

Air Pollution Control Hearing Board Meeting Minutes

Members

Cathleen Fitzgerald, DEnv, PE, Chair
Jeanne Rucker, REHS, Vice Chair
Yvonne Downs, CEM
Richard Harris, JD, PhD
Paul Kaplan
Jim Kenney
Lee Squire

**Friday, April 9, 2021
6:00 p.m.**

**Washoe County Administration Complex
Zoom Meeting
1001 East Ninth Street
Reno, NV**

1. *Roll Call and Determination of Quorum

Vice Chair Dr. Fitzgerald called the meeting to order at 6:00 p.m.
The following members and staff were present:

Members Present: Cathleen Fitzgerald, DEnv, PE, Chair
Jeanne Rucker, REHS, Vice Chair
Yvonne Downs, CEM
Richard Harris, JD, PhD
Paul Kaplan
Jim Kenney
Lee Squire

Members Absent:

None

Ms. Smith verified a quorum was present.

Staff present: Francisco Vega, AQM Division Director
Josh Restori, Supervisor, Permitting & Compliance
Janet Smith, CAP-OM, Administrative Secretary
Jessica Cabrales, Office Support Specialist

2. *Pledge of Allegiance

Ms. Rucker led the pledge to the flag.

3. *Public Comment

As there was no one wishing to speak, Chair Dr. Fitzgerald closed the public comment period.

4. Approval of Agenda – April 9, 2021

Dr. Fitzgerald called for approval of the agenda of the Air Pollution Control Hearing Board for April 9, 2021.

Mr. Harris moved that the agenda be approved as presented. Ms. Rucker seconded the motion which carried unanimously for approval.

5. Approval of Draft Minutes of February 5, 2019

Dr. Fitzgerald requested a continuance to the approval of the minutes of February 5, 2019.

Ms. Rucker moved that the minutes of the February 5, 2019 meeting of the Air Pollution Control Hearing Board meeting be continued to the Hearing Board's next meeting. The motion was seconded by Mr. Harris and carried unanimously for approval.

**6. Recommendation of Staff to Uphold the Case Appealed to the Air Pollution Control Hearing Board – Case No. 1229 – The Reindeer Lodge
(See attached minutes)**

7. *Board Comment

As there were no Hearing Board member wishing to present comments Dr. Fitzgerald closed the Board comment period.

8. *Public Comment

As there was no one wishing to speak, Dr. Fitzgerald closed the public comment period.

9. Adjournment

Chair Fitzgerald adjourned the meeting at 8:35 p.m.

Possible Changes to Agenda Order and Timing: Items on the agenda may be taken out of order, combined with other items, withdrawn from the agenda, moved to the agenda of another later meeting; moved to or from the Consent section, or they may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Items listed in the Consent section of the agenda are voted on as a block and will not be read or considered separately unless withdrawn from the Consent agenda.

Special Accommodations: The District Board of Health Meetings are accessible to the disabled. Disabled members of the public who require special accommodations or assistance at the meeting are requested to notify Administrative Health Services in writing at the Washoe County Health District, 1001 E. 9th Street, Building B, Reno, NV 89512, or by calling 775.328.2415, 24 hours prior to the meeting.

Public Comment: During the "Public Comment" items, anyone may speak pertaining to any matter either on or off the agenda, to include items to be heard on consent. For the remainder of the agenda, public comment will only be heard during items that are not marked with an asterisk (*). Any public comment for hearing items will be heard before action is taken on the item and must be about the specific item being considered by the Board. In order to speak during any public comment, each speaker must fill out a "Request to Speak" form and/or submit comments for the record to the Recording Secretary. Public comment and presentations for individual agenda items are limited as follows: fifteen minutes each for

staff and applicant presentations, five minutes for a speaker representing a group, and three minutes for individual speakers unless extended by questions from the Board or by action of the Chair.

Response to Public Comment: The Board of Health can deliberate or take action only if a matter has been listed on an agenda properly posted prior to the meeting. During the public comment period, speakers may address matters listed or not listed on the published agenda. The *Open Meeting Law* does not expressly prohibit responses to public comments by the Board of Health. However, responses from the Board members to unlisted public comment topics could become deliberation on a matter without notice to the public. On the advice of legal counsel and to ensure the public has notice of all matters the Board of Health will consider, Board members may choose not to respond to public comments, except to correct factual inaccuracies, ask for Health District Staff action or to ask that a matter be listed on a future agenda. The Board of Health may do this either during the public comment item or during the following item: “Board Comments – Limited to Announcement or Issues for future Agendas.”

Posting of Agenda; Location of Website:

Pursuant to NRS 241.020, Notice of this meeting was posted at the following locations:

Washoe County Health District, 1001 E. 9th St., Reno, NV Reno

City Hall, 1 E. 1st St., Reno, NV

Sparks City Hall, 431 Prater Way, Sparks, NV

Washoe County Administration Building, 1001 E. 9th St, Reno, NV

Downtown Reno Library, 301 S. Center St., Reno, NV

Washoe County Health District Website www.washoecounty.us/health State of

Nevada Website: <https://notice.nv.gov>

How to Get Copies of Agenda and Support Materials: Supporting materials are available to the public at the Washoe County Health District located at 1001 E. 9th Street, in Reno, Nevada. Ms. Laura Rogers, Administrative Secretary to the District Board of Health is the person designated by the Washoe County District Board of Health to respond to requests for supporting materials. Ms. Rogers is located at the Washoe County Health District and may be reached by telephone at (775) 328-2415 or by email at lrogers@washoecounty.us. Supporting materials are also available at the Washoe County Health District Website www.washoecounty.us/health pursuant to the requirements of NRS 241.020.

**CASE NO. 1229 – AS REVIEWED BEFORE THE AIR POLLUTION CONTROL
HEARING BOARD**

In Re: Appeal of GARY SCHMIDT,)
REINDEER LODGE, located at 9000)
Mt. Rose Highway, for violation of)
Section 030.107 (Hazardous Air)
Pollutants); and the National Emissions)
Standards for Asbestos 40 CFR 61,)
Subpart M 61 145(a); 40 CFR 61,)
Subpart M 61145(a)(1); and)
40 CFR 61, Subpart M 61.145(c)(1))

At a hearing of the Air Pollution Control Hearing
Board as a Zoom Meeting at Wells Avenue and
Ninth Street, Reno, Nevada
April 9, 2021

PRESENT: Chair Cathleen Fitzgerald, DEnv, PE, Chair
Vice Chair Jeanne Rucker, Vice Chair
Member Yvonne Downs, CEM
Member Richard Harris, JD, PhD
Member Paul Kaplan
Member Jim Kenny
Member Lee Squire
Francisco Vega, Division Director, Air Quality Management
Joshua Restori, Supervisor, Permitting and Compliance
Janet Smith, Administrative Secretary
Jessica Cabrales, Office Support Specialist

STATEMENT OF THE FACTUAL QUESRTION

SECTION 030.107 HAZARDOUS AIR POLLUTANTS

A. Asbestos Sampling and Notification

No permit for the demolition or for the renovation of any NESHAP regulated facility may be issued by any public agency within the Health District until such time as an asbestos survey, conducted by a person qualified to make such a survey, is made on the premises. No potential asbestos containing materials may be disturbed until such a survey is performed. The person performing the survey must possess US EPA HERA certification. The survey must be completed to the satisfaction of the Control Officer or additional samples may be required. A complete, signed copy of an asbestos survey report must be filed at the Washoe County District Health Department and an “Asbestos Assessment Acknowledgement Form” obtained before any permit for demolition or renovation, as noted above, is issued. Failure to conduct an asbestos survey, or obtain a completed “Asbestos Assessment Form”, may result in a citation or other enforcement action, including the issuance of a stop work order if a reasonable possibility for the release fibers exists. If the survey indicated the presence of asbestos, the permit applicant must adhere to the requirements of Section 030.105 and this section prior to and during the removal of any asbestos. The owner, operator or his representative shall submit to the Control Officer, notice of intent in compliance with 40 CFR 61.145. Such notice shall be required for the following:

1. All renovations, disturbing regulated asbestos containing materials (RACM) which exceed, in aggregate, more than 160 feet square, 260 linear feet or 35 cubic feet whichever is most restrictive.
2. Notice shall be required for any building demolition, including single residential dwellings.

This notification shall contain all information as requested by the Control Officer, including a plan of action as to the methods and techniques to be used for removal. Standard fees as set by the Board of Health must be submitted with all such notifications before the can be considered valid.

B. Asbestos Control Work Practice

For the purpose of this regulation, in addition to the requirements of the NESHAP, acceptable work practices for RACM removal shall include, but are not limited to, adequate wetting, containment of materials in glove bags or containment areas, negative air systems, decontamination areas, double bag disposal or other methods as required by the Control Officer. Acceptable work practices for commercial ACM roofing removal shall include adequate wetting of the material and removal in covered chutes. As an alternative, ACM roofing materials may be removed by bagging or careful wrapping and lowering. The Control Officer may require separate removal of friable roofing materials prior to demolition. All asbestos removal work which is done with barriers isolating the work area shall include transparent viewing ports which allow observation of stripping and removal of ACM from outside the barrier. Sufficient view ports shall be installed to make at least 90 percent of the work area visible from outside the barrier, except in unusual situations as approved by the Control Officer. Air clearance testing after removal work is complete may be required by the Control Officer for the protection of public health.

C. Asbestos Contamination and Abatement

Under no condition may any person store, remove, transport or destroy any asbestos containing materials in a manner which is likely to release asbestos fibers into the atmosphere. Safe asbestos removal work practices, sufficient to prevent a danger to public health as defined below, shall be required for any remodeling or demolition of NESHAP regulated facilities which disturbs any quantity of RACM. The Control Officer may require cleanup or abatement of damaged or degraded asbestos containing materials where their storage, handling or continued presence represents a danger to public health. Unsafe work practices or danger to public health as noted above shall be concluded only when testing results demonstrate asbestos levels exceeding one of the following limits: 1) 0.01 asbestos fibers per cubic centimeter as determined by any method of air sampling as specified by the Control Officer; or 2) greater than one percent asbestos as determined by vacuum, bulk or wipe sampling of surfaces. The Control Officer may require such sampling to be performed at the owner's expense by a qualified person when unsafe work practices or a danger to public health are suspected. The Control Officer shall approve procedures for sample collection, including the type of sampling as listed above, sample duration and volume, or analytical methods, such as the use of

TEM or PCM depending on the type of suspected contamination and building Materials present. Failure to use acceptable work practices during RACM removal or disturbance may result in the issuance of a stop work order, a citation, or both.

- Failure to thoroughly inspect the affected facility or part of the facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos as required by 40 CFR 61, Subpart M 61.145(a).
 - (a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:*
 - a) Friable asbestos material,*
 - b) Category I nonfriable ACM that has become friable,*
 - c) Category I nonfriable ACM that will be or has been subject to sanding, grinding, cutting or abrading, or,*
 - d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to a powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.*
 - Failure to provide the AQMD with written notice of intention to demolish or renovate 10 days prior to the start of the demolition of the Reindeer Lodge as required by 40 CFR 61, Subpart M 61.145(a)(1) and detailed in 61.145 (b).
 - (1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is*
 - (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or*
 - (ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.*
 - Failure to remove all RACM from a facility being demolished or renovated before any activity begins that would break-up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal 40 CFR 61, Subpart M 61.145(c)(1).
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Demolition is defined in 40 C.F.R. 61, Subpart M as:

“the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.”

Facility is defined in 40 C.F.R. 61, Subpart M as:

“any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation, that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.”

GENERAL COMMENTS

On April 9, 2021, the Hearing Board for the referenced Regulations held a public hearing to consider all evidence and testimony concerning the appeal of **GARY SCHMIDT, REINDEER LODGE, CASE NO. 1229, CITATION NOS. AQMV21-0002; AQMV21-0003; AQMV21-0004; AND AQMV21-0005**, for violation of Section 030.107 (Hazardous Air Pollutants) of the Washoe County Regulations Governing Air Quality Management. Additional violations were: 40 CFR 61, Subpart M 61.145(a); 40 CFR 61, Subpart M 61.145(a)(1); and 40 CFR 61, Subpart M 61.145(c)(1).

Mr. Francisco Vega, Division Director, Air Quality Management, being duly sworn, advised the purpose of tonight's hearing is to determine whether violations of the Washoe County District Board of Health Regulations Governing Air Quality Management and Federal Regulations occurred. Mr. Vega stated it is the contention of the appellant that there were extenuating circumstances which resulted in the Hearing Board having to review this case.

Mr. Joshua Restori, Supervisor, Permitting and Compliance, being duly sworn advised that he has been the project manager/inspector involved in investigating this case. Mr. Restori advised this is Case No. 1229, involving Mr. Gary Schmidt, for the Reindeer Lodge located at 9000 Mt. Rose Highway, Reno, Nevada.

Mr. Restori advised he would review Staff's case through a Power Point presentation (a copy of which was placed on file for the record). Mr. Restori advised he would be reviewing the Air Quality Management Division's authority specific to the issuance of the Notices of Violation; providing a brief history of the Reindeer Lodge; delineating pertinent definitions specific to this Case; and a review/clarification of the violations as noted by Staff. Mr. Restori stated he will be providing a review of Notices of Violation Nos. AQMV21-0002 through AQMV21-0005.

Mr. Restori briefly reviewed the Air Quality Management's regulatory authority, advising Air Quality Management is responsible for the implementation and compliance of the requirements and standards established and adopted by reference. Mr. Restori advised this authority designation is through Federal EPA Region IX, 40 CFR 61, Subpart M and by the Washoe County District Board of Health Regulations Governing Air Quality Management, specifically Section 030.107 (Hazardous Air Pollutants), Subsection B, Subpart M – Asbestos. Mr. Restori advised that Section 103.107 is the Air Quality Management Division's local Regulation for the purpose of assessing and monitoring asbestos-containing materials, including demolitions in Washoe County.

Mr. Restori provided a brief history of the Reindeer Lodge (originally the Rosemont Lodge), advising it was constructed in 1957 from surplus military barracks from the Army Depot in Herlong, California. Mr. Restori advised that facility consisted of a bar, restaurant, music/entertainment hall and approximate four to six (4-6) rooms available for rent. Mr. Restori advised Mr. Gary Schmidt, purchased the property in 1971; and continued to operate it as a bar, restaurant, music/entertainment hall until it was closed in the early 2000s. Mr. Restori advised the property (the Reindeer Lodge) is located at 9000 Mt. Rose Highway, is and has always been zoned GC-General Commercial by Washoe County, and has always been used as a commercial property since it's construction through 2017 when the roof collapsed..

Mr. Restori reviewed the definitions pertinent to this Case, advising that 'demolition' is the wrecking or taking-out of any load-supporting structural portion of a facility, and the related handling of the associated materials. Mr. Restori reviewed the definition of 'facility', advising a facility is defined as any institutional, commercial, or public structure; that as he stated, this property has always been zoned as a commercial facility. Mr. Restori further advised that per the definition, "Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function." Mr. Restori further advised it is the assertion of the appellant that the Reindeer Lodge is not a facility; that it is 'a primary residence'; therefore, the definition of a facility does not apply in this Case.

Mr. Restori reviewed the definition of friable asbestos material, advising it is any material containing more than 1 percent of asbestos as specified in utilizing the methods specified in appendix E, subpart E, 40 CFR part 763, section 1. Mr. Restori stated this is an important

definition as it was determined there were friable asbestos-containing materials in the Reindeer Lodge.

Mr. Restori advised that nonfriable asbestos-containing material is more than 1 percent asbestos-containing materials as specified in appendix E, subpart E, 40 CFR part 763, section 1. Polarized Light Microscopy, that when dry cannot be crumbled, pulverized, or reduced to powder by hand pressure. Mr. Restori stated that this, again, is an important definition as it relates to materials to be discussed in this case.

Mr. Restori reviewed the Regulations specific to Category I and Category II nonfriable asbestos-containing materials (ACM), advising Category I ACM typically has less of a propensity to release asbestos fibers if disturbed. Mr. Restori stated Category II ACM has a high probability of being crumbled or reduced to a powder by the impact of demolition or renovation.

Mr. Restori reviewed the definition of “owner or operator of a demolition or renovation activity”, advising it is “any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.” Mr. Restori advised it is the consensus of Staff the appellant is the owner/operator specific to the renovation/demolition activities.

Mr. Restori reviewed the Notice of Violation AQMV21-0002, advising this is specific to the owner of the Reindeer Lodge’s failure to submit a complete signed copy of an asbestos survey report and an Asbestos Acknowledgement Assessment (AAA) form to the Washoe County Air Quality Management Division prior to obtaining a permit for such demolition or renovation. Mr. Restori advised this requirement is delineated in Section 030.107 of the Washoe County Regulations Governing Air Quality Management. Mr. Restori stated the purposed of the AAA is to ensure the owner/operator has completed due diligence in having any and all suspect asbestos-containing materials sampled and tested prior to disturbance of any materials associated with a renovation or demolition of a structure defined as a facility per EPA requirements. Mr. Restori advised based upon the use of the Reindeer Lodge it is a facility as defined by EPA.

Mr. Restori advised Building Permit No. WBLD18-105119 was issued by the Washoe County Community Services Division (CSD) on April 6, 2018; that the Building Permit indicated “investigative work to include recovery of historical building materials for the repurposing and structural assessment of the Lodge portion damaged by snow.” Mr. Restori advised the issued Building Permit further stipulated the “...following phase will include the contractor applying for permits for any structure repair or stabilization as outlined by a structural engineer. Mr. Restori advised at the time of the issuance of the Building Permit in 2018, a survey had not been completed on the site, nor had an Asbestos Acknowledgement Assessment application been submitted to the Air Quality Management Division.

Mr. Restori reiterated the Building Permit was issued on April 6, 2018; that the Asbestos Acknowledgement Assessment had not been obtained prior to the beginning of the demolition or renovation activities having begun on the facility. Mr. Restori stated the demolition of the Lodge was initiated on June 10, 2019; however, the survey, conducted by NOVA Geotechnical and Inspection Services, wasn't performed until June 14, 2019, after the beginning of the demolition. Mr. Restori stated it is the consensus of Staff the survey "was triggered" by the notification of the Air Quality Management Division (AQMD), that the demolition activities had begun; and Staff's notification to the appellant that a survey had to be conducted prior to any further disturbance to the structure. Mr. Restori advised that the Acknowledgement of Asbestos Assessment was applied for and issued to the Reindeer Lodge on September 12, 2019, a copy of which was placed on file for the record ASB19-0963 (Attachment 2).

Mr. Restori stated AQMV21-0002 was issued due to the appellant failing to obtain an Asbestos Acknowledgement Assessment prior to the beginning of the renovation/demolition work at the Lodge on June 10, 2019. Mr. Restori advised this was a violation of both County AQMD and Federal Regulations. Mr. Restori stated it may be the assertion of the appellant that through the application for and issuance of the County Building Permit on April 6, 2018; therefore, adequate notice was provided to the County through that Permit. Mr. Restori advised AQMD Staff is "unaware of any State, County, or City Codes and Regulations that would absolve any owner/operator of adhering to the requirements specific to a demolition/renovation project from any Air Quality Regulations, both local and Federal when a Building Permit is submitted to a separate entity of the State, County, or City.

Mr. Restori stated it may be the further assertion of the appellant "that the Air Quality Management Division is using selective enforcement in this case by requiring the appellant to obtain an Acknowledgement of Asbestos Assessment form." Mr. Restori advised in 2019 the AQM Division issued 958 Acknowledgement of Asbestos Assessments; in 2020, 623 were issued; and to-date for 2021 Staff has issued 195. Mr. Restori reiterated the appellant failed to obtain an Acknowledgement of Asbestos Assessment prior to initiating the demolition/renovation of the facility in violation of both County and Federal Regulations.

Dr. Fitzgerald asked the Hearing Board members if they had any questions of Mr. Restori prior to Mr. Restori presenting the information specific to the remaining Notices of Violation. After a brief discussion, it was the consensus of the Hearing Board that questions would be asked after Staff's presentation.

Mr. Restori briefly reviewed Notice of Violation No. AQMV21-0003, advising this Notice of Violation was issued for the appellant's failure to have the facility thoroughly inspected to determine the presence of asbestos in those areas of renovation/demolition. Mr. Restori advised this was in direct violation of the 40 CFR 61.145, Subpart M (National Emission Standards for

Hazardous Air Pollutants – NESHAP), which is a Federal standard for demolition and renovation applicability, which are the Federal Regulations for asbestos. Mr. Restori advised 40 CFR 61. Subpart M (a) stipulates ‘the appellant, the owner and or operator of the demolition activity did not thoroughly inspect the affected facility or part of the facility (i.e., the Reindeer Lodge), where demolition was to occur. Mr. Restori reiterated that the survey was performed by NOVA Geotechnical on June 14, 2019; however, the demolition on the Reindeer Lodge began on June 10, 2019, without having had a survey performed. Mr. Restori advised the AQM Division was notified on June 10, 2019, by other certified abatement companies and demolition contractors, inquiring as to the demolition activities occurring at the Reindeer Lodge. Mr. Restori advised this was a violation of the Federal Regulations.

Mr. Restori reiterated the survey was conducted on June 14, 2019 (a copy of which was placed on file for the record); that it was then the AQM Division Staff who directed the appellant as to the correct process to have the asbestos survey performed and delineated the requirements necessary to be able to proceed with the demolition.

Mr. Restori reiterated the definition of a “facility”, advising it may be the appellant’s assertion that the Reindeer Lodge was his primary residence; therefore, Subpart M should not apply; and the Reindeer Lodge should not be considered a facility as it pertains to the requirements of the AQM Division and Federal asbestos-related Regulations. Mr. Restori reiterated that, per definition and zoning, the Reindeer Lodge has always been a commercial property; that the site remains zoned as a commercial property; therefore, as defined, it is a “facility”. Mr. Restori reiterated there are no provisions, within 40 CFR 61., Subpart M – the definition of ‘facility’, which would allow a facility (the Reindeer Lodge) from being exempt if it is a primary residence.

Mr. Restori stated it may further be the assertion of the appellant that the work, which was performed on June 10, 2019, was for the purpose of creating an entryway to conduct the required asbestos survey. Mr. Restori stated during his initial investigation and subsequent meetings with the appellant, and his consultants it was determined there were that were windows, doors and other entry points that provided easy access to the Lodge, which did not require demolition of the structure.

Mr. Restori displayed a photograph, printed in the Reno Gazette Journal on June 9, 2019, of the demolition of the Reindeer Lodge, stating the photograph indicates a far greater amount of demolition than what would be necessary for access to the structure. Mr. Restori advised the conditions depicted in the newspaper photograph are the same conditions he documented on-site on June 10, 2019.

Mr. Restori briefly reviewed Notice of Violation No. AQMV21-0004, advising AQMV21-0004 was issued due to appellant failing to provide the required ten (10) day written notification prior to the initiation of any renovation or demolition work at the Reindeer Lodge as required per 40 CFR 61, Subpart 61.145 (a) (1). Mr. Restori advised that pursuant to CFR 40 61, Subpart M (NESHAP), specific to notification requirements, the owner/operator of the demolition/renovation actively failed to provide an Asbestos NESHAP notification of the demolition/renovation a minimum of ten (10) working days prior to the start of the demolition.

Mr. Restori reiterated a complete Asbestos NESHAP for demolition was submitted and paid for on September 14, 2020. Mr. Restori advised the Notification was submitted “in the spirit of compromise and cooperation”; however, “under duress and under protest”, as indicated by the appellant’s attorney when the application was submitted. Mr. Restori stated this language was provided to the AQM Division by the attorney for the appellant when the form was submitted (a copy of which was placed on file for the record – Attachment 4). Mr. Restori advised the appellant wasn’t “agreeing to comply with the requirements, he was submitting (the NESHAP application) under protest.” Mr. Restori stated the vast majority of the Reindeer Lodge was demolished prior to the submission of the NESHAP demolition form on September 14, 2020.

Mr. Restori stated in June 2020, the Washoe County Building Department was potentially prepared to proceed with the requirement for the demolition of the Reindeer Lodge structure. Mr. Restori displayed a photograph of the Reindeer Lodge in “good condition prior to the roof collapse”; and photographs taken of the Reindeer Lodge on June 12, 2020, after the roof collapsed. Mr. Restori advised the majority of the structure had been demolished as of June 12, 2020. Mr. Restori stated the appellant failed to submit the NESHAP application prior to the start of the demolition; therefore, was in violation of both the County and the Federal Regulations.

Mr. Restori briefly reviewed Notice of Violation No. AQMV21-0005, advising the violation was issued for the appellant failing to remove all RACM (Regulated Asbestos-Containing Materials) from a facility being renovated or demolished prior to any and all activities that would break-up, dislodge, or similarly disturb the material or precede access to the material for subsequent removal. Mr. Restori stated 40 CFR 61, Subpart M –NESHAP establishes the standards for demolition and renovation, stipulating “Procedures for asbestos emission control, the appellant, owner and/or operator of the demolition failed to remove all RACM (Category II Nonfriable transite siding) from the facility associated with the Reindeer Lodge prior to the start of the demolition. Mr. Restori advised sections of transite paneling were crumbled, pulverized, and reduced to a powder during the renovation and demolition activity that occurred on or before June 10, 2019. Mr. Restori advised that sampling of the transite siding determined there was asbestos-containing materials in the demolition debris pile in the northeast corner of the property. Mr. Restori stated, as displayed in the photographs (copies of which were placed on file for the record – Attachment 1), the exterior of the building was accessible for inspection and asbestos sampling prior to the renovation/demolition activity on or before June 10, 2019. Mr. Restori

reiterated that the AQM Division did not receive a NESHAP notification application until September 14, 2020. Mr. Restori stated the appellant failed to remove or have removed all RACM prior to the start of the demolition; therefore, was in violation of both the County and the Federal Regulations.

Mr. Restori stated it may be the assertion of the appellant that it was not possible for the AQM Division Staff to determine there would be a reportable amount of asbestos-containing materials within the Reindeer Lodge to justify an NESHAP Notification requirement or removal of the material. Mr. Restori advised, as noted in the abatement notification provided in September 2019, by the abatement contractor hired by the appellant, approximately 420 square feet of sprayed-on acoustical ceiling material, which is friable asbestos-containing material (ACM) was identified. Mr. Restori further advised it was determined approximately 3,180 square feet of transite paneling associated with the outside of the Reindeer Lodge was removed. Mr. Restori advised there was an estimated 27 cubic yards of contaminated asbestos-containing materials in the pile of demolition debris associated with the original demolition on or before June 10, 2019.

Mr. Restori stated it may be the assertion of the appellant that the AQM Division Staff “utilized selective enforcement” in requiring the appellant to provide a NESHAP Notification to the AQM Division prior to start of demolition. Mr. Restori advised in 2019 the AQM Division issued 114 NESHAP demolition permits; that in 2020 the AQM Division issued 79 NESHAP demolition permits; and to-date for 2021, the AQM Division has issued 23 NESHAP demolition permits.

Mr. Restori reiterated the appellant did have Regulated Asbestos-Containing Materials (RACM) removed prior to obtaining the required NESHAP Notification for the removal of asbestos-containing materials. Mr. Restori advised the appellant was in violation of both County and Federal requirements.

In response to Dr. Harris regarding RACM, Mr. Restori advised RACM, as defined in 40 CFR 61, Subpart M, is any Regulated Asbestos Containing-Materials identified as any friable asbestos material(s); Category 1 nonfriable ACM (Asbestos-Containing Materials) that have become friable. Mr. Restori advised further that RACM is also Category I nonfriable asbestos-containing materials (ACM), that will be or has been subject to sanding, grinding, cutting or abrading; or Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to a powder by the forces expected to act on the material(s) in the course demolition or renovation operations regulated by this Subpart.

In response to Dr. Harris regarding the requirements for RACM and/or ACM; and whether Mr. Schmidt would have been familiar with these requirements, Mr. Restori advised he would defer the response regarding Mr. Schmidt’s knowledge to Mr. Schmidt or his legal counsel. Mr. Restori advised, it is his understanding of the process, that when a Building Permit is issued for

the purpose of renovation or demolition of a commercially zoned property, a licensed contractor must be hired to perform those “activities on a commercial structure.” Mr. Restori stated the exception to this requirement would be for a single-family residence in which the homeowner may be performing the work on one’s own home. Mr. Restori further stated, it is his understanding, that the test for acquiring a General Contractor’s License does have questions specific to asbestos and asbestos-containing materials. Mr. Restori stated; therefore, a General Contractor would be required to be aware of the requirements specific to asbestos-containing materials and other general environmental hazardous materials as it pertains to construction activities.

In response to Dr. Harris regarding the requirements specific to asbestos-containing materials, Mr. Vega advised the Regulations have been in effect in excess of forty (40) years; therefore, the requirements “are extremely well established.”

In response to Dr. Harris regarding the contractor for the Reindeer Lodge, Mr. Restori stated, it was his understanding through conversations with Mr. Schmidt on June 10, 2019, Mr. Schmidt had contracted with Collins Construction as the General Contractor to assist in the work being performed at the Reindeer Lodge.

Ms. Downs stated the documentation the Hearing Board members were provided with indicates a limited asbestos survey; however, a limited asbestos survey “is not the same” as an asbestos renovation and/or demolition survey.

In response to Ms. Downs regarding an asbestos renovation and/or demolition survey being provided, Mr. Restori stated the AQM Division did not receive an asbestos survey for the renovation or demolition. Mr. Restori stated, it is his understanding, the limited asbestos survey was conducted due to the condition of the building, due to having a limited access to the structure, and the safety of assessing the structure. Mr. Restori advised it was therefore, considered a limited asbestos survey per the Building Permit.

In response to Dr. Fitzgerald regarding the asbestos abatement report of All Eagle LLC and the amounts of asbestos-containing materials, Mr. Restori advised the NESHAP Notification (for renovation/demolition), submitted by All Eagle was for the abatement of all materials determined to have contained asbestos. Mr. Restori stated All Eagle’s NESHAP Notification was to identify, as required, all asbestos-containing materials to be removed during the abatement process. Mr. Restori advised the document submitted by the appellant in September 2020, was with the understanding there would be transite material within the structure; therefore, the demolition of that material would have to occur “in a very careful manner” to be able to remove it intact. Mr. Restori stated it is his belief that, “that is why that amount was listed on the NESHAP Notification” to which Dr. Fitzgerald referred.

Dr. Fitzgerald stated a concern could be the appellant asserting the amount of asbestos was less than 35 cubic feet; therefore, this facility would not be subject to the Regulations. In response to Dr. Fitzgerald, Mr. Restori advised per County and Federal requirements “all demolition activities” are subject to the requirements of the Regulations. Mr. Restori briefly reviewed the process for a renovation or demolition, advising a survey would be conducted to determine the presence of asbestos-containing materials, which may or will be disturbed, with an application of a NESHAP Notification for abatement. Mr. Restori stated the asbestos would then be removed, to the best extent feasible; that subsequent to the removal process a NESHAP Notification would be submitted for the demolition of the structure. Mr. Restori advised this is the process for every demolition activity in Washoe County, for the demolition of ever structure deemed a facility by definition.

Dr. Fitzgerald advised she is referring to the documentation submitted by legal counsel for the appellant indicating the removal of 35 cubic feet of asbestos-containing materials; that she would question if All Eagle LLC disposed of more than 35 cubic feet of asbestos-containing materials at the Lockwood Landfill.

In response to Dr. Fitzgerald, Mr. Restori advised All Eagle LLC did dispose of more than the 35 cubic square feet to which the appellant referred. Mr. Restori advised the appellant’s reference to the 35 cubic feet was because an abatement had been performed at the facility (the Reindeer Lodge). Mr. Restori stated the structure “fell below the threshold because an abatement was performed.

Mr. Restori advised there are “other thresholds delineated in 40 CFR 61 Subpart M”, which apply in this case. Mr. Restori advised within the same paragraph, which references the 35 cubic feet, further stipulates “any facility in which it has been determined asbestos-containing material in excess of 260 linear feet, 160 square feet, and 35 cubic feet is required” to submit an notification for abatement and a NESHAP Notification for demolition to the air district which has been delegated the authority for these activities.

In response to Dr. Fitzgerald regarding any waste manifests submitted to the Lockwood Landfill, Mr. Restori advised a manifest was submitted by All Eagle LLC of the asbestos-containing materials disposed of at the Landfill; however, nothing was submitted by the appellant. Mr. Restori advised the manifest indicates the disposal of material “in volume” rather than square feet or yards. Mr. Restori advised more than 35 cubic feet was disposed of at the Landfill by All Eagle LLC.

In response to Ms. Rucker regarding the initial Building Permit No. WBLD18-105119, issued in April 2018, being routed to other Departments within the County for review, Mr. Restori advised, to his knowledge, the initial Building Permit was never routed to the Air Quality

Management Division for review and approval.

In response to Ms. Rucker regarding a second a renovation/remodel permit issued in February 2019, per Mr. Taylor’s letter of August 2020, being reviewed by the Air Quality Management Division, Mr. Restori stated, to his knowledge, this second permit was not routed to Air Quality Management for review and approval either.

Ms. Rucker stated the NOVA Geotechnical Report provided a (survey) sample location map, which delineated a demolition line; however, it indicates only the northeast section of the structure; however, samples were taken from the rest of the structure. Ms. Rucker stated she would question “if the remaining portion of the building was to remain intact” why sampling would be necessary on the remaining portion of the structure, “or was there more construction/demolition activities already planned?” Ms. Rucker stated the photographs presented indicate “there was other demolition planned; that she would question “what the plans were at the time of the sample survey.”

In response to Ms. Rucker, Mr. Restori advised the Building Permit, which he presented, was for the removal of the damaged portion of the structure; therefore, it is his belief that that was why samples were taken from other areas of the structure. Mr. Restori advised the kitchen and dining room areas completely collapsed; that this involved the asbestos-containing acoustical ceiling materials. Mr. Restori stated, “that area was cleaned-up so that that portion of the building could be removed.” Mr. Restori stated it is the consensus of AQM Staff that it was the intention of the appellant to demolish the structure as depicted in the photographs taken in June 2020.

Ms. Rucker stated she noted the appellant “grossly underestimated the volume of the RACM that needed to be removed.” Ms. Rucker stated she noted the violations occurred in June 2019; that providing a chronology of the events would have assisted her in better understanding the events of this case. Ms. Rucker stated the violations occurred in June 2019; therefore, she would question why the Notice of Violation was not issued until February 2021?

In response to Ms. Rucker, Mr. Restori stated the Notice of Violation was not issued at that time, as Staff was working in conjunction with Mr. Schmidt and Community Services Development CSD), to resolve this issue, “and get this area cleaned-up.” Mr. Restori advised there was concern that to issue the Notice of Violation at that time could “stall the process even further”. Mr. Restori advised that at “no point in time, during his conversations with the appellant, did he ever indicate there wouldn’t be a Notice of Violation issued. Mr. Restori advised that during every meeting with the appellant and the appellant’s consultants at the Reindeer Lodge, he was “very clear that there were violations of County and Federal Regulations.” Mr. Restori further stated during each meeting with the appellant and the consultants, he was specific in advising the AQM Division would potentially be issuing Notice(s) of Violation to the appellant. Mr. Restori

advised “ultimately the decision was made to not issue those Notices of Violation until such time as there was compliance; however, compliance with the requirements of NESHAP Notification for demolition was never achieved. Mr. Restori advised the building was completely demolished by June 2020, prior to the submittal of the NESHAP Notification, which was received until September 2020. Mr. Restori advised the typical process specific to environmental regulations is to achieve compliance within the regulated community; that an investigation would then be conducted to determine the length of time in which someone has been out-of-compliance; and the possible issuance of a Notice of Violation. Mr. Restori stated; therefore, based on these factors, the issuance of this Notice of Violation was delayed.

Ms. Rucker stated she has reviewed the justification for the appeal, which was “extremely vague”; that the appellant referenced NRS 278 which is specific to planning and zoning; that there is no reference in NRS 278 to “anything that is relevant to this issue.” Ms. Rucker stated immediately prior to tonight’s hearing she received documentation from the appellant and the appellant’s legal counsel, which she has not had time to thoroughly review. Ms. Rucker stated based upon the “vague appeal” and the documentation submitted just prior to the meeting, she would be hesitant to render a decision tonight regarding this case.

In response to Mr. Squire regarding non-compliance with the Regulations as delineated by Staff, Mr. Restori stated, “there has been some compliance”; that the focus for this violation is the initial non-compliance incident which occurred on or before June 10, 2019.

Mr. Squire stated based on the issue of obvious non-compliance, then “he doesn’t see where there is a question.”

Mr. Kenney stated in Mr. Schmidt’s letter section 11.A, to which Ms. Rucker referred, Mr. Schmidt indicates, “...no demolition as defined by the Regulations occurred prior to September 12, 2019, and then it was commenced by All Eagle Construction.” Mr. Kenney questioned if this is an accurate statement.

In response to Mr. Kenney, Mr. Restori stated that this is not an accurate statement; that based on his own observations of the site on June 10, 2019, there was evidence of demolition activity. Mr. Restori advised he observed in the northeast corner of the property (the Reindeer Lodge), constituted demolition as defined by 40 CFR 61, Subpart M.

In response to Mr. Kenney regarding the issuance of two (2) Building Permits for renovation in April 6, 2018 and a second one in February 26, 2019, Mr. Restori advised the only Building Permit with which he is familiar is No. WBLD18-105119 on April 6, 2018.

In response to Mr. Kenney, Dr. Fitzgerald advised she checked on-line regarding the issuance of a second Building Permit; and could not locate a record of building permit issued for that date.

In response to Dr. Fitzgerald regarding the current status of the Reindeer Lodge, Mr. Restori advised the facility is partially demolished; that it is the consensus of Staff it is the intent of the appellant to retain a portion of the structure so that it can be rebuilt. Mr. Restori stated there was an apartment off the west side of the structure that could be rebuilt to allow the space to be habitable for someone to live there. Mr. Restori stated the structure is partially demolished.

In response to Mr. Squire regarding this section being the only portion not involved in the collapse, Mr. Restori stated that that would be an accurate statement.

Mr. Squire stated he drives past the site “at least once a month”; that during the past couple of years there has been continuous work on the property.

In response to Ms. Downs regarding a signed copy of the survey, Mr. Restori advised the AQM Division did receive an electronic signed copy on July 5, 2019.

Mr. Kaplan stated, (as a General Contractor); and with every General Contractor, with whom he has had an association, it is “common knowledge” that it is a requirement to obtain an asbestos survey in addition to a building permit prior to the commencement of any work. Mr. Kaplan stated, therefore, this isn’t “even in question.” Mr. Kaplan stated in reviewing the photographs of the structure and the damage caused by the snow, he understands the safety issues and concerns regarding entering this structure. Mr. Kaplan stated in a situation, where there is a compromised structure, there is always the pretense there will be potential issues specific to the presence of asbestos-containing materials; and “must be treated as such.” Mr. Kaplan stated the until such time as the structure can be entered, and materials removed for testing, it should be the consensus one would take “all necessary precautions possible.” Mr. Kaplan stated, as Mr. Restori indicated, if it is a private residence (single family home), homeowner can make the determination to perform the work themselves. Mr. Kaplan stated, however, as a General Contractor he would not “want to take on that kind of liability”, specifically in a commercial project in which the public could be involved, which would be a major liability. Mr. Kaplan stated the possible liability would not only be the public, but to the workers performing the demolition, who could also be exposed. Mr. Kaplan stated in this type of situation, a General Contractor must take the public safety into consideration; and therefore, it is paramount to have the materials tested as soon as possible. Mr. Kaplan stated he advises all of his customers that he will not perform any work on any project until such time as a survey has been performed; that should a customer not agree his company will not due to job.

Mr. Kaplan stated he reviewed the letters from Mr. Don Jeppson and Mr. Ray Pezonella, as

submitted by the appellant, both of whom have excellent credentials; however, “that doesn’t excuse” what occurred in this situation.

Ms. Rucker stated, prior to a General Contractor accepting the job, she would question considering the age of the Reindeer Lodge wouldn’t it have been obvious there would be asbestos present?

In response to Ms. Rucker, Mr. Kaplan stated, as a General Contractor, his company “would have everything tested” regardless of the age of the structure, as “the risk is not worth it.” Mr. Kaplan stated he cannot speak for other contractors; however, that is his standard of practice. Mr. Kaplan stated cutting “a door”, which would be “both sides of a wall, which would exceed nine (9) square feet; that as he stated, his company’s practice is “to just do it.”

Mr. Sooudi, City of Reno Deputy Attorney, advised the Hearing Board members that the Board will have the opportunity for discussion after the question and answer phase of the Hearing.

Mr. Vega stated, in response to Ms. Rucker regarding “the timeliness of the issuance of the Citation”; and the Hearing Board members receipt of the appellant’s information, he would advise the appellant has had the information from Staff since December. Mr. Vega stated the Regulations require a scheduled hearing within sixty (60) days of the filing of the appeal; that the appellant was unwilling to waive the right to conduct the Hearing within the sixty (60) days. Mr. Vega advised the original Hearing Board was scheduled for March 2, 2021; however, legal counsel for the appellant had a conflict with that date; therefore, the Hearing was rescheduled for April 6, 2021. Mr. Vega stated although Staff provided an opportunity for a continuation there was no response from the appellant’s legal counsel.

Mr. Taylor Jenkins, Legal Counsel for the appellant Mr. Schmidt’s, stated, in response to the presentation of the AQM Division Staff’s testimony and “opinions”, he would respond he has prepared “opinions as to what the appellant was going to argue and what had happened at the Reindeer Lodge.” Mr. Jenkins stated, “one of the things missing was any actual proof”; that there “was the supposition that work was being performed; that he doesn’t have any proof that work was being performed whatsoever.” Mr. Jenkins stated he “does not believe that the Department can provide that; that he has seen no pictures depicting the property “as more or less disturbed from the date of the violations, June 10, 2019”. Mr. Jenkins stated he has not seen any pictures of any actual work being performed, nor any machinery moving anything. Mr. Jenkins stated in regard to “the square footage on the ceilings and on the walls and sidings”, it is the contention of the appellant, having been in the facility “that some 80% of the ceiling had previously been replaced with dry wall and other materials.” Mr. Jenkins stated, in regard to the “siding, which would be the entire perimeter of the building, not taking into account any doors, windows, or other openings.”

Mr. Jenkins stated AQM Division Staff provided statistics as the numbers of Permits issued each year; however, there was no testimony as to the number of violations; that there was no information provided as to how many violations were issued in 2019 or 2020 or 2021.

Mr. Jenkins stated he “has some general grounds for dismissal of all of the Notices, specific to the nineteen (19) month disparity between the alleged date of the infraction of June 10, 2019; and the actual issuance of the (Notice of) Violation(s). Mr. Jenkins stated it is “their contention that Mr. Schmidt complied during the time this project was undergoing.” Mr. Jenkins stated, “there was testimony the violations were not issued” with the intent of “keeping Mr. Schmidt moving on”; however, “once you gain compliance what is the point of issuing the violation post facto?” Mr. Jenkins stated it is the “contention that AQMD has no right to issue those citations at that time.”

Mr. Jenkins stated he has submitted five (5) public records request of Washoe County Air Quality Management’ however, none of the five (5) requests have “ever been answered. Mr. Jenkins stated they received the cursory email from Mr. Vega that the requests were received”; however, there was “no further communication.” Mr. Jenkins stated pursuant to NRS 239.0107 a public information request is required by law to be answered within five (5) days. Mr. Jenkins stated, “that in the first response there can be potentially three (3) outcomes:” the first being providing the information; the second being the information being requested is privileged or classified and unavailable; and the third the date of when the information will be provided.

Mr. Jenkins advised that appellant’s Exhibit E, which is the lawsuit filed by Mr. Schmidt against Washoe County and Washoe County Air Quality Management; that the lawsuit “does name Mr. Vega, but in his capacity as the Director.” Mr. Jenkins stated the Hearing Board members have been provided “with all of the emails in Exhibits 1-5.” Mr. Jenkins stated on January 11, 2021, Air Quality Management conducted a “compliance/enforcement meeting, with him representing Mr. Schmidt with the stated purpose to discuss supporting information associated with the draft Notices of Violation and for Gary Schmidt to present evidence to contest the findings associated with the draft Notices of Violation.” Mr. Jenkins stated, “he was afforded no opportunity to have a meaningful dialogue to address his concerns, nor was he provided any evidence of the violations by the Department.” Mr. Jenkins stated one of the public information requests was “for the entire file of Mr. Schmidt”; that the AQMD Staff referenced the Waste Manifest at the Lockwood Landfill; however, he cannot, as he “has received nothing”, which is grounds for dismissal.

Mr. Jenkins stated regarding AQMV21-0002, he would advise that Mr. Schmidt applied for and received a Building Permit on February 26, 2019; that it is the contention of Staff that the issuance of the Permit is the subject of the violation; therefore, he would question if the Building Department “has also been subsequently fined for issuing said permit?” Mr. Jenkins stated his

arguments will apply generally to all of the violations issued 0002-0005.

Mr. Jenkins stated the Reindeer Lodge is not a facility; therefore, is not subject to the requirements of 40 CFR. Mr. Jenkins stated the project did “not meet the threshold for hazardous materials” in which it would be subject to the Regulations”; that the threshold is 1 cubic meter or 35 cubic feet. Mr. Jenkins stated pursuant to the NESHAP Notification form, which was received and accepted by the AQM Division on September 14, 2020, there was less than twenty (20) feet of material was present at the Reindeer Lodge. Mr. Jenkins reiterated the AQM Division accepted the NESHAP form; that the third exemption to the CFR is that the project was an emergency due to the collapse of the roof due to heavy snow during the winter of 2016/17. Mr. Jenkins stated the condition of the structure continued to deteriorate over the next couple of winters, which was a source of potential liability for Mr. Schmidt and the County. Mr. Jenkins advised the AQM Division issued Permit No. ASB19-0963 on September 12, 2019, as delineated in the Staff report, page thirteen (13); that “a true and correct signed copy of the NESHAP form was stamped received by AQM on September 14, 2020.” Mr. Jenkins reiterated the report indicated less than twenty (20) cubic feet of material being removed, as delineated in Staff’s report on page on page ninety (90). Mr. Jenkins stated, “AQMD admits this document was received and approved on September 14th, page seventy (70)”; that “by the action of AQMD accepting this document” indicates that a NESHAP was not required, “accepting that the amount of the materials falls below the thresholds.” Mr. Jenkins stated no demolition activities occurred on the structure or moving of the natural debris prior to December 12, 2019, with the exception of the removal of several exposed collapsed beams which were moved adjacent to the debris pile to potentially be used for later renovation. Mr. Jenkins stated his Exhibit A, Mr. Schmidt’s statement, and Mr. Pezonella’s statement Exhibit B corroborate this.

Mr. Jenkins stated it is his assertion Washoe County is not in compliance with State Law and/or County Code regarding “the appointment and authorization of a building official, as defined and mandated by said Laws and Codes” in addition to “the establishing of a continuing education required as determined by said building official.” Mr. Jenkins stated this is delineated in Exhibits C and D, letters from Mr. Don Jeppson who was the last designated building official in Washoe County; that Mr. Jeppson has not been in that position since 2017.

Mr. Jenkins referenced NRS 278 advising is the requirement for authorizing the creation of a building official in the County with a population between 1 and 700,000. Mr. Jenkins stated County Code 100 authorizes the creation of the Building Department and the Building Official position.

Dr. Fitzgerald advised Mr. Jenkins the focus of the Hearing Board is the Notices of Violation specific to asbestos; therefore, information specific to the Building Department is not really relevant to the discussion of the hearing.

Mr. Jenkins stated the relevance is the creation of the Building Official position defines “who can actually inspect the building”; that he “asserts Joshua Restori has no authority to inspect the building as to the soundness of the structure or related issues due to the lack of the Building Official.” Mr. Jenkins stated it is the Building Official who has the authority “to appoint who may or may not inspect structures; that the Building Official establishes the continuing education requirements. Mr. Jenkins stated it is their assertion “by not having that position the County, and hence the Air Quality Management Division, by conducting an inspection has violated the law.” Mr. Jenkins stated his last statement specific to Mr. Restori’s lack of authority is delineated in his Exhibit B, the letter from Don Jeppson; and Washoe County Code Chapter 100.

Mr. Jenkins advised that “at all times Mr. Schmidt attempted to cooperate fully with any and all agencies of the County; and at all times acted in good faith.” Mr. Jenkins stated Mr. Schmidt and his associates were assured by Mr. Michael Wolf, previous Supervisor of Enforcement with the Air Quality Management Division that no action would be taken with the stipulation that all aspects of the project would be conducted in compliance with all Regulations. Mr. Jenkins stated Mr. Schmidt relied on Mr. Wolf’s assurance this would include “alleged earlier activities on the site, providing the project was quickly completed to the satisfaction of AQMD. Mr. Jenkins stated Mr. Wolf advised Mr. Schmidt that neighbors in the area had complained as to the condition of the Lodge and that the County “wanted the project completed quickly.”

Mr. Jenkins stated it is Mr. Schmidt’s “insists that at all times the County has acted with malice of forethought, prejudice, animosity, hostility, and in an arbitrary and capricious manner against Mr. Schmidt and his project at the Reindeer Lodge.” Mr. Jenkins stated Mr. Schmidt has suffered deteriorating medical conditions “largely associated the stress associated with the stress of this project.” Mr. Jenkins reiterated Mr. Schmidt has complied completely with all the demands of the County “even though he was not required to do so”; that the AQM Division issued Notices of Violations “once complete compliance had been acquired”, which demonstrates the arbitrary and capricious actions of the AQM Division against Mr. Schmidt.

In response to Mr. Kenney regarding the ceiling materials to which Mr. Jenkins referred, Mr. Jenkins stated he was advised by Mr. Schmidt that approximately 80% of the ceiling material had been replaced “at some time during Mr. Schmidt’s ownership which began in 1971.” Mr. Jenkins advised he is not in receipt of any information specific to the contractors or invoices. In response to Mr. Kenney regarding Mr. Jenkin’s reference to a copy of the exploration and renovation Building Permit he indicated had been issued in February 26, 2019, Mr. Jenkins stated he does not have a copy of it.

Dr. Fitzgerald reiterated she conducted a search of the Washoe County Building Department’s website and there were no permits issued to the Reindeer Lodge on that date; that the only reference is to the one referred to by Staff. Dr. Fitzgerald questioned if Mr. Jenkins had proof to

substantiate his claim.

Mr. Jenkins clarified his notes may be incorrect; that he believes there was only the one Building Permit issued.

Dr. Fitzgerald clarified Mr. Restori was not performing the duties of a building inspector; that Mr. Restori is a Supervisor in the Air Quality Management Division; therefore, his duties are to ensure compliance with the Air Quality Management Division's Regulations. Dr. Fitzgerald stated there isn't any correlation between the duties of a building inspector's duties.

Mr. Jenkins stated it is the assertion of the appellant Mr. Restori "made several determinations as to the state of the structure; and how the state of the structure applied to the CFRs; that Mr. Restori indicated there was a demolition; that "it was unsound/unfit. Mr. Jenkins stated Mr. Restori made "several determinations in his own testimony", which inferred he was inspecting and making a judgement as to the 'soundness of the structure."

Dr. Fitzgerald stated the documentation provided specifies the Asbestos Assessment Acknowledgement (AAA), submitted by All Eagle LLC specifies this was a demolition project.

In response to Dr. Fitzgerald, Mr. Jenkins stated the employees of All Eagle LLC "are not government employees making the determination. Mr. Jenkins questioned if Dr. Fitzgerald is questioning whether Mr. Restori relied on the report from All Eagle in determining this was a demolition?

In response to Mr. Jenkins, Dr. Fitzgerald stated if "there are equipment and excavators tearing down a building that would be considered a demolition by anyone who observed it"; that All Eagle LLC "reached the same conclusion in deeming this a demolition project.

Mr. Jenkins stated it remains the assertion of the appellant that Mr. Restori was investigating the structure, which he is not allowed to perform. Mr. Jenkins stated employees of All Eagle LLC are not governmental employees paid by the County to perform and inspection; that All Eagle is a private contractor; that "their opinion of what is occurring is not regulated by said Building Official." Mr. Jenkins stated he could argue "there was some demolition and some renovation."

Dr. Fitzgerald stated there is a distinction between a Building Inspector and an Inspector from the Air Quality Management Division who is observing activities to determine if it complies with the requirements for asbestos.

Mr. Kaplan stated the letter from Mr. Pezonella (submitted by the appellant), indicates that to Mr. Pezonella's knowledge "all demolition work at the Reindeer Lodge was monitored and

supervised by Mr. Restori and Mr. Tom Wise an independent consultant from Wise Consulting and Planning. Mr. Kaplan stated if Mr. Wise was on the job; that he would question if Mr. Wise was present during the demolition process?

In response to Mr. Kaplan, Mr. Jenkins stated Mr. Wise was on-site for a “large portion of the project, specifically where there might be any potential issues that the County might want to regulate.” In response to Mr. Kaplan regarding Mr. Wise conducting any asbestos testing, Mr. Jenkins stated “he is unclear to that”; that Mr. Wise was to provide supervision for the proper removal and handling of any asbestos found; that he does not believe Mr. Wise “provided any testing.” Mr. Jenkins stated he would take Mr. Pezonella “at his word” that he observed Mr. Restori supervising the project.

Mr. Vega stated in reference to Mr. Jenkins’ comment as to the Notice of Violation being issued “after compliance had been achieved”, that the action was punitive and vindictive. Mr. Vega stated the purpose of the penalties is to be a deterrent for other regulated agencies in the community not complying with the requirements of the Regulations. Mr. Vega stated the principle of deterrents is within the EPA Compliance and Enforcement Program with an attempt to prevent similar actions in the future in an effort to ensure compliance. Mr. Vega stated a comparison would be to someone receiving a speeding ticket and receiving a fine; that the officer was justified in “pulling you over”; that the fine is a deterrent for someone to speed in the future. Mr. Vega stated it is the intent of the Air Quality Management Division to prevent similar violators in the future.

In response to Mr. Vega, Mr. Jenkins stated when an officer pulls someone over the ticket is issued at that time; and “not six (6) months later.

Mr. Restori spoke in rebuttal to Mr. Jenkins stating it is important to be aware, regarding compliance with the notification requirements for demolition, in September of 2020, compliance was not achieved until “almost a year and a half after the initial demolition occurred.” Mr. Restori stated the Hearing Board’s focus should be the original demolition which occurred on or before June 10, 2019. Mr. Restori stated, as he previously advised, when the notification was submitted to the AQM Division, “it was submitted under protest and duress”; that the appellant does not acknowledge the facility is regulated by 40 CF 61 145 Subpart M. Mr. Restori advised in reference to a speeding ticket compliance was achieved with the issuance of a speeding ticket; however, in this case compliance “may never have been met, as the majority of the building was demolished in the summer of 2020, without a Notification.” Mr. Restori stated, “it is very incorrect to presume a structure deemed a facility does not require Notification prior to demolition.” Mr. Restori stated 40 CFR 61 145 stipulates when a facility being demolished “only the notification requirements of paragraphs of X, Y, Z of this Section apply only if the combined amount of RACM is less than 260 linear feet or 160 square feet or less than 35 cubic

feet. Mr. Restori stated a Notification is required on the demolition of a facility; that the issue of compliance dates back to June 10, 2019, as to whether or not a Notification was submitted, which it was not. Mr. Restori stated that the appellant continued with the demolition after the abatement; and continued to demolish the building in the summer of 2020; that after the building was on the ground the Notification was submitted.

Ms. Rucker stated the appellant has asserted Mr. Restori was functioning in the capacity as a building inspector and were on-site frequently. Ms. Rucker questioned whether or not at any time when Mr. Restori was on-site if there were any building inspectors “to speak to the safety of the occupancy of the building. Ms. Rucker questioned, if at any time, Mr. Restori spoke of any issues other than air quality issues specific to the site?”

In response to Ms. Rucker, Mr. Restori stated he was not on-site frequently; that at no time when he was on-site was, he aware of any building inspectors being on-site. Mr. Restori stated at no time did he speak of any issues other than those related to air quality.

There being no further questions of Staff or Mr. Jenkins, Dr. Fitzgerald closed the Public Hearing. Dr. Fitzgerald stated the Hearing Board may move to deny the appeal and uphold the recommendation of Staff to levy the fine of \$36,500 for Case 1229. Dr. Fitzgerald stated the Hearing Board may move to uphold the violation and recommend an alternative fine in the amount of \$0 up to a fine of \$10,000 per day the violation occurred. Dr, Fitzgerald stated the third option is to uphold the appeal and dismiss the Citation. Dr. Fitzgerald requested comments from the Hearing Board members.

Ms. Downs stated she is a Certified Building Asbestos Inspector; that in a situation of four (4) individual homes on one piece of property, all owned by the same individual, this would be considered a facility. Ms. Downs stated a structure which has been used as a bar with more than four (4) rental units/rooms is a facility in accordance with the Regulations. Ms. Down stated she would support proceeding with a recommendation; that as a Certified Building Asbestos Inspector the Regulations “are very, very clear and have been violated.” Ms. Downs stated the AQM Division has been extremely helpful in attempting to have this facility “come into compliance.” Ms. Downs stated that, while she would agree the appellant has attempted to come into compliance; however, as the documentation demonstrates the appellant has “done all of this under duress”, which in her opinion, the appellant disagrees with the requirements of the Regulation; therefore, the appellant “is off base.”

In response to Mr. Squire regarding “a maximum occupancy having any bearing on the requirements of the Regulations, Dr. Fitzgerald stated according to the Regulations it does not.

Dr. Fitzgerald stated any structure that has been used as a commercial property is defined as a facility according to the Regulations. Dr. Fitzgerald stated the Reindeer Lodge has always been a commercial facility.

Mr. Kaplan stated there is some conflicting information that has been presented; that the information provided by Mr. Jenkins from Mr. Jeppson should be reviewed. Mr. Kaplan stated he would question “what is the reasonable damage that occurred and to whom.” Mr. Kaplan stated he has concerns regarding Mr. Wise being on the job and allowing what occurred as has been presented. Mr. Kaplan stated the Hearing Board members need to consider what would be a reasonable fine; that he concurs Mr. Schmidt was in violation, as he was made aware of the requirements of the Regulations; that he failed to comply and has made the situation difficult for the AQM Division. Mr. Kaplan stated he concurs a violation occurred; however, the recommended fine of \$36,500 is excessive. Mr. Kaplan stated he has worked in conjunction with the AQM Division Staff for a number of years; and “has always found them very accommodating.”

Ms. Rucker stated in receiving the information and documentation from Mr. Jenkins immediately prior to tonight’s hearing; that she has not had ample opportunity to review the material.

The Hearing Board recessed at 7:50pm, to allow the Hearing Board members to review the letters presented by Mr. Jensen. The Board reconvened at 7:53pm.

Mr. Jenkins stated he would request the opportunity to clarify the discrepancy of the Building Permit issue. Mr. Jenkins advised Building Permit WBLD18-105119 was applied for on April 6, 2018 and issued on February 25, 2019; that there was only the one (1) permit issued.

Dr. Fitzgerald stated that permit was for tenant improvement and remodeling regarding the removal the damaged portion and of roof debris and not for the demolition, which would explain why it was not forwarded to other Departments for review and approval.

MOTION

Ms. Rucker stated she strongly disagrees with Mr. Jeppson’s assertion that the Washoe County Air Quality Management Division has “no authority to do their job; that Staff was not acting in the capacity of a Building Inspector” Ms. Rucker stated Mr. Jeppson’s comments are specifically related to the functions of a Building Inspector. Ms. Rucker stated Mr. Jeppson is apparently under contract with Mr. Schmidt; and again, she strongly disagrees with Mr. Jeppson’s assertion that Mr. Restori doesn’t have the authority to enforce Air Quality issues specifically as related to air toxic contaminants such as asbestos.

Dr. Fitzgerald stated she would concur that Mr. Jeppson's first letter is more specific to building inspection issues and permit requirements; and whether a permit was necessary for demolition and renovations; and did not relate to asbestos or air quality issues at all. Dr. Fitzgerald stated in the second letter Mr. Jeppson "assumes abatement would not be necessary and a permit would not be issued by the Building Department without approval by the Health District." Dr. Fitzgerald stated there was no demolition permit issued by the Building Department; therefore, "that would be irrelevant." Dr. Fitzgerald stated historically when demolition permits are issued by the Building Department it's forwarded to the Air Quality Management District for review and approval.

Ms. Rucker questioned in reviewing all aspects of this incident, she would question if the Air Quality Management Division had noted the issuance of permits for any of the work performed? Ms. Rucker indicated, as she stated previously, it has always been her understanding when a Building Permit is applied for, the request is reviewed by all the Departments which are applicable. Ms. Rucker stated a Building Permit was applied for in April 2018; however, was not approved until February 2019.

In response to Ms. Rucker, Mr. Restori stated the Air Quality Management Division "did not have the opportunity to review the Building Permit" application or advised of such.

In response Ms. Rucker regarding the application dates of the Building Permit and the issuance of the Building Permit, Mr. Jenkins stated those dates are accurate.

In response to Dr. Fitzgerald regarding reviews of Building Permits for tenant improvements (TI) and remodels, Mr. Restori advised the AQM Division Staff does review requests for TIs and improvements.

Dr. Harris advised Mr. Jenkins that he is the legal representative member of the Hearing Board. Dr. Harris advised that, specific to asbestos abatement, the Statutes and Regulations "amount to a case of strict liability." Dr. Harris stated there was the obligation to ascertain if there was a problem; to provide notice to the appropriate authorities; and conduct remediations in accordance with the directions provided. Dr. Harris stated, as a matter of law, Mr. Taylor's client had a strict liability obligation to the health and welfare of the County.

Dr. Harris stated, Mr. Kaplan, as a General Contractor, advised "every General Contractor knows about the need of asbestos surveys and asbestos safety. Dr. Harris stated, the appellant's "quarrel is not with the Air Quality (Hearing) Board of Washoe County", but with the appellant's General Contractor, regardless of which contractor it was. Dr. Harris stated it was the General Contractor "who failed to identify the asbestos regulations"; that the appellant is "the harmed party"; and has a legal action against the contractor, and not Washoe County nor Air Quality Management.

Dr. Harris stated he would be in favor of seconding Ms. Downs previous motion to deny the appeal and uphold Staff's recommendation to levy at \$36,500 fine.

Mr. Sooudi stated, at this time, there is no motion to be considered.

In response to Mr. Kaplan regarding the Building Permit that was issued to the appellant, Dr. Fitzgerald advised the Building Permit, applied for in April of 2018; and issued in February 2019, which was issued to the appellant, was for a Tenant Improvement and Renovation. In response to Mr. Kaplan specific to the parameters of the Building Permit indicating any demolition, Dr. Fitzgerald stated the Building Permit was issued for "Investigative work to include recovery of historical building materials for the repurposing and structural assessment of the Lodge portion damaged by the snow/possible removal of damaged portion of Lodge and roof debris with the installation of a non-bearing weather resistant end wall. Following phase will include contractor apply for permit for any structure repair or stabilization as outlined by Structural Engineer."

Dr. Harris stated, based upon the strict liability; and the failure to comply with Regulations, he would move to deny the appeal of the Reindeer Lodge; and uphold Notices of Violations AQMV21-0002; AQMV21-0003; AQMV21-0004; and AQMV21-0005, Case No. 1229 issued to Mr. Gary R. Schmidt; and uphold Staff's recommendation to levy a fine in the amount of \$36,500.

In the discussion that followed, Mr. Kaplan stated he concurs the violations did occur; that his concern is the amount of the recommended fine being excessive.

Ms. Downs seconded Dr. Harris' motion to deny the appeal and uphold the Notices of Violation as delineated; and recommend a fine in the amount of \$36,500.

In a roll call vote, Ms. Rucker, Ms. Downs, Mr. Squire, Dr. Harris; Mr. Kenney voted in favor of upholding the motion.

Mr. Kaplan voted "no."

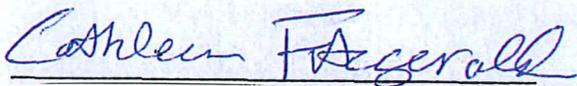
Dr. Fitzgerald advised the vote carries, with the recommendation of a \$36,500 fine to be levied.

Ms. Smith, Recording Secretary, stated, for the record, Mr. Jenkins, as Mr. Schmidt's attorney has been advised the Air Pollution Control Hearing Board is a recommending body only; that the recommendation of the Hearing Board will be forwarded to the District Board of Health for final review and action. Ms. Smith stated Mr. Jenkins was further advised of Mr. Schmidt's right to appeal the recommendation of the Hearing Board, in writing, within five (5) working days of

tonight's hearing, to the District Health Officer, should he wish to do so. Ms. Smith stated Mr. Jenkins was advised the Case will be presented to the District Board of Health at the meeting of May 27, 2021, beginning at 1:00pm. Ms. Smith advised Mr. Jenkins has executed said notification and returned it to her.

In response to Mr. Jenkins requesting Findings of Fact, Mr. Sooudi advised any findings would be from the discussion, as part of the record.

In response to Mr. Jenkins, Ms. Smith advised, historically, Findings of Fact are specific to variance requests; that as Dr. Fitzgerald stated, there have never been Findings of Fact during an appeal hearing.



CATHLEEN FITZGERALD, DEnv, PE
Chair



JANET SMITH
Recording Secretary