

# COUNTY OF NEVADA

STATE OF CALIFORNIA

## BOARD OF SUPERVISORS

May 12, 2016

The Honorable Board of Supervisors  
950 Maidu Avenue  
Nevada City, CA 95959

**DATE OF MEETING:** May 24, 2016

**SUBJECT:** Resolution making findings, accepting the appeal filed by Larry and Cheryl Andresen from the decision of the Public Works Director denying an encroachment permit (#9541) for the Floriston Avenue/Iceland Road right of way, and scheduling a public hearing for June 28, 2016 at 1:30 pm. (Dist. V)

**RECOMMENDATION:** Adopt Resolution making findings as recommended by staff, accepting the appeal within the perimeters as set forth below and setting the hearing on the appeal for June 28, 2016, at 1:30 p.m.

**FUNDING:** Filing fee collected from Appellant for costs.

### **BACKGROUND:**

On April 5, 2016, Larry and Cheryl Andresen applied for an encroachment permit. On April 27, 2016, the Director of Public Works considered and denied the encroachment permit application which sought to access the Floriston Avenue/Iceland Road right of way for the purpose of widening a portion of Floriston Avenue, as well as removing existing landscaping and vegetation. On May 6, 2016, Applicants filed an appeal of the decision.

The permit conditioned these actions upon the County relocating a power pole and fire hydrant as well as removal of other residents' personal structures. The encroachment permit was denied generally on the following bases: the proposed improvements do not serve the convenience of others in the Hirschdale community; the proposed project is not an improvement in roadway safety; and the proposed improvements require expenditure of significant resources and financial obligations by the County.

Sec. G-IV 4.A.15.1 of the Nevada County Development Code guides that encroachment permits may be denied if they adversely affect the interest of the County or the convenience or safety of the public.

Table L-II 5.2 of the Nevada County Land Use and Development Code (LUDC) summarizes which County body reviews, recommends and takes final action on land use permits. Only where a body has final permitting authority are those decisions appealable to the Board of Supervisors. The Director of Public Works is the Permitting Authority for encroachment permits and other construction related to roadway improvement, and the Board of Supervisors is the Appealing Body for those approvals.

Section G-IV.A.15.1 of the County's General Code and Section L-II 5.12.G of the County's Land Use and Development Code require the Clerk of the Board to present the appeal to the Board of Supervisors at this regular meeting, so the Board can consider whether to accept this appeal and, if appropriate, schedule it for a public hearing. County Counsel and the Clerk of the Board have reviewed the appeal and recommend that the Board adopt a Resolution finding:



Nathan H. Beason, 1<sup>st</sup> District  
Edward C. Scofield, 2<sup>nd</sup> District  
Chair Dan Miller, 3<sup>rd</sup> District  
Vice-Chair Wm. "Hank" Weston, 4<sup>th</sup> District  
Richard Anderson, 5<sup>th</sup> District

Julie Patterson Hunter,  
Clerk of the Board

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- The Appellants are interested parties who have standing to file the appeal; and,
- The appeal was timely filed; and,
- To the extent the Appellants are appealing the Public Works Director's denial of an encroachment permit for improvements to Floriston Avenue, the appeal as presented satisfies the minimum requirements set forth in Section G-IV 4.A.15.1 of the County's General Code and Section L-II 5.12 of the County's Land Use and Development Code and therefore staff recommends that this portion of the appeal be accepted.
- To the extent Appellants are attempting to appeal the legal status of a right-of-way, a request to remove a fence and/or boulders, and/or a discretionary decision by a County staff person regarding potential code enforcement actions against others, none of these actions are appealable decisions within the scope of the appeal process provided for under Sections G-IV 4.A.15.1 of the General Code and L-II 5.12 of the Land Use and Development Code and therefore staff recommends that these portions of the appeal be summarily rejected.
- To the extent that Appellant is requesting a waiver of fees, it should be noted that there is no provision in County Code which allows for that. However, upon conclusion of any successful appeal, the Appellant may request and the Board of Supervisors may authorize a refund of appeal fees pursuant to L-II 5.12.N.
- That no other issue except the denial of the encroachment permit is properly at issue in this appeal.

Staff further recommends that the Board accept the appeal of the denial by the Public Works Director and set it for public hearing on June 28, at 1:30 p.m. This date has been approved by both the Public Works Director and the Appellants.

Respectfully submitted,



JULIE PATTERSON HUNTER  
Clerk of the Board