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8 WASHOE COUNTY
BOARD OF COMMISSIONERS

9 In the Matter of:

10 THE RESORT AT TAHOE AND
RESIDENCES

Application No. WSUP21-0035

11 _____ /
12 **GRANITE PLACE OWNERS ASSOCIATION’S BRIEF**
13 **IN SUPPORT OF APPEAL OF BOARD OF ADJUSTMENT’S DECISION**
TO GRANT A SPECIAL USE PERMIT FOR MAJOR GRADING

14 GRANITE PLACE OWNERS ASSOCIATION (“GRANITE PLACE”), a Nevada non-profit
15 association of owners of the 18 condominium units located at 1 Big Water Drive in Crystal Bay,
16 Washoe County, Nevada, by and through its counsel, ALLISON MACKENZIE, LTD., submits this
17 brief in support of its appeal of the Board of Adjustment’s decision, in Application No. WSUP21-
18 0035, to approve an application for a special use permit for major grading.

19 **I.**

20 **Procedural History and Background**

21 The redevelopment of the Tahoe Biltmore property was first conceived more than fifteen years
22 ago. The first government approvals for the project now known as the Resort at Tahoe and Residences
23 were given in 2007. Economic recession and a global pandemic have halted progress on the project
24 in the intervening years. To date, very little work has been done under the original plans first approved
25 in 2007. Indeed, the eighteen condominium units of the project called Granite Place at Boulder Bay
26 comprise the only phase of the original project to have been completed and the construction and sale
27 of the last of those eighteen units occurred in 2020. GRANITE PLACE, as the association of owners
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1 of those eighteen condominiums, has a vested interest in both the completion of the Resort at Tahoe
2 and Residences and the manner in which the completion is undertaken.

3 Over the life of the project, changes have been made to the plans. It is not entirely clear to
4 GRANITE PLACE when some of those changes were made or, perhaps, more importantly, when they
5 were approved by the County. Of particular concern to GRANITE PLACE is the abandonment of
6 Reservoir Road and the approval of a new road called Wellness Way. Some sources have indicated
7 Wellness Way was part of the original plans, but other plans and maps do not show it. Still others,
8 including the site plan submitted prior to the construction of GRANITE PLACE, showed Wellness
9 Way in a different location. (*See, e.g.*, Staff Report for Tentative Subdivision Map Case Number
10 TM16-004 and Special Use Permit Case Number SB16-005). Indeed, the marketing literature
11 presented to the current members of GRANITE PLACE does not show any roadway where Wellness
12 Way is to be constructed.

13 There is, in fact, to this day, a large billboard outside the entrance to the Granite Place condos,
14 in place now for several years, which does not show Wellness Way. Instead, a landscaped garden area
15 is shown in the marketing billboard in the place where Wellness Way would go. A photograph
16 showing the billboard is attached here as **Exhibit “A”**. It is the undersigned’s understanding some
17 members of the Commission and County Staff have recently been given a tour of the site and know
18 the depiction upon which the GRANITE PLACE owners were induced to purchase their units. That
19 GRANITE PLACE has not been included in the discussion surrounding the previous abandonment of
20 Reservoir Road and approval of Wellness Way, and that the adverse impacts on GRANITE PLACE
21 were not disclosed by the applicant and considered in the approval process, is unfortunate, to say the
22 least, and provides grounds, as discussed below, for reversing the Board of Adjustment’s decision
23 from which this appeal is taken.

24 On February 3, 2022, the Board of Adjustment, in an open and agendized meeting, considered
25 and approved an application for a special use permit for major grading of the project site for the Resort
26 at Tahoe and Residences and connector roadways, including Wellness Way, to prepare for the
27 completion of the redevelopment of the Tahoe Biltmore property. At the meeting, following
28 presentations by planning staff and the applicant, members of the public were permitted to give

1 comment on the application. Many members of the public, in person and on the telephone, gave
2 comments in opposition to the application. Among them were members of GRANITE PLACE and of
3 its Board of Directors. Additionally, GRANITE PLACE submitted written comments in opposition
4 in advance of the meeting.

5 A final written Action Order was issued by the Board of Adjustment on February 8, 2022.
6 GRANITE PLACE timely submitted this appeal of the Action Order together with the associated filing
7 fee on February 18, 2022, asserting it was error for the Board of Adjustment to approve the special use
8 permit because it could and should not have found that issuance of the permit would have no
9 detrimental or injurious impact upon adjacent property, namely the GRANITE PLACE property.
10 Specifically, GRANITE PLACE raised three grounds on appeal upon which approval of the special
11 use permit should be reversed: (1) the prior decision to approve the abandonment of Reservoir Road
12 and approve Wellness Way was improvidently granted; (2) the boundaries of the property, including
13 common areas, of GRANITE PLACE have not been finalized or deeded to GRANITE PLACE by the
14 original developer, as required, and Wellness Way, as presently approved, likely encroaches on
15 property that will or should belong to GRANITE PLACE, which would result in an unlawful taking;
16 and (3) changed circumstances regarding the housing market, traffic, and other matters since the
17 original 2007 approval of the Resort at Tahoe and Residences should be considered and reevaluated.
18 As shown herein, the Board of County Commissioners should reverse the issuance of the special use
19 permit for major grading or, in the interests of completing the project in a timely fashion, preferably
20 modify it to impose conditions that will eliminate any adverse impact to GRANITE PLACE before
21 any grading is undertaken for construction of Wellness Way.

22 **II.**

23 **Legal Argument**

24 **A. GRANITE PLACE has standing to pursue this appeal.**

25 NRS 278.310(3) mandates adoption of a procedure by which “any person who is aggrieved by
26 a decision of the board of adjustment” may appeal a decision of the Board of Adjustment. The County
27 has adopted such procedures, codified in the Washoe County Development Code (“WCC”).
28 Regarding standing, WCC § 110.910.02 defines “aggrieved person,” pertinently, as a “person or entity

1 who has suffered a substantial grievance...in the form of either: (a) The denial of or substantial injury
2 to a personal or property right, or (b) The imposition of an illegal, unjust or inequitable burden or
3 obligation by...the Board of Adjustment.”

4 It is well-settled in Nevada that appellate standing of aggrieved persons in close proximity to
5 land subject to an agency’s land use decision is “beyond question.” *City of Reno v. Goldwater*, 92
6 Nev. 698, 700, 558 P.2d 532, 533 (1976); *see also Hantges v. City of Henderson*, 121 Nev. 319, 322-
7 23, 113 P.3d 848, 850 (2005) and *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 630, 218
8 P.3d 847, 850-51 (2009).

9 GRANITE PLACE and its owners are surrounded on three sides by the property that is the
10 subject of the Board of Adjustment’s decision from which this appeal is taken. Moreover, GRANITE
11 PLACE is part of the Tahoe Biltmore redevelopment project. The mapped location of Wellness Way
12 lies approximately six feet from the southwest corner of the southernmost GRANITE PLACE units.
13 The location of Wellness Way and the Board of Adjustment’s approval to begin grading that site
14 substantially impacts GRANITE PLACE and is, without doubt, an imposition of a burden that is, at
15 minimum, inequitable and unjust. GRANITE PLACE has standing to pursue this appeal.

16 **B. The Board of Adjustment improperly concluded issuance of the special use permit**
17 **would not injure the property of GRANITE PLACE and would not be detrimental to**
18 **the character of the surrounding area.**

19 Prior to issuing a special use permit, WCC 110.810.30 mandates the Board of Adjustment make
20 five specific findings. Pertinent to this appeal is the required finding that “[i]ssuance of the permit
21 will not be significantly detrimental to the public health, safety or welfare; injurious to the property or
22 improvements of adjacent properties; or detrimental to the character of the surrounding area.” WCC
23 110.810.30(d). County Staff, in response to GRANITE PLACE’s assertion that the Board of
24 Adjustment was unable to properly make this finding, suggests only that this finding was properly
25 made on the basis of conditions of approval required by various reviewing agencies regarding retention
26 of emergency vehicle access and access for the public that use Wassou Road and Lakeview Avenue.
27 *See* Page 5 of Staff Report.

28 Notably, Staff ignore entirely the impacts of issuance of the special use permit to GRANITE
PLACE. Consideration for impacts to members of the public is, of course, not objectionable.

1 However, consideration of impacts only to those members of the public who use Wassou Road and
2 Lakeview Avenue without any consideration of impacts to GRANITE PLACE cannot be left to stand.
3 There are, quite literally, no properties closer in proximity to the property at issue here than that of
4 GRANITE PLACE and its members. Yet, the applicant and the Board of Adjustment gave no
5 consideration whatsoever to the impacts the major grading would have on GRANITE PLACE and its
6 eighteen condominium owners.

7 One of the most easily identifiable impacts to GRANITE PLACE is the Board of Adjustment's
8 Condition of Approval 1.f, which allows construction activity to occur between 7am and 7pm, Monday
9 through Saturday. Grading and construction of Wellness Way, six feet from the GRANITE PLACE
10 residential units as early as 7am, as late as 7pm, and on Saturdays is extremely disruptive to the
11 GRANITE PLACE residents and their families. Further, there appear to be no requirement the
12 applicant protect GRANITE PLACE from damage, dirt, and debris resulting from grading activities.

13 Moreover, the Board of Adjustment gave no consideration to the adverse impact that grading
14 a highly sloped roadway would have to residences just a few feet away. It certainly made no findings
15 specific to whether such grading and the resulting roadway would not injure or be detrimental to the
16 residential character of the GRANITE PLACE property just a few feet away. These adverse impacts
17 include loss of open space GRANITE PLACE owners expected to have, noise pollution, light
18 pollution, unsafe conditions caused by a winding, steeply graded road, and impacts to property values.
19 These impacts were not considered by the Board of Adjustment nor were they disclosed by the
20 applicant.

21 **1. Approval to grade for the previously approved Wellness Way was not required.**

22 The previous abandonment of Reservoir Road and approval of Wellness Way was made
23 without consideration for the impacts to GRANITE PLACE, impacts which should have been
24 disclosed with the application for special use permit as required by the Development Code.¹ It was
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26 ¹ The applicant may argue disclosure of adverse impacts to GRANITE PLACE was not required because the owners waived
27 their rights in the CC&Rs or unidentified purchase documents that allow the developer to grant and secure easement rights.
28 The installation of a road, however, on GRANITE PLACE property is more than the granting or taking of an easement, it
is a total taking. Further, any such consent to the granting of easements does not absolve the County from protecting the
public safety and ensuring the authorized uses of property are not injurious to adjacent property. Lastly, there is the issue
of whether the waiver was effective when viewed with respect to the depiction of the property shown on the billboard
currently outside the entrance to GRANITE PLACE.

1 improvident to grant approval of Wellness Way without input from GRANITE PLACE and its
2 members and without considering the impact such a roadway would have on the GRANITE PLACE
3 residences. The County should reverse approval to grade for Wellness Way where the prior approval
4 of the new roadway was improvidently granted.

5 There is ample support in Nevada law for the proposition that the Board of Adjustment and
6 this Board may deny a special use permit to grade for Wellness Way even where prior approval had
7 been given for the new roadway. *See e.g., Bd. of Cty. Com'rs of Clark County v. CMC of Nevada,*
8 *Inc.*, 99 Nev. 739, 747-48, 670 P.2d 102, 107 (1983) (initial land use approval for a use that requires
9 subsequent and additional land use decisions does not give the land owner/applicant vested rights to
10 do the thing initially approved).

11 Thus, even where Wellness Way was previously approved for construction, the Board of
12 Adjustment was not required to approve a special use permit to grade for the road where it can and
13 should have found that the roadway, which must first be graded, will be injurious and detrimental to
14 the immediately adjacent GRANITE PLACE residential property. The Board of Adjustment's
15 deference or reliance on the prior approval of construction and placement of Wellness Way to approve
16 the grading thereof was improper.

17 **2. The boundaries of the GRANITE PLACE property, including common areas, are**
18 **not yet finalized.**

19 Though the eighteen GRANITE PLACE condominiums have been completed and sold, the
20 developer has not yet deeded the common area to the Association as required by NRS 116.31038. The
21 developer is, generally, required to turn over control of a common-interest community 60 days after
22 75 percent of the units have been sold. NRS 116.31032(1)(a); NRS 116.31038. Here, the developer
23 has not yet done so because the boundary lines of the GRANITE PLACE property are not yet finalized.
24 The undersigned understands this is because whatever the boundaries are will impact what the
25 surrounding portions of the Resort at Tahoe and Residences could be. The portion of the property on
26 which Wellness Way is to be constructed is among the portions of the property that could end up
27 belonging to GRANITE PLACE.

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1 **C. Approval of matters related to the Tahoe Biltmore redevelopment should be**
2 **conditioned on precise measures that will eliminate the adverse impact on Granite**
3 **Place.**

4 It is our understanding, though the short timeframe in which this matter is being handled has
5 not allowed for proper discovery, something that could have been allowed by WCC
6 110.912.20(b)(4)(ii)(2), potential adverse impacts to GRANITE PLACE have not been disclosed or
7 considered in this matter or in any other matter related to the redevelopment of the Tahoe Biltmore
8 property. Such discovery would have, for instance, permitted the parties to explore the precise design
9 contemplated for Wellness Way and the measures that can be taken to eliminate any adverse impact
10 on Granite Place. Indeed, the parties have been discussing such an approach but time has not permitted
11 this process to be completed.

12 GRANITE PLACE generally supports the redevelopment of the Tahoe Biltmore property
13 without any undue delay, and it encourages the new developer to act prudently and justly in
14 undertaking and completing the project. The degree to which GRANITE PLACE will be impacted is,
15 unfortunately unknown, but should be identified and corrected before any elements of a special use
16 permit are undertaken. As noted above, the owners of the GRANITE PLACE condominiums were
17 induced to purchase their units, in large part, based on marketing literature which did not show a
18 roadway immediately to the south of their residence. The marketing showed a landscaped open area,
19 which they expected to enjoy. Wellness Way, in its currently planned location, is being forced upon
20 them with unknown, but certainly detrimental impacts. The County should impose further conditions
21 on any special use permits such that implementation will not encroach on property of GRANITE
22 PLACE; and such that measures will be taken to eliminate any adverse impacts to GRANITE PLACE.
23 Imposition of such conditions should not unduly delay the project.

24 Such measures should include:

- 25 1. Change the name of the Wellness Way to Big Water Drive.
- 26 2. The portion of Big Water Drive from Hwy 28 to the first bend in the road must be constructed
27 with high quality pavers.
- 28 3. Entire road must be heated in winter.
4. GRANITE PLACE must see and agree to a plan showing a revised layout of the road such that
 it goes straight further up the hill past GRANITE PLACE and stays a minimum of 20 feet away
 from the southwest corner of GRANITE PLACE to an intersection with a 4-way stop sign.

- 1 5. On the north-south portion running parallel to GRANITE PLACE it must have at least one
- 2 speed bump spanning both lanes.
- 3 6. Where the road turns to go up the hill again, there must be another stop sign or speed bump.
- 4 7. Posted speed limit of 15 miles per hour.
- 5 8. The north-south section shall have a decorative wall/fence preventing vehicles from going off
- 6 the road and falling down the slope toward GRANITE PLACE. This should be constructed of
- 7 decorative brick or stone-covered block no less than 3 feet high with decorative wood railing
- 8 above it (examples to be supplied). Behind the fence shall be a dense row of trees or hedge tall
- 9 enough to prevent light pollution from vehicle headlights.
- 10 9. No heavy commercial trucks permitted on Big Water Drive.
- 11 10. Developer to obtain written consents to these road requirements from Washoe County
- 12 Engineering or Public Works, the local fire authority, local law enforcement agencies, and
- 13 TRPA. Such approvals shall be a condition of GRANITE PLACE withdrawing any appeals or
- 14 from taking further actions.
- 15 11. Applicant must define the boundaries of GRANITE PLACE and deed the common areas of
- 16 GRANITE PLACE as a condition to withdrawal of any appeals or from taking any further
- 17 actions.
- 18 12. Landscaping and restoration of all affected areas around GRANITE PLACE must be
- 19 undertaken.
- 20 13. Vegetation and tree screening must be put in place to maintain the privacy of GRANITE
- 21 PLACE's spa area.
- 22 14. Each of the foregoing features should be proposed with detailed drawings and acceptable to
- 23 GRANITE PLACE.

24 The foregoing roadway features must be a requirement of the Big Water Drive design regardless of
25 whether Developer pursues the development of the Approved Site Plan or files any Plan Revision
26 Application and modifies the site plan for The Tahoe Resort and Residences.

27 The applicant should be directed to submit a detailed plan so that the exact contours of the
28 elements of Wellness Way can be examined, and so that an appropriate plan of mitigation can be
proposed as a condition in order to protect the interests of GRANITE PLACE.

III.

Conclusion

For the reasons stated herein, GRANITE PLACE respectfully requests the County reverse or
modify the Board of Adjustment's decision to approve a special use permit for major grading in this
matter and direct the parties to submit a plan which will eliminate any adverse impact on GRANITE

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PLACE. GRANITE PLACE looks forward to presenting additional argument or answering any questions the County may have at the hearing on this appeal.

DATED this 15th day of March, 2022.

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4878-2062-1844, v. 5

EXHIBIT “A”



Resort Entry Water Feature
Casino Porte Cochere

Building D Garage Entrance
Resort Pool
Emergency Services Pull-Out

boulevard

CALIFORNIA
NEVADA

Stateline Rd

Lakeview Ave.

Events Terrace
Spa Deck
Building B Garage Entrance

Wassuk Rd

Sierra Park

SR 28

Loading/Service Entrance
Hotel Porte Cochere
Hotel Garage Entrance
Building F Amenity Area
Central Plaza/Water Feature