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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE  
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9 LAKES AT LEMMON VALLEY, LLC, a  
10 Nevada Limited Liability Company,

Case No. CV18-02374

11 Petitioner,

Dept. No. 8

12 v.

13 WASHOE COUNTY, a political  
14 subdivision of the State of Nevada,

15 Respondent.  
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19 **ORDER GRANTING PETITION FOR JUDICIAL REVIEW**

20 Petitioner, LAKES AT LEMMON VALLEY, LLC, a Nevada Limited Liability Company  
21 (“Lakes”), presents this Court with a *Petition for Judicial Review Pursuant to NRS 278.0233*,  
22 filed December 4, 2018. On December 27, 2018, a briefing schedule issued. Thereafter, on  
23 February 20, 2019, Lakes filed its *Opening Brief*. Respondent, WASHOE COUNTY, a political  
24 subdivision of the State of Nevada, filed its *Answering Brief* on March 22, 2019, to which Lakes  
25 replied on April 16, 2019. Following a request by Lakes, a hearing took place on July 11, 2019  
26 and oral argument was held on the respective briefs.

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1 Having reviewed the briefs, the arguments of counsel at the hearing, and the applicable  
2 authorities, the Court **GRANTS** the *Petition for Judicial Review Pursuant to NRS 278.0233*.

### 3 STANDARD OF REVIEW

4 On judicial review, a zoning board decision is assessed for abuse of discretion. *Nova*  
5 *Horizon, Inc. v. City Council of the City of Reno*, 105 Nev. 92, 96, 769 P.2d 721, 723 (1989).  
6 Specifically, the court's inquiry is limited to whether the ultimate decision was supported by  
7 substantial evidence. *City of Reno v. Citizens for Cold Springs*, 126 Nev. 263, 271, 236 P.3d 10,  
8 15 (2010); *Nova Horizon, Inc.*, 105 Nev. at 94, 769 P.2d at 722 (citing *McKenzie v. Shelly*, 77  
9 Nev. 237, 240-242, 362 P.2d 268, 269-70 (1961)). "Substantial evidence is that which a  
10 reasonable mind could accept as sufficient to support a conclusion." *City of Reno v. Citizens for*  
11 *Cold Springs*, 126 Nev. at 271, 236 P.3d at 15 (citing *State, Emp. Security v. Hilton Hotels*, 102  
12 Nev. 606, 608, 729 P.2d 497, 498 (1986)). This threshold is not met by the statements of  
13 interested parties and opinions of board members which are unsupported by proof. *City Council*  
14 *of City of Reno v. Travelers Hotel, Ltd.*, 100 Nev. 436, 439, 683 P.2d 960, 961 (1984) (citing  
15 *Henderson v. Henderson Auto*, 77 Nev. 118, 359 P.2d 743 (1961); *State ex rel. Johns v. Gragson*,  
16 89 Nev. 478, 515 P.2d 65 (1973)).

17 The zoning board, e.g., the Washoe County Planning Commission or Board of County  
18 Commissioners ("BCC"), is given great deference and the court is not to substitute its judgment  
19 for that of the zoning entity if substantial evidence supports the entity's action. *Id.* (citing  
20 *McKenzie*, 77 Nev. at 240, 362 P.2d at 269); *Nova Horizon, Inc.*, 105 Nev. at 94, 769 P.2d at 722  
21 (quoting *McKenzie*, 77 Nev. at 240-242, 362 P.2d at 269-70). However, "zoning boards may not  
22 unreasonably or arbitrarily deprive property owners of legitimate, advantageous land uses[.]"  
23 *Nova Horizon, Inc.*, 105 Nev. at 94, 769 P.2d at 722, and their decisions ought not to be affirmed  
24 "... if under all the facts of the particular case, the denial is unreasonable, or is discriminatory, or  
25 is without substantial relationship to the public health, safety, morals, and general welfare." *Id.*  
26 (citing *Town of Vienna Council v. Kohler*, 218 Va. 966, 244 S.E.2d 542, 548 (1978)).

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## FINDINGS OF FACT & CONCLUSIONS OF LAW

Lakes is the owner of a 33.97-acre parcel of real property located in Washoe County, Nevada, also known as APN 552-210-18. To build on the parcel, Lakes submitted Tentative Map Application No. WTM-18-004, Lemmon Valley Estates, ("Application") to the Washoe County Planning Commission ("Planning Commission") for approval of a proposed ninety-eight (98) single-family residential development.

The Planning Commission is charged with the duty to administer, receive, and review applications for tentative maps and to act in accordance to provisions set in NRS Chapter 278 and the Washoe County Development Code. The BCC is charged with reviewing any appeals taken from the Planning Commission's decisions.

According to the record before the Court, on March 15, 2018, Lakes filed its Application with the Planning Commission. The Application advised that the project conformed with regulatory zoning designation (medium density urban)<sup>1</sup> despite the fact that Lemmon Drive is the property's only access point to any public highway in the vicinity.

On May 1, 2018 the Planning Commission issued its Staff Report on the Application, which recommended approval but with improvements, including, that Lakes should: (1) construct the project as right-in/right-out only; (2) modify the island on the west side of Lemmon Drive at Lemmon Drive/ Military road intersection to provide enough space for large passenger vehicles to make northbound to southbound U-turns; (3) dedicate a right-of-way on Lemmon Drive along project frontage to accommodate planned widening from 4 to 6 lanes as stated in 2040 Regional Transportation Plan ("RTP"); and (4) construct a deceleration lane on Lemmon Drive at the intersection of Sunset View Drive to the satisfaction of the City of Reno.

At the Planning Commission's meeting, the project was denied after discussion, on the stated belief that the Application failed to meet the access requirements set forth in Section 8 of Washoe County Ordinance (WCO) §110.608.25, which reads: "Access. That the design of the subdivision provides any necessary access to surrounding, adjacent lands and provides

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<sup>1</sup> Lakes commissioned a traffic study, which was completed by an engineer. The report had similar findings as the Planning Commission Staff Report, except that the deceleration lane was required by the Staff Report and seemingly not mentioned by the Traffic Impact Study.

1 appropriate secondary access for emergency vehicles.” This was the stated reason justifying  
2 disapproval, as argued to the Court.<sup>2</sup> On May 11, 2018, Lakes timely appealed the Planning  
3 Commission’s denial to the BCC. On November 13, 2018, the BCC held a hearing and affirmed  
4 the Planning Commission’s denial.

5 In **GRANTING** the *Petition*, this Court has carefully considered the access concerns of  
6 the learned Planning Commission and BCC as contained in the record below, focused on: (1) the  
7 right-in only; (2) the right-out only; (3) the U-turn inefficiency; and (4) the hindered bus access  
8 through the U-turn.

9 **Right-in Only Access.**

10 The right-in turn only for a residential subdivision may be irregular, however, the Court  
11 finds that it is accessible by most (if not all) vehicle types. There is no evidence this constitutes  
12 a significant safety risk. As mentioned by Lakes, in the *Petition* and at the hearing, other  
13 developments in the area have entrances that are right-in only. For example, the Planning  
14 Commission and BCC previously approved on Lemmon Drive the development of Silver State  
15 Kennels, AutoZone, Jimboys Tacos, and Mynt Dispensary. This alone does not amount to  
16 substantial evidence in favor of denying the Application.

17 **Right-out Only Access.**

18 To exit the subdivision, vehicles would be required to use a right-out only onto Lemmon  
19 Drive up to a U-turn near Military Road. The BCC expressed concern about the impact of the  
20 limited turn on first responders. Although a justified concern, the Court finds that the specifics  
21 of the concern do not amount to substantial evidence. Given that the U-turn is 500-700 ft. away  
22 from the points of exit, its impact appears to be *de minimus*. First responders can safely turn right  
23 onto Lemmon Drive and use the U-turn. Thus, this concern does not justify denial of the  
24 Application.

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27 <sup>2</sup> The ten findings of fact under WCO §110.608.25 include: (1) Plan Consistency; (2) Design or  
28 Improvement; (3) Type of Development; (4) Ability of Services; (5) Fish or Wildlife; (6) Public  
Health; (7) Easements; (8) Access; (9) Dedications, and (10) Energy. Only Section 8 appears to  
have been troublesome to the Planning Commission and BCC.

1 **U-turn Inefficiency.**

2 The U-turn following the right-out only on Lemmon Drive does pose some inefficiency.  
3 However, the Planning Commission's Staff Report pointed to improvements or other alternative  
4 methods, which would alleviate traffic. For example, widening the path or the implementation  
5 of a round-a-bout could yield improved traffic flow. With the modifications, the inconvenience  
6 of the U-turn is outweighed by workable room for improvement.

7 Furthermore, even without improvement, the Lakes' Traffic Impact study determined that  
8 that the U-turn rendered the Lemmon Drive/Military Road intersection within an acceptable level  
9 of service ("LOS"). The 2040 Regional Transportation Plan, adopted by the Regional  
10 Transportation Commission (RTC), establishes the LOS criteria for Washoe County, City of  
11 Reno, and Sparks.<sup>3</sup> The required LOS for the area is an "E" or better. According to the Lakes'  
12 Traffic Impact Study, the area is designated as a "C" LOS rating. These concerns, therefore, are  
13 able to be addressed as a requisite for approval, and thus do not rise to the level of substantial  
14 evidence.

15 **Bus Access through the U-turn.**

16 The U-turn may be incompatible with school bus routes, a vehicle apparently unable to  
17 maneuver such turn. However, the school district may designate a pick-up/drop-off area or the  
18 bus may turn onto Lemmon Drive and travel up to the turn onto Military Road. While this path  
19 may be an inconvenience, the Court finds that, again, this does not arise to substantial evidence.

20 **Summary.**

21 In evaluating the concerns of the Planning Commission and the ultimate decision of the  
22 BCC, the Court finds that the general access issues with the Tentative Map do not, individually  
23 or in total, arise to substantial evidence sufficient to deny the application. Each of the above  
24 concerns may be alleviated with the recommendations made in the Planning Commission Staff  
25 Report.

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<sup>3</sup> <https://www.rtcwashoe.com/mpo-projects/rtp/>

1 **CONCLUSION**

2 **IT IS HEREBY ORDERED** that based on the foregoing, and good cause appearing, the  
3 *Petition for Judicial Review Pursuant to NRS 278.0233* is **GRANTED**.<sup>4</sup>

4 **IT IS FURTHER ORDERED** that the matter is **REMANDED** to the Washoe County  
5 BCC for decision consistent with this Order.

6 The BCC shall approve the Lakes' Tentative Map, with the conditions set forth in the  
7 Planning Commission Staff Report.

8 **IT IS SO ORDERED.**

9 **DATED** this 19 day of July, 2019.

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11 BARRY L. BRESLOW  
12 District Judge  
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26 <sup>4</sup> In **GRANTING** the *Petition*, the Court does not intend to impose its view on those held by  
27 experienced and concerned public servants. Nonetheless, the Court ultimately finds that the  
28 decision of the BCC to deny Lakes' Application was not supported by substantial evidence.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 19 day of July, 2019, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Nathan Edwards, Esq.

Stephen Mollath, Esq.



CHRISTINE KUHL  
Judicial Assistant