

Thursday, August 3, 2023

Washoe County Board of Adjustment,

Safe Embrace has bravely served victim-survivors of domestic and sexual violence in Washoe County for over 20 years providing lifesaving services and advocacy. One of the most vital services they offer is emergency shelter for those needing to flee their home. The Safe Embrace shelter allows victim-survivors a safe place to heal, keep themselves and their children safe, and build the foundation for a safe future. Safe Embrace operates one of only two shelters in Washoe County. In 2022 when Safe Embrace was confronted with the concerns and legal matters of running their shelter, they did not turn their backs on those in need. Rather, they reimagined what their advocacy looked like and stepped up to provide safe shelter in creative ways, challenging their staff and advocates in ways they have never navigated before.

Today we ask that this Board recognize the critical work and services that Safe Embrace provides this community and the necessity and vital need to maintain their shelter at full capacity. While they have managed to serve the community with limited shelter capacity, there is no doubt that many victim-survivors in Washoe have had to go without safe shelter, putting them at increased risk for violence. In just one 24-hour period in Nevada, 33 victim-survivors across the state did not have their request for services met. 70% of those unmet requests were for emergency shelter. <sup>1</sup> Knowing that Safe Embrace is the second largest program in Washoe County, we can speculate how this number has likely increased since 2022 and how many victim-survivors in our community went without critical safety.

Simply put, leaving an abusive partner is the most dangerous time for victim-survivors of domestic violence. <sup>2</sup> In a study of victim-survivors, when asked what they would do without access to safe shelter, they responded with five common concerns: <sup>3</sup>

- Be homeless.
- Lose everything – some described fears of losing their jobs and children, and others feared going to jail.

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<sup>1</sup> National Network to End Domestic Violence. 2022. Domestic Violence Counts Reports: Nevada Summary. Retrieved from: <https://nnedv.org/wp-content/uploads/2023/03/17th-Annual-Domestic-Violence-Counts-Report-NV-Summary.pdf>

<sup>2</sup> National Coalition Against Domestic Violence. *Why Do Victims Stay?* Retrieved from: <https://ncadv.org/why-do-victims-stay>

<sup>3</sup> Lyon, Eleanor, et al. 2008. *Meeting Survivors' Needs: A Multi-State Study of Domestic Violence Shelter Experiences, Final Report*. U.S. Department of Justice. Retrieved from: <https://www.ojp.gov/pdffiles1/nij/grants/225025.pdf>

- Acts of desperation – some described fleeing their communities to another state for shelter, others shared that without shelter, they would potentially resort to violence themselves and would harm their abuser.
- Uncertainty – many shared that they honestly did not know what they would do without having access to shelter.
- Continued the abuse/risk of death.

Safe Embrace advocates work around the clock, ensuring that the shelter runs smoothly, safely and that residents are respectful neighbors. It is important to remember that those entering the shelter are our neighbors, colleagues, family members, and, most importantly, our community. Domestic and sexual violence do not discriminate and intimately affect every single one of our lives.

In a county that already has limited resources for victim-survivors, we encourage this Board to stand with victim-survivors and grant Safe Embrace their Special Use Permit to operate their shelter.

Sincerely,

Elizabeth Abdur-Raheem  
Executive Director  
Nevada Coalition to End Domestic and Sexual Violence  
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775.857.7022

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**From:** Alferd Knepper <alferdknepper@att.net>  
**Sent:** Wednesday, August 2, 2023 6:12 PM  
**To:** Albarran, Adriana  
**Subject:** Fw: Case Number WSUP22-19 (Safe Embrace)  
**Attachments:** 1995 Car parked in weeds July 2023.jpeg

**[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]**

I was planning on attending the Board of Adjustment meeting tomorrow but due to health reasons and on my doctors advise, I won't be able to attend. I am sending this to comment at the public hearing for the Special Use Permit Case Number WSUP22-0019 (Safe Embrace).

My name is Tami Wittich and my husband and I own a home 2 doors down from 1995 Ponderosa Drive. We purchased the property as it was on a quiet, dead end, private street and we hoped to retire and make this our forever home. When we moved into the neighborhood we knew there was a group home but after checking into the zoning and coding on the property (it was E1 at that time) we figured a small group home was not an issue for us. However, when construction started we never got any notice of zoning changes or use permits. We were told that if any major changes were made to the property regarding zoning, etc. we would be notified. We were not and we were not happy with the outcome and have been fighting it ever since.

The house has changed over the years and the pictures included in the SUP do not accurately reflect the condition of the property. I have attached a picture I took a couple days ago of the east side of the front of the property. It was upsetting when they cut down all the trees on that side and it is now ever worse with the weeds growing and nothing being done about it. Not only is it unsightly but a tremendous fire risk parking a car on that dry brush. It is frustrating that Safe Embrace does nothing to make the property look like a neighborhood residence and when they do make a promise to maintain things, they never follow through and it gets even worse. It doesn't look like a neighborhood home, it looks like a commercial building and adding parking as noted on their permit will only make it look worse. They have no concern for the neighbors and many of the people who stay there have no concern for the property and are rude to the neighbors.

They destroyed our private road with all the construction and promised to fix it. That never happened and it forced the neighbors to try and get enough money together to at least do a fix on the road so we could drive on it. I had friends that refused to come to my house because they didn't want to drive down the road because it was so bad. Safe Embrace has done nothing to help the neighborhood and has only made it worse.

This "company" is not a good neighbor and should not be allowed in a residential neighborhood. The code violations should be enough to reject the Special Use Permit but the fact that they are destroying the look of our neighborhood and private property should tell the Board of Adjustment that this type of GROUP CARE FACILITY is not and should not be allowed in a single family, residential neighborhood. They operated for many years as a quiet group home and took care of the property. What they are doing now is atrocious and I don't think anyone would want it in their neighborhood either.

Thank you for your consideration of our feelings and we hope you take into consideration the county codes and requirements before approving this permit. The proposed use of the property is NOT permitted by your own codes in a single, family neighborhood and they should not be allowed to increase the number of people allowed to live there. 10 people (E1 zoning) is plenty for a residential building next to other homes and approving any more is not good for Ponderosa Drive or Washoe County.

Tami & Ryan Wittich  
2110 Ponderosa Drive  
Sparks, NV 89431

















ExhibitsFILED  
Electronically  
CV20-01687  
2022-06-20 12:53:19 PM  
Alicia L. Lerud  
Clerk of the Court  
Transaction # 9108327

3105

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA****IN AND FOR THE COUNTY OF WASHOE**

RYAN WITTICH, an individual; TAMI WITTICH, an individual; ALFERD KNEPPER, an individual; KATHERINE KNEPPER, an individual; CARLOS GONZALEZ, an individual; SAMANTHA GONZALEZ, an individual; MARIO FRUGOLI, an individual; MARCIA FRUGOLI, an individual; JOHN BIRD, an individual; GINA BIRD, an individual; JOHN JEFFREY, an individual; GRANT GARRISON, an individual; WARREN STOKES, an individual; JAMES FERRIS, an individual; ROBERT F. GEORGETON, an individual; NANCY BEUTEL, an individual; and MARVICE BEUTEL, an individual,

Case No.: CV20-01687

Dept. No.: 15

Plaintiffs-Petitioners,

vs.

COUNTY OF WASHOE, a political subdivision of the State of Nevada; CITY OF SPARKS, a political subdivision of the State of Nevada; SAFE EMBRACE, a Nevada nonprofit corporation; and DOES I through X, inclusive,

Defendants-Respondents.

**ORDER GRANTING ISSUANCE OF WRIT OF MANDAMUS**

Before this Court is Petitioners' Petition for Writ of Mandamus against the City of Sparks (the "City") and Washoe County (the "County") dated October 21, 2020. The City and County moved to dismiss the Petition, and on May 17, 2021, this Court entered an *Order Denying*



1 *Washoe County's Motion to Dismiss and Denying City of Sparks' Motion to Dismiss and*  
2 *Briefing Schedule.*

3 Petitioners filed their Opening Brief on July 30, 2021. The City and County filed  
4 separate Response Briefs on August 30, 2021, and Petitioners filed their Reply Brief on October  
5 11, 2021. The parties argued the Petition on November 18, 2021. Safe Embrace appeared at the  
6 hearing but did not participate in oral arguments. All parties appeared before this Court for a  
7 status hearing on May 31, 2022 and presented additional arguments.

8 After reviewing the moving papers, the transcript from the oral argument, and the Court  
9 having heard and taken into consideration further oral arguments from the parties, the Court  
10 hereby GRANTS the Petitioners' request for a Writ of Mandamus directing the City of Sparks to  
11 revoke the improperly issued approvals and directing the County of Washoe to revoke Safe  
12 Embrace's business license allowing it to operate as a group care facility.<sup>1</sup>

13 A writ of mandamus is an extraordinary remedy. Smith v. Eighth Judicial Dist. Court In  
14 & For County of Clark, 107 Nev. 674, 679, 818 P.2d 849, 853 (1991). The petitioner has the  
15 burden of proof to demonstrate that extraordinary relief is necessary. Pan v. Eighth Judicial Dist.  
16 Court ex rel. County of Clark, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004); Kochendorfer v. Bd.  
17 of County Com'rs of Douglas County, 93 Nev. 419, 422, 566 P.2d 1131, 1133 (1977). The  
18 decision whether to consider a petition for extraordinary relief is within the Court's discretion.  
19 Smith, 107 Nev. at 677, 818 P.2d at 851. However, a writ must issue if there is not a plain,  
20 speedy, and adequate remedy in the ordinary course of the law. NRS 34.170.

21 A writ of mandamus is available to compel the performance of an act that the law  
22 requires, to control an arbitrary or capricious exercise of discretion, or to correct a manifest  
23 abuse of discretion. NRS 34.160; Nalder v. Eighth Judicial Dist. Court of Nev., 136 Nev. 200,  
24 207, 462 P.3d 677, 685 (2020); Int'l Game Tech., Inc. v. Second Judicial Dist. Court, 124 Nev.  
25 193, 197, 179 P.3d 556, 558 (2008); Bd. of Com'rs of City of Las Vegas v. Dayton Dev. Co., 91  
26 Nev. 71, 75, 530 P.2d 1187, 1189 (1975) (citing State ex rel. Johns v. Gragson, 89 Nev. 478, 515

27  
28 <sup>1</sup> The Court notes that the Petition included a third request for a writ of mandamus directing Washoe County to  
impartially enforce its development codes against the Property. The Court finds that this request could potentially  
yield unintended consequences and therefore declines to include this relief in the writ.



1 P.2d 65 (1973); Henderson v. Henderson Auto, 77 Nev. 118, 122, 359 P.2d 743, 744 (1961).  
2 “An arbitrary or capricious exercise of discretion is one founded on prejudice or preference  
3 rather than on reason, or contrary to the evidence or established rules of law.” State v. Eighth  
4 Judicial Dist. Court (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011).

5 “When [a writ is] issued by a district court or a judge of the district court it shall be made  
6 returnable before the district court.” NRS 34.160. The Court finds the exceptional circumstances  
7 presented in this case warrant mandamus relief.

8 **A. Petitioners Have No Plain, Speedy, and Adequate Remedy in the Ordinary**  
9 **Course of Law.**

10 Petitioners in this matter live near the property located at 1995 Ponderosa Drive (the  
11 “Property”), which is owned by Defendant Safe Embrace. On or about November 21, 2017, Safe  
12 Embrace filed a development application with the City seeking to construct a 1,923 square-foot  
13 addition on the Property. On or about January 21, 2018, the City administratively approved Safe  
14 Embrace’s request. It is undisputed that Petitioners did not receive notice of the development  
15 application or notice of the City’s approval of same. Subsequently, on February 28, 2018, Safe  
16 Embrace submitted building application WBLD18-104678 to the City, which the City approved  
17 and issued on May 3, 2018. On July 17, 2019, Safe Embrace received its certificate of  
18 occupancy, which notes 15 beds in the “existing dwelling” and 13 beds in the “new addition,” for  
19 a total of 28 beds.

20 At the time of the approvals described above, the Property was located within the City’s  
21 sphere of influence pursuant to NRS 278.026(7), 278.02788, and the Truckee Meadows Regional  
22 Planning Agency’s Regional Plan. Pursuant to the Regional Plan and the underlying statutory  
23 authority in NRS Chapter 278, the City asserted planning jurisdiction over the Property.  
24 However, with the adoption of the 2019 Regional Plan in October of 2019, the Property was  
25 removed from the City’s sphere of influence and placed back into the County’s jurisdiction. Now  
26 that the Property is within Washoe County’s jurisdiction, the City claims it is without jurisdiction  
27 to review or reverse any of its prior decisions, and Washoe County claims it does not have  
28



1 jurisdiction to review the decisions previously made by the City and that it must accept the City's  
2 approvals and allow the use to continue as a nonconforming use.

3       The City and County argue that mandamus relief is not appropriate because Petitioners  
4 failed to exhaust their administrative remedies. Petitioners argue that no administrative remedies  
5 could be sought because they were deprived of notice of the approvals and therefore had no  
6 standing to seek a petition for judicial review under NRS 278.3195(4). The Court finds that  
7 because the City's approvals were made without notice to Petitioners, the Petitioners had no  
8 standing and no opportunity to participate in any timely appeal of the City's decisions. See  
9 Benson v. State Eng'r, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015) (a party need not exhaust  
10 administrative procedures when those efforts would be "vain and futile."); see also Engelmann v.  
11 Westergard, 98 Nev. 348, 353-54, 647 P.2d 385, 388-89 (1982) (concluding that the expiration  
12 of the statute of limitation precluded the requirement to exhaust administrative remedies because  
13 a request for administrative review would be considered "untimely and futile").

14       The City and County further argue that mandamus relief is not available to Petitioners  
15 based on the doctrine of laches. The Court does not find that Petitioners acted with any lack of  
16 diligence or delay in seeking judicial remedies.

17       The City and County contend that mandamus relief is not proper under the vested rights  
18 doctrine. Petitioners argue that the vested rights doctrine does not apply in this case as there was  
19 no subsequent changes in the zoning codes that occurred after Safe Embrace received the  
20 improper approvals from the City of Sparks. See City of Reno v. Nevada First Thrift, 100 Nev.  
21 483, 487, 686 P.2d 231, 234 (1984) ("when a building permit has been issued, vested rights  
22 against changes in zoning laws exist after the permittee has incurred considerable expense in  
23 reliance thereupon." (emphasis added); see also Bd. of County Com'rs of the County of Clark v.  
24 CMC of Nevada, Inc., 99 Nev. 739, 670 P.2d 102, 107 (1983) ("vested rights against changes in  
25 zoning laws exist only after the issuance of a building permit and the commencement of  
26 construction..." (emphasis added)). The Court agrees and finds that the vested rights doctrine  
27 does not preclude issuance of the writ.

28



1 Based on the above, the Court finds that there is no plain, speedy, and adequate remedy  
2 in the course of law available to Petitioners.

3 **B. The City of Sparks Abused its Discretion When Approving the Development**  
4 **Application.**

5 Petitioners argue that Safe Embrace's proposed use of the Property fits squarely within  
6 the "social assistance, welfare, and charitable services" use category which is defined as follows:

7 Establishments that provide social assistance services directly to clients such as  
8 children, elderly persons, disabled persons, homeless persons, or veterans. Social  
9 assistance may include (1) food, medical relief, counseling or training. Examples  
10 include adoption agencies, youth centers (except recreational only), child  
11 guidance organizations, youth self-help organizations, foster care placement  
12 services, community action services agencies, marriage counseling services  
13 (except by offices of mental health practitioners), crisis intervention centers,  
14 multipurpose social services centers, family social services agencies, self-help  
15 organizations (except for disabled persons, the elderly, persons diagnosed with  
16 intellectual and, developmental disabilities), family welfare services, suicide crisis  
17 centers, hotline centers, telephone counseling services, community food services  
18 (includes collection, preparation, and delivery of food, clothing and blankets for  
19 needy persons), and (2) ***housing services including short term emergency shelter  
20 for victims of domestic violence, sexual assault, or child abuse***; temporary  
21 residential shelter for the homeless, runaway youths, and patients and families  
22 caught in medical crises; or transitional housing for low-income individuals and  
23 families.

24 SMC 20.08.002 (emphasis added).

25 The City admits that the addition to the Property "should not have been processed as a  
26 group home." *City of Sparks' Response to Petitioners' Opening Brief in Support of Petition for*  
27 *Writ of Mandamus* at 2:3-4. The City further admits that Safe Embrace's use was misclassified  
28 and should have been either (i) a social assistance, welfare, and charitable services use or (ii)  
would not clearly fall within any listed land use category. The Court finds that neither of these  
uses were permissible in the Property's zoning district at the time the development application  
was approved.

The City of Sparks' Zoning Code provides a use table that governs the permitted, special,  
and accessory uses for each zoning district. SMC 20.02.013. The social assistance, welfare, and  
charitable services use is not permitted in the zoning district within which the Property is located.

1 See Sparks Municipal Code ("SMC") 20.02.013(A)(1) ("No uses are allowed in any zoning  
2 district except those specifically listed as a permitted or conditional use in the Use Table.")  
3 Additionally, SMC 20.02.013(B) provides that "[u]ses not listed in the use table, are presumed to  
4 be prohibited. For uses not considered in the use table, a case can be made, [sic] the use is  
5 materially similar to uses permitted in the respective zoning district. The case will be considered  
6 by the Planning Commission through the Conditional Use Permit process." (emphasis added). It  
7 is undisputed that Safe Embrace did not apply for a conditional use permit. An application for a  
8 conditional use permit would have required the planning commission to analyze the impacts on  
9 surrounding properties, document the actual or projected characteristics of the proposed use, and  
10 provide notice and a public hearing. SMC 20.05.008. Instead of following this process, the City  
11 abused its discretion when it misclassified the use of the Property and approved the development  
12 application via administrative review.

13 The permits that were granted as a result of the City's arbitrary and capricious approvals  
14 must be revoked. A building official shall not issue any permit unless the plans for the proposed  
15 construction or use fully conform to all building codes and zoning regulations then in effect.  
16 NRS 278.610(2)(a). "Permits presuming to give authority to violate or cancel the provisions of  
17 [the International Building Code] or other ordinances of the jurisdiction shall not be valid."  
18 Mesagate Homeowners' Ass'n v. City of Fernley, 124 Nev. 1092, 1101, 194 P.3d 1248, 1254  
19 (2008) (citing Int'l Bldg. Code § 105.4 (2003); see also, Denargo Mkt. Neighbors Coal. v. Visser  
20 Real Est. Invs., 956 P.2d 630, 632 (Colo. App. 1997) (finding that the zoning administrator's  
21 admittedly improper act of reclassifying the use of a property had the effect of invalidating the  
22 permit); Hurt v. Caldwell, 222 Va. 91, 97-98, 279 S.E.2d 138, 142 (1981) (finding that a  
23 building permit that "did not comply with the applicable ordinances of [the jurisdiction] then in  
24 existence and was, in effect, a nullity.") Additionally, when a certificate of occupancy is issued  
25 in connection with a building for which a building permit has been obtained, it is subject to the  
26 infirmities of the building permit; thus, if the building permit is void, then a subsequent  
27 certificate of occupancy pursuant to the permit is similarly void and revocable. Bekermus v.  
28 Nardy, 123 Misc. 2d 378, 472 N.Y.S.2d 570 (Sup. Ct. 1984).



1 Accordingly, as a result of the City's abuse of discretion, the development approvals,  
2 building permit, and certificate of occupancy must be revoked.

3 **C. The Business License was Improperly Issued as a Result of the City's Abuse of**  
4 **Discretion.**

5 On November 21, 2018, Safe Embrace applied for a Washoe County business license  
6 requesting to add a use and described its business as "a group care facility – increasing beds from  
7 9 to 32 maximum." Because Safe Embrace was located in the City's sphere of influence at the  
8 time of the application, the City's planning and zoning staff was required to sign-off on the  
9 planning/zoning issues before the Washoe County business license could be issued. The City  
10 signed off on the planning and zoning issues based on the improper approvals discussed above.  
11 On October 9, 2019, Sparks City Manager Neil Krutz sent a letter to the Interim Washoe County  
12 Manager David M. Solaro explaining that the City's planning staff approved the business license  
13 in error. Thus, the City's arbitrary and capricious land use classification affected the propriety of  
14 the subsequent business license issued by Washoe County.

15 A business permit may be revoked "if there exists a compelling public necessity  
16 justifying revocation, as where the conduct of that business constitutes a public nuisance."  
17 Sunset Amusement Co. v. Bd. of Police Commissioners, 7 Cal. 3d 64, 80, 496 P.2d 840 (1972)  
18 (citing Jones v. City of Los Angeles, 211 Cal. 304, 315, 295 P. 14 (1930)). Washoe County  
19 Development Code ("WCDC") § 110.910.10(b) provides that "[e]recting, operating or  
20 maintaining any property or structure contrary to the provisions of a development regulation  
21 shall be and is hereby declared to be unlawful and a public nuisance." Furthermore, Washoe  
22 County Code 25.018(2)(e) provides that good cause exists for revocation of a business license  
23 when a licensee "violates, in the conduct of the business, a federal, state, city, or county law,  
24 rule, ordinance, or regulation."

25 The Court finds that the City's arbitrary and capricious land use classification led to Safe  
26 Embrace's operation of the Property contrary to the applicable development regulations. Thus,  
27 the County has a duty to revoke the business license pursuant to Washoe County Code  
28 25.018(2)(e).

**CONCLUSION**


This Court having read and reviewed the verified Petition for Writ of Mandamus filed herein by Petitioners, the Affidavits appended thereto and the Memorandum of Points and Authorities in support thereof, the briefs submitted thereafter, and the oral argument presented to this Court, finds that Petitioners have no plain, speedy, and adequate remedy in the ordinary course of law and a writ of mandamus must issue pursuant to NRS 34.170. The Court further finds that the writ is proper because the City of Sparks abused its discretion when it approved the development application and misclassified the proposed use of the Property. Thus, the Court being fully advised and good cause appearing,

IT IS HEREBY ORDERED that the Petition for Writ of Mandamus is granted in the following respects:

(1) A writ of mandamus shall issue against the City of Sparks directing that it revoke the approvals related to the November 21, 2017 development application submitted by Safe Embrace, the approvals related to the WBLD18-104678 building application, and the certificate of occupancy issued as a result thereof.

(2) A writ of mandamus shall issue against Washoe County directing that it revoke the business license that is allowing Safe Embrace to operate as a group care facility.

DATED this 20<sup>th</sup> day of June, 2022.

  
DISTRICT JUDGE  
Honorable David A. Hardy

Submitted by:

\_\_\_\_\_  
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