

TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION
NOTICE OF MEETING

NOTICE IS HEREBY GIVEN that the Advisory Planning Commission of the Tahoe Regional Planning Agency will conduct its regular meeting at 9:30 a.m. on June 9, 1999, at the Chateau in Incline Village, Nevada. The agenda for the meeting is attached hereto and made a part of this notice.

May 28, 1999



Jerry Wells
Deputy Executive Director

This agenda has been posted at the TRPA office and at the following post offices: Zephyr Cove and Stateline, Nevada, and Stateline and Al Tahoe, California. The agenda has also been posted at the North Tahoe Conference Center in Kings Beach, the Incline Village GID office, and the North Lake Tahoe Chamber of Commerce.

TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION

The Chateau, 955 Fairway Boulevard
Incline Village, Nevada

June 9, 1999
9:30 a.m.

All items on this agenda are action items unless otherwise noted.

AGENDA

- I. CALL TO ORDER AND DETERMINATION OF QUORUM
- II. APPROVAL OF AGENDA
- III. PUBLIC INTEREST COMMENTS (No Action)

Any member of the public wishing to address the Advisory Planning Commission on any agenda item not listed as a Public Hearing or a Planning Matter item, or on any other issue, may do so at this time. However public comment on Public Hearing and Planning Matter items will be taken at the time those agenda items are heard.

NOTE: THE ADVISORY PLANNING COMMISSION IS PROHIBITED BY LAW FROM TAKING IMMEDIATE ACTION ON, OR DISCUSSING ISSUES RAISED BY THE PUBLIC THAT ARE NOT LISTED ON THIS AGENDA.

- IV. DISPOSITION OF MINUTES
- V. PUBLIC HEARINGS
 - A. Shorezone Ordinance Environmental Impact Statement Page 1
- VI. PLANNING MATTERS
 - A. Approval of Work Program for the South Wye Industrial Community Plan Page 3
- VII. REPORTS
 - A. Executive Director
 - B. Legal Counsel
 - C. APC Members
- VIII. ADJOURNMENT

TAHOE REGIONAL PLANNING AGENCY
ADVISORY PLANNING COMMISSION

The Chateau
955 Fairway Boulevard
Incline Village, Nevada

May 12, 1999

REGULAR MEETING MINUTES

Chairperson Bob Jepsen called the regular May 12, 1999, meeting of the Advisory Planning Commission (APC) to order at 9:30 a.m. and asked for a roll call.

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Members Present: Mr. Hust, Mr. Doughty (arrived at 9:36 a.m.), Mr. Cole (arrived at 9:38 a.m.), Ms. Baldrice, Mr. Barham (arrived at 9:41 a.m.), Mr. McDowell, Ms. Kemper, Mr. Porta, Mr. Lane, Mr. Lawrence, Mr. Morgan, Mr. Haen, Ms. Kvas, Mr. Combs (arrived at 9:35 a.m.), Mr. Marchio, Mr. Jepsen

Members Absent: Mr. Kehne, Mr. Poppoff, Mr. Joiner

II. APPROVAL OF THE AGENDA

Deputy Director Jerry Wells stated that there were no changes to the agenda.

MOTION by Mr. Marchio, with a second by Ms. Baldrice, to approve the agenda as presented. The motion carried unanimously.

III. PUBLIC INTEREST COMMENTS

Ms. Marjorie Springmeyer, representing herself, stated that she has been trying since 1992 to get the title to her property straightened out with the El Dorado County Jail and TRPA. She stated that when the permit for the jail was issued, the title to her property had been slandered. She believed that there was a conspiracy between TRPA and the Conservancy. Ms. Springmeyer stated that she pays inheritance taxes on her property in Bijou. She commented that she is here today to straighten this situation out and for the Bijou plan area statement amendment.

Mr. Don Kornreich, of Incline Village, stated that he had several things to discuss today relative to transportation. He handed out three charts; the TART Performance Indicators FY 1992 -- 1996; the NDOT Annual Average Daily Trips (ADT); and, the Scenario for Incline Village Demand/Response Van System, along with a Draft Scenario "A" to net \$20+ million a year in 2002 Dollars for EIP. He urged TRPA to move forward quickly on the next phase of the study following the Arthur Bower study of 1998. We need some action by the end of this year. If we delay more than two and a half years after the Presidential Summit, Mr. Kornreich believed that we will lose serious momentum in Washington, D.C. In addition, Mr. Kornreich had a letter addressed to Mr. Jim Baetge from Mr. Jim Jeffers, Executive Director of the Incline Village Chamber of Commerce, on various ways to raise \$20 million a year. This issue has to be addressed soon. If we have more studies beyond Phase two, Mr. Kornreich believed that we were out of time.

APC REGULAR MEETING MINUTES MAY 12, 1999

In addition, he had a letter he was going to give to Mike Harper of Washoe County on the capital improvement program for the basin portion of Washoe County. He commented that this is a very serious effort that is being linked to TRPA's Environmental Improvement Program, and he hoped that it is worth all the effort that we are putting into it.

IV. DISPOSITION OF MINUTES

Ms. Baldrice commented that on page 5, the second paragraph, where it states the Conservancy is leaning towards this one (indicating), clarification should be given in the future as to what is being indicated.

MOTION by Ms. Baldrice, with a second by Mr. Cole, to approve the April 14, 1999, APC minutes as amended. The motion carried unanimously.

Chairperson Jepsen commented that since there were a number of people in the audience, he gave a brief summary of how the meeting was to proceed. A staff presentation is made, along with a discussion with the staff member and the APC, then the meeting is opened up for a public hearing, in which anyone from the audience may address the APC. If you do, please come forward and state your name and who you represent. Following the public hearing session, the meeting will be closed and brought back to the APC for further discussion and action.

V. PUBLIC HEARING AND RECOMMENDATION TO THE GOVERNING BOARD

A. Amendment of Chapter 4, Project Review and Exempt Activities, by Adoption of New Delegation MOU With the City of South Lake Tahoe

Chief of Project Review Rick Angelocci presented the staff summary amending Chapter 4, Project Review and Exempt Activities, by Adoption of New Delegation MOU with the City of South Lake Tahoe.

A discussion ensued.

Mr. Marchio thanked Mr. Angelocci for his hard work. In addition, Mr. Marchio stated that it is also a categorical exemption category.

Mr. McDowell questioned how the Agency would monitor the efficiency of the MOU to see whether it is working as intended. Mr. Angelocci stated that TRPA monitors all their MOUs through a process where we keep statistics each and every month and year of the type, location and action taken on all projects. The average amount of permits processed by TRPA is in the 1500-1600 range. In 1998, TRPA staff processed just under 1,000 permits. The MOU delegation processed somewhere around 4 to 500. TRPA is tracking how many projects are being processed through the MOU, and we are also tracking how many are being processed by TRPA. In addition, Mr. Angelocci stated that TRPA is tracking how many hours we are putting into the Project Review Division. Although the number of projects is declining, the average complexity of the projects is going up. From this point, we will be able to tell how the MOU with the City is working out. Mr. Angelocci also commented that TRPA would conduct an audit each year to evaluate the program.

Mr. Haen stated that he is concerned that with the delegation to any jurisdictions the review time does not increase at the local jurisdictions over what it is at TRPA. TRPA has the 120-day mandatory review period, and Mr. Haen believed that if some of these things are delegated to

APC REGULAR MEETING MINUTES MAY 12, 1999

other jurisdictions it might take a lot longer than that. He wanted to know how that could be addressed.

Mr. Marchio stated that the City of South Lake Tahoe would follow TRPA's requirements and adopt them as part of the policy procedures, as long as they are not against the California State law, which is 30 days for completeness and the review process.

Mr. Haen stated that for plan check in El Dorado County, it is 12 weeks.

Mr. Hust stated that the City of South Lake Tahoe and El Dorado County both work under CEQA.

Chairperson Jepsen opened the meeting up for a public hearing. Since no one wished to comment, Chairperson Jepsen closed the public hearing.

MOTION by Mr. Doughty, with a second by Ms. Baldrice, to recommend approval to the Governing Board to amend Chapter 4, Project Review and Exempt Activities, to adopt a new Memorandum of Understanding between TRPA and the City of South Lake Tahoe. The motion carried unanimously.

Mr. Angelocci stated that within the last two weeks, Douglas County placed a planner in the TRPA offices. His name is Pete Wysocki and he will handle all of the Douglas County projects, both for TRPA and for Douglas County. This is a pilot program, and we hope that we can make it happen.

B. Amendment of Plan Area Statement 093, Bijou, to Create a Special Area #1

Chief of Project Review Rick Angelocci presented the staff summary amending Plan Area Statement 093, Bijou, Residential, to add two areas designated as Special Area #1 to limit residential density to one single-family dwelling per legal lot of record.

A discussion ensued.

Chairperson Jepsen opened the meeting up for a public hearing.

Mr. Sam DeLulio, representing himself and other residences of the Bijou area who have signed a petition and were not able to attend today's meeting, read the petition to the APC commission, along with submitting a copy of the signed petition. Mr. DeLulio stated that the petition contains 69 signatures of property owners that own property within the proposed Special Area #1, Plan Area Statement 093.

Mr. Jepsen questioned how many property owners were within that area, and Mr. DeLulio stated that he counted 221 parcels.

Mr. Marchio questioned if Mr. DeLulio agreed with the staff summary, and Mr. DeLulio replied yes.

Since no one else wished to comment, Chairperson Jepsen closed the public hearing.

Chairperson Jepsen opened the public hearing.

APC REGULAR MEETING MINUTES MAY 12, 1999

Ms. Springmeyer, representing herself, stated that she is very familiar with the area and has a lot next to Mr. DeLulio's house. She has been paying taxes on it for 45 years and somehow the TRPA designated it an SEZ lot. She stated that she gets letters from the Conservancy asking her if she would like to sell it to the Conservancy. Ms. Springmeyer questioned if she could get that changed from an SEZ lot to a buildable lot because everybody changes everything, and I don't think it is right.

Mr. DeLulio stated that there is a sizeable amount of affordable housing in the Bijou and the Tahoe Pines areas.

Chairperson Jepsen closed the public hearing.

MOTION by Mr. Doughty, with a second by Mr. Cole, to recommend approval to the Governing Board amending Plan Area Statement 093, Bijou, Residential, to add two areas designated as Special Area #1 to limit residential density to one single-family dwelling per legal lot of record. The motion carried unanimously.

- C. Amendment of Plan Area Statement 058, Glenbrook, to Prohibit the Construction of New Piers Per the Glenbrook Shorezone Plan

(Chairperson Jepsen stepped down from the dais due to a conflict of interest.)

Vice-Chairperson Marchio took over as Chairperson for this item.

Senior Planner Coleen Shade presented the staff summary amending Plan Area Statement 058, Glenbrook, to prohibit the construction of new piers per the Glenbrook Shorezone Plan.

Ms. Kvas questioned why the TRPA Governing Board did not adopt the recommendations of the Homeowners Association.

Ms. Shade responded that she did not know why, and stated that the only comment she could make in that regards is that it did not go through the formal master plan which usually focuses on marinas and those types of facilities. We didn't have anything that would look at that type of planning process at the time.

Mr. Gordan Barrett, with the TRPA, stated that when TRPA adopted the plan areas and the Code in 1987, it was done in pieces and plan areas were one of the first things that were adopted, along with sections of the Code. Later, sections of the Code came together. It took about a year and a half to put all the pieces together. In that context, we looked at all the plan area statements, and we did not know exactly what was taking place in the Code in every section. When we got to Glenbrook, we knew the process had been going on with State Lands where a document was drafted up which theoretically reflected the agreement of that community, since there had been disagreements in the past with the community. TRPA thought that this would be something good to reference in the plan area. But we didn't want to adopt this as a master plan. This is the first time someone has come to us and said they wanted to codify the plan area statements. This was brought to TRPA and not staff initiated.

Mr. Combs questioned that in the absence of this change, what rules would govern new pier construction, and do you have any idea for what the full buildout of the number of piers would be. Ms. Shade responded that along this shoreline, there are some encumbrances on some of

APC REGULAR MEETING MINUTES MAY 12, 1999

those properties in terms of community beach easements, etc. Taking those away, there are 15 parcels within this Special Area that potentially could apply for a pier.

Mr. Combs stated "so any littoral parcel owner has the opportunity to apply for a pier." Ms. Shade responded, yes, and currently, a large section of that strand of that beach could build today because it is marginal habitat.

Agency Counsel John Marshall stated that we have a couple of pier applications in and there are some problems with those pier applications. Because of the way Glenbrook was set up and the way the Code operates, a lot of the parcels and owners of those parcels have access to the community pier. Under Section 54.8.A, if a littoral owner comes in with a pier application, and they do have access to a community pier, then that's a basis for denial for TRPA. Whether or not that is true for all of these littoral parcel owners currently is something we have not explored for each one, and if the new shorezone amendments go into effect, that Code section has been lifted out and replaced with the ability to go after a pier.

Ms. Kvas commented that assuming that the shorezone EIS is approved substantially the way we are looking at it, would it then support or would it be a denial to whether this would be supported by that document. In other words, if we approve this today, would we then be taking away a right that the shoreline EIS would be giving this Glenbrook area.

Ms. Shade replied that this is not a yes or no answers; it is both yes and no. The reason why it is both yes and no is because in the new shorezone ordinances, one of the things that it is proposing to change is that any property owner, whether they have access to a community pier or not, will have the opportunity to apply for their pier. Ms. Shade stated that single use piers have limitations upon them such that if you have a community pier available to you, you may not have your own single pier. Ms. Shade commented that TRPA is not proposing to change the plan area statement as part of the EIS process, and in the plan area statement, Special Policy #4, says that staff "should use the Glenbrook Shorezone Plan as a guideline". Ms. Shade reiterated what Special Policy #4 said, and emphasized that TRPA uses the example given in creating that Special Area #1, the lines are drawn and TRPA tries to get rid of any gray area.

A discussion ensued.

Vice-Chairperson Marchio opened the meeting up for a public hearing.

Mr. Gary Midkiff, representing the applicant Robert Daiss and his wife, stated that the Daiss family has owned their property in Glenbrook for approximately a quarter of a century. The additional persons in that same area that he represents include the Jepson and Hein families. The Jepsen family purchased their property, which is immediately North to the Daiss family, in the last 1930s; the Hein property was also purchased in the late 30s, early 40s. The three families in the immediate area have been property owners in Glenbrook from anywhere between 25 to 60 years. Their families go back a long ways, and they are spending their private monies to take this step to protect the Bay for the future.

Glenbrook Bay is a shallow, protected Bay, for the most part, but has weathered many storms over the years. The photographs represent views from the North and the South, and from the top of Shakespeare Rock, with Glenbrook Bay during the Comstock era. As you look at these photographs, you will see that the area has substantially improved today over what it was over 100 years ago during that historic period. There were numerous piers; there were several

APC REGULAR MEETING MINUTES MAY 12, 1999

sawmills; there was a railroad; a store, and a lot of activities in that area that pretty much devastated the Glenbrook Bay area. It has remarkably recovered from that time period.

But that was the beginning of a time period that continues through today with a lot of various points of view of how Glenbrook should be managed and used. This photograph illustrates the Bay prior to the golf course being built. The photograph shows reminiscences of the old piers that were from the Comstock period. There were old pilings at that time also.

Mr. Midkiff continued that in order to understand better the relationships of the various players in Glenbrook, he gave a tour of the Glenbrook area in terms of who owns what property and where those properties are, and then he discussed the rights that each property owner has to use the various areas of the Bay.

The Glenbrook Homeowners' Association has about 228 members, and there are approximately 270 – 300 residences in the overall Glenbrook area. The Property Owners' Association has voted on several occasions overwhelmingly to oppose any new piers in Glenbrook Bay. The Homeowners' Association has also voted, informally, on several occasions to oppose any new piers in the Bay.

The people of Glenbrook are understandably proud of their homes and of Glenbrook Bay. They enjoy the fact that they can walk from one end of the Bay from the community pier on the South, and even beyond that, all the way to Slaughterhouse Creek on the North on a sandy beach without having to climb over, under or around any private piers. For the most part, there have never been any additional private piers in the Bay. It is important to the families of Glenbrook Bay that there be no additional piers constructed in the Bay.

His client, and many of the members of the Homeowners' Association and the Property Owners' Association, are saying no more piers. The APC has the opportunity today to pass onto the Governing Board a regulation, which would ensure that the Glenbrook scenic, historic, environmental and other quality features of the Bay are protected. Mr. Midkiff urged the APC to approve the proposed amendment of Plan Area Statement 058.

Mr. Lane questioned if the rest of the Glenbrook property owners had the right to cross the 15 private parcels on the beach. Mr. Midkiff replied that he was not aware of any recorded easement that grants them the right to walk across that entire area. There is a recreation easement in favor of the Glenbrook Subdivision Homeowners' at Golflinks Road for the parcel in front of that property. He didn't know if there was an easement from Cook over to the Slaughterhouse Creek parcel. To his knowledge, there has never any restriction to walking over in that area.

Ms. Kemper questioned if the Homeowners' Association had authority to control development rights to construct new piers, and Mr. Midkiff stated that they had no regulatory authority beyond that granted by the easements that they have and the properties they own. They are part of the CC&Rs.

Mr. George Cachara, representing Bill & Kay Long, stated that his clients have not been asked their opinion on whether they want a pier. Their property is relatively new in being built. There is no easement in front of their property for public use. They are not members of either of the homeowners' association and have no guaranteed access to a community pier. They have strong feelings on the proposed amendment being passed and implemented. They have a

APC REGULAR MEETING MINUTES MAY 12, 1999

boarding buoy, and absence swimming out to their boat, there is no other way if they don't have access to their own pier for them to be able to get to their boat.

Mr. Bill Bliss stated that he wanted the record to reflect that he went to CAL, not Stanford. He stated that there have been three periods of sales of property; two by his father and another in 1946. He sold property when his father died to settle some inheritance problems. When he sold parcels in those initial periods of time, they very distinctly gave recreational easements to all the people; that being, trails, forests and beach and pier. I understand that piers were not specifically mentioned. When he sold his property, he secured the recreational rights to the previous owners precisely as those were given to the 220 other people that have since brought property. Everybody had a right to recreation in Glenbrook from 1937 and on.

Mr. Cole questioned if the rights were restricted to members of any of the homeowners' associations. Mr. Bliss replied that the rights that were spelled out in the homeowners' association are the same rights that his family granted to people that bought property prior to the development. Everybody that owns a square inch in Glenbrook has a right to all of the recreational facilities, regardless if they are members of the homeowners' association.

Mr. Andrew MacKenzie, representing the applicants and two other property owners, and for the record he didn't go to either CAL or Stanford. There are a couple of legal issues that have come up, one of which Mr. Bliss just addressed is the fact that the access to the public community pier was made part of the requirement to get a pier application in Glenbrook. He stated that his research has indicated, as Mr. Bliss stated, that everybody who bought property that was ever owned by Mr. Bliss have the right to the use of the community pier. One of the things that had come up in the discussions and in some of the letters are things about the spot zoning; in other words, is this spot zoning or are we picking on a certain small parcel of properties that somewhat may be unconstitutional? We do not feel that this is spot zoning. What the TRPA has chosen to do in each of these Bay areas is have a master plan or a plan area statement for each Bay, and as they have done that and within that, they have drawn the different colors and made certain restrictions that a master plan is supposed to do. In doing this, by making this plan area amendment proposed today, we are not spot zoning because we are putting everybody who is in the identical position in the same position; we are not favoring one over the other. If you fall into the definition, which is broad to everyone, that has any littoral property and has the right to a pier, this would apply to him or her equally. We don't consider this spot zoning.

As far as eminent domain, which is something that is very important to all of the zoning issues in Lake Tahoe itself, the thing that is important here is that we do not think that this is an unlawful taking of property, as defined by the federal standards and the State of Nevada standards. There is case law in the State of Nevada that have found this not to be a taking of property; specifically, one of them on Mr. William Cody Kelly's property at the South End of Glenbrook where he tried to show a taking without compensation. In doing that, the Supreme Court of Nevada said that it does not destroy all viable, economic interests in the property; it is an accessory use. What you are doing is taking and preventing the person from using the accessory use. The persons who own these properties that are going to be affected by it still can build residences on their property; do every other thing that TRPA has legislated them to do. It is just that you have restricted one accessory use, and that is, under the definitions of the Kelly v. TRPA case, as well as the Boulder City v. the Cinnamon Hills Association case, those are accessory uses; they are not takings and they do not have to be compensated for those takings, and would not be subject to any compensation from anybody.

APC REGULAR MEETING MINUTES MAY 12, 1999

Mr. Paul Kaleta, with Basin Strategies and representing Larry Ruvo, stated that he would like to focus on the staff summary, the Glenbrook Shorezone Plan, and on the findings for this particular plan area statement amendment. He suggested that this plan area statement amendment is possibly something that more appropriately should be addressed by the Shorezone EIS. The Shorezone EIS might have some impacts on Glenbrook Bay. Let's keep in mind the fact that whether this plan area statement amendment is actually absolutely necessary or if, in fact, some of these conversations should be heard more appropriately as a comment for the Shorezone EIS.

In any event, we have talked a lot about the Glenbrook Bay Shorezone Plan, and the goal here is to implement some of the specifics of that plan. He pointed out that this plan was done in the early 80s, and it was a consensus process with numerous State and Federal agencies. It had representatives from the Glenbrook Company at the meetings, and it also had the homeowners and property owners attending. What we have being proposed now is not necessarily codifying the Glenbrook Shorezone Plan because there is a tremendous deviation from it. If you were to simply take the language word-for-word and add that into your special policies, that would be acceptable to many people at the meeting today. He stated that it is extremely important to point out that the special policy that is identified where it just says "the existing community pier is the only permissible pier" is nowhere near the recommendations of the Glenbrook Bay Shorezone Plan. It is much more restrictive than that plan. It would seem appropriate if you were going to try to codify the plan, that one would get all the consensus players back together again, or recommend that they get back together again, to agree to the language that is being suggested. That clearly has not been the case.

One of those provisions talks about individual piers that should be kept to a minimum and allowed only where there is a special need. He stated that he would challenge anybody today to be able to walk from South of the community pier out to Fritz Huntington's without a full wet suit. It is clearly impossible.

Mr. McDowell questioned what it was like in August, and Mr. Kaleta stated that when there was a drought, there is probably 150 feet of mud flat; it does not have the coarse, sandy beach sand; it was actually more of a muddy bottom that one would step into and sink down about eight inches.

Mr. Kaleta continued that the staff summary talks about safe navigation to new piers. He stated that the area is wide and expansive and even though there are some buoys and pilings at the end of the current community pier, there is certainly ample opportunity for people to bring their boat in to the pierline without necessarily running into those historic pilings. In fact, one would find the same navigation hazard that currently exists; people that come into the community pier have to navigate around those historic pilings at the end of that pier. I don't necessarily think that would be a concern for any new structures in that area.

Lastly, the Chapter 6 findings indicates that the project is consistent with the implementation of the regional plan and all goals and policies. The amendment indicates that it is Special Policy #4 that is currently found in PAS 58. He hoped that he pointed out that this proposed amendment goes way beyond that Special Policy #4. In addition, Special Finding #2 states that the project would not cause the thresholds to be exceeded. In that case, the rationale talks about the plant *Rorippa subumbellata* and the fact that piers tend to concentrate activity. Mr. Kaleta stated that on some pier applications that he has had approved on the North Shore where there were large, sandy beaches that have had *Rorippa*, we have demonstrated that piers actually focused the recreational activity to the pier deck, and it minimizes the activity on

APC REGULAR MEETING MINUTES MAY 12, 1999

the beach. If you have a large sandy beach area and you put a pier there, it is common that people walk out on the pier. And if they have a sandy beach and a pier, they spend a lot of their time recreating on the pier and not necessarily on the sandy beach. He is not certain that the finding can be made that by putting in a pier has a negative impact on the endangered plant. In fact, it is possible that it might have a positive impact and lessen the pedestrian activity on the beach.

In terms of Special Finding #3, which states that the project must meet federal, state, and local air and water quality standards, if you were to put a blanket stop on projects of this sort in Glenbrook, it might have an impact on other thresholds that could be achieved through mitigation.

Ms. Baldrice questioned if there were any historical features, pilings or remnants of old piers in the rocky area that were pointed out to us that you are aware of. Mr. Kaleta responded that he believed that at one time, Mr. Fine had a boathouse that was also considered a fish hatchery, but that particular structure is in a state of disrepair now. That is the only one he was aware of South of the community pier.

Ms. Baldrice asked that if access is not an issue in this area whether historic was an issue then, and is that why they have extended the area south of the sandy beach area. Mr. Kaleta stated that his response to that is he has not seen any professional, historical reports as part of this application for them to look at one way or the another, nor have they seen any reports that talk about navigation issues. Those reports are not available for them to contemplate nor is there any kind of consultant report on scenic impacts. Ms. Baldrice suggested that the proponent to this amendment might address that later.

Mr. Pat Cashill, a Reno attorney, and Larry Hoffman in Tahoe City, represent Harvey Whittemore. Mr. Cashill responded to Ms. Baldrice's question by saying that there were no historical pilings or piers or anything else in the water in that area that would be adversely impacted. This situation is an unfortunate outcome of a very spiteful, and long running battle that has gone from the District Court in Douglas County to the Nevada Supreme Court, and back down before Judge Campbell. Unfortunately, the proposed amendment, in his client's view, and in his view as well, based on his knowledge of the facts and his association with other litigation against the Tahoe Regional Planning Agency ("TRPA"), is a classic case of spot zoning. Also, this proposed amendment is a classic case of a denial of equal protection.

When Mr. & Mrs. Whittemore purchased, years ago, the parcels they now own at Glenbrook, it was with a reasonable investment-backed expectation that they could use their property for the purchase, among others, of developing a pier. The Whittemore properties are roughly at the Southend of the Bay. Also, and perhaps more significantly, the Whittemores, as well, own a U-shaped property which is to the North of opposite the word "lake" on this large chart that is before you. This is North of the community facility which the TRPA permitted to be built by the Homeowners' Association and about 20 feet from the waters of Lake Tahoe. There have been ebs and flows of conversations back and forth between the Homeowners' Association and the Whittemores and Mr. Ruvo regarding how best to minimize the construction of a pier in this Bay area. One of the proposals that has been discussed in considerable length was the forfeiture of their right to construct a pier on the sandy beach at the North end of the Bay in exchange for their right to construct a pier at the rocky portion of the South end of the Bay. Those conversations have unfortunately not resulted in a deal which has prompted the Homeowners' Association to take this action by bringing this proposal before the APC.

APC REGULAR MEETING MINUTES MAY 12, 1999

The denial of equal protection here is that the Whittemores have purchased a number of pieces of property with the knowledge that they have the right to apply for and obtain approval of the right to construct a pier. They are now being deprived of that right. The denial by way of this ordinance, or this amended ordinance, would constitute a taking of the Whittemores' property without just compensation by an agency that would enact this ordinance into law. This Agency, the TRPA, neither has the power nor the funds, perhaps more importantly, to take any piece of property. The Suitum litigation has proven two things; 1) that the TRPA does take; and 2) that if it does take, the TRPA has to pay. That is the end result of ten years of litigation, all the way up to the U.S. Supreme Court. This is an Agency which is about to embark, if this plan is amended, and if you take positive action to approve the proposal as presented before you, which seems to embark on a path which is going to lead into more litigation, which is going to result in a finding of a taking. The burden will be placed upon the Agency to pay with what funds it does not have for property that it should not have taken in the first place. This is a matter which can be addressed at the administrative level, at the approval level, at the consensus level; not by way of an ordinance which results in a takings.

There is a total absence, I respectfully suggest to you, of environmental justification or supporting document to justify the adoption of a blanket pier ban in proposed Special Area #1. One need only look at the staff recommendation of May 3, 1999, to gain a sense of how unfair, how specialized, and how desperate the treatment is accorded the Whittemores by way of this proposed amendment. The core purpose of the amendment is to protect the natural, historic and scenic values of Glenbrook Bay. The method chosen, though, to "ensure the preservation of existing piers is to prohibit new piers," that is to change something that has been in place for such a period of time that perspective property buyers took into account the right to construct a pier before they bought the property in the first place.

The term "special" in terms of Special Area #1 is absolutely correct. It is special only in the sense that it treats the Whittemores, the Ruvos, and the other 15 property owners in a desperate way; in a way that others have not been treated. Numerous other property owners from Yellowjacket Point North along Glenbrook Bay have private piers. To deny that same right to Mr. & Mrs. Whittemore constitutes a plain and simple taking. It deprives them of reasonable investment-backed expectation that motivated them to purchase the property in the first place. Those Special Area #1 boundaries in which new piers would be prohibited clearly appear to be an attempt to preclude the construction of piers on the Whittemores' property in particular.

Finally, there is no factual basis to show that the construction of a limited number of piers on a remaining eligible parcels in Glenbrook Bay would in any way affect the implementation of the Regional Plan or prevent the TRPA's environmental thresholds from being accomplished. Likewise, there is no factual basis to make the findings required by Section 2.40 of Ordinance 87-8 required to adopt the proposed plan amendment.

Mr. Cashill respectfully suggested to the APC that in your official capacities, it would be unwise to approve this plan as proposed and to adopt the amendment as those proponents seek to have done.

Mr. Doughty questioned what application had been filed first; the one for the Southerly or Northerly piece. Mr. Whittemore stated that the Northerly application was filed first; the Southerly application was filed second after. Mr. Harvey Whittemore identified himself as the trustee of the Larry Ruvo Trust, as well as one of the owners of Outrageous Investments.

A discussion ensued.

APC REGULAR MEETING MINUTES MAY 12, 1999

Vice-Chairperson Marchio suggested receiving all the testimony before adjourning for lunch.

Mr. Greg Walsh, on behalf of Larry Ruvo, stated that he is not from the Tahoe Basin; he's from Las Vegas, and did not pretend to know a lot of what goes on here. He stated that he is in complete amazement over the responsibility that the TRPA has to protect the environment. He was of the opinion that we both have the same objectives, which is to meet the environmental thresholds. Mr. Walsh commented that the existing regulations give the TRPA the ability to require that benefit through offset and offset mitigation before any project is brought before the Agency. We should be exceedingly caution with any action that would completely ban and prohibit this Agency's ability to actually gain net benefits. This is especially when an application is received and they deny say a pier because it is not adequately mitigated. The worse thing about this proposal is not the individual impact or the potentially resulting litigation that was just referred to. It is the loss of this Agency's ability to better the environment over the Glenbrook Beach area.

The first error is not allowing a pier on the Golflinks property, which constitutes a taking. He disagreed with Mr. MacKenzie and believed that this was spot zoning. In paragraph 1 of the staff summary, which states that we need to state the historic values of Glenbrook Bay, he believed that we have not heard what those historic values are. He stated that there is no authority that the Homeowners' Association has any control over property that is not part of the Association, and at least one of these applications is not part of the Association.

Mr. Walsh commented that in terms of the findings that the TRPA has to make in connection with approval of the proposed amendment, the proposal has to be consistent with the TRPA Code, plans and plan area statements. This proposal is not. It does not further enhance the ability to achieve thresholds through mitigation. It is not consistent with the Code that allows piers, provided that one meets those requirements. It is not consistent with the plan area statement that says we simply look to the shorezone plan as a guide. The second finding that had to be made was that scientific information demonstrates the need for the modification. In justification of the recommendation, as a reported satisfaction of that subcategory, they have stated that the view of Glenbrook's long, sandy beaches are only one of three in the shoreline that is privately owned to get a high rating. There is no indication that any pier out there would actually impact negatively the view. He believed that this needed to be looked at on a case-by-case basis to make the determination. In fact, because of the mitigation provisions, you may actually enhancing the view. Finally, he believed that the ban on piers cannot be extended South of the existing pier; it just doesn't make sense.

Mr. Robert Angres, representing Mr. Edward Fine, stated that Mr. Fine has three parcels and all three are littoral. The problem he sees at the outset is that even if we were to agree that there wasn't equal protection issues or taking issues, we have a fairness problem here. It is bad public stewardship to be misrepresenting or failing to integrate the important aspects of the TRPA compact, the federal guidelines, etc., in this rush and desire to protect certain interests of certain people through this PAS. We have a serious due process problem here. There was no notice, except through word-of-mouth, ever given to his client who owns three parcels within Glenbrook, one within these Homeowners' Associations. The representation that the GHOA (Glenbrook Homeowners' Association) or any other organization has unanimously voted informally to ban these piers goes against the grain when I can represent to you that the Homeowners' Association had an annual meeting, and they took no position on the construction of new piers in Glenbrook. Essentially what we have here, is a situation where rumor becomes the finding and representation to this committee. That is entirely inappropriate; if not illegal, it is

APC REGULAR MEETING MINUTES MAY 12, 1999

certainly poor stewardship. He echoed Mr. Cashill's statements about equal protection, and reinforced his comments about due process.

Mr. Angres stated that in response to Ms. Baldrice's issue about historical structures, there are historic structures in Mr. Fine's parcel, and this proposal does not take into consideration the need to integrate the thresholds and objectives of both State Lands and the Federal Lands with regards to historic structures. He suggested that the PAS should not be adopted at this point because it has been presented in a manner which is inaccurate and has failed to give notice and an opportunity to be heard properly during the entire investigations and the workings to come to the proposal that is in front of us. It is simply not ready to be approved, if ever. Mr. Kevin Agan has been retained by Mr. Fine to very briefly address the issues of the historic and appropriateness of the entire area that is sought to be included.

Mr. Kevin Agan, representing Mr. Fine, stated that he has concurred that the environment south of the community pier is different from the way they read the proposed plan area statement amendment. We presume it is to protect the sandy beaches, which they do not find south of the community pier. Mr. Agan further commented that if the APC pursues adopting the plan area statement, he would recommend changing the boarder all the way up to Mr. Fine's Northerly property.

Ms. Tony Lutes, from Basin Strategies and also representing the Moffitt family, stated that the Moffitt family has owned the property since 1860, and they currently own it. The property previously had a pier on it but it was destroyed in 1975, and they haven't rebuilt it yet. The family does not have access to the lake. She was of the opinion that the plan area statement amendment only meets the concerns of some of the people in Glenbrook.

Ms. Deborah Palmer, an attorney representing Mary Ann Cole, stated that she was attending the meeting as a point of clarification because there was some confusion about the maps. The initial Exhibit B that was attached to the packet is an old property line; there had been a property line adjustment between the Huntington property and the Cole property, her client. There was a change in the assessor's parcel numbers ("APNs"). She believed it was confusing to look at the map because we are designating a special area and there are no APN numbers. It is very vague as to what property is in and what property is out. She stated that she has heard the entire debate on what should be in and what should be out. As it is presently proposed, her client's property is out; they would like to keep it out. But she specified the APNs so there was no confusion. Her client's current legal APN is 01-080-027. The Huntington property, which is immediately adjacent to it, is included in that special area; her client is outside of that area.

Mr. Midkiff commented that Ms. Baldrice had asked about the historical significance in that area. He stated that the photos from the Comstock period, there are a number of piers. The rock crib pilings that do remain that would be impacted by any additional construction south of the pier do date back to the 1860s.

Since no one else wished to comment, Vice-Chairperson Marchio closed the public hearing.

Ms. Shade stated that in response to Ms. Palmer's testimony, in the paragraph in the staff summary under proposed action, the plan area statement listed should have 01-080-28 as the APN number. In response to meeting the thresholds, it is hard to differentiate between the regional plan amendment and the plan area amendment and the project. There are mitigations required of Mr. Ruvo for the reconstruction of a house on the shoreline; the beach house. TRPA has required mitigation for stream restoration.

APC REGULAR MEETING MINUTES MAY 12, 1999

Ms. Shade stated that bond money is not available for mitigation so the \$400,000 restoration on the project from the Nevada Bond act cannot be used. In addition, the Tahoe Yellow Crest is not a benefit to piers.

With regards to the historic boathouse on the Fine property, Ms. Shade commented that based on the TRPA code allowing some deviation for historic structures, TRPA allows for the reconstruction of the boathouse; not a pier; a boathouse based on its significance.

A discussion ensued.

Mr. Haen believed that this was a classic example of spot zoning and a taking. He asked Mr. Marshall if this is a taking and whether there is a concerned with this item.

Mr. Marshall replied that he had looked at both the spot zoning and taking issues. With regards to the spot zoning, he stated that there was an approval of a project in a subdivision with affordable housing and the community by special vote, overturned the commission's approval of the project. That was found to be spot zoning. In another case, which is similar to the proposed amendment, a hillside developer brought in a petition that they wanted to preserve two hillside areas which were greater than just the contested project, and that was found not to be spot zoning. These are two extremes. If the area that one is concerned about is broader than the particular project you are trying to prevent, it is a pretty good case that it is not spot zoning. On the other hand, if it is just limited to a particular parcel, then the modification really is to just affect only that one parcel. Although the motivation for this plan area statement amendment is obviously these two proposed piers that are coming forward, the amendment really responds to concerns more than just those two parcels rather than the broad, lakeshore in Glenbrook. Mr. Marshall stated that he is confident that we could survive a spot zoning challenge.

In terms of the takings issue, it is difficult for someone to contend that their real property has been taken because they were denied of the use of state lands for a pier. That would be an uphill battle. But if it turns out that the only possible use for this parcel on the North would be for a pier only and there is no other use for it and all value is lost if this plan area statement is adopted, then there would be some potential liability there. Mr. Marshall stated that he didn't believe that we were really close to that point, although there could be some risk there as well. He was of the opinion that the plan area statement amendment is close to getting the Agency into some real legal issues. He advised the APC to make the judgement they think is appropriate on the merits of the plan area statement rather than being influenced by the threat of litigation.

A discussion ensued.

MOTION by Mr. Cole, with a second by Ms. Baldrice, to recommend approval to the Governing Board of the amendment of plan area statement 058, Glenbrook, to prohibit construction of new piers per the Glenbrook Shorezone Plan. The motion carried on the following votes:

Ayes: Mr. Hust, Mr. Cole, Ms. Baldrice, Mr. Barham, Mr. McDowell, Ms. Kemper,
Mr. Lawrence, Mr. Morgan, Mr. Combs

Nays: Mr. Doughty, Mr. Porta, Mr. Lane, Ms. Kvas, Mr. Marchio

Abstain: Mr. Jepsen

Absent: Mr. Kehne, Mr. Poppoff, Mr. Joiner, Mr. Haen

APC REGULAR MEETING MINUTES MAY 12, 1999

Mr. Doughty stated that he voted no based on his discussions and belief that the APC should take a look at the southerly part; he was not against the entire proposal, but simply from that perspective. Mr. Marchio concurred with Mr. Doughty.

Mr. Porta added that for the consistency of the existing plan and language that is in there, the reason he voted no was because protecting the sandy beach areas could have been done with the language that is existing in the plan, and it didn't seem to match.

Ms. Kvas stated that she wanted to see the recreation easement for all property owners to use the pier.

(Chairperson Jepsen returned to the dais.)

(Messrs. Hust, Lane, Doughty and Combs left the meeting at 1:15 p.m.)

(Break taken for lunch at 1:15 p.m.)

(Reconvened at 2:25 p.m.)

VI. PLANNING MATTERS

A. Staff Presentation on Tall Whitetop (Noxious Weed) and its Potential Impact on Stream Environment Zones in the Tahoe Basin

Mr. Larry Benoit, Associate Planner and Revegetation Specialist presented a staff summary on Tall Whitetop (Noxious Weed) and its potential impact on Stream Environment Zones in the Tahoe Basin, along with a slide show.

A discussion ensued.

B. Forest Service Presentation on Status of Watershed Assessment

Mr. Chris Knopp, Staff Officer for the Department of Natural Resources with the Forest Service, discussed the watershed assessment and presented a slide show.

A discussion ensued.

V. PUBLIC HEARINGS AND RECOMMENDATION TO THE GOVERNING BOARD

D. Amendment of the Stateline/Ski Run Community Plan as Follows:

1. Amendment to the Permissible Uses Matrix
2. Amendment to Redistribute Commercial Square Footage
3. Amendment to Objective 2, Policy B, Regarding Construction of the Required Infrastructure Within the "Ski Run Village" District (3b)

Associate Planner John Hitchcock presented the staff summary amending the Stateline/Ski Run Community Plan to amend the Permissible Uses Matrix, amendment to Redistribute commercial

APC REGULAR MEETING MINUTES MAY 12, 1999

Square Footage, and amendment to Objective 2, Policy B, regarding construction of the required infrastructure within the 'Ski Run Village' District.

A discussion ensued.

Chairperson Jepsen opened the meeting up for a public hearing. Since no one wished to comment, Chairperson Jepsen closed the public hearing.

MOTION by Mr. Marchio, with a second by Mr. Porta, to recommend approval to the Governing Board amending the Stateline/Ski Run Community Plan to amend the Permissible Uses Matrix, amendment to Redistribute Commercial Square Footage, and amendment to Objective 2, Policy B, regarding construction of the required infrastructure within the 'Ski Run Village' District. The motion carried unanimously.

VII. REPORTS

A. Executive Director

Deputy Director Jerry Wells stated that the Senate Finance Committee in Nevada took an action to basically cut over \$600,000 from TRPA's budget request, which actually turned out to be a \$1.8 million dollar cut because of the reciprocating California share that would be matching that. Between the newspapers and various people calling and writing their Senators, as of yesterday the Senate Subcommittee overturned their previous decision and reinstated TRPA's full budget request. At this point, we are looking good in both states, especially in California.

B. Legal Counsel

Mr. Wells stated that he would leave the legal report to Mr. John Marshall, who had to leave for another meeting.

C. APC Members

Ms. Kemper stated that on Friday, May 14th, at the City Council Chambers at 1:00, there will be a meeting on MTBE, with the California Energy Commission and the California Air Resources Board. There will be discussions with the South Tahoe Public Utility District, the City of South Lake Tahoe, and El Dorado County related to bringing MTBE-free gas to Lake Tahoe.

VIII. ADJOURNMENT - The meeting was adjourned at 3:40 p.m.

Respectfully submitted,



Sue Mikanovich
Clerk to the Commission

APC REGULAR MEETING MINUTES MAY 12, 1999

This meeting was taped in its entirety. Anyone wishing to listen to the tapes may call (775) 588-4547 to make an appointment. In addition, written documents submitted at the meeting are available for review at the TRPA office, 308 Dorla Court, Zephyr Cove, Nevada.

TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court
Elks Point, Nevada
www.ceres.ca.gov/trpa

P.O.B. 1038
Zephyr Cove, Nevada 89448-1038

(702) 588-4547
Fax (702) 588-4527
Email: trpa@sierra.net

MEMORANDUM

May 28, 1999

To: TRPA Advisory Planning Commission
From: TRPA Staff
Subject: Shorezone Ordinance Environmental Impact Statement

After a brief presentation, staff requests that the APC open this item up for a public hearing.



TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court
Elks Point, Nevada
www.ceres.ca.gov/trpa

P.O.B. 1038
Zephyr Cove, Nevada 89448-1038

(702) 588-4547
Fax (702) 588-4527
Email: trpa@sierra.net

MEMORANDUM

May 28, 1999

To: TRPA Advisory Planning Commission
From: TRPA Staff
Subject: Approval of Work Program for the Wye Industrial Community Plan

Proposed Action: Staff will present the work program for the South Wye Industrial Community Plan, including proposed milestones and time frame for completion.

Handwritten scribbles and marks on the right edge of the page.