



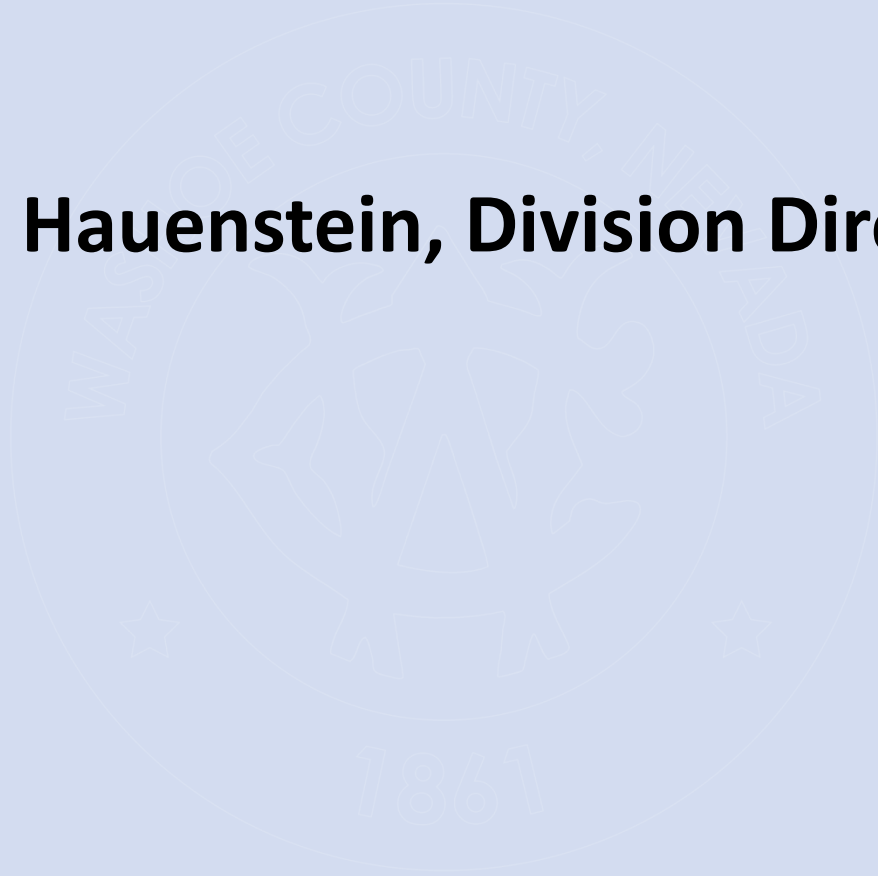
***Washoe County
Board of
Adjustment
Training
December 8, 2021
1:00 – 2:30***

***Mt. Rose Conference Room
(Welcoming Remarks
& Introductions – Mojra)***



Welcome and Introductions

Mojra Hauenstein, Division Director



(Mojra)



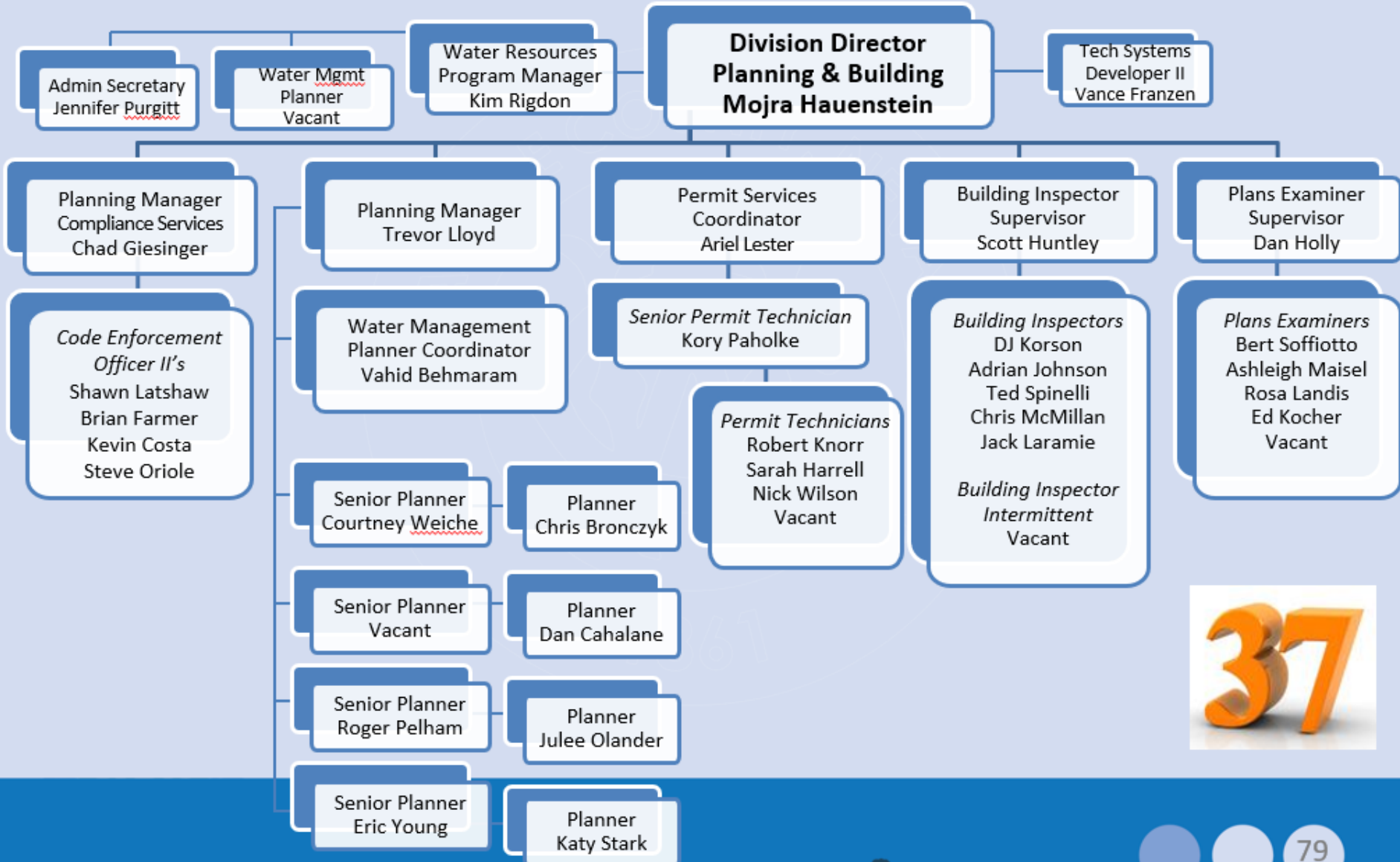
Overview

Overview of CSD and Planning & Building Division, including Organization Chart

Mojra Hauenstein, Division Director



Planning & Building





Overview of P&B

Planning:

Master Plans, Regulatory Zones (B.L), Development Code, Planning applications, Code enforcement

Key Responsibilities:

Regional Open Space programs,
Census & demographic data
Boards & commissions (BOA, PC, PMRC),
REOC support – Emergencies

Codes: Master Plan Purpose: Policy (3 volumes)

Development Code Purpose: Implementation, Uses, Standards (9 Divisions)

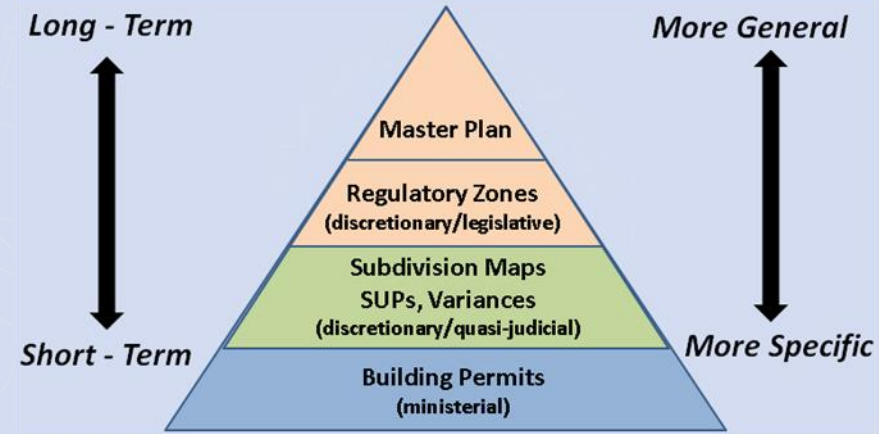
Codes

Building:

Key Responsibilities: Life Safety- Minimum codes

Codes: (12) I-codes + 1 NN Amendment: MEP, Structural, Energy, ADA, IWUI

- 4,500 permits, 22,000 inspections
- Occupancy Loads and Plumbing Fixture Analysis





Purpose of Board of Adjustment

The Washoe County Board of Adjustment, created pursuant to NRS 278.270, performs all the duties and functions delegated by the terms of NRS 278.010 to 278.630. The Board of Adjustment has the responsibility for reviewing and approving development applications and certain appeals for unincorporated Washoe County.





BOA Administration

- Membership
- Compensation
- Procedures
- Rules, Policies and
- Procedures (RPPs)





Hearing Preparation

Hearing Preparation, form and Discussion at Hearing

Trevor Lloyd, Planning Manager

(Trevor)



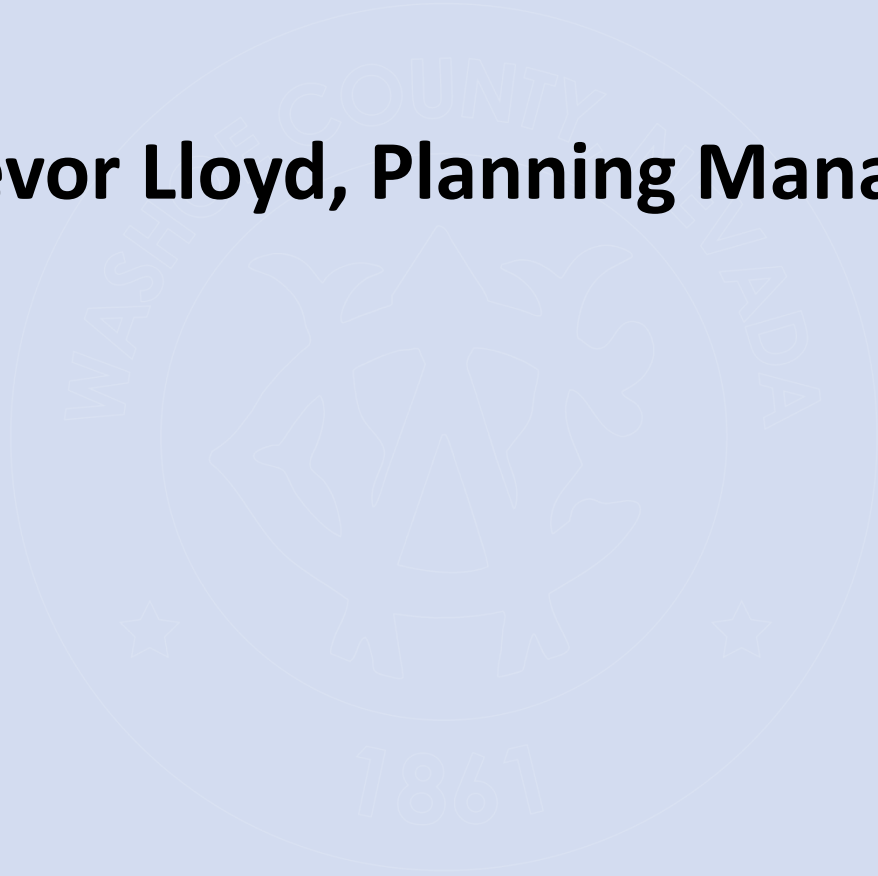
Application Process

Application Type	Permit Type	Board Meeting	WCC Article
Abandonment	Discretionary	Planning Commission	806
Administrative Permit	Discretionary	Board of Adjustments / Hearing Examiner	808
Agricultural Exemption for Land Division	Administrative	Director Review	606, 608, 612
Amendment of Conditions	Discretionary	Planning Commission / Board of Adjustments	Depends on Application Type
Appeal to Board of County Commissioners	Discretionary (Appeal)	Board of County Commissioners	Depends on Application Type
Appeal to Board of Adjustment (Staff Decision)	Discretionary (Appeal)	Board of Adjustments	Depends on Application Type
Design Review	Discretionary	Design Review Commission	916
Detached Accessory Dwelling Administrative Review	Administrative	Staff Review / BCC only on Appeal	306
Development Code Amendment	Discretionary	Planning Commission → Board of County Commissioners	818
Director's Modification of Standards	Administrative	Director Review	410, 412
Display Vehicle Application	Administrative	Staff Review	Nuisance Code
Extension of Subdivision Expiration Date	Discretionary	Planning Commission	608
Master Plan Amendment	Discretionary	Planning Commission / Board of County Commissioners / Regional	820
Regulatory Zone Amendment	Discretionary	Board of County Commissioners	821
Special Use Permit*	Discretionary	Board of Adjustments	810
Special Use Permit for Grading	Discretionary	Board of Adjustments	810
Special Use Permit for Stables	Discretionary	Board of Adjustments	810
Tentative Map of Division of Land into Large Parcels	Administrative	Staff Review	612
Tentative Parcel Map	Discretionary	Parcel Map Review Committee	606
Tentative Subdivision Map	Discretionary	Planning Commission	608
Variance	Discretionary	Planning Commission / Board of Adjustments	804
5-Year Agg. Pit Review	Administrative	Hearing Examiner	332



Defensible Conditions

Trevor Lloyd, Planning Manager



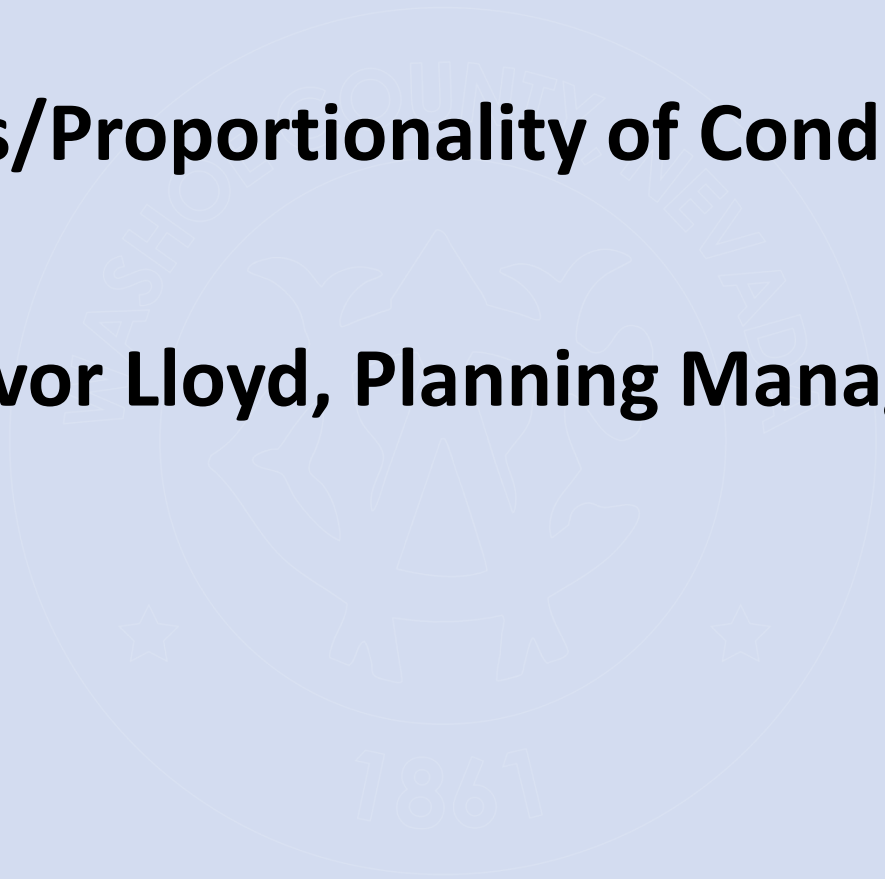
(Trevor)



Conditions of Approval

Nexus/Proportionality of Conditions

Trevor Lloyd, Planning Manager





Conditions

- Conditions and the need for a **Rational Nexus** and **Proportionality** between proposed conditions and the impacts of a particular project
- “Nexus” requirement established in Nollan v. CCC, 483 U.S. 825 (1987)
- What was Case about? Land Dedication for public access to beach
- The issue before the Court: whether the imposition by the CCC of the requirement that the Nollans convey a public easement as a condition for granting a land-use permit constituted a taking
- US Supreme Court held that permit conditions must be sufficiently related to the government’s regulatory interests
- **Justice Scalia**: a public-access condition did not meet the *nexus test* by compensating for the slight loss of public view across the Nollans’ property; if loss of public views across the Nollans' property was truly the issue, then an appropriate condition of approval would have been "construction of a public viewing platform on the roof of the Nollans' house".





Conditions

- “Proportionality” requirement established in *Dolan v. City of Tigard*, 512 U.S. 374 (1994)
- There must be “rough proportionality” between the condition’s requirements and the impacts of the development
- “Proportionality” does not require a precise mathematical calculation, **but jurisdictions “must make some sort of individualized determination that the required condition is related both in nature and extent to the impact of the proposed development**
- What was the Case About? Land dedication for public green/path/bike ways
- Court held that the requirement for a *public* greenway (as opposed to a private one, to which Dolan would retain other rights of property owners, such as the right of exclusive access), was excessive and disproportionate





Conditions

- Think of it as....

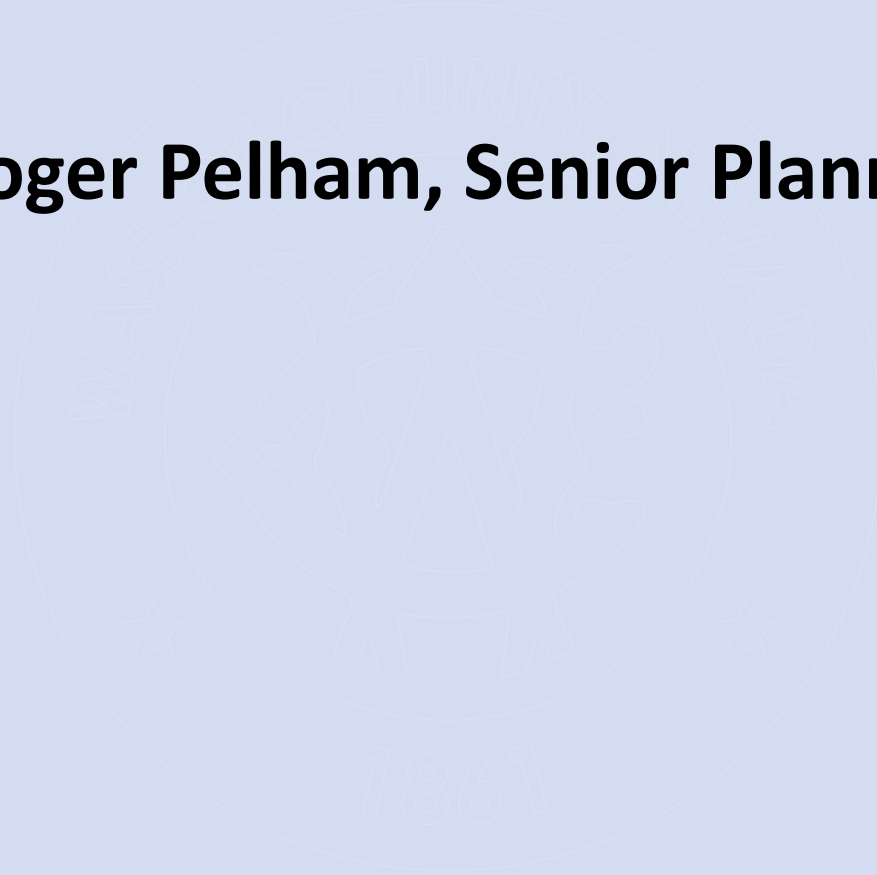


- A legitimate use of the municipality's police power (the reflection in the mirror) exists only when a harm (the object creating the reflection) exists and must be alleviated. If no identifiable harms related to development exist, no basis for a legitimate use of the municipality's land-use powers exists either.
- A broad reading of the Takings Clause requires exactions to be related to the harm of development in degree as well as purpose
- A government agency may not require a person to surrender constitutional rights in exchange for discretionary benefits
- Always tie conditions to MP Goal or Policy
- Check it: Is the *Degree* Proportional ?



Agency Review Process

Roger Pelham, Senior Planner



(Roger)



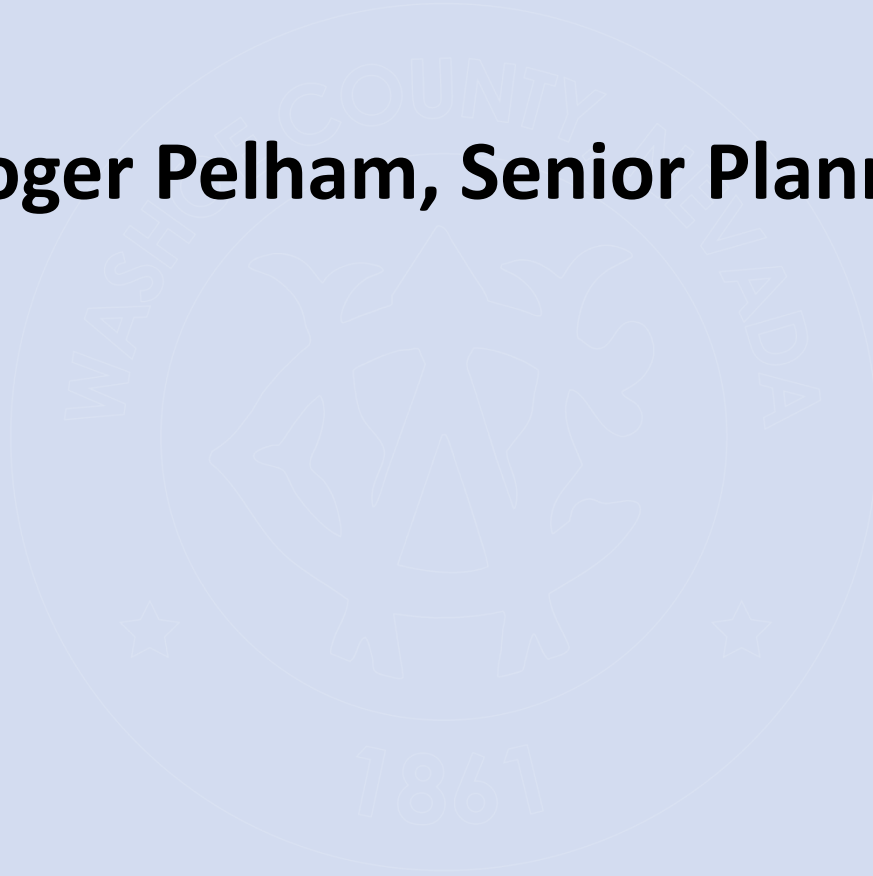
Agency Review Process

- Pre Application meeting
- Application (8th of each month)
- Review of Application for Completeness (maximum of 3 days)
- Case Description written, Public Notice list created, given to Administrative staff for distribution to reviewing agencies. (approximately 4 days after submittal)
- Comments received from reviewing agencies (approximately 3 weeks after submittal)
- Staff report is written by assigned planner and provided to Management and District Attorney for comment (approximately 4 weeks after submittal)
- Management and DA have one week to provide comments and Staff has one week to finalize report and provide it to Admin staff for distribution to members of reviewing body.
- Approximately 3 weeks before the public hearing the staff report is made public and required public notices are mailed to affected property owners.



Public Notice

Roger Pelham, Senior Planner

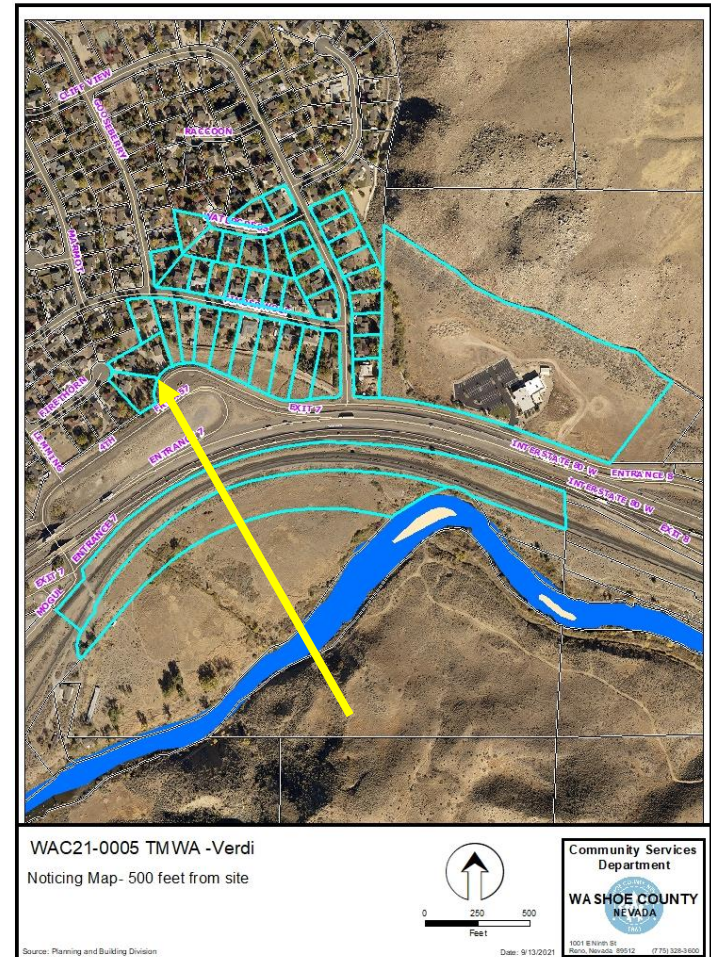


(Roger)



Public Notice

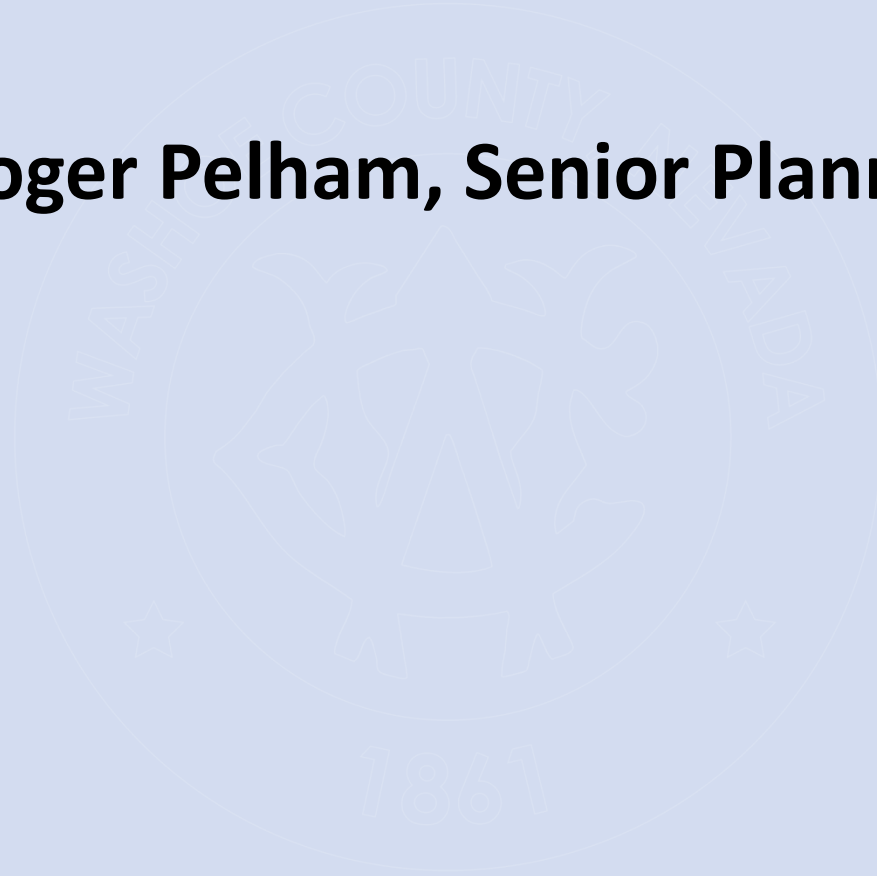
- Minimum Number of parcels and distance from subject site is defined in NRS and Development Code for each type of application.





Overview of Findings

Roger Pelham, Senior Planner



(Roger)



Variance Findings

Section 110.804.25 Findings for Variance

Prior to approving an application for a variance, the Board of Adjustment, the Planning Commission or Hearing Examiner shall find that all of the following apply to property

Special Circumstances

Exceptional Narrowness, shallowness or shape

Exceptional Topographic Conditions

Other Exceptional Condition of the property whereby the strict application of the regulation results in undue hardship

No Detriment

No Special Privileges

Use Authorized



Exceptional Narrowness

- Each regulatory zone in Washoe County has a minimum lot with specified (MDS-80', LDS-120', LDR-150', etc.)
- When a parcel has an average width less than that specified by Code, it may be considered exceptionally narrow.
- If the lot width is equal to or greater than that width, it is not exceptionally narrow.





Exceptional Shallowness

- Generally, if the front and rear yard setbacks take up so much of the parcel that a reasonable building site is eliminated, the lot is exceptionally shallow.





Exceptional Shape

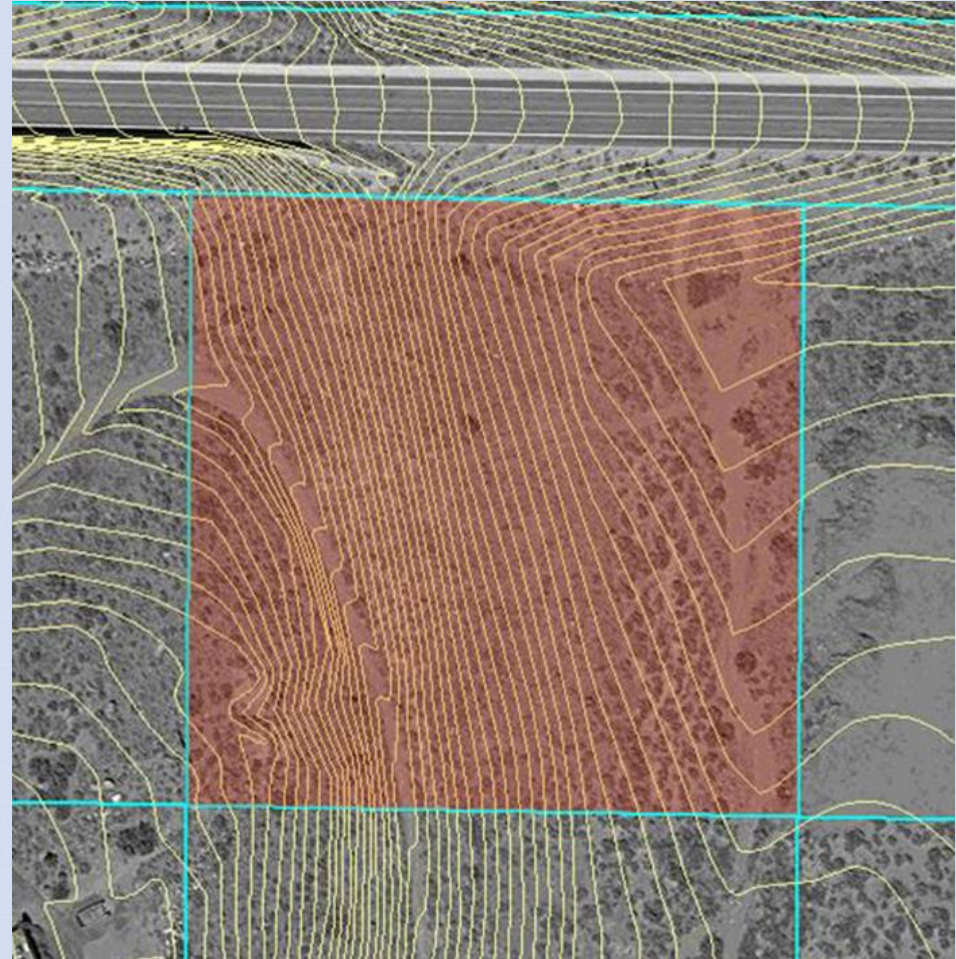
- “Hourglass” or irregular shape such that, when typical setbacks are applied, those setbacks take up so much of the parcel that a reasonable building site is eliminated, the lot is generally considered to have an exceptional shape.





Exceptional Topographic Conditions

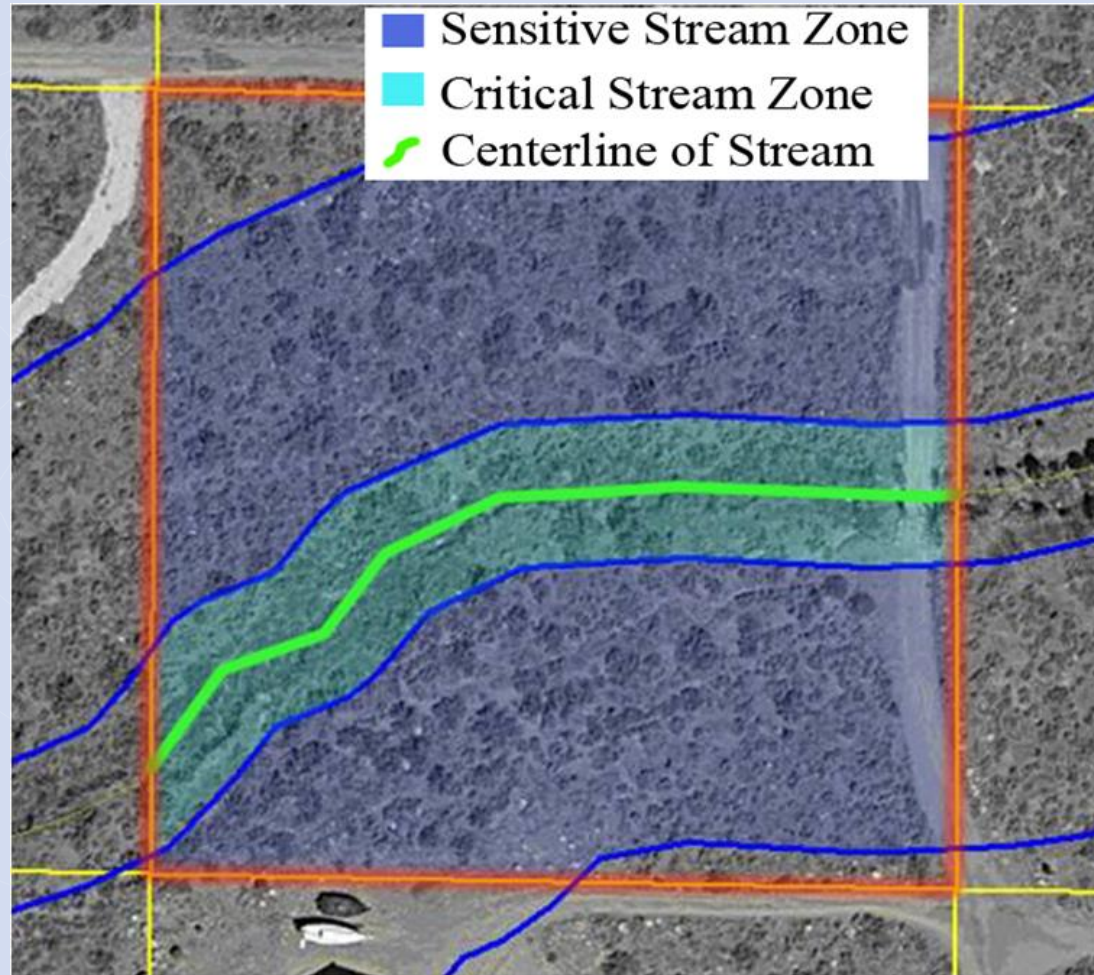
- Generally, if a parcel contains slopes greater than 15% over a significant portion, and there is little or no area under 15% slope.
- Also, if there is a stream, drainage-way, river or other topographic feature traversing the parcel, preventing development in that area.





Other Exceptional Conditions

- Any constraint or combination of constraints that eliminates or greatly reduces the development portion of a parcel.





NOT a hardship

- Financial constraints
- Convenience of the applicant
- Self-imposed hard hardships (i.e. work done without permit)
- Existing landscaping
- Overbuilding of the lot
- Attributes of the applicant



Other Findings

- No Detriment. The relief will not create a substantial detriment to the public good, substantially impair affected natural resources or impair the intent and purpose of the development Code or applicable policies under which the variance is granted;
- No Special Privileges. The granting of the variance will not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and the identical regulatory zone in which the property is situated; and
- Use Authorized. The variance will not authorize a use or activity which is not otherwise expressly authorized by the regulation governing the parcel of property.



Hardship But No Variance?

- If a hardship is identified, can a variance be denied. Yes.
- The hardship identified must create the need for the variance and the variance must be the minimum measure needed to provide relief.
- For example: Steep slopes at the rear of a 40-acre parcel do not warrant a variance for a reduced front-yard setback 500' away on the same lot.



What Variances Boil Down to...

- Approval of a Variance requires that there is a **physical condition** of the property that makes development impossible or extremely difficult under the Code as written.
- Every lot is different and presents its own set of physical hardships. No variance sets a precedent for any future request.



Grading

Illegal Grading & Article 438 Grading

Roger Pelham, Senior Planner

2:20-2:30 PM

(Roger)

30



Illegal Grading and Article 438

Section 110.438.00 Purpose. The purpose of this article is to safeguard life, limb, property and the public welfare as well as set standards that conserve the natural character of our hillsides and minimize disruption of the natural landscape, by regulating grading on private and public property.

Table 110.438.10.1

Permits Required*

Grading of any amount within a special flood hazard area as defined by the County Engineer or within any drainage facility as defined herein	Grading permit** issued by Washoe County and possibly special use permit*** depending upon the amount proposed to be graded
Grading of fifty (50) cubic yards or less or ten thousand (10,000) square feet of grading or less (outside a special flood hazard area as defined by the County Engineer and outside of any drainage facility)	No permit required
Minor grading as defined at Section 110.438.37*	Grading permit issued by Washoe County
Major grading as defined at Section 110.438.35(a)	Special use permit approved by the Washoe County Board of Adjustment, or Planning Commission, followed by a grading permit issued by Washoe County



Grading

Grading. “Grading” is any clearing, excavation, cutting, filling, or other disturbance of the natural state of the landform or natural vegetation and/or any combination thereof.



Illegal Grading

Illegal Grading is, therefore, any clearing, excavation, cutting, filling, or other disturbance of the natural state of the landform or natural vegetation and/or any combination thereof, without having previously obtained the appropriate permits.



What to do with illegal grading?

- Review as if the work has not been previously done.
- Would the grading be acceptable if permits had been applied for in the appropriate order?
- Do not consider “punishment” of the applicant.



Legal Discussion

Open Meeting Law Ethics in Government Property Rights and Takings Claims

Mike Large, Deputy District Attorney

(Mike)



Questions?

Questions and Conclusions

