



Board of Adjustment Staff Report

Meeting Date: December 3, 2015

Subject: Revised Board of Adjustment Rules, Policies and Procedures
Applicant: Planning and Development Division
Agenda Item Number: 9A
Project Summary: Action to direct staff concerning a revised set of Board of Adjustment Rules, Policies and Procedures
Recommendation: Review, discuss and provide direction to staff
Prepared by: Lora R. Robb, Water Management Planner
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Description

Discussion and possible action to direct staff on the content of the revised Rules, Policies and Procedures for the Board of Adjustment regarding the conduct of meetings, hearings, and appeals to the Board, and governance matters such as quorum, voting, record keeping, and the duties, responsibilities, and ethical rules for Board members

Rules, Policies and Procedures

The Washoe County Board of Adjustment adopts a standard set of rules, policies and procedures to guide the Board of Adjustment, and individual Members, in the discharge of their duties. The rules, policies and procedures provide continuity and consistency between the regulations and administrative functions necessary for the Board to execute its obligations. The Board of Adjustment is regulated through Nevada Revised Statutes and Washoe County Code.

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 Ordinance No. 1555 Adopted by the BCC..... Exhibit E
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 Proposed Rules, Policies and Procedures (clean).....Exhibit G

Background

In early 2011, Department staff was asked to review the Rules, Policies and Procedures for all Department-administered boards and commissions for consistency and synchronization. The outcome of the review first came before the Board of Adjustment in a staff report at its October 4, 2012 meeting (Exhibit A). The majority of the recommendations sought to synchronize the various rules, policies and procedures among the boards and commissions. Amendments were also proposed to improve formatting, grammar and context.

The staff report presented to the Board at its December 6, 2012 meeting provided details and recommendations concerning the Board’s duties related to hearing appeals. The recommendations sought to bring the Rules, Policies and Procedures in conformance with current statutory standards and establish a set of rules to govern the procedures of the Board when hearing appeals (Exhibit B) that would ensure that appellants are afforded due process of law. A draft ordinance proposing amendments to Articles 912 and 914 of the Washoe County Code was provided to the Board. Discussion of the proposed ordinance at the Board meeting resulted in staff updating the draft ordinance to reflect the Board’s changes.

At its February 7, 2013, meeting, the Board reviewed updated and revised text of the draft ordinance to amend Articles 912 and 914 (Exhibit C), establishing general rules governing appeals to the Board of Adjustment. The Board acted unanimously to accept the draft ordinance as presented by staff and recommended to the Planning Commission that the draft ordinance, as amended, be submitted to the Board of County Commissioners (BCC) for adoption.

At its June 6, 2013, meeting, the Board reviewed a revised set of Rules, Policies and Procedures that sought to conform to current practices and legal requirements as well as add new provisions governing appeals to the Board as required by State law and proposed amendments to the Washoe County Development Code. The Board agreed it was better to wait until after the BCC approved the proposed Code changes to take action on proposed changes to its Rules, Policies and Procedures (Exhibit D).

In April 2015, the BCC passed Ordinance No. 1555 (Exhibit E) amending Articles 912 and 914 of the Washoe County Code with an effective date of May 8, 2015.

Analysis of Proposed Rules

Beginning in 2012, the BCC adopted amendments to Code establishing new and expanded code enforcement mechanisms through the use of administrative hearing officers, setting out when and how appeals to the decisions of administrative hearing officers are made, and defining how building permit and land use code interpretive decisions are appealed to the Board of Adjustment.

In addition to formatting and consistency changes, the revised Rules, Policies and Procedures (Exhibits F and G) provides a process for the Board of Adjustment to hear appropriate appeals as stated in the Board's June 6, 2013 staff report. "The decisions by the Board of Adjustment are considered 'adjudicative' or 'quasi-judicial' and therefore the parties to the appeal must be afforded due process of law which includes the right to a fair hearing."

The draft of the revised Rules, Policies and Procedures has been discussed at previous meetings of the Board; and, the past direction of the Board, combined with the adopted ordinance defining how appeals shall be heard, are incorporated into the documents presented in Exhibits F and G. The draft of the revised Rules, Policies and Procedures also reflects changes in statutes (such as the Nevada open meeting law and Ethics laws), County ordinances and current practices.

Notice and Required Findings

There are no special procedures and no required findings that must be made before directing staff to make changes to the draft of the revised Rules, Policies and Procedures. Board-directed changes will be brought back at a future meeting for further discussion and possible adoption.

Recommendation

Staff recommends the Board review and discuss the attached revised Rules, Policies and Procedures and direct staff to make any additional changes. A sample motion is provided below.

Motion

After giving consideration to the information in the staff report and information received from staff during the meeting, I move to direct staff to make the following changes to the Washoe County Board of Adjustment's Rules, Policies and Procedures: *[list changes]*. The Board Secretary may also make non-substantive edits and corrections and return to this Board to present a revised draft for possible adoption at the Board's next regular meeting.



Board of Adjustment Staff Report

Meeting Date: October 4, 2012

Subject: Board of Adjustment Rules, Policies and Procedures

Agenda Item No. 9C

Summary: Review, discussion and direction to staff on possible amendments to the Washoe County Board of Adjustment Rules, Policies and Procedures.

Recommendation: Provide direction to staff on possible amendments to the Washoe County Board of Adjustment Rules, Policies and Procedures. Schedule the final review and adoption of the proposed amendments for the December 6, 2012 Board of Adjustment meeting.

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Washoe County
Commission District: All Commission Districts

Rules, Policies and Procedures Description

The Washoe County Board of Adjustment adopts a standard set of rules, policies and procedures to guide the Board of Adjustment, and individual Members, in the discharge of their duties. The Board of Adjustment is regulated through both Nevada Revised Statutes and Washoe County Code. The adopted rules, policies and procedures provide continuity and consistency between the regulations and the administrative functions necessary for the Board to execute its regulatory obligations. The Board of Adjustment will periodically review, update and amend its rules, policies and procedures as circumstances warrant.

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Proposed Rules, Policies and Procedures Exhibit A

Background

The current Washoe County Board of Adjustment rules, policies and procedures were adopted by the Board of Adjustment on December 2, 2010. Department administrative staff was asked by the Community Planning Services Manager (Kim Robinson) early in 2011 to review the rules, policies and procedures for all department administered boards and commissions for consistency and synchronization. The outcome of this comprehensive and thorough review is the proposed amendments to the current Planning Commission rules, policies and procedures included as Exhibit A to this staff report.

The majority of the proposed amendments are the result of administrative staff efforts to synchronize the various rules, policies and procedures. Additionally, there are several proposed amendments based on grammar and context. Staff is seeking questions, recommendations and direction from the Board of Adjustment on all of the proposed amendments. The major suggested areas for Board of Adjustment discussion and direction to staff are outlined below:

1. *Potential Conflicts of Interest [section A(3)(b)(iii)].* NRS 281A governs the ethics laws for the State of Nevada and applies to the Board of Adjustment as a whole and to individual Members. Upon appointment, Members execute a document indicating they have received and read a copy of NRS 281A, and that they remain current with any changes to that regulation. The current rule does not adequately address the range of potential conflicts of interest as established within NRS 281A and is misleading as to the actions required of Members. Legal staff has rewritten this portion of the rules and recommends that the Board adopt the proposed changes. If the Board of Adjustment agrees, then the added and deleted text will remain.
2. *Quorum and Voting, Number of Members Required to Conduct Business [section B(1)].* NRS 278.030 establishes the five-member Board of Adjustment and NRS 278.040 stipulates that vacancies on the Board of Adjustment must be filled. Additionally, NRS 278.210(3) requires that an appeal master plan be adopted by resolution “carried by the affirmative votes of not less than two-thirds of the total membership” of the Board of Adjustment. Board of Adjustment quorums, therefore, are based on the total number of appointed members to the Board, regardless of vacant positions on the Board. Staff recommends that any references to reducing the quorum based on Board vacancies be removed. If the Board of Adjustment agrees, the proposed amendment to remove paragraph 3 will remain.
3. *Quorum and Voting, Number of Commissioners Required for a two-thirds vote [section B(1)(b)].* Staff recommends adding additional text to clarify that “in attendance” means either physically present at the meeting or attending the meeting through a telephone or video conference. This rule would assist in ensuring a quorum of 5 members for those items requiring a two-thirds vote (i.e., master plan amendments). If the Planning Commission concurs, then the added text will remain.
4. *Time limits for group and individual speakers [sections C(1)(a)(ii) and C(7)(b)(v)].* These sections have been amended to consistently reflect the current speaker time limits for

staff and applicant presentations (15 minutes), speakers representing a group (5 minutes) and individual speakers (3 minutes).

5. *Alterations to speaker time limits [section C(7)(b)(v)(i)].* Recent changes to the Nevada Open Meeting Law required changes to the Board of Adjustment's agenda, most notably for the inclusion of public comment periods at the beginning and end of the meeting. If the Chair desires to modify speaker time limits for public comment periods, then such modification must be announced at the beginning of the meeting. Such a change must remain in effect for both public comment periods (the period at the beginning of the agenda and the period at the end of the agenda). If, however, the Chair desires to modify speaker time limits for public testimony during any agenda item in order to discuss issues associated with the agenda item, the Chair should be able to make the modifications at the beginning of the agenda item in order to facilitate due process. If the Board of Adjustment agrees, then the proposed changes to the referenced section will remain.
- ~~6. *Election of Officers, assumption of duties [section E(2)].* The current rules, policy and procedures state that newly elected officers will assume their duties at the next regular meeting of the Commission. The County Commission and Board of Adjustment rules stipulate that new officers assume their duties immediately upon election. Staff recommends that the Planning Commission's rules mirror this process. If the Planning Commission agrees, then the proposed changes to the referenced section will remain.~~
- ~~7. *Committees, Design Review Committee [section E(6)].* The current rules, policy and procedures do not address the Design Review Committee (DRC) as a committee of the Planning Commission. The proposed amendments rectify this oversight and replicate the current DRC appointment process. If the Planning Commission concurs, then the proposed amendments to the referenced section will remain (with any additional modifications provided by the Commission).~~
- ~~8. *Committees, DRC, Appointments [section E(6)].* The proposed changes show that DRC appointments are valid for one year. The Commission may wish to discuss the appointment length of time and provide direction if a longer time frame is desired.~~
- ~~9. *Regional Planning Commission [section J].* Staff requests the Planning Commission review this section and provide any modifications to address any concerns with the current Regional Planning Commission member and/or alternate appointment process.~~
10. *Ethical Principles in Planning [Appendix A].* Staff noticed that the text within Appendix A differs slightly from the Ethical Principles in Planning as published on the American Planning Association's (APA) web site. Therefore, staff modified the text to match the text within the APA web site.

Recommendation

Staff recommends that the Board of Adjustment provide direction to staff on possible amendments to the Washoe County Board of Adjustment Rules, Policies and Procedures. Staff additionally recommends that the Board of Adjustment schedule the final review and adoption of the proposed amendments for the December 6, 2012 Planning Commission meeting. The following motion is provided for your consideration:

Motion

I move that staff incorporate the modifications and direction provided by Board of Adjustment members during this item into the Washoe County Board of Adjustment Rules, Policies and Procedures. I further move that any proposed amendments not specifically discussed during this item be carried forward into the Washoe County Board of Adjustment Rules, Policies and Procedures. Finally, I move that the Washoe County Board of Adjustment Rules, Policies and Procedures be scheduled for the December 6, 2012 Board of Adjustment meeting for final review and adoption.



Board of Adjustment Staff Report

Meeting Date: December 6, 2012

Subject: Appeals Procedure Ordinance
Applicant: Community Development Department

Agenda Item No. 8F

Summary: To review proposed text of an ordinance establishing general rules governing appeals to the Board of Adjustment, and to provide direction to staff and recommendations to the Planning Commission for drafting and proposing the ordinance.

Recommendation: Review and Comment

Prepared by: Greg Salter, Deputy District Attorney
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Washoe County
Commission District: **All Districts**

Description

Draft Ordinance Amending Articles 912 and 914 - Review proposed text of an ordinance establishing general rules governing appeals to the Board of Adjustment and provide direction to staff and recommendations to the Planning Commission for drafting and proposing the ordinance. Proposed ordinance generally covers what matters can be appealed to the Board of Adjustment, the timelines and procedures for such appeals (including what evidence may be reviewed and who has the burden of persuasion), and the right to either seek judicial review of the decisions of the Board of Adjustment or appeal them to the Board of County Commissioners.

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Analysis

This staff report is part of staff's ongoing efforts to update and enhance the Board of Adjustment *Rules, Policies and Procedures*, and to improve the County's code enforcement procedures.

Under NRS 278.310 and Washoe County Code (WCC) Section 110.912.(f) (1), the Board of Adjustment is charged with hearing appeals from:

Any "person aggrieved by his or her inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location or soundness of structures," and

"all matters referred to it or properly of concern in the administration of the Development Code."

Recently WCC Chapter 110, Article 910 was amended to provide that the Board of Adjustment is charged with hearing appeals of administrative hearing officers under a new administrative enforcement mechanism.

As a part of staff's overall review of the Board of Adjustment *Rules, Policies and Procedures*, staff recommends updating the rules regarding appeals to bring them up to statutory standards and improve efficiency of appeal hearings. Rules regarding appeals are in Part D of the revised rules being considered by this Board in a separate proceeding.

Staff also needs to amend the Washoe County Code to comply with NRS 278.310.2 which requires that the Board of County Commissioners enact, by ordinance, a set of general rules to govern the procedure of the Board of Adjustment when hearing appeals. Last month, the Planning Commission initiated ordinance procedures for these changes. The draft ordinance suggested by staff is attached as Exhibit A to this staff report.

The principal purposes of the general rules in the ordinance are to assure that appellants are afforded due process of law under the federal and state constitutions, and to improve the efficiency and orderly conduct of appeal hearings. Accordingly, the attached ordinance:

- Defines which actions may be appealed to the Board of Adjustment [closely following NRS 278.310 and eliminating the overbroad language in WCC Section 110.912.10 (f) (1)].
- Establishes time periods for filing appeals (20 days) and for scheduling hearings on the appeals (60 days or next regular meeting after 60 days).
- Permits the Board Chair to conduct prehearing proceedings to settle procedural and evidentiary issues so that issues and evidence may be presented in an orderly fashion with minimal procedural objections.
- Empowers the Board Chair to issue subpoenas (authorized by NRS 278.290.1) to compel attendance of witnesses.
- Empowers the Board Chair to approve stipulations or settlements (eliminating the need to present them to the Board).
- Establishes the evidence that the Board may review at an appeal hearing, which would include the record on appeal (transcript and evidence used in the proceeding being appealed), as well as statements and information presented before or at the hearing before the Board.

- Provides that decisions being appealed are presumed to be reasonable and lawful, and the burden of persuasion to the contrary is on the appellant.
- Provides that the Board may affirm, modify, reverse, or remand (with or without instructions) a decision and establishes the grounds on which a decision may be reversed or modified.
- Requires a written decision by the Board and provides possible procedures by which the decision may be rendered and approved.
- Provides that decisions of the Board may either be submitted for judicial review or appealed to the Washoe County Commission within 25 days after the decision becomes final.

Recommendation

Staff recommends that the Board of Adjustment review the proposed ordinance and make any changes or direct staff to make changes it feels appropriate, and then recommend the ordinance to the Planning Commission to review and submit to the Board of County Commissioners for adoption.

Possible motion

I move that the changes discussed by the Board of Adjustment concerning this matter be included within the draft ordinance and, further, I move to recommend to the Planning Commission that the draft ordinance, as amended, be submitted to the Board of County Commissioners for adoption.

Staff Report xc: Bill Whitney, Acting Director

Exhibit A
Articles 912 & 914 Ordinance Changes

(Rev. 11-21-2012)

WORKING COPY
INFORMATION ONLY

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETE LANGUAGE~~

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040
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Summary: Amends WCC Section 110.912.10 (Board of Adjustment) to provide general rules governing appeals to the Board of Adjustment; repeals conflicting provision in WCC Subsection 110.914.05 (f) (Appeal of Director's Interpretation of Development Code).

BILL NO. _____
ORDINANCE NO. _____

An Ordinance amending Washoe County Code Section 110.912.10 (Board of Adjustment) to amend subsection (f) (1) and add a new subsection (j) providing general rules governing appeals to the Board of Adjustment, including kinds of matters that may be appealed, the procedures to be followed and providing that appeals from decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may taken directly to judicial review under certain circumstances; and repealing Washoe County Code Subsection 110.914.05 (f) (Appeal of Director's Interpretation of Development Code).

WHEREAS:

- A. Ordinance 1501 enacted on October 23, 2012 amends Chapter Article 910 of the Washoe County Development Code to provide that certain decisions and actions made during the enforcement of the Development Code may be appealed to the Board of Adjustment;
- B. In accordance with NRS 278.310 (2), this Commission desires to amend Washoe County Code Section 110.912.10 (Board of Adjustment) to provide general rules governing appeals to

the Board of Adjustment, providing for what kinds of matters may be appealed, the procedures to be followed, and that decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may be submitted directly to judicial review under certain circumstances; and

- C. Because it is being replaced in the amendments described next above, this Board desires to repeal Washoe County Code Subsection 110.914.05 (f) (Washoe County Community Development Department— Appeal of Director’s Interpretation of Development Code); and
- D. This ordinance is adopted pursuant to a provision in NRS Chapter 278 and therefore is not a “rule” as defined in NRS 237.060.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Subsection 110.914.05 (f) of Washoe County Code is hereby repealed.

Section 110.914.05 Washoe County Department of Community Development.

- ~~(f) — Appeal of Director’s Interpretation of Development Code. The following procedures shall be followed if an appeal is made to an interpretation by the Director of the Development Code.~~
 - ~~(1) — A statement and the appropriate fee shall be filed with the Department of Community Development.~~
 - ~~(i) — The statement shall identify the code section(s) and Director’s interpretation that is being appealed. In addition, the statement shall identify the reasons why the appellant believes the interpretation is incorrect and any additional supporting information.~~
 - ~~(ii) — The Department of Community Development shall schedule a hearing before the Board of Adjustment within sixty (60) days of the receipt of a complete statement and fees.~~
 - ~~(2) — After the completion of the hearing by the Board of Adjustment, the Board of Adjustment shall render a decision on the appeal of the interpretation within sixty (60) days of the hearing, either supporting the interpretation of the Director or supporting the appellant’s position.~~
 - ~~(3) — The decision of the Board of Adjustment on the appeal of the Director’s interpretation may be appealed to the Board of County Commissioners by the appellant. The Department of Community Development shall schedule a hearing~~

~~before the Board of County Commissioners within sixty (60) days of receipt of a request to appeal the Board of Adjustment's decision and the appropriate fee.~~

- ~~(4) The Board of County Commissioners shall render a final decision on the appeal of the Board of Adjustment's decision within sixty (60) days of the appeal hearing. The decision shall be by a majority of the entire membership of the Board of County Commissioners. In the case of a tie, the matter shall be continued to a future meeting. The final decision of the Board of County Commissioners shall be considered final for purposes of judicial review.~~

SECTION 2. Subsection 110.914.10 (f) of Washoe County Code is hereby repealed.

Section 110.912.10 Washoe County Board of Adjustment.

~~(f) Powers of Board.~~

- ~~(1) The Washoe County Board of Adjustment shall hear and decide appeals from regulations and requirements of the Development Code and shall sit and decide upon all matters referred to it or properly of concern in the administration of the Development Code.~~
- ~~(2) The Washoe County Board of Adjustment shall also have all the powers pursuant to NRS 278.290 to 278.310, inclusive.~~

SECTION 3. A new subsection 110.912.10 (j) is added to the Washoe County Code to read in its entirety as follows:

Section 110.912.10 Washoe County Board of Adjustment.

(j) Appeals to the Board of Adjustment.

- (1) Preface and Definitions. This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310**
- (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.**
- (2) Matters that may be appealed. A person aggrieved (as defined in WCC Section 110.910.02) by any of the following decisions may appeal the decision to the Board:**
- (i) A decision by the Washoe County Board of Review pursuant to WCC Chapter 100 resulting in an inability to obtain a building permit; or**
 - (ii) A decision of an administrative hearing officer if an administrative enforcement proceeding is completed in accordance with Article 910 of the Development Code; or**
 - (iii) A decision of the Director or the Building Official made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer or the Washoe County Board of Review.**

- (3) **Form and time for appeal.** Appeals must be in writing on forms or in the format prescribed by, and must be delivered to, the Planning and Development Division of the Department of Community Services within 20 calendar days from the date that the decision is communicated in writing to the appellant.
- (4) **Scheduling of hearing on appeal.** The Chairman of the Board shall schedule the appeal for a hearing not later than the date of the next regular meeting of the Board following 60 days from the date the appeal was filed in accordance with paragraph (3) unless otherwise agreed with the appellant. Within that timeline, the Chairman of the Board may also schedule a special meeting to hear the appeal. If the appellant fails to observe any prehearing schedule, the Chairman may extend the hearing date for a reasonable period of time.
- (5) **Prehearing procedures.** The Chairman of the Board may:
 - (i) Require and oversee prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, evidence assembly and admissibility;
 - (ii) Issue subpoenas compelling witnesses to appear before the Board;
 - (iii) Schedule the hearing before the Board; and
 - (iv) Approve and enforce stipulations and settlements.
- (6) **Record on appeal; additional evidence.** The Board:
 - (i) Shall review all evidence, testimony, documents, information and arguments introduced and the decision in the proceedings being appealed;
 - (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal;
 - (iii) Shall conduct a public hearing, and hear and consider relevant information and comments by members of the public;
 - (iv) May consider, upon disclosure, information and comments communicated to Board members before the hearing; and
 - (v) May consider maps, adopted master plans to include area plans, and its own knowledge of conditions that exist.
- (7) **Burden of proof and persuasion; reasons for reversal of underlying decisions; limitations on awards.**
 - (i) Decisions of administrative officials, hearing officers and the Washoe County Boards of Review are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board otherwise.
 - (ii) The Board may affirm, modify, reverse, or remand a decision with or without instructions.
 - (iii) Upon a vote of the majority of all the members [as required by NRS 278.300 (2)] the Board may reverse, modify or remand a decision if the decision:

- (a) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;
 - (b) Exceeds the jurisdiction or statutory authority of the deciding official or body;
 - (c) Was made on unlawful procedure;
 - (d) Is affected by an erroneous interpretation or other error of law;
 - (e) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
 - (f) Is arbitrary or capricious or characterized by abuse of discretion.
- (iv) The Board may not award money damages, attorney's fees or costs of the proceeding.
- (8) Decision; Communication.
- (i) The Board may take a matter under advisement and continue the hearing until its next regularly scheduled meeting, or may set a special public hearing to conclude the matter, and may require briefings or seek opinions of counsel. The Board may render a decision and instruct counsel to prepare a written decision either to be signed by the Chairman of the Board or reviewed at a subsequent meeting by the Board (provided, however, that the outcome shall not be changed at the subsequent meeting).
 - (ii) The Board must render a written decision within 60 days after the hearing unless otherwise agreed with the appellant.
 - (iii) When a decision is signed by the Chairman of the Board, a copy shall be delivered to all parties of record, and a copy shall be filed with the secretary to the Board as an official record. When a decision is so served and filed, it is final for purposes of judicial review or appeal. A petition for reconsideration or rehearing is not required as a condition to judicial review or appeal to the Board of County Commissioners.
- (9) Appeals of Board of Adjustment Decisions. A party of record who is aggrieved by a decision of the Board may:
- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or
 - (ii) Appeal the decision to the Board of County Commissioners in accordance with paragraph (10) next below.

(10) Appeals to the Board of County Commissioners.

- (i) Appeals to the Board of County Commissioners must be presented in writing to the Planning and Development Division of the Community Services Department within 25 days from the date that the decision becomes final as specified in paragraph (8) above.**
- (ii) Unless otherwise provided herein, or in its rules or determined by the Board of County Commissioners, the hearing before the Board of County Commissioners shall be held in accordance with procedures substantially similar to provisions in paragraphs (j) (4) through (j) (9) above.**
- (iii) In reviewing a decision, the Board of County Commissioners shall be guided by the statement of purpose underlying the regulations of the improvement of land expressed in NRS 278.020.**
- (iv) The Board of County Commissioners may affirm, modify or reverse the decision being appealed by a majority vote of members present at the meeting and not abstaining.**
- (v) The Board of County Commissioners must render a decision within 60 days from the date of the hearing.**
- (vi) The decision of the Board of County Commissioners is final for purposes of judicial review.**
- (vii) Fees for the appeal shall be established by resolution of the Board of County Commissioners and may include all or a portion of the cost of preparing the record on appeal.**

SECTION 4. Subsection 110.914.10 (f) of Washoe County Code is hereby amended to read in its entirety as follows:

Section 110.912.10 Washoe County Board of Adjustment.

(f) Powers of Board

- (1) The Washoe County Board of Adjustment shall hear and decide appeals under NRS 278.300 (a) and 278.310 (1) as provided in subsection (j) of this section.**
- (2) The Washoe County Board of Adjustment shall also have the all the powers pursuant to NRS 278.290 to 278.310, inclusive.**

SECTION 5. General Terms.

- 1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
- 2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or

appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.

3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

This ordinance was proposed on _____ by Commissioner _____.

This ordinance was passed on _____.

Those voting "aye" were _____.

Those voting "nay" were _____.

Those absent were _____

Those abstaining were _____

_____.

This ordinance shall be published and shall be in force and effect immediately upon the date of the second publication as set forth in NRS 244.100.

, Chairman
Washoe County Board of County Commissioners

ATTEST:

Amy Harvey, County Clerk



Board of Adjustment Staff Report

Meeting Date: February 7, 2013

Subject: Appeals Procedure Ordinance
Applicant: Community Development Department

Agenda Item No. 8G

Summary: To review proposed text of an ordinance establishing general rules governing appeals to the Board of Adjustment, and to provide direction to staff and recommendations to the Planning Commission for drafting and proposing the ordinance.

Recommendation: Review and Comment

Prepared by: Greg Salter, Deputy District Attorney
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Washoe County
Commission District: **All Districts**

Note: The original staff report on this item was discussed by the Board on December 6, 2012 and the Board asked for some changes to be made and brought back to the Board. This staff report is marked (in red) to show the changes proposed.

Description

Draft Ordinance Amending Articles 912 and 914 - Following up on comments made at the December 6 meeting of the Board, review *updated and revised* proposed text of an ordinance establishing general rules governing appeals to the Board of Adjustment and provide direction to staff and recommendations to the Planning Commission for drafting and proposing the ordinance. Proposed ordinance generally covers what matters can be appealed to the Board of Adjustment, the timelines and procedures for such appeals (including what evidence may be reviewed and who has the burden of persuasion), and the right to either seek judicial review of the decisions of the Board of Adjustment or appeal them to the Board of County Commissioners.

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Draft Ordinance..... Exhibit A

Analysis

This staff report is part of staff's ongoing efforts to update and enhance the Board of Adjustment *Rules, Policies and Procedures*, and to improve the County's code enforcement procedures.

Under NRS 278.310 and Washoe County Code (WCC) Section 110.912.(f) (1), the Board of Adjustment is charged with hearing appeals from:

Any "person aggrieved by his or her inability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location or soundness of structures," and

"all matters referred to it or properly of concern in the administration of the Development Code."

Recently WCC Chapter 110, Article 910 was amended to provide that the Board of Adjustment is charged with hearing appeals of administrative hearing officers under a new administrative enforcement mechanism.

As a part of staff's overall review of the Board of Adjustment *Rules, Policies and Procedures*, staff recommends updating the rules regarding appeals to bring them up to statutory standards and improve efficiency of appeal hearings. Rules regarding appeals are in Part D of the revised rules being considered by this Board in a separate proceeding.

Staff also needs to amend the Washoe County Code to comply with NRS 278.310.2 which requires that the Board of County Commissioners enact, by ordinance, a set of general rules to govern the procedure of the Board of Adjustment when hearing appeals. In November 2012, the Planning Commission initiated ordinance procedures for these changes. The draft ordinance suggested by staff is attached as Exhibit A to this staff report.

The principal purposes of the general rules in the ordinance are to assure that appellants are afforded due process of law under the federal and state constitutions, and to improve the efficiency and orderly conduct of appeal hearings. Accordingly, the attached ordinance:

- Defines which actions may be appealed to the Board of Adjustment [closely following NRS 278.310 and eliminating the overbroad language in WCC Section 110.912.10 (f) (1)].
- Establishes time periods for filing appeals (20 days) and for scheduling hearings on the appeals (60 days or next regular meeting after 60 days).
- Permits the Board Chair to conduct **ministerial prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, and evidence assembly and marking; however, questions regarding jurisdiction or issues to be decided by the Board or admissibility of evidence are to be decided by the Board;**

- Empowers the Board Chair to issue subpoenas (authorized by NRS 278.290.1) to compel attendance of witnesses.
- Establishes the evidence that the Board may review at an appeal hearing, which would include the record on appeal (transcript and evidence used in the proceeding being appealed), as well as statements and information presented before or at the hearing before the Board.
- Provides that decisions being appealed are presumed to be reasonable and lawful, and the burden of persuasion to the contrary is on the appellant.
- Provides that the Board may affirm, modify, reverse, or remand (with or without instructions) a decision and establishes the grounds on which a decision may be reversed or modified.
- Requires a written decision by the Board and provides possible procedures by which the decision may be rendered and approved.
- Provides that decisions of the Board may either be submitted for judicial review or appealed to the Washoe County Commission within 25 days after the decision becomes final.

Recommendation

Staff recommends that the Board of Adjustment review the proposed ordinance and make any changes or direct staff to make changes it feels appropriate, and then recommend the ordinance to the Planning Commission to review and submit to the Board of County Commissioners for adoption.

Possible motion

I move that the changes discussed by the Board of Adjustment concerning this matter be included within the draft ordinance and, further, I move to recommend to the Planning Commission that the draft ordinance, as amended, be submitted to the Board of County Commissioners for adoption.

Staff Report xc: Bill Whitney, Division Director

(Rev. 1-30-13)

**WORKING COPY
INFORMATION ONLY**

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETE LANGUAGE~~

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: Amends WCC Section 110.912.10 (Board of Adjustment) to provide general rules governing appeals to the Board of Adjustment; repeals conflicting provision in WCC Subsection 110.914.05(f) (Appeal of Director’s Interpretation of Development Code).

BILL NO. _____
ORDINANCE NO. _____

An Ordinance amending Washoe County Code Section 110.912.10 (Board of Adjustment) to amend subsection (f) (1) and add a new subsection (j) providing general rules governing appeals to the Board of Adjustment, including kinds of matters that may be appealed, the procedures to be followed and providing that appeals from decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may be taken directly to judicial review under certain circumstances; and repealing Washoe County Code Subsection 110.914.05 (f) (Appeal of Director’s Interpretation of Development Code).

WHEREAS:

- A. Ordinance 1501 enacted on October 23, 2012 amends Chapter Article 910 of the Washoe County Development Code to provide that certain decisions and actions made during the enforcement of the Development Code may be appealed to the Board of Adjustment;
- B. In accordance with NRS 278.310 (2), this Commission desires to amend Washoe County Code Section 110.912.10 (Board of Adjustment) to provide general rules governing appeals to the Board of Adjustment, providing for what kinds of matters may be appealed, the procedures to be followed, and that decisions of the Board of Adjustment may be appealed

to the Board of County Commissioners or may be submitted directly to judicial review under certain circumstances; and

- C. Because it is being replaced in the amendments described next above, this Board desires to repeal Washoe County Code Subsection 110.914.05 (f) (Washoe County Community Development Department— Appeal of Director’s Interpretation of Development Code); and
- D. This ordinance is adopted pursuant to a provision in NRS Chapter 278 and therefore is not a “rule” as defined in NRS 237.060.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Subsection 110.914.05 (f) of Washoe County Code is hereby repealed.

Section 110.914.05 Washoe County Department of Community Development.

- ~~(f) — Appeal of Director’s Interpretation of Development Code. The following procedures shall be followed if an appeal is made to an interpretation by the Director of the Development Code.~~
 - ~~(1) — A statement and the appropriate fee shall be filed with the Department of Community Development.~~
 - ~~(i) — The statement shall identify the code section(s) and Director’s interpretation that is being appealed. In addition, the statement shall identify the reasons why the appellant believes the interpretation is incorrect and any additional supporting information.~~
 - ~~(ii) — The Department of Community Development shall schedule a hearing before the Board of Adjustment within sixty (60) days of the receipt of a complete statement and fees.~~
 - ~~(2) — After the completion of the hearing by the Board of Adjustment, the Board of Adjustment shall render a decision on the appeal of the interpretation within sixty (60) days of the hearing, either supporting the interpretation of the Director or supporting the appellant’s position.~~
 - ~~(3) — The decision of the Board of Adjustment on the appeal of the Director’s interpretation may be appealed to the Board of County Commissioners by the appellant. The Department of Community Development shall schedule a hearing before the Board of County Commissioners within sixty (60) days of receipt of a request to appeal the Board of Adjustment’s decision and the appropriate fee.~~

- ~~(4) The Board of County Commissioners shall render a final decision on the appeal of the Board of Adjustment's decision within sixty (60) days of the appeal hearing. The decision shall be by a majority of the entire membership of the Board of County Commissioners. In the case of a tie, the matter shall be continued to a future meeting. The final decision of the Board of County Commissioners shall be considered final for purposes of judicial review.~~

SECTION 2. A new subsection 110.912.10 (j) is added to the Washoe County Code to read in its entirety as follows:

Section 110.912.10 Washoe County Board of Adjustment.

(j) Appeals to the Board of Adjustment.

- (1) Preface and Definitions.** This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310 (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.
- (2) Matters that may be appealed.** A person aggrieved (as defined in Section 110.910.02) by any of the following decisions may appeal the decision to the Board:
 - (i)** A decision by the Washoe County Board of Review pursuant to Chapter 100 resulting in an inability to obtain a building permit; or
 - (ii)** A decision of an administrative hearing officer if an administrative enforcement proceeding is completed in accordance with Article 910 of the Development Code; or
 - (iii)** A decision of the Director or the Building Official made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer or the Washoe County Board of Review.
- (3) Form and time for appeal.** Appeals must be in writing on forms or in the format prescribed by, and must be delivered to, the Planning and Development Division of the Department of Community Services within 20 calendar days from the date that the decision is communicated in writing to the appellant.
- (4) Scheduling of hearing on appeal.** The Chairman of the Board shall schedule the appeal for a hearing not later than the date of the next regular meeting of the Board following 60 days from the date the appeal was filed in accordance with paragraph (3) unless otherwise agreed with the appellant. Within that timeline, the Chairman of the Board may also schedule a special meeting to hear the appeal. If the appellant fails to observe any prehearing schedule, the Chairman may extend the hearing date for a reasonable period of time.
- (5) Prehearing procedures.** The Chairman of the Board may:
 - (i)** Require and oversee ministerial prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, evidence assembly and marking ; however, matters

- involving jurisdiction or issues to be heard by the Board, or admissibility of evidence are to be heard by the Board;
- (ii) Issue subpoenas compelling witnesses to appear before the Board; and
 - (iii) Schedule the hearing before the Board.
- (6) **Record on appeal; additional evidence.** The Board:
- (i) Shall review all evidence, testimony, documents, information and arguments introduced and the decision in the proceedings being appealed;
 - (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal;
 - (iii) Shall conduct a public hearing, and hear and consider relevant information and comments by members of the public;
 - (iv) May consider, upon disclosure, information and comments communicated to Board members before the hearing; and
 - (v) May consider maps, adopted master plans to include area plans, and its own knowledge of conditions that exist.
- (7) **Burden of proof and persuasion; reasons for reversal of underlying decisions; limitations on awards.**
- (i) Decisions of administrative officials, hearing officers and the Washoe County Boards of Review are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board otherwise.
 - (ii) The Board may affirm, modify, reverse, or remand a decision with or without instructions.
 - (iii) Upon a vote of the majority of all the members [as required by NRS 278.300 (2)] the Board may reverse, modify or remand a decision if the decision:
 - (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;
 - (B) Exceeds the jurisdiction or statutory authority of the deciding official or body;
 - (C) Was made on unlawful procedure;
 - (D) Is affected by an erroneous interpretation or other error of law;
 - (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
 - (F) Is arbitrary or capricious or characterized by abuse of discretion.
 - (iv) The Board may not award money damages, attorney's fees or costs of the proceeding.
- (8) **Decision; Communication.**

- (i) The Board may take a matter under advisement and continue the hearing until its next regularly scheduled meeting, or may set a special public hearing to conclude the matter, and may require briefings or seek opinions of counsel. The Board may render a decision and instruct counsel to prepare a written decision either to be signed by the Chairman of the Board or reviewed at a subsequent meeting by the Board (provided, however, that the outcome shall not be changed at the subsequent meeting).
 - (ii) The Board must render a written decision within 60 days after the hearing unless otherwise agreed with the appellant.
 - (iii) When a decision is signed by the Chairman of the Board, a copy shall be delivered to all parties of record, and a copy shall be filed with the secretary to the Board as an official record. When a decision is so served and filed, it is final for purposes of judicial review or appeal. A petition for reconsideration or rehearing is not required as a condition to judicial review or appeal to the Board of County Commissioners.
- (9) **Appeals of Board of Adjustment Decisions.** A party of record who is aggrieved by a decision of the Board may:
- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or
 - (ii) Appeal the decision to the Board of County Commissioners in accordance with paragraph (10) next below.
- (10) **Appeals to the Board of County Commissioners.**
- (i) Appeals to the Board of County Commissioners must be presented in writing to the Planning and Development Division of the Community Services Department within 25 days from the date that the decision becomes final as specified in paragraph (8) above.
 - (ii) Unless otherwise provided herein, or in its rules or determined by the Board of County Commissioners, the hearing before the Board of County Commissioners shall be held in accordance with procedures substantially similar to provisions in paragraphs (j) (4) through (j) (9) above.
 - (iii) In reviewing a decision, the Board of County Commissioners shall be guided by the statement of purpose underlying the regulations of the improvement of land expressed in NRS 278.020.
 - (iv) The Board of County Commissioners may affirm, modify or reverse the decision being appealed by a majority vote of members present at the meeting and not abstaining.
 - (v) The Board of County Commissioners must render a decision within 60 days from the date of the hearing.
 - (vi) The decision of the Board of County Commissioners is final for purposes of judicial review.

- (vii) **Fees for the appeal shall be established by resolution of the Board of County Commissioners and may include all or a portion of the cost of preparing the record on appeal.**

SECTION 3. Subsection 110.912.10 (f) of Washoe County Code is hereby amended to read as follows.

Section 110.912.10 Washoe County Board of Adjustment.

(f) Powers of Board

- (1) ~~(1) _____ The Washoe County Board of Adjustment shall hear and decide appeals from regulations and requirements of the Development Code and shall sit and decide upon all matters referred to it or properly of concern in the administration of the Development Code. The Washoe County Board of Adjustment shall hear and decide appeals under NRS 278.300 (a) and 278.310 (1) as provided in subsection (j) of this section.~~
- (2) **The Washoe County Board of Adjustment shall also have the all the powers pursuant to NRS 278.290 to 278.310, inclusive.**

SECTION 5. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

This ordinance was proposed on _____ by Commissioner
_____.

This ordinance was passed on _____.

Those voting "aye" were _____.

Those voting "nay" were _____.

Those absent were _____.

Those abstaining were _____.

This ordinance shall be published and shall be in force and effect immediately upon the date of the second publication as set forth in NRS 244.100.

David A. Humke
Chairman

ATTEST:

Amy Harvey, County Clerk



Board of Adjustment Staff Report

Meeting Date: June 6, 2013

Subject: Revised Board of Adjustment Rules

Applicant(s): Planning and Development Division

Agenda Item 10A

Project Summary: Adopt a revised set of Rules, Policies and Procedures for the Board of Adjustment governing general board matters (i.e. officers of the board, quorums, voting powers, ethics, disclosures and abstention from voting on matters, records and documents, appointments to Design Review Committee, etc.); general meeting procedures (regular and special meetings, conduct during and decorum of meetings, open meeting law etc.); and procedures for considering and taking action on general business matters, hearings and appeals.

Recommendation: **Review and Approve**

Prepared by: Greg Salter, Deputy District Attorney
Phone: 775.337-5726
E-Mail: gsalter@da.washoecounty.us

Washoe County
Commission District: **All Districts**

This is part of a project to update Board of Adjustment Rules to conform to current practices and legal requirements and add new provisions governing appeals to the board as required by state law and recent amendments to the Washoe County Development Code.

The proposed rules are a complete rewrite of all existing rules (last updated in 2010) to:

- Establish new rules regarding appeals to the Board required by NRS 278.310 and recent amendments to Chapters 910, 912 and 914 of the Development Code;
- Update, expand and enhance rules about ethical considerations of board members and how to deal with ex parte contacts;

Update general meeting rules to reflect current statutes, rulings and practices regarding agendas and meeting notices, open meetings, decorum at meetings, public comments (both during general business portions and public hearings); motions and voting procedures and requirements; hearings on individual matters and assuring compliance with the Nevada opening meeting law.

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Exhibits

Proposed Rules (annotated) Exhibit A

Background and analysis of proposed rules

NRS 278.310 provides that any person aggrieved

- by his or her inability to obtain a building permit; or
- by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location or soundness of structures may appeal to the Board of Adjustment, and further requires the County Board of County Commissioners to enact ordinances which establish that right and procedures for such appeals.

In November, 2012, the Board of County Commissioners enacted Ordinance 1501 to amend Article 901 (“Enforcement”) of the Washoe County Development Code to establish new and expanded enforcement mechanisms (adding the use of administrative hearing officers) for all “development regulations” and set out when and how appeals from decisions of administrative hearing officers may be made to the Board of Adjustment, and providing that decisions of the Board of Adjustment are final decisions subject to judicial review. Other county code amendments are in progress to provide how building permit and zoning interpretive decisions are ultimately appealable to the Board of Adjustment.

These proposed rules pick up at that point and provide how the appeals will be heard by the Board of Adjustment. The decisions by the Board of Adjustment are considered “adjudicative” or “quasi-judicial” and therefore the parties to the appeal must be afforded due process of law which includes the right to a fair hearing. That is the principal thrust of the proposed rules with respect to appellate proceedings. The draft of the rules regarding appeals has been discussed at a previous meeting of the Board and the results are incorporated in this draft.

Additionally, the Board of Adjustment Rules need to be updated to reflect changes in statutes (such as the Nevada Open Meeting Law, and Ethics laws) county ordinances (such as those reflecting organizational changes, new code administration and enforcement mechanisms, and new building and fire codes), and practices.

Attached is a proposed set of Board of Adjustment Rules which have been totally rewritten to accomplish the foregoing objectives. It was impractical and confusing to try to redline the existing rules showing word by word changes, so the attached draft sets out the new rule and provides a comment how each of the new rules compare to the former rules.

Notice and required findings.

As these are internal rules only, there are no special notice requirements, no special procedures and no required findings that must be made before enacting these rules. They may be enacted at this or another meeting.

Recommendation

Staff recommends that the Board review and discuss the attached rules, and if they are acceptable to the Board, adopt them by motion which must be approved by a simple majority of all the Board Members present at the meeting. A sample motion is provided below.

Motion

After giving due consideration to the information in the staff report and information received during the public hearing, and the deliberations and discussions following the public hearing, I move that the Board of Adjustment adopt the attached "Washoe County Board of Adjustment Rules, Policies and Procedures." The Board Secretary shall remove the annotations and may make non-substantive edits and corrections and shall enter these rules on the minutes and books of the board to become effective as of **June 16, 2011**.

Appeal Process

Board of Adjustment action will be effective 10 days after the date of adoption unless the adoption is appealed to the Board of County Commissioners.

Washoe County Board of Adjustment **RULES, POLICIES AND PROCEDURES**

A. DEFINITIONS AND GENERAL POLICIES

1. **Definitions:** The following words have the following meanings for purposes of these rules, policies and procedures:

- a. **Board** means Board of Adjustment.
- b. **Department** means the Planning and Development Division of the Community Services Department or the department designated by the Washoe County Board of County Commissioners to administer the regulations of land use and zoning. **[Changed to reflect new organization of Department]**
- c. **Development Code** means Washoe County Code Chapter 110.
- d. **Director** means the Director of the Planning and Development Division of the Community Services Department, or his/her designee. **[Changed to reflect new organization of Department]**
- e. **Administrative Official** means (i) the Director for appeals involving decisions or interpretations of the Development Code, or (ii) the County Building Official for appeals involving decisions or interpretation of regulations relating to the soundness of structures such as building codes, fire codes and electrical codes. **[New definition]**
- f. **Administrative Hearing Officer** means an Administrative Hearing Officer appointed to hear appeals of enforcement proceedings (stop activity orders, remediation orders, warnings, civil penalties etc). **[New definition]**
- g. **Aggrieved Person** means a person who has been denied a building permit or is aggrieved as defined in WCC 110.910.02. **[New definition]**
- h. **General Business Matter** includes taking action on general business items and procedural matters such as election of officers, appointment of members to committees, ceremonial or administrative resolutions, and amendments to these rules. **[New definition]**

2. Board Determines Rules, Policies and Procedures

The Washoe County Board of Adjustment, under State statute and by the Development Code, has the responsibility for reviewing and approving variances, special use permits and administrative permits for the unincorporated portions of Washoe County. In addition, the Board of Adjustment, under State law and by Washoe County ordinance, is responsible for making final determinations on appeals of administrative decisions concerning any zoning regulation or any regulation concerning the location or soundness of structures made by County officials, and the decisions of hearing officers on code compliance matters pursuant to Article 910 of the Development Code. In the furtherance of these responsibilities, the Board of Adjustment adopts the following rules, policies and

procedures. The Board may, from time to time, amend details of said rules, policies and procedures. The Washoe County Commission has the authority to review and make changes to these rules, policies and procedures at will. ***[Added to clarify duties and responsibilities under state law]***

3. Duties and Responsibilities

a. POLICY

- i Members of the Board shall keep themselves informed on planning laws, policies, procedures and trends in planning practice, and ethics laws of Nevada. ***[same]***
- ii The five Board members shall represent the best interests of unincorporated Washoe County. ***[same]***
- iii Members shall endeavor to provide questions on agenda items to the Planning and Development Division staff of the Department a minimum of 24 hours prior to the meeting on which the agenda item is scheduled. ***[same]***

b. RULE

- i Members shall be prompt and diligent in attendance. ***[same]***
- ii Failure of a member to attend 3 successive regular meetings, or miss more than 25% of scheduled meetings annually, will be reported to the Board of County Commissioners and said absences may be considered justifiable cause for replacement. ***[same]***

4. Communications outside of public hearings or meetings

a. POLICY. General: For all matters coming before the Board, members should avoid ex parte communications (i.e., private communications outside a public meeting with interested parties) regarding matters coming before the Board. With respect to such actions: ***[same general rule, details added]***

- i. Parties should be encouraged to discuss their comments with staff or at the public hearing rather than privately with individual members. ***[same]***
- ii. Unsolicited correspondence, emails or phone messages should be preserved so they may be put in the record. ***[new rule]***
- iii. Members must disclose all ex parte communications. If during any such contacts, a member obtains information that he/she might consider as important when deciding an adjudicative matter, the member must assure that the information is:
 - already public knowledge
 - has been included in the reports or presentations
 - disclosed or otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it ***[new rule]***
- iv. Members must keep an open mind and not form or communicate any preferences or thoughts that may be perceived as prehearing bias. ***[same]***

- v. Site Visits. If Members are invited to a site visit, the following rules apply:
- a. Ex parte contact may be unavoidable during site visits and should be limited to the extent practicable. If ex parte contact occurs, it must be disclosed as provided above. It is advisable to have a staff member or another person participate in the site visit and any discussions at the site. **[same]**
 - b. Members must disclose that they conducted a site visit and do not need to describe what they saw if it is in plain public view. Any information gained during a site visit that is significant in forming a conclusion must be disclosed at the public hearing, if the information has not otherwise been disclosed in the reports and presentations. **[new rule]**
- vi. Attorney Communications. Communications with the attorney assigned by the District Attorney's Office or any other attorney appointed or retained to represent or advise the Board are confidential and privileged attorney-client communications and are not subject to disclosure. **[new rule]**

b. RULE

- i. Ex parte contact does not disqualify a Member from voting on the matter **[same]** if disclosure is made and the information derived from the contact(s) that is being considered by the Member is either public knowledge, has been included in the reports or presentations, or is otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it. **[details added]**
- ii. Members shall not solicit, offer, or accept any offer for any business relationship or arrangement with any interested party. **[new rule]** Any preexisting, ongoing or expected business relationship with any interested party must be disclosed and may be grounds for abstention under NRS Chapter 281A and these rules, policies and procedures. **[same with details added]**

5. Ethical Principles for Planning; Disclosures and Abstentions

a. POLICY

- i. The Board adopts the most current version of American Planning Association's Ethical Principles in Planning as the guiding principles for the conduct of Board members. **[same]** Members will be provided a copy of the document. The Board, however, is governed by Nevada's ethics laws, including NRS Chapter 281A, and to the extent there is a conflict between state law and the APA's Ethical Principles in Planning, state law governs. Additionally, if there is a conflict between these rules, policies and procedures and the APA's Ethical Principles in Planning, the rules, policies and procedures will be followed. **[new rule]**

b. RULE

- i. Potential Conflicts of Interest. In connection with matters coming before the Board, NRS 281A.420 discusses three circumstances where disclosure and abstention may be required. These three circumstances include when a Member has:
 - received a gift or loan
 - a pecuniary interest

- a commitment in a private capacity to others in connection with the matter

If disclosure is required, it should be made before the matter is discussed by the Board, and at that time the Member must also discuss whether or not he/she is abstaining, and why. ***[present rules discuss financial interest only]***

If abstaining, it is not necessary to leave the room during deliberation and vote, but the Member should leave his/her seat on the Board until after the vote. ***[Present rules allow member to make presentation but must leave room when board deliberates and votes]***

1. If a Member has an ownership interest in property or a project being considered individually for a special use permit, variance, administrative permit or appeal of administrative decision, the Member must abstain but may address the Board to discuss facts about the property ***[same]***, the project or the proceeding but must not ask, advocate or give any reasons for or against a vote ***[added to limit what the member can say, per ethics commission rules]***.
2. If a Member has an ownership interest in land or a project that is being considered with other parcels of land for a special use permit, variance, administrative permit or appeal of administrative decision and shares benefit or detriment no greater than other owners of properties also being considered, while disclosure is necessary, abstention is not required unless otherwise indicated by the Nevada Ethics Board rulings. ***[Added to discuss the general benefit rule set out in NRS]***

B. QUORUM AND VOTING

1. Number of Members Required to Conduct Business

- a. For general matters of business a quorum of the Board shall be three members. ***[same]***
 - i. In such matters, not less than three Members must be in attendance and vote to take action on said motion. The term "in attendance" means physically present at the meeting or attending the meeting through a telephone or video conference. ***[added for clarification]***
 - ii. In the event that the three minimum required members of the Board are not present, the item shall be scheduled for the next appropriate regular meeting. ***[same]***

2. Voting

- a. An affirmative vote by a majority of the Members present is required to approve all matters unless otherwise provided by law. ***[same]***
- b. Reversal of an administrative decision under Article 910 of the Development Code requires a majority vote of total Board membership (three members if no seats are vacant). ***[new rule]***.
- c. The Chair shall be a voting member. ***[same]***
- d. The Chair may call for, or a Member may request, a roll call vote on any issue. ***[same]***

- e. An abstention shall be a non-considered vote. **[same]**
 - i. If a Member abstains under NRS 281A.420(5), the necessary quorum and the number of votes necessary to act upon the matter are reduced as though the member abstaining was not a member of the Board. **[added for clarification as set out in NRS]**
 - ii. If a Member abstains for any other reason, the necessary quorum or number of votes necessary for action is not reduced. **[added]**
- f. A tie vote means the motion does not pass. If, however, one or more Members are absent or abstain from the vote and a tie vote occurs, any Member, and/or the applicant may ask for and shall be granted a continuance to the next meeting of the Board. **[same with clarification]**

C. MEETINGS

1. Notice and Agenda **[significantly expanded per open meeting law]**

- a. Except in an emergency, written notice of all meetings will be given at least three working days prior to the meeting, excluding the day of the meeting, in accordance with Nevada Revised Statutes. The written notice of the meeting will consist of an agenda that shall include date, time, and location of the meeting, a clear and complete statement of the items to be considered and a designation of the items upon which action will be taken; and an offer to accommodate persons with special needs as prescribed in Nevada Revised Statutes. Written notice shall include substantially the following text or as advised by the District Attorney's Office: **[significant changes to material required]**

Items for Possible Action. All numbered or lettered items on this agenda are hereby designated **for possible action** as if the words "for possible action" were written next to each item (NRS 241.020), except for items marked with an asterisk (*). Those items marked with an asterisk (*) may be discussed but action will not be taken on them. **[new]**

Possible Changes to Agenda Order and Timing. Discussion may be delayed on any item on this agenda, and items on this agenda may be taken out of order, combined with other items and discussed or voted on as a block, removed from the agenda, moved to the agenda of another later meeting, moved to or from the consent section. Items designated for a specified time will not be heard before that time, but may be delayed beyond the specified time. **[new]**

Public Comment. During the "Public Comment" periods listed below, anyone may speak pertaining to any matter either on or off the agenda. Additionally, during action items (those *not* marked with an asterisk (*)), public comment will be heard on that particular item before action is taken. In either event, each speaker must fill out a "Request to Speak" form and/or submit comments for the record to the recording secretary. Public comment and presentation times are limited as follows: 15 minutes each for staff and applicant presentations, 5 minutes for speakers representing a group, and 3 minutes for individual speakers unless extended by questions or action of the Board. Comments are to be directed to the Board as a whole and not to one individual. **[new]**

Removal for Disruptive Conduct. The Board of Adjustment conducts the business of Washoe County and its citizens during its meetings. The Chair may order the removal of any person whose statement or other conduct disrupts the orderly, efficient or safe conduct of the meeting. Warnings against disruptive comments or behavior may or may not be given prior to removal. The viewpoint of a speaker will not be restricted, but reasonable restrictions may be imposed upon the time, place and manner of speech. Irrelevant and unduly repetitious statements and personal attacks which antagonize or incite are examples of speech that may be reasonably limited. **[new]**

Posting of Agenda; Website Location for Agenda and Supporting Information. In accordance with NRS 241.020, this agenda has been posted at: (i) Washoe County Administration Building (1001 E. 9th Street); (ii) Washoe County Courthouse (Court and Virginia Streets); (iii) Washoe County Library (301 South Center Street); and (iv) Sparks Justice Court (Prater Way, Sparks, Nevada). Agendas and staff reports may be accessed on the Washoe County website at www.washoecounty.us/comdev. **[new]**

Special Accommodations. The facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g. sign language interpreters or assisted listening devices) at the meeting should notify the Washoe County Community Services Department, Planning and Development Division, at 775.328.3600, two working days prior to the meeting. **[same except old rules required one working day advance notice]**

Appeal Procedure. Decisions regarding development applications rendered by the Board of Adjustment are appealable to the Board of County Commissioners. Decisions heard by the Board of Adjustment on appeal can be judicially reviewed. If you disagree with the decision of the Board of Adjustment and you want to appeal its action, call the Planning staff immediately, at 775.328.6100. You will be informed of the appeal procedure, application fee if appropriate, and the time in which you must act. Appeal periods vary in time depending on the type of application or action. **[new]**

- b. A person requesting agendas of the Board's meetings will be advised that the request will lapse after six months unless continuance is requested in writing. This applies to both postal and e-mail agenda distribution. **[same but expanded to cover email requests.]**
- c. Board meeting information should be mailed with the U.S. Postal Service or digitally provided to each Member at least seven calendar days in advance of the meeting date, or hand-delivered at least five calendar days in advance of the meeting date. **[old rule was mailed five days or delivered three days before meeting]**
- d. All meetings of the Board will be held in accordance with the Open Meeting Law of the State of Nevada. **[same]**
- e. Robert's Rules of Order, as amended, may be used for guidance for Board meeting procedures when a question or controversy arises. **[same]**

- f. Board meetings should not extend beyond 6:00 p.m. The Chair is authorized to extend the meeting beyond 6:00 p.m. or to continue items to a future meeting agenda. ***[new rule]***

2. Regular Meetings

- a. The first Thursday of every even-numbered month is the regular meeting day.
 - i. Should the first Thursday of the even-numbered month fall on a holiday, or interfere with a special event using the meeting facilities of the county complex, the meeting shall be held on an alternate date and/or at an alternate meeting facility as determined by the Board. ***[Old rule was monthly meetings]***
 - ii. Should a monthly meeting be reinstated, the regular meeting day of that meeting would be the first Thursday of each even-numbered month.
- b. Order of Business. Regular meetings shall be conducted in the following order:
 - 1. *Determination of Quorum
 - 2. *Pledge of Allegiance
 - 3. *Ethics Law Announcement
 - 4. *Appeal Procedure
 - 5. *Public Comment
 - 6. Approval of Agenda
 - 7. Approval of Minutes
 - 8. Planning Items and Public Hearings
 - 9. Chair and Member Items
 - 10. *Director's Items
 - 11. *Public Comment
 - 12. Adjournment

[Rearranges order of meeting to have two public comment periods and move Chair and Member items behind the public hearing items]

- 3. **Special Meetings:** Special meetings may be held, as required, upon call of the Chair or Acting Chair, or upon the call of not less than three Board members. ***[same]***

4. Emergencies

- a. An emergency meeting may be called or an emergency item may be added to any regular or special meeting when unforeseen circumstances require action and include, but are not limited to:

- i. Disasters caused by fire, flood, earthquake, or other natural causes; or,
 - ii. Any impairment of the health and safety of the public. **[same]**
- b. Before proceeding with any emergency meeting or considering any emergency item, the Board must, by the affirmative vote of a majority of the Members present, find that an emergency exists and specify the reasons after receiving advice on the matter from the Board's counsel. **[same]**

5. Continued Items

- a. The Board may vote to grant a continuance on an agenda item upon request of a Member, the Applicant or the Applicant's Representative. If the Board decides to continue an item, the Chair shall first ask if anyone in the audience wishes to testify on the matter even though it may be continued to another date, time and location certain. **[former rule (1) did not specify who could request a continuance; (2) required staff to forward written requests to Board (without a staff report) if the agenda item had already been sent to Members and follow up with a staff report]**
- b. The Chair may grant continuances without consulting the Board between meetings and before an agenda is published. **[New rule. Former rule required the Board to decide all continuances. This new rule only applies if the matter has not already been agendaized and staff reports sent to the Members]**
- c. Should an item appearing on an agenda be continued to another specified place, date and time, and a Board member is absent from the first meeting but present for the next meeting for which the item is scheduled, the absent Board member shall endeavor to learn what occurred during the first hearing through review of the minutes and recorded media, and shall declare at the next meeting that he/she has familiarized themselves regarding the case and is prepared to discuss, deliberate and vote on the matter. **[same]**

6. General Expectations of Members During Meetings.

- a. Members shall treat each other and all persons at a meeting with respect before, during and after the meeting. The decorum rules stated below apply to Members as well as members of the public. A Member may be removed for disruptive conduct, but if is removed for disrupting a meeting, the removal will be only for the agenda item being considered when the disruption occurred. **[new rule]**
- b. Members shall be attentive to the proceedings and give their undivided attention to speakers. Engaging in private conversations, performing tasks not associated with the meeting, and displaying obvious boredom are disruptive to the meeting process. **[new rule]**
- c. Members shall endeavor to address questions of audience members through the Chair. **[new rule]**
- d. Members should be neutral in their response to speaker's opinions through their questions, comments and body language, and should not express an opinion on the agenda item before all public testimony has been provided, although the expression of opinions during public testimony may be appropriate during legislative or general business matters. **[new rule]**

- e Members shall be prepared for each item that is listed on the agenda. **[new rule]**

7. Meeting Decorum; Removal for Disruptive Conduct

- a. Meetings of the Board of Adjustment are limited forums for the governmental purpose of making planning decisions for the community in accordance with its duties under state and local law. That governmental purpose is efficiently accomplished only when the process established by law is followed and all participants in a meeting conduct themselves within the limits established and with decorum, civic responsibility, and mutual respect. **[new rule]**
- b. It is the intent of the Board to maintain the highest level of decorum. The Chair is authorized to take appropriate actions to maintain such decorum to include declaring recesses, admonishing speakers and other remedies set forth below. **[new rule]**
- c. The viewpoint of any speaker will not be restricted, but reasonable restrictions may be imposed upon the time, place, and manner of speech at the meeting. Remarks which are irrelevant, impertinent, unduly repetitious, or which contain personal attacks, implied or actual threats, fighting words, or profanity are not consistent with efficiently accomplishing the governmental purpose. **[new rule]**
- d. The Chair may remove (with or without warning) any person who willfully makes the kind of remarks described above or engages in other disorderly conduct, if such remarks or conduct makes the orderly conduct of the meeting impractical. **[new rule]**
- e. Removal for disruptive conduct will be for the remainder of the meeting. **[new rule]**

8. Addressing the Board; Participant Conduct.

- a. Comments during Public Comment Periods. The following rules apply during the designated “public comment” period(s) of any meeting where members of the public are permitted to speak on any matter on or off the agenda (as opposed to comments made during public hearings on specific agenda items): **[new rule]**
 - i. Unless otherwise specified on the agenda, any person may speak regarding any topic, on or off the agenda. Using public comment time to speak about a topic that is not considered public business (such as advertising of products or services), or over which the Board has no jurisdiction or control, or delays the Board’s ability to conduct its meetings efficiently, and therefore may impair the ability of others to speak on topics over which the Board has jurisdiction and control, may be viewed as disruptive conduct under these rules, policies and procedures. **[new rule]**
 - ii. No action may be taken on any subject brought up during an “any matter” public comment period until properly agendized and called up for consideration and possible action. **[new rule]**
 - iii. Unless a different time is established by the Chair at the opening of public comment, time limits for speaking will be three minutes per person. Should the Chair establish a different time limit for speaking, then the different time limit will apply to both public comment periods on the meeting’s agenda. Speakers may not reserve time or give time to others. Members may ask questions of the speakers. **[new rule]**

- iv. Speakers must complete and submit to the Recording Secretary a “Request to Speak” form, and must identify themselves at the beginning of their presentation. **[same]**
 - v. The Chair may determine the order of speakers. **[former rule required following the order of speaking requests]**
- b. Public Comments during Hearings or during Individual Agenda Items. The following rules apply to persons speaking during public hearings or during individual agenda items (as opposed to speaking during public comment periods). **[new rule]**
- i. Public hearings, and receiving public input during individual agenda items, are part of a governmental planning process and, in order to efficiently pursue that process, persons addressing the Board during such items are to speak only to the topic being considered. Irrelevant or overly repetitious comments by the same person delays and disrupts the process. **[new rule]**
 - ii. Except as otherwise provided in these rules, policies and procedures, or otherwise modified by the Chair or Board, speakers shall limit their presentation times to 3 minutes for individual speakers. If a speaker represents an organization, he/she may be given 5 minutes to speak, but only one person from the organization will be given this extra time. No speaker may reserve or transfer his/her time to another speaker. Members may ask questions of the speakers. **[Same time limits, added one speaker per organization and no transfer of speaking rights rules]**
 - iii. The applicant will also be encouraged to limit his/her comments regarding the background of the application. When speakers have exceeded the allotted time, the Chair will remind them that they have gone past the recommended time limits and request they conclude their remarks. The Chair may rule the speaker out-of-order should the speaker not obey the Chair’s admonition. **[same]**
 - iv. Alterations to the above time limits may be permitted by the Chair in the following circumstances.
 - 1. All public testimony. The Chair may modify speaker time limits for all public testimony during any item and will announce the modification at the beginning of the agenda item, if possible, or as soon as is practicable during the agenda item. The modified time limits will remain in effect only for that specific agenda item. **[same, except that former rule required requests in had to be made before the “caucus” of the board of adjustment]**
 - 2. Individual time limits for public speakers. The Chair may adjust individual speaker time limits to accommodate questions by Members. **[new rule]**
 - 3. Applicants, staff, and amicus organizations. Staff, the applicant or his/her representative, or a person representing an amicus group (a group with special knowledge or interest in the agenda item who desires to testify as a friend of the Board) may notify the Community Services Department, Planning and Development Division staff 24 hours prior to the start of a noticed meeting at which action may be taken that a longer time is requested to make a presentation. When making the notification, an approximate amount of time needed to make the presentation must be provided. The division will notify the Chair, who has the discretion to grant, modify, or deny such a

request at the beginning of the agenda item. **[new rule]**

4. During individual presentations by staff, the applicant, or amicus organizations, the Chair may adjust the time limit to accommodate questions by Members or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information. **[new rule]**
- v. Speakers must complete and submit to the Recording Secretary a “Request to Speak” form, and must identify themselves at the beginning of their presentation. **[same]**
- vi. The Chair may determine the order of speakers. **[new rule]**
- c. Conduct during meeting.
 - i. Persons attending a meeting of the Board of Adjustment shall respect the Board and participants before, during and after the meeting. The Chair will rule out of order any person that makes personal derogatory or disrespectful comments about the Members, staff or participants. **[new rule]**
 - ii. Speakers will address questions and comments to the Chair and not to individual Members, staff or audience members. **[new rule]**
 - iii. Speakers are encouraged to state that they support a previous speaker’s comments and not repeat the same point in order that the meeting may be efficiently conducted. **[same]**
 - iv. Audience members are encouraged not to visibly display support or opposition (such as clapping, whistling, etc.) to speaker’s points or Board actions. To the extent such actions make the orderly progress of the meeting impractical, the Chair may order such conduct as disruptive and remove offenders. **[new rule]**

9. Procedures for Individual Agenda Items

- a. General Principles. These rules are intended to promote consistency and efficiency, maximize public input, and afford the appropriate amount of due process in the conduct of meetings of the Board of Adjustment. These rules apply to all proceedings before the Board. **[new rule]**
- b. Step by Step Procedures for individual agenda items.
 - i. Chair calls on staff to introduce the item. This is only an introduction identifying the parties and the general nature of the proceeding. **[same]**
 - ii. Jurisdictional/Procedural Issues. **[new rule]**
 1. For items requiring special notice, Chair asks if all notices required by law have been given and if staff has proof of publication and service where required.
 2. Chair asks if all parties are present and ready to proceed.

3. Chair asks whether there are any objections or special considerations to going forward with the hearing and decision on this matter. Jurisdictional issues shall be decided before proceeding with the public hearing.
 4. Chair announces that in order to have an appropriate record on appeal or for judicial review, an audio or video recording will be kept of this proceeding and exhibits will be numbered and kept with the Recording Secretary. Any party may be allowed to make recordings or have a court reporter present to record the meeting.
- c. Disclosures by Board Members. Chair asks for any disclosures and abstentions required by NRS 281A.420 (*Ethics in Government*) and/or any disclosures under these rules, policies and procedures regarding ex-parte contacts with the applicant or any interested party. **[new rule]**
 - d. Chair advises audience of general hearing procedures. If the item has been described as a public hearing item, the Chair will explain that this is a public hearing item and the process and rules to be followed. Public hearing or not, the Chair shall advise that this is an action item under the Nevada Open Meeting law and that public comment shall be heard before the Board deliberates toward a decision. **[same, but enhanced]**
 - e. Chair may canvass the audience to determine who is there to hear or speak on the agenda item, who is for or against approval of the item, or to obtain other information useful in managing the hearing and meeting. **[same but enhanced]**
 - f. Chair opens the public hearing for presentations and public comment. **[same]**
 - g. Staff Presentation
 - i. Staff will be given 15 minutes to present and discuss the item. Members may ask questions. **[same]**
 - ii. The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information. **[Same but with limitations on power to adjust times]**
 - h. Applicant Presentation and Rebuttals
 - i. For matters initiated by an application from someone other than the Department, the Applicant will be given 15 minutes to present and discuss the item. The Applicant may be represented by counsel or any other person or persons. Members may ask questions. **[former rule said that applicant should focus on certain topics, while this rule is more open; former rule did not provide for right to counsel]**
 - ii. The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information. **[same as old rule but with same limitations on power to adjust times as with staff presentations]**
 - iii. Staff will be offered five minutes of rebuttal time following the Applicant's presentation, and the Applicant will be offered five minutes of rebuttal time following Staff's rebuttal. The time limits may be adjusted by the Chair to accommodate

questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information. **[new rule]**

i. Public Comment and rebuttal to public comment

i. Following presentations, the Chair will call for public testimony in accordance with section C(8)(b) of these rules, policies and procedures. **[same]**

ii. Staff and the Applicant shall be given a reasonable opportunity to comment on any public testimony heard by the Board. The Chair shall decide what is reasonable, and is not required to afford equal time to the applicant for each public testimony. **[new rule]**

j. Board questions. Board members may ask questions of staff, the Applicant, or members of the audience. At the discretion of the Chair, a member of the public who previously testified, or staff may be asked to comment on any materials or information presented during the public hearing. **[same]**

k. Documents and Evidence

i. The staff report and all of its exhibits, and all documents offered by any presenter or speaker, shall be kept with the minutes and are public records. **[same]** The Chair may direct a numbering or other system to accommodate reference and recordkeeping. **[new rule]**

ii. Any party, presenter or speaker may offer additional evidence if it is relevant to the proceeding. If person wants to present documentary evidence to the Board, ten copies must be prepared and delivered to the Recording Secretary for distribution to the Board. **[former rule required at least six days in advance if more than three pages]**

iii. Any person may comment on the relevance, authenticity, accuracy or probative value of any evidence even if that person did not object to the admission of the evidence. **[new rule]**

iv. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted by the Chair. Any relevant evidence is sufficient in itself to support a finding provided that the evidence is the type on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action. **[new rule]**

v. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the Chair. The Board shall observe rules of privilege recognized by law. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board. **[new rule]**

l. Questions of presenters, parties and speakers

i. Questions to presenters, speakers, or the public must be made through or with the permission of the Chair. **[new rule]**

- ii. If staff or the applicant needs to ask questions of the parties or members of the audience, the Chair may ask the person to come forward and answer questions posed by the Chair. **[same]**
- iii. The Board does not have subpoena power and witnesses may not be compelled to speak or be examined or cross examined in a trial like manner. **[new rule]**
- m. Chair closes public hearing. When presentations and public comment have been completed, the Chair may close the public hearing. **[same]** However, the Chair may reopen public hearing at any time to receive new evidence or comments. **[new rule]**
- n. Discussion; additional fact finding
 - i. The Chair may call for discussion or a motion. **[same]**
 - ii. At any time during discussion or deliberation on a motion, the Chair may call (without reopening the public hearing) persons forward to answer questions or present information. **[same]**
 - iii. The Chair may also reopen the public hearing to hear public testimony. **[same]**
- o. Motions
 - i. Motions must be seconded before acceptance or debate. If a motion is not seconded, it is considered moot and the Chair may call for further discussion or a new motion. Unless otherwise directed by the Chair, motions may be made and voted upon in accordance with Robert's Rules of Order. **[same]**
 - ii. Motions must incorporate all findings of fact required by law. **[new rule]**
 - iii. The motion should be to do any one or combination of the following: **former rule was limited to dealing with what is in the staff report]**
 1. Approve the application with or without conditions.
 2. Individual conditions may be added, removed or adjusted from the original motion by a motion to amend which shall be voted upon before the original motion is taken up for a vote.
 3. Remand the application back to the Division for further review and/or action. The remand must give reasons for the remand, including instructions on actions to be taken by the Director or Division, and should include a suitable time frame for the action. The Board may also provide that the actions taken on remand may be appealed back to the Board.
 4. Deny the application with or without prejudice.
- p. Deliberation on Motion
 - i. During deliberation on motions, Board members are encouraged to discuss their views of the evidence and why they are going to vote for or against the motion. **[new rule]**

- ii. If findings of fact are required for approval of an item, Members are encouraged to individually discuss proposed findings but, as a minimum, each Member must discuss any findings that he/she cannot agree with. **[new rule]**
 - iii. The Board may continue or postpone a decision on the matter for up to 60 days after the hearing, but a motion to postpone or continue shall specify a date and the conditions under which the matter will be brought up for a decision. **[new rule]**
- q. Vote
- i. The Chair shall call for a vote **[same]**, and shall announce the results of the vote indicating by name who voted in favor or and who voted against the motion, and any abstentions, which information shall be recorded in the minutes. **[new rule]**
 - ii. If a motion to approve does not receive the required number of affirmative votes, it is deemed denied with prejudice. However, a separate motion may be made and approved to deny without prejudice based on the circumstances outlined within Section E(2)(a)(i) of these rules, policies and procedures. **[same]**
 - iii. If a motion to reverse or modify an administrative decision heard on appeal does not receive the required number of affirmative votes (three), it is deemed denied with prejudice. However, a separate motion may made be and approved to deny without prejudice based on the circumstances outlined within Section E(2)(a)(i) of these Rules, Policies and Procedures.
- r. Written Decision; appeal rights
- i. Within 60 days of the action, an Action Order shall be prepared and filed with the Secretary to the Board and will be served on the applicant. (Code is silent on this issue so the 60 days can stand). **[new rule]**
 - ii. The Applicant shall have appeal rights as established by ordinance, and time limitations begin with the service of the Action Order. **[new rule]**

D. APPEALS TO THE BOARD OF ADJUSTMENT

1. General

- a. This Article governs appeals to the Board by persons who are aggrieved by decisions or interpretations of an enforcement official under WCC 110.912.10 or an administrative hearing officer under WCC 110.910.15 (i) **[new rule]**

2. Content of appeal

- a. The appeal must be on forms provided by the Board Secretary and shall (i) identify the decision being appealed, (ii) include a short and plain statement of the reason the appellant believes the decision is in error. If the appellant is unable to state the matters in detail at the time the appeal is filed, the initial appeal may state the issues involved and a more definite statement must be made before the appeal is scheduled for a hearing. **[new rule]**

3. Prehearing procedures

- a. In consultation with the District Attorney assigned to advise the Board, the Chair shall preside over prehearing procedures and may make rulings as to scheduling, procedures, and evidence to be provided at the hearing. **[new rule]**
- b. Informal disposition may be made by stipulation which must be approved by the Board. **[new rule]**
- c. The parties shall meet and confer regarding evidence to be used and issues to be resolved by the Board and may create a joint evidence package. In more complex cases, the Chair may direct the parties to prepare prehearing memorandums. The District Attorney advising the Board may also prepare confidential or non-confidential prehearing memorandums. **[new rule]**

4. Scheduling and Notice of Hearing; Subpoenas

- a. The Chair shall schedule the hearing for a regular or special meeting of the Board and may issue subpoenas to parties and witnesses. **[new rule]**
- b. Notice for the hearing shall be given to the appellant and shall include any notices required by the Nevada Open Meeting Law, including notice required by NRS 241.033 if allegations of misconduct, competence, physical or mental health are to be considered by the Board. **[new rule]**

5. Record on Appeal

- a. Hearings by the Board will be based on a review of the record as set forth below. **[new rule]**
- b. If the decision of an administrative hearing officer is being appealed, a record on appeal shall be prepared by the Administrative Hearing Office of the County which shall include **[new rule]**
 - i. A transcript of the proceedings
 - ii. All pleadings, motions and intermediate rulings
 - iii. Evidence received or considered
 - iv. Questions and offers of proof and objections and rulings thereon
 - v. The decision of the hearing officer
 - vi. Any additional evidence requested or admitted by the Board
- c. If the decision of an administrative official is being appealed, the record shall include all documents and information upon which the administrative official relied. **[new rule]**

6. Rules of Evidence - To the extent that new evidence is admitted, the following rules will apply:

- a. Irrelevant, immaterial or unduly repetitious evidence must be excluded. Evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonable and prudent persons in the conduct of their affairs. **[new rule]**

- b. The Board shall give effect to the rules of privilege recognized by law. **[new rule]**
- c. Objections to evidentiary offers may be made and must be noted in the record. **[new rule]**
- d. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. **[new rule]**
- e. Documentary evidence may be received in the form of authenticated copies or excerpts, if the original is not readily available. Upon request, parties must be given an opportunity to review the original. **[new rule]**

7. Conduct of Hearing

- a. The sequence of presentations and deliberation set out in Rule C. 9 of these rules shall be followed with adjustments to be made by the Chair to effectuate a fair hearing.
- b. Any party may be represented by counsel. **[new rule]**
- c. All parties shall be afforded reasonable time to respond and present arguments on all issues involved. **[new rule]**
- d. If required by the Chair in order to resolve disputed facts, witnesses shall declare by oath or affirmation that they will testify truthfully. The Chair may administer oaths [NRS 278.290 (1)]. **[new rule]**
- e. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board. The experience, technical competence and specialized knowledge of the Board may be utilized in the evaluation of the evidence. **[new rule]**
- f. When the Chair determines that new evidence is needed to make a factual determination, each party may call and examine witnesses, introduce exhibits, cross examine any opposing witnesses on any matter relevant to the issues even though the matter was not covered by the direct examination, impeach any witness, regardless of which party first called the witness to testify, and rebut the evidence against him/her. **[new rule]**

8. Decision of the Board; required vote.

- a. The Board may:
 - i. Affirm the appealed decision upon the vote of a majority of the Board Members present at the hearing; **[same]**
 - ii. Remand the appealed decision back to the administrative hearing officer or the administrative official for reconsideration upon a vote of a majority of the Board Members present at the hearing; **[remand not specified in old rules]** or
 - iii. Reverse or modify the appealed decision, or rule in favor of appellant which must be done upon a vote of the majority of all the members of the Board. NRS 278.300(2). **[new rule]**

- b. Decisions of the Board regarding appeals must be in writing or stated in the record. Decisions affirming, modifying or reversing a decision or interpretation must include findings of fact and conclusions of law, separately stated. Findings of fact and decisions must be based upon substantial evidence. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. **[new rule]**
- c. The Board may make a ruling and direct that Counsel for the Board prepare a written decision for approval by the Chair or by the Board at a subsequent meeting. **[new rule]**
- d. Written decisions will be filed with the Secretary of the Board and shall be sent to all parties. The Secretary to the Board shall file a statement indicating when the decision was received by the Secretary and when it was mailed to the parties. A separate file containing copies of the decisions (and statement of filing and mailing as provided above) of the Board shall be maintained by the Secretary. **[new rule]**

E. SPECIAL CIRCUMSTANCES

1. Request to Withdraw or Continue a Development Application

- a. **POLICY.** An applicant has the ability to withdraw or continue an application submitted for consideration by the Board at any point prior to a motion for action being made by a Member. **[same]**
- b. **RULE**
 - i. A request for withdrawal or continuance of the application shall be stated by either the applicant(s), the authorized agent with power of attorney to represent all of the interests of the property owners of record party to the application, or by all of the property owners of record who submitted the application as attested by the signed and notarized affidavits accompanying the original application. **[same]**
 - ii. After a motion has been made by a Member, followed by a second on the motion and deliberation, the application cannot be withdrawn. **[same]**
 - iii. If the motion is not seconded, the applicant(s), authorized agent or property owner(s) can request the application be withdrawn prior to any new motions. **[same]**
 - iv. The request for withdrawal of the application shall be clearly entered into the record, and cannot be construed as a request for deferral or continuation of the application until a future meeting. **[same]**
 - v. The withdrawal of an application shall terminate any further deliberation, analysis, or consideration of the originally submitted request. **[same]**
 - vi. A withdrawn application is not a denied application, and therefore is not subject to the "one year wait on denials" provisions of the Washoe County Development Code for submitting a new development application request. **[same]**

2. Denial Without Prejudice.

- a. **RULE**

- i. A motion to deny without prejudice (which allows a denied application to be resubmitted prior to the expiration of a required waiting period as defined in the Development Code) can be offered by a Member if the following special circumstances are supported by the public record:
 1. All the necessary findings for approval of the application cannot be fully met or supported by the information presented at the time of the Board of Adjustment action;
 2. There is sufficient information to demonstrate that all the necessary findings could potentially be met within a one-year period if federal, state or local regulatory programs are changed, or physical conditions on or near the development site change, or that infrastructure availability and capital improvement programs change to allow development as requested in the original application; and,
 3. There is sufficient information to demonstrate that the requested application would clearly support implementation of one or more goals and policies of the Washoe County Comprehensive Plan if the findings for approval could have been made at the time of the Board of Adjustment's action to deny the application. ***[same except the present rule establishes all three conditions in conjunctive (all three must be met), former rule was disjunctive—a punctuation error]***
- ii. If an application is denied because a motion to approve does not receive the required number of approving votes, a subsequent motion may be made to cause the denial to be without prejudice. ***[new rule]***

F. OFFICERS OF THE BOARD

1. Titles. The officers of the Board shall be:

- a. Chair, who shall preside at all meetings, maintain order, call special meetings as they are needed, appoint committees, and generally represent the Board. ***[same]***
- b. Vice Chair, who will perform all of the Chair's functions in the absence of the Chair. ***[same]***
- c. Secretary (non-voting), who shall be the Director or his/her designee, and who shall maintain the Board records; rules, policies and procedures; and attachments. The Secretary is not elected by the Board of Adjustment. ***[same]***

2. Election of Officers

- a. The first Board meeting in July shall include on the agenda the election of officers, and the election shall be the first order of business under Chair and Members' Items. ***[same]***
- b. The Chair will take office immediately upon election and will officiate over the remainder of the elections and the meeting in progress. All other elected officers shall take office immediately upon election. ***[same]***

3. Terms of Office

- a. Each officer of the Board shall be elected by the Board and shall serve for one year or until his successor is elected and takes office. Each officer shall be limited to two consecutive terms. ***[former rule provided for one successive term]***
- b. In the case the Chair does not complete his/her term of office, the Vice Chair who succeeds him/her may complete that Chair's term and may continue to serve as Chair for the next two consecutive full terms. ***[former rule provided for one successive term]***

4. Authority to Sign

- a. The Secretary may sign such documents as may require certification on behalf of the Board. Transmittals of Board action or intent to the Board of County Commissioners and/or the County Clerk will generally be the responsibility of the Secretary. ***[same]***
- b. The Chair shall sign such documents as required by Nevada Revised Statutes or Washoe County Code. ***[same]***

5. Delegation of Authority

- a. The Board may designate one or more members or the Secretary to act for the Board in the conduct of hearings or the performance of its duties. The Board may also delegate to such members, when appropriate and to the extent permitted by law, such authority as may be necessary. ***[same]***

6. Committee Appointments of the Board of Adjustment

- a. Design Review Committee.
 - i. Two members of the Board of Adjustment will be requested to volunteer to serve on the Design Review Committee, one as a primary representative and one as an alternate. ***[same]***
 1. All appointments to the Design Review Committee shall be made by the Chair, who may seek input or consent of the Board. A majority vote of members present at the meeting to affirm the selection is not required. ***[same]***
 2. The Chair may select a person who is not a member of the Board to represent them for both or either position on the Design Review Committee. ***[same]***
 3. The appointments shall be for a period of one year ending in July of the following year. There are no limits to the number of times a member may be reappointed. ***[same]***

G. RECORDS AND DOCUMENTS

1. Minutes and Audio/Video Tapes

- a. All approved minutes, including items presented at the meetings as part of public record pertaining to the work of the Board shall be kept permanently in safe, orderly files maintained under the supervision of the Director. Said records shall be accessible to

the members of the Board and to the public as required by Nevada Revised Statutes and Washoe County's Public Records' Request Policy. **[same]**

- b. All audio and video recordings pertaining to the work of the Board shall be kept in a safe, orderly location maintained under the supervision of the Director. Said records shall be accessible to the members of the Board and to the public for one year and then will be destroyed pursuant to Nevada Revised Statutes. **[same]**
- c. The Director shall provide a Recording Secretary for each meeting who shall be responsible for preparing a written record of the meeting. Said minutes will bear the name of and be executed by the Recording Secretary. **[same]**
- d. Copies of unapproved minutes of the past regular meeting, or meetings, shall be furnished to the Board members in advance of a regular meeting. Upon correction and/or approval, the Secretary shall sign a master copy to be a permanent record, noting either: **[same]**
 - i. Approved by Board in session on _____, or;
date
 - ii. Amended and approved by Board in session on _____.
date

2. Other Documents

- a. Resolutions adopted by the Board shall carry the signatures of the Chair and the Secretary. Other documents relating to matters upon which the Board has taken formal action shall be signed by the Board's Secretary. **[same]**

H. AMENDMENT OF RULES, POLICIES AND PROCEDURES

The Rules, Policies and Procedures may be amended or added to by a notice of intent to amend or add, said intent to amend or add to be approved by a majority vote of the Members present. The proposed amendment or addition would then be placed on the agenda for the following Board meeting, and would become effective at the next Board meeting upon a majority affirmative vote of the full Board. **[same except that general rule changes need to go to BCC]**

- a. General governing rules, policies and procedures of the Board shall be approved by the Board of County Commissioners. The Board of County Commissioners reserves the right to review and make changes to the rules, policies and procedures at will. **[new rule]**
- b. Minor revisions to the rules, policies and procedures may be changed by a majority vote of the Board. **[new rule]**

Summary: Changes procedures for making appeals of administrative land use and certain building code decisions to the Washoe County Board of Adjustment; adds a new procedures section for appealing decisions of the Washoe County Board of Adjustment, the Washoe County Planning Commission, and Hearing Examiners to the Washoe County Board of County Commissioners; modifies existing sections to refer to these new appeal procedures; and, corrects the terminology of the Planning and Development Division of the Washoe County Community Services Department.

BILL NO. 1736

ORDINANCE NO. 1555

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), to delete Section 110.806.25, *Hearing of Appeal by Board*, and Section 110.806.30, *Notice of Board Hearing*, of Division Eight, *Procedures*; to add a new Section at 110.912.20 of Division Nine, *General Provisions*, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, *Appeals of Parcel Map Decisions*, and Section 110.608.15, *Appeals of Decisions Regarding Subdivision Maps*, of Division Six, *Subdivision Regulations*; and, Section 110.804.40, *Appeals of Decisions Regarding Variances*, Section 110.806.15, *Review Procedures of Planning Commission Regarding Vacations and Abandonments of Easements or Streets*, Section 110.806.35, *Action by Board Regarding Vacations and Abandonments of Easements or Streets*, Section 110.808.45, *Appeals of Decisions Regarding Administrative Permits*, Section 110.810.50, *Appeals of Decisions Regarding Special Use Permits*, Section 110.818.25, *Appeals of a Denial Regarding Development Code Amendments*, and Section 110.818.30, *Action by Board Regarding Development Code Amendments*, of Division Eight, *Procedures*; and, Section 110.912.10, *Washoe County Board of Adjustment*, to add a new subsection (j) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05,

Washoe County Department of Community Development, at subsection (f) to provide for appeals of a decision of the Director; and, Section 110.914.00, *Purpose*, and Section 110.914.05, *Washoe County Department of Community Development*, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, *General Provisions*. Recommendations include other matters properly relating thereto.

WHEREAS:

- A. Ordinance 1501 enacted on October 23, 2012 amends Article 910 of the Washoe County Development Code to provide that certain decisions and actions made during the enforcement of the Development Code may be appealed to the Board of Adjustment, and this Commission desires to amend Washoe County Code Section 110.912.10 (Board of Adjustment) to provide general rules governing such appeals to the Board of Adjustment, including what kinds of matters may be appealed, the procedures to be followed, and further providing that decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may be submitted directly to judicial review under certain circumstances; and,
- B. In accordance with NRS 278.300, NRS 278.310 (2), and NRS 278.3195, this Commission desires to coordinate and update various provisions in the Washoe County Development Code regarding appeals to the Board of County Commissioners of decisions of the Board of Adjustment, the Planning Commission, Hearing Examiners, the Parcel Map Review Committee and other bodies who make land use decisions by adding a new Section 110.912.20 governing such appeals and amending various sections in the Development Code to refer to the new section; and,
- C. As authorized by Washoe County Code Section 110.818.05, the Washoe County Planning Commission initiated amendments to the Development Code to clarify and expand appeal processes by resolution on November 13, 2014. The amendments and this ordinance were drafted by the District Attorney, and the Planning Commission held a duly noticed public hearing for DCA 14-010 on March 3, 2015, and adopted a resolution recommending adoption of this ordinance.

D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Board of County Commissioners desires to adopt this Ordinance; and

E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Sections 110.806.25 and 110.806.30 have been deleted in their entirety:

SECTION 2. A new Section 110.912.20 is added to read in its entirety as follows:

Section 110.912.20 Appeals to the Board of County Commissioners of a decision by the Board of Adjustment, the Planning Commission, Hearing Examiner or other deciding body. Except as specifically provided elsewhere in the County Code (such as appeals of master plan decisions by the Planning Commission), this section applies to appeals of decisions of the Planning Commission, the Board of Adjustment, a hearing examiner, or other deciding body.

(a) Time for appeal; form, fees, stay of decision.

- (1) A person aggrieved by a decision of the Board of Adjustment, the Planning Commission, a Hearing Examiner, or an administrative enforcement official or a hearing officer following the provisions of Article 910 of the Development Code whose decision is not otherwise appealable (the "deciding body") may appeal the decision to the Board of County Commissioners.
- (2) The appeal must be in writing and delivered to the Planning and Development Division within 10 calendar days from the date that the decision being appealed is reduced to writing and is filed with the secretary to the deciding body (for hearing examiner decisions the decision is to be filed with the Director of the Planning and Development Division), and mailed to the original applicant in the proceeding being appealed.
- (3) When the written appeal is filed and fees paid, it operates to stay the implementation of the decision being appealed, even if the appeal is incomplete upon initial submission. The application must be completed as provided for in subsection (4) below.
- (4) The Division may follow up to require the appeal to be on certain forms and/or to obtain more information. The appellant must submit the forms or supply the additional information within 14 business days after written notification by the Division. Failure to do so within this time frame invalidates the appeal submission. The appellant must submit a new appeal containing the original material, and the additional information requested, within 14 business days of written notice that the original application was incomplete. When the Division

deems the appeal complete and the fees have been paid, it shall process the appeal as provided herein.

- (5) Fees for the appeal are authorized by NRS 278.3195(2)(g) and may be set by resolution of the Board of County Commissioners.

(b) Scheduling of Hearing; notice.

- (1) Scheduling a hearing. Under NRS 278.3195(2)(d)(2), a decision must be rendered on the appeal within 60 days from when the Division deems the appeal to be complete, and the County Clerk shall schedule a public hearing on the appeal accordingly.

- (2) Notice. Notice for the public hearing before the Board of County Commissioners shall be the same as the required notice set out in the Development Code for the proceeding being appealed. For example, if there is an appeal of a decision to deny a special use permit, then notice for the appeal hearing shall be the same as in WCC Section 110.804.20 for the underlying special use permit. Other than notice to the appellant, notice is not required for the appeal of administrative enforcement decisions that are affirmed or denied by the appellate body.

- (3) Panels. The Board of County Commissioners may appoint two or more of its members to serve as a panel to hear the appeal and render a decision that would be binding on the Board of County Commissioners. Each appointment shall select which commissioner is to preside over the proceeding, include instructions as to voting rights and requirements, indicate whether or not decisions of the panel may be appealed to the whole Board of County Commissioners, and include any other procedural matters deemed important to the Board of County Commissioners.

- (4) Record on Appeal; Prehearing Procedures.

- (i) At least 20 days before the hearing, the Division shall prepare a record on appeal including the written appeal, the written decision or action order being appealed, draft minutes or recording of the proceeding leading to the decision being appealed, the staff report and all materials submitted to the deciding body in connection with the hearing. The original shall be filed with the County Manager's Office and a copy shall be provided to the appellant for use and reference at the hearing before the Board of County Commissioners.

- (ii) The Chairman of the Board of County Commissioners or the presiding officer of the panel may:

- (1) Issue subpoenas compelling witnesses to appear at the hearing;
- (2) Require and oversee prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, and evidence assembly and marking; and
- (3) Agree to stipulated continuances or other scheduling matters.

- (5) Hearing procedures; evidence. At the hearing, the Board of County Commissioners:

- (i) May consider the matter de novo or as an appeal limited to determining if the deciding body abused its discretion;
- (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal (even if it is new evidence);

- (ii) Shall hear public comment on the matter being heard; and
 - (iv) Shall view the record on appeal and all evidence, testimony, documents, information and arguments introduced at the hearing.
- (6) Burden of persuasion; standards of review and final decision by Board; judicial review of Board's decision.
- (i) Burden of Persuasion. Decisions of the Board of Adjustment, Planning Commission or Hearing Examiner, or an administrative enforcement official or a hearing officer are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board of County Commissioners otherwise.
 - (ii) Findings. On appeal, the Board of County Commissioners may review the findings made by the deciding body and may affirm, reverse, modify or apply a different interpretation to any finding. Unless otherwise required by a specific provision in statute or code relating to the type of matter being appealed, the Board of County Commissioners is not required to make specific findings.
 - (iii) Guiding Policy. In reviewing the decision, the Board of County Commissioners shall be guided by the statement of purpose underlying the regulation of improvement of land expressed in NRS 278.020 [NRS 278.3195(2)(f)].
 - (iv) Possible actions; vote required. On a majority vote of all its members, the Board of County Commissioners may affirm, reverse, or modify the decision of the deciding body. If the decision being appealed is the denial of a building permit, special use permit, variance, master plan amendment, regulatory zoning amendment, or other entitlement, the Board of County Commissioners may either remand the matter back to the deciding body with instructions or may directly grant the building permit, special use permit, variance or other entitlement if properly agendaized under the open meeting law and subject to NRS 278.220 for master plan amendments.
 - (v) Memorandum of Decision. A memorandum of decision shall be prepared by and filed with the County Clerk and mailed to the appellant, and when filed and mailed, the decision of the Board of County Commissioners is final for purposes of judicial review.
 - (vi) Judicial Review of BCC Decision. A person aggrieved by the decision of the Board of County Commissioners may file a petition for judicial review within 25 days of the filing of the Memorandum of Decision with the County Clerk.

SECTION 3. Section 110.606.55 is hereby amended to read as follows:

Section 110.606.55 Appeals. All appeals regarding tentative and final parcel maps shall be made as provided in this section.

- (a) Process for Tentative Parcel Map. A party aggrieved by a decision of the Parcel Map Review Committee may appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code.

- (b) Process for Final Parcel Map. A person aggrieved by a decision of the Director of the Planning and Development Division regarding a Final Parcel Map may be appealed to the Board of Adjustment in accordance with Section 110.912.10 of the Development Code.

SECTION 4. Section 110.608.15 is hereby amended to read as follows:

Section 110.608.15 Review Procedures. The review procedures for tentative maps shall be as set forth in this section.

- (a) Filing. The subdivider shall file with the Director of the Planning and Development Division a complete application and the required supporting materials as outlined in the application packet.
- (b) Review. If the application is found to be complete, the Director of the Planning and Development Division shall transmit one print of each tentative map to the County Engineer, any other public agency which may be affected by the proposed subdivision, and such other persons as the Director of the Planning and Development Division may deem appropriate.
- (c) Action Required by the Planning Commission. The Planning Commission shall, within 60 days after receipt of the complete tentative map application by the Director of the Planning and Development Division, conduct a public hearing on the application and following the public hearing, approve, conditionally approve or deny the proposed map; said action being an affirmative vote of a majority of the members of the Planning Commission present at the hearing. At the public hearing, the Planning Commission may relieve the applicant of the requirement to provide an easement for water, sewer, gas, electric, telecommunications and franchised community antenna television (where permitted to provide service) services if the applicant can demonstrate that there is not an essential nexus to the public purpose for the proposed dedication and the dedication would not be roughly proportional in nature and extent to the impact of the proposed development. Notice of the public hearing conducted by the Planning Commission shall be in accordance with the provisions of this article. Review time may be extended by mutual consent of the Director of the Planning and Development Division and the applicant.
- (d) Appeal. The decision of the Planning Commission may be appealed to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code.
- (e) Time Limits. The time limits set forth in this section are suspended for a period, not to exceed one (1) year, during which the State of Nevada or the federal government takes any action to protect the environment or an endangered species which prohibits, stops or delays the processing of a tentative map.
- (f) No Guarantee of Final Map Approval. Approval by the Planning Commission or the Board of County Commissioners of a tentative map imposes no obligation on the part of the Planning Commission or the Board of County Commissioners to approve the final map or to accept any public dedication shown on the final map.

SECTION 5. Section 110.804.40 is hereby amended to read as follows:

Section 110.804.40 Appeals. An action of the Board of Adjustment, Planning Commission or hearing examiner made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 6. Section 110.806.15 is hereby amended to read as follows:

Section 110.806.15 Review Procedures of Planning Commission. The Planning Commission shall review applications for abandonments and vacations in accordance with the provisions of this section.

- (a) **General Provisions.** The Planning Commission shall conduct a public hearing for the purpose of receiving evidence relative to the application. The evidence shall be reviewed to determine if the application is consistent with existing policies, standards and required findings.
- (b) **Time Period for Hearing and Action.** The Planning Commission shall hold a public hearing on the application for vacation or abandonment of an easement or street not less than 10 business days after the newspaper notice as required below is first published.
- (c) **Notice of Planning Commission Hearing.**
 - (1) **Notice of Vacation or Abandonment, Only.** Notice of a vacation or abandonment application to be heard by the Planning Commission shall be given by mailing to each owner of property abutting or connected to the proposed vacation or abandonment a notice of the proposed vacation or abandonment application through a delivery method that does not require signature of receipt of the notice by the abutting property owner, but does confirm delivery of the notice to the abutting property owner. Mailing of the notice shall occur at least 10 business days prior to the date of the Planning Commission's public hearing. Furthermore, a notice shall be published at least once in a newspaper of general circulation in the County not less than 10 business days prior to the date of the Planning Commission's public hearing.
 - (2) **Notice of Vacation or Abandonment Combined with Tentative Subdivision Map Application.** If the vacation or abandonment application is part of a tentative subdivision map application, the notice of the proposed vacation or abandonment shall be contained in the notice for the tentative subdivision map, and each owner of property abutting or connected to the proposed vacation or abandonment shall be provided notice of the combined proposed vacation or abandonment and tentative subdivision notice pursuant to the requirements of subsection (1). Notice shall be published at least once in a newspaper of general circulation in the County pursuant to the requirements of subsection (1).
 - (3) **Notice of Public Utility and Community Antenna Television Company.** Each public utility as defined in NRS 360.815 and each community antenna television company as defined in NRS 711.030 serving the area in which an easement or street is proposed to be abandoned shall receive a notice no later than 10 business days prior to the date of the Planning Commission's public hearing on the application. Accompanying the application shall be a request that the public

utility and/or community antenna television company indicate in writing whether that entity wishes to have an easement for its purposes provided.

- (d) Action by the Planning Commission. Except as provided in Section 110.806.40, if, upon public hearing, the Planning Commission is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Planning Commission may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. Notwithstanding the final decision of the Planning Commission, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection (c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.

SECTION 7. Section 110.806.35 is hereby amended to read as follows:

Section 110.806.35 Appeals to Board of County Commissioners.

- (a) An appeal of the Planning Commission's decision regarding a vacation or abandonment of an easement or street may be appealed to the Board of County Commissioners following the procedure set out in WCC 110.912.20 of the Development Code.
- (b) Except as provided in Section 110.806.40, if, upon public hearing on the appeal of the Planning Commission's final action on an abandonment or vacation of an easement or street, the Board is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Board may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. The action of the Board of County Commissioners shall be final for the purposes of judicial review. Notwithstanding the final decision of the Board of County Commissioners, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection 110.806.15(c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.

SECTION 8. Section 110.808.45 is hereby amended to read as follows:

Section 110.808.45 Appeals. An action of the hearing examiner or Board of Adjustment made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 9. Section 110.810.50 is hereby amended to read as follows:

Section 110.810.50 Appeals. An action of the Planning Commission, Board of Adjustment or a hearing examiner made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 10. Section 110.818.25 is hereby amended to read as follows:

Section 110.818.25 Appeal of Denial. A denial action of the Planning Commission made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of Section 110.912.20 of the Development Code.

SECTION 11. Section 110.818.30 is hereby amended to read as follows:

Section 110.818.30 Action by Board. Except as provided in Section 110.818.60, the Board of County Commissioners shall review proposed Development Code amendments in conformance with this section.

- (a) Time Period for Hearing. The Clerk of the Board of County Commissioners shall schedule a public hearing before the Board of County Commissioners on the appeal of a denial or recommendation of approval of the Planning Commission within 60 days of the filing of the appeal or receipt of the Planning Commission's action.
- (b) Notice of Hearing. The public hearing on the appeal shall be noticed as required by this article.

SECTION 12. Section 110.912.10 is hereby amended to read as follows:

Section 110.912.10 Washoe County Board of Adjustment.

- (a) Creation. The Washoe County Board of Adjustment is hereby created, pursuant to NRS 278.270, to perform all the duties and functions delegated to a County Board of Adjustment by the terms of NRS 278.010 to 278.630, inclusive.
- (b) Membership and Terms of Office.
 - (1) The Washoe County Board of Adjustment shall consist of five members.
 - (2) The term of office of each member shall be four years, or until his or her successor takes office.
- (c) Appointment and Qualifications.
 - (1) The Chairman of the Board of County Commissioners shall appoint, subject to the approval of the Board, the members of the Washoe County Board of Adjustment.
 - (2) The members shall hold no other public office, with the exception that one member may also be a member of the Planning Commission.
 - (3) The members shall be residents of the unincorporated area of Washoe County and registered voters therein at the time of their appointment and continuously throughout their term of office.
 - (4) Members of the Board of Adjustment shall be appointed based on representation of the County Commission Districts as described below. If qualified applicants

are not available from the following County Commission Districts, appointments can be made from the County Commission District which would experience the next vacancy.

- (i) One member from County Commission District One.
 - (ii) One member from County Commission District Two.
 - (iii) One member from County Commission District Three.
 - (iv) One member from County Commission District Four.
 - (v) One member from County Commission District Five.
- (d) Vacancies. Vacancies occurring other than through the expiration of a member's term shall be filled for the unexpired term.
- (e) Removal from Office. Any member of the Washoe County Board of Adjustment may be removed from office, following a public hearing, by a majority vote of the Board of County Commissioners for inefficiency, neglect of duty, or malfeasance of office.
- (f) Powers of Board.
- (1) The Washoe County Board of Adjustment shall hear and decide appeals under NRS 278.300(1)(a) and 278.310(1) as provided in subsection (j) of this section.
 - (2) The Washoe County Board of Adjustment shall also have all the powers pursuant to NRS 278.290 to 278.310, inclusive.
- (g) Meetings and Records.
- (1) The Washoe County Board of Adjustment may hold at least one regular meeting each month, but may meet less frequently if the Board so decides. The Board may also schedule special meetings as warranted.
 - (2) The Washoe County Board of Adjustment shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. This record shall be a public record.
 - (3) Complete records of official actions of the Washoe County Board of Adjustment shall be kept on file in the office of the Planning and Development Division of the Washoe County Community Services Department.
- (h) Chairman and Other Officers.
- (1) The Washoe County Board of Adjustment shall elect its Chairman from among the appointed members.
 - (2) In addition to electing its Chairman, the Washoe County Board of Adjustment shall create and fill such other of its offices as it may determine.
- (i) Compensation. All members of the Washoe County Board of Adjustment shall be compensated at a rate of \$80.00 per meeting (up to \$200.00 per month), and shall

receive compensation for reasonable travel expenses and subsistence allowances made necessary in the fulfillment of their official duties.

(j) Appeals to the Board of Adjustment

(1) Preface and Definitions. This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310 (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.

(2) Matters that May be Appealed. A person aggrieved (as defined in Section 110.910.02) by any of the following decisions may appeal the decision to the Board of Adjustment:

(i) Decisions of Building Official. Decisions of the Building Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Building Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board subject to and in accordance with Chapter 100 of this Code (Building Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Building Official is not heard by a hearing officer or the Technical Review Board, then a person aggrieved by the decision may appeal it directly to the Board under this Article; or,

(ii) Decisions of Fire Code Official. Decisions of the Fire Code Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Fire Code Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board in accordance with Chapter 60 of this Code (Fire Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Fire Code Official is not appealed to a hearing officer or the Technical Review Board, then a person aggrieved by that decision may appeal it directly to the Board but only if the decision results in denial of a building permit or is related to the soundness of structures. Decisions relating to public safety or fire code administration or enforcement are not subject to appeal to the Board unless they directly relate to the soundness of a structure or result in denial of a building permit; or,

(iii) A decision of an administrative hearing officer if an administrative enforcement proceeding is completed in accordance with Article 910 of the Development Code; or,

(iv) A decision of the Director the Planning and Development Division made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer.

- (3) Form and Time for Appeal. Appeals must be in writing on forms or in the format prescribed by, and must be delivered to, the Planning and Development Division of the Department of Community Services within 10 calendar days from the date that the decision is communicated in writing to the appellant.
- (4) Scheduling of Hearing on Appeal. The Chairman of the Board shall schedule the appeal for a hearing to occur not later than the date of the next regular meeting of the Board but no more than 60 days from the date the appeal was filed in accordance with paragraph (3) unless otherwise agreed with the appellant. Within that timeline, the Chairman of the Board may also schedule a special meeting to hear the appeal. If the appellant fails to observe any prehearing schedule, the Chairman may extend the hearing date for a reasonable period of time.
- (5) Prehearing Procedures. The Chairman of the Board of Adjustment may:
- (i) Require and oversee ministerial prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, evidence assembly and marking; however, matters involving jurisdiction or issues to be heard by the Board, or admissibility of evidence are to be heard by the Board;
 - (ii) Issue subpoenas compelling witnesses to appear before the Board; and
 - (iii) Schedule the hearing before the Board.
- (6) Record on Appeal; Additional Evidence. A record on appeal shall be prepared by the County (including either a transcript of or a copy of the recording of the proceeding, at the discretion of the Chairman of the Board) and the Board:
- (i) Shall review the record on appeal and all evidence, testimony, documents, information and arguments introduced and the decision in the proceedings being appealed;
 - (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal even if it is new evidence;
 - (iii) Shall conduct a public hearing, and hear and consider relevant information and comments by members of the public, even if they did not appear in the proceeding under appeal;
 - (iv) May consider, upon disclosure, information and comments communicated to Board members before the hearing; and
 - (v) May consider maps, adopted master plans to include area plans, and its own knowledge of conditions that exist.
- (7) Burden of Proof and Persuasion; Reasons for Reversal of Underlying Decisions; Limitations on Awards.
- (i) Decisions of administrative officials, hearing officers, and the technical review boards for building code and fire codes are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board otherwise.
 - (ii) On an affirmative vote of a majority of the members present at the hearing, the Board may affirm the decision being appealed,

- (iii) On a majority vote of all its members [as required by NRS 278.300 (2)], the Board may reverse, modify or remand a decision if the decision:
 - (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;
 - (B) Exceeds the jurisdiction or statutory authority of the deciding official or body;
 - (C) Was made on unlawful procedure;
 - (D) Is affected by an erroneous interpretation or other error of law;
 - (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
 - (F) Is arbitrary or capricious or characterized by abuse of discretion.
 - (iv) The Board may not award, allocate or direct the payment of money damages, attorney's fees or costs of the proceeding to any party.
- (8) Decision; Communication.
- (i) The Board may take a matter under advisement and continue the hearing until its next regularly scheduled meeting, or may set a special public hearing to conclude the matter, and may require briefings or seek opinions of counsel. The Board may render a decision and instruct counsel to prepare a written decision either to be signed by the Chairman of the Board or reviewed at a subsequent meeting by the Board (provided, however, that the outcome shall not be changed at the subsequent meeting).
 - (ii) The Board must render a written decision within 60 days after the hearing unless otherwise agreed with the appellant.
 - (iii) When a decision is signed by the Chairman of the Board, a copy shall be delivered to all parties of record, and a copy shall be filed with the secretary to the Board as an official record. When a decision is so served and filed, it is final for purposes of judicial review or appeal. A petition for reconsideration or rehearing is not required as a condition to judicial review or appeal to the Board of County Commissioners.
- (9) Appeals of Board of Adjustment Decisions. A party of record who is aggrieved by a decision of the Board of Adjustment may:
- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or,
 - (ii) Appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of this Article.

SECTION 13. Section 110.914.00 is hereby amended to read as follows:

Article 914

ESTABLISHMENT OF DIVISION

Section 110.914.00 Purpose. The purpose of this article, Article 914, Establishment of Division, is to specify the establishment and authority of the Planning and Development Division of the Washoe County Community Services Department.

SECTION 14. Section 110.914.05 is hereby amended to read as follows:

Section 110.914.05 Planning and Development Division of the Washoe County Community Services Department.

(a) **Division Created.**

- (1) There is hereby created the Planning and Development Division of the Washoe County Community Services Department.
- (2) The division shall be responsible for the development and administration of comprehensive planning programs, as well as development review programs, including business licensing and codes compliance, for the County in accordance with relevant local, state and federal ordinances, laws and regulations, as well as such other functions as may be assigned by the Board of County Commissioners.

(b) **Director's Position Created.**

- (1) The position of the Division Director Planning and Development is hereby created. The Director shall be appointed by the Community Services Department Director and shall serve at the pleasure of the Community Services Department Director.
- (2) The Director shall appoint, pursuant to any applicable provisions of law regulating County personnel, such technical, clerical and operating staff as the execution of the duties of the Director and operation of the department may require.

- (c) **Director's Powers and Duties.** As the executive head of the division, the Director shall direct and supervise all administrative, technical and operational activities of the division. In addition to such activities as may be required in the daily administration of the division, the Community Services Department Director may make additional assignments as deemed necessary. The Director shall have the authority to interpret and make decisions regarding the provisions of the Development Code.

(d) **Compensation.**

- (1) Except as provided in Subsection (d)(2) of this section, the salaries and other fringe benefits of the Director and employees of the Planning and Development Division shall be established in accordance with the provisions of the Merit Personnel Ordinance or any other applicable laws regulating the employment of County personnel.

- (2) The salary for the position of Director shall be established by the Board of County Commissioners.
- (e) Programs. The division shall consist of such programs, as are deemed necessary to the efficient performance of the duties of the division, created upon the recommendation of the Director and approved by the Community Services Department Director.
- (f) Appeal of a Director's Decision. A person aggrieved by a decision of the Director may appeal the decision in accordance with Section 110.912.10 of the Development Code.

SECTION 15. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

PASSAGE AND EFFECTIVE DATE

This ordinance was proposed on 4-14-15 by Commissioner Hartung.

This ordinance was passed on 4-28-15.

Those voting "aye" were Berkbigler, Jung, Herman, Lucey & Hartung

Those voting "nay" were none.

Those absent were none.

Those abstaining were none.

This ordinance shall be published and shall be in force and effect immediately upon the date of the second publication as set forth in NRS 244.100.

Marsha Berkbigler
Marsha Berkbigler, Chair
Washoe County Commission



ATTEST:
Nancy L. Parent
Nancy Parent, County Clerk



Washoe County Board of Adjustment **DRAFT RULES, POLICIES AND PROCEDURES**

April 5, 2012September 17, 2015

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Article 1 DEFINITIONS AND GENERAL POLICIES

1.01 Definitions

The following words have the following meanings for purposes of these rules, policies and procedures:

- a. **Adjudicative matter** means deciding or recommending how legislative policies (such as master plans, zoning regulations and provisions in the Development Code) would apply to individual properties usually upon application by property owners. Examples of adjudicative matters include applications by landowners for special use permits, administrative permits, variances, parcel or subdivision maps, development agreements, and master plan amendments or re-zoning requests for an individual property or project.

- b. **Board** means the Washoe County Board of Adjustment.

- c. **BCC** means Washoe County Board of County Commissioners.

- d. **Department Division** means the Department of Community Development Planning and Development Division of the Community Services Department ~~or the department designated by the Washoe County Board to administer the regulations of land use and zoning.~~

- ee. Development Code** means the Development Code of Washoe County, WCC Chapter 110.
- df. Director** means the chief executive or director of the Department~~Division~~, or his/her designee.
- eg. General Business matter** includes taking action on general business items and procedural matters such as election of officers, appointment of committees, ceremonial or administrative resolutions, and amendments to these rules.
- fh. Legislative matter** includes establishing overall land use policies or designations involving a large area consisting of multiple properties in disparate ownership, including adoption or amendment of the master plan or regulatory zoning regulations as they would generally apply to multiple properties of diverse ownership, or amendments to the Development Code. However, an application for a master plan amendment or regulatory zoning classification for the benefit of a particular property or project is considered as an adjudicative matter.

1.02 **Board Determines Rules, Policies and Procedures**

The ~~Washoe County Board of Adjustment~~, under ~~S~~state statute (Nevada Revised Statutes [NRS] 278.290 to 278.310 inclusive) and by ~~Washoe County~~Development eCode (Section 110.912.10), has the responsibility for ~~adopting long-range plans; recommending development code amendments; and approving, when authorized, development applications for the unincorporated portions of the County.~~ reviewing and approving variances and special use permits for the unincorporated portions of the eCounty. In addition, the Board of Adjustment, under State law and by Washoe County ordinance, is responsible for making determinations on appeals of administrative decisions concerning zoning regulations and regulations concerning the location or soundness of structures made by County officials. In the furtherance of these responsibilities, the ~~Board of Adjustment~~ adopts the following rules, policies and procedures and from time to time may amend said rules, policies and procedures.

1.03 **Duties and Responsibilities**

- a. POLICY
 - i Members of the Board shall keep themselves informed on planning laws, policies, procedures and trends in planning practice, and ethics laws of Nevada.
 - ii The five Board ~~m~~Members shall represent the best interests of unincorporated Washoe County.
 - iii Members shall endeavor to provide questions on agenda items to the Planning Managers or staff of the ~~Department~~Division a minimum of 24 hours prior to the meeting on which the agenda item is scheduled.
- b. RULE
 - i Members shall be prompt and diligent in attendance.
 - ii Failure of a ~~m~~Member to attend 3-three successive regular meetings, or miss more than 25% of scheduled meetings annually, will be reported to the ~~Board of County Members~~BCC and said absences may be considered justifiable cause for replacement.

1.04 Communications Outside of Public Hearings or Meetings

- a. POLICY. General: Except for legislative and general business matters, ~~m~~Members should avoid ex parte communications (i.e., private communications outside a public meeting with interested parties) regarding matters coming before the Board. Parties should be encouraged to discuss their comments with staff or at the public hearing rather than privately with individual Members.
- i. Legislative and General Business matters. With respect to such actions:
- a) When being approached or when discussing such matters, there are no policy or legal restrictions, or disclosure requirements. Members are urged to be discreet and not form or communicate any prehearing bias.
 - b) Members are authorized and encouraged in NRS 278.190 to promote public interest in land use plans and policies. Such encouragement includes consulting with public officials and agencies; with public utility companies, civic, educational, professional and other organizations; and, with citizens generally in relation to the carrying out of such legislative and policy matters.
- ii. Adjudicative matters. With respect to such actions:
- a) Members should avoid ex parte communications with parties who have an interest in the matter. ~~Parties should be encouraged to discuss their comments with staff or at the public hearing rather than privately with individual members.~~
 - b) Unsolicited correspondence, emails or phone messages should be preserved so they may be put in the record.
 - c) Members must disclose all ex parte communications. If during any such contacts, a ~~M~~member obtains information that he/she might consider as important when deciding an adjudicative matter, the ~~m~~Member must assure that the information is:
 - already public knowledge;
 - has been included in the reports or presentations; or,
 - is disclosed or otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it.
 - d) Members must keep an open mind and not form or communicate any preferences or thoughts that may be perceived as prehearing bias.
- iii. Site Visits. ~~Members are authorized in NRS 278.190 (3) to enter and examine any land in the performance of their functions, and s~~Site visits may be important to gain a better understanding of the proposed actions and their impact on surrounding lands. Members may view sites from public roadways to gain understanding, however, site visits are subject to any applicable legal restrictions on the entry of land, and site visits must be pursuant to any required authorization of the owner(s) of the land being visited.
- a) Ex parte contact may be unavoidable during site visits and should be limited to the extent practicable. If ex parte contact occurs, it must be disclosed as provided above. It is advisable to have a staff member or another person participate in the site visit and any discussions at the site.
 - b) Members must disclose that they conducted a site visit and do not need to describe what they saw if it is in plain public view. Any information gained during

a site visit that is significant in forming a conclusion must be disclosed at the public hearing, if the information has not otherwise been disclosed in the reports and presentations.

- iv. Attorney Communications. Communications with the attorney assigned by the District Attorney's Office or any other attorney appointed or retained to represent or advise the Board are confidential and privileged attorney-client communications and are not subject to disclosure.

b. RULE

- i. Ex parte contact with respect to legislative and general business matters need not be disclosed and does not disqualify a contacted Member from discussion and voting on the item under consideration by the Board. Ex parte contact with respect to an adjudicative matter does not disqualify a Member from voting on the matter if disclosure is made and that information derived from the contact(s) that is being considered by the Member is either public knowledge, has been included in the reports or presentations, or is otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it.
- ii. Members shall not solicit, offer or accept any offer for any business relationship or arrangement with any interested party. Any preexisting, ongoing or expected business relationship with any interested party must be disclosed and may be grounds for abstention under NRS Chapter 281A.

1.05 **Ethical Principles for Planning; Disclosures and Abstentions**

a. POLICY

- i. ~~The Board adopts the American Planning Association's *Ethical Principles in Planning* (Appendix A of the Rules, Policies and Procedures) as the guiding principles for the conduct of Board members. The Board, however, is governed by Nevada's ethics laws, including NRS Chapter 281A. The Board may also use the American Planning Association's *Ethical Principles in Planning* (Appendix A) as guiding principles for the conduct of Board Members, and to the extent there is a conflict between state law and the APA's *Ethical Principles in Planning*, state law governs. Additionally, if there is a conflict between these rules, policies and procedures and the APA's *Ethical Principles in Planning*, the rules, policies and procedures will be followed~~

b. RULE

- i. Potential Conflicts of Interest. In connection with matters coming before the Board, NRS 281A.420 discusses three circumstances where disclosure and abstention may be required. These three circumstances include when a Member: ~~has~~
 - ~~received~~ has accepted a gift or loan,
 - ~~has~~ has a significant pecuniary interest, or
 - ~~would reasonably be affected by the Member's a~~ would reasonably be affected by the Member's a commitment in a private capacity to the interests of another person ~~others~~ in connection with the matter.

In any of those circumstances, the Member should check current statutes and rulings of the Nevada Commission on Ethics to determine what disclosures should be made and when abstention is warranted. If disclosure is required, it should be made before the matter is discussed by the Board, and at that time the Member must also discuss whether or not he/she is abstaining, and why. If abstaining, it is not necessary to leave the room during deliberation and vote, but the Member should leave his/her seat on the Board until after the vote.

- a) If a Member has an ownership interest in property or a project being considered individually for a ~~master plan amendment, re-zoning,~~ special use permit, variance, ~~tentative map or an entitlement or appeal of administrative decision,~~ the Member must abstain but may address the Board to discuss facts about the property, the project or the proceeding but must not ask, advocate or give any reasons for or against a vote.
- b) If a Member has an ownership interest in land or a project that is being considered with other parcels of land for a ~~master plan amendment, or rezoning~~ special use permit, variance or appeal of administrative decision and shares benefit or detriment no greater than other owners of properties also being considered, while disclosure is necessary, abstention is not required unless otherwise indicated by the Nevada Commission on Ethics Board rulings.

Article 2 QUORUM AND VOTING

2.01 Number of Members Required to Conduct Business

- a. For general matters of business a quorum of the Board shall be a simple majority of the Board, three ~~m~~M members.
- b. For a matter requiring a ~~two-thirds~~majority vote of the full membership as required by state statute, ~~specifically Master Plan Amendments, not less than two-thirds of the membership of the Board (5 members) must be present. the following rules apply:~~
 - i. Full membership means the number of Members appointed and serving on the Board. An unfilled vacancy does not count as part of the total membership. For example, if four Members are appointed and serving on the Board, in such matters, not less than ~~5~~three Members must be in attendance and vote to ~~take~~approve the action on said motion. The term "in attendance" means physically present at the meeting or attending the meeting through a telephone or video conference.
 - ii. In the event that the ~~5~~ minimum required ~~m~~M members of the Board are not present, the item shall be scheduled for the next appropriate regular meeting.
 - iii. ~~Actions requiring a minimum two-thirds vote for approval as specified in the Washoe County Development Code shall mean 5 votes of the 7 potential votes.~~

2.02 Voting

- a. An affirmative vote by a majority of the Members present at a meeting is required to approve all matters, ~~unless otherwise provided by law (e.g., two thirds vote required for master plan amendments). A vote on a Development Code amendment, a Regulatory Zone amendment, or a Tentative Subdivision Map application requires an affirmative majority vote of the full membership of the Board of Adjustment, not just those Member present at the meeting. An affirmative vote by a majority of the Members present is also required to affirm a decision being appealed. An affirmative majority~~

vote of the full membership of the Board at a meeting is required to reverse, modify or remand a decision being appealed. In the absence of an affirmative vote by a majority of the Board at a meeting to reverse, modify, or remand a decision being appealed, the decision being appealed stands.

- b. The Chair shall be a voting ~~m~~Member.
- c. The Chair may call for, or a Member may request, a roll call vote on any issue.
- d. An abstention shall be a non-considered vote.
 - i. If a Member abstains under NRS 281A.420(5), the necessary quorum and the number of votes necessary to act upon the matter are reduced as though the ~~m~~Member abstaining was not a ~~m~~Member of the Board.
 - ii. If a Member abstains for any other reason, the necessary quorum or number of votes necessary for action is not reduced.
- e. A tie vote means the motion does not pass. If, however, one or more Members are absent or abstain from the vote and a tie vote occurs, any Member, and/or the applicant in an adjudicative matter, may ask for and shall be granted a continuance to the next meeting of the Board.

2.03 **Motions to Reconsider**

A motion to reconsider any action taken by the Board may be made only during the meeting at which the action was taken or at the next regularly scheduled meeting. A motion to reconsider must be made by a Member who voted on the prevailing side of the motion being reconsidered, but a motion to reconsider may be seconded by any Member. A previous motion failing by virtue of a tie vote may be reconsidered upon motion of any Member. If a motion for reconsideration relates to an item requiring legal notice, only the motion itself shall be debated and, if passed, reconsideration of the item continued to a future date to allow for the provision of legal notice.

Article 3 **MEETINGS**

3.01 **Notice and Agenda**

- a. The Board is a public body and must comply with the laws of Nevada regarding public and open meetings, including NRS Chapter 241 (open meeting law). Written notice of all meetings will be given in the time and manner specified in the open meeting law. In addition to disclosures required by the open meeting law, the notice and agenda may refer to, describe or implement these rules, including but not limited to, statements about public comment time limits, meeting decorum, hearing procedures, Member and participant conduct, voting procedures and appeals.

~~Except in an emergency, written notice of all meetings will be given at least 3 working days prior to the meeting, excluding the day of the meeting, in accordance with Nevada Revised Statutes. The written notice of the meeting will consist of an agenda that shall include date, time, and location of the meeting; the items to be considered for action and no action; and an offer to accommodate persons with special needs as prescribed in Nevada Revised Statutes.~~

- ~~i. A copy of the agenda will be posted at the Department of Community Development Office, the meeting location and at least 3 other separate prominent~~

places within the County readily available to the public. (Repeated under "Posting of Agenda," below.)

ii. ~~The agenda will include the following statements:~~

~~**Items for Possible Action.** All numbered or lettered items on this agenda are hereby designated **for possible action** as if the words "for possible action" were written next to each item (NRS 241.020), except for items marked with an asterisk (*). Those items marked with an asterisk (*) may be discussed but action will not be taken on them.~~

~~**Possible Changes to Agenda Order and Timing.** Discussion may be delayed on any item on this agenda, and items on this agenda may be taken out of order, combined with other items and discussed or voted on as a block, removed from the agenda, moved to the agenda of another later meeting, moved to or from the consent section. Items designated for a specified time will not be heard before that time, but may be delayed beyond the specified time.~~

~~**Public Comment.** During the "Public Comment" periods listed below, anyone may speak pertaining to any matter either on or off the agenda. Additionally, during action items (those *not* marked with an asterisk (*)), public comment will be heard on that particular item before action is taken. In either event, each speaker must fill out a "Request to Speak" form and/or submit comments for the record to the recording secretary. Public comment and presentation times are limited as follows: 15 minutes each for staff and applicant presentations, 5 minutes for speakers representing a group, and 3 minutes for individual speakers unless extended by questions or action of the Board. Comments are to be directed to the Board as a whole and not to one individual.~~

~~**Forum Restrictions and Orderly Conduct of Business.** The Board of Adjustment conducts the business of Washoe County and its citizens during its meetings. The Chair may order the removal of any person whose statement or other conduct disrupts the orderly, efficient or safe conduct of the meeting. Warnings against disruptive comments or behavior may or may not be given prior to removal. The viewpoint of a speaker will not be restricted, but reasonable restrictions may be imposed upon the time, place and manner of speech. Irrelevant and unduly repetitious statements and personal attacks which antagonize or incite are examples of speech that may be reasonably limited.~~

~~**Posting of Agenda; Website Location for Agenda and Supporting Information.** In accordance with NRS 241.020, this agenda has been posted at: (i) Washoe County Administration Building (1001 E. 9th Street); (ii) Washoe County Clerk's Office Courthouse (Court and Virginia Streets); (iii) Washoe County Library (301 South Center Street); and (iv) Sparks Justice Court (630 Greenbrae Drive). Agendas and staff reports may be accessed on the Washoe County website at www.washoecounty.us/comdev. (Duplicate of 1a(i), above.)~~

~~**Special Accommodations.** The facilities in which this meeting is being held are accessible to the disabled. Persons with disabilities who require special accommodations or assistance (e.g. sign language interpreters or assisted listening devices) at the meeting should notify the Washoe County Department of Community Development, at 775.328.3600, two working days prior to the meeting.~~

~~**Appeal Procedure.** Most decisions rendered by the Board of Adjustment are appealable to the Board of County Commissioners. If you disagree with the decision of the Board of Adjustment and you want to appeal its action, call the~~

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~~Planning staff immediately, at 775.328.6100. You will be informed of the appeal procedure, application fee, and the time in which you must act. Appeal periods vary from seven (7) to fifteen (15) days, depending on the type of application.~~

- ~~iii. A person requesting agendas of the Board's meetings will be advised that the request will lapse after 6 months unless continuance is requested in writing. This applies to both postal and e-mail agenda distribution.~~
- ~~b. Board meeting information should be mailed with the U.S. Postal Service or digitally provided to each Member at least 7 calendar days in advance of the meeting date, or hand-delivered at least 5 calendar days in advance of the meeting date.~~
- ~~c. All meetings of the Board will be held in accordance with the Open Meeting Law of the State of Nevada.~~
- ~~db.~~ Robert's Rules of Order, as amended, ~~shall~~may be used for guidance for Board meeting procedures when a question or controversy arises. Alternatively, the Chair may employ other procedures or techniques in an effort to provide for deliberation, an opportunity for the public and Members to be heard and for the Board to reach a consensus and/or decision.
- ~~ec.~~ In order to maximize public participation in a meeting, Board meetings should not extend beyond ~~11-6:00~~ 6:00 p.m. and the Chair is authorized to continue items that would start after that time.

3.02 Regular Meetings

- a. The Board may hold at least one regular meeting each month, but may meet less frequently if the Board decides. The Board may also schedule special meetings as warranted, including prehearing conferences, discovery proceedings and appeals.
- ~~b.~~ The first Thursday of every even-numbered month is the regular meeting day.
 - i. Should the first Thursday of the month fall on a holiday, or interfere with a special event using the meeting facilities of the ~~e~~County complex, the meeting shall be held on an alternate date and/or at an alternate meeting facility as determined by the ~~Board~~Chair or Acting Chair.
 - ~~ii. Should a monthly meeting be reinstated, the regular meeting day of that meeting would be the first Thursday of each month.~~
- ~~bc.~~ Order of Business. Regular meetings shall be conducted in the following order: Asterisks (*) are used to denote non-action items. Agenda headings will be modified to correctly indicate whether or not an item is an action (no asterisk) or a non-action action (*).
 - 1. *Determination of a Quorum
 - 2. *Pledge of Allegiance
 - 3. *Ethics Law Announcement
 - 4. *Appeal Procedure
 - 5. *General Public Comment
 - 6. Approval of Agenda
 - 7. Approval of Minutes
 - 8. Consent Items

- 8-9. Public Hearings
- 9-10. Planning Items and Public Hearings
- 10-11. Chair and Member Announcements Board Items
- 11-12. *Director's and Legal Counsel's Items
- 12-13. * General Public Comment
- 14. Adjournment

3.03 **Special Meetings**

Special meetings may be held, as required, upon call of the Chair or Acting Chair, or upon the call of not less than ~~3~~three Board ~~m~~Members.

3.04 **Emergencies**

- a. Subject to compliance with the open meeting law, An emergency meeting may be called or an emergency item may be added to any regular or special meeting when unforeseen circumstances require action and include, but are not limited to:
 - i. Disasters caused by fire, flood, earthquake or other natural causes; or,
 - ii. Any impairment of the health and safety of the public.
- b. Before proceeding with any emergency meeting or considering any emergency item, the Board must, by the affirmative vote of a majority of the Members present, find that an emergency exists and specify the reasons after receiving advice from the Board's legal counsel.

3.05 **Continued Items**

- a. The Board may vote to grant a continuance on an agenda item upon request of a Member, the Applicant or the Applicant's Representative. If the Board decides to continue an item, the Chair shall first ask if anyone in the audience wishes to testify on the matter even though it may be continued to another date, time and location certain.
- b. Should an item appearing on an agenda be continued to another specified place, date and time, and a Board ~~m~~Member is absent from the first meeting but present for the next meeting for which the item is scheduled, the absent Board ~~m~~Member shall endeavor to learn what occurred during the first hearing through review of make himself/herself knowledgeable with the minutes and recorded media ~~of the first meeting~~, and shall declare at the next meeting that he/she has familiarized themselves regarding the case and is prepared to discuss, deliberate and vote on the matter.

3.06 **General Expectations of Members During Meetings**

- a. Members shall treat each other and all persons at a meeting with respect before, during and after the meeting. The decorum rules stated below apply to Members as well as members of the public. ~~___, and a Member may be removed for disruptive conduct, except that if a Member but if is removed for disrupting a meeting, the removal will be only for the agenda item being considered when the disruption occurred.~~

- b. Members shall be attentive to the proceedings and give their undivided attention to speakers. Engaging in private conversations, performing tasks not associated with the meeting and displaying obvious boredom are disruptive to the meeting process.
- c. Members shall endeavor to address questions of audience members through the Chair.
- d. Members should be neutral in their response to speaker's opinions through their questions, comments and body language and should not express an opinion on the agenda item before all public testimony has been provided, although the expression of opinions during public testimony may be appropriate during legislative or general business matters.
- e. Members shall be prepared for each item that is listed on the agenda.

3.07 Meeting Decorum; Removal for Disruptive Conduct

- a. Meetings of the Board ~~of Adjustment~~ are limited forums for the governmental purpose of making planning ~~policies and~~ decisions for the community in accordance with its duties under state and local law. That governmental purpose is efficiently accomplished only when the process established by law is followed and all participants in a meeting conduct themselves within the limits established and with decorum, civic responsibility and mutual respect.
- b. It is the intent of the Board to maintain the highest level of decorum. The Chair is authorized to take appropriate actions to maintain such decorum to include declaring recesses, admonishing speakers and other remedies set forth below.
- c. The viewpoint of any speaker will not be restricted, but reasonable restrictions may be imposed upon the time, place and manner of speech at the meeting. Unless otherwise required by law, Remarks which are irrelevant, impertinent, unduly repetitious, or which contain personal attacks, implied or actual threats, fighting words or profanity are not consistent with efficiently accomplishing the governmental purpose.
- d. The Chair may remove (with or without warning) any person who willfully makes the kind of remarks described above or engages in other disorderly conduct, if such remarks or conduct makes the orderly conduct of the meeting impractical. Removal for disruptive conduct will be for the remainder of the meeting. If the Chair removes a Member for disruptive conduct, the removal may be only for the agenda item being considered when the disruption occurred.
- e. ~~Removal for disruptive conduct will be for the remainder of the meeting.~~

3.08 Addressing the Board; Participant Conduct.

- a. General Public Comment Period. The following rules apply during the designated "general" public comment" period(s) of any meeting where members of the public are permitted to speak on any matter on or off the agenda (as opposed to comments made during planning items or public hearings on specific agenda items):
 - i. Unless otherwise specified on the agenda, any person may speak regarding any topic, on or off the agenda. ~~The Chair may interrupt those Using general public comment time to speak about a topics that is not considered public business (such as advertising of products or services), or matters over which the Board has no jurisdiction or control and delays the Board's ability to conduct its meetings efficiently, and may impair the ability of others to speak on topics over which the Board has jurisdiction and control, and therefore may be disruptive. The Chair may~~

~~remove any person for willful disruptive conduct as described in section 3.07.~~

- ii. No action may be taken on any subject brought up during ~~an “any matter”~~ a general public comment period until properly agendaized and called up for consideration and possible action. [See NRS 241.020(2)(a)(3)]
 - iii. Unless a different time is established by the Chair at the opening of general public comment, time limits for speaking will be ~~3~~ three minutes per person. Should the Chair establish a different time limit for speaking, ~~then~~ the different time limit will apply to both general public comment periods on the meeting’s agenda. Speakers may not reserve time or give time to others. Members may ask questions of the speakers after the speaker’s time limit has been reached.
 - iv. Individual speaker times may be adjusted by the Chair to accommodate questions by Members.
 - v. Speakers must complete and submit to the Recording Secretary a “Request to Speak” form, and must identify themselves at the beginning of their presentation.
 - ~~vi. The Chair shall determine the order of speakers.~~
- b. Planning Items or Public Hearings ~~or on~~ individual Agenda Items. The following rules apply to persons speaking during planning items or public hearings ~~or on~~ individual agenda items (as opposed to speaking during general public comment periods).
- i. ~~Public hearings and r~~Receiving public input during individual agenda items are part of a governmental planning process and, in order to efficiently pursue that process, persons addressing the Board during such items are to speak only to the topic being considered. Irrelevant or overly repetitions comments by the same person delays and disrupts the process. The Chair may remove any person for willful disruptive conduct as described in section 3.07.
 - ii. Speakers must sign and deliver to the Recording Secretary a “Request to Speak” form. ~~The Chair shall determine the order of speakers.~~
 - iii. Except as otherwise provided in these Rules or otherwise modified by the Chair or Board, speakers shall limit their presentation times to ~~3~~ three minutes for individual speakers. If a speaker represents an organization, he/she may be given ~~5~~ five minutes to speak, but only one person from the organization will be given this extra time. No speaker may reserve or transfer his/her time to another speaker. The Chair may adjust individual speaker time limits to accommodate questions by Members.
 - iv. Applicants and amicus organizations. The applicant or his/her representative or a person representing an amicus group (a group with special knowledge or interest in the agenda item who desires to testify as a friend of the Board) may notify Division staff prior to the start of a noticed meeting that a longer time is requested to make a presentation. When making the notification, an approximate amount of time needed to make the presentation must be provided. The Division will notify the Chair, who has the discretion to grant, modify or deny such a request at the beginning of the agenda item. The applicant will also be encouraged to limit his/her comments regarding the background of the application. When speakers have exceeded the allotted time, the Chair will endeavor to remind them that they have gone past the recommended time limits and request they conclude their remarks. The Chair may rule the speaker out of order should the speaker not obey the Chair’s admonition.
- ~~iii. Alterations to the above time limits may be permitted by the Chair in the following~~

circumstances.

- 1) ~~All Public testimony. The Chair may modify speaker time limits for all public testimony during any item and will announce the modification at the beginning of the agenda item, if possible, or as soon as is practicable during the agenda item. The modified time limits will remain in effect only for that specific agenda item.~~
- 2) ~~Individual time limits for public speakers. The Chair may adjust individual speaker time limits to accommodate questions by Members~~
- 3) ~~Applicants, staff, and amicus organizations. Staff, the applicant or his/her representative, or a person representing an amicus group (a group with special knowledge or interest in the agenda item who desires to testify as a friend of the Board) may notify the Department of Community Development 24 hours prior to the start of a noticed meeting at which action may be taken that a longer time is requested to make a presentation. When making the notification, an approximate amount of time needed to make the presentation must be provided. The department will notify the Chair, who has the discretion to grant, modify, or deny such a request at the beginning of the agenda item.~~
- 4) ~~During individual presentations by staff, the applicant, or amicus organizations, the Chair may adjust the time limit to accommodate questions by Members or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.~~

c. ~~Conduct during meeting.~~

- i. ~~Persons attending a meeting of the Board of Adjustment shall respect the Board and participants before, during and after the meeting. The Chair will rule out of order any person that makes personal derogatory or disrespectful comments about the Members, staff or participants.~~
- ii. ~~Speakers will address questions and comments to the Chair and not to individual Members, staff or audience members.~~
- v. Speakers are encouraged to acknowledge support of a previous speaker's comments and ~~not discouraged from~~ repeating the same point in order that the meeting may be efficiently conducted.
- vi. Audience members are encouraged not to visibly display support or opposition (such as clapping, whistling, etc.) to a speaker's points or Board actions in a manner that disrupts the orderly conduct of the meeting. To the extent such actions make the orderly progress of the meeting impractical, the Chair may order such conduct as disruptive and remove offenders (as described in section 3.07).

3.09 Procedures for Individual Agenda Items

- a. General Principles. These rules are intended to promote consistency, ~~and~~ efficiency, and fairness and to maximize public input ~~and afford the appropriate amount of due process~~ in the conduct of meetings of the Board ~~of Adjustment~~. These rules apply to all proceedings before the Board.
- b. Consent Agenda.
 - i. The consent agenda may be used for matters which need not be individually discussed and acted on and may be more efficiently handled on a block vote. Examples of items typically handled on the consent agenda are acceptance of dedications and approval of property abandonments which are requested by or for

the benefit of the County.

- ii. Items which require a public hearing shall not be placed on the consent agenda.
 - iii. When announcing the consent agenda, the Chair shall ask for and allow public comments on any item. Any Member may ask for removal of an item from the consent agenda and it shall be removed and handled as a general business item under Rule C(7)(c). Otherwise, consent agenda items may be voted on as a block.
- cb.** Step by Step Procedures for individual agenda items (except as specifically required by law, these steps are meant as a procedural guideline and rigid adherence may be dispensed with, formally or informally, as deemed appropriate by the Chair during a meeting).

[1] **Chair calls on staff to introduce the item.** This is only an introduction identifying the parties and the general nature of the proceeding.

[2] **Jurisdictional/procedural issues.**

a. For items requiring special notice, Chair asks if all notices required by law have been given and if staff has proof of publication and service where required.

~~b. Additionally, for adjudicative matters: (?)~~

~~i. Chair asks if all parties are present and ready to proceed.~~

~~ii. Chair asks whether there are any objections or special considerations to going forward with the hearing and decision on this matter. Jurisdictional issues shall be decided before proceeding with the public hearing.~~

~~iii. Chair announces that in order to have an appropriate record on appeal or for judicial review, a video recording (difficult if we are in the Health Department Conference Room) will be kept of this proceeding and exhibits will be numbered and kept with the Recording Secretary. Any party may be allowed to make recordings or have a court reporter present to record the meeting.~~

[3] **Disclosures by Board Members.** Chair asks for any disclosures and abstentions required by NRS 281A.420 (*Ethics in Government*) and/or any disclosures under Board Rules regarding ex parte contacts with the ~~a~~Applicant or any interested party.

[4] **Chair advises audience of general hearing procedures.** If the item has been described as a public hearing item, the Chair will explain ~~that this is a public hearing item and~~ the process and rules to be followed. Public hearing or not, the Chair shall advise that this is an action item under the ~~Nevada Open M~~meeting law and that public comment shall be heard before the Board deliberates toward a decision.

[5] **Chair may canvass the audience** to determine who is ~~there present~~ to hear or speak on the agenda item, who is for or against approval of the item or to obtain other information useful in managing the hearing and meeting.

[6] **Chair opens the public hearing** for presentations and public comment.

[7] **Staff presentation.**

a. Staff will be given 15 minutes to present and discuss the item. Members may ask questions.

~~b.~~ The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.

[8] **Applicant presentation and rebuttals (for adjudicative matters).**

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- a. For adjudicative matters or other matters initiated by an application from someone other than the Department Division, the Applicant will be given 15 minutes to present and discuss the item. The Applicant may be represented by counsel or any other person or persons. Members may ask questions.
- b. The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.
- c. For adjudicative matters, Sstaff will be offered five minutes of rebuttal time following the Applicant's presentation, and the Applicant will be offered five minutes of rebuttal time following Sstaff's rebuttal. The time limits may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.

[9] Public comment and rebuttal to public comment in adjudicative matters.

- a. Following presentations, the Chair will call for public testimony comment in accordance with section 3.08-C(8)(b) of these Rules, Policies and Procedures.
- b. In adjudicative matters, sStaff and the Applicant shall be given a reasonable opportunity to comment on any public testimony heard by the Board. The Chair shall decide what is reasonable, and is not required to afford equal time to the aApplicant for each public testimony.

[10] Board questions. Board mMembers may ask questions of staff, the Applicant or members of the audience. At the discretion of the Chair, a member of the public who previously testified, or staff may be asked to comment on any materials or information presented during the public hearing.

[11] Documents and evidence.

- a. The staff report and all of its exhibits, and all documents offered by any presenter or speaker, shall be kept with the minutes and are public records. ~~The Chair may direct a numbering or other system to accommodate reference and recordkeeping.~~
- b. Any party, presenter or speaker may offer additional evidence if it is relevant to the proceeding. ~~If a person wants to present documentary evidence to the Board, ten copies must shall be prepared and delivered to the Recording Secretary for distribution to the Board.~~
- ~~c. Any person may comment on the relevance, authenticity, accuracy or probative value of any evidence even if that person did not object to the admission of the evidence.~~
- ~~ed.~~ The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted by the Chair. ~~For adjudicative matters, any relevant evidence is sufficient in itself to support a finding provided that the evidence is the type on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in a civil action.~~ In adjudicative matters, the parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.
- ed. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the Chair. The Board shall observe rules of privilege recognized by law. Notice may be taken

of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board.

[12] Questions of presenters, parties and speakers.

- a. Questions to presenters, speakers or the public must be made through or with the permission of the Chair.
- b. In adjudicative matters, if staff or the ~~a~~Applicant needs to ask questions of the parties or members of the audience, the Chair may ask the person to come forward and answer questions posed by the Chair.
- c. Except when compelling witnesses to appear before the Board as part of an appeal, ~~T~~he Board does not have subpoena power and witnesses may not be compelled to speak or be examined or cross examined in a trial like manner.

[13] Chair closes public hearing. When presentations and public comment have been completed, the Chair may close the public hearing. However, the Chair may reopen public hearing at any time to receive new evidence or comments.

[14] Discussion and additional fact finding.

- a. The Chair may call for discussion or a motion.
- b. At any time during discussion or deliberation on a motion, the Chair may call (without reopening the public hearing) persons forward to answer questions or present information.
- c. The Chair may also reopen the public hearing to hear public ~~testimony~~comment.

[15] Motions.

- a. Motions must be seconded before acceptance or debate. If a motion is not seconded, it is considered moot and the Chair may call for further discussion or a new motion. Unless otherwise directed by the Chair, motions may be made and voted upon in accordance with Robert's Rules of Order.
- b. Motions must incorporate all findings of fact required by law.
- c. In adjudicative matters, the motion should be to do any one or combination of the following:
 - i. Approve the application with or without conditions.
 - ii. Add, remove or adjust ~~i~~individual conditions ~~may be added, removed or adjusted~~ from the original motion by a motion to amend, which shall be voted upon before the original motion is taken up for a vote.
 - iii. Remand the application back to the ~~Department-Division~~ for further review and/or action. The remand must give reasons for the remand, including instructions on actions to be taken by the Director or ~~Department~~Division, and should include a suitable time frame for the action. The Board may also provide that the actions taken on remand may be appealed back to the Board.
 - iv. Deny the application with or without prejudice. ~~A denial without prejudice means that the application may be brought back to the Board at any time.~~See section 4.02.

[16] Deliberation on motion.

- a. During deliberation on motions, Board ~~m~~Members are encouraged to discuss their views of the evidence and why they are going to vote for or against the motion.

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- b. If findings of fact are required for approval of an item, Members are encouraged to individually discuss proposed findings. ~~but, as~~At a minimum, each Member **must shall** discuss any findings that he/she cannot agree with.
- c. In adjudicative matters, the Board may continue or postpone a decision on the matter for up to 60 days after the hearing, but a motion to postpone or continue shall specify a date and the conditions under which the matter will be brought up for a decision.

[17] Vote.

- a. The Chair shall call for a vote, and shall announce the results of the vote indicating by name who voted in favor or and who voted against the motion, and any abstentions, which ~~information~~ shall be recorded in the minutes.
- b. If a motion to approve an adjudicative matter does not receive the required number of affirmative votes, it is deemed denied with prejudice. However, a separate motion may **be** made and approved to deny without prejudice based on the circumstances outlined within section ~~4.02D(2)(a)(i) of these Rules, Policies and Procedures.~~

[18] Written decision; appeal rights.

- a. Within 60 days from the Board action, an Action Order shall be prepared and filed with the Secretary to the Board, and a copy will be served on the ~~a~~Applicant in an adjudicative matter.
- b. In an adjudicative matter, the Applicant shall have appeal rights as established by ordinance, and time limitations begin with the service of the Action Order. (Refer to Article 5 Appeals)

Article 4 SPECIAL CIRCUMSTANCES

4.01 Request to Withdraw or Continue an Item Development Application

- a. POLICY. An applicant has the ability to withdraw or request the continuance of~~continue an item development application~~ submitted for consideration by the Board at any point prior to a motion for action being made by a Member.
- b. RULE
 - i. A request for withdrawal or continuance of the ~~item application~~ shall be stated by either the ~~a~~Applicant(s), the appellant, the authorized agent with power of attorney to represent all of the interests of the property owners of record ~~party to the application~~ or by all of the property owners of record ~~who submitted the development application~~ as attested by the signed and notarized affidavits accompanying the original application or appeal. Any Member may also request the continuance of an item.
 - ii. After a motion has been made by a Member, followed by a second on the motion and deliberation, the ~~application~~item cannot be withdrawn.
 - iii. If the motion is not seconded, the ~~a~~Applicant(s), authorized agent or property owner(s) can request the application or appeal be withdrawn prior to any new motions.
 - iv. The request for withdrawal of the ~~application-item~~ shall be clearly entered into the record, and cannot be construed as a request for deferral or continuation of the

~~application item~~ until a future meeting.

- v.—The withdrawal of an ~~application item~~ shall terminate any further deliberation, analysis, or consideration of the originally submitted request.
- vi. A withdrawn application is not a denied application, and therefore is not subject to the “one year wait on denials” provisions of the ~~Washoe County~~ Development Code for submitting a new development application request.

4.02 Denial Without Prejudice

a. RULE

- i. A motion to deny without prejudice (which allows a denied application to be resubmitted prior to the expiration of a required waiting period as defined in the ~~Washoe County~~ Development Code) can be offered by a Member if the following special circumstances are supported by the public record:
 - 1) All the necessary findings for approval of the development application cannot be fully met or supported by the information presented at the time of the Board ~~of Adjustment~~ action;
 - 2) There is sufficient information to demonstrate that all the necessary findings could potentially be met within a one-year period if federal, state or local regulatory programs are changed, or physical conditions on or near the development site change, or that infrastructure availability and capital improvement programs change to allow development as requested in the original application; and
 - 3) There is sufficient information to demonstrate that the requested development application would clearly support implementation of one or more goals and policies of the Washoe County ~~Comprehensive Master~~ Plan if the findings for approval could have been made at the time of the Board ~~s of Adjustment's~~ action to deny the application.
- ii. If an application is denied because a motion to approve does not receive the required number of approving votes, a subsequent motion may be made to cause the denial to be without prejudice.

Article 5 APPEALS TO THE BOARD

5.01 Matters that may be Appealed

The following matters may be appealed to the Board (in accordance with Section 110.910.02 of the Development Code):

- a. Administrative decisions of the Building Official or the Fire Code Official made in the course of enforcing the Development Code (However, appeals related to denial for a building permit and appeals related to decisions regarding the soundness of structures are made to the Technical Review Board.);
- b. Decisions of the Technical Review Board;
- c. Decisions regarding code enforcement matters (Article 910 of the Development Code);
- d. Decisions of the Director regarding zoning or other regulations relating to the soundness of structures that cannot be otherwise appealed to an administrative hearing

officer.

5.02 Time and Schedule

Appeals must be made in writing to the Division within 10 calendar days from the date a decision is reduced to writing and mailed to the original Applicant and filed with the Secretary to the Board. In coordination with the Division, the Chair shall schedule a public hearing on any appeal at the next regularly scheduled meeting, or at a special meeting scheduled sooner than 60 days from the date the appeal was filed.

5.03 Prehearings

- a. The Chair may require and oversee procedural matters including:
 - i. Prehearing conferences, discovery proceedings, briefing schedules and evidence assembly, and
 - ii. If allowed by law, the issuance of subpoenas compelling witnesses to appear before the Board.

5.04 Record on Appeal, Public Hearing and Additional Evidence

- a. The Secretary to the Board shall prepare a transcript of, or a copy of the recording of the proceeding, and make it available to the Board in advance of a scheduled appeal hearing. The Board shall review the record on appeal and all evidence, testimony, documents, information and arguments related to the decision being appealed.
- b. The Board shall allow all parties to respond and present relevant evidence and arguments on all issues being decided on appeal, including new evidence.
- c. During the public hearing, the Board shall consider relevant information including comments by members of the public.
- d. The Board may consider, upon disclosure, information and comments communicated before the public hearing.
- e. The Board may also consider maps and plans of existing conditions.

5.05 Burden of Proof and Voting

- a. Decisions of administrative officials, hearing officers and a Technical Review Board are presumed to be reasonable and lawful; it is the burden of the Appellant to persuade the Board otherwise.
- b. Voting. As stated in section 2.02 of these Rules, Policies and Procedures:
 - On an affirmative vote of a majority of the Members present, the Board may affirm the decision being appealed.
 - i. On a majority vote at a meeting of its full membership, the Board may reverse, modify or remand a decision if the decision meets the findings described in Section 110.912.10(j)(7)(3) of the Development Code.
 - ii. In the absence of a majority vote at a meeting to reverse, modify, or remand, the decision being appealed stands.

- c. The Board may not award, allocate or direct any payment of money damages, attorney's fees or costs of the proceeding to any party.

5.06 Decisions

- a. The Board may continue the hearing on appeal as described in section 4.01. The Board may also require briefings or seek the opinions of legal counsel in order to render a decision on an appeal.
- b. The Board must render a written decision within 60 days after the hearing on the appeal unless otherwise agreed with the Appellant. The Chair shall sign the written decision and deliver copies to the Secretary to the Board and all parties on record.

5.07 Appeals of Board Decisions

- a. A party who is aggrieved by a decision of the Board may:
 - i. If the decision of the Board is a final decision as defined by law, § seek judicial review by filing a petition in the Second Judicial District Court within 25 days of the Board making a final decision, or
 - ii. Appeal the decision to the BCC in accordance with Section 110.912.20 of the Development Code.

Article 6 OFFICERS OF THE BOARD

6.01 Titles

The officers of the Board shall be:

- a. Chair, who shall preside at all meetings, maintain order, call special meetings ~~as they are needed~~, appoint committees and generally represent the Board.
- b. Vice Chair, who will perform all of the Chair's functions in the absence of the Chair.
- c. Secretary to the Board (non-voting), who shall be the Director or his/her designee, and who shall maintain the Board records; Rules, Policies and Procedures; and attachments. ~~The Secretary is not elected by the Board of Adjustment.~~

6.02 Election of Officers

- a. The first Board meeting in July-August shall include on the agenda the election of officers, ~~and the election shall be the first order of business under Chair and Members' Items.~~
- b. The Chair will take office immediately upon election and will officiate over the remainder of the elections and the meeting in progress. All other elected officers shall take office immediately upon election.

6.03 Terms of Office

- a. ~~Each officer~~ The Chair and Vice Chair of the Board shall be elected by the Board Members and shall each serve for one year, or until his successor is elected and takes office. ~~Each officer~~ The Chair and Vice Chair shall be limited to two consecutive terms per Member.

- b. In the case the Chair does not complete his/her term of office, the Vice Chair who succeeds him/her may serve as Chair for two full terms.

6.04 Authority to Sign

- a. The Secretary to the Board may sign such documents as may require certification on behalf of the Board. Transmittals of Board action or intent to the ~~Board of County Commissioners~~BCC and/or the County Clerk will generally be the responsibility of the Secretary to the Board.
- b. The Chair shall sign such documents as required by Nevada Revised Statutes or ~~Washoe County~~the Development Code.

6.05 Delegation of Authority

The Board may designate one or more ~~m~~Members or the Secretary to the Board to act for the Board in the conduct of hearings or the performance of its duties. The Board may also delegate to such ~~m~~Members, when appropriate and to the extent permitted by law, such authority as may be necessary.

6.06 Membership on Committees ~~of the Board of Adjustment~~

- a. ~~Design Review Committee.~~ Pursuant to ~~Washoe County~~Development Code 110.916.10, the Design Review Committee has been created to fulfill the design review function and to recommend policy considerations to the ~~Washoe County Board of Adjustment~~.
- i. ~~The Board appoints one representative~~All appointments to the Design Review Committee. ~~The Board may appoint a current Member, a former Member or a designee of the Board. At the designation of the Chair, an alternate representative may be designated for the Board's appointment to the Design Review Committee., other than appointment of the representative of the Board of Adjustment, shall be made by t~~The Planning Commission Chair, who appoints the remaining members of the Design Review Committee, may seek input or consent of the Board in doing so.
- a) ~~Nominations for the planning, architectural, and landscape architectural disciplines shall be made by the local professional organizations representing these disciplines. If no organization is active, members of the discipline shall be asked to submit letters of interest to the Washoe County Department of Community Development.~~
- b) ~~ii.~~Appointment of the members of the Design Review Committee shall be made at a regularly scheduled meeting of the Board of Adjustment and Planning Commission and Board of Adjustment prior to the expiration of the terms of the current members. The appointments shall be for a period of one year ending in July of the following year. There are no limits to the number of times a member may be reappointed the term specified in the Development Code.
- ii. ~~Two members of the Board of Adjustment will be requested to volunteer to serve on the Design Review Committee, one as a primary representative and one as an alternate.~~
- a) ~~The Chair may select a person who is not a member of the Board to represent them for both or either position on the Design Review Committee.~~
- b) ~~The appointments shall be for a period of one year ending in July of the following year. There are no limits to the number of times a member may be~~

~~reappointed.~~

~~b. The Chair may establish other committees as he/she deems necessary.~~

~~c. All meetings of a Board appointed committee are subject to the provisions of the Nevada Open Meeting Law.~~

Article 7 RECORDS AND DOCUMENTS

7.01 Minutes and Audio/Video Tapes

To the extent required by law:

- a. All approved minutes, including items presented at the meetings as part of public record pertaining to the work of the Board shall be kept permanently in safe, orderly files maintained under the supervision of the Director. Said records shall be accessible to the ~~m~~Members of the Board and to the public as required by Nevada Revised Statutes and Washoe County's Public Records' ~~Request Policy~~Policies and Procedures.
- b. All audio and video recordings pertaining to the work of the Board shall be kept in a safe, orderly location maintained under the supervision of the Director ~~of the Department of Community Development.~~ Said records shall be accessible to the ~~m~~Members of the Board and to the public for one year and then will be destroyed pursuant to Nevada Revised Statutes.
- c. The Director shall provide a Recording Secretary for each meeting who shall be responsible for preparing a written record of the meeting. Said minutes will bear the name of and be executed by the Recording Secretary.
- d. Copies of unapproved minutes of the past regular meeting, or meetings, shall be furnished to the Board ~~m~~Members in advance of a regular meeting. Upon correction and/or approval, the Secretary to the Board shall sign a master copy to be a permanent record, noting either:
 - i. Approved by Board in session on _____, or;
date
 - ii Amended and approved by Board in session on _____.
date
- e. Minutes of the Board's meetings shall be maintained by the Division in accordance with state public records retention rules.

7.02 Other Documents

Resolutions adopted by the Board shall carry the signatures of the Chair and the Secretary to the Board. Other documents relating to matters upon which the Board has taken formal action shall be signed by the ~~Board's~~ Secretary to the Board.

Article 8 AMENDMENT OF RULES, POLICIES AND PROCEDURES

The Rules, Policies and Procedures may be amended or added to by ~~a notice of intent to amend or add, said intent to amend or add to be approved by~~ a majority vote of the Members present at the meeting. The proposed amendment or addition ~~would then be placed on the agenda for the following~~ shall be placed as an action item on the Board meeting agenda, and would become effective at the next subsequent Board meeting

DRAFT

~~upon a majority affirmative vote of the full Board.~~

1st Revision: *March 3, 1992*
2nd Revision: *March 7, 1995*
3rd Revision: *May 24, 1996*
4th Revision: *January 21, 1997*
5th Revision: *June 15, 1999*
6th Revision: *July 16, 2002*
7th Revision: *May 20, 2003*
8th Revision: *September 25, 2009*
9th Revision: *May 20, 2010*
10th Revision: *February 7, 2012*
11th Revision:

APPENDIX A - Ethical Principles in Planning

American Planning Association
(As Adopted May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

A. The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;
3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;

5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

B. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;
9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after

verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;

11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

C. APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;
11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning.



Washoe County Board of Adjustment ***DRAFT RULES, POLICIES AND PROCEDURES***

September 17, 2015

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APPENDIX A - Ethical Principles in Planning A-1

Article 1 DEFINITIONS AND GENERAL POLICIES

1.01 Definitions

The following words have the following meanings for purposes of these rules, policies and procedures:

- a. **Adjudicative matter** means deciding or recommending how legislative policies (such as master plans, zoning regulations and provisions in the Development Code) would apply to individual properties usually upon application by property owners. Examples of adjudicative matters include applications by landowners for special use permits, administrative permits, variances, parcel or subdivision maps, development agreements, and master plan amendments or re-zoning requests for an individual property or project.
- b. **Board** means the Washoe County Board of Adjustment.
- c. **BCC** means Washoe County Board of County Commissioners.
- d. **Division** means the Planning and Development Division of the Community Services Department.
- e. **Development Code** means the Development Code of Washoe County, WCC Chapter 110.

- f. **Director** means the chief executive or director of the Division, or his/her designee.
- g. **General Business matter** includes taking action on general business items and procedural matters such as election of officers, appointment of committees, ceremonial or administrative resolutions, and amendments to these rules.
- h. **Legislative matter** includes establishing overall land use policies or designations involving a large area consisting of multiple properties in disparate ownership, including adoption or amendment of the master plan or regulatory zoning regulations as they would generally apply to multiple properties of diverse ownership, or amendments to the Development Code. However, an application for a master plan amendment or regulatory zoning classification for the benefit of a particular property or project is considered as an adjudicative matter.

1.02 Board Determines Rules, Policies and Procedures

The Board, under state statute (Nevada Revised Statutes [NRS] 278.290 to 278.310 inclusive) and by Development Code (Section 110.912.10), has the responsibility for reviewing and approving variances and special use permits for the unincorporated portions of the County. In addition, the Board is responsible for making determinations on appeals of administrative decisions concerning zoning regulations and regulations concerning the location or soundness of structures made by County officials. In the furtherance of these responsibilities, the Board adopts the following rules, policies and procedures and from time to time may amend said rules, policies and procedures.

1.03 Duties and Responsibilities

- a. POLICY
 - i Members of the Board shall keep themselves informed on planning laws, policies, procedures and trends in planning practice, and ethics laws of Nevada.
 - ii The five Board Members shall represent the best interests of unincorporated Washoe County.
 - iii Members shall endeavor to provide questions on agenda items to the Planning Managers or staff of the Division a minimum of 24 hours prior to the meeting on which the agenda item is scheduled.
- b. RULE
 - i Members shall be prompt and diligent in attendance.
 - ii Failure of a Member to attend three successive regular meetings, or miss more than 25% of scheduled meetings annually, will be reported to the BCC and said absences may be considered justifiable cause for replacement.

1.04 Communications Outside of Public Hearings or Meetings

- a. POLICY. General: Except for legislative and general business matters, Members should avoid ex parte communications (i.e., private communications outside a public meeting with interested parties) regarding matters coming before the Board. Parties should be encouraged to discuss their comments with staff or at the public hearing rather than privately with individual Members.

- i. Legislative and General Business matters. With respect to such actions:
 - a) When being approached or when discussing such matters, there are no policy or legal restrictions, or disclosure requirements. Members are urged to be discreet and not form or communicate any prehearing bias.
 - b) Members are authorized and encouraged in NRS 278.190 to promote public interest in land use plans and policies. Such encouragement includes consulting with public officials and agencies; with public utility companies, civic, educational, professional and other organizations; and, with citizens generally in relation to the carrying out of such legislative and policy matters.
- ii. Adjudicative matters. With respect to such actions:
 - a) Members should avoid ex parte communications with parties who have an interest in the matter.
 - b) Unsolicited correspondence, emails or phone messages should be preserved so they may be put in the record.
 - c) Members must disclose all ex parte communications. If during any such contacts, a Member obtains information that he/she might consider as important when deciding an adjudicative matter, the Member must assure that the information is:
 - already public knowledge;
 - has been included in the reports or presentations; or,
 - is disclosed or otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it.
 - d) Members must keep an open mind and not form or communicate any preferences or thoughts that may be perceived as prehearing bias.
- iii. Site Visits. Site visits may be important to gain a better understanding of the proposed actions and their impact on surrounding lands. Members may view sites from public roadways to gain understanding, however, site visits are subject to any applicable legal restrictions on the entry of land, and site visits must be pursuant to any required authorization of the owner(s) of the land being visited.
 - a) Ex parte contact may be unavoidable during site visits and should be limited to the extent practicable. If ex parte contact occurs, it must be disclosed as provided above. It is advisable to have a staff member or another person participate in the site visit and any discussions at the site.
 - b) Members must disclose that they conducted a site visit and do not need to describe what they saw if it is in plain public view. Any information gained during a site visit that is significant in forming a conclusion must be disclosed at the public hearing, if the information has not otherwise been disclosed in the reports and presentations.
- iv. Attorney Communications. Communications with the attorney assigned by the District Attorney's Office or any other attorney appointed or retained to represent or advise the Board are confidential and privileged attorney-client communications and are not subject to disclosure.

b. RULE

- i. Ex parte contact with respect to legislative and general business matters need not be disclosed and does not disqualify a contacted Member from discussion and

voting on the item under consideration by the Board. Ex parte contact with respect to an adjudicative matter does not disqualify a Member from voting on the matter if disclosure is made and that information derived from the contact(s) that is being considered by the Member is either public knowledge, has been included in the reports or presentations, or is otherwise brought out at the public hearing so that interested parties may have an opportunity to comment on it.

- ii. Members shall not solicit, offer or accept any offer for any business relationship or arrangement with any interested party. Any preexisting, ongoing or expected business relationship with any interested party must be disclosed and may be grounds for abstention under NRS Chapter 281A.

1.05 Ethical Principles for Planning; Disclosures and Abstentions

a. POLICY

- i. The Board is governed by Nevada's ethics laws, including NRS Chapter 281A. The Board may also use the American Planning Association's *Ethical Principles in Planning (Appendix A)* as guiding principles for the conduct of Board Members.

b. RULE

- i. Potential Conflicts of Interest. In connection with matters coming before the Board, NRS 281A.420 discusses three circumstances where disclosure and abstention may be required. These three circumstances include when a Member:
 - has accepted a gift or loan,
 - has a significant pecuniary interest, or
 - would reasonably be affected by the Member's commitment in a private capacity to the interests of another person in connection with the matter.

In any of those circumstances, the Member should check current statutes and rulings of the Nevada Commission on Ethics to determine what disclosures should be made and when abstention is warranted. If disclosure is required, it should be made before the matter is discussed by the Board, and at that time the Member must also discuss whether or not he/she is abstaining, and why. If abstaining, it is not necessary to leave the room during deliberation and vote, but the Member should leave his/her seat on the Board until after the vote.

- a) If a Member has an ownership interest in property or a project being considered individually for a special use permit, variance or appeal of administrative decision, the Member must abstain but may address the Board to discuss facts about the property, the project or the proceeding but must not ask, advocate or give any reasons for or against a vote.
- b) If a Member has an ownership interest in land or a project that is being considered with other parcels of land for a special use permit, variance or appeal of administrative decision and shares benefit or detriment no greater than other owners of properties also being considered, while disclosure is necessary, abstention is not required unless otherwise indicated by the Nevada Commission on Ethics rulings.

Article 2 QUORUM AND VOTING

2.01 Number of Members Required to Conduct Business

- a. For general matters of business a quorum of the Board shall be a simple majority of the Board, three Members.
- b. For a matter requiring a majority vote of the full membership as required by state statute the following rules apply:
 - i. Full membership means the number of Members appointed and serving on the Board. An unfilled vacancy does not count as part of the total membership. For example, if four Members are appointed and serving on the Board, not less than three Members must be in attendance and vote to approve the action on said motion. The term "in attendance" means physically present at the meeting or attending the meeting through a telephone or video conference.
 - ii. In the event that the minimum required Members of the Board are not present, the item shall be scheduled for the next appropriate regular meeting.

2.02 Voting

- a. An affirmative vote by a majority of the Members present at a meeting is required to approve all matters. An affirmative majority vote of the Board at a meeting is required to reverse, modify or remand a decision being appealed. In the absence of an affirmative vote by a majority of the Board at a meeting to reverse, modify, or remand a decision being appealed, the decision being appealed stands.
- b. The Chair shall be a voting Member.
- c. The Chair may call for, or a Member may request, a roll call vote on any issue.
- d. An abstention shall be a non-considered vote.
 - i. If a Member abstains under NRS 281A.420(5), the necessary quorum and the number of votes necessary to act upon the matter are reduced as though the Member abstaining was not a Member of the Board.
 - ii. If a Member abstains for any other reason, the necessary quorum or number of votes necessary for action is not reduced.
- e. A tie vote means the motion does not pass. If, however, one or more Members are absent or abstain from the vote and a tie vote occurs, any Member, and/or the applicant in an adjudicative matter, may ask for and shall be granted a continuance to the next meeting of the Board.

2.03 Motions to Reconsider

A motion to reconsider any action taken by the Board may be made only during the meeting at which the action was taken or at the next regularly scheduled meeting. A motion to reconsider must be made by a Member who voted on the prevailing side of the motion being reconsidered, but a motion to reconsider may be seconded by any Member. A previous motion failing by virtue of a tie vote may be reconsidered upon motion of any Member. If a motion for reconsideration relates to an item requiring legal notice, only the motion itself shall be debated and, if passed, reconsideration of the item continued to a future date to allow for the provision of legal notice.

Article 3 MEETINGS

3.01 Notice and Agenda

- a. The Board is a public body and must comply with the laws of Nevada regarding public and open meetings, including NRS Chapter 241 (open meeting law). Written notice of all meetings will be given in the time and manner specified in the open meeting law. In addition to disclosures required by the open meeting law, the notice and agenda may refer to, describe or implement these rules, including but not limited to, statements about public comment time limits, meeting decorum, hearing procedures, Member and participant conduct, voting procedures and appeals.
- b. Robert's Rules of Order, as amended, may be used for guidance for Board meeting procedures when a question or controversy arises. Alternatively, the Chair may employ other procedures or techniques in an effort to provide for deliberation, an opportunity for the public and Members to be heard and for the Board to reach a consensus and/or decision.
- c. In order to maximize public participation in a meeting, Board meetings should not extend beyond 6:00 p.m. and the Chair is authorized to continue items that would start after that time.

3.02 Regular Meetings

- a. The Board may hold at least one regular meeting each month, but may meet less frequently if the Board decides. The Board may also schedule special meetings as warranted, including prehearing conferences, discovery proceedings and appeals.
- b. The first Thursday of every even-numbered month is the regular meeting day.
 - i. Should the first Thursday of the month fall on a holiday, or interfere with a special event using the meeting facilities of the County complex, the meeting shall be held on an alternate date and/or at an alternate meeting facility as determined by the Chair or Acting Chair.
- c. Order of Business. Regular meetings shall be conducted in the following order: Asterisks (*) are used to denote non-action items. Agenda headings will be modified to correctly indicate whether or not an item is an action (no asterisk) or a non-action action (*).
 1. *Determination of a Quorum
 2. *Pledge of Allegiance
 3. *Ethics Law Announcement
 4. *Appeal Procedure
 5. *General Public Comment
 6. Approval of Agenda
 7. Approval of Minutes
 8. Consent Items
 9. Public Hearings
 10. Planning Items
 11. Chair and Board Items

- 12. Director's and Legal Counsel's Items
- 13. * General Public Comment
- 14. Adjournment

3.03 Special Meetings

Special meetings may be held, as required, upon call of the Chair or Acting Chair, or upon the call of not less than three Board Members.

3.04 Emergencies

- a. Subject to compliance with the open meeting law, an emergency meeting may be called or an emergency item may be added to any regular or special meeting when unforeseen circumstances require action and include, but are not limited to:
 - i. Disasters caused by fire, flood, earthquake or other natural causes; or,
 - ii. Any impairment of the health and safety of the public.
- b. Before proceeding with any emergency meeting or considering any emergency item, the Board must, by the affirmative vote of a majority of the Members present, find that an emergency exists and specify the reasons after receiving advice from the Board's legal counsel.

3.05 Continued Items

- a. The Board may vote to grant a continuance on an agenda item upon request of a Member, the Applicant or the Applicant's Representative. If the Board decides to continue an item, the Chair shall first ask if anyone in the audience wishes to testify on the matter even though it may be continued to another date, time and location certain.
- b. Should an item appearing on an agenda be continued to another specified place, date and time, and a Board Member is absent from the first meeting but present for the next meeting for which the item is scheduled, the absent Board Member shall endeavor to learn what occurred during the first hearing through review of the minutes and recorded media, and shall declare at the next meeting that he/she has familiarized themselves regarding the case and is prepared to discuss, deliberate and vote on the matter.

3.06 General Expectations of Members During Meetings

- a. Members shall treat each other and all persons at a meeting with respect before, during and after the meeting. The decorum rules stated below apply to Members as well as members of the public.
- b. Members shall be attentive to the proceedings and give their undivided attention to speakers. Engaging in private conversations, performing tasks not associated with the meeting and displaying obvious boredom are disruptive to the meeting process.
- c. Members shall endeavor to address questions of audience members through the Chair.
- d. Members should be neutral in their response to speaker's opinions through their questions, comments and body language and should not express an opinion on the

agenda item before all public testimony has been provided, although the expression of opinions during public testimony may be appropriate during legislative or general business matters.

- e. Members shall be prepared for each item that is listed on the agenda.

3.07 Meeting Decorum; Removal for Disruptive Conduct

- a. Meetings of the Board are limited forums for the governmental purpose of making planning decisions for the community in accordance with its duties under state and local law. That governmental purpose is efficiently accomplished only when the process established by law is followed and all participants in a meeting conduct themselves within the limits established and with decorum, civic responsibility and mutual respect.
- b. It is the intent of the Board to maintain the highest level of decorum. The Chair is authorized to take appropriate actions to maintain such decorum to include declaring recesses, admonishing speakers and other remedies set forth below.
- c. The viewpoint of any speaker will not be restricted, but reasonable restrictions may be imposed upon the time, place and manner of speech at the meeting. Unless otherwise required by law, remarks which are irrelevant, impertinent, unduly repetitious, or which contain personal attacks, implied or actual threats, fighting words or profanity are not consistent with efficiently accomplishing the governmental purpose.
- d. The Chair may remove (with or without warning) any person who willfully makes the kind of remarks described above or engages in other disorderly conduct, if such remarks or conduct makes the orderly conduct of the meeting impractical. Removal for disruptive conduct will be for the remainder of the meeting. If the Chair removes a Member for disruptive conduct, the removal may be only for the agenda item being considered when the disruption occurred.

3.08 Addressing the Board; Participant Conduct

- a. General Public Comment Period. The following rules apply during the designated “general public comment” period(s) of any meeting where members of the public are permitted to speak on any matter on or off the agenda (as opposed to comments made during planning items or public hearings on specific agenda items):
 - i. Unless otherwise specified on the agenda, any person may speak regarding any topic, on or off the agenda. The Chair may remove any person for willful disruptive conduct as described in section 3.07.
 - ii. No action may be taken on any subject brought up during a general public comment period until properly agendized and called up for consideration and possible action. [See NRS 241.020(2)(a)(3)]
 - iii. Unless a different time is established by the Chair at the opening of general public comment, time limits for speaking will be three minutes per person. Should the Chair establish a different time limit for speaking, the different time limit will apply to both general public comment periods on the meeting’s agenda. Speakers may not reserve time or give time to others. Members may ask questions of the speakers after the speaker’s time limit has been reached.
 - iv. Individual speaker times may be adjusted by the Chair to accommodate questions by Members.

- v. Speakers must complete and submit to the Recording Secretary a “Request to Speak” form, and must identify themselves at the beginning of their presentation.
- b. Planning Items or Public Hearings on individual Agenda Items. The following rules apply to persons speaking during planning items or public hearings on individual agenda items (as opposed to speaking during general public comment periods).
 - i. Receiving public input during individual agenda items are part of a governmental planning process and, in order to efficiently pursue that process, persons addressing the Board during such items are to speak only to the topic being considered. Irrelevant or overly repetitions comments by the same person delays and disrupts the process. The Chair may remove any person for willful disruptive conduct as described in section 3.07.
 - ii. Speakers must sign and deliver to the Recording Secretary a “Request to Speak” form.
 - iii. Except as otherwise provided in these Rules or otherwise modified by the Chair or Board, speakers shall limit their presentation times to three minutes for individual speakers. If a speaker represents an organization, he/she may be given five minutes to speak, but only one person from the organization will be given this extra time. No speaker may reserve or transfer his/her time to another speaker. The Chair may adjust individual speaker time limits to accommodate questions by Members.
 - iv. Applicants and amicus organizations. The applicant or his/her representative or a person representing an amicus group (a group with special knowledge or interest in the agenda item who desires to testify as a friend of the Board) may notify Division staff prior to the start of a noticed meeting that a longer time is requested to make a presentation. When making the notification, an approximate amount of time needed to make the presentation must be provided. The Division will notify the Chair, who has the discretion to grant, modify or deny such a request at the beginning of the agenda item.
 - v. Speakers are encouraged to acknowledge support of a previous speaker’s comments and discouraged from repeating the same point in order that the meeting may be efficiently conducted.
 - vi. Audience members are encouraged not to visibly display support or opposition (such as clapping, whistling, etc.) to a speaker’s points or Board actions in a manner that disrupts the orderly conduct of the meeting. To the extent such actions make the orderly progress of the meeting impractical, the Chair may order such conduct as disruptive and remove offenders (as described in section 3.07).

3.09 Procedures for Individual Agenda Items

- a. General Principles. These rules are intended to promote consistency, efficiency, and fairness and to maximize public input in the conduct of meetings of the Board. These rules apply to all proceedings before the Board.
- b. Consent Agenda.
 - i. The consent agenda may be used for matters which need not be individually discussed and acted on and may be more efficiently handled on a block vote. Examples of items typically handled on the consent agenda are acceptance of dedications and approval of property abandonments which are requested by or for the benefit of the County.

- ii. Items which require a public hearing shall not be placed on the consent agenda.
 - iii. When announcing the consent agenda, the Chair shall ask for and allow public comments on any item. Any Member may ask for removal of an item from the consent agenda and it shall be removed and handled as a general business item under Rule C(7)(c). Otherwise, consent agenda items may be voted on as a block.
- cb. Step by Step Procedures for individual agenda items (except as specifically required by law, these steps are meant as a procedural guideline and rigid adherence may be dispensed with, formally or informally, as deemed appropriate by the Chair during a meeting).
- [1] **Chair calls on staff to introduce the item.** This is only an introduction identifying the parties and the general nature of the proceeding.
 - [2] **Jurisdictional/procedural issues.** For items requiring special notice, Chair asks if all notices required by law have been given and if staff has proof of publication and service where required.
 - [3] **Disclosures by Board Members.** Chair asks for any disclosures and abstentions required by NRS 281A.420 (*Ethics in Government*) and/or any disclosures under Board Rules regarding ex parte contacts with the Applicant or any interested party.
 - [4] **Chair advises audience of general hearing procedures.** If the item has been described as a public hearing item, the Chair will explain the process and rules to be followed. Public hearing or not, the Chair shall advise that this is an action item under the open meeting law and that public comment shall be heard before the Board deliberates toward a decision.
 - [5] **Chair may canvass the audience** to determine who is present to hear or speak on the agenda item, who is for or against approval of the item or to obtain other information useful in managing the hearing and meeting.
 - [6] **Chair opens the public hearing** for presentations and public comment.
 - [7] **Staff presentation.**
 - a. Staff will be given 15 minutes to present and discuss the item. Members may ask questions. The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.
 - [8] **Applicant presentation and rebuttals.**
 - a. For adjudicative matters or other matters initiated by an application from someone other than the Division, the Applicant will be given 15 minutes to present and discuss the item. The Applicant may be represented by counsel or any other person or persons. Members may ask questions.
 - b. The time limit may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.
 - c. For adjudicative matters, staff will be offered five minutes of rebuttal time following the Applicant's presentation, and the Applicant will be offered five minutes of rebuttal time following staff's rebuttal. The time limits may be adjusted by the Chair to accommodate questions by Members, or if the Chair believes that extra time is essential to a complete presentation of probative and non-repetitive information.
 - [9] **Public comment and rebuttal to public comment in adjudicative matters.**

- a. Following presentations, the Chair will call for public comment in accordance with section 3.08.
- b. In adjudicative matters, staff and the Applicant shall be given a reasonable opportunity to comment on any public testimony heard by the Board. The Chair shall decide what is reasonable, and is not required to afford equal time to the Applicant for each public testimony.

[10] Board questions. Board Members may ask questions of staff, the Applicant or members of the audience. At the discretion of the Chair, a member of the public who previously testified, or staff may be asked to comment on any materials or information presented during the public hearing.

[11] Documents and evidence.

- a. The staff report and all of its exhibits, and all documents offered by any presenter or speaker, shall be kept with the minutes and are public records.
- b. Any party, presenter or speaker may offer additional evidence if it is relevant to the proceeding. If a person wants to present documentary evidence to the Board, ten copies shall be prepared and delivered to the Recording Secretary for distribution to the Board.
- c. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted by the Chair. In adjudicative matters, the parties or their counsel may, by written stipulation, agree that certain specified evidence may be admitted even though such evidence might otherwise be subject to objection.
- d. Irrelevant, immaterial or unduly repetitious evidence may be excluded by the Chair. The Board shall observe rules of privilege recognized by law. Notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the specialized knowledge of the Board.

[12] Questions of presenters, parties and speakers.

- a. Questions to presenters, speakers or the public must be made through or with the permission of the Chair.
- b. In adjudicative matters, if staff or the Applicant needs to ask questions of the parties or members of the audience, the Chair may ask the person to come forward and answer questions posed by the Chair.
- c. Except when compelling witnesses to appear before the Board as part of an appeal, the Board does not have subpoena power and witnesses may not be compelled to speak or be examined or cross examined in a trial like manner.

[13] Chair closes public hearing. When presentations and public comment have been completed, the Chair may close the public hearing. However, the Chair may reopen public hearing at any time to receive new evidence or comments.

[14] Discussion and additional fact finding.

- a. The Chair may call for discussion or a motion.
- b. At any time during discussion or deliberation on a motion, the Chair may call (without reopening the public hearing) persons forward to answer questions or present information.
- c. The Chair may also reopen the public hearing to hear public comment.

[15] Motions.

- a. Motions must be seconded before acceptance or debate. If a motion is not seconded, it is considered moot and the Chair may call for further discussion or a new motion. Unless otherwise directed by the Chair, motions may be made and voted upon in accordance with Robert's Rules of Order.
- b. Motions must incorporate all findings of fact required by law.
- c. In adjudicative matters, the motion should be to do any one or combination of the following:
 - i. Approve the application with or without conditions.
 - ii. Add, remove or adjust individual conditions from the original motion by a motion to amend, which shall be voted upon before the original motion is taken up for a vote.
 - iii. Remand the application back to the Division for further review and/or action. The remand must give reasons for the remand, including instructions on actions to be taken by the Director or Division, and should include a suitable time frame for the action. The Board may also provide that the actions taken on remand may be appealed back to the Board.
 - iv. Deny the application with or without prejudice. See section 4.02.

[16] Deliberation on motion.

- a. During deliberation on motions, Board Members are encouraged to discuss their views of the evidence and why they are going to vote for or against the motion.
- b. If findings of fact are required for approval of an item, Members are encouraged to individually discuss proposed findings. At a minimum, each Member shall discuss any findings that he/she cannot agree with.
- c. In adjudicative matters, the Board may continue or postpone a decision on the matter for up to 60 days after the hearing, but a motion to postpone or continue shall specify a date and the conditions under which the matter will be brought up for a decision.

[17] Vote.

- a. The Chair shall call for a vote, and shall announce the results of the vote indicating by name who voted in favor or and who voted against the motion, and any abstentions, which shall be recorded in the minutes.
- b. If a motion to approve an adjudicative matter does not receive the required number of affirmative votes, it is deemed denied with prejudice. However, a separate motion may be made and approved to deny without prejudice based on the circumstances outlined within section 4.02.

[18] Written decision; appeal rights.

- a. Within 60 days from the Board action, an Action Order shall be prepared and filed with the Secretary to the Board, and a copy will be served on the Applicant in an adjudicative matter.
- b. In an adjudicative matter, the Applicant shall have appeal rights as established by ordinance, and time limitations begin with the service of the Action Order. (Refer to Article 5 Appeals)

Article 4 SPECIAL CIRCUMSTANCES

4.01 Request to Withdraw or Continue an Item

- a. **POLICY.** An applicant has the ability to withdraw or request the continuance of an item submitted for consideration by the Board at any point prior to a motion for action being made by a Member.
- b. **RULE**
 - i. A request for withdrawal or continuance of the item shall be stated by either the Applicant(s), the appellant, the authorized agent with power of attorney to represent all of the interests of the property owners of record or by all of the property owners of record as attested by the signed and notarized affidavits accompanying the original application or appeal. Any Member may also request the continuance of an item.
 - ii. After a motion has been made by a Member, followed by a second on the motion and deliberation, the item cannot be withdrawn.
 - iii. If the motion is not seconded, the Applicant(s), authorized agent or property owner(s) can request the application or appeal be withdrawn prior to any new motions.
 - iv. The request for withdrawal of the item shall be clearly entered into the record, and cannot be construed as a request for deferral or continuation of the item until a future meeting. The withdrawal of an item shall terminate any further deliberation, analysis, or consideration of the originally submitted request.
 - v. A withdrawn application is not a denied application, and therefore is not subject to the "one year wait on denials" provisions of the Development Code for submitting a new development application request.

4.02 Denial Without Prejudice

- a. **RULE**
 - i. A motion to deny without prejudice (which allows a denied application to be resubmitted prior to the expiration of a required waiting period as defined in the Development Code) can be offered by a Member if the following special circumstances are supported by the public record:
 - 1) All the necessary findings for approval of the development application cannot be fully met or supported by the information presented at the time of the Board action;
 - 2) There is sufficient information to demonstrate that all the necessary findings could potentially be met within a one-year period if federal, state or local regulatory programs are changed, or physical conditions on or near the development site change, or that infrastructure availability and capital improvement programs change to allow development as requested in the original application; and
 - 3) There is sufficient information to demonstrate that the requested development application would clearly support implementation of one or more goals and policies of the Washoe County Master Plan if the findings for approval could

have been made at the time of the Board's action to deny the application.

- ii. If an application is denied because a motion to approve does not receive the required number of approving votes, a subsequent motion may be made to cause the denial to be without prejudice.

Article 5 APPEALS TO THE BOARD

5.01 Matters that may be Appealed

The following matters may be appealed to the Board (in accordance with Section 110.910.02 of the Development Code):

- a. Administrative decisions of the Building Official or the Fire Code Official made in the course of enforcing the Development Code (However, appeals related to denial for a building permit and appeals related to decisions regarding the soundness of structures are made to the Technical Review Board.);
- b. Decisions of the Technical Review Board;
- c. Decisions regarding code enforcement matters (Article 910 of the Development Code);
- d. Decisions of the Director regarding zoning or other regulations relating to the soundness of structures that cannot be otherwise appealed to an administrative hearing officer.

5.02 Time and Schedule

Appeals must be made in writing to the Division within 10 calendar days from the date a decision is reduced to writing and mailed to the original Applicant and filed with the Secretary to the Board. In coordination with the Division, the Chair shall schedule a public hearing on any appeal at the next regularly scheduled meeting, or at a special meeting scheduled sooner than 60 days from the date the appeal was filed.

5.03 Prehearings

- a. The Chair may require and oversee procedural matters including:
 - i. Prehearing conferences, discovery proceedings, briefing schedules and evidence assembly, and
 - ii. If allowed by law, the issuance of subpoenas compelling witnesses to appear before the Board.

5.04 Record on Appeal, Public Hearing and Additional Evidence

- a. The Secretary to the Board shall prepare a transcript of, or a copy of the recording of the proceeding, and make it available to the Board in advance of a scheduled appeal hearing. The Board shall review the record on appeal and all evidence, testimony, documents, information and arguments related to the decision being appealed.
- b. The Board shall allow all parties to respond and present relevant evidence and arguments on all issues being decided on appeal, including new evidence.
- c. During the public hearing, the Board shall consider relevant information including

comments by members of the public.

- d. The Board may consider, upon disclosure, information and comments communicated before the public hearing.
- e. The Board may also consider maps and plans of existing conditions.

5.05 Burden of Proof and Voting

- a. Decisions of administrative officials, hearing officers and a Technical Review Board are presumed to be reasonable and lawful; it is the burden of the Appellant to persuade the Board otherwise.
- b. Voting. As stated in section 2.02 of these Rules, Policies and Procedures:
 - i. On a majority vote at a meeting , the Board may reverse, modify or remand a decision if the decision meets the findings described in Section 110.912.10(j)(7)(3) of the Development Code.
 - ii. In the absence of a majority vote at a meeting to reverse, modify, or remand, the decision being appealed stands.
- c. The Board may not award, allocate or direct any payment of money damages, attorney's fees or costs of the proceeding to any party.

5.06 Decisions

- a. The Board may continue the hearing on appeal as described in section 4.01. The Board may also require briefings or seek the opinions of legal counsel in order to render a decision on an appeal.
- b. The Board must render a written decision within 60 days after the hearing on the appeal unless otherwise agreed with the Appellant. The Chair shall sign the written decision and deliver copies to the Secretary to the Board and all parties on record.

5.07 Appeals of Board Decisions

- a. A party who is aggrieved by a decision of the Board may:
 - i. If the decision of the Board is a final decision as defined by law, seek judicial review by filing a petition in the Second Judicial District Court within 25 days of the Board making a final decision, or
 - ii. Appeal the decision to the BCC in accordance with Section 110.912.20 of the Development Code.

Article 6 OFFICERS OF THE BOARD

6.01 Titles

The officers of the Board shall be:

- a. Chair, who shall preside at all meetings, maintain order, call special meetings, appoint committees and generally represent the Board.
- b. Vice Chair, who will perform all of the Chair's functions in the absence of the Chair.

- c. Secretary to the Board (non-voting), who shall be the Director or his/her designee, and who shall maintain the Board records; Rules, Policies and Procedures; and attachments.

6.02 Election of Officers

- a. The first Board meeting in August shall include on the agenda the election of officers.
- b. The Chair will take office immediately upon election and will officiate over the remainder of the elections and the meeting in progress. All other elected officers shall take office immediately upon election.

6.03 Terms of Office

- a. The Chair and Vice Chair of the Board shall be elected by the Members and shall each serve for one year, or until his successor is elected and takes office. The Chair and Vice Chair shall be limited to two consecutive terms per Member.
- b. In the case the Chair does not complete his/her term of office, the Vice Chair who succeeds him/her may serve as Chair for two full terms.

6.04 Authority to Sign

- a. The Secretary to the Board may sign such documents as may require certification on behalf of the Board. Transmittals of Board action or intent to the BCC and/or the County Clerk will generally be the responsibility of the Secretary to the Board.
- b. The Chair shall sign such documents as required by Nevada Revised Statutes or the Development Code.

6.05 Delegation of Authority

The Board may designate one or more Members or the Secretary to the Board to act for the Board in the conduct of hearings or the performance of its duties. The Board may also delegate to such Members, when appropriate and to the extent permitted by law, such authority as may be necessary.

6.06 Membership on Committees

- a. Design Review Committee. Pursuant to Development Code 110.916.10, the Design Review Committee has been created to fulfill the design review function and to recommend policy considerations to the Board.
 - i. The Board appoints one representative to the Design Review Committee. The Board may appoint a current Member, a former Member or a designee of the Board. At the designation of the Chair, an alternate representative may be designated for the Board's appointment to the Design Review Committee. The Planning Commission Chair, who appoints the remaining members of the Design Review Committee, may seek input or consent of the Board in doing so.
 - ii. Appointment of the members of the Design Review Committee shall be made at a regularly scheduled meeting of the Planning Commission and Board prior to the expiration of the terms of the current members. The appointments shall be for the term specified in the Development Code.

Article 7 RECORDS AND DOCUMENTS

7.01 Minutes and Audio/Video Tapes

To the extent required by law:

- a. All approved minutes, including items presented at the meetings as part of public record pertaining to the work of the Board shall be kept permanently in safe, orderly files maintained under the supervision of the Director. Said records shall be accessible to the Members of the Board and to the public as required by Nevada Revised Statutes and Washoe County's Public Records' Policies and Procedures.
- b. All audio and video recordings pertaining to the work of the Board shall be kept in a safe, orderly location maintained under the supervision of the Director. Said records shall be accessible to the Members of the Board and to the public for one year and then will be destroyed pursuant to Nevada Revised Statutes.
- c. The Director shall provide a Recording Secretary for each meeting who shall be responsible for preparing a written record of the meeting. Said minutes will bear the name of and be executed by the Recording Secretary.
- d. Copies of unapproved minutes of the past regular meeting, or meetings, shall be furnished to the Board Members in advance of a regular meeting. Upon correction and/or approval, the Secretary to the Board shall sign a master copy to be a permanent record, noting either:
 - i. Approved by Board in session on _____, or;
date
 - ii Amended and approved by Board in session on _____.
date
- e. Minutes of the Board's meetings shall be maintained by the Division in accordance with state public records retention rules.

7.02 Other Documents

Resolutions adopted by the Board shall carry the signatures of the Chair and the Secretary to the Board. Other documents relating to matters upon which the Board has taken formal action shall be signed by the Secretary to the Board.

Article 8 AMENDMENT OF RULES, POLICIES AND PROCEDURES

The Rules, Policies and Procedures may be amended or added to by a majority vote of the Members present at the meeting. The proposed amendment or addition shall be placed as an action item on the Board meeting agenda, and would become effective at the next subsequent Board meeting.

- 1st Revision:** *March 3, 1992*
- 2nd Revision:** *March 7, 1995*
- 3rd Revision:** *May 24, 1996*
- 4th Revision:** *January 21, 1997*
- 5th Revision:** *June 15, 1999*
- 6th Revision:** *July 16, 2002*

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7th Revision: *May 20, 2003*
8th Revision: *September 25, 2009*
9th Revision: *May 20, 2010*
10th Revision: *February 7, 2012*
11th Revision:

APPENDIX A - Ethical Principles in Planning

American Planning Association
(As Adopted May 1992)

This statement is a guide to ethical conduct for all who participate in the process of planning as advisors, advocates, and decision makers. It presents a set of principles to be held in common by certified planners, other practicing planners, appointed and elected officials, and others who participate in the process of planning.

The planning process exists to serve the public interest. While the public interest is a question of continuous debate, both in its general principles and in its case-by-case applications, it requires a conscientiously held view of the policies and actions that best serve the entire community.

Planning issues commonly involve a conflict of values and, often, there are large private interests at stake. These accentuate the necessity for the highest standards of fairness and honesty among all participants.

Those who practice planning need to adhere to a special set of ethical requirements that must guide all who aspire to professionalism.

The Code is formally subscribed to by each certified planner. It includes an enforcement procedure that is administered by AICP. The Code, however, provides for more than the minimum threshold of enforceable acceptability. It also sets aspirational standards that require conscious striving to attain.

The ethical principles derive both from the general values of society and from the planner's special responsibility to serve the public interest. As the basic values of society are often in competition with each other, so do these principles sometimes compete. For example, the need to provide full public information may compete with the need to respect confidences. Plans and programs often result from a balancing among divergent interests. An ethical judgment often also requires a conscientious balancing, based on the facts and context of a particular situation and on the entire set of ethical principles.

This statement also aims to inform the public generally. It is also the basis for continuing systematic discussion of the application of its principles that is itself essential behavior to give them daily meaning.

A. The planning process must continuously pursue and faithfully serve the public interest.

Planning Process Participants should:

1. Recognize the rights of citizens to participate in planning decisions;
2. Strive to give citizens (including those who lack formal organization or influence) full, clear and accurate information on planning issues and the opportunity to have a meaningful role in the development of plans and programs;

3. Strive to expand choice and opportunity for all persons, recognizing a special responsibility to plan for the needs of disadvantaged groups and persons;
4. Assist in the clarification of community goals, objectives and policies in plan-making;
5. Ensure that reports, records and any other non-confidential information which is, or will be, available to decision makers is made available to the public in a convenient format and sufficiently in advance of any decision;
6. Strive to protect the integrity of the natural environment and the heritage of the built environment;
7. Pay special attention to the interrelatedness of decisions and the long range consequences of present actions.

B. Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.

Planning Process Participants should:

1. Exercise fair, honest and independent judgment in their roles as decision makers and advisors;
2. Make public disclosure of all "personal interests" they may have regarding any decision to be made in the planning process in which they serve, or are requested to serve, as advisor or decision maker.
3. Define "personal interest" broadly to include any actual or potential benefits or advantages that they, a spouse, family member or person living in their household might directly or indirectly obtain from a planning decision;
4. Abstain completely from direct or indirect participation as an advisor or decision maker in any matter in which they have a personal interest, and leave any chamber in which such a matter is under deliberation, unless their personal interest has been made a matter of public record; their employer, if any, has given approval; and the public official, public agency or court with jurisdiction to rule on ethics matters has expressly authorized their participation;
5. Seek no gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision maker in the planning process;
6. Not participate as an advisor or decision maker on any plan or project in which they have previously participated as an advocate;
7. Serve as advocates only when the client's objectives are legal and consistent with the public interest.
8. Not participate as an advocate on any aspect of a plan or program on which they have previously served as advisor or decision maker unless their role as advocate is authorized by applicable law, agency regulation, or ruling of an ethics officer or agency; such participation as an advocate should be allowed only after prior disclosure to, and approval by, their affected client or employer; under no circumstance should such participation commence earlier than one year following termination of the role as advisor or decision maker;

9. Not use confidential information acquired in the course of their duties to further a personal interest;
10. Not disclose confidential information acquired in the course of their duties except when required by law, to prevent a clear violation of law or to prevent substantial injury to third persons; provided that disclosure in the latter two situations may not be made until after verification of the facts and issues involved and consultation with other planning process participants to obtain their separate opinions;
11. Not misrepresent facts or distort information for the purpose of achieving a desired outcome;
12. Not participate in any matter unless adequately prepared and sufficiently capacitated to render thorough and diligent service;
13. Respect the rights of all persons and not improperly discriminate against or harass others based on characteristics which are protected under civil rights laws and regulations.

C. APA members who are practicing planners continuously pursue improvement in their planning competence as well as in the development of peers and aspiring planners. They recognize that enhancement of planning as a profession leads to greater public respect for the planning process and thus serves the public interest.

APA Members who are practicing planners:

1. Strive to achieve high standards of professionalism, including certification, integrity, knowledge, and professional development consistent with the AICP Code of Ethics;
2. Do not commit a deliberately wrongful act which reflects adversely on planning as a profession or seek business by stating or implying that they are prepared, willing or able to influence decisions by improper means;
3. Participate in continuing professional education;
4. Contribute time and effort to groups lacking adequate planning resources and to voluntary professional activities;
5. Accurately represent their qualifications to practice planning as well as their education and affiliations;
6. Accurately represent the qualifications, views, and findings of colleagues;
7. Treat fairly and comment responsibly on the professional views of colleagues and members of other professions;
8. Share the results of experience and research which contribute to the body of planning knowledge;
9. Examine the applicability of planning theories, methods and standards to the facts and analysis of each particular situation and do not accept the applicability of a customary solution without first establishing its appropriateness to the situation;
10. Contribute time and information to the development of students, interns, beginning practitioners and other colleagues;

11. Strive to increase the opportunities for women and members of recognized minorities to become professional planners;
12. Systematically and critically analyze ethical issues in the practice of planning.