



Board of Adjustment Staff Report

Meeting Date: September 5, 2019

Agenda Item: 8C

CASE NUMBER:

WBLD18-105119 (Schmidt Appeal)

BRIEF SUMMARY OF REQUEST:

To hear an appeal of an Air Quality Management Division decision related to Building Permit Case Number: WBLD18-105119

STAFF PLANNER:

Planner's Name: Trevor Lloyd, Planning Manager

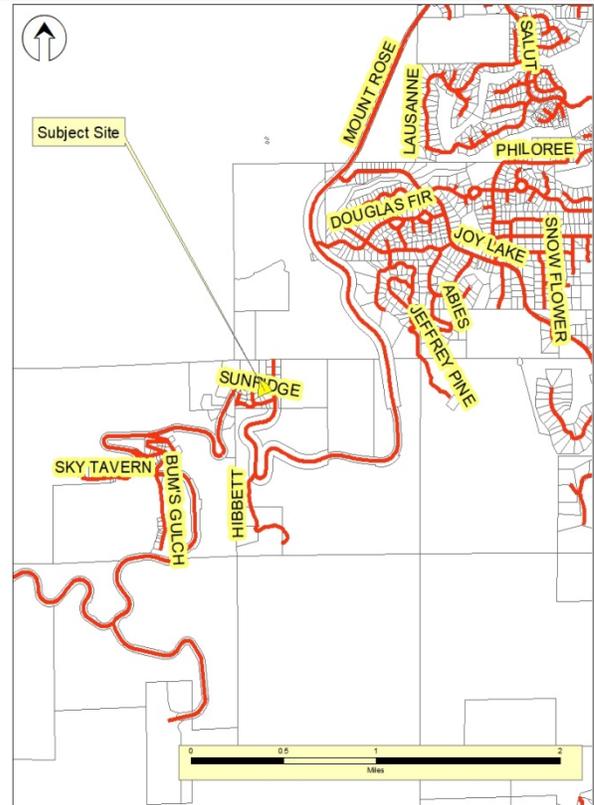
Phone Number: 775.328.3617

E-mail: tlloyd@washoecounty.us

CASE DESCRIPTION

For possible action, hearing, and discussion to approve or deny the appeal from Gary Schmidt of the decision by the Air Quality Management Division relating to the removal of materials from the Reindeer Lodge site in building permit number wbl18-105119.

Appellant/Owner:	Gary Schmidt
APN:	048-081-02
Parcel Size:	2.464 acres
Master Plan:	Commercial
Regulatory Zone:	General Commercial (GC)
Area Plan:	Forest
Citizen Advisory Board:	South Truckee Meadows/Washoe Valley
Development Code:	Authorized in Article 912
Commission District:	1 – Commissioner Berkgigler



STAFF RECOMMENDATION

APPROVE

DENY

POSSIBLE MOTION

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny this appeal and uphold the decision of the Air Quality Management Division and authorize the Chair of the Board of Adjustment to prepare a written order of the decision and file it with the Secretary of the Board of Adjustment, a copy of which shall be served to the appellant.

(Motion with Findings on Page 5)

Exhibits Contents

AppealExhibit A
Email from AQMD to AppellantExhibit B
Additional Materials Received from AppellantExhibit B

Appeals of an Administrative Hearing Officer's Decision to the Board of Adjustment**Section 110.912.10 Washoe County Board of Adjustment**(j) Appeals to the Board of Adjustment

- (1) Preface and Definitions. This subsection establishes general rules governing appeals to the Board of Adjustment as required by NRS 278.310 (2). The Board of Adjustment may adopt supplemental rules not inconsistent with these rules. For the purpose of this subsection, "Board" means the Washoe County Board of Adjustment.
- (2) Matters that May be Appealed. A person aggrieved (as defined in Section 110.910.02) by any of the following decisions may appeal the decision to the Board of Adjustment:
 - (i) Decisions of Building Official. Decisions of the Building Official made in the course of enforcing the County Code may be appealed to a hearing officer and the decisions of the hearing officer may be appealed to the Board as provided in WCC 110.910.15. Otherwise, a person aggrieved by his/her inability to obtain a building permit or by the decision of the Building Official made in the course of administration or enforcement of any regulation relating to the soundness of structures may appeal the decision to the Technical Review Board subject to and in accordance with Chapter 100 of this Code (Building Code), and if so appealed, the decision of the Technical Review Board may be appealed to the Board in accordance with this Article. If a decision of the Building Official is not heard by a hearing officer or the Technical Review Board, then a person aggrieved by the decision may appeal it directly to the Board under this Article; or,

Background

On August 20, 2019 the Planning and Building Division received an application from Gary Schmidt to appeal the preliminary decision by Joshua Restori from the Air Quality Management Division (AQMD) as to which materials are exempt and which materials may be regulated in the partial removal and repair of the Reindeer Lodge. It was determined that the Washoe County Planning and Building Division may accept and process the application as the Board of Adjustment may hear appeals involving building permits.

The AQMD has determined that asbestos is present at the site of the Reindeer Lodge on Mt. Rose Highway and that AQMD staff have provided Mr. Schmidt with correspondence detailing the required method for removal and abatement of the materials (Refer to Exhibit B). The appellant apparently objects to the methods required by the AQMD, however, the appeal does not identify any justification for the objection.

Staff is recommending that the Board deny the proposed appeal due to the fact that the appellant provided no support, justification, or rationale for his appeal. Additionally, AQMD is applying federal standards involving the removal of asbestos and the Board of Adjustment cannot make a determination which is in conflict with federal standards/requirements.

Staff Recommendation

Based upon staff analysis, lack of evidence presented by the appellant, and testimony received, staff recommends that the Board of Adjustment deny this appeal and uphold the decision of the Air Quality Management Division.

Possible Motion

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny this appeal and uphold the decision of the Air Quality Management Division.

Written Decision and Appeal Process

A written order of the Board of Adjustment's decision shall be prepared, executed by the Board of Adjustment Chair, and filed with the Secretary of the Board of Adjustment and a copy of the order shall be served on the appellant. The appellant has the right to appeal the written order by filing a petition for judicial review in the Second Judicial District Court for the State of Nevada within 25 days from the date the order is mailed to the appellant. Per WCC Section 110.910.15(i)(6), when a petition for judicial review is filed, the court rules shall govern the proceeding and the requested judicial review is in lieu of an appeal to the Board of County Commissioners as authorized by NRS 278.310(3)(b).

Appellant/Property Owner: Gary Schmidt
9000 Mt. Rose Hwy
Reno, NV 89511

Washoe County Appeal of Decision to Board of Adjustment

Your entire application is a public record. If you have a concern about releasing personal information please contact Planning and Building staff at 775.328.6100.

Appeal of Decision by (Check one)	
<p>Note: Appeals to the Washoe County Board of Adjustment are governed by WCC Section 110.910.15(i) and WCC Section 110.912.10(j).</p>	
<input type="checkbox"/> Administrative Hearing Officer	<input checked="" type="checkbox"/> County Building Official
<input type="checkbox"/> Director, Planning and Building Division	<p style="text-align: center;">Fire Code Official</p> <input type="checkbox"/> North Lake Tahoe Fire Protection District <input type="checkbox"/> Truckee Meadows Fire Protection District
Appeal Date Information	
<p>Note: This appeal must be delivered in writing to the offices of the Planning and Building Division or the Washoe County Building Official within 10 (ten) calendar days from the date that the decision being appealed is communicated in writing to the appellant.</p> <p>Note: The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).</p>	
Date of this appeal: <u>8-20-19</u>	
Date of action by County: _____	
Date of decision for which appeal is being filed: <u>unknown - perhaps June 25</u>	
Project Location: <u>Reindeer Lodge 9000 Mt. Rose Highway</u>	
Appellant Information	
Name: <u>Gary Schmidt</u>	Phone: <u>775 622 4670</u>
Address: <u>9000 Mt. Rose Highway</u>	Fax: _____
	Email: <u>nobullschmidt@hotmail.com</u>
City: <u>Reno</u> State: <u>NV</u> Zip: <u>89511</u>	Cell: _____
<p>Specific action by the County being appealed:</p> <p><u>preliminary decision by Joshua Restorini as to what materials are exempt and what materials may be regulated in the partial removal & repair of the Reindeer Lodge</u></p>	
<p>Describe why the decision should or should not have been made:</p> <p><u>Decision is in dispute</u></p>	

Restori, Joshua

From: Restori, Joshua
Sent: Tuesday, June 25, 2019 1:15 PM
To: lynn.minedew@novageotech.com; dean.stanphill@novageotech.com;
nobullschmidt@hotmail.com
Cc: Restori, Joshua; Rosa, Genine
Subject: Washoe County Air Quality Management Division :: Reindeer Lodge

Good afternoon Lynn and Gary,

The intent of the email correspondence is to make clear the expectations of the Washoe County Air Quality Management Division (AQMD) in the abatement and demolition of the asbestos containing material (ACM) and demolition (exploration) debris associated with the Reindeer Lodge located at 9000 Mt. Rose Highway in Reno, Nevada. I spoke with Lynn Minedew with Nova Geotechnical on Wednesday June 19, 2019 and relayed much of the same information that is outlined in this email.

The AQMD has been notified by Nova Geotechnical that the transite paneling common to the first floor exterior (under the cedar paneling) contains 15% chrysotile asbestos fibers and the collapsed acoustic ceiling in the southern addition to the building contains 15% chrysotile asbestos fibers.

Transite Paneling

Asbestos containing transite paneling containing more than 1% asbestos fiber is considered a Category II Non-Friable material. Category II Non-Friable materials are required to be properly abated and disposed by a licensed asbestos abatement contractor prior to the start of an activity that would become crumbled, pulverized or reduced to powder during demolition. There are several EPA Applicability Determinations that support the removal of the materials prior to demolition. The area where the building has been demolished with the transite siding is now considered asbestos-containing waste material and therefore all of the demolition debris needs to be treated as such. In order for this material to be properly removed and disposed, the following shall apply:

- A certified abatement contractor shall abate all accessible ACM/regulated asbestos containing materials (RACM) transite paneling or portions of from the ground.
- The demolition debris materials shall be kept adequately wet during the loading into a leak tight container.
- Water application for dust suppression must be continuous throughout the processing and loading of the demolition debris process. Techniques shall be used which will not apply too much water which would cause runoff.
- The work of processing and abating the RACM shall be performed by a Nevada Division of Occupational Safety and Health (DOSH) registered asbestos abatement/demolition contractor.
- The debris shall be handled using heavy equipment to process and load the material into leak tight containers (i.e. double lined covered dumpsters, lined haul trucks).
- The heavy equipment operator and on-ground labor crew must have AHERA-Asbestos certifications and must be employed by a DOSH registered contractor.
- All asbestos contaminated waste from the demolition shall be disposed of as RACM.
- All asbestos contaminated waste from the demolition shall be placed ("burrito wrapped") in (2) layers of (6) mil polyethylene, kept leak tight and properly labeled for disposal at a registered landfill that accepts asbestos waste.
- Any final clean-up shall include hand removal of any miscellaneous pieces of debris as well as using the excavator bucket to remove any visible debris from the demolition area.
- The property owner, contractor and any consulting agency shall comply with all Federal, State and/or Local regulations applicable to this project.

The sections of transite paneling that are intact on the exterior of the building may be abated using standard abatement practices for Category II non-friable materials. Due to the current state of the structure, removal may pose a risk to the abatement crews. The building should be evaluated by a certified asbestos abatement contractor to determine where this work is possible. Any sections of the transite that cannot be removed using standard asbestos abatement practices and will be left during demolition of the structure shall be treated as RACM and the bulleted requirements above shall apply.

Spray Acoustic Ceiling

Asbestos containing spray acoustic ceiling texture containing more than 1% asbestos fibers is considered friable asbestos material and is RACM. RACM is required to be properly abated and disposed by a licensed abatement contractor prior to the start of any activity which would disturb the material in the process of renovating or demolishing a structure. The area where the asbestos containing spray acoustic ceiling is present is in the southern addition to the building. The spray acoustic ceiling texture has been disturbed by a collapse of the roof in this area; therefore abatement of the material using standard abatement practices is not possible. This portion of the building is considered contaminated with asbestos fibers and the demolition debris associated with the demolition of this portion of the structure shall be treated as asbestos-containing waste material. In order for this portion of the building to be properly demolished, removed and disposed, the following requirements shall apply:

- The contaminated portion of the structure shall be defined by a certified asbestos consultant. This portion of the structure shall be removed and disposed as asbestos-containing waste material.
- A certified abatement contractor shall abate all accessible RACM spray acoustic ceiling texture or portions of from the ground.
- The demolition debris materials shall be kept adequately wet during the loading into a leak tight container.
- Water application for dust suppression must be continuous throughout the processing and loading of the demolition debris process. Techniques shall be used which will not apply too much water which would cause runoff.
- The work of processing and abating the regulated asbestos containing materials shall be performed by a Nevada Division of Occupational Safety and Health (DOSH) registered asbestos abatement/demolition contractor.
- The debris shall be handled using heavy equipment to process and load the material into leak tight containers (i.e. double lined covered dumpsters, lined haul trucks).
- The heavy equipment operator and on-ground labor crew must have AHERA-Asbestos certifications and must be employed by a DOSH registered contractor.
- All asbestos contaminated waste from the demolition shall be disposed of as RACM.
- All asbestos contaminated waste from the demolition shall be placed (“burrito wrapped”) in (2) layers of (6) mil polyethylene, kept leak tight and properly labeled for disposal at a registered landfill that accepts asbestos waste.
- Any final clean-up shall include hand removal of any miscellaneous pieces of debris as well as using the excavator bucket to remove any visible debris from the demolition area.
- The property owner, contractor and any consulting agency shall comply with all Federal, State and/or Local regulations applicable to this project.

Any areas of the building that were not accessible during the asbestos sampling that took place on June 14, 2019 will need to be sampled and analyzed during the demolition process. A representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of 40 CFR 61, Subpart M shall be onsite at all times during the abatement and demolition. It may be prudent to have the certified asbestos consultant present during the demolition process to inspect and if necessary, sample any suspect materials that were not analyzed during the initial sampling event.

A project design shall be submitted and approved by the AQMD demonstrating how federal and local requirements are going to be met during the demolition and abatement process. No work is to commence until the project design has been submitted and approved. In addition, all permitting requirements to complete the abatement and demolition shall

be obtained prior to the start of the project. This includes an EPA NESHAP Notification of Demolition and Renovation and Acknowledgement of Asbestos Assessment.

We will look forward to hearing from you soon to proceed with the abatement, demolition and clean-up at the Reindeer Lodge.

Please let me know if you have any concerns or questions.

Regards,

Joshua Restori

Senior Air Quality Specialist | Air Quality Management Division | Washoe County Health District
jrestori@washoecounty.us | O: (775) 784-7202 | C: (775) 772-8881 | F: (775) 784-7225 |
1001 E. Ninth St., Bldg. B, Reno, NV 89512

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 Please consider the environment before printing this e-mail.

From: [gary schmidt](#)
To: [Lloyd, Trevor](#)
Subject: PR Request
Date: Wednesday, August 21, 2019 11:08:42 AM

[**NOTICE:** This message originated outside of Washoe County -- **DO NOT CLICK** on **links** or open **attachments** unless you are sure the content is safe.]

To Trevor Lloyd

Please forward my BOA appeals to any and all appropriate persons. Yesterday you disputed my due process of appeal to the BOA of the current dispute in regards to the Reindeer Lodge. We respectfully disagree.

However, please forward my appeals to what or who you think is or are the appropriate person, persons, or forum for said appeals.

Please also provide me with any documents related to any follow up information and/or opinion as to your position as to how I should proceed in the appeal process.

Please also provide me with complete documentation in regards to any and all appeal processes that in your opinion are appropriate

including policy, procedures, forms, and legal citations in support of said opinions.

Again, I hope items in disagreement and or dispute can be settled short of any appeal proceedings but it is necessary for me to preserve all my due process rights at this time until these matters can be resolved

Thank you very much for your kind consideration of these matters

Gary Schmidt

Sent from my iPhone