



WASHOE COUNTY

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Finance DW
DA NE
Risk Mgt. N/A
Clerk CS
Comptroller CH

STAFF REPORT

BOARD MEETING DATE: August 9, 2016

DATE: July 15, 2016

TO: Board of County Commissioners

FROM: Trevor Lloyd, Senior Planner, Planning and Development Division
Community Services Department, 328.3620, tlloyd@washoecounty.us

THROUGH: William H. Whitney, Division Director, Planning and Development
Community Services Department, 328-3617, bwhitney@washoecounty.us

SUBJECT: Hearing, discussion, and possible action on Case No. AX16-002 (Rejection of Mil Drae Abandonment Application), an appeal of the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness. The Board of County Commissioners may take action to confirm the Board of Adjustment's denial or reverse the Board of Adjustment's denial and allow the abandonment application to proceed to the Planning Commission.

The appellants are Peter Ernaut, Ryan Dolan, James and Maureen Nunnally, Roland and Tina Scarselli, Lance Faulstich and Herbert and Susan Nichols. The subject property is Mil Drae Lane (APN: 040-581-20) and located within the Southwest Truckee Meadows Area Plan and South Truckee Meadows/Washoe Valley Citizen Advisory Board boundaries, Section 1, Township 18N, Range 19E, MDM. The Development Code articles applicable to this amendment are Article 806, Vacations and Abandonments of Easements or Streets and Article 912, Establishment of Commissions, Boards and Hearing Examiners. (Commission District 2).

SUMMARY

Confirmation or reversal of the Board of Adjustment's denial of an appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane.

Washoe County Strategic Objective supported by this item: Safe, secure, and healthy communities.

PREVIOUS ACTION

June 2, 2016, Board of Adjustment. After conducting a public hearing, taking public testimony and discussing the proposed appeal of the decision of the Director of Planning and Development to reject the application for incompleteness, the Board of Adjustment denied the appeal.

AGENDA ITEM # 18

BACKGROUND

On February 16, 2016, the firm of Lewis, Roca, Rothgerber, Christie, LLP, on behalf of several property owners, submitted an application to abandon a 2.523 acre property identified as Mil Drae Lane, which is used as a roadway/access for up to 13 parcels.

The abandonment application involved a two part request. The first part of the request asked Washoe County to accept an offer of dedication for the subject property - Mil Drae Lane. The second part of the request involved Washoe County abandoning Mil Drae Lane immediately after accepting the dedication. The abandonment application requested that Mil Drae Lane be abandoned to the following seven abutting properties/owners:

- 1) Ryan M. Dolan Family Trust (APN 040-582-02)
- 2) Roland and Tina Scarselli (APN 040-582-03)
- 3) Nunnally Family Trust (APN 040-582-04)
- 4) Ernaut Family Trust (APN 040-581-19)
- 5) Faulstich Family Trust (APN 040-581-12)
- 6) Herbert and Susan H Family Trust (APN 040-581-13)
- 7) Herbert and Susan H Family Trust (APN 040-581-14)

As to the abandonment request, Nevada law generally allows any abutting property owner to file a petition for the abandonment of any street or easement owned by the city or county. The local government is empowered to create a procedure for the processing of abandonment requests. Once a valid request is filed, the matter is set for a hearing and the local government can abandon the property if it determines the public will not be materially injured by the proposed abandonment. Conditions can be imposed on any abandonment.

As to the request to accept the offer of dedication for the roadway itself, when a final subdivision map is filed, Washoe County generally must accept or reject all offers of dedication in the map. If rejected, however, the County can rescind its rejection at any time and accept the offer of dedication by action of the Planning Commission or governing body per NRS 278.390. To date, Washoe County has not accepted the offer of dedication for Mil Drae Lane and it is currently held in private ownership.

The Director of the Washoe County Planning and Development Division rejected the abandonment application due to insufficient submittal requirements. Specifically, the application did not contain the required signed owner affidavits for the property subject to the abandonment request. Washoe County Code (WCC) Section 110.806.10 enables the Director to prepare supplemental guidelines for the submission of applications for abandonments. Submittal requirement number 3, of the Abandonment Development Application Submittal Requirements sheet, states that *"the Owner Affidavit must be signed and notarized by all owners of the property subject to the application request."* The owners of record, as specified by the Washoe County Assessor's records, differ greatly from the owners identified within the application. As shown below, the names of the signed owner affidavits (numbered 1 to 7 above) differ greatly from the official ownership records provided by the Washoe County Assessor's Office. The Assessor's Office lists Mil Drae Lane (APN: 040-581-20) under the following ownership:

- 1) Ernaut Family Trust (appears on the signed affidavit)
- 2) Darrell Bennett
- 3) Wilma Bennett
- 4) Timothy and Marsha Grant
- 5) Herbert and Susan Nichols Family Trust (appears on the signed affidavit)
- 6) Robert and Jerrady Hawkins
- 7) Larry D. Klaich Family Trust
- 8) William and Sally Burrows
- 9) William and Catherine Lore
- 10) Allyene Milabar

WCC Section 110.806.05 states “No application shall be processed when the information necessary to review and decide upon it is deemed incomplete by the Director.” Therefore, the Director of the Planning and Development Division has rejected the application as incomplete (see Exhibit B).

In their appeal, the appellants contend that owner affidavits are not necessary because the application was submitted as a two-step process and there is an existing offer of dedication for Mil Drae Lane and that Washoe County has the authority to accept the offer of dedication without the owner affidavits. The appellants also contend that a similar abandonment was approved on a short roadway off of Mil Drae Lane, known as Milabar Way several years ago, and that any abutting property owner can petition Washoe County for such an abandonment. See Exhibit A for the complete letter and materials for this appeal.

Staff does not agree with the appellants’ contention that the owner affidavits are not necessary. Even though there is an offer of dedication for Mil Drae Lane, Washoe County has not accepted that offer of dedication. At this time, the property is privately owned and Washoe County cannot proceed with a discretionary permit application without the written approval of all required owners of the property for the proposed action (i.e., the abandonment).

Per WCC Section 110.912.10, the Board may reverse, modify or remand a decision (of the Planning Director) if the decision:

- (a) Was made contrary to the constitution, a statute, an ordinance, or regulation, or the law of the case;
- (b) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (c) Was made on unlawful procedure;
- (d) Is affected by an erroneous interpretation or other error of law;
- (e) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Is arbitrary or capricious or characterized by abuse of discretion.

FISCAL IMPACT

None

RECOMMENDATION

It is recommended that the Board of County Commissioners confirm the Board of Adjustment's decision to support the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.

MOTION

Should the Board agree with the Board of Adjustment's decision to support the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness, staff offers the following motion:

“Move to confirm the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.”

OTHER POSSIBLE MOTION

Should the Board not agree with the Board of Adjustment's decision to deny the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane, staff offers the following possible motions:

Possible Motion to REVERSE the Board of Adjustment's denial of the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane for incompleteness.

“Move to reverse the Board of Adjustment's denial of the appeal of the Director of Planning and Development's decision to reject the abandonment application to abandon Mil Drae Lane and allow for the abandonment application to proceed for consideration by the Washoe County Planning Commission.”

Attachments:

- A. Appeal Application
- B. AX16-002 BOA Action Order
- C. AX16-002 BOA Staff Report
- D. June 6, 2016 Minutes of the Board of Adjustment

xc. Appellant(s): Pete Ernaut, 500 Mil Drae Ln, Reno, NV 89511
Ryan M. Dolan, 460 Mil Drae Ln, Reno, NV 89511
James and Maureen Nunnally, 490 Mil Drae Ln, Reno, NV 89511
Roland and Tina Scarselli, 470 Mil Drae Ln, Reno, NV 89511
Lance Faulstich, 510 Mil Drae Ln, Reno, NV 89511
Herbert and Susan Nichols, 495 Mil Drae Ln, Reno, NV 89511

Representative: Lewis, Roca, Rothgerber, Christie; LLP, Attn: Garrett Gordon, 50
W. Liberty Street #410, Reno, NV 89501

Appellant Information (continued)	
Cite the specific outcome you are requesting under the appeal: We request the Board of Commissioners to approve the appeal and accept the application to accept dedication, then abandon Mil Drae Lane.	
State how you are an affected individual entitled to file this appeal: The appellants are the applicants requesting Washoe County to accept dedication, then abandon Mil Drae Lane.	
Did you speak at the public hearing when this item was considered?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did you submit written comments prior to the action on the item being appealed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

For time limitations imposed for the various types of appeals, please refer to the Washoe County Development Code (WCC Chapter 110) and Nevada Revised Statutes Chapter 278 (NRS 278).

APPELLANT AFFIDAVIT

STATE OF NEVADA)
)
COUNTY OF WASHOE)

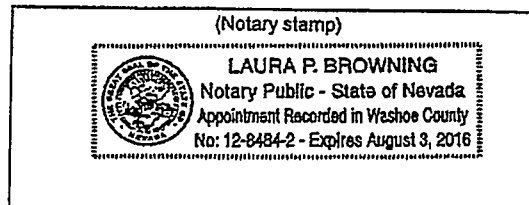
I, GARRETT D. GORDON
being duly sworn, depose and say that I am an appellant seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development.

Signed *Garrett Gordon* ATTORNEY-IN-FACT
Address 50 W. Liberty St. #410
RENO, NV 89501

Subscribed and sworn to before me this
17th day of June, 2016.

Laura P. Browning
Notary Public in and for said county and state

My commission expires: 8/3/2016



Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP
50 West Liberty Street
Suite 410
Reno, NV 89501

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lrrc.com

Garrett D. Gordon
Admitted in Nevada
775.321.3420 direct
775.321.5569 fax
ggordon@lrrc.com

March 24, 2016

VIA HAND DELIVERY

Washoe County Board of Adjustment
1001 E. 9th Street
P.O. Box 11130
Reno, Nevada 89520-0027

Re: Appeal of Staff Determination of Incomplete Application
for Abandonment Case Number AB16-001

Dear Members of the Washoe County Board of Adjustment,

Pursuant to Washoe County Development Code §§ 110.914.05 (f), and 110.912.10, we¹ are appealing the decision received March 14, 2016 in Abandonment Case Number AB16-001.

Originally, we submitted the abandonment application as part of a two-step process. First, we were asking the County to accept the dedication of Mil Drae Lane (APN 040-581-20). Second, once the County accepted the dedication, we would pursue an abandonment application. The letter received from Mr. Whitney indicates that the abandonment application is incomplete because of insufficient signed-owner affidavits. While we disagree that further owner signatures are required for the application as more fully described below, we maintain that the County can still accept the dedication of Mil Drae Lane during this appeal process.

A brief bit of history is necessary: Mil Drae Lane provides access to homes in the Mil Drae subdivision. At the time of this subdivision's final map recordation almost 40 years ago, there were seven abutting property owners to Mil Drae Lane. *See* Mil Drae Country Estates Subdivision Tract Map No. 1568 (Apr. 16, 1976) (hereinafter "1976 Final Map") (attached hereto as Exhibit 1). And at the time of the 1976 Final Map, the County rejected the dedication offer of Mil Drae Lane. *See id.* at County Commissioner's Certificate dated Apr. 15, 1976. The Board of County Commissioners, however, indicated that "[t]he offer of street dedication is hereby rejected *with the offer to remain open under NRS 278.390.*" *Id.* (emphasis added).

¹ For purposes of the application and the appeal, "we" refers to the following property addresses, owners and parcel numbers as shown on the Mil Drae Lane Country Estates Subdivision Tract Map No. 1568: 460 Mil Drae Lane, Ryan M Dolan Trust, 040-582-02; ; 470 Mil Drae Lane, Roland G & Tina L Scarselli, 040-582-03; 490 Mil Drae Lane, Nunnally Family Trust, 040-582-04; 500 Mil Drae Lane, Ernaut Family Trust, 040-581-19; 510 Mil Drae Lane, Faulstich Family Trust 040-581-12; 515 Mil Drae Lane, Herbert & Susan Nichols Family Trust, 040-581-13; 495 Mil Drae Lane, Herbert & Susan Nichols Family Trust, 040-581-14.

Thus, under both the 1976 Final Map's language and the statute it references, the offer of dedication remains open today. To be clear, NRS 278.390² provides that, because rejected dedication offers remain open, counties may accept the dedication at a later time. Moreover, NRS 278.390 does not require *any* action by the subdivider (or any other party for that matter) to accept the dedication—the County may simply rescind its previous rejection and accept the street. Accordingly, though technically no action is required on our part, we are asking the County to accept the dedication of Mil Drae Lane by resolution and place this item on the next available agenda.

Second, we disagree that the Planning and Development Director's rejection of the abandonment application in this case. The abandonment requested here is remarkably similar to a previous abandonment within the same subdivision, AB07-005 Milabar Way (Allyene Way), and cited in our original Abandonment Case Number AB16-001 Application. There, a property owner situated east of a roadway sought abandonment of the roadway to expand his parcel size. The Washoe County Department of Community Development Staff noted that

[t]ypically abandonment of a roadway would require that the abandoned roadway would require that the abandoned roadway revert to the ownership of *both* of the abutting property owners equally. In this case, the parcel to the east of the roadway *was created by a different map* and did not dedicate land for the creation of the roadway originally so the entire roadway will revert to the property owner to the west.

Washoe Cty. Dep't of Cmty. Dev. Staff Report Analysis at 3, Washoe Cty. Planning Comm'n, Abandonment Case No. AB07-005 (Milabar Way) (May 25, 2007) (emphasis added) (attached as Exhibit 2). In other words, the County looks to the *original map* that created the dedication to determine the abutting property owners. Consequently, title would only revert to these abutting property owners.

² NRS 278.390 provides that

[t]itle to property dedicated or accepted for streets and easements passes when the final map is recorded. *If at the time the final map is approved any streets are rejected, the offer of dedication shall be deemed to remain open and the governing body or planning commission may by resolution at any later date, and without further action by the subdivider, rescind its action and accept and open the streets for public use.* Such an acceptance must be recorded in the office of the county recorder and be so noted by the recorder on the subdivision plat, if the county recorder does not maintain a cumulative index for such plats and amendments. If such an index is maintained, the county recorder shall direct an appropriate entry for the acceptance or amendment.

(Emphasis added.)

Indeed, the County's conclusion in the Milabar abandonment is consistent with Nevada law. Under NRS 278.480(7):

The order [of abandonment] must be recorded in the office of the county recorder, if all the conditions of the order have been fulfilled, and upon the recordation, *title to the street or easement reverts to the abutting property owners in the approximate proportion that the property was dedicated by the abutting property owners or their predecessors in interest.*

Thus, upon abandonment, a property reverts back proportionately to the abutting property owners at the time of dedication.

Like the Milabar abandonment, the original map that provides the dedication must be consulted to determine the abutting property owners. Here, the 1976 Final Map that provided the dedication reveals the seven original abutting property owners: Parcel Numbers 040-582-02; 040-582-03; 040-582-04; 040-581-19; 040-581-12; 040-581-13; 040-581-14.³ Affidavits from all of these owners were provided with the original abandonment application.⁴ Thus, return of the application is inappropriate as the *only* parties that will have an interest in Mil Drae Lane after the abandonment are the property owners of the seven parcels on the original 1976 Final Map.

Moreover, the return of the abandonment application is also improper, as *any* abutting property owner can petition for abandonment. See NRS 278.480(1) ("Except as otherwise provided in subsections 11 and 12, *any abutting owner* or local government *desiring the vacation or abandonment of any street* or easement owned by a city or a county, or any portion thereof, shall file a petition in writing with the planning commission or the governing body having jurisdiction."). Thus, it was also improper for the return of the abandonment application here without an affidavit from *every* abutting property owner.

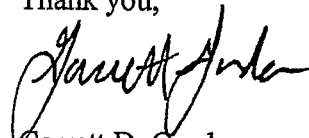
Based upon the above, we appeal the determination that the application in Abandonment Case No. AB16-001 is insufficient. First, we contend that the County may still proceed with the dedication. Second, the Planning and Development Director erred in concluding that signed owner affidavits from Mil Drae Lane's owners are required: because the County may accept the dedication at any time, signatures from all "owners" of the street is not necessary. And, importantly, affidavits from all abutting property owners as shown on the 1976 Final Map at the

³ To be sure, because the County may accept the dedication offer at any time, the cited "ownership" of Mil Drae Lane that the County is concerned with is essentially irrelevant. Any alleged owner of Mil Drae Lane took title *subject to* the 1976 Final Map and is therefore on notice of potential dedication.

⁴ As stated in the original application, easements will be granted to the three additional property owners within the subdivision.

time of dedication were included in the application. Lastly, because *any* abutting property owner can petition for abandonment, the return of the abandonment application here was improper.

Thank you,



Garrett D. Gordon
Lewis Roca Rothgerber Christie LLP

GDG/ns

cc: Mr. William H. Whitney, Planning and Development Director
Pete Ernaut
Ryan M. Dolan
James and Maureen Nunnally
Roland and Tina Scarselli
Lance Faulstich
Herbert and Susan Nichols

Appellant Information (continued)	
Cite the specific outcome you are requesting under the appeal: Application should be submitted; County should proceed with accepting dedication of Mil Drae Lane	
State how you are an affected individual entitled to file this appeal: We represent the seven property owners that filed the initial abandonment application,	
Did you speak at the public hearing when this item was considered?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Did you submit written comments prior to the action on the item being appealed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

For time limitations imposed for the various types of appeals, please refer to the Washoe County Development Code (WCC Chapter 110) and Nevada Revised Statutes Chapter 278 (NRS 278).

APPELLANT AFFIDAVIT

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Garrett Gordon
being duly sworn, depose and say that I am an appellant seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development.

Signed *Garrett Gordon*
Address _____

Subscribed and sworn to before me this
24th day of March, 2016
Connie S. Isidro
Notary Public in and for said county and state
My commission expires: Jan. 2, 2017

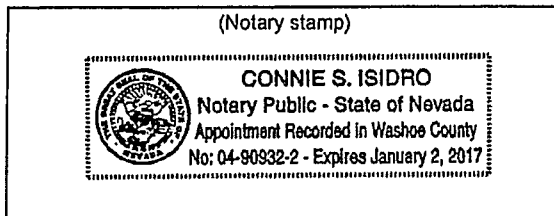
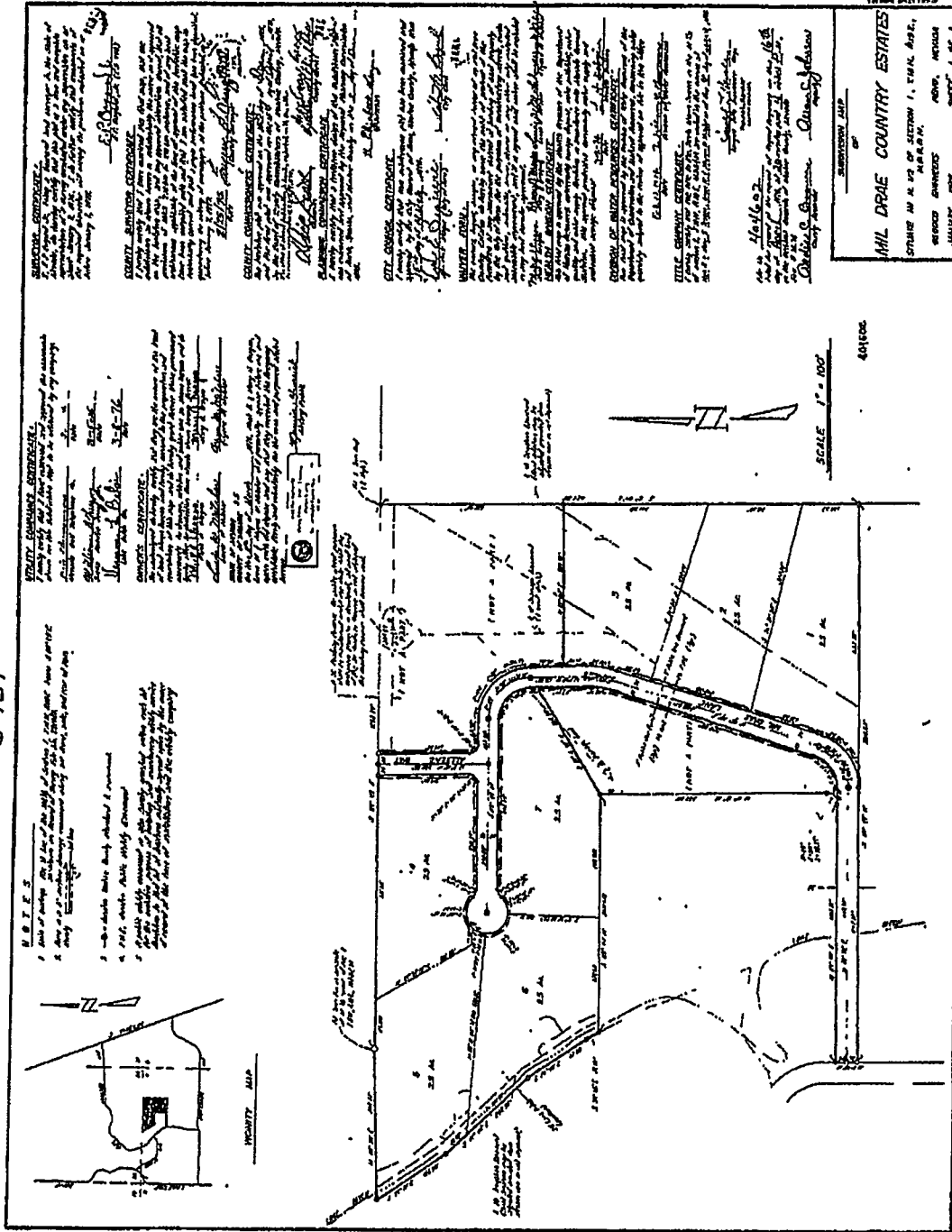


EXHIBIT 1

1568



PROPERTY OWNERS:
 1. All of the lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

NOTES:
 1. All of the lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

PROPERTY MAP:
 A small inset map showing the location of the subdivision within a larger area.

GENERAL CONDITIONS:
 1. The lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

DEED CONDITIONS:
 1. The lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

WATER DRAINAGE:
 1. The lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

OTHER CONDITIONS:
 1. The lots shown on this map are owned by the same person or persons.
 2. The lots shown on this map are owned by the same person or persons.
 3. The lots shown on this map are owned by the same person or persons.
 4. The lots shown on this map are owned by the same person or persons.
 5. The lots shown on this map are owned by the same person or persons.

MIL DRAE COUNTRY ESTATES
 STRAUS IN N. W. 1/4 OF SECTION 1, T. 14 N. R. 10 E.,
 M. 10 S. 10 W.,
 M. 10 S. 10 W.,
 JANUARY 1911

Subdivision - Tract Map # 1568

1568

EXHIBIT 2



Community Development
"Dedicated to Excellence in Public Service"
 Adrian P. Freund, AICP, Community Development Director



Agenda Item No: **3-A** (06/05/2007)
 Staff Recommendation: **NO RECOMMENDATION**

Agenda Item No: **3-B** (06/05/2007)
 Staff Recommendation: **NO RECOMMENDATION**

**WASHOE COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
 STAFF REPORT**

To: Members of the Washoe County Planning Commission
Re: Abandonment Case No. AB07-005 (MILABAR WAY)
Date: May 25, 2007 **Prepared By:** Roger D. Pelham, Senior Planner

GENERAL INFORMATION SUMMARY

Applicants: Peter and Wendy Ernaut

Requested Actions:

A - To consider offer of dedication of a private right-of-way, approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way (formerly known as Allyene Way) consisting of a portion of Assessor's Parcel Number 040-581-15, offered for dedication with the "Subdivision Map of Mil Drae County Estates" on April 16, 1976, and to consider executing a resolution accepting Dedication;

And, if approved,

B - To abandon the right-of-way, approximately 50 feet wide and 233 feet long, as shown on Tract Map No. 1568, commonly known as Milabar Way (formerly known as Allyene Way), consisting of a portion of Assessor's Parcel Number 040-581-15, offered for dedication with the "Subdivision Map of Mil Drae County Estates" on April 16, 1976. Abandonments are authorized pursuant to Article 806 of the Washoe County Development Code.

Milabar Way is a "stub street" located to the north side of Mil Drae Lane, approximately 1/3 mile north of the intersection of Mil Drae Lane and Del Monte Lane. The ±2.55 acre parcel is designated High Density Rural (HDR) in the Southwest Truckee Meadows Area Plan, is within the NE4 of Section 1, T18N, R19E, MDM, Washoe County, Nevada. The abandonment application is within the boundaries of the Southwest Truckee Meadows Citizen Advisory Board, but not subject to its review; and is in Washoe County Commission District No. 2. (APN 040-581-15)