

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 March 10, 2004, at the Tahoe Regional Planning Agency, 128 Market Street, Stateline, Nevada. The agenda for the meeting is attached hereto and made a part of this notice.

March 1, 2004

A handwritten signature in black ink, appearing to read "John Singlaub". The signature is fluid and cursive, with a prominent flourish at the end.

John Singlaub
Executive Director

This agenda has been posted at the TRPA office and at the following post offices: Zephyr Cove and Stateline, Nevada, and Tahoe Valley 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

Tahoe Regional Planning Agency
128 Market Street
Stateline, NV 89449

March 10, 2004
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) Amendment of Code of Ordinance Chapter 2, Definitions, and Chapter 18, Permissible Uses, to Recognize the Use of Single Family Residences as Vacation Rentals and Other Matters Properly Related thereto;

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- B) Amendment to Chapter 43, Subdivisions, and Related Chapters, to Provide Exemptions for Certain Existing Structures From Density and Low Cost Housing Requirements;

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- C) Notice of Sixty (60) Day Public Review and Comment Period for the Tahoe City Marina Master Plan Draft Environmental Impact Statement (DEIS) and Draft Environmental Impact Report (DEIR);

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- VI. PLANNING MATTERS

- A. Annual Water Quality Report Presentation

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VII. REPORTS

A. Executive Director

B. Legal Counsel

C. APC Members

VIII. ADJOURNMENT

TRPA ADVISORY PLANNING COMMISSION

Tahoe Regional Planning Agency
Kings Beach, California

February 11, 2004
9:30 a.m.

MEETING MINUTES

I. CALL TO ORDER AND DETERMINATION OF QUORUM

Members Present: Chairwoman Alice Baldrice, Vice-Chairman Larry Lohman, Kevin Cole, Bill Combs, Richard Harris, Robert Jepsen, Lauri Kemper, Eva Krause, Gary Marchio, Ron McIntyre, Mimi Moss, Joe Oden, Lee Plemel, Leo Poppoff, Mike Riley, Jane Schmidt, Alan Tolhurst

II. APPROVAL OF AGENDA

Robert Jepsen moved to approve the agenda.
Leo Poppoff seconded.
All ayes.
Motion carries.

III. PUBLIC INTEREST COMMENTS

None

IV. DISPOSITION OF MINUTES

Member Krause noted a correction in Section B of the January, 2004 APC Minutes. Residential allocation numbers appear to be last year's. The correct 2004 numbers should be South Lake Tahoe = 35, Douglas County = 14, El Dorado County = 90, Placer County = 46, Washoe County = 40.

Member Jepsen noted that he did not abstain to the motion approving January's minutes as amended.

Kevin Cole made a motion to approve the minutes as corrected.
Eva Krause seconded.
Joe Oden abstained.
Motion carried.

V. ADMINISTRATIVE MATTERS

A. Election of Advisory Planning Commission Chair and Vice-Chair

Member Jepsen nominated Larry Lohman as Chair.
Richard Harris seconded
Larry Lohman accepts.

No other nominations.
Motion carried.

Member Poppoff nominated Mimi Moss as Vice-Chair.
Laurie Kemper seconded
Mimi Moss accepts.
No other nominations.
Motion carried.

Larry Lohman will be the new Chair of the APC and Mimi Moss will be the new Vice-Chair.

The gavel is passed to Larry Lohman who conducts the meeting from this point forward.

VI. PUBLIC HEARINGS

A. Recommendation on Amendment to PAS 146 Emerald Bay to Add Waterborne Transit and Tourboat Operations and Related Amendments

Jennifer Quashnick, Air Quality Control Program Manager, presented a PowerPoint program. Vikingsholm would like to have permitted boats dock at the state park pier for special events. Dates would be restricted and no winter plowing will be allowed. Parties can only arrive and leave by boat. Food and beverage must be provided on the boat. She recommends allowing this as a special use.

Issues noted by APC members included length of idling time for boat; cultural facilities use as a special use (it is a corrective measure per staff); does the bike and pedestrian master plan require a specific application before TRPA can change the PAS (no, TRPA can initiate); can the PAS better define bike and ped uses so specific changes do not have to be brought to TRPA (it is something TRPA can consider).

No public comments.

Gary Marchio made a motion to accept staff's recommendation with the addition to the special policy PAS of the following:

- 1) Boats can only dock at the Vikingsholm pier for a maximum time period of 30 minutes. The CA State Parks has proposed a six-minute limit on boats idling at the pier to reduce air quality impacts.
- 2) The CA State Parks has stated that no more than 12 events total per year will be allowed.
- 3) In response to concerns expressed by the El Dorado County Health Department, CA State Parks has stated that events will not be catered or

involve food consumption, and that the proponent will request that sanitizing hand-wipes be provided during events.

Richard Harris seconded.

Motion carried.

B. Recommendation on Amendment to PAS 068 Round Mound to Change Single Family Dwelling from a Special Use to an Allowable Use.

John Hitchcock, Scenic Program Manager from the Long Range Planning Division, presented this recommendation. This amendment would allow future residential projects in this PAS to be permitted at the staff level. Staff determined there would be no environmental impact. The few large parcels included in this PAS are mostly built out. Staff felt they could handle any future applications.

Member Gary Marchio asked if this was mainly a streamlining measure. Staff responded yes.

Gary Midkiff, representing Sierra Sunset LLC and Don Chaiken, commented that the subject parcels had been permitted for single family use for many years and that they had been included in this PAS in error. To require owners of these parcels to request special use findings and get Board approval is an undue burden.

No further public comments.

Alice Baldrice moved that staff's amendment be recommended to the Governing Board.

Laurie Kemper seconded.

Motion carried.

C. Recommendation on Amendment to the Boundary Between PAS 116 Airport and PAS 114 Bonanza

Staff member John Hitchcock recommended a boundary line adjustment between these two PAS's to accommodate an affordable housing project. No expansion of the urban boundary line is being requested. There will be no significant environmental impact. Currently multi-family housing is allowable in both PAS's. This amendment allows applicant to make use of bonus units to provide affordable housing.

Issues discussed by APC members included service of the project by public transportation, permissibility of the project near the airport overflight zone and the desirability of consolidating or dispersing affordable housing throughout the community.

Public comment was provided by Richard Jacobs of 1324 Melba, a 17 year resident of South Lake Tahoe. His parcel is adjacent to the parcels that may

be developed as affordable housing. He has been a vocal adversary of the affordable housing project proposed by Mr. Fong. He believes that this area of South Lake Tahoe has already accommodated enough low-income housing and has done its share.

Patrick Conway, housing coordinator for the City of South Lake Tahoe, provided additional public comment. He supports project as does nearby Barton Hospital. The Hospital has determined that as many as 150 of their employees could be eligible for this housing. Not all low-income housing residents commute by bus. Many own cars and adequate parking is provided. The City of South Lake Tahoe has requested over \$3 million in grant funds for this 26 unit project. Mr. Conway commented that other areas of the City do have higher density low-income housing, such as Stateline area. This project would not bring down the value of the neighborhood, but, rather, increase its value. The City has done a fair job of dispersing low-income projects, but there are limited suitable parcels.

Staff member John Hitchcock commented that staff is struggling with the dispersment issue. TRPA's Code is explicit about multi-family housing being tied to infrastructure and close to transit. These constraints limit the places available.

APC members further discussed the extension of transit to the area, limited areas to place multi-family housing and feeling that Mr. Fong's development will be a quality one

Alice Baldrice made a motion to accept staff's recommendation.
Allan Tolhurst seconded.
Motion carried.

D. Proposed Amendments to Clean Water Act (CWA) 208 Plan, Vol. I,
Section VI, D.1.a. (Timber Harvest)

Mike Vollmer, Vegetation Program Manager, presented this staff summary. Staff recommends that the 208 Plan be amended to include Chapter 71 amendments allowing over snow vegetation removal as well as non snow removal provided there is no damage to vegetation or soil. Staff feels that the proposed language is sufficient for environmental protection.

No public comment offered.

Robert Jepsen made a motion to accept staff's recommendation.
Ron McIntyre seconded
Motion carried with corrections Mike Vollmer read during hearing.

VII. PLANNING MATTERS

A. Recommendation to Lower the Individual Parcel Evaluation System (IPES) Line in El Dorado County

Tim Hagan, Soils Program Manager, presented this staff summary. Staff recommended that the IPES line be lowered from 686 to 581. 268 parcels could be positively affected. The lowering is tied to EIP projects done by the County.

APC members discussed notice to property owners and whether CIP projects could find a home on EIP list.

No public comment was offered.

Kevin Cole made a motion to accept staff's recommendation.

Mimi Moss seconded.

Motion carried.

VIII. REPORTS

A. Executive Director

Executive Director John Singlaub reported that the three items recommended by the APC last month were approved by the Governing Board.

B. Legal Counsel

Assistant Agency Counsel Jordan Kahn reported that the Court will hear arguments on TRPA's Motion to Dismiss the scenic lawsuit brought by the Committee for Reasonable Regulation of Lake Tahoe. Each side will have three hours to present their case.

A lawsuit involving the illegal construction of a pier is set for trial March 9, 2004. However, settlement negotiations with defendants Kendall have lead to the removal of the pier. Penalties are being negotiated.

C. APC Members

Member Kemper reported that the Lahontan Board, which meets the same day as the March APC, in the evening, will have an information workshop on reducing water quality impacts during construction.

Member Moss requested an updated list of meetings and members. This will be sent to all APC members.

Allan Tolhurst reported that a ski resort community in France has such inflated real estate values that those who work at the resort cannot live within 50 miles of the resort.

Eva Krause provided a flyer regarding training sessions for the Northern Nevada APA.

Kevin Cole noted that he appreciated the APC facilitating affordable housing in the Basin, but hopes that South Lake Tahoe does not have to provide more than its share.

Richard Harris thanked Alice Baldrice for her tenure as Chairwoman of the APC. He is glad to report that University of California at Davis will be coming to Nevada, as they are building a new research facility on the North Shore.

Alice Baldrice commented that the staff presentations have been very good and much improved. She will not be attending the March 2004 meeting.

Larry Lohman thanked Alice and welcomed new member, representing NRCS, Jane Schmidt.

Eva Krause indicated that she will be on medical leave and will not be attending the March 2004 meeting.

IX. ADJOURNMENT

Time: 11:20 a.m.

Meeting minutes and handouts available by contacting TRPA, 775-588-4547, ext. 243.

TAHOE REGIONAL PLANNING AGENCY

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March 2, 2003

MEMORANDUM

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendment of Code of Ordinances Chapters 2, Definitions and 18, Permissible Uses to Recognize the Use of Single Family Homes as Vacation Rentals, and Other Matters Properly Relating Thereto

Proposed Action: Amend Chapters 2 and 18 of the Code of Ordinances to recognize the use of single family homes as vacation rentals provided that each local jurisdiction adopts and enforces regulations for vacation rentals to ensure compatibility with the character of the surrounding neighborhood.

Staff Recommendation: Staff recommends the Advisory Planning Commission conduct the public hearing as noticed and recommend adoption of the proposed Regional Plan amendments to the Governing Board.

Background: The vacation rental issue originated in the South Shore about a year and half ago when citizens complained to the City of South Lake Tahoe, El Dorado County, Douglas County and TRPA about the neighborhood impacts of this use. This caused numerous local hearings and an El Dorado County Grand Jury investigation. TRPA has gradually been drawn into the issue primarily on land use regulation issues. The TRPA Local Government Committee also held several hearings on these issues. It should be noted that the use of single-family homes and condominiums as vacation rentals is not unique to the Tahoe Region and is a national issue, especially in other vacation destination communities.

During their December meeting, the TRPA Governing Board approved the following directive:

Staff is hereby directed to bring back a proposal (including ordinances, plan amendments, MOUs, etc) needed to implement a proposal within three months that:

- *Amends the current Regional Plan to clearly define vacation rental use as it relates to residential and/or tourist accommodation uses;*
- *Designates vacation rental use as a permissible use in both tourist accommodation and residential zoned areas provided the vacation rental use is conducted in a manner that is compatible with the surrounding neighborhood and is enforced by the local government;*
- *Delegates all nuisance and zoning enforcement of vacation rentals to local government;*

- *Continues TRPA enforcement of general environmental issues, i.e. unauthorized coverage, BMPs.*
- *Has been reviewed by stakeholders in a process to assist in the development of the necessary Regional Plan amendments and local government nuisance regulations.*

Each of the Local Government Committee members from the Governing Board (excluding Carson City) selected three people for the stakeholder group; one to represent the vacation rental/real estate interests, one to represent the neighborhood/environmental interests, and one to represent the local government/regulatory interests. The total number of the stakeholder working group was 15 plus Jerry Wells, TRPA Deputy Executive Director, representing TRPA's interests. Other interested citizens were welcome to come and observe; however, they were only allowed to speak through one of the 16 people at the "Table" who they felt best represented their interests. Staff proposed this format to ensure a manageable working group size. The stakeholder group convened for two all-day facilitated meetings, once on January 23 and again on February 12, 2004.

Some members of the vacation rental stakeholder group were not in total agreement with the proposed definitions. The disagreements on the definitions were from some of the neighborhood representatives and were philosophically based rather than any disagreement with the specific language. Three of the four neighborhood representatives felt that vacation rentals are inherently incompatible with residential neighborhoods regardless of the rules/standards that exist or could be developed.

Discussion: Without proper regulation and enforcement, vacation rentals can have a number of negative impacts in residential neighborhoods. These fall broadly into the categories of nuisance impacts, localized environmental impacts, and impacts on the character of residential neighborhoods. The most commonly cited problems by residents and public officials are nuisance impacts, such as noise and inappropriate behavior, overcrowding, excessive parking, and improper trash disposal.

In an effort to address these potential adverse impacts while allowing the use of single-family homes as vacation rentals, the Stakeholder group developed a series of amendments to the Code of Ordinances, specifically to Chapters 2, Definitions and 18, Permissible Uses. Those amendments are contained within Exhibits 1 and 2, respectively (attached).

The amendments developed with assistance from the vacation rental stakeholder group propose to incorporate 'vacation rentals' into the definitions of single-family dwellings and multiple family dwellings (up to a fourplex) within Chapter 18 of the Code, thereby allowing the use of residences as vacation rentals and/or residences. Vacation rental will be defined within Chapter 2 of the Code, the chapter that defines most terms used in the Code. By amending the Code as proposed, any plan area statement or community plan that contains these uses (single-family or multiple family, up to a fourplex, dwelling) within the list of permissible uses for that plan area are able to operate the home as a permanent residence or a vacation rental insofar as the use is compatible with the surrounding neighborhood.

TRPA will assign to the local jurisdictions to ensure vacation rentals operate as a normal residence. TRPA is requiring that the local jurisdictions enter into a cooperative agreement with TRPA that will clearly spell out the standards to which vacation rentals

are to operate, and how the standards will be enforced. The standards with which vacation rentals are being required to comply are essentially the same as any single or multiple family residence would be required to meet.

The stakeholder group agreed that the neighborhood compatibility standards to be adopted and enforced by the local jurisdictions would include the following elements: occupancy, refuse/garbage, parking, noise, lighting, and signage. Each jurisdiction will need to adopt and enforce all the necessary regulations addressing these categories to ensure neighborhood compatibility and enter into a cooperative agreement with TRPA in order for vacation rentals to be considered an allowed use in residential neighborhoods. If not, this use will be considered a tourist accommodation use, which typically would not be allowed in residential neighborhoods

Staff is recommending up to a six month timeline for each local jurisdiction to adopt the necessary regulations and enter into a cooperative agreement with TRPA. The Governing Board may choose to extend this time limitation, however, staff believes that six months (60 days for the Ordinance to become effective, plus an additional four months after the rules become effective) is ample time to implement these agreements. During the period before these agreements are established, TRPA will continue its policy of non-enforcement. After six months, if any of the five local jurisdictions have not adopted neighborhood compatibility requirements, and entered into a cooperative agreement with TRPA, the use of residences as vacation rentals will not be allowed in those jurisdictions.

It is the local jurisdictions enforcement of these standards upon which TRPA staff is recommending approval of these amendments and making the necessary findings. Enforcement of land use standards is not easy for any jurisdiction, and is often susceptible to higher public safety priorities. TRPA is fully cognizant of this fact, but staff believes that programmatic enforcement in addition to self-policing by the vacation rental industry itself can go a long way in achieving compliance with the neighborhood compatibility requirements.

It is also important to note that each of the local jurisdictions have the ability to adopt standards that are more restrictive than those of TRPA. Therefore, should the local jurisdictions desire greater control or restrictions on the operation of vacation rentals, they can adopt more restrictive standards.

Effect on TRPA Work Program: Additional work remains to be done in developing and approving the cooperative agreements with five local jurisdictions, which is conservatively estimated to require 100 hours (20 hours per jurisdiction) from one lead staff member with additional time for support staff. This task will vary among the local jurisdictions, as some are farther along than others in developing operational standards for vacation rentals.

The level of enforcement required by TRPA for this amendment is anticipated to be minimal. TRPA looking to the local jurisdictions to enforce the vacation rental standards under the above referenced cooperative agreements. If this enforcement does not occur, this issue will need to be revisited by TRPA.

Required Findings: The following findings must be made prior to adopting the proposed amendments:

Chapter 6 Findings:

1. Finding: The project is consistent with, and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

Rationale: The amendments will not hinder implementation of the Regional Plan. Integrity of the growth management programs of the Plan are maintained, PAS permissible use lists are not compromised, development standards remain in effect, mitigation programs (such as excess coverage) are unaffected, EIP implementation will continue.

Current information regarding the occupancy level of the average vacation rental would indicate fewer Vehicle Miles Traveled (VMT) and fewer Daily Vehicle Trip Ends (DVTE) would be expected from a vacation rental than from a permanently occupied residential unit. Even if the occupancy of the vacation rental were 100%, the VMT and DVTE would be expected to be within the acceptable levels for a single-family or multi-family dwelling. The variable trip rates within TRPA's traffic model are affected to a greater degree by household income than occupancy or residential use type; the higher the income the greater the trip rates. With recent improvements to the transit system in the South Shore area, transit service is now available to many vacation rentals located in residential areas.

The amendments will not adversely affect TRPA's ability to implement the Goals and Policies pertaining to housing.
2. Finding: That the project will not cause the environmental thresholds to be exceeded.

Rationale: The proposed amendments will have no negative affect upon TRPA programs and regulations intended to ensure thresholds carrying capacities are not exceeded. Occupancy levels of vacation rentals indicate that less traffic impacts (DVTE and VMT) may be expected as compared to the same housing units occupied on a permanent basis by basin residents.
3. Finding: Wherever federal, state and local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(d) of the Compact, the project meets or exceeds such standards.

Rationale: Any project arising from the amendments must be consistent with air and water quality standards. The amendments have no affect on these standards.

4. Finding: The Regional Plan and all of its elements, as implemented through the Code, Rules and other TRPA plans and programs, as amended, achieves and maintains the thresholds.

Rationale: See findings 1 and 2 above.

5. Finding: The Regional Plan, as amended, achieves and maintains the thresholds.

Rationale: See findings 1 and 2 above.

Environmental Documentation: Staff has completed TRPA's Initial Environmental Checklist and Chapter 6 findings. Based upon the checklist, information in this staff summary and the record, Staff is recommending that the Governing Board make a Finding of No Significant Effect.

Please contact Jerry Wells (jwells@trpa.org) or Peter Eichar (recreation@trpa.org), at (775) 588-4547, if you have any questions regarding this agenda item.

Attachments: A – Implementing Ordinance with corresponding Exhibit 1 – Chapter 2 changes and Exhibit 2 – Chapter 18 changes

TAHOE REGIONAL PLANNING AGENCY
ORDINANCE 2004 –

AN ORDINANCE AMENDING ORDINANCE NO. 87-9, AS AMENDED, BY AMENDING THE REGIONAL PLAN OF THE TAHOE REGIONAL PLANNING AGENCY; AMENDING CODE OF ORDINANCES, CHAPTER 2, DEFINITIONS AND CHAPTER 18, PERMISSIBLE USES TO RECOGNIZE THE USE OF SINGLE AND MULTIPLE FAMILY DWELLINGS AS VACATION RENTALS, GIVEN CERTAIN CONDITIONS OF OPERATION TO ENSURE NEIGHBORHOOD COMPATIBILITY AND PROVIDING FOR OTHER MATTERS PROPERLY RELATING THERETO.

The Governing Board of the Tahoe Regional Planning Agency does ordain as follows:

Section 1.00

Findings

- 1.10 It is necessary and desirable to amend TRPA Ordinance 87-9, as amended, which ordinance relates to the Regional Plan of the Tahoe Regional Planning Agency (TRPA) by amending the Code of Ordinances Chapters 2 and 18 in order to further implement the Regional Plan pursuant to Article VI(a) and other applicable provisions of the Tahoe Regional Planning Compact.
- 1.20 These amendments have been determined not to have a significant effect on the environment, and are therefore exempt from the requirements of an environmental impact statement pursuant to Article VII of the Compact.
- 1.30 The Advisory Planning Commission (APC) has conducted a public hearing on the amendments and recommended adoption. The Governing Board has also conducted a noticed public hearing on the amendments. At those hearings, oral testimony and documentary evidence were received and considered.
- 1.40 Prior to the adoption of this ordinance, the Governing Board made the findings required by Chapter 6 of the Code and Article V(g) of the Compact,
- 1.50 The Governing Board finds that the amendments adopted here will continue to implement the Regional Plan, as amended, in a manner that achieves and maintains the adopted environmental threshold carrying capacities as required by Article V(c) of the Compact.
- 1.60 Each of the foregoing findings is supported by substantial evidence in the record.

Section 2.00

Amendment of the Code of Ordinances, Chapters 2 and 18

Subsection 6.10, subparagraph (28) of Ordinance No. 87-9, as amended, is hereby further amended as set forth on Exhibits 1 AND 2, dated March 2 2004, which attachments are appended hereto and incorporated herein.

Section 3.00 Interpretation and Severability

The provisions of this ordinance and the amendments to the Code of Ordinances adopted hereby shall be liberally construed to effect their purposes. If any section, clause, provision or portion thereof is declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance and the amendments to the Code of Ordinances shall not be affected thereby. For this purpose, the provisions of this ordinance and the amendments to the Code of Ordinances are hereby declared respectively severable.

Section 4.00 Effective Date

The provisions of this ordinance amending the Code of Ordinances shall be effective 60 days after its adoption.

PASSED AND ADOPTED by the Governing Board of the Tahoe Regional Planning Agency at a regular meeting held March 24, 2004, by the following vote:

Ayes:

Nays:

Abstentions:

Absent

David Solaro, Chairman
Tahoe Regional Planning Agency

New Language underlined in blue; Deleted language ~~stricken through~~ in red.

Chapter 2

DEFINITIONS

Chapter Contents

- 2.0 Purpose
- 2.1 Applicability
- 2.2 Definitions

2.0 Purpose: This chapter defines the terms used in the Code.

2.1 Applicability: This chapter shall be used in interpreting the Code and other TRPA plans and documents.

2.2 Definitions: The following terms are defined as set forth below.

Local Assembly and Entertainment: See Chapter 18.

Local Government Neighborhood Compatibility Requirements: Requirements implemented and enforced by a local government through a cooperative agreement with TRPA that regulates vacation rentals to insure neighborhood compatibility that includes, but is not limited to mitigating the potential adverse impacts related to refuse/garbage, parking, occupancy, noise, lighting and signage.

Local Post Office: See Chapter 18.

Repair Services: See Chapter 18.

Residential: Uses, facilities and activities primarily pertaining to the occupation of buildings ~~on a permanent basis~~ for living, cooking and sleeping by the owner as a permanent or second home, by renters on a monthly or longer term basis, or by renters of a vacation rental that meets the Local Government Neighborhood Compatibility Requirements.

Residential Area: See Subsection 13.5.B.

Vacant Parcel: A parcel which is undeveloped or unimproved and has no established use.

Vacation Rental: A residential unit rented for periods of 30 days or less.

Vegetation: A collective term for plants.

New language underlined in blue.

Chapter 18

PERMISSIBLE USES

Chapter Contents

- 18.0 Purpose
- 18.1 Applicability
- 18.2 Accessory Uses
- 18.3 Table Of Primary Uses
- 18.4 Definitions Of Primary Uses
- 18.5 Existing Uses

18.0 Purpose: This chapter sets forth the allowable uses for the land areas within the Region. Allowable uses for the near shore, foreshore, backshore and lakezone are set forth in Chapter 51. The concept of "use" includes any activity, whether related to land, water, air or other resources of the region. The primary uses are "allowed", "special" and "nonconforming", the applicability of which terms to a particular parcel shall be determined by reference to the plan area statements and maps, community plans, redevelopment plans and specific or master plans, as the case may be. Generic primary uses are set forth in the Table of Uses in section 18.3.

Hotels, Motels and Other Transient Dwellings Units: Commercial transient lodging establishments including hotels, motor-hotels, motels, tourist courts or cabins, primarily engaged in providing overnight lodging for the general public whose permanent residence is elsewhere. It does not include bed and breakfast facilities or vacation rentals.

Multiple Family Dwelling: More than one residential unit located on a parcel. Multiple family dwellings may be contained in separate buildings such as two or more detached houses on a single parcel, or in a larger building on a parcel such as a duplex, triplex, or an apartment building. Vacation rentals are included, up to but not exceeding a fourplex, provided they meet the Local Government Neighborhood Compatibility Requirements as defined in Chapter 2. One detached secondary residence is included under secondary residence.

Single Family Dwelling: One residential unit located on a parcel. A single family dwelling unit may be contained in a detached building such as a single family house, or in a subdivided building containing two or more parcels such as a town house condominium. Vacation rentals are included provided they meet the Local Government Neighborhood Compatibility Requirements as defined in Chapter 2. A caretaker residence is included under secondary residence.

TAHOE REGIONAL PLANNING AGENCY

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MEMORANDUM

March 2, 2004

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Amendment of Chapter 43, Subdivision Standards, to exempt the subdivision of existing structures previously subdivided from density (43.2.B) and low cost housing (43.2.D) requirements.

Proposed Action: TRPA staff, at the direction of the TRPA Governing Board (see Attachment A, January 2004 Governing Board meeting minutes) requests the APC consider amendments to the TRPA *Code of Ordinances*, that would allow TRPA to approve Mr. Ancil Hoffman's subdivision project.

Staff Recommendation: Staff recommends the Advisory Planning Commission hold a public hearing on this item, review and discuss amendment options, and recommend amending Subsection.43.2.B, Low Cost Housing, and Subsection 43.2.D, Density to exempt certain projects. As proposed, an exemption from these requirements would apply to existing multifamily attached units that were subdivided prior to 1972 and have since consolidated, and now want to re-subdivide the existing units. The staff has provided two options in the staff summary.

Background: At their January 2004 meeting, the TRPA Governing Board heard an appeal of a staff denial to subdivide an existing 4-plex, multi-family structure in Incline Village. The appeal staff summary is Attachment B. The Board struggled with the application of TRPA standards for density and low cost housing and the applicant's representation of hardship due to conflicting standards and alleged miscommunications between Washoe County and TRPA staff and the applicant.

The problem was aggravated when the applicant first applied to Washoe County without applying to TRPA. Generally most applicants submit to TRPA first since TRPA generally has the most restrictive standards. In June 2000, the project applicant, Mr. Ancil Hoffman, obtained approval from Washoe County to re-subdivide the four-unit residential project. County zoning for Medium Density Urban allows 21 units per acre (as opposed to TRPA's density of 15 units per acre). Washoe County has no mitigation requirements for low cost housing.

TRPA and the County are independent jurisdictions with their own regulations concerning development except in community plan areas. Mr. Hoffman's proposed project is outside of the community plan area and within the Incline Village Residential Plan Area, which has not been adopted by the County. Washoe County has not adopted TRPA provisions for protection and mitigation of low cost housing nor do they have any similar requirements. Consequently, Mr. Hoffman must obtain approval from both jurisdictions, after each independently applies its own regulations. Additionally, the TRPA Compact states that the most restrictive regulations apply.

The TRPA staff denial was based on conflicts with the following TRPA regulations:

TRPA Density Standards. The applicant's proposed subdivision did not meet TRPA's density standards for the Incline Village Residential Plan Area Statement (PAS) and was denied, in part, based on density for multi-family structures. The density standard for the Incline Village Residential PAS is a maximum of 15 units per acre (which is and has been since 1972 the maximum for the Region). Under 15 units per acre density, three units are permitted for the proposed project area's size as summarized in the table below.

Maximum Allowable Density for a Market-Rate Subdivision of an Existing Structure	
Parcel Size (in square feet)	8,319 square feet
Parcel Size (in acres)	8,319/43,560 = 0.19097 acres
Base Allowable Density (15 units/acre)	0.19097 acres x 15 units per acre = 2.86466 units (equal to 2 units after rounding)
Additional Density Allowed (10%)	2.86466 units x 1.1 = 3.15114 units (equal to 3 units after rounding)

Low Income Housing Requirements. Based on a May 2003 appraisal submitted by Mr. Hoffman, TRPA staff determined that all four units in this project met the definition of low cost housing. Preservation of low cost housing is a goal of TRPA's Regional Plan (*Goals and Policies*, Chapter II, Land Use Element - Housing Sub-element, Goal # 1, Policy # 1), and is implemented through the TRPA Code. In July 2002, the TRPA Governing Board amended the Low Cost Housing Ordinance. Effective September 22, 2002, TRPA defines low cost housing as follows:

Low cost housing are residential units which are sold or rented at prices and rates affordable to households or tenants that earn not more than 120 percent of the applicable county median income. Low cost housing shall not include units with a rental rate that exceeds 30% of the tenant's monthly gross income, or sell at rates that exceed 2.5 times the gross annual household income. (TRPA Code Section 41.2.F (2002)).

Using this updated Code definition, TRPA staff calculated the low cost housing rental and sales rates for Washoe County for a family of six as follows:

- Low Cost Housing Annual Income Limit¹: 73,312 x 120% = \$87,974
- Gross Monthly Income: \$87,974/12 = \$7,331
- Low Cost Housing Max. Total Monthly Housing Cost²: 7,331 x 30% = **\$2,199**
- Maximum Sales Rate per unit: 87,974 x 2.5 = **\$219,935**

¹ Source: Median Family Income from Housing and Urban Development Home Program Income Limits, 2/2004, Reno MSA, Nevada. During discussions with Mr. Hoffman, TRPA staff based its maximum housing costs on a family of four. However, upon further review, TRPA staff has determined that a family of six is the more appropriate size because Mr. Hoffman's units each have three bedrooms. Using a family of six does not affect staff's designation of the units as low cost housing, but would enable Mr. Hoffman to obtain greater rental or sales values if he opts to deed restrict them as low cost housing.

² The total monthly housing cost includes all utility expenses as well as rent. The limits above were based on a family size of six.

Subdivision of existing low cost housing residential units is not permitted unless mitigation is provided on a unit-by-unit basis for the loss of low cost housing. The May 2003 appraisal submitted by Mr. Hoffman concluded that the monthly rent for each unit was estimated to be \$1,300. Because this rental value is less than the **\$2,199** cap, Mr. Hoffman's subdivision application can only be approved if the units are mitigated, e.g., through a deed restriction to maintain their status as low cost housing.

Mr. Hoffman appealed the TRPA application of the low cost housing requirements to his project by arguing that the previous TRPA definition of low cost housing should have been used. Although application of the old definition would have resulted in a determination that his units would not qualify as low cost housing (as the \$1,300 monthly rent is above the previous \$1,000 cap), TRPA staff properly employed the updated definition. TRPA is required to apply the ordinances in effect when acting on project applications versus the date of project submission. The old definition is as follows:

Low cost housing are residential units, which are sold or rented at prices and rates affordable to households or tenants that earn not more than 120 percent of the median income. Low cost housing units shall not include units with a per unit value greater than \$85,000 or units with a fair rental value greater than \$1,000 per month, as adjusted annually (TRPA Code Section 41.2.F (1993)).

Mr. Hoffman further argues that the former definition of low cost housing should have been applied to his project because that definition was set forth in the TRPA Subdivision of Existing Structures Information Packet and Checklist, even after the Low Cost Housing Ordinance was amended. TRPA agrees that the application packet was not updated to reflect the new definition in a timely manner. This fact, however, does not exempt applicants from having to comply with adopted regulations. The information packet was immediately updated after the oversight was brought to the attention of TRPA. Moreover, TRPA staff has adopted a protocol to ensure that new code language is promptly reflected in all application materials.

Alternatives: TRPA staff presented Mr. Hoffman with the following alternatives to denial:

- A. Reduce the density of the project to three units, and "bank" the fourth residential unit of use. The banked unit of use could be sold or used at another location to develop a low cost residential unit. The remaining units must be deed restricted as low-cost housing or mitigated off-site.
- B. Request an amendment to the Subdivision Standards of the TRPA Code of Ordinances to allow the conversion of existing structures to increase the density by more than 10 percent. 26% or greater would make the four units permissible and off-site low cost mitigation would be required.
- C. Deed restrict all four units to affordable housing and then subdivide those units. The project is located in Plan Area Statement 046, Incline Village Residential, which has Special Designation as a preferred affordable housing location, and is eligible to receive bonus units under Chapter 35 of the TRPA Code of Ordinances' Bonus Unit Incentive Program. If the project were deed restricted to affordable housing, there is a provision under Subsection 21.3.B of the TRPA Code where the project area density may be increased by 25 percent.

- D. Additionally, under the Bonus Unit Incentive Program, bonus units could be assigned to the project for the affordable housing units, enabling the four existing low-cost housing units to be transferred to another location and used to develop market rate multifamily residences. By combining the provision for affordable housing density bonus (25%) with the 10% density increase allowed for subdivision of existing units, the requested four unit subdivision density would closely meet the required density. (The project area would need to be increased by an additional 129 square feet.)

The project applicant was not interested in any of the alternatives proposed by staff. At the conclusion of the January Governing Board public hearing on this appeal the TRPA staff was directed by the Board to consider Code amendments to allow the subdivision of this existing four-plex multi-family structure.

Amendment Options: TRPA staff has drafted two Code amendment options for review, discussion and, ultimately, the recommendation of one option to the Governing Board for action. Staff looked at increasing the maximum permissible density beyond 15 units per acre for the entire Region. The 15-unit density that TRPA has used since 1972 is based on relationships to land coverage, height, parking requirements and unit size. TRPA does have a 25% exception for affordable housing, which generally have smaller units, and no specified density for redevelopment projects that have additional height limits. Staff chose to present Chapter 43 options that limit the density issue and moderate housing issue to certain existing structures. The two options are below:

I. Option A. Land Coverage/Density/Moderate Housing Exemption: This option amends the following four subsections of Chapter 43:

This option would permit the proposed project to be subdivided with off-site land coverage reduction and meet the needs for low cost housing through existing measures for off-site mitigation or approval of a local government program. The ordinance allows for increased density for coming more into conformance with the Soils Conservation Threshold and allows the applicant and the local jurisdiction three options. As a note, low cost housing is defined as moderate housing under state and federal standards – up to 120% of median income. There has been a determination that there is a shortage of moderate housing and additional incentives to encourage moderate housing development will be presented to APC next month. This exemption does not address the applicant's desire to have his project approved in a simple manner and without additional mitigation. As drafted it is very limited as explained in Option B.

- 43.2.B Low Cost Housing: Existing residential units which are low cost housing, as defined by 41.2.F, shall not be subdivided unless mitigation is provided on a unit by unit bases for the loss of low cost housing. Mitigation shall be in the form of construction of an equal number of low cost units, conversion of other structures to low cost housing, restriction of subdivided units to low cost housing units, or a combination of the above. [Existing attached multi-family structures legally subdivided prior to February 10, 1972 are exempt from this provision, provided, that the newly subdivided units remain attached and, pursuant to subsection 43.2.M below, the local jurisdiction adopts and implements a low cost housing program.](#)

43.2.C Land Coverage: Prior to approving a subdivision of an existing structure, TRPA shall require submittal of a site plan showing all existing land coverage.

(1) Conversions of existing structures shall be subject to the excess coverage mitigation requirements in Section 20.5 to the extent the subdivision includes, or is approved in conjunction with, building modifications; and if applicable.

(2) Existing attached multi-family structures legally subdivided prior to February 10, 1972 that are exempt from the density provisions of 43.2.D below, are required to reduce excess land coverage pursuant to the requirements of that subsection.

43.2.D Density: Subdivision of existing structures which exceed the density standards in Chapter 21, or the applicable plan area statement, by more than 10 percent shall not be permitted.

(1) Determination of Density Standards

(a) Conversions of existing structures which exceed the density standards in Chapter 21 by no more than ten percent may be permitted provided TRPA finds that the resultant excess density is not inconsistent with the surrounding uses and the goals of the applicable plan area statement.

(b) For purposes of this chapter, the density standard for single family residential units shall be the multi-family density standard in the applicable plan area statement.

(c) If multi-family is not a permitted use, then the density standard for single family residential units in a subdivision or planned unit development shall be the density shown on the subdivision map provided the map, or the subdivision map does not depict a specific density, then the density standard for single family residential units shall be four units per acre.

(2) Exemptions: Existing attached multi-family structures legally subdivided prior to February 10, 1972 that are located in a Plan Area Statement identified as eligible for the Multi-Residential Incentive Program are exempt from this provision provided that the newly subdivided units remain attached and any excess coverage on-site is removed or mitigated through the Excess Coverage Program of Section 20.5 to the base allowed coverage for the project area applying for subdivision.

43.2.M Substitution of Local Housing Plans: If a local jurisdiction adopts and implements a program which addresses the need for low cost housing within its jurisdiction, then TRPA may, by ordinance, exempt projects within that jurisdiction from the provisions of subsection 43.2.B.

II. Option B. Limited Exemption: This option amends the following two subsections of Chapter 43.

This option provides the simplest amendment with a very limited application. Staff assumes that based on 30 years of project review without processing an application for a subdivision of a structure that had been subdivided and then reverted to acreage that this exemption will apply to a very limited category of properties. While the exemption of one or two projects may be insignificant in the Region, there will be a lost opportunity to achieve coverage and moderate housing mitigation.

43.2.B Low Cost Housing: Existing residential units which are low cost housing, as defined by 41.2.F, shall not be subdivided unless mitigation is provided on a unit by unit bases for the loss of low cost housing. Mitigation shall be in the form of construction of an equal number of low cost units, conversion of other structures to low cost housing, restriction of subdivided units to low cost housing units, or a combination of the above. Existing attached multi-family structures legally subdivided prior to February 10, 1972 shall be exempt from this provision, provided, that the newly subdivided units remain attached.

43.2.D Density: Subdivision of existing structures which exceed the density standards in Chapter 21, or the applicable plan area statement, by more than 10 percent shall not be permitted. Existing attached multi-family structures legally subdivided prior to February 10, 1972 shall be exempt from this provision, provided, that the newly subdivided units remain attached.

Required Findings: The following findings must be made prior to adopting the proposed amendments:

A. Chapter 6 Findings:

1. Finding: The project is consistent with, and will not adversely affect implementation of the Regional Plan, including all applicable Goals and Policies, Plan Area Statements and maps, the Code, and other TRPA plans and programs.

Rationale: Option A provides a very limited net benefit for land coverage and for moderate housing. Option B relies on its applicability to subdividing a very limited set of existing projects for a finding of no significant effect. The ordinance amendment will make the project consistent with the items listed above.

2. Finding: That the project will not cause the environmental thresholds to be exceeded.

Rationale: Both Options will not cause thresholds to be exceeded under this new Code language. Option A will minutely assist land coverage attainment.

3. Finding: Wherever federal, state and local air and water quality standards applicable for the Region, whichever are strictest, must be attained and maintained pursuant to Article V(d) of the Compact, the project meets or exceeds such standards.

Rationale: See Findings 1 and 2 above.

4. Finding: The Regional Plan and all of its elements, as implemented through the Code, Rules and other TRPA plans and programs, as amended, achieves and maintains the thresholds.

Rationale: See Findings 1 and 2 above.

Environmental Documentation: Option A provides a very limited net benefit for land coverage and for moderate housing. Option B relies on its applicability to subdividing a very limited set of existing projects for a finding of no significant effect. Based on the above analysis and completion of an IEC, a Finding Of No Significant Effect based on no environmental impacts were identified that cannot be mitigated to a less than significant level.

If there are any questions regarding this agenda item, please contact Coleen Shade at (775) 588-4547 or at coleens@trpa.org.

Attachments: A. Minutes of January 2004 Governing Board Meeting Minutes
B. Hoffman Appeal Staff Summary

XIII. APPEALS

- A. Appeal of Executive Director Denial of Subdivision Application, Ancil Hoffman, 210 Robin Drive, Washoe County APN 132-212-02, TRPA File No. 20031159

Associate Planner Melissa Shaw provided a PowerPoint presentation on the project's history and explained the Executive Director's denial of a request to subdivide an existing four-unit structure. The Director's denial was based on the fact the subdivision did not meet density standards or the low cost housing definition. Ms. Shaw's presentation addressed density, low cost housing, unit size and sale price and rental costs, Washoe County's zoning of the parcel, the status of code and application information on TRPA's web site, project alternatives, and staff's response to Mr. Hoffman's appeal points.

Mr. Ancil Hoffman III addressed the Board on density, the low income threshold, and the level of staff assistance in his processing of the application. He summarized his staff contacts and previous assurances he could convert the fourplex to a condominium because of its compliance with zoning and density provisions and its compliance with the application criteria as set forth in the TRPA's web site and packet materials. He provided information on discrepancies between Washoe County and TRPA density limits and the amendment of the low cost housing and rental figures which had occurred while his application was being reviewed by TRPA. The out-of-date numbers were still reflected in the TRPA's application packets. He had completed extensive renovation of the building to bring it up to condominium standards over the last two years in compliance with Washoe County requirements and had spent \$120,000 in the process on fire walls, sound proofing, plumbing, and electrical work. At no time during the two-year review process was he advised by TRPA staff that the low income housing standards had gone up since the original submittal and that he would be required to meet those new standards.

Agency Counsel John Marshall explained that a finding regarding a project's consistency with the code was required at the time the Board or Executive Director acted to approve a project.

Mr. Waldie suggested it was unfair to an applicant who had invested money in the process to be advised initially that everything was in compliance and satisfactory, only to find after the lengthy review that the application was denied because the ordinance had changed. At a minimum TRPA should advise all applicants in the pipeline of potential amendments which may change a project's outcome.

Mr. Marshall summarized the Ninth Circuit Court 1984 determination regarding the fairness question. The court addressed environmental changes over time and the requirement for TRPA to make specific findings at the time it made its decisions. In 1984, TRPA attempted to grandfather a lot of projects under the old Regional Plan; the Ninth Circuit Court disallowed this and required project actions to be taken in accordance with the current plan. This was the legal precedent TRPA was working with. Staff had discussed how to work within its legal constraints to come up with a system to minimize processing time or to somehow address the fairness issue in another way.

While recognizing that the proposal could be denied based either on the density issue or the low income housing requirements, Mr. Smith agreed that there was an injustice done in the change over time caused by the low cost housing numbers.

Mr. Galloway explained that the Washoe County staff disagreed with the disqualification over density. Taken in the context of the TRPA ordinance, a reasonable interpretation was that the property should not be subdivided if it would create new very small parcels unless they were to be in a low cost housing area. This did not meet that situation, because the density already was at 21 units per acre. A higher density than what existed was not being created. If the only argument that remained was the low cost housing change, TRPA may have a liability and due notice issue. As he recalled, the Board's action to modify the ordinance was simply an update of housing costs to recognize inflation. HUD's figures were used, not the cost of living changes.

Ms. Shahri Masters, with Prudential Nevada Realty, on behalf of the applicant, suggested that the density concern should not apply, because the four units were built 45 years ago. The density rules should apply only to new development, not to something constructed prior to TRPA's existence. With regard to the low income levels, the economy had not grown enough to justify the change in the low income figures used by TRPA. The Agency should relook at the low income threshold and at its rules for advising the public of regulation and process amendments.

Mr. Hoffman commented on his reasons for not wishing to accept TRPA's proposed alternatives.

After more discussion, Mr. Singlaub commented on the fact that under TRPA's existing rules the Executive Director denial was appropriate. Several things needed fixing. The zoning in place on the property since 1972 was not a surprise; Washoe County and TRPA did not agree on the density in this particular Plan Area, but both agreed that they needed to work together to agree on density for this area. The basis for the density was coverage, and this building had been in noncompliance with TRPA zoning since 1972. TRPA as a rule took no action on these matters until an application was brought in for a change of some type. While there was no variance provision in the code, there should be some kind of relief, such as allowing the purchase of additional coverage. Coverage was the basis for the density restriction. This could be accomplished by a code amendment in the next few months. If the Board was uncomfortable with

using HUD figures in its low cost definitions, the Board could direct staff to come up with something that was more market based. Buildings adjacent to this project had been converted to condominiums. It was embarrassing that TRPA's web site information was out of date, and this would be corrected and would not happen again. Mr. Singlaub also commented on possible amendments to the review process to provide more coordination between the date applications were complete and final TRPA action. This would address the problem of changing code provisions during the review process.

Mr. Waldie suggested that TRPA was considerably responsible for what had happened in this case and had some duty to mitigate the damage it had caused. While the policy may be correct, everything in this record showed that Mr. Hoffman had acted in good conscience and was misled by TRPA's misinformation.

Mr. Swobe suggested that the Executive Director denial of the request was valid; Board approval could be viewed as a variance.

Mr. Singlaub agreed that approval of the request would be setting a precedent and was a concern. Another option was to work up a code change that allowed acquisition of coverage in order to grant the four-unit density. TRPA could defer action on the matter in order for staff to look at the low cost housing numbers and come back at a later meeting.

The Board members discussed possible options, problems with the low cost housing numbers, the correct application of current density standards, and the timing of possible code amendments. Mr. Marshall reminded the Board that the code clearly required an applicant to comply with density standards in subdivision of a structure.

MOTION by Mr. Swobe to continue the Hoffman appeal for two months.

Ms. Rochelle Nason, for the League to Save Lake Tahoe, noted she was not taking a position on this specific appeal but advised the Board that there was misinformation floating around on the issues being discussed. They were more complex than seen at first glance. Some of the proposed solutions were broad and far-reaching and could require extensive environmental documentation. If the inclination was that some kind of injustice was done here, she urged the Board to give direction to staff to craft the narrowest exception possible to permit what was being requested, without doing bizarre things to the density requirements. These had been in effect since the early 1970s. She urged the Board not to get into coverage, density, low cost, affordable housing and variance issues.

Mr. Swobe explained that his motion to continue the matter was for staff to come up with a recommendation back to the Board.

Mr. Slaven suggested that the Agency's web site should contain a disclaimer and include a provision for ensuring the latest information was available.

The motion carried unanimously.

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STAFF SUMMARY

Application Type: Appeal of Executive Director Denial of Subdivision Application

Appellant: Ancil Hoffman (“Mr. Hoffman” or “the appellant”)

Agency Staff: Melissa Shaw, AICP, Associate Planner
Jordan Kahn, Assistant Agency Counsel

Location: 210 Robin Drive, Washoe County, NV
Assessor’s Parcel Number 132-212-02

TRPA File: Number 20031159

Staff Recommendation: Staff recommends that the Governing Board deny the subject appeal and affirm the Executive Director’s determination. The required actions are set forth below.

Appeal Description: The appellant is appealing the denial of his application to subdivide an existing four-unit structure. After working unsuccessfully with Mr. Hoffman to arrive at a project that could be permitted, staff denied the application. Staff could not permit the project as proposed for the following independent reasons:

1. TRPA Density Standards. The TRPA Plan Area Statement in which the project is proposed allows 15 units per acre, or a total of two units for this project area (three with the density bonus). The proposed four-unit project density exceeds the allowed density.
2. Low Income Housing Requirements. Because the project meets the definition of low-income housing, its subdivision is not permitted unless mitigation is provided for each unit of low-income housing lost by the subdivision (see Attachment A, TRPA Code Section 43.2.B). There was no mitigation proposed for the loss of low cost housing with the subdivision application.

In issuing the denial, staff presented Mr. Hoffman with several alternatives, including the ability to subdivide three of the four units provided the three units are deed restricted for sale and rental to those earning low cost incomes. See Attachment B, TRPA staff denial dated October 2, 2003. Mr. Hoffman has chosen to pursue this appeal instead.

Background: On December 24, 2002, Mr. Hoffman applied to TRPA to subdivide an existing four-unit residential structure located in Plan Area Statement 046, Incline Village Residential (each unit consists of three bedrooms). The application was determined to be complete on April 30, 2003, and after staff review it was denied on October 2, 2003. A chronology of events illustrating the project history follows:

**Table 1
Chronology of Events
Hoffman Subdivision Application**

Date	Event	Action
November 16, 1966	Lake Haven III Condominium Plat Recorded in Washoe County	Original subdivision of subject parcel.
January 29, 1968	Lake Haven III Condominium Plat Reversion to Subdivision Lot Recorded in Washoe County	Reverted the subdivision to acreage.
August 21, 2002	Hoffman subdivision application submitted to TRPA, stamped in error at the counter, and returned to Mr. Hoffman because key items were missing (e.g. land capability verification).	No action. Application returned.
September 22, 2002	Effective date of new TRPA Code of Ordinances Low Income Housing Requirements (adopted by Governing Board on July 24, 2002)	New code requirements into effect.
October 29, 2002	Land Capability Verification complete.	Information to applicant.
November 26, 2002	TRPA Land Coverage Verification issued.	Information to applicant.
December 24, 2002	Application received by TRPA.	Submitted for 30-day project review.
January 14, 2003	Notice of Incomplete Application. Several items requested, including subdivision map.	Request for additional information deadline 2/14/03.
February 4, 2003	Second Notice of Incomplete Application.	Request for additional information deadline 2/28/03.
March 4, 2003	Applicant requested extension (via telephone) to extend deadline.	Deadline approved to 3/24/03
April 1, 2003	Applicant requested extension of incomplete deadline	Extension approved to April 30, 2003
April 30, 2003	Additional information submitted, including subdivision map with density information.	Application determined complete.
May 8, 2003	Mr. Hoffman informed that application complete.	Complete letter sent.
June 20, 2003	Washoe County Parcel Map Review Committee approves subdivision with conditions.	Washoe County approval, effective for 2 years.
July 2, 2003	Additional information submitted (May 2003 appraisal report).	Requested by TRPA to complete review.
September 5 and 25, 2003	Telephone call with applicant regarding density issue 9/5; met with applicant regarding density and low cost housing issues 9/25. Options discussed.	Meeting between staff and applicant to discuss issues.
October 2, 2003	Staff review complete and letter to applicant prepared.	Application denied.

Alternatives: TRPA staff presented Mr. Hoffman with the following alternatives to the denial that was ultimately issued:

- A. Reduce the density of the project to three units, and “bank” the fourth residential unit of use. The banked unit of use could be sold or used at another location to develop a low cost residential unit. The remaining units must be deed restricted as low-cost housing.
- B. Request an amendment to the Subdivision Standards of the TRPA Code of Ordinances to allow the conversion of existing structures to increase the density by more than 10 percent.
- C. Deed restrict all four units to affordable housing and then subdivide those units. The project is located in Plan Area Statement 046, Incline Village Residential, which has Special Designation as a preferred affordable housing location, and is eligible to receive bonus units under Chapter 35 of the TRPA Code of Ordinances Bonus Unit Incentive Program. If the project were deed restricted to affordable housing, there is a provision under Sec. 21.3.B of the TRPA Code where the project area density may be increased by 25 percent.

Additionally, under the Bonus Unit Incentive Program, bonus units could be assigned to the project for the affordable housing units, enabling the four existing low-cost housing units to be transferred to another location. By combining the provision for affordable housing density bonus (25%) with the 10% density increase allowed for subdivision of existing units, the requested four unit subdivision density would closely meet the required density. (The project area would need to be increased by an additional 129 square feet, potentially through the abandonment of a small right-of-way, for example.)

Bases for Appeal: Mr. Hoffman appeals each of the two independent reasons why TRPA denied his application. The TRPA rationale for each is set forth below, together with Mr. Hoffman’s arguments and TRPA’s responses thereto.

- I. TRPA Density Standards. Mr. Hoffman’s proposed subdivision does not meet the TRPA density standards for the Incline Village Plan Area Statement (15 units per acre) and was denied in part based on density. Density standards permitted in the Incline Village Residential Plan Area Statement is a maximum of 15 units per acre. Three units are permitted for this size project area under this density, summarized in Table 2. As proposed, the four-unit subdivision application exceeds the TRPA density standards. The applicant was informed that the project did not meet TRPA density standards after the project application was made complete.

Table 2

Maximum Allowable Density for a Market-Rate Subdivision of an Existing Structure	
Parcel Size (in square feet)	8,319 square feet
Parcel Size (in acres)	$8,319/43,560 = \mathbf{0.19097}$ acres
Base Allowable Density (15 units/acre)	$0.19097 \text{ acres} \times 15 \text{ units per acre} = 2.86466 \text{ units}$ (equal to 2 units after rounding)
Additional Density Allowed (10%)	$2.86466 \text{ units} \times 1.1 = 3.15114 \text{ units}$ (equal to 3 units after rounding)

Mr. Hoffman obtained approval from Washoe County in June 2003 to subdivide the four-unit project. The County zoning, Medium Density Urban, allows 21 units per acre (as opposed to TRPA's density of 15 units per acre). TRPA and the County are independent jurisdictions with their own regulations concerning development. Although the Incline Village Community Plan ("IVCP") (adopted by the County) contains a uniform density standard, Mr. Hoffman's proposal is outside of the IVCP and within PAS 046, which has not been adopted by the County. Consequently, Mr. Hoffman must obtain approval from both jurisdictions after each independently applies its own regulations.

Mr. Hoffman's appeal of the density issue is based on his alleged reliance on oral and written representations by TRPA that he only had to comply with the County density standard. See Mr. Hoffman's Statement of Appeal, Attachment C at 1. TRPA disagrees, as no staff member ever provided such misinformation and the TRPA Subdivision of Existing Structures Information Packet speaks directly to the issue: "To subdivide a structure, the project area must comply with density requirements. The density requirements . . . are listed in Chapter 21 and Section 43.2.D of the TRPA Code of Ordinances, the applicable plan area statement or Community Plan."

Mr. Hoffman also contends that the density issue should have been identified earlier in the review process (within 30 days of its receipt on December 24, 2002). However, TRPA staff did not deem the application complete until having received the requisite density information from Mr. Hoffman on April 30, 2003. Prior to taking action on the subdivision, in September 2003, TRPA staff met with Mr. Hoffman specifically to address concerns regarding the density of his proposed subdivision.

- II. Low Income Housing Requirements. Based on a May 2003 appraisal submitted by Mr. Hoffman, TRPA staff determined that all four units in his project met the definition of low cost housing. Preservation of housing for those having low incomes is a goal of TRPA's Regional Plan (Chapter II: Land Use Element, Housing Sub-element, Goal # 1, Policy # 1), and is implemented through the TRPA Code of Ordinances. Subdivision of existing residential units that are low cost housing is not permitted unless mitigation is provided on a unit for unit basis for the loss of low cost housing. The original 1993 TRPA Low Cost Housing Ordinance employed the following definition:

[L]ow cost housing are residential units, which are sold or rented at prices and rates affordable to households or tenants that earn not more than 120 percent of the median income. Low cost housing units shall not include units with a per unit value greater than \$85,000 or units with a fair rental value greater than \$1,000 per month, as adjusted annually (TRPA Code Section 41.2.F (1993)).

In July 2002, the TRPA Governing Board amended the Low Cost Housing Ordinance. Effective September 22, 2002, TRPA defines low cost housing as follows:

[L]ow cost housing are residential units which are sold or rented at prices and rates affordable to households or tenants that earn not more than 120 percent of the applicable county median income. Low cost housing shall not include units with a rental rate that exceeds 30% of the tenant's monthly gross income, or sell at rates that exceed 2.5% [sic] times the gross annual household income. (TRPA Code Section 41.2.F (2002)).

Using this new Code definition, TRPA staff calculated the low cost housing rental and sales rates for Washoe County as follows:

- Low Cost Housing Annual Income Limit¹: $\$62,100 \times 120\% = \$74,520$
- Gross Monthly Income: $\$74,520/12 = \$6,210$
- Low Cost Housing Max. Total Monthly Housing Cost²: $\$6,210 \times 30\% = \mathbf{\$1,863}$
- Maximum Sales Rate per unit: $\$74,520 \times 2.5\% = \$186,300$

The May 2003 appraisal submitted by Mr. Hoffman concluded that the monthly rental for each unit was estimated to be \$1,300. Because this rental value is less than the \$1,863 cap, Mr. Hoffman's subdivision application can only be approved if the units are mitigated, e.g. through a deed restricted to maintain their status as low cost housing.

Mr. Hoffman appeals the TRPA application of the low cost housing requirements to his project by arguing that the previous TRPA definition of low cost housing should have been used. Although application of the old definition would not have resulted in the determination that his units qualify as low cost housing (as the \$1,300 monthly rent is above the previous \$1,000 cap), TRPA staff properly employed the updated definition. TRPA applies the ordinances in effect when acting on project applications – the date of submission is irrelevant. Moreover, TRPA did not accept the application until December 2002, well after the new definition became effective (Mr. Hoffman's August 2002 submission was rejected because it was missing several critical items).

Mr. Hoffman further argues that the old low cost housing definition should have been applied to his project because that definition was set forth in the TRPA Subdivision of Existing Structures Information Packet and Checklist, even after the Low Cost Housing Ordinance was amended. TRPA agrees that the application packet was not timely updated to reflect the new definition, but this fact does not exempt applicants from having to comply with adopted regulations. The information packet was immediately updated after the oversight was brought to the attention of TRPA. Moreover, TRPA staff has adopted a protocol to ensure that new code language is reflected in the application materials in a timely manner.

Finally, Mr. Hoffman challenges the effectiveness of the new TRPA Low Cost Housing Ordinance. Using a series of calculations, Mr. Hoffman concludes that: "no one in their right mind would convert to low income housing." Attachment C at 2. Although TRPA staff takes issue with his calculations (which improperly equate monthly rent with the total housing cost that includes utilities), the application of an effective ordinance to a specific project is not an appropriate forum to revisit the debate over whether the ordinance should have been

¹ Source: Median Family Income from Housing and Urban Development Home Program Income Limits for family of four, 2/2003, Reno MSA, Nevada. During discussions with Mr. Hoffman, TRPA staff based its maximum housing costs on a family of four. However, upon further review, TRPA staff has determined that a family of six is the more appropriate size because Mr. Hoffman's units each have three bedrooms. Using a family of six does not affect staff's designation of the units as low cost housing, but would enable Mr. Hoffman to obtain greater rental or sales values if he opts to deed restrict them as low cost housing. For a family of six, staff calculates the total monthly housing cost to be \$2,170 and the maximum sales rate to be \$217,000. These figures are calculated based on a family of six in Washoe County having a median income of \$72,333; the low-cost housing annual income limit is 86,800.

² The total monthly housing cost includes all utility expenses as well as rent. The limits above were based on a family size of four. The subject units, with three bedrooms, could accommodate a larger family size with a higher maximum total housing cost (based on median income for a family of six).

adopted in the first place. And in response to Mr. Hoffman's conclusion, TRPA staff notes that the purpose of the ordinance is to retain housing that meets the low cost definition, not to encourage the voluntary conversion of property to low cost housing.

Conclusion: TRPA staff properly applied the Subdivision Density requirements, and Low Cost Housing Ordinance to mitigate the loss of housing being rented at low cost rates. Staff recommends that the Governing Board deny the Mr. Hoffman's appeal and affirm the Executive Director's determination.

Required Actions: Agency staff recommends that the Governing Board deny the appeal by making the following motion based on this staff summary and evidence contained in the record:

A motion to approve the appeal, which motion should fail. (To approve the appeal, a 5/9 vote is required – five in the affirmative from Nevada.)

Attachments:

1. TRPA Code of Ordinances Section 43.2.B, Low Cost Housing requirements (2002)
2. TRPA letter dated October 2, 2003, denying Mr. Hoffman's subdivision application
3. Appellant's Statement of Appeal (with Exhibits)

Note: These attachments will not appear in the TRPA Governing Board packet. Each Governing Board member will receive a separate package including the exhibits. Members of the public wishing to view these attachments should contact Cherry Jacques, Project Review Division Executive Assistant, at (775) 588-4547 extension 277 or via e-mail at: cjacques@trpa.org.

TAHOE REGIONAL PLANNING AGENCY

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March 2, 2003

MEMORANDUM

To: TRPA Advisory Planning Commission

From: TRPA Staff

Subject: Notice of Comment Period for the Tahoe City Marina Master Plan Draft Environmental Impact Statement (DEIS) and Draft Environmental Impact Report (DEIR) Sixty (60) Day Public Review And Comment Period

Proposed Action: No formal action is proposed for this item at this time. Staff is requesting comments on the content of the environmental document for the Tahoe City Marina Master Plan DEIS/DEIR.

Staff Recommendation: Staff recommends that a public hearing be held to gather public input and comments on the DEIS/DEIR.

Background: Marinas provide a major means of public access to lake Tahoe. Seeing the Tahoe Basin from the Lake gives the viewer a very different and revealing perspective and appreciation of the area than from any viewpoint on land. A marina that is poorly designed, operated or maintained can detract from the community and be a source of environmental impacts not to mention a safety hazard. The goal of all parties concerned with marina planning and operation is that marinas make a positive contribution to the Lake Tahoe environment and community.

The environmental threshold for recreation as defined in the Recreation Element of the Goals and Policies states that "it shall be the policy of the TRPA Governing Body in the development of the Regional Plan to preserve and enhance the high quality recreational experience. In developing the Regional Plan, the staff and Governing Board shall consider provisions for additional access, where lawful and feasible, to the shorezone and high quality undeveloped areas for low density recreational uses". In addition, the threshold also states that the "TRPA Governing Board in development of the Regional Plan is to establish and ensure a fair share of the total Basin capacity for outdoor recreation is available to the general public". Marinas can make an important contribution toward meeting the recreation threshold in ensuring that high quality recreational opportunities are available to the general public.

Section 54.12 of the TRPA Code of Ordinances outlines the development standards for Marinas in the Tahoe Region. Subsection 54.12.A states that applications for new marinas and major expansions of existing marinas shall include an EIS pursuant to Chapter 5 and a master plan pursuant to Chapter 16. At a minimum, the EIS shall assess potential impacts on beach erosion, prime fish habitat, water quality and clarity, and determine the public need for the project.

In 1990 TRPA adopted Marina Master Plan Guidelines. These guidelines state that any marina expansion of more than 10 slips or 10 buoys requires a TRPA-approved master plan. Chapter 16 identifies master plan as a project oriented plan. Adoption of a master plan is an amendment to the Regional Plan which has some very specific procedural requirements. The master plan, once adopted, becomes a supplement to the applicable plan area statement (PAS) or community plan (CP). In this case, the Tahoe City Marina Master Plan will supplement the Tahoe City Community Plan.

Proposed Master Plan and Environmental Process

The Tahoe City Marina contracted with Design Workshop to develop and draft the Master Plan. The Master Plan Improvements are proposed to be developed under a two phase approach.

Phase I (Project Level Analysis)

- 905 linear feet of new marina bulkhead
- 81 additional boat slips (81 PAOTs)
- New parking structure with a net increase of 84 parking spaces
- Relocation of the boat launch facilities
- Relocation and construction of new fuel pumpout and Bilge pumpout facilities
- Boat rack storage to accommodate up to 12 boats
- New harbor master and public service building

Phase II (Programmatic Level Analysis)

- 1000 linear feet of additional marina bulkhead
- 100 new slips, removal of 41 existing buoys (net gain of 60 PAOTS)

The environmental document in which these improvement are analyzed is a Draft Environmental Impact Statement (DEIS)/Draft Environmental Impact Report (DEIR). TRPA is the lead agency for the EIS and Placer County will be the lead agency for the EIR under CEQA.

A five-party contract has been signed between TRPA, the Tahoe City Marina, Placer County, Tahoe City Public Utility District (for the Harbor Master Building/PumpStation) and Placer County Redevelopment (parking structure). The selected environmental document consultant is EDAW. The role of this consultant is to facilitate the environmental process and draft the EIS/EIR. On May 14, 2001 a public scoping meeting was held to gather public input and comments on the scope of issues that should be analyzed in the environmental document. The next step in the environmental documentation process is this Notice of Comment Period (a sixty (60) day circulation for public review and comment) which began on **February 27, 2004** and will close on **April 26, 2004**. The purpose of the sixty (60) day Comment Period is to gather input from both public and private entities regarding the adequacy of disclosure for the issues, concerns, impacts, and mitigations that are addressed in the environmental document.

If you have any questions regarding this agenda item please call Coleen Shade at (775) 588-4547 or email to coleens@trpa.org. If you wish to comment on the environmental document in writing, please send your comments in writing to:

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MEMORANDUM

March 2, 2004

To: TRPA Advisory Planning Commission
From: TRPA Staff
Subject: Annual Water Quality Report

Proposed Action: This is an informational item only. The 2003 Water Quality report will be sent under a different cover and posted on the TRPA website.

Background: The Water Quality Program publishes an annual report on the status of the water quality thresholds, WQ1 through 7. This is in addition to the Threshold Evaluation, which is completed every five years. The previous annual Water Quality report was completed in 1999, followed by the 2001 Threshold Evaluation.

Discussion: The 2003 report includes data for Secchi depth, turbidity, phytoplankton productivity, and tributary nutrient chemistry up to 2002. It also contains information on other related programs such as the EIP, BMP Implementation, and SEZ Restoration.

If there are any comments or questions regarding this agenda item, please contact Rita Whitney at 775-588-4547, ext. 258, or via email at rwhitney@trpa.org.

