



WASHOE COUNTY

Integrity Communication Service

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STAFF REPORT

BOARD MEETING DATE: May 28, 2019

DATE: April 26, 2019

TO: Board of County Commissioners

FROM: Julee Olander, Planner, Planning and Building Division, Community Services Department, 328-3627, jolander@washoecounty.us

THROUGH: Mojra Hauenstein, Architect, AICP Planner, LEED AP, Director of Planning and Building, 328-3619, mahuenstein@washoecounty.us

SUBJECT: Public hearing: Appeal of the Washoe County Board of Adjustment's approval of Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole).

The project is for:

1. The construction of a new wireless cellular facility consisting of a 117-foot high stealth monopine structure (aka cell phone tower disguised to resemble a pine tree) designed as a collocation facility; and
2. A minor deviation to vary the height standard and increase the monopine by 5 feet, to a total height of 117 feet.

The Board of County Commissioners may affirm, reverse, or modify the decision of the Board of Adjustment.

The appellants are Robert Holman, Wayne Ford, Peter Todoroff, Ronda Tycer, Jack Dalton, Amanda Bloomer, and Michael and Helen Abel. The property owner is KBS Inc. and applicant is Incline Partners, LLC. The monopole is proposed to be located on a vacant parcel, approximately 100 feet south of the intersection of Incline Way and Village Blvd. on the west side of Village Blvd. approximately 30 feet west of the easterly parcel line bordering Village Blvd. The Assessor's Parcel Number is 132-221-11. The Master Plan Category is Commercial (C) and the Regulatory Zone is General Commercial (GC). The project is located within the Tahoe Area Plan and within the Incline Village Crystal Bay Citizen Advisory Board boundary. The request comes under WCC Chapter 110, Article 324 Communication Facilities; Article 810, Special Use Permits and Article 804, Minor Deviations. (Commission District 1.)

SUMMARY

The appellants are seeking to overturn the Washoe County Board of Adjustment's (BOA) approval on April 4, 2019. The appellants have appealed the approval providing justification for denial that the application did not meet any of the four findings- first finding

AGENDA ITEM # _____

(Consistency), second finding (No Detriment), third finding (Site Suitability) and fourth finding (Issuance Not Detrimental). The BOA was able to make all of the findings.

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

PREVIOUS ACTION

On March 4, 2019, the special use permit (SUP) was heard by the Incline Village/Crystal Bay Citizen Advisory Board (IVCB CAB). The CAB made no specific recommendation and recommended to forward the CAB minutes. There were numerous people at the meeting who spoke. (See Attachment B, Exhibit D)

On April 4, 2019, the SUP was considered in a public hearing, before the BOA. The BOA took action to approve the SUP, with two members in favor and one against. The board was able to make all of the findings.

BACKGROUND

The Washoe County Board of Adjustment approved the proposed SUP based on the ability to make all of the findings required by Washoe County Code (WCC) Section 110.804.25. The appellant's application indicates that none of the findings were met. (See Attachment E)

The parcel where the tower is proposed to be located has a Regulatory Zoning of General Commercial (GC). This zoning is identified in WCC 110.106.15(r) as "intended to create and preserve areas for businesses that provide a variety of wholesale and retail goods and services and serve a community or regional market." Washoe County Code Article 324 provides the requirements for communication facilities. Section 110.324.50(e)(1) addresses monopole antennas and specifically provides that "Antennas shall be allowed with approval of a Special Use Permit in..." followed by the list of regulatory zones, including General Commercial (GC).

Washoe County is limited by federal and state rules reviewing "personal wireless service facility", which is protected by federal law (Telecommunications Act of 1996, 47 U.S.C. Section 332 (c) (7)) and state law (NRS 707.550 – 707. 920). Generally, federal and state laws provide that when regulating the placement, construction or modification of wireless facilities:

- We shall not unreasonably discriminate among providers of functionally equivalent services;
- We shall not prohibit or have the effect of prohibiting the provision of personal wireless services;
- We must act within a reasonable time on applications for permits (presumed to be 150 days under FCC "shot clock" rules);
- If we deny a request to place, construct, or modify personal wireless service facilities, we must do so in a separate writing, and the decision must be supported by substantial evidence (evidence that a reasonable mind might accept as adequate to support a conclusion) contained in a written record. State law (NRS 707.585) requires that a decision denying an application must set forth with specificity each ground on which the authority denied the approval of the application, and must describe the documents relied on by the Board in making its decision.
- We may not regulate the placement, construction and modification of personal wireless facilities on the basis of environmental effects of radio frequency

emissions to the extent that such facilities comply with FCC regulations concerning such emissions.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

It is recommended that the Board of County Commissioners affirm the decision of the Board of Adjustment and uphold the approval of Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole).

POSSIBLE MOTIONS

Should the Board agree with the Board of Adjustment's approval of Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole), staff offers the following motion:

“Move to deny the appeal and affirm the decision of the Board of Adjustment to approve Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole). The approval is based upon the ability to make the findings required by WCC Section 110.804.25, *Findings*.

Should the Board disagree with the Board of Adjustment's approval of Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole), staff offers the following motion:

“Move to approve the appeal and reverse the decision of the Board of Adjustment and deny Special Use Permit Case Number WSUP19-0001 (Incline Village Monopole). The denial is based on the Board's inability to make all four of the findings required by WCC Section 110.804.25, *Findings*.”

Attachments:

Attachment A: Board of Adjustment Action Order dated 4/4/19

Attachment B: Board of Adjustment Staff Report dated 4/4/19

Attachment C: Additional BOA Correspondence

Attachment D: Additional Letters/Information submitted at BOA Meeting

Attachment E: Appeal Application dated 4/12/19

Attachment F: BOA Minutes of 4/4/19

cc:

Appellant: James M. Walsh c/o Walsh, Baker & Rosevear, 9468 Double R Blvd., Suite A, Reno, NV, 89521, Email: jmwalsh@wbri.net

Applicant: Incline Partners, LLC, PO Box 3740, Incline Village, NV 89450, Email: jpetersen@surewest.com