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## Judge tosses out CUP appeal

Written by Dee Holzel

Monday, September 13 2010 11:19

WINNEMUCCA — Witnesses lined the hallway in front of the 6<sup>th</sup> Judicial District Court on Friday (Sept. 10) as anti-landfill activists had their day in court.

Or, as it turned out, their hour.

Even before the first witness could fully testify, the attorney for Jungo Land & Investments objected to the hearing, the judge concurred, and the appeal was dismissed.

The matter was before Judge Robert Estes who was assigned the case by the Nevada Supreme Court after the two elected judges with that court recused themselves.

The appeal was filed by Robert Dolan and Massey Mayo who sought judicial review of actions taken by the county in connection to the conditional use permit (CUP) granted to Jungo Land & Investments for the construction of a class 1 landfill.

In dismissing the petition, Estes said the court did not have the authority to substitute its judgment for that of the RPC ... or the school board, or county commission, or any other representative of the people.

He acknowledged members of the community may feel aggrieved by actions taken by their representatives, but they would have to find another way of dealing with it.

In connection to the decisions made by the representatives Estes said, "Sometimes we would just have to live with it."

Jungo was given an extension on the CUP by the Planning Commission earlier this year, but the extension was revoked by the Humboldt County Board of Commissioners when the matter was brought before them on appeal and now the issue of the extension is in US District Court.

The issue before Estes was not the extension, but whether additional information should be placed on the record and whether the Planning Commission should have held a hearing -- as Dolan and Mayo requested -- to discuss some of the issues the two attorneys saw as misrepresentation of fact in the CUP application.

Frankovich argued the two attorneys failed to identify any procedural irregularities in their appeal -- as the law required, even if there were irregularities everything was on the record and additional witness testimony was not required.

"What's this hearing about?" he asked rhetorically. "We still don't know."

Frankovich alleged Dolan and Mayo used the expression 'procedural irregularity' every time they disagreed with something the RPC decided. In addition, he noted Humboldt County's ordinance gave the RPC final say in the matter.

Dolan counter-argued it was impossible to know what had been left off the record until the witnesses were questioned.

When asked about the irregularities by the judge, Dolan noted Jungo's representatives said on their CUP application there were no impacts on the uses of abutting property. However, he continued, they failed to establish what those uses were and/or did not appear to have discussed the matter at all.

Estes briefly left the courtroom to review the case law presented by Dolan then returned with his answer.

In denying the appeal Estes said there was no evidence of procedural irregularities outside of the official record. In addition, he added there was no point in adding more to the record because " ...everyone over six-years-old realizes there's an effect."

Afterwards, *SPJ* asked Dolan what his next step in the matter would be, since he could appeal the decision to a higher court.

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He said his only immediate plan was to sponsor a dance and had even gone so far as to book the East Hall of the Convention Center for Nov. 20.

He apparently goes by the old adage: when life gets you down it's time to disco. 1970's wear is encouraged.



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