



# Planning Commission Staff Report

Meeting Date: February 6, 2018

Agenda Item: 8D

STAFF REPORT CASE NUMBER: WDCA17-0007 (Article 406)

**BRIEF SUMMARY OF REQUEST:** Change the requirement for measuring a setback from an access easement 20 feet wide or more to measuring a setback from an access easement when the easement is more than 20 feet wide, and to clarify that when a County maintained road is located outside of an easement or right-of-way the setback is measured from the edge of the road pavement.

**STAFF PLANNER:** Planner's Name: Eva Krause, AICP  
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**APPLICANT:** Washoe County

## CASE DESCRIPTION

**Development Code Amendment Case Number WDCA17-0007 (Setback from easements) –**  
For possible action, hearing and discussion:

- A) To initiate an amendment to Washoe County Code Chapter 110 (Development Code) within Article 406, Building Placement Standards, to amend Section 110.406.05 General, and for other matters necessarily connected therewith and pertaining thereto. The proposed amendment would require all yard setbacks to be measured from the property line with two exceptions: (1) when an access easement or right-of-way greater than 20 feet in width traverses the property, in which case the setback would be measured from the edge of the easement closest to the proposed structure, or (2) when a county-maintained road located outside a recorded easement or right-of-way traverses the property, regardless of width, in which case the setback would be measured from the edge of the road.
- B) If the proposed amendment is initiated, to conduct a public hearing to deny or recommend approval of the proposed amendment; and,
- C) If approval is recommend, to authorize the Chair to sign a resolution to that effect.

- ♦ Location: County wide
- ♦ Dev Code: Authorized in Article 818
- ♦ Comm. District: All Commissioners

## STAFF RECOMMENDATION

INITIATE

INITIATE &amp; RECOMEND APPROVAL

DO NOT INITIATE

**POSSIBLE MOTION**

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Planning Commission Initiate Development Code Amendment WDCA17-0007, and recommend approval and authorize the Chair to sign the attached resolution.

*(Motion with Findings on Pages 5 and 6)*

**Staff Report Contents**

<b>Background</b>	3
<b>Existing Code language</b>	3
<b>Proposed Amendment</b>	3
<b>Project Evaluation</b>	3
<b>Findings</b>	4
<b>Public Notice</b>	5
<b>Recommendation</b>	5
<b>Motions</b>	5
<b>Appeal Process</b>	6

**Exhibits Contents**

Resolution	Exhibit A
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## **Background**

Washoe County Code (WCC) Chapter 110, Article 406, *Building Placement Standards*, determines when a setback is measured from the property line and when a setback is measured from the edge of an access easement. In addition the standards determine where to measure a setback from when a Washoe County maintains a road even if the access easement is less than 20 feet wide.

Section 110.406.05 General, states that *All required yard setbacks are measured from the property line with the following exception: when an access easement traverses a portion of the property and has a total width of twenty (20) feet or more, or is maintained by the County, the required yard setback is measured from the easement edge closet to the propose structure.*

- In March of 2006, Article 406, *Building Placement Standards* was amended to address a condition that, while not common, was impacting Washoe County's ability to maintain some roads. The problem is related to old subdivisions that were either not recorded or where roads were not constructed in accordance with the approved subdivision map, but the responsibility for road maintenance has been accepted by the County. The 2006 code amendment was an attempt to address the issue of where to measure the setback from when a County maintained road is not built within a recorded right-of-way or easement.
- As part of the 2006 code amendment, the General section language was changed to state that the setback is to be measured from access easements 20 feet wide or wider, where it had previously said the setback is to be measured from easements of more than 20 feet wide. This amendment unintentionally made numerous homes and accessory structures legal non-conforming and limited a property owner's ability to upgrade or expand their existing structures or to construct new structure.

## **Existing Code language**

**Section 110.406.05 General.** The yard requirements and setback dimensions are set forth in Part Three of Table 110.406.05.1. These requirements may be modified pursuant to Article 408, Common Open Space Development. All required yard setbacks are measured from the property line with the following exception: when an access easement traverses a portion of a property and has a total width of twenty (20) feet or more, or is maintained by the County, the required yard setback is measured from the easement edge closest to the proposed structure.

## **Proposed Amendment**

**Section 110.406.05 General.** The yard requirements and setback dimensions are set forth in Part Three of Table 110.406.05.1. These requirements may be modified pursuant to Article 408, Common Open Space Development. All required yard setbacks are measured from the property line with the following exception: **(1) when an access easement traverses a portion of a property and has a total width of more than twenty (20) feet or more the required yard setback is measured from the easement closest to the proposed structure;** or ~~is maintained by the County;~~ **(2) when a Washoe County-maintained road traverses a portion of a property and is located outside of a recorded right-of-way or easement, regardless of the roadway width,** the required yard setback ~~is shall be~~ measured from the ~~easement edge closest to the proposed structure.~~ **edge of the road.**

## **Project Evaluation**

- An access easement 20 feet in width is normally created to provide a private driveway to parcels not located on a public road. These easements are not intended to become public roads.

- When an access easement is more than 20 feet wide, such as easement surrounding government patent lots, the intent is to be used as, or to preserve, corridors for roads.
- All yard abutting access easement are considered front yards. In most regulatory zones the front yard setback is the largest setbacks required.
- Measuring the required yard setback from the` edge of the easement, rather than from the property line, reduces the developable area of the property.
- The greatest impact of the 2006 code change is to properties zoned Medium Density Suburban (MDS). MDS zoning allows for 3 units per acre. These smaller lots have a 20 foot front and rear yard setback requirement. Add to that a 20 foot access easement, and which results in 60 feet of the property that cannot be built on.
- Amending the code to required yard setbacks to be measured from property line rather than from the easement, when the easement is 20 foot wide or less, will restore many parcels to a legal and conforming status.
- Under the current code a property owner can build a fence on the edge of the easement if the fence is no higher than 4.5 feet. The proposed amendment will allow a property owner who has a 20 foot wide access easement traversing their property the ability to build a 6 foot tall fence along their neighbor's driveway, to screen and secure their yard and home in a manner similar to other single family properties that do not have easements traversing their property.

## **Findings**

WCC Section 110.818.15(e) requires the Planning Commission to make at least one of the following findings of fact for approval of the amendment. Staff provides the following evaluation for each of the findings and recommends that the PC make all four findings in support of the proposed amendment.

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan.

*Staff comment:* The Master Plan establishes policies governing uses on properties in Washoe County, which are then regulated through the Development Code. The proposed amendment does not add or change any allowable uses enabled by regulatory zones as established in the Development Code, and thus complies with the policies of the Washoe County Master Plan.

2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code.

*Staff comment:* The proposed amendment will allow individuals the ability to use more of their property, and will allow the County to require a buffer from roads that are located outside of an easement or right-of-way. This amendment represents very minimal impacts in most situations. There are no anticipated adverse impacts to public health, safety or welfare.

3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the

requested amendment allow for a more desirable utilization of land within the regulatory zones.

**Staff comment:** The proposed amendment corrects the unintended impact of the 2006 code amendment, and is an initiative by Planning and Building Division staff to provide relief to properties that became legal non-conforming properties when the previous code amendment was approved. The code amend will also allow property owner's better use of their land by allowing a 20 foot wide access easement to be incorporated within the required setback.

4. **No Adverse Affects.** The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

**Staff comment:** The Conservation Element and the Population element are not impacted by this proposed amendment.

### **Public Notice**

Pursuant to WCC Section 110.818.20, notice of this public hearing was published in the newspaper at least 10 days prior to this meeting, and the Chair and membership of all Citizen Advisory Boards were likewise notified of the public hearing.

### **Recommendation**

It is recommended that the Planning Commission initiate and subsequently recommend approval of WDCA17-0007, to amend the Development Code within Article 406, *Building Placement Standards*, as follows:

**Section 110.406.05 General.** The yard requirements and setback dimensions are set forth in Part Three of Table 110.406.05.1. These requirements may be modified pursuant to Article 408, Common Open Space Development. All required yard setbacks are measured from the property line with the following exception: when an access easement traverses a portion of a property and has a total width of more than twenty (20) feet the required yard setback is measured from the easement; or when a Washoe County maintained road is located outside of a recorded right-of-way or easement, regardless of the roadway width, the required yard setback shall be measured from the edge of road pavement.

The following motions are provided for the Planning Commission's consideration:

### **Motions**

#### ***Initiation***

I move that, after giving reasoned consideration to the information contained in the staff report and received during the public hearing, the Washoe County Planning Commission initiate the amendment to Washoe County Code Chapter 110 within Article 406, *Building Placement Standards*, as described in the staff report for WDCA17-0007.

#### ***Amendment***

I move that, after giving reasoned consideration to the information contained in the staff report and received during the public hearing, the Washoe County Planning Commission recommend approval of WDCA17-0007, to amend Washoe County Code Chapter 110 within Article 406, *Building Placement Standards*, as described in the staff report for this matter. I further move to authorize the Chair to sign the resolution contained in Exhibit A on behalf of the Planning Commission and to direct staff to present a report of this Commission's recommendation to the Washoe County Board of County Commissioners within 60 days of today's date. This

recommendation for approval is based on all of the following four findings in accordance with Washoe County Code Section 110.818.15(e):

1. Consistency with Master Plan. The proposed Development Code amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

### **Appeal Process**

An appeal of the Planning Commission's denial of a Development Code amendment may be made to the Washoe County Board of County Commissioners within 10 calendar days from the date that the Planning Commission's decision is filed with the Secretary to the Planning Commission, pursuant to WCC Sections 110.818.25 and 110.912.20.

xc: Applicant: Washoe County Community Services Department, Planning and Building Director

Staff Report xc: David M. Solaro, Assistant County Manager; Dwayne Smith Engineering and Capital Projects; Denise Reynolds, Truckee Meadows Fire Protection District; All Citizen Advisory Board, Chair.



**RESOLUTION OF THE WASHOE COUNTY PLANNING COMMISSION**

**INITIATING AND RECOMMENDING APPROVAL OF AN AMENDMENT TO WASHOE COUNTY CODE CHAPTER 110 (DEVELOPMENT CODE) WITHIN ARTICLE 406, *BUILDING PLACEMENT STANDARDS*, TO AMEND THE STANDARDS WITHIN SECTION 110.406.05 GENERAL; AND OTHER MATTERS NECESSARILY CONNECTED THEREWITH AND PERTAINING THERETO. THE CODE CURRENTLY REQUIRES THAT THE SETBACK BE MEASURED FROM THE EDGE OF THE EASEMENT WHEN THE EASEMENT IS 20 FEET WIDE OR GREATER. THE PROPOSED AMENDMENT WOULD REQUIRE THE SETBACK BE MEASURED FROM THE EDGE OF AN EASEMENT WHEN THE EASEMENT IS MORE THAN 20 FEET.**

**IN ADDITION, THE CODE CURRENTLY REQUIRES THAT WHEN A ROAD IS MAINTAINED BY THE COUNTY, THE SETBACK IS MEASURED FROM THE EDGE OF AN ACCESS EASEMENT REGARDLESS OF THE EASEMENT WIDTH. THE PROPOSED AMENDMENT WOULD REQUIRE THAT IF A ROAD IS MAINTAINED BY THE COUNTY, BUT IS NOT LOCATED WITHIN A RECORDED RIGHT-OF-WAY OR EASEMENT, THE SETBACK SHALL BE MEASURED FROM THE EDGE OF THE ROAD REGARDLESS OF THE ROAD WIDTH.**

Resolution Number 18-06

**WHEREAS**

- A. Washoe County Code Section 110.818.05 requires that amendments to the Washoe County Code Chapter 110 (Development Code) be initiated by resolution of the Washoe County Board of County Commissioners or the Washoe County Planning Commission; and
- B. The Washoe County Planning Commission initiated amendments to Washoe County Code Chapter 110 (Development Code) Article 406, *Building Placement Standards*, on February 6, 2018 as fully described in Attachment A-1 to this resolution; and
- C. Development Code Amendment Case Number WDCA17-0007, came before the Washoe County Planning Commission for a duly noticed public hearing on February 6, 2018; and
- D. The Washoe County Planning Commission gave reasoned consideration to the information it received regarding the proposed Development Code Amendment; and
- E. Whereas, pursuant to Washoe County Code Section 110.818.15(e), the Washoe County Planning Commission made the following findings necessary to support its recommendation for adoption of the proposed Development Code Amendment Case Number WDCA17-0007:

1. Consistency with Master Plan. The proposed amendment is in substantial compliance with the policies and action programs of the Washoe County Master Plan;
2. Promotes the Purpose of the Development Code. The proposed Development Code amendment will not adversely impact the public health, safety or welfare, and will promote the original purposes for the Development Code as expressed in Article 918, Adoption of Development Code;
3. Response to Changed Conditions. The proposed Development Code amendment responds to changed conditions or further studies that have occurred since the Development Code was adopted by the Board of County Commissioners, and the requested amendment allow for a more desirable utilization of land within the regulatory zones; and,
4. No Adverse Affects. The proposed Development Code amendment will not adversely affect the implementation of the policies and action programs of the Conservation Element or the Population Element of the Washoe County Master Plan.

**NOW, THEREFORE, BE IT RESOLVED** that the Washoe County Planning Commission recommends approval of the ordinance attached hereto as Attachment A-1.

A report describing this amendment, discussion at this public hearing, this recommendation, and the vote on the recommendation will be forwarded to the Washoe County Board of County Commissioners within 60 days of this resolution's adoption date.

ADOPTED on February 6, 2018.

WASHOE COUNTY PLANNING COMMISSION

ATTEST:

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Trevor Lloyd, Secretary

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Sarah Chvilicek, Chair



WORKING COPY  
INFORMATION ONLY

REGULAR TEXT: NO CHANGE IN LANGUAGE

~~STRIKEOUT TEXT: DELETE LANGUAGE~~

**BOLD TEXT: NEW LANGUAGE**

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Notice: Per NRS 239B.030, this document does not contain personal information as defined in NRS 603A.040
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***Summary: Amends the Development Code by updating the standards within Section 110.406.05, General, to change when a setback is measured from an access easement, or from a Washoe County maintained road not located in a recorded right-of-way or easement; and other related matters.***

BILL NO. \_\_\_\_

ORDINANCE NO. \_\_\_\_

Title:

An ordinance amending the Washoe County Code at Chapter 110 (Development Code), within Article 406, *Building Placement Standards*, at Section 110.406.05, *General*, to modify the requirements applicable to measuring setbacks from certain easements by changing the requirement to measure setbacks from the edge of the easement when the easement is more than 20 feet wide; and, by clarifying that when a County maintained road is located outside of a recorded easement or right of way the setback is measured from the edge of the road; and for other matters necessarily connected therewith and pertaining thereto.

WHEREAS:

- A. The Washoe County Planning Commission initiated the proposed amendments to Washoe County Code Chapter 110 (Development Code) by Resolution Number 18-\_\_\_\_ on February 6, 2018; and,

- B. The amendments and this ordinance were drafted in concert with the District Attorney; and the Planning Commission held a duly noticed public hearing for WDCA17-0007 on February 6, 2018, and adopted Resolution Number 18-\_\_\_\_ recommending adoption of this ordinance; and,
- C. This Commission desires to amend Article 406 of the Washoe County Code Chapter 110 (Development Code) in order to update the standards within Section 110.406.05, *General*; and,
- D. Following a first reading and publication as required by NRS 244.100 (1), and after a duly noticed public hearing, this Commission desires to adopt this Ordinance; and,
- E. This Commission has determined that this ordinance is being adopted pursuant to requirements set forth in Chapter 278 of NRS, therefore it is not a "rule" as defined in NRS 237.060 requiring a business impact statement.

THE BOARD OF COUNTY COMMISSIONERS OF WASHOE COUNTY DOES HEREBY ORDAIN:

SECTION 1. Section 110.406.05 of the Washoe County Code is hereby amended to read as follows:

Section 110.406.05 General. The yard requirements and setback dimensions are set forth in Part Three of Table 110.406.05.1. These requirements may be modified pursuant to Article 408, Common Open Space Development. All required yard setbacks are measured from the property line with the following exceptions: (1) when an access easement traverses a portion of a property and has a total width of **more than** twenty (20) feet ~~or more, the required yard setback is measured from the edge of the easement closest to the proposed structure; or is maintained by the~~ County, (2) ~~when a Washoe County-maintained road is located outside of a recorded right-of-way or easement, regardless of the roadway width, the required yard setback is shall be~~ measured from the ~~easement edge closest to the proposed structure edge of the road.~~

SECTION 2. General Terms.

- 1. All actions, proceedings, matters, and things heretofore taken, had and done by the County and its officers not

inconsistent with the provisions of this Ordinance are ratified and approved.

2. The Chairman of the Board and officers of the County are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Ordinance. The District Attorney is authorized to make non-substantive edits and corrections to this Ordinance.
3. All ordinances, resolutions, bylaws and orders, or parts thereof, in conflict with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance, resolution, bylaw or order, or part thereof, heretofore repealed.
4. Each term and provision of this Ordinance shall be valid and shall be enforced to the extent permitted by law. If any term or provision of this Ordinance or the application thereof shall be deemed by a court of competent jurisdiction to be in violation of law or public policy, then it shall be deemed modified, ipso facto, to bring it within the limits of validity or enforceability, but if it cannot be so modified, then the offending provision or term shall be excised from this Ordinance. In any event, the remainder of this Ordinance, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected.

Passage and Effective Date

Proposed on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2018.

Proposed by Commissioner \_\_\_\_\_.

Passed on \_\_\_\_\_ (month) \_\_\_\_\_ (day), 2017.

Vote:

Ayes: Commissioners \_\_\_\_\_

Nays: Commissioners \_\_\_\_\_

Absent: Commissioners \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
County Clerk

\_\_\_\_\_  
Chair of the Board

**DRAFT: January 8, 2018**

This ordinance shall be in force and effect from and after the  
\_\_\_\_\_ day of the month of \_\_\_\_\_ of the year \_\_\_\_\_.

DRAFT