



WASHOE COUNTY BOARD OF ADJUSTMENT DRAFT Meeting Minutes

Board of Adjustment Members

Lee Lawrence, Chair
Kim Toulouse, Vice Chair
Kristina Hill
Brad Stanley
Clay Thomas
William Whitney, Secretary

Thursday, April 7, 2016
1:30 p.m.

Washoe County Administration Complex
Commission Chambers
1001 East Ninth Street
Reno, NV

The Washoe County Board of Adjustment met in regular session on Thursday, April 7, 2016, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

1. *Determination of Quorum

Chair Lawrence called the meeting to order at 1:32 p.m. The following members and staff were present:

Members present: Lee Lawrence, Chair
Kim Toulouse, Vice-Chair
Kristina Hill
Brad Stanley
Clay Thomas

Members absent: None

Staff present: Kelly Mullin, Planner, Planning and Development
Roger Pelham, Senior Planner, Planning and Development
Lora R. Robb, Planner, Planning and Development
Nathan Edwards, Deputy District Attorney, District Attorney's Office
William H. Whitney, Director, Planning and Development
Donna Fagan, Recording Secretary, Planning and Development

2. *Pledge of Allegiance

Brad Stanley led the pledge to the flag.

3. *Ethics Law Announcement

Deputy District Attorney Edwards recited the Ethics Law standards.

4. *Appeal Procedure

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

5. *Public Comment

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

6. Approval of Agenda

Director Whitney requested item 8B be placed before 8A on the agenda. There was no vote for approval.

7. Approval of February 4, 2016 Draft Minutes

Member Toulouse moved to approve the draft minutes of February 4, 2016 as written. The motion was seconded by Member Stanley and passed unanimously. **(five votes for, none against)**

8. Public Hearings

B. Special Use Permit Case Number SB16-002 (TMWA Lemmon Drive Public Service Yard) – Hearing, discussion, and possible action to approve a special use permit for the creation of a Public Service Yard on a 1.25 acre parcel located on the southeast corner of Lemmon Drive and Arkansas Drive and a major grading permit for the importation of more than 1,000 cubic yards of fill material within a special flood hazard zone.

- Applicant: Truckee Meadows Water Authority (TMWA)
- Property owner: TMWA
- Location: 100 Arkansas Drive
- Assessor's Parcel Number: 080-730-01
- Parcel Size: 1.25 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Public Semi Public (PSP)
- Area Plan: North Valleys
- Citizen Advisory Board: North Valleys
- Development Code: Authorized in Article 302 Allowed Uses, Article 438 Grading, and Article 810 Special Use Permit
- Commission District: 5 – Commissioner Herman
- Section/Township/Range: Section 26, T21N, R19E, MDM, Washoe County, NV
- Staff: Eva M. Krause, AICP, Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3628
- E-mail: ekrause@washoecounty.us

Chair Lawrence opened the public hearing. Roger Pelham reviewed Eva Krause's staff report dated March 22, 2016, in Ms. Krause's absence.

Member Thomas noted, in the staff report on page 9, it addresses the Regional Transportation Commission (RTC) comments saying they're not really concerned about the sidewalks at this time. However, at the bottom of the page of Exhibit D, it says they are required to design and construct the sidewalk. There seems to be uncertainty. Mr. Pelham looked over the staff report while Director Whitney said he saw the requirement from RTC and looked at where the proposed project is located, in an area that is rural with no development near it, and he had asked Ms. Krause to contact RTC about that. Unfortunately, she's not available to comment on the outcome. Member Thomas agreed but there is potential for residential to

surround it one day with sidewalk he asked is there going to be a gap because it wasn't required at this time or can we add a condition that says "at such a time, this ought to be done." Director Whitney noted this area had recently been annexed into the City of Reno and a majority of this area will probably mostly be industrial. So, yes, there could be a patch there with no sidewalk. You could also end up with a sidewalk around a small area all by itself. Member Toulouse observed, under the conditions of approval item 6(d), the Washoe-Storey Conservation District made a recommendation for LID pervious pavement or pavers and the way this is worded it is very ambiguous. The condition of approval says "It is recommended that the applicant use LID pervious...." why don't we just say the applicant "must use LID pervious..." because this looks like we're giving them a choice. Mr. Pelham said that is exactly what we're doing. This is written as permissive not mandatory. There are a lot of benefits to using the pervious asphalt or concrete but it also requires much higher maintenance. Member Stanley asked about how far the project is from Swan Lake. Mr. Pelham guesstimated about 1,500 – 3,000 feet east.

Angela Fuss, with CFA representing TMWA, addressed the sidewalks saying there is a walking path adjacent to Lemmon Drive in place now. RTC is doing an intensive 18-month study for the North Valleys area, looking at roads and capacity and Lemmon Drive is included. The annexation to the City of Reno and future development will have a huge impact on roads in this area. Over the course of the study they will come up with some recommendations probably when Lemmon Drive gets expanded or widened. During that process she thinks some of these roads will come in on the plan to be widened. As part of that, sidewalks will likely go in. For anyone that wants to walk, there is a safe pedestrian route with the walking path. In terms of the Low Impact Development (LID) question, the way the site is designed, the land will be paved where the trucks will be driving. The perimeter will have landscape strips and berms. LID standards will be incorporated in the design so when water hits the pavement it will drain into the swales in the landscaped areas. Ms. Fuss stated TMWA currently has a facility at this location. They want to be able to expand it so if they have to do maintenance or have an emergency in the North Valleys area, they don't have to go into town to pick up the equipment and materials they may need. TMWA already owns the property and this is an ideal location for what they want to use it for.

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

There were no disclosures.

Member Toulouse requested the Board and Planning and Development start considering the requirement of pervious pavers and pavement to allow infiltration to occur. That should go a long way to restoring the aquifers we've lost over the years and continue to lose. He's aware of the maintenance issues and that it is more expensive but he feels it would be a good idea.

Member Stanley asked Mr. Pelham how much drainage there would be from this site to Swann Lake and does he know if permeable is better or worse for that. Mr. Pelham said no, this is too small to have done a hydrology study. The infiltration basin that is on-site will be sized for the appropriate storm. He believes it's a five year storm. Engineering will determine the amount of run-off that will occur and a basin will be configured from that. Member Stanley asked if there would be any additional run-off issues with the change of use of this property. Mr. Pelham said no, there can't be. Whatever the situation is before, that is what the situation will be afterwards.

Member Toulouse 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 with conditions Special Use Permit Case Number SB16-002 for TMWA Public Service Yard, having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Thomas seconded the motion which carried unanimously. **(five in favor, none against)**

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

A. Variance Case Number VA16-001 (Collins) - Hearing, discussion, and possible action to approve a variance reducing the rear yard setback from 20-feet to 2.5-feet for an addition to the existing residence, and reducing the same rear yard setback from 20-feet to 5-feet for an attached garage.

- Applicant: Elise Fett & Associates, Ltd.
- Property Owner: Susan M. Collins Trust
- Location: 506 McDonald Drive, at the southeast corner of its intersection with McCourry Boulevard in Incline Village
- Assessor's Parcel Number: 124-071-01
- Parcel Size: ±0.41-acre
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, *Variances*
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Section 16, T16N, R18E, MDM, Washoe County, NV
- Staff: Kelly Mullin, Planner
Washoe County Community Services Department
Planning and Development Division
- Phone: 775-328-3608
- E-mail: kmullin@washoecounty.us

Chair Lawrence opened the public hearing. Kelly Mullin reviewed her staff report dated March 22, 2016.

Member Hill inquired about the east side of the Hill property being the rear yard. Ms. Mullin stated, the way Planning determines the side, rear, and front yards is in the development code. This is a corner lot so both of the property lines that abut the street are considered front and the rear is opposite the shortest front. In this case, the shortest front is the western property line

making the rear the eastern property line. The southern property line would be considered the side. In some circumstances the way it's defined in code is not necessarily the way it's used.

Elise Fett, the applicant's representative, responded to Member Hill's question about the yard designations saying McCourry Boulevard, where the short side of the property is, is a much more traveled road with a drainage ditch running alongside than is McDonald Drive. McDonald Drive is where the much safer driveways enter the properties. In using the driveway to the existing garage the property owner has to maneuver around two trees, one of which will be removed in the proposed garage addition. The driveway is so tight, sloped, shaded by trees and the house the bottom is full of ice in the winter resulting in car and house damage. The existing garage does not function well, it's lower than the existing house and it's too narrow to get in and out of with a wheelchair. They've chosen to turn that into a bedroom as there is no bedroom on the living level, eliminating that driveway, and creating one that is much safer. Ms. Fett pointed out in an old subdivision map from Crystal Bay Development, which Incline Village General Improvement District (IVGID) was using, had planned on this area being the back yard. They'll be providing a handicapped bathroom and bedroom in the existing garage and easy access from the proposed garage into the house. Ms. Fett also pointed out the garage is going to be dug into the existing slope, therefore, recessed and will show very low on the side that adjoins the neighbor's property. The proposed garage will be four feet lower in height than what would be allowed. In doing the height calculation allowed for a detached structure you would be allowed 18 feet and they propose a height of 14 feet from the finished floor of the garage to the highest peak of the garage. She's not sure if the neighbor is aware the finished floor elevation of their house is at 94 and the elevation of the finished floor here is more than seven feet lower. The beginning of the roof in the corner is going to be 10 feet from the property line, the average is 7.5 feet. The garage will be at a very low plate height, only about three feet above the finished floor of the neighbor's house. Ms. Fett believes what her clients are requesting is very reasonable with respect to the neighborhood and requests approval.

Member Thomas asked Ms. Fett to clarify how a new garage in front of the existing garage would mitigate the problems being faced to begin with; the trees, shade, and snow. Ms. Fett said the garage driveway is going to have a 3.5% slope instead of a 16% slope. It will also provide a much safer driveway that doesn't require backing onto the road. There will still be some shadowing but not as much.

Member Hill asked if the existing driveway would be removed. Ms. Fett said yes, and revegetated. Member Hill asked the status of the Tahoe Regional Planning Agency (TRPA) approval. Ms. Fett answered, it's not scenic and they have plenty of coverage.

Member Thomas noted they'll be going from a one-car garage to a two-car garage. Is the reason they need a variance because the new garage will push up against the boundary line or is it possible to just enlarge the garage without going so close to the boundary line making a 2.5-foot access. Ms. Fett reviewed the plan showing where the actual access would be.

Member Stanley asked what the implication of current garage vs. proposed garage is for the neighbor. Ms. Fett reiterated, it is a seven-foot difference in elevation between the neighbor and the applicant's houses. The neighbor's fence is higher than the height of what is being proposed. What is being added will not reduce their light coming in in the afternoon.

Chair Lawrence indicated he was glad Ms. Fett clarified that information as the Board received a letter of concern about the height of the proposed garage.

Chair Lawrence opened public comment.

Sue Collins, the property owner, said she thinks everything has been covered.

Chair Lawrence closed public comment.

DDA Edwards spoke to the reference to the American's with Disabilities Act (ADA) saying with the federal regulation enacted under the ADA which says, "a public entity shall make

reasonable modifications in policies and practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” This is directed at state and local planning laws, as well. If the application of those planning laws would result in someone with a disability being discriminated against then the local entity is required to make a reasonable accommodation. DDA Edwards noted he also did some reading on the ADA website at ada.gov/comprob.pdf. His review of those provisions indicates applying the findings that are required to issue a variance, under state law and under the development code, when viewed through the prism of the ADA requirements empowers the Board to make the findings, in this case. Member Toulouse asked if he could construe a disability as a special circumstance. DDA Edwards said yes, for purpose of the general analysis.

Member Hill disclosed she is a friend of Sue Collins. Ms. Collins called her but she stopped her from discussing the issue. Member Hill doesn't think that contact will have any influence on her decision. DDA Edwards asked Member Hill to describe the nature of her friendship with Ms. Collins. Member Hill said in 1987 she was a ski instructor in New Zealand and so was Ms. Collins. Ms. Collins was her boss. She hasn't seen her much since then. She knows Ms. Collins lives in Incline Village but they don't really see each other. DDA Edwards confirmed they've had little to no contact in the last 30 years. Member Hill said other than their kids grew up at the same time and they'd see each other at school and say hi. DDA Edwards asked if that connection would cause her to view this in a biased way. Member Hill said no. DDA Edwards thinks the safer approach would be for Member Hill to recuse herself from making a decision.

Member Toulouse noted he'd reviewed the application pretty thoroughly and the project is pretty minimal but thought he wouldn't be able to make the findings, but with DDA Edwards clarification on the ADA he believes he can now make those findings.

DDA Edwards added his analysis is particular to this case. These issues can fluctuate widely. His opinion is in relationship to this case. All cases such as this should be treated according to their facts.

Member Toulouse 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 Variance Case Number VA16-001 for Elise Fett & Associates, Ltd., on behalf of Susan M. Collins Trust, with the conditions included as Exhibit A to the staff report for this matter, having made all four required findings in accordance with Washoe County Code Section 110.804.25. Member Stanley seconded the motion which carried unanimously. **(four in favor, none against, one recused)**

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including either the: exceptional narrowness, shallowness or shape of the specific piece of property, or; by reason of exceptional topographic conditions, or; other 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;
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.

9. Planning Items

- A. Possible action to appoint (Lee Lawrence, Kim Toulouse, Kristina Hill, Clay Thomas, or Brad Stanley) Primary and Alternate members from the Washoe County Board of Adjustment to the Washoe County Design Review Committee.

Director Whitney reviewed the item that was continued from the December 3, 2015 meeting due to Member Toulouse's absence.

Member Toulouse nominated Member Stanley as the Primary member of the Design Review Committee (DRC). Member Stanley said he was pleased to be considered. Member Hill seconded the nomination which carried unanimously. **(five in favor, none against)**

Member Thomas nominated himself as the Alternate member of the DRC. Member Toulouse seconded the motion which carried unanimously. **(five in favor, none against)**

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

- B. Discussion and possible action to adopt revised Rules, Policies and Procedures for the Board of Adjustment regarding the conduct of meetings, hearings, and appeals to the Board, and governance matters such as quorum, voting, record keeping, and the duties, responsibilities, and ethical rules for Board members.

Lora R. Robb noted this item is a continuation of the same item on the December 3, 2015 meeting agenda with updates from the information gathered at that meeting. Ms. Robb reviewed her staff report dated January 21, 2016. Ms. Robb clarified attachment C is a marked up version of attachment B and attachment D is the version of attachment C with the strikethroughs removed.

Member Stanley asked why the "long and complicated" document was "reduced". DDA Edwards said it was his recommendation. His style is succinctness when it comes to written documents he likes it less complex. Member Stanley asked if any items were simply removed for style. DDA Edwards said yes, there were several removed for that reasons. He didn't find anything that conflicted with the Nevada Revised Statutes (NRS) or the Development Code so his approach was to simply cut it down and get rid of extra weight. Most of what he did was stylistic. He gave an example: in attachment C, page 13, under "voting procedure guidelines" it says, "the chair shall call for a vote" and he struck out, "shall announce the results of the vote indicating by name who voted in favor and who voted against the motion and any abstentions which shall be recorded in the minutes." DDA Edwards noted that has been a part of the RPP's for a long time and asked how many of the Board have seen a vote followed by an announcement of who individually voted for each one. Generally, there is a motion followed by the ayes and nays then announcement of whether it passed or not. The step of announcing the vote is never taken, not as a matter of fault, just a matter of expediency in conducting the meetings. That is the type of information he's gotten rid of in the new proposed draft. The RPP's should not give fodder to somebody who's challenging what was done at a meeting because you didn't follow your own rules. DDA Edwards has seen that approach used in legal cases. Director Whitney added the Rules, Policies, and Procedures is the Board's document and their decision to approve or deny it. There's the long version and the short version. The succinct version can be used as a helpful reference during meetings as everything is in there.

DDA Edwards continued, another example is a conflict with attorney client privilege. In attachment C (iv), it states, "Attorney Communications. Communications with the attorney assigned by the District Attorney's Office or any other attorney appointed or retained to represent or advise the Board are confidential and privileged attorney-client communications and are not subject to disclosure." It is not nearly that black and white. For example, he's been communicating with the Board during the meeting and nothing is attorney client privilege and not subject to disclosure. It's occurring in an open forum, being videotaped, and recorded in the minutes. None of this is attorney client privilege but if you apply the straight language of the Rules, Policies, and Procedures there could be confusion about what applies. Furthermore, there are times when he gets an email from one of the Board about something they are dealing with. Those aren't necessarily attorney client privileged communication. If there's ever any question about that, he would prefer it be addressed individually rather than having a blanket statement creating confusion that everything you say to him in the hall is attorney client. There are intricacies and tricks to those rules. That's an example of a conflict. DDA Edwards also addressed "subpoena power". There is no subpoena power for this Board. Such powers are outside the scope of what the planning board would do. Those are court level actions.

Member Thomas inquired, under "the establishment of commissions, boards, and hearings" that just passed gave the Board subpoena power. DDA Edwards said that comes from the Ordinance and that is the authority of the Ordinance to include that power. That's a road he would prefer not to go down. Member Thomas asked if it was advantageous that it was put in the original document. DDA Edwards opined it should be removed.

Member Toulouse added, in his time on the Board he remembers eight to 12 hour meetings and not one time has there ever been an occasion to ask to subpoena someone. In his opinion, a much simpler, shorter, plainer document is the way to go. Realistically, the Board will never have a need to subpoena someone. Everything we do is appealable to a higher authority.

Member Hill wanted to clarify; in the recommendation and proposed motion to consider adopting the amended RPP's which attachment should they be adopting. Ms. Robb confirmed it should be attachment D. Attachment C has the marked out language.

Member Stanley addressed DDA Edwards' less is more theory asking if the Board would get more legal coverage by less specificity. DDA Edwards said yes, that's his view. Member Stanley referred to 1.04 (i)(b) and asked since that was stricken, is it still an acceptable process to engage in, even if the document doesn't address it. DDA Edwards opined the general requirements were captured in the "policy statement", subsection A.

Member Thomas agrees with the simplicity, however, if it references back to an NRS and you have to look for those documents to put it all together, then that may become a problem.

Chair Lawrence agreed less is more. He addressed attachment C, 3.09 "procedures for individual agenda items"; and asked is that all covered in Robert's Rules of Order and is that why it has been stricken. DDA Edwards said he believes they're based on Robert's Rules but also on practice over time.

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

Member Toulouse moved that, after giving consideration to the information in the staff report and information received from staff during the meeting, I move to adopt the Board of Adjustment's revised Rules, Policies and Procedures as shown in Attachment D. Member Hill seconded the motion which carried unanimously. **(five in favor, none against)**

10. Chair and Board Items

*A. Future Agenda Items

None

*B. Requests for Information from Staff

Member Hill asked where she could find language that describes when a Board member should recuse themselves. DDA Edwards said it is in Chapter 281A of the NRS. It's also mentioned in the "ethics announcement" at the beginning of the meeting.

Member Stanley asked for more guidance in cases where there may be room for staff to make suggestion to avoid harm or recover from non-compliance. He noted recent applications which received good support, good CAB support but a finding could not be made, but suggestion about remediation or alternatives were not made. He asked if there is a process for the Board to make a request of the planner to supply alternative suggestions so the applicant could continue ahead. Director Whitney stated if the Board has a case with all the pieces they need to take action on it, that is the time to ask questions, make decisions, and add conditions before making the motion. If the Board doesn't have all the information they need they can consider other paths to take.

11 .Director's Items and Legal Counsel's Items

*A. Report on Previous Board of Adjustment Items

Director Whitney reminded the Board of the next meeting on June 2, 2016.

Member Toulouse noted he will probably not be in attendance of the June 2, 2016 meeting.

*B. Legal Information and Updates

None

12. *General Public Comment

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

13. Adjournment

The meeting adjourned at 3:13 p.m.

Respectfully submitted,

Donna Fagan, Recording Secretary

Approved by Board in session on _____, 2016

William H. Whitney
Secretary to the Board of Adjustment