



WASHOE COUNTY

Integrity Communication Service

www.washoecounty.us

STAFF REPORT

BOARD MEETING DATE: *December 17, 2019*

DATE: Wednesday, December 11, 2019

TO: Board of County Commissioners

FROM: Nathan Edwards, Deputy Washoe County District Attorney,
337-5700, nedwards@da.washoecounty.us

THROUGH: Cathy Hill, Washoe County Comptroller and ex officio Risk Manager,
328-2563, chill@washoecounty.us, and Paul Lipparelli, Assistant
Washoe County District Attorney, Civil Division, 337-5700,
plipparelli@da.washoecounty.us

SUBJECT: Discussion and possible approval of a settlement of Lakes at Lemmon Valley, LLC vs. Washoe County (2nd Judicial District Court case number CV18-02374 and associated Nevada Supreme Court case numbers 79469 and 79788), a judicial review case in which this Board denied a 98-lot single family residential subdivision along the eastern edge of Lemmon Drive just south of the intersection with Military Road (APN 552-210-18). The settlement agreement follows a settlement conference at the Supreme Court on November 13, 2019, and is subject to approval by a majority of this Board. Settlement terms include the following:

- Authorize the withdrawal and dismissal of the county's appeal,
- Effective upon remittitur from the Nevada Supreme Court, approve the subdivision pursuant to the district court's July 2019 order overturning this Board's denial of the tentative map;
- Prohibit any units from being sold within the subdivision before December 1, 2021;
- Require a median device proposal by the developer's engineer to the Regional Transportation Commission that would allow a left hand turn out of the subdivision;
- If the median device is okayed by RTC, require the developer to construct it;
- Require the developer to waive all claims for damages arising out of or related to the subject matter of this litigation, including but not limited to any claim for damages based on the alleged loss of an approximately \$2 million sale due to the litigation;
- Require the parties to bear their own costs and attorney's fees;
- Provide other matters pertinent to the resolution of the case; and
- Authorize the Chair to sign a settlement agreement and any other documents necessary to effectuate the settlement. (Commission District 5)

SUMMARY

This is a possible settlement, attached as Exhibit A to this staff report, of a judicial review lawsuit filed by Lakes at Lemmon Valley, LLC (Lakes) against Washoe County in December 2018. The gist of the case is that the county's November 2018 denial of a 98-lot single family residential subdivision along the eastern edge of Lemmon Drive just south of its intersection with Military Rd. was not based on substantial evidence and was therefore arbitrary and capricious. After briefing in the district court, the county's denial was overturned and the matter ordered remanded to the county commission for approval of the subdivision. This Board voted to appeal that order, and the district court stayed its order pending the appeal. Lakes cross-appealed to challenge the stay. The case is currently pending in the Nevada Supreme Court and has been assigned to the settlement program.

Washoe County Strategic Objective supported by this item: Stewardship of our Community

PREVIOUS ACTION

- March 15, 2018: Lakes filed its application for approval of a tentative map to create a subdivision with 98 single family residential lots in Lemmon Valley.
- May 1, 2018: Planning Commission denied Lakes' application due to lack of adequate access.
- May 11, 2018: Lakes appealed the Planning Commission's denial to this Board.
- November 13, 2018: this Board affirmed the Planning Commission's decision and denied the tentative subdivision map.
- December 4, 2018: Lakes filed its judicial review lawsuit in district court, CV18-02374.
- July 19, 2019: the district court overturned this Board's denial and orders the subdivision remanded to this Board for approval with conditions.
- August 20, 2019: this Board authorized an appeal of the district court's order.
- August 20, 2019: the county filed its appeal to the Nevada Supreme Court.
- November 13, 2019: Settlement Judge David Wasick conducted a settlement conference at the Nevada Supreme Court in Carson City.

BACKGROUND

In November 2018, this Board denied Lakes' application for approval of a 98-lot single family residential subdivision along the eastern edge of Lemmon Drive just south of its intersection with Military Rd. The Board's denial technically was an affirmation of the planning commission's earlier denial, which was based on lack of adequate access on account of the "right-in/right-out" configuration of the ingress and egress for the neighborhood. Lakes challenged the denial in district court by judicial review petition in December 2018.

After briefing and oral argument, the district court overturned this Board and ordered the matter remanded for approval of the subdivision. The court found that no substantial evidence supported the denial. Therefore, the court concluded the denial was

arbitrary and capricious. However, the court denied Lakes' application for attorney's fees in the amount of approximately \$50,000, reasoning primarily that the county had not acted in bad faith.

At a public meeting, this Board voted (3-1) to appeal the district court's decision. On motion of the county, the court agreed to stay its order pending the county's appeal. Lakes then appealed, as well, in order to challenge the stay.

On appeal, the case was assigned to the Nevada Supreme Court's settlement Program. David Wasick was assigned to be the Settlement Judge. A settlement conference was held at the Nevada Supreme Court in Carson City on November 13, 2019. Lakes attended with counsel. The county also attended with counsel, Commissioners Herman and Lucey present along with the county risk manager.

After several hours of back and forth, a tentative settlement was reached for possible approval by this Board. If approved, the settlement would result in the appeals being dismissed and the approval of the subdivision by this Board pursuant to the district court's original order from July of 2019. Lakes would be prohibited from closing sale on any lots in the subdivision any earlier than December 1, 2021, in order to allow the county to continue working on various planning and development issues in Lemmon Valley. Lakes would also be required to submit an engineering proposal to the Regional Transportation Commission, which has jurisdiction over Lemmon Drive, for a median device of some kind that would allow a left turn movement by traffic from the subdivision onto Lemmon Drive—i.e., southbound. If RTC okays the proposal, the developer has to build it as part of the project. If not, then the current ingress and egress proposal would go into effect. All parties would bear their own costs and attorney's fees.

And Lakes would waive any claim of damages related to the subject matter of the lawsuit, including any claim for damages based on the alleged collapse of a pending \$2 million sale of the property on account of the litigation. Lakes now claims damages somewhere around \$3 million. The settlement, however, would result in all of Lakes' damages claims being waived.

A copy of the agreement is attached hereto as Exhibit A. If approved, it would be signed by the chair. And counsel for Lakes and counsel for the county would then file a stipulation to withdraw the appeals in the Nevada Supreme Court, after which a remittitur would be issued to return the case to the jurisdiction of the district court. The remittitur would act to lift the district court's stay of its original order.

FISCAL IMPACT

Should the board approve the settlement as outlined, there will be no fiscal impact.

RECOMMENDATION

It is recommended this Board approve a settlement of Lakes at Lemmon Valley, LLC vs. Washoe County (2nd Judicial District Court case number CV18-02374 and associated Nevada Supreme Court case numbers 79469 and 79788), a judicial review

case in which this Board denied a 98-lot single family residential subdivision along the eastern edge of Lemmon Drive just south of the intersection with Military Road (APN 552-210-18). The settlement agreement follows a settlement conference at the Supreme Court on November 13, 2019, and is subject to approval by a majority of this Board. Settlement terms include the following:

- Authorize the withdrawal and dismissal of the county's appeal,
- Effective upon remittitur from the Nevada Supreme Court, approve the subdivision pursuant to the district court's July 2019 order overturning this Board's denial of the tentative map;
- Prohibit any units from being sold within the subdivision before December 1, 2021;
- Require a median device proposal by the developer's engineer to the Regional Transportation Commission that would allow a left hand turn out of the subdivision;
- If the median device is okayed by RTC, require the developer to construct it;
- Require the developer to waive all claims for damages arising out of or related to the subject matter of this litigation, including but not limited to any claim for damages based on the alleged loss of an approximately \$2 million sale due to the litigation;
- Require the parties to bear their own costs and attorney's fees;
- Provide other matters pertinent to the resolution of the case; and
- Authorize the Chair to sign a settlement agreement and any other documents necessary to effectuate the settlement.

POSSIBLE MOTION

The following motion is offered for consideration:

I move to approve a settlement of Lakes at Lemmon Valley, LLC vs. Washoe County (2nd Judicial District Court case number CV18-02374 and associated Nevada Supreme Court case numbers 79469 and 79788), a judicial review case in which this Board denied a 98-lot single family residential subdivision along the eastern edge of Lemmon Drive just south of the intersection with Military Road (APN 552-210-18). The settlement agreement follows a settlement conference at the Supreme Court on November 13, 2019, and is subject to approval by a majority of this Board. Settlement terms include the following:

- Authorize the withdrawal and dismissal of the county's appeal,
- Effective upon remittitur from the Nevada Supreme Court, approve the subdivision pursuant to the district court's July 2019 order overturning this Board's denial of the tentative map;
- Prohibit any units from being sold within the subdivision before December 1, 2021;
- Require a median device proposal by the developer's engineer to the Regional Transportation Commission that would allow a left hand turn out of the subdivision;
- If the median device is okayed by RTC, require the developer to construct it;

- Require the developer to waive all claims for damages arising out of or related to the subject matter of this litigation, including but not limited to any claim for damages based on the alleged loss of an approximately \$2 million sale due to the litigation;
- Require the parties to bear their own costs and attorney's fees;
- Provide other matters pertinent to the resolution of the case; and
- Authorize the Chair to sign a settlement agreement and any other documents necessary to effectuate the settlement.