Item available for public inspection in the Clerk's office during regular business hours (Monday – Friday, 9 AM – 5 PM)

April 3, 2023
Regular Meeting
Item #7a. – PUBLIC HEARING: Appeal of the Planning Commission's Approval of an Accessory Structure Over 20' in Height (Regular Agenda)
Community Development
Appeal Comments

From: Loren Lebovitz
To: CDD Comments
Subject: 1273 Swall Meadows Rd
Date: Tuesday, April 4, 2023 7:21:43 AM

I strongly oppose the construction of a 35ft structure at 1273 Swall Meadows Rd. It is unbelievable that the Planning Commission would approve these plans. The intended use of the 35ft structure is obviously commercial. This would set a dangerous precedent for the future.

I am prepared to take any action necessary to help preserve the natural beauty of our community.

Thank you

Loren Lebovitz
510-265-0322

From: Bianca Davies
To: CDD Comments
Subject: 1273 Swall Meadows Rd
Date: Tuesday, April 4, 2023 7:45:15 AM

As a property owner in Swall Meadows, I am shocked to hear that the construction of the 35 ft structure at 1273 Swall Meadows Rd was approved. I was convinced that the owner violated building codes and would be asked to take it down.
The building is clearly an eyesore in the beautiful landscape of Swall Meadows, and its intended use is even more disturbing. I can't imagine anyone in our community agreeing to any type of commercial use of the space. What would our community look like if commercial shops, and heavy machinery were allowed and encouraged?

As world travelers, we have become acutely aware of the fact that there are very few pristine and well preserved communities left, across the globe. We are lucky to have found Swall Meadows, a real gem in the Sierras.

Please reconsider the approval of the permit. Setting this precedent will affect generations to come.

Sincerely,

BIANCA DAVIES

From: Blythe Ousterman
To: CDD Comments
Subject: CommentsAppeal of Planning Commission Approval of Use Permit 23-001/Sherer.
Date: Monday, April 3, 2023 11:40:11 PM

Dear Mono County Supervisors,

I am writing to strongly object to the huge metal garage structure, being constructed by the Sherer's at 1273 Swall Meadows Road. My lot #21 is down slope from the structure, which sits only 12 feet from the property line. At a height of almost 35 feet including the building pad, it towers over my lot, dramatically blocking, in fact, obliterating my view of Wheeler Crest. It obstructs views of MT. Tom for most of the rest of the neighborhood.

I also object to how the Planning Commission's came to their 5-1 vote in favor of construction of the Sherer's oversized garage. I was physically present in the room at the Feb. 16th meeting, when the Planning Commissioners were discussing this issue. In their concluding comments to each other in that meeting room, regret and chagrin dominated their conversation; regret and chagrin for their roll in causing the Sherer's to potentially lose money because of the commission's careless mistake in wrongfully granting the permit in the first place. They were talking as if they were personal friends of the Sherer's, not like they were government stewards of the law for the entire community. As far as I could see, they were basing their decision on feelings rather than facts and law. Also disconcerting was that none of them could provide, or was willing to provide, the exact height of the new garage. Please check the meeting notes on this. They denied that the garage was taller than the main house, which it clearly appears to be in pictures.

The garage in question, in fact, starkly contradicts all the major stipulations that the Mono County General Plan put forth for Swall Meadows :

1. "The main concern in the Wheeler Crest area is preserving the

aesthetic beauty and tranquility of the area while still allowing for development of the many privately owned parcels. The focus of development is to be **single-family residential development.**"

2. B. Accessory buildings in any residential designation shall be limited to a maximum height of **20 feet** except as may be permitted by the Director. 1. Accessory uses over 20 feet in height shall be architecturally compatible with and be subordinate to the primary residence. Additional design requirements, such as color, building material, landscaping, building articulating and location, may be required to minimize off-site visual impacts and respect neighborhood characteristics.

3. LAND USE ELEMENT II-355 Land Use Element – 2021 C. **The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area in which the property is located;** D. The proposed use is consistent with the map and text of this General Plan and any applicable area plan;

This is an oversized, industrial structure, like one would find in a commercially zoned area, for the purpose of repairing heavy equipment. Or on a multi-acre property serving as a barn. It shares no features with the main house as is required in the general plan for auxilary structures: the roof slope and shape, siding, roofing, color, siding material, every component is totally different. It sits in front of the house, and is higher, with no elements of subordination. It sits on a lot thatonly .93 acres in size.

It is almost double the recommended maximum height of 20 feet for an accessory building, at almost 35 feet off grade. It substantially out scales the buildings in its surroundings, creating an eyesore. In Swall Meadows, there are no other garages even close this height, even on much larger properties, as you will see in Alisa Adriani’s presentation.

Thirdly, residents of tranquil Swall Meadows should not have to suffer the noise created by potential heavy equipment repair nor have to witness the coming and going of heavy equipment, as it enters and exits the enormous garage, activities that the Sherer’s might potentially pursue

within this large structure in future years. As noted above, this area is zoned for single family residential and residents move here for its gorgeous, unsullied beauty. And they bought into this neighborhood with the assurance that there was a county General Plan designed to maintain its singular beauty into the future.

In California Law, a General Plan holds the same binding qualities as a legal contract. In addition, after speaking with several real estate attorneys, I learned that under state law, the Planning Commission's only legal authority is to implement that which is in the General Plan. With very rare exceptions, they have no authority beyond this. Furthermore, California law clearly states that the remedy for a wrongly issued permit is to remove the permit and remove structures related to it so that that they don't become the precedent for future development. Wendy Sugimura quotes this legal precedent to Lindsey Sherer. As noted above, on December 26, 2022 in an email exchange **Wendy admits outright that the Planning Commission made a mistake by issuing the Sherer's permit for a garage 30 feet in height:**

"Based on this information, I'm sorry to inform you that the building permit for your 30' tall garage was approved in error. The structure should not have been permitted above a height of 20' unless a use permit authorized the increased height.

I know this is extremely frustrating news for you, and I sincerely apologize. Our department takes full responsibility for the permitting error, and we also recognize the earlier mistake on the building review side of the permit that caused a delay in construction. We understand the hardship created for you and wish there was an easy way to correct the situation.

As badly as we feel, we cannot change the past and must seek a pathway forward. **In this case, we are legally constrained by case law from a different jurisdiction where a building permit was approved contrary to regulations** (in that case, a setback).

The California Court of Appeals determined "...we do not see any basis in law, fact, or fairness to allow the City or homeowner to keep the improperly issued permits in place so that they become the foundation for decisions that will thereafter have to be made."

(124 Cal.App.4th 1344 at pp. 1355-1356; accord, Summit Media LLC v. City of Los Angeles (2012) 211 Cal.App.4th 921, 940-941 [writ of mandate lies to compel

city to revoke permits issued in violation of local law; “permits issued in contravention of municipal ordinances are invalid” and “the city does not and did not have the discretion to issue permits that contravened existing municipal ordinances”].) In other words, even though the jurisdiction approved the building permit in error, the Appeals Court required the permit to be revoked."

Furthermore, not only does State law limit the Planning Commission's authority to permit **only that** which exists in the general plan, but it emphasizes that this is done in a manner that is **fair and consistent and never ad hoc:**

1. 21.9 California Real Estate Law

   Under the uniformity requirement, a local agency may not approve a use of property disallowed by applicable zoning without amending the zoning, issuing a conditional use permit consistent with the zoning ordinance, or granting a variance (which, inany event, cannot grant permission to engage in an unauthorized use).[2]

   The authorized zoning scheme, whereby cities and counties may create rules and zones—with the proviso that rules **must be the same for each parcel within a zone**, but may differ from zone to zone—is similar to a contract. Each “party” (landowner) foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction enhances total community welfare. The uniformity requirement is like an enforcement clause in the zoning “contract,” allowing parties to challenge burdens unfairly imposed or benefits unfairly conferred. Ad hoc exceptions to benefit one parcel in a zone without rezoning, a use permit or a variance break the “contract” and violate the uniformity requirement.[4]

In sum, why did the Mono County Planning Commission grant a huge exception to one private party at the expense of other private property owners in the neighborhood? They doubled down on their wrongful issuing of a permit instead of appropriately rectifying the problem. This decision has been deeply divisive to the community, does not exhibit broad fairness, and will have a dramatic effect on property values. If the Sherers bought the prefab structure after the county wrongly issued the permit, my attorney states that the remedy is for the county to reimburse them for their costs and mandate the structure should be taken down(CA law quoted above). The Planning Commission has insurance that enables it to finance this solution. The remedy is not to permanently diminish the landscape of Swall, and to set the precedent for much larger garages in future development (almost 2X

what is now in the General Plan!!), without any kind of consensus and discussion in the community or amending of the General Plan, which is required.

I am paying to support my elderly mother's living expenses, and may need to sell my Swall parcel to help cover the expenses. Since the Sherer's put up their structure I have lost every single potential buyer!! No one wants to live near that huge steel structure. It outscales everything in a neighborhood. How can anyone in local government conclude that the structure adds to the community? You have responsibilities to all of us, not just the Sherers. Please don't defer to the Planning Commission's decision. Use your own minds. Please listen and honor all the voices that are providing input on this issue. Please rectify this situation. Please be fair. Please don't give the Sherer's a permit simply because it was wrongly permitted . There is no remedy for me losing perhaps over $70,000 in property value because this huge structure makes my property undesirable. Please, please listen to other voices in the community!

In December 17, 2022 email, Lindsey Sherer states to Wendy Sugimura that she wants to use her oversized garage for the following (in her own words):

The purpose of this building is for our own personal use to do things such as:

a. Store our 4-wheelers

b. Complete personal DIY projects

c. Store a 5th wheel

d. Re-build an old car potentially

e. Among other misc. personal uses.

There is no reason the Sherer's need a 175% exception from the General Plan to do the ordinary things that other Swall residents easily perform in 20 ft high garages. Once again, there are no other garages this tall in Swall, and certainly not on .93 acre plots. There is no precedent for this.

In sum, it's neither fair nor just that one private party in Swall Meadows be granted a building permit that not only conflicts with the General Plan in almost every possible way, but that also will substantially diminish both the aesthetic beauty and the property values of adjacent lots and the neighborhood in general. Property owners have invested dearly to purchase land or homes in this uniquely pristine mountain neighborhood with world class, astonishing views of the Sierras. And once again, they bought into this neighborhood with the assurance that there was a county General Plan designed to maintain its

singular beauty in perpetuity. The outsized commercial garage built by the Sherers would be better placed somewhere else.

Thank you for your thoughtful consideration of the issues at hand.

Sincerely,

Blythe Ousterman

From: Alisa
To: Wendy Sugimura; CDD Comments
Cc: Emily Fox
Subject: RE: BOS meeting 4/4
Date: Tuesday, April 4, 2023 8:00:39 AM

[EXTERNAL EMAIL]

Reasons to postpone

1. Catastrophic weather – we have been busy surviving and don't have time to prepare
2. The meeting venue is not accessible except by 2x per day convoy by the community where the issues in located.
3. This is a big deal and it deserves an in person meeting.
4. The appellants have not been given enough time to inform the community
5. One appellants mom is having heart surgery this morning.
6. Its 8 and I ran out of time

ALISA ADRIANI | CA Broker Associate
Intero Real Estate Services
C 530.412.3070
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www.TahoeDreamTeam.com

From: Alisa
Sent: Tuesday, April 4, 2023 7:57 AM
To: Wendy Sugimura <wsugimura@mono.ca.gov>; CDD Comments <cddcomments@mono.ca.gov>
Cc: Emily Fox <efox@mono.ca.gov>
Subject: BOS meeting 4/4

ALISA ADRIANI | CA Broker Associate
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Dear Supervisors:

Thank you for the opportunity to address you regarding The Mono County General Plan and the County's application of that plan. I live part time nearby at 35 Meadow Rd. I have had property in Swall Meadows since 2005, I worked in Bishop in the 90s, and my husband lived and work in Mammoth in the 90s. We are not new to the area. The values that draw us to this ideal place are at stake with this permit.

In Placer County, where I currently reside due to employment needs and elderly parent care, I hold a Board of Supervisors appointed seat on a Municipal Advisory Committee. I have been on this board for over 16 years. It is similar to an RPAC with much more authority. Every community variance and use permit comes through this board as do large developments and Ceqa processes. I am very familiar with the planning process, and this is not something that I have ever seen before because th mistake would have been corrected as soon as it was identified. I have run this situation by my Supervisor here as well as by Planning Staff at Placer County. They think you will correct the mistake since you have an opportunity to do so.

This hearing is not only about the height of one building, but also about our General Plan and its purpose. California law requires each California county to have a general plan and it also requires the county to follow that plan. The consistency doctrine requires that the county apply the plan consistency in all areas, that the county cannot grant a permit not consistent with all parts of the plans, area plans, specific plans, general plans. The county has an obligation to apply the plan equally to all people. That is what GPs and zoning laws are for, to protect property values, to provide cohesion in a community both aesthetically and in relationships. It is imperative that you make your decision based upon this as a new application and a new permit, and that you are not biased towards approving this gross exception to the allowed height as a way to clean up the mistakes made by the Planning Staff, at the expense of the community. It is imperative that you make a decision that is fair to all others moving forward and one that follows the law.

By statute, specific plans, zoning actions, development agreements, and tentative maps all must be consistent with the general plan. (Gov. Code, §§ 65454 (specific plans), 65680 (zoning), 65867.5 (development agreements), and 66473.5 (tentative maps); see also Lesher Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 536 (zoning).) Case law has extended the consistency requirement to conditional use permits and public works projects. (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, 1183-1184 (use permits); Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 998 (public works projects).) But see Elysian Heights Residents Association v. City of Los Angeles (1986) 182 Cal.App.3d 21, 29

The California Court of Appeals determined "…we do not see any basis in law, fact, or fairness to allow the City or [homeowner] to keep the improperly issued permits in place so that they become the foundation for decisions that will thereafter have to be made." (124 Cal.App.4th 1344 at pp. 1355-1356; accord, Summit Media LLC v. City of Los Angeles (2012) 211 Cal.App.4th 921, 940-941 [writ of mandate lies to compel city to revoke permits issued in violation of local law; "permits issued in contravention of municipal ordinances are invalid" and "the city does not and did not have the discretion to issue permits that contravened existing municipal ordinances"].) In other words, even though the jurisdiction approved the building permit in error, the Appeals Court required the permit to be revoked.

Individuals should not have to battle the county to defend the general plan and the welfare of their property and neighborhood. Our county government is expected to follow the general plan and to apply it equally. It is not fair that I have two weeks to try to present this case to the BOS during which I had days without power and the kids had snow days. I only get a few minutes while the applicant and the county have unlimited time to speak and present. I am not an attorney and I do not have access to county records, but I have to present against land use planners and attorneys. It feels very unjust. I spent $2,000 to have my corners pins and lot line surveyed to remove their 12 foot fence encroachment from my land. I spent $1,500 on an attorney to write a letter to planning staff for the LDTAC meeting only to have it entirely dismissed. I spent $500 on this appeal. I gave the applicant my survey in 2019 and I told them they were building their fence on the other neighbors land too but they built it anyway. They had a survey in 2021 that showed the 39 foot fence encroachment that I told them about. They did not until just this past month move their fence. Why are these people allowed to take take take and then you just give them more at our expense?

The planning staff made a mistake; and they allowed a 35-foot-high garage when the GP only allows a 20 foot garage. This is a 175% increase over the allowed number. While the plan allows some leeway in numbers based on various processes such as a variance or a director review, it does not allow for 175% of a number in its leeway. This building sets a precedence in the neighborhood and the county in general. Is the county going to allow people to build 175% of what is allowed in the MCGP going forward and individual neighbors will have to fight the county to enforce the General Plan? Will other people be allowed 35-foot-high garages? Will people be allowed 60-foot-high houses? Will you allow one commercial property owner to have a reduction of 75% of the number of parking spaces allowed and make another owner provide 100% of the property spaces allowed?

There are no other structures like this is Swall Meadows. There was one garage recently built at 857 Swall Meadows Rd., see photos below. It is on a 2-acre lot and it is about 80 feet from the property line. The owner was only allowed a 26-foot-high garage. It is mostly only 20 feet, but it has a 26-foot raised decorative section to emulate an old barn. There is an old barn at 1097 Swall Meadows Rd., built in 1963, well before the MCGP, that is on an 9-acre parcel and 150+ from other property owners. There are no other detached garages in the neighborhood above the allowed height. Neither of these structures have the impact on neighboring parcels that the subject garage does due to the large lot sizes and distance from neighbors.

Detached garages and structures with living space have different heights allowed in the GP because people do not build detached garages in the way that they build a house. Most people try to make a house visually attractive. Homes have multiple stories all containing windows for bedrooms. The garage that was approved is 35 feet high, a 30 foot structure 5 feet off grade. It is a prefabricated metal building, completely commercial and industrial in nature. The building is 12 feet from the property line and it is on a lot about .9 of an acre. If the property were .06 of an acre larger, there would be a 30 foot setback required. It is single story and a part from two small windows, it is a 30 foot wall of metal along the neighbor's property line. It is visible from just about every parcel in Upper Swall Meadows.

This building was designed to work on the applicant's heavy equipment. They have a commercial heavy equipment business, large bulldozers for fire lines. The home occupation permit for this was denied. There are no allowed uses that the applicants have proposed to justify the need for a 30-foot garage. The lot has no physical hardships. There was no effort to build the property into the slope to lower the

height, instead a building pad was made, making it even higher off the grade. Even the tallest RVs can fit in a 20-foot-high garage.

The county planning staff comes to Planning Commission and BOS meetings with a recommendation. However, this recommendation needs to be based on accurate information. Planning staff told the Planning Commission that there were other structures like this in Swall Meadows. As explained above and in the attachment following, this is not true. The commissioners asked both the planning staff and the applicant

Planning staff stated that this building should be allowed because residential homes are allowed to the 35 feet. If the MCGP thought homes and garages should be the same, it would have stated that. Residential homes are not single-story prefabricated metal buildings with 22 foot garage doors. Planning staff did not apply the other items that a home is required to have, such as a $5,000 water tank. Planning staff said that barns could be 35 feet and therefore this building should be allowed 35 feet. Barns have to be 50 feet from the property line. This building is 12. Barns have to have animals, and animals must be approved by the Director and only a certain number of animal units are allowed. In this case being under an acre, it's not many and they certainly wouldn't need a 35 foot structure.

The county made some mistakes in the permit process for this building. However, the applicant also made mistakes. They purchased the metal building before they ever had a building permit. When the county asked what the garage was for, the applicant said it was just a garage. In fact, they designed this to work on heavy equipment in addition to using it as a personal garage. If they explained this and they learned that heavy equipment mechanics were not allowed, they could have avoided this mess and designed a more suitable garage.

Planning staff told the Planning Commission that the 35-foot height should be permitted because the Design Review Committee approved the building. The planning staff did not adequately inform that PC that the Design Review Committee approval of this structure has no bearing on the excess height being allowed. The DR only looks at the materials. It is not their job, nor in their scope of knowledge, to determine if a structures height is allowed by the GP. In fact, they were not even given the height of the building because a cross section elevation, even though required to build, was not done for this property nor supplied to the DR as required on the checklist. The DR was never given anything that showed the 35-foot-high building. The DR committee process needs to be totally re-vamped, and the county acknowledges this. You don't give unsupervised and unqualified citizens a right to choose what is done in a community at meetings that are not posted, with no minutes, with no public comment or transparency. This is a gross misinterpretation of the GPs purpose for DR committees.

The counties E and O insurance will cover the losses occurred by the Sherer's to rebuild their garage at an allowed height. It will not pay the neighbors, or the neighborhood as a whole, for the negative impacts that a 35-foot-high prefabricated metal building will have on their views and setting.

While this structure is on a down sloping lot, contrary to what planning staff states, this does not mitigate the height because it is built on a large pad. This pad touches the property line to the east. The pad along with the side of the building create a massive wall just 12 feet from the property line. Many people have lost views. We have lost part of our view. Why should I lose my view for a structure that is not permitted by our GP? Do they have more rights than I do?

If indeed you think it is ok to allow one person 35 feet when no one else is allowed 35 feet, please consider the following mitigations as requirements for the use permit:

1. Require that the applicant have the surveyor come back out to confirm that the toe of the earth wall is not on the neighbor's property and that the elevation of the pad is as stated on the drawing, 982.2 feet. There are currently no pins or permanent surveying markers on this property line.
2. Require the applicant to remove all encroachments on the neighbors land and to have the property line surveyed (same as number 1).
3. Require the applicant to plants trees along the western property edge and to plant the dirt wall to break up mass of the building.
4. Require the applicant to block dirt driveways built onto the neighbor's property with boulders placed on their property.

The heights outlined by the county are from plans and not reflective of what is actually on the ground. The building inspector measured the height off the slab, not off the pad or grade. The surveyor has not been to the building site since Dec. 3, of 2021. The surveyor said that they staked the building out prior to the pad being made. The surveyor stated that he did not put in any permanent markers such as corner pins. The toe of the building pad is on the property line. The pad is visually obvious to be significantly higher than what is on the plans. This is an owner builder permit with a 30+ foot adversary fence encroachment to the east, see the full site plan in the package. It benefits the applicants to be as high as possible so that there is less dip off the road when unloading equipment. **The elevation and the location of the building pad on the lot line need to be verified/certified by a surveyor. This is required for every building in many other counties to protect both the surrounding homeowners, and to protect the county by taking the liability of the measurement off of them, since they do not have to tools (surveying equipment) or training to verify these.** There have been a lot of mistakes. Its time to have measurements verified. It's time to have firm facts.

MCGP 04.110

Accessory uses over 20 feet in height shall be architecturally compatible with and be subordinate to the primary residence. Additional design requirements, such as color, building material, landscaping, building articulating and location, may be required to minimize off-site visual impacts and respect neighborhood characteristics.

The garage is not architecturally compatible with nor subordinate to the primary residence. The main house is much lower in height as well as it is built into the hillside, not on a raised pad. The garage might be on a downslope lot, but the raised pad negates the downslope. The structure does not meet the requirements of Section 4.110(B)(1) because it clearly exceeds 35 feet and does not conform to a residential layout since the structure is made of metal, exceeds the height of the primary residence and is not made of the same building material of the house. It is not the same color. It is made of metal and clearly dominates the property. It imposes a substantial off-site visual burden and does not comport with neighborhood characteristics or design. It is an eye sore and stands out a big metal structure.

Financial hardship for either the applicant or the county for the mistakes made should not be taken into account in your decision-making process. The loss of land value and quiet peace and enjoyment of the rest of the people in the neighborhood far outweighs the losses of the applicant and the county. We should not suffer any losses by mistakes made by the local government that we pay to protect us and

uphold our general plan. If these permits are approved, you may as well shred the general plan as none of it is being followed.

It is obvious that the commercial structure will have a significant off-site impact on the entire neighborhood, both visually and noise wise, disrupting the entire neighborhood. The structure clearly exceeds the height and scale of the house. The usage of the structure would impose substantial detrimental effects on the quiet use and enjoyment of my property and the surrounding residential neighborhood, which is only zoned for residential use. For these reasons, please opposes the application. The structure clearly does not comport with the General Plan and residential zoning requirements. As such, the County should not approve the Application and the building should be dismantled and moved to an appropriately zoned parcel of land.

Sincerely,

Alisa Adriani

530-412-3070

alisa@tahoedreamteam.com

Ask yourself before voting:

1. How would I vote if there was no structure already started and if the planning staff did not harm the applicant by approving the structure higher than allowed?
2. Is it ok to reward one person at the expense of others?
3. Why do they need a 30 foot tall single story garage with a 22 foot roll up door in a residential neighborhood?
4. Should the General Plan be applied equally to all people to provide cohesion in the community and to protect property values?
5. Would I want a 35-foot-high prefabricated metal building that is very much industrial in nature built 12 feet from my property line on a lot uphill from mine?
6. What valid reasons do I have to support my decision?
7. How will me decision impact others both now and in the future? What precedence do I want to set?