



# 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

April 1, 2010

The regular meeting of the Washoe County Board of Adjustment was scheduled for Thursday, April 1, 2010 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 1:31 p.m. The following members and staff were present:

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

Members absent: Philip Horan

Staff present: Adrian Freund, FAICP, Director, Community Development  
Eva Krause, Planner, Community Development  
Roger Pelham, Senior Planner, Community Development  
Sandra Monsalvè, Planner, Community Development  
Don Morehouse, Planner, Community Development  
Trevor Lloyd, Planner, Community Development  
Nathan Edwards, Deputy District Attorney, District Attorney's Office  
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 Toulouse moved to approve the agenda of April 1, 2010. The motion, seconded by Member Wideman, passed by a vote of four to zero (Member Horan absent).

**APPEAL PROCEDURE**

Mr. Pelham recited the appeal procedure for items heard before the Board of Adjustment.

**APPROVAL OF MINUTES**

Member Toulouse moved to approve the minutes of January 29, 2010. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Horan absent).

Member Toulouse moved to approve the minutes of February 1, 2010. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Horan absent).

**PUBLIC COMMENT**

None

**CHAIR AND BOARD ITEMS**

None

**DIRECTOR'S ITEMS**

Mr. Freund announced that the Community Development budget would be presented to the Board of County Commissioners (BCC) on April 5, 2010. He stated there was no anticipation of any reduction in service to the Board of Adjustment.

**CONSENT ITEMS**

None

**PROJECT REVIEW ITEMS**

**AGENDA ITEM 1**

PUBLIC HEARING: VARIANCE CASE NO. VA09-008 (JULIET ASHTON) (Continued from February 1, 2010) – 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 asked if any member of the Board wished to make any disclosures and none did.

Chair Cieri opened the public hearing.

Ms. Krause reviewed the staff report dated March 29, 2010, reminding the Board the case had originally been presented in December of 2009. She pointed out the road was created before Washoe County standards were established and a portion of it was on the applicant's property. A portion of the variance dedicated the road segment in question to the county and the pavement would be removed from that portion.

Ms. Krause explained the variance requested to reduce the north, south and front yard setbacks. The dedication of the portion of the road would affect the amount of coverage the applicant was entitled to. She noted the case had been continued twice because the applicant and the Engineering department were unable to agree on the language for the required conditions. In an effort to demonstrate flexibility, Engineering staff had made changes to the conditions and added another since the staff report was sent out for review by the Board and the public. Ms. Krause presented them to the Board and read them aloud. The text of the revised conditions is as follows:

- h. An adequate snow storage, roadway maintenance, and signage easement (typically 7.5 feet in width) shall be granted to Washoe County.
- j. No fence, privacy wall or other obstruction to a motorist shall be allowed within 7 feet of the edge of pavement on Gonowabie Road unless such obstruction is designed to minimize damage to an errant vehicle (i.e. break-away split rail fence, molded resin simulated boulders, etc.) and is placed a minimum of 18 inches behind the face of a 6 inch concrete curb (Type I PCC median curb) placed adjacent to the edge of pavement. The County Engineer shall determine compliance with this condition during the building permit process.
- k. Where the width of Gonowabie Road is to be narrowed, the minimum pavement width shall be 18 feet at the northern edge of the proposed driveway and shall transition to a minimum width of 25 feet at the uphill property corner. Pavement widths shall be measured from the edge of pavement to edge of pavement or front face of curb. The County Engineer shall determine compliance with this condition during the building permit process.

Ms. Krause reiterated that staff was still recommending denial of the requested south side setback request based on the Nevada State Lands (NDSL) objection to any variance to the setback on properties neighboring those owned by NDSL. She stated the recommendation still included approval of the front yard and north side setbacks.

Chair Cieri asked Ms. Krause if the applicant had rejected the newest conditions. She replied she had not yet received a response.

Applicant Juliet Ashton explained how she believed the finding of hardship could be made. She stated she had invited Garth Dull, formerly the director of the Nevada Department of Transportation (NDOT), to discuss American Association of State, Highway and Transportation Officials (AASHTO) requirements and present a proposal regarding how to overcome the difficulties she and the Engineering staff were having coming to an agreement regarding a traffic barrier. Ms. Ashton then stated she had never seen the proposed conditions that had been presented earlier.

Ms. Ashton stated she was benefitting the NDSL parcel by putting in a wall to deflect any errant vehicle away from it. She said she was not opposed to a south side setback of seven or even six feet but felt the current driveway design benefitted the residents from a safety perspective. She explained they had put proposals forward to minimize any damage to the NDSL parcel and suggested she might offer a bond to reimburse NDSL if damage occurred.

Chair Cieri asked if Ms. Ashton had proposed the bond to NDSL and she replied their stance had been that they would never agree to any variance, regardless of what is offered.

Applicant's Representative Wayne Ford pointed out many other properties in the area have five-foot setbacks, including the NDSL parcel. He stated only a portion of the foundation would be within the five-foot setback. He explained how Tahoe Regional Planning Agency (TRPA) construction standards and regulations protect the neighboring property during construction. TRPA regulations render the area non-conforming and force the house to be further from the street, limiting the location options for the structure.

Member Harcinske pointed out NDSL's concerns were about ongoing occupancy of the structure, not construction, and asked how a bond would help with that. Mr. Ford reiterated many homes in the area had five-foot setbacks and only a corner of this project encroached the setback. Member Harcinske reiterated her original question. Mr. Ford suggested a solution might be a small wooden fence along the property line. Member Harcinske asked if that had been effective when used in similar situations. He referenced another property with a retaining wall adjacent to State lands and indicated the owners respect the neighboring property and do not use or damage it. He opined there were many more property owners who had done good things as a result of being adjacent to State lands than people who had used or damaged those properties.

Chair Cieri asked if the applicant had proposed the fence to NDSL. Mr. Ford reiterated that NDSL will not support any variance request, regardless of the hardship. He offered to make the proposal and added they had offered to put up a chain-link fence during construction. He stated they had offered NDSL the opportunity to inspect the site during construction and make any adjustments, and that they had removed all drainage issues.

Mr. Dull proposed an AASHTO safety barrier, describing the function and intended location. He explained the general benefits it would create regarding traffic control on Gonowabie Road. Construction would commence in 2011. The barrier meets state standards and NDOT would accept it in their right of way.

Tim Ferrell of Ferrell Civil Engineering reiterated that only a corner of the house would be in the setback and noted that portion of the house has no access from the house leading to the neighboring property. He also explained that NDOT would be extending their guardrail 25 feet to help shield the property. This helps define Gonowabie Road and the barrier wall provides a safe place for pedestrians along the roadway.

Mr. Ford spoke on behalf of Mrs. Ashton's neighbors, Larry & Carla Lusardi. Due to past ambiguities, they requested the Board provide a very clear reason as to either their approval or denial. They supported the variance. Mr. Ford also spoke on behalf of Robert & Maureen Kassel, also neighbors, who felt the plan would make the road much safer and supported the variance.

Mr. Freund pointed out that County Engineering staff was available for questions.

Member Wideman asked if the applicant's proposals had been considered. Ms. Krause pointed out the Board was not responsible for approving the guardrail design, only if they felt the variances to the setbacks should be granted. She noted Engineering was responsible for public safety and the design of the road, and that they would make the final decisions regarding those aspects of the project. She noted the revised conditions were designed to be flexible. She reiterated the side setback issue had to do with NDSL being against the variance because of numerous problems in the past with neighboring properties.

Chair Cieri asked if there were a lot of other properties that backed up to State lands that had problems. Ms. Krause stated that of the four variances she had processed that backed up to State lands; three had turned out to be a problem. She noted NDSL has problems with properties that already have five-foot setbacks but they have no say in that. When the property has an eight-foot setback NDSL wants to maintain that.

Chair Cieri asked if Ms. Krause felt that a bond could suffice to protect the property. She stated Washoe County would not hold a bond for State Lands and noted it would be difficult for them to monitor.

Chair Cieri closed the public hearing.

Member Wideman opined that this since this had been before the Board a number of times he wasn't sure if there were any clear way for them to delineate or reach a common agreement. He stated he would support the motion consistent with staff recommendation. Members Toulouse and Harcinske agreed.

Member Wideman moved to approve with conditions the request made through Variance Case No. VA09-008 to reduce the front yard setback from 15 feet to 9.2 feet and to reduce the north side yard setback from 8 feet to 6.5 feet. He moved to deny the portion of the request reducing the south side yard setback from 8 feet to 5.1 feet. Member Wideman made particular note that the topography created special circumstances. The finding of no detriment could not be upheld as there would be a detriment to State Lands. The variance would appear to provide no special privileges and is consistent with an authorized residential use.

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional topographic conditions of the parcel; the exceptionally narrow and steep roadway in front of the parcel; and the condition of the road being on the applicant's property reducing the buildable area of the parcel; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. By denying the south side yard variance and approving the north side yard and front yard variance, relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;

3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and
5. Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

The motion was seconded by Member Harcinske, who clarified it was being approved with the revised conditions that had been presented earlier. Member Wideman concurred, stating that was within the intent of his motion.

Chair Cieri expressed concern regarding the revised conditions, as the applicant had not seen them. Ms. Krause said they had been sent to the applicant's engineer the day before the meeting. She noted they had not been changed, just reworded to provide extra flexibility.

Ms. Ashton pointed out that she had been engaged in discussions with staff and was willing to work with them within the terms she had outlined and they had agreed to. She did not understand the easements required for snow storage and signage. Mr. Ferrell interpreted the condition language for Ms. Ashton. She felt the requests were excessive. Mr. Ferrell acknowledged receipt of the conditions the previous day. He proposed alternatives to the conditions.

Kris Klein of Washoe County Engineering explained the easement was for snow storage, roadway maintenance and traffic control signage. She stated if NDOT stored snow there it wouldn't be because of Washoe County's easement or permission. Ms. Klein pointed out that with regards to the barrier; this seemed like an attempt to move forward to final approval at the variance stage. She would be reluctant to make the changes recommended by Mr. Ferrell. She reiterated the roadway was an Engineering issue, not part of the variance.

Member Harcinske suggested a discussion be held between the applicant and Engineering or an amendment be made to the conditions specifying that Engineering would approve them. Chair Cieri agreed.

Mr. Freund clarified the condition did modify the restriction to the barrier wall and pointed out the conditions do state the County Engineer shall determine compliance during the building permit process. He pointed out the building permit was a ministerial process beyond the purview of the Board.

Ms. Ashton indicated she could not accept the modified conditions, that they needed to include an AASHTO-approved barrier on the side of the roadway.

Chair Cieri asked Counsel if it would be appropriate to ask if the applicant would like to have the item continued to have the opportunity to further discuss the issues with staff. Deputy District Attorney (DDA) Edwards replied he was free to ask but pointed out that if Ms. Ashton did not agree to it that a decision must be reached at this meeting. Ms. Ashton stated she did agree

to a continuance. Mr. Freund stated he was not comfortable with a continuance. He opined Washoe County would be willing to alter the language to indicate AASHTO standards would be applied. Ms. Klein stated Washoe County code was based on AASHTO standards, so although it doesn't appear in the conditions, that is what they work from. She said they were happy to include AASHTO standards but not an AASHTO-standard barrier. She suggested a guardrail might be more appropriate than a wall.

Member Harcinske asked if it would be appropriate to continue the item until later in the meeting and perhaps in the meantime an agreement could be reached regarding the language. DDA Edwards opined that would be acceptable and the applicant and Engineering staff agreed.

Chair Cieri stated the vote would be suspended until prior to Agenda Item Number 4.

## **AGENDA ITEM 2**

**PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB10-001 (MILLER RESIDENCE) –** To construct a new 1,198-square-foot detached accessory dwelling unit pursuant to Articles 306 and 810 of the Development Code (Washoe County Code Chapter 110). The project is located at 2900 Old Ranch Road near the intersection of Old Ranch Road and Franktown Road in West Washoe Valley. The ±6.41-acre parcel is designated General Rural (GR) in the South Valleys Area Plan, and is situated in a portion of Section 10, T16N, R19E, MDM, Washoe County, Nevada. The property is located in the West Washoe Valley Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 055-092-16)

Chair Cieri opened the public hearing.

Mr. Morehouse reviewed the staff report dated March 18, 2010. He pointed out the Special Use Permit (SUP) was to legalize an existing secondary dwelling that had been created in a legal accessory structure. He explained the unit did conform to current zoning laws and impacts would be minimal.

Member Harcinske asked how the illegal dwelling had come to the attention of the county. Mr. Pelham replied the applicant had not been aware the conversion was illegal and chose to go through the procedures to legalize it.

Member Toulouse pointed out this item was one of three on the agenda bringing an existing project into conformance. He asked if there was an issue that could be dealt with to change this type of event or if there were an underlying cause that could be addressed. Mr. Pelham replied the question had come up on a number of occasions in the past. He stated the county could not stop someone from making improvements without permits and that this type of conversion was not uncommon. He noted the only way to prevent it was through careful observation of all properties within the county at all times and that was not possible.

Mr. Pelham went on to explain that the illegal structures come to the county's attention through a variety of means, perhaps it is noticed when the property owner comes in for a different permit or a neighbor complains.

Mr. Freund told the Board the BCC had authorized the Building Department to allow an amnesty period in which illegal improvements could be permitted without penalty. He reiterated illegal improvements were quite common.

Applicant's Representative Marc Winters explained the applicant's deceased husband had built the detached accessory dwelling and the applicant was unaware that it had been done without permits. When it was brought to her attention she chose to make it legal.

Chair Cieri closed the public hearing.

Member Wideman moved to approve with conditions Special Use Permit Case No. SB10-001. The motion was seconded by Member Harcinske.

Member Toulouse reiterated someone could easily construct something they knew to be illegal and ask for forgiveness later. He stated he understands the county's position as Mr. Pelham had made his point very well but he did not know how to prevent this from happening again. He suggested the county explore an education program. He expressed concern with being put into a position of having to approve projects retroactively.

Mr. Freund agreed and indicated there is an education program in place but staffing shortages have limited its effectiveness.

The motion passed by a vote of four to zero (Member Horan absent).

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 South Valleys Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a DAD unit, 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; and
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.

### **AGENDA ITEM 3**

**PUBLIC HEARING: VARIANCE CASE NO. VA10-001 - (TALLAC TOWER – COLD SPRINGS)**  
– To reduce the rear yard setback from 15 feet to ±7 feet to bring an existing approved wireless communication facility into conformance with current code requirements as authorized in Article 804 of the Washoe County Development Code. The existing 75-foot-tall slimline monopole was

constructed to accommodate four wireless communications carriers or broadband internet providers. The project is located at 3600 White Lake Parkway. The 1.00-acre parcel is designated Industrial (I) in the Cold Springs Area Plan, and is situated in a portion of Section 21, T21N, R18E, MDM, Washoe County, Nevada. The property is located in the Cold Springs Citizen Advisory Board boundary and Washoe County Commission District No. 5. (APN 087-032-07)

Chair Cieri opened the public hearing.

Mr. Lloyd reviewed the staff report dated March 19, 2010. He explained the variance was necessary because the pole was constructed in the wrong location due to a misunderstanding that the fence line did not represent the property line.

Eve Lewis spoke regarding concerns about energy waves emanating from the pole.

Chair Cieri closed the public hearing and called for disclosures. There were none.

Member Harcinske moved to approve with conditions Variance Case No. VA10-001. The motion was seconded by Member Wideman and passed by a vote of four to zero (Member Horan absent).

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property. In this instance the exceptional situation or condition of the property includes the fact that the monopole is an existing structure separated by more than 15 feet (over 22 feet) from the adjoining fence line and buffered by a ±12 foot strip of existing landscaping;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property; and
5. Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

Chair Cieri noted the applicant and staff had not returned so the vote for Item 1 would be postponed until after Item 7.

#### **AGENDA ITEM 4**

**PUBLIC HEARING: PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB10-004 (OPHIR MILL RV PARK & CAMPGROUND) - To develop a Commercial Campground Facility/Recreational Vehicle (RV) Park with up to ±145 spaces for recreational vehicles and tent camping, and will include recreation areas, a general store/food stand, and all appurtenances typically associated with RV Parks. The subject properties are located at 269 S US Hwy. 395 N, approximately 600 feet south of Old Washoe Estates and across the highway from the service station. The three subject parcels, totaling approximately ±22.75 acres, are designated General Commercial (GC) in the Old Washoe City Historic Commercial District, being a part of the South Valleys Area Plan, and are situated in portions of Sections 23 & 24, T17N, R19E, MDM, Washoe County, Nevada. The properties are located in the West Washoe Valley Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APNs: 046-080-03, 046-080-04, & 046-080-07)**

Ms. Monsalvè reviewed the staff report dated March 24, 2010. She noted the CAB had concerns regarding noise, lighting and length of stay. She also pointed out the project was benefitting the area, particularly along the guidelines spelled out in the area plan. Ms. Monsalvè clarified the trash pickup was to be twice weekly, not twice daily as had been stated earlier.

Chair Cieri opened the public hearing and requested disclosures. There were none.

Member Toulouse asked if there were county regulations that minimized the length of stay, preventing the park from becoming a residential location. Ms. Monsalvè replied there were none that she knew of and she deferred to Counsel regarding the option of conditioning the length of stay. She suggested the applicant may be better able to address the concern.

Mr. Freund explained the Reno Sparks Convention and Visitor's Authority (RSCVA) has a provision that, if anyone stays longer than 28 days RSCVA tax must be paid, which has been a significant deterrent in other cases.

Applicant's Representative Ray Pezonella stated they were fine with all of the conditions and were there to answer questions.

Member Toulouse asked how they planned to insure that no one stays longer than the period of time specified. Applicant Michael Johnstone pointed out that in the Recreational Vehicle Parks portion of the Washoe County Code, Section 110.316.50 (a), Residency Limit, states that rental and occupancy space shall be limited to 60 consecutive days except for a caretaker or manager. Member Toulouse asked how they planned to enforce that. Mr. Johnstone explained their main business was going to cater to families and be a resort-style environment, not a mobile home park.

Member Harcinske asked how the amphitheater would be used. Mr. Pezonella replied it was for presentations and group activities. Applicant Bruce Reeves expounded the area would be used by groups such as the Boy Scouts or church groups, for sing-a longs and get-togethers. It was designed and placed in an area so that a group activity would cause the least amount of

disturbance possible to the other campers and the neighboring properties. The activities would stop by 10:00 p.m.

Armand Otis and Wes Abendroth spoke in favor of the project, citing benefit to the community including jobs and beneficial use of the land. Mr. Reeves summarized a letter of support written by Kimberly Clark.

Member Harcinske brought up the idea of conditioning the project so that, if there were complaints about the amphitheater, it would be brought back before the Board.

Ms. Monsalvè stated Condition 1q required the applicant to comply with Article 316, which stated the maximum length of stay was 60 days. Counsel had agreed the Board could further condition the length of stay if they so wished. She indicated the applicant was also required to comply with Development Code Noise Standards.

Mr. Freund explained any conditions applied to the project would be mirrored in the business license.

Mr. Reeves explained they were going to great lengths to isolate and fence off the amphitheater so that the noise would not bother anyone. He stated their wish was not to have to cut off a group promptly at 10:00, but to be able to give them some leeway if they needed to go on past that time.

Chair Cieri pointed out the Board had limited hours of operation for other projects in response to complaints and thus far no one had complained about this project. Mr. Freund stated complaints would be handled by the Code Enforcement division and reiterated the conditions would be embedded in the business license.

Chair Cieri closed the public hearing.

Member Wideman moved to approve with conditions Special Use Permit Case No. SB10-004. The motion was seconded by Member Toulouse, who complemented the developer on the low-impact solutions provided.

The motion was based on the following findings and passed by a vote of four to zero (Member Horan absent):

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Comprehensive Plan and the South Valleys 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 a commercial campground/RV Park and for the intensity of such a development;

4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

### **AGENDA ITEM 1**

Chair Cieri reopened Agenda Item 1.

Ms. Krause stated the applicant and staff had come to an agreement regarding the language of the conditions and read them aloud, text as follows:

Condition 8. Adequate snow storage, roadway maintenance and signage easement shall be granted to Washoe County.

Condition 10. No fence, privacy wall or other obstruction shall be allowed along Gonowabie Road unless such obstruction is designed in accordance with AASHTO guidelines.

Ms. Ashton stated she had agreed to the new, revised conditions.

Member Wideman amended his original motion to reflect the changed conditions as agreed upon by staff and the applicant. Mr. Pelham clarified that on the staff report the items were numbered Engineering conditions h and j. Member Wideman amended his motion to reflect that changes were made to items h and j.

The motion passed by a vote of four to zero (Member Horan absent).

Chair Cieri called for a 10-minute break at 3:35 p.m. The meeting was called back to order at 3:46 p.m.

### **AGENDA ITEM 5**

**PUBLIC HEARING: PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB10-003 (TAHOE ESTATES, LLC) – To develop a Detached Accessory Dwelling of 1200 square feet on the same parcel with an existing main residence of 3845 square feet as authorized in Table 110.302.05.1 of the Washoe County Development Code. The project is located on the south side of Lakeshore Boulevard, approximately 600 feet west of its intersection with Selby Drive and is addressed as 1029 Lakeshore Boulevard, Incline Village. The ±3.18-acre parcel is designated High Density Rural (HDR) in the Tahoe Area Plan, and is situated in a portion of Section 23, 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 130-230-36)**

Mr. Pelham reviewed the staff report dated March 18, 2010. He noted the applicant had constructed several structures over 120 square feet without the required building permits. The

permits were required as a condition of the SUP. The conditions also required removal of the structures prior to Certificate of Occupancy and financial assurances to ensure their removal.

Chair Cieri opened the public hearing and called for disclosures. There were none.

Applicant's Representative Lori Shannon stated the applicant had no objections to any of the conditions and offered to answer any questions.

Chair Cieri closed the public hearing.

Member Toulouse moved to approve with conditions Special Use Permit Case No. SB10-003. The motion was seconded by Member Harcinske and passed by a vote of four to zero (Member Horan absent).

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 Tahoe 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 construction of a detached accessory dwelling, and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area; and
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation;

#### **AGENDA ITEM 6**

PUBLIC HEARING: PUBLIC HEARING: SPECIAL USE PERMIT CASE NO. SB10-002 - (HIRAM PALOMO) – To request approval for a block wall built in a Critical Stream Zone as authorized in Section 110.418 of the Washoe County Development Code. The project is located at 120 Andrew Lane on the southwest corner of the intersection of Andrew Lane and US 395. The ±1.2-acre parcel is designated Low Density Suburban (LDS) in the South Valleys Area Plan, and is situated in a portion of Section 5, T17, R20, MDM, Washoe County, Nevada. The property is located in the Galena Steamboat Citizen Advisory Board boundary and Washoe County Commission District No. 2. (APN 017-430-17)

Ms. Krause reviewed the staff report dated March 22, 2010. She explained the wall in question had already been constructed and the SUP was being requested to legalize it. The

Galena-Steamboat Citizen Advisory Board (CAB) unanimously approved it but suggested Ms. Krause contact several governing agencies to be sure they did not have concerns, which she did.

Chair Cieri opened the public hearing and called for disclosures. There were none. He noted that walls approved in the past were required to have muted coloring and asked what the state of this wall was. Ms. Krause replied the construction of the wall had been halted when it was discovered so it was currently just a grey concrete block wall. Conditions of the permit allow it to be colored or stuccoed, but not increased in size or height.

Chair Cieri asked why the conditions did not require a muted color. Ms. Krause replied it had not come up in discussion but the Board was more than welcome to condition it that way.

Member Toulouse asked for verification that the wall was located in the Critical Stream Zone (CSZ). Ms. Krause replied a survey had been conducted and the wall was 18 feet from the centerline of the creek and CSZ is all area within 30 feet of the centerline.

Applicant Hiram Palomo stated the wall was planned to be stuccoed in a neutral color and when the surrounding vegetation was in bloom it would screen the wall. He indicated his willingness to apply whatever color or finish the Board wished. Chair Cieri indicated the color selection would normally be made by the Design Review Committee. Mr. Pelham suggested adding a condition stating the color would be brown, tan or a complementary earth tone.

Chair Cieri asked Mr. Palomo if he was concerned that a high water level could undermine the wall and collapse it. Mr. Palomo indicated the construction was quite solid and would not expect it could be undermined. He went on to explain he had received incorrect information regarding the need to permit the wall and it never occurred to him that there would be any problems with the wall's proximity to the stream.

Mr. Pelham suggested adding Condition 1c that would read as follows: "The wall shall be finished in a tan, brown or other complementary earth tone in color." Chair Cieri indicated that was satisfactory.

Johnnie Stolz, owner of the neighboring property, explained the bank of the creek adjacent to the property in question had been washed away in the 1997 flood. The subsequent owners had replaced it; including adding the construction debris that currently littered the bank. He expressed concern that the wall could be washed out in the event of a flood and the effects of that on the properties downstream. He suggested modeling studies be done of the possible effects.

Chair Cieri closed the public hearing.

Member Harcinske noted the CAB had expressed concern that the approval of this wall in the CSZ would open the door for others to do the same. She reiterated the question asked earlier about whether or not this was setting a precedence that allowed building first and asking permission later. She also asked if they would have approved the construction of the wall in a CSZ if it had been requested before it was built, surmising they would not.

Chair Cieri asked Counsel if they would be setting a precedent by approving the project. DDA Edwards explained that each discretionary use permit that comes before the Board is

based on its own facts and circumstances and the evidence in that case. Therefore it would not be deciding any future applications.

Member Toulouse echoed Member Harcinske's concerns and indicated he would not have approved the building of a block wall in the CSZ. He agreed with the concerns expressed by Mr. Stolz.

Chair Cieri asked Ms. Krause if Engineering had looked at the wall. She stated they had and had come to the conclusion they would not have allowed it but did not feel it needed to be removed. She acknowledged the decision was difficult but she had not been able to identify a significant detriment, nor had she been able to find a reason that justified asking the owner to tear it down.

Chair Cieri noted that in the staff report the Public Works Department did not discuss the engineering of the wall. He expressed his concern that the wall could be undermined by rapid water, collapse and fill the stream bed. Ms. Krause replied the applicant had submitted plans to the Engineering department, who had expressed no concerns. They would require the applicant to go through the building permit process to be sure that everything was built to Code. The comments were minimal because they had reviewed it for the SUP process, not building.

Chair Cieri expressed concern that approval by the Board would indicate the wall was sound. Ms. Krause explained the Board's approval would allow it to remain in its current location. The building permit process would determine whether or not the wall was safe.

Member Toulouse stated he could not find conditions that were adequate to address his concerns that the wall would fail in a flood event and cause an obstruction to the stream channel or be washed downstream and cause further problems. Chair Cieri noted Member Toulouse could add a condition if he wished. Member Toulouse stated if he were to add a condition it would require a hydro geological study or some other type of study that would indicate whether or not the wall would survive a flood event and what any impacts would be if it collapsed.

Member Harcinske agreed with member Toulouse and indicated she did not have enough information to be able to make the finding that the wall was not detrimental.

Mr. Palomo indicated his willingness to remove the wall if it was determined to be detrimental. He also indicated willingness to pay for the requested hydro geological study if requested to do so, within reason. If the study cost more than dismantling the wall, the wall would come down.

Member Toulouse asked Ms. Krause if Engineering had the ability to study the flood danger without an undue burden of cost either to the taxpayers or the applicant. Ms. Krause replied that Kimble Corbridge, Deputy Director of Public Works, is also the Northern Nevada Section Federal Emergency Management Agency (FEMA) Engineer, so he reviews projects for that purpose. Ms. Krause noted that when the streambed was rebuilt it was an Army Corps of Engineers project and so engineered by them.

Member Wideman suggested they consider a denial without prejudice, thus providing the applicant with time to evaluate whether or not it was worthwhile to conduct the hydrologic study or the time to tear the wall down if that is what he decided to do. Chair Cieri opined it was easier to condition it so the Engineering staff could more carefully review the construction and

give the applicant specific building guidelines. Member Harcinske suggested a continuance, stating she would like to see further information before signing off on a permit.

Mr. Palomo indicated a continuation would be fine with him.

Member Toulouse moved to continue Special Use Permit Case No. SB10-002 to the meeting of June 3, 2010 at 1:30. The motion was seconded by Member Harcinske and passed unanimously.

Mr. Pelham clarified the purpose for the continuance was so that the applicant could look at some hydrology and provide that information to Washoe County Community Development and Engineering staff so that they can determine whether the wall would survive a 1997 or similar type flood event. The information would contain the impact upon the stream flow should it collapse and other things related thereto.

### **AGENDA ITEM 7**

**PUBLIC HEARING: APPEAL CASE NO. AX10-001 (S. KORN, D. KENNEDY, W. WRIGHT) –**  
To appeal the decision of the Community Development Director that Rolling Thunder Airport (personal landing field) is an existing legal non-conforming accessory use as authorized in Sections 110.306.45 and 110.904.20 of the Washoe County Development Code. The landing field is located at 16400 Pyramid Lake Highway on the southeast corner of the intersection of Pyramid Lake Highway and Range Land Road. The ±64-acre parcel is designated General Rural Residential (GRR) in the Warm Springs Area Plan, and is situated in a portion of Section 31 and 32, T23N, R21E, MDM, Washoe County, Nevada. The property is located in the Warm Springs Citizen Advisory Board boundary and Washoe County Commission District No. 4. (APN 076-232-03)

Chair Cieri opened the public hearing and requested disclosures. He stated he had purchased products from Mrs. Wright's store in the past. DDA Edwards stated the Ethics law requires Chair Cieri not to participate if his pecuniary interest, receipt of a gift or loan in connection with the matter or his commitment in a private capacity to the interests of others would materially affect his judgment. Chair Cieri indicated his past interactions would not affect his judgment.

DDA Edwards disclosed that his first job out of law school was with Lionel, Sawyer and Collins, the legal firm representing the property owners in the case. He stated that would not affect his decisions.

Ms. Krause reviewed the staff report dated March 22, 2010. She explained that in 1999 the county investigated a complaint against the Rolling Thunder airstrip. At that time it was determined that it was a legal use prior to 1993, which is when the area plan modifiers would have required a special use permit. Therefore it was a legal, non-conforming use.

Ms. Krause stated that in 2009 there was a complaint filed with the county stating the airfield was an unlawful use because it had not been used for a 12-month period of time. The property owner had cleared the airstrip of vegetation, prompting the complaint. The Code Enforcement Officer (CEO) visited the property, spoke with the property owners and reviewed documentation supplied by the property owner's attorneys. Insufficient evidence existed to prove the airstrip had not been used for 12 months, so it was determined it was still a legal, non-

conforming use. She pointed out the strip is shown in the 2010-2011 aviation maps in Travel Nevada brochure.

Ms. Krause noted the appeals received were based on eyewitness accounts from people saying they have not seen a plane land there for a long time. She acknowledged it was difficult for someone to watch a neighboring property 24 hours a day, 7 days a week, 365 days a year. While they did not see it, it did not mean that it didn't happen. Therefore, staff made the determination there was insufficient evidence to prove the airstrip had not been used even once in a 12-month period. Based on this lack of evidence, the Director of Community Development made the determination the airstrip was still a legal, non-conforming use.

Chair Cieri asked how it can be proved it is not an operable airstrip. Ms. Krause acknowledged it was difficult to prove and they were taking the property owner's and the neighbor's words against each other.

Chair Cieri explained to DDA Edwards that they had received letters stating the airfield had not been used and affidavits that stated it had. He asked how they should weigh that. He noted that testimony or letters are not sworn to an oath whereas an affidavit is. DDA Edwards replied they needed to review the evidence submitted during the hearing, so he felt it was premature to advise them at this point. Chair Cieri asked if a sworn statement or one that was not had more credence than the other or if they were equal. DDA Edwards stated that in these types of hearings there was no hierarchy of preference or weight, legally speaking, in terms of their requirement to give greater deference or weight to an affidavit versus a letter that is not sworn. He indicated they may find one more believable than the other but that was for them to decide based on the evidence received during the hearing.

Member Harcinske asked if the ground had been disturbed enough to require a grading permit. She noted dust control had been brought up. Ms. Krause replied the grading removed vegetation on the surface so did not require a permit. Mr. Pelham noted it would not have triggered a grading SUP due to the small volume of earth being moved. He did point out it normally would have required an SUP because more than 25,000 square feet was being cleared. The caveat was that the Director had made the determination that it was an existing use, on which maintenance is allowed. Therefore the SUP was not required. Ms. Krause acknowledged the dust issue did need to be addressed but that did not make the airstrip an illegal use.

Applicant David Kennedy, speaking on behalf of a number of unnamed Palomino Valley residents, indicated concerns that not only did the runway approach cross Pyramid Highway and power lines, but publications indicated the property also supplied fuel and bottled oxygen. He explained he had spent time on the property at the invitation of the occupant and had seen no sign of aircraft activity. Mr. Kennedy asked the approval be reversed and the project be required to go through the SUP process so that it could be properly reviewed and conditioned.

DDA Edwards advised Chair Cieri the respondent was entitled to review copies of the document provided by the speaker. Chair Cieri replied they were duplicates of what was had already been received in the staff report packet.

Applicant Sharon Korn explained her home was in a location that had a clear view over the airstrip, that she and her husband worked from home so were there most of the time, and from 2006 to 2009 the vegetation on the airstrip had not changed and they had never seen an

airplane take off or land. She therefore asserted it had not been maintained and referenced evidentiary photographs.

Applicant Wanda Wright stated she had lived on the property neighboring the airstrip location since 1983. She also stated she and her husband work from home and they had never seen a plane land or take off from the property. She stated one of the renters had used to property to train horses and an arena was clearly visible. She noted she had lost family members in a private plane crash and the airstrip caused her and other residents to fear for their safety. She reiterated the request to reverse the approval and have the project reviewed through an SUP.

Chair Cieri asked Ms. Wright when the photograph submitted for evidence had been taken. It was dated February 4, 2010 and Ms. Wright verified it had been taken between February 3, 2010 and February 7, 2010. Chair Cieri noted the airstrip was difficult to see. He asked if the arena she had discussed was fenced and she said it was not.

Dan Schwartz, speaking for himself and his mother, also a property owner in the area, testified they had seen no planes. As she is retired and spends quite a bit of time outdoors, he felt it was unlikely she would have missed seeing a plane. Chair Cieri asked how long the power poles had been there and Ms. Wright replied since 1983.

Rupa Brooks, Brent Dowell and Raymond Nicolai spoke of not seeing air traffic and of safety concerns. Mr. Dowell asked how it was possible a plane could land among all of the sagebrush that had been on the strip before it was cleared and why it required a bulldozer to clear it if it was being maintained on a yearly basis.

Real Estate Appraiser Joe Campbell stated he had appraised Ms. Wright's property in 1994, 1999 and 2007. He stated he had never seen a runway, an airplane or part of an airplane on the neighboring property. He noted she had never granted an aviation easement over her property.

Applicant's Representative Dan Reaser clarified there were two issues before the Board. The first was if there was an airstrip and if it was allowed to be there and the second was whether it had been in continuous use. He stated in 1999 the county had established the airstrip existed and that it was a permitted, non-conforming use. In 2009 when a complaint was filed, the owner submitted a package of materials on November 3, 2009, a copy of which had been provided to the secretary and was requested to be marked as Exhibit 1. Washoe County Community Development had reviewed the materials and determined there was a permitted use of a personal airstrip there. He noted there was no requirement for an SUP for that use and that no SUP could be retroactively applied according to code.

Mr. Reaser went on to the next topic, being whether or not there has been a showing that there has been at least one use of that non-conforming permitted use in each year since 1999. He reiterated the package of material contained eight affidavits, six of which were from persons with no property interest or other motivation, who are pilots and have landed at one or more times during the period 1999 through 2009.

Mr. Reaser opined the affidavits were more credible than the signed statements because of the motivation, the interest the bias or the prejudice of the person giving the Board the evidence. He explained there were not two runways, but one with two designations given by the

Federal Aviation Administration (FAA). He pointed out the people who filed the appeal had recorded notice that the airstrip was there and was a permitted use when they bought their properties.

Mr. Reaser stated there was no gasoline stored on the property. That information had been obtained from a website maintained by an independent pilot's group and the owners have written to the group to let them know the information is inaccurate. He went on to state there is no corral on the property, it is a graded turn around for aircraft. He also noted that three appraisals of the subject property indicated it had a landing strip and that was part of the value of the property. Mr. Reaser displayed a map showing that Mr. Kennedy's and Ms. Korn's properties were outside the zone of interest according to code and therefore they did not have standing to be appellants.

Member Harcinske noted the statement that the airstrip had been so overgrown that it would be difficult to use. She asked if there were any experts who could attest to the fact a type of plane could land or take off in that type of terrain before it was cleared. Mr. Reaser stated that sagebrush would not stop a single-engine plane from landing there. He reiterated that a pilot had provided an affidavit that he landed there and did not feel that issue was determinative.

Member Toulouse asked property owner Bill Johnson if there had been a significant amount of vegetation on the strip prior to being graded and Mr. Johnson acknowledged there was. Member Toulouse inquired as to the type and Mr. Johnson replied it was cheat grass, sagebrush and eight or nine different types of grass and weeds. He noted he and his wife had landed on fields with cobbles much larger than the bushes on his property.

Member Toulouse asked Mr. Johnson if he had landed on his property and if so, in what type of aircraft with what type of wheels. Mr. Johnson affirmed that he had and listed several types of aircraft and described the tires.

Chair Cieri disclosed he lives in Palomino Valley, approximately 12 miles from the site, and it is not visible from his property. DDA Edwards repeated his earlier question regarding if Chair Cieri felt his decision would be influenced by this fact and Chair Cieri stated he did not.

Ms. Wright pointed out she had provided a letter from an FAA safety inspector who had stated the field had not been used in a long time. She also noted the field was activated in February of 2004. Chair Cieri pointed out this was a case in which some people said the field was used and some said it was not. In 24 hours a day 365 days a year somebody could have done something and therefore it is a legitimate use. He asked how the individual from the FAA would know that nobody had used the airfield. Ms. Wright suggested he read the letter.

Member Toulouse disclosed he is a pilot and has flown all of the aircraft that Mr. Johnson listed. DDA Edwards asked the same question regarding if his independence of judgment would be materially affected by the fact he had flown the same type of aircraft that were involved in the case and Member Toulouse stated his answer was mixed. He knew the appropriate aircraft with the right equipment could land on unimproved strips. Therefore it would not affect his judgment but with that knowledge he can say that with the vegetation as described by Mr. Johnson, those aircraft would be entirely appropriate for that strip.

DDA Edwards noted that Member Toulouse had hit on a subtle nuance. There is no rule requiring Member Toulouse not to have any real-world experience that might relate to

something that comes before the Board. The fact that he has knowledge of airplanes gives him an ability to view remarks and statements, but does not rise to the level of requiring him to recuse himself. What would require him to recuse himself was if he had a pecuniary interest, had received a gift or a loan or had a commitment in a private capacity to the interests of others in connection with his status as a pilot that would materially affect his judgment. Member Toulouse verified there was no reason to recuse himself.

Chair Cieri closed the public hearing.

Member Wideman noted there is a clear indication that the existence of the airstrip was unpopular with the neighbors and many of their concerns are extremely valid and heartfelt. He went out to point out that it was clear there was a matter of record that the field has existed and been assigned numbers by the FAA and does show up on aviation maps. Additionally there are affidavits from specific persons who state they have specifically landed there in each of those specific years.

Member Wideman stated he did not discount the testimony of those who had spoken, but there certainly was room for them to have missed something. In view of what was actually part of the record and what the Board's decision needs to be based in, he intended to reject the appeal.

Member Harcinske added it was difficult to prove a negative, which is what the Appellants were faced with. Evidence clearly showed the airstrip had been used. She stated she was also inclined to deny the appeal.

Chair Cieri said he understood the resident's concerns but reiterated the issue at hand was not to determine if the airstrip was appropriate to the area, but to decide whether or not it was in use. He pointed out an SUP was something that should have been in place prior to the airfield being allowed to exist, but the airstrip appears to be in existence regardless of the fact an SUP was never applied for or approved. He did not know how the appellants, as individuals, could prove it had not been used over the course of 365 days per year, 24 hours a day. He acknowledged that was a real problem and a real issue. The Board has to assume the people who say they are using it through these affidavits actually are.

Chair Cieri went on to say that the appellants cannot prove to the Board that it has not been used, even though they can see the airstrip, they are not there all the time. Therefore, although it was difficult, he was also inclined to deny the appeal simply because it could not be proven.

Member Wideman moved to deny Appeal Case No. AX10-001. The motion was seconded by Member Toulouse and passed by a vote of four to zero (Member Horan absent).

Mr. Pelham recited the appeal procedure for items heard before the Board of Adjustment.

## **OTHER ITEMS**

None

## **ADJOURNMENT**

There being no further business to come before the Board of Adjustment, the meeting adjourned at 5:28 p.m.

Respectfully submitted,

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Dawn Spinola, Recording Secretary

Approved by Board in session on June 3, 2010

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