



Community Development

"Dedicated to Excellence in Public Service"

Adrian P. Freund, FAICP, Community Development Director
Nathan Edwards, Legal Counsel



Washoe County Board of Adjustment
Richard "R.J." Cieri, Chair
Philip J. Horan, Vice Chair

Mary S. Harcinske
Andrea Manor
Robert F. Wideman

WASHOE COUNTY BOARD OF ADJUSTMENT

MINUTES

February 5, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, February 5, 2009 at 1:30 p.m., in the Washoe County District Health Department Conference Room, Building B, 1001 East Ninth Street, Reno, Nevada.

DETERMINATION OF QUORUM

Chair Cieri called the meeting to order at 1:37 p.m. The following members and staff were present:

Members present: Richard "R.J." Cieri, Chair
Mary S. Harcinske
Philip Horan
Andrea Manor
Robert F. Wideman

Members absent: None

Staff present: Adrian Freund, FAICP, Director, Community Development
Kimberly H. Robinson, Planning Manager, Community Development
Roger Pelham, Senior Planner, Community Development
Sandra Monsalve, Senior Planner, Community Development
Trevor Lloyd, Senior Planner, Community Development
Grace Sannazzaro, Planner, Community Development
Kelly Mullin, Planner, Community Development
Don Morehouse, Planner, Community Development
Nathan Edwards, Deputy District Attorney
Cathi Moldenhauer, Recording Secretary, Community Development

PLEDGE OF ALLEGIANCE

Member Wideman led the pledge of allegiance to the flag.

APPROVAL OF AGENDA

Ms. Robinson advised that Agenda Items 1 and 3 were deferred, and Agenda Item 6 would be continued to March 4, 2009, at 1:30 p.m. She requested that the public hearing for Agenda Item 6 be opened prior to hearing other items on the agenda to allow members of the

public to speak on this item. In accordance with the Open Meeting Law, Member Manor moved to approve the amended agenda of February 5, 2009. The motion, seconded by Member Horan, passed unanimously.

APPROVAL OF MINUTES

Member Horan moved to approve the minutes of December 4, 2008. The motion was seconded by Member Manor and passed unanimously.

PUBLIC COMMENT

None

CHAIR AND BOARD ITEMS

- a. Report on Previous Board of Adjustment Actions

None

- b. Discussion regarding 2009 Legislative Principles and Communication Policy

Ms. Robinson described materials provided to the Board, which guide the actions of staff, lobbyists and elected officials during the 2009 Legislative session, as well as policies directing communications by appointed boards representing Washoe County.

DIRECTOR'S ITEMS

Ms. Robinson announced that the hearing of Special Use Permit Case No. SB08-023 (RedRock Valley Ranch, LLC) would be held at 1:30 p.m., Wednesday, March 4, 2009, in the Washoe County Commission Chambers.

Director Freund updated the Board regarding the budget for Community Development. A 5.5% (\$191,000) reduction was recently effected for fiscal year 2008-09, following on the heels of a significantly larger reduction in the past six months. Further reductions in base budget will be necessary for the 2009-10 fiscal year.

Washoe County sponsored a bill with the 2009 Legislature to extend the life of tentative maps to a total of four years and to extend the period for filing final maps from one year to two years. The bill appeared to have no opposition.

CONSENT ITEMS

None

PROJECT REVIEW ITEMS

AGENDA ITEM 6 [Heard out of order]

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-023 (REDROCK VALLEY RANCH, LLC) - To construct 16.5 miles of a water line up to 24" in diameter, a booster pump

station, a 25,000-gallon surge suppression tank, up to three (3) well houses, and associated equipment for all facilities. Approximately 15.25 miles of the proposed water line is located within Washoe County's jurisdiction; the remaining 1.25 miles of pipeline would be located within City Limits of Reno. The Utility Services use type is authorized in Table 110.302.05.02 of the Washoe County Development Code. The proposed pipeline will originate at 15800 Dry Valley Road and will terminate at the north end of the Airport Authority property in Stead, within the City of Reno. The proposed route travels along portions of Dry Valley Road, Red Rock Road, and American Flats Road. The well houses are proposed to be located at 15800 Dry Valley Road. The booster pump station is proposed to be located at 14625 Red Rock Road. The surge suppression tank is proposed to be located on APN 079-381-21 on Red Rock Road, approximately 100 feet south of its intersection with Gorham Court. The proposed project is located in the North Valleys Area Plan, and is situated in portions of Sections 11-14, 23, 26, 35, T23N, R18E, Sections 1 and 2, T22N, R18E, Sections 6, 7, 18, 19, 20, 28-30, 32, T22N, R19E, Sections 5 and 6, T21N, R19E MDM, Washoe County, Nevada. The property is located in the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APNs 078-194-06, 078-091-01, 079-381-21, 078-131-05, 079-030-13, 078-124-01, 079-010-26, 079-332-23, 078-184-03)

Chair Cieri opened the public hearing.

Katherine Raymer, 15250 Dry Valley Road; Dana Bratcher, 110 Alpha Butte; and Jan Kay, 250 Shetland Circle, expressed opposition to the project. Concerns included draw-down of water in the valley, lack of noticing to property owners beyond 500 feet of the project, and misleading information provided to the residents of the valley.

S.A. Schwab, P.O. Box 60404, Reno; was in favor of the project if conditions were provided to assure that residents could tap into the pipeline at a reasonable rate in the event their wells were depleted.

Chair Cieri closed the public hearing, stating that this item was continued to the March 4, 2009 meeting at 1:30 p.m.

AGENDA ITEM 1

PUBLIC HEARING: ADMINISTRATIVE PERMIT CASE NO. AP08-003 (JEFF BOWEN) (Continued from December 4, 2008 meeting) - To allow the construction of a 9,600-square-foot covered arena, and expansion into commercial stables offering boarding, maintenance and training of no more than twenty (20) horses, including those of the property owner(s) [Washoe County Code Section 110.304.25(c)(2)]. The operation will offer daily riding lessons using the boarded horses and no more than three (3) people per lesson. There will be no horse shows, competitions, or other events. The project is located at 4955 Old US Highway 395, approximately 563 feet north of its intersection with William Brent Road in Washoe Valley. The ±5-acre parcel is designated General Rural (GR) in the South Valleys Area Plan, and is situated in a portion of Section 10, T16N, R19E, MDM, Washoe County, Nevada. The property is located in the West Washoe Valley Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 055-051-09)

[This item was deferred indefinitely.]

AGENDA ITEM 2

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-015 (TED H. AND JULIE R. GOURLEY TRUST)(Continued from December 4, 2008 meeting) – To legalize the previous grading, excavation, and disturbance of approximately 154,355 square feet (± 3.54 acres) on three (3) adjoining parcels as authorized in Article 810 of the Washoe County Development Code. The subject properties are located south and west of St. James Village; approximately $\frac{1}{2}$ mile from the intersection of Pine Wild Road and Joy Lake Road. The subject parcels total approximately ± 46.22 acres and are designated General Rural (GR) in the Forest Area Plan, and are situated in the E $\frac{1}{2}$ and SE $\frac{1}{4}$ of Section 15, T17N, R19E, MDM, Washoe County, Nevada. The properties are located in the Galena-Steamboat Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APNs 046-190-12, 049-190-13 and 046-190-14)

Chair Cieri opened the public hearing.

Member Wideman disclosed that he visited the site with the applicant. Member Manor also disclosed she visited the site.

Trevor Lloyd reviewed the staff report dated January 26, 2009. The grading and excavation resulted in the expansion of Joy Lake, providing improved helicopter safety during fire suppression activities and an improved historic drainage situation. He described testing that was performed during the construction of the expansion of the lake. Staff recommended approval with conditions of this project.

Melissa Lindell, Wood Rodgers, 575 Double Eagle Court, representing the applicant, introduced Ted Gourley, the applicant, and she stated Mr. Gourley knew he made a mistake in this matter. She also introduced Mr. Gourley's counsel, Louis Test; Stacie Huggins and Gary Probert, Civil Engineer, from Wood Rodgers; Nick Vestbie, Civil Engineer, Nortech Geotechnical Civil Consultants, 8620 Technology Way. She described the property owned by Mr. Gourley.

Joy Lake has been used as a strategic water dipping point in recent years during major wildland and forest fires. Mr. Gourley expanded the lake in order to provide a safer venue for those helicopters. He commenced the expansion in the fall of 2006 and completed construction in the summer of 2007.

No complaints were received from any of the neighbors during construction. Complaints surfaced a year later when the Forest Area Plan was under consideration and the Gourleys were requesting a land use change to allow for additional homesites similar to those in St. James's Village. The County then investigated and found the work was done without proper permitting.

Ms. Lindell stated the project was professionally designed, engineered and constructed, that Mr. Gourley has adequate water rights to support the project, and that the lake enhanced fire safety. The plans were also inspected and reviewed by a third party, Marvin Davis, who constructed over fifty dams and lake embankments. The plans and construction were also reviewed and inspected by the State Department of Water Resources, which is responsible for dam safety.

Ms. Lindell noted that the grading and revegetation were well done. Wild flowers and temporary irrigation were in place. Dust control permits were obtained from Washoe County Air Quality after the issuance of the notice of violation.

The applicant was in agreement with the staff report and all conditions proposed. Ms. Lindell enumerated the findings necessary to approve this special use permit along with the reasons those findings can be made.

Chair Cieri asked where the overflow from the lake went. Ms. Lindell replied that the emergency dam safety spillway directed water to the west, circling Mr. Gourley's property, until it connected with the ravine behind the lake, which did not impact any private property. The amount of water that would overflow would be no greater than it would have been prior to the enlargement of the lake.

Member Horan asked, had the lake not been expanded, where the overflow of water would have gone during a major storm. Ms. Lindell replied it would have gone to the same place. Mr. Probert agreed that the water had always flowed into the natural ravine as indicated. The water was not diverted in any way by the expansion of the lake.

Chair Cieri asked if the lake could be undermined if there was rapid overflow. Mr. Probert replied that the emergency spillway was designed to take 38-40 cubic feet per second (cfs). The flow in a 100-year storm is roughly 20 cfs, so the spillway has almost twice that capacity. There are also three drainage pipes within the lake that let water out, and, also, the lake acts as a detention basin. Typical overflow would range from 15 to 20 back to 15 cfs over a six-hour period. The water is directed away from the embankment or the toe of the dam.

Member Manor observed there was an agreement with Washoe Valley to provide water to the lower end users and not to decrease the amount of water received by Washoe Valley. Ms. Lindell replied that Mr. Gourley was responsible for maintaining the ditch from the diversion point to Joy Lake. He was responsible for the water leaving Joy Lake and following the Browns Creek diversion down to the Winters Ranch, who is responsible for maintaining that ditch.

Donna Peterson, 4640 West Pinewild Road, representing the St. James's Village Homeowners Association; Kip Seckington, 135 Keaton Court; Craig Cunningham, 3355 West Plumb Lane; Jeff Church, 15520 Fawn Lane; Vicki Bischoff, 16750 Evergreen Hills Drive; Kian Banks, 174 Nottingham Court; Ginger Pierce, 20885 Eaton Road; Terry Dolan, 66 Bennington Court; Duffy Wright, 74 Bennington Court; Bob Parker, 120 Cliffrose; John Toomey, 193 North Argyle Court; Joel Verner, 130 Keaton Court; Laura Munro Young, 340 Timberlake Court; Teri Iaconis, 405 Timbercreek Court; stated opposition to granting the special use permit. Concerns included the applicant's total disregard for his neighbors' health and safety by performing grading work late into the evenings, on weekends, and on holidays, creating noise and dust; the failure of professional contractors and consultants to advise the applicant of the need for appropriate permitting; the issue of water rights; the removal of healthy trees to expand the lake; lack of proper studies to mitigate impacts; possibility of dam collapse causing damage to surrounding properties; an increase in seepage on properties to the south and east; the fact that two active fault lines surround the lake, damage to existing trees; and destruction of an Indian medicine wheel on the property. Several speakers encouraged the Board to impose severe fines and sanctions for the applicant's failure to obtain the proper permits.

Kurt Latipow, Washoe County Fire Services Coordinator, discussed the benefits to fire suppression by the expansion of Joy Lake.

Chair Cieri closed the public hearing.

Member Horan asked which contractors performed the grading. Mr. Lloyd indicated that no licensed contractors performed the grading for the dam embankment.

Member Harcinske requested a condition to allow the Board of Adjustment to assure that the ongoing performance of the dam was safe.

[A recess was called at 3:30 p.m. The meeting reconvened at 3:35 p.m.]

Mr. Lloyd proposed a condition requiring a one-year review by the Board of Adjustment based on a report from the State Engineer on the items identified under Condition No. 7.

Director Freund commented that the dam and the pertinent facilities are under the purview of the State Engineer, the County was reluctant to become involved in any performance conditions or any surety related to the dam structure in order to avoid any secondary or tertiary liability.

Mr. Lloyd read proposed Condition 18 into the record: "The applicant shall return before the Board of Adjustment annually with a report from the State Division of Water Resources certifying the soundness of the dam structure. Should the dam fail that inspection, this special use permit shall be null and void."

Member Manor asked Ms. Lindell if Mr. Gourley's property was part of a homeowners association. Ms. Lindell replied the property was not a part of St. James's Village.

Member Harcinske asked when Wood Rodgers became involved in the project. Ms. Lindell stated she became involved during the Forest Area Plan hearings in June, 2009. At Mr. Gourley's request, she reviewed his property and found the land to be similar in slope to St. James's Village. She then recommended asking to change the land use to the same as St. James's Village. The lake expansion was completed over a year ago.

Member Horan requested a description of the proposed development project. Ms. Lindell stated no development project was proposed. Mr. Gourley's property is 80 acres, and development potential does exist. In the future, it would be possible to divide the property into 26 or 27 lots.

Ms. Lindell conceded that Mr. Gourley did not get a permit to expand the lake in 2006 and 2007. However, permits for other activities were obtained, such as a grading permit to improve roads, test pits for some of the northern property, and a permit to drain the lake.

She explained that the natural flow of water from storms was historically to the north. With the improvement of this expansion, the flow will no longer go northward.

Nick S. Vestbie, Nortech Consultants, Ltd., 8620 Technology Way, in response to Member Harcinske, stated the seepage at the diversion point at Browns Creek was not increased but was the same amount.

Gary Probert stated there was no change in the diversion structure exiting the lake. The same amount of water coming in would have to go out or the lake would rise and overflow.

Member Harcinske asked Mr. Gourley to explain his failure to obtain a permit to enlarge the lake. Mr. Gourley answered that when the Granite Ridge fire threatened his property, and helicopters were using the lake at peril to themselves and the applicant, he decided to enlarge the lake immediately. If a fire were to crown in the trees on his property, the fire would probably destroy St. James's Village, Galena and Montreux. He acted as his own contractor to perform the work. The work was supervised and tested by Nortech. The State Engineer does not approve small dams. He felt the urgency was to provide the safe area for the helicopters to dip.

Member Wideman noted that Mr. Gouley was an engineer and asked for his discipline. Mr. Gourley stated he was an electrical engineer. Member Wideman commented the type of work to enlarge the lake would fall under the purview of civil engineering. Mr. Gourley replied that Nortech Consultants did the soils studies and compaction tests as well as assure that the moisture content of the soil was adequate. He advised that he obtained permits to spread dirt over some rocky roads on the north portion of his property, as well as a permit to drain the lake and clear out the silt.

Member Harcinske asked if Mr. Gourley hired other contractors to perform work on the lake expansion. Mr. Gourley stated one person had a contractor's license, but he was only hired on a temporary basis. His full-time ranch hand did a lot of the work. Member Harcinske asked that Mr. Gourley provide the name of the licensed contractor. He could not recall at that time; he would search his records.

Member Manor asked if Mr. Gourley's ranch hand monitored the water flow from the lake over the dam. Mr. Gourley replied he did and that a monitoring plan was required by the State Engineer. All his gates are accessible by both the fire and police departments.

Member Harcinske expressed consternation at the fact this permit was being requested after the work was completed. However, with the two conditions regarding the archaeological information and the requirement for a one-year review by the Board of Adjustment based on a report from the State Engineer, she felt it was prudent to grant the permit.

Deputy District Attorney Edwards recommended the new Condition 19 regarding archaeological findings read: "Prior to approval of a grading permit, the developer shall submit two copies of an archaeological/historical survey to the Department of Community Development. The Department of Community Development shall submit the surveys to the State Historic Preservation Office of the Department of Museums, Library and Arts and the applicable tribe for review. Following that review, the State Historic Preservation Office shall forward a letter to the Department of Community Development indicating the survey was acceptable and whether a mitigation plan is required. Except as allowed by law, the developer shall not disturb any additional areas identified of archaeological significance."

Chair Cieri expressed his concern for the safety of residents living downstream in the event water overflowed the dam, undermining the dam and causing a collapse. He did not know that the spillway was concrete, which alleviated that concern.

Member Manor noted there was a sprinkler system on the property. Mr. Lloyd stated it was used on the disturbed areas only.

Member Wideman advised that this Board lacked the authority to impose any fines or penalties upon the applicant for conducting the work prior to obtaining the requisite permits.

Member Horan commented that some of the issues brought forward by the audience involved work that was done in 2005 and 2006, not the expansion of the lake.

Member Harcinske moved to approve with conditions Special Use Permit Case No. SB08-015, including new Conditions 18 and 19. The motion was seconded by Member Manor and passed unanimously.

The motion was based on the following findings.

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Forest Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for the type of development and for the intensity of the development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation; and
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 3

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-012 (WASHOE COUNTY SCHOOL DISTRICT)(Continued from December 4, 2008 meeting) – To develop an educational campus consisting of an elementary school and a middle school with associated playing fields (Education Use Type) as authorized in Table 110.302.05.2 of the Washoe County Development Code. The project is located at the northwest corner of La Posada Drive and Piedras Drive. The ±40.149-acre site consists of four ±10-acre parcels, all of which are designated General Rural (GR) in the Spanish Springs Area Plan, and are situated in a portion of Section 31, T21N, R21E, MDM, Washoe County, Nevada. The property is located in the Spanish Springs Citizen Advisory Board boundary and Washoe County Commission District No. 4. (APNs 076-390-27, 28, 29 and 30)

[This item was deferred indefinitely.]

AGENDA ITEM 4

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-022 (WASHOE COUNTY SCHOOL DISTRICT) – To grade an 11,638 square foot area, excavating 2,047 cubic yards of material in order to install an underground infiltration system as authorized in Section 110.806 of the Washoe County Development Code. The site is located at 499 Village Boulevard, approximately 320 feet north of the intersection of Village Boulevard and Northwood Boulevard in Incline Village. This ±22.51-acre parcel is designated Public and Semi-Public (PSP). The property is located in the Incline Village Commercial Community Plan being part of the Tahoe Plan Area, and is situated in a portion of Section 9 T16N, R18E, MDM, Washoe County, Nevada. The property is within the boundaries of the Incline Village/Crystal Bay Citizen Advisory Board and Washoe County Commission District No. 1. (APN 124-071-42)

Chair Cieri opened the public hearing.

Don Morehouse reviewed the staff report dated January 23, 2009. This project is required to comply with the Tahoe Regional Planning Agency's (TRPA) best management practices. Mr. Morehouse reported that the Incline Village/Crystal Bay Citizen Advisory Board (CAB) unanimously recommended approval of the project at its February 4, 2009 meeting. Staff recommended the special use permit be approved with conditions.

Angela Fuss, CFA, 1150 Corporate Boulevard, representing the applicant, was available to answer questions.

Chair Cieri closed the public hearing.

Member Horan moved to approve with conditions Special Use Permit Case No. SB08-022. The motion was seconded by Member Manor and passed unanimously.

The motion was based on the following:

1. Consistency. The proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the applicable area plan;
2. Improvements. Adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. The site is physically suitable for the type of development and for the intensity of the development;
4. Issuance Not Detrimental. Issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; detrimental to the character of the surrounding area; or unduly detrimental to surrounding properties, land uses and the environment in general;
5. That the proposed development will not unduly block scenic views or degrade any surrounding scenic resources;

6. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation; and
7. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 5

PUBLIC HEARING: VARIANCE CASE NO. VA08-015 (MICHA AND MILLY CORNEIL) – To reduce the front yard setback from 15 feet to 7.3 feet for an interior lot in order to facilitate the construction of an attached two-car garage. The project is located at 775 Randall Avenue in Incline Village near the intersection of Randall Avenue and Geraldine Drive. The ±0.41-acre parcel is designated High Density Suburban (HDS) in the Tahoe Area Plan, and is situated in a portion of Section 14, T16N, R18E, MDM, Washoe County, Nevada. The property is located in the Incline Village/Crystal Bay Citizen Advisory Board boundary and Washoe County Commission District No. 1. (APN 125-231-21G)

Chair Cieri opened the public hearing.

Don Morehouse reviewed the staff report dated January 23, 2009. He noted that the slope of the property made it difficult to build a two-car garage within the setbacks. The existing residence was a legal nonconforming use because it does not have a covered parking space. Staff recommended approval of the variance with conditions.

Member Horan asked if the house ever had a garage. Mr. Morehouse replied it was his understanding that it did not.

Robert Scheel, RES Design, 1132 West First Street, representing the applicant, noted the house did not ever have a garage or carport. The original builder of the house built it across the property line and onto Forest Service land. A boundary line adjustment was eventually made.

Chair Cieri closed the public hearing.

Member Manor moved to approve with conditions Variance Case No. VA08-015. The motion was seconded by Member Harcinske and passed unanimously.

The motion was based on the following:

1. Special Circumstances. Because of the special circumstances applicable to the property due to exceptional topographic conditions with the steep slope and driveway causing a safety hazard, the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special

privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;

4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and
5. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 7

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-021 (AIR SAILING FUELING STATION AND SOLAR POWER INSTALLATION) – To develop an aircraft fueling facility (gasoline sales and service stations use type) with a related solar power installation as authorized in Table 110.302.05.3 of the Washoe County Development Code. The project is located at the existing glider facility approximately eight miles northwest of the intersection of Winnemucca Ranch Road and Pyramid Highway, and is addressed as 15000 Winnemucca Ranch Road. The ±240-acre parcel is designated General Rural (GR) in the Warm Springs Area Plan and is situated in a portion of Section 14, T23N, R20E, MDM, Washoe County, Nevada. The property is located in the Warm Springs Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 076-320-09)

Chair Cieri opened the public hearing.

Roger Pelham reviewed the staff report dated January 20, 2009. The structure would replace a fuel truck used for refueling the gliders. Staff recommended the project be approved with conditions.

Chair Cieri asked how many solar panels would be installed. Mr. Pelham deferred the question to the applicant. Chair Cieri was concerned about any glare created by the panels. Mr. Pelham stated the panels were near a building and were obscured by trees.

Member Manor was concerned that the fuel tank could leak. Mr. Pelham stated the tank was double-walled and has a built-in monitoring system should a leak occur.

David Volkmann, Air Sailing, Inc. 640 Meadowgate Court; the applicant, was available to answer questions.

In response to Chair Cieri, Mr. Volkmann advised that non-glare solar panels were available; however, the panels to be installed are not non-glare. The panels are only 24 inches, and the topography is such that the glare would be minimal or nonexistent. It would definitely not be seen from Pyramid Highway.

Chair Cieri asked how security would be provided for the above-ground fuel tank. Mr. Volkmann advised a caretaker was available on an around-the-clock basis, and the tank would be used by many people during the daytime. He described the construction of the 2,000-gallon tank as being an interior tank, which held the fuel, surrounded by an outside tank. Between the two tanks was a layer of very heavy, dense concrete, which would stop bullets and/or cars. A

large enough ballistic would penetrate the tank. No security issues have been experienced with the fuel truck currently on site.

Member Manor asked the life expectancy of the tank. Mr. Volkmann replied the warranty on the tank was for thirty years by the manufacturer, so it could last as long as fifty or sixty years. Member Manor suggested using a berm structure around the tank. Mr. Volkmann stated there was an option to have a concrete wall around the tank, which they were not considering because of the expense.

Edward Lord, Air Sailing, Inc., 1595 South Virginia Street, explained that the tank was fire rated and was built with 110% containment within the six-inch concrete lining. The area under the projection of the tank would be excavated and lined with a high-density polyethylene liner, filled with decomposed granite and covered with compacted gravel. The slab would then be placed on that excavated area.

Member Horan asked if the fuel truck approached the planes to fill them. Mr. Volkmann replied that the planes approached the truck, and when the new structure was built, the fuel would go directly from the tank to the plane.

Chair Cieri closed the public hearing.

Member Horan moved to approve with conditions as set forth in the staff report Special Use Permit Case No. SB08-021. The motion was seconded by Member Harcinske and passed unanimously.

The motion was based on the following:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Warm Springs area plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for the type of development and for the intensity of the development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 8

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-020 (BARONE LIVING TRUST)
– To develop a 784-square-foot detached accessory dwelling on a lot with an existing main dwelling of 1,568 square feet as authorized in Section 110.306.25 of the Washoe County Development Code. The project is located at the southwest corner of Mogul Mountain Drive and Silva Ranch Road. The ±1.77-acre parcel is designated Low Density Suburban (LDS) in the Verdi Area Plan and is situated in a portion of Section 15, T19N, R18E, MDM, Washoe County, Nevada. The property is located in the Verdi Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 038-444-07)

Chair Cieri opened the public hearing.

Roger Pelham, on behalf of Sandra Monsalve, reviewed the staff report dated January 22, 2009. The project was not heard by the Verdi Citizen Advisory Board, as the meeting scheduled for January 1, 2009, was not held. Staff recommended approval with conditions of the project.

Michael Vicks, K2 Engineering & Structural Design, 3100 Mill Street #107, representing the applicant, was available to answer questions.

Chair Cieri closed the public hearing.

Member Manor moved to approve with conditions as set forth in the staff report Special Use Permit Case No. SB08-020. The motion was seconded by Member Horan and passed unanimously.

The motion was based on the following:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Verdi Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for the detached accessory dwelling unit and the low intensity use;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation; and

6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

AGENDA ITEM 9

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB08-019 (SALLY ARMSTRONG) – To develop and operate a commercial dog kennel business as authorized in Article 810 of the Washoe County Development Code. The project is located at 2300 Crossover Road at its intersection with Twin Springs Road in Palomino Valley. The ±40-acre parcel is designated General Rural Residential (GRR) in the Warm Springs Area Plan and is situated in a portion of Section 26, T22N, R21E, MDM, Washoe County, Nevada. The property is located in the Warm Springs Citizen Advisory Board boundary and Washoe County Commission District No. 4. (APN 077-160-35)

Chair Cieri opened the public hearing.

Grace Sannazzaro reviewed the staff report dated January 7, 2009. Staff recommended approval with conditions of the project.

Chair Cieri noted that the kennels would allow dogs outside until 10 PM. He was concerned that a noise issue could occur. He asked how far the nearest residence was. Ms. Sannazzaro deferred the question to the applicant.

Member Manor asked about the new construction required. Ms. Sannazzaro replied that the applicant would have to build a new single-car garage to conform to Washoe County Code. She would not be granted a business license until that requirement was met.

Sally Armstrong, Teacher's Pet, 2300 Crossover Road, the applicant, replied to Chair Cieri's question regarding her nearest neighbor, who was 880 feet away. None of her neighbors expressed concern about the noise created by the business. She did not feel that having a maximum of seven dogs would present a barking problem. Animal waste would be collected, bagged, and disposed of by being picked up by the municipal waste company. Liquid waste in the kennels is power washed, disinfected and drained into the septic system. However, most dogs deposit their liquid waste outside on the ground. The maximum size of dogs allowed in the kennel is eighty pounds.

Ms. Robinson advised that Animal Services provided review and conditions for this project. This is the first case that has been presented to that department by Community Development.

Discussion ensued regarding the times of containment. Ms. Armstrong contended that neighbors' dogs were more of a barking problem than those contained in a kennel. If her dogs were barking at night, she would check to find out why and to quiet them.

Landscaping could mitigate some of the noise; however, the applicant requested that the Director of Community Development waive the landscaping requirements because of the remoteness of the area and the unavailability of water. It was noted that the entire area where the dogs would be kept was completely surrounded by a cedar fence.

Midge Bevilacqua, 3755 Amy Road, advised that the applicant was very well qualified to care for and train dogs.

Chair Cieri closed the public hearing.

Member Wideman moved to approve with conditions Special Use Permit Case No. SB08-019, adding new Condition 21 to read, "When more than three complaints have been received in a one year time frame, this Special Use Permit shall return to the Board of Adjustment for review and possible direction." The motion was seconded by Member Manor and passed unanimously.

The motion was based on the following:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the Warm Springs Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a commercial dog kennel business and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.
6. Reasoned Consideration. That the Board of Adjustment gave reasoned consideration to the information contained within the staff report and information received during the meeting.

OTHER ITEMS

AGENDA ITEM 10

APPEAL CASE NO. AX09-001 (STEVE BRIDGES) - To appeal the decision of the Director of Building & Safety pursuant to NRS 278.310 to include in Building Permit No. 08-3562 the requirement of the Sierra Fire Protection District to install a sprinkler system in a one-story single-family residence. The project is located at 533 Crystal Park Road. The ±.637-acre parcel designated Medium Density Suburban (MDS) in the Verdi Planning Area and is situated in Section 18, T19N, R18E, MDM, Washoe County, Nevada. The property is located in the Verdi Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 038-081-09)

Sierra Fire Protection District Chief Michael Greene stated that on December 16, 2008, Bridges Construction applied for a building permit. The building plans were returned to Bridges Construction for five corrections, the most significant being fire flow. Fire flow is the amount of water needed (gallons per minute, gpm) to fight a fire. For a home of less than 3,600 square feet, fire code requires 1,000 gpm. That fire flow cannot be provided by a well, so the alternative is to provide a sprinkler system. Apparently, the appellant's concern is the cost of installing the sprinkler system. Exempting one from the fire code because of cost did not seem reasonable.

Chief Greene responded to Chair Cieri by stating that the 2006 International Fire Code was adopted this year by the Washoe County Commission. Chair Cieri asked if sprinklers were required for any home built in the rural areas. Chief Greene replied that if the fire flow was not available from hydrants or other sources, sprinklers would be required. He advised that the cost of sprinklers was between \$1.75 and \$2 per square foot.

Member Harcinske asked if this requirement was placed on other building permit applications. Chief Greene stated that Mr. Bridges was not singled out, but the code that was in place was being enforced consistently.

Chair Cieri noted that the sprinkler system and associated pressure tanks would be dependent upon electricity and that the power company would cut the power in the case of a fire. Chief Greene replied that the sprinkler system presumably would put the fire out before it became necessary to cut the power.

Don Jeppson, Washoe County Building Official, explained that his department did a plan check on this building permit application, and, under the International Residential Code, a fire sprinkler system was not required. When a sprinkler system is installed, it reduces the fire flow requirement by 50 percent, or 500 gpm. In his conversations with other builders in the area, he determined that the cost of a sprinkler system was between \$5 and \$7 per square foot. The national average was much less. The cost at Incline Village, where the system would be hooked to a municipal water system rather than a well, was much more in line with the national average.

Discussion ensued regarding the number of gallons provided by a sprinkler system.

Tom Smith, Fire Marshall, North Lake Tahoe Fire Protection District, explained that the sprinkler system would exempt the home from the minimum fire flow because of the reliability of the system. The local fire department would be able to respond to an incident in a timely manner because the fire would have remained in its incipient or beginning of origin stages or be fully extinguished within that time.

Member Horan asked if other jurisdictions might have different fire flow requirements. Mr. Smith replied that the minimum requirements must be met, either through having the proper amount of fire flow or through applying the exemption provided by the sprinkler system. The other option would be not to allow construction of the structure. This would be consistent throughout the County, even though response times could be widely differing. Some other jurisdictions base their requirements on their response times and require sprinklers even though the fire flow capacity is available.

Steve Bridges, Bridges Construction, 3305 Mario Road, the appellant, presented several documents, including an email from John Marshall to him dated February 4, 2009, a copy of Appendix B-2, B-3 and B-5 of the 2006 International Fire Code Commentary, a map of available water near the subject site, 533 Crystal Park Road in Verdi, and copies of four pages from NFIRS Performance Indicators, all contained in the file. He was unable to determine when the 2006 International Fire Code (IFC) was adopted and that it did not apply to all counties in the state. He addressed the staff report, noting that the alleged issue was profit versus safety. Cost estimates for a sprinkler system were \$15,000, or approximately \$4 per square foot. That did not include tanks or auxiliary pumps required. He contended that recovering costs was his goal in this economy, not making a profit. It was his belief that two other houses on the same street were, within the past year, issued building permits without the requirement of a sprinkler system. He was concerned about damage from malfunctioning sprinklers that could far exceed the damage from smoke or fire. Additionally, water was available from the river behind the house, from the canal across the street, and from nearby fishing ponds. These sources could be used as a substitute fire supply instead of a fire flow at the discretion of the local fire chief. Mr. Bridges questioned how many areas in Washoe County could meet the 1,000 gpm standard, and how many of those areas required sprinkler systems. He argued that the fire chief lacked the authority to require the additional fire protection system under Section 901.4.3 of the International Fire Code. In sum, the appeal should be granted because it avoids an inconsistent application of the same law, provides reasonably priced housing in a down market, relies upon Section B103 rather than B105, and because the fire chief lacked the authority to require sprinklers in this instance.

In response to Chair Cieri, Mr. Bridges stated he built a house last year just two houses down on the same street with no requirement for fire sprinklers. The house he is currently building is situated above the Truckee River with a drop from the rear of the lot of approximately 60 feet. The river is approximately 100 feet from the house. Therefore, it would be more practical to pump water from the canal across the street, which is about a quarter mile from the house.

Mr. Bridges stated that the requirements should be consistent throughout the state in all rural areas. He noted that the requirement was in the 2003 IFC, but it was not enforced until the adoption of the 2006 IFC.

Houston Crisp, 205 Will Sauer Road, Washoe Valley, stated that every new rural residence on a well would be required to have a sprinkler system. However, this requirement has not been enforced in the past. This constitutes a change in policy, not a change in rules. Public hearings were not held by the applicable policy-making body effecting this change. This will result in many appeals of the same nature as this appeal. He recommended that the Board of Adjustment refer this policy change to the Sierra Fire Protection District Board of Directors to consider the cost-benefit of the systems, the current economic conditions, and the timing of the new policy. He stated that he had received a building permit in October 2008 with the same requirement, and he provided a cost estimate of between \$18,000 and \$20,000 for the sprinkler system.

Kurt Latipow, Washoe County Fire Services Coordinator, stated that the requirement for fire sprinklers was the most commonly used mitigation measure used in the western United States for single-family dwellings that could not meet required fire flow. Flash-over (meaning when an entire room would become untenable) normally occurs within six to eight minutes of open burning. The IFC does not specifically identify that if fire flow cannot be met, sprinklers

must be provided. Therefore, sprinklers are simply a mitigation measure. It does say that the fire flow requirements may be discounted by providing sprinklers. The 2006 IFC was adopted on September 2008 by the State Fire Marshall's Office. He advised that the statistics provided by the State Fire Marshall were grossly in error. Fire fatalities are not consistently reported. He noted that code application throughout the County has not necessarily been uniform in the past. He is working toward that goal in the unincorporated county areas. In addition to protecting lives and property, the purpose of fire sprinklers is to keep the fire in check until the engines can arrive. The use of canals and rivers is not necessarily an option, because they must be accessed on an all-weather driving surface. The nearest fire station to the subject property is staffed by volunteers. He noted that the cost estimates provided by the appellant and by Mr. Crisp far exceed the high end of the national averages.

Chair Cieri asked who made the policy for the Sierra Fire Protection District, Mr. Latipow or the Board of County Commissioners. Mr. Latipow replied that the County Commissioners (BCC), sitting as the Sierra Fire Protection District Board, set policy. He stated that the BCC had not adopted the 2006 IFC for the Sierra Fire Protection District, as it had only been 474 District since July, 2008, and it therefore uses the minimum fire code as adopted by the State in 2006. Local authority cannot adopt code that is less restrictive than the minimum code as promulgated by the state.

Deputy District Attorney Edwards advised that State Administrative Regulations under the Nevada Administrative Code Chapter 477 still lists the 2003 version of the IFC as that under which the State Fire Marshall operates. Since the 2006 version was only adopted in September 2008, it is possible the information has not yet been updated. The County adopted the 2003 IFC in Chapter 60 of the Washoe County Code with certain modifications and exceptions listed in that code. The Sierra Fire Protection District was a Chapter 473 fire protection district until it became a Chapter 474 district last summer. When it became a Chapter 474 district, a new political subdivision was created, which is governed by the Sierra Fire Protection District Board of Commissioners, which are ex officio the Board of County Commissioners of Washoe County. The pertinent issue was to identify differences between the 1985 Uniform Fire Code, the 2003 IFC and the 2006 IFC with regard to fire flow and measures that could be taken to mitigate those requirements.

Mr. Latipow stated the requirements were the same throughout the three versions of code. The mitigating measures were normally proposed by the applicant for the permit. It is common for the fire district official to confer with the applicant and advise him of the ways in which the requirements can be mitigated. Based upon his extensive experience, Mr. Latipow stated that sprinkler systems were the most commonly used means of mitigation. He also noted it would be a rare occurrence for a policy-making board to work with the applicant by narrowing its mitigating measures.

Member Wideman asked the reason two nearby houses were allow to build without sprinklers if the regulations had been in effect for many years. Mr. Latipow stated that the oversight of the regulations in other jurisdictions was inconsistent in past years. An attempt has been made by the Sierra Fire Protection District be more consistent in the application of the code.

Member Manor asked about the location of the fire station in the area. Mr. Latipow replied the closest full-time staffed fire station was at Boomtown on Garson Road. Member Manor noted there was a volunteer fire station on Bridge Street.

Chair Cieri asked if the performance indicators presented by the State Fire Marshall were of value. Mr. Latipow stated there were of value, but that reporting in the state was slow to take hold. Statistical reporting was a challenge in an area the size of this state, particularly when relying upon volunteer stations that might not have the technology to do the necessary reporting.

Chair Cieri observed there was no uniformity in the starting time of applying the code requiring every home in the rural areas to have sprinklers. Mr. Latipow did not believe the starting time was random, but that the fire officials in the unincorporated areas were now taking a very systematic approach to the way they reviewed these projects. These mitigating measures were being implemented more and more.

In reply to Member Manor, Chief Greene stated his agency was very diligent in enforcing the code to assure standards are met. Two other homes in the Verdi area were recently issued building permits requiring sprinkler systems, and those requirements were not contested. His department is endeavoring to be consistent and uniform. Sprinklers are a mitigating measure that can be taken as an alternative to denial of the issuance of the building permit.

Member Manor recommended that the development community be advised of a date the requirement will be enforced. Chief Greene argued that there was no change being made, only that his department was consistently applying code.

Member Harcinske asked how many sprinkler systems had been required in homes that have been reviewed by the Sierra Fire Protection District. Chief Greene replied there were fifteen in the past year.

Member Wideman asked if Chief Greene knew why the two houses near the appellant's were not required to have a sprinkler system. Chief Greene stated that inconsistency in enforcing the code was his only explanation. Member Wideman asked when he decided to treat this issue more consistently. When he became fire chief in February 2007, was his reply. Member Wideman asked what steps were taken to notify the development community. Chief Greene stated there were meetings with builders in the Galena area, and he anticipated notifying the Building Council that there is a series of vendors available to provide products to assure compliance with the code. Member Wideman asked why the fire department did not reach out to the building community before. Chief Green stated he did not realize the extent of the problem until these appeals came forward. He assumed the community was aware of the code.

Member Manor suggested that the issue could have been brought out at one of the monthly public meetings of the Sierra Fire Protection District Board. Chief Greene reiterated that the fire code had been in effect for a very long time, and he assumed that it was being enforced consistently. He was now aware that an outreach program was necessary. The issue remained life and safety.

Member Horan felt the notification of the code was provided to applicants at the time they applied for a building permit.

Chief Greene stated that fire prevention measures were very effective, and he intended to consistently enforce those measures in addition to pursuing an outreach program.

Mr. Bridges defended his efforts to receive estimates for the sprinkler system. He added that he specifically asked Chief Greene if there was any alternative to the sprinkler system and was told absolutely not. Mr. Bridges noted that the Chief was authorized in the code to make exceptions or allowances.

Member Horan expressed that this was not a policy-making board but one which must enforce the code. It was unfortunate that the Sierra Fire Protection District did not consistently enforce the code in the past, but he did not feel it would be prudent to postpone enforcement until a future time. He was prepared to move to deny the appeal and offer the appellant the opportunity to appeal to the Board of County Commissioners.

Member Harcinske agreed with Member Horan.

Deputy District Attorney Edwards advised that the question presented was whether or not the requirement for a sprinkler system being imposed by the government agencies involved is arbitrary and capricious or whether it is supported by substantial evidence. Substantial evidence is defined as meaning something of substance and relevant consequence and not vague, uncertain or irrelevant matter not carrying the quality of proof or having fitness to induce conviction.

Chair Cieri stated that the performance reports from the State Fire Marshall were not as accurate as they represented themselves to be. He felt that he would be upset by a \$20,000 surprise if he was building a house. Additionally, he was not convinced that the sprinkler system was an essential lifesaving measure. He would request that a notification be given stating that the requirement would be uniformly enforced after a specific date.

Member Wideman observed that the rule in place has legal standing and that it is reasonable and well intended. However, he was concerned that the application of that rule was arbitrary and capricious.

Member Horan commented that, although the regulation was enforced arbitrarily in the past, it was being consistently enforced at this time.

Chair Cieri noted that imposition of the regulation would have a major impact on construction costs, and there was no urgent, dire need for this to take place as of this moment. He would recommend that a date certain be set upon which the regulation would be enforced so that builders could budget appropriately.

Member Harcinske stated that she was not judging the past, and the code was being enforced in a consistent manner currently. She did not see the issue as being life safety, but she felt whatever could be done to mitigate the cost caused by wildfires to the public, public lands, and public water supply should be encouraged.

Member Manor agreed with Chair Cieri. She cited the two houses recently constructed in the same area that did not have to install sprinklers.

Member Harcinske asked when the permits were pulled for those houses and was informed that they were pulled in approximately April 2008. She was further advised that the requirement must be listed on the permit at the time it is issued and could not be added later.

Mr. Jeppson stated that if a requirement was missed on a plan check and then was discovered by an inspector in the field, that permit would be modified to include that requirement. Construction in an unsafe manner would not be allowed to continue. As this case involves an overlapping of jurisdictions, it would be difficult for an inspector to know whether a sprinkler system was required or not. Residential building codes do not require sprinklers. The Building & Safety Department deals with three different fire agencies, each of which enforces this rule differently.

Member Horan moved to deny Appeal Case No. AX09-001. The motion was seconded by Member Harcinske and failed to pass by a vote of two to three (Members Cieri, Horan and Manor opposed).

Chair Cieri moved to grant Appeal Case No. AX09-001, based upon the fact that the decision of the Washoe County Building Official was not supported by substantial evidence. Member Wideman seconded the motion, which passed by a vote of three to two (Members Harcinske and Horan opposed.)

[Ms. Robinson recited the process to appeal this decision.]

ADJOURNMENT

There being no further business to come before the Board of Adjustment, the meeting adjourned at 7:15 p.m.

Respectfully submitted,

Cathi Moldenhauer, Recording Secretary

Approved by Board in session on April 2, 2009

Adrian P. Freund, FAICP, Director
Secretary to the Board of Adjustment