CITY OF ELKO
Planning Department

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1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7219

PUBLIC MEETING NOTICE

The City of Elko Planning Commission will meet in a special session on Thursday, January 4, 2018 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.S.T.

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at http://www.elkocitynv.gov/, the State of Nevada's Public Notice Website at https://notice.nv.gov, and in the following locations:

ELKO COUNTY COURTHOUSE – 571 Idaho Street, Street, Elko, NV 89801
Date/Time Posted: December 28, 2017 2:10 p.m.

ELKO COUNTY LIBRARY – 720 Court Street, Elko, NV 89801
Date/Time Posted: December 28, 2017 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801
Date/Time Posted: December 28, 2017 2:15 p.m.

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801
Date/Time Posted: December 28, 2017 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician Shelby Archuleta
Name Title Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at sarchuleta@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV.

Dated this 28th day of December, 2017.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the City of Elko Planning Department, 1751 College Avenue, Elko, Nevada, 89801 or by calling (775) 777-7160.

Cathy Laughlin

Cathy Laughlin, City Planner

CITY OF ELKO
PLANNING COMMISSION
SPECIAL MEETING AGENDA
5:30 P.M., P.S.T., THURSDAY, JANUARY 4, 2018
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES

December 5, 2017 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to initiate an amendment to the City of Elko district boundary, specifically APN 001-200-002, removing the R (Single-Family Multi-Family Residential) Zoning District and replacing it with the PQP (Public, Quasi-Public) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

2. Review, consideration, and possible action to develop the Calendar Year 2018 Planning Commission Annual Work Program, and matters related thereto. **FOR POSSIBLE ACTION**

II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Preliminary agendas for Planning Commission meetings.

E. Elko County Agendas and Minutes.

F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.

G. Staff.

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

NOTE: The Chairman or Vice Chairman reserves the right to change the order of the agenda and if the agenda is not completed, to recess the meeting and continue on another specified date and time. Additionally, the Planning Commission reserves the right to combine two or more agenda items, and/or remove an item from the agenda, or delay discussion relating to an item on the agenda at any time.

ADJOURNMENT

Respectfully submitted,

Cathy Laughlin
City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.S.T., TUESDAY, DECEMBER 5, 2017
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

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CALL TO ORDER

The meeting was called to order at 5:30 p.m. by Aaron Martinez, Chairman of the City of Elko Planning Commission.

ROLL CALL

Present: **Aaron Martinez**
David Freistroffer
Jeff Dalling *(arrived at 5:33 p.m.)*
John Anderson
Kevin Hodur
Stefan Beck
Tera Hooiman

City Staff: **Curtis Calder, City Manager**
Scott Wilkinson, Assistant City Manager
Dave Stanton, City Attorney
Shanell Owen, City Clerk
Cathy Laughlin, City Planner
Jeremy Draper, Development Manager
Ben Reed, Police Chief
Ty Trouten, Police Department
John Holmes, Fire Marshal
Bob Thibault, Civil Engineer
Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

November 7, 2017 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the minutes from the Meeting on November 7, 2017.**

Moved by Kevin Hodur, seconded by David Freistroffer.

**Motion passed unanimously. (6-0)*

I. NEW BUSINESS

A. PUBLIC HEARING

2. Review, consideration, and possible action on Conditional Use Permit No. 6-17, filed by LYFE Recovery Services, LLC, which would allow for a Halfway House for recovering alcohol and drug abusers within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   The subject property is located generally on the east side of Winchester Drive, approximately 420 feet north of Orchard Cove Drive, 1683 Winchester Drive. (APN 001-920-054)

Commissioner Jeff Dalling arrived.

Eric Velasquez, 1665 Winchester Drive, commented that they have the halfway house in their neighborhood now. He thought there were already people living there. The rest of the people in the neighborhood feel that this will drop the value of their homes, and make them harder to sell. He thought this should be put in a better location in the City, which could be better monitored. He thought he was going to have a hard time selling his home, because the halfway house would scare potential buyers away.

Codie Sharp, 1635 Winchester Drive, was concerned that 40% to 60% of rehabilitation drug abusers, or alcoholics, use again with in the first month. Her main concern was that she has little kids, and her neighbors do as well. She asked if this would be providing a safe environment for her children to play in the yard. What if somebody relapses, or wanders off, and leaves needles around and her children find them? She understood that this would be a rehabilitation center and people would have already gone through treatment. She believed it should be put in a better monitored area. She was also concerned with how it would affect the marketing for her house.

Jonathon Timmons, 1696 Winchester Drive, said that this halfway house had him concerned for the property value of his house. The Winchester Apartments, down the road, have been known to have drugs for a while, so he didn't find it a good idea to put a halfway house where drugs are easy to be found. He didn't want to be worried about his things when he goes to work. He works hard for his things and had already had them stolen from people that were addicted to drugs before. He doesn't want to have that happen again.

Miguel Cespedes, 1655 Winchester Drive, said he had the same concerns as everyone else. He has one child that is a year old. He had the same concerns about having his kid playing outside and someone relapses, they are driving, and they cause an accident. There are kids in the summer that run up and down the street. He bought the home because he knew it was a nice, safe, quiet area. This will cause problems for him in the future if it depreciates the value of his home. He asked why he had to worry about that now, when he first bought it he thought it was a good neighborhood with new homes where he would have no issues.

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Cathy Laughlin, City Planner, wanted to start off with a little background information. The property is zoned R, which is the Single-Family and Multi-Family Residential District. It does allow for this type of development with a Conditional Use Permit. The subject property was developed as a single family residence and it was built to the existing setback requirements. There are no additional areas within the property to accommodate any growth, accessory uses, or off-street parking. The City of Elko issued a building permit in 1999 for the construction of the existing house. It was originally developed as an elderly care facility for 10 or fewer, therefore it did not require a CUP, as that is a principle permitted use within the zoning district. Beehive Homes was the original developer of the property and they owned the property until July 2017. At that time it was sold to the current owner, who leases the property to LYFE Recovery. The property owner's permission for LYFE Recovery to apply for this Conditional Use Permit was included in the packet. One of staff's largest concerns of this is it does meet all of the applicable Codes and Master Plans, with the exception of 3-2-17. Staff looked at 3-2-17 a couple of different ways. If you look at it as a boarding house, or a rooming house, our current code requires one parking space per sleeping room, or one per bed whichever is greater. They also looked at it as ITE as well, which would require .45 parking spaces per room, that would equate to 4.5 parking spaces that are 9' by 20'. It currently has about 3-5 parking spaces in the front driveway area, none of which are outside the front setback. Our code requires that off-street parking be outside the front setback. But staff looks at this as a legal non-conforming use. If you look at the Code section that talks about legal non-conforming uses, they shall be known as non-conforming uses and may be allowed to continue provided, however, that such non-conforming uses may not be extended, enlarged, or changed to other non-conforming uses except by Conditional Use Permit. As this was approved in 1999, we pulled the original site plan, and it showed one ADA Handicapped Parking Stall with an access isle, and that was approved in 1999 by the City of Elko. Staff felt that this could continue as a legal non-conforming use, but they want to limit the parking to what is provided off-street. Staff doesn't want to create a burden for the adjacent property owners with overflow parking on the street. Other concerns have been brought up through either verbal phone calls to the Planning Department, or communication amongst staff. Some of those concerns are rules of the Halfway House. Staff reached out to Ms. Payne and she provided copies of the rules for the house, which are in front of you. Staff also has concern that the property is currently being used. It is listed on several different venues for rooms for rent. Up to possibly 10 to 15 guests at a time. They are currently unlicensed to be using this facility for any use, so that is a large concern. On one of those websites it states that the host of the home is within 15 minutes away from the home. If that's the case, Ms. Laughlin's question for Ms. Payne on the rules was if they are being monitored by someone who lives within the facility or outside of the facility. How are the rules being enforced and monitored?

Chairman Aaron Martinez said to be clear. He asked if Ms. Laughlin's findings and conclusion in her memo was still consistent.

Ms. Laughlin said the findings were consistent and they do consider the parking as legal non-conforming. Her recommendation was if this was approved tonight, she would recommend the conditions listed in the memo.

Jeremy Draper, Development Manager, said the Development Department concurred with the Planning Department as it was presented, with this particular use. In Mr. Draper's memo under Recommendations, Recommendation Number 5, which would require additional parking, he

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asked that to be struck, as this would be a Conditional Use Permit allowing for the continuation of this legal non-conforming use.

Bob Thibault, Civil Engineer, said the Engineering Department had the same concerns about parking.

John Holmes, Fire Marshal, stated that a fire inspection of the facility is mandatory, and keeping on an annual inspection rotation. If they are going to have over 10 occupants, sprinklers will need to be installed into the facility.

Scott Wilkinson, Assistant City Manager, concurred with a possible conditional approval based on what staff has presented. He thought they should hear from the applicant on how the rules are enforced and maintained at the facility, who is in charge at the facility to ensure that the rules are followed, and it would be beneficial to go through the rules with the applicant. There is a Midnight curfew, and he wasn't sure if that was appropriate for a residential setting. Have that type of discussion for the benefit of the public and the concerned residents that have testified tonight. One other concern he had was that he thought there was some information that has come to light that we have rentals occurring for traveling public. The applicant should address that issue with the Planning Commission. Mr. Wilkinson didn't believe that was the intent of the Conditional Use Permit Application.

Stacey Payne, 695 W Arroyo St. Reno, NV 89509, explained that her company runs structured housing, where there is a staff member on site who lives at the property. There are a set of rules and an intake packet that they go over during their admissions procedures to ensure that the resident understands that they are going to be held to the rules. They clearly state in the rules that there are numerous reasons for immediate grounds for discharge. That should there be any breach of the rules then they address them immediately with the onsite staff. They have a hierarchy of management in the Company. Ms. Payne is the owner, she has an Operations Director, Facility Director, and staff at each of her ten properties. She stated that she was really sympathetic to everyone in the community. They have residences in every community in Northern Nevada right now, Carson City, Dayton, Fallon, Elko, Reno, and Sparks. She also operated 15 homes in Las Vegas since 2014. They are not a new to running Halfway Houses. They aren't even Halfway Houses, because halfway houses provide social reintegration, which they do not. They provide structured supervised housing only. Treatment is all done offsite. They have requirements for people to participate in a recovery program, so that they do stay sober and clean, but they also understand that people are going to pick a multitude of treatment modalities. They encourage recovery in all of its forms, and they are there to support and encourage them to continue to do that. As far as drug use or alcohol use. They have a breathalyzer on site and if someone's drug of choice is alcohol, then anytime they return to the property they ask them to blow into the breathalyzer. If they are impaired or intoxicated they are not allowed to remain on the property. They have a preapproved plan with that person and their family as to what they would do at that point. They also do random drug testing. Their staff members do that on a random number generator basis. They use instant tests onsite, so they know the results immediately. What they've done while they tried to get all the paperwork ready for the Conditional Use Permit Application was listed it on *Airbnb,* and they do have residents who have booked with them through Airbnb. They are not operating as a life recovery property, so at this time they had someone who was local who would do a check-in for Airbnb residents that wanted to stay with them. As soon as the Conditional Use Permit is in place, then she will have a full

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time staff member that will move to the property. Since they have had some residents come through Airbnb she comes out and spends two to three days a week. Curfew is 10:30 pm every night, and its 9:00 pm for the first thirty days. They have a pretty extensive business plan and an extensive amount of experience running sober living homes. This property is almost her 40th home. She ran 16 homes in northern California, 15 homes in Southern Nevada, and now the 10 locations in Northern Nevada.

Chairman Martinez asked what the current status of the facility was and who was using it. He also asked how a person would come into contact with her corporation in order to stay in the facility.

Ms. Payne explained that they have a listing on Airbnb, Craig's List, and Facebook Market Place.

Chairman Martinez asked if it was advertised as a nightly room.

Ms. Payne said it was not advertised as a recovery residence. They advertised it as nightly, weekly, or monthly.

Chairman Martinez said he was thrown off a bit by this application, because it was supposed to be a residential usage. He understood that the original facility, as constructed, was to be an elderly care facility. He asked under what portion of the permitted uses within the Code was allowing for the sale of each room individually. He asked if they were achieving the current permitted use today, or if they were already outside those lines.

Ms. Laughlin stated they were outside the lines. A rooming house, or boarding house, is not listed as a principle permitted use in the Residential Zoning District. An elderly care facility of ten or fewer is listed as a principle permitted use. That's how the Beehive Home was allowed to be there without a Conditional Use Permit. Even if you have three or more rooms that you rent, you are still required to have a City of Elko Business License and you are required to pay room tax on the nightly rentals. Currently neither one of those are being done.

Chairman Martinez was curious why this application was in front of the Planning Commission, when they are currently operating out of their permitted usage of that facility now.

Ms. Laughlin explained that Ms. Payne applied for Business license for the Lyfe Recovery Services home, and they denied that Business License because it needed a CUP, which was back in May or June of this last year. Staff provided support to Ms. Payne and told her she needed to have a Conditional Use Permit. That's why it's in front of you now. The business license was for a sober living facility, it wasn't for a rooming house.

Ms. Payne explained that they had a few problems with getting all of the plans that were needed to submit to the Planning Department. Month after month they were being delayed, so they did what they needed to do to generate revenue and listed it on Airbnb. It's not something that it was intended for, but this property is a financial responsibility of hers. It was just a way to make sure some of the rooms were being occupied and generating some revue.

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Commissioner David Freistroffer asked Ms. Payne if she was aware of The Elko City Codes on boarding houses, etc.

Ms. Payne said no. In every City that they go into, they go to get a business license and make sure that they are operating correctly. It wasn't her intension to side swipe all of that, she just needed to get some revenue.

Commissioner Stefan Beck asked if this was a designated recovery house.

Ms. Payne said they operate under NRS 449.008. What they have worked with, the Health Care Quality Compliance, Don Sampson down in Las Vegas, is they fall under the threshold for HCQC, because they do not provide reintegration services. They are not a halfway house for released offenders, they aren't technically a halfway house. They operate under the NARR, which is the National Alliance of Recovery Residence. They have listed them as a Level 2 recovery residence, meaning that there is a management structure, set of rules, and those rules are followed by the company. In the NRS 449.008 there is a halfway house, which has reintegration services, they fall under that threshold because they don't provide treatment or counseling on site. They are not required to have HCQC, but they fall under the Fair Housing. They are an ADA population that falls under the Fair Housing Act.

Commissioner Beck said he wanted to know what the admission standards were.

Ms. Payne explained that a recovery house is like a bunch of roommates that want to live in a clean and sober environment, because they are all like minded in trying to accomplish something. Their organization provides that kind of structure, oversite, and accountability. So it's a little more than a bunch of roommates living together, because they have a set of rules and a company that enforces those rules. People come in at all different stages of recovery. If she talks to someone and feels that they are going to go through a detox, and will have withdrawal symptoms, then this facility is not the appropriate fit for them at that point, because they don't have anyone on staff that would help somebody through that particular period. If someone is willing to try to their change life, willing to try to follow the rules, and they are reaching out to live in an environment like theirs, then they will give them a shot. If it's not working out with that individual, if there are too many interior problems, then they are not going to have them continue to live there. The basic requirement is someone that is really trying to change their life and do it in a safe environment.

Chairman Martinez asked Ms. Payne how she was able to achieve that. He read that people could rent it on a nightly basis.

Ms. Payne explained that it is currently not a life recovery property yet. They are not operating with those rules, because they don't have the approval to do it. The rules and concept is not in that house right now, because they don't have the business license to operate Lyfe Recovery there. She has a variety of people living in the house.

Chairman Martinez said that concerned him, because it was outside of the City Code currently, which is a blatant disregard for how the City of Elko operates and the residents nearby. To come to this meeting and state, publicly, that she was operating illegally was shocking to Mr. Martinez.

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He understood it was investment, and understood about generating revenue, but at the sacrifice of residents nearby, at some point you teeter off the ladder of acceptable, in his opinion.

Commissioner Freistroffer said he was struggling to understand how a company, which seems to be rather large, could be ill-informed about Elko's localities, rules on operating any properties. You have acquired a property that you don't know if you're going to get a CUP for. He wanted to understand if her legal department, or anybody, had looked at if this was a feasible place to have this, because the Planning Commission can deny it on many different grounds, and you're obviously putting a big investment into it.

Ms. Payne explained that this was the first time that she had to do something like this. She has business licenses and approvals in all of the other locations, and she's never had to come to a City Planning Meeting and apply for a Conditional Use Permit. When she met with Ms. Laughlin, at first she didn't think she needed a CUP. She went on to explain more and more, to make sure that it was understood exactly what they were going to propose. Ms. Laughlin got back into the Code and in the Code they found that she needed to get a Conditional Use Permit. She has not had to have this experience in the past. What she has done in other counties, is have the Fire Marshal come out and sign off. Some of them don't come to the property, they just know that they are able to operate that. She has the City Engineer and the City Planner come out as well. She just had some out today in the Fallon house, and they had one thing that needed to be changed and then they signed them off. She didn't intend to go outside of any of Elko's rules, laws, or anything else. If this is disapproved then it will be a business loss. She did a lot of due diligence. She came out here month after month, until May when the property was bought, and she talked to residents in the town. There are no sober living homes in Elko, except for one that is attached to Vitality Center. They looked at what they could bring to Elko as a large organization that has had 17 years of experience.

Commissioner Freistroffer thought it was an admirable business to start in this town, there is a need. He asked Ms. Laughlin if she could comment on what she perceived in the Cities procedures that may have hung this up, or what has caused a delay since June or July. He asked Ms. Payne if she acquired the property in July.

Ms. Payne said they moved in in July.

Ms. Laughlin explained that she had discussed this with Ms. Payne in June, as well as another individual that worked for Lyfe Recovery that's no longer there. When the Business License came in Ms. Laughlin denied it, because it needed a CUP. Staff was basing it off of the definition of Halfway House in Section 3-2-2. If you look at the definition and the application, as well as the services provided listed on her website, staff felt that it truly was a house for recovering alcohol and drug abusers. In the R District it does require a CUP. She gave them the application at that time. Staff could not give Ms. Payne copies of the plans that were submitted in 1999 without confirmation from the architect or design professional that developed the plans. We let her know at that time, part of our application process is the Site Plan and Elevations of the property. Then Ms. Payne came in in August to submit the application for the September Planning Commission Meeting, she was one day late and the application wasn't filled out at that time. We asked her to fill out the application and she missed the September meeting, but we would take it onto the October meeting. Ms. Laughlin did not see her again until three weeks ago. It has not been a delay on behalf of the City of Elko, we have tried to accommodate Ms.

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Payne and everything she needed, but for us to sign off on a business license for halfway house on Winchester on this property, it would require a Conditional Use Permit.

Commissioner Freistroffer said he was trying to get to the seriousness of this business, which could be operating this facility in a residential neighborhood. He asked Ms. Laughlin where, in her mind, could they have gotten the idea that they didn't need a permit, then they did need a permit, and it was something that made her take time.

Ms. Laughlin explained at first it was a residential group facility, and they were looking at the definitions under residential group facility, which is a different section in the Residential Code. As time went on we learned more about the business, we said no, it would require a Conditional Use Permit.

Commissioner Freistroffer asked if Ms. Payne was informed of that in July. (Yes)

Commissioner Kevin Hodur asked Ms. Payne when she added Elko to her website.

Ms. Payne explained that they uploaded Elko and her Webmaster didn't put the three properties as "coming soon". When it was brought to their attention of it being live on their website they changed it to "coming soon".

Commissioner Hodur pointed out that he didn't see the "coming soon" designation. He then read the statement from the website.

Ms. Payne said that was her Webmaster.

Commissioner Jeff Dalling asked when they were looking at homes if there were any other homes available other than Winchester.

Ms. Payne explained that she has a man that buys properties for her. When they were invited to Vitality Center to do a presentation she got on a phone call with him on her way home from Elko. He said he got a call from the owner of Beehive, he buys distressed properties or properties that owners want to sell for cash. Both of the properties on Winchester were on the market. He told Ms. Payne that it was perfect for her. She said she couldn't have asked for a better property. They were trying to buy both of them. In the meantime, while they were researching the area the property across the street went into contract as a single family home. She would look for more properties like this, or have them built, because for 10 residents to have their own room, half bath, and a large common area is exactly what they want for people who are going to live there for a year or two. Their goal is not to have people come in and out, their goal is to have them live there for a year or two and truly achieve long lasting sobriety.

Commissioner Dalling said that Ms. Payne lives in Reno, so she won't be there, but the neighbors will be there every day. Their lives and their kids will be affected by this. He asked Ms. Payne what her safety net was for the neighbors and what she had to say to them to make them feel better about this.

Ms. Payne said most of time they do extensive property renovations. Normally they go in and improve the property, but this one was move in ready. The concerns about property value going

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down generally isn't the case. The other thing she wanted to say was that not too many neighbors have a phone number they can call 24/7 if they needed to reach someone that's going to do something about whatever is going on. They have an extensive list of good neighbor policies. They never park in front of another person's house, they never have loud music, they have a 10 pm quiet time, and they have someone on site that is going to manage those people. They act immediately, Ms. Payne distributes her cards, she becomes friends with the neighbors, and they don't hide what they are. There is a number that can be called day or night to let her know if something is going on. They try to stay to themselves and to just be a value to the community.

Mr. Wilkinson said Ms. Payne talked about if someone had to be discharged that she had a program set in place with family members. He asked what would happen if that support does not materialize, but you need to discharge someone. Are they just asked to leave, and they're kicked out loose in the neighborhood?

Ms. Payne said they are very cognizant of their neighborhood, and they would never put someone on who is impaired, or intoxicated, in car or out in the neighborhood. If they don't have a family that they would go to, or if there is no one to call, then they take them to the local detox, or to a hotel with a buddy. So, that person will hopefully stop using and come to their senses the next day.

Mr. Wilkinson had one other question. He said they had discussion about Ms. Payne's need to generate revenue. He asked what percent vacancy she had with these type of facilities. Mr. Wilkinson said he would be looking for an assurance that if she have vacancies that they wouldn't be advertised for other uses outside of that. He thought she could get into some explanation to the Board with regard to those issues.

Ms. Payne explained that they were anticipating getting this Conditional Use Permit in place, so they can operated as who they really are. If they are denied, they will, more than likely, shut the house down. It doesn't operate for them, they are not a motel. They're occupancy rates, they stay pretty full. There is a very large population in every City in the Nation of substance abusers. They market to the treatment program discharge coordinators that this is the next step for someone coming out of treatment. They encourage that rather somebody come out of a 30 day program, that they are put in to a recovery residence, where they can continue to be monitored and held accountable.

Mr. Wilkinson asked if they were typically local residents that go to those homes.

Ms. Payne said generally everyone that moves into a house is local.

Commissioner Beck asked Ms. Payne if she were denied, if she would give up and leave Elko, or if she had other options.

Ms. Payne said she hadn't entertained that, because she wouldn't believe that an organization serving an underserved population, with the Americans with Disabilities Act and the Fair Housing Act behind them, that they would not be approved with everything that they have done. With that said, this property is very expensive to operate. Everyone that lives in the house has to pay rent, they are not a free organization. They are not County, State, or federally funded. They don't bill insurance. In order to afford to live there, people have to work and pay rent. It's part of

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becoming stabilized. If they were to be denied, they would continue the conversation and see what the Commission would want them to do in order to operate here, because they have put a lot into the property.

Mr. Thibault asked if there was a more appropriate zone, one in which a halfway house is a principle permitted use.

Ms. Laughlin explained that a halfway house is not listed as a principal permitted use in any of the City's Zoning Districts.

Mr. Thibault asked if the Residential District was the only one in which it is listed as a Conditional Use. (Yes) So this is the most appropriate Zone for this type of facility.

Ms. Payne added that they are not a treatment program. People that live with them are residents, they aren't patients. They want to live in a home. They want to live with their families and their families are not letting them live with them, because it's dysfunctional. Putting them into some other warehouse area is dehumanizing what people are trying to do in their home.

Steven Sharp, 1635 Winchester Drive, asked if the residence was going to cause more cops or more conflict in the neighborhood when someone had to be removed. He also asked if this does pass, would you want a halfway house next door.

Desiree Leniger, 1696 Winchester Drive, said her concern was that they had already broken rules with the City to generate revenue. She asked if, for the right price, the members of the house could also break the rules. They are already causing issues with the City, are they going to cause issues with the residents as well.

Ms. Laughlin read into the record the conditions listed in the Staff Report that would be applied if the Commission were to approve this application.

Miguel Cespedes, 1655 Winchester Drive, said they probably had a drug problem in the area. It would be like putting a beer in front of an alcoholic. He said it was a quiet neighborhood. He was concerned with his wife staying home alone at night and not being able to contact her because he's out at the mine. With the Airbnb that is going on they have people parking in front of their homes. He asked why Ms. Payne didn't come talk to them about what she was planning for the house.

Codie Sharp, 1635 Winchester Drive, said there are people using drugs in the neighborhood. There are people smoking weed, they smell it all the time. She asked if it was a neighborhood where you would bring people that are trying not to relapse. She said they already had people parking in their driveways. Every night there is a new car on the street. The people that are living in the house now, come and go whenever they please, they park wherever they want, and they walk up and down the street. They moved into the neighborhood knowing that that was a Beehive Home, that it was an old folk's home. They were very quiet and kept to themselves. Her main concern was that this would come in and cause chaos and ruckus.

Commissioner Dalling asked Mr. Holmes what the number was that they had to add the fire suppression system.

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Mr. Holmes stated if they had 10 or more occupants, they would have to add a sprinkler system, because of being a boarding/halfway house.

Commissioner Dalling asked if the house had eleven rooms. (Correct)

Ms. Payne thought there was already a Fire Suppression system in the house.

Mr. Homes added that he hadn't been to the location, but it would be a requirement for the Business License.

Commissioner Dalling asked Chief Reed if he could fill the Commission in on any of his run-ins with this kind of business, and what his thoughts were.

Ben Reed said he could only draw on his experience where he used to work. They had a number of problems in the City Police Department there with Group Homes for juveniles, in particular, but also for this type of operation with alcohol and drug abusers that were in stages of recovery. It's when they struggle, relapse, and don't comply. Some of the houses, and operations were better, and some were much worse. It typically depended on the level of management, how proactive they were, and how accountable they were. That City, at that time, made some efforts, as the years went by and the problems surfaced, to enact some addition regulations, such as a Conditional Use Permit. Chief Reed said he responded to those places, as an officer, a supervisor, and later as management, and dealt with some of the oversite and the problems with the neighbors. Some of them are fairly quiet and some very problematic. In general guidance, either prohibit, deny it, or if you're going to allow it you will want to put significant amount of controls in place, to give the City the handle that is needed.

Commissioner Hodur asked who the permit would be issued to, since the company is leasing the property.

Ms. Laughlin explained that it would be granted to the property owner for Lyfe Recovery Services, LLC, which is the applicant for the use of a halfway house.

Commissioner Hodur asked if the permit still went to the owner(s).

Ms. Laughlin explained that the permit will get recorded to the property, but it can be transferred to a new property owner, if the property were to be sold.

Chairman Martinez commented that Ms. Payne identified her company as having extensive experience in the real estate industry, broadcasting all over Northern Nevada. That is a concern of his, because this item is a basic Planning issue, which is dealt with in every community across the country. Permitted uses verses non-permitted uses in a Residential Zoning District is day one planning stuff. For a company of this size Mr. Martinez thought Ms. Payne would have done her land planning properly, to identify this parcel in its current zoning application. He understood that in the Residential Zoning District it is a CUP type of usage. This facility was brought in as elderly facility. He also thought the facility was ill equipped for all the things that Ms. Payne was identifying. With eleven rooms this facility should have never been built. The fact that there is not enough off-street, or on-street, parking to achieve that. If you have eleven residents there will

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potentially be eleven vehicles, or more. There have been some previous decisions made about this facility that has allowed it here on the Commission's lap today. This facility cannot handle 11 groups of people going through there. They will be parking all across the street and the Commission has been trying to clean up the off-street parking. In his opinion this company was grossly mistaken on this facility, its usage and utilization in this Zoning District is not appropriate. This is not the right place for it. He thought the City was stuck with the facility and they would see future applications of some sort of occupation along the lines of an elderly care facility. Mr. Martinez stated that he was not a fan of this application and the way that it had been operating. He thought it was too uncertain, but there was a path forward. That path would be along the lines of each individual occupying the facility signing a lease. He thought the applicant would want to provide leases beyond 3 months for people that are targeting sobriety.

Commissioner Freistroffer agreed with Mr. Martinez. He stated his issue was that the applicant had shown a severe lack of due diligence on researching the property and its suitability for having a minimum of eleven residents, and have also rented the rooms out against City Code. That made Mr. Freistroffer doubt the seriousness of this business. They weren't in compliance now and Mr. Freistroffer didn't think they would be in compliance with many things having to do with the Conditional Use Permit in the future.

Commissioner Hodur thought this was the type of facility that would be a benefit to the community. He had some concerns however. Where do you put a facility such as this? He was ill at ease overall with how to proceed, because this is a facility that this community needs, however there are issues.

Commissioner Freistroffer added that it is an admirable use. He thought that the way that the Code was structured this seems to be the most appropriate zone for it to be in. Just not with this particular facility, which seems to not be dimensioned for the lot or the space.

Chairman Martinez disagreed with that. He thought it was more of a multifamily, or some sort of a buffer zone. He thought a principle residential zoning district was not appropriate for this type of facility.

Commissioner Hodur said one of the questions for the Commission is, for a structure that is already built within this neighborhood, what are they considering to be an acceptable use.

Chairman Martinez said what it was originally permitted for, or a residential only. Currently under the Code it is allowed to operate under all the permitted uses. This is a non-permitted use.

Commissioner Hodur asked if this was a non-permitted use.

Chairman Martinez clarified that it was a non-principle use for the facility.

Mr. Wilkinson explained that it is allowed under a Conditional Use Permit. The Commission hasn't had a discussion on limitations on occupancy. That might be a discussion you could have with the applicant, it may not fit their model, which addresses some of the concerns. The limitation would be a low number to accommodate the available parking. That may not work for them, and it just may not be an appropriate use regardless.

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Ms. Laughlin said if parking was the concern, there is an empty lot behind the facility and a parking lot around the corner, there is a Section in the Code that states for rooming houses, they may provide parking in a parking lot not further than 200 feet from the entrance to the dwelling unit it is intended to serve. If there is an issue with the parking, maybe the applicant could come up with a parking agreement.

Chairman Martinez thought there was conflict there. He thought that under several circumstances they were not allowed to utilize a separate parcel as a parking lot for another location.

Mr. Draper explained for a Commercial use a parking lot is allowed to be on a separate parcel, but it is required to have a Conditional Use Permit.

Mr. Wilkinson added that they would have to control the property that they were parking on.

Commissioner Tera Hooiman said that Ms. Payne was in the business of making and enforcing rules. The City of Elko has rules, laws, and regulations in place that Ms. Payne and her business have broken. Ms. Hooiman said that she couldn't get past that.

*****Motion: Deny Conditional Use Permit No. 6-17.**

Commissioner Freistroffer's findings to support his motion was that this was not a suitable use for the property, and that the business was not in compliance currently.

Moved by David Freistroffer, Seconded by Tera Hooiman.

Vote: *Motion passed (5 – 2 Commissioners Hodur and Beck voted no).*

Mr. Wilkinson notified the applicant of her right to appeal and that it was time sensitive.

1. Review, consideration, and possible action on Zoning Ordinance Amendment 3-17, Ordinance No. 825, specifically an amendment to Title 3, Chapter 2 of the Elko City Code entitled Zoning Regulations adding a new Section 29 entitled "Marijuana Establishments and Medical Marijuana Establishments Prohibited," and matters related thereto. **FOR POSSIBLE ACTION**

   At the October 24, 2017 meeting, City Council took action to initiate an amendment to the City Zoning Ordinance establishing a new Section 3-2-29 of the Elko City Code, and referring the matter to the Planning Commission for further action in accordance with Elko City Code Section 3-2-21.

Ms. Laughlin explained that the State of Nevada passed a law allowing recreational marijuana establishments starting July 1, 2017. As a practical matter the City Code prohibits the City from issuing a business license for a marijuana establishment, whether it is medical or recreational, because the business for which the license is applied for is unlawful under the Federal Controlled Substance Act. In terms of land use, we currently do not have medical or recreational marijuana establishments of any kind listed as principle, conditional, or accessory uses in any of the City's Zoning Districts. The Nevada State Law allows for Municipalities to prohibit both medical and recreational marijuana establishments through zoning ordinances, or other land use restrictions.

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Because this is a Zoning Ordinance and involves a land use issue it was referred to the Planning Commission with a recommendation to City Council. The Commission has been provided a new map, which has the locations within the City of Elko which the law prohibits any marijuana establishments. The green shows 1,000 feet surrounding any schools and the yellow shows 300 feet surrounding any social, civic, and activity locations, which includes churches, the Boys and Girls Club, Girls Scout House, etc. In Ms. Laughlin's Memo she has provided information on some questions that have been addressed to the Planning Department and those are on the election results, taxes, and what another community is doing in regards to Tribal Land. Ms. Laughlin then turned the microphone over to Dave Stanton.

Dave Stanton, City Attorney, stated that under NRS Chapters 453 'A', dealing with medical marijuana establishments, and 'D', dealing with recreational marijuana establishments. Both of those statutes contain provisions that key the States approval of establishments, basically any type of business that deals in marijuana processes or sales, which keys the approval to compliance with local Zoning Requirements and Land Use Requirements. As matters now stand communities with zoning authority, such as the City of Elko, are not required to zone for medical marijuana establishments or recreational marijuana establishments. The City does have the power to prohibit the establishments through zoning. The issue of Business Licenses is a separate issue, as a practical matter they are related. One of these establishments cannot operate commercially without a business license. The way the City Code now reads: A Business License cannot be issued to a business that is in violation of Federal Law. We are talking about the Federal Controlled Substances Act. We all know the disparity between State Laws and Federal Laws. It is a collateral issue, it's not a land use issue, and it's not before this board, but Mr. Stanton wanted to bring that up.

Mr. Draper and Mr. Thibault had nothing further.

Mr. Holmes said to keep in mind that there are differences between the growing and the business establishments, so there are regulations, rules, and inspections that need to be compiled. The 2015 International Fire Code is being changed with this subject in matter. If marijuana does get approved there will be changes coming for the Fire Department and far as Fire Codes.

Curtis Calder, City Manager, mentioned that this Ordinance 825 was initiated by the City Council, just so the Planning Commission was aware of what started the process.

Chairman Martinez thought that was a good point of clarification. The City Council identified this initiative, and then it was approved to come to the Planning Commission.

Ty Trouten, Police Department, explained that the legal issue was the most concerning issue, because it does tie up Law Enforcement's side of this. They are sworn to uphold State, Federal, and Local Law. When those laws aren't in accordance with each other it places them in a very precarious position. Until the law is changed on the Federal level that issue will remain. Having been at the DEA headquarters in Quantico, learning from them, they have nothing on the table to readdress the level of this controlled substance. They are going to maintain it as a Schedule 1, because there is a great deal of mixed studies, less than scientific studies, which do not clearly show from marijuana a medical benefit. That would be the caveat that would take it from a no medical use controlled substance down to something with limited medical use, or moderate medical use. He did not foresee a change in that law coming anytime soon. The concern from the

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Law Enforcement was with any drugs, prescription or elicit, there are a host of issues that follow quickly on the heels. Some of the issues that were not foreseen as other states have pursued this route and legalized marijuana. Because it is still federally prohibited it interferes with the cash transactions for such a business. Basically, you cannot utilize a bank, they will not accept the cash. You have a high dollar cash business, which makes a prime target for people who wish to commit robberies, armed robberies, home invasions, and so forth. If we have readily available marijuana for all, not just medicinal, you also have the accompanying DUI issues, just like with alcohol establishments. A lot of crimes are related to drugs, obtaining money for, theft, sales, prostitution, etc. For that reason Law Enforcement is not in favor of it. If we do violate the federal law there is the question, should we be at liability down the road. We are seeing that issue play out long term with the Sanctuary City issue. The other concern they have, they see with alcohol establishments, they end up fielding the complaints with the minors that are trying to buy it. They anticipate a rise in those types of things. Talking with other establishments in the area, within the State of Nevada, about the additional burdens that come with it. There is not anything within the law passed by the state that would provide for funding for increased enforcement, or to combat the problems that occur. There are some problems that were already seen in Clark County and Reno. Some things as simple as traffic control when you have a business with exceedingly long lines and crowds of people. Mr. Trouten wanted to talk about Colorado tracking their marijuana related statistics for the past 5 years since recreational use was allowed in 2013. The data coming out is one direction, negative. Even though it is approved at the State level, 66%, over two-thirds of their jurisdictions, have prohibited both recreational and medical use of marijuana, because of these issues. The right thing to do for the community is to prohibit the existence of marijuana establishments, whether or not Federal or State Law allows such operations is a moot point. We do not need a greater supply of an intoxicating drug readily available in the community to further compound an already significant drug problem that is in Elko. He encourages the Planning Commission's support to prohibit marijuana establishments via a revision to the Zoning Code, as written by the City Attorney.

Commissioner Freistroffer said the Colorado Law differs from the Nevada Law, in that the Colorado Law allows jurisdictions to prohibit the use of marijuana.

Mr. Trouten said as he understood it, the Colorado Law allowed the County Entities to opt out of legalizing marijuana.

Commissioner Freistroffer asked if it was for recreational use, not just sales. (Correct)

Commissioner Beck asked if this was a State's right issue. Did the State decide that marijuana is legal, then the feds say it's not legal, so whoever trumps who? As far as getting a business license, you can't issue a business license if the State says yes, and the feds say no. he asked if was correct in that understanding

Mr. Stanton said generally, yes. He thought a lot people viewed this as a State's rights issue.

Commissioner Beck said he had a question for Mr. Trouten. He asked what would happen if the City had a business license to sell marijuana. Would that potentially get rid of all the underground procedures going on? Would there be a tax revenue? He asked if Mr. Trouten had an opinion on that.

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Mr. Trouten explained that he had opinion and it was formed on some information received through National Academy, talking with the DA, and some trends that are being seen across the country. The prices, that the dispensaries are charging, are quite high, much higher that street value. Because there is a great deal of money to be made, what they have seen is that there are criminal elements that are taking over the growing, preparation, and deliverance of the marijuana. They are now making greater money than they were selling it on the street level. It doesn't get rid of the black market as you would hope. What it does is the players get involved on both sides and the black market will continue, because we have juveniles. A lot of the minors and juveniles are using marijuana as well. They are going to get it somewhere, so there is continually that market. Prohibiting a marijuana dispensary or a medical marijuana dispensary in the City of Elko doesn't deprive the residents the ability to obtain medical marijuana, or anything of that nature. For the medical marijuana laws there are allowances for growing, amounts, and number of plants. So, there are still means to obtain marijuana legally and use it within the parameters of the law without running into an issue. This is strictly the issue of a dispensary or a medical dispensary.

Commissioner Beck said you read in the news about all the drug cartels and all the drugs coming across the border. If there was a way to reduce that, he thought that would be everyone's goal. He asked if it would be fair to say that if they legalize marijuana stores throughout the country if it would affect the illegal drug trade.

Mr. Trouten didn't know if there were any accurate projections. It's not like they could lock down the border and no drugs would get in. The drugs are here, whether they are manufactured, grown, or anything else. The people who choose to use marijuana, there are other dispensaries within the state and a multitude of avenues. From their personal standpoint the concern comes down to their oaths, which are to uphold Federal, State, and Local Laws. And now they would have laws that couldn't be reconciled.

Commissioner Hodur asked why they were doing this. If they already couldn't issue a business license, because it is federally against the law, why are they doing this?

Chairman Martinez thought that was a great point and added that he brought that up himself. Because in the past the Commission has always tried to not make policy changes, or be a part of policy changes, that focused on one singular item. They have tried to make it a house keeping policy that they don't target singularity like that, because their policies are supposed to be much broader than that. It's almost as though they have to identify this and treat it similarly in the Code as they do a bar, so they can address where, and where they do not want it. So that when it does come about they will have the foundation work for what the constituents want.

Commissioner Hodur asked if this was in anticipation that it would someday be federally legal that they were going to do this now.

Chairman Martinez thought it was in anticipation of the State Law forcing the City of Elko to act.

Commissioner Hodur said that they already had the federal backup in the Business License Code.

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Chairman Martinez pointed out that the Code doesn't identify whether it is permitted or not. He thought they might be getting themselves into some liability by not addressing it.

Mr. Stanton said that there are a lot of questions that are up in the air on all of this right now, particularly at the State level. The issues are complex and are likely to become more complex. What we are talking about here is specifically the issue of land use. Business regulation falls into one category, and land use falls into another category. One of the primary purposes of land use is to enable people to make plans as to how they are going to utilize their property, whether they are going to sell their property or purchase property. A Business Licensing Mechanism operates independent of a Land Use Mechanism. That is in part why when the Legislature wrote these two chapters in the NRS, the issues of land use and licensing were addressed separately. Both of those requirements have to be satisfied independently in order for the State to issue a license to a marijuana establishment, or a medical marijuana establishment. The issue of zoning is complicated because it interrelates with surrounding communities and land uses throughout the rest of Elko County. There are limitations on the number of these establishments that can be placed in one county. We have an Indian Colony located within the political boundaries of the City, which may be subject to a different set of regulations than outside of the boundaries. We are thinking that we really need to address it on all fronts. Mr. Stanton asked what they are going to do in the areas where they have the authority to regulate, both through Land Use Planning and through Business Licensing. He thought it was a legitimate issue to be considered by the Planning Commission. How are we going to deal with this in the Zone Code, so that we know how this ties in with the State Statutes that have been enacted, which specifically refer to Zoning and Land Use?

Commissioner Hodur thought all of it was a grey space.

Commissioner Beck asked what kind of complex situation the Elko Police Department would be in if the City issued a business license to a marijuana dispensary. Would they be arrested and shut down because they are in violation of Federal Law?

Mr. Stanton said he could give some of his opinions on how that might work, but there is no definitive answer to that question. The issue of Federal Law versus State Law versus Local Law is in flux right now. At the Federal level it was Mr. Stanton's understanding that there is not a lot of appetite for enforcing the Federal prohibition against the sale of marijuana, and marijuana establishments, in states where it's been legalized. There are some internal federal memoranda that talk about what criteria they will look at, at the State level in order to make a decision as to whether to inforce or not. These are policy issues, at the federal level, that can be changed at any time. His understanding, generally, is that they have their hands full with plenty of other stuff and they aren't really inclined to do that right now. Could the Federal Government sweep in and decide to enforce the Federal Controlled Substances Act at some point, and shut down every one of the medical or recreational marijuana dispensaries that have been permitted throughout the State? It is a possibility.

Commissioner Hodur asked, if he understood correctly, if such a business license would be issued by the City of Elko for within the City of Elko.

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Mr. Stanton explained that if it were legalized at the Federal Level and someone came in and applied for one. It's legal at the Federal level, it's legal at the State level. Were that to happen without some sort of land use restriction? Yes.

Commissioner Hodur said he was troubled overall. He explained that he was troubled by the either or options that they have before them. That it's either do nothing, and have that be open, or do something based on the City Council, and agree with their Zoning Ordinance to make it disappear. He was troubled that those were his options.

Chairman Martinez asked Commissioner Hodur what he proposed.

Commissioner Hodur said he didn't know. If you take the federally illegal element out of this, they have been able to zone all of the other sorts of businesses within the town. It's additionally complicated with the Federal element. He felt that this was a backstop for them, since they already can't issue a business license based on a federally illegal substance. They are backstopping it, and already deciding even if it's federally and state legal they are still not going to have it. His first inclination was to deny this.

Chairman Martinez stated this was a very important item on many fronts. He had been doing research, investigating, and interviews. It has been a very long process. The City Staff has put in a ton of effort into trying to identify all these facets, and not all of them will get identified tonight. Speaking about the colonies that surround the City of Elko. It was his understanding that a certain amount of facilities are allowed within each county. Is that number six, for Elko County?

Mr. Stanton clarified that it was two for Elko County. You want to know whether that counts against the total.

Chairman Martinez said that was correct.

Mr. Stanton said he placed a call to the Attorney General's Office and asked that question. That question is being run up the flag pole right now.

Chairman Martinez said that was an interesting item, because technically that is a sovereign land and it's not within the Elko City or Elko County Limits. He wasn't sure how that would play out, but thought it would be an important item. We have neighbors that could be humoring these in the future. That is a concern for many folks. The fact that the State Law has forced the Planning Commission, and the City of Elko, to act is unfortunate. They are placed in a position of making decisions, when the Code doesn't identify that that is a permitted usage right now. He has made that argument and has heard from other staff members both sides of that argument. He understood both sides of the argument. Technically the Code doesn't allow for it now. So, to act and to further prohibit was an interesting move, which was not something that the Planning Commission generated. One of the other staff members made eloquent point, which was sometime when you're not sure what to do it doesn't mean you have to act, and they can wait and see. Chairman Martinez didn't think the prohibition would be permanent and it can be readdressed through the City Council. He asked if this could be brought up through the Planning Commission to be humored by the City Council.

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Mr. Wilkinson said the Planning Commission could initiate a change.

Chairman Martinez said his biggest concern was having a distribution center right next door, but the City of Elko not benefitting from that, but the City of Elko policing it, health services facilitating it, and facilities absorbing it. At what point are we doing ourselves due justice by not allowing it.

Mr. Stanton brought up that West Wendover was actively pursuing a marijuana establishment. There is a moratorium in the County, but West Wendover has separate authority to issue a license.

Chairman Martinez pointed out that West Wendover was located within Elko County limits, so it would be taking one of the two establishments within the County.

Mr. Stanton said that was correct.

Ms. Laughlin said she had an email from Chris Melville, from the City of Wendover, and he states in the email that the Council had not adopted a recreational component to the ordinance, given that the majority wanted to see how the medical impacted the community first.

Commissioner Hooiman asked if that would still fall under one of the two establishments. (Yes)

Mr. Wilkinson stated that he had a question for the City Attorney. If the City doesn't address either a prohibition or allowing these establishment through zoning, and someone approaches the City and says the State Law allows for it, is the City open to litigation, because the City hasn't addressed it.

Mr. Stanton explained that the Code states that it has to be in compliance with Federal Law before we can issue a business license. He thought that was a pretty strong position. The City can be sued for that, but he thought the City's position was strong. The think to consider is that that we are keying our decision on what other governmental authorities may, or may not, do, rather than being proactive and making a decision for ourselves. Congress can change the Federal Controlled Substance Act and just say it's up to the States, and that may happen. The State can change its rules when it comes to how it goes about issuing licenses for these establishments, including changing the number per county, or per jurisdiction. What we are talking about here today is actually making a decision on the part of Elko. What does Elko want to do in terms of Land Use, irrespective of what other governmental entities may, or may not, decide to do in the future?

Mr. Wilkinson clarified that if the City didn't provide for this as some type of use, and some type of zone, we wouldn't be able to issue a license, even if the Federal Law were to change, because it is not an identified use in any Zone District.

Mr. Stanton deferred to Ms. Laughlin whether it would fall under the description of any of the principle uses, or uses that might be permitted with a CUP.

Mr. Wilkinson thought it could be retail sales.

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Ms. Laughlin pointed out under Commercial there is sales and service.

Mr. Stanton said there are some pretty broad categories listed under the different uses that this might fit into.

Mr. Wilkinson said with that in mind, if someone approached the City of Elko and wanted a business license, and the federal government were to change, they would be able to say that it was allowed in a Commercial District and they respectfully requested a business license to be issued, if the City didn't have a prohibition on this specific use.

Ms. Laughlin added that it couldn't be in the colored area on the map.

Mr. Stanton said if it falls within a description of a principle permitted use, and it's not otherwise prohibited under Federal or State Law, and someone comes in and wants a license for it, unless it's in the Code we wouldn't be able to deny it.

Mr. Wilkinson explained that the City Council initiated this potential prohibition for consideration, and that was not a unanimous vote. It was four to one. You have a majority of the City Council who is behind initiating this prohibition. So it is before the Planning Commission for a recommendation back to the City Council, one way or another.

Mr. Wilkinson said in actuality with the current law you can grow an amount for personal use.

Chairman Martinez pointed out that when Mr. Stanton started identifying the business license law. That was interesting to Chairman Martinez, because he knew that they were here today to identify the land usage, and that is what the Commission is tasked with, because that is under their responsibilities. Chairman Martinez thought it sounded as if the City was protected from liability or litigation strictly on that standpoint. He asked if that was true, or if he was misunderstanding.

Mr. Stanton read the City Code Provision regarding Business License denials. He stated that the provisions that he read prevent the City Clerk from issuing a business license to a marijuana establishment or a medical marijuana establishment. However, somebody who is really crafty might want to challenge that ordinance, and say that the ordinance violates State Law. There is some litigation risk, because there is a disparity between Federal and State Law. He thought that it was a strongly worded ordinance, but the ordinance could potentially be challenged. Especially in light of the climate we are in right now, there is so much controversy over the scope of the Federal Government's control on this issue.

Chairman Martinez said by issuance of the ordinance, he asked if it was his understanding, that they were going further into a liability, because now someone can come in and contest that the City is going against Federal Law.

Mr. Stanton explained that courts look at regulatory codes differently than they look at land use codes. The courts are very deferential to local governments when it comes to land use decisions. Something like this, Mr. Stanton would feel pretty comfortable with. Although, whenever a land use decision is made, especially something that is controversial like this, there needs to be some rational for it, and you would want to put that in the record. His experience is regulatory, police,

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ordinances like this one, or licensing ordinances, can be challenged more easily than land use ordinances.

Mr. Wilkinson thought they should probably review the options for the Planning Commission, because this will still go back to the City Council one way or another. There will be a hearing in front of the City Council. This is before the Planning Commission for advice and a recommendation back to the City Council. Tonight the options are to approve with a recommendation for approval, a recommendation not to approve, or the Planning Commission could ask to have the item tabled if they need more information. Regardless of where the Planning Commission lands on the issue there will be another hearing before the City Council.

Commissioner Freistroffer asked if they could allow it in certain zones with a CUP process, under certain stipulations.

Mr. Wilkinson thought what would happen in that case, because this is a proposed amendment, you would then have a recommendation to not approve, and in support of that recommendation you could convey your desire to the City Council that they consider allowing that use under a Conditional Use Permit in whatever districts you determined appropriate. The areas on the map are delineated under the NRS, so they would be prohibited there.

Mr. Stanton asked if Commissioner Freistroffer was referring to an overlay district.

Commissioner Freistroffer clarified that he was referring to allowing it in the Commercial and Industrial Districts with a Conditional Use Permit.

Commissioner Dalling asked if the Indian Colony ever made the vote to decide whether or not to allow the marijuana establishment.

Commissioner Hooiman thought they tabled it.

Commissioner Hodur said that he would be comfortable with Mr. Freistroffer's suggestion of allowing it in the Commercial and Industrial Districts, with a Conditional Use Permit. He would also be comfortable with an overlay district. It's the yes or no nature of this that had him concerned, especially when they are backed up by the business license process.

Commissioner Dalling said the County Commissioners had already said no, and City Council is four to one. He asked if it was John Rice that voted against. (Yes)

Mr. Wilkinson believed Mr. Rice's primary concern was on the medical side.

Commissioner Dalling thought it seemed like it's all lined up against it. He didn't know what good it would do to give it its own zoning or trying to do a CUP or an overlay, if the kibosh has been put on it from the top.

Commissioner Freistroffer explained that the Planning Commission can propose what they want and then the City Council can then respond.

Commission Dalling asked what good that would do.

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Commissioner Freistroffer said there would be no delay or speeding up, it would just be something different.

Commissioner Hodur said just because there is a line, doesn't mean that they are right.

Commissioner Dalling said he didn't say anyone was right. He was just saying that he didn't know what they were fighting for. And now you want to turn it into a whole new district, an overlay, or a whole new CUP process, that turns it into more work.

Commissioner Hodur said he was fine with just denying. If the City Council wants to ignore the Planning Commission's recommendation then that's fine. The Planning Commission can come back with a recommendation later, if the atmosphere changes. He didn't see the Planning Commission needing to get in the line, not when the City is already protected.

Mr. Wilkinson thought they would include that as part of the findings for their recommendation. Those type of concerns for the City Council to consider. Mr. Wilkinson knew that Chairman Martinez had some concerns and staff hasn't been able to do a really good job of trying to do some projections on what type of revenues you might get off a facility in the City. There are some unanswered questions.

Chairman Martinez thought that staff had done great job identifying a lot of the concerns and they've answered a lot of questions. He hadn't brought up a lot of those questions. He would be happy to discuss those in this form, the financial aspect and what the benefit would be for the City. Ultimately the City of Elko Planning Commission is looking at it from a Zoning purpose and land usage, but at the same time the Planning Commission sometimes evaluates the impacts financially on a residence through different land zoning policies. The Planning Commission does have a say in taking into account the financial aspect. He stated that staff had already answered all of his questions, and he felt comfortable with all the research he had done.

Ms. Laughlin stated that she had information on Mesquite's 1st Quarter revenues, as well as what Wendover used as their projected revenues, if anyone would like to know.

Commissioner Hooiman said she would.

Ms. Laughlin said that Mesquite's first quarter, just on the dispensary, they received $12,600 in revenue for medical, and in recreational they received $77,000. Mesquite charges $12,500 a quarter license fee, plus 3% gross revenue.

Chairman Martinez asked if any of that was sales tax revenue.

Ms. Laughlin stated that none of that was sale tax revenue. Aaron Baker, from Mesquite, informed Ms. Laughlin that the sales tax they collect all goes to the County.

Chairman Martinez asked if that was an inter-local agreement or if it was a global.

Ms. Laughlin wasn't sure. Mr. Baker just said that they don't get any sales tax revenue from it, this is simply their license fee. Mesquite had projected in their estimates, when they took this

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ordinance to their City Council, they estimated $50,400 in medical in a year and $308,000 in recreational in a year. West Wendover projected in their medical $80,000 annually, and that was on the fee structure of 3% of gross sales, and they estimated between $250,000 and $300,000 annually for recreation, if they add the recreational component to their ordinance.

Commissioner Dalling asked if $350,000 would go to the County.

Ms. Laughlin clarified $250,000 to $300,000 for the City of Wendover.

Mr. Wilkinson suggested the Commission keep in mind that both those communities are boarder communities. There is that influence there.

Commissioner Beck asked if there were any studies done about where marijuana is legalized if the crime rate goes up or down. Will we be over loading the local Police Department? He thought the dominating variable was finances, but he thought they needed to worry about if this would be making it easier for the drug problem to expand, or would this make it easier for the problem to go away. He knew there was a lot of issues and that they couldn't solve them all tonight. His concern was how it was going to affect the community. He thought it was probably too early for there to be any data on that, but he thought maybe the Police Department might have some data on that.

Chairman Martinez said the Chief had issued quite a bit of information on that.

Ben Reed, Police Chief, stated that the most definitive data he's seen was the Colorado Study, because they had been in the business longer than anyone else. They started studying it their first year, when it went legal, which was 2013. They just issued Volume 5 about a month ago. They track all kinds of data: hospital visits, DUIs, crime data, and all other kinds of data. All of it is trending in the wrong direction towards safety for the community. It appears that they went with an approach in the State that it was up to the local jurisdictions as well. They quote a statistic that 66% of their local jurisdictions have somehow prohibited marijuana dispensaries, either recreational and/or medicinal. They currently, as of June 2017, have 491 retail marijuana stores in the State, compared to 392 Starbucks and 208 McDonalds. About a year ago Chief Reed listened to a lecture by a District Attorney for the Denver area, at the time, he was speaking in Reno. He was speaking to a variety of attendees. He was highly recommending that the voters of Nevada not give a thumbs up to Question No. 2. Question No. 2 did go ahead and pass State wide about a year ago. He didn't believe it passed the voters in Elko, it went down in Elko County. He looked at the Secretary of State's data and it typically passed in Washoe and Clark Counties, with a couple of exceptions. He spoke to a lot of the problems they had from a crime standpoint, but Denver is their major metropolitan area and is much different than Elko. It was all bad news, he spoke of all the foreign countries that are operating cartels out of Colorado. There were five or six different countries that he identified, who sell, process, control, and ship out, which they had never saw before. He also talked about the immigration of people coming there for marijuana from all over the world, Europe, Canada, Mexico, and Asia. They went to live there to acquire product. Chief Reed thought this was a fairly new statistical area Nationwide, because not many people are tracking it. The Federal Government doesn't really track it with a ton of statistics like they do for everything else, because it's prohibited. Chief Reed read some internet crime stories for what is going on in Nevada. There are a lot of them in the Clark County area. There have been around 30 burglaries of marijuana establishments since

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January 2016, one armed robbery, one shooting by the police, and a number of other crime problems. He has seen that from where he used to work and talking to other Police Chiefs and Sheriffs in Nevada, as well as Colorado and California, that there is an impact on the Police Department once the establishments are established. He will be placed in a position where he will either have to tell callers calling for service that they aren't coming call the State, or Elko Police Officers will respond. The types of responses that they have seen in other areas are a variety of things, loitering, minors, fights, burglaries, etc. They do get marijuana conflict calls now for people who have personal grows in their homes, or their backyards. Typically it is the neighbors complaining about the smell, but it is permitted under current law in Nevada for up to six plants, or up to possession of an ounce. There are about 4 in the City that they've gotten calls on, they check to make sure they are in compliance with NRS 453, and then if they are they move on and let the neighbor know.

Commissioner Freistroffer asked if the Police Department checks to see if they have a State Marijuana Card, because it's for personal medical use right.

Chief Reed explained that they are typically looking for the card, which is issued by the State. There are issued Statewide, there are not many around here, but there are several hundred that have been issued. Because it is still prohibited by Federal Law, it was Chief Reed's understanding, Doctors cannot prescribe, but many doctors recommend, or not recommend, but there is no script for it. If Congress was to act and move this through the FDA, like all the other drugs, into a particular schedule and allow a medicinal use for it. In there that would take it away from the law enforcement, mostly, at the individual level. You would put in the hands of doctor and patient. We would still have the black market, trafficking, and cultivation issues, but you wouldn't have the conflict that we have now. This is a very difficult issue. Chief Reed stated that he had a hard time explaining to his officers what their policy is, when they have a Federal set of rules, State schematic, County prohibition, and a current City Resolution moratorium on medicinal facilities, which expires March 2018.

Commissioner Hooiman wanted some clarification on something that Mr. Trouten had said. He said that the dispensaries cannot use banks. Why is that?

Chief Reed explained that most of the businesses deal on a cash basis. They're not doing business with the banks, because the bank's guidance, from their owners and legal staff, is to be cautious of that issue. They don't want to get sideways with the federal regulators in the banking industry, because they are federally insured, they have federal oversite, and federal law. It's very complex.

Mr. Wilkinson added that he attended a short seminar on this issue at League of Cities, and a small community that has the full chain of the product, from grow to dispensary, has a huge problem with the amount of cash that they have to deal with. It is also a huge security concern. It's just waiting for a crime. When you allow for these type of businesses you are setting the stage for a big problem that could arise.

Grett Miller, 1024 Barrington Avenue, pointed out that someone could grow six plants without a medical marijuana license by recreation.

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Chief Reed thought Mr. Miller was correct, he thought that was under Question No. 2 that allowed for that. Question No. 2 established a whole new set of crimes on marijuana. He thought it got even more complex when that passed last year.

Mr. Wilkinson asked by extension if individuals are able to cultivate and use marijuana, does the City really needed to allow for dispensaries or grows. It's more of an individual choice at that time and if the City had a prohibition, it would be a City decision on land use, but an individual could still do what they wanted to do.

Chairman Martinez thought that was an interesting point. On the other side of that too is if a distribution center is open then those folks, who were once able to cultivate, are no longer. He asked if that was correct. Once that distribution facility is open within a 25 mile radius there is no cultivation allowed. He said at some point they would be reducing the residents' ability to make that individual decision.

Chief Reed explained within 25 miles of a retail marijuana store personal cultivation is prohibited.

Chairman Martinez said that was one of the most interesting things he read on the law. It was almost like to feed the coffers. 25 miles covers the City of Elko.

Commissioner Dalling asked if it would stop someone from doing it at home.

Chairman Martinez said no, absolutely not. It's more of the cause and effect of each decision.

Commissioner Freistroffer added that another aspect to add to this is to get the money and the revenue generated, it is no longer a small scale business, it would be a very large business. The Nevada Statute is set up so that only large, well endowed, businesses can run any kind of an operation. It's not necessarily something that helps a small business to establish a corner pot store.

Mr. Wilkinson wasn't sure if the Chief would agree with him, but almost all of this is revenue driven. It's almost like the consequences of doing it, other than acquiring revenue, have just been disregarded across the board. The States have looked at it purely as a revenue resource.

Chairman Martinez pointed out that the law is sculpted to where they have the largest benefit of it. If you look at tax distribution, what we have been able to identify so far and the State is who is receiving all of those funds.

Mr. Wilkinson didn't believe that the City Council viewed this as a revenue resource and something that the City should go do to generate revenue for the City of Elko.

Commissioner Dalling said his thoughts on it were, normally he wouldn't care. He rode with Reece Keener in the Centennial Parade and they talked a little bit about it. Mr. Dalling knew he wasn't into it, but he was questioning why. Mr. Keener's thoughts were the crime. Mr. Dalling stated that he was a business owner and he had looked into. He talked with Ms. Laughlin about it and asked her what the boundaries were. He thought whoever got it, it would be like the golden ticket. Mr. Keener had a good point and said that one person benefits, and the rest of the people

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get to deal with the fallout. Part of him wanted to go with not allowing it and the other half thought maybe they should allow it. The problem is that it is fully illegal in the County and in the City. So, by doing this are they really hampering anything, or are they doing what is right, or are they leaving the door open for a legal fight. He pointed out that there were dispensaries in Las Vegas and Reno. Would they benefit from allowing one in little Elko? Nevada borders two States, and if they open their own it's not like this is a destination town to come get weed. If the City is getting $300,000 into the City coffers. He thought $300,000 was a joke for the City budget.

Chairman Martinez thought Mr. Dalling brought up good points. The City's operating budget is $19 Million per year. He thought they brought up a lot of good points. There are plenty more to be made. For Mr. Martinez it came down to more access and more usage. He wasn't sure that was in the City's best interest at this time.

*****Motion: Forward a recommendation to City Council to not approve Zoning Ordinance Amendment No. 3-17.**

Commissioner Hodur's findings were that such establishments were already not allowed under the Business License Process and can be handled as the Federal situation changes.

Moved by Kevin Hodur, Seconded by Stefan Beck.

Motion passed (4 - 3, Commissioners Martinez, Dalling, and Hooiman voted No).

3. Review, consideration, and possible adoption of Resolution 1-17, containing amendments to the Acknowledgments, Land Use and Transportation components, and the Land Use and Transportation Atlas Maps #5, #6, #8 & #12 of the City of Elko Master Plan, and matters related thereto. **FOR POSSIBLE ACTION**

   Planning Commission reviewed and initiated the amendment to the City of Elko Master Plan at its August 1, 2017 and September 7, 2017 meetings.

Ms. Laughlin explained that in front of the Commissioner's was a spreadsheet that was a cross referencing table that highlighted the majority of the amendments that Staff was proposing to the Master Plan. She then went over the proposed changes to the Acknowledgements and the Land Use Document.

Chairman Martinez had a question about the airport for the City Manager's Office. He asked if this was the appropriate time to address the long term plan of the Airport.

Ms. Laughlin explained that the Airport just completed a Master Plan.

Mr. Wilkinson added that the Airport had their own Master Plan.

Chairman Martinez asked if the City Master Plan is referencing the Airport Master Plan, and if so if there was an identification of that long term commercial utilization of the Airport.

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Ms. Laughlin explained that it was all included in the new Airport Master Plan, and that was why they added the Airport Master Plan on the Acknowledgements page. She then continued going over the changes to the Land Use Document.

Mr. Wilkinson explained that the reason they removed the development Multi-Family Zoning District was because Multi-Family Districts are already in the Code.

Commissioner Freistroffer asked if they changed the CUP process for Multi-family, to stream line it.

Mr. Wilkinson explained that they allowed mixed use under Commercial with a CUP.

Ms. Laughlin continued going over the proposed changes.

Mr. Wilkinson explained that they changed annexation by petition to other annexation areas. In reality the City has a pretty good handle on the first two classifications with the Development Report, and then everything outside that is speculation and the City doesn't have the water to serve it.

Ms. Laughlin finished going over the proposed changes to the Land Use Document.

Mr. Draper had nothing to add for the Land Use Document.

Mr. Thibault, Mr. Holmes, and Mr. Wilkinson had nothing to add.

Ms. Laughlin went over the proposed changes to the Transportation Document.

Chairman Martinez asked what the level of service was on 5th Street.

Mr. Draper said it was Level of Service B.

Chairman Martinez asked if those were based on total trips.

Mr. Draper explained that they were based on the total trips and the tables listed in the Best Practices. It doesn't take into account any turning movements or anything else.

Chairman Martinez asked if the total trips were evaluated through actual traffic counting means, or if it was through population evaluation.

Mr. Draper explained that they are done by NDOT. They come out yearly and do traffic counts.

Chairman Martinez asked when the last study was done.

Mr. Draper stated that when he updated the table the last published study they had was for 2015. He also added that they included the NDOT identifier for their traffic count, so that way as they review this in the future it is easier to identify exactly what the trending data is.

Ms. Laughlin went over the proposed changes to Atlas #5, #6, #8 & #12

DRAFT

*****Motion: Adopt Resolution 1-17 containing amendments to the Acknowledgements, Land Use and Transportation Components, Land Use and Transportation Atlas Maps #5, #6, #8, and #12 of the City of Elko Master Plan, directing that an attested copy of the forgoing parts, amendments, extensions of, and/or additions to the Elko City Master Plan be certified to the City Council, further directing that an attested copy of this Commission's report on the proposed changes and additions shall have been filed with the City Council and recommending to the City Council to adopt said amendments by resolution.**

Moved by Kevin Hodur, Seconded by Stefan Beck.

Motion passed unanimously. (7-0)

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to set regular meeting dates as well as special meeting dates for 2018, and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin explained that regular meetings are the first Tuesday of every month. If any of those don't work we will need to set special meeting dates.

Chairman Martinez said they needed to change the January 2nd meeting.

Commissioner Freistroffer said they would also need to change the July 3rd meeting.

Chairman Martinez asked if they could move the January meeting to the 9th.

Ms. Laughlin stated that there was a City Council meeting that day, so that would not work. She also added that she would prefer to keep it as close to the regular meeting day as possible, because it messes the Planning Department up with application cycles.

Chairman Martinez suggested they change it to January 4th.

Commissioner Hodur suggested they change the July meeting to the 5th.

Chairman Martinez proposed July 17th.

Mr. Wilkinson explained that last time the meetings were delayed for that long it created some issues. He recommended that they didn't go any further than the next week out.

Chairman Martinez proposed Monday, July 9th for the July meeting.

Commissioner Freistroffer said that they would need to change the September meeting because of Labor Day.

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Commissioner Hodur suggested they move it to September 6th.

*****Motion: Accept the dates that are the first Tuesdays of each month for next year's meetings, with the exception of instead meeting on January 4th, July 9th, and September 6th.**

Moved by David Freistroffer, Seconded by Tera Hooiman.

Motion passed unanimously. (7-0)

II. REPORTS

A. Summary of City Council Actions.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Preliminary agendas for Planning Commission meetings.

E. Elko County Agendas and Minutes.

F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.

G. Staff.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

ADJOURNMENT

There being no further business, the meeting was adjourned.

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Aaron Martinez, Chairman

Jeff Dalling, Secretary

Agenda Item # I.A.1.

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action to initiate an amendment to the City of Elko district boundaries, specifically APN 001-200-002, removing the R-Single Family and Multiple Family Residential District and replacing with the PQP-Public, Quasi-Public District, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **January 4, 2018**

3. Agenda Category: *MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS*

4. Time Required: **10 Minutes**

5. Background Information: **Elko City Code Section 3-2-21 allows the Planning Commission to initiate on its own motion a change to the district boundaries. This parcel was originally built as a church which is permitted in the R-Residential zoning district with a conditional use permit. The City of Elko then occupied the building for many years as a police department. City of Elko Master Plan Land use document defines the area as Public. This amendment, initiated by the Planning Commission, if approved, will bring back as a public hearing a rezone of the parcel from R- Residential to PQP- Public Quasi-Public.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information:

8. Recommended Motion: **Move to initiate an amendment to the City of Elko district boundary and direct staff to bring it back as a public hearing.**

9. Prepared By: **Cathy Laughlin, City Planner**

10. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 1/4
Do not use pencil or red pen, they do not reproduce

Title: Initiation of Rezone

Applicant(s): City of ELKO

Site Location: 1401 College Ave - APN 001-200-002

Current Zoning: R Date Received: _____ Date Public Notice: N/A

COMMENT: This is to begin the process of Rezoning the Old Police Department Parcel from R to PQP

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 12/26/17 Recommend approval

SAW

Initial

City Manager: Date: _____

Initial

Agenda Item # I.A.2.

Elko City Planning Commission
Agenda Action Sheet

1. **Review, consideration, and possible action to develop the Calendar Year 2018 Planning Commission Annual Work Program, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **January 4, 2018**

3. Agenda Category: *MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS*

4. Time Required: **10 Minutes**

5. Background Information: **Each year the Planning Commission reviews the Annual Work Program. The work program gives the Planning Commission direction on various issues to address throughout the year.**

6. Business Impact Statement: **Not Required**

7. Supplemental Agenda Information: **2018 Work Program**

8. Recommended Motion: **Pleasure of the Planning Commission**

9. Findings:

10. Prepared By: **Cathy Laughlin, City Planner**

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 1/4
Do not use pencil or red pen, they do not reproduce

Title: 2018 Planning Commission Annual Work Program

Applicant(s): _____

Site Location: _____

Current Zoning: _____ Date Received: _____ Date Public Notice: _____

COMMENT: This is to approve the 2018 Annual Planning Commission Work Program.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 12/26/17 Recommend approval

SHW

Initial

City Manager: Date: _____

Initial

CITY OF ELKO
Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

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Memorandum

To: Planning Commission
From: Cathy Laughlin –City Planner
Date: December 18, 2017
Meeting Date: Thursday, January 4, 2018

Agenda Item:

1. Review, consideration, and possible action to develop the Calendar Year 2018 Planning Commission Annual Work Program, and matters related thereto. **FOR POSSIBLE ACTION**

Additional Information:
The 2017 Planning Commission Work Program consisted of the follow four items:

Completion of the new Residential Business District (RB)	Completed
Revise Sign Ordinance	Started
Complete Zoning Ordinance Amendment 1-16	On hold
Review Zoning for residential parking in corridor.	Not Started

Other projects completed or started, not in 2017 Work Program:

Ordinance 825 adding section 3-2-29 for Marijuana establishments
Ordinance 818 Home Occupation Zoning Amendment
Master Plan Amendment 1-17 Land use and transportation documents, Atlas #5, #6, #8 & #12.
Revisions to the Planning Department applications and fee schedule

The Master Plan Amendment as well as the Residential Business District took many months to complete due to the complexity of the amendments and meetings that are required.

The revisions to the Planning Department applications and fee schedule will be complete in February requiring several notices, public hearings and business impact statement which all take time. The applications are under review by legal counsel.

I would like the Planning Commission to recommend any other changes to code or concerns they may have in which we can try to address in 2018.

Cathy

Cathy Laughlin
City Planner

Elko Planning Commission 2018 Work Program

	ITEM	START DATE	PROJECTED COMPLETION	ACTUAL COMPLETION
*	Revise Sign Ordinance	February	October	
*	Review Zoning for RMH districts, revise map	October 2017	March	
*	Review and revise 3-3 Subdivisions	January	June	
*	Revise P & Z applications and fee schedule	October 2017	February	
	ONGOING PROJECTS			
	Planning Commission training (General conduct, , Ethics, NRS, Open meeting law)			ongoing

QUINLAN™ November 10, 2017 | Volume 11 | Issue 21

Zoning Bulletin

in this issue:

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Immunity from Regulation—State university seeks to construct on-site road that will intersect local road

University maintains it is immune from local regulation, but county and city say such immunity does not apply when there are roadway safety concerns

Citation: *Montclair State University v. County of Passaic, 2017 WL*

Contributors:
Corey E. Burnham-Howard

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3611681 (N.J. Super. Ct. App. Div. 2017)

NEW JERSEY (08/23/17)—This case addressed the issue of whether limits of a local government's authority to regulate development of a state university's property (see *Rutgers, State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972)*) apply to a state university's construction of a roadway that intersects a county road.

The Background/Facts: Montclair State University ("MSU") sought to develop a roadway from its campus to Valley Road in the City of Clifton (the "City") in the County of Passaic (the "County"). MSU spent approximately six years consulting with the County and the City with regard to various objections and concerns about the project. Finally, in 2014, MSU applied to the County for a permit to install traffic controls at the intersection of the campus roadway and Valley Road. In seeking that permit, MSU stated that it was exempt, under New Jersey case law, from seeking any approvals from the City's land use boards. In arguing such exemption, MSU referenced the case of *Rutgers, State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972)* ("*Rutgers*"). In *Rutgers*, among other things, the Supreme Court of New Jersey held that state universities are permitted to exercise certain "governmentally autonomous powers." The court in *Rutgers* held that the development of state university property is excluded from local regulation.

The County refused to issue the permit sought by MSU because it believed that MSU's roadway design failed to meet certain American Association of State Highway Transportation and New Jersey Department of Transportation standards and because it believed that the City's approval was required for a proposed traffic signal as it would impact municipal roadways. Here, the County and the City argued that the case at hand was "distinguishable" from *Rutgers*. They argued that the limits of a local government's authority to regulate development of a state university's property did not apply where there were "legitimate safety concern[s]," such as here with regard to MSU's roadway design.

MSU filed a legal action in court. It asked the court to declare that the County's refusal to issue the permit was contrary to law, and it asked the court to order the County to issue the permit to MSU so that MSU could construct the roadway.

The trial judge dismissed MSU's complaint, citing an "insufficient record to rely upon because MSU had not appeared before the [County] or [City] planning boards."

MSU appealed. On appeal, it argued that the trial judge abused his discretion by dismissing MSU's complaint. MSU contended that, under *Rutgers*, its only obligation was "to act reasonably and consult with the city and county." MSU contended that it had met that obligation, and, as such, it was error for the trial judge to dismiss its complaint.

On appeal, the County and the City reiterated their argument that the state university development immunity from local regulation found under *Rutgers* did not apply where, as here, there was "legitimate safety concern[s]."

DECISION: Judgment of Superior Court, Law Division, reversed, and matter remanded.

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The Superior Court of New Jersey, Appellate Division, held that the state university development immunity from local regulation found under *Rutgers* also applied here—to a state university's construction of an on-site road that will intersect a local or county road. However, the court emphasized that such "immunity [from regulation] is not completely unbridled." The court explained that state universities have "an 'implied duty' to consider local interests that obviously include legitimate 'safety concerns.' " To satisfy such an obligation, said the court, "a state university 'ought to consult with local authorities and sympathetically listen and give every consideration to local objections, problems and suggestions in order to minimize conflict as much as possible.' " Addressing the City and County's argument directly, the court said that in order for a state university to satisfy its obligation to reasonably consider "local safety concerns," the state university is "not obligated to appear before local land use boards," but must listen to and consider local objections.

Whether a state university has complied with its obligation to consult and consider local concerns is a "judicial function not conditioned upon consideration by a local zoning board," said the court. Here, the court remanded the matter to the trial judge for reinstatement of MSU's complaint, and for the judge to determine whether MSU satisfied those obligations under *Rutgers*.

See also: *Rutgers, State University v. Piluso, 60 N.J. 142, 286 A.2d 697 (1972).*

See also: *Township of Fairfield v. State, Dept. of Transp., 440 N.J. Super. 310, 113 A.3d 267 (App. Div. 2015), certification denied, 222 N.J. 310, 118 A.3d 350 (2015)* (quoting *Garden State Farms, Inc. v. Bay, 77 N.J. 439, 390 A.2d 1177 (1978)*).

RLUIPA—City denies height variance for personal chapel

Variance applicant claims denial substantially burdens his exercise of religion in violation of RLUIPA

Citation: *Milosavlejevic v. City of Brier, 2017 WL 3917015 (W.D. Wash. 2017)*

WASHINGTON (09/07/17)—This case addressed the issue of whether a city's denial of a zoning variance for the construction of a personal chapel violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA") (42 U.S.C.A. § 2000ee).

The Background/Facts: Vladan Milosavlejevic ("Milosavlejevic") sought to build a personal Serbian Orthodox chapel on property owned by his company in a single-family residential zone in the City of Brier (the "City"). Milosavlejevic sought to build a chapel with two domes, each nearly 40.5 feet high. He claimed that the height of the domes was necessary to comply with religious standards, including a "Serbian Orthodox belief that 40 is a holy number." Because the City Municipal Code (the "Code") limited buildings in

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a single-family residential zone to 30 feet in height, Milosavlejevic applied to the City for a height variance to construct his chapel.

The City denied Milosavlejevic's variance request on the basis that Milosavlejevic met only two of eight mandatory criteria for granting variances.

Milosavlejevic then filed a legal action against the City. Among other things, Milosavlejevic claimed that the City's denial of his requested height variance violated the substantial burden provision and the equal terms provision of RLUIPA. (See 42 U.S.C.A. § 2000cc.)

Under RLUIPA's substantial burden provision, a "government land-use regulation 'that imposes a substantial burden on the religious exercise of a [person, including a] religious assembly or institution' is unlawful 'unless the government demonstrates that imposition of the burden . . . is in furtherance of a compelling government interest; and is the least restrictive means of furthering that compelling governmental interest.' " (See 42 U.S.C.A. § 2000cc(a)(1).) Under RLUIPA's equal terms provision, governments are prohibited from imposing land-use "restriction[s] on a religious assembly 'on less than equal terms' with a nonreligious assembly." (See 42 U.S.C.A. § 2000cc(b).)

The City argued that Milosavlejevic's RLUIPA claims failed because: (1) Milosavlejevic failed to demonstrate that his exercise of religion was substantially burdened by the City's denial of his variance request because alternative locations exited in which Milosavlejevic could practice his religion; and (2) Milosavlejevic was not a "religious assembly," and even if he was, the City did not treat him on "less than equal terms to comparable nonreligious or secular assemblies or institutions."

The City asked the court to find there were no material issues of fact in dispute, and to issue summary judgment in its favor on the law alone.

DECISION: City's motion for summary judgment granted, and Milosavlejevic's claims dismissed.

The United States District Court, W.D. Washington, held that Milosavlejevic's RLUIPA claims failed.

In so holding, the court agreed with the City's arguments. The court found that Milosavlejevic failed to demonstrate that his free exercise of religion was "substantially burdened" by the city's failure to grant his requested height variance. The court found that Milosavlejevic had "ready alternative places of worship at his disposal," including at home or other faith centers. The court noted that Milosavlejevic's own witness, an Orthodox priest, had stated that Milosavlejevic's prayer could take place anywhere, including within other churches and homes. The court also found that the City had not precluded Milosavlejevic from practicing his faith at home or other faith centers. Further, the court stated that "the City's zoning procedures do not impose a substantial burden simply because they prevent a religious institution or person from constructing an ideal place of worship." While worshipping within a home or church in the local county was "unsatisfactory" to Milosavlejevic, that "inconvenience [did] not rise to the level of a substantial burden," said the court. Additionally, the court noted that Milosavlejevic had the option of submitting a building permit application for land located within a different

zone, which could be "inconvenient," but was "not substantially burdensome," particularly given that Milosavlejevic had experience in the construction business and owned additional properties.

With regard to Milosavlejevic's claim under the equal terms provision of RLUIPA, the court agreed with the City that, even if Milosavlejevic qualified as a "religious assembly or institution," he failed to demonstrate that he was treated less than equal to similarly situated applicants. The court found that Milosavlejevic failed to "offer a suitable comparator." He had compared his proposed chapel to utility towers that had been approved at a height greater than 30 feet, but the court found that "[u]tility towers are not suitable comparators to chapels" as they "serve completely different purposes" and are "located within different City zones with different zoning criteria."

See also: *International Church of Foursquare Gospel v. City of San Leandro, 673 F.3d 1059 (9th Cir. 2011).*

Case Note:

Milosavlejevic had also brought a Section 1983 claim, alleging that the City's variance denial violated his right to free exercise of religion and equal protection. The court rejected those claims also, finding that: the Section 1983 claims relied on the same, inadequate facts and evidence as Milosavlejevic's RLUIPA claims; and that Milosavlejevic "fail[ed] to demonstrate either unequal treatment or any racial animus" by the City in the denial of the variance. Moreover, the court emphasized that Milosavlejevic's discrimination claims were "undermined by the fact that his variance application met only two of eight mandatory criteria for granting variances."

Rezoning/Discrimination—Village's rezoning of parcel is challenged as violating federal Fair Housing Act

Opponents say an alternative zoning designation would have had allowed for multi-family housing and thus had a less discriminatory effect on minorities

Citation: *MHANY Management, Inc. v. County of Nassau, 2017 WL 4174787 (E.D. N.Y. 2017)*

NEW YORK (09/19/17)—This case addressed the issue of whether a village, in rezoning a parcel of land, was liable under the federal Fair Housing Act based on disparate impact and disparate treatment. More specifically, it addressed whether the "substantial, legitimate, nondiscriminatory interests" proffered by the village in support of its zoning change "could be served by another practice that has a less discriminatory effect."

The Background/Facts: The Village of Garden City (the "Village")

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rezoned a parcel of land from a Public Use ("P") designation to a Residential-Townhouse ("R-T") zoning designation. The parcel had previously been occupied by numerous government offices. Following that rezoning, MHANY Management, Inc. ("MHANY") challenged the rezoning. MHANY argued that because an R-T zoning designation did not allow any "affordable multifamily housing," the rezoning of the parcel had a disparate impact on minorities and disparate treatment of minorities—namely African Americans and Hispanics. MHANY maintained that an alternative zoning designation would have had allowed for multi-family housing and thus had a less discriminatory effect on minorities. Specifically, MHANY had maintained that a CO-5(b) zone with multi-family residential group restrictions ("R-M" zoning controls), which would have allowed for the construction of multifamily housing such as apartment buildings, would have had a less discriminatory effect than the R-T zoning controls that were adopted by the Village. MHANY, which was later joined by intervenor New York Communities for Change, (hereinafter, collectively, "MHANY") brought a housing discrimination action against the Village.

After trial, agreeing with MHANY, the United States District Court, E.D. New York found that based on the Village's rezoning of the parcel from a P to R-T zoning designation, the Village was liable under various federal laws, including the Fair Housing Act (the "FHA"), 42 U.S.C.A. §§ 3601 to 3618, based on disparate impact and disparate treatment.

MHANY and the Village cross-appealed. The United States Court of Appeals for the Second Circuit affirmed the majority of the Court's conclusions, but remanded the case on two points, one of which was addressed is addressed here. The Second Circuit held that the district court had applied an incorrect standard in addressing MHANY's FHA disparate impact claims. The Second Circuit explained that the district court should have analyzed the disparate impact claims under the standard announced by the Secretary of Housing and Urban Development ("HUD") in 2013. (See Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11,460 (Feb. 15, 2013) (codified at 24 C.F.R. § 100.500).) The Second Circuit found that the FHA was "ambiguous on the relative burdens of the parties, and therefore HUD's interpretation was entitled to deference."

Under HUD's standard, in order to succeed on a FHA disparate impact claim, a plaintiff—such as MHANY, here—must present a prima facie (i.e., on its face) case of disparate impact. The burden then shifts to the defendant (here, the Village) to demonstrate that the "challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant." (24 C.F.R. § 100.500(c)(1)-(2).) As a third step, the burden shifts back to the plaintiff to prove that the defendant's "substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect." (24 C.F.R. § 100.500(c)(3).)

Here, the Second Circuit held that the first two steps were met: "MHANY more than established a prima facie case[,] . . . [and] [the Village] identified legitimate, bona fide governmental interests, such as increased traffic and strain on public schools." However, the Court remanded the case back to the

district court with instructions that the district court determine whether MHANY proved at trial that the "substantial, legitimate, nondiscriminatory interests" proffered by the Village in support of its zoning shift "could be served by another practice that has a less discriminatory effect." (See 24 C.F.R. § 100.500(c)(3).)

DECISION: Judgment for MHANY.

The United States District Court, E.D. New York, found that MHANY met its burden at trial in demonstrating, by a preponderance of the evidence, that the Village's proffered reasons for its chosen zoning change (P to R-T) could have been met by another practice that had a less discriminatory effect.

As an initial point, re-addressing the first step in the HUD standard analysis of this disparate impact claim, the court reiterated its previous holding that R-M zoning would have provided for a "significantly larger percentage of minority household than the pool of potential renters in the R-T zoning." In other words, MHANY had established that the adoption of an R-T zoning instead of an R-M zoning "affected minority residents to a greater degree." In support of this finding, the court pointed to evidence that the R-T zoning would not have allowed for "any measurable number of affordable housing units," while the R-M zoning would have allowed for 45 to 78 affordable housing units. The court further noted that 88% of those on the Section 8 rental housing list in the county were African American and Hispanic households, even though those households comprised only 14.8% of all households in the county. Thus, the court had found that R-M zoning would create more affordable housing units available to minorities than the R-T zoning. Accordingly, the court reiterated its previous holding (made prior to the appeal and remand) that "R-M zoning controls would have a less discriminatory effect than R-T zoning controls."

Re-addressing the second step in the analysis, the court noted that the Village had identified its "legitimate, bona fide governmental interests" in the zoning change as including: "controlling traffic; minimizing school overcrowding; developing townhouses; maintaining the character of the area; and creating a transition zone." On appeal, the Second Circuit had concluded that the only "legitimate interests" of those claimed by the Village were the interests of "minimizing traffic and school overcrowding."

Finally, the court addressed the issue that was remanded to it from the Second Circuit: whether MHANY had met its burden at the third step of HUD's disparate impact burden shifting analysis. (See 24 C.F.R. § 100.500(c)(3).) For guidance, the court looked to the language of the statute and HUD's interpretation.

The statute provides:

> "If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section [(i.e., the first and second steps of the analysis)], the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect."

(24 C.F.R. § 100.500(c)(3).) And, the court found that "HUD's interpretation could not be clearer that a plaintiff's burden under 24 C.F.R. § 100.500(c)(3) is not to show that the less discriminatory practice would be

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equally effective, but merely that it must serve a defendant's legitimate interests."

Looking at the evidence presented in the case, the district court found that MHANY provided at trial that: R-M zoning would not have overburdened or strained public schools; and the Village's interest in reducing traffic from the levels that existed under the P zone, could have been served by R-M zoning. The court found that evidence showed that the Village's school could have accommodated as many as 565 additional students, and that the R-M zoning would have, at most, added 156 additional students. The court also found that elimination of government office buildings (as found previously in the P zone) and replacement with residential buildings "would have reduced traffic, whether the residences were single or multi family," and any decrease in traffic between R-M and R-T zoning was de minimis as eliminating multi-family housing only reduced peak traffic by 3%.

Thus, in conclusion, the district court determined that MHANY met its burden at trial in establishing that the Village's "legitimate, substantial, nondiscriminatory interests" in not overburdening public schools and in reducing traffic could have been served by R-M zoning. The Court confirmed its finding that the adoption of R-T zoning instead of R-M zoning had a disparate impact on minorities in the Village.

See also: *Mhany Management, Inc. v. County of Nassau, 819 F.3d 581 (2d Cir. 2016).*

Case Note:

The Second Circuit had also vacated the district court's grant of summary judgment to the County of Nassau on MHANY's "steering" claims under Section 804(a) of the FHA and Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d ("Title VII"), and remanded for reconsideration of those claims. Those claims were not addressed in the court opinion summarized here.

Preemption—City regulates registration and use of drones

Drone owner contends city regulations are preempted by Federal Aviation Administration regulations

Citation: *Singer v. City of Newton, 2017 WL 4176477 (D. Mass. 2017)*

MASSACHUSETTS (09/21/17)—This case addressed the issue of whether a city ordinance, requiring the registration of drones and prohibiting operation of drones out of the operator's line of sight or in certain areas without permit or express permission, was preempted by Federal Aviation Administration regulations.

The Background/Facts: Michael Singer ("Singer") was a resident of the

City of Newton (the "City"). Singer was a Federal Aviation Administration ("FAA")-certified small unmanned aircraft ("drone") pilot and owned and operated multiple drones in the City. In December 2016, "[i]n order to prevent nuisances and other disturbances of the enjoyment of both public and private space," the City adopted an ordinance (the "Ordinance") regulating drone use in the City. Among other things, the Ordinance imposed registration requirements on drone owners. It also banned the use of drones: below an altitude of 400 feet over private property without the express permission of the owner of the private property; over public property without prior permission from the City; and "beyond the visual line of sight of the Operator."

Singer sued the City, challenging those requirements of the Ordinance. He argued that those provisions of the Ordinance were preempted by federal law—namely FAA regulations, which extensively control much of the field of aviation.

Newton defended the Ordinance, contending that it was not preempted by federal law because it fell "within an area of law that the FAA expressly carved out for local governments to regulate." Newton pointed to FAA regulations that provide that "[c]ertain legal aspects concerning small UAS [i.e., unmanned aircraft systems such as drones] use may be best addressed at the State or local level," including those related to "land use, zoning, privacy, trespass, and law enforcement operations." (See 81 Fed. Reg. 42063 § (III)(K)(6).)

DECISION: Judgment for Singer.

The United States District Court, D. Massachusetts, held that those sections of the City's Ordinance that were challenged by Singer conflicted with federal regulation of drones and therefore were preempted by FAA regulations.

In so holding, the court explained that the Supremacy Clause of the United States Constitution provides that "federal laws are supreme." (U.S. Const. art. VI, cl. 2.) Thus, said the court, federal laws preempt any conflicting state or local regulations. Where Congress has not expressly preempted an area of law, federal law will preempt state or local law where field or conflict preemption is evident. Field preemption, explained the court, "occurs where federal regulation is so pervasive and dominant that one can infer Congressional intent to occupy the field." Conflict preemption "arises when compliance with both state and federal regulations is impossible or if state law obstructs the objectives of the federal regulation."

Here, the court determined that since the FAA explicitly contemplated state or local regulation of pilotless aircraft such as drones, the City's Ordinance was not preempted under the principles of field preemption. However, the court found that the sections of the City Ordinance that were challenged by Singer did conflict with FAA regulations and were therefore preempted under the principles of conflict preemption.

Specifically, the court found that the FAA had explicitly indicated "its intent to be the exclusive regulatory authority for registration of pilotless aircraft." (See State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet) ("FAA UAS Fact Sheet"). Accordingly, the court concluded that the City's drone registration requirements were preempted.

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The court also found that the FAA regulations preempted the Ordinance's ban on drone use below an altitude of 400 feet and over private property without the express permission of the owner of the private property and over public property without prior permission from the City. The court found that those provisions of the Ordinance worked in tandem to "create an essential ban on drone use within the limits of the [City]," since the FAA mandated that drone operators keep drones below an altitude of 400 feet from the ground or a structure (see 14 C.F.R. § 107.51). In other words, given the FAA mandate, the City's ban on drone use below an altitude of 400 feet essentially eliminated any drone use in the confines of the City, absent prior permission.

Finally, the court found that the FAA regulations preempted the Ordinance's ban on drone use "at a distance beyond the visual line of sight of the Operator." The court pointed to FAA rules regarding aircraft safety and the visual line of sight for pilotless aircraft operation (see 14 C.F.R. §§ 107.31 and 107.205), and determined that the Ordinance "limit[ed] the methods of piloting a drone beyond that which the FAA has already designated, while also reaching into navigable space."

Case Note:

In its decision, the court noted that the remaining, unchallenged portions of the Ordinance "stand."

Zoning News from Around the Nation

CALIFORNIA

In late September, Governor Jerry Brown signed into law 15 bills aimed at addressing the "affordable housing crises." Among those new laws are: Senate Bill 35, which requires cities approve "projects that comply with existing zoning if not enough housing has been built to keep pace with their state home-building targets"; Assembly Bill 73, which provides that a "city receives money when it designates a particular community for more housing and then additional dollars once it starts issuing permits for new homes" provided at least 20% of the housing is reserved for low- or middle-income residents, "and projects will have to be granted permits without delay if they meet zoning standards"; Senate Bill 540, which "authorizes a state grant or loan for a local government to do planning and environmental reviews to cover a particular neighborhood," provided the developers in the designated community reserve a certain percentage of homes for low- and middle-income residents "and the city's approvals there would be approved without delay"; Assembly Bill 1505, which allows cities to "once again implement low-income requirements," forcing developers to set aside a percentage of their projects for low-income residents; Assembly Bill 1397, which "forces local governments to zone land for [buildable] housing"; Senate Bill 166, which requires cities to

"add additional sites to their housing plans if they approve projects at densities lower than what local elected officials had anticipated in their proposals"; Assembly Bill 879, which instructs cities to take steps to shorten the time developers take to build projects once approved; and Senate Bill 167, Assembly Bill 678 and Assembly Bill 1515, which make "it easier for developers to prove a city acted in bad faith when denying a project," and increase a city's penalty to "$10,000 per unit they rejected."

Source: *Los Angeles Times*; www.latimes.com

MASSACHUSETTS

State Legislators are considering a bill that would "require that developments defined as 'substance use and alcohol addiction centers and clinics' go through local zoning regulations and approvals." The bill is entitled "An Act to Prevent Over Saturation of Clinical or Educational Programs in Low Income Neighborhoods Under the Dover Amendment without Local Approval." Currently, under an existing state law known as the "Dover Amendment," "sober houses and other addiction centers are exempt from zoning requirements if they can show they offer some educational function." Under the bill, "addiction centers would not be exempt from zoning regulations 'without first obtaining the approval of the legislative body of such city or tow' in cases where it is a low[-]income city or town . . . ."

Source: *MassLive*; www.masslive.com

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First Amendment/Signs—Town ordinance bans signs and banners from town overpasses and within 100-foot buffer zone of town overpasses

Protestors contend ordinance violates their First Amendment rights

Citation: *Luce v. Town of Campbell, Wisconsin, 872 F.3d 512 (7th Cir. 2017)*

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The Seventh Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

SEVENTH CIRCUIT (WISCONSIN) (09/22/17)—This case addressed the issue of whether an ordinance banning signs from a highway overpass and within 100 feet of a highway overpass violated First Amendment rights. The case also addressed whether such an ordinance required empirical support in order to be sustained.

The Background/Facts: Members of a local Tea Party group began placing banners on a highway overpass in the Town of Campbell, Wisconsin (the "Town"). The banners bore messages such as: "Honk to Impeach Obama." In response to the banners, the Town enacted an ordinance (the "Ordinance"), which forbid all signs, flags, and banners—no matter the message conveyed—(other than traffic-control information) on any of the three overpasses in the Town, or within 100 feet of the end of the overpasses.

Gregory Luce ("Luce") and Nicholas Newman ("Newman"), two members of the local Tea Party group, challenged the Ordinance. They contended that it violated their First Amendment rights. They argued that the First Amendment permitted them to carry or place banners and signs "everywhere" in Town.

The district court disagreed with Luce and Newman. Finding no material issues of fact in dispute, and deciding the matter on the law alone, the district court issued summary judgment in favor of the Town.

Luce and Newman appealed. Among other things, they pointed to the fact that much of the information presented by the Town as reason for the Ordinance's enactment had been presented by the Town's former police chief. The police chief had testified that the Tea Party's banners caused drivers to pull off the road to take photographs, and produced complaints from drivers about slow and snarled traffic. The police chief, however, had later resigned in disgrace after retaliatory actions against Luce for Luce's posting of videos of the removal of demonstrators from Town overpasses. Luce and Newman now argued that the former police chief's credibility was undermined, and that without his evidence, there was no empirical support for the Ordinance.

DECISION: Judgment of United States District Court for the Western District of Wisconsin affirmed in part, vacated in part, and remanded.

The United States Court of Appeals, Seventh Circuit, explained that the Ordinance here was a "time, place, and manner restriction" that would survive the First Amendment challenge if it was shown to serve a "significant governmental interest" and be "no more extensive than necessary."

Responding to Luce and Newman's argument, the court held that the Ordinance did not require empirical support in order to be sustained. In other words, the court held that "record evidence supporting time, place, and manner restrictions" is not always essential. What is always essential (to sustain a time, place, and manner regulation, such as the Ordinance here), said the court, is "a good reason for regulating."

Here, the court determined that no empirical evidence was needed to support the ban on signs from Town overpasses because "the potential benefits of the rule [could] be appreciated without [it]." The court found that "it does not take a double-blind empirical study, or a linear regression analysis, to know that the presence of overhead signs and banners is bound to cause some drivers

to slow down in order to read the sign before passing it." And, per empirical research, noted the court, the slowing down of some drivers, while others don't, increases the risk of accidents. Thus, the court concluded that the Town's ban on overpass signs was rationally justified by the Town's interests in reducing the incidence of sudden braking on the highway (and thus, accidents).

The court, however, found it hard to find the governmental interest justifying the Ordinance's ban of signs within 100 feet of overpasses. "It is hard to see why signs off the highway, and too small to cause drivers to react, should be banned," said the court.

Thus, the Seventh Circuit affirmed the judgment of the district court in part, but vacated it with respect to Luce and Newman's challenge to the 100-foot buffer zone sign ban. That issue was remanded for further proceedings as to whether or not it was justified by a Town interest.

See also: *Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 101 S. Ct. 2882, 69 L. Ed. 2d 800, 16 Env't. Rep. Cas. (BNA) 1057, 11 Envtl. L. Rep. 20600 (1981).*

See also: *City of Ladue v. Gilleo, 512 U.S. 43, 114 S. Ct. 2038, 129 L. Ed. 2d 36 (1994).*

RLUIPA—City ordinance prohibits schools in particular zoning district

Private Christian school alleges that ordinance violates equal terms provision of RLUIPA

Citation: *TREE OF LIFE CHRISTIAN SCHOOLS, Plaintiff, v. THE CITY OF UPPER ARLINGTON, Defendant., 2017 WL 4563897 (S.D. Ohio 2017)*

OHIO (10/13/17)—This case addressed the issue of whether a city's zoning ordinance, which prohibited schools from operating in an "ORC Office and Research District" treated a particular religious school on less than equal terms with a nonreligious assembly or institution in violation of the Equal Terms provision of the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA").

The Background/Facts: In an effort to maximize revenues, the City of Upper Arlington (the "City") had developed a Master Plan. The purpose of the Master Plan was "to create opportunities for office development and emphasize high-paying jobs." In its Master Plan, the City designated an "ORC Office and Research District." According to the City's zoning ordinance (the Unified Development Ordinance or "UDO"), the purpose of the "ORC Office and Research District" was to allow offices and research facilities that would provide "job opportunities" and "contribute to the City's economic stability." Permitted uses in the ORC Office and Research District included, among others: "business and professional offices, research and development, book and periodical publishing, insurance carriers, corporate data centers, survey research firms, bank finance and loan offices, outpatient surgery centers, hospitals." Under the ordinance, conditional uses were also allowed in a small

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percentage of the gross floor area of buildings in the ORC Office and Research District. Schools of any type were not permitted in the ORC Office and Research District. Schools were permitted in residential zones which comprise 95% of the developed land in the City.

Tree of Life Christian School ("Tree of Life") was a private Christian school. Tree of Life served grades ranging from preschool to 12th grade at different locations around the Columbus, Ohio metropolitan area. In 2006, Tree of Life began searching for property that would allow it to expand to accept a greater number of students. Tree of Life eventually purchased property (the "Property") located in the ORC Office and Research District in the City. The Property consisted of the largest office building in the City.

During and after the Property purchase process, Tree of Life sought zoning allowances from the City. Tree of Life filed an application for a Conditional Use Permit, which the City denied (including on appeal to the City's Board of Zoning and Planning and the City Council) because "a private school [was] neither a permitted use nor a conditional use" in the ORC Office and Research District. Tree of Life also asked the City to amend the City's zoning ordinance to allow private religious schools as a permitted use in the ORC Office and Research District. The City denied that rezoning request. Tree of Life then submitted a second application for rezoning, asking the City to rezone only its Property. The City also denied that rezoning request. The City provided several reasons for denying Tree of Life's rezoning requests, including that "allowing private religious schools a permitted use in the ORC Office and Research District would 'significantly diminish expected tax revenues per square foot due to relatively low salaries and low density of professionals per square foot . . . .'"

Eventually, Tree of Life filed a legal action against the City. Among other things, Tree of Life alleged that the City's zoning ordinance violated the Equal Terms provision of RLUIPA. RLUIPA's "equal terms" provision provides: "No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." (42 U.S.C.A. § 2000cc(b)(1).)

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court issued summary judgment in favor of the City. The district court concluded that the City's zoning ordinance did not violate the Equal Terms provision of RLUIPA.

Tree of Life appealed.

The United States Court of Appeal, Sixth Circuit, found that there was a genuine issue of material fact on the RLUIPA claim. The Sixth Circuit remanded the matter to the district court to answer the following:

"Are there nonreligious assemblies or institutions to which the court should compare Tree of Life [ ] because they would fail to maximize income-tax revenue, and if so, would those assemblies or institutions be treated equally to Tree of Life [ ]?"

On remand, Tree of Life argued that there were other nonreligious assemblies or institutions to which the court should compare Tree of Life—namely daycare centers and partial office uses—that were not treated equally to Tree of Life because they were allowed uses in the ORC Office and Research District.

DECISION: City's Motion for Final Judgment granted. Tree of Life's Motion for Final Judgment denied.

Responding to the Sixth Circuit's inquiry on remand, the United States District Court, S.D. Ohio, Eastern Division, concluded that the City's zoning ordinance did not treat Tree of Life on less than equal terms with a nonreligious assembly or institution. Finding no unequal treatment, the court concluded that there was no RLUIPA violation.

In so concluding, the district court explained that the equal-terms provision of RLUIPA "is violated whenever religious land uses are treated worse than comparable nonreligious ones, whether or not the discrimination imposes a substantial burden on the religious uses." For Tree of Life to establish an "equal terms" violation, further explained the court, it would have to establish the following four elements: "(1) [Tree of Life was] a religious assembly or institution, (2) subject to a land use regulation, that (3) treat[ed] [Tree of Life] on less than equal terms, with (4) a nonreligious assembly or institution."

There was no dispute that the first two elements were established. Looking at the second two elements, the court noted that RLUIPA does not define the meaning of "equal terms" and that "not all courts are in agreement as to its meaning." The Sixth Circuit had not specifically adopted a test for evaluating an equal terms RLUIPA claim. But both parties here had urged the district court to adopt the test set forth by the Fifth Circuit, and the district court found that test to "be consistent with the instruction from the Sixth Circuit on remand." That test requires a court to examine: "the regulatory purpose or zoning criterion behind the regulation at issue" and "whether the religious assembly or institution is treated as well as every other nonreligious assembly or institution that is 'similarly situated' with respect to the stated purpose or criterion."

Here, the district court found that Tree of Life's proposed use of the Property as a school was not consistent with the regulatory purpose of the ORC Office and Research District—to maximize income. Moreover, the court found that Tree of Life failed to establish a similar nonreligious assembly or institution comparator—one that was permitted in the ORC Office and Research District and generated less tax revenue than Tree of Life's intended use. The court rejected Tree of Life's argument that "day cares" and "partial office uses" were similar comparators that were not treated the same as religious schools. The district court concluded that daycare centers were not similarly situated to a religious school—like Tree of Life—with respect to maximizing revenue to the City. Daycare centers were no longer a permitted use in the ORC Office and Research District, noted the court, but even if they were still permitted as an ancillary use to compliment a commercial use, the court found that they would generate more revenue to the City than Tree of Life. As to Tree of Life's argument that buildings that were only partly used were similar comparators to Tree of Life in terms of revenue, the court rejected the argument, saying that "if a partial use is accepted as a valid comparator, then there can never be a case in which a city with the goal of maximizing revenue could ever prevail."

Thus, the court concluded that Tree of Life was treated the same as every other nonreligious assembly or institution, such as secular schools, that do not maximize tax revenue as they are all prohibited from the ORC Office and

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Research District. "Therefore," said the court, "regardless of what test is applied, there is no nonreligious assembly or institution similarly situated that is being treated better than [Tree of Life]." Accordingly, the court concluded that there had been no unequal treatment and no RLUIPA violation, "merely a neutral application of the City's zoning laws."

See also: *Tree of Life Christian Schools v. City of Upper Arlington, 823 F.3d 365, 332 Ed. Law Rep. 1 (6th Cir. 2016).*

See also: *Opulent Life Church v. City of Holly Springs, Miss., 697 F.3d 279, 83 Fed. R. Serv. 3d 1068 (5th Cir. 2012).*

Standing/Proceedings—Town issues temporary use permit for 16-year temporary use to continue

Neighboring property owner challenges permit issuance, noting that "temporary" use is expected to last up to 20 additional years

Citation: *Tayback v. Teton County Board of County Commissioners, 2017 WY 114, 402 P.3d 984 (Wyo. 2017)*

WYOMING (09/28/17)—This case addressed the issue of whether neighbors had standing to challenge a permit issued to a site, despite the fact that their property was not adjacent to the site. The case also addressed the issue of whether a county board's issuance of a permit for a temporary use was arbitrary and capricious where it permitted a 16-year "temporary" use to continue and the permit applicant conceded the use was intended to continue for another 20 years.

The Background/Facts: Four Shadows, LLC ("Four Shadows") owned a 2.72-acre parcel in the Teton Village (the "Village") in Teton County (the "County"). That parcel was referred to as "the Granite Ridge site." Since 2001, Four Shadows had leased the site to contractors working on projects in the Village. Contractors used the site for various construction storage and staging needs.

In 2015, Four Shadows' permit for the Granite Ridge site expired. Consequently, Four Shadows filed an application with the County for a four-year Basic Use Permit ("BUP") for "temporary use of the property as a construction storage/staging site." Under the County's Land Development Regulations ("LDRs") temporary uses were permitted through BUPs. Ultimately, the County Board of County Commissioners (the "Board") approved the BUP with several conditions, including that the permit would expire in two years, with any requests for renewal to be heard by the Board.

Christopher and Clare Phillips Tayback (the "Taybacks") owned a residence on property overlooking Four Shadows' Granite Ridge site. The Taybacks filed with the district court a petition for review of the BUP. The Taybacks contended

that the County erred in granting the BUP to Four Shadows. Specifically, the Taybacks argued that BUPs permitted temporary uses, and it was clear that Four Shadows' use of the site for construction storage/staging was not temporary.

The Board claimed that the Taybacks did not have standing (i.e., the legal right) to contest the BUP.

The district court ruled that the Taybacks had standing, but affirmed the Board's decision to grant the BUP to Four Shadows.

The Taybacks appealed.

DECISION: Judgment of district court affirmed.

The Supreme Court of Wyoming first determined that the Taybacks did have standing to challenge the issuance of the BUP despite the fact that the Taybacks' property was not directly adjacent to the Granite Ridge site. The court explained that under Wyoming law, "any person aggrieved or adversely affected in fact," can petition for judicial review of a final agency decision. Specifically, with regard to appeals of zoning and land use matters, the court explained that "an aggrieved or adversely affected person having standing to sue is a person who has a legally recognizable interest that is or will be affected by the action of the zoning authority in question." In other words, if the Taybacks could claim an interest that exceeded the general public's interest, they would have standing to maintain their appeal as persons "aggrieved and adversely affected in fact by the Board's decision to issue the [BUP]."

The court found that although the Taybacks' property was not directly adjacent to the Granite Ridge site, it was "near" the site, and the operations at the site interfered with the Taybacks' scenic views. The court found this was a "valid harm to establish standing."

Next, the court rejected the Taybacks' claims that the Board had erred when it issued the BUP. Again, the Taybacks had argued that the Board had erred in granting the BUP because, under the LDR, BUPs permitted temporary uses, and it was clear that Four Shadows' use of the site for construction storage/staging was not temporary. The court looked to the LDR's definition of "temporary use," and found it defined as "a use established for a fixed period of time." The court found that the Board's grant of a two-year BUP to Four Shadows established a right to use the site for a fixed (definite) period of two years. As such, the court concluded that the Board, in issuing the BUP, met the LDR's definition of "temporary use." Thus, while all parties agreed that there would be a need to use the property as a construction staging site well into the future, and potentially for up to 20 years, Four Shadows' right to use the property for that purpose was limited to a temporary two-year permit period. The court therefore concluded that the Board's interpretation of the LDR's "temporary use" was "not contrary to the law," and that the BUP had been properly issued.

See also: *Hoke v. Moyer, 865 P.2d 624 (Wyo. 1993).*

See also: *Burgess v. U.S., 553 U.S. 124, 128 S. Ct. 1572, 170 L. Ed. 2d 478, 30 A.L.R. Fed. 2d 737 (2008).*

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Case Note:

The Taybacks had also alleged that the Board acted arbitrarily and capriciously in issuing the BUP because it failed to consider alternative sites for Four Shadows' construction storage/staging operation. The court found that the County Master Plan and LDR did not require the Board to consider, or make findings about, alternative sites for construction storage/staging. Thus, without some authority requiring the Board to consider alternative sites, the court could not say that the Board acted contrary to law or arbitrarily and capriciously in failing to do so.

Fees and Assessments—City imposes a "major roadway assessment" on subdivision developer

Developer contends city lacked state statutory authority to impose road assessment as a condition of subdivision approval

Citation: *Harstad v. City of Woodbury, 2017 WL 4104728 (Minn. Ct. App. 2017)*

MINNEAPOLIS (09/18/17)—This case addressed the issue of whether a statutory city lacked express or implied statutory authority to impose a major roadway assessment as a condition for subdivision approval.

The Background/Facts: Martin Harstad ("Harstad") sought to develop 77 acres in the City of Woodbury (the "City") into a 183-home residential community called "Bailey Park." Harstad submitted a subdivision application to the City. Some time later, the City sent Harstad a memorandum stating the proposed area and connection charges for the Bailey Park subdivision, including a "proposed" major roadway assessment ("MRA") of $1,389,444.

The City's resolution provided that a new residential development "pays its own way" and "all associated costs" for "public infrastructure" will "be the sole responsibility of the developing property owner." The City's resolution directed that roadway improvement costs "will normally be collected at the time a property develops per a negotiated major roadway contribution," also called a "major roadway assessment." The resolution also set out a formula to calculate the MRA, dividing the total expected cost of improvements by the net developable acreage in each phase to arrive at a per-acre fee. Based on the MRA formula, the City estimated that phase-two developers must pay $20,230 per acre to fund necessary road improvements.

Harstad objected to paying the MRA. Harstad filed a legal action against the City. Among other things, he asked the court to declare that the MRA was unauthorized by Minnesota law. Specifically, he maintained that, the City, as a

statutory city—"which has no inherent powers beyond those expressly conferred by statute or implied as necessary in aid of those power which have been expressly conferred"—lacked express or implied authority under Minnesota statutory law—Minn. Stat. § 462.358, subd. 2a—to impose a road assessment as a condition for its approval of a developer's subdivision application.

The City countered that it did have such express authority to impose the MRA under the plain language of Minn. Stat. § 462.358, subd. 2a.

Section 462.358, subdivision 1a, provides that "a municipality may by ordinance" regulate the subdivision of land to, among other things, facilitate "adequate provision for transportation." (Minn. Stat. § 462.358, subd. 1a.) Subdivision 2a states, in relevant part that such regulation may address, among other things, "streets, [and] roads . . . ." and "may permit the municipality to condition its approval on the construction and installation of [among other things] streets . . . or, in lieu thereof, on the receipt by the municipality of a cash deposit, . . . or other financial security . . . sufficient to assure the municipality that the utilities and improvements will be constructed or installed . . . ." The statute further provides that when such conditions required by the municipality for approval have been satisfied, "the municipality has 30 days to release and return to the applicant any and all financial securities tied to the requirements." (Minn. Stat. § 462.358, subd. 2a.)

The City appeared to claim, and Harstad did not disagree that the MRA was a regulation adopted pursuant to city ordinance under Minn. Stat. § 462.358, subds. 1a, 2a. Harstad, however, argued that, while subdivision 2a provided municipal authority to condition subdivision approval on a developer's agreement to fund roadway improvements within subdivision boundaries and its perimeter, subdivision 2a did not authorize an MRA to pay for off-site road improvements. Thus, Harstad argued that the MRA sought by the City for the Bailey Park subdivision was unauthorized by Minnesota law and unenforceable.

The district court concluded that the MRA was a development "impact fee" and that the City lacked statutory authority under Minn. Stat. § 462.358, subd. 2a, to impose the MRA as a condition of approving a developer's subdivision application. The district court declared the MRA unenforceable. Finding no material issues of fact in dispute, and deciding the matter on the law alone, the court issued summary judgment in favor of Harstad on the MRA claim.

The City appealed.

DECISION: Judgment of district court affirmed.

The Court of Appeals of Minnesota held that the City lacked express or implied authority under Minn. Stat. § 462.358, subd. 2a, to impose the MRA as a condition of approval of Harstad's subdivision application.

In so holding, the court explained that (as Harstad had pointed out), as a statutory city, the City had "no inherent powers beyond those expressly conferred by statute or implied as necessary in aid of those power which have been expressly conferred." Thus, the court looked at the language of the statute and the legislature's intent. The court found that subdivision 2a was "unambiguous" and "[did] not by its plain language authorize the [C]ity to condition subdivision approval on payment of a road assessment." In fact, the court found that subdivision 2a "does not authorize collection of any type of assessment."

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Rather, it found that "subdivision 2a authorizes city planning." "By its plain language," concluded the court, "subdivision 2a allows the [C]ity to condition subdivision approval on the construction or installation of road improvements, or on the receipt 'of a cash deposit, . . . or other financial security' sufficient 'to assure' the city that road construction or installation will be completed."

While the City had argued that the MRA was "like a 'cash deposit' or 'other financial security,' " the court disagreed. Looking at the dictionary definitions of "cash deposit" and "assessment," the court concluded that subdivision 2a allows a city to require a "cash deposit," which, "based on the term's common and ordinary meaning, is money held by a municipality and must be preserved or returned 'in kind.' " In fact, subdivision 2a expressly required "a city to hold the cash deposit or other financial security until completion of road construction (or other improvements) on which approval is conditioned, after which the deposit or security is returned." But, noted the court, "subdivision 2a does not authorize a road assessment."

Having concluded that subdivision 2a did not expressly authorize the City to impose the MRA, the court next considered whether subdivision 2a implied the City was authorized to impose a road assessment as necessary to aid expressly granted powers. The court found that it did not. The court noted that the legislature had specifically authorized special assessments as the municipal funding mechanism for road improvements. (See Minn. Stat. § 429.021, subd. 1(1) (providing express municipal authority to improve streets) and Minn. Stat. § 429.051 (stating that the cost of any improvement "may be assessed upon property benefited by the improvement").) Thus, the court determined that "no funding mechanism need be implied to effectuate the legislative grant of authority to undertake road improvements." Further, the court noted that the legislature has authorized municipalities to assess water- and sewer-connection charges against developers to fund public water and sewer improvements made necessary by development. (See Minn. Stat. § 444.075, subd. 3 (stating that cities "may impose just and equitable charges for the use" of and connections with waterworks, sanitary sewer, and storm water systems).) The court reasoned that the legislature's failure to include road charges under the same statutory section was not the result of "legislative oversight" because it passed "statutory provisions expressly establishing special assessments as the mechanism by which cities are empowered to finance road improvements." Thus, the court concluded that subdivision 2a is not a source of implied authority for the city to impose the MRA.

In sum, the court concluded that the MRA imposed on Harstad was "invalid and unenforceable because the [C]ity lacked express or implied authority under Minn. Stat. § 462.358, subd. 2a, to impose the MRA as a condition of approving a developer's subdivision application."

See also: *Country Joe, Inc. v. City of Eagan, 560 N.W.2d 681 (Minn. 1997).*

Case Note:

Harstad had also brought an inverse condemnation claim against the City, arguing that the MRA amounted to a temporary regulatory taking. The court dismissed the claim as moot because the City had not denied the Bailey Park subdivision application or imposed the MRA, so nothing had been "taken."

Case Note:

The court also rejected Harstad's claims that his subdivision application was automatically approved by law because the City had failed to approve or deny it within a 60-day period of time. The court found it undisputed that the subdivision application remained "incomplete," and therefore the time periods for automatic approval under Minn. Stat. §§ 15.99, subd. 2(a), and § 462.358, subd. 3b, had not begun to run.

Zoning News from Around the Nation

CALIFORNIA

Governor Jerry Brown has vetoed Senate Bill 649, which would have "established a uniform permitting process for the small-cell wireless equipment [(i.e., 5G technology)] on utility poles while fixing rates localities charged to lease their infrastructure." Reportedly, municipalities had opposed the bill, arguing it would limit local authority and "be a handout to the telecom industry."

Source: *StateScoop*; *http://statescoop.com*

MICHIGAN

Separate bills introduced in the state House and Senate would reportedly "prohibit local governments from enacting zoning ordinances that ban or restrict owners from renting out homes or condominiums for less than 28 days at a time." Opponents of the bills argue they would give short-term rentals "an unfair advantage over existing hotels, allow unregulated rentals to clog residential neighborhoods and prohibit local governments from enacting zoning rules that meet their unique needs."

Source: *The Detroit News*; *www.detroitnews.com*

WASHINGTON

The Bellevue City Council has voted "to permanently ban safe injection sites for illegal drugs," effective October 26, 2017. In passing Ordinance No. 6376, the City Council amended Bellevue's land use code to impose a "prohibition on the sites, locations or other uses or activities designed to provide a location for people to consume illicit drugs intravenously or by other means, throughout the city." Those who support safe injection sites say they "reduce drug-related deaths and health risks by preventing overdoses, the transmission of viral infections, . . . and provide access to treatment and social services . . . [and] improve public safety by reducing the frequency people use in public."

Source: *Bellevue Reporter*; *www.bellevuereporter.com*

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Validity of Zoning Regulation—City adopts ordinance granting limited immunity from prosecution as public nuisance to marijuana dispensaries

Marijuana dispensary owner argues new ordinance is an illegal ex post facto law, making previously legal activity, retroactively illegal

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Citation: *City of Vallejo v. NCORP4, Inc., 15 Cal. App. 5th 1078, 223 Cal. Rptr. 3d 740 (1st Dist. 2017)*

CALIFORNIA (09/29/17)—This case addressed the issue of whether a city ordinance, which granted limited immunity from prosecution as public nuisances to marijuana dispensaries that consistently paid businesses taxes and met other requirements, improperly amended an earlier city ordinance, which placed a business license tax on marijuana businesses, by making activity that was legal at the time committed (or at least subject to very limited penalties) suddenly and retroactively illegal (or subject to greater and much different penalties).

The Background/Facts: California laws permit medicinal and recreational use of marijuana. While those laws permit the use of marijuana, they do not "mandate that local governments authorize, allow, or accommodate the existence of" marijuana dispensaries. Nor do they preempt "the authority of California cities and counties, under their traditional land use and police powers, to allow, restrict, limit, or entirely exclude facilities that distribute medical marijuana, and to enforce such policies by nuisance actions."

The City of Vallejo (the "City") has several ordinances affecting the operation of medical marijuana dispensaries. The City's zoning ordinance prohibits all uses not expressly permitted, and declares unpermitted uses to be "a public nuisance." The City's zoning ordinance does not recognize marijuana dispensaries as a permitted or designated land use, and, therefore, such a use is an unpermitted nuisance.

Despite the fact that marijuana dispensary uses were not permitted under the City's zoning ordinance, they nonetheless were "proliferating." Noting a lack of financial resources to enforce land use restrictions, the City attempted to take a first step of "taxing and regulating these businesses." In 2011, City voters approved "Measure C" which placed a business license tax on marijuana businesses. In 2015, the City adopted Ordinance No. 1715, which provides that medical marijuana dispensaries are a public nuisance but grants immunity from prosecution to those dispensaries that have consistently paid business taxes and meet other requirements.

NCORP4, Inc. ("NCORP4") was a nonprofit corporation operating a medical marijuana dispensary in the City. The City denied NCORP4's request for limited immunity under Ordinance No. 1715 because NCORP4 had not paid most of its marijuana business taxes due under Measure C. In its application for limited immunity, NCORP4 offered to pay delinquent taxes and penalties. The City denied NCORP4's application and then sought to enjoin NCORP4's operations.

In May 2016, the City sued to enjoin operation of NCORP4's medical marijuana dispensary. The trial court denied the City's requested injunction. The court found that Ordinance No. 1715 improperly amended Measure C by increasing the penalty for nonpayment of taxes. The court determined that Ordinance No. 1715 amounted to "in essence an ex post facto law, making activity that was legal at the time committed (or at least subject to very limited penalties) suddenly and retroactively illegal (or subject to greater and much different penalties.)"

The City appealed. The City contended that it could lawfully preclude

operation of a medical marijuana dispensary that had a history of unpaid taxes. The City argued that Ordinance No. 1715 did not, as the trial court had held, impermissibly amend Measure C's tax provisions to increase the penalty for nonpayment of taxes but simply "limit[ed] the many aspirants to sell medical marijuana in the city to a manageable number by preferring those who have demonstrated a willingness and ability to comply with local law by paying the Measure C tax when the [C]ity enforced it . . . and to continue paying taxes as a condition of immunized operation."

DECISION: Judgment of Superior Court reversed, and matter remanded with directions to issue the City's requested preliminary injunction.

The Court of Appeal, First District, Division 3, California, agreed with the City. The court said that "[l]ocal governments may rationally limit medical marijuana dispensaries to those already in operation and compliant with prior law as past compliance shows a willingness to follow the law, which suggests future lawful behavior." Thus, the court characterized Ordinance No. 1715 as "essentially a grandfather provision." The court determined that a marijuana dispensary's timely payment of business taxes provided the City "with a rational basis to conclude that the dispensary will continue to act in a law-abiding manner." Since NCORP4 did not pay its business taxes, the court concluded that the City reasonably denied NCORP4 immunity to continue operations.

Addressing the NCORP4's argument and the trial court's conclusion—that Ordinance No. 1715 impermissibly amended Measure C as an ex post facto law, the appellate court noted that the constitutional prohibition on ex post facto laws applied only to criminal statutes and was inapplicable to local ordinances regulating the operation of medical marijuana dispensaries. Moreover, the court concluded that Ordinance No. 1715 did not amend Measure C's tax provisions retrospectively, but rather was a separate ordinance that used past compliance with Measure C as one of several standards for granting dispensaries immunity from prosecution as a public nuisance.

See also: *420 Caregivers, LLC v. City of Los Angeles, 219 Cal. App. 4th 1316, 163 Cal. Rptr. 3d 17 (2d Dist. 2012).*

See also: *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc., 56 Cal. 4th 729, 156 Cal. Rptr. 3d 409, 300 P.3d 494, 28 A.D. Cas. (BNA) 144 (2013).*

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Rezoning/Vested Rights—After corporation obtains conditional site plan approval to build self-storage facility within a block of a school, city changes zoning to prohibit such facilities within 250 feet of schools

Corporation contends it has a vested right to construct the self-storage facility, but city argues there was no vested right because corporation failed to comply with conditions in site plan approval or obtain building permit

Citation: *Siena Corporation v. Mayor and City Council of Rockville Maryland, 873 F.3d 456 (4th Cir. 2017)*

The Fourth Circuit has jurisdiction over Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

FOURTH CIRCUIT (MARYLAND) (10/13/17)—This case addressed the issue of whether a property owner had a vested right under the Due Process Clause of the United States Constitution in building a self-storage facility.

The Background/Facts: In 2013, Siena Corporation and Rockville North Land LLLP (collectively, "Siena") sought to build an "ezStorage" self-storage facility in the City of Rockville, Maryland (the "City"). The property on which construction of the self-storage facility was proposed was zoned "Light Industrial." At the time Siena purchased the property, that zoning designation allowed for its use as the site of a self-storage facility.

City residents opposed the proposed ezStorage facility, contending that it posed a safety threat to the students of the local elementary school, which was located down the block from Siena's property. Residents expressed fear that the ezStorage facility would increase traffic, and that the storage facility might be used to store "illegal or hazardous materials and therefore invite crime into the area." The Residents proposed that the City amend its zoning ordinance to prohibit self-storage facilities within 250 feet of school zones. Eventually, in February 2015, the City council adopted such a zoning ordinance amendment. In effect, the zoning ordinance amendment prohibited self-storage facilities like Siena's from being built within 250 feet of lots with public schools.

While the zoning text amendment was being considered, and before it was adopted, Siena obtained from the City's Planning Commission conditional site plan approval for its proposed ezStorage facility. Final approval of the site plan was "subject to full compliance with" 19 conditions listed in the conditional approval, including obtainment of various permits. Siena did not

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satisfy all of the conditions on its site plan approval, and it didn't apply for a building permit.

After passage of the zoning amendment prohibiting self-storage facilities within 250 feet of schools, Siena was unable to build the ezStorage facility on its property. Siena sued the City. It alleged, among other things, that the zoning amendment violated the substantive due process guarantee of the Fourteenth Amendment of the United States Constitution. The Fourteenth Amendment provides, in relevant part, that no state shall "deprive any person of life, liberty, or property, without due process of law." Siena maintained that it had a protected property interest in using its property to develop an ezStorage facility.

The district court dismissed Siena's due process claim. The court held that Siena lacked a protected property interest in the ezStorage facility construction because it had not applied for a building permit.

Siena appealed.

DECISION: Judgment of district court affirmed.

The United States Court of Appeals, Fourth Circuit, held that Siena did not have a vested right in building a self-storage facility that was protected by the Due Process Clause.

In so holding, the court explained that to succeed on its substantive due process claim, Siena had to establish: (1) that it possessed a "cognizable property interest, rooted in state law"; and (2) that the City Council in adopting the zoning amendment deprived it of this property interest in a manner "so far beyond the outer limits of legitimate governmental action that no process could cure the deficiency." The court determined that Siena "ha[d] not cleared either hurdle."

To have a "cognizable property interest," requires a "legitimate claim of entitlement," said the court. Looking at Maryland law, the court found that:

> "in order to obtain a 'vested right' in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use."

Here, since Siena had failed to satisfy either of those requirements—in that it never applied for a building permit or satisfied the conditions of its site plan approval for its proposed self-storage facility, the court concluded that it did not have a vested right in the self-storage facility use.

Moreover, the court found that "[e]ven if Siena had a property interest here, the enactment of the zoning text amendment would still fall short of a substantive due process violation." The court said that state deprivation of a protected property interest violates substantive due process only if it is "so arbitrary and irrational, so unjustified by any circumstance or governmental interest, as to be literally incapable of avoidance by any pre-deprivation procedural protections or of adequate rectification by any post-deprivation state remedies." In other words, the state action must be "conscience shocking, in a constitutional sense," lacking any "conceivable rational relationship to the exercise of the

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state's traditional police power." Here, the court found that the zoning amendment to prohibit self-storage facilities within 250 feet of schools did not shock the conscience as it was an attempt to protect students from the hazards that the City Council believe to be associated with self-storage facilities: increased crime, traffic, and illicit drugs.

See also: *L.M. Everhart Const., Inc. v. Jefferson County Planning Com'n, 2 F.3d 48 (4th Cir. 1993).*

See also: *Sylvia Development Corp. v. Calvert County, Md., 48 F.3d 810 (4th Cir. 1995)).*

See also: *A Helping Hand, LLC v. Baltimore County, MD, 515 F.3d 356, 20 A.D. Cas. (BNA) 519 (4th Cir. 2008).*

Case Note:

Siena had also brought an equal protection claim under the Fourteenth Amendment. With regard to that claim, the Equal Protection Clause provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws." Siena suggested that the zoning text amendment uniquely burdened its property in a discriminatory manner. The district court rejected that claim, concluding that the zoning text amendment "was rationally based, given the residents' concerns that self-storage facilities near school could attract crime and traffic that would endanger students." The Fourth Circuit agreed. It also noted that Siena could not show that Siena had been intentionally treated differently than others similarly situated since Siena failed to identify a similarly situated competitor. Moreover, said the court, even such a similarly situated competitor existed, "the zoning text amendment would apply to it in the exact same way it applie[d] to Siena."

Billboards/Eminent Domain—City denies company's billboard relocation request

Billboard company argues denial was "illegal" because denial amounted to eminent domain taking under state's Billboard Compensation Statute and city failed to comply with statutory eminent domain procedural requirements

Citation: *Outfront Media, LLC v. Salt Lake City Corporation, 2017 UT 74, 2017 WL 4783908 (Utah 2017)*

UTAH (10/23/17)—This case addressed the issue of whether, under Utah's Billboard Compensation Statute (Utah Code section 10-9a-513), the denial of a billboard relocation request by a municipality constitutes a physical taking of the billboard, which requires compliance with the eminent domain

procedures of Utah's Eminent Domain Statutes (Utah Code sections 78B-6-501 through 522).

The Background/Facts: CBS Outdoor, LLC ("CBS") owned a billboard in Salt Lake City (the "City"). Its billboard was located on land that CBS leased from Corner Property, L.C. ("Corner Property"). In the fall of 2014, CBS's lease from Corner Property was about to expire, so CBS sought to relocate its billboard. CBS submitted a billboard relocation request to the City. The City's mayor made the decision to deny CBS's request to relocate the billboard.

CBS appealed that denial. Among other things, CBS argued that the denial was "illegal" because, in denying CBS's billboard request, the City "invoked the power of eminent domain to effect a physical taking of CBS's billboard without complying with the procedural requirements that constrain the use of eminent domain." In particular, CBS asserted that under Utah's Billboard Compensation Statute (Utah Code section 10-9a-513), the denial of a billboard relocation request by a municipality constitutes a physical taking of the billboard, which requires compliance with the eminent domain procedures of Utah's Eminent Domain Statutes (Utah Code sections 78B-6-501 through 522). CBS contended that the City's denial of its billboard request illegally failed to comply with the eminent domain procedures of Utah's Eminent Domain Statutes, which provide that "[p]roperty may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking." Here, the "governing body" was the City Council, and the City Council did not participate in the decision to deny CBS's relocation request; the decision was made by the City's mayor alone.

The City maintained, however, that the Eminent Domain Statutes do not apply to billboard relocation denials. Pointing to the texts of the Billboard Relocation Statute and the Billboard Compensation Statute, the City noted that neither incorporated the Eminent Domain Statutes by explicit textual reference.

Utah's Billboard Relocation Statute provides, in relevant part, that a municipality may agree to relocation of a billboard. The Billboard Compensation Statute provides, in pertinent part that "[a] municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from . . . relocating a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if [certain spacing requirements are met]; and . . . the billboard owner has submitted a written request under Subsection 10-9a-511(3)(c); and . . . the municipality and billboard owner are unable to agree, within the time provided in Subsection 10-9a-511(3)(c), to a mutually acceptable location[.]" In other words, the Billboard Relocation Statute permits a municipality to agree to a billboard relocation request that would otherwise be prohibited by the city's zoning ordinance. However, if the city does not agree to a relocation request, and that request meets certain spacing requirements (which CBS' request here did), the city is "considered" under the Billboard Compensation Statute to have "initiated the acquisition of the billboard structure by eminent domain."

The district court agreed with the City's arguments, and upheld the City's denial of CBS's relocation request.

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CBS appealed.

DECISION: Judgment of district court affirmed.

The Supreme Court of Utah also agreed with the City's arguments. The court held that the procedural requirements of eminent domain mandated by Utah's Eminent Domain Statutes (i.e., that property could not be taken by the City unless the City Council approved the taking) did not apply because, "under the Billboard Compensation Statute, relocation denials are merely 'considered' to be the acquisition of a billboard structure by eminent domain for compensation purposes, but th[ose] denials do not actually involve the formal exercise of the eminent domain power and the concomitant procedures the legislature has prescribed to restrain the exercise of that power." In other words, the court read the Billboard Compensation Statute to treat a denial under the Billboard Relocation Statute (such as the City's denial of CBS's billboard relocation request, here) as "an acquisition for compensation purposes only, even though the denial itself [was] not an acquisition."

In sum, the court concluded that Utah's Eminent Domain Statutes "do not apply to actions that may trigger the Billboard Compensation Statute." The court interpreted the Billboard Compensation Statute to mean that, by denying billboard relocation requests that meet the spacing requirements (as the City had done here with CBS), the City is "considered to have initiated the acquisition of a billboard structure by eminent domain, solely for purposes of just compensation as dictated in that section." Because "considered" in that context means "to look upon (as)," the court concluded that billboard relocation denials that meet the spacing requirements are "only to be looked upon as acquisitions by eminent domain, though in fact they are not."

Case Note:

CBS also challenged the denial of its relocation request as violating the City's Billboard Ordinance, and as being arbitrary and capricious. The appellate court rejected both of these arguments. The court found that the City's Billboard Ordinance did not forbid the City from denying a billboard relocation request that fit within the spacing requirements of the Billboard Compensation Statute (as with CBS' request here). And, the court found that the City mayor's decision to deny CBS' billboard relocation request was not arbitrary and capricious because it furthered the mayor's established goal of achieving a net reduction in the number of billboards in the area.

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Variance/Conditions—Village grants restaurant owner's requested parking variance, with conditions dictating hours of operation and requiring valet parking

Restaurant seeks to annul conditions, arguing they are unreasonable

Citation: *Bonefish Grill, LLC v. Zoning Bd. of Appeals of Village of Rockville Centre, 153 A.D.3d 1394, 61 N.Y.S.3d 623 (2d Dep't 2017)*

NEW YORK (09/27/17)—This case addressed the issue of whether conditions imposed on a parking variance were reasonable.

The Background/Facts: Bonefish Grill, LLC ("Bonefish Grill") leased property (the "Property") in the Village of Rockville Centre (the "Village"). In 2013, Bonefish Grill sought to demolish the existing structure on the Property and to build a 5,400 square foot restaurant. Based on the square footage of the proposed structure, the Village's Zoning Code required Bonefish Grill to have 54 off-street parking spaces. The Property did not have any off-street parking spaces.

Bonefish Grill applied for a parking variance. The parking variance application relied on a license agreement, which Bonefish Grill had with the adjacent property, allowing Bonefish Grill access to that adjacent property's 40 exclusive parking spaces between 4:00 p.m. and 12:30 a.m. on Mondays through Fridays.

The Village's Zoning Board of Appeals (the "ZBA") granted the parking variance with specific conditions, including that the restaurant's operating hours be restricted to 4:00 p.m. and 12:30 a.m. on Mondays through Fridays, and that valet parking be mandatory. The ZBA also granted Bonefish Grill's application for a substantial occupancy permit, imposing the same conditions.

Bonefish Grill challenged the conditions imposed, asking the court to annul them. The court annulled the conditions that restricted the restaurant's operating house and required valet parking.

The ZBA appealed.

DECISION: Judgment of Supreme Court reversed in relevant part.

The Supreme Court, Appellate Division, Second Department, New York, held that the conditions imposed on Bonefish Grill's parking variance were reasonable.

The appellate court explained that a zoning board "may, where appropriate, impose reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property, and aimed at minimizing the adverse impact to an area that might result from the grant of a variance or

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special permit." The court further explained that if the imposed conditions are "unreasonable or improper," they may be annulled although the variance is upheld.

Here, the appellate court concluded that the ZBA's conditions on Bonefish Grill's parking variance, requiring valet parking and limiting the hours of operation to coincide with the hours of access to the 40 off-street parking spaces granted in the license agreement, were "proper because the conditions related directly to the use of the land and were intended to protect the neighboring commercial properties from the potential adverse effects of [Bonefish Grill's] operation, such as the anticipated increase in traffic congestion and parking problems." The court found that the "ZBA's rationale was supported by empirical and testimonial evidence," including the testimony of local store owners and the ZBA members own personal knowledge of parking demands in the area of the Property.

See also: *St. Onge v. Donovan, 71 N.Y.2d 507, 527 N.Y.S.2d 721, 522 N.E.2d 1019 (1988).*

See also: *Martin v. Brookhaven Zoning Bd. of Appeals, 34 A.D.3d 811, 825 N.Y.S.2d 244 (2d Dep't 2006).*

Zoning News from Around the Nation

CALIFORNIA

The San Francisco Board of Supervisors in considering legislation "that would make it easier to establish specially protected cultural districts in the city." The bill's aim is to "help slow the tide of gentrification in traditional ethnic enclaves." The new bill defines a cultural district as a neighborhood that: "Embodies a unique cultural heritage because it contains a concentration of cultural and historic assets or culturally significant enterprise, arts, services, or businesses, or because a significant portion of its residents or people who spend time in the area or location are members of a specific cultural, community, or ethnic group."

Source: *Curbed San Francisco*; https://sf.curbed.com

MARYLAND

The Montgomery County Council passed legislation that restricts the placement of country inns in certain residential zones. While current zoning law designates "rural areas" as locations for country inns, the recently passed measure gives more specificity, allowing for a country inn to be located in certain residential zones "only on properties that border a more rural zone." An amendment to the bill creates an exemption to the location restrictions for country inns located in a building that the county has deemed historic.

Source: *Bethesda Magazine*; www.bethesdamagazine.com

OHIO

Cleveland's City Council recently voted to approve new zoning requirements that will reportedly "prevent the sale of medical marijuana in about 95 percent of the city." The legislation "limits the location of marijuana dispensaries, cultivation sites, production and refining facilities and research sites." More specifically, the new ordinance provides that medical marijuana operations:

- "cannot be opened within 500 feet of a property that is the site of a school, church, public library, public playground or public park;"
- "are allowed only on property zoned as a general retail district or one of three industrial property designations."

Source: *cleveland.com; www.cleveland.com*

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Elko County Planning Commission

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PUBLIC MEETING NOTICE

The Elko County Planning Commission, County of Elko, State of Nevada, will meet on Thursday, December 21, 2017, in the Nannini Administration Building, Suite 102, 540 Court Street, Elko, Nevada 89801 at 5:15 PM. Pacific Time Zone

Attached with this Notice is the Agenda for said meeting of the Board.
This Notice is posted pursuant to NRS 241 as amended by the 2017 Legislature and is to be posted at the following places no later than three full working days before the meeting:

ELKO COUNTY MANAGER'S OFFICE
ELKO COUNTY COURTHOUSE
ELKO COUNTY LIBRARY
ELKO CITY HALL
ELKO COUNTY WEBSITE: www.elkocountynv.net

ROBERT K. STOKES
Elko County Manager

WELCOME TO AN ELKO COUNTY BOARD OR COMMISSION MEETING!

We are pleased you are interested in a meeting of one of Elko County's Boards or Commissions. Below is some basic information about our meetings and procedures for you to participate in your government.

AGENDAS

The agenda is available on the Elko County website at www.elkocountynv.net. Hard copies are made available at the meeting, upon request at the County Manager's Office or posted as per NRS 241. Meetings are broadcast live from our website, under the Meetings tab on the home page of the website and then under Agendas, Videos, etc. You can also click the Watch Our Meetings tab on the right side of the home page. Videos of the meeting are available within 24 hours of the end of the meeting. Minutes, when finalized and approved by the Board/Commission, are also posted to that page.

PUBLIC COMMENT

The public's participation in our meetings is valued and appreciated. The Board/Commission can only take action on items that are listed on an agenda properly posted prior to the meeting. During Comments by the General Public, speakers may address matters not listed on the agenda. The Open Meeting Law does not expressly prohibit responses to public comment by the Commissioners, but no deliberation on a matter can be considered without notice to the public. Public comment will be called for on all agenda items marked For Possible Action.

If you are planning to speak during the meeting, please sign the sign-in-sheet at the back of the meeting room. This helps our recording clerk get the correct spelling of your name. When comments are called for, please approach the podium and state your name and who you represent.

If submitting comments or information on an agenda item, please submit to the County Manager's Office as soon as possible in order to provide opportunity for Board/Commission members to review and to avoid possible delays in a decision if not all information is presented previous to the start of a meeting. If information is presented at the meeting, you need to provide at least 10 copies, making sure to submit a copy to the recording secretary for the official public record. All information submitted becomes part of the public record and is added to the backup information for that agenda item on our website with 24 hours of the adjournment of the meeting.

Another avenue for making comments on agenda items, especially if you can't make a meeting, is called e-Comment. If you open the agenda under the process described above, you will find a link by the agenda called e-Comment. Click on the link and follow the directions to register to comment and you are set to comment on specific agenda items. Please note that the e-comment period for a specific agenda closes 24 hours before the start of the meeting to allow those comments to be transmitted to our Board/Commission members and recording staff. Those reports are also uploaded to our agenda on the website.

CONSENT AGENDA

Items listed under the Consent Agenda are considered to be routine in nature and are normally approved by one motion without extensive discussion. If a Board/Commission member wishes to comment or discuss a particular item, that item can be removed from the consent agenda and considered as a separate action during the meeting.

ELKO COUNTY PLANNING COMMISSION
COUNTY OF ELKO, STATE OF NEVADA MEETING
THE NANNINI ADMINISTRATION BUILDING, SUITE 102, 540 COURT STREET, ELKO, NEVADA 89801.

5:15 PM Pacific Time Zone

Thursday, December 21, 2017

IN ACCORDANCE WITH NRS 241, THE COMMISSION MAY: (I) CHANGE THE ORDER OF THE AGENDA, (II) COMBINE TWO OR MORE AGENDA ITEMS FOR CONSIDERATION, (III) REMOVE AN ITEM FROM THE AGENDA OR DELAY DISCUSSION RELATING TO AN ITEM ON THE AGENDA AT ANY TIME, (IV) AND IF THE AGENDA IS NOT COMPLETED, RECESS THE MEETING AND CONTINUE ON ANOTHER SPECIFIED DATE AND TIME. THE PUBLIC CAN COMMENT ON ANY AGENDA ITEM BY BEING ACKNOWLEDGED BY THE CHAIR WHILE THE COMMISSION CONSIDERS THAT AGENDA ITEM.

POSTING

This agenda is posted pursuant to NRS 241 as amended by the 2017 Legislature and was posted at the following locations no later than 9:00 a.m. (Pacific Time Zone), on December 18, 2017: ELKO COUNTY COMMUNITY DEVELOPMENT, ELKO COUNTY MANAGER'S OFFICE, ELKO COUNTY COURTHOUSE, ELKO COUNTY LIBRARY, ELKO CITY HALL, LAMOILLE POST OFFICE, ELKO COUNTY WEBSITE (www.elkocountynv.net), STATE OF NEVADA's PUBLIC NOTICE WEBSITE (https://notice.nv.gov).

REQUEST FOR AGENDA INFORMATION

The public may acquire this agenda and supporting materials, pursuant to NRS 241 by contacting John Kingwell at (775) 748-0214 or via email to jkingwell@elkocountynv.net or, Peggy Pierce Fitzgerald at (775) 748-0215 or via email to pfitzgerald@elkocountynv.net. Materials are available from the Elko County Planning and Zoning Office, Nannini Administration Building, located at 540 Court Street, Suite 104, Elko, Nevada 89801 or on the Elko County website at www.elkocountynv.net.

NOTICE OF THE APPEAL PROCESS

Anyone aggrieved by an action of this Planning Commission may appeal such decision to the Elko County Board of County Commissioners within 10 calendar days of said action. An appeal form may be obtained from the Division of Planning and Zoning located at 540 Court Street, Suite 104, in Elko. When completed, return the appeal form with the required $250.00 filing fee to the Division of Planning and Zoning within the 10 calendar day period.

NOTICE TO PERSONS WITH DISABILITIES

Members of the public who are disabled and require special accommodations or assistance at the meeting are requested to notify the Elko County Planning Commission in writing at 540 Court Street, Suite 104, Elko,

Nevada 89801, email pfitzgerald@elkocountynv.net or jkingwell@elkocountynv.net or by calling (775) 738-6816.

PROCEDURES

The public will be given the opportunity to comment on any agenda item by being acknowledged by the chair prior to action being taken by the Planning Commission.

Breaks and recess actions shall be called for at the pleasure of the Commission rather than by agenda schedule. Please place your cell phones on manner mode.

"FOR POSSIBLE ACTION" identifies an action item subject to a vote of the Commission.

A. CALL TO ORDER AT 5:15 P.M.

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF MINUTES

C.1. Minutes of November 16, 2017
FOR POSSIBLE ACTION

ECPC November 16, 2017 Minutes Draft.pdf

D. COMMENTS BY THE GENERAL PUBLIC

Pursuant to NRS 241 this time is devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified to be an action item.
NON-ACTION

E. PRELIMINARY HEARINGS

F. PUBLIC HEARINGS

F.1. Application No. 17-2000-0007, The Elko County School District :
For Possible Action

A public hearing for an application submitted by The Elko County School District requesting a public hearing for changes in zoning on two (2) parcels of land to facilitate the construction and operation of a

public elementary school for a maximum student attendance of 750 (Spring Creek Elementary School #3) in the Spring Creek Subdivision.

Parcel No. 050-001-032, a change of zoning from Commercial 1 (C1) to Public (P).
Parcel No. 050-006-001, a change of zoning from Open Space (OS) to Public (P).

LOCATIONS:

Parcel No. 1, APN 050-001-032, Lot 1, Block 2, Tract 106-D as shown on the Reversion To Acreage Map, recorded on November 29, 2007, in the Office of the Elko County Recorder as Map No. 2741, Document #585098, being an 11.01 acre parcel; and

Parcel No. 2, APN 050-006-001, Parcel "A", Tract 106-D as shown on that certain Subdivision Map of Spring Creek Corporation, recorded on December 7, 1972, in the Office of the Elko County Recorder as Map No. 72495, being a 3.460± acre parcel.

Owner of Record: Parcel No. 050-001-032 & Parcel No. 050-006-001 is the Spring Creek Association.

17-2000-0007, Staff Report.pdf

17-2000-0007_30 Closest Owners List.xlsx

Robert___Margaret_Ray_Comments.pdf

F.2. Application No. 14-4000-0005, Stephanie Moye,

For Possible Action

A request for an extension of time with which to begin construction on the Caring 4 Cubs Preschool in Spring Creek, Tract 102, Block 12, Lot 22 as shown on that parcel map with File No. 60405 as filed in the Office of the Elko County Recorder. Physical address is 321 Spring Creek Parkway, Spring Creek, NV.
17-4000-0005, Staff Report.pdf

F.3. Application No. 17-7100-0001, A Tentative Map of Division into Large Parcels Map for Woodbury 2013 Family Revocable Trust.

For Possible Action

APPLICATION: A Tentative Map of Division into Large Parcels submitted by the Woodbury 2013 Family Revocable Trust for the purpose of Division into Large Parcels as per N.R.S.278.471 through 278.4725 inclusive and Elko County Code 5-2-17. Proposed is six (6) parcels of approximately 40 +/- acres each and a remainder parcel of 393.528 acres to be known as the Woodbury 2013 Family Revocable Trust Division into large Parcels. This map subdivides Parcel 2, as shown on the Parcel Map for the Woodbury Family 2013 Revocable Trust on file in the Office of the Elko County Recorder, Elko, Nevada, File No. 725566.

LOCATION: Parcel 2, as shown on the Parcel Map for the Woodbury Family 2013 Revocable Trust on file in the Office of the Elko County Recorder, Elko, Nevada, File No. 725566.

The total parcel area proposed for division is 643.327 acres in size and is located within Sections 26, 35, & 36, T.33 N., R.56 E., M.D.B. &M. General location is east of the Broken Arrow Road from its Pleasant Valley Road intersection approximately 4, 016 feet and North of Pleasant Valley road between the

intersection of Broken Arrow Road / Pleasant Valley Road through to the intersection of Place Parkway / Pleasant Valley Road.

APPLICANT AND OWNER: Woodbury 2013 Family Revocable Trust.

17-7100-0001, DLLP Map_Woodbury 2013 Family Revocable Trust.pdf

Tentative Map_Woodbury 2013 Family Revocable Trust.pdf

Tentative Map_Woodbury 2013 Family Revocable Trust_Vicinity Map.pdf

Tentative Map_Woodbury 2013 Family Revocable Trust_Water Basin Map.pdf

Response - Opposition Letter 12-12-17.pdf

Response to Comments regarding DLP.pdf

G. OTHER BUSINESS

NON-ACTION

H. STAFF UPDATE AND COMMISSIONERS COMMENTS

This time is devoted to comments by Elko County Planning Commissioners and/or County Staff for general information or update purposes. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on a successive agenda and identified to be an action item.
NON-ACTION

I. COMMENTS BY THE GENERAL PUBLIC

Pursuant to NRS 241 this time is devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified to be an action item.
NON-ACTION

J. ADJOURNMENT

E-COMMENT

E-Comment Report

E-Comment Report.JPG

e-Comment Report for 12-21-17

POSTING CERTIFICATE

ELKO COUNTY IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER.