

## **Law Offices of Victor Elgohary**

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Dear Washoe County Planning Commission:

I am writing in regards to the Abandonment Application (“Application”) submitted by Mr. Caillier through his architect Mr. GilanFarr for parcel 123-143-11 located at 425 Pahute Road (“the Subject Property”). I became aware of this Application because I own 450 Pahute Road, just two doors down the road. For the reasons set forth below, I am in opposition to Mr. Caillier’s Application.

### **Background**

I became familiar with the Subject Property because when it was put on the market back in 2019, I performed due diligence on the listing and quickly noticed its major title defect. I decided to purchase 450 Pahute which had had no such title problems when it came on the market a short time later.

Public tax data shows the Subject Property to have been constructed in 1941 with a weighted average year (WAY) of 1952. Given my knowledge and research of the Washoe County tax database, that strongly suggests that there are some Washoe County records that would show an approved or known remodel likely occurring in the 1960s or early 70s, however, I have not been able to find such evidence through my online search.

The more recent history from the 2000s forward show that the Subject Property has changed hands a few times, most notably the foreclosure that occurred in 2011 from Mr. Martin to Wells Fargo Bank. At the time of the foreclosure, the Subject Property was in very poor condition according to Mr. Greifenstein, a full time resident and owner of the neighboring property at 440 Pahute Road since 1997. When Ms. Rader (the immediate prior owner) purchased the Subject Property from Wells Fargo in lieu of auction, she undertook extensive and unpermitted renovations of the home that place it in the current condition that it is today. The encroachment of the Subject Property’s improvements, as I have personally experienced, is quite problematic since heavy truck deliveries and even towing of small trailers with a passenger vehicle can become virtually impossible, requiring vehicles to either back into or out of the very narrow and twisty Pahute Road.

### **The Application**

Reading through the Application that has been presented to the Washoe County Planning Commission (“Commission”), there appears to be quite a few liberties being taken with the facts and circumstances surrounding the Subject Property in order to paint an image most favorable to Mr. Caillier, but ultimately misleads the Commission with regard to the Subject Property’s history and conditions in the neighborhood generally.

To begin, Mr. Caillier, through Mr. GilanFarr, represents to the Commission in the very first paragraph that “like many homes in this neighborhood, the residence at 425 Pahute encroaches into the property’s front setback and a portion of the home is constructed in the Washoe County ROW.” That statement is simply and factually inaccurate. It is true that for those who have followed the rules promulgated both by Washoe County and Tahoe Regional Planning Authority (“TRPA”), variances

have been granted to construct into setbacks for essential structures such as garages. However, Mr. Caillier will be unable to show the Commission that Washoe County or TRPA has *ever* acquiesced or approved a structure to encroach on public right of ways.

Second, Mr. Caillier represents that;

“When visiting the site in person, it does not appear as a turnaround area or cul-de-sac, rather the street essentially dead ends straight into the garage of the existing residence. See photo to right. The home does not share the cul-de-sac with any other residences, and is the only residence serviced by the last 60+ feet of road.

That, too, takes quite a few liberties with the facts. Every resident and regular service provider to Pahute Road knows this area is a difficult turnaround. The current map of this plat with the encroachment makes that abundantly clear. Moreover, the suggestion that Mr. Caillier is all by his lonesome self at the end of a long uninhabited mountain road is quite artful, but profoundly misleading and ultimately untrue. Indeed, when one visits the site, one would see from the photo submitted that panning the camera just a few more degrees to the left would start to show Mr. Greifenstein’s property at 440 Pahute Road.

Finally, Mr. Caillier represents that “We have reason to believe that these listed conditions have existed for a long time and were built legally.” That assertion is also very likely not true. For starters, Ms. Rader (the prior owner of the Subject Property) had a duty to disclose to Mr. Caillier all these unpermitted major renovations to the Subject Property. Even more damaging to Mr. Caillier’s assertion would be found in the title commitment disclosures he received from First American Title back in November 2019. That title commitment and title policy almost certainly highlight this major title defect and were likely excluded from coverage. Indeed, how could one possibly assert that something “existed for a long time and [was] built legally” when there are no permits for any major renovation that would have been disclosed by Ms. Rader? Moreover, who could possibly believe in good faith that the Subject Property was in this condition with absolutely no permitted renovations for a half century? It simply lacks credibility. Mr. Caillier should be asked to produce those title commitment documents to affirm his assertion that the improvements “existed for a long time and [were] built legally”.

### **Considerations Requiring the Denial of the Application**

Both the Washoe County Code 110.806.20 and Nevada Revised Statutes 278.480 (5) require that there be no material injury to the public by the proposed vacation. The Washoe County Planning Commission should make short work of Mr. Caillier’s Application since it is not in the public interest, continues a condition that is detrimental to other owners and service providers to Pahute Road and condones or rewards willful violations of the Washoe County Building Code.

First, in the map plat that was dedicated as part of this planned development, the end of Pahute Road has a turning radius of 25 feet which equates to almost 2,000 square feet of public right of way. Indeed, when this map was dedicated, the 25 foot radius turnaround was not just a random dimension or whim as it took considerable time and resources to carve this road out of the mountainside. The severe encroachment of the Subject Property’s improvements have destroyed more than half of this vital public turnaround area. In its current condition with the major building encroachment onto this

public right of way, typical service vehicles used by UPS Freight, FedEx Freight and numerous other LTL carriers that have over 26 foot box trucks or trailers are required to choose to either back into or out of Pahute Road to service residents on this street. On several occasions, I personally have been unable to receive large freight items to my residence because trucking companies cannot or refuse to navigate Pahute Road. Even Pahute Road residents themselves as well as other members of the public are negatively impacted since turning around at the end of Pahute Road in a passenger vehicle with even a modest U-Haul or other small trailer is challenging, if not impossible at any time of year. Snow season makes that impossibility a certainty. I would invite anyone sitting on the Commission or its staff to bring their personal vehicle with even the smallest trailer and try to navigate in and out of Pahute Road. It is quite an unpleasant experience and is all due to the Subject Property's profound encroachment onto this public right of way.

Second, the request seems to contemplate Washoe County just giving the land to Mr. Caillier. But Nevada Revised Statutes 278.480(8) states that “[i]f the street was not acquired by dedication, the governing body may make its order conditional upon payment by the abutting property owners for their proportionate part of the street of such consideration as the governing body determines to be reasonable.” There are considerable public ramifications of Commission just giving away property as evidenced by the recently disputed sales of IVGID land to private individuals. See <https://www.rgj.com/story/news/2017/12/20/fight-over-tahoe-beach-access-leads-questionable-land-sales/966297001/>. In its report, the Commission staff report has completely failed to take into account the required payment for the property if this Application is approved.

Finally, there is the public policy issue and setting precedent. If Mr. Caillier is successful in having the end of Pahute Road simply deeded to him, the Commission is indirectly stating to Washoe County residents that it condones and encourages adverse possession of public property. It is also signaling that (i) the Commission is willing to simply move property lines for those that wrongfully build onto Nevada property and (ii) totally disregard the public interest of those using the public right of way so as to solve a problem created by a land owner's willful disregard of the building code. The Commission should decline to continue to open that Pandora's Box.

### **The Staff Report is Conclusory and Perfunctory**

In a meager two pages of written text which it considers a “thorough analysis and review”, the Commission staff concludes that this Application should be granted. It makes little to no effort to explain (i) the detailed history of the Subject Property and its improvements, (ii) the dedication history of Pahute Road, (iii) necessary and obvious references to the Washoe County Master Plan Land Use and Transportation Element, and (iv) even fails to consult with the Washoe County Community Services to understand and explain the implications for snow removal under this Application. Perhaps the Commission staff, in addition to recommending the free transfer of public property, also intends this gift of land to Mr. Caillier to include free Washoe County snow removal to owners of the Subject Property in perpetuity.

Indeed, without a detailed written analysis or public policy considerations, the Commission staff offers baseless conclusions to each of the three required findings in 40 words or less. A reviewing body such as the Washoe County Board of Commissioners and especially any Washoe County District judge will find this analysis profoundly lacking by any reasonable standard making any decision based on this analysis arbitrary and capricious.

## **An Alternative Solution to the Abandonment Request**

What Mr. Caillier seeks is the use of the 1,198 square feet of TRPA Code of Ordinances coverage requirements (“Coverage”) that was almost certainly built in violation of the Washoe County Building Code as it then existed but predated the TRPA Code of Ordinances. Mr. Caillier needs this existing Coverage that now exists on the Pahute Road public right of way in order to relocate any new structure. Otherwise, under the TRPA’s purported current interpretation of the ordinance, he will be forced to purchase (from other lots around the Tahoe Basin) almost all the Coverage necessary to complete his proposed project, making his whole redevelopment undertaking prohibitively expensive and ultimately economically unfeasible, if it is even possible. Other than this Coverage problem, Mr. Caillier has 11,675 sq. ft. (minus the appropriate existing setbacks) of land to build improvements which is more than adequate to construct a single family home of any reasonable proportion.

But Mr. Caillier has not formalized *any* detailed plans for his request because according to Mr. GilanFarr, he would like to take less risk by getting approvals first before undertaking the expense of formalizing a plan that may not get approved. He also claims through Mr. GilanFarr that the TRPA (or at least its general counsel) refuses to even entertain the rational solution of simply moving the existing footprint back onto the lot where it belongs. But without the submission of a detailed plan to both this Commission and the TRPA, we have no idea what the official TRPA response actually could be and from which further actions by the affected parties can be contemplated.

The solution going forward is not this meritless and publicly injurious free land transfer. Instead, the Commission should use its resources to help Mr. Caillier with the TRPA so that everyone impacted can benefit. But that also requires that Mr. Caillier give all of us an opportunity to comment on detailed plans rather than these mere vague suggestions. The Commission has an interest in helping Mr. Caillier since it is obligated (and can be compelled) to enforce the building code and recover the necessary public right of way owned by the State of Nevada / Washoe County.

If a calamity like fire or avalanche were to beset the Subject Property, it would be inconceivable that Mr. Caillier could not reconstruct his home without first taking public land and harming his neighbors. Indeed, a denial of an application to this Commission and the TRPA to simply rebuild the Subject Property after a loss would most certainly be an unconstitutional taking of land, a claim which Mr. Caillier would most certainly win in court. The result should be no different if rebuilding is required due to obsolescence. There are plenty of provisions and special exceptions under the TRPA Code of Ordinances to make Mr. Caillier’s vision a reality, but he will need assistance and support from this Commission to bring it to completion. The Commission and the TRPA should help him in that regard, but not in the lazy and publically injurious manner that is being proposed here.

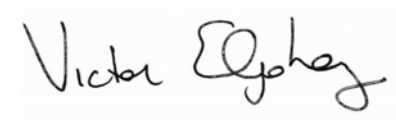
As all these pre-TRPA homes in Crystal Bay age, this issue will most certainly come up again with such a purported TRPA interpretation of the ordinances. Giving away public right of ways in order to rebuild is simply not workable for the public at large and will lead to numerous lawsuits as these problems continue to arise in the future.

## Conclusion

Mr. Caillier's request for an Abandonment of the end of Pahute Road benefits only him while continuing to injure the public. The Commission should not grant this Application since it has significant harm to the public and encourages violations of section 110 of the Washoe County Development Code.

If the Commission grants this request in its current form, it will immediately be appealed to the full Washoe County Board of Commissioners. In addition to the appeal, a writ of mandamus will be filed in the Washoe County District Court against the Commission for its blatant failure to enforce the building code and give away critically necessary public property to violators (or their successors in interest) of the Washoe County Building Code. I trust alternate solutions to this unreasonable Abandonment Application and building code violation will receive due consideration so a lawsuit becomes unnecessary.

Regards,

A handwritten signature in black ink that reads "Victor Elgohary". The signature is written in a cursive style with a large, stylized 'V' and 'E'.

Victor Elgohary