

Washoe County Appeal of Decision to Board of County Commissioners

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 County Commissioners are governed by WCC Section 110.912.20.	
☐ Planning Commission	☐ Board of Adjustment
☐ Hearing Examiner	☐ Other Deciding Body (specify) _____
Appeal Date Information	
Note: This appeal must be delivered in writing to the offices of the Planning and Building Division (address is on the cover sheet) within 10 calendar days from the date that the decision being appealed is filed with the Commission or Board Secretary (or Director) and mailed to the original applicant.	
Note: The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).	
Date of this appeal: _____	
Date of action by County: _____	
Date Decision filed with Secretary: _____	
Appellant Information	
Name: _____	Phone: _____
Address: _____	Fax: _____
	Email: _____
City: _____ State: _____ Zip: _____	Cell: _____
Describe your basis as a person aggrieved by the decision:	
Appealed Decision Information	
Application Number: _____	
Project Name: _____	
State the specific action(s) and related finding(s) you are appealing:	

Appealed Decision Information (continued)

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

Cite the specific outcome you are requesting with this appeal:

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 Signature

Printed Name:

Signature:

Date:

DEVELOPMENT CODE (Washoe County Code Chapter 110) MASTER FEE SCHEDULE

Applications accepted by CSD, Planning and Building

APPLICATIONS	COMMUNITY SERVICES DEPARTMENT FEES								HEALTH FEES		TOTAL
	Planning			Engineering			Parks		Health District		
	PLANNING	NOTICING	RTF	ENGINEERING	UTILITIES	RTF	PARKS	RTF	ENVIRON.	VECTOR	
ABANDONMENT											
Not Tahoe	\$1,111	\$200	\$52.44	\$195	\$26	\$8.84	-		\$187	-	\$1,780.28
Tahoe	\$1,111	\$200	\$52.44	\$195	-	\$7.80	-		\$187	-	\$1,753.24
ADMINISTRATIVE PERMIT											
Not Tahoe	\$1,265	\$200	\$58.60	\$65	\$38	\$4.12	-		\$187	\$322	\$2,139.72
Tahoe	\$1,265	\$200	\$58.60	\$65	-	\$2.60	-		\$187	\$322	\$2,100.20
ADMINISTRATIVE REVIEW PERMIT											
Detached Accessorty Dwelling (DADAR)											
Not Tahoe	\$1,000	\$200	\$48.00	\$65	\$203	\$10.72	-		\$617	-	\$2,143.72
Tahoe	\$1,000	\$200	\$48.00	\$121	-	\$4.84	-		\$617	-	\$1,990.84
Short-Term Rental - Tier II (STRAR) (See Note 0)											
Not Tahoe	\$1,000	\$200	\$48.00		-	\$0.00	-			-	\$1,248.00
Tahoe	\$1,000	\$200	\$48.00		-	\$0.00	-			-	\$1,248.00
AGRICULTURAL EXEMPTION LAND DIVISION	\$250	-	\$10.00	\$500	-	\$20.00	-		\$1,943	-	\$2,723.00
AMENDMENT OF CONDITIONS	\$700	\$200	\$36.00	\$390	-	\$15.60	-		-	-	\$1,341.60
APPEALS/INITATION OF REVOCATION											
No Map	\$803	\$200	\$40.12	-	-		-		-	-	\$1,043.12
With Map	\$803	\$200	\$40.12	\$390	-	\$15.60	-		-	-	\$1,448.72
Administrative/Code Enforcement Decision	-	-		-	-		-		-	-	\$0.00
BOUNDARY LINE ADJUSTMENT											
Not Tahoe	\$51	-	\$2.04	\$268	\$38	\$12.24	-		\$187	-	\$558.28
Tahoe	\$51	-	\$2.04	\$268	-	\$10.72	-		\$187	-	\$518.76
COOPERATIVE PLANNING	\$1,230	-	\$49.20	-	-		-		-	-	\$1,279.20
DEVELOPMENT AGREEMENT											
Less Than 5 Parcels	\$3,500	\$200	\$148.00	-	-		-		\$617	\$243	\$4,708.00
5 or More Parcels (See Note 1)	\$5,000	\$200	\$208.00	-	-		-		\$617	\$243	\$6,268.00
DEVELOPMENT CODE AMENDMENT	\$2,242	\$200	\$97.68	\$1,299	-	\$51.96	-		-	-	\$3,890.64
DIRECTOR'S MODIFICATION OF STANDARDS	\$338	-	\$13.52	-	-		-		-	-	\$351.52
DISPLAY VEHICLES	\$65	-	\$2.60	-	-		-		\$187	-	\$254.60
DIVISION OF LAND INTO LARGE PARCELS (See Note 2)	\$252	-	\$10.08	\$416	\$35	\$18.04	-		\$47	-	\$778.12

In accordance with Nevada Revised Statutes, application fees must be deposited the day of receipt. This does not guarantee the application is complete.
Pursuant to section 110.90610 of the Washoe County Code, no fees shall be required of a governmental entity or agency thereof.

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April 20, 2022

Our File Number: 302639.00005

VIA E-MAIL

Chair Vaughn Hartung & Honorable Commissioners
Board of County Commissioners
Washoe County, Nevada
1001 E. Ninth Street, Bldg. A
Reno, Nevada 89501-2845

RE: Appeal of WSUP22-0006 (Reno Tahoe Business Gateway) ("Application")

Dear Chair Hartung and Honorable Commissioners:

I. INTRODUCTION AND BACKGROUND

This office represents S3 Development Company, LLC, a Nevada limited liability company, the applicant in the above referenced matter ("Applicant"). The Applicant has only requested a special use permit for grading to vary from the natural slope by more than ten feet in elevation (WCC § 110.438.45(c)) ("Project"). The Project site is located at 10355 Mogul Road, Washoe County 89523, which is more particularly described as Washoe County Assessor's Parcel Numbers ("APN") 038-181-01 and 038-172-14 ("Property"). The Property has an approximate area of 27.89 acres, and is presently located in the Industrial regulatory zone.

The Property was recently removed from the Reno Sphere of Influence ("SOI"). As the City of Reno did not establish regulatory zoning on the Property, the regulatory zoning reverted to the prior zoning designation that was adopted when the Property was previously within the County's jurisdiction—in this case, the Industrial regulatory zone.¹ A Master Plan land use designation has not yet been assigned, although a Master Plan designation is not required in order for a property owner to utilize the regulatory zone.² The Property is within the area of the Verdi Area Plan.

On April 7, 2022, the Washoe County Board of Adjustment held a public hearing and denied the Application. The Board of Adjustment indicated it could not make three of the required findings of approval: consistency with the Master Plan, that adequate utilities and facilities have been provided, and that the issuance would not be significantly detrimental to the public health.

¹ See Washoe County Development Code Interpretation 13-2 (Interim Zoning for Properties Rolled Back from a City's SOI) ("If regulatory zoning was never established within the City's Sphere of Influence by the City, then Washoe County will apply the most current regulatory zoning [...] that was adopted when the property was previously within the County's jurisdiction.").

² *Id.* ("A property owner may utilize the interim regulatory zoning to establish any use type allowed within that regulatory zone [...]").

The Board erred in its determination for several reasons, as the Application is limited to grading and does not create any future use or development entitlements for the Property. The Project is consistent with the Verdi Area Plan and will be consistent with the Master Plan land use designation proposed. Utilities and facilities are not needed for a grading permit, and the Board of Adjustment did not provide rationale for why it believed required utilities or facilities had not been provided. Finally, issuing a grading permit does not pose any significant detriment to public health, safety or welfare, to surrounding properties, or to the character of the area. Accordingly, we respectfully request that the Board of County Commissioners reverse the Board of Adjustment and approve the Application.

II. ANALYSIS

a. The grading request is consistent with the Master Plan and Verdi Area Plan.

Pursuant to WCC § 110.810.30, this request for a special use permit shall be granted if all of the requisite findings of approval can be made by the Board. The Applicant submits that all findings can be made. With respect to finding (a), relating to consistency with the Master Plan and Verdi Area Plan, the Staff Report to the Board of Adjustment ("Staff Report") confirms that the proposed grading, as conditioned, "is consistent with the action programs, policies, standards, and maps of the Master Plan".³

This Property was removed from the City of Reno's SOI and was properly returned to its former zoning designation of Industrial. Pursuant to WCC § 110.106.30 and Interpretation 13-2, when a property is removed from a City SOI, the underlying zoning reverts to the last regulatory zone. In this case, the prior regulatory zone was (ME) which is now the (I) Industrial regulatory zone. The Property does not presently have a Master Plan land use but Washoe County's professional planning staff has indicated that it will recommend a designation of Industrial based on the underlying regulatory zone. Grading as a general matter, is consistent with the proposed Master Plan amendment – and would be consistent even with commercial Master Plan designations, were those to be proposed (they have not been proposed). Accordingly, the request for grading is consistent with the Master Plan.

The Project is also consistent with the Verdi Area Plan. The Area Plan does not prohibit any grading. The only applicable policy in the Area Plan is Policy V.3.1, which requires "design standards for grading that minimize the visual impact of all residential and non-residential hillside development. The Staff Report indicates this policy is met, as the Project is adequately conditioned for this purpose.⁴ Additionally, Policy V.27.1 indicates that grading *for residential purposes* should meet certain criteria "when feasible", including minimizing disruption to natural topography, utilizing natural contours and slopes, preserving existing vegetation and ground coverage to minimize erosion.

³ Board of Adjustment Staff Report on WSUP22-0006 ("Staff Report"), at 10.

⁴ *Id.* ("The proposed use of major grading is consistent with the action programs, policies, standards, and maps of the Master Plan with the conditions recommended").

The Property is vacant, undeveloped land which has been subject to “significant disturbance [...] as a result of the railroad, I-80 corridor and various utility projects in the immediate vicinity.”⁵ The Staff Report indicates that “[a]lthough the site requires major grading to accommodate development, the project area is relatively flat with over 80% of the site having slopes of less than 15% or less.”⁶ The Staff Report further explains:

The grading design includes a maximum depth of cut of approximately 25’, and a maximum depth of fill of approximately 22’, however those depths are localized to only a few locations on site. The majority of the site has depth of cuts and fills that are considerably shallower at approximately 6.1’ and 4.7’. Any finish grade varying from natural slope by any more than 10’ in elevation is required to meet [certain] requirements, specified as a proposed condition of approval[.]⁷

The proposed grading will not create any visual impact of any hillside development, and there is no evidence in the record to suggest this policy is not met. Consequently, the Project complies with the Area Plan and will comply with any Master Plan land use designation assigned in the future.

We note that staff proposed an amendment to Condition #1a, which would have the effect of imposing a waiting period on the Project until the Master Plan amendment process has concluded. However, from a legal perspective, the Master Plan land use designation will not affect the underlying zoning or what is permitted on this site. Moreover, granting the special use permit will allow the grading to move forward regardless of any potential future change to the Property’s Master Plan designation. There is no actual benefit to the County or the Applicant to warrant this delay. Accordingly, the Applicant respectfully requests that the Board of County Commissioners not impose such a detrimental, yet meaningless, condition on this Project.

b. Adequate improvements and utilities are in place to support this grading request.

Pursuant to WCC § 110.810.30(b), any necessary improvements and utilities are required to be provided. Because no improvements or utilities are required for the grading requested herein, this finding can be readily made. Again, this request is only to permit the Applicant to perform grading that varies more than ten feet from the natural slope. There is no need for any improvements for this permit. The proposed use under this special use permit is strictly limited to grading, and does not include a request for any future construction. Future development on the site will be subject to all requirements for improvements, utilities and other facilities applicable to what may be proposed. The Staff Report confirms that this finding can be readily made:

The proposed use is to provide for future construction of industrial use types. There are no utility, sanitation, or water supply facilities necessary at this time. All

⁵ *Id.* at 7.

⁶ *Id.* at 7.

⁷ *Id.* at 8.

*required utilities and necessary improvements will be subject to future applicable permitting requirements.*⁸

It is clear that adequate utilities are facilities have been provided because none are required for the grading requested under this permit to proceed. The Board of Adjustment therefore erred by basing its decision on future, not-yet-proposed development, which will comply with all requirements at the time of permitting.

c. The issuance of a grading permit is not detrimental to the surrounding area.

Pursuant to WCC § 110.810.30(d), “[i]ssuance 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”. The Staff Report plainly makes this finding, as the Project has been adequately conditioned to ensure there is no significant detriment to public health, safety, welfare, adjoining properties, or the surrounding area.⁹

Again, this request is limited to grading on the Property. Specifically, the special use permit is to vary the grading by more than ten feet from the natural slope. The Property is bounded to the north by I-80, to the southeast by a self-storage facility, and to the south and southwest by the Union Pacific Railroad and undeveloped land. There are no immediately adjacent residential uses. In fact, all other uses are separated by the freeway or by the railroad. Thus, the existing topography and I-80 create a natural buffer which will serve to minimize the visual impact on other existing development in the area. On its own, the grading permit will only result in the movement of cut and fill which is not capable of leaving a lasting impact on the surrounding area. Moreover, the grading permit poses no concern to public health, safety or welfare.

Consequently, the Board of Adjustment erred in its determination that it could not make this finding. The Board relied on public comment having to do with potential future build out of the site, without considering that the request before it was actually limited to grading this vacant private parcel which is set apart from all adjacent uses—save for the commercial storage facility—by the major interstate and a railroad.

d. Traffic concerns have been addressed or are not relevant to this request for a grading permit.

During the hearing before the Board of Adjustment, concerns were raised during public comment, and the Applicant was not permitted to respond. Comments were primarily focused on traffic and impacts to the residential uses in the vicinity. Because this special use permit is strictly limited to grading, there are no long term traffic impacts anticipated as a result of the grading.

⁸ *Id.* at 10.

⁹ *Id.*

Future permit requirements for build out of the Project will address all requirements related to traffic, parking, and other standards.

Conditions of approval are being recommended by staff, which include that “[a] detailed traffic report shall be prepared by a registered engineer and shall address driveway locations and turning movements, delivery truck patterns and movements, and provide recommendations on acceleration/deceleration lanes, storage lanes, and access control.”¹⁰ Additionally, the Applicant is required to comply with all development standards for driveways, regulatory traffic signs, and any roadway improvements.¹¹ The Applicant will also provide “a detailed analysis of turning movements for emergency and service vehicles”.¹² Had the Applicant been given the opportunity to respond to the commenters, it would have been made clear that this Application is only for the proposed grading variation of more than 10 feet from the natural slope, and for no other purpose. Any issues related to the future uses or development on this site will be addressed with future permit requirements, including with respect to traffic, parking, lighting, and other requirements.

III. CONCLUSION

As this special use permit is strictly limited to grading which varies from the natural slope by more than ten feet, all of the requisite findings of approval can readily be made. The Board of Adjustment improperly based its decision on potential, future possibilities for the site, which are not the subject of this request. As demonstrated herein, the grading request is consistent with the Master Plan and the Verdi Area Plan. There is no reason to delay allowing grading to move forward while a Master Plan designation is under consideration as there would be no legal impact on the special use permit for grading. There are not any needed improvements or utilities needed for this grading. The grading proposal will not create any detrimental effect or visual impact on adjacent properties or other nearby development in this area. The grading will also not impact traffic. Future permitting on the site will need to demonstrate compliance with all applicable standards under Washoe County Development Code.

For these reasons, we respectfully request that the Board of County Commissioners reverse the decision below, and directly approve this grading permit. Please do not hesitate to contact me with any questions.

Sincerely,

/s/ Garrett D. Gordon

Garrett D. Gordon
Lewis Roca Rothgerber Christie LLP

GDG/mwc

¹⁰ *Id.*, Exhibit A at 4 (Traffic and Roadway Condition (a)).

¹¹ *Id.* (Traffic and Roadway Conditions (b), (e), and (f)).

¹² *Id.* (Traffic and Roadway Condition (g)).