

TAHOE REGIONAL PLANNING AGENCY  
LEGAL COMMITTEE

Tahoe Regional Planning Agency  
Zoom

May 22, 2024

**Meeting Minutes**

CALL TO ORDER AND DETERMINATION OF QUORUM

Chair Williamson called the meeting to order at 8:32 a.m. on May 22, 2024.

Members present: Ms. Aldean, Ms. Faustinos, Mr. Rice, Ms. Leumer, and Ms. Williamson.

Members absent: None.

I. APPROVAL OF AGENDA

Mr. Marshall stated there were no changes proposed to the agenda.

Chair Williamson deemed the agenda approved as posted.

II. APPROVAL OF MINUTES

Ms. Aldean made a motion to approve the April 24, 2024 Legal Committee meeting minutes as presented.

**Motion carried** by voice vote.

III. [APPEAL OF FIGONE GARAGE/ACCESSORY DWELLING UNIT PERMIT, 32 MOANA CIRCLE, PLACER COUNTY, CALIFORNIA, ASSESSOR'S PARCEL NUMBER \(APN\) 098-191-018, TRPA FILE NO. ERSP2023-0701, APPEAL FILE NO. ADMIN2024-0005](#)

Graham St. Michel, TRPA Associate Attorney, presented staff's recommendation on an appeal involving a construction permit issued under the executive director's authority to the Legal Committee. The permit allows for the demolition and reconstruction of a detached garage with a 618 square foot accessory dwelling unit (ADU) above it. The applicant, Ms. Figone, received the permit, which has been contested by neighboring residents.

The presentation outlined three main arguments from the neighbors: concerns about private views and potential conflicts with homeowner association (HOA) restrictions, objections to the assignment of a housing bonus unit due to speculative use concerns, and issues related to a scenic assessment impacted by the removal of a tree.

Mr. St. Michel clarified that the project complies with all TRPA development standards, including height restrictions and scenic design constraints. He emphasized that the project is an allowed use under local plans and TRPA codes, thus not requiring special use findings. Private views and HOA restrictions were deemed irrelevant to the permit issuance.

Regarding the housing bonus unit, St. Michel explained that the permit includes a deed

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restriction prohibiting vacation rentals and limiting occupancy to achievable housing definitions. He dismissed speculative concerns, stating that compliance with the deed restriction is enforceable and ensures the project qualifies for the bonus unit under TRPA regulations.

Finally, Mr. St. Michel addressed the scenic assessment issue, noting that the project meets shoreline scenic requirements despite the removal of a tree shown in earlier assessments.

The conclusion recommended denying the appeal and confirming the executive director's decision to issue the permit.

Speaking on behalf of the group of appellants, Jens Egerland began acknowledging the professionalism of the TRPA staff, specifically mentioning Brandy McMahon, Katherine Huston, and Graham St. Michel, and expressing appreciation for their availability and willingness to assist when called upon, despite his disagreement with several of their conclusions. In his presentation to the Legal Committee, Mr. Egerland highlighted several critical concerns regarding the ADU project at 32 Moana Circle in Homewood, California. He began by acknowledging the challenges residents face in navigating TRPA processes, citing the complexity of codes and regulations. Mr. Egerland stressed the importance of TRPA's role in accurately interpreting and enforcing policies to ensure transparency during public permitting. He expressed doubts about the effectiveness of TRPA's policies, particularly concerning achievable income deed-restricted ADUs meant for the "missing middle." Mr. Egerland pointed out discrepancies in the application of specific code sections and raised questions about their relevance to the project in question.

Additionally, Mr. Egerland emphasized the need for robust enforcement of deed restrictions on ADUs to maintain their intended use. He sought clarity on how TRPA monitors and ensures compliance, especially in cases where Placer County might alter or remove deed restrictions. Mr. Egerland also addressed legal and procedural issues encountered during the project review, including misunderstandings over project findings and scenic assessments, which led to the initiation of an appeal process. He expressed concerns about the potential misuse of bonus units intended for community housing if ADUs are used for personal purposes, advocating for greater transparency in TRPA's monitoring and enforcement practices. Overall, Mr. Egerland's presentation underscored the importance of clarity, accuracy, and adherence to policy to uphold the intended benefits of ADU projects within the community.

Michael Brown, representing the permittee, presented in support of the application for an ADU permit at Ms. Figone's property, emphasizing that the project complies with all TRPA ordinances and development standards. He acknowledged the diligent work of TRPA staff and their recommendation to deny the appeal against the permit. Mr. Brown highlighted that the opposition's challenge was primarily based on view restrictions, which he argued are not within TRPA's purview as they are private property disputes. He presented visuals and comparisons to demonstrate that Ms. Figone's proposed ADU does not significantly impact neighboring views compared to other larger developments in the area. Mr. Brown concluded by urging the legal committee to uphold the executive director's decision to issue the ADU permit, stating that Ms. Figone intends to fully comply with all regulations and that there is insufficient evidence to support reversing the decision.

In his rebuttal, Mr. Egerland expressed surprise at the focus of Michael Brown's presentation, noting that the HOA does not serve as a proxy for TRPA. He emphasized that their comments were specifically limited to questioning the intent behind the project. Egerland acknowledged that the application technically complies with requirements but indicated that their concerns would be addressed through litigation. He concluded by stating that he would submit written

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comments outlining their ongoing concerns about how the project aligns with the goals related to affordable housing and the "missing middle" concept.

### Committee Member Comments and Questions

Shelly Aldean asked TRPA General Counsel John Marshall if he was aware of any instances where Placer County had removed restrictions that were originally applied and enforced by TRPA, as suggested by the opponent.

John Marshall responded that he was not aware of any instances where Placer County had removed restrictions applied and enforced by TRPA. He clarified that any such actions would typically involve Placer County's own restrictions, not TRPA's. He noted that while deed restrictions have been removed in the past, it was not for affordable or achievable housing purposes. In this case, the property owners could not remove the deed restriction because they could not substitute another unit in its place. The current unit could only be built as a bonus unit.

Mr. St. Michel clarified that the property could not have an ADU with a kitchen due to its location. An ADU requires a residential unit of use, which wasn't available due to the sensitive land capability and slope of the site. Therefore, a bonus unit was needed. While removing the kitchen would negate the need for the bonus unit, the applicant wanted a full ADU, necessitating the bonus unit due to the site's restrictions.

Ms. Aldean commented on the qualification criteria for ADUs, noting that existing code provisions allow ADUs to be used for achievable housing or by family members related to the occupants of the primary dwelling by birth, marriage, or adoption. She highlighted that the applicant intends to use the ADU exclusively for herself, as she is a family member related by birth to those living in the primary residence.

Mr. St. Michel responded by acknowledging that upon reviewing the file, he found it unclear what the specific argument was regarding the use of the ADU. He noted that it seemed the opponents generally believed the applicant would not use the ADU in accordance with the definition of achievable housing.

Ms. Figone explained that a few years ago, she let several kids who worked at local businesses live in her garage during the summer and one during the winter, using her house for kitchen facilities. When asked if she would occupy the new ADU, she clarified she would be living in her house, not the ADU. She emphasized that the ADU would be used for affordable housing, consistent with its definition. Ms. Figone also mentioned that her children now own the house, although she remains the trustee to keep it in the family.

Ms. Aldean clarified her earlier presumption that Ms. Figone would be using the ADU herself due to specific language. However, it was confirmed that the ADU would actually be used for affordable housing. Ms. Aldean expressed appreciation for this clarification, countering the appellant's argument that the ADU would not address the need for affordable housing.

Ms. Faustinos sought clarification regarding future ownership scenarios for the property. She asked if a new owner could allow a family member to live in the ADU without meeting other criteria. It was confirmed that this would be permissible. She acknowledged that circumstances can change and wanted to ensure that the current owner could also choose to live in the ADU in

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the future while remaining compliant with regulations. She concluded by expressing appreciation for the clarity of the staff report.

### Public Comments

Ann Nichols from the North Preservation Alliance expressed concerns about the use of bonus units and achievable housing provisions without income caps. She highlighted that this could lead to an increase in the size of homes or the addition of multiple units, which might not address the intended housing issues. Ms. Nichols warned that the current example shows potential for misuse, where one could obtain bonus units, deed-restrict a house, and then rent or sell these units without addressing affordable housing needs. She stressed the necessity of establishing a clear, overarching policy before proceeding further with such initiatives.

Ms. Leumer acknowledged the difficulty residents face in navigating code sections, especially those unfamiliar with such processes. She appreciated the TRPA staff for their responsiveness and availability to assist the involved parties. Ms. Leumer commended the staff for their engagement and willingness to answer questions, emphasizing that while it might not change the outcome, their support helps in navigating the complex process.

Ms. Aldean highlighted the TRPA's commitment to its responsibility, particularly in reviewing upcoming changes related to affordable housing during the meeting. She emphasized the agency's dedication to increasing affordable housing while ensuring the process is not misused.

Ms. Aldean moved to recommend Governing Board denial of the appeal.

Ayes: Ms. Aldean, Ms. Faustinos, Ms. Leumer, Ms. Williamson, and Mr. Rice.

Nays: None

**Motion carried.**

#### IV. [DISCUSSION OF COMPLIANCE PROCEDURES FOR VIOLATIONS OF INCOME- OR EMPLOYMENT-RELATED DEED-RESTRICTIONS](#)

Karen Fink, from the Long Range Planning Department, presented alongside Michelle Brown to discuss tightening protocols for enforcing deed restrictions. They underscored the growing importance of these restrictions in meeting housing and environmental goals, highlighting initiatives such as annual audits to ensure compliance. The proposed enforcement approach includes issuing notices of violation and cease and desist orders, accompanied by penalties calibrated to escalate over time to deter ongoing violations. They also outlined plans for enhancing deed restriction processes, including better documentation during property sales and educational efforts. Seeking feedback, they aimed to refine these protocols to align with community and agency expectations for effective enforcement and compliance.

Committee Member Comments and Questions

Chair Williamson expressed concern about the proposed fines for violations of deed restrictions, comparing them to other fines in the Tahoe area, such as tree fines, which she felt were significantly lower. She questioned whether the proposed fines adequately deter violations, particularly given the importance of affordable housing and the seriousness of maintaining deed restrictions. Her initial feedback suggested that the fines should be significantly higher to ensure effective enforcement and compliance with deed restrictions.

Ms. Leumer highlighted concerns about the proposed fines for violations of deed restrictions, suggesting that they might not serve as an effective deterrent. She expressed that some violators, if simply renting out their property at market rates, could easily cover the fines and still turn a significant profit.

Chair Williamson expressed concerns about the proposed fines for deed restriction violations, suggesting that they should be comparable to fines for other serious violations in the area, such as tree violations which can start at \$25,000 per violation. She emphasized the need for substantial fines to ensure compliance with deed restrictions. Additionally, she expressed support for establishing a sustainable funding source for compliance and monitoring efforts, noting its importance and potential benefits for addressing various regional issues. She sought clarification on the feasibility and potential avenues for securing such funding.

Karen Fink responded by indicating support for letting the process unfold as they bring forward their next amendments. She highlighted the potential for incorporating the costs of monitoring and enforcement into the broader framework of affordable housing initiatives in the region. Fink suggested exploring the possibility of implementing fees or other mechanisms tied to development projects that rely on housing, which could serve as a sustainable funding source for ongoing compliance and monitoring efforts related to deed restrictions.

Chair Williamson emphasized the importance of taking seriously the idea of incorporating violations into a sustainable funding source. While acknowledging the legal considerations, she suggested exploring whether funds from violations could contribute to such a source. Ms. Williamson underscored the critical role of beefing up and adequately funding enforcement efforts, expressing gratitude to the committee for considering her comments.

Ms. Aldean raised several points during her comments. Firstly, she expressed concern about deed-restricted properties being sold at prices higher than allowed, suggesting that buyers should be informed and potentially seek legal recourse against title companies involved in such transactions. She highlighted the role of escrow companies and title insurance in such sales, emphasizing that buyers should be aware of any violations of deed restrictions. Secondly, she proposed the idea of requiring a refundable deposit when issuing ADU permits, with the deposit refunded if the property remains compliant over several years. She also inquired about the feasibility of entering into MOUs with local jurisdictions to allow them to file liens against non-compliant properties at TRPA's request, seeking enhanced enforcement mechanisms through partnerships with local authorities.

Marsha Burch, TRPA Associate Attorney, responded to Ms. Aldean's concerns by acknowledging the complexities involved in deed-restricted property sales and the potential for buyers to seek legal remedies against title companies for violations. She agreed on the importance of transparency in such transactions, emphasizing the roles of escrow companies and title insurance in ensuring compliance with deed restrictions. Regarding the proposal for a

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refundable deposit for ADU permits, Ms. Burch indicated openness to exploring this idea further as a means to incentivize compliance over time. On the topic of MOUs with local jurisdictions, she expressed interest in collaborating to strengthen enforcement measures, suggesting that partnerships could indeed enhance TRPA's ability to address non-compliance effectively.

Ms. Aldean emphasized the need for effective enforcement mechanisms, especially given potential increases in fines for non-compliance. She highlighted the financial strain and complexity of lawsuits, whether handled internally or outsourced. Advocating for efficient collection methods, she supported the idea of placing liens on properties with unpaid assessments as a practical solution. Additionally, she proposed clarifying language in the document concerning violations of deed restrictions, suggesting it should explicitly state that such violations could lead to appropriate legal actions.

Ms. Leumer raised a question about whether it would be feasible to link the penalty fee amount directly to the value of the property in question. She acknowledged that property values can vary significantly, suggesting this as a potential factor to consider when determining penalty amounts.

Karen Fink responded briefly, acknowledging Ms. Leumer's suggestion to tie penalty fees to property values and agreeing that it's a point worth exploring further.

Marsha Burch responded, noting that the staff has discussed various methods to escalate fines for violations. She acknowledged receiving public comments echoing concerns about whether the proposed fines are sufficient to deter improper use of units. Burch indicated that they will consider these perspectives and explore the possibility of tying fines to the value of the property as a potential solution.

Ms. Leumer expressed support for tying fines to the value of the property to ensure they are meaningful deterrents. She emphasized the importance of clarity and transparency regarding fines and penalties associated with violations of ADU codes. Ms. Leumer indicated that such measures should serve as disincentives to non-compliance and ensure adherence to TRPA's complex regulatory requirements for ADUs.

Ms. Aldean suggested ensuring that the literature accompanying ADU permits includes a signed acknowledgment from recipients, indicating their understanding and agreement to comply with the provisions outlined. She emphasized that signed documents often lead to better adherence compared to merely receiving information that might be disregarded over time.

### Public Comments

None.

## V. CLOSED SESSION WITH COUNSEL TO DISCUSS EXISTING AND POTENTIAL LITIGATION

Ms. Faustinos made a motion to move to closed session.  
**Motion carried** by voice vote.

The Legal Committee was in closed session for approximately 30 minutes.

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Ms. Aldean made a motion to move to open session.

**Motion carried** by voice vote.

VI. POTENTIAL DIRECTION REGARDING AGENDA ITEM NO. 5

No direction.

VII. COMMITTEE MEMBER COMMENTS

None.

VIII. PUBLIC INTEREST COMMENTS

None.

IX. ADJOURNMENT

Ms. Aldean moved to adjourn.

Meeting adjourned at 10:13 a.m.

Respectfully Submitted,



Katherine Huston  
Paralegal

*The above meeting was recorded in its entirety. Anyone wishing to listen to the recording may find it at <https://www.trpa.gov/meeting-materials/>. In addition, written documents submitted at the meeting are available for review. If you require assistance locating this information, please contact the TRPA at (775) 588-4547 or [virtualmeetinghelp@trpa.gov](mailto:virtualmeetinghelp@trpa.gov).*