



Planning Commission Staff Report

Meeting Date: March 3, 2015

Subject: Development Code Amendment Case Number DCA 14-010

Applicant: Planning and Development Division

Agenda Item Number: 9A

Summary: To amend Washoe County Code, Chapter 110, Development Code, at various Sections in Divisions Six, Eight and Nine to change the procedures for appealing certain decisions to the Board of Adjustment; and for appealing decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners; and, to correct the terminology of the Planning and Development Division at Article 914

Recommendation: **Recommend approval and authorize the Chair to sign the attached resolution**

Prepared by: Bob Webb, Planning Manager
Washoe County Community Services Department
Planning and Development Division
Phone: 775.328.3623
E-Mail: bwebb@washoecounty.us

Washoe County
Commission District: All Commission Districts

Description

Development Code Amendment Case Number DCA 14-010 – To amend Washoe County Chapter 110 (Development Code) to delete Section 110.806.25, *Hearing of Appeal by Board*, and Section 110.806.30, *Notice of Board Hearing*, of Division Eight, *Procedures*; to add a new Section at 110.912.20 of Division Nine, *General Provisions*, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, *Appeals of Parcel Map Decisions*, and Section 110.608.15, *Appeals of Decisions Regarding Subdivision Maps*, of Division Six, *Subdivision Regulations*; and, Section 110.804.40, *Appeals of Decisions Regarding Variances*, Section 110.806.15, *Review Procedures of Planning Commission Regarding Vacations and Abandonments of Easements or Streets*, Section 110.806.35, *Action by Board Regarding Vacations and Abandonments of Easements or Streets*, Section 110.808.45, *Appeals of Decisions Regarding Administrative Permits*, Section 110.810.50, *Appeals of Decisions Regarding Special Use Permits*, Section 110.818.25, *Appeals of a Denial Regarding Development Code Amendments*, and Section 110.818.30, *Action by Board Regarding Development Code Amendments*, of Division Eight, *Procedures*; and, Section 110.912.10,

Washoe County Board of Adjustment, to add a new subsection (j) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05, *Washoe County Department of Community Development*, at subsection (f) to provide for appeals of a decision of the Director; and, Section 110.914.00, *Purpose*, and Section 110.914.05, *Washoe County Department of Community Development*, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, *General Provisions*; and, providing for matters properly related thereto.

Staff Report Contents

Description 1
 Staff Report and Attachment Contents 2
 Development Code Amendments 2
 Background and Proposed Amendments 3
 Findings 8
 Public Notice 9
 Recommendation 10
 Motion 11
 Appeal Process 11

Attachment Contents

Resolution Attachment A
 Memorandum to Development Services Forum Attachment B

Development Code Amendments

The Washoe County Development Code is Chapter 110 of the Washoe County Code (WCC). The Development Code broadly regulates allowable and permitted land uses, subdivision of land, planning permit requirements and procedures, signage, infrastructure availability, land use development standards, and other related matters. Because the Development Code covers so many varying aspects of land use and development standards, it is expected that from time to time it may be necessary to change or amend one or more portions of the Development Code to keep it up to date with the most current and desirable trends in planning and development.

The Development Code amendment process provides a method of review and analysis for such proposed changes. Development Code amendments may be initiated by the Washoe County Commission, the Washoe County Planning Commission, or an owner of real property. Development Code amendments are initiated by resolution of the Washoe County Commission or the Planning Commission. Real property owners may submit an application to initiate a Development Code amendment.

After initiation, the Planning Commission considers the proposed amendment in a public hearing. The Planning Commission may recommend approval, approval with modifications or denial of the proposed amendment. The Planning Commission records its recommendation by resolution.

The Washoe County Commission hears all amendments recommended for approval, and amendments recommended for denial upon appeal. The County Commission will hold a first reading and introduction of the ordinance (proposed amendment), followed by a second reading and possible ordinance adoption in a public hearing at a second meeting at least two weeks after the first reading. Unless otherwise specified, ordinances are effective 10 days after adoption.

Background and Proposed Amendments

BACKGROUND ON PROPOSED CODE CHANGES

The proposed code amendments (DCA 14-010) will change the procedures for appealing decisions by the building official, the fire code official, an administrative hearing officer, and/or the Planning and Development Division Director to the Washoe County Board of Adjustment (BOA). The proposed amendments will also establish the process through which appeals may be filed and acted upon by the BOA. This process will include regulations about who may appeal a decision, when and how appeals are filed, the scheduling of the appeal hearing, actions by the BOA on the appeal, and other pertinent matters. The proposed amendments are attached as Exhibit A to the resolution (Attachment A) included with this staff report.

These amendments were initiated by the Washoe County Planning Commission (PC) on October 2, 2012 under Resolution 12-12 and were assigned Development Code Case Number DCA 12-007. The BOA discussed the proposed changes on December 6, 2012 and again on February 7, 2013 to reflect changes requested by the BOA at their December meeting. The BOA recommended that the PC recommend approval of the proposed amendments to the Washoe County Board of County Commissioners (BCC).

The PC discussed the proposed amendments at their March 5, 2013 meeting and adopted Resolution 13-3 recommending approval of the amendments to the BCC. DCA 12-007 was scheduled for an ordinance introduction and first reading by the BCC for August 13, 2013. The proposed amendments were discussed at the August 8, 2013 meeting of the Development Services Forum. A member of the Builder's Association of Northern Nevada (BANN) expressed concerns about the BOA reviewing decisions of the County Building Official, and the role of the Technical Review Board as established by WCC Chapter 100 (Washoe County Building Code) in Building Official decisions. DCA 12-007 was then pulled from the BCC's August 13, 2013 meeting agenda in order to resolve those concerns.

Planning staff and District Attorney Office staff revised the proposed amendments to address the concerns raised by the BANN member as follows [see section 12 of the attached ordinance; WCC Section 110.912.10(j)]:

1. Clarify that building official decisions made while enforcing County Code may be appealed to an administrative hearing officer, and subsequently appealed to the BOA, using the administrative enforcement process outlined in Article 910, *Enforcement*, of the

Development Code. Examples of such building official decisions include administrative penalty notices, stop activity orders, remediation orders, and abatement orders.

2. Establish that the following may be appealed to the Technical Review Board following the process outlined in WCC Chapter 100:
 - a. The inability to obtain a building permit, or
 - b. A decision by the building official relating to the soundness of structures.A decision of the Technical Review Board may be appealed to the BOA.
3. Provide that if the building official's decision is not heard by either an administrative hearing officer or by the Technical Review Board, then a person may appeal such a decision directly to the BOA.

Staff believes that the changes to the proposed amendments respond to the BANN member's concerns and follow the provisions of NRS 278.310, which requires the BOA to hear appeals of building permit denials, and appeals of decisions of administrative officials who are administering or enforcing "any zoning regulation or any regulation relating to the location or soundness of structures." The changes also include a provision that decisions of a fire code official related to the soundness of a structure or decisions which result in the denial of a building permit may be appealed to an administrative hearing officer, the Fire Code Technical Review Board, and/or the BOA as outlined above for the building official.

In the course of their review of NRS in the context of the proposed amendments, staff realized that requirements and procedures within NRS 278.3195 were not included in the Development Code. This NRS section regulates appeals to the BCC concerning decisions related to land uses or regulatory zoning. The NRS section regulates not only appeals from the BOA, but also appeals from the PC, Hearing Examiners, or other deciding bodies. Therefore, a new section was added to Article 912, *Establishment of Commissions, Boards and Hearing Examiners*, to provide for the NRS requirements and procedures.

The new Article 912 section and subsection also requires that Development Code procedures in Division Six, Subdivision Regulations, and Division Eight, Procedures, which regulate appeals of discretionary actions (e.g., tentative subdivision maps, special use permits, etc.) be amended to refer to the new sections concerning appeals to the BOA or the BCC.

The extent and content of the changes to DCA 12-007 warranted a new Development Code amendment initiation and review by both the BOA and action by the PC.

PROPOSED AMENDMENTS

The changes to DCA 12-007, and the original proposed amendments, were initiated as a new Development Code Amendment case (DCA 14-010) by the PC on November 13, 2014 under Resolution Number 14-21. The proposed amendments are included in ordinance format as Exhibit A to the resolution (Attachment A) included with this staff report.

The BOA discussed DCA 14-010 on February 5, 2015. Discussion included background on the various time frames to appeal decisions (10 days, 15 days and 30 days, see more detailed information further in this staff report within the *Public Notice* section) and the time frame discussions during the public workshop on January 13, 2015. Staff said that the draft ordinance to be reviewed by the PC will show the 10 day appeal time frame as recommended by the

Development Service Forum (DSF) members. One BOA member stated that any time frame could be selected and that the BOA should support the consensus decision by the PC and the BCC.

The BOA recommended that the PC recommend approval of the proposed amendments to the BCC. During the motion for approval, the BOA's comment was to support whichever appeal time frame is adopted by consensus of the PC and the BCC.

The proposed amendments reflect the current requirements of WCC Section 110.914.05(f) that interpretations of the Director may be appealed to the BOA¹. The amendments also reflect the provisions within Article 910, *Enforcement*, that establish an administrative enforcement mechanism for development regulations and provide that decisions of administrative hearing officers under that mechanism are subject to appeal to the BOA. In order to properly establish appeal methods and processes for the BOA, a new subsection (subsection j) was added to WCC Section 110.912.10, *Washoe County Board of Adjustment* (see ordinance section 12). The proposed amendments regarding appeals to the BOA contain:

1. What kinds of decisions may be appealed to the BOA.
 - a. Decisions of the County's Building Official. These include decisions of an administrative hearing officer hearing a case involving the Building Code, or of a person aggrieved by his/her inability to obtain a building permit, or of a decision of the Technical Review Board.
 - b. Decisions of the Fire Code Official. These include decisions of an administrative hearing officer hearing a case involving the Fire Code, or of a person aggrieved by his/her inability to obtain a building permit resulting from a decision by the Fire Code Official, or of a decision of the Technical Review Board pertaining to soundness of structures and decisions by the Fire Code Official. Appealable decisions to the BOA do not include those relating to public safety or fire code administration or enforcement.
 - c. Decisions of an Administrative Hearing Officer through the administrative enforcement of Development Code regulations using Article 910, *Enforcement*, and the County' Administrative Enforcement Code (WCC Chapter 125).
 - d. Decisions of the Division Director Planning and Development in administering any zoning regulation or regulations concerning the location or soundness of structures.
2. Who may appeal such decisions.
 - a. An aggrieved person as defined in WCC Section 110.910.02.

Aggrieved Person. "Aggrieved person" means a person or entity who has suffered a substantial grievance (not merely a party who is dissatisfied with a decision) in the form of either:

 - (a) The denial of or substantial injury to a personal or property right, or
 - (b) The imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or an administrative hearing officer.

¹ The addition of subsection j to WCC Section 110.912.10 supersedes the requirements in WCC Section 110.914.05(f); therefore, WCC Section 110.914.05(f) is amended to refer to Section 110.912.10 for appeals of a decision by the Director.

3. When and how an appeal must be filed.
 - a. Appeals must in writing and filed with the Planning and Development Division within 20 days of the date a decision is communicated in writing to the appellant.
4. When an appeal is filed, the authority of the Chair to decide scheduling and evidentiary matters, prehearing matters, and issue subpoenas in order to efficiently set up hearings before the BOA.
 - a. The BOA Chair shall ensure the appeal hearing is scheduled at the next regularly scheduled BOA meeting and not more than 60 days after the appeal is filed. The Chair can schedule a special meeting if warranted, and extend the hearing date if the appellant fails to observe any prehearing schedule.
 - b. The Chair has broad prehearing authority to set prehearing schedules, evidence assembly and marking. However, certain matters (jurisdiction or admissibility of evidence) must be heard by the whole BOA.
 - c. The Chair may also subpoena witnesses to appear before the BOA.
5. The record and evidence on which the BOA will decide an appeal.
 - a. The BOA shall review the record and all information and evidence resulting from the appealed decision.
 - b. The appeal shall be conducted as a public hearing. The BOA must hear and consider all relevant evidence from the appellant and from the public.
6. The burden of proof of the appellant and basis on which administrative decisions may be reversed or modified.
 - a. The decisions of administrative officials, hearing officers and the technical review board are presumed to be reasonable and lawful; it is the appellant's burden to persuade the BOA otherwise.
 - b. An affirmation of the appealed decision requires a majority vote of BOA members present at the hearing.
 - c. The BOA may also reverse, modify or remand an appeal decision with a majority vote of BOA members present at the hearing under specific circumstances.
7. Limitations on what the BOA may award at a hearing.
 - a. The BOA may not award, allocate or direct payment of monetary damages, attorney's fees, or hearing costs.
8. How the BOA's decisions are communicated.
 - a. The BOA must render a written decision within 60 days of the hearing, unless the appellant otherwise agrees to an extended time.
 - b. The Chair signs all decisions on behalf of the BOA, and a copy must be delivered to the appellant and other parties of record. A copy must also be filed with the BOA Secretary.
9. Appeals of BOA decisions.
 - a. Appeals may be filed with the Washoe County Board of County Commissioners following a new section of the Development Code, 110.912.20 (see below).
 - b. The appellant may also seek judicial review of the BOA's decision within 25 days of the date the decision was communicated to the appellant.

The amendments required to bring the Development Code into alignment with NRS 278.3195 for appeals to the BCC are reflected in WCC Section 110.912.20, a new section added to Article

912, *Establishment of Commissions, Boards and Hearing Examiners* (see ordinance section 2). The proposed amendments include:

1. Which types of decisions may be appealed to the BCC.
 - a. Decisions of the PC, the BOA, a Hearing Examiner, an administrative hearing officer, or an enforcement official using administrative enforcement may be appealed to the BCC, provided such decisions relate to land use, zoning, or building matters.
2. When and how an appeal must be filed, and the resulting stay of any appealed decision.
 - a. Appeals must in writing and filed with the Planning and Development Division within 25 calendar days of the date a decision is communicated in writing to the appellant.
 - b. Filed appeals, with any fees paid, will stay any decision on the matter being appealed.
3. The scheduling and notice of any hearing before the BCC, the appointment of a panel to hear and decide on an appeal; and, prehearing procedures.
 - a. The County Clerk will schedule the hearing before the BCC, which must make a decision on the appeal within 60 days from when the appeal is deemed complete.
 - b. The BCC can appoint two or more BCC members to serve on a panel to hear the appeal. The panel's decision is binding on the rest of the BCC.
 - c. A staff report regarding the appeal, to include information on the decision, must be provided no later than 20 days before the hearing to the BCC and the appellant.
 - d. The BCC or panel may issue subpoenas, require prehearing procedures matters, and agree to continuances and other scheduling matters.
4. The procedures, record and evidence on which the BCC will decide an appeal.
 - a. The BCC may consider the matter as a new case, or limit its decision as to whether the deciding body abused its discretion.
 - b. The BCC must afford all parties the opportunity to testify, and to present evidence and arguments. The BCC must also hear any public comment on the case.
 - c. The BCC must review the record (i.e., the staff report) and any information presented at the hearing.
5. The burden of persuasion, standards of review, and decision of the BCC.
 - a. The decisions of the body are presumed to be reasonable and lawful, it is the appellant's responsibility to persuade the BCC otherwise.
 - b. The BCC may affirm, reverse, modify, or apply a different interpretation to the body's decision with a majority vote of BCC members present at the hearing. The BCC is not required to make any findings.
 - c. If the appealed decision involves a discretionary entitlement (e.g., a building permit, a special use permit, etc.), the BCC may remand the matter back to the deciding body or grant the entitlement if properly argued.
 - d. The County Clerk will prepare and file a memorandum of decision, and mail a copy to the appellant. The BCC's decision is final for purposes of judicial review.

The two new sections on appeals to the BOA and to the BCC require amendments to other sections of the Development Code which address appeals of discretionary permits. The sections which require amendments include:

1. WCC Section 110.606.55, an appeal of a decision by the Parcel Map Review Committee regarding a tentative and final parcel map to the BCC (see ordinance section 3);
2. WCC Section 110.608.15, an appeal of a decision by the PC regarding a tentative subdivision map to the BCC (see ordinance section 4);
3. WCC Section 110.804.40, an appeal of a decision by the PC, BOA or a hearing examiner regarding a variance to the BCC (see ordinance section 5);
4. WCC Sections 110.806.15 and 110.806.35, an appeal of a decision by the PC regarding a vacation or abandonment of an easement or street to the BCC (see ordinance sections 6 & 7);
5. WCC Section 110.808.45, an appeal of a decision by the BOA or a hearing examiner regarding an administrative permit to the BCC (see ordinance section 8);
6. WCC Section 110.810.50, an appeal of a decision by the PC, BOA or a hearing examiner regarding a special use permit to the BCC (see ordinance section 9); and,
7. WCC Sections 110.818.25 and 110.818.30, an appeal of a decision by the PC to deny a development code amendment to the BCC, and action by the BCC on a development code amendment (see ordinance sections 10 & 11).

The code amendments to the sections listed above makes two code sections redundant and no longer needed. Those two code sections, 110.806.25 and 110.806.30, will be removed from the Development Code.

The code amendments will also correct the terminology of the Planning and Development Division with the establishment of the Community Services Department (CSD). The creation of CSD caused the Department of Community Development to no longer exist. That Department was transformed into a division (Planning and Development) within CSD. Amendments are required within Article 914, *Establishment of Department*, to reflect the current CSD organization. The specific amendments required to reflect the current CSD organization are included within WCC Section 110.914.05, *Department of Community Development*, and include the section's title, the title of the Division Director, the appointment of the Division Director, and programs within the Division (see ordinance section 13).

Finally, there are minor amendments within WCC Section 110.912.10, *Washoe County Board of Adjustment*, to remove BOA representation requirements created when the BOA was first established in 1996. Those requirements are out of date and no longer apply to the BOA.

Findings

WCC Section 110.818.15(e) requires the Planning Commission to make at least one of the following findings of fact. Staff provides the following evaluation for each of the findings of fact and recommends that the Planning Commission make all four findings in support of the proposed Development Code amendment.

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan.

Staff comment: The Master Plan does not include provisions regarding appeal procedures, so this amendment does not contradict or offend any master plan provisions.

2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code.

Staff comment: Part of the purpose of the Development Code is to provide due process rights afforded by the constitution, state statutes, and the County Code. The proposed amendments enhance those due process rights to appeal decisions of the building official, fire code official, administrative hearing officer, and enforcement officials to the Board of Adjustment; and, to appeal decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners. These amendments promote due process, which was a cornerstone of the original purpose for the Development Code. Additionally, the amendments apply to appeal and organizational matters and, as such, do not adversely affect the public's health, safety or welfare.

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones.

Staff comment: The amendments conform to State Law appeal requirements and also respond to changes in Article 910 regarding enforcement procedures, which, among other things, adds an administrative enforcement process. That administrative enforcement process was adopted by the Board of County Commissioners in 2010, which is well past the original adoption of the Development Code in 1993.

4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

Staff comment: The amendments relate to enforcement procedures only and do not affect the policies and action programs of the Conservation or Population Elements of the Washoe County Master Plan.

Public Notice

The Development Services Forum (DSF) discussed the proposed amendments at their January 8, 2015 meeting. Four members of the DSF were present at the meeting. Greg Salter, Deputy District Attorney, prepared a memorandum for the DSF members specific to these proposed amendments. A copy of that memorandum is included with this staff report as Attachment B.

A few DSF members were concerned about the 25 calendar day appeal time frame proposed for an aggrieved person to appeal a decision of the BOA to the BCC, which was the time frame in the draft ordinance presented to the DSF. The members felt this time frame was too long, since it would take at least that long for an applicant to obtain their permits after any BOA decision. Staff received a few e-mails from DSF members not present at the meeting echoing the concern with the proposed 25 calendar day appeal time frame.

After review of the DSF comments, staff concurs that the proposed 25 calendar days is a long appeal time frame. Staff proposes that all appeal time frames be changed to 10 calendar days. The 10 calendar days should allow an aggrieved person adequate time to review the written material provided after the board/commission's decision, and to file an appeal if warranted. Additionally, as noted in the paragraph below, many of the current appeal time frames are set at 10 days, so this time frame represents current code processes. Staff, therefore, modified the proposed amendments just prior to the BOA meeting on February 5, 2015 to reflect the 10 calendar day time frame. That time frame commences from the date that the board/commission action is written and filed with the board/commission secretary or from the date when the decision is communicated in writing to the appellant (not from the date of the meeting when the decision was reached). The specific changes are reflected in the new Section 11.912.20(a)(2) and the amended Section 110.912.10(j)(3).

For background, the current Development Code has varying appeal time frames, based on the application. The following is a list of the application and the current appeal time frame. All of these appeal time frames are proposed to be changed to the 10 calendar days:

1. Parcel Map Review Committee decision: 30 days [Section 110.606.55(a)]
2. Final Parcel map: 15 days [Section 110.606.55(b)]
3. Tentative Subdivision map: 10 days [Section 110.608.15(d)]
4. Variance: 10 days [Section 110.804.40(a)]
5. Abandonment or Vacation: 10 days [Section 110.806.15e)]
6. Administrative Permit: 15 days [Section 110.808.45(a)]
7. Special Use Permit: 10 days [Section 110.810.50(a)]
8. Development Code amendment: 15 days [Section 110.818.25(a)]

Summary of appeal time frames:

- 10 days: 4 applications
- 15 days: 3 applications
- 30 days: 1 application

One DSF member requested that staff contact the County Building Official and the Truckee Meadows Fire Marshall to validate that both are comfortable with the proposed amendments. Staff notified both on January 15, 2015 of the proposed amendments, and requested any concerns or issues they may have with the amendments. As of the writing of this staff report, staff has not received any response from either official. If responses are provided, staff will present those to the PC at the March 3, 2015 meeting.

Staff hosted a public workshop on January 13, 2015, to discuss the proposed amendment and invited all current members of the County's Citizen Advisory Boards (CAB) to attend. Four citizens attended the workshop. The only comment pertinent to these proposed amendments concerned the time for a person to appeal a decision (see discussion above from the DSF meeting). The citizens present were comfortable with a 15 calendar day appeal period, which was the time frame in the draft ordinance presented at the workshop. The citizens present praised staff for proposing amendments which would standardize appeal processes and shorten the Code.

Pursuant to Washoe County Code Section 110.818.20, notice of this public hearing was published in the newspaper at least 10 days prior to this meeting, and the Chair and

membership of all Citizen Advisory Boards were likewise notified of the public hearing. Such notification was accomplished and staff can provide proof of notification if requested.

Recommendation

It is recommended that the Washoe County Planning Commission recommend approval of DCA 14-010, to amend Washoe County Chapter 110 (Development Code) at various Sections in Divisions Six, Eight and Nine to change the procedures for appealing certain decisions to the Board of Adjustment; and for appealing decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners; and, to correct the terminology of the Planning and Development Division at Article 914. The following motion is provided for your consideration:

Motion

I move that after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Planning Commission recommend approval of DCA 14-010, to amend Washoe County Chapter 110 (Development Code) at various Sections in Divisions Six, Eight and Nine to change the procedures for appealing certain decisions to the Board of Adjustment; and for appealing decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners; and, to amend Article 914 to correct the terminology of the Planning and Development Division. I further move to authorize the Chair to sign the resolution contained in Attachment A on behalf of the Washoe County Planning Commission and to direct staff to present a report of this Commission's recommendation to the Washoe County Board of County Commissioners within 60 days of today's date. This recommendation for approval is based on all of the following four findings in accordance with Washoe County Code Section 110.818.15(e):

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

Appeal Process

An appeal of the Planning Commission's denial of a Development Code amendment may be made to the Washoe County Commission within 15 days after the date of the decision, pursuant to WCC Section 110.818.25. If the end of the appeal period falls on a non-business day, the appeal period shall be extended to include the next business day.

Staff Report and Action Order xc: Greg Salter, Deputy District Attorney



RESOLUTION OF THE WASHOE COUNTY PLANNING COMMISSION

RECOMMENDING APPROVAL OF AMENDMENTS (DCA 14-010) TO THE WASHOE COUNTY CODE AT CHAPTER 110, DEVELOPMENT CODE, AT VARIOUS SECTIONS IN DIVISIONS SIX, EIGHT AND NINE TO CHANGE THE PROCEDURES FOR APPEALING CERTAIN DECISIONS TO THE BOARD OF ADJUSTMENT; AND FOR APPEALING DECISIONS OF THE BOARD OF ADJUSTMENT, THE PLANNING COMMISSION, AND HEARING EXAMINERS TO THE BOARD OF COUNTY COMMISSIONERS; AND, TO CORRECT THE TERMINOLOGY OF THE PLANNING AND DEVELOPMENT DIVISION AT ARTICLE 914

Resolution Number 15-04

WHEREAS

- A. Development Code Amendment Case Number DCA 14-010, came before the Washoe County Planning Commission for a duly noticed public hearing on March 3, 2015; and
- B. The Washoe County Planning Commission heard public comment and input from both staff and the public regarding the proposed Development Code amendment; and
- C. The Washoe County Planning Commission gave reasoned consideration to the information it received regarding the proposed Development Code Amendment; and
- D. Pursuant to Washoe County Code Section 110.818.15(e), the Washoe County Planning Commission made the following findings necessary to support its recommendation for adoption of the proposed Development Code amendment, Case Number DCA 14-010:
 1. Consistency with Master Plan. The proposed amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
 2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
 3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,

4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

NOW, THEREFORE, BE IT RESOLVED that pursuant to Washoe County Code Section 110.818.15(d) and (g):

1. The Washoe County Planning Commission does hereby recommend APPROVAL of DCA 14-010, an amendment to the Washoe County Code at Chapter 110, Development Code, at various Sections in Divisions Six, Eight and Nine to change the procedures for appealing certain decisions to the Board of Adjustment; and for appealing decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners; and, to correct the terminology of the Planning and Development Division at Article 914 as set forth in Exhibit A; and,
2. A report describing this amendment, discussion at this public hearing, this recommendation, and the vote on the recommendation be forwarded to the Washoe County Board of County Commissioners within 60 days of this resolution's adoption date.

ADOPTED on March 3, 2015.

WASHOE COUNTY PLANNING COMMISSION

ATTEST:

Carl R. Webb, Jr., AICP, Secretary

Roger M. Edwards, Chair

WORKING COPY
INFORMATION ONLY

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETED LANGUAGE~~

BOLD TEXT: NEW LANGUAGE

Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040

Summary: *Changes procedures for making appeals of administrative land use and certain building code decisions to the Board of Adjustment; and for appealing decisions of the Board of Adjustment, the Planning Commission, and Hearing Examiners to the Board of County Commissioners; and, corrects the terminology of the Planning and Development Division.*

BILL NO. _____

ORDINANCE NO. _____

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), to delete Section 110.806.25, *Hearing of Appeal by Board*, and Section 110.806.30, *Notice of Board Hearing*, of Division Eight, *Procedures*; to add a new Section at 110.912.20 of Division Nine, *General Provisions*, regarding appeals to the Board of County Commissioners of decisions by the Board of Adjustment, the Planning Commission, and Hearing Examiners; to amend various sections throughout the Development Code to adopt the new appeal provisions, including Section 110.606.55, *Appeals of Parcel Map Decisions*, and Section 110.608.15, *Appeals of Decisions Regarding Subdivision Maps*, of Division Six, *Subdivision Regulations*; and, Section 110.804.40, *Appeals of Decisions Regarding Variances*, Section 110.806.15, *Review Procedures of Planning Commission Regarding Vacations and Abandonments of Easements or Streets*, Section 110.806.35, *Action by Board Regarding Vacations and Abandonments of Easements or Streets*, Section 110.808.45, *Appeals of Decisions Regarding Administrative Permits*, Section 110.810.50, *Appeals of Decisions Regarding Special Use Permits*, Section 110.818.25, *Appeals of a Denial Regarding Development Code Amendments*, and Section 110.818.30, *Action by Board Regarding Development Code Amendments*, of Division Eight, *Procedures*; and, Section

110.912.10, *Washoe County Board of Adjustment*, to add a new subsection (j) to provide general rules regarding appeals of administrative decisions to the Board of Adjustment and other matters relating to the new appeal provisions and Board membership that is no longer applicable; Section 110.914.05, *Washoe County Department of Community Development*, at subsection (f) to provide for appeals of a decision of the Director; and, Section 110.914.00, *Purpose*, and Section 110.914.05, *Washoe County Department of Community Development*, to correct the terminology of the Planning and Development Division with the establishment of the Community Services Department of Division Nine, *General Provisions*. Recommendations include other matters properly relating thereto.

WHEREAS:

- A. Ordinance 1501 enacted on October 23, 2012 amends Article 910 of the Washoe County Development Code to provide that certain decisions and actions made during the enforcement of the Development Code may be appealed to the Board of Adjustment, and this Commission desires to amend Washoe County Code Section 110.912.10 (Board of Adjustment) to provide general rules governing such appeals to the Board of Adjustment, including what kinds of matters may be appealed, the procedures to be followed, and further providing that decisions of the Board of Adjustment may be appealed to the Board of County Commissioners or may be submitted directly to judicial review under certain circumstances; and,
- B. In accordance with NRS 278.300, NRS 278.310 (2), and NRS 278.3195, this Commission desires to coordinate and update various provisions in the Washoe County Development Code regarding appeals to the Board of County Commissioners of decisions of the Board of Adjustment, the Planning Commission, Hearing Examiners, the Parcel Map Review Committee and other bodies who make land use decisions by adding a new Section 110.912.20 governing such appeals and amending various sections in the Development Code to refer to the new section; and,
- C. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

DRAFT: March 3, 2015

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Sections 110.806.25 and 110.806.30 have been deleted in their entirety:

~~**Section 110.806.25 Hearing of Appeal by Board.** The Board of County Commissioners shall hold a public hearing on the appeal of the Planning Commission's final action on an application for vacation or abandonment of an easement or street after the notice as required in Section 110.806.30 is first published.~~

~~**Section 110.806.30 Notice of Board Hearing.** Notice of an appeal of the Planning Commission's final action on a vacation or abandonment application to be heard by the Board of County Commissioners shall be provided pursuant to Section 110.806.15.~~

SECTION 2. A new Section 110.912.20 is added to read in its entirety as follows:

Section 110.912.20 Appeals to the Board of County Commissioners of a decision by the Board of Adjustment, the Planning Commission, Hearing Examiner or other deciding body. Except as specifically provided elsewhere in the County Code (such as appeals of master plan decisions by the Planning Commission), this section applies to appeals of decisions of the Planning Commission, the Board of Adjustment, a hearing examiner, or other deciding body.

(a) **Time for appeal; form, fees, stay of decision.**

- (1) A person aggrieved by a decision of the Board of Adjustment, the Planning Commission, a Hearing Examiner, or an administrative enforcement official or a hearing officer following the provisions of Article 910 of the Development Code whose decision is not otherwise appealable (the "deciding body") may appeal the decision to the Board of County Commissioners.
- (2) The appeal must be in writing and delivered to the Planning and Development Division within 10 calendar days from the date that the decision being appealed is reduced to writing and is filed with the secretary to the deciding body (for hearing examiner decisions the decision is to be filed with the Director of the Planning and Development Division), and mailed to the original applicant in the proceeding being appealed.
- (3) When the written appeal is filed and fees paid, it operates to stay the implementation of the decision being appealed, even if the appeal is incomplete upon initial submission. The application must be completed as provided for in subsection (4) below.
- (4) The Division may follow up to require the appeal to be on certain forms and/or to obtain more information. The appellant must submit the forms or supply the additional information within 14 business days after written notification by the Division. Failure to do so within this time frame invalidates the appeal submission. The appellant must submit a new appeal containing the original material, and the additional information requested, within 14 business days of written notice that the original application was incomplete. When the Division deems the appeal complete and the fees have been paid, it shall process the appeal as provided herein.

- (5) Fees for the appeal are authorized by NRS 278.3195(2)(g) and may be set by resolution of the Board of County Commissioners.

(b) Scheduling of Hearing; notice.

- (1) Scheduling a hearing. Under NRS 278.3195(2)(d)(2), a decision must be rendered on the appeal within 60 days from when the Division deems the appeal to be complete, and the County Clerk shall schedule a public hearing on the appeal accordingly.

- (2) Notice. Notice for the public hearing before the Board of County Commissioners shall be the same as the required notice set out in the Development Code for the proceeding being appealed. For example, if there is an appeal of a decision to deny a special use permit, then notice for the appeal hearing shall be the same as in WCC Section 110.804.20 for the underlying special use permit. Other than notice to the appellant, notice is not required for the appeal of administrative enforcement decisions that are affirmed or denied by the appellate body.

- (3) Panels. The Board of County Commissioners may appoint two or more of its members to serve as a panel to hear the appeal and render a decision that would be binding on the Board of County Commissioners. Each appointment shall select which commissioner is to preside over the proceeding, include instructions as to voting rights and requirements, indicate whether or not decisions of the panel may be appealed to the whole Board of County Commissioners, and include any other procedural matters deemed important to the Board of County Commissioners.

(4) Record on Appeal; Prehearing Procedures.

- (i) At least 20 days before the hearing, the Division shall prepare a record on appeal including the written appeal, the written decision or action order being appealed, draft minutes or recording of the proceeding leading to the decision being appealed, the staff report and all materials submitted to the deciding body in connection with the hearing. The original shall be filed with the County Manager's Office and a copy shall be provided to the appellant for use and reference at the hearing before the Board of County Commissioners.

- (ii) The Chairman of the Board of County Commissioners or the presiding officer of the panel may:

- (1) Issue subpoenas compelling witnesses to appear at the hearing;
- (2) Require and oversee prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, and evidence assembly and marking; and
- (3) Agree to stipulated continuances or other scheduling matters.

(5) Hearing procedures; evidence. At the hearing, the Board of County Commissioners:

- (i) May consider the matter de novo or as an appeal limited to determining if the deciding body abused its discretion;

- (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal (even if it is new evidence);
 - (ii) Shall hear public comment on the matter being heard; and
 - (iv) Shall view the record on appeal and all evidence, testimony, documents, information and arguments introduced at the hearing.
- (6) **Burden of persuasion; standards of review and final decision by Board; judicial review of Board's decision.**
- (i) **Burden of Persuasion.** Decisions of the Board of Adjustment, Planning Commission or Hearing Examiner, or an administrative enforcement official or a hearing officer are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board of County Commissioners otherwise.
 - (ii) **Findings.** On appeal, the Board of County Commissioners may review the findings made by the deciding body and may affirm, reverse, modify or apply a different interpretation to any finding. Unless otherwise required by a specific provision in statute or code relating to the type of matter being appealed, the Board of County Commissioners is not required to make specific findings.
 - (iii) **Guiding Policy.** In reviewing the decision, the Board of County Commissioners shall be guided by the statement of purpose underlying the regulation of improvement of land expressed in NRS 278.020 [NRS 278.3195(2)(f)].
 - (iv) **Possible actions; vote required.** On a majority vote of all its members, the Board of County Commissioners may affirm, reverse, or modify the decision of the deciding body. If the decision being appealed is the denial of a building permit, special use permit, variance, master plan amendment, regulatory zoning amendment, or other entitlement, the Board of County Commissioners may either remand the matter back to the deciding body with instructions or may directly grant the building permit, special use permit, variance or other entitlement if properly agendized under the open meeting law and subject to NRS 278.220 for master plan amendments.
 - (v) **Memorandum of Decision.** A memorandum of decision shall be prepared by and filed with the County Clerk and mailed to the appellant, and when filed and mailed, the decision of the Board of County Commissioners is final for purposes of judicial review.
 - (vi) **Judicial Review of BCC Decision.** A person aggrieved by the decision of the Board of County Commissioners may file a petition for judicial review within 25 days of the filing of the Memorandum of Decision with the County Clerk.

SECTION 3. Section 110.606.55 is hereby amended to read as follows:

Section 110.606.55 Appeals. All appeals regarding tentative and final parcel maps shall be made as provided in this section.

- (a) Process for Tentative Parcel Map. **A party aggrieved by a decision of the Parcel Map Review Committee may appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code** ~~For thirty (30) days following the notification of the decision, a decision of the Parcel Map Review Committee may be appealed to the Board of County Commissioners.~~
- (1) ~~The statement of appeal shall be filed with the Department of Community Development, set forth the particular actions or conditions appealed, the reasons for the appeal, and shall be accompanied by all supporting documentation.~~
- (2) ~~The Department of Community Development shall set an appeal hearing before the Board of County Commissioners within thirty (30) days of receipt of a complete statement of appeal.~~
- (3) ~~If the Board of County Commissioners fails to render a decision after sixty (60) days of the scheduled appeal hearing, the appeal shall be deemed to have been decided in favor of the appellant.~~
- (b) Process for Final Parcel Map. **A person aggrieved by a decision of the Director of the Planning and Development Division regarding a Final Parcel Map may be appealed to the Board of Adjustment in accordance with Section 110.912.10 of the Development Code** ~~For fifteen (15) days following the notification of the decision, a decision of the Director of Community Development to deny a final parcel map may be appealed to the Board of County Commissioners.~~
- (1) ~~The statement of appeal shall be filed with the Department of Community Development, set forth the particular actions or conditions appealed, the reasons for the appeal, and shall be accompanied by all supporting documentation.~~
- (2) ~~The Department of Community Development shall set an appeal hearing before the Board of County Commissioners within thirty (30) days of receipt of a complete statement of appeal.~~
- (3) ~~If the Board of County Commissioners fails to render a decision after sixty (60) days of the scheduled appeal hearing, the appeal shall be deemed to have been decided in favor of the appellant.~~
- (c) ~~Final Action on Appeal.~~ ~~The Board of County Commissioners shall take action on the appeal within the time prescribed in Section 110.606.55, Appeals.~~
- (1) ~~The Board of County Commissioners may impose additional conditions on the parcel map, provided the conditions are related to the review criteria in Section 110.606.30.~~
- (2) ~~Any disapproval or conditional approval must include a statement of the reason for that action and must be acted upon by an affirmative vote of a majority of the full membership of the Board of County Commissioners. In the case of a tie vote due to the absence of a member, the appeal shall be continued to a future meeting unless requested otherwise by the appellant.~~
- (d) ~~Notice of Final Action.~~ ~~Within ten (10) days of the final action, the Director of Community Development shall report to the applicant concerning the decision of the Board of County Commissioners. Such report shall contain, at a minimum, any additional conditions placed upon the parcel map, the statement of the reason for the final action, and a~~

~~statement that the Board of County Commissioners' decision is final for the purpose of judicial review.~~

SECTION 4. Section 110.608.15 is hereby amended to read as follows:

Section 110.608.15 Review Procedures. The review procedures for tentative maps shall be as set forth in this section.

- (a) Filing. The subdivider shall file with the Director of **the Planning and Development Division** ~~Community Development~~ a complete application and the required supporting materials as outlined in the application packet.
- (b) Review. If the application is found to be complete, the Director of **the Planning and Development Division** ~~Community Development~~ shall transmit one print of each tentative map to the County Engineer, any other public agency which may be affected by the proposed subdivision, and such other persons as the Director of **the Planning and Development Division** ~~Community Development~~ may deem appropriate.
- (c) Action Required by the Planning Commission. The Planning Commission shall, within ~~sixty (60)~~ days after receipt of the complete tentative map application by the Director of **the Planning and Development Division** ~~Community Development~~, conduct a public hearing on the application and following the public hearing, approve, conditionally approve or deny the proposed map; said action being an affirmative vote of a majority of the ~~full membership~~ **members** of the Planning Commission **present at the hearing**. At the public hearing, the Planning Commission may relieve the applicant of the requirement to provide an easement for water, sewer, gas, electric, telecommunications and franchised community antenna television (where permitted to provide service) services if the applicant can demonstrate that there is not an essential nexus to the public purpose for the proposed dedication and the dedication would not be roughly proportional in nature and extent to the impact of the proposed development. Notice of the public hearing conducted by the Planning Commission shall be in accordance with the provisions of this article. Review time may be extended by mutual consent of the Director of **the Planning and Development Division** ~~Community Development~~ and the applicant.
- (d) Appeal. **The decision of the Planning Commission may be appealed to the Board of County Commissioners in accordance with Section 110.912.20 of the Development Code** ~~Within ten (10) days after issuance of the decision, the decision of the Planning Commission may be appealed to the Board of County Commissioners by submitting the appropriate form and fee to the Director of Community Development.~~
- (e) Board of County Commissioners' Consideration of Appeals. ~~Appeals of any Planning Commission decision shall be scheduled before the Board of County Commissioners within thirty (30) days of receiving the appeal. Action by the Board of County Commissioners on the appeal shall be by an affirmative vote of a majority of the full membership of the Board of County Commissioners. In the case of a tie vote due to the absence of a member, the appeal shall be continued to a future meeting unless requested otherwise by the appellant. The final action by the Board of County Commissioners shall be considered final for purposes of judicial review.~~
- (e f) Time Limits. The time limits set forth in this section are suspended for a period, not to exceed one ~~(1)~~ year, during which the State of Nevada or the federal government takes

any action to protect the environment or an endangered species which prohibits, stops or delays the processing of a tentative map.

- (f g) No Guarantee of Final Map Approval. Approval by the Planning Commission or the Board of County Commissioners of a tentative map imposes no obligation on the part of the Planning Commission or the Board of County Commissioners to approve the final map or to accept any public dedication shown on the final map.

SECTION 5. Section 110.804.40 is hereby amended to read as follows:

Section 110.804.40 Appeals. An action of the Board of Adjustment, Planning Commission or hearing examiner made pursuant to this article may be appealed **to the Board of County Commissioners** in accordance with the provisions of **Section 110.912.20 of the Development Code** ~~this section.~~

- (a) ~~Appeal Period.~~ An appeal of the Board of Adjustment's, the Planning Commission's or hearing examiner's final decision may be made to the Board of County Commissioners within ten (10) days after the date of the final decision. If filed, an appeal stays any further action on the permit until final resolution of the appeal. If the end of the appeal period falls on a non-business day, the appeal period shall be extended to include the next business day.
- (b) ~~Who Can Appeal.~~ Appeals may be filed only by the following:
- (1) ~~The applicant or the applicant's authorized agent;~~
 - (2) ~~An owner of real property who has received notice of the public hearing pursuant to Section 110.804.20(a)(3) of the Development Code; or~~
 - (3) ~~A person who may be adversely affected by the decision; and~~
 - (i) ~~Has participated in the review process by submitting written testimony on the application prior to the public hearing before the Board of Adjustment or Planning Commission;~~
 - (ii) ~~Has participated in the review process by providing oral testimony at the public hearing before the Board of Adjustment or Planning Commission on the application; or~~
 - (iii) ~~Was prevented from participating in the review by circumstances beyond his/her control.~~
- (c) ~~Denial of Appeal Application.~~ A decision by County staff that a potential appellant does not meet the criteria in subsection (b)(3) of this section may be appealed to the Board of County Commissioners.
- (d) ~~Contents of Appeal.~~ An appeal shall be filed with the Director of Community Development, accompanied by a filing fee. The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the Board of Adjustment, the Planning Commission or hearing examiner. Such reasons shall be based upon the evidence presented to the Board of Adjustment, the Planning Commission or hearing examiner at the original hearing. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.

- ~~(e) Time Period for Hearing. The Clerk of the Board of County Commissioners shall schedule a public hearing on the appeal of the Board of Adjustment's, the Planning Commission's or hearing examiner's final decision before the Board of County Commissioners within sixty (60) days of the date of the filing of the appeal with the Director of Community Development.~~
- ~~(f) Notice of Hearing. The public hearing on the appeal shall be noticed as required by Section 110.804.20. The notice shall state that an appeal of the Board of Adjustment's, the Planning Commission's or hearing examiner's final decision has been filed; describe the final decision; describe the lot, parcel, property or areas that are affected by the variance and the final decision on the request; and other pertinent information.~~
- ~~(g) Action by the Board of County Commissioners. The Board of County Commissioners shall consider only those items cited in the appeal. In its deliberation, it may use the record and any additional evidence relative to the application and may confirm, reverse, or modify the appealed actions based upon its interpretation of the findings required and the evidence submitted. The action of the Board of County Commissioners shall be by an affirmative vote of a majority of the entire membership of the Board. The Board of County Commissioners shall render a final decision within sixty (60) days of the appeal hearing. In the case of a tie due to the absence of a member, the appeal shall be continued to a future meeting unless requested otherwise by the appellant. Said future meeting may be beyond the sixty (60) days required for a final decision. The final decision of the Board of County Commissioners shall be final for the purposes of judicial review.~~
- ~~(h) Effective Date. The decision of the Board of County Commissioners on an appeal from the Board of Adjustment, the Planning Commission or hearing examiner shall be effective immediately.~~

SECTION 6. Section 110.806.15 is hereby amended to read as follows:

Section 110.806.15 Review Procedures of Planning Commission. The Planning Commission shall review applications for abandonments and vacations in accordance with the provisions of this section.

- (a) General Provisions. The Planning Commission shall conduct a public hearing for the purpose of receiving evidence relative to the application. The evidence shall be reviewed to determine if the application is consistent with existing policies, standards and required findings.
- (b) Time Period for Hearing and Action. The Planning Commission shall hold a public hearing on the application for vacation or abandonment of an easement or street not less than ~~ten~~ (10) business days after the newspaper notice as required below is first published.
- (c) Notice of Planning Commission Hearing.
 - (1) Notice of Vacation or Abandonment, Only. Notice of a vacation or abandonment application to be heard by the Planning Commission shall be given by mailing to each owner of property abutting **or connected to** the proposed vacation or abandonment a notice of the proposed vacation or abandonment application through a delivery method that does not require signature of receipt of the notice by the abutting property owner, but does confirm delivery of the notice to the abutting property owner. Mailing of the notice ~~shall occur on a date that assures~~

~~delivery was made at least ten (10) business days prior to the date of the Planning Commission's public hearing. Furthermore, a notice shall be published at least once in a newspaper of general circulation in the County not less than ten (10) business days prior to the date of the Planning Commission's public hearing.~~

- (2) Notice of Vacation or Abandonment Combined with Tentative Subdivision Map Application. If the vacation or abandonment application is part of a tentative subdivision map application, the notice of the proposed vacation or abandonment shall be contained in the notice for the tentative subdivision map, and each owner of property abutting **or connected to** the proposed vacation or abandonment shall be provided notice of the combined proposed vacation or abandonment and tentative subdivision notice pursuant to the requirements of subsection (1). Notice shall be published at least once in a newspaper of general circulation in the County pursuant to the requirements of subsection (1).
- (3) Notice of Public Utility and Community Antenna Television Company. Each public utility as defined in NRS 360.815 and each community antenna television company as defined in NRS 711.030 serving the area in which an easement or street is proposed to be abandoned shall receive a notice no later than ~~ten (10)~~ business days prior to the date of the Planning Commission's public hearing on the application. Accompanying the application shall be a request that the public utility and/or community antenna television company indicate in writing whether that entity wishes to have an easement for its purposes provided.
- (d) Action by the Planning Commission. Except as provided in Section 110.806.40, if, upon public hearing, the Planning Commission is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Planning Commission may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. Notwithstanding the final decision of the Planning Commission, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection (c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.
- ~~(e) Appeal of Final Action of Planning Commission. An appeal of the Planning Commission's final action on an abandonment or vacation application may be appealed to the Board of County Commissioners within ten (10) days of the date of the final decision of the Planning Commission only by the following:~~
 - ~~(1) The applicant or the applicant's authorized agent;~~
 - ~~(2) An owner of real property who has received notice of the public hearing pursuant to Section 110.806.30 of the Development Code; or~~
 - ~~(3) A person who may be adversely affected by the decision; and~~
 - ~~(i) Has participated in the review process by submitting written testimony on the application prior to the public hearing before the Planning Commission;~~
 - ~~(ii) Has participated in the review process by providing oral testimony at the public hearing before the Planning Commission on the application; or~~

~~(iii) Was prevented from participation in the review by circumstances beyond his/her control.~~

~~(f) Denial of Appeal Application. A decision by County staff that a potential appellant does not meet the criteria in subsection (e)(3) of this section may be appealed to the Board of County Commissioners.~~

SECTION 7. Section 110.806.35 is hereby amended to read as follows:

Section 110.806.35 Appeals to Board of County Commissioners Action by Board.

- (a) An appeal of the Planning Commission's decision regarding a vacation or abandonment of an easement or street may be appealed to the Board of County Commissioners following the procedure set out in WCC 110.912.20 of the Development Code.
- (b) Except as provided in Section 110.806.40, if, upon public hearing on the appeal of the Planning Commission's final action on an abandonment or vacation of an easement or street, the Board is satisfied that the public will not be materially injured by the proposed vacation, it shall order the street or easement vacated. The Board may make the order conditional, and the order becomes effective only upon the fulfillment of the conditions prescribed. The action of the Board of County Commissioners shall be final for the purposes of judicial review. Notwithstanding the final decision of the Board of County Commissioners, if a public utility and/or community antenna television company requests an easement for its purposes pursuant to the notice provided in subsection 110.806.15(c)(3), an easement in favor of the public utility and/or community antenna television company shall be provided and the County shall ensure recordation of same.

SECTION 8. Section 110.808.45 is hereby amended to read as follows:

Section 110.808.45 Appeals. An action of the hearing examiner or Board of Adjustment made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of **Section 110.912.20 of the Development Code** ~~this section.~~

- ~~(a) Appeal Period. An appeal of the decision of the hearing examiner or Board of Adjustment may be made to the Board of County Commissioners within fifteen (15) days from the date of the decision by the Board of Adjustment or the date of the notice of decision of the hearing examiner was mailed. If filed, an appeal stays any further action on the permit until final resolution of the appeal. If the end of the appeal period falls on a non-business day, the appeal period shall be extended to include the next business day.~~
- ~~(b) Who Can Appeal. Appeals may be filed only by the following:
 - (1) The applicant or the applicant's authorized agent;
 - (2) An owner of real property who has received notice of the public hearing pursuant to subsection 110.808.40(c)(1)(iii) of the Development Code; or
 - (3) A person who may be adversely affected by the decision; and~~

- ~~(i) Has participated in the review process by submitting written testimony on the application prior to the public hearing before the Board of Adjustment or Planning Commission on the application;~~
 - ~~(ii) Has participated in the review process by providing oral testimony on the application at the public hearing before the Board of Adjustment or Planning Commission;~~
 - ~~(iii) Has submitted written testimony on the application to the hearing examiner prior to a decision; or~~
 - ~~(iv) Was prevented from participating in the review by circumstances beyond his/her control.~~
- ~~(c) Denial of Appeal Application. A decision by County staff that a potential appellant does not meet the criteria in subsection (b)(3) of this section may be appealed to the Board of County Commissioners.~~
- ~~(d) Contents of Appeal. An appeal shall be filed with the Director of Community Development, accompanied by a filing fee. The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the hearing examiner or Board of Adjustment. Such reasons shall be based upon the evidence presented to the hearing examiner or Board of Adjustment prior to the original decision. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.~~
- ~~(e) Time Period for Hearing. The Director of Community Development shall schedule a public hearing before the Board of County Commissioners on the appeal within thirty (30) days of the date of the filing of the appeal.~~
- ~~(f) Notice of Hearing. The public hearing on the appeal shall be noticed as required by Section 110.808.40. The notice shall state that an appeal has been filed; describe the request being appealed; describe the lot, parcel, property or areas that are the subject of the administrative permit; describe the final decision on the request; and note other pertinent information.~~
- ~~(g) Action by the Board of County Commissioners. The Board of County Commissioners shall consider only those items cited in the appeal. In its deliberation, it may use the record and any additional evidence relative to the application and may confirm, reverse, or modify the appealed action based upon its interpretation of the findings required and the evidence submitted. The action of the Board of County Commissioners shall be final.~~
- ~~(h) Effective Date. The decision of the Board of County Commissioners on an appeal shall be effective immediately.~~

SECTION 9. Section 110.810.50 is hereby amended to read as follows:

Section 110.810.50 Appeals. An action of the Planning Commission, Board of Adjustment or a hearing examiner made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of **Section 110.912.20 of the Development Code** ~~this section.~~

- ~~(a) Appeal Period. An appeal of the Planning Commission's, Board of Adjustment's or a hearing examiner's final decision may be made to the Board of County Commissioners~~

~~within ten (10) days after the date of the final decision. If filed, an appeal stays any further action on the permit until final resolution of the appeal. If the end of the appeal period falls on a non-business day, the appeal period shall be extended to include the next business day.~~

- ~~(b) Who Can Appeal. Appeals may be filed only by the following:~~
- ~~(1) The applicant or the applicant's authorized agent;~~
 - ~~(2) An owner of real property or tenant of a mobile home who has received notice of the public hearing pursuant to subsection 110.810.25(a)(3) or 110.810.(a)(4) of the Development Code; or~~
 - ~~(3) A person who may be adversely affected by the decision; and~~
 - ~~(i) Has participated in the review process by submitting written testimony on the application prior to the public hearing before the Board of Adjustment or hearing examiner;~~
 - ~~(ii) Has participated in the review process by providing oral testimony on the application at the public hearing before the Board of Adjustment or hearing examiner; or~~
 - ~~(iii) Was prevented from participating in the review by circumstances beyond his/her control.~~
- ~~(c) Denial of Appeal Application. A decision by County staff that a potential appellant does not meet the criteria in subsection (b)(3) of this section may be appealed to the Board of County Commissioners.~~
- ~~(d) Contents of Appeal. An appeal shall be filed with the Director of Community Development, accompanied by a filing fee. The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the Planning Commission, Board of Adjustment or a hearing examiner. Such reasons shall be based upon the evidence presented to the Planning Commission, Board of Adjustment or a hearing examiner at the original hearing. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.~~
- ~~(e) Time Period for Hearing. The Clerk of the Board of County Commissioners shall schedule a public hearing on the appeal of the Planning Commission's, Board of Adjustment's or hearing examiner's final decision before the Board of County Commissioners within sixty (60) days of the date of the filing of the appeal with the Director of Community Development.~~
- ~~(f) Notice of Hearing. The public hearing on the appeal shall be noticed as required by Section 110.810.25. The notice shall state that an appeal of the Planning Commission's, Board of Adjustment's or a hearing examiner's final decision has been filed; describe the final decision; describe the lot, parcel, property or areas that are the subject of the special use permit and the final decision on the request; and other pertinent information.~~
- ~~(g) Action by the Board of County Commissioners. The Board of County Commissioners shall consider only those items cited in the appeal. In its deliberation, it may use the record and any additional evidence relative to the application and may confirm, reverse or modify the appealed actions based upon its interpretation of the findings required and the~~

~~evidence submitted. The action of the Board of County Commissioners shall be by an affirmative vote of a majority of the entire membership of the Board. A final decision by the Board of County Commissioners shall be rendered within sixty (60) days of the appeal hearing. In the case of a tie vote due to the absence of a member, the appeal shall be continued to a future meeting unless requested otherwise by the appellant. Said future meeting may be beyond the sixty (60) days required for a final decision. The final decision of the Board of County Commissioners shall be final for purposes of judicial review.~~

- ~~(h) Effective Date. The decision of the Board of County Commissioners on an appeal of the Planning Commission's, Board of Adjustment's or a hearing examiner's final decision shall be effective immediately.~~

SECTION 10. Section 110.818.25 is hereby amended to read as follows:

Section 110.818.25 Appeal of Denial. A denial action of the Planning Commission made pursuant to this article may be appealed to the Board of County Commissioners in accordance with the provisions of **Section 110.912.20 of the Development Code** ~~this section.~~

- ~~(a) Appeal Period. An appeal of the Planning Commission's denial of a Development Code amendment request may be made to the Board of County Commissioners within fifteen (15) days after the date of the decision. If the end of the appeal period falls on a non-business day, the appeal period shall be extended to include the next business day.~~
- ~~(b) Who Can Appeal. Appeals may be filed by the Board of County Commissioners, applicant, or applicant's authorized agent.~~
- ~~(c) Appeal by Applicant or Applicant's Agent. An appeal by the applicant or the applicant's authorized agent shall be filed with the Director of Community Development, accompanied by a filing fee. The appeal shall be in writing and state the basis of the appeal by citing the inadequacy of the findings made by the Planning Commission. Such reasons shall be based upon the evidence presented to the Planning Commission at the original hearing. Failure of the appellant to present such reasons shall be deemed cause for denial of the appeal.~~
- ~~(d) Action on Appeal. The appeal of the Planning Commission's denial of a Development Code amendment request shall be processed pursuant to this article.~~

SECTION 11. Section 110.818.30 is hereby amended to read as follows:

Section 110.818.30 Action by Board. Except as provided in Section 110.818.60, the Board of County Commissioners shall review proposed Development Code amendments in conformance with this section.

- (a) Time Period for Hearing. The Clerk of the Board of County Commissioners shall schedule a public hearing before the Board of County Commissioners on the appeal of a denial or recommendation of approval of the Planning Commission within ~~sixty (60)~~ days of the filing of the appeal or receipt of the Planning Commission's action.
- (b) Notice of Hearing. The public hearing on the appeal shall be noticed as required by this article.
- ~~(c) Board of County Commissioners' Action.~~

- ~~(1) If the Board of County Commissioners is considering an appeal from a denial of a Development Code amendment request, it may use the record and any additional evidence relative to the application and may confirm or reverse the denial based upon its interpretation of the findings required and the evidence submitted. Final action to approve the amendment shall require a two-thirds (2/3) vote of the total membership of the Board.~~
- ~~(2) If the Board of County Commissioners is considering a recommendation of approval, it may take final action to adopt, adopt with conditions, or deny the Development Code amendment, after consideration of the Planning Commission's recommendation. Final action to approve the amendment shall require a simple majority vote of the total membership of the Board.~~
- ~~(3) If the Board of County Commissioners proposes to modify the recommendation of approval from the Planning Commission, the proposed modification shall be referred to the Planning Commission for consideration. The Planning Commission shall not be required to hold a public hearing on the modification. The Planning Commission shall submit a report on the proposed modification to the Board of County Commissioners within ninety (90) days from the date of referral by the Board of County Commissioners. Failure to report shall be deemed a recommendation of approval. Prior to making a final decision, the Board of County Commissioners shall be required to conduct a public hearing and notice this hearing pursuant to this article. If the Planning Commission does not recommend approval, approval of the proposed modification shall require a two-thirds (2/3) vote of the total membership of the Board.~~
- ~~(4) The final action by the Board of County Commissioners shall be considered final for purposes of judicial review.~~

SECTION 12. Section 110.912.10 is hereby amended to read as follows:

Section 110.912.10 Washoe County Board of Adjustment.

- (a) Creation. The Washoe County Board of Adjustment is hereby created, pursuant to NRS 278.270, to perform all the duties and functions delegated to a County Board of Adjustment by the terms of NRS 278.010 to 278.630, inclusive.
- (b) Membership and Terms of Office.
 - (1) The Washoe County Board of Adjustment shall consist of five ~~(5)~~ members.
 - (2) The term of office of each member shall be four ~~(4)~~ years, or until his or her successor takes office, ~~except that the terms of two (2) of the members first appointed shall be three (3) years and the term of one (1) of the members first appointed shall be two (2) years.~~
 - ~~(3) The term of office enumerated in this section shall commence for all appointments taking effect on or after June 30, 1996.~~

(c) Appointment and Qualifications.

- (1) The Chairman of the Board of County Commissioners shall appoint, subject to the approval of the Board, the members of the Washoe County Board of Adjustment.
- (2) The members shall hold no other public office, with the exception that one ~~(4)~~ member may also be a member of the Planning Commission.
- (3) The members shall be residents of the unincorporated area of Washoe County and registered voters therein at the time of their appointment and continuously throughout their term of office.
- (4) Members of the Board of Adjustment shall be appointed based on representation of the County Commission Districts as described below. If qualified applicants are not available from the following County Commission Districts, appointments can be made from the County Commission District which would experience the next vacancy.
 - (i) One ~~(4)~~ member from County Commission District One.
 - (ii) One ~~(4)~~ member from County Commission District Two.
 - (iii) One ~~(4)~~ member from County Commission District Three.
 - (iv) One ~~(4)~~ member from County Commission District Four.
 - (v) One ~~(4)~~ member from County Commission District Five.

~~(5) In order to effectuate the representation of Board of Adjustment members as described in subsection (4), the following schedule shall be followed until each County Commission District has one (1) Board of Adjustment member appointed from each district.~~

- ~~(i) One (1) member from County Commission District Two in 2003.~~
- ~~(ii) One (1) member from County Commission District Five in 2004.~~
- ~~(iii) One (1) member from County Commission District Three in 2005.~~
- ~~(iv) One (1) member from County Commission District Four in 2005.~~
- ~~(v) One (1) member from County Commission District One in 2006.~~

(d) Vacancies. Vacancies occurring other than through the expiration of a member's term shall be filled for the unexpired term.

(e) Removal from Office. Any member of the Washoe County Board of Adjustment may be removed from office, following a public hearing, by a majority vote of the Board of County Commissioners for inefficiency, neglect of duty, or malfeasance of office.

(f) Powers of Board.

- (1) **The Washoe County Board of Adjustment shall hear and decide appeals under NRS 278.300(1)(a) and 278.310(1) as provided in subsection (j) of this section.** ~~The Washoe County Board of Adjustment shall hear and decide appeals from regulations and requirements of the Development Code and shall sit and decide upon all matters referred to it or properly of concern in the administration of the Development Code.~~
- (2) The Washoe County Board of Adjustment shall also have all the powers pursuant to NRS 278.290 to 278.310, inclusive.

(g) Meetings and Records.

- (1) The Washoe County Board of Adjustment **may** ~~shall~~ hold at least one ~~(4)~~ regular meeting ~~in~~ each month, **but may meet less frequently if the Board so decides. The Board may also schedule special meetings as warranted.**
- (2) The Washoe County Board of Adjustment shall adopt rules for the transaction of business and shall keep a record of its resolutions, transactions, findings and determinations. This record shall be a public record.
- (3) Complete records of official actions of the Washoe County Board of Adjustment shall be kept on file in the office of the **Planning and Development Division of the Washoe County Community Services** ~~Department of Community Development.~~

(h) Chairman and Other Officers.

- (1) The Washoe County Board of Adjustment shall elect its Chairman from among the appointed members.
- (2) In addition to electing its Chairman, the Washoe County Board of Adjustment shall create and fill such other of its offices as it may determine.

- (i) Compensation. All members of the Washoe County Board of Adjustment shall be compensated at a rate of \$80.00 per meeting (up to \$200.00 per month), and shall receive compensation for reasonable travel expenses and subsistence allowances made necessary in the fulfillment of their official duties.

(j) Appeals to the Board of Adjustment

- (1) Preface and Definitions. This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310 (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.
- (2) Matters that May be Appealed. A person aggrieved (as defined in Section 110.910.02) by any of the following decisions may appeal the decision to the Board of Adjustment:
 - (i) **Decisions of Building Official.** Decisions of the Building Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be

appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Building Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board subject to and in accordance with Chapter 100 of this Code (Building Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Building Official is not heard by a hearing officer or the Technical Review Board, then a person aggrieved by the decision may appeal it directly to the Board under this Article; or,

- (ii) **Decisions of Fire Code Official.** Decisions of the Fire Code Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Fire Code Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board in accordance with Chapter 60 of this Code (Fire Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Fire Code Official is not appealed to a hearing officer or the Technical Review Board, then a person aggrieved by that decision may appeal it directly to the Board but only if the decision results in denial of a building permit or is related to the soundness of structures. Decisions relating to public safety or fire code administration or enforcement are not subject to appeal to the Board unless they directly relate to the soundness of a structure or result in denial of a building permit; or,
 - (iii) A decision of an administrative hearing officer if an administrative enforcement proceeding is completed in accordance with Article 910 of the Development Code; or,
 - (iv) A decision of the Director the Planning and Development Division made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer.
- (3) **Form and Time for Appeal.** Appeals must be in writing on forms or in the format prescribed by, and must delivered to, the Planning and Development Division of the Department of Community Services within 10 calendar days from the date that the decision is communicated in writing to the appellant.
- (4) **Scheduling of Hearing on Appeal.** The Chairman of the Board shall schedule the appeal for a hearing to occur not later than the date of the next regular meeting of the Board but no more than 60 days from the date the appeal was filed in accordance with paragraph (3) unless otherwise agreed with the appellant. Within that timeline, the Chairman of the Board may also schedule a special meeting to hear the appeal. If the appellant

fails to observe any prehearing schedule, the Chairman may extend the hearing date for a reasonable period of time.

- (5) **Prehearing Procedures.** The Chairman of the Board of Adjustment may:
- (i) Require and oversee ministerial prehearing procedural matters, including prehearing conferences, discovery proceedings, briefing schedules, evidence assembly and marking; however, matters involving jurisdiction or issues to be heard by the Board, or admissibility of evidence are to be heard by the Board;
 - (ii) Issue subpoenas compelling witnesses to appear before the Board; and
 - (iii) Schedule the hearing before the Board.
- (6) **Record on Appeal; Additional Evidence.** A record on appeal shall be prepared by the County (including either a transcript of or a copy of the recording of the proceeding, at the discretion of the Chairman of the Board) and the Board:
- (i) Shall review the record on appeal and all evidence, testimony, documents, information and arguments introduced and the decision in the proceedings being appealed;
 - (ii) Shall afford all parties an opportunity to respond and present relevant and non-repetitious evidence and arguments on all issues being decided on appeal even if it is new evidence;
 - (iii) Shall conduct a public hearing, and hear and consider relevant information and comments by members of the public, even if they did not appear in the proceeding under appeal;
 - (iv) May consider, upon disclosure, information and comments communicated to Board members before the hearing; and
 - (v) May consider maps, adopted master plans to include area plans, and its own knowledge of conditions that exist.
- (7) **Burden of Proof and Persuasion; Reasons for Reversal of Underlying Decisions; Limitations on Awards.**
- (i) Decisions of administrative officials, hearing officers, and the technical review boards for building code and fire codes are presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board otherwise.
 - (ii) On an affirmative vote of a majority of the members present at the hearing, the Board may affirm the decision being appealed,
 - (iii) On a majority vote of all its members [as required by NRS 278.300 (2)], the Board may reverse, modify or remand a decision 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.
- (iv) The Board may not award, allocate or direct the payment of money damages, attorney's fees or costs of the proceeding to any party.
- (8) **Decision: Communication.**
- (i) The Board may take a matter under advisement and continue the hearing until its next regularly scheduled meeting, or may set a special public hearing to conclude the matter, and may require briefings or seek opinions of counsel. The Board may render a decision and instruct counsel to prepare a written decision either to be signed by the Chairman of the Board or reviewed at a subsequent meeting by the Board (provided, however, that the outcome shall not be changed at the subsequent meeting).
 - (ii) The Board must render a written decision within 60 days after the hearing unless otherwise agreed with the appellant.
 - (iii) When a decision is signed by the Chairman of the Board, a copy shall be delivered to all parties of record, and a copy shall be filed with the secretary to the Board as an official record. When a decision is so served and filed, it is final for purposes of judicial review or appeal. A petition for reconsideration or rehearing is not required as a condition to judicial review or appeal to the Board of County Commissioners.
- (9) **Appeals of Board of Adjustment Decisions.** A party of record who is aggrieved by a decision of the Board of Adjustment may:
- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or,
 - (ii) Appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of this Article.

SECTION 13. Section 110.914.00 is hereby amended to read as follows:

Article 914

ESTABLISHMENT OF Division DEPARTMENT

Section 110.914.00 Purpose. The purpose of this article, Article 914, Establishment of **Division Department**, is to specify the establishment and authority of the **Planning and Development Division of the Washoe County Community Services** Department of ~~Community Development~~.

SECTION 18. Section 110.914.05 is hereby amended to read as follows:

Section 110.914.05 Planning and Development Division of the Washoe County Community Services Department of Community Development.

- (a) **Division Department Created.**
- (1) There is hereby created the **Planning and Development Division of the Washoe County Community Services Department of Community Development.**
 - (2) The **division department** shall be responsible for the development and administration of comprehensive planning programs, as well as development review programs, including business licensing **and codes compliance**, for the County in accordance with relevant local, state and federal ordinances, laws and regulations, as well as such other functions as may be assigned by the Board of County Commissioners.
- (b) **Director's Position Created.**
- (1) The position of the **Division Director of Planning and Development Community Development** is hereby created. The Director shall be appointed by the **Community Services Department Director Board of County Commissioners**, upon recommendation of the County Manager, and shall serve at the pleasure of the **Community Services Department Director Board of County Commissioners.**
 - (2) The Director shall appoint, pursuant to any applicable provisions of law regulating County personnel, such technical, clerical and operating staff as the execution of the duties of the Director and operation of the department may require.
- (c) **Director's Powers and Duties.** As the executive head of the **division department**, the Director shall direct and supervise all administrative, technical and operational activities of the **division department**. In addition to such activities as may be required in the daily administration of the **division department**, the **Community Services Department Director Board of County Commissioners** may make additional assignments as deemed necessary. The Director shall have the authority to interpret **and make decisions regarding** the provisions of the Development Code.
- (d) **Compensation.**
- (1) Except as provided in Subsection (d)(2) of this section, the salaries and other fringe benefits of the Director and employees of the **Planning and Development Division Department of Community Development** shall be established in accordance with the provisions of the Merit Personnel Ordinance or any other applicable laws regulating the employment of County personnel.
 - (2) The salary for the position of Director shall be established by the Board of County Commissioners.
- (e) **Programs Divisions.** The **division department** shall consist of such **programs divisions**, **as are deemed necessary to the efficient performance of the duties of the division**, created upon the recommendation of the Director **and approved by the Community**

~~Services Department Director of the Department of Community Development, as are deemed necessary to the efficient performance of the duties of the department.~~

- (f) ~~Appeal of a Director's Decision Interpretation of Development Code. A person aggrieved by a decision of the Director may appeal the decision in accordance with Section 110.912.10 of the Development Code. The following procedures shall be followed if an appeal is made to an interpretation by the Director of the Development Code.~~
- ~~(1) A statement and the appropriate fee shall be filed with the Department of Community Development.
 - ~~(i) The statement shall identify the code section(s) and Director's interpretation that is being appealed. In addition, the statement shall identify the reasons why the appellant believes the interpretation is incorrect and any additional supporting information.~~
 - ~~(ii) The Department of Community Development shall schedule a hearing before the Board of Adjustment within sixty (60) days of the receipt of a complete statement and fees.~~~~
 - ~~(2) After the completion of the hearing by the Board of Adjustment, the Board of Adjustment shall render a decision on the appeal of the interpretation within sixty (60) days of the hearing, either supporting the interpretation of the Director or supporting the appellant's position.~~
 - ~~(3) The decision of the Board of Adjustment on the appeal of the Director's interpretation may be appealed to the Board of County Commissioners by the appellant. The Department of Community Development shall schedule a hearing before the Board of County Commissioners within sixty (60) days of receipt of a request to appeal the Board of Adjustment's decision and the appropriate fee.~~
 - ~~(4) The Board of County Commissioners shall render a final decision on the appeal of the Board of Adjustment's decision within sixty (60) days of the appeal hearing. The decision shall be by a majority of the entire membership of the Board of County Commissioners. In the case of a tie, the matter shall be continued to a future meeting. The final decision of the Board of County Commissioners shall be considered final for purposes of judicial review.~~

SECTION 14. General Terms.

1. All actions, proceedings, matters and things heretofore taken, had and done by the County and its officers not inconsistent with the provisions of this Ordinance are ratified and approved.
2. The Chairman of the Board and the officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then it shall be excised from this ordinance. In any event, the remainder of this ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

DRAFT: March 3, 2015

Passage and Effective Date

This ordinance was proposed on _____ by Commissioner _____.

This ordinance was passed on _____.

Those voting "aye" were _____.

Those voting "nay" were _____.

Those absent were _____.

Those abstaining were _____.

This ordinance shall be published and shall be in force and effect immediately upon the date of the second publication as set forth in NRS 244.100.

Marsha Berkbigler, Chair
Washoe County Commission

ATTEST:

Nancy Parent, County Clerk

Office of the Washoe County District Attorney

Memorandum

To: Development Services Forum
From: Greg Salter, Deputy District Attorney
Re: Proposed ordinance to establish certain appeal rights.
Date: Jan 6, 2015

A new ordinance¹ is proposed to implement uniform and constitutionally sound appeal procedures to implement the following state statutes:

- **NRS 278.310²** requiring that appeals may be taken to the Board of Adjustment by any person aggrieved³ by his or her ability to obtain a building permit, or by the decision of any administrative officer or agency based upon or made in the course of administration or enforcement of the provisions of any zoning regulation or any regulation relating to the location or soundness of structures.
- **NRS 278.3195** requiring that appeals may be taken to the Board of County Commissioners by any person aggrieved by a decision of the Planning Commission, Board of Adjustment or a Hearing Examiner.

¹ This statute only applies to governments that have appointed Boards of Adjustment.

² In 2012, WCC Chapter 125 was substantially amended to provide for administrative enforcement of all provisions in the County Code which included new procedures for appeals to a hearing officer of administrative enforcement decisions. WCC 110.910 (Enforcement of Development Code) was then amended to tailor administrative enforcement procedures and appeals for violations of "Development Regulations" in order to implement NRS 278.310. This proposed ordinance completes the implementation of NRS 278.310 and NRS 278.3195 by establishing appeal procedures for the Board of Adjustment, and clarifying appeal rights for entitlement decisions.

³ Both NRS 278.310 and 278.3195 limit appeal rights to persons who are "aggrieved" by the decision being appealed, but neither statute defines what "aggrieved" means (except for counties in excess of 700,000), leaving it to the county code to define. WCC 110.910.02 presently defines an aggrieved person as a person or entity who has suffered a substantial grievance (not merely a party who is dissatisfied with a decision) in the form of either (a) the denial of or substantial injury to a personal property right, or (b) the imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or any administrative hearing officer.

Appealing building permit denials. (NRS 278.310)

- Denials of building permits by the Building Official or Fire Official because the building will not comply with the building code or fire code are appealable to the technical boards of review established under the Building Code (WCC Chapter 100) or Fire Code (WCC Chapter 60). Decisions of the technical review boards may be appealed to the Board of Adjustment if the denial is related to a code provision that regulates the location or soundness of structures.
- If a denial of a building permit is made because of a violation of a Development Regulation (defined below), then the decision to deny may be appealed to the Board of Adjustment. See Section 12 of the new ordinance amending WCC 110.910.10 (j).

Appealing decisions enforcing development regulations. (NRS 278.310)

Development Regulations include

- Development Code provisions including zoning and land use regulations, development standards, signage requirements, and subdivision regulations;
- Requirements set out in permits (special use permits, grading permits, etc);
- Stop activity orders, remediation orders or abatement orders; and
- Any other ordinance or regulation relating to the soundness of structures.

As set out in Article 910 of the Development Code, they may be enforced by County enforcement officials either through an administrative enforcement process or by judicial proceedings (civil or criminal) by the District Attorney’s Office. The Administrative enforcement process uses warnings, stop activity orders, abatement orders, administrative penalty notices and remediation orders or the like issued by County enforcement officials under WCC 125.240 (which sets general rules applicable to enforcement of all County Code provisions) and WCC 110.910.15 (which applies only to enforcement of development regulations). The administrative actions may be appealed to a hearing officer, and the decision of the hearing officer may be appealed to the Board of Adjustment under WCC 110.910.15.

Under the new Ordinance (See § 12), WCC 110.912.10 (Board of Adjustment) is amended to establish new procedures for such appeals, including:

- ✓ Appeal deadlines—20 calendar days from written decision.
- ✓ Deadline for hearing on appeal -- 60 days
- ✓ Prehearing procedures to expedite introduction of evidence
- ✓ Evidence and record on appeal
- ✓ Who has the burden of proof and persuasion (appellant)
- ✓ Vote required – simple majority of those present to affirm, majority of entire Board of Adjustment to reverse or modify the decision being appealed (as required by NRS 278.310 (2)).

- ✓ Appeal Rights: Persons aggrieved by the BOA decision may **either** go to judicial review or appeal to the Board of County Commissioners.

Appeals of entitlement decisions (NRS 278.3195)

Presently, appeal rights of entitlement decisions are scattered throughout the Development Code and are not uniform and in some cases do not provide adequate due process rights.

As required to implement NRS 278.3195, the new ordinance establishes that all of the following types of decisions may be appealed to the Board of County Commissioners and establishes a uniform and detailed appeals provision (WCC 110.912.20) that will modify or replace the appeal provisions regarding:

Decisions regarding	By	Modifies or replaces WCC 110.	Ordinance Reference
Parcel Maps	PMRC	606.55	§3
Tentative Subdivision Maps	PC	608.15	§4
Variances	BOA	804.40	§5
Abandonment or vacation of easements or streets	PC	806.15 806.25 806.30 806.35	§1 §6 §7
Administrative Permits	BOA	808.45	§8
Special Use Permits	BOA or PC	810.50	§9
Development Code Amendments (denials by PC)	PC	818.25 818.30	§10 §11
Administrative appeals of code enforcement decisions. ⁴	BOA	912.10	§12

Article 914 Changes.

The ordinance (see §13) also amends Article 914 (Establishment of Community Development Development) to reflect recent changes in the County structure, and provide that certain decisions of the Director are subject to appeal to the Board of Adjustment.

⁴ At the discretion of the appellant, Hearing Officer decisions may either taken to judicial review or appealed to the Board of County Commissioners. See proposed WCC 110.920.10 (j) (9). This alternative procedure is authorized by NRS 278.310 as an exception to NRS 278.3195 (1) generally requiring that all decisions are appealable to the Board of County Commissioners.