

**BOARD OF COUNTY COMMISSIONERS
WASHOE COUNTY, NEVADA**

TUESDAY

10:00 A.M.

AUGUST 20, 2019

PRESENT:

Vaughn Hartung, Chair
Bob Lucey, Vice Chair
Marsha Berkgigler, Commissioner
Jeanne Herman, Commissioner

Nancy Parent, County Clerk
Dave Solaro, Interim County Manager
Paul Lipparelli, Assistant District Attorney

ABSENT:

Kitty Jung, Commissioner

The Washoe County Board of Commissioners convened at 10:01 a.m. in special session in the Commission Chambers of the Washoe County Administration Complex, 1001 East Ninth Street, Reno, Nevada. Following the Pledge of Allegiance to the flag of our Country, the Clerk called the roll and the Board conducted the following business:

19-0619 AGENDA ITEM 3 Public Comment.

Ms. Amanda Hilbert said she had not received answers to her questions about the use of semi-truck trailers for storage and noted August 20 was the deadline she had been given. She said she sent emails to multiple individuals on July 9. Ms. Hilbert said Interim County Manager Dave Solaro initially responded that he needed time to review her file and would get back to her; his assistant later promised to email her. After several weeks, Ms. Hilbert emailed Mr. Solaro again and copied Commissioner Herman. She said she received a reply from Commissioner Herman on August 19. Ms. Hilbert noted there had been problems with her paperwork and spoke about an administrative hearing. She believed some Commissioners had asked for a stay on complaints regarding commercial vehicle containers until the applicable section of the Washoe County Code could be reviewed in February. However, it appeared Mr. Solaro directed staff to move forward with her fines. She said she felt stuck and did not know what else to do; she was looking to the County for direction. She said she would try to file an appeal and requested the issue be addressed before February.

Ms. Fauna Tomlinson spoke about her desire to volunteer in Washoe County. She then mentioned she often went with family and friends to Bureau of Land Management (BLM) land for bird watching and to use all-terrain vehicles. She claimed hunters were also using these lands illegally to hunt coyotes for a contest hosted by the Wayside Bar. She noted she had spoken to a BLM representative who said the Wayside

Bar had not applied for a Special Recreational Permit (SRP) for the contest. She said both the BLM and the Sheriff's Department advised her they did not have resources to prevent hunters from using the land for illegal purposes. Ms. Tomlinson said she was willing to pay for a warden to spend a day talking to contestants to let them know they could not use BLM land for coyote hunting so families would be safe while using the land for recreation. She said the Sheriff advised her to apply for a permit to hire a warden for that purpose.

Ms. Tammy Holt-Still of the Lemmon Valley/Swan Lake Recovery Committee displayed photos of a property for sale on Lemmon Drive. She said Mr. Solaro advised Reno City Councilmember Bonnie Weber that a mess created last month would be cleaned up by 5:00 p.m. on August 19. Ms. Holt-Still then displayed a photo she took on the morning of August 20 which showed nothing had been cleaned up. She stated she was tired of the lies and inaction. She displayed a photo of a Hesco barrier abandoned on Lemmon Drive for two years, noting it had originally been part of an expensive \$2 million dollar project but was now left behind like trash. She said residents did not deserve the trash abandoned in their neighborhoods. She stated she was ashamed of the Commissioners and asserted senior staff did not do their jobs; she suggested the County hire people who would. She concluded the Lemmon Valley area had become trashy because of all that had happened and said it needed to be fixed.

19-0620 AGENDA ITEM 4 Announcements/Reports.

Interim County Manager Dave Solaro announced Commissioner Jung was attending the 2019 Lake Tahoe Summit and would not be present for the meeting.

Commissioner Herman, referring to Ms. Hilbert's comments, said it seemed the message to hold off on semi-trailer citations had not gotten through to the right people. She said she wanted to find an immediate resolution.

Chair Hartung said he or Commissioner Herman could work with Mr. Solaro on the issue regarding the coyote hunting contest at the Wayside Bar. He said he believed the Nevada Division of Wildlife might need to be involved if a warden was to be hired. He stated he was not sure what role, if any, Washoe County or the Board of County Commissioners would play.

Regarding the Hesco barrier on Lemmon Drive, Chair Hartung asked Dwayne Smith, Director of Engineering and Capital Projects, to find out why it had been discarded there.

Chair Hartung noted a complaint came in at 1:30 a.m. on Sunday, August 19 regarding a continued violation of a Special Use Permit in Spanish Springs. He said he wanted the property manager brought in, an agenda item scheduled, and proceedings to begin to determine whether the permit should be revoked. He said the permit would be pulled if the grantee could not work within the defined parameters and hours of operation.

19-0621 **AGENDA ITEM 5A** Approval of minutes for the Board of County Commissioners' regular meeting of July 9, 2019. Clerk. (All Commission Districts.)

There was no public comment on the Consent Agenda Item listed above.

On motion by Commissioner Berkbigler, seconded by Commissioner Herman, which motion duly carried on a 4-0 vote with Commissioner Jung absent, it was ordered that Consent Agenda Item 5A be approved.

19-0622 **AGENDA ITEM 6** Recommendation to approve filing an appeal to the Nevada Supreme Court of the Second Judicial District Court's decision in Lakes at Lemmon Valley v. Washoe County (CV18-02374) a case concerning the denial of a tentative subdivision map application for 98 single-family lots on a 33.97-acre parcel (APN 552-210-18) located near the intersection of Military Road and Lemmon Drive. District Attorney. (All Commission District.)

Deputy District Attorney Nathan Edwards said he had handled the legal proceedings and judicial review in the Lakes at Lemmon Valley case and spoke about the Board's decision to deny the tentative subdivision map. He said the developer had challenged the decision by judicial review; Judge Breslow sided with the developer and overturned the Board's denial. Mr. Edwards said the Board now needed to decide whether or not to authorize the District Attorney's office to pursue an appeal in the Nevada Supreme Court. He explained the timeline for the appeal would be subject to the Court's discretion and a number of factors could come into play. He said the Nevada Supreme Court could decide to send the case to the Nevada Court of Appeals and the District Attorney's office did not know whether there would be oral argument.

Mr. Edwards noted a typical timeframe on an appeal such as this might be a year to a year and a half before a final decision was reached. He said there was also a motion pending in the District Court for approximately \$45,000 in developer's attorney fees. If there was an appeal, that number would increase. He said he spoke with the attorney for the developer, Mr. Stephen Mollath, who noted a pending transaction with respect to the property was hanging in the balance based on whether or not the appeal was filed. He noted Mr. Mollath would explain this in more detail when he spoke.

Mr. Edwards said the decision would ultimately come down to whether the Board believed the case was important enough to defend the County's jurisdiction and their comfort with the level of risk. Pursuing an appeal could result in a claim for damages caused by delays to the project.

Mr. Edwards said he was asking for direction and authorization from the Board of County Commissioners (BCC). He mentioned the recent Hansen case, which had been thrown out of the Nevada Supreme Court because a notice of appeal had been

filed without a formal action to authorize it by the Nevada Commission on Ethics. He said he would not go into further specifics on the Lakes at Lemmon Valley case as the Board had the staff report. He clarified this was not a point in the proceedings where the merits of the actual subdivision were being considered; it was simply a decision on whether or not the County would file an appeal.

Mr. Stephen Mollath, attorney for the developer, noted the staff report summary said stewardship of the community was the chief objective. He opined that stewardship required the BCC to follow the planning law as well as the case and legal law governing the planning and zoning ordinances of the County. He said he did not quite understand what the staff report meant regarding a 'strategic objective.'

Mr. Mollath noted the staff report said there was no direct fiscal impact for filing an appeal. He said it mentioned attorney's fees and costs, but the cost of damages relative to the denial of the project had not been included. Mr. Mollath said the project was a simple land-use planning action, with a right-in/right-out (RIRO), use of a U-turn with no zone change, no master plan amendment, no special use permit, and a tentative map. He noted Mr. Edwards spoke about protecting the County's jurisdiction, but Mr. Mollath opined this case was simply a decision that was made incorrectly. He said the real issues in the case were the planning and engineering facts, and the rules and regulations concerning ingress and egress set forth in the ordinances and the Regional Plan. He noted these rules were also adopted in guidelines and handbooks used by the Nevada Department of Transportation and the Regional Transportation Commission.

Mr. Mollath asked the Board to approve the tentative map pursuant to the court order. He said the developer's legal costs could double if the appeal proceeded and the County could be held responsible for those costs as decided by the District Court. He said the fees were discretionary, but nothing in the statutes said that discretion was governed by stewardship of the County or strategic objectives. Mr. Mollath explained damages would begin to accrue if the developer was unable to close an anticipated transaction on the property by September 15 and he was discussing with accountants how the damage model might apply. He estimated there could be nearly \$100,000 in legal fees plus damages and interest, which, over a period of two years, could be substantial.

In conclusion, Mr. Mollath asked the Board to exercise discretion and resolve the matter rather than appeal. He said he would submit the fees to the court and would not charge any additional fee for his time on August 20 if the Board chose not to appeal. He advised this would be a wise move on the County's part.

Commissioner Berkbigler asked Mr. Edwards why the RIRO was the only issue brought up during litigation in light of the fact that there were other considerations behind the Board's decision to support the denial. Mr. Edwards said he could respond in a general context but could not be too specific as it would be outside the scope of the agenda. He said RIRO was the main issue which, after reviewing the approximately 800-page record, appeared to be the central focus which had consistently predominated both the County Commission and Planning Commission discussions.

Commissioner Berkbigler asked whether the appeal would consider only the RIRO issue and the legality of the Planning Commission's and BCC's decisions, or if other factors would also be taken into account. Mr. Edwards said there was a possibility the Nevada Supreme Court might consider other issues but it would be difficult to get them to do so. He stated there were doctrines in the law which allowed them to review decisions even if they were not discussed in the briefing, but it was likely they would focus on the access issue.

Commissioner Berkbigler explained she could not support an appeal due to her concerns about the County's potential fiscal responsibility, noting the money could be put to better use in Lemmon Valley. She opined the RIRO was not an issue as it had been done in other neighborhoods, but said she would not support further housing development in that area until concerns about flooding and infrastructure had been resolved.

On the call for public comment, County Clerk Nancy Parent stated she received email correspondence from Mr. Steve Wolgast in support of filing the appeal, a copy of which was placed on the record.

Ms. Tammy Holt-Still of the Lemmon Valley/Swan Lake Recovery Committee spoke in support of the appeal, noting the developer in question had a history of violating County regulations. She expressed concerns about the RIRO, safety issues including lack of emergency access in the event of fire, and Lemmon Valley's existing infrastructure challenges. She felt there were many merits of the case that had not been considered and homebuyers would be in danger if the development was allowed to proceed.

Commissioner Berkbigler asked whether the County would have the ability to place additional restrictions on the development if no appeal was filed. Assistant District Attorney Paul Lipparelli replied the approval sought was for a tentative map and the District Court's order was that the map be approved by the County. He said approval would set in place the requirements to meet the conditions for a final map, which were substantial but not discretionary-type decisions. He said there would not be a lot left for the County to do as far as exercising discretion and the developer could begin selling lots and land once the final map was approved.

Vice Chair Lucey said the decisions made by the Planning Commission and the BCC were valid and noted the RIRO issue had not been the only merit considered when the tentative map was reviewed. He said planning resided with the BCC so the public could have the opportunity to discuss development in an open forum. He opined a courtroom was not a venue in which planning should take place and said the Board should support the appeal.

Chair Hartung agreed and said he was very concerned the court had overridden a planning decision. He recognized Judge Breslow's acumen in evaluating

cases for merit but felt the Board had made the right decision. He noted there had been a number of RIRs used throughout the region which had failed miserably. He explained the Board had also considered water flow across the property and the development's consistency with adjoining parcels. He asked staff to look at those issues if it was decided an appeal should be filed. He felt the Board's decision was not arbitrary or capricious and should not have been overturned.

Commissioner Herman stated the reason she voted against the development in the first place was because the County did not have the sewer capacity to support the subdivision. She said this was consistent with the way she had voted all along.

Commissioner Berkgigler said she continued to have concerns about the potential fiscal impact on the County. She felt it was overreaching for the Board to step out into the unknown when there were other fiscal responsibilities, but noted she could not disagree with the other Commissioners' comments. Chair Hartung said he understood Commissioner Berkgigler's fear of making a fiscal decision that could cost the County.

Vice Chair Lucey moved that the appeal be authorized. Chair Hartung seconded the motion.

Vice Chair Lucey said Commissioner Berkgigler was right to be concerned about the County's fiscal responsibility; however, he felt the decision to move forward with the appeal had been forced by the developer. He said protecting the County, its citizens, and future development was not a random, frivolous, or inappropriate use of County funds. Chair Hartung voiced agreement.

On motion by Vice Chair Lucey, seconded by Chair Hartung, which motion duly carried on a 3-1 vote with Commissioner Berkgigler voting "no" and Commissioner Jung absent, it was ordered that Agenda Item 6 be approved.

19-0623 **AGENDA ITEM 7** Public Comment.

Ms. Tammy Holt-Still opined the appeal was the right thing to do even though it would likely be expensive. She then reiterated management staff were not doing their jobs and displayed an image of a culvert on Tupelo Street overgrown with weeds. She said all the streets and main thoroughfares in the Lemmon Drive area looked this way except for hers, which she maintained on her own. She stated the area was neglected by the County and requested it be cleaned up and properly maintained before winter.

19-0624 **AGENDA ITEM 8** Announcements/Reports.

Vice Chair Lucey said the Reindeer Lodge demolition had been halted for asbestos mitigation, which was supposed to have taken about a month. He noted there had been no other action at the site in the past 30 days and requested an update on the

status of the project. He said demolition needed to be complete before winter if asbestos was indeed present.

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10:46 a.m. There being no further business to discuss, the meeting was adjourned without objection.

VAUGHN HARTUNG, Chair
Washoe County Commission

ATTEST:

NANCY PARENT, County Clerk and
Clerk of the Board of County Commissioners

*Minutes Prepared by:
Derek Sonderfan, Deputy County Clerk*