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STAFF REPORT
BOARD MEETING DATE: June 22, 2004

DATE: June 16, 2004
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THROUGH: Adrian P. Freund, AICP, Director
SUBJECT: Discussion and possible direction regarding 2002 Regional Plan Settlements, litigation, potential litigation and associated issues, including reports on actions of the Regional Planning Commission and Regional Planning Governing Board

SUMMARY

Direction by Board of County Commissioners on comments to be submitted to City of Reno City Council on scheduled NRS 278.670¹ annexation request of 7,561 acres of property located in the eastern half of Cold Springs Valley and the northwestern portion of Lemmon Valley.

County Priority/Goal supported by this item: Responsible Growth Management

PREVIOUS ACTION

The Board of County Commissioners received a verbal description of the proposed annexation at their regularly scheduled meeting of June 15, 2004 and directed staff to present a suggested list of comments for the Board of County Commissioners' consideration at their meeting of June 22, 2004.

SUMMARY OF COMMENTS

Staff has provided a very extensive analysis of the annexation request. In order to focus the Board of County Commissioners on the comments, the following is a general summary of the comments contained in the analysis:

¹ An annexation request that is outside the City of Reno sphere of influence, but is considered contiguous to that city's municipal boundaries.

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- No substantiated need for the annexation has been identified.
- The timing of re-activating the annexation application suggests a political motive, not a planning need. "Re-activating" an application that was submitted nearly 2-years ago is also of questionable legality and appears to violate City of Reno code.
- Physical contiguity between the current municipal boundaries and the area proposed for annexation does not exist.
- Using a single point of contiguity and leaving a substantial peninsula of unincorporated Washoe County area if the annexation request is approved is not a logical extension of the city's municipal boundaries.
- The time available for review of the annexation request does not permit involvement by citizens of Cold Springs Valley at a time and location convenient for those citizens.
- The reasons stated for the urgency of taking action on the annexation request are based on erroneous assumptions. For example:
 - The applicable law referenced regarding the "blackout" period, NRS 268.666, does not require a "blackout" period before elections if the land being annexed is all unimproved land.
 - Further, the "blackout" period, even if it were effective, prevents only the recordation of the annexation prior to the election and not the action on an ordinance.
 - Finally, there is no City benefit to be obtained by rushing the annexation because the property wouldn't get taxed until the 2005-06 tax year, whether annexed in July of 2004 or March of 2005.
- If the annexation is approved, and if the City approves the development proposed in the accompanying fiscal analysis, the existing Cold Springs community will be cut in half, resulting in two completely different communities.
- It is likely that the annexation will result in a project being proposed for 13.5 million square feet of new commercial and office uses and 6,860 new residential units in a highly urbanized setting. This level of development intensity is inconsistent with existing development and the citizen-based area plan.
- There is no water available in the Cold Springs area to support the urban/suburban development proposed and the mere moving of the TMSA line – after the fact – won't create a water supply. Importation of water from the north may be one answer, but that solution is still in the discussion stage and may be many years in the future.
- Basing a recommendation of approval of the annexation request on development plans and studies that either do not exist or have not been officially adopted is unprofessional and of questionable legality. The study areas referred to in the staff report were never completed nor acted upon. The development plans cited as a "draft" plan for the area were conceptual and have not been adopted by Washoe County, nor even reviewed by the majority of the community.

Adjustments to the Reno SOI and/or the TMSA depicted by the former "study areas" would currently require a new application to be submitted by Reno to amend the 2002 Regional Plan.

- The Settlement Agreement provides that pending applications "...will be processed under existing statutes, ordinances, regulations, etc." The subject application was purportedly submitted to the City of Reno on October 1, 2002, just weeks before the Settlement Agreement was officially signed on October 17, 2002. The City of Reno, therefore, could argue at a later date that the application was a "pending" application and thus not subject to the requirements of the Settlement Agreement, including Cooperative Planning. If this argument is pursued successfully, the property being annexed will likely never have to go to Regional Planning for conformance review. Under this scenario, all of the properties would automatically be zoned and master planned as a "Special Planning Area" upon annexation and all subsequent development proposals would be exempt from Regional conformance review because no change in the master plan would be required.
- Suggesting that potential intense urban development exists through the County's land use designations on the property proposed for annexation is a false statement. The vast majority of the land included in the annexation request is zoned for one dwelling unit per 40-acres. One dwelling unit per 40-acres does not constitute urban development. As defined by the Regional Plan, urban residential development is development at gross densities greater than 3 dwelling units per acre.
- The need for annexing the property identified in the application is unsubstantiated; in fact the rationale enumerated in the City of Reno's staff report suggests that urban sprawl is the city's preferred development pattern.
- Staff cannot identify any community goals that would be met by the annexation request.
- The City of Reno's staff report cannot identify a specific fiscal benefit should the property be annexed. The staff report offers only vague and recurring statements about fiscal inequity. In fact, the City of Reno can't even obtain any tax benefit from the unimproved property until the 2005-06 tax year.
- Substantial erroneous statements about the Community Management Plan process are used to validate the City of Reno's staff report recommendation.
- The City of Reno's staff report statement that it can better manage the urban-wildland fringe is unsupported in fact or experience.

BACKGROUND

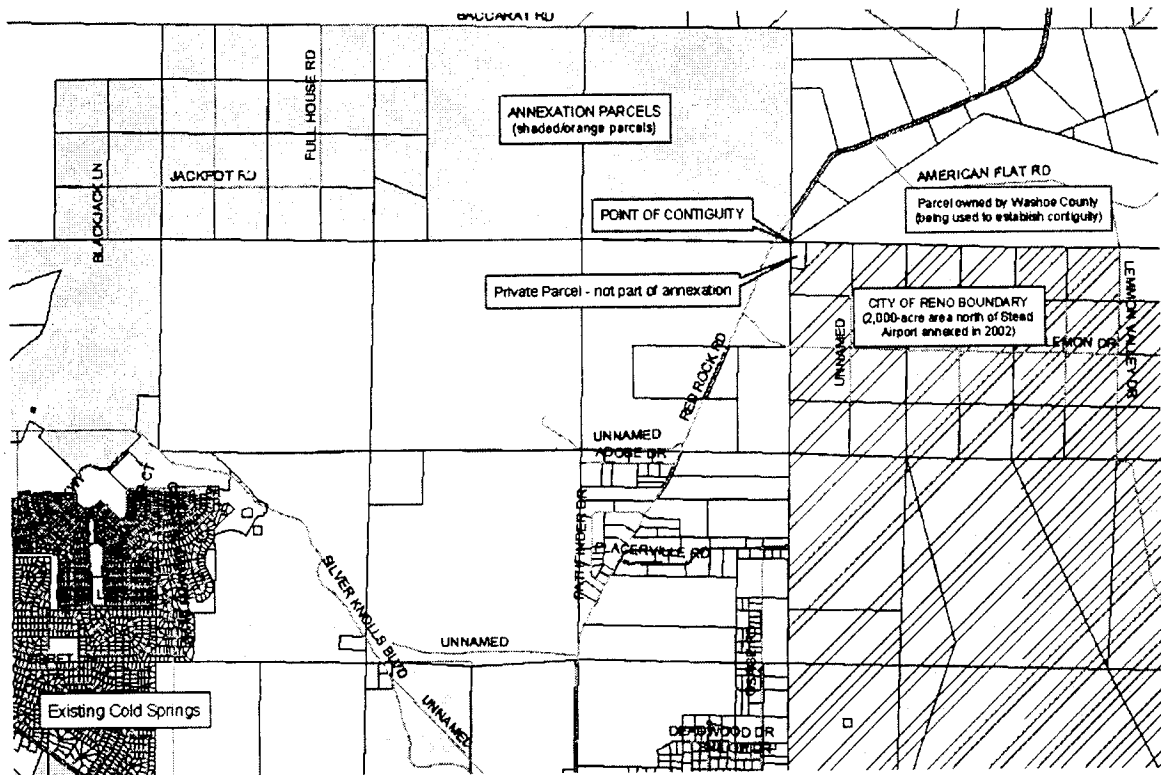
At approximately 4:55 p.m. on Monday, June 14, 2004, staff of the Washoe County Department of Community Development was provided a copy of an annexation request for 7,561 acres of land generally located in the eastern half of Cold Springs Valley and the northwestern portion of Lemmon Valley. In addition to the annexation request, the package of information included a fiscal impact analysis and a staff report from the City

of Reno Department of Community Development approved by the director of that department recommending that the City of Reno City Council approve the annexation request.

Status of Annexation Request

According to the staff report and supporting information, the annexation request under consideration was originally submitted in October 2002 to the City of Reno. The City of Reno staff report notes that the annexation request was deferred from action until the settlement efforts emanating from *Washoe County/Sun Valley General Improvement District v. Regional Planning Governing Board* could be concluded. The annexation request has now been "re-activated" (nearly 2-years later) and is scheduled for review by the Reno City Council at their July 7, 2004 meeting for first reading on an ordinance. Second reading of an ordinance is scheduled for July 21, 2004 before the city council takes a hiatus from meeting for most of August.

Staff is also concerned about how this annexation meets the definition of contiguity. The most recent map submitted to the County does not show direct contiguity between the property to be annexed and the current City of Reno's municipal boundaries. There is an intervening lot. Staff has reviewed, though, the definition of contiguity. The definition permits bridging public land to achieve contiguity. In this case the bridge is the corner point of an intervening County owned parcel (see below graphic). Although this may be a technicality that makes the proposed property to be annexed contiguous to Reno's municipal boundaries; the use of this technicality is highly insensitive to the County's objections to 278.670 annexations outside of the sphere of influence.



Timing of Requested Action

The City of Reno staff report contains the following statement concerning the timing of re-activating this annexation request:

“The applicant has requested annexation at this time so that it can be effective prior to the annexation “blackout” period which begins 90 days prior to the general election (August 3, 2004). In order to meet this time frame and conform to the City Council meeting schedule, the second reading of the annexation ordinance would have to be completed at the July 21, 2004, City Council meeting.”

It would appear that one rationale for the timing of re-activating this annexation request is to avoid the possibility that after the municipal elections in November, a city council may be seated that may be less favorable toward approving this annexation. The reasoning behind the statement regarding an annexation "blackout" period, however, is faulty. The 2001 Legislature amended the annexation laws to allow annexation of unimproved properties at any time. The properties proposed for annexation are entirely unimproved. Even if the "blackout" period applied (which it doesn't), action on an ordinance is allowed to become effective (i.e. recorded) after an election. Additionally, the rush to action certainly isn't the City's because the City doesn't enjoy any benefit of the annexation until the 2005-06 tax year. In other words, the annexation application could be considered anytime in the next nine months and the City would enjoy the same benefits as if processed today.

Comments on City of Reno's Staff Recommendation

This department's commentary on the City of Reno's staff report and recommendation is divided between general comments and specific areas (my apologies for the copy of the City of Reno staff report having some marked up areas, I used the staff report to organize the original presentation to the Board of County Commissioners at their June 15, 2004 meeting).

GENERAL COMMENTS

- The City of Reno's staff report states that comments from Washoe County will be provided to the City of Reno City Council before their action on July 7, 2004. Although the Board of County Commissioners can conceivably make that deadline with their comments; the short time frame provided to the County completely eliminates the ability of the Cold Springs CAB from agendizing this matter for their consideration and recommendation (they meet on Monday, June 21, 2004 – too late to legally agendize this application). Considering that one-half of the community is being proposed for annexation into the City of Reno, it is disturbing that the residents most affected by the proposal will not have an opportunity to hold a community meeting on this application. In addition, there is very little opportunity to circulate the application for consideration of the impact on County current or planned services
- Nowhere in the City of Reno's staff report is there a mention or recognition that if the annexation occurs, that Cold Springs exist as a cohesive community. Not only that, but the development proposal suggested in the fiscal analysis will create two

entirely different communities – one that will be intensively urbanized with commercial, office commercial and high density residential development; and the other being the existing suburban/rural lifestyle community for which there is strong resident support.

- The City of Reno's staff report lacks substantiating evidence that a need exists for the annexation. Little context for the recommendation for annexing the property exists. For example, the City of Reno bases approval in part on:
 - General and vague assertions that the County will approve development at an urban level (which is prohibited by the regional plan); and
 - The City of Reno needs the additional land for industrial, commercial and urban residential uses (though no assessment of how much vacant land in these categories exists or what the absorption rate is for these categories of land within the rest of the City of Reno); despite the fact that the city just supported the re-zoning of industrial land north of Stead to residential.
- The types of development that are proposed through the fiscal analysis accompanying the annexation request are dependent on a number of prospective decisions. One of the most serious issues being left to a future decision is the issue of amending the Truckee Meadows Service Area to permit the type of urban services required for the proposed development. The regional plan contemplates that amendments to the TMSA will lead the region in identifying new areas for more intense development, not being an after-thought.
- The staff report also seems to imply that if the TMSA line is moved, utility service capability will automatically follow. Even if utilities (whether Utilities, Inc., TMWA or the County) could provide the infrastructure, they can't magically create water rights or water.

SPECIFIC COMMENTS

The City of Reno's staff report lists ten annexation criteria (criteria that the County has continually suggested needs more definition).

- Location of property to be considered for annexation. The central premise of the City of Reno's staff report is that portions of the property are within the TMSA service area and within the TMSA and SOI *study areas* (emphasis added). Somehow a conclusion is reached that because properties were once part of a study area, the SOI and TMSA should automatically be extended. The following statement in the City of Reno's staff report expresses this conclusion: "Existing land uses and the TMSA designation suggest that this portion of the site is ripe for annexation." Had the regional plan contemplated this conclusion, there would have been no need for a study area. According to the annexation application to the City of Reno, 77% of the parcels are within a study area. All, except one, are within the TMSA study area. County staff is unaware of any study having been commenced or concluded by either the County or the City of Reno. More importantly, due to the passage of time, there are currently no existing study areas. So any "study" necessarily means a new request for amendment to the regional plan, which amendment would have to be processed, presumably, in

accordance with the law and current regional plan criteria relating to plan amendments. County staff does not consider unsupported statements in the City of Reno's staff report to be an adequate study.

To bolster the recommendation for approval, the City of Reno's staff report makes the following statement: "If the proposed annexation is not approved, buildout [sic] of existing land uses will result in a sizeable unincorporated enclave, which would likely preclude future City expansion to the north." County staff is very concerned about the use of the term 'enclave'. It suggests that at some time in future, the City of Reno contemplates extending its municipal boundaries southwest to the Nevada/California state line. Ironically, the City of Reno's staff report does not appear to be concerned with leaving a currently suburban/rural developed area as an "enclave" should the annexation proposal be approved. Also, County staff cannot locate any supporting documentation in either the regional plan or the city's own plan policies that suggest that it is inevitable that the City of Reno should expand to the north. To accept this expansion notion at face value could lead to the conclusion that the regional plan does not play any role in guiding the density or intensity of development in this county, which was the primary task imposed upon the agency by the Legislature.

County staff found the following statement of interest: "After annexation, subsequent Regional Planning and City decisions would address the extent and location of more intensive land uses in these areas [annexed areas]". This is a curious statement as the City of Reno's staff report suggests later on that this annexation is a good fiscal deal for the city based on the fiscal analysis accompanying the application. The fiscal analysis specifically identifies the amount of development as a support for why this annexation should be approved by the city council. County staff has to ask whether the annexation is in support of a development plan that only the city staff has seen; or are the numbers in the fiscal analysis created solely to make the annexation more attractive to the city?

More likely, the statement means what it says. The City of Reno will determine the location of more intensive land uses in the annexed areas because, unsaid in the staff report, the City will be merely zoning the land – without any regional review. Although staff hasn't checked the specifics, it is probable that because the annexation application preceded the settlement agreement, it will be processed by the City under the pre-existing ordinances. Those ordinances translated county master plan designations to, generally, SPA (which allows anything) and zoning to urban/suburban densities automatically. For instance, a 1 unit/40 acre zoning becomes automatically 1 unit per 2.5 acres zoning. Same with tens and fives. Under SPA, industrial and commercial become a zoning matter – not a master plan amendment matter. So much for the regional plan and regional agency.

- Logical Extension of City Limits: The only support for this annexation being a logical extension of the city's municipal boundaries is the following one paragraph statement: "The property is contiguous to the Reno corporate boundary and is located within the TMSA and TMSA study area. For these reasons and the reasons articulated under criterion #1 above [location of property to be considered for annexation], the annexation appears appropriate." The only conclusion that County staff can reach is that any application for annexation under NRS 278.670

must be a logical extension of the city's boundaries. Sadly, this statement underscores the lack of specificity in the city's own criteria for considering annexation requests, whether they be within or outside the sphere of influence.

County staff also believes that a logical extension of the city's municipal boundaries cannot be considered to be a series of property corners that touch. Nor can a logical extension be considered when a substantial peninsula of unincorporated land is left between the current city's area of jurisdiction and the proposed area for annexation (see the *Annexation Vicinity Map* on the following page).

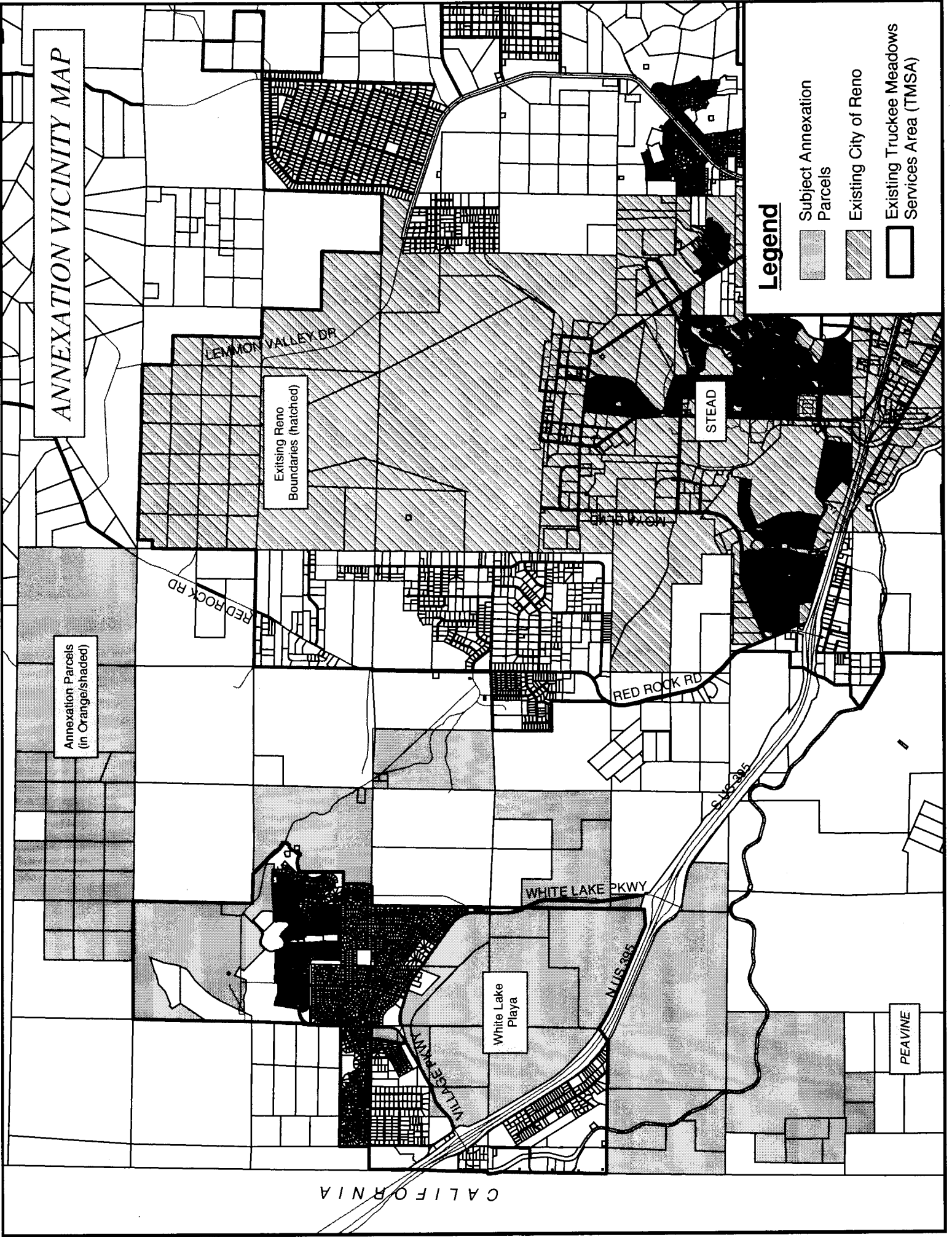
- The need for the expansion to accommodate regional growth: The first statement in the City of Reno's staff report under this criteria is an outrageous comment: "Urban growth was already approved by Washoe County on much of the site." A review of the land use map submitted with the application shows an overwhelming majority of the property in a General Rural designation – a one dwelling unit for every 40 acres of land. County staff has consistently questioned how the city can classify three (3) dwelling units per acre as urban development (even the regional plan considers it suburban); but County staff has to express its bewilderment over how 40 acre zoning is now considered urban growth.

County staff suspects that the City of Reno's staff report is making an overarching statement about a small portion of the property that is classified in a medium density development pattern (3 dwelling units per acre). What is conveniently absent from any description in the City of Reno's staff report is that this land use absorbed much of the current development potential on the surrounding property through the common open space development process. The staff report implies that this common open space may subsequently be subdivided once the property is annexed into the city. Unfortunately, it appears through a review of the accompanying fiscal impact analysis that the proposed 6,860 residential units identified in that report will require establishing intense development potential on the parcels with 40-acre land use.

A further comment under this criteria heading leaves little doubt of the intended City of Reno development pattern: "Reno's expansion opportunities are limited by slope constraints and public lands to the south, west and east [of the current municipal boundaries?] – expanding to the north could be the only major growth area for Reno in the future." This implies continued sprawl of low and moderate density residential development is the preferred development pattern by the City of Reno. What happened to the concept of centers and transit oriented development (TOD) that the regional plan contemplated will provide a handle on sprawl – a concept enthusiastically endorsed by the City of Reno?

- The location of existing and planned water and sewer service: Again, the City of Reno's staff report relies on a prospective action through the regional planning process – the expansion of water and sewer services through an expansion of the TMSA. The following statement is contained in the City of Reno's staff report "Community water and sewer services are available in the central portion of the site located within the TMSA." Based on this statement, the City of Reno's staff

ANNEXATION VICINITY MAP



Legend

- Subject Annexation Parcels
- Existing Reno Boundaries (hatched)
- Existing Truckee Meadows Services Area (TMSA)

Annexation Parcels
(in Orange/shaded)

Existing Reno
Boundaries (hatched)

White Lake
Playa

STEAD

PEAVINE

CALIFORNIA

report goes on to state: "TMSA Study Areas are potentially appropriate areas to extend community water and sewer services into."

First of all, there is no existing TMSA study area. Second, Utilities, Inc. is currently the water service purveyor in the area and Washoe County operates and owns the sewer plant. Third, neither TMWA nor TMWRF currently provide either water or sewer services to the area – thus raising the issue of how any conclusion can be drawn by the City that these service providers will be providing service to the annexed properties. And finally, there are no water rights or water available to support any significant expansion of existing community sewer and water services at this time.

- Community goals that would be met by and proposed annexation: The first statements under this criteria states: "The Reno Master Plan supports annexation of properties that will benefit from City services and/or are necessary to allow phased urban expansion. Annexation of the site appears to be consistent with these policies." No empirical data exists to support these statements. The existing development is suburban or rural in density. No service deficiencies for the existing County land uses have been identified in this valley that are not currently being adequately addressed or planned. County staff can only assume that the above City of Reno staff report statement must refer to the proposed development of 13,500,000 square feet of office and commercial floor area and 6,860 residential units identified in the fiscal impact analysis.

The City of Reno's staff report does try to justify the above comments by noting that there are lots smaller than 1/3 acre in the valley (Cold Spring 2000). What the City of Reno's staff report fails to identify is that the overall density of this project is much less than three dwelling units per acre – a fact easily verified through a review of this approval by the county. To confuse lot size with density has been a consistent and inaccurate theme perpetuated through written documents developed by the City of Reno.

- The efficient and cost effective provision of service areas and capital facilities: A consistent theme in the City of Reno's staff report is an assumption that the TMSA will be expanded in the Cold Springs area and that this logically leads to a need for the City of Reno to annex property. The following statement is made under this criteria heading:

"Because this site is located in both a TMSA and SOI Study Area it is likely that urban growth and urban services will [be] provided/extended into this area. The ultimate extent of urban services provided in this case will be determined with amendments to the existing TMSA and[/] or/[sic] final review of the TMSA Study Area through a Regional Plan Amendment Process."

This clearly is putting the cart before the horse. It would seem more logical to make the determinations on service area amendments BEFORE pursuing annexation. It would be easier, or course, to support an expansion of the TMSA if annexation occurred – especially one that relies on a positive fiscal impact that projects 13.5 million square feet of new commercial and office space and 6,860

new residential units. Without this possible sequence of events, the staff's conclusions have no basis.

- Fiscal analysis regarding the proposed annexation: The following statement is made under this criteria in the City of Reno's staff report:

“Please note that the fiscal analysis is based upon proposed land uses that have not been submitted to or approved by the City of Reno. This proposal would require City and Regional Plan amendments and would be subject to cooperative planning. No fiscal analysis has been provided for the existing land uses.”

If the fiscal analysis is based on a prospective project that has not been submitted nor endorsed by the city, how can a determination be made that it is appropriate to recommend approval of the annexation? How can the city know if the annexation will, in fact, not result in a substantial subsidy by current City of Reno residents? Because the County would have to provide sewer services to the proposed project articulated in the fiscal analysis, and because the City of Reno subsidizes difference between City of Reno rates and Washoe County rates, a subsidy by current Reno residents will automatically occur if the area noted in the application is annexed. The City of Reno cannot just dismiss this fact by ignoring the entire issue of who the service provider would be.

As has been a typical rationale in approving previous annexation request, the City of Reno staff report articulates the mantra of fiscal equity. The following statement in the City of Reno's staff report sums up this always present reason for approving annexation: “Annexation appears to be the only feasible way for Cities to independently address existing fiscal problems created by Washoe County.” What County staff finds interesting is that by its own admission, the City of Reno staff has made no effort to determine if this commonly held belief is actually relevant to the annexation application. The last sentence in the statement above notes that the fiscal analysis does not evaluate current land uses. How can the City of Reno staff report reach a conclusion that this annexation positively addresses a broad city held belief when no effort has been made to confirm this for the specific annexation request being made?

- Whether the County has adopted a Community Management Plan for the proposed annexation area: It is true that a Community Management Plan has not been adopted for the Cold Springs Valley area (the activation of this unfortunately delayed effort commences in July 2004 through the area plan update). Nevertheless, there are a number of erroneous statements and conclusions reached in the City of Reno's staff report. Somehow the city has concluded that the absence of an adopted Community Management Plan at this time “...means that municipal services for future residents will likely be subsidized by the City taxpayers of annexation does not occur.” Given that the city has not insisted on a specific analysis of the current land uses in the unincorporated portion of the proposed annexed area (primarily 40-acre land uses), this is an unsubstantiated statement.

The City of Reno staff report erroneously identifies a concept map that was developed to represent citizen input as an early version of the Community

Management Plan. This simply was a graphic representation of ideas, not a plan in any sense of the word – and certainly not a graphic that had been developed into a plan for community input. Nevertheless, the commentary in the City of Reno's staff report tries to rationalize the need for expanding the annexation of half of Cold Springs Valley through this one graphic. Additionally, the City of Reno's staff report reaches an untrue conclusion that the Community Management Plans (now part of the area plan update commencing in July 2004) were ever intended to address Reno's fiscal inequity issue. The area plan update for Cold Springs Valley will address service costs and levels and the timing of development to insure that the service costs are equitably distributed and the service levels will not be unduly affected.

County staff has to wonder, based on the City of Reno's staff report, if an accurate conclusion could be reached that if a Community Management Plan had been adopted would the City of Reno Department of Community Development staff be recommending denial of the annexation request? It needs to be pointed out that both cities opposed excluding areas within identified Community Management Plans from annexation in the adopted regional plan. Therefore, there is no lawful way of preventing the City of Reno of considering this annexation. It also needs to be pointed out that the annexation request was submitted at a time when the Community Management Plan process was being reviewed with the citizens of Cold Springs.

- Whether the annexation creates islands: At this point in time, if the annexation was to occur, an actual island is not created. However, a rather significant peninsula is created that might as well be an island.
- Any other factors concerning any proposed annexation deemed appropriate for consideration: The City of Reno staff report notes that another reason for approving the annexation request is to provide the city with the "...ability of the City to manage growth patterns in the urban-wildland fringe. Denial of the annexation would likely result in continued Washoe County control over land uses in developing areas." This statement suggests that the city is able to better address urban-wildland interface issues than the County, even though the city has very little experience in this area. Furthermore, the second statement clearly states that it is the city's philosophy that only municipalities are capable of addressing developing areas – a rather arrogant comment given the long history of successful citizen based planning in the County.

As noted in previous comments contained in the City of Reno's staff report, a recurring theme that the city must have this area to continually grow leaves the County staff questioning the city's commitment to regional planning, or for that matter, any planning.

CONCLUDING COMMENTS

As noted in an e-mail by the city's community development director received by this department on June 17, 2004, this is viewed as only an annexation; nothing more, nothing less.

“Adrian:

This is simply an annexation. It is the same application that was submitted in 2002 and put on hold. It will not affect land use and development entitlements. The only entitlements we will recognize are those you have already issued. Any plan amendment application will, as you know, be subject to cooperative planning at the local level, and could also require a Regional Plan amendment. We look forward to your full involvement in those processes.”

County staff is not reassured by the above statement. If this is not a big deal as implied by Reno’s community development director, then

- ❑ Why the need to rush this through before the blackout period?
- ❑ Why the recommendation for approval on an annexation request that does not have a physical point of contact with the current municipal boundaries?
- ❑ Why a recommendation of approval when the city cannot confirm that the fiscal impact will have a positive or negative effect on the taxpayers residing in the City of Reno?
- ❑ Why a recommendation for approval of an annexation request that will split Cold Springs Valley into two separate and different communities and destroy the integrity of the existing community?

FISCAL IMPACT

It is difficult to identify a fiscal impact on the County given the short time frame available for comments from County agencies and departments.

RECOMMENDATION

Staff recommends that the Board of County Commissioners review the comments provided in this report and direct staff to submit those comments to the City of Reno City Council that the Board of County Commissioners wishes to forward.

POSSIBLE MOTION

Staff recommends the following motion for the Board of County Commissioners’ consideration:

“I move to direct staff to forward the following [identified] comments to the City of Reno City Council. And, in addition, that the City be requested to delay the consideration of the annexation proposal until the citizens of Cold Springs have an opportunity to review the proposal and County staff has the time to verify and analyze the ramifications of such a proposal.”

MAH (cold springs annex bcc 62204)

Xc: Adrian P. Freund, AICP, Director; Chad Giesinger, Planner; John Hester, AICP, Community Development Director, City of Reno; Members of the Washoe County Planning Commission.



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STAFF REPORT

BOARD MEETING DATE: June 22, 2004

DATE: June 18, 2004
TO: Board of County Commissioners
FROM: Michael A. Harper, FAICP, Planning Manager
Eric Young, PhD, Planner
THROUGH: Adrian P. Freund, AICP, Director
SUBJECT: Discussion and possible direction regarding 2002 Regional Plan Settlements, litigation, potential litigation and associated issues, including reports on actions of the Regional Planning Commission and Regional Planning Governing Board (Verdi DSH/Mortensen)

SUMMARY

Possible basis for appealing Regional Planning Commission's decision approving Verdi Development Standards Handbook and zoning (Mortensen) to the Regional Planning Governing Board.

County Priority/Goal supported by this item: Responsible Growth Management

PREVIOUS ACTION

No Previous Action on this particular issue. The County has been an active participant in the settlement agreement and the review of the draft development standards handbook for the Verdi properties annexed by the City of Reno.

BACKGROUND

Commissioner Galloway requested this item during the caucus meeting of Monday, June 14, 2004. Specifically he inquired of the possible reasons for appealing the Regional Planning Commission's decision to approve the Verdi Development Standards Handbook and related zoning that occurred on May 25, 2004 and June 4, 2004. The action of the RPC was approved on a 5-4 affirmative vote (3 City of Sparks and 2 City of Reno representatives voting in the affirmative; 1 City of Reno and 3 Washoe County representatives voting against).

Staff has identified two possible and related reasons for appealing the Regional Planning Commission's action to the Regional Planning Governing Board. They both center on the issue of traffic impacts emanating from the proposed development permitted through the approved zoning and development standards handbook. These two issues were also

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significant components of the Regional Planning Agency's staff report, and formed the bulk of that agency's reasoning for recommending a finding of non-conformance.

Possible Reason 1: The Verdi Settlement Agreement states that the appropriate density and distribution of up to a maximum of 3000 residential units and 300 commercial acres will be objectively justified by following a prescribed set of criteria. One of those criteria enumerated in the settlement agreement is, "Any impacts of traffic, level of service and level of congestion on existing Verdi community." Two significant issues arise from the traffic analysis, which together may be justification for appeal.

First, the analysis of the traffic impacts on the ability of Interstate 80 to absorb the increased traffic from the proposed project and not result in a significant reduction in service level was not substantiated by the evidence presented to the Regional Planning Commission. Significant impacts to I-80 were identified. But the timing of constructing the mitigating improvements will clearly leave the Verdi community with unwarranted and even potentially dangerous road conditions. This is due in large part to the very costly and extensive improvements that would be necessary, and the reliance on Federal and State funds to construct them.

Second, the applicant vehemently protested any need to consider impacts on I-80 in the first place, contending that such a consideration would amount to holding the developer to a new standard that had never been asserted in this region beforehand. The applicant pointed to other language in the settlement agreement that states that in addition to the criteria previously mentioned, the density and density distribution will also be determined utilizing, "...generally accepted planning and engineering standards." The applicant contends that this means only those standards of review that have been utilized in this region in the past can be utilized for this project. Staff disagrees with this assertion and would point out that the criteria quoted above would seem to contradict that assertion by clearly stating "Any impacts to traffic..." (emphasis added), must be considered.

Further, Washoe County staff agrees with Regional Staff that in the case of the Verdi community, in which the only access to the community is I-80, it not only meets the standard of a "generally accepted planning and engineering standard," but that it would simply be irresponsible to exclude the significant impacts to I-80 in the determination of density and density distribution.

Further, the applicant stated in no uncertain terms that it was never contemplated during the settlement negotiations that impacts to I-80 would be taken into consideration. Staff disagrees with this assertion and feels confident that because no County representative participating in the Verdi mediation recalls any discussions about I-80 at all, that the language of the agreement controls and I-80 impacts should be considered. Staff disagrees very strongly with this assertion and feels confident that the settlement negotiations did in fact contemplate impacts to I-80.

Possible Reason 2: In their staff report, Regional Planning Agency Staff discovered a fascinating manipulation of data. Both the traffic report and the fiscal analysis rely on underlying land use assumptions relating to the square feet of commercial development per acreage of commercial land use. However, the amount of commercial square footage used for the traffic analysis and the amount of commercial square footage used for the

fiscal impact were substantially different. The following numbers are taken from the Regional Staff Report prepared for the June 9th meeting of the RPC:

<u>Development</u>	<u>Traffic Study</u>	<u>Fiscal Analysis</u>
Business Park	955,000sq.ft.	1,986,000 sq.ft.
AC and NC zoning	293,000sq.ft.	823,000 sq.ft.
HC zoning	300 hotel rooms	1,111,000 sq.ft retail

The use of different commercial square footage numbers results in an unsupportable assessment that the approval provides both a positive fiscal impact and no negative effect on the level of service for traffic. The Regional Staff Report points out that if the traffic study numbers are used in the fiscal analysis, "the result would show a yearly deficit for the City of Reno of approximately \$869,000, while the fiscal surplus to Washoe County would be reduced to approximately \$299,000 per year."

The applicant's response to this concern is that the traffic assumption is based only on the additional inventory of commercial land use created by this proposal, while the fiscal analysis includes the existing Boomtown development. However, this explanation seems to fall far short of accounting for the very large differences between the two land use assumptions, particularly the difference between 300 motel rooms and 1,111,000 sq. ft of commercial retail space. Further, this explanation tends to raise more questions than it answers, such as why would the fiscal analysis of the impact of the proposal include any existing commercial, instead of adopting an additive approach as was done for the traffic analysis.

The use of wildly different land use assumptions is overtly troubling, but it is not immediately apparent how this may establish grounds for appeal based on the settlement agreement. This is particularly true because, as the applicant pointed out, there is no requirement for a fiscal analysis per se. However, the settlement agreement articulates another criterion by which the proposal should be weighed that is clearly relevant to this issue. This criterion is,

"The delivery of services, including fire, law enforcement, water, sewer and road maintenance, and how the provision of services affects, if at all, existing and neighboring communities."

The issue is simple, if the land use assumptions for the traffic analysis call into question the validity of the fiscal analysis, then the ability of the city to provide services must also be called into question. Conversely, if the land use assumptions used for the fiscal analysis were used for the traffic analysis, then any statements regarding the criterion relating to traffic impacts, levels of services, and congestion would be inaccurate.

Staff has been advised that the Board of County Commissioners can direct an appeal be made at either their last meeting of June (June 22, 2004) or their first meeting of July

(July 13, 2004), though any direction is preferred at the June meeting. Either of these dates would be within the time frames established for an appeal.

FISCAL IMPACT

The appeal has no direct fiscal impact.

RECOMMENDATION

Staff recommends that the Board review the information provided in this report and determine if filing an appeal of the RPC decision is appropriate.

POSSIBLE MOTION

Staff suggests the following motion for the Board of County Commissioners' consideration:

“I move that Washoe County file an appeal of the decision of the Regional Planning Commission concerning the approval of the Verdi Development Standards Handbook (Mortensen) and the record of action by the Reno City Council regarding zoning of the Verdi properties.”

Or alternately,

“I move that Washoe County not proceed with an appeal of the decision of the Regional Planning Commission concerning the approval of the Verdi Development Standards Handbook (Mortensen) and the record of action by the Reno City Council regarding zoning of the Verdi properties.”

MAH (Verdi dsh-zoning mortensen bcc 6-15)

xc: Adrian P. Freund, AICP, Director; Eric Young, PhD, Planner