

## LYON COUNTY PLANNING COMMISSION MEETING MINUTES

SEPTEMBER 10, 2013

The Lyon County Planning Commission met this day with a quorum. The following members were present: Larry Wahrenbrock, Betty Retzer, Harold Ritter, George Mortensen and Mike Hardcastle. Chuck Davies and Paul Lanning were absent. Attending staff were Robert Loveberg, Planning Director and Kerry Page, Planning Assistant. No member of the Board of County Commissioners was present due to the NACO meeting at Lake Tahoe.

### PLEDGE OF ALLEGIANCE

Betty Retzer led the Pledge of Allegiance.

### REVIEW AND ADOPTION OF AGENDA

Harold Ritter made a motion to adopt the agenda as presented. George Mortensen seconded and the motion passed unanimously (5 ayes; 0 nays; 2 absent-Chuck Davies and Paul Lanning)

### APPROVAL OF THE MINUTES

Betty Retzer made the motion to approve the minutes of the August 13, 2013, Planning Commission meeting. Mike Hardcastle seconded and the motion passed unanimously (5 ayes; 0 nays; 2 absent-Chuck Davies and Paul Lanning)

### MISCELLANEOUS CORRESPONDENCE

Calvary Chapel has presented a request to staff for a preschool on their M-1 General Industrial zoned property. We informed them that the current zoning designation doesn't allow that use though as part of the new land use and development code there may be a way of allowing that which would involve changing that area's zoning at some point in the future. The Church wants to move forward as soon as possible as they have a heavy need for the preschool in the area, so they were told that they would either have to get a text change to the existing zoning code to allow daycare in the industrial zoning district, which is not something that staff would typically recommend, or look to a potential interpretation from the Planning Commission. The Church asked that we provide this letter to the Planning Commission thinking that if we redefine what the allowed accessory uses are to a church it could include a preschool.

Because this is not agendized as an action item it could be discussed at a future date either in the context of the new code or if there is such an appetite, what might be done within the current county code in the interim. In the current county code preschools are likened to a daycare facility and although we have had preschools in other areas in other zoning districts where they are allowed with a special use permit it is not allowed in the M-1 even with a special use permit.

### PUBLIC PARTICIPATION

None

1. **LYON COUNTY – REVERSION TO ACREAGE - For Possible Action** - Request for a Reversion to Acreage Map, to combine three (3) parcels into one approximately 1.10 total acre parcel; located on the corner of Main Street and Ziller Way, Dayton Townsite (APN's 06-057-06; 06-057-07; & 06-057-08) PLZ-13-0046

Rob Loveberg, Planning Director, represented the application in the Public Works Director's absence. He stated that the removal of the interior lot lines will allow the historic Dayton Depot to be relocated onto another portion of the parcel. The site will eventually be developed into a tourist and visitor's center.

Barbara Peck, Vice President of the Historic Society in Dayton Valley explained the vision for the site and added that they hope to be able to provide additional parking spaces for the visitors. She said that Lyon County currently owns all three parcels.

Betty Retzer made a motion to **approve** the Reversion to Acreage, based on the findings that a) it is consistent with the applicable provisions of Lyon County Code and the Nevada Revised Statutes; b) it will not be detrimental to the public health, safety, convenience and welfare; and c) it will not result in material damage or prejudice to other property in the vicinity, and subject to the following conditions:

1. The applicant shall pay the actual costs for County Engineer plan and map checking and County Inspector site improvement inspection fees, in accordance with the adopted County fee resolution in effect at the time, and provide proof of payment to the Planning Department prior to map recordation.
2. The applicant shall provide the legal description and deed for the new parcel to record subsequent to the map.
3. The applicant shall comply with the map requirements as prescribed by NRS 278.490 et seq. and Title 11 of the Lyon County Code
4. Should any public utility easement require abandonment as part of this action, documentation of the release of interest by all affected utility purveyors with interest shall be obtained prior to recording any abandonment or vacation documents.
5. The final map shall be conspicuously marked under the title "the purpose of this map is to 'Revert to Acreage'".
6. Structures placed on this newly created parcel shall adhere to the County's site and setback standards for the zoning district.
7. The applicant shall provide the map of reversion to the Lyon County Planning Department for inclusion in the Lyon County GIS database in a form and format compatible with the County geographic information system (GIS) pursuant to 11.05.09 of the Lyon County Code. The scale of the site plan, improvements, monuments and other items shall be in model space correctly oriented to the coordinate system as established by the Lyon County. Cover sheet and standard details need not be included.

Mike Hardcastle seconded and the motion passed by a unanimous vote of those members present - 5 ayes; 0 nay; 2 absent (Chuck Davies and Paul Lanning).

**2. COMSTOCK MINING, INC – REVERSION TO ACREAGE - For Possible Action – Request for a Reversion to Acreage Map, to combine fifteen (15) Silver City Townsite lots into one approximately 16.18 total acre parcel; located off of Highway 341, Silver City (APN 08-091-05 & 08-091-02) PLZ-13-0044**

Rob Loveberg stated that a letter requesting continuance of this item was received September 6<sup>th</sup>, 2013. Mr. Loveberg read the letter for the record. He said that the zoning information provided to the applicants by our GIS provider (Douglas County) and was indicated on the Assessor's records was incorrect. Staff found that the zoning for this parcel as shown on the official zoning maps is actually split zoned – M-1 and NR-1. The Assessor records were corrected to reflect the correct zoning. Since this was discovered the applicant requested the continuance so that they can correct their submittal and to have this run concurrently with the other submitted applications that are being reviewed at this time.

Mr. Loveberg said that if the reversionary map is recorded it will create a split zoned parcel and that could cause problems in the future. Currently there are specific townsite lots in the northerly portion of the parcel that are zoned M-1 and the remainder is zoned NR-1.

Mr. Loveberg recommended that the Planning Commission take action to continue the item to allow the applicant to correct the information. He said they should not be penalized as the misinformation was through no fault of their own. Mr. Loveberg said the item can be discussed as there are members of the public in attendance that may want to speak on this particular agenda item.

Larry Wahrenbrock asked when the Master Plan amendment (MPA) and Zone Change (ZON) is agendized. Mr. Loveberg and that per county code, those items will be agendized on the November 12<sup>th</sup> agenda. Mr. Wahrenbrock asked if the request for continuance is intended to have the Reversion to Acreage be heard concurrently with the other two items. Mr. Loveberg said yes.

Mark Rotter, Manhard Consulting and representative for Comstock Mining, explained that they had only recently learned about the zoning discrepancy and have asked for the opportunity to come back with more accurate information. He said whether the Reversion to Acreage map is heard on the October agenda or concurrently with the MPA and ZON requests in November will depend on how they are able to reconfigure

the information. One option is to rezone the M-1 zoned parcels and another option is to remove the M-1 zoned parcels out of the reversionary map. Mr. Rotter said he needs to discuss these options with the applicants. Discussion followed regarding the options for re-agendizing the item.

Erich Obermayer, Silver City Advisory Board, stated that this item was discussed at their most recent regular meeting where it was recommended that this item be denied by the Planning Commission or grant the continuance at the applicant's request, because they realize that the purpose of this request is to create a large parcel of land that will cause the parcel to conform to a separate application for MPA & ZON and the board feels it is premature to act on this before those two applications have been deliberated. Mr. Obermayer read the opinion for the record.

Gayle Sherman, resident of Silver City, stated that the advisory board has solicited signatures on petitions against these applications and those petitions will be presented at their next hearing. She said the reason they feel the reversionary map is premature is that it is essentially putting the cart before the horse. Most of the residents in Silver City oppose mining in the area especially in such close proximity to residences. She mentioned that there are Superfund site issues in the area that must be resolved and contaminates of concern in the parcels that could eventually be part of the mine site.

Cashion Callaway, resident of Silver City, requested, on behalf of everyone in Silver City, that the Planning Commission consider conducting their meetings regarding these applications in Silver City and in the evening, to facilitate those residents that have to work or are otherwise unable to travel to Yerington. Larry Wahrenbrock asked the Planning Director is there would be any problems in doing that. Rob Loveberg responded that there are some problems with that but acknowledged that the Planning Commission has in the past, conducted meetings in the area of a significant project or have held special meetings or workshops in addition to the regular meetings, so it is possible. It could present problems for any other attendees for other items on the agenda and we wouldn't be able to record the meeting on our regular equipment which can be a problem for doing minutes, etc. but it is something the Planning Commission can consider but action to do that must be taken by the Planning Commission in advance of the meeting. Mr. Loveberg said that a special meeting should focus solely on these specific items and not an entire agenda. Discussion followed.

Mr. Wahrenbrock asked the members of the Planning Commission and staff, if there are any issues or if they have any preferences, associated with combining the three applications onto one agenda versus the RTA being heard separately and prior to the MPA & ZON. Mr. Loveberg said the RTA is not dependent upon the outcome of a MPA or a ZON unless that is part of how the lines will be delineated. It is appropriate to consider the RTA separate from the other two applications because all it is doing is combining lot lines. It is not changing land use. Discussion followed.

Mike Hardcastle asked how the resultant split zoning is addressed. Mr. Loveberg said that historically, Lyon County has a lot of split zoning which has caused some headaches over time in that staff must, in certain instances, delineate where that split is. In the past split zoning was done purposely but that is no longer considered good planning practice although there is nothing in state or county code that prohibits it. It was our intent in the Master Plan to map to parcel boundaries and not prolong the split zoning and master plan designations. We now find ourselves struggling to overcome this issue within the proposed land use code in the present.

Corrado DeGasperis, of Comstock Mining, stated that it was not their intent to cause confusion or ill-intent with their request for this RTA and they take full responsibility for the misinformation in the file. It is their intent to request a RTA that fully complies with both the existing and the proposed master plan and zoning designations. He stated that he feels the RTA is a prerequisite to any re-master planning or re-zoning rather than a concurrent application.

Rob Loveberg said because you cannot condition a zone change, the boundaries of the lots need to coincide with whatever zoning is being proposed. The outcome of the choice of the two options mentioned here depends on how the applicant chooses to create the lines for the boundaries of the reverted parcels and what portion of the parcels they choose to rezone. The applicant will have to decide whether it is beneficial for them to retain the M-1 zoning perhaps as a separate parcel. If the RTA is approved

at this time the parcel will become a split zone parcel. The proposed zone change, if approved would correct that but if the zone change is denied then the parcel remains split zoned. Discussion followed.

John Bennetts, Silver City resident, said he hopes the Planning Commission will make their decision to the benefit of the county as a whole rather than just a small part.

Robert Elston, Silver City resident, reminded the Planning Commission that the ultimate goal of the applicant is so they can mine the land. For this reason he feels the RTA should be considered subsequent to the MPA and ZON.

Betty Retzer made a motion to **continue** this item for up to 90 days at the applicant's request. Harold Ritter seconded and the motion passed by a unanimous vote of those members present: 5 ayes; 0 nays; 2 absent (Chuck Davies and Paul Lanning)

### **3. FORT CHURCHILL SOLAR ENERGY PROJECT / SUNPOWER CORPORATION SYSTEMS / NV ENERGY – SPECIAL USE PERMIT - For Possible Action –**

Request for a Special Use Permit to construct and operate a 19.9 MW AC Solar Photovoltaic Energy Generation Facility, with interconnection to the adjacent Fort Churchill Electrical Generating Facility, on a portion of approximately 137 total acres; located off of Sierra Way, Wabuska, Mason Valley (APN 14-091-10 & 14-091-11) PLZ-13-0043

John Murnin, representing SunPower as its Project Development Manager, introduced Jim Brencic, Project Manager and Renee Robin, Director of Permitting. Mark Sullivan and Linda Bissett from NV Energy were also in attendance.

Mr. Murnin provided a power-point presentation on the project and the Sunpower Corporation. He said that this is a project being co-developed by NV Energy and Apple Corporation. The power generated by this facility will offset the power needed by Apple in the operation of their local (Storey County) data center. Mr. Murnin explained the reasons why Wabuska was chosen for this installation some of which are the level terrain, close proximity to an existing power facility, surrounding land use compatibility and the superior solar resource in this area.

Mr. Murnin said that SunPower is coordinating with Nevada Division of Wildlife, which owns surrounding property, to mitigate any hazards to wildlife that could arise. He said that SunPower remains open to any public input and stated that they have had a few workshops in the county where they were available to address everyone's concerns. He proceeded to discuss the benefits that this project can provide to the community and the county such as using local contractors for construction and contributing taxes into the community.

Mr. Murnin said that SunPower is currently discussing a program that could provide solar power to individual residences in the immediate area where the homeowner could possibly purchase the SunPower module and have the equipment installed on their home at a discounted price. Discussion followed regarding Apple's demand for power. Mr. Murnin said that this facility will offset the initial load requirements of the data center. He said it will be a very significant portion of their need. Mr. Wahrenbrock asked if they plan to expand the facility in the future, for additional load capability. Mr. Murnin said that it is Apple's intent to have a net-zero policy for all of their data centers so they could possibly build additional solar power in this area to offset 100% of the demand at that plant.

Rob Loveberg discussed the issues brought up in the staff report. He said that this location is well suited for this type of use and appears to be much more compatible with surrounding land uses than was the previous application for a solar energy facility. Mr. Loveberg said he didn't anticipate any problems with this facility being on this land as it is appropriately master planned and zoned for this type of use. He added that this type of solar panel is unlike the typical, flat type of panel that tends to be much more reflective. The parabolic mirrors tend to break up the reflective surface potentially eliminating the hazard of migrating birds being attracted to the reflection and being injured by flying into the panels. Mr. Loveberg stated that staff has recommended approval with 15 conditions but suggested an additional condition pertaining to mitigation of potential hazards to wildlife and said that the applicants have expressed agreement to adding such a condition.

Jim Brencic, SunPower said he will be instrumental in coordinating the construction activities and securing the local jobs. He noted the sparse vegetation and the flat topography of the site and stated that it is their intention to leave the site as undisturbed as possible. He said there are some areas where some bumps and old, inactive ditches will need to be removed but the amount of grading will be minimal and appropriate dust control will be put in place. Where possible they will re-vegetate with native species of plants. The project will be enclosed with a 6 foot high, chain-link fence with barbed wire to keep wildlife out because the site could pose a danger to animals if they were to get inside the fence.

Larry Wahrenbrock asked if SunPower has ever had an installation so close to a wildlife management area before. Renee Robin said she works on all environmental issues relating to the installations. She said that they have met with Nevada Division of Wildlife (NDOW) regarding protection of the local wildlife. Ms. Robin said they weren't as concerned specifically with the deer population as they were with locking the facility specifically during the hunting season, as a safety measure. She said the main topic of discussion regarding wildlife was the protection of migrating and nesting birds in the area. They have constructed other projects around the world which are in close proximity to protected species and they do take special measures at those sites to monitor and manage the wildlife, such as wildlife friendly fencing. Special fencing was not something requested by NDOW however; in fact their preference is to keep the larger wildlife out altogether. SunPower is following the guidelines of the NDOW Biologist to do preconstruction surveys for avian species and install protective measures during the hunting season. Discussion followed.

Mr. Loveberg said there is currently no condition of approval addressing compliance with NDOW recommendations or requirements, nor for ongoing weed and dust control.

Betty Retzer noted that the materials say the facility will operate emission free for 25 years and asked what happens after that timeframe. Mr. Murnin responded that the land lease agreement between Apple and NV Energy extends for 30 years. The equipment could exist forever however it is written into this particular agreement that after the 30 years has elapsed, the equipment will be removed. Mrs. Retzer then asked about the statement that says these types of panels could lessen the impact to migratory birds. Ms. Robin responded by saying that there has been a lot of discussion on this topic and that this type of panel absorbs light rather than reflecting it. The parabolic mirrors shine down onto the solar cell so there is no glint or glare issue with these panels causing an increase in mortality of the avian species.

Betty Retzer asked whether there will be any permanent employees at the site which might cause the need for parking space at the site. Rob Loveberg said that there will be periodic maintenance necessary on the panels and parking should be made available for that vehicle(s) so they don't park within the Sierra Way right of way. He said that one parking space, built to county code specifications, is a reasonable request. Discussion followed regarding water use and availability. It was stated that the water will be brought from NV Energy wells onto a truck where the water will be de-ionized on the truck and used to clean the panels. Discussion then turned to noise emissions, which was stated to be very minimal. Harold Ritter asked about any electro magnetic fields (EMI's). Ms. Robin said that the system itself does not emit any EMI's however transmission lines do and they will have collector lines at the site but nothing out of the ordinary that would cause alarm.

John Bennetts, Silver City resident, asked if there is any cost increase to the Nevada ratepayers. Mr. Murnin said there is no cost to the ratepayers for this project.

Karen Steele, resident of south Mason Valley, complimented the applicants for their community involvement but said there are still concerns for the local wildlife. She said there is not a lot of data available on environmental wildlife impact and asked the applicant if it would be possible for them to establish an environmental assessment, maybe involving a university intern, to monitor the site. Ms. Robin responded said they do have biological survey information on the site which can be shared with the public. She said they also plan to do preconstruction survey work and also worker training so that they can identify any problems that might occur during construction. She said she would look into that possibility but couldn't guarantee it.

Betty Retzer made a motion to recommend approval of the special use permit for the Fort Churchill Solar Energy Project with the recommended findings and subject to the following conditions:

1. The applicant shall comply with all State, County, federal and special district rules and regulations as they apply to this special use permit.
2. The applicant shall comply with all applicable fire, building, zoning and improvement code requirements.
3. The applicant shall acquire all State, County and special purpose district permits and obtain all necessary public inspections.
4. Prior to commencement of construction, the applicant shall provide to the Lyon County Planning Department evidence of the issuance of any necessary permits and/or approvals for construction, including but not limited to NDEP air quality permit, Lyon County Road Division encroachment permit, Lyon County grading permit, and Walker River Irrigation District approval of work performed in, on or around the District drain.
5. Prior to commencement of the use, the applicant shall provide to the Lyon County Planning Department evidence of the issuance of an encroachment permit and satisfactory completion of all improvements required by the Lyon County Road Department, or documentation that no new encroachment permit and/or improvements are required.
6. Commencement of the use is contingent upon satisfactory completion of all required access, driveway and parking improvements to County and International Fire Code standards, as required by the Lyon County Planning Department and Mason Valley Fire Protection District.
7. Any proposed sanitation facilities and Onsite Sewage Disposal System must be approved by the Nevada Division of Environment Protection and evidence of such approval must be provided to the Lyon County Planning Department prior to approval of any building permit for sanitary facilities.
8. Commencement of the use is contingent upon approval of the proposed use of water by the property owner and evidence provided to the Lyon County Planning Department that the property owner's water rights are appurtenant to this parcel.
9. The applicant shall obtain the written approval of the Walker River Irrigation District, and other ditch owners as applicable, prior to any work being performed in, on or around Walker River Irrigation District's Drain, and before the modification, diversion, realignment or filling of any ditch owned by others.
10. If outdoor lighting is provided, it shall comply with the outdoor lighting requirements of Chapter 10.20 of the Lyon County Code.
11. The applicant shall comply with Lyon County's 1996 drainage guidelines, as revised.
12. All of the requirements placed on the special use permit by the County Building Official, Mason Valley Fire Protection District, Planning Director, and other agencies with jurisdiction shall be met prior to the applicant commencing use of the site.
13. No change in the terms and conditions of the special use permit, as approved shall be undertaken without first submitting the changes to Lyon County and having them modified through a public hearing process.
14. The substantial failure to comply with any conditions imposed on the issuance of a special use permit or the operation of a special use in a manner that endangers the health, safety or welfare of Lyon County or its residents or the violation of ordinances, regulations or laws in the special use or the non use of the permit for a year may result in the institution of revocation proceedings.
15. The special use permit is subject to annual review by Lyon County.

Before the second, discussion followed regarding the wording of an additional condition relating to compliance and follow up with NDOW. Discussion followed and Ms. Robin made some suggestions. Mrs. Retzer recommended that Ms. Robin's verbiage be used. Condition #16 was added as follows. .

16. The applicant will conduct pre-construction surveys, worker training on wildlife and biological issues, and will institute other protective measures for wildlife as delineated by the Nevada Division of Wildlife (NDOW).

Mike Hardcastle seconded and the motion passed by a unanimous vote of those members present: 5 ayes; 0 nays; 2 absent (Chuck Davies and Paul Lanning)

#### **RECESS TO CONVENE AS THE LYON COUNTY PUBLIC LANDS MANAGEMENT ADVISORY BOARD**

##### **4. Public participation**

Rob Loveberg stated that the Board of Commissioners held their second hearing to repeal title 10.13, the Interim Public Lands Management Plan, which will go into effect after the required publishing period.

Larry Wahrenbrock mentioned the email forwarded from staff regarding the Draft Environmental impact Statement from the USDA-Forest Service for the Greater Sage Grouse Bi-State Distinct Population Segment Forest Plan Amendment and said that they should expect future correspondence regarding that.

##### **5. Future agenda items for discussion and possible action**

Rob Loveberg reminded the Public Lands Management Advisory Board that the adopted policy needs to start being reviewed in January and if they want any specific items placed on the agenda as a precursor for that review he asked that they let us know so we have sufficient time to agendize the item. Discussion followed that it would probably be best to agendize something for December as it is anticipated that November's meeting will be lengthy. Larry Wahrenbrock said that some issues had recently been brought to light that will need to be discussed at that time.

##### **6. Board member comments**

None

##### **7. Public participation**

None

#### **ADJOURN TO RECONVENE AS THE LYON COUNTY PLANNING COMMISSION**

##### **8. Discussion and possible action regarding the draft Lyon County Land Use and Development Code, with special concentration on Part 1.**

Rob Loveberg said that Part's 1, 2 & 3 of the working draft of the Land Use and Development Code are now available on the county's website. He added that he is working on Part 4 and will make that available in workable formats on the website also. Mr. Loveberg said he is again revising the schedule for community workshops and advisory board meetings which are anticipated to commence in early October.

Mr. Loveberg reminded the Planning Commission members of the importance of moving forward with their review of the working draft and added that the commission members can contact staff outside of the scheduled hearings if they have comments or questions regarding any part of the draft document. He said that Part 1 could be worked on today but we could also discuss any other part of the draft document.

The Planning Commissioners proceeded to review Part 1, page by page. Mr. Loveberg said that most of the text is driven by what state law dictates although there are some additions. He recommended that each of the members carefully review the Right to Farm portion of the proposed code and possibly offer a more concise version of the wording without changing the intent of the ordinance.

Mr. Loveberg mentioned that the way we approach Planned Unit Developments will change so that they can be developed more effectively. In addition, other types of land development types such as clustering, that aren't strictly PUD's, are being proposed.

Larry Wahrenbrock asked if under site improvement permits, mining and mining exploration permits would be included in that category or would such uses still require special use permits. Mr. Loveberg responded that it would probably still be under the requirement for a special use permit. He explained that a site improvement permit is less than a full building permit in that it entails site improvements only without a structure. Currently Lyon County does not offer site improvement permits and it has become a necessity.

Mr. Loveberg mentioned that the new code proposes a Board of Adjustments which Lyon County has not had before. This is usually made up of the members of the Board of Commissioners as set forth in NRS.

A discussion ensued regarding the proposed requirement for placing a sign on any property that is proposing a land use application. Mr. Loveberg said that currently our code does not require this because NRS only requires a sign be posted for specific application types in counties with populations over 400,000. He said it was a recommended practice in our area due to the sparse population and larger parcels which could cause insufficient noticing in the case where only those properties within 300' of the parcel are noticed.

Mike Hardcastle had to leave the meeting at this point.

Discussion followed regarding some of the procedural changes and additions such as requiring applicants to provide their own mailing information and materials for public noticing purposes.

Mr. Loveberg said that overall, it is their intention to standardize procedures and public noticing requirements, etc. as much as allowed by NRS.

### **9. STAFF COMMENTS AND COMMISSIONER COMMENTS**

None

### **PUBLIC PARTICIPATION**

None

### **ADJOURNMENT**

At approximately 12:22 P.M. it was unanimously motioned that the meeting be adjourned.

---

Chuck Davies, Chairman

ATTEST:

---

Robert Loveberg, Planning Director

---

Kerry Page, Planning Assistant