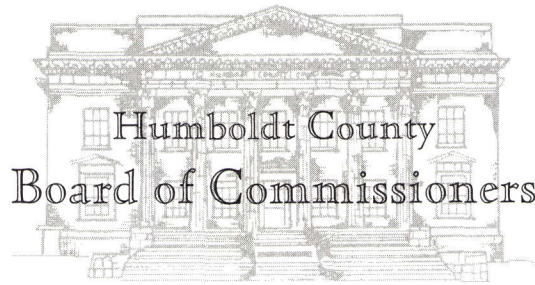


County Commissioners:

TOM FRANSWAY, *Chairman*
DAN CASSINELLI, *Vice Chairman*
CHUCK GIORDANO
GARLEY AMOS
MIKE BELL



County Administrator:
BILL DEIST

COURTHOUSE, ROOM 205
50 W. FIFTH STREET
WINNEMUCCA,
NEVADA 89445
Phone: (775) 623-6300
Fax: (775) 623-6302

PROPOSED

FINDINGS BASED ON APPEAL OF VOTE, DECISION AND FINDINGS BY THE HUMBOLDT COUNTY REGIONAL PLANNING COMMISSION REGARDING REVOCATION OF CONDITIONAL USE PERMIT #UH-07-05 OF JUNGO LAND & INVESTMENTS, INC.

Bob Dolan and Massey Mayo filed an Appeal on October 14, 2009 ("Appeal"), requesting the Humboldt County Board of Commissioners ("Commissioners") reverse the Findings of the Humboldt County Regional Planning Commission ("RPC"), dated October 8, 2009 ("Findings"). The issue raised on appeal is whether the RPC abused its discretion in denying a hearing on revocation of Jungo Land & Investments, Inc.'s Conditional Use Permit #UH-07-05 ("CUP"). The RPC found there was no evidence provided to show Jungo Land & Investments, Inc. ("Jungo") made any misrepresentations to the RPC or that Jungo was not in compliance with any of the conditions of its CUP.

Based upon the record from the RPC (*see* Exhibit 1, attached), the Appeal (*see* Exhibit 2, attached) and the Response from Jungo, dated October 27, 2009 ("Response") (*see* Exhibit 3, attached), the Commissioners uphold the Findings of the RPC.

The RPC Findings concluded that Appellants did not present sufficient evidence to set a hearing regarding revocation of Jungo's CUP. After reviewing the RPC record, the Appeal, and the Response, the Commissioners agree that Appellants have not presented any evidence to show Jungo made any misrepresentations to the RPC, or that it has violated any of the conditions of its CUP. This Appeal, similar to the facts presented to the RPC, provides no evidence that the RPC abused its discretion when it made its Findings that there was no evidence of misrepresentations or noncompliance by Jungo to hold a hearing on revocation of the CUP.

The Nevada Supreme Court has found that statements of interested parties or their counsel, and the opinions of board members that are unsupported by proof, do not meet the 'substantial evidence' requirement supporting board decisions. *City Council of Reno v. Travelers Hotel*, 100 Nev. 436, 439, 683 P.2d 960, 961 (1984). Because no evidentiary proof has been presented that Jungo has made any misrepresentations or has not complied with the conditions of its CUP, the Commissioners shall uphold the Findings of the RPC, dated October 8, 2009.

Below, Commissioners add the following additional facts and/or clarification concerning issues presented in the Appeal and Response:

Issues of Standing

Nevada Revised Statutes ("NRS") §278.3195(1) provides that the Commissioners shall adopt an ordinance allowing appeals to the Commissioners regarding decisions of the RPC. The statute states that the ordinance must allow an appeal process for a person who is aggrieved by an RPC decision to appeal that decision to the Commissioners. Humboldt County Code ("HCC") Chapter 17.68 sets forth the appeal process regarding conditional use permits.

Pursuant to HCC §17.68.120, any interested person may appeal a decision of the RPC to the

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Commissioners. The HCC is broader than the statute, as it allows “interested” persons to appeal rather than aggrieved persons. (See *City of North Las Vegas*, 122 Nev. 1197, 1205-1206, 149 P.3d 1109, 1115 (2006)). The Commissioners believe that Appellants are interested persons and have standing under the HCC to appeal the decision of the RPC to the Commissioners.

Commissioners do not believe, however, that the Appellants are aggrieved parties. (See *Kay v. Nunez*, 122 Nev. 1100, 1105, 146 P.3d 801 (2006) (recognizing that an aggrieved party must show that a personal or property right has been adversely and substantially affected) (citing *L & T Corp. v. City of Henderson*, 98 Nev. 501, 504, 654 P.2d 1015, 1016-1017 (1982) (concluding an appellant must demonstrate that he or she suffered a ‘special or peculiar damage differing in kind from the general public’)).

Issues in Appeal

- 1) The Appellants argue that the RPC abused its discretion with regard to the issue of asbestos; however, this is not the case. As was pointed out in the RPC Findings, the CUP application stated solid waste will be received at the landfill, consistent with applicable State and Federal laws. The Nevada State Environmental Commission is responsible for adopting regulations regarding the “disposal of asbestos and material containing asbestos.” See NRS 618.775. The Nevada State Environmental Commission’s regulations allow a Class I disposal site, similar to what Jungo is proposing, to dispose of asbestos, as long as it complies with Nevada regulations. See Nevada Administrative Code (“NAC”) 444.965-444.976. Asbestos is not regulated under the hazardous waste regulations. See NRS and NAC Chapters 459. No evidence has been presented that Jungo made any misrepresentations to the RPC relating to asbestos, and the issue is premature as to whether Jungo has complied with applicable laws regarding acceptance of asbestos at its landfill.
- 2) The RPC did not abuse its discretion when it found there were no misrepresentations made by Jungo regarding its CUP.
- 3) The RPC did not abuse its discretion when it found that the allegations regarding noncompliance with the conditions of the CUP were premature. Jungo has only begun the early permitting process for its proposed landfill. No evidence has been provided to show that Jungo is in any way out of compliance with the conditions of its CUP. In fact, Jungo is complying with the conditions of its CUP by seeking out the required permits from the State of Nevada.
- 4) To date, Jungo has complied with the conditions of the CUP, and all County, State and Federal laws. Therefore, the Commissioners will not reverse the RPC’s Findings. The Commissioners agree that there has been no evidence presented to even consider revoking Jungo’s CUP, and therefore RPC’s findings are upheld.

DATED this _____ day of _____ 2009.

HUMBOLDT COUNTY BOARD OF COMMISSIONERS

By: _____
TOM FRANSWAY, Chair

Attest:

TAMI RAE SPERO, County Clerk and
Ex-Officio Clerk of the Humboldt County Board of
Commissioners