



WASHOE COUNTY

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STAFF REPORT

BOARD MEETING DATE: April 24, 2018

DATE: Wednesday, April 18, 2018

TO: Board of County Commissioners

FROM: Roger Pelham, MPA, Senior Planner, Planning and Building Division, Community Services Department, 328-3622, rpelham@washoecounty.us

THROUGH: Mojra Hauenstein, Architect, AICP Planner, LEED AP, Director of Planning and Building, 328-3619, mahuenstein@washoecounty.us

SUBJECT: Public hearing: Appeal of the Washoe County Planning Commission's approval of Tentative Subdivision Map Case Number WTM18-001 (Lemmon Valley Heights). The project is a 206-lot single-family residential, common open space subdivision. Lot sizes are proposed to range from a minimum size of 4,500 square feet (\pm .10 acres) to a maximum size of 17,206 square feet (\pm .39 acres) with an average size of 6,540 square feet (\pm .15 acres). Side yard setbacks are reduced from a minimum of 8 feet to a minimum of 5 feet, and lot widths from 80 feet to 45 feet minimum.

The Board of County Commissioners (Board) may affirm, reverse, or modify the decision of the Planning Commission. The Board's analysis may also include a finding on the issue of standing to bring the appeal in the first place. If the Board modifies or reverses, it may remand the matter back to the Planning Commission with instructions.

The applicant is JDS, LLC. The property owners are JDS, LLC and Jennifer Jory and Sunrinder Preet. The address is 1200 Estates Road. The Assessor's Parcel Numbers are 080-635-01, 080-635-02, 080-730-35, 080-730-21, and 552-210-07. The project area is \pm 128.5 acres total. The Master Plan Categories are Rural (R) and Suburban Residential (SR), the Regulatory Zones are General Rural (GR, \pm 59.95 acres, 1 dwelling per 40 acres) and Medium Density Suburban (MDS, \pm 68.64 acres, 3 dwellings per acre). The project is located within the North Valleys Plan Area, within the North Valleys Citizen Advisory Board boundary and within Sections 34 and 35, T21N, R19E, MDM, Washoe County, NV. The subdivision is authorized in Article 608, Tentative Subdivision Maps and Article 408, Common Open Space Development. (Commission District 5.)

AGENDA ITEM # _____

SUMMARY

The applicant, JDS, LLC, applied for approval of a tentative subdivision map. That map was approved by the Washoe County Planning Commission on March 6, 2018.

The appellant, Tammy Holt-Still, has appealed that approval, based upon concerns over public safety.

Washoe County Strategic Objective supported by this item: Stewardship of our Community

PREVIOUS ACTION

On February 12, 2018, the subdivision was considered by the North Valleys Citizen Advisory Board (NV CAB). The NV CAB took action to recommend approval of the project with a vote of four in favor and one opposed. Roger Edwards moved for approval, Teresa Aquila seconded and Jean Harris opposed.

On March 6, 2018, the subdivision was considered, in a public hearing, before the Washoe County Planning Commission (PC). The PC took action to approve the project, with conditions, with a vote of five in favor and two opposed. Commissioner Chesney moved for approval, Commissioner Donshick seconded, and Commissioners Lawson and Bruce opposed.

BACKGROUND

The Washoe County Planning Commission has approved the proposed subdivision map, having made all required findings including:

- 1) Plan Consistency. That the proposed map is consistent with the Master Plan and any specific plan;
- 2) Design or Improvement. That the design or improvement of the proposed subdivision is consistent with the Master Plan and any specific plan;
- 3) Type of Development. That the site is physically suited for the type of development proposed;
- 4) Availability of Services. That the subdivision will meet the requirements of Article 702, Adequate Public Facilities Management System;
- 5) Fish or Wildlife. That neither the design of the subdivision nor any proposed improvements is likely to cause substantial environmental damage, or substantial and avoidable injury to any endangered plant, wildlife or their habitat;
- 6) Public Health. That the design of the subdivision or type of improvement is not likely to cause significant public health problems;
- 7) Easements. That the design of the subdivision or the type of improvements will not conflict with easements acquired by the public at large for access through, or use of property within, the proposed subdivision;

- 8) Access. That the design of the subdivision provides any necessary access to surrounding, adjacent lands and provides appropriate secondary access for emergency vehicles;
- 9) Dedications. That any land or improvements to be dedicated to the County is consistent with the Master Plan; and
- 10) Energy. That the design of the subdivision provides, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

Please see the Planning Commission staff report, included as Attachment B, for discussion of each of these findings.

The appellant has stated that the reasons for the appeal are:

“The project does not meet the criteria for flood risk. The area has been in flood waters for nearly a year. The proposed catch basins incorporated in the plan will be ineffective for reducing the risk of flooding posed by the additional development and impenetrable surface area produced.

The project does not meet the public safety risk. The area is flooded with water partly composed of partly-treated sewage effluent. The water treatment plant itself is below grade, sits below the waterline, and only protected by emergency berms.

Lemmon Drive is proposed to be raised two feet and serve as the emergency access. However, only a small portion of Lemon Drive will be raised rendering this strategy ineffective as an emergency access provision.”

Please see the appeal application, included as Attachment C, to this report.

LEGAL STANDING FOR APPEAL

In analyzing this appeal, the threshold issue of "standing" must be addressed. Standing is the legal right to bring a challenge in the first place. In courts it is treated as part of the analysis of subject matter jurisdiction, meaning that without it, the court has no power to even hear the challenge. It is the burden of the appellant to establish standing.

NRS chapter 278 limits appeals of Planning Commission decisions to "aggrieved persons." See NRS 278.310, 278.3195 and 278.328. The statutes do not go on to give a detailed definition of "aggrievement" but rather leave it to the local governments to enact ordinances, which can broaden the scope of standing under chapter 278, but cannot narrow it. See *City of North Las Vegas v. District Court*, 122 Nev. 1197, 147 P.3d 1109 (2006). The county has enacted such an ordinance. Like NRS chapter 278, the Development Code limits standing to "aggrieved persons." WCC 110.910.02 gives useful guidance on the definition of an "aggrieved person." That definition provides in pertinent part as follows:

Aggrieved Person. “Aggrieved person” means 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.

In the North Las Vegas case cited above, the Nevada Supreme Court determined there was no standing to appeal the Planning Commission's approval of a special use permit for a check cashing business. The Court appeared to take into account both the distance of the property from the proposed project, as well as the stated basis of the appeal. The appellant lived over 900 feet from the project. North Las Vegas' ordinance apparently presumed standing for property owners within 300 feet, but required anyone beyond that distance to make a particularized showing by affidavit of the nature of injury or damage to their property a project would cause. The appellant stated the basis of her appeal as an "oversaturation" of similar businesses in the area. According to the Nevada Supreme Court, this was inadequate to give her standing under the North Las Vegas ordinance or chapter 278. Her appeal was thus invalid.

On the issue of distance from the proposed land use in this case, Washoe County's ordinances include similar recognition of the presumed effects of development projects on neighboring properties based on proximity. WCC 110.608.16 requires that written notice be given to property owners "within 500 feet" of the property where the subdivision will be. It follows from this provision and numerous authorities that the farther away someone is from a subdivision, the less likely they have standing to challenge it. Conversely, residents living in "close proximity" to a proposed land use unquestionably have standing. See *Citizens for Cold Springs v. City of Reno*, 125 Nev. 625, 630, 218 P.3d 847, 851 (2006). Where the exact line is, however, depends on the facts and circumstances of each particular case.

The appellant's property in this case is listed at 11493 Tupelo St. The subdivision itself is listed at 1200 Estates Road. The distance between these addresses is approximately 2.5 miles, or 13,200 feet. Thus the appellant's property is roughly 26 times farther from the proposed subdivision than the properties within 500 feet that are entitled to written notice, and almost 15 times farther than the property was in the North Las Vegas case where there was no standing.

Turning to the stated basis of standing, the appellant argues that the proposed subdivision will pose an increased flood risk for her property. Proposed mitigation of flood risk in the project, including increasing the elevation of Lemmon Drive and constructing water detention basins on-site, are inadequate according to the appellant. And the hydrology report prepared in support of the project is "suspect and has not been subjected to an independent review." Notably, while the appellant apparently disagrees with or does not trust the evidence submitted in support of the project, the record does not, for example, include contrary reports of experts on the hydrological issues presented, unlike *Red Rock Valley Ranch, LLC v. Washoe County*, 127 Nev. 451, 254 P.3d 641 (2011) (conflicting hydrology report submitted by project opponents).

In deciding the standing issue, the Board may take into account the distance of the appellant's property from the proposed subdivision. The Board may also take into account the type of harm alleged in the appeal itself, as well as its likelihood of occurring

based on the evidence. Additionally, the Board may also take into account the record before it and before the Planning Commission.

If the Board finds there is standing, it must then analyze the merits of the appeal. If it finds no standing, the Board is free to deny the appeal without analyzing the merits. Alternatively, in the interest of completing the record in case of any possible future legal challenges, if the Board finds no standing it may nonetheless also indicate what its findings on the merits would be if standing did exist.

FISCAL IMPACT

No fiscal impact.

RECOMMENDATION

It is recommended that the Board of County Commissioners affirm the decision of the Planning Commission and uphold the approval of Tentative Subdivision Map Case Number WTM18-001 (Lemmon Valley Heights).

POSSIBLE MOTION

Should the Board of County Commissioners agree with the Planning Commission's approval of Tentative Subdivision Map Case Number WTM18-0001 (Lemmon Valley Heights), staff offers the following motion:

"Move to affirm the approval, with conditions, of Tentative Subdivision Map Case Number WTM18-001 (Lemmon Valley Heights), having found that the appellant lacks standing and/or having not found that the decision of the Planning Commission:

- (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;
- (B) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (C) Was made on unlawful procedure;
- (D) Is affected by an erroneous interpretation or other error of law;
- (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
- (F) Is arbitrary or capricious or characterized by abuse of discretion."

Should the Board of County Commissioners disagree with the Planning Commission's approval of Tentative Subdivision Map Case Number WTM18-001 (Lemmon Valley Heights), staff offers the following motion:

"Move to reverse the approval of Tentative Subdivision Map Case Number WTM18-001 (Lemmon Valley Heights), having found that the appellant has standing, and having found that the decision of the Planning Commission:

- (A) Was made contrary to the constitution, a statute, an ordinance or regulation, or the law of the case;

- (B) Exceeds the jurisdiction or statutory authority of the deciding official or body;
- (C) Was made on unlawful procedure;
- (D) Is affected by an erroneous interpretation or other error of law;
- (E) Is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or
- (F) Is arbitrary or capricious or characterized by abuse of discretion.”

Attachments:

Attachment A: Planning Commission Action Order dated 3/7/2018

Attachment B: Planning Commission Staff Report dated 3/6/2018

Attachment C: Appeal Application dated 3/13/18

Attachment D: DRAFT Planning Commission Minutes of 3/6/2017

Cc: Appellant: Tammy Holt-Still, 11493 Tupelo Street, Reno, NV 89506

Applicant: JDS LLC, attn.: Derek Larson, 7500 Rough Rock Road, Reno, NV 89502

Property Owner: JDS LLC and Jennifer Jory and Sunrinder Preet, 7500 Rough Rock Road, Reno, NV 89502

Applicant Representative: Manhard Consulting, attn.: Karen Downs, 9580 Double R Boulevard, Suite 101, Reno, NV 89521