



## **RESOLUTION No. \_\_\_\_\_**

### **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

#### **RESOLUTION DENYING THE REFUND OF FEES IN THE AMOUNT OF \$1,374.20 RELATED TO AN APPEAL FILED BY JAMES POWELL AND CAROL FULLER POWELL ON AUGUST 5, 2016**

WHEREAS, on August 5, 2016, James Powell and Carol Fuller Powell (“Appellants”) filed an appeal to a Nevada County Planning Commission decision to approve the Byers Warehouse Project (the “Project”) and related environmental document (the “Appeal”) and paid an appeal fee in the amount of \$1,374.20; and

WHEREAS, on October 11, 2016, at a duly noticed public hearing, the Board denied the Appeal but (a) amended Condition of Approval No. D.7 to clarify existing “No Parking” restrictions at nearby turnouts by requiring the Project applicant to install “No Parking” signage at the turnouts and (b) directed staff to work with the Project applicant to ensure proper fencing would be constructed around the Project; and

WHEREAS, on October 19, 2016, the Clerk of the Board received a written request from James Powell and Carol Fuller Powell to refund the appeal fee that was required to submit an appeal of \$1,374.20 on the basis that while Appeal was denied, the Appeal filing and Appellants’ participation and comments in the process added clarification to the Project; and

WHEREAS, the Nevada County Land Use & Development Code, Section L-II 5.12.N.2 provides that the Board may authorize the return of an appeal fee where the Board of Supervisors denies an appeal but finds that appellants raised issues of substantial merit causing some affirmative change in the decision of the Planning Agency; and

WHEREAS, the Planning Department has estimated that its current cost to process the appeal was \$5,626.21, including 39.75 hours of staff time at the hourly rate of \$141.54 and for materials; and

WHEREAS, the Board of Supervisors found that the appellant did not raise issues of substantial merit, causing some affirmative change in the decision of the Planning Commission.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Nevada that it hereby finds and determines as follows:

1. The above recitals are true and correct.
2. The Appeal by James Powell and Carol Fuller Powell was denied by the Board of Supervisors.
3. The amendment to Condition No. D.7 to clarify the “No Parking” restriction and require signage at turnouts was a minor, non-substantial modification to the Project conditions of approval and does not constitute an issue of substantial merit.

4. The direction to staff to work with the Project applicant regarding the construction of proper fencing did not result in any modification to the Project conditions of approval and therefore did not affect any affirmative change in the Planning Agency's decision to approve the Project.
5. No issues of substantial merit causing an affirmative change in the decision of the Planning Agency were raised or acted upon at the appeal.

BE IT FURTHER RESOLVED that the Board of Supervisors hereby denies the request of James Powell and Carol Fuller Powell to refund appeal fees in the amount of \$1,374.20.