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Reply to Reno

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Via Email to: ocm_washoecounty@washoecounty.gov & Washoe311@washoecounty.gov

Washoe County Board of County Commissioners
1001 E. Ninth Street
Reno, NV 89512

Re: Response to Appeal of WSUP23-0016; For Consideration by the Commission as Agenda Item #16 on May 28, 2024.

Dear Chair Hill and County Commissioners,

Our office represents the Sky Tavern Junior Ski Program. By decision dated April 4, 2024, the Washoe County Board of Adjustment entered an Action Order (the “Order”). The Order approved by a 4-1 vote, with conditions, special use permit WSUP23-0016 (the “SUP”) pertaining to an expansion of the Sky Tavern Junior Ski Area, including water storage tanks, enhanced snowmaking water supply pipes, two well and pump houses, expanded site parking, and lighting for the parking area and night skiing, and related grading and cut and fill authorizations. The Board of Adjustment made specific findings that the SUP met the required elements of consistency with the County Master Plan and Forest Area Plan, adequacy of improvements, site suitability, and non-detrimental impacts on neighbors or the surrounding area. Order, 1-2. With respect to the lighting for night skiing, the Board of Adjustment imposed Condition 1(j)(v), which provides that “Any site lighting shall not be operational later than 9:00 pm.”¹ Order, Exhibit A, 6.

On April 12, 2024, the Mount Rose Bowl Property Owners Water Co. (the “Water Company”) filed an appeal of the Order to the Washoe County Board of County Commissioners (the “Appeal”).² The Appeal described the Water Company’s “basis as a person aggrieved by the decision” as “[s]ignificant light to the night sky, when this is considered a scenic corridor for dark

¹ The lighting for night skiing will only be used during the ski season and will not be used year round.

² The Water Company is self-described as “a publicly-owned residential & commercial water system and has a current water operation permit, NV 0000732. The [Water Company] services water to 15 metered flat-rate connection customers in its service area in southwestern Reno up on Mount Rose, which is located in Washoe County.” See <http://water.nv.gov/programs/planning/plans/mountrosebowl.pdf>

night skies.” Appeal, 1. The Appeal indicated that the action being appealed was the “[a]pproval of lighting for night skiing . . .” Id. The specific remedy requested by the Water Company is “[t]o deny the night lighting.” Appeal, 2. The Appeal also included a letter on the letterhead of the Water Company. Accordingly, the Appeal is limited to condition 1(j)(v) of the SUP.³

As set forth in more detail below, the Appeal should be dismissed for several reasons. First, the Water Company has no recognizable property right in lighting or dark skies protections and has suffered no substantial injury and therefore lacks legal standing to pursue the Appeal. Second, the Water Company fails to identify any specific reason the SUP violates the dark skies provisions in the Washoe County Master Plan (including the Forest Area Plan) and therefore fails to satisfy its burden of proof on the Appeal. Third, the Order is based on substantial evidence provided by Sky Tavern and accepted by the Board of Adjustment, is consistent with stated goals in the County Master Plan and related planning documents, and the Board of Adjustment imposed reasonable conditions on the use of night lights for skiing at Sky Tavern by requiring the lights be off by 9:00 p.m.

A. The Importance of Sky Tavern to the Community.

The Sky Tavern Junior Ski Program, a non-profit 501(c)(3) entity, operates at Sky Tavern pursuant to a 50 year lease with the City of Reno.⁴ The goal of the Sky Tavern Junior Ski Program is to introduce youth to skiing and provide them a lifelong love and foundation for the recreational activity that is enjoyed by so many residents and visitors to our area.

The Sky Tavern Junior Sky Program began in 1948, when a donor gifted the property to the City of Reno to protect and preserve youth skiing opportunities. To say that the Sky Tavern Junior Ski Program has had an enormous impact on the region would be a gross understatement. This last winter, over 3,700 youth and 1,000 adult volunteers participated in the program. The program is so popular that several hundred applicants are, unfortunately, turned down each year because there is not enough space. Alumni of the Sky Tavern Junior Ski Program have gone on to ski in high school, in college, in the Olympics and professionally.

Importantly, Sky Tavern provides training opportunities for local collegiate and high school ski teams. The north facing orientation of the ski slopes at Sky Tavern is ideal for hard and cold snow, allowing racers to train at competition level speeds. Today, training opportunities for student athletes at Sky Tavern are limited to 2-3 runs between the time they are able to leave school and the time it gets too dark to safely ski. The use of night lights at Sky Tavern will significantly

³ See Staff Report to County Commission, 3 (“Other than appealing the approval of the lighting for night skiing, the appellants are not asking to overturn any of the other approvals associated with this special use.”).

⁴ Sky Tavern operates on land owned by the City of Reno as a City Park. Sky Tavern and the City of Reno entered into a 50 year lease in 2019.

increase the opportunities for student athletes to train without compromising their education.⁵ That is exactly why the Washoe County School District, the University of Nevada, and a broad range of other community leaders support the use of night lights at Sky Tavern. For example, University of Nevada President Brian Sandoval noted that “[t]he possibility of evening training would allow our student-athletes more flexibility to attend courses and study sessions during the day, empowering them to continue to excel academically while also succeeding in their athletic careers.” Washoe County School District Superintendent Kristen McNeil noted that there are ten high school ski teams in Washoe County that train at Sky Tavern, and “[t]hrough this lighting enhancement, the partnership between WCSD and Sky Tavern will greatly increase our students’ engagement opportunities directly impacting the District’s critical mission of educating our communities students.” Other letters of support were submitted to the Board of Adjustment from the head coach of the University of Nevada Ski Team, the head coaches of the North Valleys High School Ski Team and the Manogue Ski Team, the CEO of the High Fives Foundation, the President of the Arrowcreek HOA, PBS Reno, the Nevada Chapter of the American Academy of Pediatrics and a myriad of other Washoe County citizens and community leaders.

B. The Appeal Should Be Dismissed and the SUP Affirmed.

For several reasons, the Appeal brought by the Water Company should be dismissed and the Order should be affirmed.

1. The Water Company lacks legal standing to bring the Appeal because it has no substantial injury.

Only an aggrieved person has standing to appeal the Order to the Board of County Commissioners. Washoe County Development Code §110.912.20(a)(1). An “aggrieved person” with standing to appeal is “a person or entity who has suffered a substantial grievance (not merely a party who is dissatisfied with a decision) in the form of either: (a) The denial of or *substantial injury to a personal or property right*, or (b) The imposition of an illegal, unjust or inequitable burden or obligation by an enforcement official, the Board of Adjustment or an administrative hearing officer.” Id., §110.910.02 (emphasis added); *see also McSweeney-Wilson v. Storey Cnty. Comm’rs*, No. 82806, 2022 WL 500478, at *1 (Nev. Feb. 17, 2022) (reiterating “that in counties with populations less than [700,000], local ordinances govern the definition of who is aggrieved” (citing *City of N. Las Vegas v. Eighth Jud. Dist. Ct.*, 122 Nev. 1197, 1206, 147 P.3d 1109, 1115 (2006))); *DeMartini v. City of Reno*, No. 82331, 2022 WL 667084, at *1 (Nev. Mar 3, 2022) (looking to city ordinance for definition of aggrieved for decision of municipal body sitting in Washoe County, and concluding appellant lacked standing to administratively appeal or seek judicial review because he failed to show “that his personal right or right of property [was] adversely and substantially affected”).

⁵ The ability to train at night will allow skiing student-athletes the same opportunities student athletes in other sports have with respect to training at night, such as football, baseball, softball, soccer and track and field.

Here, the Water Company has suffered no substantial injury to a personal or property right as a result of the Order and therefore no standing to challenge it. As it relates to the approval of the SUP, the Water Company's appeal challenges only the approval of lighting for night skiing. Yet the Water Company identifies no injury personal to it. *See Schwartz v. Lopez*, 132 Nev. 732, 743, 382 P.3d 886, 894 (2016) (recognizing generally that, to establish standing, a party must show the occurrence of an injury that is "special," "peculiar," or "personal" to that party "and not merely a general interest that is common to all members of the public"). Instead, the Water Company points to the purported impact of night lighting on "the greater Truckee Meadows area," and complains that other unidentified members of the community "living in the Truckee Meadows greater area that would be impacted by the night lighting proposed for increased skiing did not receive any notification."⁶ Appeal at 1, 3. The Water Company likewise failed to identify any personal injury to it before the Board of Adjustment, but rather relied on speculative concerns about operational challenges and costs for Sky Tavern, as well as the preferences for day skiing and safety of Sky Tavern's guests.⁷ *See* Public Comment Packet to Board of Adjustment, 9-10. In other words, Water Company's concerns are speculative at best but otherwise based on potential harms that are neither substantial nor personal to it.⁸

Even if the Water Company articulated a substantial and personal injury, the Water Company would not be able to bring a private civil action against Sky Tavern over the night lighting because Nevada does not recognize a property right in lighting. *See Frederic and Barbara Rosenberg Living Trust v. MacDonald Highlands Realty, LLC*, 134 Nev. 570, 574, 427 P.3d 104, 108 (2018) (quoting from *Probasco v. City of Reno*, 85 Nev. 563, 565, 459 P.2d 772, 774 (1969)) ("Nevada has expressly repudiated the doctrine of implied negative easement of light, air and view for the purpose of a private suit by one landowner against a neighbor."). Simply put, the Water Company has no property interest in lights on another person's property.

Accordingly, because Appellant fails to show a substantial injury to the Water Company's personal or property right, and instead relies on a generalized and speculative injuries, Water Company does not meet the standing requirement for seeking administrative appellate review. *Cf. Garmong v. Lyon Cnty. Bd. of Commr's*, No. 74644, 2019 WL 1989191, at *1-2 (Nev. May 3, 2019) (concluding that appellant lacked standing to challenge special use permit via a writ petition because he relied "on a generalized injury" in having the laws executed and the public duties and

⁶ This argument is a red herring, as notice was appropriately given in accordance with NRS 278.315(4)(c). *See* Staff Report to Board of Adjustment, Ex. D at 48 ("A notice setting forth the time, place, purpose of hearing, a description of the request and the land involved was sent within a 500-foot radius of the subject property. A total of 35 separate property owners were noticed a minimum of 10 days prior to the public hearing date.").

⁷ Among the speculative concerns raised by the Water Company were concerns that electricity needs for Sky Tavern would be prohibitively expensive, that "guests prefer to ski in the warmer daylight hours," and that a "wrong turn can send a skier into a dark forest." Public Comment Packet to Board of Adjustment, 9.

⁸ To the extent that the Water Company attempts to raise issues on appeal that are outside the night lighting, the Water Company has similarly failed to identify a personal and substantial injury that it will suffer and lacks standing on those issues.

rights enforced, but failed “to show a direct and substantial injury”). The Appeal should be dismissed on this threshold basis alone.

2. The Water Company has not met its burden of proof on the Appeal.

A decision of the Board of Adjustment, such as the Order, is “presumed to be reasonable and lawful, and it is the burden of the appellant to persuade the Board of County Commissioners otherwise.” Washoe County Development Code §110.912.20(b)(6)(i). The grant or denial of a special use permit is a discretionary act that must be supported by substantial evidence. *City Council of Reno v. Travelers Hotel*, 100 Nev. 436, 439 (1984). Substantial evidence is defined as evidence that “a reasonable mind might accept as supporting a conclusion.” *City of Las Vegas v. Laughlin*, 111 Nev. 557, 559 (1995) (citations omitted). A court generally will give deference to a discretionary decision of a local government unless there are clear signs of an abuse of discretion, such as the lack of substantial evidence for a denial. *City Council of Reno*, 100 Nev. at 439.

Here, the Appeal makes only vague and general statements suggesting that condition 1(j)(v) of the Order is inconsistent with a “scenic corridor for night skies.” Appeal, 1. No section of the County Code is cited, nor is any other statute, regulation or judicial decision with respect to standards for dark skies. Further, there is no “dark skies” ordinance in Washoe County, nor has the Water Company identified any best practices for dark sky standards that would apply.⁹ Regardless, the Water Company has failed to provide any evidence whatsoever to prove its case, instead relying on speculation, conjecture and generalized complaints.

Before the Board of Adjustment, the Water Company presented written public comment on night skiing, and brief verbal remarks.¹⁰ The Water Company did not provide any technical or specific evidence regarding lighting and did not rebut any evidence offered by Sky Tavern, instead relying on speculation and conjecture.¹¹ The Nevada Supreme Court has held that generalized statements by individuals unsupported by proof is not substantial evidence sufficient to deny a special use permit. *City Council of Reno*, 100 Nev. at 439 (“Such statements and opinions alone do not justify denial of a special use permit.”). For this reason alone, the Water Company has failed to meet its burden of proof on the Appeal, and the Appeal should be dismissed.

⁹ The Washoe County Master Plan, Envision 2040, includes a table on page 164 indicating that the County intends to “[d]evelop a Dark Skies Ordinance to minimize impacts of excess lighting while maintaining a safe level of visibility at night.” That “Dark Skies Ordinance” has yet to be proposed. The Forest Area Plan component of the Master Plan proposes that the County should establish “development guidelines” including standards that lighting is “consistent with the current best practice “dark-sky” standards. Forest Area Plan, F.2.5. However, no such development guidelines or standards have been proposed or enacted. The Mount Rose Scenic Byway Corridor Management Plan (“Mt. Rose Plan”) includes a goal to “[p]reserve the remaining integrity of our region’s dark night sky.” Mt. Rose Plan, 106. However, no standards are set forth for this general principle.

¹⁰ The Water Company also provided comment on other aspects of the SUP, none of which are raised in the Appeal.

¹¹ There has been no allegation by the Water Company at any point in these proceedings that the SUP violates lighting standards set forth in Washoe County Development Code §110.414.21 et. seq.

3. The use of night lighting for recreational opportunities is consistent with the Master Plan and the Board of Adjustment imposed reasonable conditions on the SUP.

The Water Company would have the County Commission ignore all other goals of the Master Plan and related plans in favor of an exclusive focus on speculative and unsubstantiated “dark skies” concerns. This would be entirely inappropriate. Strict compliance with a single aspect of a master plan to the exclusion of all other aspects would be impossible as master plans, by their nature, set aspirational and general goals for a local government. See *Nova Horizon v. City Council of Reno*, 105 Nev. 92, 96 (1989) (“We therefore choose to view a master plan as a standard that commands deference and a presumption of applicability, rather than a legislative straitjacket from which no leave may be taken.”). Here, the Board of Adjustment appropriately considered the importance of other goals of the Master Plan in issuing the Order.

The County Master Plan was developed as a result of community interviews, questionnaires, and polls. Master Plan, 19. One of the “Key Takeaways” from that process was the importance of “Access to Nature and Recreation.” Master Plan, 20. (“The access that residents have to hiking, biking, skiing, and open space was stated as the primary reason people were attracted to the area and one of the most important features that speaks to resident retention.”); Master Plan, 11 (“Growth in younger age groups has increased demand for alternative transportation, outdoor recreation opportunities, and more diverse and more affordable housing types.”); Master Plan, 19 (listing a “top priority” of the County as “to preserve and enhance access to open space, recreation, wildlife and natural resources” and to “[e]xpand and emphasize economic, recreational, and cultural opportunities.”); Master Plan, 37-38 (Regional Form and Coordination Element Principle 2 is set forth as “Utilize land use and transportation decisions to support a healthy economic base.”). The Mt. Rose Plan notes that “the area is still a recreational hot spot offering skiing and snowshoeing in the winter and hiking, camping and golfing in the summer” and a stated goal of the plan is to “enhance recreation access.”¹² Mr. Rose Plan, 68. These goals are among the reasons why Board of Adjustment members supported the SUP.¹³

The enhancement of recreational opportunities, including skiing, is of paramount importance in the master plan, and should not be easily brushed aside. The use of night lighting for skiing at Sky Tavern significantly enhances recreational opportunities for Washoe County residents, and particularly for student-athletes and their parents. See *supra*, Section A. These

¹² Skiing is the reason why the Mt. Rose Highway looks the way it does today. The Mt. Rose Highway “was not formally paved until the popularization of skiing in the 1950’s and the emergence of ski resorts such as the Reno Ski Bowl (now the Slide Mountain side of Mt. Rose – Ski Tahoe).” Mt. Rose Plan, 30.

¹³ Some pertinent comments from the Board of Adjustment hearing include: “Member Ghishan agreed with Chair Pierce’s position, referencing Regional Form and Coordination Principle 2 which stressed strengthening the identity of the region by encouraging land uses that contributed to the community. He was moved when several reviewing entities had no concerns about the ski lighting element, and Regional Parks only suggested that Sky Tavern use best practices for dark sky compliance.”; “[Vice Chair Christensen] was swayed by Chair Pierce’s point that the lighting would only be used for a portion of the year and with the use of technology which would direct light downward.” Meeting Minutes for Board of Adjustment, April 4, 2024, 8.

recreational benefits are real and tangible. The Board of Adjustment expressly recognized these concerns when it deliberated and made its decision that the SUP is consistent with the County Master Plan and Forest Area Plan, has adequate improvements, is on a suitable site, and will not be detrimental to neighbors or the surrounding area. Order, 1-2.

In making those findings, it is important to note that when the SUP was first proposed, Sky Tavern proposed a 10:00 pm shut off time for the night lighting. See Staff Report to Board of Adjustment, 12. Sky Tavern's application for the SUP recognized a desire to limit sky glow and included detailed and technical information on the night lights, including the type of LED lights used, the height and location of light poles, the downward tilt of the lighting, side shielding to diffuse sky glow, and renderings of light diffusion. *Id.*, Exhibit A. This evidence has not been rebutted by the Water Company. The Board of Adjustment accepted that evidence but nonetheless decided to impose a reasonable condition to mitigate the Water Company's concerns by prohibiting the use of night lights after 9:00 p.m.¹⁴ This mitigation, coupled with the repeated emphasis on recreational uses in the County Master Plan and the unrebutted technical evidence provided by Sky Tavern, is more than sufficient to justify the Order and dismiss the Appeal. See *City of Laughlin*, 111 Nev. at 559.

C. Conclusion.

The Water Company's Appeal should be dismissed for a myriad of reasons. The Water Company has not suffered any real or personal injury that would give it legal standing to bring an appeal. The Water Company's issues with night lighting are generalized, speculative and lack an evidentiary basis, and the Water Company has therefore failed to meet its burden of proof. Finally, the real and tangible benefits that night skiing at Sky Tavern will bring to the community, and to student-athletes in particular, is consistent with the County Master Plan's emphasis on the protection and enhancement of recreational opportunities.

¹⁴ Although Washoe County has yet to propose or enact a dark skies ordinance or define best practices for dark skies issues, other jurisdictions that have done so typically allow lighting for athletic events with a requirement that lights be extinguished by a time certain. See Black Diamond Wash., Code § 18.70.030 (2009) (including an exemption for sports lighting with shielding and imposing a 10:00 pm shut off time); Kanab, Utah, Code § 22(e)(7) (2023) (including an exemption for sports lighting with shielding); Aspen, CO, Code § 26.512.030(d) (2023) (allowing lighting when there is a demonstrable community benefit); City of Sedona, AZ, Code § 911.06 (2018) (allowing sports lighting with angle limits and imposing a 10:00 pm shut off time); Star Valley, WY, Code § 153.074(5) (allowing sports lighting with shielding and imposing a 11:00 pm shut off time).

Sincerely,

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