

TAHOE REGIONAL PLANNING AGENCY
LEGAL COMMITTEE

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September 22, 2021

Meeting Minutes

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Mr. Bruce called the meeting to order at 8:30 a.m. on September 22, 2021.

Members present: Ms. Novasel, Mr. Rice, Ms. Williamson, Mr. Yeates, Mr. Bruce.

Members absent: None.

II. APPROVAL OF AGENDA

Mr. Marshall stated no changes to the agenda.

Mr. Bruce deemed the agenda approved as posted.

III. APPEAL OF EXECUTIVE DIRECTOR APPROVAL OF WESTERMEYER SINGLE-FAMILY ADDITION AND REMODEL, 1015 SKYLAND DRIVE, DOUGLAS COUNTY, NEVADA, ASSESSOR'S PARCEL NUMBER (APN) 1318-03-210-030, TRPA FILE NUMBER ERSP2021-0347, APPEAL FILE NO. ADMIN2021-0022

Mr. Bruce asks for disclosure of any conflicts of interest or ex parte communications with the parties from the committee members. No committee members have any conflicts of interest or have had ex parte communications with either party.

Presentations

Mr. Marshall provided an introduction to the appeal of this Executive Director approval of a single-family addition and remodel in the Skyland neighborhood of Douglas county. The appeal is coming from the permittee's direct neighbor to the north; Mr. Herwig. The issue here is the final height of the residence to be constructed under the permit. The sites here have been built on for years so one of the issues in question is determining the "low point of natural grade" on a site that has been significantly disturbed. The two issues that determine overall building height in this case are 1) low point of natural grade from which the allowable height is measured and 2) the cross-slope of the building site which is one of the axis on the TRPA height chart that informs total allowable height. Mr. Marshall explains that he will focus in on how staff along with the consultant Wells Barnett determined both the low point of natural grade and the cross slope.

The consultants Wells Barnett determined that, based on the foundation of the current structure, the low point of natural grade was at 103' [demonstrated on a slide with a highlighted dashed line across the site plan]. The foundation in this case is not the solid wall of the house but rather pillars that support an overhanging structure. This pillar is the closest point of surveyed elevation which was used to calculate the low point of natural grade ("LPNG"). Mr. Herwig contends that the correct LPNG is 102.6'. This point is substantially further away from

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any foundational element of the house which is why it was not determined to be the actual LPNG.

The second issue is the cross-slope of the building [slide showing a the cross-slope through the building]. There was a cross-slope drawn when the original site assessment was done for the remodel which was not used for the final plans. The cross-slope that was used runs through the middle of the building which is oriented in an attempt to be perpendicular to the 108 line running through the structure. Because this is a disturbed site; we have to connect existing slope lines. The cross-slope is then calculated as 8 ft of drop over 80 feet of run which yields 10% which isn't surprising since this is a relatively small site and it's adjacent to the 10% slope previously calculated. The appellants contend that it should be an 8% cross-slope because their slope lines run, not perpendicular to the cross-slope, but parallel to the building walls which, under TRPA Code, is not the appropriate way to calculate cross-slope.

Using those 2 elements, the 10% cross-slope and the 103.7' LPNG was calculated and provided to the applicant who then designed their house to an allowable height based on those limitations.

Mr. Midkiff presented for the appellant. Mr. Midkiff asserts that "a number of items" mentioned by Mr. Marshall are not in the file and was not the information provided by Wells Barnett when Mr. Midkiff asked about where they took the measurement for the cross slope. Mr. Midkiff states that Wells Barnett indicated that they were using a cross-slope of 10% that was taken "well off" to the South of the house by TRPA when they did the site assessment. The cross-slope displayed this morning by Mr. Marshall, however, doesn't project through the addition that is at issue. It doesn't go all the way down to the living room which is that second floor above the driveway. Mr. Marshall is indicating a footing that Mr. Midkiff states is not on the plans he's seen.

Mr. Midkiff agrees that the measurement line for the cross-slope should be perpendicular to the cross-slope but in this case, because of the addition of the garage that projects over the driveway is extended a great deal down the slope, Mr. Midkiff measured all the way to the far corner of the living room addition above the driveway. Because of the length of the building, it's not practical to project entirely through the building site topo. If you look at the 102' and 104' contours, you can see that those go more or less across the site. They also extended their measurement line through the entire building and not only the existing structure footprint which was 7.65 [drop] over 107 [feet of run] which yields 7.5% slope which the TRPA Code requires to be round up to 8%.

Looking at the spot elevations, TRPA uses the 103.2 but that is about 13 feet away from either corner of the living room footprint which is much closer to the 102.6 spot elevation. Mr. Midkiff says they used what they had from the provided site plans to be as correct as possible to apply TRPA Code. With that, using the 102.6 elevations, closer to the corner of the living room, and the 8% cross-slope, you see that the allowable height is 35.7, not 36.1 or anything higher. Therefore, based on the information that was in the file that the proposed building is about a foot over height.

Mr. Midkiff states that even though there is only 1 foot difference here, the board shouldn't make any exception because that's what's in the TRPA Code. Staff and Wells Barnett started out, looking at the building footprint, showing the low point of the house at the left middle of the bow-line at about 103' not taking into account that the living room had to be supported by the columns at the far end. Wells Barnett caught that error and had a discussion with staff and the

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architect and selected 103.2 [as the LPNG] which is further away from the corner than the 102.6'. With that information in hand, Mr. Midkiff believes that perhaps they were gaming the system to look at more height. He believes he has correctly interpreted TRPA Code and urges the Committee to approve the appeal at the very least to have a surveyor find the actual low point at the footings of the building to correct the plans before construction proceeds.

Mr. Exline presented for the permittee. He states that his own presentation started off as a replica of Mr. Marshall's presentation, and he doesn't want to simply repeat what has already been presented. Mr. Exline states that these projects "don't happen in a vacuum" meaning that when questions arise, they work with staff and the 3rd party reviewer to address questions. As Mr. Midkiff highlighted, as questions arose regarding height, there were detailed discussions with staff, the consultant, and the designer to address those concerns. That's important because the process is set up to ensure no "gray areas" and a successful project. Furthermore, it's set up to avoid these kinds of appeals so that by the time the project is approved, everyone agrees in terms of the Code interpretations, the precedent, the legality from the applicants' and TRPA's perspective.

There are real-world costs associated with these kinds of appeals and actions; Mr. Exline is never supportive of spending good money to purchase sour grapes. Mr. Exline fully supports the staff report and Mr. Marshall's presentation.

Mr. Marshall states that Lyn Barnett and Theresa Avance are both available if there are any specific questions from the committee for them.

Mr. Marshall clarifies that one of the major differences in opinion between TRPA and Mr. Midkiff understanding of where to look for the spot elevation in determining LPNG is that it needs to be foundation. Mr. Midkiff chose a spot that is close, not to a foundational element of the structure, but to a bedroom that's above the ground. There's nothing on the ground at that point. TRPA requires the spot elevation selection to be at a foundational point which is why the post at 103.2 was selected to base the LPNG calculation on.

Committee Comments & Questions.

Ms. Novasel asks if "this diagram" [a slide showing a highlighted contour line at the LPNG as determined by TRPA staff and Wells Barnett consultants] was made available to Mr. Midkiff as it's not in the packet and it's very clarifying.

Mr. Marshall answers that the slide in question was an image provided by Wells Barnett when they were doing the review. Mr. Marshall asks if Mr. Lyn Barnett can address the image.

Mr. Barnett states that it is typical in project review to mark up plans to assist in determining the certain contour line here. Mr. Barnett points out that the architect will overlay their plans on top of a surveyor's plans so it would be unusual to have a surveyor go back out to make any adjustments to their survey based on architectural plans. At some point the architect takes over and there are interpretations made.

The survey was done with 2-foot contoured elevations which is required by TRPA and is very detailed. Mr. Barnett drew in a mid-elevation, a 1-foot "extra" contour to try to understand the site a bit better. As Mr. Marshall pointed out, that property has been grade and disturbed over the years so it's not in its pristine, natural condition, therefore, they had to estimate where the contour line is. The surveyors provide contour elevations which are their interpretations of

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where an area of equal elevation lies on the property. It's nice when they're able to provide a specific spot elevation with their equipment and the LPNG that was used to plan the structure is within a foot of a surveyed, precise spot elevation. When a surveyor works on a property like this, they start at corners with spot elevations and then come in later to draw the contour elevations and topographic lines in an artistic attempt to find where that is. In this case, Wells Barnett relied on their best judgement of where the elevations fell and were lucky to have spot elevations done where they were needed.

Mr. Marshall states, and Mr. Barnett confirms, that the only difference between the image in question and the site plan within TRPA files and in the packet is the dotted orange line drawn in by Mr. Barnett as one of his notes. There's no difference in the LPNG calculation without that line because it's based on the spot elevation provided by the surveyor.

Public Comments & Questions

None.

Mr. Midkiff comments that the drawings he has do not include the orange line but the deck addition outside the footprint of the house is also drawn so faintly he can hardly see it. So the plans he reviewed made it look like there was no column indicated but that the corner was the lowest part of the upper structure. Mr. Midkiff couldn't see the deck which is why he didn't indicate the additional footing. This was a major factor in his review.

Final Committee Comments

None.

Ms. Novasel made a motion to recommend denial of the appeal.

Ayes: Ms. Novasel, Mr. Rice, Ms. Williamson, Mr. Yeates, Mr. Bruce.

Motion carried.

Presentation can be found at: <https://www.trpa.gov/wp-content/uploads/Appeal-VII-A-Herwig-Appeal.pdf>

Mr. Rice made a motion to move to closed session.

Motion carried by voice vote.

IV. CLOSED SESSION WITH COUNSEL TO DISCUSS EXISTING AND POTENTIAL LITIGATION

Committee members held a closed session with TRPA General Counsel John Marshall and acting Executive Director Julie Regan.

Mr. Rice moved to return to the public session.

Motion carried by voice vote.

V. POTENTIAL DIRECTION REGARDING AGENDA ITEM. 3

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Mr. Marshall stated that there's no direction from the committee needed.

VI. COMMITTEE MEMBER COMMENTS

None.

VII. PUBLIC INTEREST COMMENTS

None.

VIII. ADJOURNMENT

Mr. Rice moved to adjourn.

9:31 a.m.

Respectfully Submitted,



Katherine Hangeland
Senior Management Assistant
Legal Department

The above meeting was recorded in its entirety. Anyone wishing to listen to the recording may find it at <https://www.trpa.gov/meeting-materials/>. In addition, written documents submitted at the meeting are available for review. If you require assistance locating this information, please contact the TRPA at (775) 588-4547 or virtualmeetinghelp@trpa.gov.