



# WASHOE COUNTY

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## STAFF REPORT

**SPECIAL BOARD MEETING DATE:** August 20, 2019

**DATE:** August 13, 2019

**TO:** Board of County Commissioners

**FROM:** Paul Lipparelli, Assistant District Attorney  
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**SUBJECT:** Recommendation to approve filing an appeal to the Nevada Supreme Court of the Second Judicial District Court's decision in Lakes at Lemmon Valley v. Washoe County (CV18-02374) a case concerning the denial of a tentative subdivision map application for 98 single-family lots on a 33.97-acre parcel (APN 552-210-18) located near the intersection of Military Road and Lemmon Drive. (All Commission Districts.)

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### SUMMARY

A request to decide whether to authorize the filing of an appeal to the Nevada Supreme Court in a case involving the denial of a tentative subdivision map.

**Strategic Objective supported by this item:** Stewardship of our Community.

### PREVIOUS ACTION

November 13, 2018—Board of County Commissioners affirmed the Planning Commission's denial of tentative subdivision map.

### BACKGROUND

The division of a larger parcel into smaller parcels for development requires the approval of a tentative subdivision map. NRS 278.326 and WCC 110.608.05. The application for approval is heard by the Washoe County Planning Commission. WCC 110.608.15(c). The Board of County Commissioners considers tentative subdivision maps if there is an appeal. WCC 110.608.15(d).

Lakes at Lemmon Valley, LLC is the owner of a 33.97-acre parcel (APN 552-210-18) located south of the intersection of Military Road and Lemmon Drive. The company applied for approval of a tentative subdivision map to create 98 single-family lots on the site. The Washoe County Planning Commission denied the application on May 1, 2018. The primary reason for the denial was the finding that the requirements for access to the subdivision were not satisfied. WCC 110.608.25.

On November 13, 2018 the Board of County Commissioners heard the applicant's appeal of the Planning Commission's decision. The Board voted unanimously to uphold the denial. The applicant filed a petition for judicial review with the Second Judicial District Court on December 4, 2018. The parties submitted legal briefs and oral argument was heard on July 11, 2019.

**AGENDA ITEM # \_\_\_\_\_**

On July 19, 2019 the court issued an order granting the developer/applicant's petition and ordering that the "BCC shall approve the Lakes' Tentative Map, with the conditions set forth in the Planning Commission Staff Report." The court found "the general access issues with the Tentative Map do not, individually or in total, arise to substantial evidence sufficient to deny the application."

The right to appeal is a substantial legal right and it is the client, not the attorney, who determines whether to appeal. *The Comm'n on Ethics of the State of Nevada v. Hansen*, 134 Nev. Adv. Op. 40, 419 P.3d 140, 142 (2018) citing 7A C.J.S. Attorney & Client § 301 (2015). Thus, an attorney for a public body must have authorization from the client prior to filing a notice of appeal. When the client is the Board of County Commissioners, the only way for the client decision to be made is in a duly-noticed public meeting.

The District Attorney will provide advice to the commissioners about the basis for an appeal in a confidential setting.

### **FISCAL IMPACT**

There is no direct fiscal impact of filing an appeal. If the county does not prevail in the appeal, the district court could award attorney's fees to the developer/applicant. Currently pending with the court is a motion for fees and costs for the developer/applicant for more than \$45,000. The source of funds for any costs awarded would be the county's risk management fund.

### **RECOMMENDATION**

If the Board concludes an appeal is in the best interest of Washoe County, it is recommended that the Board authorize an appeal to the Nevada Supreme Court of the Second Judicial District Court's decision in *Lakes At Lemmon Valley v. Washoe County* (CV18-02374) a case concerning the denial of a tentative subdivision map application for 98 single-family lots on a 33.97-acre parcel (APN 552-210-18) located near the intersection of Military Road and Lemmon Drive.

### **POSSIBLE MOTION**

A possible motion would be:

Move to authorize an appeal to the Nevada Supreme Court of the Second Judicial District Court's decision in *Lakes At Lemmon Valley v. Washoe County* (CV18-02374) a case concerning the denial of a tentative subdivision map application for 98 single-family lots on a 33.97-acre parcel (APN 552-210-18) located near the intersection of Military Road and Lemmon Drive.