



WASHOE COUNTY BOARD OF ADJUSTMENT Meeting Minutes

Board of Adjustment Members

Kim Toulouse, Chair
Lee Lawrence, Vice Chair
Philip J. Horan
Robert F. Wideman
Vacant
William Whitney, Secretary

Thursday, February 6, 2014
1:30 p.m.

Washoe County Health District
Conference Room, Building B
1001 East Ninth Street
Reno, NV

The Washoe County Board of Adjustment met in regular session on Thursday, February 6, 2014, in the Washoe County Health District Conference Room, Building B, 1001 East Ninth Street, Reno, Nevada.

1. Determination of Quorum

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

Members present: Kim Toulouse, Chair
Lee Lawrence, Vice Chair
Philip Horan
Robert Wideman

Members absent: None; one vacancy

Staff present: William Whitney, Division Director, Planning and Development
Sandra Monsalvè, AICP, Senior Planner, Planning and Development
Trevor Lloyd, Senior Planner, Planning and Development
Eva Krause, AICP, Planner, Planning and Development
Greg Salter, Deputy District Attorney, District Attorney's Office
Sara DeLozier, Recording Secretary

2. Pledge of Allegiance

Chair Toulouse led the pledge to the flag.

3. Ethics Law Announcement

Deputy District Attorney Salter recited the Ethics Law standards.

4. Appeal Procedure

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

5. Public Comment

Chair Toulouse opened the public comment.

Katherine Snedigar commented on zoning for Palomino Valley. That area is an agriculture zone but is being treated as a residential zone. The area is 40 acre parcels and should be treated as such.

Robert Lewis commented on SB14-022. He is an Incline resident asking for a delay in the motion. He lives close to where the new "fake tree" pole is to be installed and it will be 30 feet from any other tree.

Virginia Lewis commented on SB14-022. She would like the motion delayed. She feels there has not been enough time to get proper notice and gather public comment. She says the new pole will contain two microwave dishes but the staff report gives no dimensions. Also, the photo is not a good representation as it shows a tree style pole with no equipment installed on the pole. Ms. Lewis said she did not receive notice of the application in a timely manner.

Chair Toulouse closed the public comment period.

6. Approval of Agenda

In accordance with the Open Meeting Law, Member Horan moved to approve the agenda of February 6, 2014. The motion, seconded by Member Wideman, passed four in favor and none opposed.

7. Approval of October 3, 2013 Draft Minutes

Member Horan moved to approve the minutes of October 3, 2013, as written. The motion was seconded by Member Wideman and passed four in favor, none opposed.

8. Planning Items and Public Hearings

Agenda Item 8A

Public Hearing: Special Use Permit Case Number SB13-021 (Larry & Alice Olson) – To convert a duplex to a single-family dwelling on a Medium Density Urban (MDU) Regulatory Zoned parcel in the Tahoe planning area.

- Applicant: Larry and Alice Olson
- Property Owner: Larry and Alice Olson
- Location: 821 Alder Avenue, Incline Village, NV
- Assessor's Parcel Number: 132-020-02
- Parcel Size: ±0.147 acres (±6,403 square feet)
- Master Plan Category: Urban Residential
- Regulatory Zone: Medium Density Urban
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 302, Allowed Uses, Table 110.302.05.1; and Article 810, Special Use Permits
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Sections 15 & 16, T16N, R18E, MDM
Washoe County, NV

- Staff: Eva M. Krause, AICP, Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3796
- E-mail: ekrause@washoecounty.us

Chair Toulouse opened the public hearing. Ms. Krause reviewed her staff report dated January 14, 2014.

Member Wideman requested of Ms. Krause, her best argument why this would not be consistent with the area plan. Ms. Krause responded that the only thing she could find was it would be reducing multi-family housing in a predominately multi-family urban area. The use was still residential and code says you can have single family homes in a Medium Density Urban area. In Member Wideman's opinion, there is no indication why it can or can't be approved. If approved, this will be the only single family home in this area. Changes appear to be mostly on the interior of the residence with only a change from two single garage doors to a double garage door on the exterior.

Chair Toulouse opened public comment.

Gary R. Taylor, the applicant's representative, was present and stated that Development Code said they needed to apply for a Special Use Permit. That's why they'd done so.

Chair Toulouse closed the public comment.

All members agreed there was nothing they could find to show they should deny the Special Use Permit.

Member Horan moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment makes the following findings and approve, Special Use Permit Case Number SB13-021 for Larry and Alice Olson, subject to the conditions stated in Exhibit A, in accordance with Washoe County Development Code Section 110.810.30. Member Wideman provided the second; the motion carried unanimously.

There were no disclosures.

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 Master 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 a single-family residence, 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.

Agenda Item 8B

Public Hearing: Special Use Permit Case Number SB13-022 (AT&T Mobility, Wireless Communication Facility) – To install a wireless telecommunications monopole, designed as a monopine, up to ±112.5 feet tall to top of pole (±117 to top of branches), with up to 12 panel antennas; 2 microwave dishes; 3 fiber optic runs; 3 DEC power cables; 6 LTE remote radio units (RRU); 9 UMTS RRUs; 3 surge protectors; outdoor radio equipment; and all necessary ancillary equipment, and an 8-foot tall chain link fence with green, vinyl slats.

- Property Owner: Mike Schwartz
- Applicant: Ericsson for AT&T Mobility, Attn: Joel Ellinwood
- Location: 202 E. Enterprise, where Enterprise and Oriole meet
- Assessor's Parcel Number: 132-222-17
- Parcel Size: ±.43 acres
- Regulatory Zone: General Commercial
- Master Plan Category: Commercial
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Commission District: 1 – Commissioner Berkbigler
- Development Code: Authorized in Article 324, Communication Facilities; and Article 810, Special Use Permits
- Section/Township/Range: Within Section 15, T16N, R18E, MDM Washoe County, NV
- Staff: Sandra Monsalve, AICP, Senior Planner Washoe County Community Services Department Planning and Development Division
- Phone: 775-328-3608
- E-mail: smonsalve@washoecounty.us

Chair Toulouse opened the public hearing. Ms. Monsalve reviewed her staff report dated January 24, 2014.

Member Horan referred to a letter from L'Ermitage HOA citing Table 110.324.55.1 of the Washoe County Code. Ms. Monsalve said that the table was not applicable because this pole was not being installed to "close a significant gap" but to address a "maximum capacity" issue.

Chair Toulouse asked where in the Code is the "maximum capacity" issue addressed. Ms. Monsalve replied that it isn't addressed. Chair Toulouse asked council, if "maximum capacity" is not addressed, does the Board of Adjustment make the decision for or against the pole. Deputy District Attorney Salter said the pole is authorized in the code without a "significant gap study".

David Alameda, applicant's representative, there is a pole in the surrounding area this is at capacity causing dropped cell phone calls and other disruptions so they have determined they need to improve in the area by adding another monopole. Mr. Alameda indicated that the photo sims were accurate, showing the antennas.

Member Horan inquired if this pole is a replacement for a previous application to install a pole at the high school football field, which was never installed. Mr. Alameda said he was not aware of that application. He is working specifically on this application. Ms. Monsalve said the previous application was for a pole at the Incline Village High School football field but it came

under a lot of public outcry so AT&T withdrew the application. If this application is a replacement, she is not aware of it.

Member Lawrence asked if the distance of 300 feet from the nearest dwelling unit was accurate. Ms. Monsalve said according to the geographic mapping system it was more like 82 feet.

Member Lawrence asked if this site would have coolers/fans that click on and off. Mr. Alameda said it may depend on if it gets warm enough in the area.

Member Lawrence also asked about noise mitigation. Mr. Alameda said typically they are below the level for noise abatement. The equipment is fairly quiet. Additionally, the fence will dampen the noise.

Mr. Alameda called attention to condition "i" which requires landscape design. He will apply for a modification as the proposed site is in a concrete parking lot used for boat storage.

Member Horan asked if the site was already landscaped. Ms. Monsalve said there was probably already a 6 foot fence around the property and AT&T would be installing an 8 foot fence around their equipment. Seeing as how the property was a concrete parking lot, she didn't think landscaping was necessary.

Chair Toulouse opened public comment.

Virginia Lewis, an Incline Village resident, stated that the site is all asphalt with no trees on the parcel so the tower will be highly visible. She objects to the equipment that will be hanging up and visible from all around. She feels it's inappropriate for the area, making it less desirable to residents and travelers. She requests further review before approving the application.

Chair Toulouse closed the public comment.

Director Whitney advised the Board that they could address the request to remove condition "i" at this time or have the applicant apply for a Director's Modification.

Member Horan disclosed that he'd received a phone call from someone, he couldn't remember the gentleman's name, who raised objections to the item. Member Horan gave the caller the planning contact number. He also disclosed he is friends with Mr. and Ms. Lewis. He doesn't feel the friendship will influence his decision.

Member Wideman opined that, utility and telecommunication infrastructure are viewed as a necessary element of quality of life. Customers expect to have phone access. He appreciates the concerns for view shed but at the same time the equipment is necessary. He feels the stealth towers, pine tree and palm tree are an adjustment to the consideration of view shed. View shed has an effect on the quality of life as well as being able to make a phone call when you expect to.

Chair Toulouse agreed with Member Wideman and added, in the past when the towers have come up, particularly in Incline Village, there has been a lot of public comment that there isn't enough cell phone capacity and dropped calls. He feels this is an attempt to address that. He then responded to the comment about lack of notification. Ms. Monsalve's records show the public hearing notices were sent out ten days prior to the meeting. Chair Toulouse said he's heard that comment at other times; that notification is not sent out in time to adequately prepare for coming to the meeting. He feels it's a valid concern and stretching it to 15 days should be addressed sometime in the future.

Member Horan encouraged Director Whitney to review condition "i" regarding landscape requirements. He also agreed with Chair Toulouse's comments on increasing the noticing period.

Chair Toulouse closed the public hearing.

Member Wideman moved to adopt all of the eight findings listed in the staff report and based on those findings approve Special Use Permit Case No. SB13-022 for AT&T Mobility, subject to the conditions contained in Exhibit A to the staff report. The Findings are adopted based on individual consideration of information contained in the staff report (including, but not limited to the staff comments regarding the findings) and all exhibits as well as testimony and exhibits presented at the public hearing. Counsel for the Board and the Board Secretary are hereby directed to prepare a written Action Order consistent with this motion. Member Lawrence provided the second; the motion carried unanimously.

The motion was based on the following findings in accordance with Washoe County Development Code Section 110.810.30:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Master 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 of the Development Code;
3. Site Suitability. That the site is physically suitable a for a telecommunications monopole/monopine 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.

Findings required by Section 110.324.75, for a telecommunications facility.

6. That the communications facility meets all the standards of Sections 110.324.40 through 110.324.60 as determined by the Director of Community Development and/or his/her authorized representative;
7. That public input was considered during the public hearing review process; and
8. That the monopole or lattice tower will not unduly impact the adjacent neighborhoods or the vistas and ridgelines of the County.

Agenda Item 8C

Public Hearing: Special Use Permit Case Number SB13-020 (Sader/L.E.A.D) – To establish an equestrian therapy facility that will involve the boarding of up to nine horses and will utilize an existing 12-stall barn and outdoor corrals.

- Applicant/Owner: Robert and Candice Sader
- Location: 19440 Annie Lane, off of Andrew Lane

- Assessor's Parcel Number: 017-320-23
- Parcel Size: 10.32 Acres
- Master Plan Category: Rural Residential
- Regulatory Zone: Low Density Rural
- Area Plan: Southeast Truckee Meadows
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 810, Special Use Permits
- Commission District: 2 – Commissioner Humke
- Section/Township/Range: Section 4, T17N, R20E
- Staff: Trevor Lloyd, Senior Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3620
- E-mail: tlloyd@washoecounty.us

Chair Toulouse opened the public hearing. Mr. Lloyd reviewed his staff report dated January 24, 2014.

With no response to the call for public comment, Chair Toulouse closed the public comment period.

Member Horan opined that this type of facility is valuable to the community and he supports the application.

Chair Toulouse asked if there were any disclosures. There were none.

Member Wideman said he had no objections, he thinks this will be a great facility.

Member Lawrence stated he feels the same way.

Chair Toulouse said he feels the same way, having worked with special needs populations in the past. He thinks this project is fabulous.

Chair Toulouse closed the public hearing.

Member Lawrence moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve Special Use Permit Case Number SB13-020 for Bob and Candice Sader, having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Horan seconded the motion which carried 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 Master 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 horse, 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.

Agenda Item 8D

Public Hearing: Amendment of Conditions Case Number AC13-011 (Spanish Springs Associates, LLC) – To amend Special Use Permit Case Number SB0007-020 to add 118.6 acres to the approved standards and conditions of the original special use permit for grading and construction of drainage facilities to facilitate future development within the Spanish Springs Business Center.

- Applicant/Owner: Spanish Springs Associates, LLC
- Location: Spanish Springs Business Center
- Assessor's Parcel Numbers: 538-171-07 & 538-010-02
- Parcel Size: 118.6 Acres
- Master Plan Category: Industrial and Suburban Residential
- Regulatory Zone: Industrial and Low Density Suburban
- Area Plan: Spanish Springs
- Citizen Advisory Board: Spanish Springs
- Development Code: Authorized in Article 810, Special Use Permits
- Commission District: 4 – Commissioner Hartung
- Section/Township/Range: Sections 14, 22 and 23, T21N, R20E MDM
Washoe County, NV
- Staff: Trevor Lloyd, Senior Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3620
- E-mail: tlloyd@washoecounty.us

Chair Toulouse opened the public hearing. Mr. Lloyd reviewed his staff report dated January 24, 2014. Mr. Lloyd read an email he received from Tim Johnson. There was another email from Tim and deDee Johnson that was distributed to the Board.

Member Lawrence asked Mr. Lloyd if he had stated, staff had not received any complaints about dust and what was the time frame. Mr. Lloyd said, since the beginning of this development. The special use permit dates back to 2000. Member Lawrence stated that he has a very good view of the Pebble Creek area and has seen, several times, excessive dust from projects due to wind. He's seen the contractors on the project with water trying to hold down the dust but with no avail, it just made more dust. Member Lawrence inquired, in this application there were dust palliatives and re-seeding, stated earlier. Is the re-seeding mix a native mix? Mr. Lloyd answered, yes it is. Member Lawrence asked if there were plans to fence the 118 disturbed acres to keep out ATVs and motorcycles. Mr. Lloyd answered there is no proposal for fencing and it's not in the Conditions. Member Lawrence voiced his concern that there would be no fencing on the 118 acres to keep vehicles out which will in turn create more dust.

Jesse Haw, the applicant, stated that they would comply and apply dust palliative or straw with a seed mixture to help absorb water and help germinate the seed, to any disturbed area.

Mr. Haw addressed the fencing concerns indicating that when they gave the land for Alice Taylor Middle School, during construction ATV and motorcycle riders went through the fence at night and dropped into the ditches and sued them for riding at night without lights. He has constant problems with trespassers. He's put up signs and miles of fence and it gets cut down. Mr. Haw said he's met with the Washoe County Under-Sheriff about the problem and he pledged to come out, put up notices on where they can ride. More of an education program for the riders. The WC Sheriff has had a problem trying to catch them, as well. Mr. Haw indicated there is a map coming for a 20 – 30 acre subdivision at the north end of the property in the next 60 days so he's asked if it would make sense to fence and reseed that section with that in mind. Mr. Haw said that he understood Member Lawrence's concerns and if he could stop the ATV and motorcycle riders, he would. He hopes the education program will help. Mr. Haw introduced Engineer, Sam Chacon and Lisa May who have been in Spanish Springs with him since 1981, along with the Consultant, Mr. Sader and they can answer any questions. Member Lawrence asked how deep the proposed grading is to be. Mr. Haw answered the material is called "blow sand", a material with sand that has blown over the eons into the area and if the topography is flat, it has blown into piles, but they are not going to grade below the topography. He said, maybe from one to ten feet of the material that has collected. Then the material would need to pass soil test for density to be used in the fill area. Member Lawrence acknowledged that this is a three phased project and would like to know how long the areas will be opened before amendments will be put down. How long will residents be subject to the dust? Mr. Haw said that it would probably be about two weeks for them to get the material off and two days to put down a palliative and during that time they are required to have dust control. Mr. Haw said that he has been out there during wind events and it's just impossible to control the dust. It also comes from the pits, Boneyard Flats and the playa. With regard to his development, he doesn't see it as being exposed. They're going to cut it, put down a palliative or seed and then this summer or late fall the first phase of new houses being built.

Chair Toulouse asked Mr. Haw if he had considered putting up notices with a contact to call should a large dust event be occurring so a water truck can be sent to the area. Mr. Haw answered; on every project like this he is required to put up a dust permit notice with a phone number and a contact. There would be a large, four-foot by eight-foot, sign with the contractor's name, phone number and the dust control permit number, if there is a large dust event. Chair Toulouse asked what will be done to mitigate dust if a wind event is forecast? Mr. Haw said they'd water as heavy as they could the day before and stay off of it the day of the forecast event. Staying away from the construction site during a wind event is also a safety measure due to possible flying plywood, etc.

With no response to the call for public comment, Chair Toulouse closed the public comment period.

Chair Toulouse asked if there were any disclosures. There were none.

Member Wideman suggested that most of the argument against the project were regarding dust and its impact on surrounding residents. It is his opinion that dust is always a concern with this type of construction and the only way to guarantee that there is no dust due to the construction would be to prohibit construction which is not a practical approach. Which leaves them with good faith and practical efforts to mitigate the dust as the construction goes forward. Member Wideman is satisfied that the applicant is fully aware of and is willing to take steps to satisfy the conditions of approval.

Member Horan agreed with Member Wideman's comments.

Member Lawrence also agreed with Member Wideman's comments, in principle, that construction has to happen and this is an unfortunate aspect of it.

Chair Toulouse supports the project and agrees that the applicant will follow the subscribed measures and use best practices to minimize the dust. He can make all the findings to support the project.

Chair Toulouse closed the public hearing.

Member Horan moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public hearing, the Washoe County Board of Adjustment approve Amendment of Conditions Case Number AC13-011 for Spanish Springs Associates, LTD, Partnership having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Wideman seconded the motion which carried 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 Master Plan and the Spanish Springs Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for grading for future landscaping, 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 8E

Amendment of Conditions Case Number AC13-012 (Palomino Valley General Improvement District) – To amend condition 1i of Special Use Permit Case Number SB10-011 to extend for one additional year the timeframe for the re-vegetation to achieve a 50% minimum vegetative coverage to the graded areas of the Palomino Valley General Improvement District facility.

- Applicant/Owner: Palomino Valley General Improvement District (PVGID)
- Location: 5105 Wayside Road
- Assessor's Parcel Number: 077-350-02
- Parcel Size: 42.53 Acres
- Master Plan Category: Rural
- Regulatory Zone: General Rural
- Area Plan: Warm Springs
- Citizen Advisory Board: Warm Springs/Rural
- Development Code: Authorized in Article 810, Special Use Permits
- Commission District: 5 – Commissioner Weber

- Section/Township/Range: Section 33, T23N, R21E
- Staff: Trevor Lloyd, Senior Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3620
- E-mail: tlloyd@washoecounty.us

Chair Toulouse opened the public hearing. Mr. Lloyd reviewed his staff report dated January 24, 2014.

Chair Toulouse asked if, seeing as how the special use permit expired on February 3, 2014 would we be making the requested application extension retroactive. Mr. Lloyd said exactly, as the application was submitted prior to the expiration date.

Member Lawrence said one of the concerns he has is the longer these projects go, the reduced possibility of germination for re-vegetation. Is there any consensus, if irrigation is provided and things don't grow, is there a guarantee from a contractor? Mr. Lloyd said, typically, there is a bond that insures the germination of the seed mix occurs and will mature and if not, we would have the ability to pull the bond. In this case, Mr. Lloyd doesn't know the details of the bond but the applicant is here and can answer that question, Dennis Goodsalt, the vice-president of the Palomino Valley GID Board.

Member Lawrence asked if there was any guarantee from the contractor that re-seeded the area, to the quality of the seed. Mr. Goodsalt said the landscaper hydro-seeded both sites with a native mix, whether it was good seed or not, he doesn't know. All they know is they didn't get the coverage that was required. He said, the president who is out of town right now, had anticipated re-spraying to get better coverage. They had two employees watering both sites but the well has gone down quite a bit so they can't do that anymore.

Chair Toulouse opened public comment.

Katherine Snedigar, a taxpayer, said she didn't care to pay for the re-seeding/re-vegetation. It's for their private dirt roads and the GID is the one who grades those roads, not Public Works. They can't afford, out there, to pay for vegetation in the desert. If you drive around the properties in the area you're going to find many properties that look similar to the one shown on the screen. Are you going to start implementing requirements that they re-vegetate? This is ridiculous. You're going to take our water that is used on the roads and the money that it costs to re-vegetate, instead of putting it on the roads you want to put it on the hillside so it looks pretty. I object to that. They're private roads with restricted public access and we don't need to have the desert reforested.

Jeanne Herman, with the Warm Springs CAB, said she thinks they need to rethink some of the re-vegetation and reforestation. It costs the taxpayers a lot of money. Maybe we shouldn't try to do what God hasn't been able to do in the last year or two. To me, I look out there at the hill and think there is nothing wrong with it and don't know why we are doing this to begin with. Everybody is trying to do the right thing but with everyone being poor right now and things being tough, there ought to be a change to the program. There's going to be another project to come before you where they want to put trees and landscaping up at the Shooting Range. That's going to slow down the guys who want to shoot out there because you have to have the lawnmowers and nippers doing the trees. The whole thing needs to be looked at.

Chair Toulouse closed public comment.

Chair Toulouse asked if there were any disclosures. There were none.

Member Wideman commented that this project for Palomino Valley GID has come before the Board many times. In many of the previous discussions, on this topic of dust control, we had a substantial number of people come to the meeting with concerns about dust control so the re-vegetation was a result of the concern. We also heard concerns about public money. We are aware that this is a special tax district and a narrowly funded project. As a result of that, there was a decision to put up a fence to mitigate view into the corporate yard and that condition was relaxed as a result of concern for that special tax district. The fact that all those people are not here today doesn't diminish the fact that their testimony went on the record as heard so that is still a viable consideration. As a result of that, Member Wideman believes the re-vegetation, to a minimal level, is appropriate, and for that reason he supports the extension.

Member Horan agreed with Member Wideman's comments.

Member Lawrence said that re—vegetation was the best way to go, for sure. It's unfortunate, that Mother Nature hasn't cooperated. Member Lawrence supports the extension based on the fact that, in the record, dust has been a problem before.

Chair Toulouse stated that the Board has a great deal of sympathy and empathy for, not only the PVGID but others as well, when it comes to public money. We have to be good stewards of public money, as well. He believes extending the re-vegetation program another three years is the best way to go.

Member Horan moved that, after giving reasoned consideration to the information contained within the staff report and the information received during the public hearing, the Washoe County Board of Adjustment approve Amendment of Conditions Case Number AC13-012 for Palomino Valley General Improvement District, having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Lawrence seconded the motion which carried 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 Master Plan and the Warm Springs Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for the existing facility and the request to extend the timeframe for the revegetation to mature.
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.

9. Chair and Board Items

A. *Report on Previous Board of Adjustment (BOA) Items

Director Whitney reported that the special use permit for Dream Valley Stables in Spanish Springs, which was denied by the Board, was appealed to the Board of County Commissioners and approved at the November 12, 2013 meeting along with some additional conditions dealing with water quality, reduction in the amount of horses allowed from 50 to 30.

B. Future Agenda Items and Reports

Chair Lawrence requested an item be placed on a future agenda for a presentation from Director Whitney and DDA Salter regarding public hearing notice law and statutes. Director Whitney said yes. They will give some background on how the time frame came to be along with the legal aspects.

10. Director's Items

A. *Legal Information and Updates

Director Whitney noted that the December Board of Adjustment meeting was cancelled due to poor weather and nasty roads.

Director Whitney thanked Mr. Webb for standing in for him at the October Board of Adjustment meeting in his absence.

Director Whitney congratulated Chair Toulouse and Vice Chair Lawrence on their appointments.

B. *Presentation regarding the Carrigan vs. Ethics Commission case regarding disclosure and abstention due to conflicts of interest.

DDA Salter gave a presentation regarding a recent Nevada Supreme Court case, Carrigan vs. Ethics Commission. The case added a lot of information about; in what circumstances we'd need to disclose or abstain due to conflicts of interest. The Statute read a bit differently when it was litigated but the concept is still the same and the catch-all clause is still the same. Today's Statute in part says, "except as otherwise provided in this section, in addition to the requirements of Subsection 1, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in, consideration of a matter with which the independence of judgement of a reasonable person in the public officers situation would be materially affected by the public officers acceptance of a gift or a loan, the public officer's significant pecuniary interest, or the officer's commitment in a private capacity to the interest of another person". Further down in the Statute it goes on to define what a commitment in a private capacity is. It says, "a commitment in a private capacity with respect to the interest of another person means a commitment, interest or capacity with respect to the interest or relationship of a public officer or employee, to a person who is a spouse, a domestic partner of the public officer or employee, who is a member of the household of a public officer or employee, who is related to the public officer or employee or to the spouse or domestic partner of the public officer or employee by blood, adoption, marriage, domestic partnership within the third degree of consanguinity or affinity, or a person who employees the public officer or employee, the spouse or domestic partner of a public officer or employee, or with whom the public officer or employee has a substantial and continuing business relationship or, 'this is called the catch-all clause and this is what the case was all about', with whom the public officer or employee has any other commitment, interest or relationship that is substantially similar to a commitment, interest or relationship described above".

The case involved a project called the Lazy 8 Casino that was going to be built off the Pyramid Highway, a very controversial project. The presenter in the case was Carlos Vasquez, who's a political consultant. Mr. Vasquez was receiving a \$10,000 a month retainer from the

developer to lobby for the project and present it at the Planning Commission at the Sparks City Council level. He was also the campaign manager for Sparks City Councilman Carrigan. Sparks City Councilman Carrigan, at the time was up for re-election. Mr. Vasquez was managing Mr. Carrigan's campaign without compensation as he had done the three times before that Mr. Carrigan had been elected. Mr. Vasquez was also a very close personal friend of Mr. Carrigan. When the issue came up before the Sparks City Council, Mr. Carrigan said he didn't know if he needed to disclose this, he's not a member of my family, I don't have an ongoing relationship with him. What should I do? Mr. Carrigan went to the Sparks City Attorney who said he should disclose the nature of the relationship, but you don't have to abstain because you don't have a financial interest in the project. Mr. Carrigan followed that advice. When the project came for a vote, Mr. Carrigan voted for approval of the project. Immediately after which, there were several complaints filed with the Nevada Ethics Commission against Mr. Carrigan. The Ethics Commission did an investigation and had a hearing and they censured Mr. Carrigan saying that his relationship with Mr. Vasquez was "substantially similar" to a family relationship. One of the facts they used when Mr. Carrigan testified before the Ethics Commission was, he was a very close friend with Mr. Vasquez and that he confided in Mr. Vasquez things he wouldn't confide with his own siblings. The Ethics Commission said this is such an intense relationship it's actually "substantially similar" to a family relationship. Then, when they examined the ongoing campaign management, they said this is "substantially similar" to an ongoing business relationship and therefore Mr. Carrigan should disclose, which he did, but he should abstain because, the Commission felt because of the business relationship a reasonable person's independence of judgement would be affected. So, they censured him but didn't fine him and didn't find him in willful violation of an Ethics Law because he got an opinion from the Sparks City Attorney that was wrong. Mr. Carrigan appealed the Ethics Commission decision to District Court and at the District Court he said, his right to vote is a protected first amendment right and therefore the Ethics Law that operates as a prior restraint on that right violates the first amendment of the Constitution. Also, because the way the Ethics Law is written it violates the first amendment because it's vague and overbroad in that it prohibits conduct that is protected by the first amendment. The District Court said they weren't going to buy that and we're not going to review the Ethics Commission decision, we're going to let it stand. The case was appealed to the Nevada Supreme Court who said, yes, your right to vote is protected by the first amendment and yes, the Ethics Law catch-all clause is unconstitutional and we reverse the Ethics Commission decision and we also hold that the catch-all clause is unconstitutional. The Ethics Commission appealed to the United States Supreme Court who said, if the right to vote has not gone before a Legislator, someone who has been elected to sit on an elective body and make legislative decisions, that is not protected by the first amendment. The U.S. Supreme Court said it's not protected and therefore the standard the Nevada Supreme Court used to rule the catch-all clause to be unconstitutional was too stiff and got reversed. So, it goes back down to the Nevada Supreme Court and Mr. Carrigan raised two additional arguments on remand. He argued that the Ethics Commission censure violated his first amendment right to association and also, under the correct standard to review the catch-all clause is still unconstitutional because it doesn't impart fair notice as to what's prohibited. A couple of months ago the Nevada Supreme Court came out with a decision and said no, we don't think the Ethics Law's catch-all clause violates freedom of association and we also don't think the provision in the Ethics Law is unconstitutionally vague or overbroad.

What we learned from this case was that, the Nevada Supreme Court says the catch-all clause is alive and well and valid meaning we need to pay attention to it. If someone is coming before you who might be a friend, who maybe isn't a relative, maybe isn't an employer, maybe doesn't have a substantial ongoing business relationship with you but you have a relationship with that person or your spouse or domestic partner has a relationship with that person that's kind of like a family, as in the case of Mr. Vasquez and Mr. Carrigan who said, he was a very close personal friend and I trust him more than I trust my own sibling. That turned out to be a circumstance that was very substantially similar to a family relationship. And the campaign

turned out to be substantially similar to an ongoing business relationship. So, you need to consider, the matters and the people coming before you. You need to decide whether you have a relationship with them; is it "substantially similar" to a family or ongoing business relationship. If so, if you have a situation, you can go to the Ethics Commission and get an opinion. Therefore, it can't be vague because you have a way to find a real answer. In the Carrigan case, Mr. Carrigan admitted he did have sufficient time to go to the Ethics Commission but he chose not to so the Nevada Supreme Court made a big deal out of it. The substantially similar rule does apply to us now and if you have a question, the best thing to do is go to the Ethics Commission and get an answer. So, how do you do that when you get an agenda packet on Thursday with a meeting coming up on Tuesday? We're looking at a way to resolve that by getting preliminary staff reports out early or at least agenda items a little bit earlier so the Board can judge whether or not someone involved might trigger one of these relationships.

Member Lawrence asked how long is the turn around when asking the Ethics Commission. DDA Salter said it would take about 30 – 45 days to get an opinion.

Chair Toulouse asked if that would mean possibly moving an item to a future meeting. DDA Salter said, we could run up against time limits, so maybe, if you have a situation call Karen Jenkins at the Ethics Commission and ask her what she thinks. They would probably advise you to abstain. When in doubt abstain.

Member Horan asked when there would be a fifth Board Member. Mr. Whitney answered said it's on the path to the BCC and should be within the next two months.

Member Horan noticed Dawn Spinola for the great job she did and support she gave to the Board as Recording Secretary. Member Horan welcomed Sara DeLozier as the Recording Secretary.

11. Public Comment

As there was no response to the call for public comment, Chair Toulouse closed the public comment period.

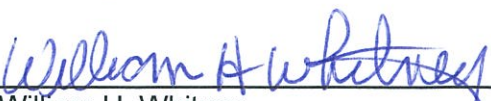
12. Adjournment

The meeting adjourned at 3:44 p.m.

Respectfully submitted,


Sara DeLozier, Recording Secretary

Approved by Board in session on August 6, 2015


William H. Whitney
Secretary to the Board of Adjustment

