



# WASHOE COUNTY BOARD OF ADJUSTMENT Meeting Minutes

## Board of Adjustment Members

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

Thursday, October 1, 2015  
1:30 p.m.

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

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The Washoe County Board of Adjustment met in regular session on Thursday, October 1, 2015, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

### 1. \*Determination of Quorum

Chair Lawrence called the meeting to order at 1:34 p.m. The following members and staff were present:

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

Members absent: None

Staff present: William Whitney, Division Director, Planning and Development  
Grace Sannazzaro, Planner, Planning and Development  
Roger Pelham, Senior Planner, Planning and Development  
Eric Young, Planner, Planning and Development  
Kelly Mullin, Planner, Planning and Development  
Mike Large, Deputy District Attorney, District Attorney's Office  
Kathy Emerson, Administrative Secretary Supervisor, Planning and Development  
Donna Fagan, Recording Secretary, Planning and Development

### 2. \*Pledge of Allegiance

Member Toulouse led the pledge to the flag.

### 3. \*Ethics Law Announcement

Deputy District Attorney Mike Large recited the Ethics Law standards.

### 4. \*Appeal Procedure

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

## 5. \*Public Comment

Kathy Brandhorst spoke about stealing of utilities.

With no other request for public comment, Chair Lawrence closed the public comment period.

## 6. Approval of Agenda

Mr. Whitney requested item 9G be heard after item 9C and postpone item 10A to the December 3, 2015 agenda.

In accordance with the Open Meeting Law, Member Toulouse moved to approve the agenda of October 1, 2015 as amended. The motion carried unanimously.

## 7. Approval of August 6, 2015 Draft Minutes

Member Hill moved to approve the minutes for the August 6, 2015 Board of Adjustment meeting as written. Member Thomas seconded the motion which carried unanimously.

## 8. Consent Item

### A. Possible action to adopt a Resolution commending Robert Wideman for his service to Washoe County.

Member Toulouse made a motion to adopt the resolution. Member Hill seconded the motion which carried unanimously.

## 9. Public Hearings

### A. Variance Case Number VA15-007 (Rodman) – Hearing, discussion, and possible action to approve a variance to reduce the front yard setback from 20 feet to 4 feet-2 inches and to vary the maximum roof overhang (architectural feature) from 2 feet to 4 feet to construct a new three story single family dwelling.

- Applicant: Ira Rodman
- Property Owners as of 08/15/15: Raymond & Barbara Miller, Trustees  
(Application submittal date)
- Property Owner as of 08/20/15: Rodman Pension Trust
- Location: 541 Dale Drive, Incline Village
- Assessor's Parcel Number: 122-132-14
- Parcel Size: 0.426 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Birkbigler
- Section/Township/Range: Section 17, T16N, R18E, MDM,  
Washoe County, NV
- Staff: Grace Sannazzaro, Planner  
Washoe County Community Services  
Department  
Planning and Development Division
- Phone: 775-328-3627
- E-mail: gsannazzaro@washoecounty.us

Chair Lawrence opened the public hearing. Grace Sannazzaro reviewed her staff report dated September 18, 2015.

Wyatt Ogilvy, the applicant's representative, stated they support the conditions of approval and noted that at the CAB meeting, which he attended, a couple of the Board members felt that with the existing structures encroachment and the way Tyner Drive and Dale Drive intersect, the removal of the structural encroachment would be a benefit to the public health and safety.

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

Member Toulouse disclosed that he had received four email comments in support of the project. There were no other disclosures.

Member Hill said she supports this project. It warrants a variance.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve Variance Case Number VA15-007 for Ira Rodman, having made all four findings in accordance with Washoe County Development Code Section 110.804.25. Member Stanley seconded the motion which carried unanimously.

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated; and
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.

Chair Lawrence asked why the Board only had to make four findings for approval of this application when usually they have to make five findings. Ms. Sannazzaro answered County code has five findings listed; the fifth being if there is a military installation nearby. If there is no military installation that finding doesn't need to be included in the motion.

**B. Variance Case Number VA15-008 (Myers)** – Hearing, discussion, and possible action to approve a variance to reduce the rear yard setback from 20 feet to 10 feet and to reduce the north, side yard setback from 8 feet to 6 feet in order to renovate and expand an existing single family dwelling.

- Applicant/Property Owner: Joshua Myers
- Location: 565 Country Club Drive, Incline Village

- Assessor's Parcel Number: 131-080-16
- Parcel Size: 0.59 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 804, Variances
- Commission District: 1 – Commissioner Birkbigler
- Section/Township/Range: Section 10, T16N, R18E, MDM,  
Washoe County, NV
- Prepared by: Grace Sannazzaro, Planner  
Washoe County Community Services  
Department  
Division of Planning and Development
- Phone: 775.328.3627
- E-Mail: gsannazzaro@washoecounty.us

Member Hill disclosed that she has had business with this applicant and will recuse herself from voting on this item.

Chair Lawrence opened the public hearing. Grace Sannazzaro reviewed her staff report dated September 18, 2015.

Mike Railey, Rubicon Design Group, noted the property has U.S. Forest Service land on both sides and the golf course on the other resulting in essentially no neighbors. The intent of a setback is a buffer from the neighbors. Mr. Railey has a letter of support from Incline Village General Improvement District (IVGID) who runs the golf course. To clarify the hold harmless discussion during the Incline Village/Crystal Bay Citizen Advisory Board (CAB) meeting, the intent is if a golfer hits a ball into the house IVGID doesn't want to be held responsible. The CAB wanted to extend that to say IVGID and their guests, meaning covering the golfers, but he believes the golfers are covered. If the Board wants to add "IVGID and their guests" to the conditions of approval he has no problem with that. Mr. Railey said the house is known as the Winchester Mystery House, to the neighborhood. The interior is strange and has a spiral staircase which could be a safety issue in the event of a fire. The application was submitted so a wider staircase could be built in the home. Mr. Railey addressed a question regarding TRPA approval; there was a coverage survey and study reviewed and approved by TRPA in 1990 that is still valid which will allow encroachment into the stream zone shown on the map. He spoke with Jennifer Self this morning and TRPA has no comment on the review. When they apply for the building permit they will submit the approval from TRPA.

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

Member Thomas disclosed he had received a call from Mr. Railey who said he'd be glad to clarify or discuss any questions Member Thomas may have had regarding TRPA approval. Member Thomas suggested any discussion on the topic would best be discussed at the BOA meeting in an open forum.

Member Stanley noted there had been a suggestion that golfers be held harmless and Mr. Railey said they'd be happy with that. Is there a process or way to codify? Deputy District Attorney Large said in terms of the hold harmless clause, the agreement is between IVGID and the parcel owner. The terms and conditions that are going to govern that will be between those two parties on how, who, and what is covered. He doesn't believe it's necessary to codify it at this time, at the County level.

Member Toulouse moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve Variance Case Number VA15-008 for Joshua Myers, having made all four findings in accordance with Washoe County Development Code Section 110.804.25. Member Stanley seconded the motion which carried with four members voting to approve and one abstaining.

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated; and
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.

**C. Special Use Permit Case Number SB15-004 (LeFriant Family Trust)** – Hearing, discussion, and possible action to approve a special use permit to allow the grading for and construction of a driveway within the Sensitive Stream Zone Buffer Area of Franktown Creek, as well as excavation of approximately 3,300 cubic yards of earthen material [Major Grading as defined at Article 438.35] in preparation for construction of a single-family dwelling.

- Applicant/Property Owner: Jacques and Beth LeFriant  
1151 Hornblend Street  
San Diego, CA 92109
- Location: 55 Will Sauer Road, approximately 3/10 of a mile northwest of its intersection with Franktown Road in Washoe Valley
- Assessor's Parcel Number: 172-010-06
- Parcel Size: ± 5 acres
- Master Plan Category: Rural (R)
- Regulatory Zone: General Rural (GR)
- Area Plan: South Valleys
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 418, Significant Hydrologic Resources, Article 438, Grading, and Article 810, Special Use Permits
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 4, T16N, R19E, MDM, Washoe County, NV
- Prepared by: Roger Pelham, MPA, Senior Planner

Planning and Development Division  
Washoe County Community Services  
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775.328.3622  
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- Phone:
- E-Mail:

Chair Lawrence opened the public hearing. Roger Pelham reviewed his staff report dated September 10, 2015.

Member Hill stated she had read Tom Hall's letter regarding water rights and he's requesting a condition that would recognize, protect, and not interfere with the various easements. Mr. Pelham said it is condition 1(o). He noted any action today is not going to get rid of the legal encumbrances that are currently on that parcel.

Joe Cacioppo, Resources Concepts, Inc., stated he attended the South Truckee Meadows/Washoe Valley CAB meeting and there was some discussion about the driveway leading to the house. He said the house is situated as far back on the lot as it can be and the reason for that is while there's flatter land close to the road there is a FEMA flood zone there, there are setback requirements, and there are a variety of ditches. After all the requirements have been met the only suitable place to locate the house is behind all that. Consequently, one of the reasons there is a lot of grading on this site is because the only buildable place on the parcel is on the steeper section which gets us away from Franktown Creek and the irrigation ditches. The house and septic system meet all the requirements, so when you put the house where it needs to go, the driveway serving the parcel is an existing driveway. The access/driveway has been there since the 1950s or earlier. The special use permit calls for grading for a driveway, it is minor grading to smooth it out and prepare it for any surfacing. In laying out the house and the grading associated with it we've been careful to comply with all the codes and ordinance and 100% outside the critical zone. Mr. Cacioppo had a conversation with Mr. Hall to explain why the critical zone wasn't shown on the map. Mr. Cacioppo said they were waiting for the title report which didn't show up until a couple of days before the deadline to submit the application so not everything got onto the map. The owners are going to comply with water rights decrees, won't obstruct any flows or impede any easements associated with the creek. While it was a verbal conversation, he believes Mr. Hall believes they are going to do what they say they are going to do. There should not be any issue associated with that. On page 5 of the staff report there is a site plan which shows most of the grading will be at the rear and side of the house. It will not exceed 3:1. There will be retaining walls at or below height restrictions. Everything is in compliance with the code. There has been some historic grading but recent grading has been to repair damaged or degrading culverts. One last item came up at the CAB that talked about previous obstruction regarding the water diversion. Mr. Cacioppo promised them it would get fixed, it was accidental, and it has since been fixed. He spoke to the contractor this morning and the access has been re-established.

Member Toulouse asked how the applicant would feel if the Board added a condition, 1(h)vi, provisions to meet the 50% success rate over three years with a monitoring plan for revegetation. Mr. Cacioppo said the property owner could come up and address that.

Mr. Cacioppo added they accept the conditions of approval with no major issues but does have questions on a couple which the property owner will address.

Chair Lawrence opened public comment.

Charles Spann and Laurie Yott, Will Sauer Road Association, spoke in favor of the application. They believe, after looking at the plans, the applicants will be good neighbors.

They noted that many people came to the CAB meeting to show support for the project and think the home will enhance the neighborhood.

Cathy Fawcett says she supports this project. It is consistent with the purpose of the sensitive stream zone buffer area as stated in the Washoe County Development Code, that there will be no loss of significant hydrological resource size, function, and value. The project removes an insignificant amount of creek side vegetation. Their commitment to revegetate with native species is documented in their permit application. The driveway was graded in long ago and has been used by the irrigation companies. The home has no effect on the size, function, or value of the creek. If you were to look at the creek today, it is so low because of a diversion above the creek. From the bridge, you couldn't see the creek, just overgrowth. No hydrological resource has been degraded in any way nor will it be. Ms. Fawcett finished by saying she pays the least property tax on Franktown Road, at \$9000 a year, and thinks they're entitled to some rights with those high taxes.

Mary Kranz said the Franktown Creek HOA reviewed the plans in September and have approved them. They believe it's going to be a great addition to the community. She added none of the other three houses recently built on this road have been required to do any remediation as far as regrowth of vegetation. She feels it's a little over and beyond because it's close to water. But no one has had to jump through hoops like this before.

Tom Hall, representing George W. Gillemot a downstream lot owner, spoke in favor of the project. A concern from Mr. Gillemot, who owns a ranch in west Washoe Valley, is the water course of the Franktown Creek and the ditches which are the lifeblood of the ranch. This is the third time there's been an application that deals with property on the water course. The first time the guy took his backhoe and was moving the ditch without consent or permission, so we're a little sensitive to it. The second time they re-routed the water to go through an architectural cascade feature next to a house and we had to protect ourselves from that. He feels the planner did a good job with this application noting Condition of Approval 1(f) "All development on the subject parcel shall recognize, protect and not interfere with any existing easements for water conveyance or other purposes." Mr. Hall also noted 1(h)iii, "No work or land disturbance of any kind will occur within the sixty-foot wide Critical Stream Zone Buffer area." They are happy these items are contained in the conditions of approval and will welcome the new neighbor knowing they will have to abide by the easements of record.

Houston Crisp, a retired vice president of environmental planning, says with his experience he has an insight into the staff report and commended staff for the thorough report into the criteria and the consistency with each one of them. Mr. Crisp submitted a four page summary and wants to address the four points on the first page. He believes the four points are unnecessary or ill-advised and has detailed why on each point.

Beth LeFriant, the property owner, stated they have been planning this for multiple years and have taken into consideration all the various needs of the property including the irrigation needs. She said that she was unaware that Mr. Hall and Mr. Gillemot were people that she should contact directly whenever anything involved irrigation or the ditches. Once that came to her attention she sent Mr. Hall a track of emails she had sent to Jack Healy, who represents one of the large irrigation companies, and Bob Rusk, with a Franktown Creek irrigation company, asking for guidance on where they should build the house and what needed to be done to accommodate one another. We have always included water interests in every step of this project. Ms. LeFriant says she has a problem with some of the requirements. Condition 1(f), she feels if they had been negligent or acted unilaterally there would be a reason for making sure there were directions they need to follow. But they've been compliant with the water people in every way they were just unaware of the need to contact Mr. Hall and Mr. Gillemot. In the future, they will include them on anything they do that may impact the creek or irrigation.

The condition is extraneous to the permit process, that's a deed the water company has recorded, documented, and has to be adhered to. When they bought the parcel they knew that was the case. Condition 1(i)3, all of this is documented in title, by deed, by map and doesn't need to be re-iterated and made a condition for the permit, it's an existing law. And condition 1(h)viii, regarding the home design, about half the homes on this street are stucco or have painted finishes. Our house is mostly wood and glass. The rear of the house, which faces west and where we feel if there was a fire, this is the direction it would come, will be stucco per advice from the fire department. We're also considering putting in a fire system along the perimeter of the house. We want a look that is natural wood and glass but are taking extra steps to compromise the design so we address fire and don't add problems to the area. The same thing with the irrigation and the creek. We're trying to work with our neighbors and don't feel we need handcuffs put on us as we've demonstrated we are the kind of people who are easy to work with. I'm asking the Board to look at this as a grading permit and not an opportunity to add all of these extraneous things that there is no reason to impose on us.

Member Toulouse asked Ms. LeFriant which conditions, specifically, she is taking issue with and what she would like them to do. Ms. LeFriant referenced condition 1(f) saying it is loosey-goosey. Who is to determine what is "recognize, protect, and not interfere?" That's subject to interpretation. There are specific covenants set forth in title, recorded maps, that outline what we're supposed to do and we intend to abide by that. Ms. LeFriant stated she takes issue with telling a person what style of home he should put on his property, although it doesn't affect their home. But takes issue with the precedent it might set. And finally, she has a problem with a future purchaser being told to see Planning and Development before buying the property. She opined it is a diminishment in property value and being in the real estate business has never seen a requirement of this type. It's a realtor's job to represent a property correctly and a homeowner's job to disclose any detrimental elements or compromises to the land to a future buyer. Adding these types of provisions puts a burden on us as property owners that is not germane to the permit we're asking for.

Member Hill asked Ms. LeFriant why she had a problem with condition 1(f). Ms. LeFriant said she didn't have any problem with the concept and intends to do it so if she was not already doing it she understands it would need to be mentioned but since she's been cooperative in every way she doesn't think it's a necessity. She has a problem with the non-specificity of the language as it's subject to someone's interpretation. What does it mean? That's my problem with it.

Member Thomas noted that in previous testimony, on two prior occasions a property owner came in and changed the ditch. Not saying that you would do that but people do that and for protection for all the statement is there, but we are not in a position to clarify the language to the smallest degree as to what this stands for. Ms. LeFriant stated that just because someone else did it doesn't mean they have to be told not to do it as the law already exists to recognize, protect, etc. the irrigation ditches. This is our property and the irrigation people have certain rights which are limited to their easement and we recognize that. Since we are not guilty of any offense we shouldn't be tagged with a special requirement that is unnecessary.

Member Stanley asked DDA Large, with this language are they intended to add to existing NRS statutes that are in place around easements and clouding of the title or are they voluntary and suggestions looking for the goodwill and intent of the client? DDA Large stated that the language that was there in paragraph f recognizes the existence of current easements and it's not changing anything under the NRS and is merely recognizing what is already there. There is no problem with having that language in there. Member Stanley asked it is voluntary or a condition and if it is a condition how does that language play. DDA Large answered, the language itself, whether or not it's in there, has the same legal affect. The easements still exist, they still cloud title but this just re-emphasizes that, yes, these easements are there.



Chair Lawrence verified with DDA Large this being a re-iteration of what's already in NRS. DDA Large said as far as the NRS, he would have to get back to the Chair on that. The condition recognizes what is already in legal existence. Chair Lawrence asked, it's more of an informational piece. DDA Large said that was his interpretation. Ms. LeFriant said that is exactly what her objection is because it's already part of title. The easements are already there so there should be no reason to re-iterate what is already a legal fiat as far as the water people go. Chair Lawrence said he understands Ms. LeFriant's concerns but the Board's concern is; they need information regarding the properties. Laws, codes, homeowner's associations, CABs, whatever group wants to provide information helps them understand the issues at hand. The language is simply a re-iteration so Chair Lawrence doesn't feel it's something the Board can consider to vote on or remove. DDA Large said that the condition could be removed. Ms. LeFriant said the law will exist whether the condition is removed or not. She also noted, a future purchaser going to see Planning is again an additional burden on them. The hydrologic resource and easements will be made aware to a future buyer as part of title. Mr. Whitney suggested Mr. Pelham explain what a special use permit is and what it does. It's a document that runs with the land not with who owns the land.

Chair Lawrence closed public comment.

Mr. Pelham addressed condition 1(f) which is more of a courtesy and the Board can remove it or leave it in, it doesn't remove the obligations that this property owner has based upon the easements that currently exist. We put these things in as an information item for the current and future property owner. Mr. Pelham went on to explain, a special use permit is a discretionary action, the applicant doesn't have the unfettered right to do what they want to do with regards to the grading and driveway but it may or may not be permitted at the discretion of Washoe County, in this case the Board of Adjustment. When things need to be added to the basic code requirements, that's what the conditions of approval are. Is this condition absolutely necessary to effectuate the special use permit, no, is it a good idea for the next property owner, yes, I believe it is. Regarding the requirement for the wood siding, that language came out of the application. That sentence may be removed. Finally, having any future buyer meeting with Planning is a standard condition of approval although it's difficult to enforce as we don't know when property changes hands.

Member Stanley asked Mr. Pelham if the condition having a future owner come in to Planning was advisory or a stipulation. Mr. Pelham said it was advisory. Many future owners come in and ask for information on a perspective property and we can let them know about previous permits applied for. Member Stanley asked if the condition was binding. Mr. Pelham said yes because it is a condition of approval but reiterated it is difficult to enforce. Member Stanley asked if that condition could be made advisory. Mr. Pelham said if the Board chose to, they could add "shall recommend" to the language in place of "direct." DDA Large said his interpretation is, yes we could create that through the language, however, this is standard language on special use permits and before we make that change he recommends doing some research on NRS and Washoe County Code to ensure that. He also said the language on special use permits are adding value not subtracting value. There isn't a right to this. DDA Large suggested leaving the standard language in the conditions and if the Board is not advised to do that we should postpone this item to allow some research to be done on the language and why it was put in there.

Member Stanley said in terms of process and protocol, if there needs to be a reconsideration of this item for legal reasons how would that be approached. Would the applicant be asked about it. Chair Lawrence suggested discussing that with DDA Large in a moment.

There were no disclosures.

Member Hill opined this is a special use permit application because of the 3,300 cubic yards of material being graded along with a series of retaining walls, a driveway, etc. and that can be potential for interference with the waterway and it's important to protect the downstream rights of the people it protects. She said she has no problem keeping the conditions as they are. The Board is not in a position to judge the character of the property owner the language is in there to protect the people who use the water.

Member Stanley agreed with the protection of the downstream water rights. His concern is if the language adds to responsibility that was already defined in the easements that have been in place for years along with the language that was added having the strength of law in terms of its additional language to the existing easement and responsibilities. Member Hill said she feels the language is in there because of what the property owners are proposing to do which requires a special use permit and it's up to the Board to decide if they should approve the permit and is appropriate to have the language stated with the permit.

Member Toulouse agreed with Member Hill along with hearing the language is standard for a special use permit. In this case he thinks it's critically important to protect the downstream users and water right holds while recognizing the property owner's right to develop the property. The special use permit is being triggered by the amount of grading that's being required with this application. Member Toulouse feels the language should stay in the conditions.

Member Thomas agreed with the discussion and doesn't find the re-iterated language offensive, the language submitted in the application, and the standard language used in the past. He doesn't feel there needs to be any changes in the conditions.

Chair Lawrence agreed with the other Board members that the water language is in the best interest of the downstream users. He also agrees the standard language is what we use and a procedure the County has.

Member Toulouse requested an addition to condition 1(h)vi at the end of the paragraph, "all re-vegetation will meet a 50% success rate after three years with an adequate monitoring plan in accordance with best management practices". Mr. Whitney suggested Chair Lawrence have Mr. Pelham confirm that language comes from the development code. Mr. Pelham said 50% does not come from County development code it is interpolated from our code. We do not have residential landscape standards, however, we use 50% under commercial projects and extend that into cases where we have discretionary purview. Member Toulouse asked if he should change the language. Mr. Pelham said yes. The revised language is "all re-vegetation of disturbed areas will meet 50% success rate after three years with an adequate monitoring plan in accordance with best management practices."

Member Stanley asked if it was appropriate to consider modifying the language that the new owner "must" confer with Washoe County Planning to a less demanding language as in "should be invited to" seeing as how it advisory and not enforceable anyway. Mr. Pelham said while it is in the Boards purview to modify conditions he thinks the opinion from DDA Large is we should stick with the standard language or not go forth until some additional research has been done. DDA Large said if Member Stanley wanted to change that language DDA Edward's should research the language. Member Stanley withdrew his suggestion.

Member Toulouse moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve with conditions, as modified, Special Use Permit Case Number SB15-004 for the LeFriant Family Trust, having made all five findings in accordance with Washoe County Development Code Section 110.810.30, and one finding in accordance

with Washoe County Development Code Section 110.418.30. Member Stanley seconded the motion which carried unanimously.

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the South Valleys Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a driveway and dwelling, and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of a military installation.
6. Special Review Considerations. The special review considerations required by Section 110.418.30 of the Development Code, due to the Sensitive Stream Zone Buffer Area, have been appropriately addressed.

3:39 p.m. The Board recessed.

3:46 p.m. The Board reconvened with all members present.

**G. Variance Case Number VA15-006 (Yarhi Estate)** – Hearing, discussion, and possible action to grant a variance to reduce the front yard setback from 30 feet to 11 feet on the property at 4880 Franktown Road, and to reduce the front yard setback from 30 feet to 24 feet on the property at 4910 Franktown Road to enclose the generators and switching gear located in the front yard of each property. The properties are located on the east side of Franktown Road approximately 3500 feet south of the north intersection of Franktown Road and Old 395 highway.

- Applicant: John R. Lundy Architect
- Property Owner: Robert Yarhi
- Location: 4880 and 4910 Franktown Road
- Assessor's Parcel Number(s): 055-060-37 and 055-060-38
- Parcel Size: 10 acres each
- Master Plan Category: Rural Residential (RR)
- Regulatory Zone: Medium Density Rural (MDR)
- Area Plan: South Valleys
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 804, Variances
- Commission District: 2 – Commissioner Lucey
- Section/Township/Range: Section 10, T16N, R19E, MDM, Washoe County, NV

- Staff: Eva M.  
Krause - AICP, Planner  
Washoe County Community Services  
Department  
Division of Planning and Development  
775.328.3628  
[ekrause@washoecounty.us](mailto:ekrause@washoecounty.us)
- Phone:
- E-Mail:

Chair Lawrence opened the public hearing. Roger Pelham reviewed Eva Krause's staff report dated September 14, 2015, in her absence.

John Lundy, architect for the applicant, said he believes this is a hardship, he doesn't believe the situation was self-induced per the staff report. The equipment was located where it needed to be located and his client bought the property that way. The generators are needed as the owner has Arowana fish from South America that need constant power. The question is whether it's to the advantage to the neighborhood to shield the equipment, hiding it and sound proofing it. He's designed stone buildings with slate roofs. Mr. Lundy submitted and showed photos of the current equipment and what it would look like with the buildings around them. He noted the switch gears were located where they are, possibly by NV Energy, and there's nothing they can do about it but build around them where they are. The generator located at 4880 Franktown Road has been hooked up but the one at 4910 Franktown Road has been installed but not hooked up. Mr. Lundy says the self-induced circumstances are inaccurate as the equipment was there. The point is, do they want to leave them exposed or enclose them. He agrees the equipment is in the setback which would result in the buildings being in the setback. The design will make them fit better into the surroundings. Mr. Lundy also noted, the staff report incorrectly states the equipment at 4800 is 19 feet into the setback but is only 14 feet into the setback and 16 feet from the property line not 11 feet. On lot 4910 the staff report says the equipment is 6 feet into the setback not 5 feet. He asks for the Boards approval.

Member Hill asked Mr. Lundy why they couldn't move the equipment out of the setback. Mr. Lundy said he didn't know but thinks NV Energy decided where they needed to be. They're legal where they are.

Member Stanley asked how long the equipment has been in its location. Mr. Lundy believes four or five years. His client bought it last year. Member Stanley confirmed that Mr. Lundy said he's not looked into moving the equipment. Mr. Lundy said no.

Member Thomas asked if there had been any discussion about planting trees around the equipment to make it look better or buffer the noise. Mr. Lundy said if they don't get approval to build he's going to recommend planting trees around them.

Chair Lawrence asked how often the generators run. Mr. Lundy said when the power fails they go on automatically with no loss of power. Chair Lawrence asked if there was any other power for the fish aquarium. Mr. Lundy said no.

Member Stanley asked if Mr. Lundy had been in conversation with Ms. Krause about alternatives to building in the setback. Mr. Lundy said he had not looked at an alternative location.

Chair Lawrence opened public comment.

Debbie Sheltra, a noticed property owner, submitted pictures and referred to page 7 of the staff report noting the equipment at 4940 Franktown Road will not be covered up along with something to the east. She was there when the equipment was installed and says the

contractor who owned the property dug a ditch, threw the wire in, and hooked them up. Ms. Sheltra said everyone in the neighborhood has a generator in case they lose power and they aren't that hard to move. The area has test periods when the power is turned off to test the generators. Ms. Sheltra indicated the road is easement by prescription, the property owners own it, the highway doesn't own it, and the lanes are only 10 feet wide. She also stated her and her neighbors switching gear are in their garages. She believes it's very easy to hire an electrical contractor and move the equipment out of the setback. She's afraid approving this permit will set a precedent in the area. She requests a denial of the permit.

Chair Lawrence closed public comment.

Member Stanley disclosed that he attended the CAB meeting where this was discussed.

Member Toulouse said the equipment was well within the setback but the buildings would not be. There are no special circumstances to justify the granting of a variance. He suggests an alternative method.

Member Stanley agreed with Member Toulouse in suggesting pursuing methods within the code to cover the equipment.

Chair Lawrence said if the generators were running many hours a day, daily he could see where the good of the neighborhood would be understandable but intermittently wouldn't be an issue for noise.

Member Thomas moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Variance Case Number VA15-006 for Robert Yarhi, having not made findings 1, 2 or 3 of the four required findings in accordance with Washoe County Development Code Section 110.804.25. Member Stanley seconded the motion which carried unanimously.

The motion was based on the following findings:

1. Special Circumstances. Because of the special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the strict application of the regulation results in exceptional and undue hardships upon the owner of the property;
2. No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
3. No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.

Mr. Whitney read the appeal procedure.

**D. Variance Case Number VA15-009 (William Van Leuven Garage) – Hearing, discussion, and possible action to approve a variance reducing the side yard setback from fifty (50) feet to fifteen (15) feet to facilitate the construction of a garage.**

- Applicant/Property Owner: William Van Leuven  
25 Aguliar Court  
Sparks, NV 89441
- Location: southwest corner of Aguilar Court and Valle De Sol Boulevard in Spanish Springs
- Assessor's Parcel Number: 076-381-28
- Parcel Size: ± 9.4 acres
- Master Plan Category: Rural (R)
- Regulatory Zone: General Rural (GR)
- Area Plan: Spanish Springs
- Citizen Advisory Board: Spanish Springs
- Development Code: Authorized in Article 804, Variances
- Commission District: 4 – Commissioner Hartung
- Section/Township/Range: Section 30, T21N, R21E, MDM,  
Washoe County, NV
- Staff: Roger Pelham, MPA, Senior Planner  
Washoe County Community Services  
Department  
Division of Planning and Development
- Phone: 775.328.3622
- E-Mail: [rpelham@washoecounty.us](mailto:rpelham@washoecounty.us)

Chair Lawrence opened the public hearing. Roger Pelham reviewed his staff report dated September 10, 2015.

Member Stanley recognized Mr. Pelham for the good job of finding alternatives to the applicant's request.

Chair Lawrence asked will this garage have any influence on redirecting flood water away from the house. Mr. Pelham said no, it would not. He thinks if the garage is placed where the applicant proposes, the water would collect up against the front of the house. Chair Lawrence asked if its placement would redirect the water. Mr. Pelham referred to page 11 of the staff report saying it is his understanding that most of the water flow comes from the northeast to the southwest. If the garage was placed to the northeast of the existing dwelling the flood flow coming from the northeast would pool in front of the house, possibly into the house. If the garage was placed to the south of the dwelling he doesn't believe it will redirect the flood flow.

Nick Vespee, Civil Engineer, stated the applicant wants to put the garage to the south of the existing garage because it's convenient. The flood that recently impacted the residence is a new floodway, referring to page 10 of the staff report. As a result of culverts being added, changed and removed at the 90% turn on Valle Del Sol Blvd. the water flows over and down through the Van Leuven property, as shown by the distressed vegetation. Mr. Vespee referred to page 9 of the staff report saying the blue area is flood zone A. The Van Leuven home is now in flood zone 1A, a 100 year flood plain. In the past it was zone X, a 500 year flood plain. A new floodway was created in an area where the floodway did not previously exist which has put an impact on the Van Leuven home as seen in the photo in the application. He also noted the topographical map submitted in the staff report was not the same as the copy he had. Mr. Vespee went on to say they disagree with the assessment of the findings. He submitted a letter from a neighbor, Mr. Unger, who has no problem with the placement of the garage. Mr. Vespee

referred to page 11 of the staff report saying it wouldn't make any sense to build the garage, in blue, in that area as it would be too far to walk to the entrance of the home.

Chair Lawrence asked Mr. Vespee how the garage in the proposed area would help mitigate flooding. Mr. Vespee answered that swales were added after the flooding. Chair Lawrence asked if there were any special considerations in the plans to raise the garage higher. Mr. Vespee said no.

Chair Lawrence opened public comment.

Gwen Lorson, a friend of Mr. Van Leuven, stated she has a degree in hydrology. She noted the front of the house faces northeast, there are trailers stored to the west of the home, the septic system is to the north of the northwestern most corner of the home, there are also monitoring wells in that area. Because of flood flow changes, land use changes, and the purchase of properties to the north of his, he's in a hole now. The garage placed in the alternate area, to the north east would block water and create larger problems. The best place for the garage is where the applicant has proposed.

William Van Leuven, the applicant, said he's lived on the property for 15 years and it floods all the time. It's gotten worse since the County paved the roads two years ago. Previously, there were culverts. Now he's on a hillside and the water runs down from the road to his property and to the west of the home. He built the home as far to the east as possible. With the culvert changes at the 90% turn on Valle Del Sol the water comes from that area across to his property and to the west where the natural drainage is. The only logical place for the garage is where they propose. The proposed alternative would create a huge catch basin for the water which would enter his home. Mr. Van Leuven said he's spoken with the County regarding the road resulting in his flooding and they said he has to deal with it.

Chair Lawrence asked Mr. Van Leuven if he felt his property would be better protected with the garage in the location he has asked to have it placed. Mr. Van Leuven said yes, the reason is the water will come to the front of his home he doesn't want the garage to the front. If he puts it on the side where the land slopes to the south, it'll channel the water away from the house. They've placed a few swales in the front to alleviate the flooding that just happened but he has to be careful as there is a septic tank and monitoring wells in the front. The proposed placement of the garage will result in the least damage in another flood.

Chair Lawrence closed public comment.

Member Toulouse disclosed he knows Mr. Van Leuven but hasn't seen him in 4 – 5 years. Mr. Van Leuven called Member Toulouse on September 22, 2015 and they discussed the project but he said the same things he's presented to the Board today. There were no other disclosures made.

Member Toulouse opined this was a difficult case as it doesn't have any special circumstances but he thinks Mr. Van Leuven and Mr. Vespee have shown that there is a special circumstance that may or may not be precipitated by the road which has added to his flooding problem and placing the garage in the proposed location would help alleviate some of the potential damage created by the flooding when it floods again. Member Toulouse thinks a special circumstance has been created over time which helps him make the findings to approve the variance.

Chair Lawrence noted he knows where Mr. Van Leuven's property is, lives in that area, and knows how it can flood. He thinks if a property owner feels he can better protect his home then the Board should support that intention and that is what's at hand here today. Chair Lawrence

is aware there have been channel changes in the area when they did the roads resulting in changes to the topography and drainage. He supports this project.

Member Hill asked if because of the special circumstances, does that allow the applicant to build in the setback and if placed anywhere else the home would flood. Member Toulouse said he thinks that's what they're saying; with the circumstances that have been created they would be allowing him to build the garage in the setback to protect his home from future flooding and the alternatives that have been addressed will make the home more susceptible to flooding maybe even increasing the potential for flooding. Member Toulouse doesn't have a problem with the garage being built into the setback because of those conditions. Member Hill asked if this would set a precedent for this type of thing. Chair Lawrence said if it was his home he hoped it would if it could help alleviate it but in the case of the Board, each application is on a case by case basis.

Member Stanley asked Mr. Pelham if he made site visits. Mr. Pelham said yes, with the applicant's representative. He also walked the site and examined the bend in the road. The special circumstances of the occasional flooding did not, in his evaluation of the findings, rise to the level of a hardship. That is within the Boards purview to determine. Mr. Pelham said he also spoke with Washoe County Engineering staff regarding the road and they said when the roads were put in the flood flow was accounted for. Member Stanley asked if the misalignment in the topo maps was relevant to the case. Mr. Pelham said he doesn't believe there was a mistake. Chair Lawrence noted the topo map in the staff report and Mr. Vespee's topo map were almost exactly identical.

Member Thomas said building a garage or not building a garage has nothing to do with the flooding but how it's going to affect the property if the structure is in its way. Where is it going to re-divert the flow of the water; is it going to re-divert and flood another person's property? Can the garage be cut back so it doesn't affect another property? He doesn't want to prohibit the applicant from building a garage but doesn't want to set a precedent. Chair Lawrence said he had never considered the size of the garage and didn't think it is relevant. He opined the roads being paved created the flooding problem. Member Hill asked why the garage had to be so big as to extend into the setback. She's not in approval of the project.

Member Toulouse moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve Variance Case Number VA15-009 for William Van Leuven, being able to make the finding of Special Circumstance in accordance with Washoe County Development Code Section 110.804.25 and to approval all the standard conditions of approval. Chair Lawrence seconded the motion. The motion didn't carry with two votes for approval, three votes against approval.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Variance Case Number VA15-009 for William Van Leuven, being unable to make all five findings in accordance with Washoe County Development Code Section 110.804.25. Member Stanley seconded the motion which carried with three votes for denial and two votes against denial.

The motion was based on the following findings:

1. No Special Circumstances. Because of the lack of special circumstances applicable to the property, including exceptional narrowness, shallowness or shape of the specific piece of property; exceptional topographic conditions; extraordinary and exceptional situation or condition of the property and/or location of surroundings; the



- strict application of the regulation does not result in exceptional and undue hardships upon the owner of the property;
2. Detriment. The relief may create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the Development Code or applicable policies under which the variance is granted;
  3. Special Privileges. The granting of the variance will constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated;
  4. Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property;
  5. Effect on a Military Installation. The variance will not have a detrimental effect on the location, purpose and mission of the military installation.

Mr. Whitney read the appeal procedures.

**E. Special Use Permit Case Number SB15-006 (Booth Accessory Dwelling) – Hearing, discussion, and possible action to approve an Accessory Dwelling at 61 Shoreline Circle, Incline Village, Nevada.**

- Applicant/Property Owner: Corwin and Caroline Booth
- Location: 61 Shoreline Circle, Incline Village, Nevada
- Assessor's Parcel Number: 122-162-15
- Parcel Size: .355 acres
- Master Plan Category: Suburban Residential (SR)
- Regulatory Zone: Medium Density Suburban (MDS)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 304, Accessory Structures and Article 810, Special Use Permits
- Commission District: 1 – Commissioner Birkbigler
- Section/Township/Range: Section 21, T16N, R18E, MDM, Washoe County, NV
- Staff: Eric Young - Planner  
Planning and Development Division  
Washoe County Community Services Department
- Phone: 775.328.3613
- E-Mail: [eyoung@washoecounty.us](mailto:eyoung@washoecounty.us)

Chair Lawrence opened the public hearing. Eric Young reviewed his staff report dated September 16, 2015.

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

There were no disclosures made.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve with conditions, Special Use Permit Case Number SB15-006 for the Booth

Family Trust, having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Thomas seconded the motion which carried unanimously.

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a detached accessory dwelling, and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

**F. Special Use Permit Case Number SB15-007 (Tahoe’s Connection for Families) –** Hearing, discussion, and possible action to approve a day care center/pre-school for up to 25 children within an existing commercial structure.

- Applicant: Tahoe’s Connection for Families
- Property Owner: L&L Partners
- Location: 761 Northwood Blvd., on the east side of Northwood Blvd., approximately 300 feet north of its intersection with Tahoe Blvd.
- Assessor’s Parcel Number: 132-203-02
- Parcel Size: ±.305
- Master Plan Category: Commercial (C)
- Regulatory Zone: Neighborhood Commercial (NC)
- Area Plan: Tahoe – Incline Village Commercial Community Plan Area
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 810, Special Use Permits
- Commission District: 1 – Commissioner Berkbigler
- Section/Township/Range: Section 16, T16N, R18E, MDM, Washoe County, NV
- Staff: Kelly Mullin, Planner  
Planning and Development Division  
Washoe County Community Services  
Department
- Phone: 775.328.3608
- E-Mail: [kmullin@washoecounty.us](mailto:kmullin@washoecounty.us)

Chair Lawrence opened the public hearing. Kelly Mullin reviewed her staff report dated September 10, 2015.

Member Stanley asked if there were any traffic or safety studies regarding the impact to/from children at that location. Ms. Mullin said the application was sent to the Traffic engineer who had no concerns.

Member Thomas asked if this project would add parking issues to the front of the building. Ms. Mullin said there was parking available in the front and rear of the building. Before receiving a business license the applicant would have to meet parking and landscaping standards. Based on initial review there is ample room for parking.

Debra Scarborough, applicant, stated the reason they are developing the program is due to demand in the community. It will be a pre-preschool program.

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

There were no disclosures made.

Member Hill noted there is a need for this service in the community. She approves the project.

Member Stanley stated he is also in support of the project.

Member Hill moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment approve with conditions Special Use Permit Case Number SB15-007 for Tahoe's Connection for Families, having made all five findings in accordance with Washoe County Development Code Section 110.810.30. Member Thomas seconded the motion which carried unanimously.

The motion was based on the following findings:

1. Consistency. That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Tahoe Area Plan;
2. Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways, and an adequate public facilities determination has been made in accordance with Division Seven;
3. Site Suitability. That the site is physically suitable for a day care center/pre-school and for the intensity of such a development;
4. Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare; injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area;
5. Effect on a Military Installation. Issuance of the permit will not have a detrimental effect on the location, purpose or mission of the military installation.

## **10. Planning Items**

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

This item is postponed until the December 3, 2015 Board of Adjustment meeting.

**11. \*Chair and Board Items**

**\*A. Future Agenda Items**

None

**\*B. Requests for Information from Staff**

None

**12. \*Director's Items and Legal Counsel's Items**

**\*A. Report on Previous Board of Adjustment Items**

Mr. Whitney gave an update on the following items:

- At the August 6, 2015 meeting the Board denied variance case VA15-004, Nudelman. The case has been appealed and is tentatively scheduled for the October 27, 2015 Board of Commissioners meeting.
- At the August 6, 2015 meeting the Board approved special use permit SB15-002, Commnet-Gerlach. The site was built and functioning for the Burning Man event.

**\*B. Legal Information and Updates**

DDA Large suggested, if the Board would like to discuss modifying the standard language in the conditions of approval, it should be placed on a future agenda.

Member Toulouse asked to have it placed on a future agenda for discussion.

**13. \*General Public Comment**

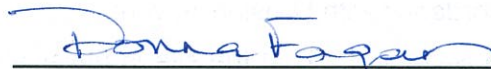
Cathy Brandhorst spoke about metal detectors.

With no other request for public comment, Chair Lawrence closed the public comment period.

**14. Adjournment**

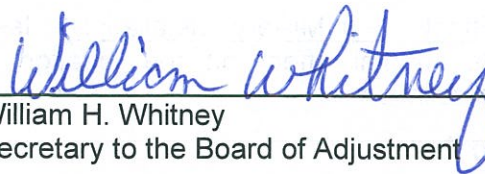
The meeting adjourned at 5:49 p.m.

Respectfully submitted,



Donna Fagan, Recording Secretary

Approved by Board in session on December 3, 2015



William H. Whitney  
Secretary to the Board of Adjustment

**Houston W. Crisp**

205 Will Sauer Rd.  
Washoe Valley, NV 89704

(425) 681-7887  
hwcrisp@aol.com

September 30, 2015

By hand to  
Washoe County Board of Adjustment  
Meeting of October 1, 2015

Subject: Special Use Permit Case Number SB 15-004 (LeFriant Family Trust)

I am a recently retired vice president of Environmental Planning and have prepared and evaluated development permit applications throughout the world for governments and industry. I am also a former county Planning Commissioner. I commend the Staff (Roger Pelham) for his thorough review and well prepared Staff Report that recommends approval of the subject permit. I concur.

I wish to address three matters: (1) compliance with Special Use Permit (SUP) and Sensitive Stream Zone requirements established in the Washoe County Development Code sections 110.418.00, 110.418.25 and 110.148.30; (2) possible conditions on granting the permit; and, (3) a request made to the Board to effectively modify existing water conveyance easements. See also my letter dated September 10, 2015, to the Citizen Advisory Board, included in the Staff Report packet.

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### EXECUTIVE SUMMARY

The Staff Report, my letter dated September 10, 2015, this letter, and verbal comments made to the Citizen Advisory Board all document that the proposal complies with applicable codes and has no significant impact. Consequently, a Special Use Permit should be granted.

Development Code Section 110.418, appropriately attempts to avoid loss of significant hydrological resources. However, the protected hydrological values have been mostly absent for decades in the subject stretch of Franktown Creek due to water diversions by others.

These conditions, suggested in the Staff Report, are unnecessary or ill-advised:

1. Exhibit A, page 3 of 6, subparagraph viii recommends that the home have a "natural wood appearance." This goes beyond what the Code requires and is better handled by the existing Home Owners Association.
2. Operational Condition i.3 (Exhibit A, page 4 of 6, i.3) would require sending future purchasers of the property to meet with the Planning and Development Division. This is unnecessary and the Board should consider it carefully.
3. Operational Condition 3.c (Exhibit A, page 5 of 6, subparagraph c) has no authority basis in the Development Code nor in Health District Regulations, and puts an unnecessary cloud on the property title.
4. Condition 1.f (Exhibit A, page 2 of 6, paragraph 1.f) is not needed and only responds to a request for special treatment by an individual that is not supported by Code or law.

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SB15-004  
AC  
10/1/15

## **Compliance with Washoe County Development Codes**

### **Section 110.418.00 Purpose.**

This article implements a policy of “no net loss” of significant hydrological resource size, function and value.

The proposed construction is outside what is designated as the “critical stream buffer area.” An insignificant part of it lies within the zone that is less vital to the integrity of Franktown Creek, designated the “sensitive stream zone buffer area.” The proposed project affects a miniscule fraction of the hydrological resource’s overall size. It is far below the level of “significant” in both size and value. The purpose of Section 110.418.00 has been met by the applicant.

We must recognize that, for convenience, the entirety of Franktown Creek was mapped as a hydrological resource to which Section 110.481.00 would apply, without considering the fact that nearly all of the natural function and value of the creek has been lost to irrigation water diversions upstream of the segment that could be affected by the applicant.

Photos included in the LeFriant application document that the creek downstream of the irrigation diversion on LeFriant’s property is merely a trickle in the non-runoff season, when water is most critical to the riparian vegetation and wildlife that Section 110.418 intends to protect. The photos also show the irrigation ditches carrying water from the creek with substantial velocity and depth. By onsite visual inspection, it appears that the only water reaching the creek is what escapes the boards used to dam the creek and divert water into the ditch.

This is important because, by applying Section 110.418, the County is attempting to preserve natural values on the LeFriant property that have been mostly absent for decades due to water diversions.

### **Section 110.418.25 Sensitive Stream Zone Buffer Area Development Standards**

Single family residences, such as proposed by the LeFriants, are an outright allowed use in this zone. The only reason that a SUP is required in this case is that excavation for the structure and regrading of the existing driveway exceeds 1,000 cubic yards.

As documented in the Staff Report and in my letter to the CAB dated September 10, 2015, the requirements of Section 110.418.25 are met, since there is no significant impact.

### **Section 110.418.30 Special Review Considerations.**

As documented in the Staff Report and in my letter to the CAB dated September 10, 2015, the requirements of Section 110.418.30 are met.

However, the Staff Report recommends an additional condition beyond the requirements of subsection “(h) Preservation of the ... character of the area...” (see Exhibit A, page 3 of 6, subparagraph viii). The Report recommends that the home have a “natural wood appearance when done, not painted.” The decision on when this appearance has been achieved, or not, rests on the subjective judgment of the Planning and Development Division. This determination would, presumably, be made during final inspection prior to issuing the Certificate of Occupancy. At that

point, the owner will have spent considerable time, effort, and money attempting to meet an undefined visual standard (except, "not painted" is clear).

Since the criterion is met, there is no justification for a condition. Secondly, actual wood is a poor material choice in this area mapped and designated by State and local fire officials as "Extreme Fire Hazard" zone; the most hazardous wildfire zone. Third, many of the houses in the neighborhood have stucco exteriors and the wood-clad houses are either painted or deep stained. Finally, regulation of the visual appearance of a house is the province of the Franktown Estates Homeowners Association. In testimony before the CAB on September 10, an officer of the HOA reported that the plans submitted by the LeFriants have been approved.

I understand, from a conversation with the LeFriants, that they believe this condition will be met by their current design. Still, since it is not needed, relies on a subjective judgment without guiding criteria, and would be made in the *final* stage of construction, **this condition should not be applied.**

### **Special Use Permit; Section 110.810.30 Findings.**

As documented in the Staff Report and in my letter to the CAB dated September 10, 2015, the requirements of Section 110.810.30 are met.

### **Operational Conditions 1.i.3 and 3.c**

These conditions do not track to any specific Section or requirement in the Code. Consequently, it is unclear where the authority for them is derived. Both would have a dampening effect on the future salability and sale price of the LeFriants' property, as the typical home purchaser would be intimidated by them.

Condition 1.i.3 (Exhibit A, page 4 of 6, subparagraph i.3) proposed by Planning and Development would require that LeFriants direct future potential purchasers of their property "to meet with the Planning and Development Division to review Conditions of Approval prior to the final sale of the site..." I can understand the thought behind this. But, state law (NRS 113.1300) already requires a seller to disclose "a condition that materially affects the value or use..." And, the *Code of Ethics and Standards of Practice of the National Association of Realtors®* stipulates that a realtor "shall avoid ... concealment of pertinent facts relating to the property."

**Consequently, Operational Condition 1.i.3 is unnecessary and the Board should consider it carefully.**

Washoe County Health District's proposed condition 3.c (Exhibit A, page 5 of 6, subparagraph c) also has no authority basis in (a) the Development Code, nor in (b) *Regulations of the Washoe County District Board of Health Governing Sewage, Wastewater, and Sanitation*.

The District recommends that a statement be recorded on the property title describing the difficulty that might be encountered if the primary septic drainfield fails. This is unreasonable in that:

- It clouds the title in perpetuity, irrespective of how many times Code requirements may be revised or deleted over the coming years.
- It ignores that better methods and technology may be available in the future than prescribed in the proposed title statement.

- Per Health District Regulation 020.035, a new permit would be required anyway. ("An on-site sewage disposal construction permit shall be obtained from the Health Authority to construct, alter, extend, repair, replace or abandon onsite sewage disposal system(s).") As better ideas emerge, it is entirely possible that the repair field would be constructed differently than the proposed statement in the title; subject to approval by the District.
- It would have a dampening effect on the future salability and sale price of the LeFriants' property, as the typical home purchaser would be intimidated by the details.

Consequently, **Operational Condition 3.c should not be applied** since it is not needed and permanently clouds the title.

**Exhibit F, letter from Thomas J. Hall (September 10, 2015)**

The letter (appended to the Staff Report as Exhibit F) meticulously documents and illustrates the locations of irrigation water conveyance easements all over western Washoe Valley, including the subject property. Since these easements are already documented in the property title, and none are affected by the proposal, it is unclear why these 16 pages were submitted.

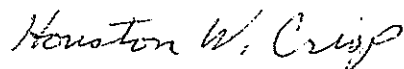
The letter cites no authority in the Development Code nor in State water law that supports the special treatment being requested. Nor do the requested conditions respond to any impacts of the proposal. The privileges granted to the easement holders are described in the easements, themselves. This attempt to get the Board of Adjustment to add requirements that have no basis effectively modifies those easements. If the ditch interests want special treatment that is not enjoyed by other easement holders, they need to negotiate this with the landowner who is their host.

I congratulate the Staff for appropriately ignoring the baseless requests. However, the Staff Report tried to give courteous consideration to the writer by restating a given, as requested: "All development on the subject parcel shall recognize, protect and not interfere with any existing easements for water conveyance or other purposes." (Exhibit A, page 2 of 6, paragraph 1.f) It is unnecessary for the permit to restate the requirements of every code, law, contract, covenant, easement, right-of-way, etc. that impinge on the property. The permit, itself, requires compliance.

Consequently, **Condition 1.f should not be applied**, as it is superfluous. It is already a general permit requirement and not a special condition.

Thank you.

Sincerely,



Houston W. Crisp

Cc: Roger Pelham, Washoe County Planning and Development Division





4880 FRANKTOWN, GI ENCLOSURE

11/15/2011



VAIS-006



4880 FRANKTOWN RD. ENCLOSURE GI & GI1

VA 15-006



VA15-006



4910 FRANK TOWN & ADJACENT LOT 5G.  
EDNA SMITH



STONE TO MATCH  
4910 FRANK TOWN RD. RES.



4880 FRANKTOWN ROAD SG.



4910 FRANKTOWN RD. G # & SG.





4910 FRANKTOWN RD GEN. II & SG.



4910 FRANK TOWN RD. SGN. & ADD. LOT SGN.

VA15-004



VA 15-004



CATTLE  
XING



VA 15-0



4

VA 15-006



3



VA15-006

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Navigation icons: back, forward, delete, move, spam, more

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Drafts (18)

Sent

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Garage Variance Permit VA15-009 Comm District #4

Thomas Unger <thomasunger42@gmail.com>

To skibuckaroo@yahoo.com

Hi Butch,

First a hallo and hope you are well. Adrian ask me to send you a letter outlining your garaç permit and all the problems you had when the storms hit last time. I certainly agree it shou by you to avoid future issues.

Please use this letter or e-mail and take it to the County Planning as I have absolutely no p Nor do I see any issues where it would affect my property at 150 Aquilar Ct. I would certair would not be able to attend their planning meeting on October 1 due to distance involvec

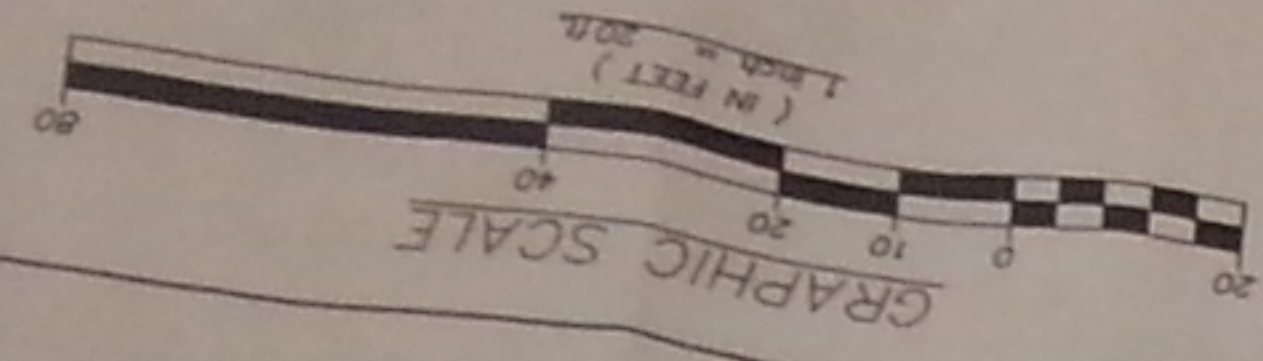
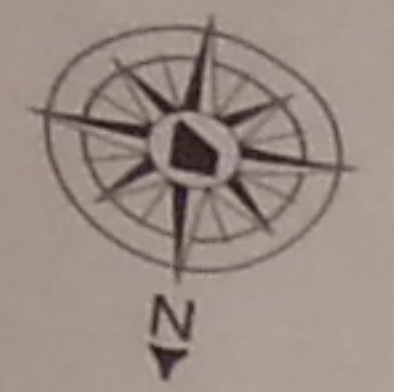
Good luck and let me know if I can be of any other help.



VA15-009  
10/1/15  
9/29/2015



ACCEPTED  
5/14/11 2:05 PM

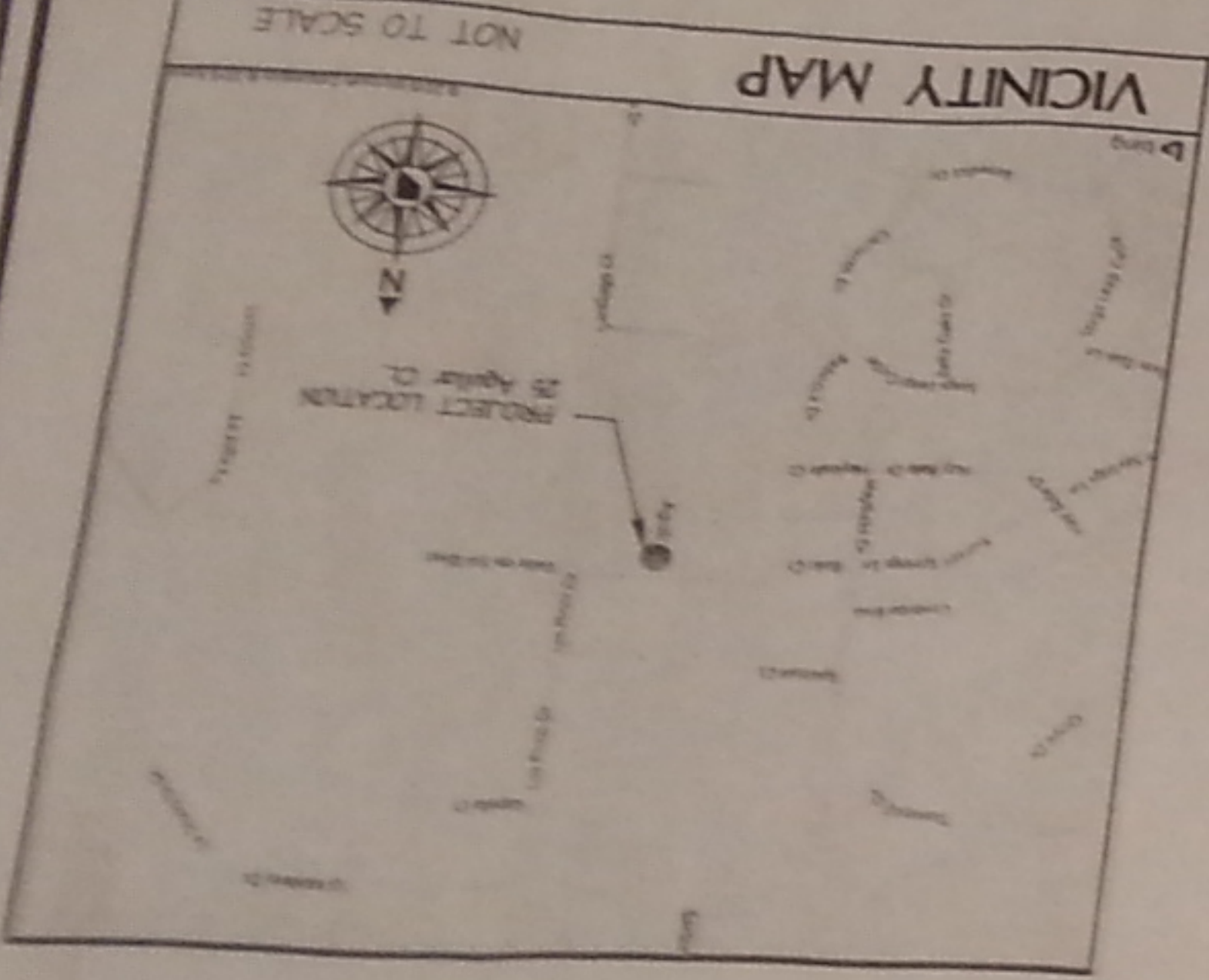


**LEGEND**

PROPERTY LINES	---
(E) CONTOURS	.....
SETBACKS/EASEMENTS	- - - - -
ELECTRICAL LINE	— G —
NATURAL GAS LINE	— G —

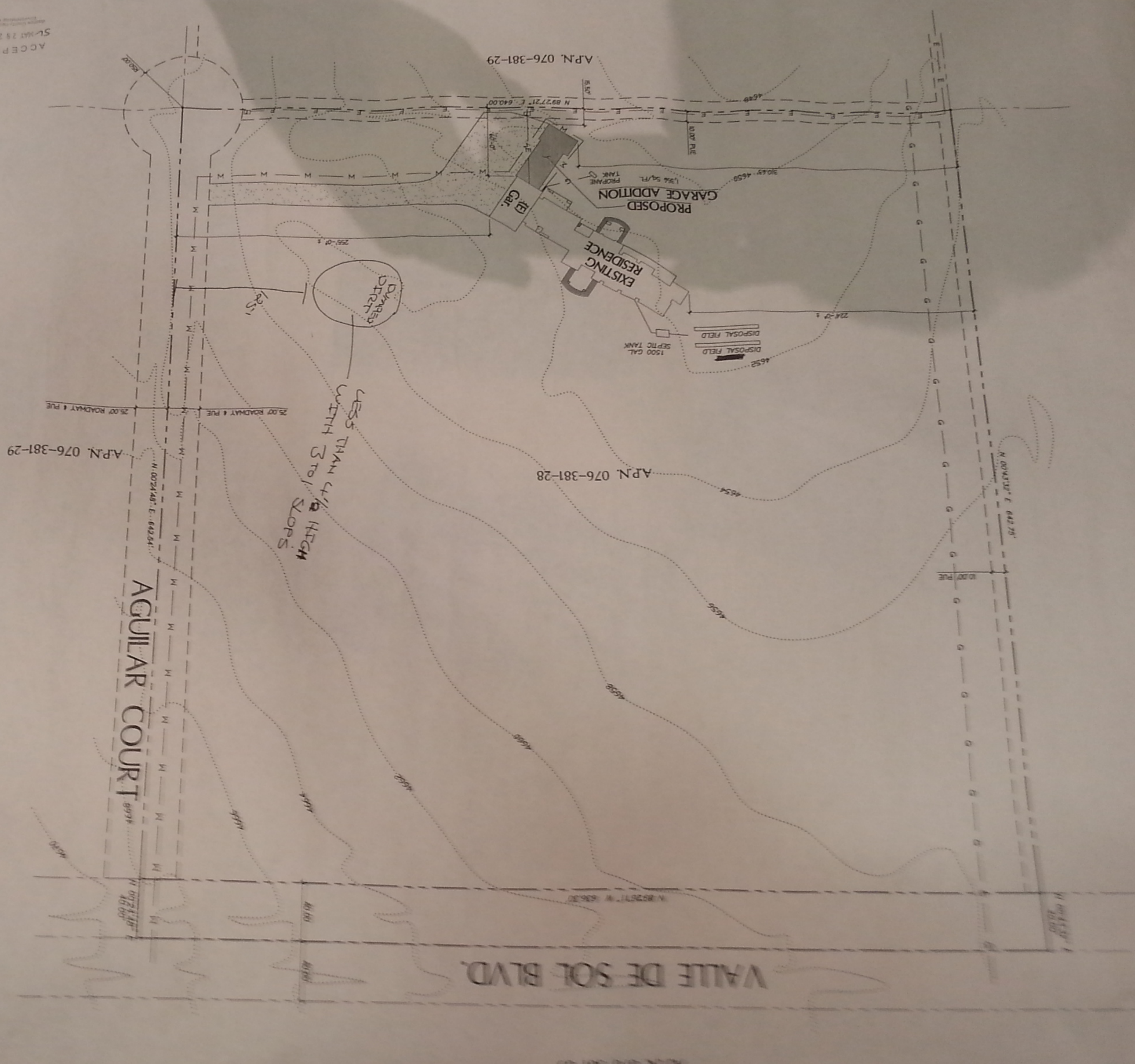
**SITE PLAN NOTES:**

1. THE EXISTING SITE INFORMATION AND PROGRAM HAS BEEN BASED ON THE INFORMATION PROVIDED BY THE COUNTY ASSESSOR'S OFFICE FOR USE BY THE DESIGNER. THE DESIGNER ASSUMES NO LIABILITY FOR THE EXISTING INFORMATION PROVIDED OR THE ACCURACY OF THAT INFORMATION.



**PROJECT INFORMATION:**

<b>OWNER:</b> William Van Leuven 21 Agate Court Scotts, Nevada 89411 Phone: (775) 324-4555 Fax: (775) 324-2382	<b>ENGINEER:</b> ASTHETIC ENGINEERING 140 N. HARRIS LANE SUITE 505 Reno, Nevada 89501 Phone: (775) 324-4555 Fax: (775) 324-2382
<b>SITE DATA:</b> APN: 076-381-28 APN: 076-381-29 APN: 076-381-29 APN: 076-381-29	<b>CODES:</b> 201 INTERNATIONAL BUILDING CODE (I.B.C.) 202 INTERNATIONAL PLUMBING CODE (I.P.C.) 203 INTERNATIONAL ELECTRICAL CODE (I.E.C.) 204 INTERNATIONAL FIRE CODE (I.F.C.) 205 INTERNATIONAL MECHANICAL CODE (I.M.C.)



Proposed Garage Addition For:  
**Van Leuven Residence**

Engineer O  
Trevor J. Am...

Professional Engineer  
No. 52411  
State of Nevada

Plan  
Project  
Checked  
Date  
Revised  
5/14/11