

MEMORANDUM OF OPINION

TO: Gary Schmidt

FROM: Luke Busby, Esq.

RE: To render an opinion on the limited issue of enforcement procedures in Washoe County, with a focus on the options available after a Board of Adjustment decision in enforcement proceedings.

DATE: Jul 30, 2024

I. Background

The appeal process for enforcement decisions in Washoe County is governed by both the Washoe County Code (WCC) and Nevada Revised Statutes (NRS).

II. Analysis

A. Statutory Framework

1. NRS 278.310(3) provides two options for county ordinances regarding appeals of Board of Adjustment decisions:

- a) Comply with NRS 278.3195(2), requiring an appeal to the governing body (County Commission) first, or
- b) Allow for direct appeal to the district court within 25 days.

2. NRS 278.3195 broadly provides for appeals of Board of Adjustment decisions to the governing body (County Commission).

B. Interpretation of Statutes

1. The use of "allows" in NRS 278.310(3)(b) provides that direct appeal to district court is an additional option, not a replacement of the existing right to appeal to the County Commission under NRS 278.3195.

2. NRS 278.3195 does not contain language limiting the right to appeal to the County Commission in cases where a county has adopted an ordinance allowing direct appeal to district court.

C. Washoe County Code

WCC 110.910.15(i)(6) regarding "Judicial Review of Board of Adjustment Decisions" is ambiguous to the point of lacking meaningful direction. While the section

is titled "Judicial Review," it fails to specify to whom or where an appeal should be made, merely providing a timeframe without identifying the recipient of the appeal. The ambiguity is so fundamental that it essentially renders the provision meaningless. Appellants might mistakenly assume the appeal should be made to the Board of Adjustment itself, or they may infer it should go to a court, but without knowing which one.

WCC 110.910.15(i)(6) states: "This judicial review is in lieu of appeal to the Board as authorized by NRS 278.310(3)(b)." However, this regulation must be interpreted in light of the governing state statutes.

WCC 110.912.10(j)(9) clearly establishes two distinct and equally valid options for appealing Board of Adjustment decisions. The provision presents appellants with the choice to either seek judicial review in the Second Judicial District Court or appeal to the Board of County Commissioners. By providing specific procedures for each option and using the word "or" between them, the code demonstrates a clear intent to offer separate, alternative appeal paths.

WCC 110.920.20(b)(6)(vi) provides that: "A person aggrieved by the decision of the Board of County Commissioners may file a petition for judicial review within 25 days of the filing of the Memorandum of Decision with the County Clerk."

D. NRS prevails over WCC

1. "When the Legislature's intent is clear from the plain language, this court will give effect to such intention and construe the statute's language to effectuate rather than nullify its manifest purpose." *We the People Nev. v. Miller*, 124 Nev. 874, 881, 192 P.3d 1166, 1171 (2008). Local ordinances that conflict with state statutes are preempted and thus invalid. *Lamb v. Mirin*, 90 Nev. 329, 526 P.2d 80 (1974): "That which is allowed by the general laws of a state cannot be prohibited by local ordinance, without an express grant on the part of the legislature."

III. Conclusion

It is my opinion that after a decision by the Board of Adjustment, an aggrieved person may appeal to either the Board of County Commissioners or the district court, despite the language in WCC 110.910.15(i)(6) stating that judicial review is in lieu of appeal to the Board. This interpretation is supported by:

1. The permissive language in NRS 278.310(3)(b), which "allows" for direct appeal to district court without explicitly precluding appeal to the County Commission.

2. The broad provisions of NRS 278.3195, which provide for appeals of Board of Adjustment decisions to the governing body (County Commission) without limiting this right in cases where a county has adopted an ordinance allowing direct appeal to district court.

3. The principle that state statutes take precedence over local ordinances when there is a conflict.

While WCC 110.910.15(i)(6) appears to limit appeals in enforcement proceedings to judicial review, this provision should be interpreted as adding the option for direct appeal to district court rather than eliminating the option to appeal to the County Commission. To interpret it otherwise would conflict with the statutes, which do not explicitly authorize counties to eliminate the option of appealing to the County Commission and thereafter to district court as provided in NRS 278.3195. Further, WCC 110.912.10(j)(9) expressly provides both options as well. This dual-option approach expressly aligns with state law, maximizes flexibility for aggrieved parties, and contains no language prioritizing or limiting either option. Therefore, this provision unequivocally allows appellants to choose between appealing to the district court or the county commission, establishing separate rules for each path.

Therefore, to harmonize the WCC with state law and to effectuate the plain language in NRS 278.310 providing multiple appeal options, the most reasonable conclusion is to permit that both appeal paths - to the district court and to the County Commission - remain available to aggrieved parties after a Board of Adjustment decision.

By: Zade A. Berling

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)

Note: Appeals to the Washoe County Board of Adjustment are governed by WCC Section 110.910.15(i), WCC Section 110.912.10(j), and NRS 278.310.

- | | |
|--|--|
| <input type="checkbox"/> Administrative Hearing Officer | <input type="checkbox"/> County Building Official |
| <input checked="" type="checkbox"/> Director, Planning and Building Division | Fire Code Official |
| <input type="checkbox"/> Director, Engineering and Capital Projects Division | <input type="checkbox"/> North Lake Tahoe Fire Protection District |
| | <input type="checkbox"/> Truckee Meadows Fire Protection District |

Appeal Date Information

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.

Note: The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).

Date of this appeal: Aug 1, 2024

Date of action by County: continuous

Date of decision for which appeal is being filed: continuous

Project Location: N/A

Appellant Information

Name: <u>Gary Schmidt</u>	Phone:
Address: <u>324 N. "C" Street</u>	Fax:
<u>P.O. Box 861</u>	Email:
City: <u>Virginia City</u> State: <u>NV</u> Zip: <u>89440</u>	Cell:

Specific action by the County being appealed:

The Washoe County Community Services Department is now claiming that certain decisions by the Board of Adjustment can not be appealed to the county Commission but can only be appealed to District Court

Describe why the decision should or should not have been made:

State law provides that all decisions of the Board of Adjustment may be appealed to the County Commission. County Code read together with state law allows decisions of the BOA to be appealed to either the County Commission OR directly to District Court!

Cite the specific outcome you are requesting with this appeal:

Decisions of the BOA may be appealed to the County Commission OR directly to District Court!

Describe your basis as an aggrieved party. The basis must include the nature and location of your property interest and the manner in which the property interest will be affected by the appealed decision.

I have pending appeals before the BOA!

Did you speak at the public hearing when this item was considered?

Yes
 No

Did you submit written comments prior to the action on the item being appealed?

Yes
 No

Appellant Affidavit

STATE OF NEVADA)

COUNTY OF WASHOE)

I, _____ being duly sworn, depose, and say that I am an appellant
(print name)

seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Building Division.

Signed _____

Address _____

Phone: _____

Subscribed and sworn to before me this

____ day of _____, _____

Notary Public in and for said county and state

My commission expires: _____

(Notary Stamp)

Begin forwarded message:

From: gary schmidt <nobullschmidt@hotmail.com>
Subject: Fwd: Appeal application from Schmidt directly to BOA **Date:** July 23, 2024 at 3:39:16 PM PDT
To: "Kelly D. Mullin" <kmullin@washoecounty.gov>, David Solaro <DSolaro@washoecounty.us>, "Eric P. Brown" <epricebrown@washoecounty.gov>, Elizabeth Hickman <ehickman@da.washoecounty.gov>, "rpierce@washoecounty.gov" <rpierce@washoecounty.gov>, "dchristensen@washoecounty.gov" <dchristensen@washoecounty.gov>, "kjulian@washoecounty.gov" <kjulian@washoecounty.gov>, "peter@cpnv.com" <peter@cpnv.com>, "leohorishny@gmail.com" <leohorishny@gmail.com>, Trevor Lloyd <tllloyd@washoecounty.gov>, Jeanne Herman <jherman@washoecounty.gov>

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[Report Suspicious](#)

Please submit these for the hearing scheduled for August 1 should it proceed. These are in part additional documents that were submitted on the record at the administrative hearing that have been conveniently omitted from the record as moved forward by Giesinger and/or the County ! Exhibit numbers 6 to 13 were presented at the administrative hearing but I only find 6, 11, and 12 in the supporting materials for the BOA Hearing at this time. I also find duplications in the documents submitted by Giesinger which further confuses the documentation and I also find that without any tabs on his documents they are very difficult to go through even for me and I was there at the hearing and I am familiar with all the documents. Exhibit C is still in error in that Giesinger claims those are documents submitted by me at the administrative hearing and most of those documents

were not submitted by me and I was not familiar with them until they showed up in exhibit C mis-identified as documents submitted by me (more false testimony by Giesinger). Just more errors and omissions (and confusion) on the part of Giesinger and the County.

Washoe County Appeal of Decision to Board of Adjustment
 Planning and Building Division
 1100 N. Virginia St., Suite 200, Reno, NV 89502
 Phone: (775) 784-3100 Fax: (775) 784-3101

Appeal of Decision by (Check one)

Address: Appeals to the Washoe County Board of Adjustment are governed by NRS Chapter 218.010, 218.015, 218.020, 218.025, 218.030, 218.035, 218.040, 218.045, 218.050, 218.055, 218.060, 218.065, 218.070, 218.075, 218.080, 218.085, 218.090, 218.095, 218.100, 218.105, 218.110, 218.115, 218.120, 218.125, 218.130, 218.135, 218.140, 218.145, 218.150, 218.155, 218.160, 218.165, 218.170, 218.175, 218.180, 218.185, 218.190, 218.195, 218.200, 218.205, 218.210, 218.215, 218.220, 218.225, 218.230, 218.235, 218.240, 218.245, 218.250, 218.255, 218.260, 218.265, 218.270, 218.275, 218.280, 218.285, 218.290, 218.295, 218.300, 218.305, 218.310, 218.315, 218.320, 218.325, 218.330, 218.335, 218.340, 218.345, 218.350, 218.355, 218.360, 218.365, 218.370, 218.375, 218.380, 218.385, 218.390, 218.395, 218.400, 218.405, 218.410, 218.415, 218.420, 218.425, 218.430, 218.435, 218.440, 218.445, 218.450, 218.455, 218.460, 218.465, 218.470, 218.475, 218.480, 218.485, 218.490, 218.495, 218.500, 218.505, 218.510, 218.515, 218.520, 218.525, 218.530, 218.535, 218.540, 218.545, 218.550, 218.555, 218.560, 218.565, 218.570, 218.575, 218.580, 218.585, 218.590, 218.595, 218.600, 218.605, 218.610, 218.615, 218.620, 218.625, 218.630, 218.635, 218.640, 218.645, 218.650, 218.655, 218.660, 218.665, 218.670, 218.675, 218.680, 218.685, 218.690, 218.695, 218.700, 218.705, 218.710, 218.715, 218.720, 218.725, 218.730, 218.735, 218.740, 218.745, 218.750, 218.755, 218.760, 218.765, 218.770, 218.775, 218.780, 218.785, 218.790, 218.795, 218.800, 218.805, 218.810, 218.815, 218.820, 218.825, 218.830, 218.835, 218.840, 218.845, 218.850, 218.855, 218.860, 218.865, 218.870, 218.875, 218.880, 218.885, 218.890, 218.895, 218.900, 218.905, 218.910, 218.915, 218.920, 218.925, 218.930, 218.935, 218.940, 218.945, 218.950, 218.955, 218.960, 218.965, 218.970, 218.975, 218.980, 218.985, 218.990, 218.995, 219.000

Administrative Hearing Officer County Building Official

Director, Planning and Building Division
 1100 N. Virginia St., Suite 200, Reno, NV 89502
 Phone: (775) 784-3100 Fax: (775) 784-3101

Fire Code Official North Lake Tahoe Fire Protection District
 District, Engineering and Capital Projects Truckee Meadows Fire Protection District

Appeal Date Information

Note: This appeal must be delivered in writing to the office of the Planning and Building Director or the Planning County Building Official within 10 (ten) calendar days from the date that the decision being appealed is communicated in writing to the applicant.

Note: The appeal must be accompanied by the appropriate appeal fee (see attached Washoe Fee Schedule).

Date of the appeal: 7/23/24

Date of action by County: 8/1/24

Date of decision for which appeal is being filed: 7/18/24

Project location: 835 + 345 Main Street

Appellant Information

Name: Gary Schmidt Phone: 775 722-41670
 Address: P.O. Box 861 Fax: nobullschmidt@hotmail.com
 City: Virginia City, NV 89400 Email: nobullschmidt@gmail.com

Notes to the County Hearing Officer:

Director of Subordinate "decided" that "contribution does not apply to an issue concerning accessory use and accessory use on two contiguous parcels which use adjacent in lot in 2014 to these two contiguous parcels that have functioned as one unit for decades. Does the decision apply or should not have been made. These two parcels have functioned as one unit since the early 1990s as a driveway users as no fence was present between the two parcels for many years. The driveway users for many years before the county subdivision this type of situation in 1996 and again in 2014.

(Figure 1)

Sent from my iPhone Begin

forwarded message:

**WVIO-PLA23-0127
 APPLICANT COMMENT**

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), WCC Section 110.912.10(j), and NRS 278.310.</p> <p style="text-align: right;"><i>Administrative Code Enforcement Decision</i></p>	
<input type="checkbox"/> Administrative Hearing Officer	<input type="checkbox"/> County Building Official
<input checked="" type="checkbox"/> Director, Planning and Building Division <i>not subordinates</i>	Fire Code Official <input type="checkbox"/> North Lake Tahoe Fire Protection District <input type="checkbox"/> Truckee Meadows Fire Protection District
<input type="checkbox"/> Director, Engineering and Capital Projects Division	
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>12-21-23</u>	
Date of action by County: <u>ambiguous / unknown</u>	
Date of decision for which appeal is being filed: <u>unknown</u>	
Project Location: <u>Gerlach 335 + 345 Main Street</u>	
Appellant Information	
Name: <u>Gary Schmidt</u>	Phone: <u>775 622-4670</u>
Address: <u>P.O. Box 861</u>	Fax:
	Email: <u>robullschmidt</u>
City: <u>Virginia City</u> State: <u>NV</u> Zip: <u>89440</u>	Cell: <u>@hotmail.com</u>
<p>Specific action by the County being appealed:</p> <p><i>Director or subordinate "decided" that "Grandfathering" does not apply to an issue concerning an accessory use and a primary use on two contiguous parcels which was addressed in code in 2014 to these two contiguous parcels that have functioned as one unit for decades</i></p>	
<p>Describe why the decision should or should not have been made:</p> <p><i>These two parcels have functioned as one unit including including a primary use as a residence and are normal adjoining adjoining yard accessory uses for many years before the county starting addressing this type of of situation in 1996 and again in 2014</i></p>	

Cite the specific outcome you are requesting with this appeal:

"Grandfathering" of accessory use on the adjacent parcel to the parcel that has the primary use be affirmed! Administrative penalty notice and penalty be rescinded! Damages for abuse of process & the affliction of duress in the amount of \$5,000 be paid to appellant Gary Schmidt!

Describe your basis as an aggrieved party. The basis must include the nature and location of your property interest and the manner in which the property interest will be affected by the appealed decision.

Two contiguous residential parcels owned by me that have functioned as one unit for years!

Did you speak at the public hearing when this item was considered?

Yes No N/A

Did you submit written comments prior to the action on the item being appealed?

Yes No N/A

Appellant Affidavit

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Gary Schmidt being duly sworn, depose, and say that I am an appellant
(print name)

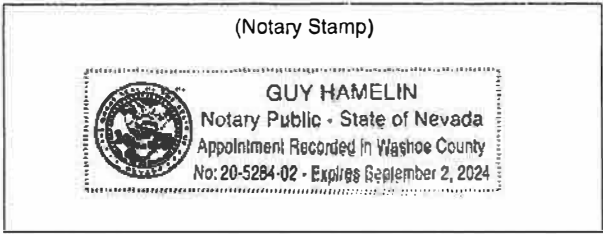
seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Building Division.

Signed [Signature]
Address P.O. Box 865
Virginia City NV 89440
Phone: 775-622-4670

Subscribed and sworn to before me this
21st day of December, 2023.

[Signature]
Notary Public in and for said county and state

My commission expires: 9/2/24



NRS 278.310 Appeals: Persons entitled to appeal to board of adjustment; procedure; appeals from decisions of board of adjustment; alternative procedure if board of adjustment has not been created.

1. Except as otherwise provided in subsection 4, appeals to the board of adjustment may be taken by:

(a) Any person aggrieved by his or her inability to obtain a building permit

or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation

or any regulation relating to the location or soundness of structures.

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), WCC Section 110.912.10(j), and NRS 278.310.</p>	
<input type="checkbox"/> Administrative Hearing Officer	<input type="checkbox"/> County Building Official
<input checked="" type="checkbox"/> Director, Planning and Building Division	<p>Fire Code Official</p> <input type="checkbox"/> North Lake Tahoe Fire Protection District <input type="checkbox"/> Truckee Meadows Fire Protection District
<input type="checkbox"/> Director, Engineering and Capital Projects Division	
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>12-21-23</u>	
Date of action by County: <u>December 4th through present</u>	
Date of decision for which appeal is being filed: <u>unknown N/A</u>	
Project Location: <u>235 + 245 Main Street - Gerlach</u>	
Appellant Information	
Name: <u>Gary Schmidt</u>	Phone: <u>775 622-4670</u>
Address: <u>P.O. Box 861</u>	Fax:
	Email: <u>nobullschmidt</u>
City: <u>Virginia City</u> State: <u>NV</u> Zip: <u>89440</u>	Cell: <u>@hotmail.com</u>
Specific action by the County being appealed: <u>"Silent"? denial of 30 day extension of Administrative Enforcement "warning notice" requested on 12/14/23!</u>	
Describe why the decision should or should not have been made: <u>They did not have to grant the requested 30 day extension but they had a fiduciary duty and responsibility to respond to the request giving me notice of denial so that I could appeal any decision to deny under NRS 278.</u>	

Cite the specific outcome you are requesting with this appeal:

Grant to 30 day extension & received the Administrative penalty notice & the Penalty!
Retraining for those involved!!

Describe your basis as an aggrieved party. The basis must include the nature and location of your property interest and the manner in which the property interest will be affected by the appealed decision.

I had requested 30 day extension & never got an answer!

Did you speak at the public hearing when this item was considered?

Yes *N/A*
 No *N/A*

Did you submit written comments prior to the action on the item being appealed?

Yes *N/A*
 No *N/A*

Appellant Affidavit

STATE OF NEVADA)
)
COUNTY OF WASHOE)

I, Gary Schmidt being duly sworn, depose, and say that I am an appellant
(print name)

seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Building Division.

Signed: *Gary Schmidt*

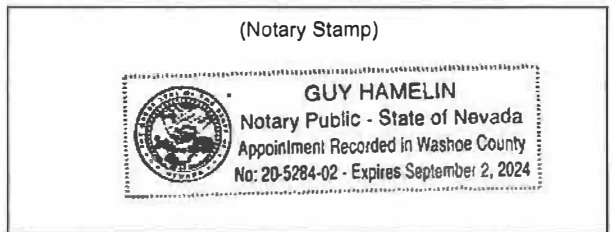
Address: P.O. Box 861
Virginia City NV 89410

Phone: 775-672-4670

Subscribed and sworn to before me this
21st day of December, 2023.

[Signature]
Notary Public in and for said county and state

My commission expires: 9/2/24



NRS 278.310 Appeals: Persons entitled to appeal to board of adjustment; procedure; appeals from decisions of board of adjustment; alternative procedure if board of adjustment has not been created.

1. Except as otherwise provided in subsection 4, appeals to the board of adjustment may be taken by:

(a) Any person aggrieved by his or her inability to obtain a building permit

or by the decision of any administrative officer or agency based upon or made in the course of the administration or enforcement of the provisions of any zoning regulation

or any regulation relating to the location or soundness of structures.

df

Begin forwarded message:

From: gary schmidt <nobullschmidt@hotmail.com>
Subject: Schmidt Appeal
Date: July 12, 2024 at 10:21:20 PM PDT
To: Elizabeth Hickman <ehickman@da.washoecounty.gov>, "Eric P. Brown" <epricebrown@washoecounty.gov>, David Solaro <DSolaro@washoecounty.us>, Jeanne Herman <jherman@washoecounty.gov>, "ecrump@washoecounty.gov" <ecrump@washoecounty.gov>, "Kelly D. Mullin" <kmullin@washoecounty.gov>, "rpierce@washoecounty.gov" <rpierce@washoecounty.gov>, "ahill@washoecounty.gov" <ahill@washoecounty.gov>
Cc: Luke Busby Lawyer Busby <luke@lukeandrewbusbyltd.com>, Joe Hart <jmhart@chestv.com>

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I and others that requested hard copies of the complete packet for said hearing including all the supporting materials did not receive any documents identified as Exhibit H even though the packet submitted by the County identified Exhibit H as "Record on Appeal" which presumptively would be the complete record of the Administrative Hearing since that is what has been appealed. Please Immediately provide me with a copy of Exhibit H.

Additionally, I sense it would appear you're making a general response to my communication of July 10th, 2024 to various agents of the County. You have failed to address my Public Records Request contained within! The County now has 3 days left to respond appropriately to said Public Records Request! I believe it was clear from my request that it is to include the complete "Record on Appeal" of the Administrative Hearing to include audio tapes and/or transcripts of both administrative hearings and all documents submitted for the Administrative Hearing and/or otherwise reviewed by the Administration Hearing Officer and/or any agents of the county in preparation for that administrative hearing. I further stated I wanted copies of any and all communications or correspondences between any agents of the County at any time related to that administrative hearing and/or generally related to or addressing the subject matter of the original alleged code infraction. The administrative hearing process was created by the County and is a function of the County and is administered by the County and therefore my Public Records Request has been appropriately made. Please include in your response a certification by a Custodian of Records showing that the responsive documents are authentic, as required by NRS 239.030.

You have also failed to address my allegations that Mr. Giesinger knowingly gave false testimony live at the hearing on July 8 in regards to when I had raised the issue of a continuance of the administrative hearing scheduled for February 15th, for the purpose of conducting an in-person hearing. (See Voice message audio tapes submitted)

You also failed to acknowledge or respond to my allegation that the statement via the County's index from their staff report which was identified as Exhibit C is FALSE TESTIMONY in that most of the 34 pages submitted by the County and identified as Exhibit C (Documents Submitted by Appellant at Hearing) were NOT submitted by the Appellant at the hearing or otherwise. Knowing Giesinger's Mode of Operation (MOA) I would suspect that this was an intentional act by Giesinger to confuse and deceive the BOA, but in any event it is certainly false testimony!

In regards to your banter about notice of an appeal process directly to District Court, along the way there was no categorical statement that it was the position of the County that this was the ONLY appeal process. I made note early on, and on more than one occasion, that this may be an error of omission or was at a minimum misleading because County Code 110.912.10(J)(9)

"Appeals of Board of Adjustment Decisions. A party of record who is aggrieved by a decision of the Board of Adjustment may:

- (i) Seek judicial review of the decision by filing a petition in the Second Judicial District Court for the State of Nevada within 25 days from the date that the decision becomes final as specified under paragraph (8) above, and pursuant to the rules and rulings of the Court; or,
- (ii) Appeal the decision to the Board of County Commissioners in accordance with Section 110.912.20 of this Article."

This as well as State Law (NRS 278.3195) also provide for the option of an appeal of any action/decision of the BOA to the County Commission. These two options of both County Code and State Law are not mutually exclusive !

Time is of the essence in this matter, so I look forward to your immediate response.

Certainly no hearing can proceed until the requested public documents have been provided and can be submitted for said hearing in a manner as so the BOA has time to review them! Again please note that the County (Giesinger) in their staff report via the index indicated they were submitting the "Record on Appeal" documents but failed to do so.

Gary Schmidt

Sent from my iPhone

Begin forwarded message:

From: gary schmidt <nobullschmidt@hotmail.com>

Subject: Schmidt BOA Hearing / Place in Hearing record WVIO-PLA23-0127

Date: July 10, 2024 at 1:04:01 PM PDT

To: "Kelly D. Mullin" <kmullin@washoecounty.gov>, "Eric P. Brown" <epricebrown@washoecounty.gov>, "ecrump@washoecounty.gov" <ecrump@washoecounty.gov>, David Solaro <DSolaro@washoecounty.gov>, "Supervisorinvestigations@da.Washocounty.gov" <Supervisorinvestigations@da.Washocounty.gov>

Cc: "rpierce@washoecounty.gov" <rpierce@washoecounty.gov>, "dchristensen@washoecounty.gov" <dchristensen@washoecounty.gov>, "leohorishny@gmail.com" <leohorishny@gmail.com>, "peter@cpnv.com" <peter@cpnv.com>, "kjulian@washoecounty.gov" <kjulian@washoecounty.gov>

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Report Suspicious

The county has agents that have now given false testimony to the Board of Adjustment (BOA) and elsewhere multiple times to include the following; The index on page 3 of the Staff Report for the BOA Hearing which states under Exhibit Contents for Exhibit C "Documents Submitted by Appellant at Hearing" is a false statement ! Exhibit C contains many documents not submitted by the appellant at the hearing. It actually contains many documents that are communications between various agents of the county that Appellant has never seen before and that most certainly were not submitted by the Appellant. While it does include some of the Exhibits numbered 6 to 13 that Appellant did submit at the administrative hearing they are not clearly identified or in anyway properly organized and are degraded by their inclusion amongst a bunch of information and documents that were NOT submitted by Appellant at the hearing, perhaps intentionally to confuse the Board of Adjustment !

In addition Mr. Giesinger testified falsely in violation of NRS 241.0363 2. punishable by a year in prison when he stated under the item for a consideration of a continuance of the BOA hearing on July 8th that Mr. Schmidt only asked for a continuance of the Administrative Hearing

scheduled for February 15th the day before the hearing. This was discussed at length when the Hearing Officer considered whether to continue the Administrative Hearing from February 15th in order to provide for an in-person hearing and there was undisputed testimony that Defendant had requested an in-person hearing more than a week before the hearing. Guesinger was witness to all that testimony ! He was witness to the fact that the Hearing Officer granted the extension of time based upon the evidence presented of a timely request for a continuance to provide for a in-person hearing and therefore when Guesinger stated to the Board of Adjustment that Mr. Schmidt only made the request the day before the hearing he knowingly gave false testimony to the Board of Adjustment and he should be prosecuted.

Also for Exhibit H identified as a "Record on Appeal" on page 3 in the index of the Staff Report none of the materials (which will be voluminous) were included in any documents provided the Appellant and it's believed may not have been included in the packet provided to the Board of Adjustment ! Based upon these three items alone of errors and omissions and false testimony this nonsense (abuse of process by the county) should stop now and this action should be immediately dismissed !

There have been multiple continuances and extensions of time granted during this whole process all as a result of violations of due process, violations of state law, and false statements and testimony all by agents of the county ! The Administrative Hearing Officer acknowledged on the record various inconsistencies and deficiencies on the part of the county and stated on the record that the administrative hearing process was a "work in progress" and apologized and stated that they will be making some corrections and modifications to the system. You may refer to the various motions made by the appellant during the administrative hearing process pointing out these inconsistencies and deficiencies by the county.

If this action is not immediately dismissed request/demand is hereby made to re-draft and reconstruct the Index and it's contents in regards to the Exhibits to include page numbers to make the index more functional, to correct all the errors and omissions in Exhibit C (which constituted false testimony), and provide the "Record on Appeal" identified as Exhibit H to include complete transcripts as well as copies of the actual recordings of both of the Administrative Hearings and also to including post hearing motions and responses and also to include all communications between and among any agents of the county related to this entire matter properly identified and indexed.

In addition consider this a Public Records Request for all these referenced documents !

Gary Schmidt

Appellant

Nobullschmidt@hotmail.com

Sent from my iPhone

From: gary schmidt <nobullschmidt@hotmail.com>

Date: July 18, 2024 at 2:12:39 PM PDT

To: "Hickman, Elizabeth" <ehickman@da.washoecounty.gov>, "Eric P. Brown" <epricebrown@washoecounty.gov>, David Solaro <DSolaro@washoecounty.us>, "Kelly D. Mullin" <kmullin@washoecounty.gov>, "Kelly D. Mullin" <kmullin@washoecounty.gov>, "Chad ; Kremers" <CGiesinger@washoecounty.gov>
Cc: Jeanne Herman <jherman@washoecounty.gov>, rpierce@washoecounty.gov, dchristensen@washoecounty.gov, kjulian@washoecounty.gov, peter@cpnv.com, leohorishny@gmail.com, ahill@washoecounty.gov, Kristofor Swanson <kris@swansonlane.com>, Joe Hart <jmhart@sbgvtv.com>, Luke Busby Lawyer Busby <luke@lukeandrewbusbyltd.com>

Subject: Re: Schmidt BOA Hearing / Place in Hearing record WVIO-PLA23-0127

I have not as of yet been able to review the partial provision of materials requested via Public Records Request as I am on the road and am working off my phone and the files are too voluminous to download !

However, I again request to please immediately correct the staff report of the July 8th Agenda

Item 8A issued for my appeal to the BOA of the administrative hearing order by submitting the materials which Giesinger had identified as Exhibit H (Record on Appeal) in said staff report but failed to include !!

The “Record on Appeal” even though it was allegedly included because it was identified as Exhibit H was NOT provided !Obviously when an order of the administrative hearing officer is appealed all the materials from the original administrative hearing must be included for review by any appellant body.

Also, I again request that Exhibit C of said staff report be corrected as Kiesinger gave false testimony to the BOA by his staff report in that Exhibit C identified as “Documents Submitted by Appellant at Hearing” contains mostly documents NOT submitted by Appellant at the hearing. This false testimony by Kiesinger at a minimum confused the BOA and may potentially have prejudiced their review of the record. Once a bell rings information(false) it can not be unring ! Please also immediately provide me a printed copy of the materials that were not included in the “supporting materials” I (and others) requested prior to the July 8

hearing. In addition to establish a clear record for any potentially necessary District Court action once any and all corrections have been made to the staff report and its supporting materials provide me another copy of the complete new packet !

Please also remember that I requested within my public records request Certified Copies of said records as is provided for under the Public Records Law !

The failure to post the complete “supporting materials” (i.e. Exhibit H) prior to the July 8th hearing is also an issue ! All these failures constitute multiple violations of the Open Meeting Law.

Please IMMEDIATELY submit all the supporting materials (Record on Appeal) to the BOA members along with all the communications related to said “errors and omissions” by the County including but not limited to the entire string of emails whereas I have identified the County’s deficiency and had to resort to a public records request to force the County to correct the record and provide the complete “Record on Appeal” that their

Exhibit Index (H) claimed to have provided but did not ! These materials MUST all be included for the hearing for review by the BOA and any and all interested parties

Since Exhibit H is voluminous and I presume contains either transcripts and/or audios/videos of five hours plus of hearings requested and the public records requested have not yet totally been provided It is difficult to see how the BOA and other interested parties will have time to obtain and then review these materials prior to the scheduled August 1 hearing unless the County acts very expediently which they have certainly failed to do so in the past

I will be making a motion and/or requesting Immediately prior to said hearing that said alleged code infractions be dismissed and the appeal be granted based upon multiple due process violations and multiple open meeting law violations and I hereby make the request that this be considered prior to the hearing by both the District Attorney's Office and the Board of Adjustment !

Sent from my iPhone



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 N. Carson St.
Carson City, NV 89701
Phone: 775-684-1100
Fax: 775-684-1108

www.ag.nv.gov

For official use only.

Received by: _____

Date Received: _____

Complaint Type: _____

Referred to: ACS CI

FPU OAK NEU

MFCJ JIS WCRU

Other: _____

OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law - NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: Mr. Mrs. Ms Miss

Your Name: Schmidt Gary A.

Your Address: 324 N. "C" Street Virginia City NV PO Box 861

Your Phone Number: 775 622-4670 State 89440 Zip

Email: nobullschmidt@hotmail.com Home Cell Work Fax

Call me between 8am-5pm at: Home Cell Work

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Washoe County Community Services Department
(i.e., specific board, commission, agency, or person(s) etc.) Chad Giesinger AICD

Date of meeting where alleged violation occurred (mm/dd/yyyy): _____

SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is

Agenda Item 10 D Washoe County Board of Adjustment,

August 1, 2024

Washoe County Community Services Department and Chad Giesinger failed to post on the county website a complete "copy" of the "supplemental materials" as is required by NRS 241.020 9. Their posting did not include "Exhibit H" "Record on Appeal" as identified in the index on page 3 of their posting.

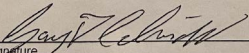
I am therefore asking that the item 10 D appeal be granted and that the underlying alleged minor code infraction which poses no threat to the public be dismissed !

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

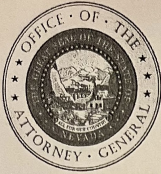
I understand that the Attorney General is not my private attorney, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.

Signature


7-30-24
Date (mm/dd/yyyy)

Print Name

Gary R. Schmidt



**STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL**

100 N. Carson St.
Carson City, NV 89701
Phone: 775-684-1100
Fax: 775-684-1108

www.ag.nv.gov

For official use only.

Received by: _____

Date Received: _____

Complaint Type: _____

Referred to: BCP GI
 IFU OML MFU
 MFCU PIU WCFU
(Stamp here)

OPEN MEETING LAW COMPLAINT FORM

The information you report on this form may be used to help us investigate alleged violations of Nevada's Open Meeting Law – NRS chapter 241. When completed, mail or fax your form and supporting documents (if any) to the office location listed above. Upon receipt, your complaint will be reviewed by a member of our staff. The length of this process can vary depending on the circumstances and information you provide with your complaint. The Attorney General's Office may contact you if additional information is needed. If you have a claim against the State of Nevada, complete the Tort Claim Form found on our website.

INSTRUCTIONS: Please TYPE/PRINT your complaint in dark ink. You must write LEGIBLY. All fields MUST be completed.

SECTION 1.

COMPLAINANT INFORMATION

Salutation: Mr. Mrs. Ms. Miss

Your Name: Schmidt Gary R.

Your Address: 324 N. "C" Street Virginia City NV PO Box 861

Address City State Zip

Your Phone Number: 775 622-4670 89440

Home Cell Work Fax

Email: nobullschmidt@hotmail.com

Call me between 8am-5pm at: Home Cell Work

Age: Under 18 18-29 30-39 40-49 50-59 60 or older

ALLEGED OPEN MEETING LAW VIOLATION IS AGAINST

Name of Public Body: Washoe County Community Services Department
 (i.e., specific board, commission, agency, or person(s) etc.) Chad Giesinger AICD

Date of meeting where alleged violation occurred (mm/dd/yyyy): _____

SECTION 2.

Please detail the specific violations against the board, commission, or agency or person listed in Section 1. Include the who, what, where, when, and why of your complaint. You may use additional sheets if necessary. Remember the Open Meeting Law applies only to public bodies (see NRS 241.015 for definition) and only to members of public bodies.

My complaint is:

Agenda item 10 D Washoe County Board of Adjustment, August 1, 2024

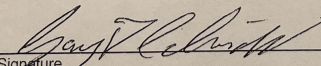
Chad Giesinger AICP of the Washoe County Community Services Department knowingly testified falsely by the written submission of the staff report prepared by him in violation of NRS 241.0353 2. In the index on page 3 of the staff report he identified Exhibit C as "Documents Submitted by Appellant at Hearing". This would be the Administrative Hearings held on February 16 and continued to April 5. In fact most of the pages identified as submitted by Appellant had never even been seen by Appellant prior to the posting of Exhibit C of the staff report by Kiesinger and certainly were not submitted by the Appellant ! Therefore this constituted misrepresentation of facts knowingly by Giesinger which is not only an Open Meeting law violation but also a crime for which Kiesinger should be investigated and potentially prosecuted !

Due to this Open Meeting Law Violation I am asking that the appeal sought in item 10 D be granted and that the underlying alleged minor code infraction that presents no threat to the public be dismissed.

SECTION 3.

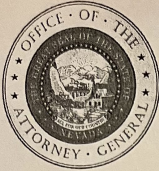
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Signature

Gary R. Schmidt
Print Name

7-30-24
Date (mm/dd/yyyy)



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Complaint
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 MFCU PIU WCFU
(Stamp here)

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Last First MI Address City State Zip

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Email: nobullschmidt@hotmail.com Home Cell Work Fax

Call me between 8am-5pm at: Home Cell Work

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My complaint is:

Agenda item 10 D Washo county board of adjustment August 1, 2024

I, Gary Schmidt, requested a "copy" of the "supporting materials" for this meeting on Monday, July 29, 2024. When I received the documents they were incomplete! "Exhibit H" "Record on Appeal" as identified on page 3 of the materials was missing! There was a note on page 3 under the Exhibit H item of some links where allegedly I could go and view some files or video tapes. The open meeting ~~law~~ under NRS 241.020 7. denotes that any person is entitled to receive a "copy" of supporting materials! A link is not a copy !! I have no capacity technologically to view these videos and in any event I am entitled to a copy not a link !!

Due to this open meeting law violation I am asking that the appeal sought under item 10 D be granted and that the underlying alleged minor code infraction that presents no danger to the public be dismissed.

SECTION 3.

Sign and date this form. The Attorney General's Office cannot process any unsigned, incomplete, or illegible complaints.

I understand that the Attorney General is **not my private attorney**, but rather represents the public. I am filing this complaint to notify the Attorney General's Office of alleged violations of the Open Meeting law by public bodies or individual members of a public body. I understand that the information contained in this complaint may be used by the Attorney General to investigate the public body named in my complaint. I understand that the Attorney General has statutory authority to require public bodies to comply with the Open Meeting Law. In order to resolve your complaint, we may send a copy of this form to the public body about whom you are complaining. I authorize the Attorney General's Office to send my complaint and supporting documents to the public body identified in this complaint.

Signature

Print Name

7-30-24

Date (mm/dd/yyyy)

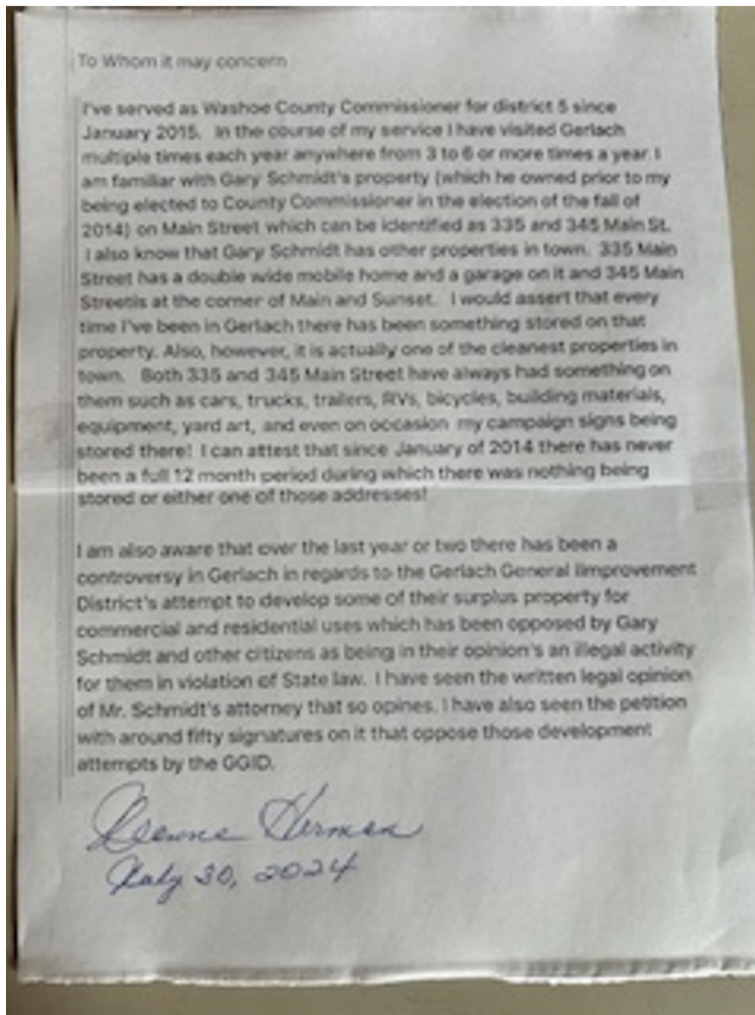
From: [gary schmidt](#)
To: [Albarran, Adriana](#); [Brown, Eric P.](#); [St. Jacques, Diane](#); [Solaro, David](#); [Mullin, Kelly D.](#); [Lloyd, Trevor](#); [Pierce, Rob](#); [Christensen, Don](#); [Julian, Kathie M.](#); [peter@cpnv.com](#); [leohorishny@gmail.com](#)
Subject: Board of Adjustment Hearing August 1st, 2024 Item 10 D
Date: Wednesday, July 31, 2024 3:56:29 PM

This Message Is From an External Sender

This message came from outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.

[Report Suspicious](#)

Please Immediately submit this document for the record for the above hearing !



(Figure 2)

Sent from my iPhone

I've served as Washoe County Commissioner for district 5 since January 2015. In the course of my service I have visited Gerlach multiple times each year anywhere from 3 to 6 or more times a year. I am familiar with Gary Schmidt's property (which he owned prior to my being elected to County Commissioner in the election of the fall of 2014) on Main Street which can be identified as 335 and 345 Main St. I also know that Gary Schmidt has other properties in town. 335 Main Street has a double wide mobile home and a garage on it and 345 Main Street is at the corner of Main and Sunset. I would assert that every time I've been in Gerlach there has been something stored on that property. Also, however, it is actually one of the cleanest properties in town. Both 335 and 345 Main Street have always had something on them such as cars, trucks, trailers, RVs, bicycles, building materials, equipment, yard art, and even on occasion my campaign signs being stored there! I can attest that since January of 2014 there has never been a full 12 month period during which there was nothing being stored or either one of those addresses.

I am also aware that over the last year or two there has been a controversy in Gerlach in regards to the Gerlach General Improvement District's attempt to develop some of their surplus property for commercial and residential uses which has been opposed by Gary Schmidt and other citizens as being in their opinion's an illegal activity for them in violation of State law. I have seen the written legal opinion of Mr. Schmidt's attorney that so opines. I have also seen the petition with around fifty signatures on it that oppose those development attempts by the GGID.

Gene Herman
July 30, 2024

From: [gary schmidt](#)
To: [Albarran, Adriana](#); [Brown, Eric P.](#); [St. Jacques, Diane](#); [Solaro, David](#); [Mullin, Kelly D.](#); [Lloyd, Trevor](#); [Hickman, Elizabeth](#); [Crump, Eric S](#); [Pierce, Rob](#); [Christensen, Don](#); [Julian, Kathie M.](#); [peter@cpnv.com](#); [leohorishny@gmail.com](#)
Cc: [Kristofor Swanson](#)
Subject: SUGGESTED MOTION
Date: Thursday, August 1, 2024 9:40:54 AM

This Message Is From an External Sender

This message came from outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.

[Report Suspicious](#)

SUGGESTED MOTION

I move that the property at 345 Main Street in Gerlach legally established the use of storage prior to the changes in the County Code adopted on August 19, 2016 based on the definition of “parcel of land” in the Development Code up until that time which would include both 335 Main Street and 345 Main Street being combined units of land defined as a “parcel” having a primary use of a residence. I further move that as of August 19, 2016 when the definition of “parcel of land” in the Development Code changed to conform with the definition long used by the Assessor’s Office and those two individual units of land became separate parcels the use of storage on 345 Main Street

**WVIO-PLA23-0127
APPLICANT COMMENT**

became a legal nonconforming use. This legal nonconforming use of storage can continue on 345 Main Street until such time as the storage ceases for a 12 month period or the property is sold to another party and the two properties no longer have common ownership.

Sent from my iPhone