

PUBLIC COMMENTS

TO: Honorable Nevada County Board of Supervisors

RE: Andresen Encroachment Permit Appeal Hearing 9-22-20

My comments are herein offered for your consideration in resolving conflicts regarding proposed [improvements] to Floriston Avenue in our Hirschdale community within the Truckee River canyon and as part of the Tahoe National Forest in the Eastern portion of Nevada County. Having read the extensive documents produced over many years regarding achieving and maintaining the safe and compatible use of this treasured area for full and seasonal residents and property owners, I remain appalled at the nasty attitudes and outright vitriol expressly directed at the Andresens integrity in various means of communication by some of our neighbors. It appears that County interaction with some neighbors [Brunson,Rivara,Minnis,Fehrt] and not others has resulted in conflicts that have been very detrimental to evaluating issues, and animosity prevails towards the Andresens. Several changes in County leadership and conflicting objectives further complicate timely resolve.

Larry Andresen has routinely plowed and graded, [the unmaintained by NVCO] Floriston Avenue thoroughfare to accommodate reasonable vehicle/pedestrian travel during many seasons of unpredictable, often confining, weather conditions that could hazard occupants of the community, as well as clearing Iceland Road of obstacles for access by his and various government and utility company vehicles to properties served in the extended community along the Truckee River canyon. Upon reading his proposed improvement plan for Floriston Avenue and design submittals to Nevada County Public Works, it appeared he gave careful consideration to concerns regarding existing encroachments on the thoroughfare by several property owners. Remedies to the encroachments seemed reasonable to accomplish appropriately safe passage through the community.

In the early 1970's, our McBride family routinely dodged 18 wheeler logging trucks storming along Iceland Road and Floriston Avenue as we bicycled, hiked, fished summers and skied winters. The tinkling bells on herds of sheep being directed along the same [roadway] to pastures beyond still ring clear in my reminiscences of the early days spent in our beloved Truckee River canyon. Cordiality among neighbors was the norm. Our son Erin sat for hours with Chris Mortensen on a boulder in her yard as she wept over the tragic automobile death of her youngest son one summer. His love for fishing began with tutoring by neighbor "Brownie" for best timing, locating strategic spots on the river, and fostering respect for protecting the environs. Although our cabin was recently trashed by the roaming bear, we did not act on the permit acquired to capture it as we received intimidating threats to our person and property. We cleaned up the mess, temporarily remain with boarded access points and hope for no more intrusions. As a widow facing family health challenges myself, I certainly understand delays in achieving satisfactory resolve of complex property maintenance issues requiring active family and community participation.

My experience with Larry and Cheryl Andresen and their expressed concerns for the wellbeing of all have seemed sincerely compatible with protecting the neighborhood from human, animal, and weather assaults on comfortable living in this quiet community. Removing obstructions to the ROW take time, ongoing cooperation, and consideration of the parties involved. Obstacles to safe roadway use should not hamper remedial action. As California is being consumed by challenges to overcome wildfires, particularly in remote communities such as Hirschdale, it seems inconceivable that urgent attention to improving ingress and egress to the community should be further delayed. My impression has been that the Andresens would be among the very first to respond to neighbor's needs in time of any crisis, be it accidents, illness, bear invasions, weather or wildfire threats. I have relied on their attention to protecting our family property use and reasonable approach to action and concerns of the broader community.

Respectfully submitted to you by Martha McBride on September 17, 2020.

Dear Honorable Members of the Board:

We are Ron and Virginia Legg, and own the residence located at the end of Floriston Avenue, 10965 Floriston Avenue. We purchased this home in 1969 and it was our primary residence many years ago. More recently, we rented the home out to a deputy sheriff in Sierra County. Unfortunately, our renter was forced to move out due to repeated instances where she was unable to exit our property because of multiple encroachments and parking in the middle of the road at 10949 Floriston Avenue.

When we first purchased our property, the property located at 10949 Floriston Avenue was developed only with a single-family home. Over the years, multiple unpermitted sheds and other structures were constructed on that property, which encroached into the public-right-of way and the traditional and customary path of travel. Several improvements were constructed encroaching onto our property, and we were forced to engage legal counsel to get them removed. We have attempted to work with the County to resolve the hazards created at 10949 Floriston Avenue via the multiple unpermitted structures and the trespass onto the public right of way, but the County has taken little to no action, and to our knowledge, no fines have been assessed against the property owner despite repeated instances of work, including permanent encroachments, within the County right-of-way.

The encroachments have increased over the years, negatively impacting the use and enjoyment of our property and creating substantial public safety hazards. As we mentioned, our renters ultimately had to move out of our property because they were repeatedly blocked from entering or exiting the property by cars parked in the middle of the public right of way at 10949 Floriston Avenue. There have also been several times when we have been unable to get to our property because of cars parked at 10949 in the middle of the road. Other times, propane or other service trucks have blocked the entrance to our house for significant periods of time due to their inability to maneuver past the encroaching bush, encroaching railroad ties, and the cars parked at 10949 directly in the right of way. These illegal encroachments within the right of way create very serious safety issues and impact the ability of residents to evacuate or emergency personnel to access residences and other areas beyond the encroachments at 10949.

Access issues are further exacerbated during the winter months. Nevada County does not conduct snow removal operations on Floriston Avenue. Larry Andresen has provided voluntary snow removal services on Floriston Avenue for many years. Absent Larry's snow removal services, Floriston Avenue would be unpassable during storm events. As the bush grew and the encroachments in front of 10949 extended further into the right of way, snow removal and winter access became increasingly difficult.

Finally, there has been multiple instances of other parties doing unpermitted work in the Floriston County right-of-way. At 10949 Floriston Avenue, an unpermitted shed, unpermitted traffic obstructions such as railroad ties, and unpermitted drainage facilities were installed in the right of way and currently impede access. At 10941 Floriston Avenue, a septic tank was purportedly installed in the right-of-way without permits, and the aforementioned bush was maintained without appropriate permits and authorizations. All of these improvements are hostile to the use of a public right way for access, yet despite multiple complaints, the County never issued violations or fined the offenders. The County has in fact now provided after the fact permits for these encroachments, without any notice to the neighborhood or opportunity to comment.

The County has a duty to keep the road clear for public and emergency access. A public right of way should not be used for private sheds, illegal drainage, unpermitted septic tanks, nor should bushes be allowed to grow in the middle of the road. We are asking that the Andresen appeal be granted and that Floriston Avenue be restored to the purpose for which it was granted to the County, as a public right of way, and not for permanent encroachments for a few private residences.

Thank you for your attention to our comments.

Ron and Virginia Legg



September 10, 2020

Lauren V. Neuhaus
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
D. 916.319.4643
lauren.neuhaus@stoel.com

VIA EMAIL
VIA U.S. FIRST-CLASS MAIL

Clerk of the Board
Nevada County
950 Maidu Avenue, Suite 200
Nevada City, CA 95959
clerkofboard@co.nevada.ca.us

Re: Request for Correction to Notice of Violation Appeal Notice for Hearing

Dear Clerk of the Board,

Our clients, Larry and Cheryl Andresen, received a letter from Trisha Tillotson, Director of Public Works, dated August 20, 2020, regarding the public hearing scheduled for September 22, 2020, on an alleged encroachment permit violation on Floriston Ave. A true and correct copy of this letter is attached for reference.

We submit this letter to request a correction to an erroneous statement in the letter. Specifically, the letter states:

This letter is to notify you of a public hearing tentatively scheduled for September 22, 2020 at a regular meeting of the Board of Supervisors regarding an appeal of an alleged Encroachment Permit violation involving unpermitted work on Floriston Avenue resulting in the removal of permitted encroachments *and damage to water utilities.*" (emphasis added)

Mr. Andresen did not cause damage to any water utilities and there is no alleged damage to water utilities in Nevada County's Notice of Violation to Mr. Andresen, dated December 20, 2019. A true and correct copy of the Notice of Violation is attached for reference.

The December 20, 2019 Notice of Violation purports to require Mr. Andresen to repair water utilities as a condition of his pending encroachment permit application. This requirement is unsupported by any claim or allegation of fault and disputed in Mr. Andresen's appeal. The Board of Supervisors will have the opportunity to hear this item on September 22, 2020 at the appeal hearing. In the interim, we request that the record be corrected that Mr. Andresen did not cause damage to water utilities and that damage to water utilities is accordingly improperly included in Ms. Tillotson's August 20, 2020.

September 10, 2020

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We appreciate your time correcting this item. If you would like to speak further about this, please do not hesitate to contact me or Michael Brown.

Respectfully submitted,



Lauren V. Neuhaus

cc: Michael Brown, Michael.Brown@stoel.com
Trisha Tillotson, Director of Public Works, Trisha.Tillotson@co.nevada.ca.us

Attachments: August 20, 2020 letter
December 20, 2020 Notice of Violation

ATTACHMENT 1



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
DEPARTMENT OF PUBLIC WORKS
950 MAIDU AVENUE, NEVADA CITY, CA 95959-8617
(530) 265-1411 FAX (530) 265-9849 www.mynevadacounty.com

Sean Powers
Community Development Agency Director

Trisha Tillotson
Director of Public Works

August 20, 2020

10930, 10931, 10941, 10949, 10953 and 10965 Floriston Avenue Property Owners

RE: Encroachment Permit Violation on Floriston Ave

Dear Property Owners,

This letter is to notify you of a public hearing tentatively scheduled for September 22, 2020 at a regular meeting of the Board of Supervisors regarding an appeal of an alleged Encroachment Permit violation involving unpermitted work on Floriston Avenue resulting in the removal of permitted encroachments and damage to water utilities. This work occurred on November 26, 2019 in the County road right of way fronting 10930, 10931, 10941, 10949, 10953 and 10965 Floriston Avenue.

Please note that the Board of Supervisors meeting may be held remotely pursuant to Governor Gavin Newsom's Executive Order pertaining to the convening of public meetings in response to the COVID-19 pandemic. The meeting agenda, including the start time of the meeting, public hearing time and all supporting documents regarding this matter may be obtained in advance (typically two working days in advance) of the meeting at <https://nevco.legistar.com/Calendar.aspx>. If the meeting is held remotely, the following directly involved property/utility owners will receive instructions prior to the meeting to participate in the presentation and live discussion of the item: 10941, 10949 and 10953 Floriston Avenue and the Truckee Donner Public Utility District. All others may provide general comments on the item by following the instructions posted with the agenda.

Should you have any questions, please reach out to me at (530) 265-1411 or by email at Trisha.Tillotson@co.nevada.ca.us.

Sincerely,

Trisha Tillotson
Director of Public Works

Cc: Truckee Donner Public Utility District

ATTACHMENT 2



COUNTY OF NEVADA
COMMUNITY DEVELOPMENT AGENCY
DEPARTMENT OF PUBLIC WORKS
950 MAIDU AVENUE, NEVADA CITY, CA 95959-8617
(530) 265-1411 FAX (530) 265-9849 www.mynevadacounty.com

Sean Powers
Community Development Agency Director

Trisha Tillotson
Director of Public Works

December 20, 2019

Larry Andresen
PO Box 34047
Truckee, CA 96160

RE: Encroachment Permit Violation on Floriston Ave

Hello Mr. Andresen,

This letter is a follow up to my December 3, 2019 letter in which you were notified to cease and desist all unpermitted work in the County right of way, specifically on Floriston Avenue in Nevada County. The Nevada County Department of Public Works has investigated the situation (see attached pictures) and has determined that unpermitted work has occurred and is a violation of Nevada County General Code Section G-IV 4.A Regulating Roadway Encroachments. Furthermore, per Section G-IV 4.A.29 Restoring Highways, Section G-IV 4.A.32 Relocation of Facilities, Section G-IV 4.A.39 Violations/infractions and G-IV-4.A.43 Cost of Enforcement of the Nevada County General Code, you are responsible for restoring the highway, relocation of water facilities, subject to a mandatory fine of \$100 for working in the County right of way without a permit and subject to the cost of enforcement up to \$5,000 per violation.

While the unpermitted work has already occurred, your encroachment permit application and plans must be revised and resubmitted within 30 days and reflect the following work:

Highway restoration is necessary as follows:

1. Replacement of railroad ties fronting 10949 Floriston Avenue.
2. Relocation of permitted personal property fronting 10949 Floriston Avenue.
3. Replacement of a landscape barrier fronting 10941 Floriston Avenue by a licensed landscape contractor. The estimated costs of replacing the landscape barrier are attached for reference and are estimated at \$5,880.

Relocation/Possible Repair of Facilities, specifically water utilities under the purview of the Truckee Donner Public Utility District (TDPUD), for 10941 and 10949 Floriston Avenue. The cost to relocate the water utilities has been estimated by the TDPUD to be \$9,020.00. In addition, the water line is leaking and requires repair of which you may also be responsible for. You must work with the TDPUD directly to have them perform all the work necessary to complete the relocation. This will be a condition of your encroachment permit.

Submittal of the revised plan does not constitute approval of an encroachment permit. The submitted plans will require review and ultimately approval plus the development of conditions of approval prior to issuance of the permit.

In addition, the cost of enforcement is \$970.02 plus the \$100 mandatory fine, for a total cost of \$1,070.02 see attached invoice, which must be paid within 30 days of the date of this letter otherwise a late penalty of 10% will be applied.

You may appeal this fine to the Board of Supervisors by filing a statement of appeal with the Clerk of the Board within 30 days of the date of this letter. Forms, a fee schedule and additional information are available in the Clerk of the Boards office or online at: <https://www.mynevadacounty.com/878/Land-Use-Appeals>. If appealed, an item will be scheduled with the Board of Supervisors per the Nevada County Land Use and Development Code Section L-II 5.12 through 5.15.

Should you have any questions, please reach out to me at (530) 265-1411 or by email at Trisha.Tillotson@co.nevada.ca.us.

Sincerely,



Trisha Tillotson
Director of Public Works

Cc: Code Compliance
Tahoe Donner Public Utility District
CDA Fiscal

Landscape Estimate to Replace Rock Planter and Shrubs

FOR RICHARD AND MARY FEHRT AT 10941 FLORISTON AVE., TRUCKEE, CA

Cost to remove road base and excavate for rock planter and shrubs

2 men, 1 day @\$250 per person/day (includes disposal fee)	\$550
Backhoe rental and delivery fee (\$190)	\$610
Dump truck rental	\$400

Cost to purchase rocks and set rocks in place around planter

2 men, 2 days @ \$250 per person/day	\$500
Cost to purchase rocks	\$1,600
Backhoe rental, 2 days @ \$420/day (includes pickup fee \$190)	\$1030

Cost for purchasing and installing soil for planter

6 yards planter mix @ \$45/yard	\$270
1 man ½ day @ \$250/day	\$125

Cost to purchase and install plants in rock planter

4-5 gallon can Syringa vulgaris (Lilac) @ \$35/ea	\$140
6-1 gallon can Mahonia repens (Oregon grape) @ \$15/ea	\$90
1-15 gallon can Cornus florida (Dogwood)	\$90
2 men ½ day @ \$250/day per person	\$250

Cost to purchase gravel and to spread around planter to blend with driveway

2 yards gravel @ \$50/yard(includes delivery fee)	\$100
1 man ½ day @ \$250/day	\$125

Total cost: **\$5880**















WELCOME
SLOWLY
NO STOP
NO TURN
NO PULL
PRIVATE





Julie Patterson-Hunter

From: Mary and Dick Fehrt <[REDACTED]>
Sent: Thursday, September 10, 2020 12:37 PM
To: Clerk of Board; BOS Public Comment
Cc: Trisha Tillotson
Subject: Response to Andresen Public Hearing Scheduled for September 22, 2020
Attachments: IMG_0184.jpeg; IMG_0187.jpeg; IMG_0188.jpeg; IMG_0216.jpeg; IMG_0223.jpeg; IMG_0226.jpeg; IMG_0227.jpeg; IMG_0230.jpeg; IMG_0232.jpeg

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Honorable Members of the Board of Supervisors County of Nevada –

My name is Richard Fehrt and my wife Mary and I reside at [REDACTED] Mary and I also own a vacation home in the Hirschdale Community located at [REDACTED] which we purchased in July, 1972.

My familiarity and history of the Hirschdale area dates back to 1952 when my family started camping at Juniper Creek along the Truckee River when I was 11 years old. The Hirschdale Road exit we took off of the old Highway 40 was at the old Chicken House restaurant and store with the gas pumps out front. We would follow the lower road past the few cabins and after we crossed the bridge at Juniper Creek we turned left and followed the bumpy road down to the camping area at Juniper Creek. Although Floriston Avenue and the road to Juniper Creek has not changed, it follows the same historical pathway as it did in 1952, a number of other things have changed over the past few years since Larry and Cheryl Andresen moved into the Hirschdale Community and acquired property adjacent to Peter and Jamie Rivara's home. Some of these changes are outlined in the following timeline:

MAY 20, 2012

We first became aware of Larry Andresen's campaign to widen Floriston Avenue on Sunday, May 20, 2012. We received an email and pictures from one of our neighbors in Hirschdale telling us that Larry Andresen was measuring and spray-painting lines on our property and the Minnis property adjacent to us. The spray-painted lines depicted where Larry Andresen thought the right-of-way was located.

APRIL 1, 2015

We received an email from Richard Anderson, Supervisor for District 5, Nevada County stating: "I've recently heard concerns that the County intends to "two-lane" or otherwise modify the road that goes through Hirschdale. There are no such plans. The County understands that the current path of travel has been in place for many years, and has no intention or reason to modify it."

SEPTEMBER 26th and 27th 2015

Larry Andresen installs fence into the middle of Floriston Avenue which he believes is his property even though it has been used as a public road for over 50 years.

SEPTEMBER 30th 2015

We received an email from Richard Anderson in which he states: "...we are aware of the fence that Mr. Andresen has placed in the road this past weekend. In addition, I've notified CalFire and the Truckee Fire Protection District of the resulting impediment for emergency vehicles. The County is beginning the process to have it removed, although this may take a while – the fence is on his property, which extends into the historical "path of travel"."

AUGUST 9th 2016

Nevada County Public Hearing regarding Encroachment Permit application filed by Larry and Cheryl Andresen to widen and change the historical "path of travel" of Floriston Avenue.

SEPTEMBER 9th 2016

Richard Anderson, in an email sent to Duane Brunson, stated: "...that in regards to an application that Larry Andresen had filed with the County to straighten, widen, and grade Floriston Avenue along the County right of way (ROW) will not be accepted or otherwise acted upon by the County. The County's focus is on formalizing the existing path of travel as the legal roadway, and having a court recognize this would remove any basis for reverting to the existing ROW for the road."

JUNE 22, 2017

Sent email to Alison Barratt Green, County Counsel Nevada County relating to her that in the 45 years that we have owned the property at [REDACTED] the road alignment of Floriston Avenue had remained the same until Larry Andresen placed a fence in the middle of the roadway. All of the infrastructure, utility poles, fire hydrants, mail boxes and water lines and water boxes have been constructed along this historic roadway. We also stated that the rock planter, trees and shrubs provide privacy, dust control, and water drainage protection and we would be vehemently opposed to having it removed. We also informed her that our septic tank and leach field is located in our driveway and parking area behind the rock planter and needed to be protected. We also offered to purchase from the County the property that we thought was ours for 45 years.

APRIL 5th 2019

Sent email back to Chris Robyn of Bates/Winter Law (Representing Larry Andresen) after he sent an email asking to meet with us to discuss the rock planter at the front of our property. I told Mr. Robyn that I did not think it would be appropriate to meet with him at this time because of ongoing litigation and mediation with the parties involved (Minnis and Rivara). I told him that he could send us a copy of the proposed plan and we would comment on it. We never received a copy of the plan.

OCTOBER 7th 2019

Met with Trisha Tillotson at our property at [REDACTED] so she could see for herself the rock planter, trees and shrubs at the front of our property. At this meeting she suggested that perhaps we might consider submitting an Encroachment Permit for the rock planter, trees and shrubs at the front of our property. She indicated to us that the County had granted an Encroachment to Miriam Minnis for the railroad tie retaining wall at the edge of her property and that the Brunsons' our other neighbors had submitted an Encroachment Permit for a driveway.

OCTOBER 8th 2019

Sent Encroachment Permit Application Form to Nevada County Public Works to retain rock planter, trees and shrubs at the front of our cabin located at [REDACTED].

NOVEMBER 15th 2019

Sent email to Trisha Tillotson asking her to update us on the status of our Encroachment Permit. The last time we had corresponded you indicated to us that you hoped to take a look at the permit in the near future.

NOVEMBER 18th 2019

Trisha Tillotson sent an email saying: "With two permits for the same issue, we are making sure we have all information before making a decision on either permit. We have also had a Public Record Act Request that took additional time to respond to. I apologize for the time it is taking to review the permit and expect to have an answer in the next two weeks.

NOVEMBER 26th 2019

Larry Andresen illegally removes rock planter, trees and shrubs from the front of our property at 10941 Floriston Avenue, Truckee, CA. He also locates our water box below grade at the edge of Floriston Avenue and places a steel plate over the top of it. We now have to pry off the steel lid which is very heavy and lay in the roadway in order to turn on or off our water supply. Our water box needs to be moved onto our property and placed above grade for easy access. At the same time, he also illegally removed a railroad tie retaining wall from the front of the Minnis property next door.

DECEMBER 1st 2019

Sent email to Richard Anderson and Trisha Tillotson expressing our angst and asking what action can be taken against Larry Andresen. We also expressed our personal belief that Larry Andresen took this action as he felt that his Encroachment Permit was going to be denied and that our Encroachment Permit was going to be approved, especially since the County had approved permits for the Brunson's and the minnis's.

DECEMBER 2019

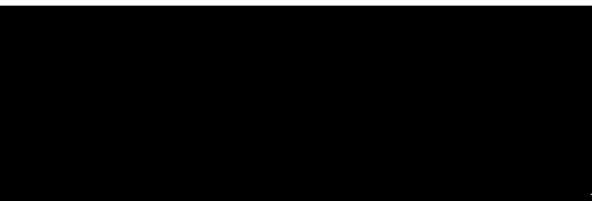
Sent cost estimate (\$5,880.) to Trisha Tillitson to replace rock planter, soil, trees and shrubs at the front of 10941 Floriston Avenue, Truckee, CA.

We believe that Larry Andresen took matters into his own hands when he illegally removed the rock planter, trees and shrubs and substantially changed our water box on November 26, 2019 and should be responsible for restoring them as they were prior to his actions.

Thank you for the opportunity to comment on this issue and for your consideration.

Respectfully,

Richard and Mary Fehrt





















From: [Neuhaus, Lauren V.](#)
To: [Julie Patterson-Hunter](#)
Cc: [Brown, Michael B.](#); [Forgeur, Dawn R.](#); [Nguyen, Ha T.](#); [Trisha Tillotson](#)
Subject: Letter to Board of Supervisors Regarding Andresens" 9/22 Appeal [SR-ACTIVE.FID4185985]
Date: Friday, September 18, 2020 4:04:17 PM
Attachments: [2020-09-18 Letter to Board of Supervisors\(108073136.1\).pdf](#)

CAUTION: This email originated from outside of County of Nevada email system. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Clerk of the Board,

Please find a letter for the Board of Supervisors regarding the Andresens' appeal next Tuesday, September 22, 2020 attached. Specifically, the letter objects to the proposed order of events during the hearing, and asks for any Supervisor who cannot proceed in an unbiased and neutral manner to be recused.

Thank you.

Sincerely,
Lauren

Lauren V. Neuhaus | Attorney
STOEL RIVES LLP | 500 Capitol Mall, Suite 1600 | Sacramento, CA 95814
Direct: (916) 319-4643
lauren.neuhaus@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com



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September 18, 2020

Lauren V. Neuhaus
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
D. 916.319.4643
lauren.neuhaus@stoel.com

VIA EMAIL

Nevada County Board of Supervisors
c/o Julie Patterson, Clerk of the Board
950 Maidu Avenue
Nevada City, CA 95959

Re: Objections to the Proposed Schedule and Participation of Certain Supervisors in the Andresen's Appeal, Scheduled for Hearing in Front of the Nevada County Board of Supervisors on September 22, 2020

Dear Honorable Members of the Board:

This firm represents Larry and Cheryl Andresen ("Andresens" or "Appellants") in regard to their appeal of the Public Works Department's Notice of Violation, issued on December 20, 2019, to the Board of Supervisors. A hearing on this matter is scheduled for September 22, 2020. We submit this letter to provide written objections to the Public Works Department's proposed schedule for the hearing, and to ask that Supervisor Anderson and any other Supervisors who participated in the County's efforts to condemn the Andresens' property in 2016 be recused from hearing this item due to an unacceptable risk of actual bias.

On September 17, 2020, the County posted the agenda, staff report, and the County's documentation for the Andresen's appeal on its website.¹ The staff presentation provides on slide 9 that the appeal hearing will proceed as follows:

- Staff presentation and statements from those directly impacted:
 - Fehrts
 - Minnis

¹ The agenda and agenda items were posted at:
<https://nevco.legistar.com/LegislationDetail.aspx?ID=4644562&GUID=DC6CD372-C56F-4733-9860-B07AB03779C6>, last accessed Sept. 18, 2020.

- Truckee Donner Public Utility District
 - Hear from Appellants, Andresens (15 minutes plus 15 minutes for proponent)
 - Hold a public hearing (3 minutes per person for comments)
 - Appellant Summation (10 minutes plus 10 minutes for proponent)
 - Public Rebuttal (2 minutes per person)
 - BOS Questions
 - Staff Summation

This proposed schedule does not comply with the County Code provision on appeals. Nevada County Code Section L-II 5.12, which governs appeals, states that the County shall conduct hearings as follows:

K. **Hearing Procedures.** At the time and place set for any hearing as provided for herein, the Board of Supervisors shall conduct any such appeal hearing as a full hearing de novo on the project, without limitation as to the issues that may be raised, or as to the evidence that may be received. Any such hearing shall be conducted as follows:

1. Staff presentation.
2. Presentation by appellant which shall be limited to 15 minutes.
3. Presentation by project proponent (if different party than appellant) which shall be limited to 15 minutes.
4. Public hearing: The Board may limit any person's input to not less than 3 minutes in which to give testimony.
5. Summation by project proponent - 10 minutes.
6. Summation by appellant - 10 minutes.
7. Rebuttal by members of the public - 2 minutes.
8. Staff summation.

The Code does not provide discretion to the Board or County staff to conduct appeals in a different order; it clearly states “[a]ny such hearing **shall** be conducted as follows.” As such, it is impermissible for the County to propose allowing anyone from the public to speak between the staff presentation and Appellants’ presentation. The County appears to be providing time for “statements from those directly impacted” by listing the Fehrts, Minnis, and Truckee Donner Public Utility District under “Staff presentation.” Statements from those impacted would be properly heard during the public hearing portion of the appeal, which follows Appellants’ presentation. This is Appellants’ appeal, and they have the right to speak directly after the Staff

Presentation. We therefore object to the County's proposed schedule and ask that the Board proceed as required under the County Code at the September 22, 2020 hearing.

Second, we object to Supervisor Anderson and any other Supervisor involved in the County's previous efforts to condemn part of the Andresens' property as a "solution" to the unlawful encroachments blocking Floriston Avenue from participating in the Andresens' appeal.

When a board of supervisors hears an appeal on a land use matter, it acts in an adjudicatory capacity. (*Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.) Within an adjudicatory capacity, the board must be "neutral and unbiased" in order to afford the appellant his or her procedural due process rights. (*Ibid.*) Allowing a biased decision maker to participate in a local government decision is enough to invalidate the decision. (See, e.g., *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470.)

Supervisor Anderson recused himself previously when the Board voted to accept the Andresens' appeal.² Supervisor Anderson has been intimately involved in opposing the Andresens' efforts to improve Floriston Avenue, and has demonstrated bias against the Andresens' by supporting the County initiating a lawsuit against the Andresens and the County's improper and unlawful efforts to condemn the Andresens' property in 2016. Supervisor Anderson should be recused from the appeal hearing in light of his history with this matter, and the unacceptable probability of actual bias in this appeal. By the same token, any Supervisor who participated and supported the County's condemnation actions against the Andresens in 2016 should be recused from the hearing.

We sincerely hope that the County will abide by its Code and conduct the hearing accordingly. In addition, we ask that the County recuse Supervisor Anderson and any other Supervisor who cannot hear this appeal in a neutral and unbiased manner. Thank you for your attention to this matter.

Respectfully submitted,



Lauren V. Neuhaus

cc: Michael Brown, Michael.Brown@stoel.com
Trisha Tillotson, Director of Public Works, Trisha.Tillotson@co.nevada.ca.us

² The minutes from the Board of Supervisor's February 11, 2020 meeting state: "Following a short break, Chair Hall called the meeting back into order and Supervisor Anderson recused himself from the agenda item discussion." (County of Nevada Summary Minutes for February 11, 2020 Meeting at p. 96, https://legistar.granicus.com/nevco/meetings/2020/2/1486_M_BOARD_OF_SUPERVISORS_20-02-11_SUMMARY_MINUTES.pdf (last accessed Sept. 18, 2020).)