



# WASHOE COUNTY BOARD OF ADJUSTMENT Meeting Minutes

## Board of Adjustment Members

Clay Thomas, Chair  
Kristina Hill, Vice Chair  
Lee Lawrence  
Brad Stanley  
Kim Toulouse  
Trevor Lloyd, Secretary

Thursday, September 5, 2019  
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 a **special** session on Thursday, September 5, 2019, in the Washoe County Administrative Complex Commission Chambers, 1001 East Ninth Street, Reno, Nevada.

### 1. \*Determination of Quorum

Chair Thomas called the meeting to order at 1:31 p.m. The following members and staff were present:

Members present:	Clay Thomas, Chair Kristina Hill, Vice-Chair Brad Stanley Kim Toulouse (by phone)
Members absent:	Lee Lawrence
Staff present:	Trevor Lloyd, Planning Manager, Planning and Building Julee Olander, Planner, Planning and Building Division Chris Bronczyk, Planner, Planning and Building Division Michael Large, Deputy District Attorney, District Attorney's Office Donna Fagan, Recording Secretary, Planning and Building Division

### 2. \*Pledge of Allegiance

The pledge was recited.

### 3. \*Ethics Law Announcement

DDA Michael Large recited the Ethics Law announcement.

### 4. \*Appeal Procedure

Trevor Lloyd recited the appeal procedure for items heard before the Board of Adjustment.

### 5. \*General Public Comment and Discussion Thereof

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

### 6. Approval of Agenda

In accordance with the Open Meeting Law, Member Stanley moved to approve the agenda of September 5, 2019. The motion, seconded by Member Hill, passed four in favor and none opposed.

### 7. Possible action to approve August 1, 2019 Draft Minutes

Chair Thomas stated on page 7 of 9, midway down, it was suggested the applicant requested a continuance. Member Stanley moved to approve the minutes of August 1, 2019 with correction. The motion, seconded by Member Hill, passed four in favor and none opposed.

### 8. Public Hearings

The Board of Adjustment may take action to approve (with or without conditions), modify and approve (with or without conditions), or deny a request. The Board of Adjustment may also take action to continue an item to a future agenda.

**A. Administrative Permit Case Number WADMIN19-0017 (Tahoe Forum)** – For possible action, hearing, and discussion to approve an administrative permit for an outdoor community event business license for the Tahoe Forum featuring speaker Maye Musk. The free event will be held at the Sierra Nevada College campus at 999 Tahoe Blvd. on October 5, 2019, from 2:00 p.m. to 3:30 p.m. with approximately 650 to 700 people in attendance. Parking will be available at the Sierra Nevada College campus parking lot, Cornerstone Church parking lot, Incline Village General Improvement District Recreation Center parking lot, and along Country Club Drive and Incline Way.

- Applicant: Kristina Hill
- Property Owner: Sierra Nevada College
- Location: 999 Tahoe Blvd.
- APN: 127-040-10
- Parcel Size: 1.1 acres
- Master Plan: Commercial (C)
- Regulatory Zone: General Commercial (GC)
- Area Plan: Tahoe
- Citizen Advisory Board: Incline Village/Crystal Bay
- Development Code: Authorized in Article 808, Administrative Permits
- Commission District: 1 – Commissioner Berkbigler
- Staff: Julee Olander, Planner  
Washoe County Community Services Department  
Planning and Building Division
  
- Phone: 775-328-3627
- E-mail: [jolander@washoecounty.us](mailto:jolander@washoecounty.us)

Chair Thomas opened the public hearing.

Chair Thomas called for member disclosures. Member Hill recused herself since she is the applicant.

Julee Olander, Washoe County Planner, reviewed her staff report dated August 16, 2019.

Chair Thomas asked if the Cornerstone Church and Incline Village GID (IVGID) will allow parking at their facilities. Ms. Olander stated the applicant can address the parking.

Member Stanley asked if the CAB provided comments. Ms. Olander said there wasn't a quorum and didn't believe they had comments regarding this item.

Diane Severance, Sierra Nevada College (SNC) Representative, said IVGID confirmed parking is allowed. She said Cornerstone has another event happening on Saturday and SNC cannot use their parking lot. She said they will primarily be using the IVGID Recreation Center parking lot. Chair Thomas said you lose 70 parking spaces. She said they believe they have sufficient parking with the College and Rec Center parking. Ty Casey said the majority will be students on campus. It won't be all car traffic.

Member Stanley asked if they have any backup plan if they are get more than 400 cars. Ms. Severance said they have hosted this event in the past. She said they had 1000 people and they did not have any parking issue that day. She said they expect a lower attendance and believe it's adequate parking.

With no requests for public comment, Chair Thomas closed the public comment period.

Member Stanley moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Board of Adjustment approve Administrative Permit Case Number WADMIN19-0017 for the Tahoe Forum, having made all five findings in accordance with Washoe County Development Code Section 110.808.25. Chair Thomas seconded the motion which carried unanimously.

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 forum with a speaker 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.

\*\*1:45 p.m. - Member Hill re-entered the meeting and Member Toulouse exited the meeting by phone\*\*

Item 8B is continued from the August 1, 2019 meeting.

**B. Administrative Permit Case Number WADMIN19-0014 (De La Montanya Winery)** – For possible action, hearing, and discussion to approve an administrative permit for a winery use type in the Low Density Suburban regulatory zone on two parcels; the winery will have a tasting room and any approval may include conditions such as days and hours of operation, occupancy limitations, noise level limitations, lighting restrictions, parking requirements and other conditions related to the contemplated use and its effects.

- Applicant/Property Owner: Dennis and Tina De La Montanya Trust
- Location: 16435 and 16445 Bordeaux Drive
- APN: 047-162-21 (1.01 Acre); 047-162-19 (1 Acre)
- Parcel Size: 2.02 Acres
- Master Plan: Suburban Residential
- Regulatory Zone: Low Density Suburban
- Area Plan: Forest
- Citizen Advisory Board: South Truckee Meadows/Washoe Valley
- Development Code: Authorized in Article 808, Administrative Permits
- Commission District: 2 – Commissioner Lucey
- Staff: Chris Bronczyk, Planner  
Washoe County Community Services Department  
Planning and Building Division
- Phone: 775-328-3612
- E-mail: [cbronczyk@washoecounty.us](mailto:cbronczyk@washoecounty.us)

Chris Bronczyk, Washoe County Planner, reviewed his staff report dated August 8, 2019.

Chair Thomas asked if the phone calls staff received regarding this application were followed-up by emails. Mr. Bronczyk said he took notes on the seven phone calls he received in addition to the emails. Chair Thomas asked about the 25 students at the bus stop and if there were additional buses. Mr. Bronczyk said he spoke with Mike Boster, with the Washoe County School District, who indicated bus #1620 goes to Hunsberger Elementary school and believes it's the only bus that uses that stop.

Member Stanley asked if when Mr. Bronczyk spoke to Mr. Boster, was there any mention of a development going in this area with 1000s of students. Mr. Bronczyk said he asked about bus stop pick-up and drop-off information.

Dennis Troy, the applicant representative, provided a PowerPoint presentation.

Member Stanley asked for the definition of appointments. Mr. Troy said there will be times where no staff will be in the winery and customers will have to call to schedule an appointment if they want to visit the winery. He said it's common in Napa. If they are a wine member, they need to call. The employees may be out in the field. Member Stanley said someone could have an event and make an appointment for an event. Mr. Troy said during the hours of 11 a.m. - 4:30 p.m. They need to call if they want to schedule to wine taste. Member Stanley wants to know what is considered an event that would not be allowed. Mr. Troy said he would defer to Washoe County to determine what is considered a threshold for an event.

Chair Thomas asked how many people can attend during one appointment. Mr. Troy said they haven't determined that number yet. He said it could be a car with two people or a limousine with eight people. Chair Thomas said one car with two people is considered one appointment. There are 16 car spots. Chair Thomas said the term appointment is innocuous. He said a bus could show up with people for one appointment along with other appointments. Mr. Troy said appointments are tied to staffing levels. They won't schedule too many if there is only one staff member. It will be controlled capacity.

Chair Thomas asked the height of the fence that will be installed to keep out wildlife. Mr. Troy said 6-foot smooth wire fence with hotwire, is proposed. He said Nevada Division of Wildlife (NDOW) said lower fences do work.

Chair Thomas asked if the property was purchased with the intent to put a winery on the property. Mr. Troy said yes.

Member Stanley said he noticed a concern with occupancy. He asked what is the maximum occupancy. Mr. Troy said when they submit for building permits, the building department will determine that. 1,200 sq ft. will be production and 3,000 sq. ft. area will be for people to congregate. They will determine occupancy on the area where the people can congregate.

Mr. Bronczyk read 'winery with special events' for events at wineries in certain zoning. Member Stanley asked if the golf promotional event can happen on the winery property. Trevor Lloyd said special events are prohibited with this winery and regulatory zone. He said guests would be by appointment only. There won't be bleed over from Barracuda onto this site.

Chair Thomas asked if semantics will come into play. Trevor Lloyd said prearranged events such as a wedding with invitations; that would be prohibited. He said there is potential that a gathering of people that looks like a party shows up for a tasting. He said there will be restriction with availability of parking.

Chair Thomas asked if there was a traffic study. Mr. Bronczyk said 80 average daily trips (ADT) or greater, a formal traffic analysis would be required and it would take into account existing traffic. It was reviewed by Mitch Fink, Washoe County Traffic Engineer. There were no recommendations of denial by engineering. This business would generate 30 daily trips. Chair Thomas asked how that was determined. Mr. Bronczyk said the Engineer uses a traffic manual to determine the average.

Member Stanley said he still has an issue with the occupancy. He asked how many people are going to be there; how many wine tasters do they anticipate. Mr. Bronczyk said occupancy numbers comes from building and fire district.

Richard Oujevouk "OJ" with NDOT, Traffic Engineer for District 2, said he uses common trip generation ITE manual – a book with studies that estimate trips based on land use. He said 30 daily trips is below the

threshold for a traffic study. He said he promotes joint use driveways. Administratively, he said it's a non-issue to NDOT. He said he is conducting a corridor study down to the roundabout on Mt. Rose Hwy.

Chair Thomas asked if a traffic study is based on other wineries in the California area since this is the first one in Washoe County. OJ said the manual used is a generalization but universally based on studies since the 1950s. Chair Thomas asked if other traffic is taken into account. OJ said RTC generates a work plan for the area and NDOT takes into account the volume. He said 30 trips per day is not detrimental. Average annual daily traffic numbers are used with adjustments for seasons such as for skiing. He said the road is designed to carry more. Chair Thomas asked if future development was taken into consideration. OJ said they will look at total build out for access.

Member Stanley asked if being near the school bus stop is taken into considered in the study. OJ said we make assumptions everyone is a rational driver and observe the law. He said he understands concerns, but he said we do the best assumptions. To date, he said he hasn't heard any issues with this particular bus stop.

Member Hill said she uses the ITE trip generation packet. She said you look at site specific traffic generation. It's measured by traffic flow and different levels of speed. 30 trips per day is minimal.

Member Stanley asked if residing in the building is allowed. Mr. Bronczyk said the application doesn't include a residence. Member Stanley asked if it's allowed on this winery site. Mr. Bronczyk said he doesn't believe there is anything that prohibits anyone from to living on the site. Mr. Lloyd said it's Low Density Suburban (LDS); nothing prohibits the use of residence, but it's unlikely. Mr. Troy said there is no plan to occupy it as a residence. He said in the future, it could convert to a residence if the business does not succeed.

Chair Thomas asked how many employees are needed to harvest. Mr. Troy said four people. It's an acre that will need to be harvested.

Public comment:

Nancy Davis said she lives ½ mile east of proposed winery. She said there are unanswered questions. She asked how it's going to affect air quality. She said the biggest impact, to her, is traffic. She said she doesn't believe the traffic studies. She asked about the fences will being installed. She said the bears will cross the highways. There are mountain lions and bobcats. She asked why they putting a business in low density suburban area. We are changing the rules. No one takes into consideration the impacts on the wildlife. We oppose anything that attracts them.

Ina Katzman said she is not in favor of this proposed winery. She asked it is where the buses go. There is more than one bus. We have 400 homes in Montreux that are being bought by families. There are many children below school age. There is more than one bus from 2:30, 3:00, 4:00 p.m. dropping children off which wasn't mentioned. She asked if the NDOT engineer has gone to Bordeaux when the bus lets out the children. The two streets converge onto Bordeaux. She said we can see a problem with cars and truck and bus converging. There are women and men parked on both sides of the street. You cannot get through and traffic gets backed up on both sides. She said the two acres that is being built is just part of what they really want to do. It's ludicrous to think they can grow grapes on one acre. She believes the owners want to buy 12 acres from Stan Jaksick. She said the bears would be happy to jump over the fence.

Peter Durffy said we are concerned with specific traffic study and backdoor wine club events. He said he has difficulty understanding appointments. The traffic study doesn't address concerns by the neighbors. There has been significant change to the amount of kids in the area. There is significant building in Montreux. He spoke about the traffic and data supports the impact. STMWV CAB pointed out fatalities on Mt. Rose due to high speed traffic.

Sue Foltz said she is a neighbor in Montreux. She said Pine Middle School uses that area for a bus stop. She said she lived on 3 acres in California with 7-8 ft fence and the mule deer could still get over the fence. She recommended installing a fence over 8 feet. She said she has concerns for the school children and people leaving the site after consuming wine. She wants occupancy defined. She said she is concerned for wildlife. The grapes will attract deer and bear. She said if this goes forward, she wants to know if they can have their own entrance, not near the school children.

Jeanne Budkey said she resides in Montreau. She expressed concern with traffic on Mt. Rose Hwy. She is surprised with major accidents on Mt. Rose Hwy which many of them were related to alcohol. People will be leaving the winery on Mt. Rose Hwy. She said there is no other way about it. She spoke about the bus stop. Everyone must park on Bordeaux to pick up their child. I t's going to be chaotic. It's a safety concern for families waiting for the bus to arrive. She said the neighbors are also not in favor. Read the posts on nextdoor.com. Everyone voices their opposition.

Mark Schimpf said he lives on Boredeaux near the bus stop. He said it really equals 60 trips a day. Montreux is not good neighbors. The dust has been an issue. The dirt road behind his house was given to the County, but the County says they didn't accept it and Stan Jaksick doesn't do anything about the dust. There is a wine bar across the street. He said he isn't opposed to the winery. He said he doesn't have children and doesn't have a choice to have a bus stop in front of his house. He said to his knowledge, there is only one bus. He said its 3 minutes of frustration. He said there are 3 kids under 12 years old next door. He said he is concerned with dust. He said he has been there for 20 years and gets no kids on Halloween. He said he hasn't had wildlife. He picks up his apples. A bear was killed on Mt. Rose Hwy.

Elizabeth Coffee Curle said she is for this project. She lives across the highway. She said she is familiar with the amount of traffic. She said she doesn't agree there have been substantial increases. She said she was impressed with the matching with the area and community. She spoke about fencing. She said she personally has hives, and livestock. She said the issue she had was a mountain lion. She said she has 4-5 foot fencing and they had put in hotwire. Proper fencing will deter wildlife from entering the property. She uses Labradors to deter wildlife. Other ranches use dogs and it works. She said it's a positive to the community.

With no further public comment, Chair Thomas closed the public comment period.

Member Hill said they've done a great job. She said she visited the site and they will pave the dirt road. If you build single family dwellings there instead, it would be 20 average daily trips. This is 30 ADT. She likes the fencing and landscaping.

Member Stanley asked about bus stop proximity to the site. Member Hill said approximately 100 yards. Mr. Bronczyk put up Exhibit F map on the overhead. Mr. Bronczyk said he can estimate it on the mapping system.

Chair Thomas requested a 5-minute recess for Mr. Bronczyk to access the mapping system.

\*\*recess: 3:08 p.m. – 3:16 p.m.\*\*

The meeting was called back into session.

Mr. Bronczyk said he measured from the bus stop to cul-de-sac. It is 221 feet. Then measured the distance from bus stop to the winery property line. It is 686 feet.

Member Stanley said the applicant has done a good job in listening to the concerns and address them and yet a couple of issues including location of bus stop haven't been a resolution. He said we asked a dozen ways about appointments and how many people are there at any given time. We didn't receive an answer. He said he is going to suggest conditions around occupancy with a maximum amount of people served at any given time. It's extremely open ended and to the detriment to the neighbors.

Chair Thomas said Mr. Troy did a great job; he made changes to satisfy the community. He said this Board has heard this twice. He said thirty-one public members are opposed with an additional thirteen emails. The planner reported 7 calls. That is fifty-one individuals who oppose this project. Mr. Bronczyk said there were 3 individuals expressing support but asked not to be part of public comment. Chair Thomas said fourteen people in favor of it. He said of the fourteen, 6 of them were individuals who had visited the winery, live in Truckee or Hidden Valley, or club members. He said they don't live in the area. He said that's a very strong statement. The community is not in favor of this in this location. He said he has concerns with definition of appointments, special event, school bus, future of homes, and more daily trips. He said he has a hard time making findings in favor.

Member Hill said the owner of the Eddy said how people assumed the worst scenario and it ended up being an asset to the community. She said she doesn't believe 30 trips will impact the neighborhood as

much. Member Hill said there are people lined up to pick up their kids. This operation is 600 feet from the bus stop. It's operating certain hours and certain days. It's not as big of an impact as their fear of the unknown.

Member Stanley said at CAB meeting, a CAB member converted a store into a wine venue. There were tons of concerns about Mt. Rose Hwy. It's on a straight-a-way, not a curve. After it's been in place, there has been a request for music, the neighborhood opposed music. There was a huge cry about dark sky lighting. He said there is a Washoe County statute stipulating how far a bus stop has to be from a cannabis dispensary. He asked about liquor venues. Mr. Lloyd said Washoe County business license statute, not development code.

Mojra Hauenstein, Planning and Building Director, provided information regarding occupancy. She said after planning, we look at floor plan under building code, we look at the layout that is presented. There are occupancy loads if there is a counter and if there is a kitchen. There will be a maximum occupancy determined. It applies to all business. It cannot be calculated now, but at the time of permitting. Member Hill asked about parking. Ms. Hauenstein said that is determined by development.

Member Stanley asked if the Board can condition occupancy. Ms. Hauenstein said we usually don't condition something that is in code but that can be answered by Mr. Lloyd and legal counsel. Mr. Lloyd said it's not clear territory. We try not to condition what's in code. We don't want to single out a particular use or property owner. DDA Large agreed.

Member Stanley said the hope with the occupancy condition was to bound this operation since its open ended and ambiguous. It hasn't been address numerically. He asked the Boards appetite for conditioning. Member Hill said to leave it to the experts in the building department. Chair Thomas said the applicant has been gracious to add conditions already. We have a document before us with a staff report and take an action with what we know at this time.

Member Hill moved to approved WADMIN19-0014. There was no second to the motion to approve. The motion failed for a lack of a second to the motion.

Member Thomas moved that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Board of Adjustment deny Administrative Permit Case Number WADMIN19-0014 for Dennis and Tina De La Montanya, having been unable to make finding#3, Site Suitability, in accordance with Washoe County Development Code Section 110.808.25. Member Stanley seconded the motion. The motion carried with two approving denial, Member Hill opposed denial.

**C. WBLD18-105119 (Schmidt Appeal)** – 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 Berkbigler
- Staff: Trevor Lloyd, Planning Manager  
Washoe County Community Services Department  
Planning and Building Division
  
- Phone: 775.328.3617
- E-mail: [tlloyd@washoecounty.us](mailto:tlloyd@washoecounty.us)

Chair Thomas opened the public hearing.

Trevor Lloyd, Washoe County Planner Manager, reviewed his staff report dated August 28, 2019.

On August 20, Planning and Building received an appeal from Gary Schmidt. The permit was requested to investigate work of restoring of the building damaged from snow. Staff is recommending denial for two reasons – staff didn't receive justification or support for the appeal application and it didn't go into detail of what they were appealing other than the appeal of removal of materials. Mr. Lloyd said we don't have staff to determine if the decision made by Air Quality is correct and staff recommends denial.

Mike Wolf and Josh Restori, Air Quality Division, were available to answer questions.

Gary Schmidt, appellant, requested continuance of this matter based on several points. He said when this request is heard, he would like it before the full board. He said he believes he is at a disadvantage. The precedence is for the BOA and other Boards, the applicant or appellant can be granted a continuance based on there not a full panel. He said on August 21st, he submitted a public records request to Trevor Lloyd for various documents which is included in the staff report. He said on the 20<sup>th</sup>, he met with Sarah Tone who he had previous conversations to discuss this matter. He said it's still under discussion with his engineering company and Air Quality. He said they haven't resolved some of the issues. Some issues have been agreed upon. He said at that meeting, to preserve his rights for the appeal process, he didn't have time to place his appeal. He said he attempted to place his appeal which he and his legal counsel firmly believed it's the proper process. But the meeting on the 20<sup>th</sup> Sarah Tone and Trevor Lloyd said this could not be appealed before the Board of Adjustment. He said they had extensive discussions about portions of the letter from Mr. Restori that were of concern and some were not. That letter is in the package. He said he was told some of it was not a matter to go before the Board of Adjustment. He submitted the appeal application. He was told it wasn't the proper form. He said he submitted a public records request the next day which requested policy, procedures, forms and legal citations and opinions of why it could not be heard before this Board. It's a clear public records request. State law, NRS 239, requires that the body respond within 5 days with great detail, they failed to do so and now they are in violation of State law. He said he needs that response to the public records request in order to properly prepare for ultimate appeal, and what happen instead, we leave the meeting and was told to schedule a meeting with Sarah Tone and Trevor Lloyd and Dave Solaro who have visited the site. We were going to have another meeting on the 24<sup>th</sup> or 25<sup>th</sup>. He told them he would be out of town and try to schedule when he came back into town and made several calls about a meeting and got no responses to messages. He said we are still discussing the process whether it should go before this body or another body, for himself and counsel. He said he left town again, he received a call from Trevor Lloyd that a hearing was going to be held today. He said it was the first he had heard about it. He said he exchanged messages and spoke this morning. He said Trevor couldn't tell him what sort of notice he received or how the package, staff recommendation was mailed to him. He said he picked it up this morning and it's the first he's seen of it. He said he has one of the principle engineers from Nova with him today but he's not prepared either. He said he sent a letter in response to Josh's email to Josh, Sarah Tone, Dave Solaro dated on the 19<sup>th</sup> and didn't receive response. He said he sent it several times and it wasn't in the packet. He assumed Sarah would include it in the packet but the Board just received that letter today. He didn't believe the Board has had time to read or study it. The Board doesn't have all the evidence. He said he doesn't have all the evidence to present because the department has failed to respond to records requests. You haven't received the evidence and we are blindsided. He said he only received effective notice today that this hearing was going to proceed. We are going to shooting in the dark. He said we have scheduled, or we believe we have scheduled, a meeting with Mike Wolf, the Branch Chief of Air Quality for Tuesday, which may be tentative. Mr. Schmidt said he thinks these matters are short of highly technical presentation to you here by the engineers and lawyers. The best thing is to continue this matter on the basis of the notice and response to public records request and the process is less than to be desired. He said we think we have the same goal in mind, that the Reindeer Lodge damaged portions be removed in accordance with federal regulations. He asked what are the federal regulations that apply and what is the processes that apply? He said a brief staff report for such a highly technical matter says that "his appeal was not supported." He said he can make the same argument about the letter from Josh. There was no support or justification or rationale for their position. They cited no federal regulation, no case law, and no factual basis other than his report regarding the air quality mediation division determined asbestos was present. That is not disputed and the air quality didn't determine asbestos was present, he said he determined it from his



engineers. He said he paid for the report and they were present at the time the sampling was taken. There is no dispute asbestos is present. The question is, at what level is regulated. There is very little dispute some of it is regulated. There is a major dispute or not meeting of the minds, on other parts of it if it's regulated or not. Some of it goes to 1% criteria which goes to federal regulations which says materials of greater than 1% is regulated if greater than 1% is asbestos; but how do you define material. He said because of the collapse roof, there is a pile of rubble that was pulled away from the building to keep the rest of the building from collapsing and that is far less than 1% which is less than 1% of 1%. We don't believe it's regulated under federal law. The initial position that air quality has taken is that since there are individual pieces in there, the individual piece has more than 1%, therefore, the 40 yards of material has to go out as regulated. We don't believe that is what the law says. He said he doesn't think we have a lawyer present other than the Board's counsel and asked if he is an expert in federal regulation to air quality control with asbestos in construction work or demolition. We haven't heard from legal from air quality, just a blanket statement. He said they haven't supported their claims. He said he is requesting a continuation at this point and it's justified as there are only 3 board members and that is usually a routine continuance granted, if the applicant or appellant requests it.

Member Hill asked when Mr. Schmidt plans on cleaning it up. Gary Schmidt said soon as we get these issues settled. He said he received a verbal stop work. He questions even if that is legal. He is adhering to it because he is trying to be over cooperative. He said there are things up there, for example, there is pile with 30 pieces of metal, scrap metal, stoves, flue pipes, metal that has been basically removed from the main structure, 40-50 feet. It's all been tested. Josh was on site and everything he wanted tested was tested. That scrap metal has been deemed not to be subject. He said he would like to remove it and has been trying to remove it for a month. There are other portions of the building that are tested negative. He said he could do additional work on the building, but prohibited by Air Quality. He said no work will proceed until we come up with a master plan. Worst case scenario it could take 3 years. Maybe not decided by this Board, not decided by air quality but rather Nevada Supreme Court or Federal Court or 9<sup>th</sup> District Court. In the mean time, he said he would like to work on the things that are not in dispute. Take the scrap metal off the property, there are overhangs on the building that are valuable, at least historically, 2 inch by 12 inch reseeded cedar that is nearly 100 years old that is in great demand that came from the Reindeer Lodge. Report shows there is not asbestos in that material. The shingles were suspect; they have been tested. There are piles of shingles that tested negatively. Some work could proceed. We have been unable to arrange to meet face to face with Air Quality. He said his period of appeal was tolling. He said he doesn't want to be here today; he said it's premature. He doesn't have the facts or information. We don't what we agree to or don't agree to. He said he would respectfully request to be continued to the next meeting. He said if it's not settled by then, you will see a whole bunch of engineers and lawyers out here. He said he will sit in the back row, but he doesn't want to go there.

Chair Thomas confirmed Mr. Schmidt is not disputing the fact there is asbestos on site, is that correct. Mr. Schmidt said that is correct. He said it's his report that he paid for by this engineering firm that determined it. He said it's Nova. Chair Thomas asked, Nova actually came out and located at least two areas of which the first floor exterior contained 15% and the collapsed acoustic ceiling on the south side contained 15%. Gary said yes that information came from his report. Chair Thomas said it's not an issue that there is asbestos that needs to be cleaned up and you have a document on June 25<sup>th</sup> from Joshua that addressed these issues so it wasn't like you were surprised at the last minute that this took place. Gary said yes, there were various emails during that time period. He said he officially responded to that on the 19<sup>th</sup> which the Board has that document, for the first time. Mr. Schmidt said it was sent multiple time and we have not received response to that. Maybe they are willing to accept our position. They haven't said no. One of the issues is 40-yards of material that has traces of matter, individual matters, in there that tested greater than 1%. But it's material. Regulations say that any material that tests greater than 1% is regulated. If it's less than 1%, it's not. He said that material, 40 yards, is way less than 1%. It's probably only 1% of 1% or 100<sup>th</sup> of 1%. We are ready, willing and able to remove that but until we are ready to settle that issue, I believe to discuss on Tuesday, if that issue gets settle, and we're given permission to remove it, we will remove it. We were told not to do anything until we settle everything. It makes things difficult. He said we should proceed with things we agree on, and then work on the things we don't agree with.

Chair Thomas said Mr. Schmidt is asking for continuance predicated on two things: One, due to not having a full Board, is that correct, although we have a quorum. Mr. Schmidt said that is one. Two, predicated upon your 8/21 public records request which you have not received yet. Mr. Schmidt said that is correct. Chair Thomas said Mr. Schmidt was out of town for a while and some of the information was mailed to him and wasn't able to pick up. Mr. Schmidt said a five day notice. It was post marked the 30<sup>th</sup>. He said he has had numerous conversations with Sarah and Trevor. Mr. Schmidt said its short notice.

Member Stanley said he wasn't sure if Mr. Schmidt was here to argue his case or ask for a continuance, which it is. Mr. Schmidt said he is requesting a continuance because he isn't prepared to argue the case.

Mr. Schmidt asked a question of counsel. Chair Thomas said counsel works for us. Mr. Schmidt said it was a procedural question. Chair Thomas asked Mr. Schmidt to direct the question to him. Mr. Schmidt asked if this were denied without prejudice, would his time period to appeal be tolled, and if not settled in the next week or two or three or four, he can re-appeal and not be beyond the statutory limits of his time to appeal. The original letter is suspect but he doesn't want to get the lawyers involved if he doesn't have to. The letter was not a letter, it was an email. Chair Thomas said we haven't made a decision, but if it goes the path of denial, will put everything out on table regarding your rights.

Mike Wolf, Air Quality Division, Enforcement Branch Chief, addressed the first question of who has authority over what. Air Quality Management Division is delegated direct authority from US EPA. He said we operate under the Health Department but our regulatory authority is provided from the federal government and code of federal regulations. Mr. Schmidt asked about paths forward if he doesn't agree with the decisions. Mr. Wolf said there are several paths – he could appeal to EPA Region 9. Mr. Wolf said they have been in close contact with them and who are supportive of our approach in this case. He said our desire is to protect public health. We want to get it cleaned up properly. He said we are bound by federal law that is referenced in Josh's email to Mr. Schmidt and his consultant. (NESHAP) National Emission Standards for Hazardous Air Pollutants subpart M administers that program. Under that program, EPA is clear on how to handle situations like this and piles like this cannot be aggregated. There is a lot of support for it. There is lots of precedent for it. They can appeal the local regulations by applying for a variance through District Board of Health. That's online as well. Or in event that nothing happens, we can write a citation, and they can appeal in front of Air Pollution Hearing Board. All those methods are available. He said he is trying to protect public health and enforce the law as written. He said he didn't receive Mr. Schmidt's letter until Thursday evening before he was going home and only reason he knew about the letter was Morja asked what Mr. Wolf's response to the letter was, and Mr. Wolf said what letter. He said he had never received it. Josh had not received it. It's dated the 19<sup>th</sup>. Until that time, Mr. Wolf said he still had not received that letter in email or hard copy. He said he received it from Morja on that evening. Mr. Wolf said they have prepared a response. He said they have been trying to set up meetings with Mr. Schmidt since June, but for some reasons they keep getting put back or not responded to. He said they had one meeting with his consultant, principles from that consulting firms, an abatement company and demo company. The result was to prepare a removal and abatement plan. There is a lot of material that can be removed from that property. Nobody has said it cannot be removed. Our advice is, don't touch anything until that plan is finished so that everyone understands what is happening. We are trying to make it clear and easy. Josh's email was intended to be a little less formal; it didn't cite all the regulations being covered. We can do that moving forward. Everything we are doing is federal law and in code of federal regulations. There is a lot of precedent for asbestos removal in this Country.

Member Stanley said the applicant has requested more time. You have been working on this since June. In relation to public health as time passes, some as much as 1% up to 15%, what is the public health issue and how does time impact that. Mr. Wolf said the biggest public health impact would be chronic respiratory health issue if this gets in the air, mesothelioma, asbestosis. Asbestos is dangerous. He said in that pile, we are not as concerned about it right now. He said we are concerned with the movement and disposal of it or over time, what will happen with that pile. If we go through another winter like we just had the pile will be disbursed everywhere and that needs to be addressed before winter. Our goal is to get it cleaned up. Member Stanley asked about rain impact. Mr. Wolf said what is going to happen over time is the material will slowly move and gets into the soil that is a concern we have discussed. There are limits and calculation the EPA uses and it could actual trigger sercula. That could deem that whole cite contaminated. Member Stanley asking, in his point of view, if there is a continuance, is there is an increased health risk. Mr. Wolf

said he isn't an industrial hygienist. He said over the next week we are not likely to have a public health risk. The longer we wait the worse it is. If we can get the material cleaned up properly soon, it would be best for everyone.

Chair Thomas spoke about applying federal standards for removal, asking if it comes out of the hands of Board of Adjustments (BOA) to make a determination. If they are following federal guidelines does the BOA need to be involved in this or does this denial stand on its own and move forward from there. DDA Large said the posture of this appeal is difficult because Mr. Schmidt asked for appeal to the Board of Adjustment dealing with the building permit that is in question. Air Quality Management's decision is under federal regulations. This board is pursuant to the power under Chapter 278 and Washoe County code is empowered to make a determination. If they believe the Air Quality management is misinterpreting federal regulations, this Board has the power to say we believe you are misinterpreting the federal regulations and can approval the appeal. If the Board believes Air Quality Management is properly interpreting regulations, then they can deny the appeal. In regards to Mr. Schmidt's question regarding denial without prejudice, Mr. Wolf has illustrated many different remedies in regard to appeal process under federal regulations both to the EPA and Health District that is appropriate for that purview. This Boards purview is under Chapters 278 and 110 to look at the building aspect of this and permit in question. In this case, Air Quality believes they are outside federal regulations and they are in violation. Therefore, if this Board agrees with that interpretation, it's appropriate to deny appeal. If the Board believes Air Quality has overstepped the federal regulations, they can approve the appeal.

Chair Thomas asked if Mr. Wolf is tasked to follow federal regulation. Mr. Wolf said yes. Chair Thomas asked Mr. Wolf if he has training on federal regulation. Mr. Wolf said yes, four of his staff went to EPA Inspector NESHAP Asbestos training last week. And they attend refreshers annually. They have extensive asbestos training. Chair Thomas asked if the regulations for asbestos change very often. Mr. Wolf said the NESHAP that regulates asbestos is in the CFR. The CFR was last updated in 1990; it doesn't change quickly. Chair Thomas asked if this division dealt with asbestos in the past with proper disposal within federal guidelines. Mr. Wolf said yes.

Member Stanley said applicant asked for a continuance. He asked how willing would the AQMD be willing to a continuance. Mr. Wolf said we are moving forward and have that meeting on Tuesday to come up with a resolution. He said a continuance would be irrelevant. He said he doesn't know if the Board will hear it again, what will change. He said he has been in communication with EPA about this case. Member Stanley asked if they have had this process in front of the Board of Adjustment in the past. Mr. Wolf said no, nor has he heard it come in this direction.

Chair Thomas said even if the continuance is granted, the denial is still in force in effect for him to take any action because what we are saying is your division had denied him to do anything with the property. He is appealing that decision to us. If we do a continuance, it stands force in effect that everything stays status quo with that property until it comes backs to this Board. DDA Large said yes, status quo will be maintained. He said the decision made at a meeting on Tuesday would then be appealable to the Health District, the EPA, or this Board, if there is a continuation. That goes to Mr. Schmidt's question; denial without prejudice would allow him to maintain this. He said this Board is empowered to make a decision that is before it today. Chair Thomas asked if there needs to be a full Board present to make this decision. DDA Large said nothing in open meeting law requires a full board be present. It's preferable, but a quorum is sufficient.

Member Stanley asked Mr. Large, under what conditions of denial, non-denial, or continuance, would a resolution that they could come to on Tuesday, be valid. Will anything we do today impede them from getting together on Tuesday. DDA Large said there is nothing that would impede them from getting together on Tuesday. DDA Large said if you approve the appeal, you will be overturning the decision by Air Quality and the building permit would be no longer red tagged and they would be able to proceed. DDA Large said the Air Quality Management may appeal that decision. Member Stanley said federal law doesn't trump our decision. Chair Thomas said there is a denial on the record in which the applicant is requesting a continuance although there is no indication requesting for continuance in his documentation submitted. We have geotechnical from Nova that will be present at the meeting on Tuesday. Mr. Schmidt said yes. Chair Thomas said this doesn't prevent the Tuesday meeting from moving forward. He asked if the intent of Mr. Wolf is to have this resolved on Tuesday. Mr. Wolf said yes. Chair Thomas asked Mr. Schmidt if it was his

intent to resolve this on Tuesday. Mr. Schmidt said his intent is to move forward. What needs to be done in compliance with federal regulation as quickly as possible. He said he will be at the meeting on Tuesday along with his consultant and other engineers from his firm. He said he would like to point out is the issues come up about the citations, federal law, case law. They aren't prepared to argue their case today, either. He doesn't want the Board to hear the case today. He said he didn't know until 6 pm last night that he would be here. He said we are entitled to their citations and the law and arguments for positions they have taken and hopefully will come on Tuesday. The Board isn't getting it here today. Chair Thomas said they are not here to argue their case before Board. Mr. Schmidt said one other point; if it's denied, he said he has 25 days to get it in District Court and worst case scenario, then he has to proceed in abundance of caution in that direction and that is change of focus he doesn't want to do. He wants to focus on getting the job done and strongly requests a continuance – the best avenue to move forward.

Chair Thomas asked how much time Mr. Schmidt is requesting for a continuance. Mr. Schmidt said a week or two to get things clarified assuming we have some sort of public commitment that there is going to be a meeting on Tuesday. He said that may lead to a second meeting. He said if we can't it in 2-3 weeks it'll be an unhappy situation for everybody.

Member Stanley addressed Mr. Lloyd and said we heard from property owner asking for a continuance and Mr. Wolf saying federal law trumps whatever we do here and from a public health standpoint, things should move forward quickly before heavy winter. Member Stanley asked what is the Planning Department's position on a continuance on this. Mr. Lloyd said when he spoke with Mr. Schmidt this morning he was pressing for a continuance, he said he wasn't going to recommend it one way or another. At this point, it's the Board's decision. He said he doesn't know if this Board had the technical expertise when it comes down to it to make a determination whether Air Quality is interpreting federal statute or law correctly. He said he doesn't know if continuance is going to do much good. He will leave the decision up to the Board.

Chair Thomas said if we request a continuance, it gets delayed until the next Board meeting in a month, not two weeks or ten days. That would mean a stop order when nothing gets done. DDA Large said that is correct. Even if they agreed to something on Tuesday to clean it up, but had a denial from us, does that put everything on hold until such time that it comes back to the Board and we make a ruling. DDA Large said if meeting of the minds on Tuesday on a process to move forward, the planning department has the ability to green light an operation moving forward. Chair Thomas asked then it will not come back to the Board. It would be agendized but it may be moot. Mr. Lloyd said then the appellant could withdraw the appeal. Chair Thomas said or the appellant could not show up on Tuesday and everything stays on hold until another meeting in the future. That would push it to a later date to get this cleaned up. Mr. Lloyd said that is a possibility.

There were no requests for public comment; Chair Thomas closed the public comment.

Member Hill said she is not in favor of continuance and is in support of Air Quality Department's decision. Member Stanley said his issue that they overlap with federal law and county regulations and that is grey. It sounds like our denial as opposed to a continuance actually imposes the impetus for Tuesday meeting to work. And we are in support of AQMD by doing that. Chair Thomas said Air Quality is the resident experts on this. They have training and background. He said he has no reason to doubt they aren't following the federal standards. This doesn't prevent their meeting on Tuesday. The appeal process is still out there. Mr. Schmidt can still appeal it and address this further up the chain.

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 this appeal and uphold the decision of the Air Quality Management Division. Member Stanley seconded the motion which carried unanimously.

Mr. Lloyd read the appeal procedure.

## **9. Chair and Board Items**

### **\*A. Future Agenda Items**

None

\*B. Requests for Information from Staff

None

**10. Director's and Legal Counsel's Items**

\*A. Report on Previous Board of Adjustment Items

None

\*B. Legal Information and Updates

None

**11. \*General Public Comment and Discussion Thereof**

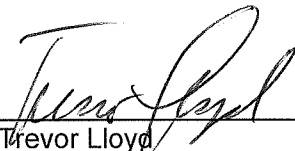
With no requests for public comment, Chair Thomas closed the public comment period.

**12. Adjournment**

Meeting adjourned at 4:33 p.m.

Respectfully submitted by Misty Moga, Independent Contractor

Approved by Board in session on October 3, 2019

  
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Trevor Lloyd  
Secretary to the Board of Adjustment

