

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.

<b>Appeal of Decision by (Check one)</b>	
<b>Note:</b> Appeals to the Washoe County Board of County Commissioners are governed by WCC Section 110.912.20.	
<input type="checkbox"/> Planning Commission	<input checked="" type="checkbox"/> Board of Adjustment
<input type="checkbox"/> Hearing Examiner	<input type="checkbox"/> Other Deciding Body (specify) _____
<b>Appeal Date Information</b>	
<b>Note:</b> 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.	
<b>Note:</b> The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).	
Date of this appeal: <u>November 16, 2023</u>	
Date of action by County: <u>Thursday, November 2, 2023</u>	
Date Decision filed with Secretary: <u>Monday, November 6, 2023</u>	
<b>Appellant Information</b>	
Name: <b>Pro Pony, LLC c/o Luke Busby, Esq.</b>	Phone: <b>775-453-0112</b>
Address: <b>3400 Holcomb Ranch Lane</b>	Fax:
	Email: <b>luke@lukeandrewbusbyltd.com</b>
City: <b>Reno</b> State: <b>NV</b> Zip: <b>89511</b>	Cell: <b>775-453-0112</b>
Describe your basis as a person aggrieved by the decision: Appellant is aggrieved by the denial of the Appellant's application for a Special Use Permit by the Board of Adjustment ("BOA") because the proposed improvements, including bringing the stable into conformance with Washoe County Code and constructing a 13,500 square foot indoor riding arena, meet the standard for issuance of a Special Use Permit under the provisions of WCC 110.810.30 subsections (a) through (d).	
<b>Appealed Decision Information</b>	
Application Number: <b>WSUP23-0029</b>	
Project Name: <b>Silver Circle Ranch</b>	
State the specific action(s) and related finding(s) you are appealing: The BOA failed to approve the application of the Appellant for a Special Use Permit WSUP23-0029. A motion to approve failed by a tie vote.	

**Appealed Decision Information (continued)**

Describe why the decision should or should not have been made:

The Application should have been approved by the Board of Adjustment because the substantial evidence supports a finding that the Appellant met the standard under WCC 110.810.30 for Special Use Permits, as recommended by Washoe County Staff. Please see the attached memorandum for further argument and elaboration.

Cite the specific outcome you are requesting with this appeal:

Appellant is seeking that the County Commission reverse the decision of the Board of Adjustment and approve the Appellant's application for a special use permit to bring an existing legal non-conforming commercial stable to board 35 horses into conformance with Washoe County Code and to allow for the construction of a 13,500 SF indoor riding arena structure. Appellant is also requesting modifications to remove the requirement for paved parking surfaces to allow non-paved surfaces (110.410.25(e)), and to waive landscape standards for commercial uses (110.412.40(a-d)).

Did you speak at the public hearing when this item was considered?

Yes  
 No

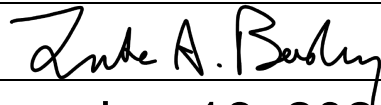
Did you submit written comments prior to the action on the item being appealed?

Yes  
 No

**Appellant Signature**

Printed Name: **Luke Busby, Esq. Attorney for Pro Pony, LLC**

Signature:



Date: **November 16, 2023**

Luke Andrew Busby, Ltd.

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November 16, 2023

Re: Appeal of WSUP 2023-0029 of Pro Pony, LLC (“Applicant”)

On November 2, 2023, the Board of Adjustment made a motion to approve the Applicant’s Special Use Permit (“SUP”) to allow for the construction of an indoor arena covering an existing outdoor arena at a licensed commercial stable. The motion failed to pass as two members voted against the motion, resulting in a technical denial of the request. The following supplements Applicant’s appeal filing to the Washoe County Commission for WSUP2023-0029.

The Applicant is applying for the SUP to bring the long existing licensed commercial stable into conformance with Washoe County Code (“WCC”) Section 110.226.18(b)(1) and to construct a 13,500 square foot indoor riding arena to enhance the experience for both the horses and the community members, and to ensure the safety of horses and riders during bad weather. The Application also includes a request to modify the requirement for paved parking surfaces to allow non-paved surfaces, as well as the waiver for landscape standards.

The Staff Report outlines Staff’s recommendation for approval based on its ability to make all required SUP findings. Staff’s discussion at the November 2, 2023 hearing, by both Chad Giesinger and Julee Olander, noted that the commercial stable is a legally established nonconforming use. The Applicant is currently licensed and allowed to operate subject to the limit on the number of horses boarded at the facility under WCC 110.904.20.

Since the commercial stable is an established nonconforming use, the only issue properly under consideration before the Commission is the request to cover an existing outdoor riding arena with the proposed indoor arena. With that, the Applicant acknowledges that while they have a vested right to operate a commercial stable and there is currently a limit to the number of horses at the facility under the business license for the facility, it is reasonable to establish a cap on the number of horses boarded in association with the commercial stable in the SUP. While the number of horses is not directly related to the SUP request, the Applicant is not opposed to establishing a cap of 33 stable horses plus 2 retired horses as part of the approval of this SUP, as this is the existing limit in the Applicant’s business license.

The members of the Board of Adjustment who voted against the request expressed concerns regarding the following SUP Findings required in WCC 110.810.30(a) through (d). The Applicant responds to each of these concerns as follows:

(a) Consistency. *That the proposed use is consistent with the action programs, policies, standards and maps of the Master Plan and the Southwest Area Plan.*

Board Member Christensen indicated that since the property was previously subdivided to create a 12.56 acre parcel out of a larger parcel, there are too many horses on the property and that the request has not met the consistency finding in terms of adequate roadways, and suitability, because in years past the site was over 50 acres in size.

To be clear, the subject parcel is the result of a record of survey recorded on June 29, 2001 (RS3951, Document #2569521). The commercial stable use has been long established on the 12.56-acre parcel and a valid business license has been issued for this use for decades, long before the property was sold to the current owner in 2019. The previous subdivision of land does not have any bearing or relevance to this request and was inappropriately used as a basis to vote against approval of this request by the Board of Adjustment.

While consistency was noted as an issue in a Board of Adjustment member's vote against approving the motion, there were no action programs, policies, standards or maps discussed to support an inability to make SUP Finding (a) for lack of consistency. In other words, no evidence was pretend to support this finding as a basis to deny the SUP. To the contrary, the Southwest Truckee Meadows Area Plan expressly acknowledges, "***The existence of hobby livestock for recreational, economic and educational purposes is commonplace and recognized as a significant contributor to the local character. County policies supporting and facilitating a rural approach to the maintenance of animals including livestock, "hobby livestock," and pets contribute to the preservation of the area's character. Access to equestrian and multi-use trails is an important concern of local residents.***" Based on the information provided at the Board of Adjustment meeting, it is clear that finding (a) can and should be made.

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*(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.*

Concerns related to traffic were noted by Board of Adjustment members who voted against approval of the motion. Traffic associated with the Applicant's operation will not change in a way that will negatively impact the transportation system – in fact, there will likely be no change to traffic at all. At the November 2, 2023 meeting, staff noted that Holcomb Ranch Road is a NDOT roadway. When Washoe County staff spoke with NDOT staff, NDOT noted that the replacement of the existing outdoor arena with an indoor arena building would have a negligible impact on traffic, if any. Neither NDOT nor Washoe County staff recommend any traffic mitigations since the roadway is capable of providing an adequate level of service and the proposal **will not affect** current levels of service. The Applicant currently operates year-round and will continue to do so whether the indoor arena is constructed or not.

Public comment provided at the Board of Adjustment meeting claimed that the addition of the indoor arena would have a negative impact on storm water runoff, and that it would result in an increase of runoff from the arena. A Board of Adjustment member noted concerns related to flood impacts should the indoor arena building be built, but these concerns are premature and misplaced. As detailed in the Staff Report, the plan includes adequate drainage.

Additionally, during the building permitting process, the Applicant's plans to Washoe County will be required to demonstrate that the design complies with all code requirements, including providing adequate site drainage to prevent negative impacts on neighboring properties. The claim that the indoor arena would result in added sediment and debris runoff is questionable since the existing outdoor arena will be replaced with an indoor arena. The addition of the indoor arena will add protection from sediment and arena sand runoff by virtue of it being within an enclosed building.

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(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.*

Board of Adjustment Member Julian noted that public comment was received in opposition of the request based on the existing use being detrimental to the character of the surrounding area. It should be noted that much of the opposition to the project related to complaints regarding the existence of the facility, and not the applied for arena, specifically. The commercial stable use is already legally established, licensed and currently operates without within the limits of its business license. Since the commercial stable is a legally established non-conforming use, the only issue that should be under consideration is the request to replace an existing outdoor riding arena with the proposed indoor arena – not whether the business should be there at all.

The single-story indoor arena has been tastefully designed and placed on the property to minimize the possible visual impacts of the indoor arena on the community. Once the indoor arena is built, it is likely that during the hottest and coldest parts of the year, many of the lessons and other operations will be held within the building and not outside, which will actually serve to mitigate some of the issues raised in opposition to the SUP. The addition of the indoor arena will likely result in less outdoor activity, and in general result in a reduced impact of the Applicant's operation on the neighboring properties. Activity within the indoor arena will be contained to the building, reducing the any noise generated by the use. The neighborhood is an area that has long been the place where neighbors and passersby can enjoy the presence of horses located in a country setting. This request will allow the Applicant's decades old facility to continue to contribute toward the established neighborhood charm and character of Washoe County's equine culture that has attracted its residents for so many years.

### **Conclusion**

The Board of Adjustment was unable to articulate why the required findings could not be made for the Applicant's SUP request to allow for the construction of an indoor arena, and the grounds that it did express, respectfully, were not relevant to the issue before it. Courts review land use decisions for clear error or an arbitrary abuse of discretion and will overturn factual findings if they are not supported by substantial evidence. *City of N. Las Vegas v. Warburton*, 127 Nev. 682, 686, 262 P.3d 715, 718 (2011). Further, an administrative body is required to make findings of fact, which are necessary as they: "facilitate judicial review by

enabling the parties to decide whether judicial review should be sought and the courts to review the agency's decision without intruding on its fact-finding function.” *State Bd. of Psychological Examiners v. Norman*, 100 Nev. 241, 244, 679 P.2d 1263, 1265 (1984), citing *Spilotro v. State ex rel. Gaming Comm'n*, 99 Nev. 187, 661 P.2d 467 (1983).

The Applicant respectfully requests that the Board of County Commissioners reverse the denial of the Board of Adjustment and approve the SUP.

With regard to the recommended conditions of approval in Staff’s Report, the Applicant also requests that condition 2.d. be deleted or modified as follows:

2 d. Prior to approval of a building permit or grading permit, the developer will comply with all Washoe County Codes regarding ~~furnish to the Engineering Division and development review staff, written confirmation from the Ditch Company that they have reviewed and approved~~ all ditch crossings, protective fencing, landscaping, and storm water discharge facilities ~~that may impact the ditch~~.

Washoe County staff sought a modification of its proposed language in the Staff Report before the Board of Adjustment, but because the Board of Adjustment denied the motion to approve, the issue surrounding the language in Condition 2.d. is outstanding and should be resolved.

There are no provisions in the WCC requiring an applicant to coordinate with, or receive approval from, the Last Chance Ditch Company. Further, in Section 110.416.50(a) of the WCC, Washoe County is expressly made responsible for permit review of development in floodplains. “...Public Works Director or assigned designee is hereby appointed Floodplain Administrator to administer and implement the requirements set forth for the development in the floodplains.” In this case, one of the opponents of the Applicant’s request, Mr. Pete Lazetich, is a board member of the Last Chance Ditch Company. A condition of approval that requires the Applicant to receive approval from the Last Chance Ditch Company is unlawful.

Sincerely,

/s/ Luke Busby, Esq.

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Luke Busby