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MEMORANDUM

TO: Carson City Board of Supervisors
FROM: Todd E. Reese, Deputy District Attorney
DATE: November 16, 2021
RE: *Appeal from the Carson City Growth Management Commission.
Item 26.A on November 18, 2021 Board of Supervisors Agenda*

BACKGROUND

This memorandum is intended to provide general guidance to the Board of Supervisors (“Board”) on the issues of legal standing and the appropriate standard of review in the Board’s consideration of an administrative appeal by Raceway Car Wash Company of the Carson City Growth Management Commission’s decision on September 29, 2021, to approve a request by Capitol Carwash, LLC, the applicant, to use 29,500 gallons per day of water at a car wash located at located at 3390 South Carson Street, APN 009-111-28.

DISCUSSION

1. Legal Standing

When considering an administrative appeal, the Board must first determine whether the appellant has standing to appeal before reaching the merits of the appeal. City of N. Las Vegas v. Eighth Judicial Dist. Court., 122 Nev. 1197, 1204-05, 147 P.3d 1109, 1114-15 (2006). If the Board determines that the appellant does not have standing, then the Board’s consideration of the matter comes to an end. Id. at 1210, 147 P.3d at 1118 (holding that if the Board does not decide whether a party has standing, the Board’s “administrative authority to hear and rule on the merits of [an] appeal [is] never properly invoked.”).

Persons with standing to appeal are defined in Carson City Municipal Code (“CCMC”) 12.02.060(4)(a), which provides “Any project applicant or any aggrieved party may file an appeal as specified in this section provided that the appellant has participated in the administrative process prior to filing the appeal.” Thus, the applicant can appeal, or any “aggrieved party” can appeal, provided that the person appealing “participated in the administrative process.”

Participation in the administrative process generally includes, at a minimum, participating in public comment at the hearing where the decision being appealed was made, whether by providing written or verbal comment. The reference to the applicant is fairly straight forward, but the applicant must have participated in the administrative process.

The term “aggrieved party” is not defined in Carson City by the CCMC or by the Nevada Revised Statutes. Several categories of persons may be an aggrieved party. These categories include persons who (1) are sent notice of the hearing on an application, if noticing is required; and (2) suffer special or peculiar damage that differs from that of the general public and is not simply a matter of public concern.

First, in general, any person who was required to be sent written notice of the hearing on an application may be considered an “aggrieved party.” The noticing provisions under CCMC 18.02.045 are designed to provide notice of a potential change to the use of land to persons within a specified radius around the land at issue. For Growth Management Commission matters, however, noticing under CCMC 18.02.045 is not required.

Second, a person has standing if he or she can demonstrate that he or she suffered special or peculiar damage differing in kind from the general public. Kay v. Nunez, 122 Nev. 1100, 1106, 146 P.3d 801, 805-06 (2006) (citing L & T Corp. v. Henderson, 98 Nev. 501, 504, 654 P.2d 1015, 1016-1017 (1982)). Persons outside the noticing area but near to the property may fall into this category. For example, if evidence demonstrated that the use produced particulate matter that fell on the adjacent area, a person owning property within that area might be an aggrieved party.

This is not a complete list; other persons could qualify as an aggrieved party. The general requirements, however, are that the person have a personal or property right that is adversely or substantially affected in a manner different from the general public. See id., at 1106, 146 P.3d at 805-06.

In the matter before the Board, there is no question that appellant Raceway Car Wash Company “participated in the administrative process prior to filing the appeal.” As to whether appellant Raceway Car Wash Company is an “aggrieved party,” while notice was not required under CCMC 18.02.045 for this matter, appellant Raceway Car Wash Company would likely have been within, or at least very close to, the area specified by the noticing provisions, which is a 600 foot radius, CCMC 18.02.045(3)(b)(2) (for property larger than 1 acre and less than 40 acres; APN 009-111-28 is larger than 1 acre), or an expanded radius to include 30 unique property owners, CCMC 18.02.045(3)(b)(4). In addition, appellant Raceway Car Wash Company alleges in its November 17, 2021, correspondence that it has experienced a lack of adequate water pressure from the Carson City water system during period of high usage. Appellant alleges that adding a significant new user on this water line will have a negative effect on its water pressure. If accurate, this impact to appellant’s property is a special or peculiar impact to appellant’s property that differs in kind from the general public. Based on these facts, it is the recommendation of this office that the Board of Supervisors find that appellant Raceway Car Wash Company has standing to appeal the Growth Management Commission’s September

29, 2021, decision to approve the use of 29,500 gallons per day of water at a car wash located at located at 3390 South Carson Street, APN 009-111-28.

2. Standard of Review

The standard of review for an appeal is whether the board, committee, or commission abused its discretion when it made its decision. City of Reno v. Estate of Wells, 110 Nev. 1218, 1222-23, 885 P.2d 545, 548-49 (1994). The Board does not sit in place of the board, committee, or commission, and does not consider the matter anew. An abuse of discretion is acting in an arbitrary or capricious manner. Id.

Arbitrary action is a baseless decision, one that ignores the law, one that was made without any apparent grounds for the decision, or one that was made “just because we did it.” Id.; City Council of Reno v. Irvine, 102 Nev. 277, 279, 721 P.2d 371, 373 (1986). An arbitrary decision is also one that is not supported by substantial evidence. Id. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. City of Reno, 110 Nev. at 1222, 885 P.2d at 548.

A capricious decision is a decision based on “a sudden turn of mind without apparent motive; a whim.” Id. (quoting City Council of Reno, 102 Nev. at 278-79, 721 P.2d at 372).

After considering the material provided to the Board of Supervisors in support of Item 24.A of the agenda, and considering the standard of review, it appears that the Growth Management Commission carefully considered the facts and arguments before it, and did not make an arbitrary or capricious decision, and thus did not abuse its discretion.



**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF WATER RESOURCES**

901 South Stewart Street, Suite 2002

Carson City, Nevada 89701-5250

(775) 684-2800 • Fax (775) 684-2811

<http://water.nv.gov>

October 18, 2021

Vivian Carvin
1806 Alexander Hamilton Dr
Reno, NV 89509

RE: Permit 27822 (Certificate) 9209

Dear Vivian:

Please be advised that per your request received on October 8, 2021, it is hereby confirmed that ownership of **Permit 27822 (Certificate) 9209** for 0.71 acre-feet at a diversion rate of 0.08 cubic-feet per second is in the name of RUTLEDGE, RALPH A. for Commercial Use at Carson City parcel 009-111-28. Details of the above permit(s), including the current ownership, are viewable online. First, click on "Water Rights Database"; then "Permit Search".

Also be advised that the afore mentioned permit is found to be in good standing currently with the Division of Water Resources. The amount of water referenced in the notice is the actual amount of water that a person is entitled to use. This is not a determination of ownership.

This confirmation reflects only the information that has been filed with this office and may be subject to amendment upon receipt of additional documentation. The owner is responsible for notifying the State Engineer's office of any change of address in writing. If you have any questions, please contact this office at (775) 684-2800.

Sincerely,

A handwritten signature in blue ink, appearing to read "Daniel I. Randles".

Daniel I. Randles
Staff III Supervisor, Associate Engineer

DIR/km

Cc: Carson City Planning Division,

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JAMES R. CAVILIA
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November 17, 2021

Mayor Lori Bagwell and
Carson City Board of Supervisors
City of Carson City
201 N. Carson Street, Suite 2
Carson City, NV 89701

Via Email and Hand Delivery
LBagwell@carson.org

Re: Growth Management Commission Appeal;
3390 S. Carson Street, APN 009-111-28

Dear Mayor Bagwell and Supervisors:

This law firm represents Raceway Car Wash Company (“Raceway”), the owner and operator of Sierra Car Wash located at 3130 S. Carson Street. Raceway is respectfully challenging the Growth Management Commission’s (“GMC”) approval of a request by Capitol Car Wash, LLC (“Applicant”) to utilize more than 15,000 gallons of water per day for the operation of a drive-through car wash at 3390 S. Carson St. This matter is scheduled for your consideration on Thursday, November 18th at 1:30 p.m.

As stated in our earlier correspondence to the GMC, Raceway operates 37 car washes in the western United States and has continuously operated the Sierra Car Wash on S. Carson St. for more than six years. During that time, the Sierra Car Wash has never, on average, utilized more than 11,000 gallons of water per day over any single month. Specifically, in June of this year, Sierra Car Wash washed 11,700 cars and utilized an average of 26 gallons per car. This is an average water use of only 10,400 gallons per day (“gpd”) during what was Sierra Car Wash’s busiest month in the past six years.

It is also our understanding that another new car wash is currently being developed at 2110 N. Carson St. and that this new facility has not and will not seek to use more than 15,000 gallons of water per day. Whatever the demand is for additional car wash facilities in Carson City, it seems clear that such facilities can successfully operate without having to exceed the established maximum daily water use threshold of 15,000 gallons per day.

In its presentation of information to the GMC, the Applicant repeatedly references and makes comparisons to large car wash facilities in the Reno/Sparks area. As you are well aware, Carson City is not Reno/Sparks and such comparisons are simply not appropriate. As I am sure you all know, Carson City does have a relatively new, large, high-speed car wash, Surf Thru, located on U.S. Highway 50. As your staff will attest, this new, large car wash facility in Carson City does not utilize more than 15,000 gallons of water per day. The Applicant’s reliance upon statistics and water usage data from large car washes in the Truckee Meadows is inappropriate and should not be relied upon as a basis for allowing nearly double the maximum daily water usage threshold for commercial and industrial uses established by this Board.

In its submittals to the City and in statements before the GMC, the Applicant has expressed an expectation of capturing as much as 5.8% of the daily traffic that passes by this South Carson Street location. Initially it must be pointed out that these projections are once again based upon data from large car washes in the Truckee Meadows. Additionally, as an operator of dozens of car washes in the western United States, Raceway asserts that the accepted industry standard is a capture rate of 1 to 3% of the daily traffic, not 5.8%. There is simply no good reason to allow the Applicant to use twice as much water per day than any other car wash in Carson City.

As I have indicated in previous correspondence to the GMC earlier this year, at times of high volume at Raceway's Sierra Car Wash, only 200± yards north of this new proposed car wash, there has been a lack of adequate water pressure to supply sufficient water to the system. In this regard, Sierra Car Wash installed its own equipment to ensure the adequate flow of water.¹ Adding a user of nearly twice the maximum daily usage that will be served by the same supply line will undoubtedly have a negative effect on other users in the vicinity.

With regard to the amount of water being requested by this applicant, it cannot be emphasized enough that the City's own analysis of three similar businesses in Carson City shows an average daily use of 9,336 gpd and upper daily use of 14,904 gpd. There is simply no justification for this business to utilize twice as much water as other similar operations in Carson City. The City's analysis also shows that this applicant is seeking to utilize approximately 16.5 acre-feet more water annually than is allowed by Carson City's existing ordinance. Based upon the Carson City Municipal Code definition of Water Equivalent Residential Customer, this 16.5 acre-feet is enough water to supply 34 residential units in Carson City. This proposed use for another car wash in Carson City is simply not a sufficient basis to justify the amount of water being requested.

Sierra Car Wash and others have clearly demonstrated that car wash facilities can be effectively and successfully operated in Carson City while staying within the water use constraints that have been thoughtfully established by the GMC and this Board. In order to protect the precious and finite water resources of our region and to ensure a level playing field with similar businesses in Carson City, the request to use 29,500 gallons of water per day at the above-referenced location should not have been granted.

Carson City Municipal Code §18.12.070 provides that decisions about exceeding the maximum daily water threshold must be based on, among other things, "[o]ther effects of water usage." The most obvious effect of allocating more than the maximum daily amount of water to a single user is that this additional amount of water will no longer be available for another use in Carson City.

As you are well aware, Carson City does not have "extra" water resources. The City has an established finite amount of water available. This Board, over the past generation, has established a growth management plan, in large part, to protect that finite resource. In implementing that plan, it is imperative that you act prudently in making decisions about how that resource should be utilized generally. And specifically, you must determine whether a request to utilize more than the accepted or normal amount of water should be granted based upon the value of that proposed use to our community as a whole.

¹ Enclosed is correspondence from the vice-president of maintenance and facilities for Sierra Car Wash describing the water pressure issues being experienced at Sierra Car Wash in Carson City.

Correspondence re 3390 S. Carson Street
November 17, 2021
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Based upon all of the information made available to you, I respectfully submit that the establishment of a car wash on South Carson Street does not justify the use of nearly twice the amount of water used by any similar operation in Carson City. While a new "state of the art" car wash may be nice, it is not a sufficient reason to permanently allocate approximately 16.5 acre-feet of water that could be used for another business or up to 34 residential units in Carson City. If Carson City did have "extra" water, this would not be a sensible use of that water. On this basis, the decision of the GMC should be reversed.

Thank you for your careful consideration of this very important issue.

If you have any questions related to the information provided or if you would like any additional information from Raceway about its operation in Carson City, please contact me.

Very truly yours,

Allison MacKenzie, Ltd.

By: 
JAMES R. CAVILIA, ESQ.

JRC/sp

Encl.

cc: Raceway Car Wash Company

Hope Sullivan, Community Development Director

via email

4890-5288-6275, v. 1



To Whom it May Concern:

September 27, 2021

At times Sierra Car Wash located at 3130 S Carson Street suffers from lack of water pressure supplied to the site through the municipal water system. This phenomenon seems to happen during intervals when there seems to be high demand on the water system caused by local use, including the car wash. The typical hours that the wash is affected by low water pressure are between 10am – 4pm. It's not uncommon to see water pressure drop below 10 psi as measured with local gauges.

During these intervals of low water pressure, the car wash is affected in several ways. The most prominent way the wash is affected is in the soap, detergents, and wax applications delivered in the car wash tunnel. Without sufficient water pressure supplied to the site, the mixing stations cannot properly dilute these products, thus the performance of car wash cleaning process is severely diminished.

These issues caused by low water pressure have caused a strain on the business in terms of customer complaints, equipment service and replacement costs as well as service costs associated with the cleaning of clogged drains.

In recent months, because of this low pressure, the car wash has made capital improvements to increase the water pressure at the site and to enhance the delivery process of the cleaning products. These improvements have been necessitated by the poor incoming water pressure. Eight of the other regional Sierra Car Wash locations have not needed these improvements because they are supplied with sufficient water pressure to properly run the operations.

Sincerely,

A handwritten signature in blue ink, appearing to read "JP", is written over a horizontal line.

Josh Perrault
VP Maintenance and Facilities – Raceway Car Wash Company

2398 E Camelback Road Ste 615, Phoenix, AZ 85016