



# 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

February 1, 2010

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, February 1, 2010 at 1:30 p.m., in the Washoe County Health Department Conference Rooms, 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  
Mary S. Harcinske  
Philip Horan  
Kim Toulouse

Members absent: Robert Wideman

Staff present: Adrian Freund, FAICP, Director, Community Development  
Kim Robinson, Planning Manager, Community Development  
Eva Krause, Planner, Community Development  
Don Morehouse, Planner, Community Development  
Trevor Lloyd, Senior Planner, Community Development  
Nathan Edwards, Deputy District Attorney, District Attorney's Office  
Clara Lawson, Engineering  
Dawn Spinola, Recording Secretary, Community Development

### PLEDGE OF ALLEGIANCE

Member Toulouse led the pledge to the flag.

### APPROVAL OF AGENDA

In accordance with the Open Meeting Law, Member Horan moved to approve the agenda of February 1, 2010. The motion, seconded by Member Harcinske, passed unanimously.

**APPEAL PROCEDURE**

Ms. Robinson recited the appeal procedure for items heard before the Planning Commission.

**APPROVAL OF MINUTES**

Member Harcinske moved to approve the minutes of December 3, 2009. The motion was seconded by Member Horan and passed unanimously.

**PUBLIC COMMENT**

None

**CHAIR AND BOARD ITEMS**

None

**DIRECTOR'S ITEMS**

None

**CONSENT ITEMS**

None

**PROJECT REVIEW ITEMS**

**AGENDA ITEM 1**

(Continued from December 3, 2009) 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 announced the case is requested to be continued to the April meeting. She noted a staff member of Nevada State Lands (NSL) was present and available if the Members had any questions for them.

Applicant Juliet Ashton confirmed she wished to postpone the hearing and explained her reasoning for that decision.

Applicant's Representative Wayne Ford stated they would present their merits at the next meeting, along with some minor adjustments to the proposed variance that might facilitate other party's concerns.

Deputy District Attorney Nathan Edwards (DDA Edwards) suggested the Chair offer the public an opportunity to speak on the item. Chair Cieri did so.

Elise Randall of NSL stated they preferred to comment on the case now rather than in April, as no representatives planned to attend that meeting. She and another member of the staff were there at the Board's request because of conditions or mitigation approvals noted in the prior hearing. She explained her department's statutory responsibility is to manage urban lots within the Lake Tahoe Basin. The office has taken a historic stance of not being in favor of any variance, not calling out any specific variance. She noted a propensity for increased encroachment onto open space when a variance is granted to the neighboring property.

Member Harcinske asked Ms. Randall if it was correct that, unless something was provided in writing that states differently, the department opposes variances to properties adjacent to open land owned by NSL. Ms. Randall verified this was correct.

Chair Cieri closed the public hearing.

Member Horan moved to continue Variance Case No. VA09-008 to the meeting of April, 2010. The motion was seconded by Member Harcinske and passed unanimously.

## **AGENDA ITEM 2**

**PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-017 (MOUNT ROSE ACADEMY) – To construct and operate a child day care, preschool, state accredited kindergarten and state accredited first grade educational facility pursuant to Table 110.302.05.2 and Article 810 of the Development Code (Washoe County Code Chapter 110). The project is located on the south side of Mount Rose Highway (SR 431), at the northeast corner of the intersection of Edmonton and Butch Cassidy Drives, and approximately one-quarter mile west of Galena High School. The requested facility is located within a ±3.16-acre portion of a parcel that totals ±9.18 acres. The parcel is designated Neighborhood Commercial/Office (NC) in the Forest Area Plan, is located within the jurisdiction of the Galena-Steamboat Citizen Advisory Board, and is in Washoe County Commission District No. 2. The property is within portions of Section 30, T18N, R20E, MDM, Washoe County, Nevada. (APN 049-402-07)**

**AND**

**PUBLIC HEARING: ADMINISTRATIVE PERMIT CASE NO. AP09-002 (MOUNT ROSE ACADEMY) – To construct and operate a child day care and preschool facility pursuant to Table 110.302.05.2 and Article 808 of the Development Code (Washoe County Code Chapter 110). The project is located on the south side of Mount Rose Highway (SR 431), at the northeast corner of the intersection of Edmonton and Butch Cassidy Drives, and approximately one-quarter mile west of Galena High School. The requested facility is located within a ±3.16-acre portion of a parcel that totals ±9.18 acres. The parcel is designated Neighborhood Commercial/Office (NC) in the Forest Area Plan, is located within the jurisdiction of the Galena-Steamboat Citizen Advisory Board, and is in Washoe County Commission District No. 2. The property is within portions of Section 30, T18N, R20E, MDM, Washoe County, Nevada. (APN 049-402-07)**

Chair Cieri opened the public hearing.

Mr. Morehouse reviewed the staff report dated January 13, 2010. He pointed out a similar project had been approved in the same location in January of 2005.

Chair Cieri asked the members to disclose if they had been contacted regarding the case; none had. DDA Edwards pointed out this was the time for disclosures in general, not just contacts or communication from involved citizens. This would include conflicts of interest, ownership of nearby property, business relationships, commitments in private capacities, pecuniary interests, loans or gifts. The members indicated they had nothing to disclose.

Mr. Morehouse went on to note the property was located near Galena High School and explained the code provisions that required the special use permit and the administrative permit for that type of project in the Neighborhood Commercial (NC) zoning. He pointed out that grading would require a separate special use permit so was not included in the current case. Approximately six acres of the nine-acre property would not be utilized for building and would remain in its current natural state.

Mr. Morehouse explained the project was designed to serve 90-120 students, although the initial number of attendees would be fewer. The children would be dropped off and picked up from the facility. He stated there were no adverse comments from any of the reviewing agencies. The Galena-Steamboat Citizen Advisory Board (CAB) had recommended denial based on traffic impacts, specifically elimination of the left turn from Edmonton Drive onto Mount Rose Highway.

Member Horan asked if the application approved in 2005 had lapsed and how this proposal was different from the one approved. Mr. Morehouse replied it had lapsed and for the most part was a very similar project. Member Horan asked if it was to be a charter school concept requiring approval by Washoe County School District (WCSD). Mr. Morehouse replied it was not part of WCSD, it was a private facility. Member Horan asked who would license the facility then withdrew the question, surmising it could be answered later by the applicant.

Chair Cieri called Clara Lawson, Washoe County Traffic Engineer. Ms. Lawson stated she had met with the Regional Transportation Commission (RTC) and Nevada Department of Transportation (NDOT) regarding the prohibition of the left turn and they had unanimously agreed the condition prohibiting the turn should not be placed on the project. She had received suggestions to create a school zone for the project and felt that since the children were so young and were only to be dropped off and picked up that there was no real need. If the primary means of transportation for the children changed, a condition was in place directing the school to install a school flasher, rather than installing a school zone.

Member Toulouse referred to a letter from RTC requiring construction of deceleration and acceleration lanes on Mount Rose Highway (SR 431) and asked who would bear the cost of that construction. Ms. Lawson replied the applicant would be required to pay for the construction but would receive RTC credits. Member Toulouse asked how long the process from approval through construction takes. Ms. Lawson replied she did not know. Member Toulouse stated his concern was the project would be completed long before the lanes, worsening traffic problems in the area. Ms. Lawson speculated the process was not that long, perhaps six months and certainly not more than a year. She pointed out the construction of the

lanes and the project would be concurrent, so the facility would not be open for an entire year before the lanes were completed.

Applicant's Representative Kerry Rohrmeier stated they concurred with the conditions and findings and preferred to reserve their allotted speaking time to respond to any questions that may arise. She explained the originally-approved application had lapsed due to prohibitively high costs of construction and noted the only changes were fewer classrooms, a larger facility and improved architectural design.

Ms. Rohrmeier went on to note that it is not a charter school; it is private and will be accredited by the state. Washoe County does not need to approve private schools. She stated it would be an all-parent drop-off facility so there would be no buses or other public transportation. If conditions changed they would be happy to put in the flashers, but there are no anticipated changes to that status. Ms. Rohrmeier also stated a county building permit would not be issued until the project obtains NDOT approval for required improvements.

Residents Dennis Wilson, Brian Gardner, Nancy and Carlos Romo, Tristan Armstrong, Sharon Bahry, Larry Smith and Vin Keenan spoke in favor of the project but expressed concerns about traffic impacts and safety. Suggestions were made regarding installation of a traffic light and the possible extension of Butch Cassidy Drive to alleviate the problems. Most spoke in opposition to the condition forbidding a left turn from Edmonton Drive onto westbound SR 431. Resident Richard Boyce noted the subject parcel backed up to his and would affect his property in terms of noise, value and privacy and that it would block his view.

Ms. Rohrmeier reiterated the left turn restriction had been removed by Ms. Lawson, RTC and NDOT. She addressed Mr. Boyce's concern regarding privacy and noise, noting only 3.16 acres of the 9.18-acre property were to be developed, the rest remaining in its current state.

Applicant's Representative Paul Solaegui stated his firm had prepared the traffic study for this project for both applications. He noted the recommendation to prohibit the left turn onto SR 431 was based on predictions of future traffic volumes. He went on to restate the restriction had been removed and that his recommendation for a long-term solution was the extension of Butch Cassidy Drive to Thomas Creek. He also noted the solutions were not currently needed; the traffic volume was a future difficulty. He pointed out his firm had recommended the deceleration lane and the turn restriction but he was happy to rescind the restriction.

Mr. Solaegui acknowledged concerns mentioned about the driveway coming in off Edmonton. He pointed out the driveway was designed for one-way circulation, so no traffic would exit onto Edmonton. He went on to note the intersection of Edmonton and SR 431 did not meet the mandated federally-established criteria for installation of a traffic signal.

Member Harcinske asked how much traffic the project would add proportionately to the existing high school traffic. Mr. Solaegui stated the project did not generate much traffic, but the traffic studies could not differentiate high school students from the other types of traffic making the turn, so he was unable to answer the question.

Chair Cieri asked if the study was conducted while school was in session and Mr. Solaegui confirmed it was. He stated the predictions made for the traffic volumes generated by the project were based on manuals compiled from statistical national averages. Chair Cieri asked how the peak time traffic at the beginning and end of the school day affect traffic. Mr.

Solaegui stated the high school and the proposed school arrival hours would overlap in the mornings and the departure hours were separated.

Chair Cieri asked Mr. Solaegui to hazard a guess at the cost to extend Butch Cassidy. Mr. Solaegui replied he was unable to do so because he does not engage in road construction, but the problem was that the dedicated right of way for the extension did not exist. In addition to the improvement cost, there is also the need to acquire the right of way, which would be at the mercy of the homeowners. At Chair Cieri's request, Mr. Solaegui described his qualifications as a Professional Traffic Engineer.

Member Harcinske asked Ms. Rohrmeier if they had considered creating initiatives for carpooling. Ms. Rohrmeier replied they had. Additionally they intended to invite local residents to walk to the school when possible. Member Harcinske noted the parcel had potential for future RTC Ride bus service and asked if the applicant planned to work with RTC with regards to a bus stop. Ms. Rohrmeier responded affirmatively.

Chair Cieri closed the public hearing.

Mr. Freund noted the Forest Area Plan had a policy encouraging landowners, NDOT, RTC and the county to work together towards the extension of Butch Cassidy Drive to Thomas Creek. However, ultimately the dedication of right of way along the extension would occur on a piece-by-piece basis as the other properties develop over time. The dedication of the right-of-way would be a condition placed on the applicant at the time they developed their properties.

Ms. Lawson clarified the county had not completed its own traffic study; it relies on the applicant to provide the data at the time they submit the application. In response to a question from Member Toulouse, Ms. Lawson indicated she felt the infrastructure as it exists was adequate to address the increased vehicle trips per day. Member Toulouse asked what the current and projected levels of service are and Ms. Lawson was unable to answer as she had not had the opportunity to collect the file prior to the meeting.

Member Harcinske noted it appeared as though the high school currently created greater traffic problems than the proposed school would and requested assistance crafting the amended condition.

Member Horan noted much of the information and comments dealt with traffic, a good deal of it objecting to the prohibition against the left turn at SR 431, and that that was no longer an issue. He suggested it was only natural to be concerned when facing increases in traffic and that there was always a safety issue. He felt the traffic issues had been adequately addressed in the application and it was not in the Board's realm to discuss the extension of Butch Cassidy. He did not feel that concern about increased traffic was a reason to object to the improvement proposed by the application.

Chair Cieri stated his observation was similar to Member Horan's, that it appeared everyone was in favor of the school but traffic was the underlying issue. He noted the Board members were not experts, that they relied on experts and it was not the Board's position to provide solutions.

Member Toulouse observed that only one person spoke in opposition of the project, most were in favor. He also noted the condition that had caused the most concern had been

removed. He acknowledged Mr. Royce's concern regarding the devaluation of his property but pointed out it could not be said at this point in time if that would occur or not. He agreed with Chair Cieri that he didn't see a reason why the project should not be approved.

Member Horan requested assistance crafting the motion. Mr. Freund noted Condition o was the condition in question and suggested they may add language indicating the left turn was permissible, or that they may state that separately.

DDA Edwards offered an addition to Condition o which states: "It shall not be a condition of this Special Use Permit that traffic be prohibited from turning westbound onto State Route 431 from northbound on Edmonton Drive." He surmised NDOT or RTC might have the ability to override the condition but the language would be satisfactory for the Board's purposes.

Member Harcinske moved to approve conditionally, amended as recommended by Counsel, Special Use Permit Case No. SB09-017. The motion was seconded by Member Toulouse.

Member Horan noted that, in particular, the finding of Issuance Not Detrimental had been clearly made on a sound basis.

The motion 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 an educational facility, in that there are no other facilities that might be utilized in this location;
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 any military installation, as there are no military installations in that area of Washoe County.

Member Harcinske moved to approve conditionally, including the same amended condition as SB09-017, Administrative Permit Case No. AP09-002. The motion was seconded by Member Horan and passed unanimously.

Member Horan reiterated that the finding had been made that the issuance was not detrimental.

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 an educational facility, in that there are no other facilities that might be utilized in this location;
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, as there are no military installations in that area of Washoe County.

### **AGENDA ITEM 3**

**PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB09-016 (GERLACH TEMPORARY INVENTORY YARD)** – To establish a temporary storage facility on 60 acres of an ±84.8-acre property for a period of approximately 3 to 5 months as authorized in Section 110.810 of the Washoe County Development Code. The purpose of the facility is to store and transfer materials associated with the Ruby Pipeline project located in Northern Washoe County near Vya. The project is located south and west of State Hwy 447 in the town of Gerlach. The ±84.8-acre parcel is designated General Rural (GR) in the High Desert Area Plan, and is situated in a portion of Section 14, T32N, R23E, MDM, Washoe County, Nevada. The property is located in the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN: 071-220-28)

Chair Cieri opened the public hearing.

Mr. Lloyd reviewed the staff report dated January 22, 2010. He listed the equipment to be used on the property and noted the applicant had demonstrated an existing agreement with Gerlach General Improvement District for the use of their water.

Mr. Lloyd explained the applicant had proposed a phasing plan to minimize the impacts. The applicants had conducted an informational community meeting and no opposition was heard. Mr. Lloyd presented a list of changes proposed for the conditions and provided a copy to each of the Board members. The changes are listed below:

Existing

- 1g. The applicant shall install a 6-foot tall (minimum) chain link fencing with barbed wire around the vehicle and pipe storage areas.

Proposed

- 1g. ***The applicant shall install a bollard and chain system at the entrance of the facility to restrict access to the site as requested by the Washoe County Sheriff's Office.***

Mr. Lloyd explained Community Development was undecided whether to support this revision. The Sheriff's Office had recommended the bollard and chain and Union Pacific Railroad had indicated a fence would be problematic.

Existing

- 1h(e). Hours of operation will be limited to the hours of 6:00AM to 6:30PM.

Proposed

- 1h(e). ***Typical hours of operation of the facility will be from 6:00AM to 6:30PM. However, the hours of operation may be extended from 5:00AM to 8:00PM due to not being able to control the Union Pacific Railroad delivery schedule.***

Mr. Lloyd indicated Community Development staff was not opposed to this change.

Existing

- 2f. All internal roads and parking areas subject to vehicular traffic shall be stabilized with Polypavement, durablend, or approved equal. The County Engineer shall determine compliance with this condition.

Proposed

- 2f. ***All internal roads and parking areas subject to vehicular traffic shall be stabilized with gravel. The applicant will have a water tender on site and the dust shall be stabilized with water. The applicant will conform to the dust control measures consistent with Washoe County District Board of Health Regulations Governing Air Quality Management, Section 040.030.***

Existing

- 2i. Prior to approval of any grading or building permit the applicant shall provide an estimate, acceptable to the County Engineer, from a contractor licensed in the State of Nevada for complete restoration of all roadways utilized by this project, to pre-project condition. The applicant shall provide financial assurance acceptable to the County Engineer, in an amount equal to 120% of the estimate. The financial assurances will be held by Washoe County until the roadway restoration has been completed and approved by the County Engineer.

**Proposed**

- 2i. ***The applicant shall submit a road use agreement and maintenance plan prior to hauling any pipe from the inventory facility relating to the maintenance and restoration of roadways utilized for this project.***

**Existing**

- 2j. The applicant shall prepare a roadway maintenance plan for all county maintained roads utilized in by this project. The maintenance plan shall address which roads are to be maintained, when roadway maintenance is to be performed, what maintenance methods are to be utilized. The County Engineer shall determine compliance with this condition.

**Proposed**

- 2j. ***The applicant shall submit a road use agreement and maintenance plan prior to hauling any pipe from the inventory facility relating to the maintenance and restoration of roadways utilized for this project.***

**Staff Compromise for 2i & 2j**

***Prior to approval of any grading or building permit the applicant shall enter into a road use agreement and maintenance plan relating to the maintenance and restoration of roadways utilized for this project. The applicant shall provide an estimate, acceptable to the County Engineer, to implement the road use agreement and maintenance plan. The applicant shall provide financial assurance, acceptable to the County Engineer, in an amount equal to 120% of the estimate. The financial assurances will be held by Washoe County until the roadway restoration has been completed and approved by the County Engineer.***

Mr. Lloyd stated the applicant and the Engineering Department had reached an acceptable compromise for Condition 2i, which reads as follows:

***Prior to hauling of any pipe from the inventory facility the applicant shall enter into a road use agreement and maintenance plan relating to the maintenance and restoration of roadways utilized for this project. The applicant shall provide an estimate, acceptable to the County Engineer, to implement the road use agreement and maintenance plan. The applicant shall provide financial assurance, acceptable to the County Engineer, in an amount equal to 120% of the estimate. The financial assurances will be held by Washoe County until the roadway restoration has been completed and approved by the County Engineer.***

Condition 2j will be deleted.

**Additional Staff Condition 1i**

- 1i. ***Assuming access has been granted by the Union Pacific Railroad. The applicant shall not prohibit or restrict access to the Gerlach General Improvement District***

***(GGID) through the subject property. The Department of Community Development shall determine compliance with this condition.***

Mr. Lloyd stated DDA Edwards had advised an additional finding must be made and read it into the record. It states: "High Desert Finding(s). That the community character can be adequately conserved through the mitigation of any potential negative impacts and that no significant degradation of air quality will occur as a result of the permit.

Chair Cieri asked if anyone was living on the site and Mr. Lloyd responded negatively. Indicating the fencing issue, Chair Cieri then asked about the possibilities of vandalism or theft but noted the pipe segments to be stored were 42" and therefore not easily transportable. Mr. Lloyd confirmed large equipment was required to move the pipe segments.

Chair Cieri called for disclosures. Member Toulouse noted he works for Nevada Department of Wildlife (NDOW), who has been asked to provide comment on the Ruby Pipeline project. He deferred to Counsel for guidance. DDA Edwards asked Member Toulouse if it was true that he had not been a part of the review and Mr. Toulouse acknowledged that was correct. DDA Edwards then asked if member Toulouse's job at NDOW, and the fact that NDOW is involved in review of the pipeline, would materially affect his independence of judgment in ruling on the case. Member Toulouse felt there was no conflict of interest and the circumstance would have no material affect on his decision making. No other members had anything to disclose.

Member Horan requested staff make a recommendation regarding the fence. Mr. Lloyd explained he had provided the condition prior to finding out about the positions the Sheriff's Office and Union Pacific had adopted regarding the matter. In his best judgment, based on Union Pacific's position, the fencing requirement should be eliminated, with the exception of the bollard and chain system at the entrance.

Member Harcinske asked if the proposed revisions had been discussed at the community meeting. Mr. Lloyd explained the meeting had been for informational purposes and been in an informal format. He did not believe the conditions had been discussed with the community.

Chair Cieri asked if the property was owned by Union Pacific and Mr. Lloyd replied it was.

Applicant's Representative Scott Reudy gave a presentation further explaining the details of the project. In response to a question posed by Member Horan, Mr. Reudy indicated working hours were dependent on daylight. Mr. Horan suggested the condition be changed to reflect that and Mr. Reudy indicated that would be acceptable, although the hours requested would be sufficient. Mr. Reudy noted the pipe would arrive by truck as well as by rail.

He went on to note the plans they had presented to Community Development and the citizens had never depicted a surrounding fence. Additionally, he had provided letters from two residents stating the fence was not necessary, as well as a letter from Union Pacific stating the fence was problematic.

Chair Cieri requested more information regarding the movements of the train. Lynn Christensen of El Paso Pipeline explained the cars arriving with the pipe would be diverted off the main track to side tracks and unloaded from there.

Member Toulouse asked if the applicant would be willing to stipulate native materials be used for revegetation. Mr. Reudy referred to Condition 1e, requiring they work with the county to ensure their satisfaction with the choice of seed mix.

DDA Edwards asked what the arrangement was that the applicant, Pe Ben USA (Pe Ben) could make decisions regarding Union Pacific-owned property and use it for a storage yard. Mr. Reudy explained Pe Ben had a lease agreement with Union Pacific. Union Pacific had signed the application along with a letter stating Pe Ben was authorized to sign. Mr. Reudy verified the project was being done with Union Pacific's permission.

Chair Cieri closed the public hearing.

Member Horan reiterated the condition regarding the hours should be revised to clarify if it was going to be set hours or daylight hours. Mr. Lloyd noted the condition would be difficult to enforce regardless of the language, but if the Board wished the condition changed staff would not object. Chair Cieri pointed out the applicant had already agreed to the hours and since the cars were to be unloaded off a spur there was no urgency.

Member Toulouse expressed concern regarding operational hours potentially affecting businesses located near the site and thought the condition should be specific. Member Horan explained he did not have an issue with the hours of operation, he felt they should not put in conditions that were not going to be enforced. Mr. Lloyd pointed out that if there were complaints they hours could be enforced.

Chair Cieri stated he intended to support the project and requested a motion.

Chair Cieri called for a five-minute break at 3:30 p.m. and called the meeting to order at 3:45 p.m.

Mr. Lloyd read the revised conditions into the record.

Member Harcinske moved to approve conditionally, as amended to include the revised conditions and the additional finding, Case No. SB09-016. The motion was seconded by Member Horan 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 High Desert 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 temporary inventory yard, 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;
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. High Desert Finding(s). That the community character can be adequately conserved through the mitigation of any potential negative impacts and that no significant degradation of air quality will occur as a result of the permit.

#### **AGENDA ITEM 4**

PUBLIC HEARING: AMENDMENT OF CONDITIONS CASE NO. AC09-007 (SIERRA NEVADA TEEN RANCH) – To amend Condition #7 of the Special Use Permit case number SB07-019 to extend the time for completion of each phase by two additional years from the original date of approval by the Washoe County Commission such that Phase One will be extended to February 12, 2012, Phase Two will be extended to February 12, 2014, Phase Three will be extended to February 12, 2016 and Phase Four will be extended to February 12, 2019 as authorized in Section 110.810 of the Washoe County Development Code. The project is located in Bedell Flat, east of the Sierra Ranchos/Rancho Haven communities. The ±29-acre parcel is designated General Rural (GR) in the North Valleys Area Plan, and is situated in a portion of Section 4, T23N, R19E, MDM, Washoe County, Nevada. The property is located in the North Valleys Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN: 079-210-15)

Chair Cieri opened the public hearing.

Mr. Lloyd reviewed the staff report dated January 22, 2010. He explained the extension dates were not based on the original approval date, but on the date of an appeal denied by the Board of County Commissioners. He went on to explain that, per Section 810.65, a special use permit shall expire and become null and void at the time specified in the permit. Further, the time period may be extended by the Board of Adjustment. Requests for time extensions shall be in writing and shall be submitted prior to the expiration date. Mr. Lloyd noted the application and the written request were submitted on November 25, 2009, which was prior to the original expiration date of December 6, 2009

Mr. Lloyd explained that the reason for the extension request had been made so the applicant might have more time to work with permitting issues with the Bureau of Land Management (BLM). He noted there is nothing in code requiring a critical review of the justifications for the extension request. What is required is that the findings from the original special use permit are still applicable, and that no material change in the circumstance has occurred to warrant denial of the request to extend. Mr. Lloyd stated the item had been heard before the CAB on January 11, 2010 and received unanimous approval. Some attendees had expressed opposition.

Chair Cieri asked if any work had been done, any permits requested. Mr. Lloyd replied there had been no requests through the Community Development department that he was aware of. He did not know if there had been requests to other departments. He stated an

application had been made with BLM and the approval was still in process. Mr. Lloyd had contacted BLM who had told him they were still waiting for submittal of the environmental analysis application. At Chair Cieri's request, Mr. Lloyd reiterated that to the best of his knowledge no requests for permits had been made to the county.

Members Horan, Harcinske and Toulouse and Chair Cieri disclosed they had all received e-mails in opposition to the applications. DDA Edwards asked for any other disclosures and there were none.

Applicant Marvin Neal explained one of the conditions had required he provide documentation of legal access from the site to a public right of way. He stated they made this application prior to submitting the application for the special use permit, but it had taken the BLM some time to review it. They had been told the review would only take six months and they had filed complaints to appropriate agencies regarding the extensive amount of time the BLM had taken so far.

On January 7, 2010, Mr. Neal received an e-mail from the BLM which contained the wording for the official documentation as well as a copy of the actual right of way. Mr. Neal provided copies to the Board for their review. He explained that circumstances had arisen prohibiting the opportunity to provide the documentation to their attorney for review and approval. Mr. Neal emphasized there would be no reason to start the building process without having the approved right of way in place.

Mr. Neal asked, if a special use permit could be extended, was it appropriate for the special use permit to contain a condition outlining a time frame for the project? DDA Edwards asked if Mr. Neal was objecting to the time frame provided in the original special use permit and Mr. Neal replied he was not. DDA Edwards explained the extension was discretionary, that the code says the time period may be extended. He explained to the board they needed to base their decision on substantial evidence, it could not be arbitrary.

Chair Cieri reiterated Mr. Neal had done no work on the project because he had been waiting for the response from BLM. Mr. Neal stated that was correct. He went on to reiterate it did not make good business sense to spend hundreds of thousands of dollars to start the project only to learn the BLM would not grant the right of way. Chair Cieri pointed out that nothing on the e-mail that had provided that indicated the correspondence had been going on for two years. Mr. Neal offered to provide documentation demonstrating the time frame of the process, including the original application filed in 2007. Included in that documentation was a copy of the application as amended to include the secondary access required as part of the original approval of the project.

In answer to a question posed by Member Toulouse, Mr. Neal stated his organization was not satisfied with the language provided by the BLM as received in the e-mail. He reiterated they had not had the opportunity to meet with their attorney and the BLM to come to an agreement regarding the necessary language for the right of way. Member Toulouse noted a discrepancy between the county's requirement of a 50-foot-wide public access easement and the 34-foot easement noted on the BLM e-mail. Mr. Neal pointed out the condition required the owner to dedicate a 50-foot easement. They are happy to provide that over land they own but have no control over land owned by BLM. Mr. Lloyd verified for Member Toulouse the condition only applied to Mr. Neal's property.

Member Harcinske noted from the documentation provided that an Environmental Impact Statement (EIS) dated July 10, 2009 had been filed with the BLM for the easement in question.

Doug Silva, Bob Casaubon, Deborah Casaubon, Lynn Silva and Peter Hackbusch, who was representing the Sierra Ranchos Property Owner's board of directors, spoke against approval of the application, primarily citing lack of required progress. Mr. Silva and Ms. Casaubon suggested the BLM had not been provided the necessary documentation as required in a timely manner. Mr. Casaubon noted a well had been dug but required additional work to be suitable for domestic use. He stated he and other members of the community had contacted the various county departments and no application for permits had been filed.

Applicant Jan Neal explained BLM had initially indicated there would be no problem with their request. She stated that as the process went on, and little if any progress was being made, they decided to file formal complaints. She described the efforts they had expended to get the permit approved and suggested the opposition was in error making the statement that nothing had been done. Mrs. Neal pointed out the Washoe County Building Department had informed them they would not be given a building permit without an address. They could not get an address without the required right of way from the BLM.

Mrs. Neal noted the backing and momentum they had possessed when they applied had indeed dried up due to the BLM's delays and the concurrent economic crisis. She indicated they were still putting on fundraisers and did have funds remaining for the project.

Mr. Neal provided the Board copies of the original and amended applications. He was unable to provide copies with a stamp of receipt from the BLM.

Chair Cieri stated for the record that he had been provided an Application for Transportation and Utility Systems and Facilities on Federal Lands dated July 18, 2007. He stated he also had an Application for Transportation and Utility Systems and Facilities on Federal Lands dated February 20, 2008. Neither had an official stamp of receipt from BLM.

DDA Edwards noted for Open Meeting Law purposes the documents should be made available to the public at the time they are made available to the Board. He requested the Chair notify the public of the existence of the documents he just referred to and make them available to the Clerk so the public may view them if desired. Chair Cieri asked if anyone in the audience would like to see the documents and gave them to the Clerk, who provided public access to them.

Mr. Neal provided a dated response to the applications from BLM so the Board had evidence the applications were received.

Chair Cieri called for a break at 4:32 p.m. to allow the public an opportunity to review the documents.

Ms. Robinson informed the Chair that the other two documents provided were ready for viewing at the Clerk's desk and requested he make that announcement when the meeting resumed.

Chair Cieri called the meeting back to order at 4:38 p.m. and announced there were two other documents available for public viewing. He called for a three-minute break to allow the public an opportunity to review the additional documents. The meeting was called to order at 4:42 p.m.

Chair Cieri provided identifying reference numbers for each of the documents. They are as follows:

Sierra Teen Ranch (STR) 1) Application for Transportation and Utility Systems and Facilities on Federal Lands dated July 18, 2007,

STR 2) Application for Transportation and Utility Systems and Facilities on Federal Lands dated February 20, 2008,

STR 3) Correspondence from BLM dated July 7, 2008,

STR 4) E-Mail and attached proposed right of way from BLM.

For the record, Chair Cieri announced the submittals had been identified to the public, made available for viewing and time had been provided for viewing.

Chair Cieri closed the public hearing.

Member Horan verified with DDA Edwards that, if they denied the extension, it had to be with good cause or because of a change in conditions. DDA Edwards stated that was accurate. Member Horan suggested even though the opposition had stated they could not allow it, he felt the Board had the right to either deny or approve it. He went on to express that he did not feel the conditions of the original application had changed substantially enough to provide reason to deny the extension, so he would support it as recommended by staff.

Member Harcinske noted that over the last two years it was not unusual to have a request for an extension of a special use permit, given the declining economic situation. Considering what the Board has done with the other extensions, she could not find a reason to deny the request.

Member Toulouse asked Counsel if the Board still had the ability to consider all five findings at this point or was their focus narrowly defined to only looking at Condition 7. He further clarified by asking if they could not make all five of the findings, could they render a decision based on that. DDA Edwards replied it was not specified in the code. The applicant must state a reason for the request and submit the request in writing prior to the expiration of the permit.

DDA Edwards stated that since the Board had the discretion to grant or deny the permit, they should weigh the reason submitted in connection with the request against the findings that would support a special use permit. He cited as an example an application for a special use permit that is granted and later requests an extension. If in the interim the Board feels as though the conditions would no longer support the special use permit, they would have the discretion to deny the extension.

Member Toulouse stated that when he looked at the project in its entirety, he could not make the finding that the SNTR is not detrimental to the character of the area. Therefore he would have to oppose the issuance of the extension.

Mr. Freund noted that, with regards to making the findings currently before the Board, in essence they are not re-hearing the entire special use permit case. They should look at the findings in light of the current request for extension. That is how staff makes their determination when reviewing the case. Mr. Freund suggested they clarify the question by asking: "Will the extension be detrimental?"

DDA Edwards agreed with Mr. Freund's assessment. He expounded, pointing out the Board's question was whether or not the extension would satisfy the findings. If they were to take the position that they could not make a finding about no detriment, even though a finding was made to that effect when the original permit was granted, they would need to be able to articulate what evidence on the record causes them to reach a different conclusion. Otherwise they would not have enough evidentiary basis to make that conclusion.

Mr. Toulouse indicated he understood the points made but still found the project detrimental to the character of the rural aspects and the nature of that area, so he would oppose the extension of the permit.

Chair Cieri noted two years had elapsed. Even though the applicant was having problems, when the Board originally approved the permit, it was anticipated that by this time some construction progress would have occurred. He pointed out the potential exists for the applicant to request extension after extension until the project goes on into perpetuity. He suggested extending the case for one year instead of the two proposed.

Member Horan indicated he would support Chair Cieri's suggestion. He felt the applicant should be given the extension but noted the Chair's thoughts were well taken. Chair Cieri noted it appeared from the correspondence that the project was proceeding.

Member Harcinske asked if they were supporting one extension or multiple extensions and it was pointed out the project was to be completed in phases, so it was one extension for all the phases. Ms. Robinson noted there was the possibility for more than one extension but that would have to come back before the Board. Member Harcinske indicated she would not be opposed to the extension whether it be one year or two.

Chair Cieri acknowledged the citizen's uncertainty, since it appeared nothing was being done. If something were to be accomplished then they would probably be concerned about its completion. He recalled that had been part of the discussion during the initial hearing.

Mr. Freund reiterated the applicant could request subsequent extensions. He stated whatever extension they determined was appropriate they should base it on the February 12 date as explained earlier. He also noted that until the applicant can show legal access and control of that access to their property, they cannot pull a building permit in Washoe County. Negotiations with BLM are crucial in this case for them to reach a good portion of that first phase.

DDA Edwards requested a short recess to research a legal issue.

Chair Cieri called the recess at 4:55 p.m. and called the meeting back to order at 5:05 p.m.

Member Horan moved to approve conditionally, Amendment of Conditions Case No. AC09-007, with the specific change to condition #7 so that each phase shall be extended by one year such that phase one shall be extended to February 12, 2011, phase two shall be extended to February 12, 2013, phase three shall be extended to February 12, 2015 and phase four shall be extended to February 12, 2018.

Member Horan noted, regarding the issue of the project not being detrimental, he could not find that changes had been made to the application to warrant withholding the extension.

The motion was seconded by Member Harcinske.

Member Toulouse reiterated he could not make the finding that the action was not detrimental to the community and was therefore still opposed.

The motion passed by a vote of three to one (Member Toulouse voting against).

The motion was based on the following findings:

1. Consistency. That the proposed amendment of condition is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the North Valleys Area Plan;
2. Improvements. That pursuant to the conditions of approval contained in the approved special use permit, 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 development. The General Rural (GR) designation on the property allows civic uses such as a teen group care facility. Also, there are no development constraints on the property that would prevent the development of the proposed facility;
4. Issuance Not Detrimental. That issuance of the amendment of conditions 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 amendment of conditions will not have a detrimental effect on the location, purpose or mission of the military installation; and

## OTHER ITEMS

None

**ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting adjourned at 5:10 p.m.

Respectfully submitted,

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Dawn Spinola, Recording Secretary

Approved by Board in session on April 1, 2010

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