

NYE COUNTY AGENDA INFORMATION FORM

☒ Action ☐ Presentation ☐ Presentation & Action

Department: Planning		Agenda Date:	
Category: Regular Agenda Item		April 20, 2010	
Contact: Steve Osborne		Phone: 775-751-4029	Continued from meeting of:
Return to: Steve Osborne	Location: Pahrump Planning		Phone: 775-751-4029
Action requested: (Include what, with whom, when, where, why, how much (\$) and terms) <p>Discussion, deliberation and possible decision on a request to set a date, time and location for a Public Hearing on Nye County Resolution No. 2010-15: A Resolution enacting a moratorium on the enforcement of Nye County Code Section 17.04.905.C (Abandonment of Grandfathered Uses).</p>			
Complete description of requested action: (Include, if applicable, background, impact, long-term commitment, existing county policy, future goals, obtained by competitive bid, accountability measures)			
<hr/> <p>Any information provided after the agenda is published or during the meeting of the Commissioners will require you to provide 20 copies: one for each Commissioner, one for the Clerk, one for the District Attorney, one for the Public and two for the County Manager. Contracts or documents requiring signature must be submitted with three original copies.</p>			
<u>Expenditure Impact by FY(s):</u> (Provide detail on Financial Form)			
<div style="text-align: right;"> <input type="checkbox"/> No financial impact </div>			

Routing & Approval (Sign & Date)

1. Dept	Date	6.	Date
2.	Date	7. HR	Date
3.	Date	8. Legal	Date
4.	Date	9. Finance	Date
5.	Date	10. County Manager	<input checked="" type="checkbox"/> Place on Agenda Date

Board of County Commissioners Action

<input type="checkbox"/> Approved	<input type="checkbox"/> Disapproved	<input type="checkbox"/> Amended as follows:
Clerk of the Board	Date	

gp

**NYE COUNTY BOARD OF COUNTY COMMISSIONERS
PLANNING DEPARTMENT STAFF REPORT**

Meeting Date: April 20, 2010

AGENDA ITEMS

Request to Set a Date, Time and Location for a Public Hearing on Resolution No. 2010-15:

Discussion, deliberation and possible decision on a request to set a date, time and location for a Public Hearing on Nye County Resolution No. 2010-15: A Resolution enacting a moratorium on the enforcement of Nye County Code Section 17.04.905.C (Abandonment of Grandfathered Uses).

GENERAL INFORMATION SUMMARY

The Pahrump Regional Planning Commission (RPC) recently requested that the Nye County Planning Department review the existing language of Section 17.04.905 of the Zoning Ordinance for the purpose of potentially revising the language of the Zoning Ordinance that pertains to the grandfathered use six month provision of the abandonment section (Section 17.04.905.C) of Title 17.

On March 10, 2010, the RPC decided to not amend the Zoning Ordinance, rather, directed staff to proceed with the implementation an 18 month moratorium for the enforcement of the time limits specified in 17.04.905 (Grandfathered Uses). A moratorium cannot be instituted by the RPC, only the Board of County Commissioners can do so.

RPC MINUTES

RPC Minutes (from the March 10, 2010 RPC meeting):

Jack Lohman reviewed the staff report, project synopsis; the Pahrump Regional Planning Commission recently requested that the Nye County Planning Department to review the existing language of Section 17.04.905 of the Zoning Ordinance for the purpose of potentially revising the language of the Zoning ordinance that pertains to the grandfathered use six month provision of the abandonment section of Title 17. It was recommended by the Planning Commission to write the Bill to allow up to 12 months before the deeds abandoned. With the opportunity prior to that expiration to apply for a Conditional Use Permit through the Planning Commission to extend up to 18 months total. There was also a discussion about the possibility to do a moratorium for enforcement for 18 months. The first situation the Planning Commission has the authority to recommend that Bill to the BOCC. The Planning Commission does not have the authority to do a moratorium, but they can recommend to the BOCC to consider it. Staff recommends they take a look at it, they think it is what they wanted them to do. If the decide to go the other route he suggests the reject this Bill and make a recommendation to the BOCC to develop a moratorium for 18 months.

Commissioner Borasky asked legal counsel if that would meet the requirements of a moratorium. Does he know what needs to be done to impose a moratorium?

Jack Lohman stated he thinks if they want to do the moratorium, they recommend they continue this so they may refer this to the District Attorney's Office to find out the mechanics on how to do it. He thinks it can be done by a resolution but it would be beneficial to make sure there are no ramifications by doing it.

Commissioner Borasky stated the reason he brought that up was because you cannot impose a moratorium on just anything, there are specific conditions that have to be met. Planning Staff really needs to get that to the DA's office to make sure.

Jack Lohman stated they are simply talking about a concept. Staff does not have any specific information for them and they do not have a District Attorney's opinion. If they decide they do not want the Bill and are considering for them to do a moratorium then he would suggest have them refer it to the DA's office for a legal opinion to see what the mechanics are, what the pitfalls are and what the mind set has to be. In his experience, he worked in a community that had a moratorium that stopped all development for 2 years. That was a negative type of moratorium; it was legal however, it caused a lot of problems. In this case, they are given a benefit to individuals so it is not in a negative context. He does not know if that makes a difference in the findings but he thinks they should refer it to the DA to get some kind of information.

Commissioner Parker stated yes and while they are doing that, she asked that they asked about making this retroactive because they have a number of properties that have gone past the six months and they are starting to deteriorate.

Jack Lohman stated that is certainly a question they can ask, he does see some potential problems, however they can certainly ask the question.

Commissioner Kimball stated this is about the third month they have been discussing this, if they do not do anything else tonight, they need to get the issue clear so that the attorneys know what they are making a recommendation on. It seems to him they have kick this around enough and they should be sending something to the BOCC and let the DA's Office, in the intervene, in 30 days do their homework and tell the BOCC what the right answer is. The reason that the moratorium has come up is because the text amendment, while it is an effort to help people who were losing their grandfathering during hard economic time, actually imposes a financial burden on those same people. They have to pay a fee to come in and get an extension and they may be required to come in for a second extension. That would be a permanent change to the ordinance that they are not sure is necessary because they do not know the extent of the problem. The reason the moratorium has come up is that it does not require a permanent change or impose a financial burden on anybody. It just gives everyone 18 months so they can figure out how many of those people do have problem. They would then have 18 months to do something with their property within any burden being placed on them. Interesting to know that the County Manager as you know has appointed an Ad Hoc Committee of citizens, developers, private business men and others to be looking at ways to help the community, especially to help applicants get things done more quickly. There were six people at the meeting last week and it was a six to nothing vote to ask him to support the moratorium here tonight. The moratorium make sense he is not sure a permanent change to the ordinance does make sense or if it is necessary. If grandfathering is eventually suppose to go away this ordinance prolongs it. He thinks the moratorium is what's fair; it gives people who are struggling right now a chance to keep their property. It allows them to do so without having to pay \$350 to come ask them about it. And it gives them a chance to gather information over the 18 months to see what extent that problem really is. They can always pass the text amendment later if it is necessary. It seems to him taking another move to debate it in the DA's Office and another discussion here before they send something to the BOCC, as Commissioner Parker pointed out, there are people now about to lose their property. Let us get on with it.

Jack Lohman stated if they decide to go with the moratorium, they need to make a recommendation to the BOCC with a caveat that they have them refer it for the legal ramifications if they decide to do it. So they would recommend for them to do this. If they take that course of action, they will have to go through the legal channels with the DA to fine-tune it.

Commissioner Masterson stated they could get rid of it tonight by doing that way.

Jack Lohman stated they can do it both ways but they can streamline it better if they just recommend it tonight, if they want to do it, and let the BOCC refer it to the DA's Office if they decide to do it.

Commissioner Borasky stated he would check on it tomorrow about what requirements there is to put a moratorium in place.

Commissioner Opatik stated last month she stated she did not think that changing an ordinance was a great idea because it is law. All that they are doing is changing it so they need another process to change it back. She had asked for something temporary and the moratorium is a temporary fix for this particular problem. It gives them time to collect data, to find out if it is a problem and if it is a problem, they can then change the law. She said it last month and she will say it again this month that she would agree with a moratorium.

Public Comment – 6:51 p.m.

Public Comment Closed

Commissioner Kimball moved that they propose a moratorium on grandfathering for 18 months to the BOCC, in the interim, 30 days asking the DA's Office to do legal background to see exactly what steps would have to be taken to impose such a moratorium.

Commissioner Opatik asked if they had to reject the Bill first.

Commissioner Masterson stated yes he thinks they need to reject the Bill first before them.

Commissioner Kimball asked why they have to reject the Bill.

Commissioner Opatik and Staff stated it is because it was presented and notice.

Commissioner Kimball motioned to deny Bill No. 2010-03 based on the idea that a moratorium is a better solution to the problem. Commissioner Opatik seconded. Roll call vote: Kimball, yes; Opatik, yes; Skinner, yes; Tolladay, yes; Masterson, yes; Parker, yes. Motion to deny passes 6-0

Commissioner Kimball moved that they propose a moratorium on to the BOCC asking the DA's Office to do the legal legwork in the interim. Commissioner Opatik seconded. Roll call vote: Kimball, yes; Opatik, yes; Skinner, yes; Tolladay, yes; Masterson, yes; Parker, yes. Motion to propose passes 6-0.

Jack Lohman corrected a comment, it was not noticed because you do not have to notice a text amendment but they should reject it anyway.

RECOMMENDATION

Recommended BOCC Motion: "I motion to set the date, time, and location for a public hearing regarding Nye County Resolution No. 2010-15 for May 17, 2010 at 11:00 a.m., in the Bob Rudd Community Center, Pahrump, Nevada."

1 **NYE COUNTY RESOLUTION NO. 2010-15: A RESOLUTION ENACTING A**
2 **MORATORIUM ON THE ENFORCEMENT OF NYE COUNTY CODE SECTION**
3 **17.04.905.C (ABANDONMENT OF GRANDFATHERED USES).**

4 **WHEREAS**, pursuant to NRS 278.020, for the purpose of promoting the health, safety and
5 the general welfare of the residents of Nye County, the Nye County Board of County
6 Commissioners (Board) is authorized and empowered to regulate and restrict the improvement of
7 land and to control the location and soundness of structures; and

8 **WHEREAS**, any such regulation, restriction and control must take into account the
9 potential impairment of natural resources and the total population which the available natural
10 resources will support without unreasonable impairment; and

11 **WHEREAS**, on July 18, 2000, the Board adopted Ordinance 229 establishing Title 17 of
12 the Nye County Code and adding Section 17.04, which provides regulations concerning zoning
13 districts, variances, special exceptions and conditional use permits within the Pahrump Regional
14 Planning District (PRPD); and

15 **WHEREAS**, on June 16, 2004, the Board adopted Ordinance 285 amending Title 17,
16 Section 17.04 of the Nye County Code, by establishing general development standards within the
17 PRPD in order to comply with the Goals, Objectives and Policies of the November 19, 2003
18 Master Plan Update for the PRPD; and

19 **WHEREAS**, in consideration of hardships which property owners within the community
20 are experiencing because of current economic conditions, the Board hereby finds that the
21 temporary suspension of certain regulations related to the abandonment of grandfathered uses will
22 result in further promoting the goals and objectives of the County in regards to promoting the
23 economic welfare of the community.

24 **NOW THEREFORE, BE IT RESOLVED** by the Board that effective immediately it does
25 hereby enact a moratorium on the enforcement of Section 17.04.905.C (Abandonment of
Grandfathered Uses) for a period of eighteen (18) months.

ADOPTED this 17th day of May 2010.

BY: _____
Gary Hollis, Chairman
Nye County Board of
County Commissioners

ATTEST: _____
Sandra "Sam" Merlino
County Clerk and Ex-Officio
Clerk of the Board

17.04.905 GRANDFATHERED USES

- A. Continuance of Use. A lawful use of land or buildings not in conformance with the regulations prescribed in this Chapter existing at the time of the adoption of the original Ordinance may be continued as follows in this Section.
- B. Expansion of Grandfathered Buildings. A grandfathered use of land or building shall not be extended or expanded, nor additional structures be added except by Conditional Use Permit. Minor modifications and maintenance necessary to said continuing condition is permitted.
- C. Abandonment of Grandfathered Use. A lawful use of grandfathered land or buildings, including house trailers, which is operationally abandoned or discontinued for a period of six (6) consecutive months or more, shall not be resumed.
- D. Repair and Construction of Damaged Buildings. Grandfathered buildings which have been damaged or destroyed by natural calamity or fire, may be repaired or reconstructed within (18) eighteen months from the date of damage, with an application for a building permit placed within six months from the date of damage, provided the repaired building is appropriate to, and is not an expansion of, the previous use.
- E. Compliance. Provisions of this Section shall comply with the uses of property or to buildings, which may become nonconforming by reason of amendment or supplement to this Chapter or the Land Use Plan.
- F. Changing to Another Nonconforming/Grandfathered Use. A grandfathered use, building or structure may not be changed to any other nonconforming use.
- G. Change of Ownership. A grandfathered use can continue with a change of ownership of the property.
- H. Sexually Oriented Businesses.
 - 1. Any sexually oriented business lawfully operating on December 21, 2004, that is in violation of the Sexually Oriented Business Conditions and Safeguards of Article V of this Chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 36 months, unless sooner terminated for any reason or voluntarily discontinued for a period of six (6) months or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,500 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.
 - 2. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in Subsection "1" above within 1,500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.