

**BOARD OF COUNTY COMMISSIONERS
WASHOE COUNTY, NEVADA**

TUESDAY
PRESENT:

10:00 A.M.

JUNE 26, 2018

Marsha Berkbigler, Chair
Kitty Jung, Vice Chair
Bob Lucey, Commissioner
Vaughn Hartung, Commissioner
Jeanne Herman, Commissione
Nancy Parent, County Clerk
John Slaughter, County Manager
Paul Lipparelli, Deputy District Attorney

The Washoe County Board of Commissioners convened at 10:01 a.m. in regular session in the Commission Chambers of the Washoe County Administration Complex, 1001 East Ninth Street, Reno, Nevada. Following the Pledge of Allegiance to the flag of our Country, the Clerk called the roll and the Board conducted the following business:

18-0508

AGENDA ITEM 21 Recommendation to consider possible courses of action and direction to legal counsel and county staff to pursue one or more of those courses of action regarding the Warm Springs Specific Plan refunds lawsuit, Newell (plaintiff) et. al. vs. Washoe County CV15-01104. The lawsuit was filed in 2015 seeking, among other things, refunds of money paid by a number of property owners in the Warm Springs Specific Plan in Washoe County at the time they recorded their final maps for development in that area. The money was intended to build infrastructure in the area, including community water and sewer facilities, certain roads, drainage, and other improvements. At this point, the Court has dismissed all of the plaintiffs and all of the claims in the case, except for the claims based on a single 5 acre parcel still owned by the Newell's. Additionally, one developer (Brian Murphy) has sought "reimbursement" of approximately \$319,252 for work done on roads in or near the plan area. Possible direction at this point could include any of the following individual courses or a combination of them:

- 1) Refunds.
 - a) Pay partial or full refunds to all current property owners in the Warm Springs Specific Plan area in the total amount of approximately \$800,000 (\$781,882.37 approximate fund balance as of 4/6/18)) based on the Court's ruling that the amounts are NRS 278B "impact fees" refundable if improvements are not built within 10 years; or,
 - b) Pay no refunds and maintain the county's position in the lawsuit that the fees are not "impact fees" and that the plaintiffs waived any refunds;
- 2) Reimbursement. Allow, partially allow, or disallow Capurro Investments, LLC's/Brian Murphy's claim for "reimbursement" of approximately \$319,252 - for work done on certain roads, some of which were identified in the Warm Springs Specific Plan area agreement, see Exhibit A;

- 3) Master Plan Amendment. Direct planning staff to initiate master plan amendments to the Warm Springs Specific Plan removing the financing provisions of the plan that require current or future developers to continue paying development fees at the time of recording their final maps; this option could include direction to staff to cease taking payments under the financing plan on development maps within the area plan while the amendment process is underway;
- 4) Interpleader. File a lawsuit against all persons or entities with competing claims for the money in the fund, “interplead” the money into the Court, and allow the claimants to make their case for a share of the money with the Court ultimately deciding. Community Services. (Commission District 5.)

Planning Manager Bob Webb reviewed the four courses of action available to the Board as laid out in the agenda description. He noted various staff members were in attendance to answer questions from the Board, including Planning Manager Trevor Lloyd, Director of Engineering and Capital Projects Dwayne Smith, and Deputy District Attorney Nathan Edwards.

On the call for public comment, Mr. Stephen Moss spoke representing the plaintiffs in the lawsuit referenced in the agenda item. He asked for a commitment from the Board to refund all the moneys to the individuals who initially paid the development fees. He claimed the Warm Springs Specific Plan, which anticipated an equestrian center and a golf course, was not viable. According to the order issued by the court, there were seven individual plaintiffs with claims for refunds and he asked the Board to instruct staff to prepare refunds for them. He acknowledged what to do with the remaining funds was problematic but he suggested money could be given to the current property owners if the original developers could not be found. He did not think any of the Capital Improvement Projects (CIPs) would be started. He stated the reimbursement request by Capurro Investments, LLC was not well-founded since the roads they improved had nothing to do with Warm Springs.

Deputy District Attorney Paul Lipparelli pointed out Mr. Moss represented a group of individuals and it was at the discretion of the Board to allow him additional time. Chair Berkgigler gave him the opportunity to continue.

Mr. Moss stated one developer was told by the building department his fees would be returned because of amendments that would be made to the Warm Springs Area Plan. He drew the Board’s attention to a proposal in the staff report that the Warm Springs development handbook should be amended and the funding portion be removed. He felt the handbook needed to be changed completely because it was no longer appropriate. He stressed there needed to be a mechanism to refund fees to those who paid them since those moneys were being held for CIPs that would likely never be constructed. He repeated his request of the Board.

Ms. Pam Roberts mentioned she lived on a road for which Capurro Investments, LLC was seeking reimbursement for allegedly improving. She agreed the road was not built to County standards. She said when the financial provisions were put in place in 1995, people expressed concern about infrastructure given that smaller lot sizes were being considered. She said the financing plan did not work and wondered whether the County would accept responsibility for building and maintaining

infrastructure in the Specific Plan Area (SPA) if those provisions were removed. She remarked the Rolling Hills subdivision in south Reno built roads and drainage systems before building homes but expressed that was not the case in Warm Springs.

Ms. Susan Ambrose, representing the Warm Springs Property Owners Alliance Task Force (WSTF), said the club was formed when the Citizens Advisory Board (CAB) cancelled its January and May meetings. She remarked new citizens had moved to the SPA and they expressed the following concerns: not knowing what the SPA was, not realizing they lived inside the SPA boundaries, and not understanding why they were being treated differently. To respond to the concerns the WSTF conducted a survey, the results of which would be conveyed by another speaker. The WSTF felt the County needed to revise the SPA beyond just the financing plan.

Ms. Sharon Korn provided documents, copies of which were distributed to the Board and placed on file with the Clerk. Ms. Korn mentioned she was a member of the WSTF and said the original plan for the area had not been updated in 20 years. A survey was conducted on June 16 and 51 citizens responded. She reviewed the answers to the survey questions, noting many citizens were confused why anyone would want to develop this far from town. She summarized a majority of those who took the survey wanted to live in a rural area away from overdevelopment and many were concerned about the future of the valley.

Mr. Marshall Todd, a member of the WSTF, stated he purchased his home to be alone. He said he was aware of the SPA plan but was not aware the area was zoned to include lots smaller than one acre. He expressed concern about having to pay for improvements that would only benefit developers. He wanted the SPA plan to be reexamined before additional projects were approved and for developers to pay for all improvements through impact fees. He suggested any homeowner on the periphery of the SPA on a lot larger than in 40 acres should be exempt from any development costs.

Mr. Larry Johnson, President of the Palomino Valley General Improvement District (PVGID), asked for additional time since the GID represented 500 residents. Chair Berkgler obliged and gave him five minutes.

Mr. Johnson explained both the financing plan and the development agreement required certain roads be developed along with community water and sewer systems. Unfortunately no parks, fire stations, or water treatment plants were built. He noted small developers signed development agreements that referenced the special plan and financing plan requirements but the developments proceeded without following those agreements. They had the option of building the improvements or the County could give funds to the PVGID to design and construct the roadways. He noted the development that occurred happened along a narrow strip along Broken Spur Road and Whiskey Springs Road, but added the roads were not built to County standards nor did the County provide the PVGID money for outside consultants. He indicated the development agreement required the formation of homeowners associations (HOAs) and the HOA fees would pay for refurbishment of that roadway. This also never happened.

Mr. Johnson noted homeowners came to PVGID meetings asking why the roads were not being improved. He pointed out a number of parcels had been sold multiple times. He recommended a revision of the Warm Springs Master Plan and the SPA, and asked that the SPA be removed from the PVGID's jurisdiction. He felt all roads

within the SPA needed to be constructed to County standards and then dedicated to and maintained by the County. He acknowledged Capurro Investments, LLC should be reimbursed for surfacing costs but stated only a small amount of what was done was within the SPA; he felt Capurro Investment's reimbursement request was excessive.

Mr. Greg Dennis, member of the PVGID, noted he was on the CAB when the SPA item was heard and he was the only one to vote 'no'. He appreciated the Board's desire to fix the SPA. He agreed nothing in the area was built to Washoe County standards and there was no money to address it. The only funding available would be through development funding by turning it over to the County or a combination of HOA fees and general taxes. He felt the interpleader was a great idea but felt the Board should not give in to the developers. He suggested reviewing the Master Plan through the Planning Commission (PC) and getting public input.

Mr. Louis Test said he was the PVGID's attorney for twenty years and he indicated the major concern when the plan was proposed was maintaining roads with additional traffic. Because the developer did not intend to use a spine road, the area would be challenged with higher density and no funds to take care of its roads. He emphasized the impact of heavy construction equipment on gravel roads. He said if the County allowed this type of density it should require the developer to comply with the County's rules and regulations. The expectation was the County would take care of the paved spine roads but there was no money to pay for that. He requested that future development had to meet the same standards so the County would maintain the roads. He said the GID only received \$343 per unit, which was not sufficient to maintain the current roads.

Commissioner Herman said it seemed like the SPA could work when it began but things had not gone as planned. She acknowledged changes might need to be made but she was unsure where to start. She agreed with the developers who felt they could request their money back. She stated there were people in the valley who thought additional development would cause them grief and concerns about water. She invited further discussion and stressed the importance of having CAB meetings on a regular basis to work out solutions. She did not agree with any of the options laid out in the staff report and said any suggestions would need feedback from the citizens.

Commissioner Hartung asked who he should address legal questions to. Mr. Lipparelli replied Mr. Edwards should be asked lawsuit-related questions and Mr. Lipparelli could be asked anything else.

Commissioner Hartung remarked the original property owners paid the fees but when they sold the properties they likely added the cost of the fees into the purchase price. He wondered whether they should be refunded that money. He provided an example of making improvements to a house then adding the cost of those improvements to the sale price. He pointed out the fees in this case never improved the properties. He concluded the current property owners paid the price of those fees. Mr. Edwards responded the Statute said if they were impact fees and if improvements were not built within 10 years, the refunds should go to the current property owners. He added the judge ruled they were Nevada Revised Statute Chapter 278b impact fees.

Commissioner Hartung asked for a realistic timeframe to complete a master plan amendment if it was initiated immediately. Mr. Webb answered the bare minimum for a simple amendment would be seven to eight months, but this would not be simple.

He estimated it would take 12 to 18 months assuming consensus with the public could be reached. Mr. Webb admitted determining who would assume responsibility if provisions were removed was what made this case difficult.

Commissioner Hartung asked whether the County owned Broken Spur Road. Mr. Smith replied it did not. Prompted by other queries from Commissioner Hartung, Mr. Smith stated his familiarity with the agreements did not address earlier comments made about the County paying the PVGID money to build Broken Spur Road. Mr. Smith explained since the roads in the area were not dedicated to the County per County standards, it did not maintain them. He explained in order for the County to assume responsibility for a road, the road would have to be built, dedicated, and accepted by the Board of County Commissioners (BCC); dirt roads would not qualify.

Commissioner Hartung told a story about roads in Spanish Springs and said if the County took over the road system in Warm Springs, a Special Assessment District (SAD) would have to be created. Mr. Smith acknowledged the Spanish Springs example was one where the County accepted and maintained roadway infrastructure that was built to its standards. He explained roadway construction through a SAD program would require agreement by a minimum number of community members.

Commissioner Hartung said he would have required a supermajority and not a simple majority in the Spanish Springs example. He felt any steps taken by the Board should include a master plan amendment but there was no clear answer. He stated the first step would be to remove the requirement to collect fees because, as long as the plan was in effect, they would have to continue to do so.

Mr. Edwards confirmed Chair Berkbighler's assertion that the court dismissed all parties and claims except for the Newells' claim on their five-acre parcel. Chair Berkbighler asked why the BCC would agree to pay someone who had been dismissed by the court. Mr. Edwards explained some of the claims were dismissed because they were filed before the ten-year deadline expired; those applicants could refile.

Chair Berkbighler asked whether the PVGID covered Warm Springs. Mr. Johnson responded the boundaries of the GID were set in Statute and encompassed the entirety of Warm Springs plus areas further south along Pyramid Highway. When asked about the purpose of the PVGID, Mr. Johnson explained they maintained the existing roads inherited from the Rocketdyne rocket testing facility, few of which were paved by the company. He explained the PVGID received consolidated tax (C-tax) based on the entire population in the GID and its policy was to accept new roads that met certain standards. He indicated they also received fees assessed to all properties in the GID.

Mr. Johnson clarified right of ways were typically dedicated to the County and City but the PVGID did not own any right of ways. Chair Berkbighler confirmed the PVGID was given funds to repair and maintain the roads. When she asked whether they were tasked by law to repair and maintain to the same standards as the County, Mr. Johnson replied they were not and could not do that.

Commissioner Hartung asked for information about Mr. Murphy's \$319,252 reimbursement request. Mr. Smith responded they received a reimbursement request for improvements done on certain right of ways in the SPA as well as work done

that was not identified in the original plan. He noted the work performed did not meet the SPA requirements, which decreed they be built to County standards. He said staff verified what type of construction methodology was used and, since only a segment of those roads were identified in the SPA, he could not recommend reimbursing those funds. Mr. Smith indicated he did not know who engaged Mr. Murphy but the plan review part of the process did not happen. Commissioner Hartung felt Mr. Murphy was due some money but he did not know how to approach that.

Commissioner Herman said a developer would make the property look as favorable as possible to sell lots and that was part of his cost. She asked whether Mr. George Newell could speak. Mr. Lipparelli noted the public comment period was over but stated the Chair could allow someone to speak if a Commissioner had questions. Commissioner Herman remarked Mr. Newell was a veteran of World War II.

Mr. Newell stated the County violated the contract by failing to put the money in an interest-bearing account. Additionally they did not provide annual updates like they were supposed to. He said the County employee who determined where the money was resigned shortly afterwards. Mr. Newell alleged the money was supposed to be used for creating a spine road through the valley and, if it were not done for five or ten years, the money was supposed to be refunded to 10 individuals. He asked the Board to help.

Chair Berkbigler thanked Mr. Newell for his service to the country. She expressed concern that a GID received funding but was not required to build roads to County standards, especially if Mr. Murphy did not receive a reimbursement because his work was not up to County standards. She felt this topic needed further discussion and it possibly needed to go before the Legislature. She said she did not know how they could reimburse Mr. Murphy since they would not consider doing so in any other portion of the County if the work performed was not done to County specifications. She pointed out no one knew who issued the original contract.

Mr. Smith responded the requirements of the SPA identified what should be done and offered the pathway for reimbursement. Staff determined this was not done in this case, hence the recommendation not to approve the reimbursement. He added there were other rules around the construction and dedication of roadways since this was within a GID. He offered to discuss and consider additional potential options.

Chair Berkbigler summarized she did not support Mr. Murphy's reimbursement and work should begin immediately on a master plan amendment. She commented the County had not been able to start that process sooner because of the lawsuit against it.

Commissioner Hartung asked for the length of the spine road, to which Mr. Smith replied it was approximately five miles. Commissioner Hartung pointed out \$800,000 would not be sufficient to build five miles of road. Regarding the assertion that the County violated the contract, he asked whether the spine road was part of the original agreement. Mr. Edwards said it was part of the SPA and the development agreements, but the five and ten-year provisions were a result of the judge's ruling that the fees were impact fees, not because of the area plan or the contracts. He said the original proposal included five and ten-year refund provisions but they were removed after an objection from the PVGID, which felt that was not enough time to complete the improvements. He

indicated there would be no ten-year refund timeline without the judge's ruling. Under the court order, if improvements were not built within ten years the money should be refunded to the current property owners.

Commissioner Hartung recommended conflating options 3 and 1a in the staff report, but he was unsure how they could accommodate the options prior to a master plan amendment. He suggested continuing to collect fees as required and, once the amendment was done, refunding any fees that were collected.

Chair Berkbigler asked for the County's legal opinion as to whether the judge could change her mind. Mr. Lipparelli answered the plaintiffs' assertion that they were impact fees was what got the judge thinking along those lines. Mr. Lipparelli opined they were not impact fees because, if they were, the government would have an obligation to build something with the money in the fund; he provided an example of the Regional Transportation Commission using impact fees to build roads. He said when the agreement was approved the Commissioners decided the County would not build the roads; that would fall on the developers who would use the money the County was acting as a trustee for. He said the legal team had a difficult time agreeing that they were impact fees. If they were, the County would have failed to formulate a CIP along with other statutory obligations. He admitted the court described them as impact fees. He added if the master plan could be amended to remove the non-working finance plan, a settlement could be reached to determine what to do with fees that were already collected.

Chair Berkbigler suggested following Commissioner Hartung's suggestion to pay refunds to the current property owners in the SPA up to \$800,000 and direct staff to initiate master plan amendment activities immediately. She asked whether they should pay back the money now or hold it until a master plan amendment was finished. She also questioned whether to hold additional monies from developers until the plan was amended.

Commissioner Hartung asked whether the master plan needed revision beyond the financial portion. Mr. Webb noted the plan had not been reconsidered in a significant amount of time and it would be difficult to consider the finance component without reviewing the other parts of the plan. Chair Berkbigler said it would be fair to get feedback from the many new residents in the community.

Mr. Lipparelli said the agenda contemplated directing planning staff to initiate master plan amendments to remove the financing portion of the plan. They could give direction on additional provisions at another meeting or forum.

On motion by Commissioner Hartung, seconded by Commissioner Jung, which motion duly carried on a vote of 4 to 1 with Commissioner Herman voting "no", it was ordered that the master plan be amended to remove the finance portion, staff be directed to include an agenda item at the next meeting to consider changes to the entire master plan, partial refunds be repaid to current property owners, and any funds collected in the interim be refunded as soon possible with the master plan amendment.