

From: rvsls2020@gmail.com
To: [Weiche, Courtney](#)
Subject: FW: WSUP24-0015
Date: Thursday, January 23, 2025 9:21:22 AM

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Courtney, please include the below email messages in your submittal to the Commissioners' meeting agenda item concerning WSUP24-0015.

Thank you,
Rod Smith

From: rvsls2020@gmail.com <rvsls2020@gmail.com>
Sent: January 20, 2025 8:15 PM
To: 'Smith, Dwayne E.' <DESmith@washoecounty.gov>
Cc: Leenev85 <Leenev85@protonmail.com>; 'Stan Haskell' <rustythedog04@gmail.com>; 'Laurie Carey 2' <Laurie@brokenglassworks.com>; 'Weiche, Courtney' <CWeiche@washoecounty.gov>; Claudia Rosa <claudiaannrosa@gmail.com>; meclark@washoecounty.gov
Subject: FW: WSUP24-0015

Dwayne, I believe I have been keeping you in the email loop in regards to the Bryan Canyon residents concern for WSUP24-0015 regarding Mr. Hurry's application to restore his property. I and other neighbors, met with you and Mr. Lucey back in 2021 regarding Mr. Hurry's first application. The below letter was sent to Mr. Clark, our Commissioner, in addition to you and the County Planner, Courtney Weiche. In the letter I mentioned that I believed the County's Engineer's office was remiss in it's review of the project. I believe I owe you an explanation of my comments.

An applicant must address five criteria as specified in the County Code. Item #4 as mentioned in the below letter, requires an assessment of the potential safety and detriment to adjacent property. This assessment has been basically ignored by both the applicant and the County engineer reviewing the project. Please refer to the applicant's spread sheet discussing his responses to the five criteria in his current application. The downstream neighbors can and will be injured by this project. Immediately, our properties will be reduced in resale value knowing a potential dam failure exists above our properties. In addition, there is no discussion regarding the potential downstream damage caused by a dam failure and how it would be minimized. This issue is alluded to in Mr. Wimer's drainage conditions but is not fully developed. I have attached a picture of the road washout caused by the 2017 storm. As you can see, a dam failure could be catastrophic especially concurrent with a major storm.

I and possibly some neighbors, would like to meet with you prior to the February 11 Commissioners'

meeting to bring you up to date with our continued concerns. Please provide us with a date, time and place where we could continue this discussion,

Rod Smith
7450 Bryan Canyon Rd
Washoe Valley NV
775-883-7451 home
776-249-9605 cell

From: rvsls2020@gmail.com <rvsls2020@gmail.com>

Sent: January 17, 2025 4:10 PM

To: meclark@washoecounty.gov

Cc: 'Smith, Dwayne E.' <DESmith@washoecounty.gov>; 'Laurie Carey 2' <Laurie@brokenglassworks.com>; Leenev85 <Leenev85@protonmail.com>; Claudia Rosa <claudiaannrosa@gmail.com>; 'Stan Haskell' <rustythedog04@gmail.com>; 'Weiche, Courtney' <CWeiche@washoecounty.gov>

Subject: WSUP24-0015

Mr. Clark, I am writing you in regards to WSUP24-0015. I have left three phone messages for you at 775-686-0342 and have not received a response so will try the email method to connect with you. The subject (WSUP24-0015) is a Special Use Permit application in response to the WSUP21-0024 denial by the Board of Adjustment in 2021 dealing with illegal grading done in 2021. I believe the owner of the property, Mr. Hurry, was required to return the land to original grade within Six months. Mr. Hurry has ignored that requirement and now, three years later, Mr. Hurry submitted WSUP24-0015 to rectify the situation. Again, the Board of Adjustment denied his application and he is now appealing the denial to the Board of County Commissioners, scheduled to be heard on February 11.

The original application consisted of a six acre pond behind an earthen dam. The pond excavation was to provide earth material for the dam. The County stopped the project after most of the pond excavation had been completed and the soil was being used to construct the earthen dam. His proposed six acre pond is located about 700 ft above and 3700ft away, via a narrow canyon, from the residences on Bryan Canyon Rd, Washoe Valley. This elevation change equates to about a 20% grade, very steep for uncontrolled water!

This new application, WSUP24-0015, which is supposed to address the reasons for denial of the original application, has yet to address to major reason for the denial, Item #4 of the Washoe County Code Section 110.810.30- Issuance Not Detrimental. This paragraph states, "That the issuance of the permit will not be significantly detrimental to the public health, safety or welfare, injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area. This item #4 has not been addressed sufficiently in either the first or second applications. Not only did the applicant not address this issue, it was not adequately addressed by the County Engineer's office in their submittal to the original or later hearings. I believe the County Engineer's office was remiss in their review of the project!

Pond size has been reduced to one acre but he is asking for approval to minimize the soil remediation more than 10 ft below natural grade, and approval to retain the dam. The reason the soil cannot be returned to natural grade is the soil now exists in the earthen dam. If the dam was dismantled there would be adequate soil to return the area to natural grade. The Bryan Canyon residents do not believe the dam should be allowed to remain as we have reason to believe we cannot trust Mr. Hurry not to return to a 6 acre pond after this Action Order is complete.

Other items that the Bryan Canyon residents believe need be addressed by both the applicant and the County Engineers are:

1. Safety of the downstream road crossings and residences should the dam breach.
2. Safety for the water level with only a 6" overflow that can freeze or plug with debris.
3. Winter supervision of the pond safety when the road is not passable.
4. Source of emergency power.
5. Design of the dam, earth alone can be breached.
6. Design for both a dam breach and a major storm in Bryan Canyon Creek drainage. I have attached a picture of the results from the 2017 storm.

This is the third letter that I have written in opposition to this project. During the previous application, myself and two other neighbors met with Mr. Lucey, our then Commissioner, and Mr. Dwayne Smith, County Engineer, they both assured us that a pond would not be allowed above our properties. Here we go again!

We hear constantly, we Nevada's must conserve water. This project proposes to use expensive diesel fuel to pump valuable ground water into a pond so that it can evaporate. Please realize, I am not opposed to ponds but I am opposed to an earthen dam retaining up to approximately 6 acre ft of water, as stated in the application, directly above a residential community.

A group of Bryan Canyon Residents would appreciate a meeting with you to discuss this project in greater detail prior to the Commissioners' February 11 meeting. Please advise as to a date, place and time we can meet with you,

Rod Smith
7450 Bryan Canyon Rd.
Washoe Valley
775-240-9605 (cell)
775-240-9605 (home)

January 23, 2025

Lee Gardiner
7445 Bryan Canyon Road
Washoe Valley, NV 89704

Washoe County Board of Commissioners
1001 E. Ninth St. Bldg A
Reno, NV 89512

Dear Washoe County Board of Commissioners,

This letter is in regard to an appeal filed regarding the Board of Adjustment denying SUP application WSUP24-0015. Bryan Canyon Road Pond and Restoration as heard by the Board on December 5, 2024. This appeal will come before the Commissioners on February 11, 2025. I would like to urge the County Commission members to uphold the denial of the SUP request for the reasons given below.

On December 5, 2024, the Washoe County Board of Adjustment held a hearing to either approve or deny the SUP application case number WSUP24-0015, (Bryan Canyon Road Pond and Restoration), which was in response to Washoe County Code Enforcement Action WVIO-ENG20-0015 issued in 2020 requiring that the property be returned to its previous condition. At the end of the hearing a vote was taken and the application was denied for the reasons that the application did not have the ability to meet the Required Special Use Permit Findings (A) through (E), but did not state exactly which findings the Board was referring to and why. In the following text, I will refer to the proposal only as the "proposed pond as the illegally constructed dam is already there and has been since 2020. Being a resident of Bryan Canyon Road and familiar with this case, it is my opinion that the Board may have denied the application for the following reasons. The findings required for the SUP are;

(A) Consistency. The proposed use is consistent with action programs, policies, standards and maps of the Master Plan and the South Valley Planning Area;

Being that the code enforcement action ordered in 2020 had been ignored by the applicant until this application was submitted in the Fall of 2024 requesting an SUP to create a pond and restoration, the board felt they had no choice to deny the application as it is impossible to restore the land and create a pond at the same time. The board may have determined that rewarding such behavior was not in line with the policies or standards of the county and certainly it was not complying with the code enforcement action issued as a result of the illegal grading done in 2020. When the Board denied the similar application in 2021, the Board members laid out a path forward which appears to have been rejected by the applicant leaving the board with little choice but to deny the application. Additionally, requesting a variance for more than a 10 foot change in elevation from the natural grade does nothing to restore the property to its previous condition but only accommodates the creation of a pond so in the end there is actually no significant restoration of the property as ordered so the application appears to be merely a request to finish the illegal work that was started in 2020, but on a smaller scale.

(B) Improvements. That adequate utilities, roadway improvements, sanitation, water supply, drainage, and other necessary facilities have been provided, the proposed improvements are properly related to existing and proposed roadways and an adequate public facilities determination has been made in accordance with Division Seven;

There are not adequate utilities on the subject parcel and in fact no utilities at all, although there was a comment regarding a diesel generator being used to power the well pump. A diesel generator left to run unattended would seem to pose a serious threat of causing a fire at a location directly upwind from the neighborhood as the prevailing wind blows. The road to the site of the existing dam is over a mile long consisting of dirt and gravel at a peak elevation just below 6,000 feet and is often impassable during winter months and blocked by a locked gate. The same road was washed out in the flooding that occurred in 2017. There is no sanitation or even an out house on the property. The applicant's water rights are for irrigation only and there is no record of the applicant applying for a change of use with Nevada Division of Water Resources so there is no water available for a pond which also is not listed as a beneficial use of water by NDWR. The proposal offers no modifications to the drainage which due to the topography would direct drainage directly down Bryan Creek to the residences located on Bryan Canyon Road.

(C) Site Suitability. That the site is physically suitable for major grading and for the intensity of such a development;

The site is located at the headwaters of Bryan Creek which runs down Bryan Canyon with an elevation drop of approximately 600 feet in less than three quarters of a mile down the narrow canyon where four houses are situated in close proximity to the creek. Also approximately 5,000 feet down Bryan Creek from the proposed dam and pond, there is an existing FEMA flood zone so common sense would say that the site is not a suitable location for a dam and pond especially considering the flooding that occurred in 2017 in Bryan Creek due to runoff from the subject property. The drainage for the pond is directed to an "existing water course", being the headwater of Bryan Creek and there are no plans for detention or retention of the drainage resulting in any breach or overflow being directed straight down Bryan Canyon. The applicant did submit a Conceptual Drainage Study with the application but the figures used to calculate the 5 year and 100 year storm rainfall amounts were based on a location approximately 3500 feet away and 500 feet lower in elevation and not at a location even on the subject parcel. This resulted in the rainfall amounts being underestimated for all calculations derived from those numbers and misrepresents many aspects of the study. Another problem with the site that was mentioned on the application is the presence of earthquake faults at the site as it is located in close proximity to the Mount Rose Fault Zone which is considered an active earthquake fault according to USGS. The Mount Rose Fault Zone has a 60- 75% chance of creating a damaging earthquake of magnitude 6 or greater in the next 50 years.

(D) Issuance Not Detrimental. That issuance of the permit will not be significantly detrimental to the public health, safety or welfare, injurious to the property or improvements of adjacent properties, or detrimental to the character of the surrounding area;

The applicant provided an incomplete response to this requirement stating only that "The request would compliment the surrounding area and will not be detrimental to the character of the surrounding area." The applicant did not address public health, safety or welfare, or the possibility of being injurious to the property or improvements of adjacent properties. This along with providing misleading information

regarding 5 year and 100 year storm rainfall amounts should cause great concern to Commission members as it seems to indicate that the applicant is not acting in good faith. Also, the wording found in the response to requirement (B), stating that the pond would have “less of an impact”, and in the response to SV.2.16, “the revised pond configuration provides a less intrusive pond and works.” indicates that the proposed pond does have impacts and is intrusive and is contrary to satisfying the code violation order WVIO-ENG20-0025 requiring restoration of the property, not to mention not complimenting the surrounding area as stated in the response to requirement (D). Additionally, at the very least, the values of the properties on Bryan Canyon Road would be negatively impacted due to the increased threat of flooding. The major reasons that the proposed pond is detrimental is due to the factors mentioned in findings C, being that the area has suffered from flooding in the past evidenced by the existing FEMA flood zone a mere 5,000 feet downstream from the location of the proposed pond and the fact that the Mount Rose Fault Zone is located near the site which the applicant admits in the SUP application has earthquake faults at the location of the of the proposed pond. And finally, the use of an unattended generator running on flammable fuel would pose a threat of possibly causing a fire in a location as stated in the SUP application as not being visible to the surrounding area that can only be reached by a road with a locked gate. It is a fact that generators can be a fire hazard due to overheating, fuel leaks, and causing sparks among other things and probably should never be left unattended. So this proposal not only poses a threat to the neighborhood downstream of flooding, but also a risk to the entire area of causing a fire.

Other requirements of the application that were not met include SV.2.14 requiring that development activities should be designed to support the efficient use of infrastructure, and the conservation of recharge areas, habitat, and open vistas.

The applicant stated that the proposed drainage would provide an additional recharge area for the West Washoe Valley area.

This is illogical as the applicant is asserting that pumping ground water into a pond where it will be susceptible to evaporation will provide additional recharge areas.

It should also be mentioned that the applicant did submit a similar application in September of 2021 and was also denied by the Board of Adjustment for not satisfying findings C and D. The Board did say that through remediation, which would require that the property be returned to its pre-disturbed condition and could be done without an SUP, that the applicant could then submit a new plan and figure out a way to make it meet code. The applicant has chosen not to do this but instead has waited several years until new members of the Board and the Commission have come into power perhaps approving the dam and pond proposal as in 2021, Commissioner Lucey, assured the residents of Bryan Canyon Road that there would never be a dam in the hills above their homes. In the meantime the dam which was nearly completed in 2020 still exist on the site and the latest SUP application seeks to make it permanent while brushing off the order to restore the property to a pre-disturbed condition. Granting the variance for a change in elevation and allowing the pond to be completed is not restoring the property to pre-disturbed condition in any way, but merely granting permission to finish the project but on a somewhat smaller scale.

Also, it seems difficult to understand why the applicant has decided that building a dam and pond structure is necessary to maintain his water rights when the water rights presented are for the beneficial use of irrigation only. According to Nevada Department of Water Resources, ponds are not listed as a beneficial use. Also according to NDWR records, there has not been an application for the change of use for the water rights the applicant holds which logically would have been the first course of action taken in order to pursue this proposal in a legal manner in the first place. It could have been that if no complaint had been filed with the county in 2020, that today there would be a large dam and pond illegally constructed, filled with water illegally obtained by using a fuel powered generator posing a possible risk of fire on the site where the almost completed dam sits today.

To conclude, for the reasons listed above, I strongly urge the Commission to stand firm on the previous stance and deny any appeal put forth regarding this proposal and in doing so ensure the residents of Bryan Canyon Road that they will not have to fear the consequences associated with flooding and property devaluation due to the existence of a dam and pond in the hills above their homes. As eloquently stated by Commissioner Hill in 2021, “It’s an earthen dam controlling a body of water above these people’s homes at risk of earthquakes and floods and something very serious.” These words are as true now as they were then. The bottom line on this proposal is that it poses many risks while offering little or no benefits and therefore it should never be allowed.

Sincerely,

Lee Gardiner
7445 Bryan Canyon Road

From: rvsls2020@gmail.com
To: [Weiche, Courtney](#)
Subject: FW: WSUP24-0015
Date: Thursday, January 23, 2025 9:24:02 AM
Attachments: [Attachment B - Appeal Application.pdf](#)
[October 7, 2021 BOA Minutes.pdf](#)

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Courtney, please include the below email messages in your submittal to the Commissioners' meeting agenda item concerning WSUP24-0015.

Thank you,
Rod Smith

From: rvsls2020@gmail.com <rvsls2020@gmail.com>
Sent: January 21, 2025 8:43 PM
To: ahill@washoecounty.gov; jherman@washoecounty.gov; mcgarci@washoecounty.gov; meclark@washoecounty.gov; candriola@washoecounty.gov
Cc: 'Smith, Dwayne E.' <DESmith@washoecounty.gov>; Leenev85 <Leenev85@protonmail.com>; 'Laurie Carey 2' <Laurie@brokenglassworks.com>; 'Stan Haskell' <rustythedog04@gmail.com>; Claudia Rosa <claudiaannrosa@gmail.com>; 'Weiche, Courtney' <CWeiche@washoecounty.gov>
Subject: FW: WSUP24-0015

County Commissioners, Washoe County

I am writing this message to provide you with the Bryan Canyon residents' point of view of the pond and dam proposed in WSUP24-0015. This application is currently scheduled to be heard by the Washoe County Commissioners on February 11. I have previously written Mr. Clark, our Commissioner, copy provided below, but thought I should provide all the Commissioners information on the proposed project:

1. The current owner, Mr. Hurry, of parcel #005-301-28 decided that he wanted to provide his children with a fishing pond back in 2020. He currently maintains a residence at Lake Tahoe.
2. He undertook a non-permitted earth moving project to build a 6 acre pond using the excavated soil from the pond to build a non-engineered earthen dam to hold back the water from his proposed pond.
3. The proposed pond is located approximately 700 ft higher and 3000 ft from Bryan Canyon residents.
4. Failure of the dam would be catastrophic to the residents on Bryan Canyon Road.
5. County Code Enforcement stopped the project in the fall of 2021 and he was required to submitted an application to the Board of Adjustment , WSUP21-0024.
6. This application was denied by the Board on October 21, 2021 due to not having made all five

findings in accordance with Washoe County Code Section 110.810.30, specifically findings #3 and #4. See the highlighted paragraphs on page 8 and 9 of the BOA October 7, 2021 minutes attached

7. I believe the Board of Adjustment required him to return the land to its natural terrain within six months.
8. Mr. Hurry ignored the BOA denial until October of last year when he applied for a new application, WSUP-24-0015. He stated that this new application was to correct the issues of his denial in 2021, 3 years earlier.
9. This application was again denied by the Board of Adjustment. The denial was again based on his lack of detail in answering all five findings in accordance with Washoe County Code Section 110.810.30, specifically findings #3 and #4.
10. Mr. Hurry now is appealing the Board of Adjustment decision to the Board of County Commissioners.

I request that you study the details of his original application back in 2021 along with his current appeal which can be found attached to this message.

I have been a property owner on Bryan Canyon Road for over 20 years and never expected someone to suggest building a dam and pond on the property up the canyon above our home. When we purchased the property the land was used for cattle grazing. The property has two wells on the property, permitted by the state, to be used for irrigation. The previous owner had considered irrigating the land but the new owner is now considered building a pond. Now Mr. Hurry wants to use the well water to fill a pond to provide a fishing pond for his children. The State Engineer states that a request for a permit change would be required to use the water from irrigation to maintain a pond. As I state in my letter below, a pond seems like a poor use of water, ground water that is in critical demand in Nevada, to be pumped with expensive diesel fuel just to be evaporated.

The residents of Bryan Canyon Road request that the Board of County Commissioners uphold the Board of Adjustment's denial of the proposed project.

Rod Smith
7450 Bryan Canyon Rd
Washoe Valley
775-240-9605 cell
775-883-7451 home

From: rvsls2020@gmail.com <rvsls2020@gmail.com>

Sent: January 17, 2025 4:10 PM

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This new application, WSUP24-0015 , which is supposed to address the reasons for denial of the original application, has yet to address to major reason for the denial, Item #4 of the Washoe County Code Section 110.810.30- Issuance Not Detrimental. This paragraph states, "That the issuance of the permit will not be significantly detrimental to the public health, safety or welfare, injurious to the property or improvements of adjacent properties; or detrimental to the character of the surrounding area. This item #4 has not been addressed sufficiently in either the first or second applications. Not only did the applicant not address this issue, it was not adequately addressed by the County Engineer's office in their submittal to the original or later hearings. I believe the County Engineer's office was remiss in their review of the project!

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A group of Bryan Canyon Residents would appreciate a meeting with you to discuss this project in greater detail prior to the Commissioners' February 11* meeting. Please advise as to a date, place and time we can meet with you,

(*original message date was in error, changed from 13 to 11 by Rod Smith)

Rod Smith
7450 Bryan Canyon Rd.
Washoe Valley
775-240-9605 (cell)
775-240-9605 (home)