



# WASHOE COUNTY

"Dedicated To Excellence in Public Service"

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CM/ACM\_\_\_\_\_

Finance\_\_\_\_\_

DA\_\_\_\_\_

Risk Mgt. \_N/A\_

HR \_N/A\_

Other \_N/A\_

## STAFF REPORT

BOARD MEETING DATE: **May 12, 2015**

**DATE:** April 28, 2015

**TO:** Board of County Commissioners

**FROM:** Dave Solaro, Arch., P.E., Director  
Community Services Department, 328-2040, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)

**THROUGH:** Kevin Schiller, Assistant County Manager

**SUBJECT:** Discussion and possible direction to staff to implement with or without modifications one of the following options related to requests for refunds of infrastructure fees held by Washoe County for the Warm Springs Specific Plan Area: 1) Continue implementation of the Financing Plan as approved as a component of the Specific Plan in 1995; 2) Initiate an amendment to the Warm Springs Specific Plan Area by removing the Financing Plan and/or amend the existing development agreements to include the refund of collected development fees; 3) Notice and set a public hearing to receive evidence and stakeholder input concerning the refund requests; or 4) Create a process that combines aspects of 1 and 2 above that amends the Warm Springs Specific Plan Area by removing the financing plan except for its provisions dealing with roadway and storm water management, amends the existing development agreements, and grants partial refunds. (Commission District 5.)

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### SUMMARY

The Washoe County Commission (Board) has directed staff to solve a grievance that continues to be heard during the public comment period from Mr. George Newell demanding that the County refund all infrastructure fees held by Washoe County for the Warm Springs Specific Plan Area (SPA).

Staff was given direction by the Board at the March 10, 2015 meeting to answer the following and create a solution:

- How do we expedite a refund?
- How do we fix the problem?
- Make sure language is clear that no land division smaller than 2.5 acres will be allowed.
- Make sure that Washoe County is not liable for potential entitlements granted with current land splits for water, sewer, and roadway infrastructure.

AGENDA ITEM # 19

- Determine whether there are any other developments in the County that are similarly situated – fair treatment for all.
- Provide a mechanism for indemnification from each property owner and each sub-property owner.

Washoe County staffs from the Community Services Department, the Comptroller's Office and the Office of the District Attorney have worked using the questions and statements provided by the Board as guidance. The information included in this staff report will provide the Board with the necessary tools to allow a decision and closure of this item.

Washoe County Strategic Objective supported by this item: Economic development and diversification.

### **PREVIOUS BOARD ACTION**

September 5, 1992, The Board took action to adopt the Warm Springs Specific Plan which included the *Development Standards Handbook Framework*.

April 18, 1995, The Board took action to amend the Warm Springs Specific Plan to include the *Financing Plan* for the Specific Plan.

March 10, 2015, The Board directed staff to provide additional information regarding the Warm Springs Specific Plan and provide options for the Board to address the grievance.

April 28, 2015, The Board acknowledged receipt of an update provided by staff on requests for refund of infrastructure fees held by Washoe County for the Warm Springs Specific Plan Area.

### **BACKGROUND**

Staff has determined that there are four options that the Board could exercise which are outlined below to include all information necessary in order to make a final decision.

#### **OPTION ONE: Continue implementation of the Financing Plan as approved as a component of the Specific Plan in 1995.**

The SPA adopted in 1992 and amended with a Financing Plan in 1995 directs that all property owners within the improvement boundary will pay their fair share of the costs to support the backbone infrastructure necessary for development within the SPA. This is an important concept due to the increased demand on services as the SPA envisions a major property development will occur with housing densities of one unit per acre with supporting commercial and civic uses, and will be required to install a substantial amount of the needed SPA infrastructure, such as a community water system, paved roadways and flood control channels. The Financing Plan was adopted in 1995 as an appendix to the SPA which allowed the property owners to utilize higher density residential regulatory zones and create 2.5 and 5 acre sized parcels prior to installation of the infrastructure necessary for full development of the SPA. In order to utilize the higher density residential regulatory zones, the property owners are required to enter into a

“development agreement” with the County as a condition of project approval (WSSP.8.1). There are currently 11 Development Agreements recorded with Washoe County pertaining to this SPA.

Continued implementation of the plan will assure that when, at some point in the future, the property owners that have one acre zoning determine the time is right to develop they do not bear all of the costs associated with the creation of the backbone infrastructure necessary to support all of the SPA development. Washoe County will continue to hold the collected fees as outlined in the SPA and Financing Plan for the future development.

**OPTION TWO: Initiate an amendment to the Warm Springs Specific Plan Area by removing the Financing Plan and/or amend the existing development agreements to include the refund of collected development fees.**

The process to refund the collected development fees to date includes multiple steps. The initial step is to remove the adopted Financing Plan from the Specific Plan Area. Due to the length of time anticipated to complete the refund process, by removing the Finance Plan first, it will ensure that procedurally, Washoe County does not require the payment of more development fees if a current property owner contemplates development within the SPA and initiates the process. When the Financing Plan is removed, amendment of the eleven Development Agreements will be initiated. It is contemplated that the fee portion of the agreements will be removed and the other provisions will remain. Each amended agreement will require approval by all signatories to the agreements, which include the Board, the property owner, and the Palomino Valley General Improvement District (PVGID). The final step in this option will be the disbursement of collected fees. The removal of the Financing Plan is the only anticipated change to the Specific Plan Area document. Densities that exist within the current document will continue to exist, the difference being that any developer who develops in the future will be conditioned to complete backbone infrastructure associated with their development.

*Timing and process for removing the Financing Plan from the Specific Plan Area:*

The procedure to remove the Financing Plan includes a Master Plan Amendment. The amendment will be submitted to the Washoe County Community Services Department on September 15, 2015. Procedurally this item will be taken to the Warm Springs Citizens Advisory Board at their September meeting, and will be placed on the Planning Commission agenda for the November 5, 2015 meeting. If approved by the Planning Commission, the item will be placed on the Board agenda for December 8, 2015. After Board adoption, the item will be scheduled for hearing by the Truckee Meadows Regional Planning Commission for regional plan conformance, a process that can range from 30 to 90 days to complete.

*Timing and process for amendment of the Development Agreements:*

Development agreements once approved, are ordinances of the county. Under the County Code, a “development agreement may be amended or canceled, in whole or in part, by mutual consent of the parties to the agreement or their successors in interest ...” WCC 110.814.40. Approval of an amendment must be by ordinance and must be consistent with the master plan. NRS 278.0205; WCC 110.814.40(b). The amended Development Agreements will need to be agreed to by the original developers, any new

property owner, the PVGID and Washoe County. This is anticipated to take approximately three months to gain consensus by all parties. Applications are due on the 15<sup>th</sup> of a given month and will be placed on the BCC agenda for the 3<sup>rd</sup> meeting of the following month.

*Timing and process associated with disbursement of collected fees:*

Both the timing and process of a potential refund of collected fees depend on the nature of those fees, the terms of the Warm Springs Specific Plan Area, and the terms of the Development Agreements entered into in connection with the Warm Springs Specific Plan Area. There has been concern expressed by some members of the public that the developer fees should be classified as “impact fees” within the meaning of NRS chapter 278B, NRS 278B.260(1) which provides that they “shall, upon the request of an owner of real property for which an impact fee has been collected, refund the impact fee and any interest and income earned on the impact fee by the local government,” if after collecting the fee, either (1) the local government did not begin construction of the associated capital improvements within 5 years of the fee’s collection, or (2) the fee “was not spent for the purpose for which it was collected within 10 years after the date on which it was collected.” Subsection 4 goes on to state that the local government “shall refund any impact fee or part thereof, and any interest and income earned by the local government on the amount of money refunded, if it is not spent within 10 years after the date of payment.”

Staff is of the opinion that the fees are not “impact fees,” or even if they are, there are other potential legal problems with giving refunds, and the process may be constrained by the Area Plan itself, the development agreements entered in connection with it, and other legal considerations. If the fees are chapter 278B “impact fees” and a refund is properly due, then the statutes appear to give a wide degree of discretion to the Board as to how to go about implementing the refunds. This could be as simple as a vote by the Board on a properly agendaed item at a public meeting. Regardless of whether these fees are “impact fees” or not it is important to determine whether there are any competing claims of, for example, other property owners or entities concerning the validity of refunds. A fuller factual record of these and related issues is important to develop, perhaps at a hearing in the near future for interested stakeholders before the Board.

**OPTION THREE: Notice and set a public hearing to receive evidence and stakeholder input concerning the refund requests.**

This option will allow for a fuller factual record of all related issues and is important to develop a better understanding whether there are other interested stakeholders in the community. Notice will be sent to all property owners within the SPA defining the time, and location for input which will assist the Board in fully understanding from the resident’s perspective whether the Financing Plan is an important aspect of the SPA.

**OPTION FOUR: Create a process that combines aspects of 1 and 2 above that amends the Warm Springs Specific Plan Area by removing the financing plan except for its provisions dealing with roadway and storm water management, amends the existing development agreements, and grants partial refunds.**

The Palomino Valley General Improvement District is signatory to all Development Agreements per the terms of the Financing Plan. Washoe County has received a letter

from the PVGID attached as Exhibit A requesting infrastructure funds for maintenance associated with existing development within the SPA boundaries.

The current Development Agreements, Section 3. A. Collector Roadway Fees, contains the following language:

**A. Collector Roadway Fees**

All Roadway Fees collected pursuant to this Agreement shall be set aside in a segregated interest-bearing account specifically for the construction of the first phase of the Spine Road or other collector roads as defined in the phasing plan for roadways specified in the Financing Plan (Exhibit B). These fees collected by the County shall only be disbursed to the PVGID to provide funding for the PVGID to contract for the design and construction of the roadways or reimbursed to Developer(s) if Developer constructs collector roads.

Through additional correspondence, the PVGID Board has requested review of the process to determine whether their activities to construct portions of the contemplated phased road backbone infrastructure would result in reimbursement from Washoe County from the held developer fees. Impacts from development to date, which include an increase in traffic as well as stormwater runoff, have caused an increase in maintenance activities for PVGID. Construction of the backbone roadway and associated drainage infrastructure would improve the existing infrastructure for the residents.

While the funding available in the roadway and stormwater management infrastructure portions of the collected fees is currently not enough to fully construct all phases of the backbone infrastructure as contemplated, it could be leveraged with PVGID funding to construct identified parts of the needed improvements.

The other collected developer fees for law enforcement and fire protection, parks and open space, and community center would be refunded in a manner described within option two.

**FISCAL IMPACT**

Depending on the option directed by the Board for implementation the impact to Washoe County financially will be directly related to staff time required to carry out the process and is estimated below:

<b>Option</b>	<b>One</b>	<b>Two</b>	<b>Three</b>	<b>Four</b>
Estimated time:	No additional time	Potentially 1040 hours of staff time	Potentially 10 hours of staff time	Potentially 1040 hours of staff time
Estimated cost:	No additional cost	\$62,400 @ \$60/hour*	\$600 @ \$60/hour*	\$62,400 @ \$60/hour*

\*\$60 per hour is an approximate average of the fully benefited hourly rate of pay for Sr. Planner, Deputy District Attorney and Sr. Accounting staff.

**RECOMMENDATION**

It is recommended that the Board of County Commissioners direct staff to implement with or without modifications one of the following options related to requests for refund of infrastructure fees held by Washoe County for the Warm Springs Specific Plan Area:

- 1) Continue implementation of the Financing Plan as approved as a component of the Specific Plan in 1995; or
- 2) Initiate an amendment to the Warm Springs Specific Plan Area by removing the Financing Plan and/or amend the existing development agreements to include the refund of collected development fees; or
- 3) Notice and set a public hearing to receive evidence and stakeholder input concerning the refund requests; or
- 4) Create a process that combines aspects of 1 and 2 above that amends the Warm Springs Specific Plan Area by removing the financing plan except for its provisions dealing with roadway and storm water management, amends the existing development agreements, and grants partial refunds.

**POSSIBLE MOTION**

Move to direct staff to implement Option \_\_\_\_\_ as proposed by staff related to requests for refund of infrastructure fees held by Washoe County for the Warm Springs Specific Plan Area.

**Palomino**  
**Valley General Improvement District**

P.O. Box 615, Sparks, Nevada 89432

RECEIVED  
MAR 20 2015  
PLANNING DEPARTMENT

March 17, 2015

Mr. Bill Whitney, Director  
Department of Community Development  
P. O. Box 11130  
Reno, NV 89520

Re: Warm Springs Specific Planning Area

Dear Mr. Whitney:

Review of the agenda for the Washoe County Commission reveals a request to refund infra structure fees collected by Washoe County back to the original developers. The Palomino Valley General Improvement District (PVGID) maintains roads that serve residential lots developed within this planning area. Deficiencies of design and construction exist along Broken Spur Drive in that culverts perpetuating runoff in roadside V-ditches are of insufficient length. Culverts beneath entrances to both individual lots, as well as cul-de-sacs, need to be extended in length to prevent traffic from damaging both culverts and vehicles. Some culverts were installed with such insufficient length that the culvert ends fall directly in the middle of the traffic lane. A memorandum summarizing these deficiencies and documented by accompanying photos is attached for your review.

The PVGID hereby requests that monies be withheld from any infrastructure funds held by Washoe County until these deficiencies are corrected. The original developer could perform repairs, or the funds could be administered by the PVGID or Washoe County for repairs by an independent contractor.

Thank you for your consideration.

Sincerely,

**Palomino Valley Improvement District**

  
Larry J. Johnson, President

LJJ:tj

Enclosure

# **Dalomino Valley General Improvement District**

P.O. Box 615, Sparks, Nevada 89432

## **Field Memorandum**

Date: September 23, 2014

On September 23, 2014 I inspected and made repairs to ends of private driveway culverts accessing Broken Spur and Sharrock roads. PVGID personnel Jim Hicks and Dan Shoflus assisted me. My observations are as follows:

- Private driveway culverts almost always were of insufficient length to allow traffic to enter or leave the parcel without running over the ends of culverts. In many cases, tire tracks completely straddled the culvert end. On one cul-de-sac entrance the culvert end was in the middle of the travel path. On another driveway the culvert ended well before the edge of the driveway. Only on the Newell driveway off Sharrock had culverts been extended sufficiently.
- Almost all private culverts had ends squashed. Often the cause of damage was obvious from vehicle tire tracks entering and leaving the private parcels.
- There was no evidence of damage by PVGID equipment (no equipment tire tracks or blade marks in adjacent soil).

I, therefore, conclude that damaged culverts are due to improper design and construction (insufficient culvert length) by the developer and that the PVGID has no responsibility for this damage.

In the spirit of avoiding conflict, we went ahead and jacked squashed culverts back into a round cross section where feasible without causing a hazard to vehicle tires. With CMP culverts, this is a simple task with the repairs to the driveway culverts taking approximately two hours.

Attached are photographs taken documenting damage, vehicle tire tracks, improper installation, and of the Newell driveway culvert following repairs.

Larry J. Johnson, President





09/23/2014



09/23/2014





09/23/2014





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09/23/2014



The attached document was submitted to the  
**Washoe County Board of Commissioners** during  
the meeting held on May 12, 2015.  
by Dave Solaro, CSD  
for Agenda Item No. 19  
and included here pursuant to NRS 241.020(7) as  
amended by AB65 of the 2013 Legislative Session.

# Warm Springs Specific Plan Area (WSSP)

## Potential options to consider:

1. Continue implementation of the Financing Plan as approved as a component of the Specific Plan in 1995.
2. Initiate an amendment to the Warm Springs Specific Plan Area by removing the financing Plan and/or amend the existing development agreements to include the refund of collected development fees.
3. Notice and set a public hearing to receive evidence and stakeholder input concerning the refund requests.
4. Create a process that combines aspects of 1 and 2 above that amends the Warm Springs Specific Plan Area by removing the financing plan except for its provisions dealing with roadway and storm water management, amends the existing development agreements, and grants partial refunds.



- BCC 5-12-15 #19  
Dave Solera, CSD