could happen, her marriage dissolved. Not wanting to lose the property in that area, he acquired the property. Chair Lawrence asked Mr. Fleming if he had a copy of the 2001 variance approval, in his file. Mr. Fleming said he doesn't have the variance in his possession.

There were no disclosures.

Member Stanley noted it would be nice to have more information on the 2001 variance and finds it problematic. But, in the current analysis, the variance request doesn't meet the findings, when 15 years ago it did, somehow, and the lot didn't change. He pondered if it would be possible to take a second look at the 2001 variance. Member Hill said from experience it used to be a lot easier to get a variance, now they interpret the rules much more strictly saying it's in the Nevada Revised Statutes (NRS). She doesn't believe 2001 rules should be applicable today. We need to look at how it is interpreted today and how we uphold those findings. Member Thomas stated NRS 278.301(c) is definitive as to the requirements of this Board in granting a variance. As such, as it exists today, he doesn't see the narrowness of the lot, the shallowness of the lot, or the exceptional circumstances to the property, and that is the guiding force the Board follows to make this decision. With what is in front of him today he doesn't believe he can make the findings to grant a variance. Chair Lawrence echoed the other Members comments and suggested, if the Board denies the variance and they appeal to the Board of Commissioners (BCC), they get a copy of the 2001 variance and submit it with their appeal application in the hopes it will help the BCC in their decision making. Chair Lawrence voiced his concern regarding the comments from Clara Lawson, Traffic Engineer, " a vehicle

parked in front of the garage would encroach in the traveled way of Christina Drive and snow storage would be reduced.” He said he could not support approval of this request.

Member Thomas moved 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 Variance Case Number VA16-003 for Thomas and Susan Fleming, being unable to make all four applicable findings in accordance with Washoe County Development Code Section 110.804.25. Member Hill seconded the motion which passed. **(three in favor, one against)**

The motion was based on the following findings:

1. Special Circumstances. Because of the 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;
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.

Mr. Whitney read the appeal procedure.

D. Administrative Permit Case Number AP16-002 (Classical Tahoe) – Hearing, discussion, and possible action to approve an administrative permit and outdoor community event business license for Classical Tahoe, formerly known as Lake Tahoe SummerFest, an outdoor concert event to be held at the Sierra Nevada College in Incline Village, Nevada on July 29, 30, August 5, 6, 7, 12, 13, 2016; and indoor concert event at Lifepoint Church in Incline Village on July 26, August 2, and 9, 2016. The proposed outdoor concerts will be held between the hours of 5:00 p.m. and 9:00 p.m. on July 29, 30, August 5, 6, 12, and 13, 2016, with one additional concert held August 7, 2016 between the hours of 11:00 a.m. and 1:00 p.m. The proposed indoor concerts at Lifepoint Church will be held on the Tuesdays of July 26, August 2 and 9, 2016, between the hours of 7:00 p.m. and 9:00 p.m. All proposed concerts will be unamplified classical music venues. Primary participant and spectator parking will be within parking lots on the College campus and the Lifepoint Church existing parking lot, with additional off-site (overflow) parking at the adjacent Incline Village General Improvement District (IVGID) Recreation Facility, if needed. Event organizers estimate that approximately 1,300 participants and spectators will take part in the event during any of the three-day event periods, with a maximum of 500 participants and spectators on any one day of the event. Based on the testimony and evidence presented at the hearing, to include the report of reviewing agencies, the Board of Adjustment may approve the issuance of the administrative permit and business license with conditions, or deny the application.

- Applicant: Lake Tahoe SummerFest – Kirby Combs
- Property Owner: Sierra Nevada College
- Location: 948 Incline Way, Incline Village, NV 89451 and
300 Country Club Drive, Incline Village, NV 89451

- Assessor's Parcel Numbers: 127-040-10 (College), 127-040-07 (IVGID Recreation Center), and 130-050-01 (Lifepoint church)
- Parcel Size: 17.05 acres (College), 1.4 acres (Recreation Center), 1.45 acres (Lifepoint Church)
- Master Plan Category: Rural (R)
- Regulatory Zone: Public and Semi-Public Facilities (PSP)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 310, Temporary Uses and Structures; and Washoe County Code Chapter 25, Business Licenses, Permits, and Regulations
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Within Section 14, T16N, R18E, MDM, Washoe County, NV
- Staff: Eric Young, Senior Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775.328.3613
- Email: eyoung@washoecounty.us

Chair Lawrence opened the public hearing. Eric Young reviewed his staff report dated May 18, 2016.

With no response to the call for public comment, Chair Lawrence closed public comment.

There were no disclosures.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Board of Adjustment approve Administrative Permit Case Number AP16-002 and the associated outdoor community event business license for Classical Tahoe, having made all four findings in accordance with Washoe County Development Code Section 110.808.25. Member Stanley seconded the motion which carried unanimously. **(four in favor, none against)**

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 Master Plan and the Tahoe 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 outdoor community event, 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.

E. 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

- Staff: Trevor Lloyd, Senior Planner
Washoe County Community Services Department
Planning and Development Division

- Phone: 775.328.3620
- Email: tlloyd@washoecounty.us

Member Stanley disclosed he had a long term real estate business relationship with one of the families of the appellants in this case which may continue in the future. He asked DDA Edwards for advice in this matter. DDA Edwards asked if the business venture Member Stanley is involved in is in Washoe County. Member Stanley said yes and disclosed it is with the Dolan family and has nothing to do with this application. DDA Edwards noted Member Stanley does not have a direct pecuniary interest in the project because the real estate venture Member Stanley is involved in with the Dolan's is not this project. But there is the potential of an indirect pecuniary interest, in that, an objective outsider might view this as a scenario where one business partner would feel pressure to act favorably toward another business partner to preserve their working business relationship in the other matter. Then the commitment of private capacity issue has come up in some of the ethics commission cases hearings where they talk about business relationships which are in the scope of that provision in NRS 281.80.420 so those are matters that appear to come within the scope of that statute. The question is would it materially affect your independence of judgement of a reasonable person. It is not a subject of standard, meaning, even though you may be an upstanding guy and it may not affect your independence of judgement, the question is not whether subjectively that is the case it is whether an objective person would perceive that as an impairment of your independence of judgement. DDA Edwards stated Member Stanley's inclination is to recuse himself from this case having made this disclosure and he believes there are grounds for Member Stanley to recuse himself, under the statute. Legally he feels there is a basis for Member Stanley to do that, in this situation. DDA Edwards advised Member Stanley to not participate at all in the matter and exit the room until the matter is over. DDA Edwards wanted to make it clear there is no accusation of wrong doing with respect to this it is simply a matter of following the rules and ethics code that are meant to provide impartiality for applicants in adjudicated matters, such as is happening here today. DDA Edwards also stated, under NRS 281(a) 420.5, if you are abstaining because of the requirements of that section the quorum to act is reduced as though that person were not a member of the Board. Meaning, of the remaining three Members, two constitute a majority.

3:11 p.m. – Member Stanley left the Board and Chambers.

Chair Lawrence opened the public hearing. Mr. Lloyd reviewed his staff report dated May 12, 2016. Mr. Lloyd noted the applicant requests to amend the appellants to reflect those seven owners who signed the affidavits not the attorney who submitted the appeal.

Chair Lawrence asked Mr. Lloyd for clarification on abandoning a road and the logic behind it. Mr. Lloyd deferred the question to Garrett Gordon, attorney for the appellants.

DDA Edwards advised the Board the question before them is not whether the abandonment is a good or bad idea, what affects it may have, etc. What they are here to decide is whether or not to uphold the Director's decision to reject the application for being incomplete.

Mr. Gordon, representing the Ernaut family, the Dolan family, the Nunnally family, the Scarselli family, the Faulstich family, and the Nichols family, displayed the original parcel map that was approved in 1976. It created seven parcels along with a parcel being Mil Drae Lane with a stub called Mili Bar Way. There was a notation on the map, when it went to the BCC, but an offer of dedication of the road to the County was rejected because it wasn't up to County standards, which is typical, but the offer remained open, so, the County at any time could accept dedication. With that was a set of CC&R's, recorded in 1976. Mr. Nichol's name is in the CC&R's as one of the architectural representatives. The CC&R's do a number of things that commit to the seven property owners; only single family residences, certain setbacks, trailers/ancillary structures prohibited, things Mr. Nichols and his neighbors bought here knowing how the community would be developed. Subsequently, there was a second set of CC&R's which added three more properties now creating the Mil Drae subdivision containing ten properties. The supplemental CC&R's also had maintenance obligations of Mil Drae Lane. Every April the ten property owners would divide up assessments; repairing the road, snow removal, and taxes. It is a private road. Currently, we have Washoe County Parcel Map, showing Mil Drae Country Estates identifying the original seven property owners plus the three. Mr. Gordon noted two additional parcels, the Bennett parcels, along the south side of Mil Drae Lane. They are not included in the original map and not included in the CC&R's, they have no ownership to the road, have never contributed to the maintenance of the road, and never used the road. A couple of years ago, the Dolan family saw a For Sale sign on the back southeastern parcel next to theirs and noted the parcel has Del Monte access, they're not part of our subdivision, maybe they should buy the property and expand. The Dolan's called their realtor and during conversation found out the property for sale had access via Mil Drae Lane. Mr. Dolan called Mr. Nichols and Mr. Ernaut to ask them how the property for sale had access by Mil Drae Lane as it wasn't mentioned in the CC&Rs, noted on the map and the seven property owners never granted them access. The property owners did research and found, in 2009, a boundary line adjustment (BLA) was approved by the County and moved the boundary line which created the back parcel. Now the property owners are thinking the back parcel was created to sell on the backs of the ten property owners who have been using the road for all these years and asking how the BLA was approved. Mr. Gordon went to the accessor's website and both parcels show a Del Monte access. He went to the County surveyor to find out how the back parcel was approved with Mil Drae access when they had no legal right to it. Mr. Gordon read portions of an email from the County surveyor to Terrance Shay, a previous DA, ..."Mr. Gordon called me wondering how this map was approved...two adjacent parcels not part of TM1568, 040-582-11 and 040-582-12 are not part of this map, have access to Del Monte Lane but both were directly adjacent to Mil Drae Lane." "In 2009 both of these parcels were identified on a record of survey where the rear parcel no longer has access to Del Monte. The adjustment of the boundary lines were approved by Washoe County knowing the rear parcel was losing access to Del Monte Lane but still had access from Mil Drae Lane. At the time it seemed there was opposition from the other owners. I believe the other owners have a roadway maintenance agreement that the two parcels are not part of. Please advise us how to respond." So, statute in 1979 said if you want to have a private road in the subdivision you have to show it on the map. Referring to the original map, the road does not say "private road". Maybe there is a

problem here. However the original map was recorded in 1976, the statute came in 1979. There wasn't a requirement to add the designation in 1976. Mr. Gordon wrote a letter to Mr. Shay noting that and said if the BLA was approved giving a back lot it was approved under that statute, that map needs to be rescinded as it is inaccurate. Mr. Gordon read Mr. Shay's letter responding to his letter. Now Mr. Gordon has ten property owners asking how the BLA was approved with no legal access. The map should be rescinded they don't have access to our road. In the meantime, Mr. Gordon received an email from the Bennett's lawyer saying they tracked down one of the original developers who signed the map, Milibar and Dragoo, and they quit-claimed the Bennett's 15% of road. Now they own part of our road? We got together to figure out how they could protect these ten people interest in the road. What was mentioned was; do what we did with the stub street Mili Bar Way when Mr. Ernaut wanted to abandon Mili Bar Way and add it to his property. They filed an application, like the one before the Board today, and asked the County to accept the road under the open dedication offer along with abandoning it to Mr. Ernaut. At that time the County asked what signatures they need and what was concluded; under state law any abutting property owner can request an abandonment and a dedication doesn't require any owner affidavits. Anyone can do it. Once the County accepts dedication there is no owner. Washoe County is the owner. In the Milibar Way request only Mr. Ernaut's affidavit was accepted. Under law, when you abandon a parcel, in some cases it goes to the adjoining parcels but in the Milibar Way case it goes to the properties under the original map who dedicated it. Mr. Gordon said when he filed the abandonment application he only had the original seven property owners sign the application knowing no one who had to sign the application for a dedication which they are asking the County Commission to do. In the application, Mr. Gordon acknowledged the other three property owners who were not part of the original application but had been subject to the CC&Rs. They are going to grant everyone in the community easements. Mr. Gordon filed the application and staff said it wasn't complete. He objects as staff relied upon, attached to their denial, an assessor's website page listing the owners. The Ernaut Family Trust owns an easement to the road. They're not an owner. How can you require an affidavit from an easement holder. Timothy and Marsha Grant, they don't own the property any more. Any title company would say you shouldn't rely upon the assessor's webpage. There are no guarantees they are right. The Lore's, who they require to sign, also owns an easement. That's why Mr. Gordon believes the state law is correct in that you only need a request from one abutting property owner and everyone receives notice so they can come in and comment. The precedent we are going to set of who has to sign is based on the Washoe County assessor's printouts it's going to be incorrect. Now Washoe County is going to have to do a series of title searches. Mr. Gordon noted the findings the Board could make to reverse the decision; the County's decision was contrary to the constitution, a statute, or ordinance. Yes, state law allows one signature and it's contrary to the ordinance Mr. Lloyd quoted regarding who's subject to this application. Dedication requires zero signatures. Once the dedication is approved the County owns it. It's clearly erroneous based on the record of Milibar Way. The County accepted one signature, it was processed. Anyone can ask the BCC to deny an abandonment or to condition it. Mr. Gordon believes they need the same precedent with this application. He believes it is arbitrary and capricious to rely upon a list on the assessor's website and to vary from a precedent on Milibar Way. Mr. Gordon wants to make clear his clients are trying to be 100% reasonable when saying, if they want to be subject to the CC&Rs they can come in and live under the same rules we do if they want to be part of our road. The second set of CC&Rs says here is the process to be part of payment for the road which they would have to commit to. He is asking the Board to deem the application complete based on the signatures of these seven property owners.

Member Thomas asked Mr. Gordon if it was correct the County hasn't accepted dedication of Mil Drae Lane, yet. Mr. Gordon said that is correct. Member Thomas asked, if the County hasn't accepted ownership how they can someone file for an abandonment. Mr. Gordon said just as they did in 2008 with the request to abandon Milibar Way. We asked the Planning Commission to accept dedication then to abandon followed by approval from the BCC. There is

no process for asking for acceptance of dedication. Member Thomas asked if, back in the early 70's, the road was not classified as a private road. Mr. Gordon said correct. In 1976, the road was approved and given its own parcel number and attempted to be dedicated to the County and the County said no. The property owners over the last 40 years believed they legally owned the property, maintained and paid the taxes on it. Member Thomas asked if it was not identified as a private road what would prevent the Bennett's from using the road. Mr. Gordon said it was 100% private and they made the assertion in order to make it private it had to say that on the map. Mr. Gordon said no they didn't because it wasn't a requirement when this map was created. When they abandoned Milibar Way, once the statute was created, it gave them an opportunity to put something else on the record so "private roadway" was added, complying with the statute. The Bennett's, with their BLA relied on the notation map, which wasn't a requirement, does not give them legal access to that BLA.

Member Hill stated she understands the request requires owner affidavits from the owners that abutt the road and it doesn't seem like Mr. Gordon has provided that. She asked if the first list mentioned in the staff report contained the owners on the road. Mr. Gordon argued that staff is not requiring owner affidavits from all the adjacent properties. They're saying, because the road is an APN, who owns the road should be filing owner affidavits and we're saying their relying upon the assessor's property information is incorrect. These people don't own the road anymore and some of them on the list only have an easement so to comply with staff we'd have to run a title report. Member Hill asked Mr. Gordon if he ran a title report to find out who owns the road. Mr. Gordon said he has a title and knows who owns the road and the fact is it's a complete mess. Member Hill asked who the title report says owns the road. Mr. Gordon replied he would go through it. Of the ten property owners six or seven have easements the other three or four were granted one tenth interest. So, it's confusing as to who owns the road. Milibar Way was approved with one owner affidavit. Member Hill referred to the staff report and asked when the County said they needed the owner affidavits from the additional people, these are the property owners adjacent to the road, is that true. Mr. Gordon said correct, and how we got to that analysis was the same analysis for Milibar Way. Step One: State law says one abutting property owner. Step Two: the first request was a dedication anyone could make so we don't even get to Step Two until we get through Step One. Member Hill asked what the problem was in getting the ten owner affidavits. Mr. Gordon said, from these ten property owners? No problem. We have seven I can go get three more. Member Hill confirmed that would be the list of ten of the actual owners. Mr. Gordon said it's different than what they identified because, for example; the Grants sold their property to someone else, the Hawkins sold their property. But, if you approve a request today on the condition that we go get seven of them we would need three more, Klaich, Lore, and one more. That's no problem, we'll happily do that. Member Hill reiterated Mr. Gordon's comment that he would be happy to provide owner affidavits from all the people abutting the road. Mr. Gordon said no, all the people who are part of the Mil Drae Country Estates who have a legal access to this road and who have become subject to the CC&Rs that require maintenance obligations. Member Hill asked, in other words not those southern properties. Mr. Gordon said correct because they have no legal right to that road and they don't want to be subject to the CC&Rs. It wouldn't be difficult for them to say, we're in.

Chair Lawrence asked Mr. Whitney if, to complete the application, it is acceptable to have the people currently owning those properties, under those parcel numbers, and under their names to resolve the application issue we're talking about. Mr. Whitney responded, we requested names of the property owners that are accessed off of Mil Drae Lane, we didn't get that and that is why I rejected the application. It's that simple. If we get the names of the folks that are accessed off Mil Drae Lane on the abandonment application, we'll process it. Chair Lawrence asked how many people are on Mil Drae that he would need signatures from for the abandonment, does he know. Mr. Whitney said no. He said Mr. Gordon made a point that we would have to accept Mil Drae Lane before we could abandon it. We aren't going to accept it. It's not up to County standards. Mr. Gordon said we could all agree to disagree. We would be

happy to provide owner affidavits from the three property owners who are part of it. We can get that in the next week. Mr. Gordon's understanding was staff was inferring by attaching the assessor's exhibit to the letter, that they would require signatures from all these people who we didn't think were relevant, so I'm happy to do that. As far as excepting the road, Milibar Way was accepted and abandoned and it wasn't up to County standards and staff can recommend denial to accept the road and that goes to the BCC and they can make a determination whether or not they want to accept and abandon or not.

Chair Lawrence opened public comment.

Joan Wright, the Bennett's representative with Allison, MacKenzie, Ltd., noted she has been involved in this matter for a couple of years and has submitted a letter supporting staff's decision. Ms. Wright said Mil Drae Lane is a separate parcel and was always a separate parcel. The developers had designed this and Allyne Drive (aka Milibar Way) to develop the adjacent property so it was going to be a pass through. They ultimately didn't develop the property and ultimately there was no need for Allyne Drive so no one objected to that abandonment. That is not a similar case or precedent for this. This road will continue to be accessed. There are water rights underneath this road and that's probably why it was always privately owned so the developers, Mr. Dragoo and Mr. Milibar, kept title in their name. They ultimately granted easements to the people who bought lots but they kept title and the water rights. Later, after 1976, it appears they changed title companies and some of the conveyances did have title go with the lot so they did 1/10th convey. Some people have easements some people have 1/10ths. After the sale of all ten lots Mr. Milibar and Mr. Dragoo still owned parts of the road. The Bennett's, as a result of the transfer from Mr. Dragoo, now own 15% of that road. They have every right to be on Mil Drae Lane and if it's taken and abandoned to other people it's a taking without compensation. The other thing Mr. Gordon didn't tell you is the Yamamoto parcel, the interior parcel on the left, has a written 50-foot easement to use Mil Drae Lane so are you going to take his interest too and not compensate him. When the parcel map was done in 2009, Ms. Wright opined the County may have made a mistake by relying on the statute that hadn't been adopted but there was access to that back parcel on Mil Drae by prescriptive use for nearly 35 years, at that time. The Bennett's had never used their access off Del Monte they had always used Mil Drae to access their back parcel. The back parcel has been there for 40 years. It's not as though it was just now created and the County made a mistake by using Mil Drae. It had a little flagstick shape that went to Del Monte. That access wasn't used. They always used the other access so that's what they thought entitled them to change the boundary lines not the statute. It's not that the Bennett's haven't offered to pay maintenance, they have. They've been given enormous numbers on what they would have to pay. There hasn't been any maintenance, that's the real problem.

Chair Lawrence closed public comment.

Mr. Gordon said he just confirmed with Herb Nichols there was a reason they believed the original seven property owners filed the applications. We can go get Klaich, Lepori, and Mr. Holcomb to file applications to do this. There was a mention of Yamamoto and in the email I wrote, if they had said we want Yamamoto to chip in as well, trying to carve down as much money as they would want to pay on this road. Yamamoto uses the road as a secondary access, never bothered anyone, had an easement because when his parcel was created the road took some of his property to create the road and as consideration he was given an easement for that. The Bennett's have never participated. They have never provided any consideration. If we want to bring this up to County standards, we can't until we have a system of who owns it and whose going to pay for it. There has been offers made but nothing has been put in writing, they don't want to be subject to the CC&Rs. Their only offer was; we'll be part of a road maintenance agreement and chip in something. We're saying, if you want to be part of our community and you want to chip in then it's only fair to the Dolan's that you have to comply with the setback line. It's only fair to the community that you have to comply with the height restrictions and one single family residence. We're ready to draft those papers today but the

email was nonresponsive and if they want to be part of this then they can come join the community. You can't have one foot in and one foot out.

Member Thomas disclosed he has a family member that worked with a Dr. Yamamoto about 15 years ago but he doesn't know if there is a relationship to the one mentioned. A member of the audience said it is a different Yamamoto, apparently, the son. DDA Edwards asked who the family member was that worked for or was an acquaintance of Dr. Yamamoto. Member Thomas said his wife who is a registered nurse and no longer works for him

Chair Lawrence disclosed there is a Ron Yamamoto who was a past Board member of the Nevada Department of Agriculture where he works, who he knew but had no affiliation with. Chair Lawrence met Mr. Yamamoto's son one time fishing a Pyramid Lake about 35 years ago. This disclosure has no impact on his decision today.

DDA Edwards asked if Member Thomas or Chair Lawrence has a pecuniary interest or made commitments in a private capacity to the Yamamoto family with respect to this matter. Both said no. DDA Edwards asked if either of them had received a gift or a loan in connection with this matter. Both said no.

Member Hill moved 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. Member Thomas seconded the motion which carried unanimously. **(three for, none against, one recused)**

Mr. Whitney read the appeal procedures.

4:03 p.m. – Member Stanley returned to the Chambers and Board

9. Chair and Board Items

***A. Future Agenda Items**

None

***B. Requests for Information from Staff**

None

10. *Director's Items and Legal Counsel's Items

***A. Report on Previous Board of Adjustment Items**

Mr. Whitney reported the two items the Board approved at their April 7, 2016 meeting, VA16-001 and SB16-002, were not appealed.

***B. Legal Information and Updates**

None

11. *General Public Comment

As there was no response to the call for public comment, Chair Lawrence closed the public comment period.

12. Adjournment

The meeting adjourned at 4:06 p.m.

Respectfully submitted,

Donna Fagan, Recording Secretary

Approved by Board in session on _____, 2016

William H. Whitney
Secretary to the Board of Adjustment

DRAFT