



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
Kim Toulouse

WASHOE COUNTY BOARD OF ADJUSTMENT

MINUTES

December 3, 2009

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, December 3, 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 1:32 p.m. The following members and staff were present:

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

Members absent: None

Staff present: Adrian Freund, FAICP, Director, Community Development
Kim Robinson, Planning Manager, Community Development
Roger Pelham, Senior Planner, Community Development
Eva Krause, Planner, Community Development
Kris Klein, Engineering
Leo Vesely, Public Works
Kurt Latipow, Fire
Nathan Edwards, Deputy District Attorney, District Attorney's Office
Dawn Spinola, Recording Secretary, Community Development

PLEDGE OF ALLEGIANCE

Member Harcinske led the pledge to the flag.

APPROVAL OF AGENDA

Ms. Robinson announced the Ethics Presentation scheduled for today's meeting had to be cancelled and would be rescheduled to a future date.

In accordance with the Open Meeting Law, Member Harcinske moved to approve the amended agenda of December 3, 2009. The motion, seconded by Member Toulouse, passed unanimously.

APPEAL PROCEDURE

Ms. Robinson read the appeal procedure for the record.

APPROVAL OF MINUTES

Member Harcinske moved to approve the minutes of October 1, 2009. The motion was seconded by Member Toulouse and passed unanimously.

PUBLIC COMMENT

None

CHAIR AND BOARD ITEMS

Ms. Robinson announced that VA09-005, which had been denied by the Board of Adjustment (BOA), had been appealed to BCC and approved.

Due to the necessity of moving the February 2010 meeting location and date, the members indicated their preference was to hold the meeting on Monday, February 1, 2010.

DIRECTOR'S ITEMS

Ms. Robinson reviewed the memo regarding how well the BOA application cycles coincided with the Citizen Advisory Board (CAB) cycles.

Ms. Robinson reviewed the revised draft BOA agenda format, which provides more information to the members and citizens. None of the members had any comments or questions.

Members were invited to the Holiday Potluck scheduled in the Community Development office on Wednesday, December 9.

Chair Cieri noted the Visual Simulations Workshop might be postponed due to the large number of attendees and potential resulting time constraints.

CONSENT ITEMS

None

PROJECT REVIEW ITEMS

AGENDA ITEM 1

PUBLIC HEARING: VARIANCE CASE NO. VA09-008 (JULIET ASHTON) – To reduce the front yard setback from 15 feet to 9.2 feet, to reduce the north side yard setback from 8 feet to 6.5 feet and the south side yard setback from 8 feet to 5.1 feet as authorized in Article 804 of the

Washoe County Development Code. The project is located at the southern intersection of Gonowabie and State Route 28, and is identified as 285 Gonowabie Road in Crystal Bay. The ±0.187-acre parcel is designated Medium Density Suburban (MDS) in the Tahoe Area Plan, and is situated in a portion of Section 19, 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 123-133-22)

Chair Cieri opened the public hearing.

Ms. Krause reviewed the staff report dated November 20, 2009. She noted the Nevada Department of State Lands (NDSL) objected to the south side setback and that they had met with the applicant but still objected to a reduction.

Ms. Krause also pointed out the Engineering Department allowed some flexibility in their conditions. The applicant had objected to some of these conditions so that flexibility might be of assistance in coming to a compromise.

Ms. Krause went on to note the Incline Village/Crystal Bay Citizen Advisory Board (CAB) had voted in favor of the project, but that two members had voted against it, primarily concerned with how close the garage was to the road. She reviewed and discussed e-mails she had received regarding concerns expressed from agencies, neighbors and others.

She then explained she had two recommendations to the Board based on the applicant's objections to the conditions, one for approval with the Engineering conditions, the other for denial if the applicant did not choose to comply.

Applicant Juliet Ashton expressed her appreciation that Kris Klein of the Engineering Department had taken the time to discuss options with her the day before the meeting. She spoke of an e-mail she had sent the morning of the hearing regarding a Hold Harmless agreement and discussed her concerns with the requirement. She had been informed the guardrail was to be moved and the rail is the guide for the plows and felt it was going to be too close to her home. She stated it was difficult for her to move forward without more information.

Chair Cieri asked Ms. Ashton if she was against the conditions and she responded she was not ruling them out, but needed to understand them and be assured there continues to be flexibility. She understood from her conversation with Ms. Klein this was to be the case but the e-mail gave her a different impression. She further clarified the conditions would be acceptable with modifications regarding alternative standards for the roadway if Engineering would work with her on placement of the guardrails.

Applicant's Representative Wayne Ford stated that, based on his experience, this Variance clearly meets standards for hardship. He reviewed and clarified specific items, being 1) Nevada Revised Statutes (NRS) and findings; 2) the letter in opposition from NDSL; 3) adding conditions they were willing to put into the variance; and noted his client had already clarified what she was willing to do.

He went on to explain the physical constraints and challenges with regard to the driveway being connected to Gonowabie Road. He suggested the driveway could be moved but that would result in the building going over the height limit unless a flat roof was utilized, which was a poor choice for a snowy area. He requested permission to read the additional

conditions proposed to satisfy NDSL or to provide them to Ms. Krause. Chair Cieri agreed they should be submitted to Ms. Krause.

Mr. Ford then spoke on behalf of the neighboring property owners, expressing their approval of the project. Member Wideman clarified with Mr. Ford the property to the south was owned by NDSL.

Chair Cieri closed the public hearing.

Member Wideman noted some of the neighboring properties had five-foot side setbacks and was unclear as to why the request for a 5.1-foot setback on this property was cause for opposition. Ms. Krause explained the zoning on this property was different from the property to the south which has a smaller setback. She clarified it was common practice for NDSL to object, wanting to maintain established setbacks.

Mr. Wideman asked Ms. Krause if she would have been inclined to recommend the variance in the absence of objections from NDSL. She replied that was a hard choice because it was a balancing act, but she probably would have in that case.

Member Horan requested more information regarding moving the guardrail and the history of the road. Ms. Klein explained the county took over maintenance of the road prior to the 1970s and it was paved sometime in the mid-70s. At Member Horan's inquiry, she verified the current configuration is most likely the same as it was when the road was originally paved.

Ms. Klein went on to explain the plan was to cut out part of the guardrail to provide access to the driveway. The Engineering Department had placed a condition requiring a licensed civil engineer to submit justification of the safety of the rail after it has been cut. She noted it may not be appropriate to extend the guardrail further up the hill. An approximately 10-foot portion going up the road toward Highway 28 would remain after the cut, which may need to be extended farther based on the engineer's design analysis. Member Horan expressed concern about the idea of the road being narrowed in any way at that location.

Chair Cieri asked the applicant and her representative if they would like to consider a continuance to have the opportunity to obtain the answers she needed and add the proposed conditions. Mr. Ford explained the new conditions were written to allay the concerns of NDSL about problems during construction.

Chair Cieri asked Ms. Krause if the conditions sounded acceptable. She replied that they did but were written to address the concerns of NDSL, not the county. NDSL had reviewed the conditions and agreed to them but were still opposed to the variance. Member Harcinske asked who would monitor the conditions if they were added. Ms. Krause replied they would be part of the building permit. She went on to note there is no on-street parking on that road, and as it was a NDSL condition, it would be up to them to monitor.

Member Toulouse asked Ms. Krause to clarify her finding that the relief would create a detriment to the public good. She explained that finding would be valid if the conditions were removed.

Ms. Ashton noted she had offered to bank the road into the hill, diminishing the danger of sliding down the road towards the lake.

Member Wideman wondered about any procedural jeopardy if the case was continued. He expressed concern that some conditions may need further negotiation, and if NDSL was going to continue to oppose it they should have the opportunity to come and speak for themselves.

Mr. Ford indicated they would accept the continuance and Chair Cieri verified that with him.

Member Horan moved to continue Variance Case No. VA09-008 until the Board of Adjustment meeting February 1, 2009. The motion was seconded by Member Harcinske.

Member Harcinske expressed her hope that the continuance would allow NDSL to provide specifics about their opposition. She stated she felt that NDSL represented the people of the state and the owners of that land and there are a lot of people opposed to granting the variance on that side. Therefore it was a legitimate opposition and that was her opinion. She hoped there could be something worked out that would resolve the issue or the Board would know for sure that NDSL continues to oppose it.

Chair Cieri finalized the vote, which passed unanimously.

AGENDA ITEM 2

PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-014 (VYA TEMPORARY EMPLOYEE HOUSING CAMP) – To develop a temporary employee housing camp for approximately 600 employees, helistop and operable vehicle storage area to be utilized for a period of approximately eight months as authorized in Sections 110.206, 110.302 and 110.310 of the Washoe County Development Code. **The project is located approximately one mile south of the historic Vya town-site on the west side of Nevada State Route 8a.** The ±160-acre parcel is designated General Rural (GR) in the High Desert Area Plan, and is situated in a portion of Section 10, T42N , R19E, MDM, Washoe County, Nevada. The property is located in the Gerlach/Empire Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN: 061-010-08)

AND

2b. PUBLIC HEARING: VARIANCE CASE NO. VA09-007 (VYA TEMPORARY EMPLOYEE HOUSING CAMP) – To waive the standards as would be applied to a permanent development (such as pavement, landscaping, lighting and etc.) for a temporary employee housing camp for approximately 600 employees, helistop and operable vehicle storage area to be utilized for a period of approximately eight months, as required by Section 110.310.15, of the Washoe County Development Code. **The project is located approximately one mile south of the historic Vya town-site on the west side of Nevada State Route 8a.** The ±160-acre parcel is designated General Rural (GR) in the High Desert Area Plan, and is situated in a portion of Section 10, T42N , R19E, MDM, Washoe County, Nevada. The property is located in the Gerlach/Empire Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN: 061-010-08)

Chair Cieri opened the public hearing and requested disclosure if necessary. Member Harcinske noted she had received e-mails from residents of the area. Member Toulouse disclosed he had received the same e-mails and that he is employed by the State of Nevada

Division of Wildlife (NDOW). NDOW has commented on the Ruby Pipeline project, but has not provided comment for this specific project. He requested clarification from Counsel as to what his standing should be with regards to this case.

Deputy District Attorney (DDA) Edwards asked Member Toulouse if he felt his independence of judgment would be materially altered by his role and employment with NDOW. Mr. Toulouse stated he did not believe that fact would have a material affect on his judgment, nor would he feel any pressure to vote one way or another based on his employment. DDA Edwards determined there did not appear to be any conflict and Member Toulouse would make the final decision about his participation. Member Toulouse chose to proceed as an active member in the decision process.

Members Horan and Wideman and Chair Cieri stated they had also received the e-mail. DDA Edwards requested that if any Board member felt materially affected by receipt of the information that they state so, otherwise he would assume that is not the case and they should proceed.

Mr. Pelham reviewed the staff report dated November 19, 2009. He pointed out the camp employees would not be travelling in individual vehicles but would be bussed to the work site. Extra power would be supplied by a generator as the supply from the rural electric grid was insufficient for the camp's needs.

Mr. Pelham noted the applicant was requesting variance to development standards as there were no direct neighbors. Temporary Employee Housing is a use anticipated by the High Desert Area Plan, unlike other area plans. He pointed out that while an Environmental Impact Statement (EIS) was required for the pipeline, for this use it was not. This project was being evaluated independently of the pipeline

One of the required conditions was the construction of an eight-foot solid fence surrounding the facility. The primary purpose is visual screening and to keep light from spilling over past the property line. Lighting is to be fully down-shielded. The fence will also inhibit interaction between inhabitants of the camp and any wildlife in the area. It serves as the visual barrier that would normally be achieved through landscaping and will inhibit growth of the camp.

Mr. Pelham went on to explain dust and emissions were a concern and would be mitigated by conditions imposed by Air Quality. Recreational use of off-highway vehicles is prohibited. He noted asphalt is typically used for commercial projects but the applicant proposed, and the Engineering department approved, an alternative, which is a polymer mixed into the soil and compacted. Roads degraded due to traffic associated with the project will be required to be maintained and restored.

The applicant will be required to present an acceptable plan to the Sheriff's Department and the Washoe County Fire Coordinator such that public safety is maintained in a level consistent with the rest of Washoe County. The plan must include provisions for payment to the agencies for their services. The site must be returned to its original topographic contour, revegetated and irrigated for not less than three years.

Mr. Pelham listed the required findings, explaining the basis of staff's recommendations for each one. He noted the application had been extensively reviewed by numerous agencies and their conditions of approval were included in the staff report.

Member Harcinske requested more information regarding water usage for the project. Mr. Pelham replied there was an existing well and another was to be drilled. The Department of Water Resources (DWR) is responsible for determining if sufficient amounts of water have been obtained for the project. As DWR had no comments, Mr. Pelham accepted that as evidence they were satisfied.

Mr. Pelham noted DDA Edwards had requested one additional condition of approval be added. It stated: "The applicant will be required to obtain a permit for an outdoor community event per Chapter 25 of the Washoe County Development Code." DDA Edwards clarified the condition would be required to the extent a license is required under Chapter 25. If Community Development determines that it is not required, then the condition would be satisfied. He went on to explain the event license covered assemblies of people over a certain number in anything other than permanent buildings or permanent installations.

Chair Cieri asked if there would be loudspeakers or lighting, like a concert, and Mr. Pelham replied it would not be of that nature, although there will be lighting. Member Harcinske asked if anyone had quantified the cost to the county to monitor the many conditions of approval associated with the project. Mr. Pelham replied no one had quantified the costs, but most of the conditions applied at the building permit stage and the decommissioning stage. Ongoing activities would be paid for by the applicant.

Member Harcinske asked who was going to monitor air quality and Mr. Pelham explained the Air Quality Division would be receiving separate fees for their involvement and would be monitoring as they would any other project.

Member Toulouse clarified with Mr. Pelham that the lighting would be in compliance with Best Management Practices for dark skies. He went on to address a statement from Air Quality (AQ) Management stating subsequent development plans did not address dust suppression on public unpaved roads. He noted prior to that statement there was discussion of the quadrupling of [vehicle miles traveled](#) during the construction and use phase. Mr. Pelham informed Member Toulouse the document he was referencing was not from AQ. It was provided by Wendi Lutz, a resident of the area. He stated AQ has provided their conditions of approval stating they must obtain the appropriate permits and abide by them. That includes the public roads.

Chair Cieri asked if the wells would remain or if they were temporary. Mr. Pelham replied it had been conditioned one would remain. It was his understanding the second would be abandoned.

Member Wideman noted two documents in opposition of the project, one from White Pine Ranch and one from Mr. and Mrs. Lutz. Mr. Pelham was not familiar with the objection document from White Pine Ranch. Member Wideman noted the White Pine document contained suggestions for conditions, many of which were similar to conditions already in place.

Mr. Pelham noted AQ had reviewed Ms. Lutz's concerns and had responded, and AQ was satisfied with the conditions as written. He pointed out that even if the conditions were not written into the staff report, Washoe County Code still dictated the standards the applicant must meet for the project to obtain permits.

Member Wideman noted White Pine Ranch appeared to be the largest neighboring property and wanted to know if their concerns had been taken into account. Mr. Pelham reiterated he had not received the correspondence.

Member Toulouse asked who would monitor the restoration and revegetation of the site and suggested the time period should be longer than conditioned. Mr. Pelham replied he would do the monitoring inspections and that three years is the typical time period required. He felt the revegetation might occur more quickly due to the fact the area receives more snow than the southern portion of the county. Member Toulouse then verified with Mr. Pelham the revegetation materials would consist of native plants.

John Spencer from the Washoe County Sheriff's Office (WCSO) explained there was to be an agreement in place prior to the beginning of the project that is suitable to the Sheriff. He went on to note one issue is the need for additional staff. There are two deputies permanently in residence in Gerlach. Additionally, the WCSO has an agreement with law enforcement in Modoc County, California, but that is for emergency services only, not routine law enforcement services.

Mr. Spencer went on to explain it would take an officer from Gerlach one hour and 20 minutes to drive to the Vya site in case of an emergency. The proposed agreement included the applicant pay for the salaries and benefits of additional officers and vehicles as required for the project. Chair Cieri asked how medical services would be provided and Mr. Spencer replied that was part of the plan to be coordinated with Kurt Latipow of Fire Services.

Chair Cieri asked Leo Vesely of the Engineering Department if the road to the facility was a dirt road or an improved dirt road. Mr. Vesely replied the facility was adjacent to a county-maintained unpaved road and the applicant would construct two driveway entrances.

Member Toulouse noted the nearby roads were gravel and one of them was closed during winter. Mr. Vesely was unable to verify this. Member Toulouse asked how the polymer proposed to be used breaks down and how it would affect water quality. Mr. Vesely replied it does break down with ultraviolet light and precipitation and the manufacturer claims it is not hazardous to the environment.

Chair Cieri worked with the speakers to determine how they would like to organize their group presentations.

Applicant's Representative Tony Dazzio explained many of the requested speakers were part of one group, Burke and Associates, the general contractor for the Vya camp. He introduced the group, Kevin Burke, Ray Jacobsen, John Frankovich, David Logsdon, Scott Reudy and Daniel Gredvig, representing Ruby Pipeline.

Mr. Gredvig explained processes in progress and completed and permits received thus far regarding the overall pipeline project. He noted the Vya work camp had not been part of the original Environmental Impact Statement (EIS) study, but had been added later and was expected to be authorized by the Federal Energy Regulatory Commission (FERC) as part of the EIS and the certification process. He stated application had been made to utilize State water rights for the project and verified that another well will be drilled and later abandoned. Mr. Gredvig pointed out the camp was to be located on private land and they had an agreement with the landowner to recontour and revegetate.

Member Horan noted the speaker had made reference to federal and other governmental body's authorizations and asked if the actions today were dependent on any of those. Mr. Pelham explained they were not as the Board of Adjustment was there to make the determination under the code whether the use was appropriate in the location given the conditions.

Mr. Dazzio asked Chair Cieri if the group was being held to 15 minutes or if he would extend it to 30. Chair Cieri asked if any other speaker had pertinent information and Mr. Dazzio replied he would like to bring up Mr. Frankovich. Mr. Dazzio thanked Mr. Pelham and the Planning Department for their comments as well as Mr. Spencer for his. He noted they had concerns to discuss regarding conditions and they wished to provide some additional clarifications.

Mr. Frankovich thanked staff for their cooperation and assistance, noting the additional time spent addressing the conditions and standards as this was an unusual project. He stated they believed some of the conditions did not recognize the temporary nature of the project or the overlap between it and the overall pipeline project. They wanted to be sure that if the conditions were satisfied for the pipeline project that they would also be satisfied for the camp and not duplicated. He listed a number of conditions these concerns applied to and requested flexibility, reiterating many of the conditions would be handled by the pipeline company.

Mr. Frankovich then stated they were also concerned with the requirement for the eight-foot fence around the project. They felt it would make the camp more, rather than less visible and noted the lack of residences in the immediate vicinity that would potentially be affected. He pointed out the temporary structures were 14 feet in height and therefore would not be concealed by an eight-foot fence. He also pointed out the area was enclosed by barbed wire, which would keep wildlife out.

Mr. Logsdon surmised if the planned retention basin were removed the Health Department concerns would be eliminated.

[Chair Cieri gave the secretary permission to extend the speaker's time.]

Mr. Logsdon clarified he was discussing Conditions 4a, 4b and 4c. Chair Cieri asked if they had discussed this with the Health Department. Mr. Logsdon replied they had discussed them with Doug [Coulter] and attempted to set up a meeting. They will continue to work with him as they move forward. Chair Cieri noted the Board could not modify the conditions without input from the agency that imposed them. He stated they must vote on the matter today unless the applicant requested a continuance. Mr. Logsdon stated he did not want a continuance. Chair Cieri asked if they would accept the conditions as written and Mr. Logsdon replied no. If no retention basin existed, he believed the items would not be necessary.

Chair Cieri pointed out to Mr. Logsdon that both he and a previous speaker referred to several conditions they wished to have reviewed. He reiterated the Board could not alter the conditions without staff input. Mr. Logsdon stated he would ask their legal counsel to address that issue.

DDA Edwards clarified Chair Cieri's statement, suggesting perhaps the Board might not feel comfortable modifying conditions without first being able to confer with staff to obtain feedback and input. He stated that technically the Board would be permitted to change the

conditions today if they wanted to but the question was not whether or not they could but rather were they felt comfortable doing that. Chair Cieri replied no one on the Board had the knowledge or expertise to make changes to the conditions. Member Harcinske agreed.

Mr. Dazio asked if the Board could approve the conditions contingent on staff approval and that they meet with staff beforehand. Chair Cieri deferred to Counsel. DDA Edwards stated the Board had free rein to condition the granting of a special use permit or variance and could impose reasonable conditions and decide what those conditions are.

Mr. Dazio stated their intention to cooperate to the best of their ability with the exception of some of the conditions. Chair Cieri asked if he had the proposed condition modifications in written form. Mr. Frankovich stated they did not. He reiterated that of the two he discussed, one was asked to be deleted; the other was more for clarification regarding flexibility with regards to duplication of requirements. He asked that 4a, 4b and 4c be deleted.

Mr. Reudy stated they did have the conditions in written form that they would like removed or modified, clarifying they were 1d, 4a, 4b, 4c and 5e. Chair Cieri asked they be presented to the board. Mr. Reudy reiterated the request not to duplicate requirements already imposed on the pipeline.

Member Horan asked Mr. Pelham if he had had discussion with the applicants regarding the modifications being requested. Mr. Pelham stated he and Mr. Frankovich had discussed elimination of the fence requirement. Absent the fence condition his best professional opinion would be to recommend denial. He clarified that conditions imposed by Jim Shafer of the Vector-Borne Diseases program were based on plans submitted. If the plans submitted do not contain the detention or retention structure being referred to, then those conditions are simply irrelevant. He went on to state that, in any case, the conditions must be met to the satisfaction of the department that has imposed them.

Mr. Dazio stated that, upon hearing Mr. Pelham's explanation, in order to get this approved they would be willing to stipulate the fence if staff was willing to remove the District Health Department issues that they feel they are mitigating in other ways. Member Harcinske stated she felt they were deliberating prior to hearing the entire presentation and public comment before getting into details and negotiations.

Mr. Logsdon stated they were not asking the Board to remove or change the Health District conditions, they were stating that when they revise the plan to remove the retention basin and work through the drainage issued with the Engineering Department, they believe they will satisfy the Health District.

Wendi and Ed Lutz, Post Office Box 232, Vya, NV, 96104, spoke in opposition, discussing in detail the effects they believed the project would have on the area.

Pierre Hascheff, Legal Counsel for White Pine Ranch, stated there was not enough time to adequately describe the violations to the area plan, the land use plan and other violations, so they had provided a handout by way of summary. He described a proposal to the applicant to re-route the road, which they thought would mitigate all of the concerns of White Pine Ranch.

Mr. Hascheff pointed out there was no traffic study, just a traffic letter, and the applicant's proposal significantly increases traffic on the gravel road. The construction traffic is

proposed to utilize Route 34, which is 100 feet away from the ranch house. He noted the zoning is General Rural (GR) which allows one unit per 40 acres. The camp would house over 600 people on the 80-acre parcel.

Mr. Hascheff went on to note that several area plan and development code amendment perceived violations were listed in the packet which had been submitted to the Board. He suggested the best option for the project would be a Comprehensive Plan Amendment. Attachment A of the packet displayed the communication extended to the applicant regarding mitigation options. The applicant responded on December 2, 2009, indicating none of the measures would be implemented.

White Pine Ranch felt the case should be postponed to allow the applicant to contact them and propose acceptable mitigation for the project. Mr. Hascheff pointed out the Board did not have the right to modify Health Department conditions as they were a separate agency. He noted there had been no Citizen Advisory Board (CAB) input, there were no provisions for dark-skies lighting or renewable energy and no consultation with Nevada Division of Wildlife (NDOW).

Todd Jaksick, owner of White Pine Ranch, explained his father had owned the ranch since 1972 and it had been in use as a cattle operation since that time. He stated they were in favor of the pipeline and not too concerned about the camp, but were concerned about the potential impacts to the areas outside the camp. He explained the area was a true wildlife resource and the animals cross the road proposed to be utilized for construction of the camp. He went on to note that the residents of the ranch house, their guests, their pets and their cattle often crossed the road, causing safety concerns. He reiterated their concerns could be mitigated but they had not had the opportunity to work them out with the applicant. He felt additional time would allow them to do so.

Washoe County Fire Services Coordinator Kurt Latipow stated the location of the camp placed it out of any organized fire protection district in the county. He conditioned the project on the submittal and approval of a fire protection and emergency medical services (EMS) plan. The plan must address the normal workload that would occur at a facility of this type. The caveat of the condition was minimal or no impact to existing services. The closest existing county service is in Gerlach. A Mutual Aid Agreement does exist with the volunteer fire department in Cedarville, but that is for emergency service, not to provide a baseline of continuous service.

Mr. Latipow noted they had met with applicant and had received preliminary information. Truckee Meadows Fire Protection District has jurisdiction and will also be reviewing the plans. He emphasized he would not sign off on the project until he had an acceptable plan. Chair Cieri asked about keeping staff and equipment on site and Mr. Latipow replied they had no intention of staffing a 24/7 operation on the site. Based on experience and preliminary discussions, he believed the applicant could provide a plan that minimized the impact in the area of fire and EMS. He stated a fire brigade would probably work for this operation. Since the majority of the pipeline will be on Bureau of Land Management (BLM) property, they will be coordinating their efforts to approve the plans with them as well.

Chair Cieri asked where the closest BLM station was located. Mr. Latipow deferred to Member Toulouse, who replied the closest wildland fire protection would be in Sheldon, approximately 20 miles away. Mr. Latipow noted the greatest fire risk for the project was

associated with the grading portion. Once the vegetation was removed, the risk was diminished. The biggest concern centered around 600 people during the construction phase and that was where many of the discussions had been focused.

Chair Cieri asked Mr. Latipow how they were going to respond if there was a fire within the facility. Mr. Latipow replied the intent that had been proposed was to develop a plan for an on-site initial attack force. He added that could be accommodated with the proper equipment and training. He noted the Fire Code was very explicit when it comes to things such as propane tanks, propane fueling, diesel tank fueling, generator operation and kitchen operation. Safeguards would be applied to the project.

Chair Cieri asked if Fire provides EMS. Mr. Latipow replied they did, there is an ambulance in Gerlach. The applicant is working with Modoc County and Surprise Valley EMS to have them propose a plan of service. Washoe County Health Department would have to approve any plan as well as the state EMS authority.

Member Toulouse noted Mr. Latipow had rated the area a high fire risk. He asked if there was a mitigation proposal to limit the potential for fire related to recreational activities conducted in the surrounding areas. Mr. Latipow noted the residents of the camp worked 12-hour shifts and had one day off. Additionally, the Sheriff's Department or Community Development had conditioned that there be no All-Terrain Vehicles (ATVs) or other off-road vehicles permitted other than what was required to run the camp.

Mr. Toulouse asked if the applicant could convert their water trucks to a tactical water tender or something similar. Mr. Latipow replied the application included a specification for a dual-purpose water truck. He has submitted additional specifications that he will be looking for. The applicant is also discussing including a fire engine as part of the equipment for the camp.

Buck Sampson spoke against the project, citing the amount of water required to pressure test the pipe, potential desecration of Indian burial sites and lack of consultation with tribal counsels regarding the pipeline passing through tribal lands.

Alan Moss also spoke against the project, citing the impact on wildlife, and by extension, hunting, fishing and recreation in the area. He also raised questions about the security of the pipeline.

Chair Cieri closed the public hearing and called for a 5-minute break.

Chair Cieri called the meeting to order at 4:30 p.m.

Member Wideman expressed concern that there seemed to be a number of suggestions related to conditions that were based on some resolution at a date to be named later. He had no problem with staff determining when conditions had been met or adjusting that but the reason this is a public process is to provide that transparency. He stated he was not comfortable with any adjustment or negotiation of conditions at a later date outside this process. He noted he was not sure the process was far enough along to make an adequate decision. He also expressed concern that staff had not seen the opposition from White Pine Ranch or had an opportunity to consider it and alter the conditions if necessary.

Member Horan did not feel the condition modifications were as much of an issue as the White Pine opposition. He noted what he had heard was if the road was moved it would alleviate the migration aspects and concerns of the ranch owner.

Mr. Pelham stated he had had a few minutes to review the opposition document and to glance at some of the area plan policies cited. He did not believe some of them applied because they referred to residential zoning, this was not a residential zone. While GR allows one dwelling per 40 acres, it is defined in the code as "other," not commercial or residential.

Mr. Pelham stated DDA Edwards had proposed, and staff would accept, a condition that says: "The permit shall comply with any High Desert Area Plan requirements outlined in the White Pine Ranch opposition as well as any other county requirements, to the extent that they are deemed applicable as determined by the department of Community Development."

Mr. Pelham stated his willingness to review the specific areas of the High Desert Area Plan (HDAP) cited in the opposition to determine if any were missed. As an example, one of the HDAP policies is a maximum of three-to-one slopes in cut-and-fill grading. It was his best estimate this did not apply because this was a temporary use, not permanently altering the land form. Therefore, he would disagree with the opposition.

Chair Cieri noted the historical significance of the region for the Indian tribes needed to be considered and asked if any studies had been conducted. Mr. Pelham replied he had reviewed it with the State Historic Preservation Office (SHPO) who had recommended he speak with the Oregon-California Trails Association (OCTA). OCTA has done an analysis and the location of the camp is not on one of the historic migration trails, but will be visible from one of the trails.

Chair Cieri clarified his question was in regards to preserving ancient Indian historic values. Mr. Pelham replied an inventory of the site is not required. It is private property and they have a certain development right. Subject to the SUP, the activities that they are requesting are allowed on that property. If the land was under the jurisdiction of the BLM, standards would be different. Mr. Pelham clarified if historical artifacts are uncovered they are required to report that to SHPO, who has two days to get to the site and conduct an inventory.

Mr. Pelham reiterated the importance of the fence, explaining it would mitigate interaction of residents of the camp and wildlife or livestock. Chair Cieri asked if any study regarding livestock or wildlife movements in the area was required and Mr. Pelham stated there was not.

Chair Cieri asked Mr. Pelham if he knew how much water would be required to charge the pipeline. He did not, but suggested the applicant would.

Member Toulouse noted a letter received from the Summit Lake Tribe expressing an interest in having a trained cultural monitor participate in the process and wondered if that had been communicated to the applicant. If so, would the applicant be adverse to having those monitors participate in the process and be present during any excavation of the site? Mr. Pelham replied that was not a requirement. He reiterated the requirement to contact SHPO if anything of potential historical value was uncovered. Mr. Toulouse verified he understood it was not a requirement but wanted to know if the applicants had been informed and if so what their

reaction had been. Mr. Pelham replied he had not discussed it with the applicant but the letter had been attached to the staff report.

Member Harcinske expressed concerns that between the tribe, the ranch and the Lutzs, there was a significant amount of opposition from the immediate neighbors regarding the project. She stated it was hard for her to reconcile the use of an SUP and Variance processes to put a town in the High Desert area.

Member Toulouse expressed concern with a negotiation process during the meeting or things being negotiated on the fly. He would prefer it be returned to staff and that staff have time to digest the information and discuss it with the applicant. As was stated earlier, a decision seemed premature.

Chair Cieri asked about a pamphlet containing requested changes to conditions, stating he had not received it. Ms. Robinson clarified the Board had received a single copy of a one-page document containing that information.

Mr. Dazio stated that, in the spirit of cooperating with staff recommendation, they were not objecting to the recommendations based on approval with conditions. He wanted to clarify their position regarding the conditions placed by the Health Department, stating they had a recommendation that may make sense to the Chair and the Board.

Mr. Logsdon reiterated they were not opposed to the fence and believed they could solve the Health District criteria through alternate means. Therefore they would not request to remove the items presented earlier. They would like some flexibility to work with the Engineering Department and the District Health Department to satisfy their needs.

Chair Cieri asked how much water it was going to take to charge the gas line and how much water it would take out of the valley. Mr. Gredvig stated he did not have the information at hand but if the pipeline were to be filled from one end to the other it was millions of gallons. They would not be filling the entire pipe but cascading the water from one test section to another. He stated the water rights they are securing are either state water rights that are available or by doing a change of use of an existing right not being used. The water will be returned to the basin. The wells at the camp would not be used for hydrostatic testing.

Ms. Robinson suggested to the Chair that for clarity the applicant might read the requested condition changes into the record, sign the sheet of paper they are written on and give it to the Clerk.

Mr. Logsdon reiterated they were going to agree to put the fence on the property to satisfy Condition 1d. Regarding Health Department Conditions 4a, 4b and 4c, they would like to work with the Engineering Department and the Health District to revise the retention pond and work through the issues with alternate methods. The last item was 5e regarding the raised pad draining into a sanitary sewer system in the garbage washing area. He explained they are contracted with a waste disposal company. The garbage from the kitchen will be placed directly in plastic bags and into the 30-yard dumpster, which will be taken off-site by the company. Therefore there will be no washing of garbage facilities on site.

Chair Cieri read a note he had received which stated the project would use 66 million gallons of water for dust mitigation.

Member Horan felt the change of conditions as read into the record were minimal, they were accepting the fence and the Health Department requirements would be met. He noted DDA Edwards has suggested wording that they will review the High Desert Plan issues that were brought up in the White Pine Ranch opposition to determine if they comply. If they do not then there will be an issue. He pointed out White Pine was not opposed to the pipeline, they did have concerns about the road and migration, but there is not a question that there will be an impact. He went on to say that with Mr. Pelham's presentation and the subsequent discussion, he was comfortable with approving the project.

Member Toulouse was concerned that the changes were being made without being under public review. They had not been posted to the web, people had not seen them, only the limited number of people in the meeting were reviewing them. He felt they should maintain as open a process as possible so people should see what has been given to the Board. He stated it could be continued, or voted on today, but it did not make sense to him to continue with a process that is not as open as he would like it to be.

Member Horan stated he appreciated Member Toulouse's comments, but during the process of the hearings, they are continually given information from the public as they discuss the matters, like what they received from White Pine Ranch. That does not mean it is not part of the public forum. The fact that it was presented at the meeting and not posted anywhere should not prevent them from making a decision. Information received at a public meeting should be taken into consideration.

Chair Cieri asked for the number of notices mailed to the public and the date they went out. Mr. Pelham answered that there had been a total of 31 notices sent on November 20th. In response to Chair Cieri's inquiry regarding the CAB's receipt of notification, Mr. Pelham explained the CAB had not meet during the application cycle but had been provided with a copy of the application around October 18th and their comments had been requested. No comments had been received.

Chair Cieri asked if any of the members had had the opportunity to review the White Pine Ranch opposition document. Member Harcinske answered that she had glanced at it and it seemed like there were going to be some significant impacts to the ranch. She pointed out she had not heard discussion regarding accommodating their request. She went on to note there was no question the project would have impacts. Her question was whether they were or were not detrimental to the area. She also felt that a decision was premature because so many items were still fluid and did not feel like she knew what she was voting for. She stated it was their job to hear the public input and do the best they could to be sure projects are meeting the requirements of the Development Code and area plans.

Member Horan asked what the process would be if the Board recommended denial. Ms. Robinson stated one option was denial without prejudice. A denial prevents the applicant from returning for 12 months with another application. They are free to appeal the decision to the Board of County Commissioners (BCC). Denial without prejudice allows them to return with a new application within that 12-month time period and is also appealable to the BCC.

Member Wideman suggested they obtain clarification regarding the impacts of continuation to the next meeting, whether or not there would be a requirement for a new application, or if it would simply provide opportunity for further review and negotiation. Ms.

Robinson pointed out the applicant must agree to a continuance, so that would need to be the first step in that conversation.

Mr. Frankovich stated time did not permit them to continue the item. He then stated the applicant had not received the White Pine document until that day at the meeting. He felt it was unfair for an opponent who wants a state road moved to come in at the last day with their issues and then for the Board to suggest they require more time to consider those issues.

Member Toulouse asked Mr. Jaksick to verify an earlier statement that he had made numerous attempts to negotiate and speak with the applicant. Mr. Jaksick replied that was an accurate statement. He had called and met with them and given them a copy of Attachment A. The applicant had indicated they would be contacting Mr. Jaksick, and did so on December 2. Mr. Jaksick stated he had provided them with the document on November 22 or shortly thereafter. For the record, he wished to make it clear that the submitted document contained his comments as of that day. Five minutes was insufficient time to address all of his concerns verbally, hence the written format for the record.

Mr. Frankovich stated he wished to correct the record, that Mr. Hascheff's comments were not entirely accurate. He acknowledged that there had been a meeting, at which time White Pine stated they would submit their concerns in writing, which they did. He then contacted Mr. Hascheff explaining they hoped to be able to provide a written response that week. A representative from the pipeline company met with Mr. Jaksick the Friday prior to the meeting. They agreed they were not going to be able to resolve the issues because Mr. Jaksick Sr. was not available to make decisions and they were not willing to agree to move the road at that point. Mr. Frankovich stated he did call Mr. Hascheff to tell him they would not be providing the written response. Mr. Hascheff acknowledged that as he was aware of the conversation between Mr. Jaksick and the pipeline representative. Mr. Frankovich stated they had been aware of the concerns about the road for about a week, they did not know about the other issues outlined in the opposition document.

Member Wideman expressed his concern that whether they approved or denied the project there would be an appeal. He wondered if it was possible to allow them time to work things out and convening for a special meeting. Ms. Robinson reiterated a continuance could not be provided without the applicant's approval. She noted a special meeting would require funding and the county was under severe budget constraints.

Member Horan asked for assistance in the wording and moved to approve with the modification of Health Department conditions 4a, 4b and 4c so that they would comply with Health Department.

Mr. Pelham suggested the conditions did not to be modified, because in every case, the conditions have to be met to the satisfaction of that department. If they eliminate the need for the rock cobble then they have complied with the condition. He went on to note that if they choose to add the condition as suggested by the District Attorney, addressing the White Pine letter, he had read that into the record and could do it again if it would be of benefit to the Board.

Ms. Robinson requested the Chair ask if the applicant would be willing to return for a special meeting in January. Chair Cieri did so and Mr. Frankovich replied that they would not be willing.

Member Horan moved to approve conditionally, as amended, Special Use Permit Case No. SB09-014. Mr. Pelham clarified the new condition would be numbered 1n and read as follows: "The permit shall comply with any High Desert Area Plan requirements outlined in the White Pine Ranch opposition as well as any other county requirements, to the extent that they are deemed applicable as determined by the department of Community Development." The motion was seconded by Chair Cieri. The vote was opposed by Members Harcinske, Wideman and Toulouse and Chair Cieri so the motion failed to pass by a vote of four to one.

Member Harcinske stated she was unable to make findings for consistency or issuance not detrimental.

DDA Edwards recommended clarification, perhaps with another motion, whether it be denied or denied without prejudice. Ms. Robinson clarified for the Board all that had happened was a motion that failed to pass. If there was to be a denial they needed to make a motion for denial, stating whether it was with or without prejudice.

Chair Cieri requested a motion for denial. Member Wideman moved to deny without prejudice Special Use Permit Case No. SB09-014. The motion was seconded by Member Harcinske and passed unanimously. Ms. Robinson requested clarification the vote was five to zero in favor of the denial. Member Horan clarified he opposed the denial so the vote was four to one.

Member Wideman moved to deny without prejudice Variance Case No. VA09-007. The motion was seconded by Member Harcinske and passed by a vote of four to one, Member Horan voting against.

OTHER ITEMS

Chair Cieri reiterated the next meeting would be on February 1, 2010 at 1:30.

Ms. Robinson noted the Visual Simulations Workshop would be scheduled for a future meeting. Chair Cieri stated it would be on February 1.

ADJOURNMENT

There being no further business to come before the Board of Adjustment, the meeting adjourned at 5:12 p.m.

Respectfully submitted,

Dawn Spinola, Recording Secretary

Approved by Board in session on February 1, 2010

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