



# 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  
Robert F. Wideman

## WASHOE COUNTY BOARD OF ADJUSTMENT

### MINUTES

August 6, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, August 6, 2009 at 1:30 p.m., in the Washoe County District Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

#### DETERMINATION OF QUORUM

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

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

Members absent: None

Staff present: Adrian Freund, FAICP, Director, Community Development  
Kim Robinson, Planning Manager, Community Development  
Don Jeppson, Director, Building and Safety  
Sandra Monsalvè, AICP, Planner, Community Development  
Grace Sannazzaro, Planner, Community Development  
David Creekman, Chief Deputy District Attorney  
Dawn Spinola, Recording Secretary, Community Development

#### PLEDGE OF ALLEGIANCE

Member Harcinske led the pledge to the flag.

#### APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Horan moved to approve the agenda of August 6, 2009. The motion, seconded by Member Wideman, passed unanimously.

#### APPROVAL OF MINUTES

Member Wideman moved to approve the minutes of July 7, 2009. The motion was seconded by Member Harcinske and passed unanimously.

**ELECTION OF OFFICERS:** Board of Adjustment Chair and Vice Chair

Upon nomination by Member Horan, seconded by Member Wideman, Chair Cieri was again approved as Chair by a vote of three to zero (Chair Cieri abstaining).

Member Harcinske nominated Member Horan as Vice Chair. Upon second by Member Wideman, the nomination was unanimously approved.

**PUBLIC COMMENT**

None

**CHAIR AND BOARD ITEMS**

None

**DIRECTOR'S ITEMS**

Member Horan asked when the fifth member would be appointed and Mr. Freund replied the recruitment process with the commissioner had begun and he hoped she had some candidates in mind. If not, the department would initiate recruitment and that would take approximately one month until board action.

**CONSENT ITEMS**

None

**PROJECT REVIEW ITEMS**

**AGENDA ITEM 1**

**PUBLIC HEARING: VARIANCE CASE NO. VA09-005 (SHAUNA OLSEN-TONE)** – To reduce the front yard setback along Odile Court from 30 feet to 12 feet for the construction of a detached garage. The project is located at 4000 Odile Court and is situated on the northeast corner of its intersection with Lamay Lane and is approximately 410 feet west of Fairview Road. The ±1.126-acre parcel is designated Low Density Suburban (LDS) in the Southwest Truckee Meadows Area Plan, and is situated in a portion of Sections 11 and 12, T18N, R19E, MDM, Washoe County, Nevada. The property is located in the Southwest Truckee Meadows Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 040-491-43)

Chair Cieri opened the public hearing.

Grace Sannazzaro reviewed the staff report dated July 24, 2009 and verified legal noticing requirements had been met. She explained staff was recommending denial because all findings required for a variance could not be made. Staff had presented the applicant with other options not requiring a variance but these options had been rejected. The project had been presented to the Southwest Truckee Meadows Citizen Advisory Board (CAB), who submitted comments but did not recommend approval or denial.

Member Wideman asked why the existing garage, with a 12-foot setback, was allowed on the property and the new structure was not. Ms. Sannazzaro replied there was no record of when the garage was built nor was there a building permit on file for the garage. Therefore it is

a legal, non-conforming structure. Mr. Wideman asked if there had been any problems as a result of it being there and Ms. Sannazzaro replied there had not.

Chair Cieri confirmed with Ms. Sannazzaro the letters sent to the board from CAB members incorporated concerns already addressed at the CAB meeting.

Applicant's Representative Jeremy Lewis of M.B. Lewis Construction introduced himself, George Lindesmith of Tri-State Surveying and Applicant Shauna Olsen-Tone. He provided a presentation explaining the purpose of the project and the reasoning behind the location chosen. He noted the project was planned in such a fashion as to enhance the property visually as well as functionally. The location had been chosen with emphasis on keeping it away from the Steamboat Ditch, which runs along the east side of the property.

He stated they felt there were topographic hardships applicable to the case as the lot is oddly shaped, has an average of a ten-foot slope throughout the property and is bordered by the ditch. Mr. Lindesmith noted several conditions that create a special hardship. Taken individually they could be overcome but together they created the hardship. Odile Court is six feet above the lot, creating the requirement for a steep driveway. The lot itself slopes six, eight or ten percent depending on location and is narrow at the north end. It has 65 feet available, more towards the south as the lot widens, and that amount is reduced by the 30-foot setback. The ditch encompasses a piece of land about 25 feet wide. There should be a minimum ten- to 15-foot setback from the ditch so as not to impinge on ditch rights and have effect on properties downstream.

Mr. Lewis went on to explain the alternative location options presented a danger to the foundation of the building due to erosion based on its close proximity to the ditch. He noted the proposed locations in combination with the steep driveway would cause difficulty in driving onto the lot and backing trailers into the building, which was being designed and built for that purpose.

Mr. Lewis noted the existing barn was built prior to the construction of Odile Court. He pointed out the property would appear well-planned, correct and right if the new structure were in line with the existing one. This approach would diminish any imposition to the neighboring properties. He also stated the proposed locations would block access to trucks arriving to provide service to the septic system of the home. Some concerned neighbors, after meeting with the applicant and discussing the project, had signed a petition in favor of it.

Member Harsinske acknowledged the statement about the barn being built prior to Odile Court and asked when it had been built. Ms. Olsen-Tone explained the house was built in the 70s and the barn shortly thereafter.

Chair Cieri asked Mr. Lewis about the difficulty of moving trailers into the building if it is located next to the driveway. Mr. Lewis pointed out the building was being created to house the trailers which are already being parked in that location. A different location would make the driving conditions more difficult and possibly unsafe. He explained the current parking method involved coming down the driveway into the flat area to the east and backing the trailers into the designated area which runs next to the driveway. The alternate proposed locations would create a dead end and restrict the turn around room required.

Member Harcinske requested an explanation of how the impact of repeated vehicle traffic over the eastern portion of the property affected drainage into the ditch versus the effect a building would have in that same location that was set up to drain away from it. Mr. Lewis replied a system would be installed to alleviate most of the problems and the traffic was minimal, perhaps one trip every two months. It is not designed for everyday use. Member Harcinske noted erosion effects created when turns were made and Mr. Lewis replied the intended travel area was compacted with gravel. The vehicles in question would not be coming close enough to the ditch to travel over the adjacent uncompacted area and create erosion problems affecting it.

Member Wideman asked if the garage would change the pattern of traffic or the number of trips in that area and Mr. Lewis replied nothing would change other than the fact the trailers would now be parked inside.

Robert Hudgens, 3801 Lamay Lane, stated he lived directly below the subject property and did not object to the garage. He did not think the trailers being in the open was in any way offensive or a bother and did not feel the variance was necessary. The proposed location next to the ditch would suffice for the applicant's needs and he would prefer to see it there. He verified the barn had been constructed prior to the existence of Odile Court.

Chair Cieri closed the public hearing.

Member Wideman commended the work staff had done in analyzing the situation and interpreting the special conditions which would allow the variance. While he felt the interpretations were probably accurate, perhaps it was a case where the letter of the law is not necessarily consistent with some common sense regarding the circumstances that exist. He made note of the fact the existing building and the proposed one would be in line and similar. He was also concerned about the drainage circumstance with an alternate location closer to the ditch.

Member Wideman went on to state that in view of the history of the lot and the general character of the surrounding areas he thought a case could be made that it is an extraordinary or unusual circumstance that would permit the building of the detached garage within the 12-foot setback as requested. For those reasons he would support the variance.

Member Horan stated the applicant had made a good effort at presenting evidence to justify the variance but he could not see meeting the conditions they had to make as far as the findings were concerned. He noted there were options and he did not see the special circumstances necessary for him to support the variance. He granted it would be aesthetically pleasing. He stated he would support staff recommendation.

Member Harcinske stated she was having difficulty making the finding for special circumstances. The arguments were persuasive but spoke primarily to the convenience of use and appearance of the yard. She noted the house had been constructed within the setbacks and reiterated other locations within the setbacks were also available for the building. She verified with Chair Cieri she would vote for denial.

Chair Cieri noted it was important to have room for maneuverability of the trailers. He stated they needed to look at the hardship as it related to the size, shape or topography of the property. The staff report says the hardship is not related to these, and there were two

opposing testimonies regarding the slope of the property, so that made it difficult for him to take a position on the positioning of the building with the slope. He noted any other location other than the one proposed would probably require more fill dirt and engineering costs.

Chair Cieri asked Counsel for the record if their vote would set any type of precedent. Chief Deputy District Attorney (CDDA) David Creekman stated it would not. He expounded, stating that to the extent that the vote is based on substantial evidence in the record as that evidence has been presented with respect to the specifics of this case, it would have no precedential value elsewhere. CDDA Creekman noted, assuming a decision is made to grant the application, they need to find the legal standards are met and that the standards are supported by substantial evidence. The legal standards were set forth by staff and Nevada law with respect to variances.

Chair Cieri requested a motion. Member Horan moved to deny based on not having made all findings in accordance with the Development Code. Specifically he did not find special circumstances had been met. Member Harcinske seconded the motion. The vote for the motion resulted in a tie, Members Horan and Harcinske voting "aye," Chair Cieri and Member Wideman voting "no."

Chair Cieri requested further discussion. Member Harcinske asked Chair Cieri to articulate specifically the special circumstances he was seeing to make the finding and perhaps help her to understand. Chair Cieri stated it was the maneuverability of the trailering of the vehicles. If the building was placed along the ditch and the ditch flooded it would affect the building.

Ms. Robinson requested a five-minute recess while staff reviewed procedures regarding the vote.

Chair Cieri called the recess at 2:22 p.m. The meeting was called back to order at 2:33 p.m.

Ms. Robinson informed the Chair the recess had been requested for the purpose of reviewing the Rules, Policies and Procedures for the Board of Adjustment, as well as Nevada Revised Statutes (NRS). The motion just completed and voted was a tie. Because it was a vote for a negative, the motion failed to pass. She outlined that the options were additional conversation or the possibility of making a motion in the affirmative. If that motion failed it would result in a denial, sometimes called a technical denial. The board may use a denial without prejudice, which allows the applicant to return before a one-year timeline has passed. There is also an appeal process if a motion was voted on at the meeting. Ms. Robinson went on to point out if an affirmative vote for approval cannot be approved the tie shall constitute a denial.

Member Wideman suggested it would be helpful if Counsel could read the legal standard on the matter. CDDA Creekman stated the legal standard that needs to be met were spelled out by Ms. Sannazzaro in her presentation but was a shorthanded version of the legal standard, especially with respect to her reference to special circumstances. The precise language of the legal standard as set forth in Nevada statutes is as follows: "Whereby reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the enactment of the setback requirement, or by reason of exceptional topographic conditions or other extraordinary or exceptional situation or condition of the piece of the property, the strict application of the setback requirement would result in peculiar and exceptional practical

difficulties to, or exceptional and undue hardship upon, the owner of the property, you are authorized to issue a variance from strict application of the setback requirement to relieve the difficulties of the hardship if the relief can be granted without substantial detriment to the public good.

CDDA Creekman proceeded to opine that if the board were inclined to consider further the possibility of granting the variance, they needed to look at the evidence before them and find something contained in the evidence which establishes a uniqueness to this particular piece of property that is not a characteristic shared by other pieces of property and that uniqueness would allow relief from the 30-foot setback requirement, finally concluding that doing so would not substantially harm the public welfare or the public good.

Chair Cieri stated the discussion would continue. Member Wideman stated he felt the conditions had been met, particularly the other extraordinary and exceptional situation or condition of the property, the location of the surroundings and the existence of practical difficulties. He noted the proposed location would be in line with the existing structure and only impede on the setback from the street, not a neighboring property. He pointed out the alternative locations would move the building closer to the Steamboat Ditch, which is a significant hydrologic resource. Any buildings placed closer to it enhance a risk to that resource. The waiver of the setback has not been demonstrated to produce a hardship or a problem to any other adjacent property owners; however, a movement towards the ditch could adversely affect a number of persons. The greater good of the public would be better served by allowing the variance and moving the structure away, as opposed to having the applicant utilizing another location that required no permit.

Chair Cieri polled the members and determined the vote was still two to two. CDDA Creekman advised Chair Cieri they need not take any action to break the tie. Taking no further action would result in a denial. Chair Cieri declared the case denied.

Mr. Freund asked Counsel if the board needed to again make a record of the tie vote in order to satisfy procedures. CDDA Creekman opined the first vote established the inadequacy of the record to support the motion the way it was originally posed.

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

## **AGENDA ITEM 2**

**PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-008 (TRIPLE "G" RANCH) - To re-establish a horse boarding facility for the purposes of boarding, training, breeding, and selling of up to 24 horses, as authorized in *Article 810* of the Washoe County Development Code. The subject property is located at 5305 Winnemucca Ranch Road, at the intersection of Pyramid Highway and Winnemucca Ranch Road. The ±65-acre parcel is designated General Rural Residential (GRR) in the Warm Springs Area Plan and is situated in a portion of Section 13, T22N, R20E, MDM, Washoe County, Nevada. The property is located in the Warm Springs Citizen Advisory Board boundary and Washoe County Commission District No. 4. (APN 076-262-10)**

Chair Cieri opened the public hearing.

Sandra Monsalvè reviewed the staff report dated July 23, 2009. She noted an additional Engineering comment not included in the staff report that had been provided to the members prior to the beginning of the meeting. She stated the Warm Springs CAB had voted unanimously to approve the project.

Member Harcinske asked Ms. Monsalvè how the requirement for water rights was bought into the special use permit process. Ms. Monsalvè replied it was a standard condition from the Water Resources division. Member Harcinske then asked if they were on public facilities and Ms. Monsalvè replied they were on well and septic.

Chair Cieri asked if they would get the water rights back if they elect not to continue the business. Ms. Robinson stated she did not believe they would be returned to the applicant and reiterated it was a standard Water Resources condition. Chair Cieri inquired of Mr. Freund if this was new as he did not recall it being a condition for other stables. Mr. Freund stated it was a standard condition and it was necessary to account for the fact the basin is over-allocated. He suggested the change of ownership may have predicated the addition of the condition. Chair Cieri asked if the previous owner had been subject to the same condition. Ms. Monsalvè consulted the previous special use permit staff report and reported it stated water rights would be determined by demand and asked for proof of sufficient water rights.

Property Owner James Rodrigues stated he was not in possession of any specific records regarding the property when the permit was granted in 1998. He understood business licenses had been in place every year until he purchased the property. He also understood the prior owner had a permit in place to run a business with up to 50 horses.

Chair Cieri closed the public hearing.

Member Wideman moved to approve conditionally Special Use Permit Case No. SB09-008. The motion was seconded by Member Harcinske 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 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 a commercial stable providing horse boarding, breeding and training services to serve the local residents;
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**

APPEAL CASE NO. AX09-005 (WILL SAUER ROAD MAINTENANCE ASSOCIATION) – To appeal the decision of the County Building Official to place a stop work order (“Red-Tag”) on building permit number 07-04383. The permit is to construct a new gate across Will Sauer Road on Assessors Parcel Numbers 055-092-23 and 055-041-17. The project is located on Will Sauer Road, just west of its intersection with Franktown Road. The subject parcels are designated a combination of Medium Density Rural (MDR) and Public and Semi-Public Facilities (PSP) 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.

Chair Cieri opened the public hearing, announcing time allowed for comment would be reduced to two minutes as there were a large number of people wishing to speak. The speakers representing groups would be allowed five minutes.

Don Jeppson reviewed the staff report dated June 21, 2009. He noted after approval of the gate, the Building Department began receiving complaints. Upon review, it was determined the plans had not accurately represented the proposed location of the gate and all the owners of the affected parcels had not provided permission to build on their property. He stated the application should have been denied as it was determined the gate was commercial and therefore the drawings were required to be prepared by a licensed professional.

Mr. Jeppson went on to explain that upon request, the applicant did provide more detailed drawings, but those did not accurately represent the easements involved. He took a moment to list the departments that review the application and submit their comments. He noted all departments except Health and Water Resources had denied the application.

Mr. Jeppson stated there were three issues that needed to be addressed. The first was code considerations to be sure the gate complied with NRS requirements. The construction company had provided a letter assuring the gate did comply but contained no detail. The Fire Department also had two issues; 1) that they required 20-foot clearance for the vehicles and 2) they required an auto-entry device. The contractor had submitted a device that did not meet that standard. Mr. Jeppson explained property owner’s consent was still required. He noted the road association had provided an agreement, but the District Attorney’s office had determined the department could not substantially rely on that.

He went on to explain that the final issue was in regards to the easements. Conflicting documentation made it unclear if the road was undeniably private or public. Currently, the county’s position is that the road is public. He reviewed a series of documents referencing the easements and deeds pertaining to the road and displayed a graphic showing the numerous easements and agreements. He then pointed out the recommendation to the applicants had been to abandon the easements for the sake of clarification.

Mr. Jeppson then noted other people besides the property owners utilize the roadway, such as visitors to the private cemetery and ranchers and water purveyors that use it to access

their water rights. He explained the design of the gate required three property owners give permission, and one of them had refused to do so.

Applicant's Representative Chuck Spann introduced himself as the representative of the Association and as a resident of the area. Addressing the three items pointed out by Mr. Jeppson, he stated he understood the gate would meet code, the affected parties had signed the agreement and the easements required for the gate had been granted when the owners bought the properties.

Mr. Spann respectfully disagreed the road was public, as Washoe County does not maintain the road and an association exists for that purpose. He agreed with the assessment there was no clear statement that it was a private road, but ample evidence from recorded documentation suggests it is considered to be private. If it is something other than public the county needs to establish it in an affirmative way. The owners of the affected properties have believed the road was private since they purchased there.

Mr. Spann explained many of the residents would like the gate to be placed to keep out intruders who may start fires. He stated those who needed access would not be blocked, and the Association would like to have the gate installed. He believed they had addressed the technical code violations as well as the issue of the easements. He pointed out there is an authority signed by most of the people impacted. The agreement allows the gate to be installed in that area. If a property owner now objects to it, they would state that is a dispute that should be resolved not by the county, but in some other venue that is appropriate for resolutions of this type of dispute.

Bob Rusk, 4205 Old Highway 395, spoke on behalf of Franktown Creek Irrigation Company (FCIC), and Jack Healy, 4955 Franktown Road, spoke on behalf of Happy Valley Irrigation Company (HVIC) and FRIC. Mr. Rusk stated FCIC was in support of the opponents to the gate and stated it was unfortunate there had been no notice when this gate was approved and was to be installed. Mr. Healy explained the gate had not been in use for approximately 25 years.

Shyrl Bailey, 4105 Old Highway 395, Thomas Hall, 305 South Arlington, Carol Ganz, 4965 Franktown Road and Nancy Baurichter, 4785 Franktown Road all spoke against installation of the gate, primarily citing access issues. Tom and Cathy Fawcett, 60 Will Sauer, Houston Crisp, 205 Will Sauer, Lebo Newman, 4795 Franktown, Jacques and Beth LeFriant, 37 and 39 Will Sauer and Charles Spann, 100 Will Sauer spoke in favor of the installation of the gate and submitted evidence and exhibits to support their testimony. They spoke primarily of safety and privacy issues and presented evidence supporting the claim the road is private and the easements valid. The final speaker was John Warren, 4755 Old Highway 395, who noted he had owned the neighboring ranch for 10 years, the gate had not been used during that time and it was important to have immediate access to the area in the event of fire or flood. He also spoke of the fact there had been no notice regarding the installation of the gate.

Chair Cieri closed the public hearing and asked Ms. Robinson if people in the surrounding areas had been notified of the hearing. She replied the issue of noticing the appeal of a building permit was determined by legal counsel and she preferred to allow him to answer the question. CDDA Creekman opined the speaker's question referred to the issue of having not received notice regarding the issuance of the building permit in the first instance. He could not say definitively but could recall no provision in the building codes, or any references to the

building codes, which obligate some sort of notice to the neighbors of pending building permits. He asked Mr. Jeppson for his confirmation or rebuttal of that point. Mr. Jeppson stated generally there was no notification unless it impacts a land use or some sort of planning-type variance. For a homeowner to improve his property in a manner that is within the county ordinances and building codes there is no notification.

CDDA Creekman asked Mr. Jeppson if this was the type of permit that would require notice and Mr. Jeppson replied this case was unique. If one were to fence or put a gate on private property the Building department would not be noticing the neighbors. CDDA Creekman asked if Mr. Jeppson's understanding was this was a gate on one piece of property at the time of application and Mr. Jeppson replied affirmatively.

Mr. Jeppson then requested and was granted time for one more clarification. He explained some of the pictures and submitted information were difficult to interpret for the purposes of clarifying the issues. He and Chair Cieri engaged in a discussion regarding a particular document presented during testimony that Mr. Jeppson had not obtained in his prior research. Mr. Jeppson noted the document was similar to another that had been submitted with the packet and inferred the discovery of the new document did not alter his opinion this was a public road.

Member Harcinske asked Counsel, if after hearing testimony and viewing the presentation, the legal opinion included in the information provided to the Board had changed. CDDA Creekman replied there were no changes other than to add emphasis to the conclusion contained in a footnote that this is too complicated, difficult and contentious an issue for this board to be deciding. It is most appropriately decided in a friendly manner amongst the various property owners or judicially, thus adding credence to the building official's decision to "Red Tag" the permit. The underlying issues were too contentious and too disputed, and the evidence is too contradictory to allow a firm conclusion either way as to the nature of this road.

Member Horan clarified further by pointing out on the second page of the District Attorney's opinion there were two primary reasons given to support the stoppage. One was a definitive resolution of the civil dispute that exists among the abutting property owners on Will Sauer Road and the second is public versus private. He noted it would seem there was clearly no resolution offered relative to the property owners. For that reason the District Attorney's opinion still definitely applies.

CDDA Creekman noted the most significant comment after listening to the speakers was that no one is trying to impede anyone's rights. That comment was significant because the nature of anyone's rights is impossible to determine in this proceeding. From his perspective, there was too much contradictory evidence to allow a definitive conclusion as to the public or private nature of the road.

Member Harcinske asked Counsel if the applicants had brought forward a replat of the road compiled in conjunction with a road maintenance agreement, designating the road as private and signed by all of the affected parties, would that have resolved this issue. CDDA Creekman replied it would have solved it to some extent, assuming the replat was accompanied by the concurrence of the property owners directly impacted by the issuance of the building permit. He noted he believed the building official had stated that two of the three property owners had given permission and Mr. Jeppson verified that was correct. CDDA Creekman

finished by stating that with the replat, with the concurrence of the three property owners, would more likely resolve this than will be the case without that information.

Chair Cieri clarified with Mr. Jeppson there were three issues for the stoppage, which were minor code violations, property owner issue and the easement issue. He went on to note if the property owners were all in agreement then the easement issue is still a problem. Mr. Jeppson agreed, stating it was his understanding they could do a new plot plan, but they would need to abandon the existing easements through a public process. Legal notification would be required for that case.

Chair Cieri asked Counsel if the issue would end if the property owners agreed. CDDA Creekman replied it would end it to some extent, to where there would be minimized dispute or dissention on questions relating to a subsequent abandonment of the easement, assuming it is a public easement or public road. Whether or not it is a public road has not been definitively established, although his opinion and that of his colleague is that it is public.

Member Horan asked if their options were to deny, continue or some other option. Member Wideman commended the presenters on their cogent and well-thought-out arguments, as well as those who presented heartfelt testimony. He noted the issue clearly revolves around whether or not it is a private or public road, and he could not imagine how any vote of the Board was going to resolve that. It seemed prudent to him to let those issues be resolved before construction of the gate, rather than after. Therefore he would be guided by the District Attorney's opinion that the stop work order was properly issued and should remain in force.

Member Horan stated he agreed with Member Wideman and asked if the procedural option was to uphold the stop work order. CDDA Creekman replied they could take no action, in which case the appeal would not be granted and the stop work order would remain in place. They could take affirmative action to uphold the stop work order or they could take negative action to deny the appeal. He recommended they respond directly to the appeal and take action either granting or denying the appeal.

Chair Cieri asked if there was a way to deny without prejudice. Ms. Robinson explained this particular type of permit appeal coming to the Board of Adjustment is not discussed in the Rules, Policies and Procedures (RPP). Her understanding was these types of cases, in terms of building permit appeals, come to the Board of Adjustment following a decision by the Supreme Court after the RPP were finalized, so the discussion of with or without prejudice is not addressed within that particular piece. She stated she would defer any other direction to Counsel and added the items may be appealed to the Board of County Commissioners.

Chair Cieri noted the mapping and easements in the Mount Rose area were quite confusing and pointed out it causes difficulties for a body of this nature to move forward on public or private issues. He understood the needs of parties on both sides of the issue but did not know how to arrive at a solution.

Member Harcinske moved to deny Appeal Case No. AX09-005. The motion was seconded by Member Wideman and passed unanimously.

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

## **OTHER ITEMS**

None.

**ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting adjourned at 4:29 p.m.

Respectfully submitted,

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Dawn Spinola, Recording Secretary

Approved by Board in session on October 1, 2009

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