

Community Services Department
Planning and Building
APPEAL TO BOARD OF COUNTY
COMMISSIONERS (BCC)
APPLICATION




Community Services Department
Planning and Building
1001 E. Ninth St., Bldg. A
Reno, NV 89512-2845

Telephone: 775.328.6100

Washoe County Appeal of Decision to Board of County Commissioners

Your entire application is a public record. If you have a concern about releasing personal information please contact Planning and Building staff at 775.328.6100.

Appeal of Decision by (Check one)	
Note: Appeals to the Washoe County Board of County Commissioners are governed by WCC Section 110.912.20.	
<input checked="" type="checkbox"/> Planning Commission	<input type="checkbox"/> Board of Adjustment
<input type="checkbox"/> Hearing Examiner	<input type="checkbox"/> Other Deciding Body (specify) _____
Appeal Date Information	
Note: This appeal must be delivered in writing to the offices of the Planning and Building Division (address is on the cover sheet) within 10 calendar days from the date that the decision being appealed is filed with the Commission or Board Secretary (or Director) and mailed to the original applicant.	
Note: The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).	
Date of this appeal:	<u>December 10, 2024</u>
Date of action by County:	<u>December 3, 2024</u>
Date Decision filed with Secretary:	<u>December 5, 2024</u>
Appellant Information	
Name: Aubrey Powell, Esq. on behalf of Silver Sky Ranch LLC	Phone: 775-321-3452
Address: 1 East Liberty Street, Suite 300	Fax: _____
	Email: apowell@lewisroca.com
City: Reno State: NV Zip: 89501	Cell: _____
Describe your basis as a person aggrieved by the decision: See attached letter. This appeal is of the favorable decision of the Planning Commission, filed to preserve a right to judicial review.	
Appealed Decision Information	
Application Number: <u>WRZA24-0003</u>	
Project Name: <u>Regulatory Zone Amendment for White Owl Drive/Red Rock Road</u>	
State the specific action(s) and related finding(s) you are appealing: See attached letter.	

Appealed Decision Information (continued)	
Describe why the decision should or should not have been made: See attached letter.	
Cite the specific outcome you are requesting with this appeal: Uphold the Planning Commission decision to approve this application.	
Did you speak at the public hearing when this item was considered?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Did you submit written comments prior to the action on the item being appealed?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Appellant Signature	
Printed Name: Aubrey Powell, Esq. on behalf of Silver Sky Ranch LLC	
Signature:	
Date:	December 13, 2024

O. 775.823.2900
One East Liberty Street
Suite 300
Reno, NV 89501-2128
lewisroca.com

Aubrey Powell
Associate
775.321.3452 direct
775.823.2929 fax
Apowell@lewisroca.com

December 13, 2024

Chair Alexis Hill & Honorable Commissioners
Board of County Commissioners
Washoe County
1001 E. Ninth Street, Bldg. A
Reno, Nevada 89512

RE: Appeal of Planning Commission Decision in Case No. WRZA24-0003.

Dear Chair Hill and Honorable Commissioners:

On behalf of Silver Sky Ranch LLC, the applicant in the above referenced matter (“Applicant”) we support the Planning Commission’s action of December 3, 2024 to approve the Applicant’s request to for a regulatory zone amendment from low density suburban (LDS-1 DU/Acre) to Medium Density Suburban (MDS-3 DU/Acre) on two parcels totaling 169.94 acres (APN 086-250-01 and APN 086-250-81). Pursuant to NRS 278.3195(4), the Applicant is required to appeal the decision of the Planning Commission in order to preserve its rights to judicial review. Thus, the purpose of this appeal is to preserve the Applicant’s right to any necessary further appeals pursuant to NRS 278.3195 or any other applicable code, regulation or statute. This letter sets forth the legal framework for an appeal of a favorable decision of the Planning Commission to the Board of County Commissioners.

The Nevada Supreme Court has consistently held that judicial review of land use actions may only be preserved when the prevailing party at the planning commission level has appealed such favorable decision to the applicable governing body. The statutory language states, as follows:

Any person who:

- a) Has appealed a decision to the governing body in accordance with an ordinance adopted pursuant to [NRS 278.3195(1)]; and
 - b) Is aggrieved by the decision of the governing body,
- may appeal that decision to the district court of the proper county by filing a petition for judicial review within 25 days after the date of filing of notice of the decision with the clerk or secretary of the governing body, as set forth in NRS 278.0235.

NRS 278.3195(4). The Court has examined this statute and determined that:

ordinance, may challenge the [governing body's] decision “by filing a [timely] petition for judicial review.”

Kay v. Nunez, 122 Nev. 1100, 1104, 146 P.3d 801, 804-05 (2006) (quoting NRS 278.3195(4); quotation marks in original).

Although statutory and common law in Nevada typically require an appellant to be aggrieved by a decision, the Nevada Supreme Court has explained that the Legislature created additional authority and a *requirement* for parties to appeal favorable land use decisions to the governing body in order to preserve their rights to judicial review. *See Kay*, 122 Nev. at 1106, 146 P.3d at 805-06; *Humboldt River Ranch Ass'n v. Pershing County Bd. Of Com'rs*, 128 Nev. 904, 381 P.3d 622 (2012) (unpublished). In other words, if an applicant has not appealed a favorable decision from the lower body to the governing board, the applicant would not have standing to appeal an adverse governing board decision to district court. *See Kay*, 122 Nev. at 1106, 146 P.3d at 805-06. The Court explained that:

the Legislature has substituted its own definition of “aggrieved” for purposes of local zoning and land use planning decisions” . . . NRS 278.3195(4) governs a party's standing to challenge the Board's decision in the district court; it provides that a person who has appealed an administrative decision to the Board under the local ordinance and is aggrieved by the Board's decision may file a petition for judicial review in the district court.

Id.

Further review by the Court of NRS 278.3195(4) indicates that the prevailing party in initial municipal decisions, such as from the Board of Adjustment, are authorized *and required* to file such appeals to preserve standing for judicial review. *See Holt-Still v. Washoe County Board of County Commissioners*, 466 P.3d 937, 2020 WL 3570377 (2020) (unpublished) (“Had the Legislature meant to extend standing to a party who won at the lower body level and so did not appeal to the governing body, it would not have included a separate subsection expressly requiring a petitioner to “[h]a[ve] appealed” to the governing body.”); *Humboldt River Ranch Ass'n*, 128 Nev. 904, 381 P.3d 622.

In *Humboldt River Ranch Ass'n*, the petitioner (“HRRA”) sought judicial review of an adverse zoning decision by the Pershing County Board of County Commissioners (“Pershing County BCC”). Because the Pershing County Planning Commission’s decision was favorable to the position taken by HRRA, it did not appeal the Planning Commission’s decision to the Pershing County BCC. After the Pershing County BCC reversed the Planning Commission’s decision, HRRA sought a petition for judicial review. The district court dismissed the petition for a lack of standing, which dismissal was upheld by the Nevada Supreme Court. The Supreme Court explained:

Pursuant to NRS 278.3195(4), a petition for judicial review can only be filed with the district court by a person who administratively appeals a zoning decision under the applicable ordinance to the governing board and is aggrieved by the board's decision. We recognize that the decision of the Planning Commission was favorable to the position taken by HRRA, however, based on the plain language of NRS 278.3195(4)'s limiting criteria, HRRA was required to file an appeal within the local zoning process in order to pursue a petition for judicial review. *See Kay*, 122 Nev. at 1104, 146 P.3d at 805 (stating that “NRS 278.3195(4) is clear and unambiguous, and thus, we follow its plain meaning”). HRRA did not file such an appeal before filing its petition for judicial review, and we therefore conclude that the district court did not err in dismissing HRRA's petition.

128 Nev. 904, 381 P.3d 622.

Thus, the Applicant is required to appeal the favorable decision of the Planning Commission in order to preserve its rights to judicial review. During the Board of County Commissioners hearing on this appeal, the Applicant will therefore request that this honorable body affirm the Planning Commission's decision.

Sincerely,



Aubrey Powell
Lewis Roca Rothgerber Christie LLP