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June 29, 2023

Our File Number: 310683.00001

VIA E-MAIL

Tahoe Regional Planning Agency Governing Board
128 Market Street
Stateline, NV 89449

RE: 1713 Lakeshore Blvd - Response to Neighbor's Appeal of Pier Rebuild Project

Dear Governing Board Members:

This Firm represents RAH RAH LLC, the owner and applicant in this matter ("Applicant"). The Applicant applied to the Tahoe Regional Planning Agency ("TRPA") on June 4, 2022 to rebuild and expand the grandfathered, single-use pier located at 1713 Lakeshore Boulevard (the "Applicant's Property" or "1713 Lakeshore Property") (TRPA File No. ERSP2022-1124). On April 24, 2023, TRPA issued a permit to the Applicant for the pier reconstruction and expansion.

Background of 1713 Lakeshore Property:

The Applicant's property has been in the Applicant's family since 1926. Richard Herz purchased the 1713 Lakeshore Property when he was just fourteen years old.¹ The 1713 Lakeshore Property is now owned by Mr. Herz's granddaughter and her husband. The Applicant's Property has remained in the Herz family's possession for nearly one hundred years. Mr. Herz built the pier for the 1713 Lakeshore Property. Mr. Herz's daughter, Lillian "Lee" Dixon (formerly Lillian Herz), cannot identify the exact year the pier was built, but she recalls the pier's existence from as far back as her memories at the 1713 Lakeshore Property begin. For reference, Mrs. Dixon was born in 1946, twenty years after her father bought the property. The pier is critical to the complete and full enjoyment of the property, as without the pier, the Applicant is denied access to the most westerly portion of their property. Unfortunately, the pier was partially destroyed in 1993 following a storm on Lake Tahoe.

Further evidencing the Applicant's position that TRPA correctly permitted the request for Applicant to rebuild and expand their grandfathered pier, attached to this letter is the following:

- **Exhibit "A":** A family photograph of Richard Herz with his grandson on the 1713 Lakeshore Property pier in 1970.
- **Exhibit "B":** A photograph of the 1713 Lakeshore Property pier and ramp in 1970.

¹ At the time Mr. Herz purchased the property, the address was 1709 Lakeshore Boulevard.

- **Exhibit “C”:** An aerial photograph from 1968 of the 1713 Lakeshore Property pier.
- **Exhibit “D”:** A photograph taken in 2001 of the remaining portions of the 1713 Lakeshore Property pier.

Response to Appeal:

John and Jeanette Finney (“Appellants”) who own the residence next to the Applicant’s Property (the “1715 Lakeshore Property” or “Appellants’ Property”), filed a notice of appeal application on May 12, 2023 with TRPA. On behalf of the Applicant, we submit the following responses to the Appellants’ written statement of appeal.

It should be noted that the 1713 Lakeshore Property pier was partially destroyed in 1993, a couple years before the Appellants took ownership of the 1715 Lakeshore Property. The Applicant has been in possession of their property for many, many decades and can provide firsthand information on the history of the grandfathered pier that was located on the 1713 Lakeshore Property.

Easement Agreement (Appellants’ Exhibit A):

An easement agreement was entered into on February 18, 1970, between the Herz family and Camille Ryan. Ms. Ryan owned the 1715 Lakeshore Property. Ms. Ryan was also a member of the Herz Family. In fact, around the same time Richard Herz bought the 1713 Lakeshore Property in 1926, his aunt, Elsie Herz Golden, purchased the neighboring property (the 1715 Lakeshore Property), which is now the Appellants’ Property.² Ms. Ryan came into ownership of the 1715 Lakeshore Property when her aunt, Elsie Herz Golden, sold the property to Ms. Ryan prior to Ms. Golden’s passing in 1967. Ms. Ryan built both a pier and a garage on the 1715 Lakeshore Property which encroached slightly onto the Applicant’s Property. Ms. Ryan built the pier to accommodate the launch of a boat that was owned by her brother. The Applicant does not dispute the fact that the Appellants’ Property had a boat pier at one time. In fact, at the time the easement was granted, the Applicant’s Property and the Appellants’ Property each had its own separate, single-use pier. Thus, there were two piers in operation when the easement was granted.

The easement was granted to Ms. Ryan to permit the 1715 Lakeshore Property to use its boat pier and garage because the garage and pier encroached on the eastern property line of the Applicant’s Property. The easement was granted “so long as the present boat pier exists, the right and easement to keep said boat pier in its present position, to maintain said boat pier in its present condition, and to make normal use of said boat pier” Pursuant to the terms of the agreement, the easement terminated when the boat pier washed away in a storm sometime in the early 1970s. The garage was later demolished by the Appellants around 2012 when the land was cleared to build the Appellants’ new residence. Therefore, the easement agreement is no longer in effect and has no bearing on this appeal.

² At the time Ms. Golden purchased the property, the address was 1711 Lakeshore Boulevard.

The prior existence of the pier associated with the 1715 Lakeshore Property is irrelevant to the approval to rebuild the pier associated with the 1713 Lakeshore Property, as these were two independent structures associated with two separate properties.

Affidavit (Appellants' Exhibit B):

Firstly, the affidavit by M. Max Steinheimer dated May 24, 2010, was given to establish coverage confirmation for the Appellants' Property. Mr. Steinheimer's affidavit was never prepared for the purpose for which the Appellants now seek to introduce it; to deny that the Applicant has a grandfathered pier associated with the 1713 Lakeshore Property. Therefore, the Governing Board should give little, if any, weight to an affidavit that was written twelve years ago that is irrelevant to the underlying question of this appeal, whether the 1713 Lakeshore Property has a grandfathered pier.

Please note the affidavit does state, "[t]here were, in the 1950s and 60s, wooden decks on both the Herz lakefront property [Applicant's Property] and on the lakeside and southeast corner of the Finney property [Appellants Property]." Again, this statement in the affidavit is consistent with the background information provided above. There were independent pier structures associated with both the 1713 Lakeshore Property and the 1715 Lakeshore Property. The Applicant has never denied that the Appellants also had a pier associated with their property at one time. Furthermore, it's likely that the reference to a wooden deck on the 1713 Lakeshore Property corresponds to the pier structure that is visible in the 1968 aerial photograph attached hereto as Exhibit "C". Often piers are referred to as a "deck", "pier deck", "dock", or simply a "pier" on site plans or surveys, a fact that will be discussed further below in this letter.

Appraisal Record (Appellants' Exhibit C & D):

Once again, the Applicant does not deny that the Appellants had a pier located on their property at one time. However, the repeated assertion by the Appellants that their property had a pier at one time, does not negate the fact that Applicant has a grandfathered pier associated with their property.

Prior Site Plans and Application (Appellants' Exhibit E):

The Appellants are incorrect that TRPA denied a pier rebuild project for the 1713 Lakeshore Property on three separate occasions. In fact, TRPA has never denied a pier rebuild for the 1713 Lakeshore Property. In 2004, Richard and Lee Dixon applied to TRPA for a Single-Family Residential Addition (TRPA File No. 20040988STD). Attached hereto as **Exhibit "E"** are the *approved* plans which included rebuilding a section of the pier that was destroyed by a storm in 1993. On May 12, 2005, TRPA issued a permit approving Lee and Richard to commence construction pursuant to the approved plans. Subsequently, Lee and Richard modified their plans and submitted a Plan Revision Application to TRPA in August 2006 (TRPA File No. 20061555STD). Attached hereto as **Exhibit "F"** are the *approved* plans which again included rebuilding the destroyed section of the pier. TRPA issued a permit on August 29, 2006, permitting Lee and Richard to commence construction pursuant to the revised approved plans.

In October 2007, Lee and Richard were required to modify their plans to accommodate a new detached garage for the 1713 Lakeshore Property to satisfy new Washoe County parking requirements for single family residential projects (TRPA File No. ERSP2007-0950). In accordance with TRPA procedures, this modification required another Plan Revision Application. In January 2008, TRPA issued a permit approving construction of the revised plans. A special condition of this approval was that the pier rebuild could not be authorized under the Plan Revision Application for a Single-Family Residential Addition. There is a set of approved plans and a set of approved plan revisions in this file. The dates on the approval stamps correspond to two of the three dates referenced in the Appellants' written appeal statement: 3/4/08 and 3/13/08. The pier rebuild was not *denied*, it was simply not authorized under the application the revised plans were submitted under.

In 2009, an additional Plan Revision Application was submitted to TRPA specifically to revise the plans to allow the walkway to circumnavigate around a rock that was outcropping between the house and the garage (TRPA File No. ERSP2009-0527). The approval of the Plan Revision Application included the same special condition that the pier rebuild could not be authorized under this application. The date on the TRPA-approved stamp associated with the plan revisions in this file corresponds to the third date referenced in the Appellants' written appeal statement: 5/5/09. The pier rebuild was never denied by TRPA. In fact, there is documented correspondence, as shown below, from TRPA staff dated March 3, 2015, which states that TRPA determined in 2014 that a pier is historically grandfathered to the 1713 Lakeshore Property and TRPA staff would support a pier rebuild and expansion project (TRPA File No. CORR2015-0820).

Meeting with David Landry- November 14, 2014

The TRPA is not against the rebuilding and extension of a pier. They have determined that a pier is historically grandfathered to the property and that it was capable of mooring a boat. TRPA does not see a reason to purchase a buoy to make a finding of mooring capability as they are going to allow extension of the pier.

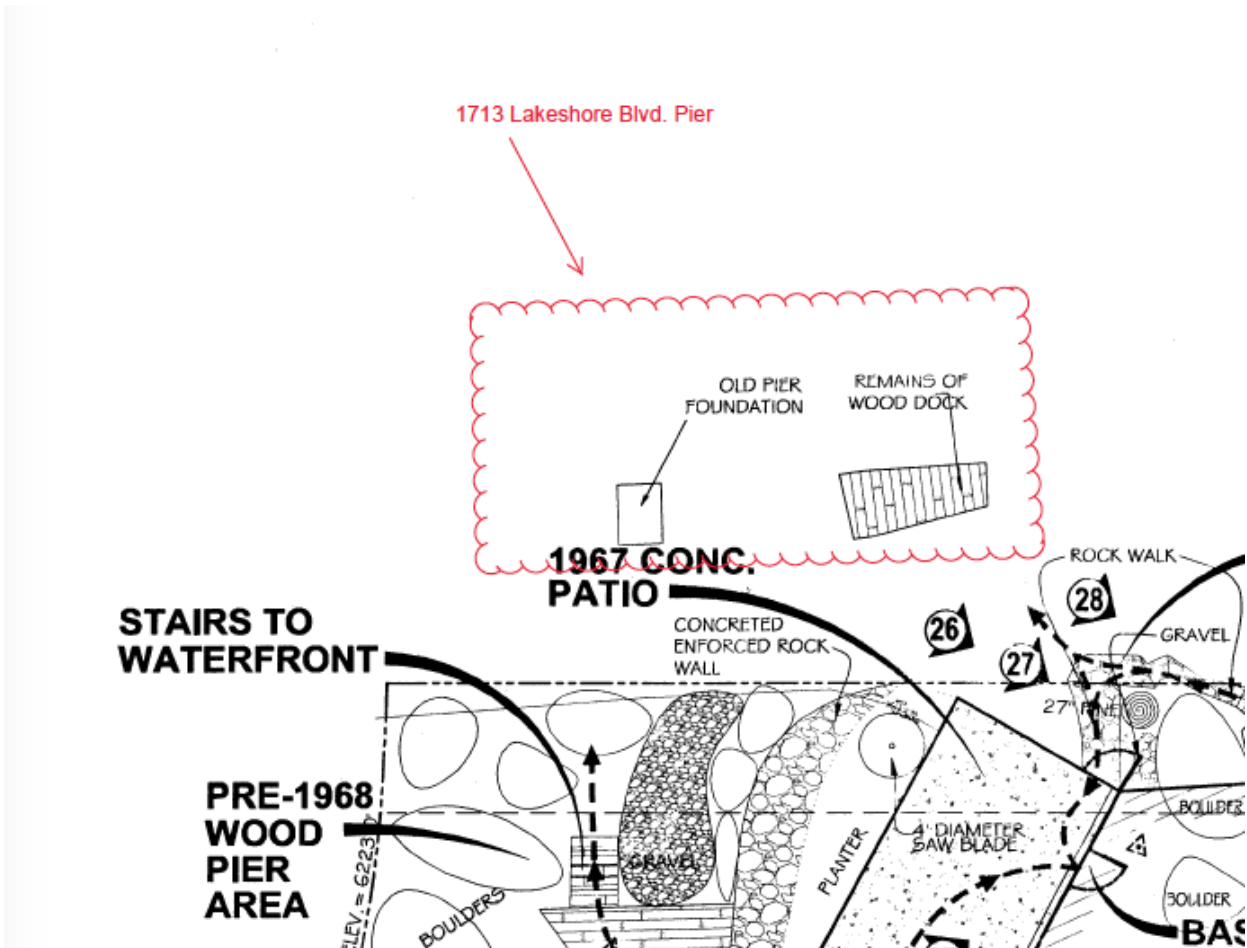
Appellants' Exhibit F:

First, the approved pier rebuild project meets *all* TRPA design standards and setback standards with one boatlift proposed on the north side of the pier.

Second, the Appellants make several erroneous and tasteless comments about the Applicant in this section of their written statement with absolutely no factual basis or firsthand knowledge to support such claims. The Appellants' appeal reads more as a personal protest to the Applicant's right to rebuild their grandfathered pier, rather than an actual appeal found in reasonable fact based on TRPA Code.

Lastly, as previously stated above, it is not uncommon for piers to be referred to as "decks," "pier decks," "docks," or simply "piers" on site plans and surveys. As shown below, the Appellants' surveyor labeled the Applicant's Property's pier remnants as being associated with a pier/wood dock. However, the Appellants, again, resort to disparaging comments, this time

criticizing their own surveyor's expertise/experience as a "lack of knowledge" simply because the surveyor's conclusion that the Applicant's Property has a pier associated with it does not suit the Appellants' narrative on which their entire appeal is based upon.



Interestingly, the Appellants argue that nothing should be construed from the fact that their own surveyor used the term "pier" on the survey because they had no input into the labeling of the survey, but then in the same paragraph the Appellants argue that because in the Applicant's prior site plans and surveys, the pier has been referred to as a "deck," that is definitive evidence that the structure on the 1713 Lakeshore Property was only ever a deck. Thus, in the Appellants' opinion, we should only consider labeling in surveys and site plans when the labeling is of benefit to the Appellants' position. The Appellants' logic and opinion on the site plan or survey labeling is neither reasonable nor equitable.

Conclusion:

Based on the foregoing, TRPA correctly issued the permit for the Applicant's rebuild project. The 1713 Lakeshore Property has been held by three generations of the Herz Family in a direct line for nearly one hundred years. Rebuilding the historic, grandfathered pier will enable the family to have safe water access so that future generations of the family can continue to enjoy the property for the next hundred years. Based on the foregoing, the Applicant respectfully requests that Governing Board affirm TRPA staffs' approval of this pier rebuild project.

Sincerely,

Leif Reid

E. Leif Reid
Lewis Roca Rothgerber Christie LLP

ER

EXHIBIT "A"

HERZ FAMILY PHOTO ON 1713 LAKESHORE PROPERTY PIER IN 1970



EXHIBIT "B"

1970 PHOTO OF 1713 LAKESHORE PROPERTY PIER AND RAMP



EXHIBIT "C"

1968 AERIAL PHOTO OF 1713 LAKESHORE PROPERTY PIER



EXHIBIT "D"

2001 PHOTO OF 1713 LAKESHORE PROPERTY PIER REMNANTS

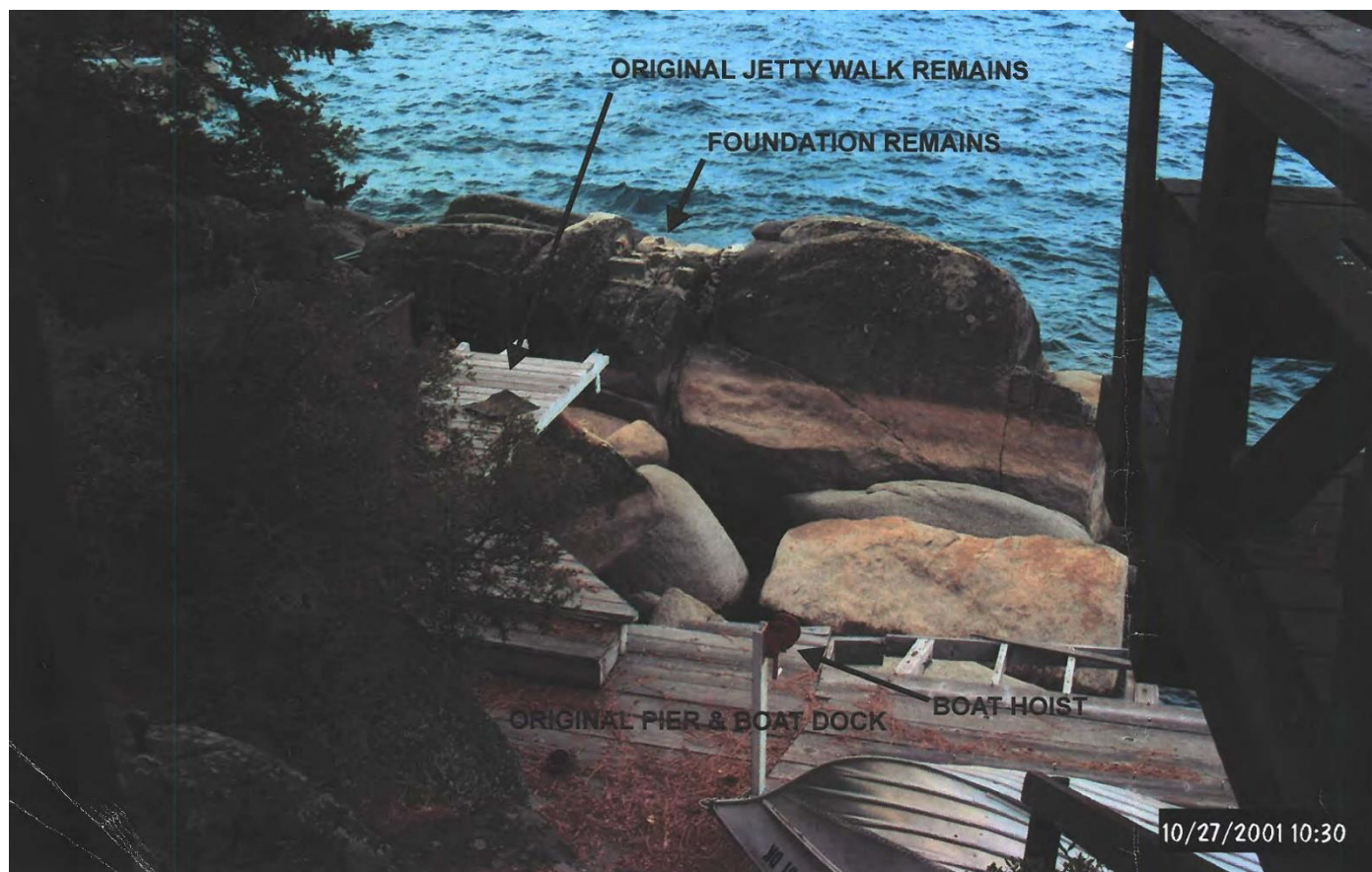


EXHIBIT "E"

TRPA FILE NO. 20040988STD – 2004 TRPA APPROVED PLANS WITH PIER REBUILD

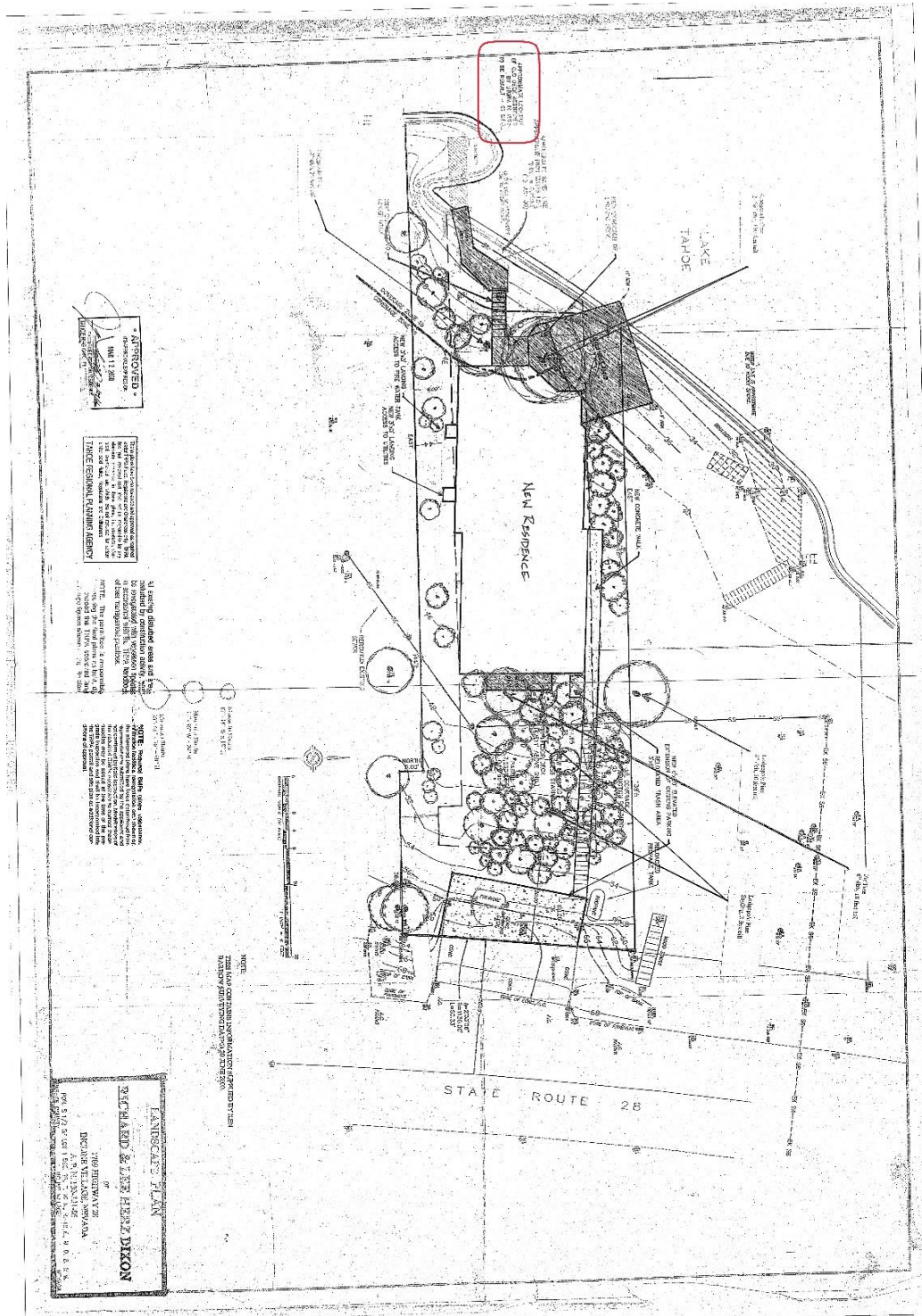


EXHIBIT "F"

TRPA FILE NO. 20061555STD – 2006 TRPA APPROVED PLANS WITH PIER REBUILD

