



WASHOE COUNTY BOARD OF ADJUSTMENT DRAFT Meeting Minutes

Board of Adjustment Members

Clay Thomas, Chair
Kristina Hill, Vice Chair
Lee Lawrence
Brad Stanley
Kim Toulouse
Trevor Lloyd, Secretary

Thursday, October 4, 2018
1:30 p.m.

Washoe County Health District
Conference Room – Bldg. B
1001 East Ninth Street
Reno, NV

The Washoe County Board of Adjustment met in regular session on Thursday, October 4, 2018, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

1. *Determination of Quorum

Chair Thomas called the meeting to order at 1:30 p.m. The following members and staff were present:

Members present: Clay Thomas, Chair
Kristina Hill, Vice Chair
Brad Stanley
Kim Toulouse
Lee Lawrence (Arrived at 1:55 p.m.)

Members absent: None

Staff present: Julee Olander, Planner, Planning and Building Division
Roger Pelham, Senior Planner, Planning and Building Division
Eva Krause, Planner, Planning and Building Division
Trevor Lloyd, Planning Manager, Planning and Building Division
Nathan Edwards, Deputy District Attorney, District Attorney's Office
Donna Fagan, Recording Secretary, Planning and Building Division

2. *Pledge of Allegiance

Member Stanley led the pledge to the flag.

3. *Ethics Law Announcement

Deputy District Attorney Edwards recited the Ethics Law standards.

4. *Appeal Procedure

Mr. Lloyd 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 Thomas closed the public comment period.

6. Approval of Agenda

In accordance with the Open Meeting Law, Member Stanley moved to approve the agenda of October 4, 2018. The motion, seconded by Member Hill, passed four in favor and none opposed.

7. Possible action to approve September 6, 2018 Draft Minutes

Member Stanley moved to approve the draft meeting minutes of September 6, 2018. The motion, seconded by Member Hill, passed four in favor and none opposed.

8. Public Hearings

The Board of Adjustment may take action to approve (with or without conditions), modify and approve (with or without conditions), or deny a request. The Board of Adjustment may also take action to continue an item to a future agenda.

A. Special Use Permit Case Number WSUP18-0007 (T-Mobile Lighthouse Baptist Church) – For possible action, hearing, and discussion to approve an application by T-Mobile for a Special Use Permit for the construction of a new wireless cellular facility consisting of a 55-foot high tower utilizing a stealth design disguised as a pine tree (also known as a monopine) with faux branches screening the proposed antenna panels. The associated 30' x 30' (900 s.f.) lease area and equipment cabinets will be enclosed by a 7 foot concrete block wall, which will be treated with a stucco finish and painted to match the existing church building on property owned by the Lighthouse Baptist Church of Reno.

- Applicant: T-Mobile
- Property Owner: Lighthouse Baptist Church Reno
- Location: 5350 Pembroke Drive, 1/3 mile east of McCarran Blvd

- APN: 021-140-20
- Parcel Size: 4 acres
- Master Plan Category: Rural (R)
- Regulatory Zone: General Rural (GR)
- Area Plan: Southeast Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 324, Communication Facilities and Article 810, Special Use Permits

- Commission District: 2 – Commissioner Lucey
- Staff: Chad Giesinger, AICP, Senior Planner
Washoe County Community Services Department
Planning and Building Division

- Phone: 775-328-3626
- E-mail: cgiesinger@washoecounty.us

Chair Thomas opened the public hearing.

Roger Pelham, Washoe County Senior Planner, provided a staff report presentation.

Member Stanley disclosed he attended the CAB meeting where this application was heard. He asked if FAA required a light and what the timing of that decision is. Mr. Pelham said we do not know, but it will be prior to when the applicant gets their building permit. Member Stanley asked about the size of the light. Mr. Pelham said FAA sets those standards.

Member Toulouse said he understands it's not our purview; he asked if Planning contacted FAA about the requirements. Mr. Pelham said the applicant has contacted the FAA.

Chair Thomas said there may be a base pad for the monopine which affects the height. He asked if FEMA requires the base pad. Mr. Pelham said Washoe County engineering decides the pad height.

Member Stanley asked about the sequencing. Mr. Pelham said all necessary documents will need to be received and reviewed prior to issuing a building permit.

Karen Lienart, applicant representative for T-Mobil, gave a presentation. She addressed the lighting issue. She said she has been in contact with neighbor who had the concern as well as the consultant who is working on the light with FAA. She said she committed to the neighbor to use a light with the least amount of impact that meets requirements.

Chair Thomas asked about design process. Ms. Lienart said the previous design of the cross would interrupt with utilities. She said the monopine was considered. She said the steeple was first proposed to fit with the design of the church. She said they had 3 different designs before coming to this design.

Public Comment:

Bernard Smith said he lives behind the church. He said the tower would be visible from his house. He spoke about flooding issues. He spoke about FAA lighting requirements for the flight path. The steeple was a nice idea because it blended with the church building, but the monopine is located in the parking lot. There was a cost involved with steeple design. It's a source of revenue for the church. The pastor doesn't live on property so he doesn't have to see the required red light. He said he doesn't want to see the light every day.

No further requests for public comment, Chair Thomas closed public comment.

Board discussion:

Member Stanley said this design and process seems to be the best option; however, the light is not wanted. He wondered if the angle of the light could be adjusted based on the flight path to help reduce impacts on neighbors. Mr. Pelham said that is the decision of the FAA.

Member Toulouse asked if there is a way in the future to include a picture of just the pole with the antenna.

**Member Lawrence arrived 1:55 p.m., before the motion.

Member Stanley 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 approve with conditions in (Exhibit A to the staff report) Special Use Permit Case Number WSUP18-0007 for T-Mobile, having made all four findings required in accordance with Washoe County Code Section 110.810.30; and the three additional findings required by WCC Section 110.324.35 for approval of wireless communication facilities. Member Toulouse seconded the motion which carried unanimously.

Article 810 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 a wireless communication 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;

Article 324 findings:

1. Meets Standards. That the wireless communications facility meets all the standards of Sections 110.324.40 through 110.324.60 as determined by the Director of the Planning and Development Division and/or his authorized representative;
2. Public Input. That public input was considered during the public hearing review process;
3. Impacts. That the wireless communications facility will not unduly impact the adjacent neighborhoods or the vistas and ridgelines of the County.

B. Variance Case Number WPVAR18-0006 (David Wood) – For possible action, hearing, and discussion to approve the reduction in the side yard setback from 8 feet to 5 feet and the rear yard setback from 20 feet to 8 feet on one parcel of land; and to reduce the front yard setback from 20 feet to 8 feet and the rear yard setback from 20 feet to 15 feet on an adjacent parcel of land. The reductions in setbacks are being requested to facilitate the placement of one dwelling unit on each of the parcels and would be applicable only after an associated boundary line adjustment was also approved. The boundary line adjustment would change the dividing line between the parcels roughly from a north-south direction to an east-west direction, which would allow the placement of a dwelling unit on the eastern portion of each parcel without having to locate it within a flood zone. Currently, almost all of the buildable area of the western parcel is located in a flood zone.

- Applicant/Property Owner: David Wood
- Location: 5443 and 5445 Pearl Drive, approximately 650 feet north of its intersection with 4th Avenue in the Sun Valley area
- APN: 085-722-24 and -25
- Parcel Size: ±14,985 and ±15,159 square feet
- Master Plan: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Sun Valley
- Citizen Advisory Board: Sun Valley
- Development Code: Authorized in Article 804, Variances
- Commission District: 3 – Commissioner Jung
- Staff: Roger Pelham, Senior Planner
Washoe County Community Services Department
Planning and Building Division
- Phone: 775-328-3622
- E-mail: rpelham@washoecounty.us

Chair Thomas opened the public hearing.

Roger Pelham, Washoe County Senior Planner, provided a staff report presentation.

Member Hill said it appears in the maps that the property is land locked. Mr. Pelham said there is an easement coming from the east. He said it's common in Sun Valley to have access by easement instead of right-of-way. The properties are owned by the same person.

Nathan Robinson, engineer and applicant representative, said it's for the safety of public to eliminate structures from the flood way and with this variance they hope to have the least impact.

Public Comment:

Vicky Maltman said this property is behind her parcel. She said she has been flooded 5 times and that she had 5 feet of water on her property; her property is in the flood zone. Her neighbor attached a drainage pipe to Washoe County drainage. She said the drainage pipe changes sizes from 24 to 18 inches which causes flooding. A property owner should do what they want with their property. She said she is tired of the

codes inflicted on the owners. She said she has concerns with the adjustment of the subject property to cause more water and flooding. She has requested the county to come out to take care of the ditches, but they had not.

Board Discussion:

Member Toulouse wanted to review the map to see where Ms. Maltman lives in relation to the subject property.

Member Stanley asked if Ms. Maltman's concerns will be addressed by engineering. Mr. Pelham said by moving obstructions such as a structure it's supposed to help with the flow. Mr. Robinson said the removal from the house from the floodway is negligible. He said he is confident it won't cause additional issues; it's a slight positive affect. Member Stanley said he appreciates the consideration taken into account for flooding for that area.

Member Toulouse 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 approve Variance Case Number WPVAR18-0006 for David Wood, with the Conditions of Approval included as Exhibit A for this matter, having made all required findings in accordance with Washoe County Development Code Section 110.804.25. Member Lawrence seconded the motion which carried unanimously.

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;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of a military installation.

C. Variance Case Number WPVAR18-0007 (SYGO – Yount Elevator) – For possible action, hearing, and discussion to approve a variance to reduce the side yard setback from 5 feet to ± 2 inches to allow for the construction of an elevator within a residence along the north side property line.

- Applicant/Property Owner: G. Stuart and Geraldine M. Yount Family Trust
- Location: 400 State Route 28, Crystal Bay
- APN: 123-144-12
- Parcel Size: $\pm 8,712$ square feet
- Master Plan: Suburban Residential (SR)
- Regulatory Zone: High Density Suburban (HDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Berkbigler
- Staff: Roger Pelham, Senior Planner
Washoe County Community Services Department

- Phone:
- E-mail:

Chair Thomas opened the public hearing.

Chair Thomas called for member disclosures. Kristina Hill she said she worked with Stewart Yount at Sierra Nevada College. Mr. Yount is on the Board of Directors for the school. She doesn't have a ongoing business relationship with the college and it's been over a year since the last contact with the applicant. Mr. Edwards said there isn't a conflict.

Roger Pelham, Washoe County Senior Planner, provided a staff report presentation.

Member Lawrence asked if there is a fence between US Forest land and subject property. Mr. Pelham said no.

Member Stanley said the CAB unanimously approved this. There is a 40% slope. He wanted to know about the findings for the variance.

Mr. Pelham said the findings are laid out in NRS, exceptional narrowness, exceptionally shallow, shape, exceptional topographic conditions. He explained how these are not extraordinary conditions.

Member Hill asked if they received a variance for front or side yard setbacks. Mr. Pelham said not for the side, but perhaps for the front but he is not certain.

Member Lawrence asked about the square footage of the roof.

Elise Fett, applicant representative, spoke about special circumstances and site constraints. She showed the assessors map. It's a unique shape into the NDOT right-of-way. It's a special circumstance. The property has 71% slope in the beginning area. NDOT gave half of the right-of-way due to slope. The slope is consistent of 51%. The property has an average of 49 feet narrowness where it should be 60 feet minimum in zoning. There are height limitations per TRPA. The contours are tight in right-of-way. Steepness is extreme in this case. It's common in the area. She said they have made many considerations for the location of the elevator. The proposed elevator services the top 3 floors. Through step-height code, the front section is where it's being proposed. A chair lift won't work. She spoke about constraints with height and current footprint. Dr. Koch's letter is included in the staff report. Special circumstance: Extreme slope, width is less than allowed by zoning, CAB considered it a hardship. It doesn't provide special privileges. She spoke about other variances in the area. There is no deterrent.

Member Lawrence asked the square footage of the roof of elevator. Ms. Elise said approximately 56 square foot. Member Lawrence said TRPA didn't support the other location options. Ms. Fett explained TRPA step-height codes.

Member Stanley asked if this the only location TRPA will accept. Ms. Fett said yes. He asked about other properties with similar variances. Ms. Fett spoke about other homes on Gonowabi with similar setbacks. She spoke about options to mitigate erosion to US Forest Service property by reducing the gutter and moving it internal. Member Stanley asked about the different sloping. Ms. Fett explained the slope calculations. She said they would be requesting a side setback, not a front setback.

Chair Thomas asked about the interior floor size of the elevator. Ms. Fett said it's a common size installed for a wheelchair. He asked about a letter regarding TRPA's opinion. Ms. Fett said representatives met together with TRPA and came to an agreement, but she said she didn't believe it was on paper. She said they had to make sure they could move forward before spending money on this project.

Chair Thomas asked why a stair lift could not be added. He said he called an elevator lift company, and they said a stair lift is possible. Ms. Fett said she didn't try to find one because the stairwell is narrow; you have to have 6 inches at each turn. She said she hasn't had anyone look at it. She said the lifts take up space on the width; it's already hard to maneuver these stairs already.

Member Lawrence asked for clarification on sloping. Ms. Fett showed the site plan. The 51% slope is natural, the 71% was excavation when creating the roadway.

Public Comment:

Stewart Yount, property owner, said the CAB unanimously voted to approve it and considered it a hardship. He said his wife is claustrophobic and has back problems. He said she will need an attendant with her in the elevator. He said we cannot identify an alternative location.

Board Discussion:

Member Hill said the runoff from the roof will be directed through a gutter and downspout not to disturb the forest service. The US Forest Services was concerned with erosion and this will be addressed. She said she went out there this morning and took pictures – she said that side of the house has the same encroachment; it won't create a visual or environmental impact since there are already improvements on that side of the house of the same size.

Member Lawrence said the roof isn't a concern. He said he has difficulty making a decision; he said he isn't able to make the findings. He said there are other walls where it can be located. He said he is on the fence with this issue.

Member Toulouse said he cannot make the findings to allow this project to go forward. He said he doesn't believe the alternatives, including the option of a chair lift has been explored. He said there hasn't been enough exploration on alternatives.

Member Stanley said the CAB is extremely diligent and they approved this project. He said 40-70% slopes which are hardships, as well as the narrowness can be challenging to build on those slopes. He said the CAB minutes reflected TRPA acceptable location. Member Stanley said he could consider a continuance for more work to be done with the different parties to explore more options.

Mr. Lloyd said we don't consider agency requirements such as TRPA's code with the findings we are making. The requirements are not considered in our analysis when we are considering the unique situations of the property.

Chair Thomas said he feels for the applicant and the issues they face. Within the confines of the statues, he said he is having a hard time making the findings to approve this. It would be nice to see a letter from TRPA to reflect the other options aren't appropriate. The US Forest Service is the other property owner who opposes this. There needs to be more exploration to the other options including a chairlift. If other issues are explored with dead ends, it might help make a future decision. The applicant would need to ask for a continuance.

Member Hill said the slope is a challenge. Run-off will be mitigated. More and more people in Incline Village are getting elevators; it's very common. It's not a special privilege. She said she can make the findings for approval.

Chair Thomas asked if a continuance can be entertained. DDA Edwards said yes, it's up to the applicant. Ms. Fett said yes, the applicant would like to request a continuance to explore the options.

Mr. Lloyd said he would need clear direction for staff to continue the item, time certain for the next meeting on December 6, 2018.

Member Stanley said assess the size of elevator with smaller footprint, if feasible; reassess slope numbers; mitigation to reduce or eliminate the runoff concerns of US Forestry Service.

Member Lawrence said he is interested in why TRPA will not support the location somewhere else on the structure and why they would support this particular proposed location for the elevator.

Chair Thomas said he is interested to see if a chair lift is an option, and if a smaller footprint with the elevator is possible.

The applicant confirmed they would like to continue their application to December 6, 2018 in order to explore more options.

Member Toulouse moved that, Variance Case Number WPVAR18-0007 (SYGO – Yount Elevator) be continued to the next regular Board of Adjustment meeting of December 6, 2018 at 1:30 p.m. in Washoe County Chambers to allow the applicant to consider more options. Member Stanley seconded the motion which carried unanimously.

****3:20 – 3:29 Recess****

D. Variance Case number WPVAR18-0005 (Blaszyk – Wittmann) - For possible action, hearing, and discussion to approve a variance for the reduction of the general 15 foot front yard setback as follows: 1) to approximately 8 feet to build a roof over the staircase to the front entry; 2) to approximately 11 feet to build a roof over the front entry deck; and 3) to approximately 11 feet to extend the roof eaves over the front of the garage.

- Applicant/Property Owner: Michael Blaszyk & Leslie Wittmann
- Location: 455 Fairview Blvd, Incline Village
- APN: 131-221-05
- Parcel Size: 0.5 acres
- Master Plan: Suburban Residential
- Regulatory Zone: Medium Density Suburban
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804 Variances
- Commission District: 1 – Commissioner Berkbigler
- Staff: Eva Krause, Planner
Washoe County Community Services Department
Planning and Building Division

- Phone: 775.328.3628
- E-mail: ekrause@washoecounty.us

Chair Thomas opened the public hearing.

Eva Krause, Washoe County Planner, provided a staff report presentation.

Chair Thomas called for member disclosures. There were no disclosures.

Member Lawrence asked about the roof over the deck, 11' 4". He asked if the deck encroached on the setback. She said they want to install the roof over the deck.

James Borelli, applicant representative/architect, said we are adding a series of roofs to provide protection. The existing house was built without overhangs which created a safety problem. Three different roofs with setback distances: 11' 4" front door, stairwell 8', garage door 22' 2" to edge of pavement. The neighbor to the south objected due to the amount of construction projects in the area. Mr. Borelli said the applicant attempted to meet with the concerned neighbor. He wrote a letter to the neighbor to address their concern. Mr. Borelli said there is a US Forest lot across the street which will help with parking since it's not impacting another neighbor. This is no new living space, just new roof overhangs.

Member Toulouse said he wanted to make sure communication took place between the Wittman's and the neighbor, Mr. Lawless. Mr. Borelli said his client provided a letter addressing concerns, but did not hear back from the neighbor.

DDA Edwards said copies of the photos that were provided by the applicant's representative are available for the public.

With no requests for public comment, Chair Thomas closed public comment period.

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 WPVAR18-0005 for Blaszyk-Wittmann with the Conditions of Approval included as Exhibit A for this matter, having made all four required findings in accordance with Washoe County Development Code Section 110.804.25. Member Toulouse seconded the motion which carried unanimously.

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.

E. Special Use Permit Case Number WSUP18-0017 (Soule Grading) – For possible action, hearing, and discussion to approve a special use permit for grading, which was performed without the required permit(s) within a significant hydrological resource (SHR), by grading and removing vegetation within the Thomas Creek Critical Stream Zone Buffer Area and Sensitive Stream Zone Buffer Area. Grading has also taken place outside the stream zone buffer area.

- Applicant/Property Owner: Randal and Kim Soule
- Location: 13410 & 13430 Welcome Way
- APN: 049-165-06 and 049-165-07
- Parcel Size: 2.77 acres and 2.4 acres
- Master Plan: Rural (R) and Suburban Rural (SR)
- Regulatory Zone: Low Density Suburban & General Rural (GR)
- Area Plan: Southwest Area Plan
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 810, Special Use Permits and Article 438, Grading

- Commission District: 2 – Commissioner Lucey
- Area Plan: Southwest
- Staff: Julee Olander
Washoe County Community Services Department
Planning and Building Division

- Phone: 775.328.3627
- E-mail: jolander@washoecounty.us

Chair Thomas opened the public hearing.

Chair Thomas called for member disclosures. Member Toulouse said he conducted business with Mr. Setty in 2008. Member Stanley said he attended three separate CAB sessions where this was discussed.

Julee Olander, Washoe County Planner, provided a staff report presentation.

Ms. Olander said they recommend to remove conditions from Washoe County Parks and NDF, and recommend a new condition 'f,' "the applicant shall develop and submit the restoration plan to the Washoe County Planning and Building Division that includes re-vegetation with native riparian plant species and

measures for erosion and weed control.” The re-vegetation shall protect Thomas Creek and both the critical and sensitive stream zone buffer area. The plan will include amount of shrubs and trees; that will include evergreen trees at least 7 feet in height, deciduous trees at least 2 inches in caliber, and pounds per acre of seed mix; the plan will be submitted with the building permit for grading. Washoe County Planning and Building Division will consult with Nevada Division of Forestry and be in compliance with master plan policies concerning the appropriateness and viability of the plan for the area to be restored at the project site.

Member Toulouse requested a paper copy of the new condition.

Member Hill asked if the applicant has agreed to the new conditions. Ms. Olander said the applicant didn't agree with the other conditions, however, was satisfied with this condition.

The applicant's representative requested to change some wording.

Member Hill asked if the owner would post a security to make sure the work is completed. Ms. Olander said condition 1(a) indicates timelines for completion. He has 6 months to comply. Condition C requires him to come back for review to make sure the work is complete at subject site. The Corp of Engineers and NDEP are involved and have their specific requirements, permits, and fees they can impose if Mr. Soule doesn't meet their requirements. Mr. Lloyd noted condition 2(e) speaks to financial assurance being held prior to issuing grading permit. NDEP is requiring a storm water and working water ways permit. He is having to comply with them.

Member Hill asked about the accessory use of the dwelling. Ms. Olander said it is to store his heavy equipment which is fenced.

Member Stanley said, at the CAB meeting some of the residents saw the applicant using heavy equipment in the middle of the stream. Ms. Olander said yes, he drove through the creek. He is using the roadway to cross the stream. Member Stanley asked if grading was conducted in the stream. She said the applicant said he has maintained the dirt road. Member Stanley asked if a dirt road went through the stream. She said no, that's not allowed. Member Stanley asked if fishing is allowed in Thomas Creek. Ms. Olander said she believes there are fish planted in the creek. Member Stanley asked about code officers and how far the grading is away from the house. A code officer spoke with the wife and she indicated the work was removing dying and dead vegetation. The code officer took her word for it. Ms. Olander said you have to enter the property to see the work done. Member Stanley asked if the code officer was supposed to see the reported problem. The code officer took her word for it that no work was being done.

Member Stanley said when a second report came through, the code officer was able to enter the property. Ms. Olander said Mr. Soule believed what he was doing was ok; he is allowed to remove dead and dying vegetation, but it's more than that. Staff met with Mr. Soule and explained Articles 418 and 438 grading code, which the property owner said allowed him to do it. In May, the first complaint was filed, on June 12, a stop work order was given, on September 13 an administrative penalty notice was given.

Member Toulouse said, after reviewing the new conditions of approval, he doesn't see the stream channel needs to be restored to preexisting condition. Ms. Olander said NDEP requires that. We don't have that language in our code. There isn't language regarding putting the creek back the way it was. NDEP and Corp are regulating that. There was concern with the pool that was made. The Corp or NDEP will review - him from keeping the pool. Member Toulouse said we can make that as part of this condition. DDA Edwards said yes, as long as it fits the framework.

Member Stanley said there is TMWA property nearby. He asked if TMWA was asked for comment. Ms. Olander said TMWA didn't provide feedback for this particular situation. She said they received feedback from NV Div. of Water Resources – they said this property has ground water and surface water rights. Member Stanley spoke about adequate stream flow and water rights downstream. Ms. Olander said she doesn't know specifically, but she believes there are properties along the creek that have it.

Member Stanley asked about the coordination of the agencies' requirements and how they fit together. Ms. Olander said the applicant will have to meet all the agencies' requirements. The applicant will have to prove he meets the requirements. She explained their process. She said we will get a report back regarding

the status of his mitigation work. Washoe County will make sure it's all done within a year at the requirements of the Corp and NDEP.

Mr. Lloyd said this is under code enforcement; this is the mechanism to ensure compliance. It remains a code compliance issue until mitigation has been completed to the satisfaction of all the agencies involved.

Under condition 1(f), it addresses planting trees but doesn't indicate how many. Ms. Olander said NDF will address riparian vegetation. They will provide direction depending on the amount of trees. She indicated the size of trees as a guide.

Chair Thomas said this was a scorched earth approach; it was more than dead and dying trees. He said he would like to have documentation and video of progress. We decide what is appropriate; the applicant shouldn't be able to dictate that. The planning department has the authority, the master plan and NDF guides the direction of re-vegetation.

Member Toulouse said he would like to see a condition regarding the survival rate and steps to ensure the vegetation actually works. Ms. Olander said the condition would include the applicant coming back to the Board of Adjustment in a year. Mr. Lloyd said 2(e), the financial assurances will be held until it's completed. It will take a couple of years until it's established. Member Toulouse said he wanted to see specific criteria. He said upland and transition zone was also disturbed and needs to be mitigated.

DDA Edwards said a copy of the conditions with the new language is available for the public.

Member Stanley asked for conditioning regarding fisheries. Ms. Olander said NDOW provided a condition – the applicant shall use best management practices for dirt work. Applicant shall re-seed to minimize erosion with sediment control devices to prevent erosion and it will help the wildlife habitat in the area.

Member Lawrence asked how deep is the the pool/pond. Ms. Olander said deep enough to allow his dogs to swim in it.

Matt Setty, hydrologist and applicant representative, said he is working with US Federal Water Master, Nevada Division of State Lands, Corp of Engineers, NDEP, and Rural Water planning. He wants to merge the conditions into the plan and how they can fulfill those conditions and align the financial assurances. He said he recommends a hard criteria for success.

Mr. Setty provided a presentation.

Member Stanley asked if they assessed the impacts with downstream water rights. Mr. Setty said no impacts were made downstream. He said State Engineer will work with them to create an addendum. The Corp is concern with stream bank impacts. Member Stanley asked how many total acres will have to be restored in all components. Mr. Setty said .92 acres in riparian and .3 acres behind the residence. Member Stanley asked if the mitigation runs with the land. Mr. Setty said yes, it runs with the land. The federal and state has a right to deed restrict compliance. Member Stanley asked for the total cost for restoration – the bond 125% of the license engineer's estimate; \$30-50K in direct plantings as a rough estimate. The engineer will put that cost together.

Member Lawrence said this work was not near Mr. Soule's house. He asked what is the flooding damage? Mr. Setty said there were dead trees debris and material. There is a long standing issue with Parks. There is no easement access. Mr. Soule was having issues with the homeless. He thought he was exercising his rights under Article 418. Mr. Setty said we offered to work in conditions to allow maintenance of the floodway on the county easement, but hasn't heard back. The initial concern was the build up of Alder in the stream zone. It was more esthetic. There was theft by the homeless issues. Member Lawrence said that is a different issue than the stream.

Chair Thomas said there isn't a culvert, rather a bridge that crosses the access road 18-20 feet long, 8 feet tall.

Member Lawrence said it's natural for debris to fall and build up with flooding. Mr. Setty said Mr. Soule is back in compliance with state regulation with in-stream. He exposed system to sedimentation.

Member Toulouse said we are dancing around stream channel restoration. Would it be a good idea for restoration to mimic the natural state of the channel. Mr. Setty said let's take the pool out of consideration. The stream bottom was untouched, the banks were disturbed. In the SWPPP, the bank is rocky with little silt. It's been sitting and stabilized since June. We won't gain much by going back in because there wasn't a fill or dredge. The pool will fill back in. We can leverage the current roots and build in stability. Trying to do something with that channel cross section except the pond where it went out of the system; focus would be erosion control in the bank areas.

Member Toulouse asked about Mountain Alder as an option. He said it's natural and native. Why wouldn't we want to plant Mountain Alder. Mr. Setty said they will. The Mountain Alder has potential to choke everything out again. Yellow Willow and Mountain Alder is proposed. We need to do the right thing.

Chair Thomas said the pond was built for his dogs. Mr. Setty said he doesn't know if the applicant has dogs. Mr. Setty showed a map of the bar he filled in to create a pond. He excavated that area. Chair Thomas asked about the amount of stream that was disrupted. Mr. Setty said 20 feet x 10 feet of the stream of disturbance.

Public Comment:

Jim Sundali said he lives near this subject property. He said there isn't much he can do to restore it. Mr. Soule is a successful, wealthy, smart business man who is strategic. He didn't want to ask for permission, but is asking for forgiveness. There is not penalty except for \$100 fine. Something needs to change with the code enforcement process. You could see on day one the impact he did. He asked what if the neighbors were to do the same thing. You can't do 100 years of growth. You need to de-incentivize someone from doing this again.

Lyn Mundt said she was instrumental in putting together a stream committee comprised of a variety of people who had an issue with streams. The goal was to put together a stream ordinance to protect the stream with buffer zones. It's been an interesting process. The development code, 418, hydrological resources, if followed, is great. To find the enforcement is so chaotic and complex, it's been an eye opener. She agreed with the last speaker that this needs to be looked at. She said she never expected another homeowner to do this. Mr. Soule has disrupted natural corridor and its natural benefits. There will be expenditures of public funds to protect homes from stream flow. She said she appreciates the restoration, but we need to prevent this from happening again. There will be floods and debris flows due to this. The process needs to be more logical. She commends the board members and staff for a job well done.

Board Discussion:

Member Toulouse said he doesn't know where to begin. Ms. Mundt mentioned a stream committee creating ordinances. Member Toulouse said he sat on that committee. He said this is the most egregious violation of the county code we have ever seen. He said it's almost criminal. The county lacks the teeth to enforce the ordinances. He would like to see the citizens approach the county about enforcement. The only correction is through this special use permit. We have no other options. He said he has confidence in Mr. Setty's restoration plan. He said he has worked with him in the past and knows he will accomplish this. We have to approve the special use permit to get the restoration done.

Member Lawrence said he agreed with Member Toulouse. He said he has never seen something like this. He said he has a strong regulatory background and this issue has been raised with staff about stronger regulatory actions. He said he has expressed his concerns about that. He said he wanted to assure the public that they are looking at this process. They are aware there is concern about this. We need to proceed with the best management practice to restore things to the best we can to reduce erosion. He said he disagreed with a statement made about impacts downstream. There are impacts that affect everyone downstream. He said he hopes restoration can be done.

Member Hill said she looks forward to the progress with the restoration. She said she appreciates the condition that it needs to come back before this Board in a year. They need to be held accountable; it's horrific.

Member Stanley said he echoes the comments and outrage. He said he is very disappointed that someone from enforcement couldn't be here. He said we have gone through this only to bless something after the fact. We need to improve the process.

Member Toulouse said we need to approve this in order to get it done. He said he appreciates the condition that the applicant comes back within a year. Member Toulouse said we are going to hold your feet to the fire.

Member Stanley said the county has worked diligently to fix a serious problem. He agrees that stabilization needs to be done and restored. Planning has done a great job.

Chair Thomas said he is disappointed the applicant isn't present. He echoed the comments made by the public. He said he walked the trail and never saw any homeless. He said one person decided to devold that property. He blatantly destroyed the area to build his own pond for personal reasons. He said he is concerned; he wants to add more teeth, conditions and fines. People have disregarded the codes and come before this board to ask for forgiveness. He said he questions if Mr. Soule will do his part.

Ms. Olander said there is a change in the condition for NDEP under condition 3(a) to read 'applicant will obtain a working and water way permits as required by NDEP' dependent on what is required; it will be decided during the process.

Member Toulouse 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 approve, with amended conditions 2.a., Special Use Permit Case Number WSUP18-0017 for Randy and Kami Soule, having made all four findings in accordance with Washoe County Code Section 110.810.30. Member Lawrence seconded the motion which carried 4 in favor, one against.

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Southwest 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 Major Grading in a Critical Stream Zone Buffer Area, 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.

9. Chair and Board Items

***A. Future Agenda Items**

Member Stanley requested a working session regarding precedence in enforcements and jurisdiction of other agencies. Mr. Lloyd said you can raise the issue with the Planning Commission.

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

No requests were made.

10. Director's and Legal Counsel's Items

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

Mr. Lloyd reported the Eekoff variance in Hidden Valley was appealed at the Board of County Commissioners and they upheld the decision of this board.

***B. Legal Information and Updates**

No updates.

11. *General Public Comment

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

12. Adjournment

The meeting adjourned at 5:39 p.m.

Respectfully submitted by Misty Moga, Independent Contractor

Approved by Board in session on December 6, 2018

Trevor Lloyd
Secretary to the Board of Adjustment

DRAFT