



# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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 regular session on Tuesday, January 7, 2020 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 30, 2019 2:10 p.m.

ELKO COUNTY LIBRARY – 720 Court Street, Elko, NV 89801

Date/Time Posted: December 30, 2019 2:05 p.m.

ELKO POLICE DEPARTMENT – 1448 Silver Street, Elko NV 89801

Date/Time Posted: December 30, 2019 2:15 p.m.

ELKO CITY HALL – 1751 College Avenue, Elko, NV 89801

Date/Time Posted: December 30, 2019 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician  
Name Title

Shelby Archuleta  
Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at [sarchuleta@elkocitynv.gov](mailto: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 30<sup>th</sup> day of December, 2019.

### 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**  
**REGULAR MEETING AGENDA**  
**5:30 P.M., P.S.T., TUESDAY, JANUARY 7, 2020**  
**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 3, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

**I. NEW BUSINESS**

**A. PUBLIC HEARING**

1. Review, consideration, and possible action of Conditional Use Permit No. 11-19, filed by Kelly Builders, LLC which would allow for a townhome development 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 south side of Indian View Heights at the southern terminus of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)

2. Review and consideration of Tentative Map No. 13-19, filed by Kelly Builders, LLC, for the development of a subdivision entitled The Town Homes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 lots for residential development and 1 common lot within the R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**



The subject property is located generally on the south side of Indian View Heights at the intersection of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)

3. Review, consideration and possible recommendation to City Council for Rezone No. 5-19, filed by Koinonia Development, LP, for a change in zoning from C (General Commercial), PQP (Public-Quasi, Public), and RMH (Mobile Home Park and Mobile Home Subdivision) to CT (Commercial Transitional) Zoning District, approximately 4.008 acres of property, to allow for a townhome development, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is generally located on the south side of N. 5<sup>th</sup> Street, across from Mary Way. (APNs 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075)

## **B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**

1. Review, consideration, and possible action to initiate an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8, Land Use Component Corresponding Zoning Districts, Transportation Component Best Practice 2.3 and Roadway Classifications, Existing Functional Classification Atlas Map 11 and Atlas Map 12, and matters related thereto. **FOR POSSIBLE ACTION**
2. Election of officers, and matters related thereto. **FOR POSSIBLE ACTION**

Pursuant to Section 3-4-3 A. of the City Code, the Planning Commission shall elect a Chairperson, Vice-Chairperson and Secretary in January every year.

3. Review, consideration, and possible action to develop the Calendar Year 2020 Planning Commission Annual Work Program, and matters related thereto. **FOR POSSIBLE ACTION**

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.

## **II. REPORTS**

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
  1. Zoning Bulletin



D. Miscellaneous Elko County

E. Training

### **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 3, 2019**  
**ELKO CITY HALL, COUNCIL CHAMBERS,**  
**1751 COLLEGE AVENUE, ELKO, NEVADA**

**CALL TO ORDER**

Jeff Dalling, Chairman of the City of Elko Planning Commission, called the meeting to order at 5:30 p.m.

**ROLL CALL**

**Present:**      Evi Buell  
                 Gratton Miller  
                 Ian Montgomery  
                 Jeff Dalling  
                 Stefan Beck  
                 Tera Hooiman

**Excused:**      John Anderson.

**City Staff Present:**   Scott Wilkinson, Assistant City Manager  
                         Cathy Laughlin, City Planner  
                         Michele Rambo, Development Manager  
                         John Holmes, Fire Marshal  
                         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 5, 2019 – Regular Meeting **FOR POSSIBLE ACTION**

**\*\*\*Motion: Approve the November 5, 2019 minutes as presented.**

**Moved by Evi Buell, Seconded by Tera Hooiman.**

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

**I. NEW BUSINESS**

**A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**



1. Review, consideration, and possible recommendation to City Council for Vacation No. 12-19, filed by the Ellison Properties, for the vacation of a portion of the Front Street right-of-way, consisting of an area approximately 1,926 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally south of S. 5<sup>th</sup> Street and east of the terminus of Front Street. (404 S 5<sup>th</sup> Street- APN 001-422-002)

Cathy Laughlin, City Planner, explained that the Commission heard this item last month. The Display Map and Legal Description from last month included the area to the back of the sidewalk. The Commission made a condition to make sure that no NDOT right-of-way was being included in the vacation. Staff felt it was a significant enough change in the square footage to have the item heard again. The new display map and legal description was included in the packet. Ms. Laughlin then went over the City of Elko Staff report dated October 24, 2019. Staff recommended conditional approval with the conditions and findings listed in the Staff report.

Michele Rambo, Development Manager had no comments or concerns.

John Holmes, Fire Marshal, had no comments or concerns.

Scott Wilkinson, Assistant City Manager, had no comments or concerns.

**\*\*\*Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Vacation No. 12-19 subject to the conditions listed in the City of Elko Staff Report dated October 24, 2019, listed as follows:**

1. **The applicant is responsible for all costs associated with the recordation of the vacation.**
2. **Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.**
3. **A water line easement for the existing water line that bisects the area proposed for vacation must be approved by the City and recorded.**
4. **Existing sidewalk connecting Front Street and South 5<sup>th</sup> Street must be demolished and reconstructed in accordance with plans submitted and approved by the City.**

**Commissioner Buell's findings to support the recommendation were the proposed vacation is not in strict conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is not located within the Redevelopment Area. The proposed vacation is in conformance with NRS 287.479 to 278.480, inclusive. The proposed vacation, with the recommended conditions, is in conformance with Elko City Code 8-7. The proposed vacation will not material injure the public and is in the best interest of the City.**



Moved by Evi Buell, Seconded by Tera Hooiman.

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

2. Review, consideration, and possible recommendation to City Council for Vacation No. 11-19, filed by the City of Elko, for the vacation of a portion of the Commercial Street right-of-way adjacent to APN 001-343-008, consisting of an area approximately 100 sq. ft., and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the south corner of the intersection of 6<sup>th</sup> Street and Commercial Street. (592 Commercial Street- APN 001-343-008)

Ms. Laughlin explained that the City Council made a motion to vacate the encroachments into Commercial Street at their meeting on September 24, 2019. They referred the matter to the Planning Commission. The City Council talked about reaching out to this property owner to see if they wanted to be included in the vacation process, because this specific property does not have an encroachment. Staff reached out to the property owner several times, and finally heard back from her and she stated that she wanted to be included in the vacation process. Ms. Laughlin then went over the City of Elko Staff Report dated November 18, 2019. Staff recommended conditional approval with the findings and conditions listed in the Staff Report.

Ms. Rambo, Mr. Holmes, and Mr. Wilkinson had no comments or concerns.

**\*\*\*Motion: Forward a recommendation to City Council to adoption a resolution, which would conditionally approve Vacation No. 11-19 subject to the conditions listed in the City of Elko Staff Report dated November 18, 2019, listed as follows:**

1. **Written response from all non-City utilities is on file with the City of Elko with regard to the vacation in accordance with NRS 278.480(6) before the order is recorded.**

**Commissioner Buell's findings to support the recommendation were the proposed vacation is in conformance with the City of Elko Master Plan Land Use Component. The proposed vacation is in conformance with the City of Elko Master Plan Transportation Component. The property proposed for vacation is located within the Redevelopment Area. The proposed vacation is in conformance with NRS 278.479 to 278.480, inclusive. The proposed vacation with the recommended condition is in conformance with Elko City Code 8-7. The proposed vacation will not materially injure the public and is in the best interest of the City.**

Moved by Evi Buell, Seconded by Tera Hooiman.

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

## **II. REPORTS**

### **A. Summary of City Council Actions.**



*Ms. Laughlin, reported that the City Council, on November 26<sup>th</sup>, approved Resolution 30-19, which was for the sale of some land that is part of Mountain View Park. Koinonia has purchased the adjacent property for a Town Home development. The City of Elko is in the process of selling a sliver of land to them. Now the deed and the Boundary Line Adjustment will need to be completed. Resolution 29-19 was also approved for the rezone for Elko West Properties across from the Hospital.*

**B. Summary of Redevelopment Agency Actions.**

*Ms. Laughlin reported that there was a Redevelopment Agency meeting on November 12<sup>th</sup>. RDA approved authorization for the Agency to apply for a grant with NV Energy to underground some overhead utility lines that run along the alley between 4<sup>th</sup> and 5<sup>th</sup> and Silver and Commercial Streets. The deadline for that application is December 15<sup>th</sup>.*

**C. Professional articles, publications, etc.**

**1. Zoning Bulletin**

**D. Miscellaneous Elko County**

**E. Training**

*Ms. Laughlin announced that Ian Montgomery has submitted his letter of resignation from the Planning Commission. Staff greatly appreciated his time and service. We will be taking that to City Council on December 10<sup>th</sup> for them to accept his resignation and authorize staff to advertise for the vacancy.*

**COMMENTS BY THE GENERAL PUBLIC**

*There were no public comments made at this time.*

**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**

There being no further business, the meeting was adjourned.

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Jeff Dalling, Chairman

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Tera Hooiman, Secretary



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 11-19, filed by Kelly Builders LLC, which would allow for a townhome development within an R (Single Family and Multi-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 7, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **Within the R- Residential Zoning District, townhouses are allowed with the approval of a Conditional Use Permit.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff report**
8. Recommended Motion: **Conditionally approve Conditional Use Permit 11-19 based on the facts, findings and conditions as presented in Staff Report dated December 9, 2019**
9. Findings: **See Staff Report dated December 9, 2019.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Kelly Builders LLC.  
209 Raptor Court  
Elko, NV 89801**

**Lana Carter**  
[lanalcarter@live.com](mailto:lanalcarter@live.com)



**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE:** 1/7

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Conditional Use Permit No. 11-19

Applicant(s): Kelly Builders, LLC

Site Location: 1553 Indian View Heights Dr. - APN 001-530-026

Current Zoning: R Date Received: 11/26/19 Date Public Notice: 12/24

COMMENT: This is to allow for a townhome development  
within an R (Single-Family + Multi-Family Residential) Zoning  
District.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 12/19/19

Recommend approval as presented by staff

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SAW

Initial

City Manager: Date: 12/20/19

No comments/concerns.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CC

Initial





City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

<b>DATE:</b>	<b>December 4, 2019</b>
<b>PLANNING COMMISSION DATE:</b>	<b>January 7, 2020</b>
<b>AGENDA ITEM NUMBER:</b>	<b>I.A.1</b>
<b>APPLICATION NUMBER:</b>	<b>Conditional Use Permit 11-19</b>
<b>APPLICANT:</b>	<b>Kelly Builders, LLC</b>
<b>PROJECT DESCRIPTION:</b>	<b>Development of 10 Townhomes</b>
<b>RELATED APPLICATIONS:</b>	<b>TM 13-19</b>

**A Conditional Use Permit for the development of 10 townhomes within the R – Single Family Multiple Family Residential Zoning District.**



### **STAFF RECOMMENDATION:**

**RECOMMEND APPROVAL**, subject to findings of fact and conditions as stated in this report.



## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-530-026

**PROPERTY SIZE:** 1.297 acres

**EXISTING ZONING:** R- Single Family and Multiple Family Residential

**MASTER PLAN DESIGNATION:** (RES- MD) Residential Medium Density

**EXISTING LAND USE:** Undeveloped

### **NEIGHBORHOOD CHARACTERISTICS:**

- The property is surrounded by:
  - North: R- Residential / Developed
  - East: R - Residential / Developed
  - West: R- Residential (Outside City Limits/ Indian Colony) / Developed
  - South: R- Residential / Developed

### **PROPERTY CHARACTERISTICS:**

- The area is currently undeveloped.
- The area slopes from west to the east, with minimal topographic challenges
- The property is within the 5400 water zone and can be serviced with water.
- The area is accessed from Indian View Heights Drive.

### **APPLICABLE MASTER PLANS AND CITY CODE SECTIONS:**

- City of Elko Master Plan-Land Use Component
- City of Elko Master Plan-Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Code 3-2-3 General Provisions
- City of Elko Code 3-2-4 Establishment of Zoning Districts
- City of Elko Code 3-2-5 Residential Zoning Districts
- City of Elko Code 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Code 3-2-18 Conditional Use Permits
- City of Elko Code 3-8 Flood Plain Management

## **BACKGROUND INFORMATION**

- APN 001-530-026 is owned by Kelly Builders, LLC
- The area fronts Indian View Heights Drive.
- City of Elko utilities are in the vicinity as well as other non-city utilities.



- The proposed development includes 10 townhomes and one common area.

## **MASTER PLAN**

### **Land Use**

1. The Master Plan Land Use Atlas shows the area as Residential Medium Density.
2. R- Single Family and Multiple Family Residential zoning district is listed as a corresponding zoning district for Residential Medium Density.
3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.

The proposed conditional use permit is in conformance with the Land Use Component of the Master Plan

### **Transportation**

1. The area will be accessed from Indian View Heights Drive.
2. Indian View Heights Drive is identified as a Residential Collector.

The proposed conditional use permit is compatible with the Master Plan Transportation Component and is consistent with the existing transportation infrastructure.

## **ELKO WELLHEAD PROTECTION PLAN**

- The property is located inside the 20-year capture zone for several City wells.

## **ELKO REDEVELOPMENT PLAN:**

1. The property is not located within the redevelopment area.

## **SECTION 3-2-3 GENERAL PROVISIONS**

- Section 3-2-3 (C) 1 of City code specifies use restrictions. The following use restrictions shall apply.
  1. Principal Uses: Only those uses and groups of uses specifically designated as “principal uses permitted” in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses
  2. Conditional Uses: Certain specified uses designated as “conditional uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance hereinafter specified in this chapter or imposed by the planning commission or city council.
  3. Accessory Uses: Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.



1. Section 3-2-3(C) states that certain specified uses designated as “conditional uses permitted” may be permitted as principal uses subject to special conditions of location, design, construction, operation and maintenance specified in Chapter 3 or imposed by the Planning Commission or City Council.
2. Section 3-2-3(D) states that “No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify or withdraw the determination of unsuitability.”

The proposed development is required to have an approval as a conditional use to be in conformance with this section of code.

#### **SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS**

1. Section 3-2-4(B) Required Conformity To District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

The proposed development conforms to Section 3-2-4 of the City Code.

#### **SECTION 3-2-5-E-RESIDENTIAL ZONING DISTRICTS**

1. Section 3-2-5(E)(3)-Conditional Uses Permitted- Multiple-family residential developments which contain five (5) or more units located on a single lot or parcel; townhouse or row house developments.
2. Section 3-2-5(G) The minimum setback standards for multi-family dwellings shall be the following.
  - Front Yard: 15 feet, 20 feet for a garage
  - Interior Side Yard: 7 feet
  - Exterior Side Yard: 15 feet
  - Rear Yard: 20 feet

Setbacks have been provided on the plan and it does appear that the setbacks have been met. The proposed development is required to conform to this section of city code. 3-2-5(E).



### **SECTION 3-2-17 TRAFFIC, ACCESS, PARKING AND LOADING REGULATIONS**

- It would appear that each townhome has two off street parking stalls provided on their lot and additional parking on a parking pad outside their townhome. There are also 9 guest parking stalls provided.
- Conformance with this section is required

### **SECTION 3-2-18 CONDITIONAL USE PERMITS**

#### General Regulations:

1. Certain uses of land within designated zoning districts shall be permitted as principal uses only upon issuance of a conditional use permit. Subject to the requirements of this chapter, other applicable chapters, and where applicable to additional standards established by the Planning Commission, or the City Council, a conditional use permit for such uses may be issued.
2. Every conditional use permit issued, including a permit for a mobile home park, shall automatically lapse and be of no effect one (1) year from the date of its issue unless the permit holder is actively engaged in developing the specific property to the use for which the permit was issued.
3. Every conditional use permit issued shall be personal to the permittee and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
4. Conditional use permits shall be reviewed from time to time by City personnel. Conditional use permits may be formally reviewed by the Planning Commission. In the event that any or all of the conditions of the permit or this chapter are not adhered to, the conditional use permit will be subject to revocation.

### **3-8 FLOOD PLAIN MANAGEMENT**

The property is not located within a Special Flood Hazard Area.

### **FINDINGS**

1. The proposed development is in conformance with the Land Use component of the Master Plan
2. The proposed development is in conformance with the existing transportation infrastructure and the Transportation component of the Master Plan
3. The site is suitable for the proposed use.
4. The proposed development is in conformance with the City Wellhead Protection Program.



5. The proposed use is consistent with surrounding land uses.
6. The proposed use is in conformance with City Code 3-2-5 (E) R- Single Family Multiple Family Residential Zoning District and meets the required setbacks for multiple family development.
7. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-2-18, and 3-8 of the Elko City Code.

### **STAFF RECOMMENDATION:**

Staff recommends **APPROVAL** of CUP 11-19 with the following conditions:

1. The CUP 11-19 shall be personal to the permittee and applicable only to the submitted application conforming to the exhibits as presented.
2. Landscaping shall be installed and not obstruct the view of oncoming traffic at the intersections. Home Owner's Association is to provide such maintenance and care as is required to obtain the effect intended by the original landscape plan for the development.
3. CUP 11-19 to be recorded with the Elko County Recorder within 90 days after commencement of work.
4. The permit shall be personal to the permittee, Kelly Builders, LLC. and applicable only to the specific use of multiple family residential and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
5. Guest parking to be for guest vehicles only, no RV parking allowed on site.
6. All parking lot lighting is to be shielded or cut-off design.
7. An illumination schedule is required to ensure lighting is adequate for safety with minimal impact to adjacent properties.
8. There shall not be any placement of any mail gang boxes or kiosks in association with this complex placed in the city's right of way and shall remain internal to the complex
9. The exterior of the building shall be compatible with surrounding areas and shall be similar to what is presented in the application.
10. The common areas are to be maintained in an acceptable manner at all times.

### **Development Department Conditions:**

1. Tentative Map 13-19 must also be approved and those conditions met
2. NDEP approval of construction plans required prior to issuance of a grading permit
3. BMPs are required during grading/construction as set forth in the City's Construction Site BMP Handbook found online at:

<http://cms4.revize.com/revize/elkonv/WPCP-Management%20PlansConstruction%20BMP%20Manual-DEC2015.pdf>





# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

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December 27, 2019

Kelly Builders, LLC  
209 Raptor Court  
Elko, NV 89801

Re: Conditional Use Permit No. 11-19 & Tentative Map No. 13-19

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

CC: Lana Carter – [lanalcarter@live.com](mailto:lanalcarter@live.com)



CUP 11-19 + TM 13-19 Kelly Builders, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001952013	ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001952012	ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001530019	BRENSEL, ROBERT A ET AL		1550 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2896
001530012	CHRISTIAN CENTER OF ELKO		1555 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2691
001530005	DIANA ARMS II ASSOC	C/O WESTSTATES PROPERTY	PO BOX 2688	ELKO NV	89803-2688
001530025	ELKO CITY OF NO PC.		1755 COLLEGE AVE	ELKO NV	89801
001530013	ELKO ENGLISH CONGREGATION OF JE	C/O GROUNDWATER FEE (I	486 SPRING CREEK PKWY	SPRING CREEK NV	89815-5320
001530017	GOULDING, BRENT & SADIE		1840 GRISWOLD DR	ELKO NV	89801-2651
001530009	GRANT, THOMAS R & JODIE L		1680 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2667
001530016	HOEM, KAREN E ET AL		1850 GRISWOLD DR	ELKO NV	89801-2651
001954035	JIMENEZ, CENNI R & KASI M		1860 GRISWOLD DR	ELKO NV	89801
00609D001	US DEPT OF THE INTERIOR BUR OF	C/O BLM	3900 E IDAHO ST	ELKO NV	89801-4692
001530011	WAHRENBROCK, CINDY HOPE		2072 RUBY VIEW DR	ELKO NV	89801-2649
001530018	WAHRENBROCK, JON A		1800 GRISWOLD DR UNIT 1	ELKO NV	89801-1625

12

Post Marked 12/27/19



## **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, January 7, 2020 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

- Conditional Use Permit No. 11-19, filed by Kelly Builders, LLC which would allow for a town home development within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the south side of Indian View Heights at the southern terminus of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)
- Tentative Map No. 13-19, filed by Kelly Builders, LLC, for the development of a subdivision entitled The Town Homes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 lots for residential development and 1 common lot within the R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the south side of Indian View Heights at the southern terminus of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

**ELKO CITY PLANNING COMMISSION**



**Carter Engineering, LLC**  
**Civil Engineering**

P. O. Box 794  
Elko, Nevada 89803  
775-397-2531



**Transmittal Letter**

Date: December 20, 2019

To: Michele Rambo, AICP  
Development Manager, City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: The Town Homes at Ruby View - Revised Tentative Map and Conditional  
Use Site Plan

Description of Attachments:

1. 3 Copies of the Revised CUP Site Plan (24"x36")
2. 3 Copies of the Revised Tentative Map (24"x36")

Remarks:

Hello Michele,

Please accept the attached revised plans for the CUP and Tentative Map for The Town  
Homes at Ruby View. We appreciate everyone's help throughout this process.

Thanks - Lana L Carter

Cc: Wade and Laura Kelly, Kelly Builders, LLC

**RECEIVED**

DEC 20 2019





## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 phone \* (775) 777-7219 fax

### APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s):	Kelly Builders, LLC
(Applicant must be the owner or lessee of the <b>proposed</b> structure or use.)	
MAILING ADDRESS:	209 Raptor Court, Elko Nevada 89801
PHONE NO. (Home)	(Business) 775-777-3217
NAME OF PROPERTY OWNER (If different):	
(Property owner's consent in writing must be provided.)	
MAILING ADDRESS:	
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):	
ASSESSOR'S PARCEL NO.:	001-530-026
Address	1553 Indian View Heights Drive, Elko Nv
Lot(s), Block(s), & Subdivision	
Or Parcel(s) & File No.	Parcel No. 1 of File No. 707194

#### FILING REQUIREMENTS

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month).

**Fee:** A \$750.00 non-refundable fee.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the proposed conditional use permit site drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information that shows the use will be compliant with Elko City Code.

**Elevation Plan:** Elevation profiles including architectural finishes of all proposed structures or alterations in sufficient detail to explain the nature of the request.

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 ½" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support this conditional use permit application.

RECEIVED

NOV 26 2019



1. Current zoning of the property: R - Single-Family and Multiple-Family Residential District
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:  
3-2-5 RESIDENTIAL ZONING DISTRICTS: E. R Single-Family and Multiple-Family Residential  
District: 3. Conditional Uses Permitted: 3-2-5 E. 3. requires town homes in R zones to be by CUP.
3. Explain in detail the type and nature of the use proposed on the property:  
This project is the development of 10 town homes on individually owned lots. The lots shall be the perimeter of the  
town home structure and a rear yard. The remainder shall be common area controlled by the home owners  
association (HOA). The proposed water, sanitary sewer and culverts are to be private and owned by the HOA.  
The the paved driveways, trash enclosure, concrete parking pads, individual private sidewalks to homes will also  
be private and owned by the HOA. One water meter is proposed and the utility service will be paid by the HOA.  
The proposed landscape and irrigation service will be owned by the HOA as well. Each unit will have a two car garage  
and a two car parking pad. There are nine additional guest parking spaces provided. This project requires a  
conditional use permit (CUP). The CUP is being submitted along with the Tentative Map application.
4. Explain how the use relates with other properties and uses in the immediate area:  
The project is located in mixed use neighborhood. There are single family homes to the north and west.  
Duplexes and Multi-family are located to the north east. Churches are located to the east and south. The addition  
of town homes to this area would complement the existing uses.
5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property: There are no unique features that will impact or limit the development of the property into town homes.
6. Describe the general suitability and adequacy of the property to accommodate the proposed use: The property is large enough to accommodate the town homes and leave room for additional  
parking, snow storage, landscape and storm water detention in the common area controlled and owned by the  
home owners association. The existing utilities in Indian View Heights Drive will provide service to this project.  
A waiver was granted by City Council 3-12-19 to wave the requirement of extending the sewer along the frontage  
of the property as there are no up-stream users for this extension.



7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.:

The proposed grading for this project works very well with the existing topography. The property will be graded from southwest to northeast to its existing discharge point near the right of way of Indian View Heights Drive. The design standards for City of Elko Storm water management will be followed to address storm water leaving the site. The property has a gentle slope and will not require mass grading or terracing.

8. Describe the amounts and type of traffic likely to be generated by the proposed use:

It is estimated that each resident will generate 10 vehicle trips per day. At 10 lots this is 200 vehicle trip per day. The distance from the center line of the proposed access and Griswold Avenue is approximately 85 feet. This exceeds the code requirement of 75 feet. 3-2-17: B. 3. c. (3)

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property:

There is no off-street parking proposed for this development. Each lot will have a two car garage and a 2 car parking pad. There will be an additional 9 spaces provided for guests. This exceeds the parking requirement of 2 per dwelling unit 3-2-17: F.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed:

A ground level decorative monument sign for the development will be constructed in the common area near the entrance approach. The sign will meet the requirements of Title 3, Chapter 9.

11. Identify any outside storage of goods, materials or equipment on the property:

There will be no outside storage allowed.

12. Identify any accessory buildings or structures associated with the proposed use on the property:

There will be no accessory building.

**(Use additional pages if necessary to address questions 3 through 12)**



**By My Signature below:**

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** Kelly Builders LLC  
(Please print or type)

**Mailing Address** 209 Raptor Ct  
Street Address or P.O. Box  
Elko NV 89801  
City, State, Zip Code

Phone Number: 775 777 3217

Email address: kellybuilders@frontiernet.net

**SIGNATURE:** Laura Kelly

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**FOR OFFICE USE ONLY**

**File No.:** 11-19 **Date Filed:** 11/26/19 **Fee Paid:** \$750 CR# 1620

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**Carter Engineering, LLC**  
**Civil Engineering**

P. O. Box 794  
Elko, Nevada 89803  
775-397-2531



**Transmittal Letter**

**RECEIVED**

NOV 26 2019

Date: November 26<sup>th</sup>, 2019

To: Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: The Town Homes at Ruby View - Conditional Use Permit Submittal

Description of Attachments:

1. Application
2. Fee (Check 1620, \$750.00)
3. 3 Copies of the CUP Site Plan (24"x36")
4. 1 Copy of the CUP Site Plan (8.5"x11")
5. 3 Copies of the Elevation View
6. 1 copy of the Elevation View (8.5"x11")
7. PDF copy of the entire submittal on a jump drive.

Remarks:

Hello Cathy,

Please accept the attached submittal for the CUP for The Town Homes at Ruby View.  
We appreciate everyone's help throughout this process.

Thanks - Lana L. Carter

Cc: Wade and Laura Kelly, Kelly Builders, LLC



# THE TOWN HOMES at RUBY VIEW - CONDITIONAL USE

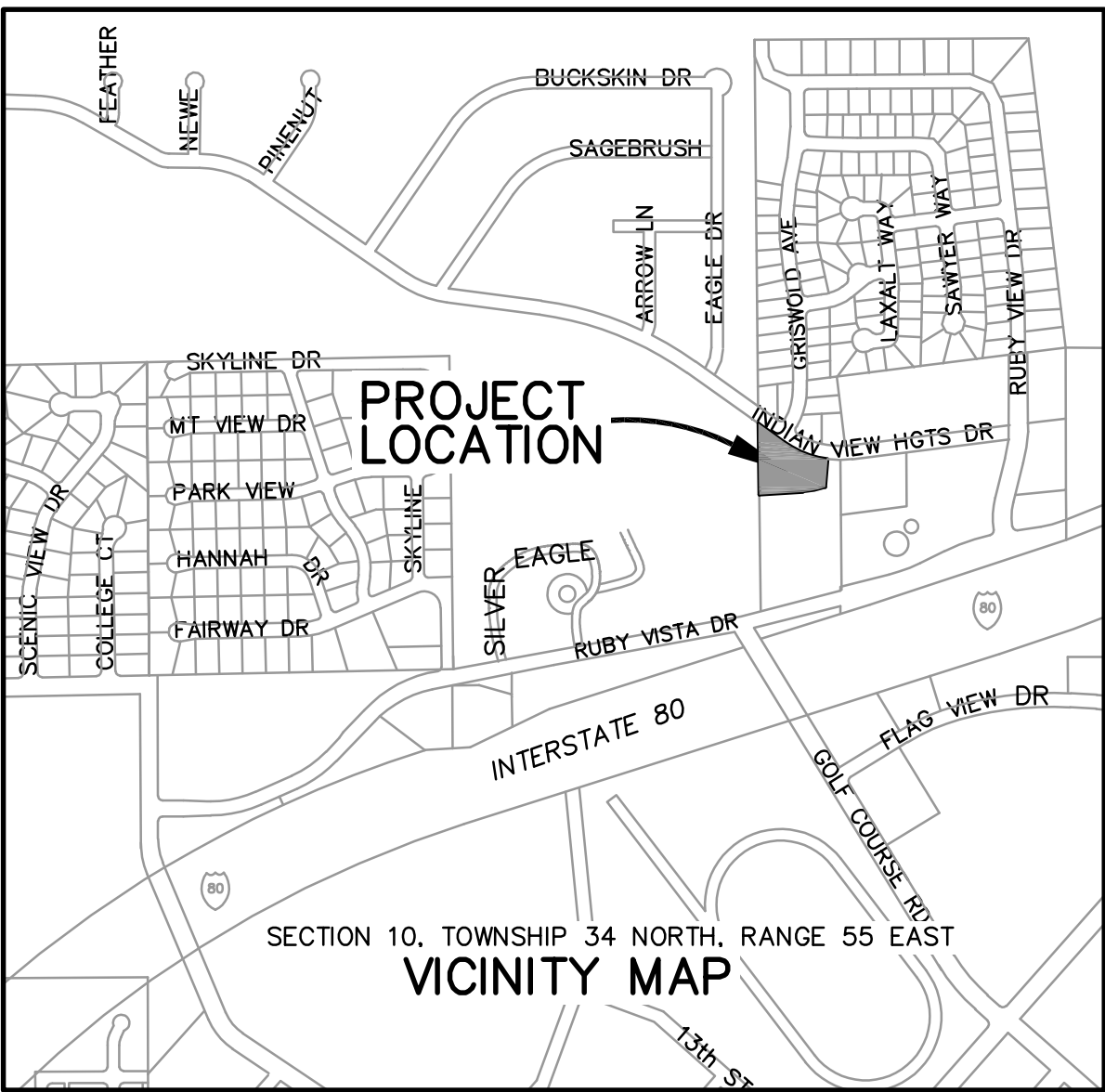
## PROJECT INFORMATION

1. ZONING: R - SINGLE FAMILY AND MULTIPLE FAMILY RESIDENTIAL DISTRICT.
2. APN = 001-530-026
3. LEGAL DESCRIPTION = PARCEL 1 OF FILE NUMBER 707194, IN THE OFFICE OF THE ELKO COUNTY RECORDER.
4. TOTAL AREA PARCEL AREA IS 1.300 ACRES.
5. 10 LOTS TOTAL WITH ONE REMAINDER LOT.
6. NO DEED RESTRICTIONS.
7. THE EXISTING PARCEL IS 1553 INDIAN VIEW HEIGHTS DRIVE.
8. PARCEL TO BE SUBDIVIDED IS IN LOCATED IN SECTION 10 OF TOWNSHIP 34 NORTH, RANGE 55 EAST M.D.B. & M.
9. SUBDIVISION TO BE SERVED BY THE FOLLOWING UTILITY COMPANIES  
CITY OF ELKO - WATER, SEWER & STORM DRAIN  
SW GAS - NATURAL GAS  
FRONTIER - COMMUNICATIONS AND TELEPHONE  
NV ENERGY - ELECTRICAL  
SATVIEW BROAD BAND - COMMUNICATIONS AND TELEVISION  
ELKO SANITATION - WASTE DISPOSAL
10. THIS PROPERTY IS LOCATED IN ZONE X (AREA OF MINIMAL FLOOD HAZARD) PER FEMA FIRM MAP 32007C5607E EFFECTIVE 9-4-13
11. THERE ARE NO NEW EASEMENTS TO BE DEDICATED.
12. ON SITE DRIVEWAY AND UTILITIES WILL BE PRIVATE AND MAINTAINED BY THE HOME OWNERS ASSOCIATION.
13. IN ADDITION TO THE TWO CAR GARAGE EACH LOT SHALL HAVE A TWO CAR PARKING PAD. AN ADDITIONAL 9 PARKING SPACES ARE PROPOSED FOR GUESTS. THIS EXCEEDS THE CODE REQUIREMENT OF 2 SPACES PER DWELLING UNIT.
14. SETBACK REQUIREMENTS: FRONT YARD = 15 FEET  
INTERIOR SIDE YARD = 7 FEET  
REAR YARD = 20 FEET
15. THE TOPOGRAPHY AND BOUNDARY SHOWN HERE IS PER A SURVEY PROVIDED BY HIGH DESERT ENGINEERING ON 10-16-19 PERFORMED UNDER THE DIRECTION OF DUANE MERRILL, P.L.S.
16. ALL UNITS WILL HAVE FENCED YARDS WITH A 5' WIDE GATE FOR FOR EMERGENCY ACCESS.

## LEGEND

EXISTING SANITARY SEWER MANHOLE	SS
EXISTING SANITARY SEWER LINE	SS
PROPOSED SANITARY SEWER MANHOLE	SS
PROPOSED SANITARY SEWER LINE	SS
EXISTING CURB INLET	CI
EXISTING STORM DRAIN	SD
EXISTING STORM DRAIN MANHOLE	SD
PROPOSED CULVERT	SD
EXISTING GAS LINE	GAS
EXISTING WATER LINE	W
EXISTING WATER VALVE	W
EXISTING FIRE HYDRANT	W
EXISTING SPIGOT	W
PROPOSED WATER LINE	W
PROPOSED WATER SERVICE LINE	WS
PROPOSED WATER VALVE	W
PROPOSED FIRE HYDRANT	W
EXISTING TELEPHONE PEDESTAL	T
EXISTING TELEPHONE BOX	T
EXISTING POWER POLE	PP
EXISTING OVER HEAD POWER LINE	OP
EXISTING POWER BOX	P
PROPOSED PROPERTY CORNER	•
EXISTING PROPERTY CORNER	○
EXISTING DRAINAGE SWALE	---
PROPOSED DRAINAGE SWALE	---

1" = 20'



TOWN HOME FOOT PRINT

## PROJECT CONTACTS

### OWNER-DEVELOPER

KELLY BUILDERS, LLC  
209 RAPTOR COURT  
ELKO, NEVADA 89801  
CONTACT: WADE KELLY  
OR LAURA KELLY  
(775) 777-3217  
EMAIL: kellybuilders@frontiernet.net

### CIVIL ENGINEER

CARTER ENGINEERING, LLC  
P.O. BOX 794  
ELKO, NEVADA 89801  
CONTACT: LANA L. CARTER, P.E.  
(775) 397-2531  
EMAIL: lanalacarter@live.com

### SURVEYOR

HIGH DESERT ENGINEERING, LLC  
640 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: ROBERT E. MORLEY, P.L.S.  
(775) 738-4053  
EMAIL: remorley@frontier.net



SCALE: 1" = 20'

Carter Engineering, LLC  
Civil Engineering  
P.O. Box 794  
Elko, Nevada 89801  
775-397-2531

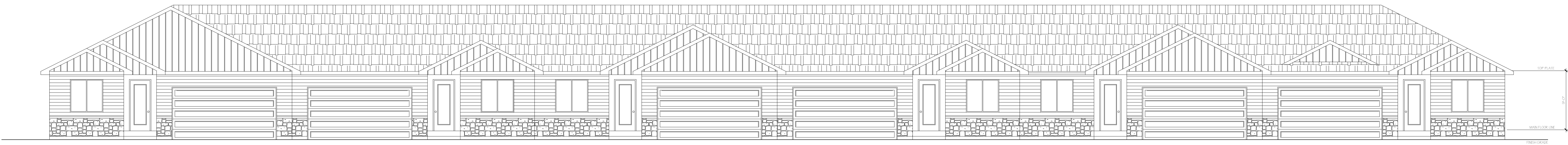
KELLY BUILDERS, LLC  
THE TOWN HOMES at RUBY VIEW  
CONDITIONAL USE - SITE PLAN  
ELKO, NEVADA

DESIGN BY: LLC  
DRAWN BY: LLC  
CHECKED BY: LLC  
DATE: 12-19-19  
JOB NO: 06-2019  
DWG NO: 2019-18

SCALE  
HORIZ: 1"=20'  
VERT: N/A

SHEET  
1  
OF 1







**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review and consideration of Tentative Map 13-19, filed by Kelly Builders, LLC for the development of a subdivision entitled Townhomes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 lots for residential development and 1 common lot within the R (Single Family and Multiple Family Residential) Zoning District, in conjunction with a conditional use permit application, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 2, 2020**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **20 Minutes**
5. Background Information: **Subject property is located on the south side of Indian View Heights Drive at the intersection of Griswold Drive. (APN 001-530-026)**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application and Staff Report**
8. Recommended Motion: **Recommend that the City Council conditionally approve Tentative Map 13-19 based on facts, findings, and conditions as presented in Staff Report dated December 17, 2019.**
9. Findings: **See Staff Report dated December 17, 2019**
10. Prepared By: **Michele Rambo, AICP, Development Manager**
11. Agenda Distribution: **Kelly Builders, LLC  
209 Raptor Court  
Elko, NV 89801  
kellybuilders@frontiernet.net**  
  
**Carter Engineering, LLC  
Attn: Lana Carter  
P.O. Box 794  
Elko, NV 89801  
lanalcarter@live.com**



**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 1/7**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Tentative Map No. 13-19-The Town Homes at Ruby View  
Applicant(s): Kelly Builders, LLC  
Site Location: 1553 Indian View Heights Dr. - APN 001-530-026  
Current Zoning: R Date Received: 11/26/19 Date Public Notice: 12/24/19  
COMMENT: This is for the division of  $\approx$  1.3 acres into 10 lots for residential development and a common area, which will be entitled The Town Homes at Ruby View.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 12/19/19  
Recommend approval as presented by  
Staff  
  
  
  

SAW

Initial

City Manager: Date: 12/20/19  
No comments/concerns.  
  
  
  

cc

Initial





City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

<b>REPORT DATE:</b>	<b>December 17, 2019</b>
<b>PLANNING COMMISSION DATE:</b>	<b>January 7, 2020</b>
<b>AGENDA ITEM NUMBER:</b>	
<b>APPLICATION NUMBER:</b>	<b>Tentative Map 13-19</b>
<b>APPLICANT:</b>	<b>Kelly Builders, LLC</b>
<b>PROJECT DESCRIPTION:</b>	<b>Townhomes at Ruby View</b>

**A Tentative Map for the proposed division of approximately 1.297 acres of property into 10 townhouse lots for residential development and 1 common lot within an R (Single Family and Multiple Family Residential) Zoning District.**



### **STAFF RECOMMENDATION:**

**RECOMMEND CONDITIONAL APPROVAL**, subject to findings of fact, and conditions as stated in this report.



## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-530-026

**PARCEL SIZE:** 1.297 Acres

**EXISTING ZONING:** (R) Single Family and Multiple Family Residential

**MASTER PLAN DESIGNATION:** (RES-MD) Residential Medium Density

**EXISTING LAND USE:** Vacant

### **NEIGHBORHOOD CHARACTERISTICS:**

The property is surrounded by:

- ) North: Single and Multiple Residential / Developed
- ) South: Single and Multiple Residential (R) / Developed
- ) East: Single and Multiple Residential (R) / Developed
- ) West: Tribal Land / Developed

### **PROPERTY CHARACTERISTICS:**

- ) The property is an undeveloped residential parcel.
- ) The site abuts previous residential development to the north, churches to the south, east, and west.
- ) The parcel has some slope to it, which is incorporated into the design of the lots where possible.
- ) The property will be accessed off of Indian View Heights Drive.

### **APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:**

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012
- ) City of Elko Redevelopment Plan
- ) City of Elko Wellhead Protection Plan
- ) City of Elko Zoning – Section 3-2-3 General Provisions
- ) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- ) City of Elko Zoning – Section 3-2-5(E) Single Family and Multiple Family Residential District
- ) City of Elko Zoning – Section 3-2-5(G) Residential Zoning Districts Area, Setback, and Height
- ) City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- ) City of Elko Zoning – Chapter 3 Subdivisions
- ) City of Elko Zoning – Section 3-8 Flood Plain Management
- ) City of Elko Public Ways and Property – Title 9, Chapter 8 Post Construction Runoff Control and Water Quality Management



**BACKGROUND:**

1. The property owner and applicant is Kelly Builders, LLC.
2. The subdivision is located on APN 001-530-026.
3. The property is undeveloped.
4. The proposed subdivision consists of 10 townhouse lots and 1 common lot.
5. The total subdivided area is approximately 1.297 acres.
6. The proposed density is 7.71 units per acre.
7. No phasing is proposed as part of this subdivision.
8. There are no new roads or dedications offered as part of the project.
9. The property is located on the south side of Indian View Heights Drive at the intersection of Griswold Drive.
10. A Stage 1 meeting for the proposed subdivision was held on February 14, 2019.

**MASTER PLAN**

Land Use:

1. The land use is shown as Residential Medium Density. Medium Density is identified as having a density of 5-8 units per acre.
2. Single Family and Multiple Family Residential (R) zoning is listed as a corresponding district for the Medium Density Designation in the Master Plan.
3. The listed Goal of the Land Use Component states: "Promote orderly, sustainable growth and efficient land use to improve quality of life and ensure new development meets the needs of all residents and visitors."
4. Objective 1 under the Land Use component of the Master Plan states: "Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups."
  - a. Best Practice 1.1 – The proposed subdivision meets several of the methods described to achieve a diverse mix of single family homes in the community.
  - b. Best Practice 1.3 – The location of the proposed subdivision appears to support the City striving for a blended community by providing a mix of housing types in the neighborhood and is supported by existing infrastructure.
5. Objective 8 of the Land Use component of the Master Plan states: "Ensure that new development does not negatively impact County-wide natural systems or public/federal lands such as waterways, wetlands, drainages, floodplains, etc. or pose a danger to human health and safety." Staff believes there will be no negative impacts to natural systems and no issue with regard to human health and safety.

The proposed subdivision and development is in conformance with the Land Use component of the Master Plan.

Transportation:

1. The project will be accessed from Indian View Heights Drive.
2. Indian View Heights Drive is classified as a Residential Collector road.
3. The interior circulation of the project will be provided by a private driveway.
4. The Master Plan requires Residential Collector roads to have 60 feet of right-of-way.
5. Indian View Heights Drive has 60 feet of right-of-way. No further dedications are required.



6. Upon full buildout, the proposed subdivision is expected to generate approximately 58 additional Average Daily Trips based on 5.81 trips/townhome (ITE Trip Generation, 10<sup>th</sup> Edition).

The proposed subdivision and development is in conformance with the Transportation component of the Master Plan.

**ELKO AIRPORT MASTER PLAN:**

The proposed subdivision and development does not conflict with the Airport Master Plan.

**CITY OF ELKO DEVELOPMENT FEASIBILITY, LAND USE, WATER INFRASTRUCTURE, SANITARY SEWER INFRASTRUCTURE, TRANSPORTATION INFRASTRUCTURE, AND ANNEXATION POTENTIAL REPORT – NOVEMBER 2012:**

The proposed subdivision does not conflict with the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012.

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the Redevelopment Area.

**ELKO WELLHEAD PROTECTION PLAN:**

The property is located within the 20-year capture zone for several City of Elko wells. Development of the site is required to be connected to a programmed sewer system and all street drainage will be directed to a storm sewer system.

**SECTION 3-3-5 TENTATIVE MAP STAGE (STAGE II):**

**Tentative Map Approval 3-3-5(E)(2)(a)-(k)** – Requires the following findings:

- a. Environmental and health laws and regulations concerning water and air pollution, the disposal of solid waste, facilities to supply water, community or public sewage disposal, and, where applicable, individual systems for sewage disposal.
  - ) The proposed subdivision will be connected to the city's water supply system, programmed sewer system and is required to be in compliance with all applicable federal, state, and local requirements.
- b. The availability of water which meets applicable health standards and is sufficient in quantity for the reasonably foreseeable needs of the subdivision.
  - ) The City of Elko Engineering Department is required to model the anticipated water consumption of the subdivision. The City of Elko Utility Department will be required to submit a "Tentative Will-Serve Letter" to the State of Nevada. The water modeling requires an update to reflect the increased number of lots. Current City-wide annual water usage is approximately 50% of the total allocated water rights.



- ) City of Elko currently has excess pumping capacity of 3,081 gallons per minute. Sufficient infrastructure and pumping capacity exists to provide the required water volume to serve the proposed subdivision and development.
  - ) The Developer will extend properly sized infrastructure as required for development of the property.
  - ) The proposed subdivision and development will not create an unreasonable burden on the existing water supply.
- c. The availability and accessibility of utilities.
  - ) Utilities are available in the immediate area and can be extended for the proposed development.
- d. The availability and accessibility of public services such as schools, police protection, transportation, recreation, and parks.
  - ) Schools, fire and police, and recreational services are available throughout the community.
- e. Conformity with the zoning ordinance and the City's Master Plan, except that if any existing zoning ordinance is inconsistent with the City's Master Plan, the zoning ordinance takes precedence.
  - ) The Master Plan Land Use Map shows the area as Medium Density Residential. The proposed subdivision and development have been designed in accordance with the Single Family and Multiple Family Residential (R) zone.
  - ) The result is a density of 7.71 units per acre, which meets the minimum density of 4 units per acre specified in the Master Plan.
  - ) The proposed subdivision is in conformance with the City's Master Plan as well as the Zoning Ordinance.
- f. General conformity with the City's Master Plan of streets and highways.
  - ) The proposed subdivision is in conformance with the Transportation Component of the Master Plan.
- g. The effect of the proposed subdivision on existing public streets and the need for new streets or highways to serve the subdivision.
  - ) The proposed subdivision and development will add approximately 58 Average Daily Trips to Indian View Heights Drive. Based on the threshold of 1,000 ADT referenced in the Master Plan, a traffic study is not required with this subdivision.
  - ) The proposed subdivision and development will not cause unreasonable traffic congestion or unsafe conditions with respect to existing or proposed streets.
- h. Physical characteristics of the land, such as floodplain, slope, and soil.
  - ) The proposed subdivision and subsequent development of the property is expected to reduce the potential for erosion in the immediate area. Development of the property will not cause unreasonable soil erosion.
  - ) A hydrology report is required with the Final Map and Construction Plan submittal.



- ) The proposed subdivision and development is not expected to result in unreasonable erosion or reduction in the water holding capacity of the land thereby creating a dangerous or unhealthy condition.
- i. The recommendations and comments and those entities and persons reviewing the Tentative Map pursuant to this Chapter and NRS 278.330 to 278.3485, inclusive.
- j. The availability and accessibility of fire protection, including, but not limited to, the availability and accessibility of water and services for the prevention and containment of fires, including fires in wild lands.
- k. The submission by the subdivider of an affidavit stating that the subdivider will make provision for payment of the tax imposed by Chapter 375 of NRS and for compliance with the disclosure and recording requirements of Subsection 5 of NRS 598.0923, if applicable, by the subdivider or any successor in interest.

There are no obvious considerations or concerns which indicate the proposed subdivision would not be in conformance with all applicable provisions.

**SECTION 3-3-6 CONTENT AND FORMAT OF TENTATIVE MAP SUBMITTAL:**

- A. Form and Scale – The Tentative Map conforms to the required size and form specifications.
- B. Identification Data
  - 1. The subdivision name, location, and section/township/range, with bearing to a section corner or quarter-section corner, is shown.
  - 2. The name, address, email, and telephone number of the subdivider is shown.
  - 3. The engineer's name, address, and telephone number are shown.
  - 4. The scale is shown on all sheets.
  - 5. The north arrow is shown on all sheets.
  - 6. The date of initial preparation and dates of any subsequent revisions are shown.
  - 7. A location map is provided.
  - 8. A legal description is provided.
- C. Physical Conditions
  - 1. The existing topography of the site is shown.
  - 2. Existing drainage conditions are shown on the Tentative Map.
  - 3. There are no Special Flood Hazards within the proposed subdivision.
  - 4. All roadways, easements, and corporate limits are shown within and adjacent to the subdivision.
  - 5. Dimensions of all subdivision boundaries are shown on the Tentative Map.
  - 6. Gross and net acreage of the subdivision is shown.
- D. Recorded Map Information:
  - 1. Any previously recorded maps for adjacent properties is labeled on the Tentative Map.



E. Existing Zoning:

1. The zoning is shown for the subject property. Zoning classifications for adjacent properties are also shown on the Tentative Map.

F. Proposed Improvements and Other Features Data:

1. The proposed interior driveway layout is shown. None of the streets are named or proposed for dedication. The grades of the proposed streets are shown on the grading plan. The continuation of roadways is not required of the proposed subdivision.
2. The lot layout with consecutively numbered lots is shown. The area and dimensions for each lot are shown, as well as the total number of lots.
3. Typical easements will be required along all lot lines.
4. No street dedications are proposed.
5. A Conditional Use Permit is required to allow for the use of townhouses in the Single Family and Multiple Family Residential zoning. This application has been submitted and is being processed by the Planning Department.

G. Proposed Deed Restrictions:

1. Proposed CC&R's for the subdivision have been submitted.

H. Preliminary Grading Plan:

1. A grading plan has been provided. Estimated quantities of cut and fill have been provided in a separate document.

I. NPDES Permit Compliance:

1. The subdivider will be required to comply with the City of Elko's storm water regulations.

J. Proposed Utility Methods and Requirements:

1. The proposed sewage disposal infrastructure connecting to the City's infrastructure is shown on the utility plan.
2. The proposed water supply infrastructure connecting to the City's infrastructure is shown on the utility plan.
3. The Tentative Map shows storm water infrastructure. A hydrology report will be required with the Final Map and Construction Plan submittal.
4. Utilities in addition to City utilities must be provided with construction plans required for Final Map submittal.
5. The City will not require a traffic impact study for the proposed subdivision.

**SECTION 3-3-9 GENERAL REQUIREMENTS FOR SUBDIVISION DESIGN:**

- A. Conformance with Master Plan: The proposed subdivision is in conformance with the Master Plan objectives for density and applicable zoning.
- B. Public Facility Sites: No public facility sites are proposed for dedication.
- C. Land Suitability: The area proposed for subdivision is suitable for the proposed development based on the findings in this report.

The proposed subdivision is in conformance with Section 3-3-9 of City code.



**SECTION 3-3-10 STREET LOCATION AND ARRANGEMENT:**

- A. Conformance with Plan: The proposed subdivision utilizes an existing section of Indian View Heights Drive for access.
- B. Layout: Street continuation through the proposed subdivision is not required.
- C. Extensions: No extensions are required as part of the proposed subdivision.
- D. Arrangement of Residential Streets: The arrangement of streets within the subdivision prevents outside traffic from utilizing the neighborhood for cut-through traffic.
- E. Protection of Residential Properties: There are no lots that have frontage or access from arterial streets. A note has been required on the Tentative Map that no lots shall front on Celtic Way, a Minor Collector.
- F. Parallel Streets: Consideration of street location is not required.
- G. Topography: The residential driveway has been designated to address the topography of the area.
- H. Alleys: No alleys are proposed.
- I. Half-Streets: There are no half-streets proposed.
- J. Dead-End Streets: There are no dead-end streets proposed. The driveway is designed to allow for appropriate turnaround areas for traffic, as well as fire trucks.
- K. Intersection Design: The proposed intersection with Indian View Heights Drive are code compliant.

The proposed subdivision is in conformance with Section 3-3-10 of City code.

**SECTION 3-3-11 STREET DESIGN:**

- A. Required Right-of-Way Widths: Indian View Heights Drive currently consists of the required 60 feet of right-of-way. No new streets are proposed.
- B. Street Grades: The proposed street grades are code compliant.
- C. Vertical Curves: The vertical curves are code compliant.
- D. Horizontal Alignment: The horizontal alignment of the driveway and intersection are code compliant.

The proposed subdivision is in conformance with Section 3-3-11 of City code.

**SECTION 3-3-12 BLOCK DESIGN:**

- A. Maximum Length of Blocks: The block design does not exceed the maximum length of a block and maximizes block length.
- B. Sidewalks or Pedestrian ways: The proposed sidewalks are code compliant. No other pedestrian ways are proposed.

The proposed subdivision is in conformance with Section 3-3-12 of City code.



**SECTION 3-3-13 LOT PLANNING:**

- A. Lot Width, Depth, and Area: The lots are in conformance with the specifications stipulated for the zoning in Elko City Code 3-2-5.
- B. Building Setback: The proposed subdivision, when developed, can meet setback requirements as stipulated in Elko City Code 3-2-5(G).
- C. Side Lot Lines: The side lot lines are generally at right angles to the interior driveway. Deviations occur on inside curves and are appropriate.
- D. Accessibility: The development abuts a public street. All residents will have access to Indian View Heights Drive.
- E. Prohibitions: No units shall have direct access to Indian View Heights Drive. All access is to be through the proposed driveway.

The proposed subdivision is in conformance with Section 3-3-13 of City code with the note added as part of section E (above).

**SECTION 3-3-14 EASEMENT PLANNING:**

- A. Utility Easements: Typical side and rear yard easements are already in place. No new easements are offered for dedication. Overhead utilities are not allowed within the subdivision.
- B. Underground Utilities: Overhead utilities are not allowed within the subdivision. The utility companies, at their discretion, may request a wider easement on the rear lot line.
- C. Lots Facing Curvilinear Streets: Overhead utilities are not allowed within the subdivision.
- D. Public Drainage Easement: Typical side and rear yard easements for drainage and/or utilities are already in place.
- E. Easement Land Not Considered and Considered in Minimum Lot Area Calculation: All calculations appear to be correct.
- F. Lots Backing Onto Arterial Streets: There are no lots proposed which back onto an arterial street.
- G. Water and Sewer Lines: The utilities are shown in the streets, within existing side or rear easements, and in the proposed driveway access. Sanitary sewer will tie into the existing city infrastructure near the northeast corner of the property.

The proposed subdivision is in conformance with Section 3-3-14 of City code.

**SECTION 3-3-15 STREET NAMING:**

No new streets are proposed as part of this project.

The proposed subdivision is in conformance with Section 3-3-15 of City code.

**SECTIONS 3-3-16 STREET LIGHT DESIGN STANDARDS:**

Conformance is required with the submittal of construction plans.



**SECTION 3-3-17 through 3-3-22 (inclusive):**

All referenced sections are applicable to Final Map submission, approval, and construction plans.

**SECTION 3-3-23 PARK LAND DEDICATIONS:**

There is no offer of dedication for park lands.

**SECTION 3-2-3 GENERAL PROVISIONS:**

Section 3-2-3(C)(1) of City code specifies use restrictions. The following use restrictions shall apply:

**Principal Uses:** Only those uses and groups of uses specifically designated as “principal uses permitted” in zoning district regulations shall be permitted as principal uses; all other uses shall be prohibited as principal uses.

**Accessory Uses:** Uses normally accessory and incidental to permitted principal or conditional uses may be permitted as hereinafter specified.

Other uses may apply under certain conditions with application to the City.

Section 3-2-3(D) states that: “No land may be used or structure erected where the land is held by the planning commission to be unsuitable for such use or structure by reason of flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, extreme topography, low bearing strength, erosion susceptibility, or any other features likely to be harmful to the health, safety, and general welfare of the community. The planning commission, in applying the provisions of this section, shall state in writing the particular facts upon which its conclusions are based. The applicant shall have the right to present evidence contesting such determination to the city council if he or she so desires, whereupon the city council may affirm, modify, or withdraw the determination of unsuitability.”

The proposed subdivision and development is in conformance with Section 3-2-3 of City code.

**SECTION 3-2-4 ESTABLISHMENT OF ZONING DISTRICTS:**

1. Section 3-2-4(B) Required Conformity to District Regulations: The regulations set forth in this chapter for each zoning district shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except as provided in this subsection.
2. Section 3-2-4(B)(4) stipulates that no yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title.

The proposed subdivision is in conformance with Section 3-2-4 of City code.



**SECTION 3-2-5(E) R – SINGLE FAMILY AND MULTIPLE FAMILY RESIDENTIAL:**

Section 3-2-5(E)(2) Principal Uses Permitted:

1. Adult care facility serving ten (10) or fewer.
2. Electric power substations, sewer lift stations, and water pump stations wherein service to district residents requires location within the district.
3. Multiple-family residential units, including a duplex, triplex, or a fourplex located on a single lot or parcel, provided area and setback requirements are met.
4. One single-family dwelling of a permanent character in a permanent location with each dwelling unit on its own parcel of land and provided all area and setback requirements are met.
5. Publicly owned and operated parks and recreation areas and centers.
6. Residential facility for groups of ten (10) or fewer.

The proposed subdivision and development is in conformance with Section 3-2-5(E)(2). Conformance with Section 3-2-5(E) is required as the subdivision develops.

**SECTION 3-2-5(G) RESIDENTIAL ZONING DISTRICTS AREA, SETBACKS, AND HEIGHT:**

1. Lot areas are shown.
2. Lot dimensions are shown. The lot dimensions are in conformance with Section 3-2-5(G) of City code.

The proposed subdivision and development is in conformance with Section 3-2-5(G) of City code.

**SECTION 3-2-17 TRAFFIC, ACCESS, PARKING, AND LOADING:**

1. Indian View Heights Drive is designated as a Residential Collector in the Master Plan. No new streets are being proposed as part of the proposal.
2. The proposed lots are large enough to develop the required off-street parking. Each townhouse unit will include a two-car garage within the individual lots. Additional guest parking will be provided in the common lot owned and maintained by the Homeowner's Association.
3. The access driveway is proposed to be more than the 75 feet required in Section 3-2-17(B)(3)(3).

The proposed subdivision and development is in conformance with Section 3-2-17 of City code. Conformance with Section 3-2-17 is required as the subdivision develops.

**SECTION 3-8 FLOOD PLAIN MANAGEMENT:**

The proposed subdivision and development is not located in a designated special flood hazard area and is in conformance with Section 3-8 of City Code.



**TITLE 9, CHAPTER 8 POST CONSTRUCTION RUNOFF CONTROL AND WATER QUALITY MANAGEMENT:**

Final design of the subdivision is required to conform to the requirements of this title. The Tentative Map storm drain infrastructure is shown through the area.

**OTHER:**

The following permits will be required for the project:

1. State storm water general permit: Required submittals to the City of Elko are a plan view showing the storm water controls, a copy of the Storm Water Pollution Prevention Plan (SWPPP) and a copy of the certified confirmation letter from the Nevada Department of Environmental Protection.
2. A Surface Area Disturbance (SAD) is required if the disturbed area is equal to or greater than five (5) acres. A copy of the SAD permit is required to be submitted to the City of Elko.
3. A street cut permit from the City of Elko.
4. A grading permit from the City of Elko.
5. All other applicable permits and fees required by the City of Elko.
6. The City of Elko also requires submittal of the plans to the individual utility companies before permits will be issued for the project.

**FINDINGS**

1. The proposed subdivision and development is in conformance with the Land Use component of the Master Plan.
2. The proposed subdivision and development is in conformance with the Transportation component of the Master Plan.
3. The proposed subdivision and development does not conflict with the Airport Master Plan.
4. The proposed subdivision does not conflict with the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012.
5. The property is not located within the Redevelopment Area.
6. The proposed subdivision and development are in conformance with the Wellhead Protection Program. The sanitary sewer will be connected to a programmed sewer system and all street drainage will be directed to a storm sewer system.



7. No zoning amendment is required for the proposed subdivision.
8. In accordance with Section 3-3-5(E)(2), the proposed subdivision and development will not result in undue water or air pollution based on the following:
  - a. There are no obvious considerations or concerns which indicate the proposed subdivision would not be in conformance with all applicable environmental and health laws and regulations.
  - b. There is adequate capacity within the City's water supply to accommodate the proposed subdivision.
  - c. The proposed subdivision and development will not create an unreasonable burden on the existing water system.
  - d. There is adequate capacity at the Water Reclamation Facility to support the proposed subdivision and development.
  - e. The proposed subdivision and development will be connected to the City's programed sanitary sewer system. Therefore, the ability of soils to support waste disposal does not require evaluation prior to Tentative Map approval.
  - f. Utilities are available in the immediate area and can be extended for the proposed development.
  - g. Schools, fire and police, and recreational services are available throughout the community.
  - h. The proposed subdivision and development will not cause unreasonable traffic congestion or unsafe conditions with respect to existing or proposed streets.
  - i. The area is not located within a designated flood zone. Concentrated storm water runoff has been addressed as shown on the grading plan.
  - j. The proposed subdivision and development is not expected to result in unreasonable erosion or reduction in the water-holding capacity of the land thereby creating a dangerous or unhealthy condition.
9. The proposed subdivision submittal is in conformance with Section 3-3-6 of City code.
10. The proposed subdivision is in conformance with Section 3-3-9 of City code.
11. The proposed subdivision is in conformance with Section 3-3-10 of City code.
12. The proposed subdivision is in conformance with Section 3-3-11 of City code.
13. The proposed subdivision is in conformance with Section 3-3-12 of City code.
14. The proposed subdivision is in conformance with Section 3-3-13 of City code.
15. The proposed subdivision is in conformance with Section 3-3-14 of City code.
16. The proposed subdivision is in conformance with Section 3-3-15 of City code.
17. The proposed subdivision and development is in conformance with Section 3-2-3 of City code.



18. The proposed subdivision and development is in conformance with Section 3-2-4 of City code.
19. The proposed subdivision and development is in conformance with Section 3-2-5(E)(2). Conformance with Section 3-2-5(E) is required as the subdivision develops.
20. The proposed subdivision and development is in conformance with Section 3-2-5(G) of City code.
21. The proposed subdivision and development is in conformance with Section 3-2-17. Conformance with Section 3-2-17 is required as the subdivision develops.
22. The proposed subdivision and development is not located in a designated flood hazard area and is in conformance with Section 3-8 of City code.
23. The proposed subdivision design shall conform to Title 9, Chapter 8 of City code.

**STAFF RECOMMENDATION:**

Staff recommends this item be **conditionally approved** with the following conditions:

**Development Department:**

1. Conditional Use Permit 11-19 must be approved and all conditions be met.
2. The subdivider is to comply with all provisions of the NAC and NRS pertaining to the proposed subdivision.
3. Tentative Map approval constitutes authorization for the subdivider to proceed with preparation of the Final Map and associated construction plans.
4. The Tentative Map and construction plans must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.
5. Tentative Map approval does not constitute authorization to proceed with site improvements.
6. The applicant must submit an application for Final Map within a period of four (4) years in accordance with NRS.360(1)(a). Approval of the Tentative Map will automatically lapse at that time.
7. A soils report is required with Final Map submittal.
8. A hydrology report is required with Final Map submittal.



9. Final Map construction plans are to comply with Chapter 3-3 of City code.
10. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.
11. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.

**Fire Department:**

1. Work with the church and good relations for the gate(s) to be placed to the back of the new subdivision for emergency access.
2. Gates to all backyards for emergency access to be constructed.
3. Keeping an isle for emergency responders to access if needed to the rear of all properties.





# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

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December 27, 2019

Kelly Builders, LLC  
209 Raptor Court  
Elko, NV 89801

Re: Conditional Use Permit No. 11-19 & Tentative Map No. 13-19

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

CC: Lana Carter – [lanalcarter@live.com](mailto:lanalcarter@live.com)



CUP 11-19 + TM 13-19 Kelly Builders, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001952013	ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001952012	ARNOLD BECK CONSTRUCTION INC		247 GREENCREST DR	SPRING CREEK NV	89815-5447
001530019	BRENSEL, ROBERT A ET AL		1550 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2896
001530012	CHRISTIAN CENTER OF ELKO		1555 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2691
001530005	DIANA ARMS II ASSOC	C/O WESTSTATES PROPERTY	PO BOX 2688	ELKO NV	89803-2688
001530025	ELKO CITY OF NO PC.		1755 COLLEGE AVE	ELKO NV	89801
001530013	ELKO ENGLISH CONGREGATION OF JE	C/O GROUNDWATER FEE (I	486 SPRING CREEK PKWY	SPRING CREEK NV	89815-5320
001530017	GOULDING, BRENT & SADIE		1840 GRISWOLD DR	ELKO NV	89801-2651
001530009	GRANT, THOMAS R & JODIE L		1680 INDIAN VIEW HEIGHTS DR	ELKO NV	89801-2667
001530016	HOEM, KAREN E ET AL		1850 GRISWOLD DR	ELKO NV	89801-2651
001954035	JIMENEZ, CENNI R & KASI M		1860 GRISWOLD DR	ELKO NV	89801
00609D001	US DEPT OF THE INTERIOR BUR OF	C/O BLM	3900 E IDAHO ST	ELKO NV	89801-4692
001530011	WAHRENBROCK, CINDY HOPE		2072 RUBY VIEW DR	ELKO NV	89801-2649
001530018	WAHRENBROCK, JON A		1800 GRISWOLD DR UNIT 1	ELKO NV	89801-1625

12

Post Marked 12/27/19



## **NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, January 7, 2020 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

- Conditional Use Permit No. 11-19, filed by Kelly Builders, LLC which would allow for a town home development within an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the south side of Indian View Heights at the southern terminus of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)
- Tentative Map No. 13-19, filed by Kelly Builders, LLC, for the development of a subdivision entitled The Town Homes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 lots for residential development and 1 common lot within the R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the south side of Indian View Heights at the southern terminus of Griswold Drive. (1553 Indian View Heights Drive - APN 001-530-026)

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

**ELKO CITY PLANNING COMMISSION**



**Carter Engineering, LLC**  
**Civil Engineering**

P. O. Box 794  
Elko, Nevada 89803  
775-397-2531



**Transmittal Letter**

Date: December 20, 2019

To: Michele Rambo, AICP  
Development Manager, City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: The Town Homes at Ruby View - Revised Tentative Map and Conditional  
Use Site Plan

Description of Attachments:

1. 3 Copies of the Revised CUP Site Plan (24"x36")
2. 3 Copies of the Revised Tentative Map (24"x36")

Remarks:

Hello Michele,

Please accept the attached revised plans for the CUP and Tentative Map for The Town Homes at Ruby View. We appreciate everyone's help throughout this process.

Thanks - Lana L Carter

Cc: Wade and Laura Kelly, Kelly Builders, LLC

**RECEIVED**

DEC 20 2019





## ADDENDUM # 2



1 This addendum to the Offer and Acceptance Agreement dated 01/30/2019, regard g  
2 the property located at 1553 Indian View Heights Elko NV 89801  
3 between Kelly Builders LLC  
4 Christian Center of Elko  
5 is being attached this date 03/27/2019 and becomes effective when signed by all parties.

6 In reference to Addendum 1 lines 9-15 and the Exhibit 1 regarding deeded access, the City of Elko will  
7 not allow for a shared access point on proposed development. Buyer requests referenced Addendum 1  
8 line items 9-15 to be omitted from the contract.  
9

10 Buyer has completed their due diligence and during that due diligence discovered that there is not only  
11 the water line that goes through the middle of the property but also a gas line and that both must be  
12 relocated and also that with any development of the property the City of Elko will require the entrance f  
13 the church to be re-built at the developers expense.  
14

15 Attached is an estimate from Ruby Dome and Carter Engineering of the associated expenses for the  
16 relocation of water line, gas line and rebuilding of the approach/entrance as well as Carter Engineering  
17 drawings of the entrance including the requirements from the City of Elko.  
18

19 Because of the above expenses the buyer is still interested in the property at a Purchase price of  
20 \$75,000.00 to off set some of the new expenses discovered during the due diligence period.  
21

22 At a purchase price of \$75,000.00 builder will, concurrent with the development of the property do the  
23 entrance and water line/gas line relocation work as per the attached drawings.  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

35 All other terms to remain the same.  
36

37 Dated: 3-27-19 Time: 5:39 pm

38 BUYER/TENANT: [Signature]  
39 Kelly Builders LLC

40 BUYER/TENANT: \_\_\_\_\_

41 BUYER/TENANT: \_\_\_\_\_

42 BUYER/TENANT: \_\_\_\_\_

43 BUYER/TENANT: \_\_\_\_\_

Dated: 4-3-19 Time: 12:11 pm

SELLER/OWNER: [Signature]  
Christian Center of El

SELLER/OWNER: \_\_\_\_\_

SELLER/OWNER: \_\_\_\_\_

SELLER/OWNER: \_\_\_\_\_





# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
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1751 College Avenue • Elko, Nevada 89801 • (775) 777-7160 • Fax (775) 777-7219

---

December 5, 2019

NV Energy  
**Mr. Robert Lino**  
4216 Ruby Vista Dr.  
Elko, NV 89801-1632

SUBJECT: Tentative Map No. 1-20/The Town Homes at Ruby View

Dear Mr. Lino:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Town Homes at Ruby View subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their January 7, 2020 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

Application Number  
was switched from  
1-20 to 13-19 after  
letters were sent.





# CITY OF ELKO

## Planning Department

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Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

---

December 5, 2019

Southwest Gas Corporation  
**Engineering Department**  
PO Box 1190  
Carson City, NV 89702

SUBJECT: Tentative Map No. 1-20/The Town Homes at Ruby View

To Whom It May Concern:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Town Homes at Ruby View subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their January 7, 2020 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures



I-W. Tentative Map 1-20 and Tentative Map 14-19

Amanda Marcucci <Amanda.Marcucci@swgas.com>

Mon 12/16/2019 7:01 AM

To: Shelby Archuleta <sarchuleta@elkcitynv.gov>

2 attachments (5 MB)

(14-19 Plans.pdf, 14-19 Plans.pdf)

Hi Shelby,

I don't have any conflicts with Tentative Map 1-20 or Tentative Map 14-19.

Amanda



Amanda Marcucci, PE | Supervisor/Engineering

PO Box 1190 | 24A-580 | Carson City, NV 89702-1190  
direct 775.887.2871 | mobile 775.430.0723 | fax 775.882.6072  
[amanda.marcucci@swgas.com](mailto:amanda.marcucci@swgas.com) | [www.swgas.com](http://www.swgas.com)

From: Shelby Archuleta <sarchuleta@elkcitynv.gov>  
Sent: Tuesday, December 10, 2019 3:24 AM  
To: Amanda Marcucci <Amanda.Marcucci@swgas.com>  
Subject: EXTERNAL: Re: Tentative Map 1-20 and Tentative Map 14-19

Amanda,  
Sorry about that. Here are the PDFs.  
Let me know if you need anything else.

Shelby Archuleta

Planning Technician

City of Elko

Planning Department

Ph (775) 777-7160





# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

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December 5, 2019

Satview Broadband  
**Mr. Steve Halliwell**  
3550 Barron Way, Suite 13A  
Reno, NV 89511

SUBJECT: Tentative Map No. 1-20/The Town Homes at Ruby View

Dear Mr. Halliwell:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Town Homes at Ruby View subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their January 7, 2020 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures





# CITY OF ELKO

## Planning Department

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Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

---

December 5, 2019

Frontier Communications  
**John Poole**  
1520 Church Street  
Gardnerville, NV 89410

SUBJECT: Tentative Map No. 1-20/The Town Homes at Ruby View

Dear Mr. Poole:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Town Homes at Ruby View subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their January 7, 2020 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures





# CITY OF ELKO

## Planning Department

Website: [www.elkocitynv.gov](http://www.elkocitynv.gov)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

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December 5, 2019

Elko County School District

**Mr. Todd Pehrson**

PO Box 1012

Elko, NV 89803

SUBJECT: Tentative Map No. 1-20/The Town Homes at Ruby View

Dear Mr. Pehrson:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Town Homes at Ruby View subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their January 7, 2020 meeting.

Please submit written comments to the Elko City Planning Department. If we do not receive written comments prior to the scheduled meeting, we will assume you have no concerns regarding this application.

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures





**City of Elko – Development Department**  
**1755 College Avenue**  
**Elko, NV 89801**  
**Telephone: 775.777.7210**  
**Facsimile: 775.777.7219**

December 4, 2019

Carter Engineering, LLC  
Attn: Lana Carter  
P.O. Box 794  
Elko, NV 89803

Re: Townhomes at Ruby View – Complete Submittal

Dear Ms. Carter:

The City of Elko has reviewed your Tentative Map application materials for the Townhomes at Ruby View (submitted November 26, 2019) and has found them to be complete. We will now begin processing your application by transmitting the materials to other City departments for their review. You may receive further comments or corrections as these reviews progress.

I will keep you updated on the status of your application, but please feel free to contact me at (775) 777-7217 if you have any questions.

Sincerely,

Michele Rambo, AICP  
Development Manager  
mrambo@elkocitynv.gov

CC: Kelly Builders, LLC  
209 Raptor Court  
Elko, NV 89801

City of Elko – File



**Carter Engineering, LLC**  
**Civil Engineering**

P. O. Box 794  
Elko, Nevada 89803  
775-397-2531



**Transmittal Letter**

Date: November 26<sup>th</sup>, 2019

**RECEIVED**

NOV 26 2019

To: Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, Nevada 89801

From: Lana L. Carter, P.E.  
Carter Engineering, LLC

Regarding: The Town Homes at Ruby View - Tentative Map Submittal

Description of Attachments:

- ✓ 1. Application
- ✓ 2. Fee (Check 1619 \$1,025.00)
- ✓ 3. 3 Sets of the Tentative Map and Floor Layout (24"x36")
- ✓ 4. 1 Set of the Tentative Map and Floor Layout (8.5"x11")
- ✓ 5. Hydrology Study
- 6. CCR's-HOA Draft documents
- 7. PDF copy of the entire submittal on a jump drive.

Remarks:

Hello Cathy,

Please accept the attached submittal for The Town Homes at Ruby View. It is my understanding that the State submittal will be made after Planning Commission approval and that it is desired to wait until then to prepare the State materials and fees allowing any changes due to the City's review process to be included within the State submittal package. We appreciate everyone's help throughout this process.

Thanks - Lana L Carter

Cc: Wade and Laura Kelly, Kelly Builders, LLC





## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 \* (775) 777-7219 fax

### APPLICATION FOR TENTATIVE MAP (STAGE II) APPROVAL

**\*\*PRIOR TO SUBMITTING THIS APPLICATION, PRE-APPLICATION (STAGE I) MUST BE COMPLETE\*\***

**APPLICANT(s):** Kelly Builders, LLC

**MAILING ADDRESS:** 209 Raptor Court, Elko Nevada 89801

**PHONE NO (Home):** \_\_\_\_\_ **(Business):** 775-777-3217

**EMAIL:** kellybuilders@frontiernet.net

**NAME OF PROPERTY OWNER (If different):** \_\_\_\_\_

*(Property owner consent in writing must be provided)*

**MAILING ADDRESS:** \_\_\_\_\_

**LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):**

**ASSESSOR'S PARCEL NO.:** 001-530-026

**Address** 1553 Indian View Heights Drive

**Lot(s), Block(s), & Subdivision** \_\_\_\_\_

**Or Parcel(s) & File No.** Parcel 1 of file No. 707194

**APPLICANT'S REPRESENTATIVE:** Carter Engineering, LLC (Lana L. Carter)

**MAILING ADDRESS:** P.O. Box 794, Elko Nevada 89803

**PHONE NO:** 775-397-2531

**EMAIL:** lanalcarter@live.com

### **FILING REQUIREMENTS:**

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 42 days (6 weeks) prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month), and must include the following:

1. One .pdf of the entire application, and three (3) 24" x 36" copies of the tentative map, grading plan, and utility plan folded to a size not to exceed 9"x12" provided by a properly licensed surveyor or civil engineer, and any required supporting data, prepared in accordance with Section 3-3-5(C) and 3-3-6 of the Elko City Code (see attached checklist).
2. A Development Master Plan when, in the opinion of the Planning Commission, the proposed subdivision possesses certain characteristics, such as size, impact on neighborhoods, density, topography, utilities, and/or existing and potential land uses, that necessitate the preparation of a Development Master Plan.
3. Applications/fees for State of Nevada review. (See Page 5)

**Fee:** \$750.00 + \$25.00 per lot including remainder parcels; non-refundable.

**Other Information:** The applicant is encouraged to submit other information and documentation to support the request.

RECEIVED



**PROJECT DESCRIPTION OR PURPOSE:**

This project is the development of 10 town homes on individually owned lots. The lots shall be the perimeter of the town home structure and a rear yard. The remainder shall be common area controlled by the home owners association (HOA). The proposed water, sanitary sewer and culverts are to be private and owned by the HOA.

The the paved driveways, trash enclosure, concrete parking pads, individual private sidewalks to homes will also be private and owned by the HOA. One water meter is proposed and the utility service will be paid by the HOA.

The proposed landscape and irrigation service will be owned by the HOA as well. Each unit will have a two car garage and a two car parking pad. There are nine additional guest parking spaces provided. This project requires a conditional use permit (CUP). The CUP is being submitted along with the Tentative Map application.

(Use additional pages if necessary)



### Tentative Map Checklist as per Elko City Code 3-3-6

Date	Name
<b>Identification Data</b>	
✓	Subdivision Name ✓
✓	Location and Section, Township and Range ✓
✓	Reference to a Section Corner or Quarter-Section Corner ✓
✓	Name, address, phone number, and email of subdivider ✓
✓	Name, address, phone number, and email of engineer/surveyor ✓
✓	Scale, North Point and Date of Preparation ✓
✓	Dates of Revisions ✓
✓	Location maps ✓
✓	Legal description of boundaries ✓
<b>Existing Conditions Data</b>	
✓	2' contours on city coordinate system ✓
	Location of Water Wells <span style="border: 1px solid black; padding: 2px;">none in area</span> ✓
✓	Location of Streams, private ditches, washes and other features ✓
✓	Location of Designated flood zones ✓
✓	The Location, widths and Names of all platted Streets, ROW ✓
✓	Municipal Corporation Lines ✓
✓	Name, book and page numbers of all recorded plats ✓
✓	Existing Zoning Classifications in conformance with Master Plan Land Use ✓
✓	Zoning of Adjacent Properties ✓
✓	Dimensions of all tract boundaries, gross and net acreage ✓
<b>Proposed Conditions Data</b>	
✓	Street Layout, location, widths, easements ✓
	Traffic Impact Analysis <span style="border: 1px solid black; padding: 2px;">Not required</span> ✓
✓	Lot Layout, including dimensions of typical lots ✓
	Corner Lot Layout <span style="border: 1px solid black; padding: 2px;">No corner Lots</span> ✓
✓	Lot layout on Street Curves ✓
✓	Each lot numbered consecutively ✓
✓	Total number of lots ✓
✓	Location, Width and proposed use of easements ✓
	Location, extent and proposed use of all land to be dedicated ✓ <span style="border: 1px solid black; padding: 2px;">None</span>
	Location and boundary of all proposed zoning districts ✓ <span style="border: 1px solid black; padding: 2px;">No zone changes</span>
✓	Draft of proposed deed restrictions ✓
✓	Preliminary Grading Plan ✓
✓	Conceptual cut and fill ✓
✓	Estimated quality of material to be graded ✓
<b>Proposed Utilities</b>	
✓	Sewage Disposal, design for sewage disposal ✓
✓	Water Supply, Evidence of adequate volume and quality ✓
✓	Storm Drain, Preliminary Calculations and Layout ✓
✓	Telephone, Power, Gas, Television ✓
	Intent to Serve Letter from Utility Department ✓ <span style="border: 1px solid black; padding: 2px;">after council approval</span>



**By My Signature below:**

- ☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.
- ☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)
- ☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.
- ☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.
- ☒ I have carefully read and completed all questions contained within this application to the best of my ability.

**Applicant / Agent** Kelly Builders LLC  
(Please print or type)

**Mailing Address** 209 Raptor Ct  
Street Address or P.O. Box  
Elko, NV 89801  
City, State, Zip Code

Phone Number: 775 777 3217

Email address: Kellybuilders@frontiernet.net

**SIGNATURE:** Laura Kelly

**FOR OFFICE USE ONLY**

10 Lots + Common Area =  $11 \times \$25 = \$275$   
 $+ 750$   
 $\$1,025$

**File No.:** 13-19 **Date Filed:** 11/26/19 **Fee Paid:** \$1025 **CL#** 11019



Draft CCR's and HOA document

**DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS**

**THE TOWNHOMES AT RUBY VIEW**

DRAFT



**DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS  
THE TOWNHOMES AT RUBY VIEW**

**A Planned Community in Elko, Nevada.**

THIS DECLARATION (the "Declaration") is made this \_\_\_\_ day of November 2019, by Kelly Builders, LLC, A Nevada limited liability company (the "Declarant"), in its capacity as the owner and developer of THE TOWNHOMES AT RUBY VIEW, a Planned Community located in the City of Elko, County of Elko, State of Nevada.

**ARTICLE I**

**PURPOSE AND EFFECTUATION**

- 1.01 Purpose.** The purpose of this instrument is to provide for the preservation of the values of Lots and residential Units within THE TOWNHOMES AT RUBY VIEW (the "Development"), a Planned community in Elko, Nevada, and for the maintenance of the driveways, amenities, open spaces, landscaping all other Common Areas therein.
- 1.02 Effectiveness.** From and after the effective date hereof: (a) Each part of the Development and each Lot and Unit lying within the boundaries of the Development shall constitute constituent parts of a single planned community; (b) The Development shall consist of the Lots and of the Common Areas which are described and depicted on the plat and in this Declaration; (c) The Declaration for the Development shall consist of this document as the same may be modified, amended, supplemented, or expanded in accordance with the provisions thereof; and (d) The Plat of the Development shall consist of the instrument filed for record in the Office of the Elko County Recorder, Elko, Nevada, as the same may be amended.

**ARTICLE II**

**DEFINITIONS**

When used in this Declaration each of the following terms shall have the meaning indicated:

- 2.01 Articles** shall mean and refer to the Articles of Incorporation of the Association, which are or shall be filed with Nevada Secretary of State and in the Office of the Ombudsman for Common Interest Communities of the Nevada Division of Real Estate, State of Nevada, as amended from time to time.
- 2.02 Assessment** shall mean the amount, which is to be levied and assessed against each Lot and paid by each Owner to the Association for Association expenses.
- 2.03 Association** shall mean **THE TOWNHOMES AT RUBY VIEW HOMEOWNERS ASSOCIATION**, a Nevada nonprofit corporation, and its successors and assigns.
- 2.04 Board** shall mean the Board of Directors for the Association.



**2.05 Bylaws** shall mean and refer to the Bylaws of the Association as set forth and embodied in this Declaration in Articles XI, XII, XIII.

**2.06 Common Areas** shall mean all portions of the Development except the Lots and Units, and shall include all property owned by the Association for the common use and enjoyment of the Owners such as all private undedicated roadways, driveways, parking, amenities, open spaces, landscaping, structural common area, if any, and the like, together with all easements appurtenant thereto, as reflected on the plat.

**2.07 Declarant** shall mean KELLY BUILDERS LLC, a Nevada limited liability company, its successors and assigns, if any, as developer of the Development.

**2.08 Declaration** shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of THE TOWNHOMES AT RUBY VIEW, A Nevada Planned Community as the same may be supplemented or amended from time to time.

**2.09 Development** shall mean the Planned Community known as THE TOWNHOMES AT RUBY VIEW, a Planned Community, as it exists at any given time.

**2.10 Limited Common Areas** shall mean any Common Areas designated for exclusive use by the Owner of a particular Unit. Limited Common Areas that are identified on the Plat with the same number or other designation by which a Unit is identified thereon shall be Limited Common Area for the exclusive use of the Owner of the Unit bearing the same number or designation.

**2.11 Lot** shall mean and refer to any of the separately numbered and individually described parcels of land within the Development as designated on the Plat intended for single-family residential use.

**2.12 Managing Agent** shall mean any person or entity appointed or employed as Managing Agent by the Association.

**2.13 Mortgage** shall mean any recorded first mortgage or first deed of trust encumbering a Lot; and Mortgagee shall mean any mortgage or beneficiary under a mortgage.

**2.14 Owner** shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Elko County, Nevada) of a fee or undivided fee interest in any Lot, and any contract purchaser of any Lot. Notwithstanding any applicable theory relating to mortgages, no Mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Lot owned by it. Multiple owners of a particular Lot shall be jointly and severally liable to all responsibilities of an Owner.

**2.15 Plat** shall mean and refer to the subdivision plat covering the Property entitled "THE TOWNHOMES AT RUBY VIEW," ACCEPTED BY THE City of Elko, and recorded as File \_\_\_\_\_ on \_\_\_\_\_, in the Office of the County Recorder of Elko County, Nevada.

**2.16 Property** shall mean all land covered by this Declaration, including Common Areas and Lots. The Property shall consist of the land described in Section 3.01 of Article III hereof.

**2.17 Reimbursement Assessment** shall mean a charge against a particular Owner or his Lot for the purpose of reimbursing the Association for costs incurred in bringing the Owner or his Lot or Unit into



compliance with the provisions of this Declaration, the Articles, Bylaws or rules and regulation of the Association, or any other charge designated as a Reimbursement Assessment in this Declaration the Articles, Bylaws or rules and regulations of the Association, together with costs, interest, attorney's fees and other charges payable by such Owner pursuant to the provision of this Declaration.

**2.18 Unit** it shall mean a structure which is designed, constructed and intended for use or occupancy as a single family residence on a Lot, together with all improvements located on the same Lot and used in conjunction with such residence, including anything located within or without said Unit (but designated and designed to serve only that Unit) such as patios decks, appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, but specifically excluding roofs and exterior surfaces of Units (and/or building in which Units exist) and patio fences, all of which roofs, surfaces and fences shall be treated as Limited Common Areas designated for the exclusive use of the particular Units to which such surfaces appertain, even though not designated as Limited Common Areas on the Plat.

### **ARTICLE III**

#### **PROPERTY DESCRIPTION AND ANNEXATION**

**3.01 Submission.** The Property which initially is and shall be held transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property in the City of Elko, County of Elko, State of Nevada:

Legal Description and any exceptions to follow

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above described parcel of real property, whether or not the same are reflected on the Plat.

RESERVING UNTO DECLARANT, however, such easements and rights on ingress and egress over, across, through, and under the said property and any improvements (including buildings) now or hereafter constructed thereon as may be reasonably for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration:: (i) to construct and complete each of the buildings and Units and all of the other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonable necessary or proper in connection therewith; and (ii) to improve portions of the said property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate. If, pursuant to the foregoing reservations, the said property or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservations hereby effected shall, unless sooner terminated in accordance with their terms, expire five (5) years after the date on which this Declaration is filed for record in the office of the County Recorder of Elko County, Nevada.



ALL OF THE FOREGOING ISSUBJECT TO all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations of record and is incident thereto; all instruments of record which affect the above-described real property of any portion thereof, including, without limitation, an Mortgage (and noting in this paragraph shall be deemed to modify or ament such Mortgage); all visible exists and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plan or existing; an easement for each and every pipe, line cable, wire, utility line, or similar facility which traverse or partially occupies the said real property (including buildings) at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of and replacement of all such pipes, lines, cable, wires utility lines, and similar facilities; AND TO EACH OF THE COVENANTS, EASEMENTS, CONDITIONS ND RESTRICIONS CONTAINED IN THIS DECLARATION.

**3.02 Division of Lots.** The Development is hereby divided into ten (10) Lots, as set forth and described on the Plat, with appurtenant and equal rights and easements of use and enjoyment in and to the Common Areas, as well as appurtenant obligations pertaining to assessments, maintenance, etc., all as set forth in this Declaration

#### **ARTICLE IV**

##### **DUTIES AND OBLIGATIONS FO OWNERS**

**4.01 Maintenance and Repairs.** Each Owner shall at his own cost maintain his Lot and any improvements constructed thereon in good repair at all times, provided that Unit exteriors, roof, and patio fences shall be maintained and repaired by the Association as provided in Section 12.01 € of this Declaration. In the event of the damage or destruction of any Unit, the Owner of the Lot on which such Unit is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed building in the Development. The painting or repainting, remodeling, rebuilding or modification of any Unit exteriors or parts thereof must be submitted to and approved by the Architectural Control committee pursuant to it procedures. Notwithstanding the obligations of the Association to maintain and repair Unit exteriors, roofs and patio fences as provided herein, no Owner shall openly or wantonly neglect or fail to help keep such items in good and attractive condition.

**4.02 Insurance.** Notwithstanding any insurance coverage required to be provided herein by the Association, each Owner shall procure and maintain in force hazard insurance on their Unit as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances (See also 8.02 of this Declaration).

**4.03 Assessments and Rules Observance.** Each Owner shall be responsible for the prompt payment of any Assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time. Owners in violation of the provisions of this Section 4.03 will not be deemed to be in good standing for Association voting purpose.



**4.04 Transfer of Interests.** Except for obligations already accrued, an Owner who, for other than purposes of security, transfers all of his interests in his Lot to another, either voluntarily or by operation of law, shall be relieved by all obligations under this Declaration, following such transfer.

## **ARTICLE V**

### **PROPERTY RIGHTS AND CONVEYANCES**

**5.01 Easement Concerning Common Areas.** Each Lot shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas for their intended purposes. Such right and easement shall be appurtenant to and shall pass with title to each Lot and shall in no event be separated therefrom.

**5.02 Form of Conveyancing; Leases.** Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

THE TOWNHOMES AT RUBY VIEW, a Planned Community in Elko, Nevada, SUBJECT TO the "Declaration of Easements, Covenants, Conditions and Restrictions of THE TOWNHOMES AT RUBY VIEW, a Planned Community in Elko, Nevada, recorded in the Office of the Elko County Recorder as Document No. \_\_\_\_\_ (as said Declaration may have heretofore been amended or supplemented), TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented)

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

**5.03 Ownership and Transfer of Title to Common Areas.** Concurrent with or immediately following the recordation of this Declaration and the Plat, Declarant shall convey to the Association title to the various Common Areas free and clear of all liens other than the lien of current general taxes and the lien of any nondelinquent assessments, charges, or taxes imposed by governmental or quasi-governmental authorities. All sewer laterals will be owned, operated and maintained by the Association.

**5.04 Limitation on Easement.** Each Lot's appurtenant right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) The right of the Association to govern by reasonable rules and regulations the use of the Common Areas so as to provide for the enjoyment of the Common Areas in a manner consistent with the collective rights of all the Owners;
- (b) The right of the City of Elko, Nevada any any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street or driveway, parking area, walkway, or open area contained within the



Common Areas for the purpose of providing police and fire protection and providing any other governmental or municipal service; and

(c) The right of the Association to dedicate or transfer any part of the common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association; provided that such dedication or transfer must first be assented to in writing by (i) the holder of each and every Mortgage and encumbers any Lot and (i) the Owners of Lots to which at least sixty percent (60%) of the total votes in the Association appertain.

**5.05 Utility Easements.** Each Lot is subject to appurtenant easements for underground lines for utility purposes under and through such portions of the Common Areas as are comprised of roads, walkways, and landscaped areas. If any Owner utilities such easement rights with respect to his Lot or Unit, he shall be responsible for the restoration to its former state of any portion of the Common Areas, which have been disturbed or damaged as a result.

**5.06 Easements for Encroachments.** If any structure or Unit improvement (including without limitation, roof overhangs) constructed on any Lot whether or not constructed in replacement of the structure or improvement previously located thereon (so long as such structure or improvement is in substantially the same configuration and location as such prior structure or improvement) now or hereafter encroaches upon any other Lot or upon any portion of the common Areas, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure (including without limitation, roof overhangs) on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to substantially duplicate the location and configuration of the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Areas due to the reconstructed structures being in a slightly different location than its predecessor shall be permitted; and valid easements for such encroachments and maintenance thereof, so long as they continue, shall exist.

## **ARTICLE VI**

### **USE RESTRICTIONS**

**6.01 Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Units set forth herein.

**6.02 Residential Use.** The Property is zoned residential, and each Lot and Unit is restricted to single-family residential use pursuant to applicable provisions of Elko City Code. Each Lot, Unit and Owner are subject to the uses and restrictions imposed by such zoning, including occupancy and parking, and no Lot or Unit shall be used, occupied, or altered in violation of any ordinance or so as to create a nuisance or to interfere with the rights of any other Owner.

**6.03 Use Restrictions.** All activity on the Property is subject to the following use restrictions, and to any additional use restrictions, which may, from time to time, be adopted by the Board pursuant to Section 12.03 of this Declaration:

(a) **Private Single-Family Residence Use.** No Unit shall be used except for residential single-family purposes. No Unit or any part thereof shall be used or occupied by any persons not



coming within the definition of "Family" as such term is defined and intended in the Elko City Code as of the date hereof provided further, however, that no more than (3) unrelated persons may live together as a group in a single household in a dwelling Unit as therein defined.

(b) **Rental or Lease of Unit.** No rental or lease of any Unit shall be for less than the whole thereof.

(c) **Business Use.** No resident may operate a commercial trade or business in or from his Unit with employees of any kind or with customers who are not residents of the Development, or which create or maintain a nuisance. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Unit. No commercial trade or business may be conducted in or from a Unit unless (a) the existence or operation of the business activity is not apparent or detectable by sign, sound or smell from outside the residence; (b) the business activity conforms to all home occupation ordinances and zoning requirements; (c) the business activity does not involve persons coming onto the Property who do not reside in the Development or door-to-door solicitation of residents of the Development; (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development; (e) the operator has a city issued business license; and (f) the resident has obtained the prior written consent of the Board. Notwithstanding the foregoing, the leasing of a Unit shall not be considered a trade or business within the meaning of this subsection.

(d) **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Property is governed and regulated as follows:

- 1) **Parking Rules.** The parking rules and regulations adopted by the Board, as they may be amended from time to time.
- 2) **Denial of Access.** No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Unit or to create an obstacle or potentially dangerous condition.
- 3) **Repairs.** No Resident shall repair or restore any vehicle of any kind in, on or about the Property, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a property repair facility.
- 4) **Garages.** No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed. All garages shall be used primarily for the parking and storage of vehicles.
- 5) **Open Parking.** Any parking in the open parking spaces of the Common Areas shall be limited to residents and their guests. Parking for guests within the common Areas is limited to two (2) consecutive days or no more than two (2) days in any seven-day (7) period. Residents are encouraged to park their vehicles in their garages.



Residents may park in the open parking spaces of the Common Areas but shall not allow a resident's vehicle to stand in an open parking space for more than 48 hours without moving the vehicle.

6) **Damaged Vehicles.** All motor vehicles parked so as to be visible from the street or another Unit must be undamaged (less than \$1,000 to repair) in good mechanical condition, registered, and licensed.

7) **Storage of Vehicles.** Except as otherwise expressly permitted, motor vehicles may not be "stored" so as to be visible from the street or another Unit. This includes by way of illustration, but not limitation, any unregistered, unlicensed, abandoned, disabled, or damaged (more than \$1,000 to repair) motor vehicles.

8) **Recreational, Commercial and Oversized Vehicles.** Except for purposes of loading or unloading passengers or supplies, or as otherwise expressly permitted, no oversized vehicles (vehicles that do not fit within a standard parking stall), recreational vehicles, commercial vehicles, watercraft, or trailers may be parked or stored within the Property.

9) **Towing.** Vehicles parked in violation of this Declaration may be towed by the Association as permitted under NRS 116.310 (s) at the owner's sole risk and expense.

10) **Emergency, Law Enforcement, and Public Utility Service Vehicles.** No restriction under this Declaration nor any rule or regulation adopted by the Board shall prohibit an emergency services vehicle, law enforcement vehicle or public utility service vehicle from accessing or parking within the Development as required under NRS 116.350(3).

(e) **Garbage and Refuse Disposal.** All trash, garbage, debris, rubbish and other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

(f) **Aerials, Antennas, and Satellite Systems.** All exterior aerials, antenna and satellite dishes (collectively "antenna") must be positioned so that they are screened from view from the street. Satellite dishes must also be positioned in location wired for installation. No antenna shall be erected, maintained or used in, on or about any Unit, outdoors and above ground, whether attached to or on top of any building, structure, Unit, or otherwise, upon the Property without the prior written consent of the Board, which shall not be unreasonably withheld. If there is a conflict between this subsection and the FCC guidelines, the latter shall in all respects govern and control. In making its decision, the Declarant and/or ARC shall abide by and be subject to all relevant local, state and federal law, including but not limited to all FCC guidelines, rules and regulation as they may be amended or supplemented from time to time.

(g) **Animals and Pets.** Up to two (2) household pets as that term is defined by Elko City Code per Unit are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Property and not in a cage or on a leash and



under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; or (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property. In addition to the foregoing, large animals over 60 pounds are not allowed. No pets, livestock or poultry of any kind may be commercially bred on the Property.

(h) **Laws.** Nothing shall be done, or kept in on or about the Property or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(i) **Signs.** Except as provided under NRS 116.325, no signs, billboards, or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot or Unit except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Lot. Signs advertising a Lot or Unit for rent or for lease are strictly prohibited. Provided, however, this restriction does not apply to and is not binding upon the Declarant, who may use whatever signs it deems appropriate to market the Development and its Lots for sale or lease. Declarant may maintain offices for sales and management, models in Units, and may maintain signs on the Property for marketing of the Development.

(j) **Nuisances.** No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

(k) **Outbuildings or Structures.** No shed, outbuilding, or structure of a temporary nature or character shall be maintained by an Owner on the Property without written approval by the Board.

(l) **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects outside of a Unit which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

## ARTICLE VII

### ARCHITECTURAL CONTROL

**7.01 Architectural Control Committee.** The Board of Directors of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. The Committee shall be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

**7.02 Submission to Committee.** No Unit, accessory of or addition to a Unit which is visible from the Common Areas shall be constructed or maintained, and no alteration, repainting or refurbishing of the exterior of any Unit shall be performed, unless complete plans and specification therefore have first been submitted to and approved by the Committee.



**7.03 Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots and Units within the Development conform to and harmonize with existing surrounds and structures. Any structure hereafter constructed on any Lot in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location and architectural style and be approximately the same size as the prior structure; and if the plans and specifications therefore meet such criteria, the Committee must approve the same.

**7.04 Approval Procedure.** Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten(10) days after submission. In the event the Committee fails to take any action within such specified period, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

**7.05 Construction.** Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be prosecuted to completion. Building permits shall be obtained as required by law.

## **ARTICLE VIII**

### **INSURANCE**

**8.01 Association Insurance.** The Board shall procure and maintain a policy or policies of property insurance, and such other insurance coverages, in at least such amount or amounts as required under NRS 116.3113. Such insurance policy or policies shall name the Association as insured or the benefit of the Owners and shall afford protection, to the extent applicable, at least against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage, and such other risks as customarily covered with respect to facilities similar in construction, location and use.

**8.02 Unit Owner's Insurance.** Each Unit Owner shall be responsible to purchase a separate homeowner's insurance policy for protection against loss or damage by fire, and other hazards covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, windstorm, and water damage, and such other risks as customarily covered with respect to Units similar in construction, location and use. All claims for liability must be submitted first under the homeowner's insurance policy. The Association will not be required to file claims on the Association's policy for liability that would have been covered under a homeowner's insurance policy.

**8.03 Liability Insurance.** The Board shall procure and maintain from a policy or policies of liability insurance to insure the Association, the Board, The Managing Agent, and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the conditions of the Common Areas of activities thereon. Such insurance shall be for such limits as the Board may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence.



Any such coverage procured by the Board shall be without prejudice to the right of the Owners to insure their personal liability for their own benefit at their own expense.

**8.04 Additional Insurance; Further General Requirements.** The Board may also procure insurance, which shall insure the Common Areas and the Association or the Owners, and others against such additional risks as the Board may deem advisable. Insurance procured and maintained by the Board shall not require contribution from insurance held by any of the Owners or their Mortgagees. Each policy of insurance obtained by the Board shall, if reasonably possible provide:

- (a) A waiver of the insurer's right of subrogation against the Association, the Owners and their respective directors, officers, agent, employees, invitees, and tenants;
- (b) That it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners;
- (c) That it cannot be cancelled suspended or invalidated due to the conduct of the Association without a prior written demand that the defect be cured; and
- (d) That any "no other insurance" clause therein shall not apply with respect to insurance maintained individually by any of the Owners.

**8.05 Fidelity Coverage.** The Association shall maintain fidelity coverage to protect against dishonest acts on the part of Officers, Directors, Managing Agents, Directors and employees of the Association. In that event such fidelity bonds shall:

- (a) Name the Association as obligee;
- (b) Such insurance may not contain a conviction requirement, and the minimum amount of the policy much not be less than an amount equal to 3 months of aggregate Assessments on all Units plus reserves.
- (c) Contain waivers of any defense based upon the exclusion of volunteers or persons who serve without compensation from any definition of "employee" or similar expression; and
- (d) Provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days proper written notice to the insured.

**8.06 Review of Insurance.** The Board shall periodically, and whenever requested by Owners entitled to exercise at least forty percent (40%) of the outstanding votes in the Association, review the adequacy of the Association's insurance program and shall report in writing the conclusions and action taken on such review to the Owner of each Unit and to the holder of any Mortgage on any Lot who shall request a copy of such report. Copies of every policy of insurance procured by the Board shall be available for inspection by any Owner or Mortgagee.

**8.07 Other Insurance Provisions.** Notwithstanding anything in this Article VIII to the contrary, any insurance required to be obtained by the Association pursuant to Section VIII of this Article shall be required only to the extent such coverage is reasonably obtainable at reasonable rates and is customarily obtained with respect to improvement or facilities that have the same or similar characteristics of the Common Areas and Units or risks being insured. If the insurance required by the



Association under this Declaration, or otherwise required by law, is not reasonably available, the Association promptly shall cause notice of the fact to be given to all Unit Owners.

## **ARTICLE IX**

### **RIGHTS OF MORTGAGES**

**9.01 Title and Mortgagee Protection.** A breach of any of the covenants, provisions or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot or any other portion of the Property. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair, or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any Mortgagee entered under any Mortgage affecting a Lot or an other portion of the Property shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions or requirements of this Declaration (other than those, if any, concerning a consent or approval to be given by a Mortgagee, in the event a Mortgagee's failure to give same is wrongful). No amendment to this Declaration shall in any way affect the rights of any Mortgagee interested under a mortgage which is in effect at the time of the amendment concerned or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

**9.02 Preservation of Common Areas.** The Common Areas shall remain substantially of the same character, type and configuration as when such Common Areas became part of the Development. Unless the Association shall receive the prior written approval of (a) all first Mortgagees of Lots and (b) the Owners of all Lots, the Association shall not be entitled to encumber, sell, or transfer the Common Areas, except to grant reasonable easements for use or for utilities and similar or related purposes.

**9.03 Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Lot requesting such notice whenever:

- (a) There is any material default by the Owner of the Lot subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within sixty (60) days after default occurs; or
- (b) Damage to the Common Areas from any one occurrence exceeds \$10,000.00; or
- (c) There is any condemnation or taking by eminent domain of any material portion of the Common Areas.

**9.04 Notice of Meetings.** The Board shall give to any Mortgagee of a Lot requesting the same, notice of all meetings, of the Association;



and such Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

**9.05 Right to Examine Association Records.** Any Mortgagee shall, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Lot securing the Mortgage.

**9.06 Rights to Pay Taxes and Charges.** Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas, and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payment shall be owed immediate reimbursement therefore from the Association.

**9.07 No Priority Accorded.** No provision of this Declaration gives or may give a Lot Owner or any other party priority over any rights or Mortgagees pursuant to their respective Mortgages in the case of a distribution to Lot Owners of insurance proceeds or condemnation awards for loss to or taking of Lots and/or the Common Areas.

**9.08 Construction.** In the event another provision or clause of this Declaration deals with the same subject matter as is dealt with in any provision or clause of this Article IX, the provision or clause which results in the greatest protection and security for a Mortgagee shall control the rights, obligations, or limits of authority as the case may be, applicable to the Association with respect to the subject concerned.

## **ARTICLE X**

### **PARTY WALLS**

**10.01 General Rules of Law to Apply.** Each wall to be built as a part of the original construction of the Units and placed substantially on a dividing line between Lots shall constitute a party wall and to the extent not inconsistent with the Provisions of this Article, the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto.

**10.02 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

**10.03 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the Owner of another Lot thereafter makes use of the wall, such other Owner shall contribute to the cost of restoration thereof in proportion to such use; the foregoing provision shall not prejudice, however the right of any Owner to call for a larger contribution from another Owner under any rule of law regarding liability for neglecting or willful acts or omissions.



## ASSOCIATION BYLAWS

### ARTICLE XI

#### BYLAWS

**11.01 Membership.** Every Owner upon acquiring title to a Lot shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason.

**11.02 Voting Rights.** The Association shall initially have two (2) classes of voting memberships, votes of both classes being of equal value as to all matters.

(a) **Class A.** Each Owner, including Declarant shall be a Class A member entitled to one (1) vote for each Lot in which such member holds the interest required for such Class A membership.

(b) **Class B.** Declarant shall be the only Class B member and shall be entitled to one (1) vote for each Association Class A membership outstanding at such time (in addition to any votes to which it is entitled as a Class A member) provided however that such Class B membership shall lapse and become nullity on the first to happen of the following events:

- (i) Sixty (60) days after conveyance of 75 percent of the Lots that may be created to Unit Owners other than Declarant or
- (ii) Five years after Declarant has ceased to offer Lots for sale in the ordinary course of business or
- (iii) Upon surrender of Class B membership by Declarant in writing to the Association.

**11.03 Ownership Restrictions.** With the exception of units owned by Developer, at least sixty percent of the Lots must be owner occupied. No one entity or its members may own more than fifteen percent of the total lots, except that Developer may own up to 255 of the Lots after Developer ceases to offer Lots for sale in the normal course of business.

**11.04 Place of Meeting.** Meetings of the Association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

**11.05 Annual Meetings.** Annual meetings of the membership of the Association shall be held in the month of September of each year following after the conveyance of the first Lot. At such annual meeting there shall be elected Directors of the Board, as needed. Financial and budget reports shall be presented at such meetings as well as other business of the Association properly placed before each meeting.

**11.06 Notice of Meetings.** The Secretary shall mail a notice to each meeting stating the purpose as well as the time and place of the meeting to each Owner of record at least fifteen but not more than 60 days prior to such meeting. Mailing of notice by prepaid U.S. Mail or by delivery in person shall deem notice served.



**11.07 Quorum.** Owners present in person or by proxy at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, provided however that such Owners collectively be entitled to cast least thirty percent of the total Association votes eligible to vote.

**11.08 Officers.** The Association shall have a President, a Vice President, Secretary and Treasurer all of whom shall be elected by and from the Board. The same person may fill more than one office. The officers shall be elected by the Board for one year terms immediately following each annual meeting of Owners at which the new Board has been elected. Whenever a vacancy arises the Board may elect an officer to fill such vacancy until the next regular election. Officers serve at the pleasure of the Board and the Board may remove officer with or without cause.

## **ARTICLE XII**

### **BYLAWS**

#### **DUTIES AND POWERS OF THE ASSOCIATION**

**12.01 Duties of the Association.** Without limiting any other duties, which may be imposed upon the Association by its Articles of Incorporation, Bylaws or the Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it, provided the same is free and clear of liens and encumbrances.
- (c) The Association shall maintain repair and replace the landscape in the Common Areas
- (d) The Association shall maintain, repair, replace the streets, sewer mains, water lines and sidewalks in the Common Areas. Any sewer lateral backups shall be the liability and responsibility of the Association.
- (e) In connection with its duties to maintain and repair Common Areas the Association will provided maintenance and repair upon the exterior surfaces and roofs of the Units and patio fences, including but not limited to, painting, replacing and caring for roofs, gutters, down spouts, exterior surfaces, window casings, trim, fences and other exterior improvements except glass surfaces.
- (f) To the extent not assessed to or paid by the Owners directly, the Association will pay all real property taxes and assessments levied upon any portion of the Common Areas.
- (g) The Association shall obtain and maintain in force the policies of insurance required of it by the provisions of the Declaration.

**12.02 Powers and Authority of the Association** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws together with its central powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required, or permitted to be done by the Association under and by virtue of the Declaration or the Bylaws,



including the power to levy and collect assessment as hereinafter provided including but not limited to the collection of water/sewer assessment and payment of water/sewer charges.

**(a)** to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair without liability to any Owner for trespass, damage or otherwise.

**(b)** In fulfilling any of its duties under the Declaration including its duties for the maintenance, repair, operation or administration of the Common Areas and Lots or in exercising any of its rights to construct improvements or other work upon any of the Common Areas, the Association shall have the power and authority to obtain, contract and pay for construction, maintenance and repair of Common Areas, Insurance policies, utility related services, services of architects, engineers, attorneys, and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable.



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**The Town Homes at Ruby View - HYDROLOGY**  
**REPORT**

Type II, 24-hour, 25 year Storm



11-24-19





## The Town Homes at Ruby View - Hydrology Report Type II, 24-hour, 25 year Storm

The proposed 1.30-acre town home development located at 1553 Indian View Heights Drive, Elko Nevada was analyzed the Type II, 24-hour, 25-year storm event for both existing and proposed conditions using the SCS TR-55 Method.

The areas and grades were determined using the existing topography for this project and grading plan for this project. Existing conditions and proposed conditions included drainage areas that are affected by the proposed construction. Off-site drainage areas that are not changed by the new construction were not considered.

This soil type was estimated to Soils Group D.

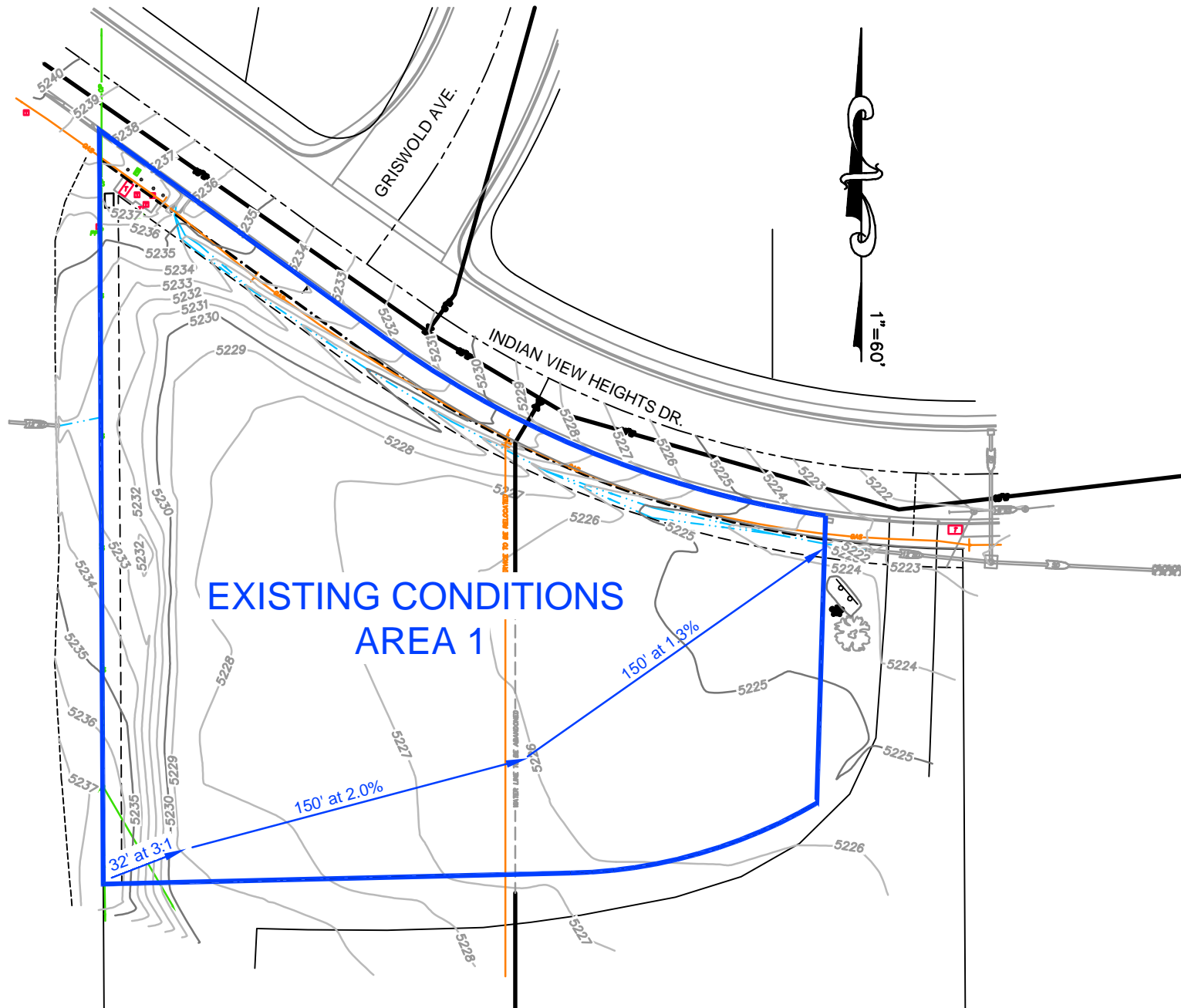
The run-off, run-off coefficients and precipitation frequencies were calculated using Autodesk Storm and Sanitary Sewer Analysis 2018.

The purpose of the study was to demonstrate the difference in existing condition flows and proposed condition flows due to the site development. The total peak runoff was increased 0.58 cubic feet per second for the 25-year, 24-hour storm. Because of this during the final design stormwater detention will be required. The proposed layout has areas dedicated for this.

The supporting data included in this study is as follows:

1. Map of Existing Conditions and Proposed Conditions
2. Data for Existing Conditions and Proposed Conditions







Project Description

File Name .....	StormXML.SPF
Description .....	C:\Users\lanal\Documents\AutoCAD Projects\Wade Kelly\Hydro\Tentative Map - Hydro.dwg

Project Options

Flow Units .....	CFS
Elevation Type .....	Elevation
Hydrology Method .....	SCS TR-55
Time of Concentration (TOC) Method .....	SCS TR-55
Link Routing Method .....	Kinematic Wave
Enable Overflow Ponding at Nodes .....	YES
Skip Steady State Analysis Time Periods .....	NO

Analysis Options

Start Analysis On .....	Nov 24, 2019	00:00:00
End Analysis On .....	Nov 25, 2019	00:00:00
Start Reporting On .....	Nov 24, 2019	00:00:00
Antecedent Dry Days .....	0	days
Runoff (Dry Weather) Time Step .....	0 01:00:00	days hh:mm:ss
Runoff (Wet Weather) Time Step .....	0 00:05:00	days hh:mm:ss
Reporting Time Step .....	0 00:05:00	days hh:mm:ss
Routing Time Step .....	30	seconds

Number of Elements

	Qty
Rain Gages .....	1
Subbasins.....	1
Nodes.....	1
<i>Junctions</i> .....	0
<i>Outfalls</i> .....	1
<i>Flow Diversions</i> .....	0
<i>Inlets</i> .....	0
<i>Storage Nodes</i> .....	0
Links.....	0
<i>Channels</i> .....	0
<i>Pipes</i> .....	0
<i>Pumps</i> .....	0
<i>Orifices</i> .....	0
<i>Weirs</i> .....	0
<i>Outlets</i> .....	0
Pollutants .....	0
Land Uses .....	0

Rainfall Details

SN	Rain Gage ID	Data Source	Data Source ID	Rainfall Type	Rain Units	State	County	Return Period (years)	Rainfall Depth (inches)	Rainfall Distribution
1	Rain Gage-01	Time Series	TS-01	Intensity	inches	Nevada	Elko	25	2.07	SCS Type II 24-hr



Subbasin Summary

SN	Subbasin ID	Area	Weighted Curve Number	Total Rainfall	Total Runoff	Total Runoff Volume	Peak Runoff	Time of Concentration
		(ac)		(in)	(in)	(ac-in)	(cfs)	(days hh:mm:ss)
1	{ Hydro}.Area1	1.37	88.00	2.07	1.02	1.40	2.26	0 00:04:19



Node Summary

SN	Element ID	Element Type	Invert Elevation	Ground/Rim (Max) Elevation	Initial Water Elevation	Surcharge Elevation	Ponded Area	Peak Inflow	Max HGL Elevation Attained	Max Surcharge Depth Attained	Min Freeboard Attained	Time of Peak Flooding Occurrence	Total Flooded Volume	Total Time Flooded
			(ft)	(ft)	(ft)	(ft)	(ft²)	(cfs)	(ft)	(ft)	(ft)	(days hh:mm)	(ac-in)	(min)
1	Out-01	Outfall	0.00					0.00	0.00					



Subbasin Hydrology

Subbasin : { Hydro}.Area1

Input Data

Area (ac) ..... 1.37  
Weighted Curve Number ..... 88.00  
Rain Gage ID ..... Rain Gage-01

Composite Curve Number

Soil/Surface Description	Area (acres)	Soil Group	Curve Number
Desert shrub range, Poor	1.37	D	88.00
Composite Area & Weighted CN	1.37		88.00

Time of Concentration

TOC Method : SCS TR-55

Sheet Flow Equation :

$T_c = (0.007 * ((n * L_f)^{0.8})) / ((P^{0.5}) * (S_f^{0.4}))$

Where :

Tc = Time of Concentration (hr)  
n = Manning's roughness  
Lf = Flow Length (ft)  
P = 2 yr, 24 hr Rainfall (inches)  
Sf = Slope (ft/ft)

Shallow Concentrated Flow Equation :

V = 16.1345 \* (Sf^0.5) (unpaved surface)  
V = 20.3282 \* (Sf^0.5) (paved surface)  
V = 15.0 \* (Sf^0.5) (grassed waterway surface)  
V = 10.0 \* (Sf^0.5) (nearly bare & untilled surface)  
V = 9.0 \* (Sf^0.5) (cultivated straight rows surface)  
V = 7.0 \* (Sf^0.5) (short grass pasture surface)  
V = 5.0 \* (Sf^0.5) (woodland surface)  
V = 2.5 \* (Sf^0.5) (forest w/heavy litter surface)  
Tc = (Lf / V) / (3600 sec/hr)

Where:

Tc = Time of Concentration (hr)  
Lf = Flow Length (ft)  
V = Velocity (ft/sec)  
Sf = Slope (ft/ft)

Channel Flow Equation :

$V = (1.49 * (R^{2/3})) * (S_f^{0.5}) / n$   
R = Aq / Wp  
 $T_c = (L_f / V) / (3600 \text{ sec/hr})$

Where :

Tc = Time of Concentration (hr)  
Lf = Flow Length (ft)  
R = Hydraulic Radius (ft)  
Aq = Flow Area (ft²)  
Wp = Wetted Perimeter (ft)  
V = Velocity (ft/sec)  
Sf = Slope (ft/ft)  
n = Manning's roughness



	Subarea	Subarea	Subarea
	A	B	C
Sheet Flow Computations			
Manning's Roughness :	0.40	0.00	0.00
Flow Length (ft) :	32	0.00	0.00
Slope (%) :	33	0.00	0.00
2 yr, 24 hr Rainfall (in) :	1.15	0.00	0.00
Velocity (ft/sec) :	0.11	0.00	0.00
Computed Flow Time (min) :	4.69	0.00	0.00
	Subarea	Subarea	Subarea
	A	B	C
Shallow Concentrated Flow Computations			
Flow Length (ft) :	150	150	0.00
Slope (%) :	2	1.3	0.00
Surface Type :	Bare & untilled	Bare & untilled	Unpaved
Velocity (ft/sec) :	1.41	1.14	0.00
Computed Flow Time (min) :	1.77	2.19	0.00
Total TOC (min) .....	4.33		

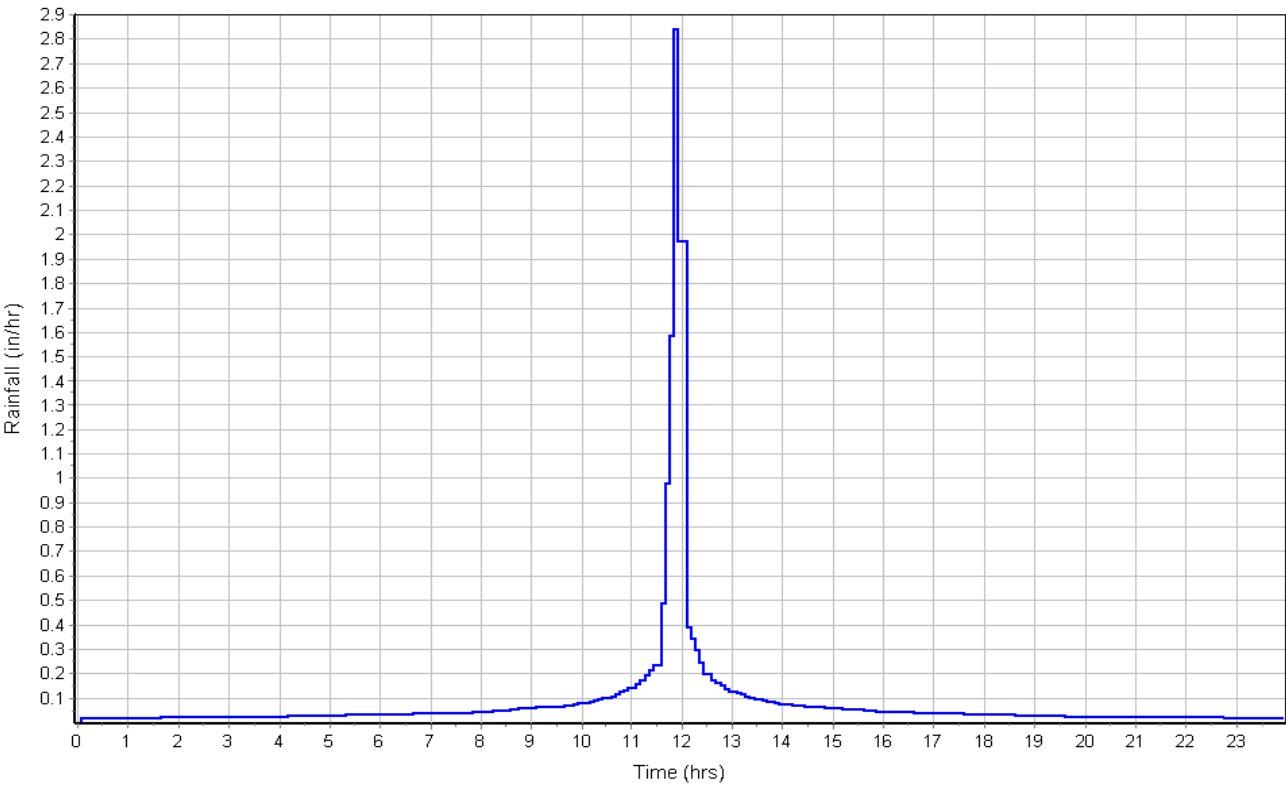
## Subbasin Runoff Results

Total Rainfall (in) .....	2.07
Total Runoff (in) .....	1.02
Peak Runoff (cfs) .....	2.26
Weighted Curve Number .....	88.00
Time of Concentration (days hh:mm:ss) .....	0 00:04:20

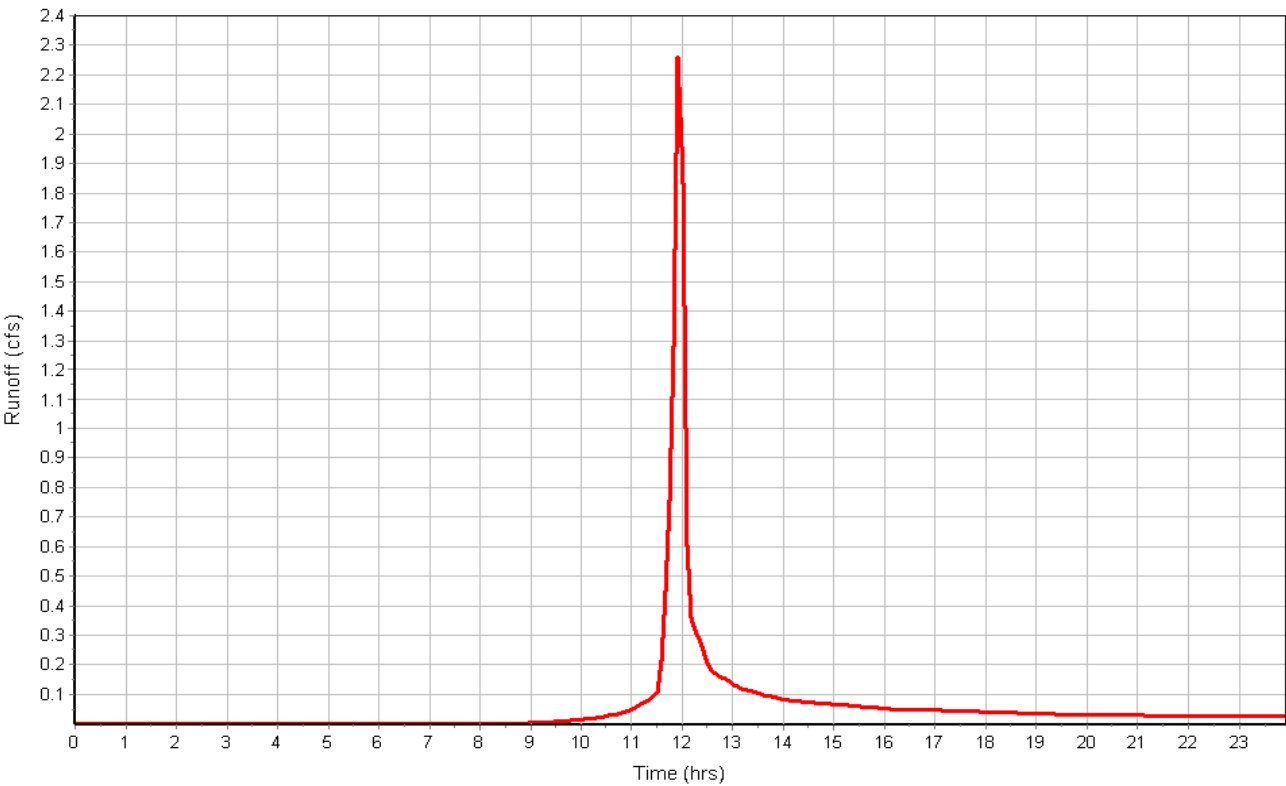


Subbasin : { Hydro}.Area1

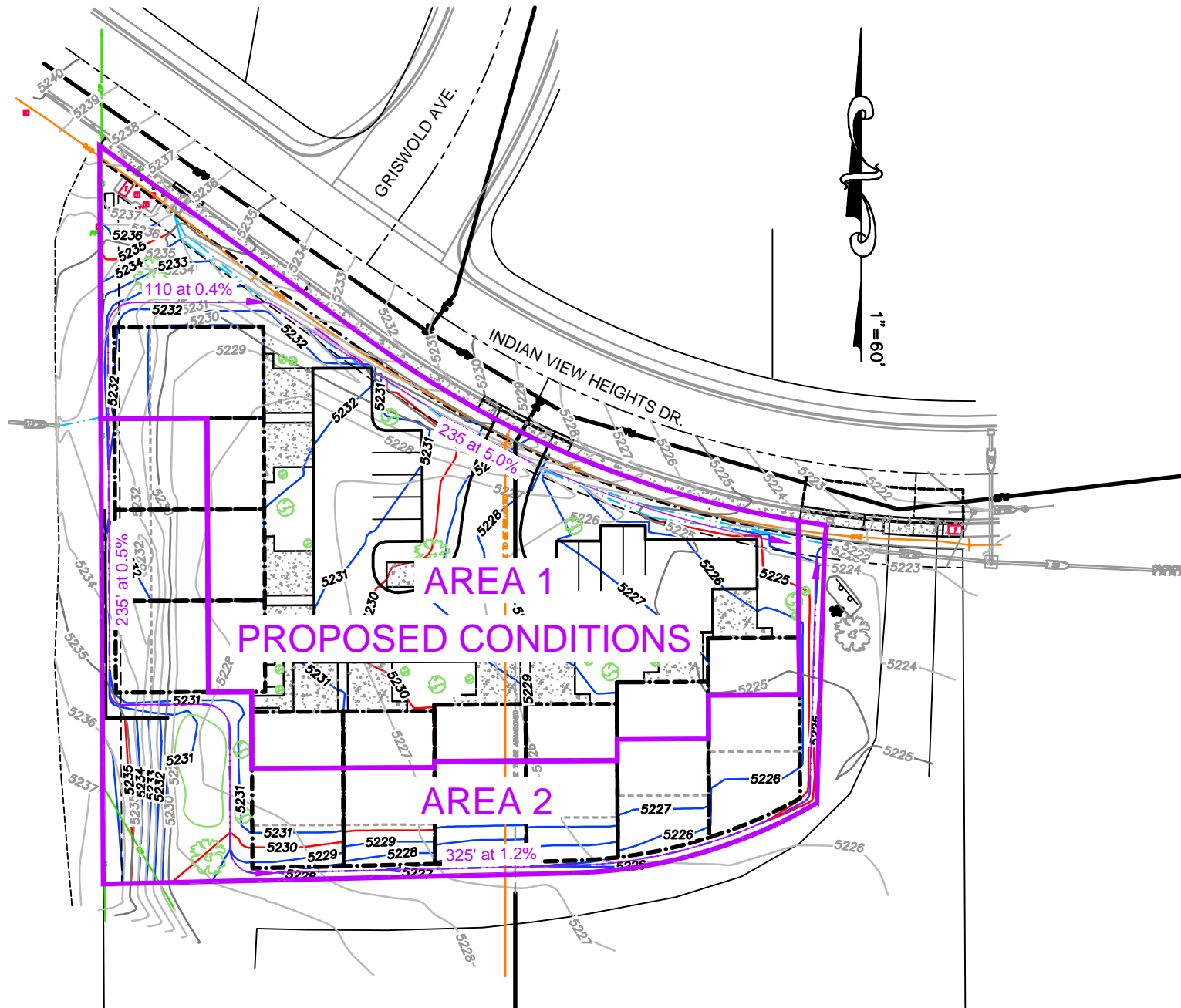
Rainfall Intensity Graph



Runoff Hydrograph









Project Description

File Name .....	Proposed Conditions.SPF
Description .....	C:\Users\lanal\Documents\AutoCAD Projects\Wade Kelly\Hydro\Tentative Map - Hydro.dwg

Project Options

Flow Units .....	CFS
Elevation Type .....	Elevation
Hydrology Method .....	SCS TR-55
Time of Concentration (TOC) Method .....	SCS TR-55
Link Routing Method .....	Kinematic Wave
Enable Overflow Ponding at Nodes .....	YES
Skip Steady State Analysis Time Periods .....	NO

Analysis Options

Start Analysis On .....	Nov 24, 2019	00:00:00
End Analysis On .....	Nov 25, 2019	00:00:00
Start Reporting On .....	Nov 24, 2019	00:00:00
Antecedent Dry Days .....	0	days
Runoff (Dry Weather) Time Step .....	0 01:00:00	days hh:mm:ss
Runoff (Wet Weather) Time Step .....	0 00:05:00	days hh:mm:ss
Reporting Time Step .....	0 00:05:00	days hh:mm:ss
Routing Time Step .....	30	seconds

Number of Elements

	Qty
Rain Gages .....	1
Subbasins.....	2
Nodes.....	2
<i>Junctions</i> .....	0
<i>Outfalls</i> .....	2
<i>Flow Diversions</i> .....	0
<i>Inlets</i> .....	0
<i>Storage Nodes</i> .....	0
Links.....	0
<i>Channels</i> .....	0
<i>Pipes</i> .....	0
<i>Pumps</i> .....	0
<i>Orifices</i> .....	0
<i>Weirs</i> .....	0
<i>Outlets</i> .....	0
Pollutants .....	0
Land Uses .....	0

Rainfall Details

SN	Rain Gage ID	Data Source	Data Source ID	Rainfall Type	Rain Units	State	County	Return Period (years)	Rainfall Depth (inches)	Rainfall Distribution
1	Rain Gage-01	Time Series	TS-01	Intensity	inches	Nevada	Elko	25	2.07	SCS Type II 24-hr



Subbasin Summary

SN	Subbasin ID	Area	Weighted Curve Number	Total Rainfall	Total Runoff	Total Runoff Volume	Peak Runoff	Time of Concentration
		(ac)		(in)	(in)	(ac-in)	(cfs)	(days hh:mm:ss)
1	{Proposed Hydro}.AREA1	0.85	92.06	2.07	1.30	1.11	1.86	0 00:02:19
2	{Proposed Hydro}.AREA2	0.48	92.06	2.07	1.30	0.63	0.98	0 00:05:13



Node Summary

SN	Element ID	Element Type	Invert Elevation	Ground/Rim (Max) Elevation	Initial Water Elevation	Surcharge Elevation	Ponded Area	Peak Inflow	Max HGL Elevation Attained	Max Surcharge Depth Attained	Min Freeboard Attained	Time of Peak Flooding Occurrence	Total Flooded Volume	Total Time Flooded
			(ft)	(ft)	(ft)	(ft)	(ft²)	(cfs)	(ft)	(ft)	(ft)	(days hh:mm)	(ac-in)	(min)
1	Out-01	Outfall	0.00					0.00	0.00					
2	Out-02	Outfall	0.00					0.00	0.00					



Subbasin Hydrology

Subbasin : {Proposed Hydro}.AREA1

Input Data

Area (ac) ..... 0.85  
Weighted Curve Number ..... 92.06  
Rain Gage ID ..... Rain Gage-01

Composite Curve Number

Soil/Surface Description	Area (acres)	Soil Group	Curve Number
Paved parking & roofs	0.57	D	98.00
> 75% grass cover, Good	0.28	D	80.00
Composite Area & Weighted CN	0.85		92.06

Time of Concentration

TOC Method : SCS TR-55

Sheet Flow Equation :

$T_c = (0.007 * ((n * L_f)^{0.8})) / ((P^{0.5}) * (S_f^{0.4}))$

Where :

Tc = Time of Concentration (hr)  
n = Manning's roughness  
Lf = Flow Length (ft)  
P = 2 yr, 24 hr Rainfall (inches)  
Sf = Slope (ft/ft)

Shallow Concentrated Flow Equation :

V = 16.1345 \* (Sf^0.5) (unpaved surface)  
V = 20.3282 \* (Sf^0.5) (paved surface)  
V = 15.0 \* (Sf^0.5) (grassed waterway surface)  
V = 10.0 \* (Sf^0.5) (nearly bare & untilled surface)  
V = 9.0 \* (Sf^0.5) (cultivated straight rows surface)  
V = 7.0 \* (Sf^0.5) (short grass pasture surface)  
V = 5.0 \* (Sf^0.5) (woodland surface)  
V = 2.5 \* (Sf^0.5) (forest w/heavy litter surface)  
Tc = (Lf / V) / (3600 sec/hr)

Where:

Tc = Time of Concentration (hr)  
Lf = Flow Length (ft)  
V = Velocity (ft/sec)  
Sf = Slope (ft/ft)

Channel Flow Equation :

V = (1.49 \* (R^(2/3)) \* (Sf^0.5)) / n  
R = Aq / Wp  
Tc = (Lf / V) / (3600 sec/hr)

Where :

Tc = Time of Concentration (hr)  
Lf = Flow Length (ft)  
R = Hydraulic Radius (ft)  
Aq = Flow Area (ft²)  
Wp = Wetted Perimeter (ft)  
V = Velocity (ft/sec)  
Sf = Slope (ft/ft)  
n = Manning's roughness



	Subarea	Subarea	Subarea
	A	B	C
Shallow Concentrated Flow Computations			
Flow Length (ft) :	110	235	0.00
Slope (%) :	.4	5	0.00
Surface Type :	Bare & untilled	Bare & untilled	Unpaved
Velocity (ft/sec) :	0.63	2.24	0.00
Computed Flow Time (min) :	2.91	1.75	0.00
Total TOC (min) .....	2.33		

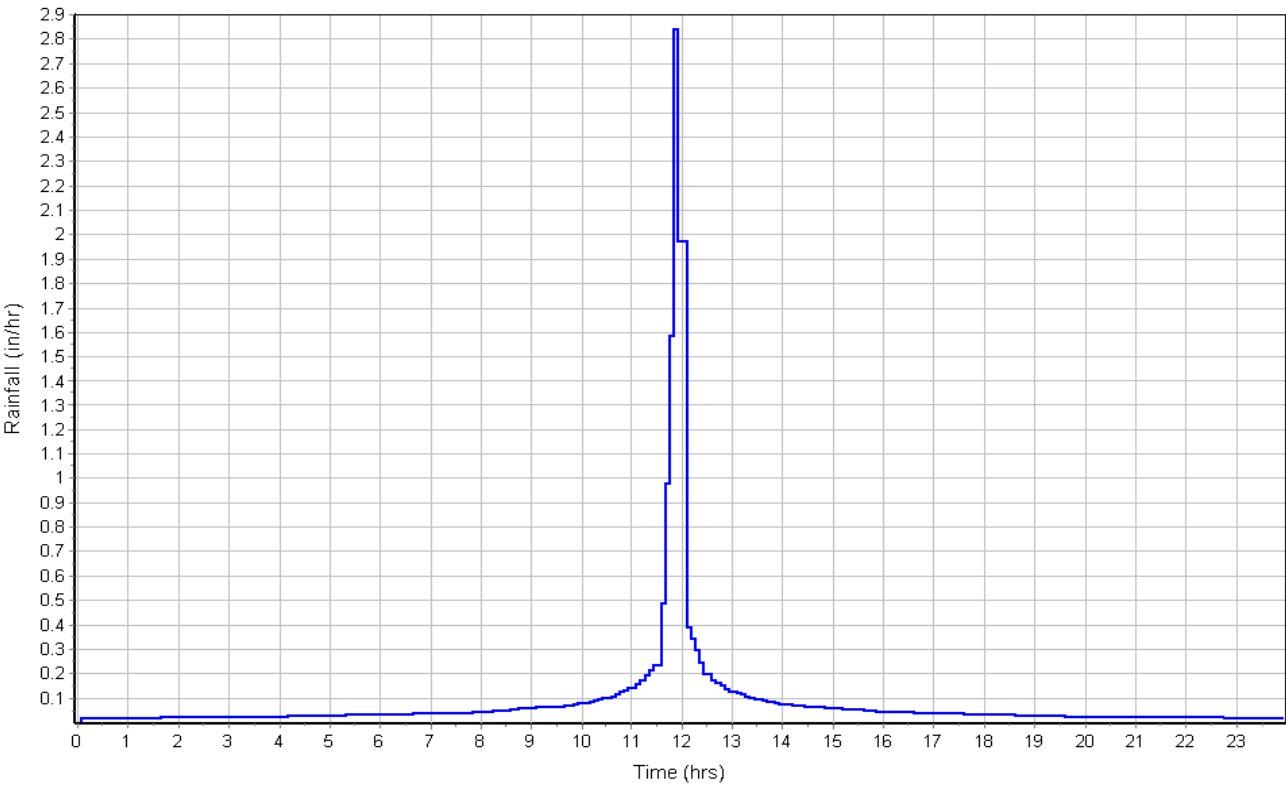
**Subbasin Runoff Results**

Total Rainfall (in) .....	2.07
Total Runoff (in) .....	1.30
Peak Runoff (cfs) .....	1.86
Weighted Curve Number .....	92.06
Time of Concentration (days hh:mm:ss) .....	0 00:02:20

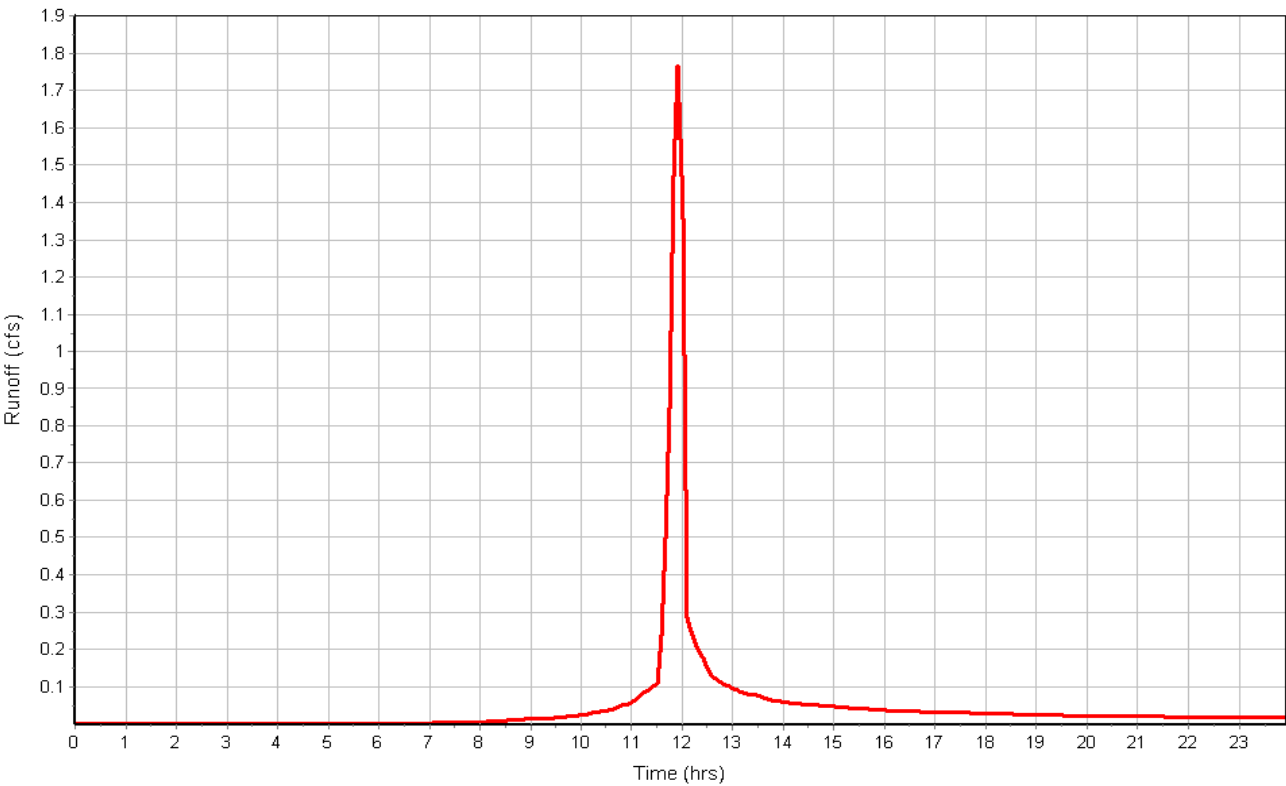


Subbasin : {Proposed Hydro}.AREA1

Rainfall Intensity Graph



Runoff Hydrograph





## Subbasin : {Proposed Hydro}.AREA2

### Input Data

Area (ac) ..... 0.48  
Weighted Curve Number ..... 92.06  
Rain Gage ID ..... Rain Gage-01

### Composite Curve Number

Soil/Surface Description	Area (acres)	Soil Group	Curve Number
Paved parking & roofs	0.32	D	98.00
> 75% grass cover, Good	0.16	D	80.00
Composite Area & Weighted CN	0.48		92.06

### Time of Concentration

	Subarea A	Subarea B	Subarea C
Shallow Concentrated Flow Computations			
Flow Length (ft) :	235	325	0.00
Slope (%) :	.5	1.2	0.00
Surface Type :	Bare & untilled	Bare & untilled	Unpaved
Velocity (ft/sec) :	0.71	1.10	0.00
Computed Flow Time (min) :	5.52	4.92	0.00
Total TOC (min) .....5.22			

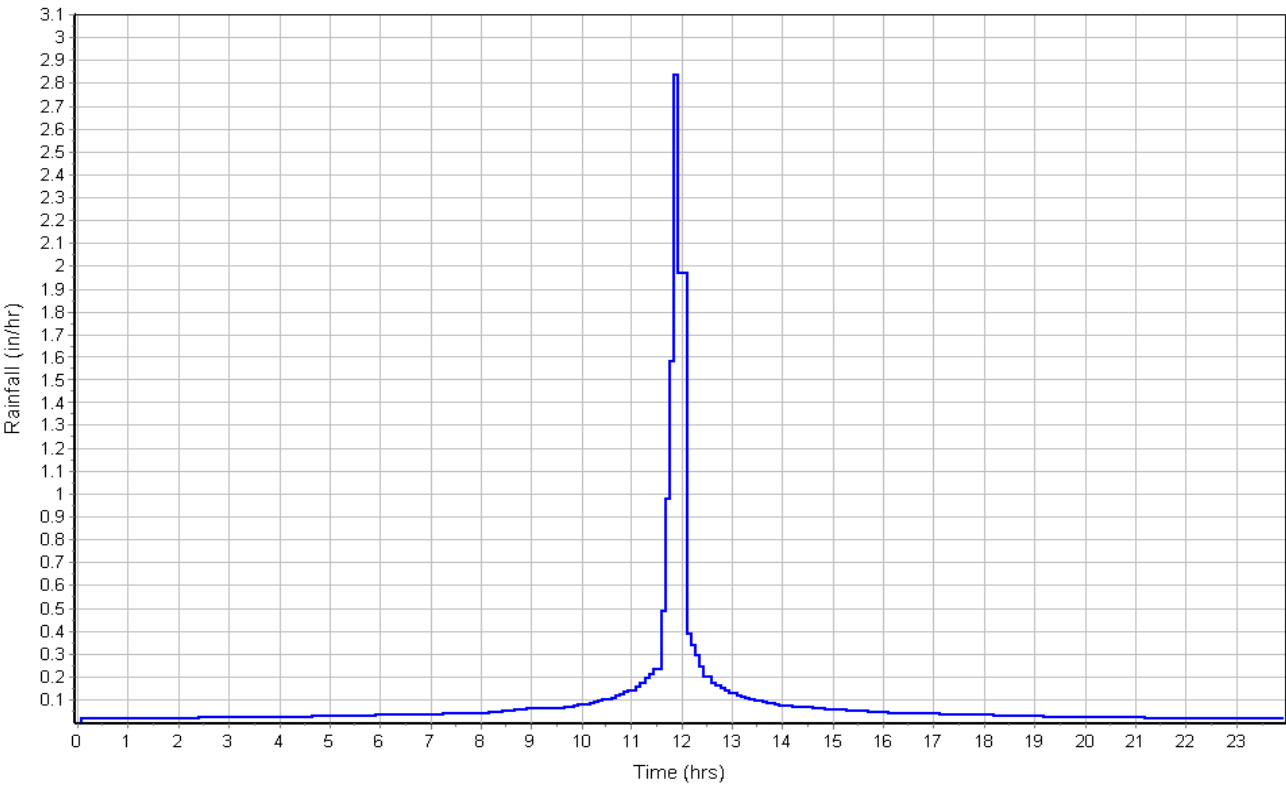
### Subbasin Runoff Results

Total Rainfall (in) ..... 2.07  
Total Runoff (in) ..... 1.30  
Peak Runoff (cfs) ..... 0.98  
Weighted Curve Number ..... 92.06  
Time of Concentration (days hh:mm:ss) ..... 0 00:05:13

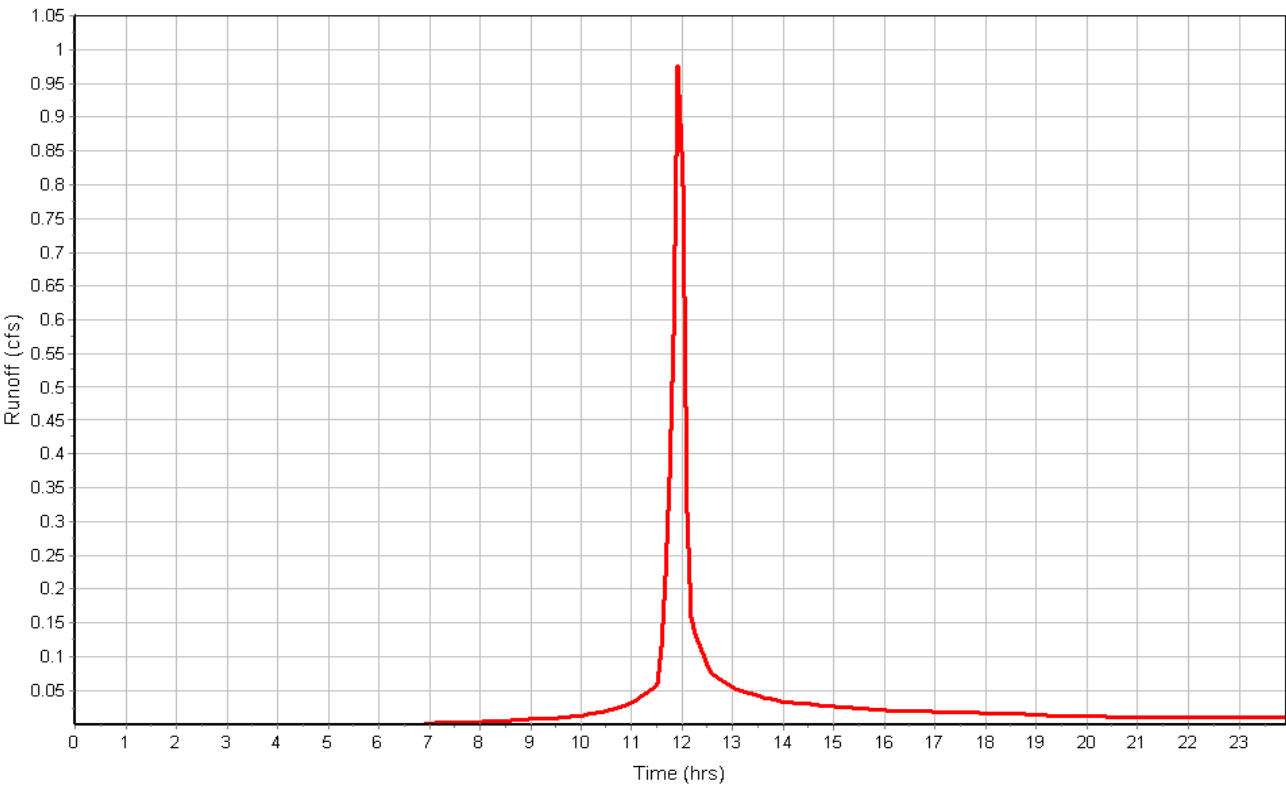


Subbasin : {Proposed Hydro}.AREA2

Rainfall Intensity Graph



Runoff Hydrograph





# THE TOWN HOMES at RUBY VIEW

## PROJECT INFORMATION

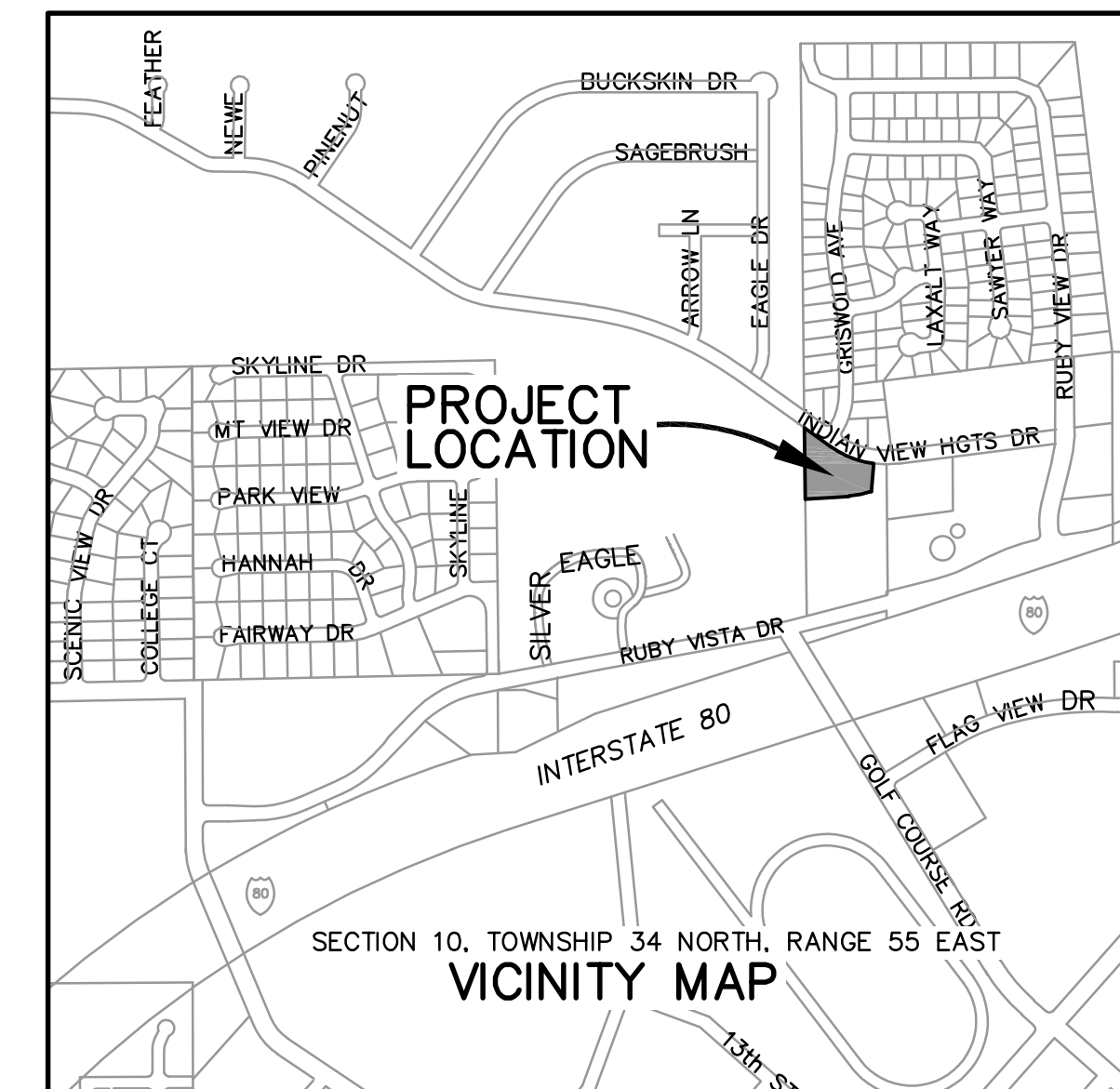
1. ZONING: R - SINGLE FAMILY AND MULTIPLE FAMILY RESIDENTIAL DISTRICT.
2. APN = 001-530-026
3. LEGAL DESCRIPTION = PARCEL 1 OF FILE NUMBER 707194, IN THE OFFICE OF THE ELKO COUNTY RECORDER.
4. TOTAL AREA PARCEL AREA IS 1.300 ACRES.
5. 10 LOTS TOTAL WITH ONE REMAINDER LOT.
6. NO DEED RESTRICTIONS.
7. THE EXISTING PARCEL IS 1553 INDIAN VIEW HEIGHTS DRIVE.
8. PARCEL TO BE SUBDIVIDED IS IN LOCATED IN SECTION 10 OF TOWNSHIP 34 NORTH, RANGE 55 EAST M.D.B. & M.
9. SUBDIVISION TO BE SERVED BY THE FOLLOWING UTILITY COMPANIES CITY OF ELKO - WATER, SEWER & STORM DRAIN SW GAS - NATURAL GAS FRONTIER - COMMUNICATIONS AND TELEPHONE NV ENERGY - ELECTRICAL SATVIEW BROAD BAND - COMMUNICATIONS AND TELEVISION ELKO SANITATION - WASTE DISPOSAL
10. THIS PROPERTY IS LOCATED IN ZONE X (AREA OF MINIMAL FLOOD HAZARD) PER FEMA FIRM MAP 32007C5607E EFFECTIVE 9-4-13
11. THE ESTIMATED WATER DEMAND IS 1.12 AC-FT/YEAR/LOT. 10 LOTS x 1.12 AC-FT/YEAR/LOT = 11.20 AC-FT/YEAR.
12. TOTAL GROSS ACREAGE 1.297 ACRES (56,477.40 SF)
13. THERE ARE NO NEW EASEMENTS TO BE DEDICATED.
14. ON SITE DRIVEWAY AND UTILITIES WILL BE PRIVATE AND MAINTAINED BY THE HOME OWNERS ASSOCIATION.
15. IN ADDITION TO A 2 CAR GARAGE AND 2 CAR PARKING PAD PER EACH DWELLING, AN ADDITIONAL 9 PARKING SPACES ARE PROPOSED FOR GUESTS.
16. SETBACK REQUIREMENTS: FRONT YARD = 15 FEET INTERIOR SIDE YARD = 7 FEET REAR YARD = 20 FEET
17. THE TOPOGRAPHY AND BOUNDARY SHOWN HERE IS PER A SURVEY PROVIDED BY HIGH DESERT ENGINEERING ON 10-16-19 PERFORMED UNDER THE DIRECTION OF DUANE MERRILL, P.L.S.
18. ALL UNITS WILL HAVE FENCED YARDS WITH A 5' WIDE GATE FOR FOR EMERGENCY ACCESS.



## LEGEND

EXISTING SANITARY SEWER MANHOLE	SS
EXISTING SANITARY SEWER LINE	SS
PROPOSED SANITARY SEWER MANHOLE	SS
PROPOSED SANITARY SEWER LINE	SS
EXISTING CURB INLET	CI
EXISTING STORM DRAIN	SD
EXISTING STORM DRAIN MANHOLE	SD
PROPOSED CULVERT	SD
EXISTING GAS LINE	GAS
EXISTING WATER LINE	W
EXISTING WATER VALVE	W
EXISTING FIRE HYDRANT	W
EXISTING SPIGOT	W
PROPOSED WATER LINE	W
PROPOSED WATER SERVICE LINE	WS
PROPOSED FIRE HYDRANT	W
EXISTING TELEPHONE PEDESTAL	PP
EXISTING TELEPHONE BOX	PP
EXISTING POWER POLE	PP
EXISTING OVER HEAD POWER LINE	PP
EXISTING POWER BOX	PP
PROPOSED PROPERTY CORNER	PP
EXISTING PROPERTY CORNER	PP
EXISTING DRAINAGE SWALE	PP
PROPOSED DRAINAGE SWALE	PP

1" = 20'



TOWN HOME FOOT PRINT

## PROJECT CONTACTS

### OWNER-DEVELOPER

KELLY BUILDERS, LLC  
209 RAPTOR COURT  
ELKO, NEVADA 89801  
CONTACT: WADE KELLY  
OR LAURA KELLY  
(775) 777-3217  
EMAIL: kellybuilders@frontiernet.net

### CIVIL ENGINEER

CARTER ENGINEERING, LLC  
P.O. BOX 794  
ELKO, NEVADA 89801  
CONTACT: LANA L. CARTER, P.E.  
(775) 397-2531  
EMAIL: lanalacarter@live.com

### SURVEYOR

HIGH DESERT ENGINEERING, LLC  
640 IDAHO STREET  
ELKO, NEVADA 89801  
CONTACT: ROBERT E. MORLEY, P.L.S.  
(775) 738-4053  
EMAIL: remorley@frontier.net

## SHEET INDEX

- |   |                        |
|---|------------------------|
| 1 | TENTATIVE MAP - LAYOUT |
| 2 | UTILITY PLAN           |
| 3 | GRADING PLAN           |
| 4 | CUT AND FILL GRID      |

## ENGINEER'S CERTIFICATION

I, LANA L. CARTER, A REGISTERED PROFESSIONAL CIVIL ENGINEER IN THE STATE OF NEVADA, DO HEREBY CERTIFY THAT THIS TENTATIVE PLAT HAS BEEN PREPARED UNDER MY DIRECTION AND WAS COMPLETED ON THE 26TH DAY OF NOVEMBER, 2019.

LANA L. CARTER, P.E.



SCALE: 1" = 20'

Carter Engineering, LLC  
Civil Engineering  
P.O. Box 794  
Elko, Nevada 89801  
775-397-2531

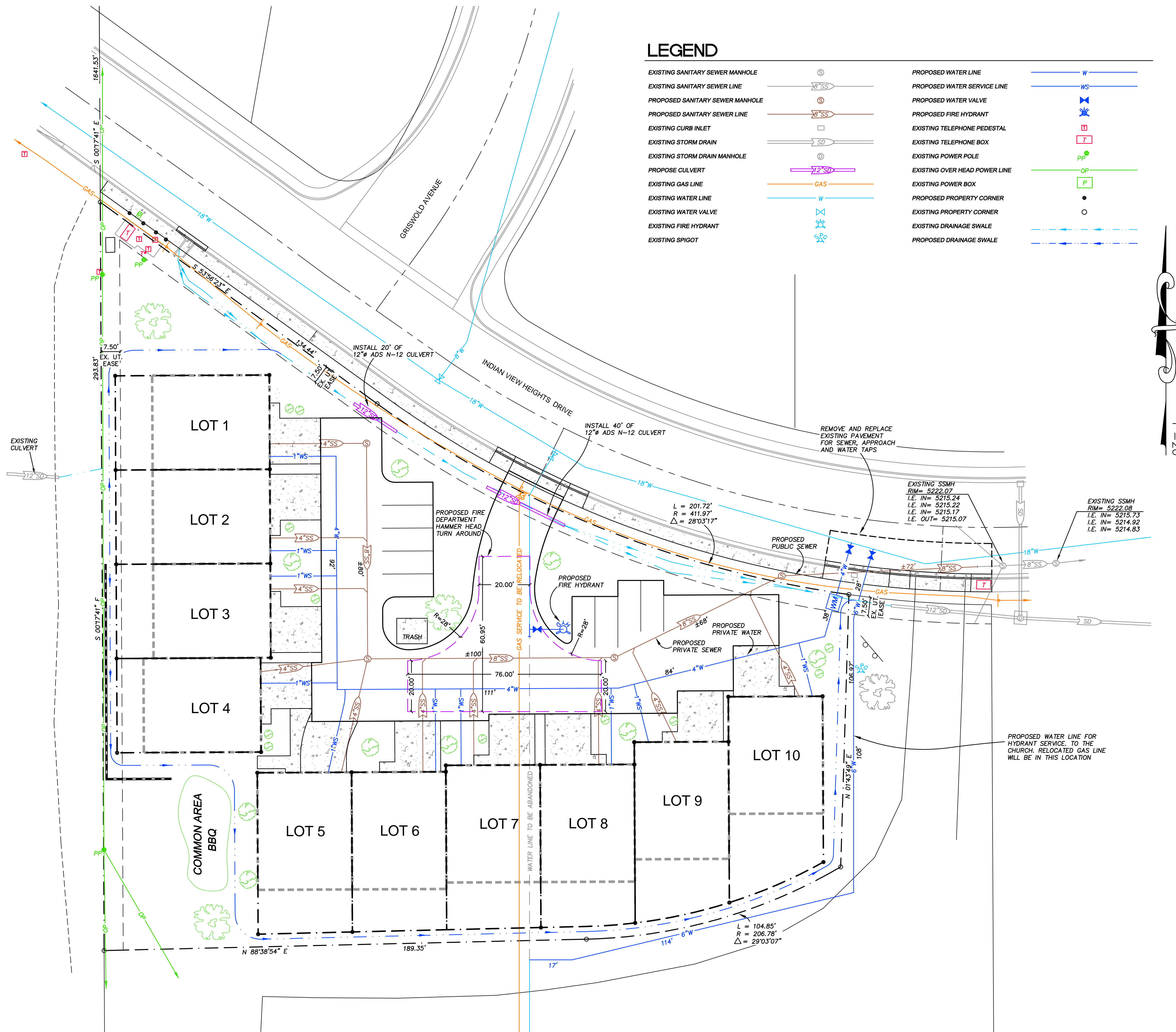
KELLY BUILDERS, LLC  
THE TOWN HOMES at RUBY VIEW  
TENTATIVE MAP - LAYOUT  
ELKO, NEVADA

DESIGN BY:	LLC
DRAWN BY:	LLC
CHECKED BY:	LLC
DATE:	12-19-19
JOB NO:	06-2019
DWG NO:	2019-17

SCALE  
HORIZ: 1" = 20'  
VERT: N/A

SHEET  
1  
OF 4





### LEGEND

EXISTING SANITARY SEWER MANHOLE		PROPOSED WATER LINE	
EXISTING SANITARY SEWER LINE		PROPOSED WATER SERVICE LINE	
PROPOSED SANITARY SEWER MANHOLE		PROPOSED WATER VALVE	
PROPOSED SANITARY SEWER LINE		PROPOSED FIRE HYDRANT	
EXISTING CURB INLET		EXISTING TELEPHONE PEDESTAL	
EXISTING STORM DRAIN		EXISTING TELEPHONE BOX	
EXISTING STORM DRAIN MANHOLE		EXISTING POWER POLE	
PROPOSED CULVERT		EXISTING OVER HEAD POWER LINE	
EXISTING GAS LINE		EXISTING POWER BOX	
EXISTING WATER LINE		PROPOSED PROPERTY CORNER	
EXISTING WATER VALVE		EXISTING PROPERTY CORNER	
EXISTING FIRE HYDRANT		EXISTING DRAINAGE SWALE	
EXISTING SPIGOT		PROPOSED DRAINAGE SWALE	



### WATER NOTES:

- ALL WATER MAINS SHALL BE AWWA C900, DR 18 WATER PIPE.
- ALL WATER SERVICE LINES SHALL BE AWWA C-901, 1" IPS 200 PSI POLYETHYLENE.
- ALL WATER LINE FITTINGS SHALL BE DUCTILE IRON AWWA C-110 AND AWWA C-153.
- ALL WATER LINES SHALL BE PLACED WITH 42" OF MINIMUM COVER.
- ALL METERS SHALL BE 1 INCH.
- ALL NEW FIRE HYDRANTS WILL BE EQUIPPED WITH STORZ FITTINGS.
- A MINIMUM OF 18" INCHES SEPARATION WILL BE ALLOWED BETWEEN WATER TAPS AS REQUIRED BY THE CITY OF ELKO UTILITIES DEPARTMENT.
- A MINIMUM OF 2 FOOT SEPARATION WILL BE ALLOWED BETWEEN WATER TAPS AND HYDRANT TAPS AS REQUIRED BY THE CITY OF ELKO UTILITIES DEPARTMENT.
- WATER AND SEWER LATERALS WILL BE PLACED IN SEPARATE TRENCHES AND LOCATED AT LEAST 48" APART MEASURE FROM OUTSIDE DIAMETERS PER NAC 445A.6716.
- INSTALL SAMPLE STATION AT LOCATION DETERMINED BY CITY OF ELKO. THE SAMPLING STATION SHALL BE USA BLUEBOOK MODEL EH101 (301D) ABOVE GRADE WITH GREEN ENCLOSURE AND 48" BURY DEPTH.
- HOT TAPS SHALL BE PERFORMED BY THE CITY OF ELKO UTILITIES DEPARTMENT. THE CONTRACTOR SHALL SUPPLY TRENCH AND MATERIALS FOR THE HOT TAP. IT SHALL BE THE CONTRACTORS RESPONSIBILITY TO COORDINATE THIS WORK WITH THE CITY OF ELKO.
- VERTICAL AND HORIZONTAL SEPARATION OF ALL WATER AND SEWER (SANITARY OR STORM) UTILITIES SHALL BE MAINTAINED PER NAC SECTION 445A.6715 - SECTION 445A.6718 AND THE BUREAU OF SAFE DRINKING WATER (BSDW) GUIDANCE FOR AREAS REQUIRING MITIGATION FOR WATER AND SEWER SEPARATION, EDITION 1.0, UNLESS OTHERWISE APPROVED BY THE DESIGN ENGINEER OR BSDW.
- ANY OPENINGS IN UNFINISHED PIPING AND APPURTENANCES MUST BE SEALED WATERTIGHT AT THE END OF EACH WORKING DAY.
- ALL MATERIALS AND CONSTRUCTION METHODS SHALL BE IN ACCORDANCE WITH APPLICABLE AWWA STANDARDS.
- THE MAXIMUM JOINT DEFLECTION SHALL NOT EXCEED THE MANUFACTURES SPECIFICATIONS. FOR TYTON JOINT PIPE THIS IS 5" OR 19" FOR AN 18 FOOT LENGTH OF PIPE OR 21" FOR A 20 FOOT LENGTH OF PIPE. THE RADIUS PRODUCED IS 206 FEET FOR AN 18 FOOT LENGTH OF PIPE OR 229 FEET FOR A 20 FOOT LENGTH OF PIPE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE MAXIMUM ALLOWABLE JOINT DEFLECTION FOR THE BRAND OF PIPING USED AND NOT TO EXCEED THIS.
- ALL MATERIALS IN CONTACT WITH POTABLE WATER MUST BE NSF/ANSI 61 CERTIFIED AS LEAD FREE AND COMPATIBLE WITH DRINKING WATER.
- BEFORE BEING CERTIFIED BY AN ENGINEER ACCEPTED BY THE CITY OF ELKO, ANY NEW WATER SYSTEMS, EXTENSIONS, REPLACEMENTS IN EXISTING SYSTEMS AND VALVED SECTIONS SHALL BE DISINFECTED IN ACCORDANCE WITH AWWA C-651 (DISINFECTING WATER MAINS) AND BE PRESSURE TESTED IN ACCORDANCE WITH NAC 445A.6714.5.7 (A) AND (B) AND AWWA C-605. THE DISPOSAL OF HIGHLY CHLORINATED WATER MUST BE COORDINATED WITH NEVADA DEPARTMENT OF ENVIRONMENTAL PROTECTION, BUREAU OF WATER POLLUTION CONTROL.

### SANITARY SEWER NOTES:

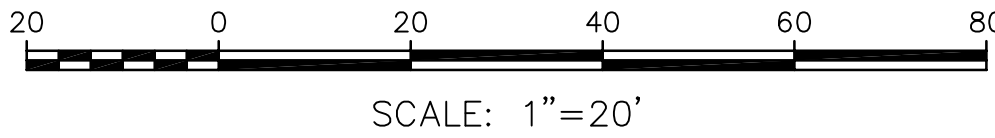
- ALL SEWER LINES SHALL BE SDR-35 P.V.C.
- IN NO CASE SHALL A LATERAL CONNECT TO THE SEWER MAIN DIRECTLY ON THE TOP OF THE PIPE.
- SEWER LATERALS TO BE 4" Ø AND SHALL HAVE A MINIMUM SLOPE OF 2% FOR 100-FEET.

### STORM DRAIN NOTES:

- ALL CULVERTS SHALL BE ADS N-12 WT OR APPROVED EQUAL.

### GENERAL NOTES:

- SANITARY SEWER IS PROPOSED AS PUBLIC TO FIRST NEW MANHOLE, THEN ALL ONSITE SEWER IS PROPOSED AS PRIVATE.
- THE WATER IS PROPOSED AS PUBLIC TO THE WATER METER. THE WATER LINE FROM THE METER TO THE TOWN HOMES IS PROPOSED AS PRIVATE.
- ONE METER IS PROPOSED FOR THIS DEVELOPMENT WITH THE UTILITY SERVICES PAID FOR BY THE HOME OWNER ASSOCIATION.
- THE SIZE OF THE PROPOSED WATER LINE MAY CHANGE FOR FINAL DESIGN DEPENDING ON THE FIXTURE COUNTS OF THE TOWN HOMES.
- AN IRRIGATION TAP WITH BACK FLOW DEVICE SHALL BE PROVIDED ON THE PRIVATE SIDE OF THE METER AS PART OF FINAL DESIGN.

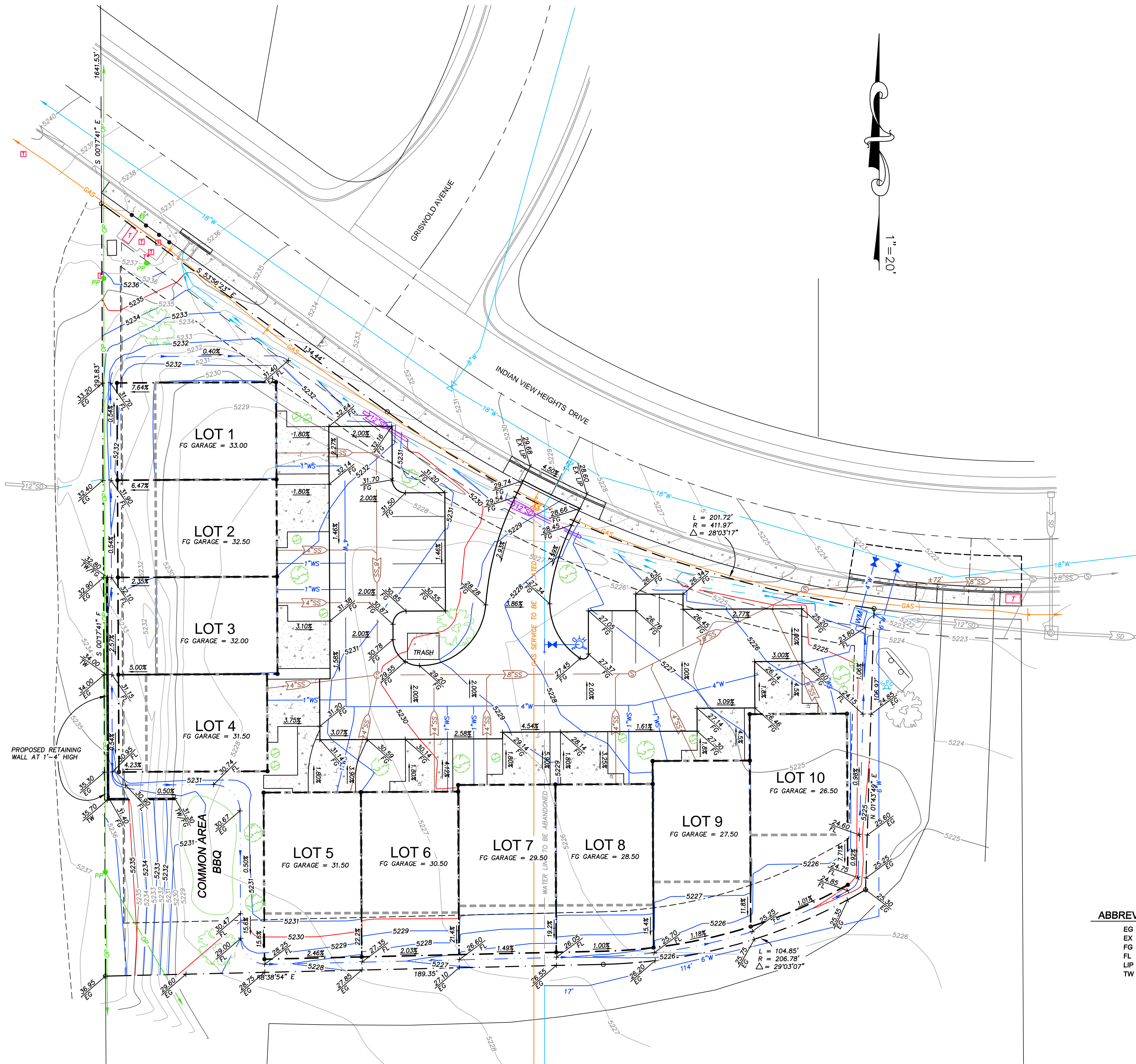


DESIGN BY: LLC	LLC	DATE: 12-19-19	12-19-19
DRAWN BY: LLC	LLC	JOB NO: 06-2019	2019-17
CHECKED BY: LLC	LLC	DWG NO: 2019-17	
SCALE HORIZ: 1"=20' VERT: N/A			
SHEET 2 OF 4			

**Carter Engineering, LLC**  
Civil Engineering  
P. O. Box 784  
Elko, Nevada 89803  
775-397-2531

**KELLY BUILDERS, LLC**  
THE TOWN HOMES at RUBY VIEW  
TENTATIVE MAP - UTILITY PLAN  
ELKO, NEVADA





LEGEND

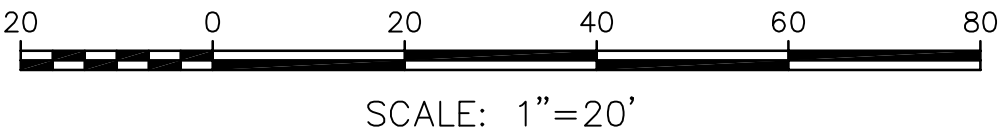
EXISTING SANITARY SEWER MANHOLE	SS
EXISTING SANITARY SEWER LINE	SS
PROPOSED SANITARY SEWER MANHOLE	SS
PROPOSED SANITARY SEWER LINE	SS
EXISTING CURB INLET	CI
EXISTING STORM DRAIN	SD
EXISTING STORM DRAIN MANHOLE	SD
PROPOSED CULVERT	SD
EXISTING GAS LINE	GAS
EXISTING WATER LINE	W
EXISTING WATER VALVE	WV
EXISTING FIRE HYDRANT	FH
EXISTING SPIGOT	SP
PROPOSED WATER LINE	W
PROPOSED WATER SERVICE LINE	WS
PROPOSED WATER VALVE	WV
PROPOSED FIRE HYDRANT	FH
EXISTING TELEPHONE PEDESTAL	TP
EXISTING TELEPHONE BOX	TB
EXISTING POWER POLE	PP
EXISTING OVER HEAD POWER LINE	OP
EXISTING POWER BOX	P
PROPOSED PROPERTY CORNER	PC
EXISTING PROPERTY CORNER	PC
EXISTING GROUND CONTOUR	5280
FINISH GRADE CONTOUR	5280
SPOT ELEVATION	ELEV LABEL
PERCENT OF SLOPE	2.00%
EXISTING DRAINAGE SWALE	SD
PROPOSED DRAINAGE SWALE	SD

NOTES:

- THE ESTIMATED EARTHWORK QUANTITIES ARE AS FOLLOWS:  
UNCLASSIFIED EXCAVATION = 270 CY CUT  
UNCLASSIFIED EMBANKMENT = 2,670 CY FILL  
THE ABOVE QUANTITIES ARE BANK CUBIC YARDS. SHRINK OR SWELL HAS NOT BEEN CONSIDERED.  
THE ABOVE QUANTITIES ARE TO SUBGRADE INCLUDING EXCAVATION FOR CRAWL SPACES AND A 3 INCHES FOR CLEARING AND GRUBBING OF THE EXISTING GROUND.  
ADD \$200 FEET TO SPOT ELEVATIONS.  
THE FINAL GRADING WILL BE DONE TO ELIMINATE CROSS LOT DRAINAGE. ALL LOTS ARE TO HAVE GRADED AND DEFINED SWALES ALONG YARD PROPERTY LINES REPORTING TO THE COMMON AREAS AND THEN TO EXISTING DRAINAGES.  
SLOPES ADJACENT TO STREETS SHALL NOT EXCEED 3:1.  
INTERIOR SLOPES SHALL NOT EXCEED 2:1.  
THIS PROJECT REQUIRES IMPORT EMBANKMENT.  
THE EXISTING GROUND TOPOGRAPHY SHOWN ON THIS PLAN IS FROM A SURVEY PROVIDED BY HIGH DESERT ENGINEERING ON 10-16-19.  
THIS PROJECT WILL REQUIRE STORM WATER PERMITTING WITH NEVADA DEPARTMENT OF TRANSPORTATION.  
THE AVERAGE SLOPE OF THIS SUBDIVISION PER 3-2-28 B IS 6.17% WHICH IS LESS THAN 15% AND THEREFORE THIS IS NOT A HILLSIDE AREA.

ABBREVIATIONS FOR SPOT ELEVATIONS

EG	EXISTING GRADE
EX	EXISTING
FG	FINISH GRADE
FL	FLOW LINE
LIP	LIP OF GUTTER PAN
TW	TOP OF WALL



DESIGN BY: LLC  
DRAWN BY: LLC  
CHECKED BY: LLC  
DATE: 12-19-19  
JOB NO: 06-2019  
DWG NO: 2019-17

SCALE  
HORIZ: 1"=20'  
VERT: N/A

SHEET  
3  
OF 4

DESCRIPTION  
MODIFY DWG FOR LOTS 4, 5 & 6  
CHANGE ROW SIDEWALK FROM 4' TO 5' WIDE  
ADD NOTE 16, SHEET C1

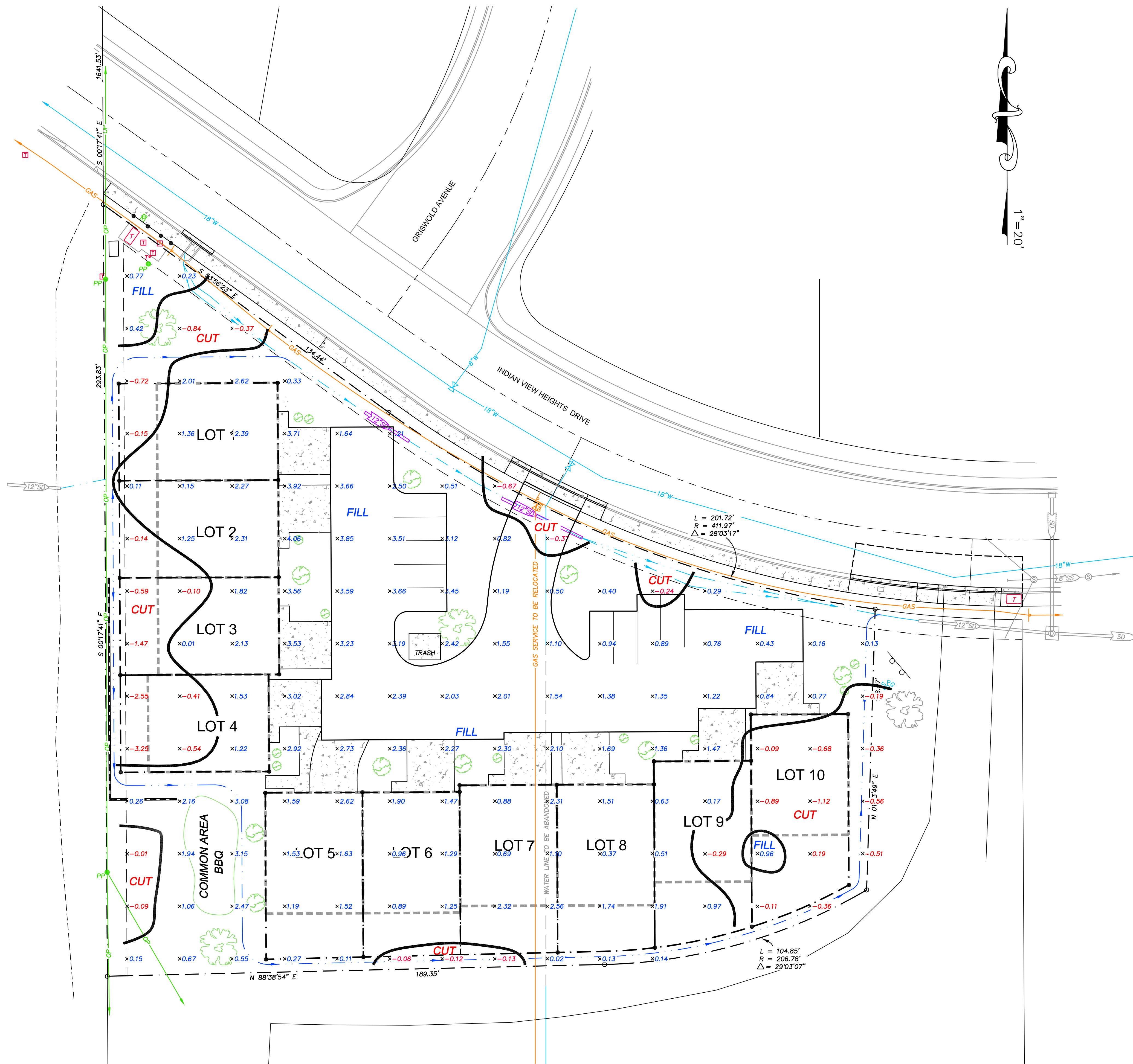
DATE  
12-19-19  
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12-19-19

REV  
1  
2  
3

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Elko, Nevada 89803  
775-397-2531

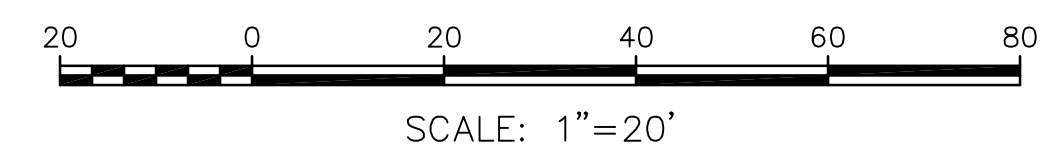
KELLY BUILDERS, LLC  
THE TOWN HOMES at RUBY VIEW  
TENTATIVE MAP - GRADING  
ELKO, NEVADA





## LEGEND

EXISTING SANITARY SEWER MANHOLE	SS
EXISTING SANITARY SEWER LINE	SS
EXISTING CURB INLET	CI
EXISTING STORM DRAIN	SD
EXISTING STORM DRAIN MANHOLE	SD
PROPOSE CULVERT	12" SD
EXISTING GAS LINE	GAS
EXISTING WATER LINE	W
EXISTING WATER VALVE	WV
EXISTING FIRE HYDRANT	FH
EXISTING SPIGOT	SP
EXISTING TELEPHONE PEDESTAL	TP
EXISTING TELEPHONE BOX	TB
EXISTING POWER POLE	PP
EXISTING OVER HEAD POWER LINE	OP
EXISTING POWER BOX	PB
PROPOSED PROPERTY CORNER	PC
EXISTING PROPERTY CORNER	OC
EXISTING DRAINAGE SWALE	DS
PROPOSED DRAINAGE SWALE	DS



DESIGN BY: LLC

DRAWN BY: LLC

CHECKED BY: LLC

DATE: 12-18-19

JOB NO: 06-2019

DWG NO: 2019-17

SCALE

HORIZ: 1"=20'

VERT: N/A

SHEET

4

OF 4

KELLY BUILDERS, LLC

THE TOWN HOMES at RUBY VIEW

TENTATIVE MAP - CUT & FILL GRID

ELKO, NEVADA

Carter Engineering, LLC

Civil Engineering

P. O. Box 784

Elko, Nevada 89803

775-397-2531

DESCRIPTION

1. MODIFY DWG FOR LOTS 4, 5, 6

2. CHANGE ROAD SIDEWALK FROM 4' TO 5' WIDE

3. ADD NOTE 16, SHEET C1



[illegible]



**Elko City Planning Commission  
Agenda Action Sheet**

1. Review, consideration and possible recommendation to City Council for Rezone No. 5-19, filed by Koinonia Development LP, for a change in zoning from C (General Commercial), PQP (Public, Quasi-Public) and RMH (Mobile Home Park and Mobile Home Subdivision) to CT (Commercial Transitional) zoning district, approximately 4.008 acres of property, and matters related thereto. **FOR POSSIBLE ACTION**
2. Meeting Date: **January 7, 2020**
3. Agenda Category: **PUBLIC HEARINGS,**
4. Time Required: **15 Minutes**
5. Background Information: **This rezone would bring the zone into conformance with the Master Plan Land Use designation.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Memo**
8. Recommended Motion: **Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 5-19 based on facts and findings as presented in Staff Report dated December 6, 2019.**
9. Findings: **See Staff Report dated December 6, 2019**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Koinonia Development LP  
207 Brookwood Drive  
Elko, NV 89801  
[elkoluke@gmail.com](mailto:elkoluke@gmail.com)  
[johns.koinonia@gmail.com](mailto:johns.koinonia@gmail.com)**



**STAFF COMMENT FLOW SHEET**  
**PLANNING COMMISSION AGENDA DATE: 1/7**

\*\*Do not use pencil or red pen, they do not reproduce\*\*

Title: Rezone Ab. 5-19

Applicant(s): Koinonia Development, LP

Site Location: S side of N. 5<sup>th</sup> St., across from Mary Way

Current Zoning: C, PDP, BMA Date Received: 12/2/19 Date Public Notice: 12/24/19

COMMENT: This is to rezone APNs 001-610-096, 097, 098, 099 + a portion of 001-610-075 from C, PDP, + BMA to CT.

\*\*If additional space is needed please provide a separate memorandum\*\*

Assistant City Manager: Date: 12/19/19

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 12/20/19

No comments/concerns.

CC

Initial





City of Elko  
1751 College Avenue  
Elko, NV 89801  
(775) 777-7160  
FAX (775) 777-7119

## **CITY OF ELKO STAFF REPORT**

<b>MEMO DATE:</b>	<b>December 6, 2019</b>
<b>PLANNING COMMISSION DATE:</b>	<b>January 7, 2020</b>
<b>APPLICATION NUMBER:</b>	<b>Rezone 5-19</b>
<b>APPLICANT:</b>	<b>Koinonia Development LP</b>
<b>PROJECT DESCRIPTION:</b>	<b>Zone amendment from C, PQP and RMH to CT</b>
<b>ADDITIONAL APPLICATIONS:</b>	<b>CUP 12-19 &amp; TM 14-19</b>



### **STAFF RECOMMENDATION:**

RECOMMEND APPROVAL, subject to findings of fact, and conditions as stated in this report.



## **PROJECT INFORMATION**

**PARCEL NUMBER:** 001-610-096, 097, 098, & 099 as well as a portion of 001-610-075

**PARCEL SIZE:** 60.75 acres

**EXISTING ZONING:** C- General Commercial & PQP- Public, Quasi-Public

**MASTER PLAN DESIGNATION:** (MU-NGHBHD) Mixed Use Neighborhood

**EXISTING LAND USE:** Undeveloped

### **NEIGHBORHOOD CHARACTERISTICS:**

- ) The property is surrounded by:
  - ) North: Residential Mobile Home (RMH) / Developed
  - ) Northwest: Commercial (C) / Developed
  - ) South: Public Quasi-Public (PQP) / Developed
  - ) Northeast: Residential Mobile Home (RMH) / Developed
  - ) Southeast: Commercial (C) / Developed

### **PROPERTY CHARACTERISTICS:**

- ) The area is currently undeveloped.
- ) The area has slight sloping to the South.
- ) The area is accessed from North 5<sup>th</sup> Street

### **MASTER PLAN AND CITY CODE SECTIONS:**

Applicable Master Plans and City Code Sections are:

- ) City of Elko Master Plan – Land Use Component
- ) City of Elko Master Plan – Transportation Component
- ) City of Elko Redevelopment Plan
- ) City of Wellhead Protection Plan
- ) City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- ) City of Elko Zoning – Section 3-2-9 CC, CT Commercial Districts
- ) City of Elko Zoning – Section 3-2-21 Amendments
- ) City of Elko Zoning – Section 3-8 Flood Plain Management

### **BACKGROUND:**

1. The property is owned by Koinonia Development LP.
2. The rezone includes all of APN 001-610-096,097,098,& 099 plus ½ of the North 5<sup>th</sup> Street rights-of-way and a small portion of 001-610-075 which they are purchasing from the City of Elko
3. The area fronts North 5<sup>th</sup> Street.



4. City utilities are located in the immediate vicinity.
5. Other non-city utilities are located in the immediate area.
6. The application for rezone is based on an application for a Conditional Use Permit for the development of townhomes and the Tentative Map that was submitted for the Mountain View Townhomes Subdivision.

**MASTER PLAN:**

**Land use:**

1. Land Use is shown as Neighborhood Mixed Use.
2. Supporting zone districts for Neighborhood Mixed Use are Convenience Commercial (CC) and Commercial Transitional (CT).
3. Objective 1: Promote a diverse mix of housing options to meet the needs of a variety of lifestyles, incomes, and age groups.
4. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.
5. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

The proposed zone district is in conformance with the Land Use Component of the Master Plan.

**Transportation:**

1. The area will be accessed from North 5<sup>th</sup> Street.
2. North 5<sup>th</sup> Street is classified in the Transportation Component as a Minor Arterial.
3. The property has pedestrian access along North 5<sup>th</sup> Street.

The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.

**ELKO REDEVELOPMENT PLAN:**

The property is not located within the Redevelopment Area.

**ELKO WELLHEAD PROTECTION PLAN:**

1. The property sits within the 20 year capture zone for the City of Elko wells.

The proposed zone district is in conformance with wellhead protection plan.

**SECTION 3-2-4 Establishment of Zoning Districts:**

1. No building, structure or land shall hereafter be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered, unless in conformity with all regulations specified in this subsection for the district in which it is located.
2. No building or other structure shall hereafter be erected or altered:
  - a. To exceed the heights required by the current City Airport Master Plan;



- b. To accommodate or house a greater number of families than as permitted in this chapter;
  - c. To occupy a greater percentage of lot area; or
  - d. To have narrower or smaller rear yards, front yards, side yards or other open spaces, than required in this title; or in any other manner contrary to the provisions of this chapter.
- 3. No part of a required yard, or other open space, or off street parking or loading space, provided in connection with any building or use, shall be included as part of a yard, open space, or off street parking or loading space similarly required for any other building.
  - 4. No yard or lot existing on the effective date hereof shall be reduced in dimension or area below the minimum requirements set forth in this title. The property meets the area requirements for the proposed zone district.

The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).

**SECTION 3-2-9 (B) –Commercial Transitional Zoning District**

- 1. As the property develops, it will be required to be in conformance with Section 3-2-9 (B).

The proposed zone district is in conformance with Elko City Code Section 3-2-9 (B).

**SECTION 3-2-21:**

The application is in conformance with Elko City Code 3-2-21 with the filing of this application.

**SECTION 3-8:**

The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA).

**FINDINGS:**

- 1. The proposed zone district is in conformance with the Land Use Component of the Master Plan.
- 2. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.
- 3. The property is not located within the Redevelopment Area.
- 4. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.
- 5. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B).
- 6. The proposed zone district is in conformance with Elko City Code Section 3-2-9(B).
- 7. The application is in conformance with Elko City Code 3-2-21.



8. The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA).
9. Development under the proposed zone district will not adversely impact natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

**STAFF RECOMMENDATION:**

Staff recommends this item be CONDITIONALLY APPROVED with the following condition:

1. Resolution for the zone amendment not to be signed by the mayor until after the Deed and BLA for the Land Sale 1-19, selling a portion of APN 001-610-075 from the City of Elko to Koinonia Development LP., be recorded.





# CITY OF ELKO

## Planning Department

Website: [www.elkocity.com](http://www.elkocity.com)  
Email: [planning@elkocitynv.gov](mailto:planning@elkocitynv.gov)

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

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December 27, 2019

Koinonia Development, LP  
207 Brookwood Drive  
Elko, NV 89801

Re: Rezone No. 5-19

Dear Applicant/Agent:

Enclosed is a copy of the agenda for an upcoming Planning Commission meeting. Highlighted on the agenda is the item or items that you have requested to be acted on at the meeting. Also enclosed is pertinent information pertaining to your request. Please review this information before the meeting.

The Planning Commission requests that you, or a duly appointed representative, be in attendance at this meeting to address the Planning Commission. If you will not be able to attend the meeting but wish to have a representative present, please submit a letter to the Planning Commission authorizing this person to represent you at the meeting.

If you have any questions regarding this meeting, the information you received, or if you will not be able to attend this meeting, please call me at your earliest convenience at (775) 777-7160.

Sincerely,

Shelby Archuleta  
Planning Technician

Enclosures

CC: [elkoluke@gmail.com](mailto:elkoluke@gmail.com)  
[Johns.koinonia@gmail.com](mailto:Johns.koinonia@gmail.com)



# Rezone 5-19 Koinonia Development, LP

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001614001	ANCHONDO, CARISA & MICHAEL		2508 FRANZI LN	ELKO NV	89801-4445
001610039	ATLAS LAND HOLDINGS LLC		1522 PROSPECT LN	ALPINE UT	84004-1874
001610018	COPPERWOOD APARTMENTS LLC		4655 S 2300 E APT 205	SALT LAKE CITY UT	84117-4679
001612003	DAVIS, LYNETTE		2430 5TH ST	ELKO NV	89801-4469
001612008	DENNIS, PERRY KENT ET AL		2451 CONNIE VIEW DR	ELKO NV	89801-4479
001612009	DITTES, JANET F		2441 CONNIE VIEW DR	ELKO NV	89801-4479
001610075	ELKO CITY OF <i>NO P.C.</i>		1755 COLLEGE AVE	ELKO NV	89801
001611007	ELKO CO TREAS TR		571 IDAHO ST	ELKO NV	89801-3715
001611005	ELLIS, GREGOR ET AL		2350 N 5TH ST	ELKO NV	89801-4453
001612010	FINK, KYLE		2431 CONNIE VIEW DR	ELKO NV	89801-4479
001612011	FRANCE, DALE L & YVONNE B		230 TEAL WAY	ELKO NV	89801-8483
001612007	GILBERT, DON L & LINDA		2461 CONNIE VIEW DR	ELKO NV	89801-4478
001613005	HEIT, GARY D ET AL		2536 FRANZI LN	ELKO NV	89801-4474
001614002	HEREDIA, MARIA DEL CARMEN		531 MARY WAY	ELKO NV	89801-4450
001612012	KRANZ, CHRISTOPHER ALLEN		511 TASHA WAY	ELKO NV	89801-4461
001611003	MCCARSON, CHRISTINE M		2330 N 5TH ST	ELKO NV	89801-4453
001610047	NORTH FIFTH COMMERCIAL CENT LLC		PO BOX 669	ELKO NV	89803-0669
001612006	PETTY, MICHAEL & JULIE		512 MARY WAY	ELKO NV	89801-4447
001613002	POMROY, ROBERT & CAITLIN TERESA		2515 FRANZI LN	ELKO NV	89801-4446
001612004	REIMOLD, ZACKERY E ET AL		2440 N 5TH ST	ELKO NV	89801-4469
001613003	RODRIGUEZ, ALEJANDRO		2523 FRANZI LN	ELKO NV	89801-4446
001613001	SANDOVAL, LUZ & CELSA G		2507 FRANZI LN	ELKO NV	89801-4446
001611014	SANTINA, CHANCE		2321 CONNIE VIEW DR	ELKO NV	89801-4451
001611004	SHIPP, DUSTY		959 MONTROSE LN	ELKO NV	89801-2472
001612002	SIDES, RICHARD		2420 5TH ST	ELKO NV	89801-4469
001610049	SONORA LLC		PO BOX 1597	ELKO NV	89803-1597
001610048	SONORA LLC <i>1 p.c</i>		PO BOX 1597	ELKO NV	89803-1597
001611006	SORENSEN, TYLER M & KIRSTI		512 TASHA WAY	ELKO NV	89801-4459
001613007	TAYLOR, TODD		503 TINA LN	ELKO NV	89801-4443
001613004	THORNBURG, GILBERT G TR ET AL		PO BOX 1772	ELKO NV	89803-1772
001612005	TYNER, ERIC		2450 N 5TH ST	ELKO NV	89801-4469
001614004	VELAZQUEZ, JOSE T TR		500 TINA LN	ELKO NV	89801-4400
001612001	WORNEK, KIM RAY & DONNA K		2410 N 5TH ST	ELKO NV	89801-4469



001611013 WORTHINGTON, NEIL E

001613006 WRIGHT, JOHNNY S & LESLIE L

2341 CONNIE VIEW DR ELKO NV

2528 FRANZI LN ELKO NV

89801-4451

89801-4474

33

Post marked 12/27/19



## NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, January 7, 2020 beginning at 5:30 P.M. P.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

The specific item to be considered under public hearing format is:

- Rezone 5-19, filed by Koinonia Development, LP, for a change in zoning from C (General Commercial), PQP (Public-Quasi, Public), and RMH (Mobile Home Park and Mobile Home Subdivision) to CT (Commercial Transitional) Zoning District, approximately 4.00 acres of property, specifically APNs 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075, located generally on the south side of N. 5<sup>th</sup> Street, across from Mary Way, more particularly described as:  
A parcel of land located within Section 9, Township 34 North, Range 55 East, M.D.B. & M., City of Elko, Elko County, Nevada, more particularly described as follows:

Commencing at the monument located at the intersection of North Fifth Street and Tasha Way as shown on the Parcel Map for North VII, a General Partnership, filed in the office of the Elko County Recorder, Elko, Nevada, as document number 416535, being Corner No. 1, the True Point of Beginning;

Thence South 32°09'14" West, a distance of 40.00 feet to Corner No. 2, being the most easterly corner of Parcel No. 1 as shown on said Parcel Map;

Thence South 32°09'14" West, along the southeast boundary of said Parcel No. 1 and the northwest boundary of Parcel 1-A as shown on the Parcel Map for Elko Athletic Club Associates filed in the office of the Elko County Recorder, Elko, Nevada, as document number 300324, a distance of 125.00 feet to Corner No. 3;

Thence North 57°50'46" West, a distance of 318.05 feet to Corner No. 4;

Thence South 72°09'14" West, a distance of 97.91 feet to Corner No. 5;

Thence North 57°50'46" West, a distance of 455.77 feet to Corner No. 6, being the most westerly corner of Parcel No. 4 as shown on said Parcel Map for North VII;

Thence North 32°09'14" East, along the northwesterly boundary of said Parcel No. 4, a distance of 200.00 feet to Corner No. 7, being the most northerly corner of said Parcel No. 4;

Thence North 32°09'14" East, a distance of 40.00 feet to Corner No. 8, a point on the centerline of North Fifth Street;

Thence South 57°50'46" East, along the centerline of said North Fifth Street, a distance of 836.75 feet to Corner No. 1, the Point of Beginning.

Said Parcel contains an area of 4.008 acres, more or less.

The intent of the zone change is to allow for a town home development.

Additional information concerning this item may be obtained by contacting the Elko City Planning Department at (775) 777-7160.

**ELKO CITY PLANNING COMMISSION**





## CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue \* Elko \* Nevada \* 89801

(775) 777-7160 phone \* (775) 777-7219 fax

### APPLICATION FOR ZONE CHANGE

APPLICANT(s): Koinonia Development, LP  
MAILING ADDRESS: 207 Brookwood Drive, Elko, NV 89801  
PHONE NO (Home) \_\_\_\_\_ (Business) (775) 778-1539  
NAME OF PROPERTY OWNER (If different): same  
(Property owner's consent in writing must be provided.)  
MAILING ADDRESS: same  
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):  
ASSESSOR'S PARCEL NO.: 001-610-096, 097, 098 & 099, and a portion of 001-610-075  
Address Not addressed  
Lot(s), Block(s), & Subdivision \_\_\_\_\_  
Or Parcel(s) & File No. \_\_\_\_\_

#### FILING REQUIREMENTS:

**Complete Application Form:** In order to begin processing the application, an application form must be complete and signed. *Complete* applications are due at least 21 days prior to the next scheduled meeting of the Elko City Planning Commission (meetings are the 1<sup>st</sup> Tuesday of every month).

**Fee:** A \$500.00 non-refundable filing fee.

**Area Map:** A map of the area proposed for this zone change must be provided.

**Plot Plan:** A plot plan provided by a properly licensed surveyor depicting the existing condition drawn to scale showing property lines, existing and proposed buildings, building setbacks, distances between buildings, parking and loading areas, driveways and other pertinent information must be provided.

**Legal Description:** A complete legal description of the boundary of the proposed zone change must be provided as well as a map depicting the area to be changed stating the wording: area to be changed from "x" to "x"; (LI to R, for example).

**Note:** One .pdf of the entire application must be submitted as well as one set of legible, reproducible plans 8 1/2" x 11" in size. If the applicant feels the Commission needs to see 24" x 36" plans, 10 sets of pre-folded plans must be submitted.

**Other Information:** The applicant is encouraged to submit other information and documentation to support this Rezone Application.

**RECEIVED**



1. Identify the existing zoning classification of the property: \_\_\_\_\_

C – Commercial

PQP – Public, Quasi Public

RMH – Residential Mobile Home

2. Identify the zoning Classification being proposed/requested: \_\_\_\_\_

CT – Commercial Transitional

3. Explain in detail the type and nature of the use anticipated on the property: \_\_\_\_\_

Development of 44 single family residential townhouse lots.

4. Explain how the proposed zoning classification relates with other zoning classifications in the area: \_\_\_\_\_

Single family residential zoning (RMH) currently exists across North Fifth Street from the proposed development. Commercial zoning (C) currently exists on each side of the proposed development. Public, quasi public zoning (PQP) currently exists along the southerly boundary of the proposed development (Mountain View Park).

5. Identify any unique physical features or characteristics associated with the property: \_\_\_\_\_

The property abuts North Fifth Street and overlooks Mountain View Park.

(Use additional pages if necessary to address questions 3 through 5)



**By My Signature below:**

☒ I consent to having the City of Elko Staff enter on my property for the sole purpose of inspection of said property as part of this application process.

☐ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect the recommendation made by the staff or the final determination made by the City Planning Commission or the City Council.)

☒ I acknowledge that submission of this application does not imply approval of this request by the City Planning Department, the City Planning Commission and the City Council, nor does it in and of itself guarantee issuance of any other required permits and/or licenses.

☒ I acknowledge that this application may be tabled until a later meeting if either I or my designated representative or agent is not present at the meeting for which this application is scheduled.

☒ I have carefully read and completed all questions contained within this application to the best of my ability.

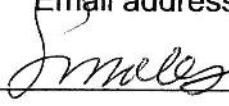
**Applicant / Agent** Koinonia Development, LP / John M. Smales  
(Please print or type)

**Mailing Address** 207 Brookwood Drive  
Street Address or P.O. Box

Elko, NV 89801  
City, State, Zip Code

Phone Number: (775) 778-1539

Email address: johns.koinonia@gmail.com

**SIGNATURE:** 

---

**FOR OFFICE USE ONLY**

**File No.:** 5-19 **Date Filed:** 12/2/19 **Fee Paid:** \$ 500 CX# 2989

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Thomas C. Ballew, P.E., P.L.S.  
Robert E. Morley, P.L.S.  
Duane V. Merrill, P.L.S.

---



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Consulting Civil Engineering  
Land Surveying  
Water Rights

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December 2, 2019

Cathy Laughlin, City Planner  
City of Elko  
1751 College Avenue  
Elko, NV 89801

Re: Koinonia Development, LP  
Zone Change

Dear Cathy,

Enclosed please find the following items regarding the above referenced project:

- Application for Zone Change.
- One (1) 8-1/2"x11" copy of the Area Map.
- One (1) 8-1/2"x11" copy of the Plot Plan.
- One (1) legal description (Exhibits A & B) for the site.
- Check in the amount of \$500.00 for the review fee.

Pdf copies of the documents listed above will be transmitted to you.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,  
HIGH DESERT Engineering, LLC

Thomas C. Ballew, P.E., P.L.S.

enclosures

cc John M. Smales, Koinonia Development, LP

RECEIVED

DEC 02 2019



DEC 02 2019

**EXHIBIT "A"**  
**KOINONIA DEVELOPMENT, LP**

**Zone Change**  
**from - Commercial; Public, Quasi-Public; & Residential Mobile Home**  
**to - Commercial Transitional**

December 2, 2019

A parcel of land located within Section 9, Township 34 North, Range 55 East, M.D.B. & M., City of Elko, Elko County, Nevada, more particularly described as follows:

Commencing at the monument located at the intersection of North Fifth Street and Tasha Way as shown on the Parcel Map for North VII, a General Partnership, filed in the office of the Elko County Recorder, Elko, Nevada, as document number 416535, being Corner No. 1, the True Point of Beginning;

thence South 32°09'14" West, a distance of 40.00 feet to Corner No. 2, being the most easterly corner of Parcel No. 1 as shown on said Parcel Map;

thence South 32°09'14" West, along the southeast boundary of said Parcel No. 1 and the northwest boundary of Parcel 1-A as shown on the Parcel Map for Elko Athletic Club Associates filed in the office of the Elko County Recorder, Elko, Nevada, as document number 300324, a distance of 125.00 feet to Corner No. 3;

thence North 57°50'46" West, a distance of 318.05 feet to Corner No. 4;

thence South 72°09'14" West, a distance of 97.91 feet to Corner No. 5;

thence North 57°50'46" West, a distance of 455.77 feet to Corner No. 6, being the most westerly corner of Parcel No. 4 as shown on said Parcel Map for North VII;

thence North 32°09'14" East, along the northwesterly boundary of said Parcel No. 4, a distance of 200.00 feet to Corner No. 7, being the most northerly corner of said Parcel No. 4;

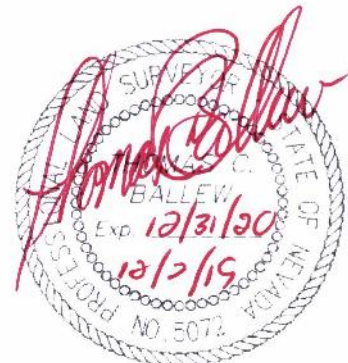
thence North 32°09'14" East, a distance of 40.00 feet to Corner No. 8, a point on the centerline of North Fifth Street;

thence South 57°50'46" East, along the centerline of said North Fifth Street, a distance of 836.75 feet to Corner No. 1, the Point of Beginning.

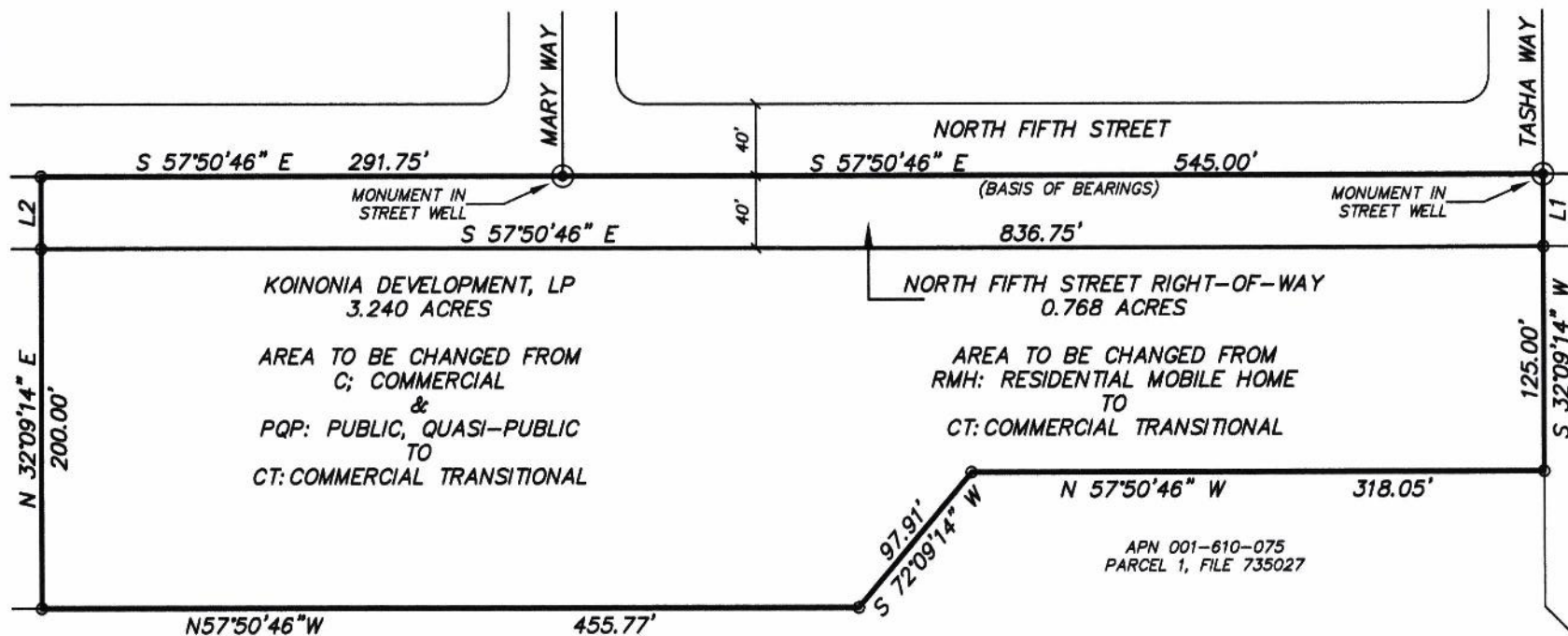
Said parcel contains an area of 4.008 acres, more or less.

Reference is hereby made to Exhibit "B", Koinonia Development, LP, Application for Zone Change, Section 9, T.34 N., R.55 E., M.D.B. & M., attached hereto and made a part hereof.

HIGH DESERT Engineering, LLC  
Thomas C. Ballew  
Nevada P.L.S. 5072



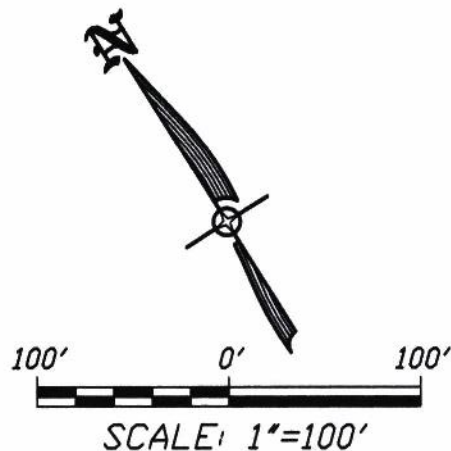




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DEC 02 2019

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 32°09'14" W	40.00'
L2	N 32°09'14" E	40.00'



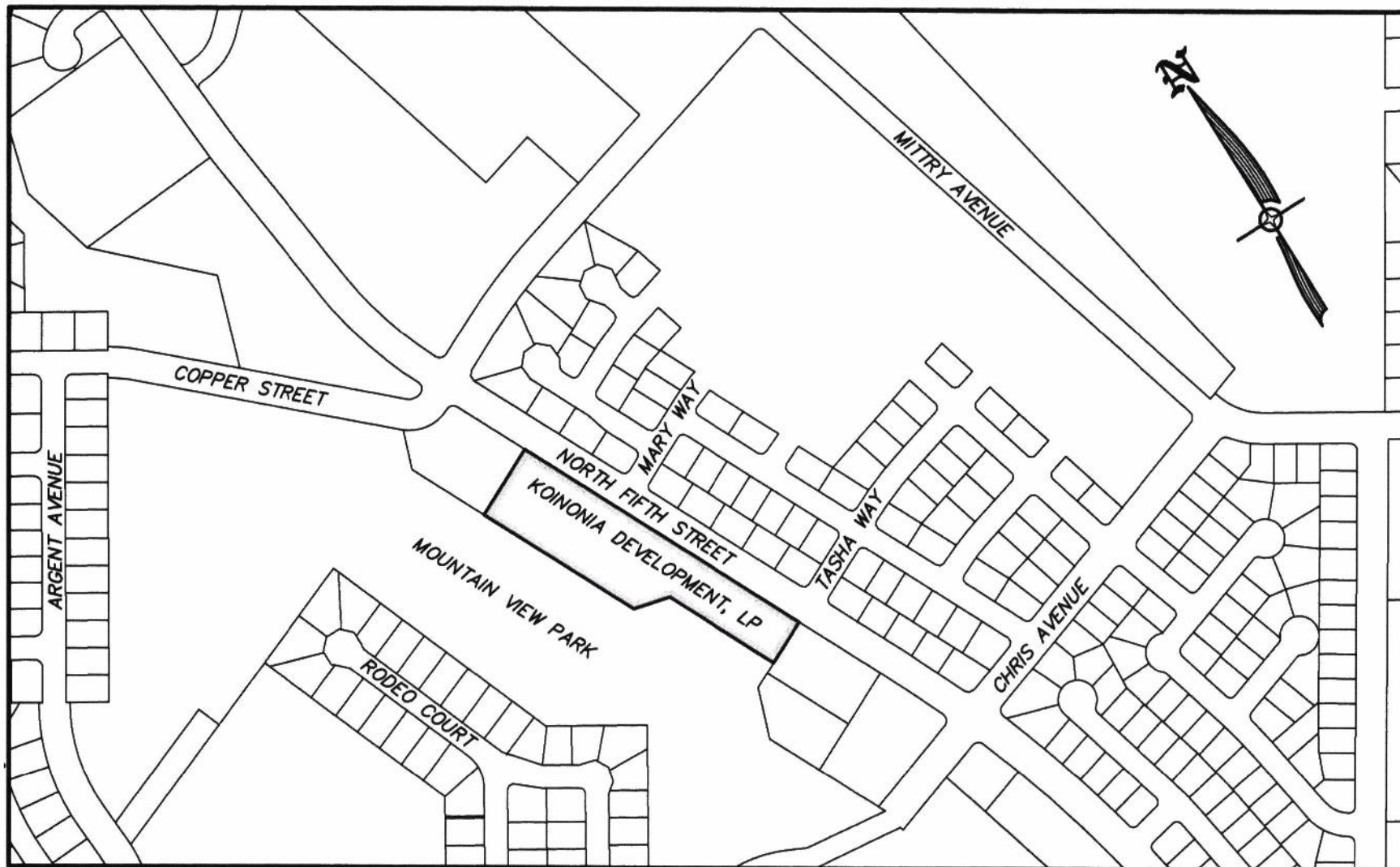
**HIGH DESERT ENGINEERING LLC**

640 IDAHO STREET  
ELKO, NV 89801  
(775) 738-4053  
HDENG@FRONTIERNET.NET

**EXHIBIT "B"**  
**KOINONIA DEVELOPMENT, LP**  
**APPLICATION FOR**  
**ZONE CHANGE**

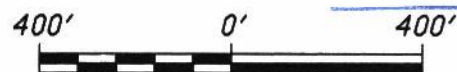
SECTION 9, T.34 N., R.55 E., M.D.B. & M.





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DEC 02 2019



SCALE: 1"=400'



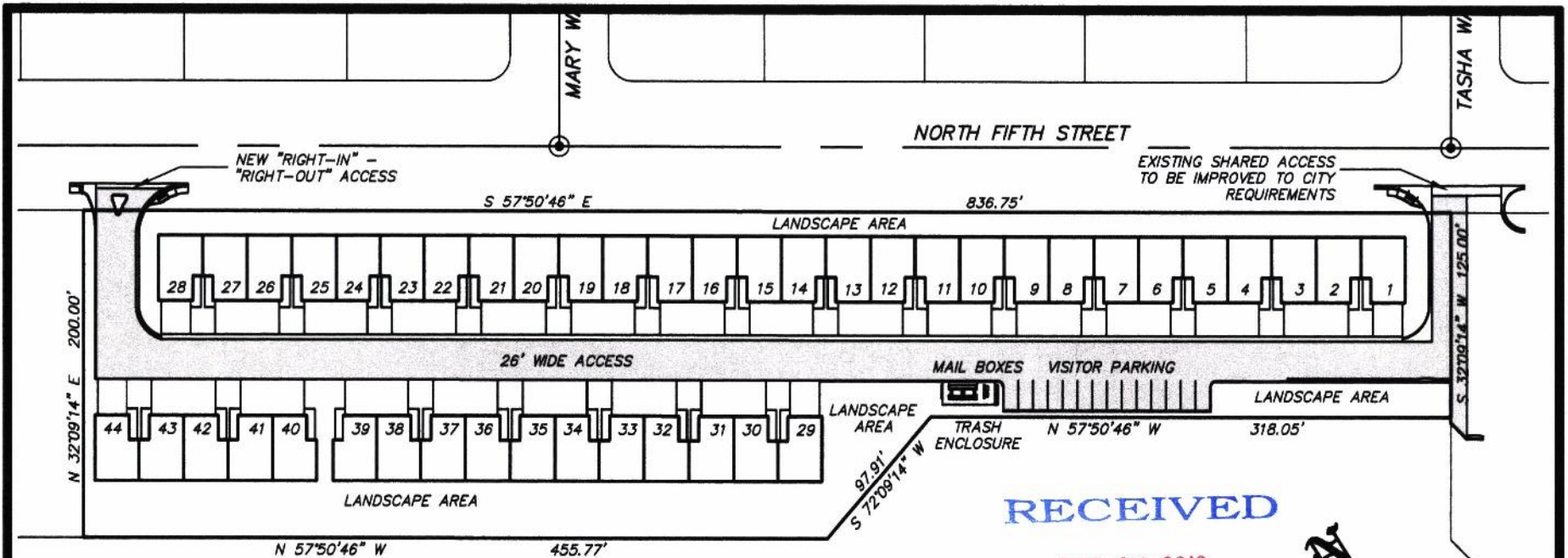
640 IDAHO STREET  
ELKO, NV 89801  
(775) 738-4053  
HDENG@FRONTIERNET.NET

AREA MAP

KOINONIA DEVELOPMENT, LP  
APPLICATION FOR  
ZONE CHANGE

SECTION 9, T.34 N., R.55 E., M.D.B.& M.





#### SUBDIVISION INFORMATION:

NUMBER OF LOTS: 44 SINGLE FAMILY LOTS PLUS COMMON AREA

LOT AREA 70,571 S.F. 1.620 ACRES  
COMMON AREA 70,565 S.F. 1.620 ACRES  
DEDICATED STREETS 0 S.F. 0.000 ACRES

TOTAL AREA 141,136 S.F. 3.240 ACRES

CURRENT ZONING: C - COMMERCIAL

PROPOSED ZONING: CT - COMMERCIAL TRANSITIONAL

MINIMUM SETBACKS: FRONT:  
REAR:  
INTERIOR SIDE:  
EXTERIOR SIDE:

MAXIMUM BUILDING HEIGHT: 45 FEET

MAXIMUM LOT COVERAGE: 65%

SPECIAL FLOOD HAZARD: NONE  
COMMUNITY NUMBER: 320010  
MAP NUMBER: 32007C5606E  
EFFECTIVE DATE: SEPTEMBER 4, 2013

PARKING REQUIREMENT: 88 SPACES (2 PER UNIT)

PARKING PROVIDED: 176 SPACES (4 PER UNIT)  
14 VISITOR SPACES  
190 TOTAL SPACES

LANDSCAPING REQUIREMENT: 15% (21,170 S.F.)

LANDSCAPING PROVIDED: 39% (54,421 S.F.)



SCALE: 1"=100'



#### PLOT PLAN

KOINONIA DEVELOPMENT, LP  
MOUNTAIN VIEW TOWN HOMES

IN  
ELKO, NEVADA



**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action to initiate an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8, Land Use Component Corresponding Zoning Districts, Transportation Component Best Practice 2.3 and Roadway Classifications, Existing Functional Classification Atlas Map 11 and Atlas Map 12, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 7, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information:
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion: **Move to initiate an amendment to the City of Elko Master Plan and direct staff to bring the item back as a resolution and public hearing.**
9. Prepared By: **Cathy Laughlin, City Planner**
10. Agenda Distribution:





# CITY OF ELKO

## Planning Department

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## Memorandum

To: Planning Commission  
From: Cathy Laughlin –City Planner  
Date: December 17, 2019  
Meeting Date: Tuesday, January 7, 2020

### Agenda Item:

- 1. Review, consideration, and possible action to initiate an amendment to the City of Elko Master Plan, specifically amending the Proposed Future Land Use Plan Atlas Map 8, Land Use Component Corresponding Zoning Districts, Transportation Component Best Practice 2.3 and Roadway Classifications, Existing Functional Classification Atlas Map 11 and Atlas Map 12, and matters related thereto. FOR POSSIBLE ACTION**

### Additional Information:

Proposed Change #1:

The City of Elko Master Plan Future Land Use Plan Atlas Map #8 designates APN 006-09M-003 as Low Density Residential similar to many Elko County parcels contiguous to the City of Elko Boundary. This Master Plan amendment would change the land use designation for that parcel to medium density residential similar to the designation on the north, west and east sides of the parcel and provides a more uniform land use boundary at this location.



Proposed Change #2



We are proposing to add RB – Residential Business District under the corresponding zoning districts of Neighborhood Mixed Use to bring that zoning district into conformance with the Master Plan Land Use Component.

Proposed Change #3

Transportation Component Best Practice 2.3 Table 8 currently conflicts with Elko City Code 3-2-17 for distance requirements between driveways and to intersections.

Proposed Change #4

College Avenue is currently in the Transportation Component Roadway Classification schedule as a Minor Arterial from 9<sup>th</sup> Street to Idaho Street. We are proposing to change the classification from 9<sup>th</sup> the 12<sup>th</sup> to a Residential Collector as the traffic count history from 2002 to 2018 doesn't justify the level of service for a Minor Arterial.

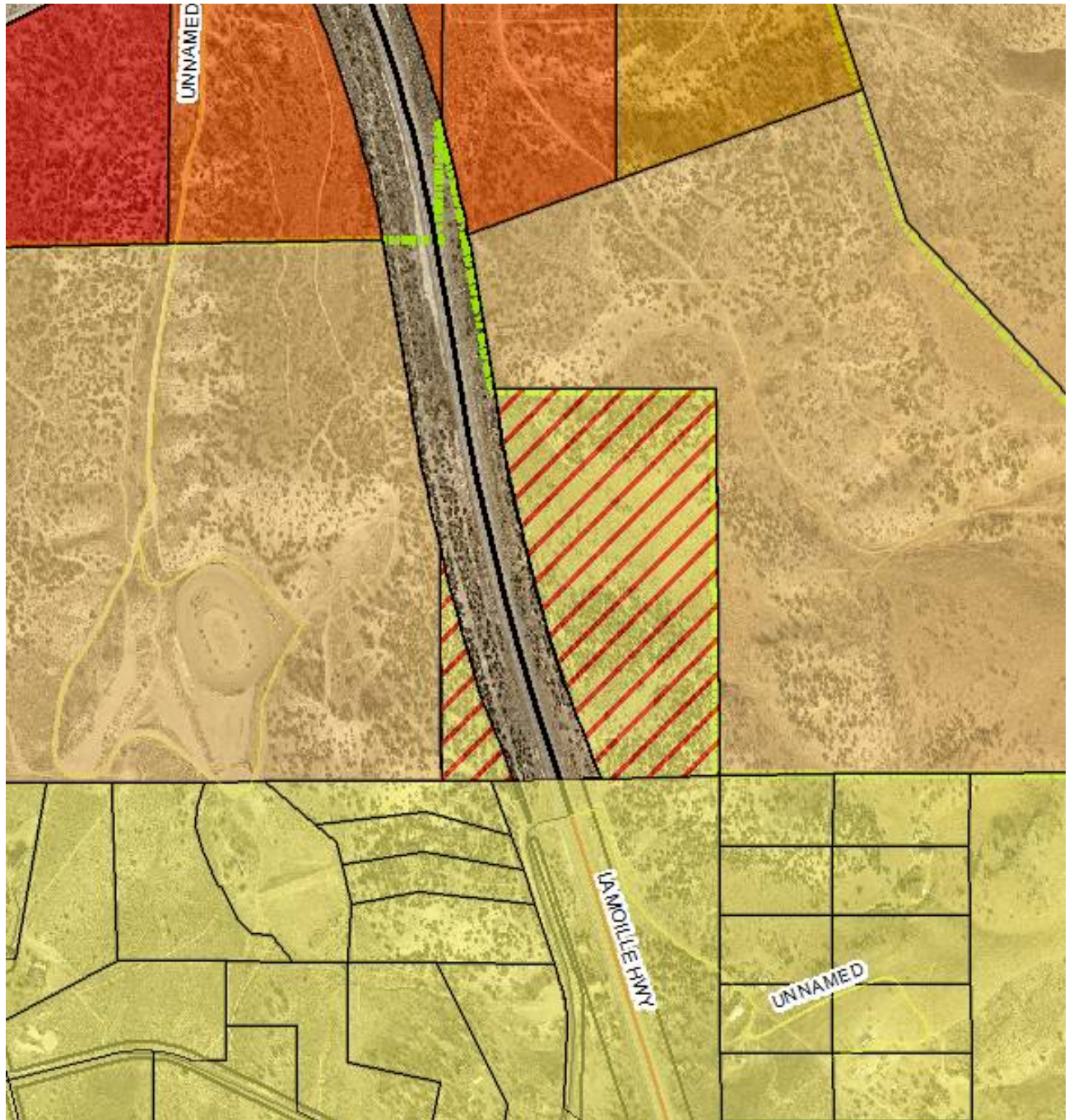
Proposed Change #5

With the proposed change in Roadway Classification for proposed change #4, Atlas Map 11 and Atlas Map 12 would be required to be changed as well.



## Proposed Change to Atlas Map #8;

Currently Low Density Residential and proposed Medium Density Residential





apartments, townhomes, condominiums, etc. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, this Master Plan's goals and policies.

Corresponding zoning districts:

- C General Commercial (with revisions)

### **Neighborhood Mixed Use**

Neighborhood Mixed-Use are areas designated on the Elko Future Land Use Map intended for higher density residential development combined with neighborhood scale commercial activity. This designation features commercial uses such as grocery stores, corner stores, coffee shops, bookstores, video rentals, barber shops, hair salons, bakeries and bicycle repair. The Master Plan Land Use Map identifies several general locations for Neighborhood Mixed-Use development.

Housing within this designation will range from higher density multi-family housing around the commercial core of the neighborhoods to medium density residential development away from the core. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, this Master Plan's goals and policies.

Corresponding zoning districts:

- CC Convenience Commercial
- CT Commercial Transitional
- RB Residential Business

### **General Industrial**

This land use designation includes light to heavy industrial type land uses as well as some of the more intense commercial uses. Land use activity in this category may include research and development, clean technology assembly and production as well as more intense industrial uses. It should be noted that these uses have some impact on surrounding areas in terms of noise, odor, dust or other nuisances that would likely extend beyond the property lines. Uses of land must comply with the Elko City Code, and must be compatible with, and not frustrate, this Master Plan's goals and policies.

Corresponding zoning districts:

- LI Light Industrial
- IC Industrial Commercial
- GI General Industrial

### **Business Park Industrial**

This land use designation identifies future employment centers, and specifically those targeting high-technology, research, education, and training institutions. Light industrial uses are appropriate within this designation, provided there are no nuisances (odor, noise, dust) which



**Table 8  
ACCESS MANAGEMENT STANDARDS**

<b>Roadway Functional Classification</b>	<b>Signal Spacing</b>	<b>Driveway Spacing</b>	<b>Left-Turns from Roadways and Driveways</b>	<b>Median Treatment</b>	<b>Other</b>
<b>Mixed Use/Main Street Major Arterial</b>	1/2 Mile desired  1/3 Mile minimum	350 ft.  (right in/out only with deceleration lane)	Only at Signal or Major Unsignalized Intersection/ Driveway	Raised Median or TWLTL	<ul style="list-style-type: none"> <li>- No more than one driveway per property; joint driveways are recommended</li> <li>- Left turn in at major driveways/unsignalized roadways okay</li> </ul>
<b>Industrial Major Arterial</b>	1/2 Mile desired  1/3 Mile minimum	350 ft.  (right in/out only with deceleration lane)	Only at Signal or Major Unsignalized Intersection/ Driveway	TWLTL	<ul style="list-style-type: none"> <li>- No more than one driveway per property; joint driveways are recommended</li> <li>- Left turn in at major driveways/unsignalized roadways okay</li> </ul>
<b>Commercial Major Arterial</b>	1/2 Mile desired  1/3 Mile minimum	350 feet  (right in/out only with deceleration lane)	Only at Signal or Major Unsignalized Intersection/ Driveway	Raised Median or TWLTL	<ul style="list-style-type: none"> <li>- No more than one driveway per property; joint driveways are recommended</li> <li>- Left turn in at major driveways/unsignalized roadways okay</li> </ul>
<b>Mixed Use/Main Street Minor Arterial</b>	1/2 Mile desired  1/3 Mile minimum	250 feet	<b>To Be Determined*</b>	Raised Median or TWLTL	<ul style="list-style-type: none"> <li>- Do not offset driveways</li> <li>- A maximum of one full access driveway per property</li> </ul>
<b>Industrial Minor Arterial</b>	1/2 Mile desired  1/3 Mile minimum	250 feet	<b>To Be Determined*</b>	TWLTL	<ul style="list-style-type: none"> <li>- Do not offset driveways</li> <li>- A maximum of one full access driveway per property</li> </ul>
<b>Commercial Minor Arterial</b>	1/2 Mile desired  1/3 Mile minimum	250 feet	<b>To Be Determined*</b>	Raised Median or TWLTL	<ul style="list-style-type: none"> <li>- Do not offset driveways</li> <li>- A maximum of one full access driveway per property</li> </ul>



<b>Residential Minor Arterial</b>	1/2 Mile desired  1/3 Mile minimum	250 feet	<b>To Be Determined*</b>	Raised Median or TWLTL	- Do not offset driveways - A maximum of one full access driveway per property
<b>Mixed Use/Main Street Collector</b>	1/4 Mile desired  1/5 Mile minimum	150 feet	Yes	Raised Median or TWLTL	- Do not offset driveways - A maximum of one full access driveway per property
<b>Industrial Collector</b>	1/4 Mile desired  1/5 Mile minimum	150 feet	Yes	None Required	- Do not offset driveways - A maximum of one full access driveway per property
<b>Commercial Collector</b>	1/4 Mile desired  1/5 Mile minimum	150 feet	Yes	Raised Median or TWLTL	- Do not offset driveways - A maximum of one full access driveway per property
<b>Residential Collector</b>	1/4 Mile desired  1/5 Mile minimum	75 feet	Yes	None Required	None

Notes: TWLTL = Two way left turn lane

Sources: Fehr & Peers, 2010

\*Additional research needed. Will be completed prior to public hearings.



## Rural Roadways

Rural Roadways provide direct access to residential properties located within the Residential Suburban (RS) zoning district. Rural Roadways typically serve lower traffic volumes under 600 vehicles per day, roadways with a traffic volume over 600 vehicles per day should be classified as a Collector Rural Road. Rural Roadways may be utilized in the RS district which are self-contained and having lots no less than ½ acre in size.

Right-of-Way Width: 60 feet Local Rural Residential Road  
Typical Travel Lanes: 2 lanes

Right-of-Way Width: 70 feet Collector Rural Residential Road  
Typical Travel Lanes: 2 lanes

## Elko Roadway Classification

The following provides the functional classifications for roadways within the City of Elko based on existing street character and function:

### *Interstates and Interstate Interchanges*

- Interstate 80 (I-80)
- Exit 298 (Idaho Street Interchange)
- Exit 301 (Mountain City Highway Interchange)
- Exit 303 (Jennings Way Interchange)

### *Principal Arterials/Other NDOT Roadways*

- Lamoille Highway (State Route-SR 227)
- Mountain City Highway (SR 225)

### *Major Arterials*

- 5<sup>th</sup> Street, between Idaho Street and Lamoille Highway (SR 227)
- 12<sup>th</sup> Street, between Idaho Street and Lamoille Highway (SR 227)
- Idaho Street
- Silver Street, Idaho Street to 5<sup>th</sup> Street

### *Minor Arterials*

- 5<sup>th</sup> Street, north of Idaho Street
- 12<sup>th</sup> Street Extension (future)
- Cattle Drive, south of Mountain City Highway (SR 225) (future)
- College Avenue – 12<sup>th</sup> Street to Idaho Street
- Errecart Boulevard, between Silver Street and Bullion Road  
(classification is Major Arterial once roadway is connected)
- Errecart Boulevard, west of Lamoille Highway (SR 227)  
(classification is Major Arterial once roadway is connected)
- Jennings Way, northeast of Mountain City Highway (SR 225)  
(classification is Major Arterial once roadway is connected)
- Jennings Way, northwest of Idaho Street (classification is Major Arterial once roadway is connected)



- Powder House Road
- Powder House Road Extension (future)
- Ruby Vista Drive
- Silver Street, between 5<sup>th</sup> Street and 12<sup>th</sup> Street
- Spruce Road
- Spruce Road Extension (future)

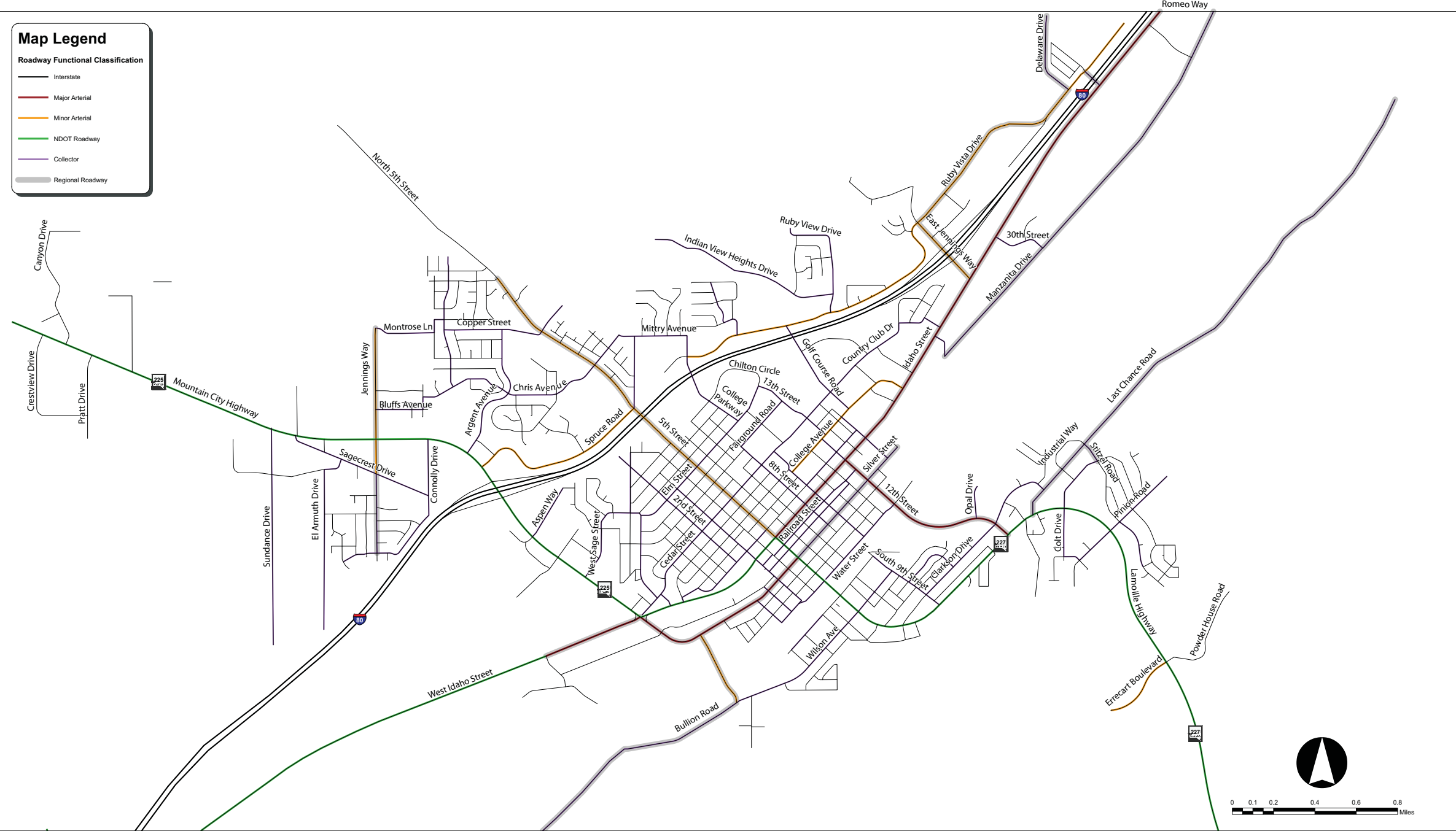
#### *Commercial/Industrial Collectors*

- 8<sup>th</sup> Street, between Elm Street and Silver Street
- 9<sup>th</sup> Street
- 12<sup>th</sup> Street, between College Avenue and Idaho Street
- 13<sup>th</sup> Street
- 14<sup>th</sup> Street
- 30<sup>th</sup> Street
- Airport Road Extension (future)
- Aspen Way, between Mountain City Highway (SR 225) and Westwood Drive
- Chris Avenue
- Colt Drive
- College Avenue – 9<sup>th</sup> Street to 12<sup>th</sup> Street
- College Parkway
- Commercial Street
- D Street
- Elm Street
- Fairground Road
- Front Street
- Golf Course Drive
- Last Chance Road
- Manzanita Lane
- Kittridge Canyon Road, between Paradise Drive and Idaho Street
- Pinion Road
- Railroad Street
- Silver Street, east of 12<sup>th</sup> Street
- Statice Street (Ruby Vista Drive to Delaware Street) Stitzel Road, between Colt Way and Last Chance
- Water Street
- West Sage Street
- Wildwood Way, between Lamoille Highway (SR 227) and Stitzel Road

#### *Residential Collectors*

- 1<sup>st</sup> Street, south of Silver Street
- 2<sup>nd</sup> Street
- 3<sup>rd</sup> Street
- Argent Avenue
- Bluffs Avenue
- Bullion Road – Wilson Avenue
- Cattle Drive, north of Mountain City Highway (SR 255) (future)
- Cedar Street, between Fir Street and 6<sup>th</sup> Street
- Cedar Street, Mountain City Highway to Fir Street and 6<sup>th</sup> Street to Idaho Street
- Clarkson Drive
- Connolly Drive
- Copper Street







**Map Legend**

**Future Improvements**

- Intersection Improvements
- Grade Separated Interchange
- Install Traffic Control Device

**Roadway Functional Classification**

- Interstate
- Major Arterial
- Minor Arterial
- NDOT Roadway
- Collector
- Regional Roadway

Note:  
Roadway alignments are conceptual.

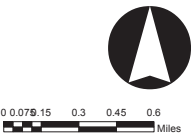
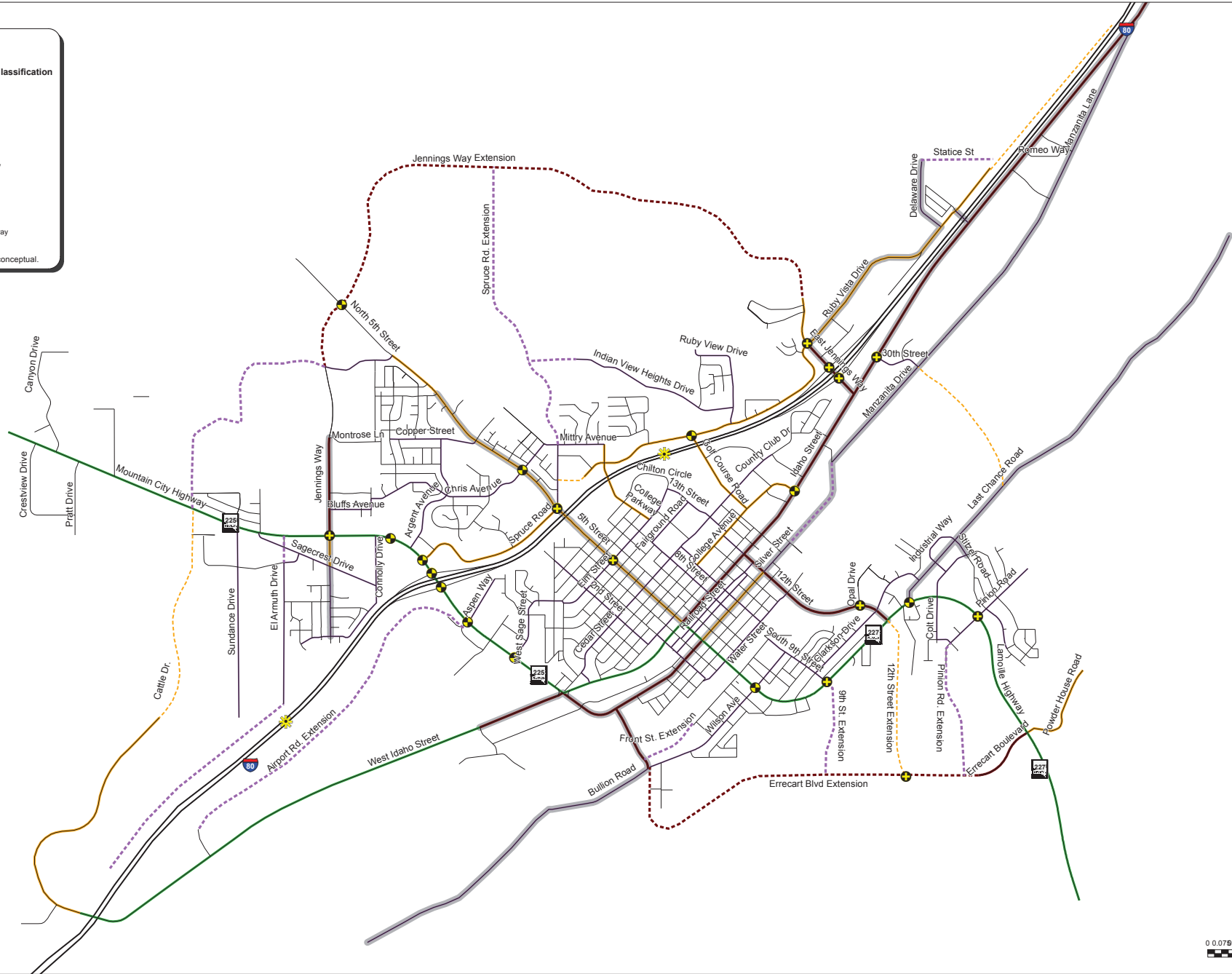
**Elko\_Planned**

**Planned Roadway Classification**

- Major Arterial
- Minor Arterial
- Collector

**Future Roads**

Stattice: Ruby Vista Drive to west  
-Collector  
Ruby Vista: Stattice to NYTC  
-Minor Arterial  
Cattle Drive: Mountain City Hwy. to Exit 298  
-Minor Arterial  
-Cattle Drive: Mountain City Hwy to 5th St  
-Collector  
9th St: Lamolle Hwy to Errecart Blvd  
-Collector  
Front St: A St. to Errecart Blvd  
-Collector  
Airport Road: W. Idaho St to Mountain City Hwy  
-Collector





**Elko City Planning Commission  
Agenda Action Sheet**

1. Title: **Election of officers, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 7, 2020**
3. Agenda Category: **MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS**
4. Time Required: **10 Minutes**
5. Background Information: **Pursuant to Section 3-4-3 A. of the City Code, the Planning Commission shall elect a Chairperson, Vice-Chairperson and Secretary in January every year.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information:
8. Recommended Motion:
9. Findings:
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:



**Elko City Planning Commission  
Agenda Action Sheet**

1. **Review, consideration, and possible action to develop the Calendar Year 2020 Planning Commission Annual Work Program, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **January 7, 2020**
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: **2020 Work Program**
8. Recommended Motion: **Pleasure of the Planning Commission**
9. Findings:
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution:



## Elko Planning Commission 2020 Work Program

		<b><u>ITEM</u></b>	<b><u>START DATE</u></b>		<b><u>PROJECTED COMPLETION</u></b>	<b><u>ACTUAL COMPLETION</u></b>
	*	Repeal and Replace Sign Ordinance	Feb-19		October	
	*	Review Zoning for RMH districts, revise map	April		September	
	*	Revise P & Z applications / Zoning Code Amendment to reflect changes	October 2017		August	
	*	Master Plan Amendment for misc. revisions	January		March	
		<b>ONGOING PROJECTS</b>				
		Planning Commission training (General conduct, Ethics, NRS, Open meeting law)				ongoing



# Zoning Bulletin

## in this issue:

Preemption—Zoning hearing board concludes its zoning ordinance requirements for hog raising are preempted by Pennsylvania's Nutrient Management Act

Vacation Rentals / Commerce Clause—City ordinance prohibits vacation rentals unless primary resident remains in dwelling

Reasonable Accommodation / Civil Rights—City refuses to exempt sober houses from state zoning ordinance requiring sprinklers in boarding houses

Permit Conditions / Municipal Liability for Unlawful Action—City conditions permit for church parsonage on church land dedication

Zoning News from Around the Nation

## Preemption—Zoning hearing board concludes its zoning ordinance requirements for hog raising are preempted by Pennsylvania's Nutrient Management Act

Objectors argue state law does not so preempt here where the agricultural operations are not otherwise subject to the Act's requirements

Citation: *Berner v. Montour Township Zoning Hearing Board*, 2019 WL 4726151 (Pa. 2019)

PENNSYLVANIA (09/26/19)—This case addressed the issue of whether, and if so to what extent, Pennsylvania's Nutrient Management Act, 3 Pa.C.S. §§ 501-522, preempts local regulation of nutrient management (e.g., animal manure) by agricultural operations that are not otherwise subject to the Act's requirements.

**The Background/Facts:** Scott Sponenberg ("Applicant") owns property in an agricultural district in Montour Township (the "Township"). Applicant sought to build on his property a swine nursery barn with under building concrete manure storage (i.e., manure storage facility). The Township's zoning ordinance (the "Ordinance") permitted "hog raising" in agricultural districts by special exception. So, in April 2013, Applicant applied to the Township's Zoning Hearing Board ("ZHB") for a special exception for the swine nursery barn and manure storage facility.

The ZHB granted Applicant's special exception application subject to conditions. The ZHB's decision was appealed by various objectors, including Russell Berner, Donna Berner, Kendall Dobbins, Robert D. Clark, and Robert W. Webber (the "Objectors"). The Objectors apparently argued that the ZHB erred in granting the special exception to Applicant because the ZHB failed to find that Applicant's waste management facility would be "conducted without adverse impact upon adjacent properties," as required by the Ordinance.

Eventually, the Objector's appeal was remanded by the Commonwealth Court back to the ZHB. There, the ZHB concluded that the Ordinance's





adverse impact requirement did not apply because it was preempted by Pennsylvania's Nutrient Management Act (the "Act"), 3 Pa.C.S. §§ 501-522—thus rendering it unnecessary for Applicant to comply with that requirement.

The Act requires certain agricultural operations to comply with various standards regarding the management of livestock manure, among other "nutrients." The Act also contains a provision outlining the manner in which the Act, as well as the regulations and guidelines promulgated pursuant to it, preempt local regulation of nutrient management. More specifically, the Act requires operators of concentrated animal operations to develop and implement a nutrient management plan ("NMP"). The Act does not require smaller operations to adopt an NMP, but allows them to do so voluntarily. Under the Act and its implementing regulations, NMP

operations must meet certain requirements, including "minimum standards [for] new manure storage facilities," which are aimed at water quality protection. (See 25 Pa. Code § 83.351.)

With respect to preemption, Section 519 of the Act expressly states that "[n]o ordinance . . . may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients . . . if the municipal ordinance or regulation is in conflict with [the Act] and the regulations or guidelines promulgated under it." The Act allows for adoption and enforcement of municipal ordinances that are "consistent with and no more stringent than the requirements of [the Act] and [its related] regulations."

The Objectors appealed the ZHB's decision. The trial court affirmed.

The Objectors again appealed. The Commonwealth Court then held that the ZHB erred in finding that the Ordinances' adverse impact requirement was preempted by the Act and its regulations. In so holding, the Commonwealth Court reasoned that the "minimum standards [for] new manure storage facilities" required by 25 Pa. Code § 83.351 applied only to certain manure storage facilities that are "part of a plan developed for an NMP operation." Since Applicant's proposed use did not have a mandatory or voluntary NMP, the court concluded that § 83.351 was not applicable to Applicant's proposed use. Further, the court reasoned that if § 83.351 did not apply here then Applicant's proposed use was subject instead to the Ordinance's adverse impact requirement. Accordingly, the Commonwealth Court reversed the trial court's decision affirming the ZHB's grant of Applicant's special exception application.

Applicant then filed a petition for review with the Supreme Court of Pennsylvania. Applicant argued that the Act did, in fact, preempt the Township's adverse impact requirement for nutrient management. Applicant contended that the Commonwealth Court's interpretation that § 83.351 did not apply to non-NMP operations "would allow local regulation of nutrient management and the imposition of more burdensome restrictions on lower intensity agricultural operation like Applicant's that are not required to submit an NMP than the Act imposes on higher intensity agricultural operations."

#### **The Court's Decision: Judgment of Commonwealth Court reversed.**

Agreeing with Applicant, the Supreme Court of Pennsylvania held that the Act preempts local regulation of agricultural operations not subject to the Act's requirements (i.e., non-NMP operations) to the extent that the local regulation is more stringent than, inconsistent with, or in conflict with those requirements.

Looking at the plain language of the Act, the court

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#### **Contributors**

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Corey E. Burnham-Howard

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concluded that “the provisions of Section 519 of the Act do not evidence an intent on behalf of the Legislature to preclude all local regulation in the field of nutrient management.” Rather, the court found that “Section 519 of the Act reveals the Legislature’s intent to prohibit local regulation of nutrient management only to the extent that it is more stringent than, inconsistent with, or in conflict with the Act or its regulations.”

Here, the court found that the Ordinance’s adverse impact requirement for nutrient management was “in conflict with the Act and its regulations.” Importantly, the court also found that the Commonwealth Court’s determination that non-NMP operations were free from the requirements imposed pursuant to the Act was “in contravention of the legislative intent underpinning the Act, and thus, respectfully, was made in error.” Specifically, the court concluded that the purpose of the Legislature’s distinction between NMP operations and non-NMP operations was to spare lower-intensity non-NMP operations from the “complex and expensive burden of adoption of an NMP.” In light of that purpose and intent, the court found it would be “ironic” to “permit[ ] local municipalities to impose upon small agricultural operations standards more burdensome than those placed upon large agricultural operations under the Act.” Accordingly, the court held that “Section 519 of the Act provides preemption protection from local regulation to both NMP operations subject to the Act’s requirements as well as non-NMP operations that are free from them.” More specifically, the court concluded that “the Act preempts any local regulation of nutrient management to the extent the local regulation imposes requirements that are stricter than, inconsistent with, or in conflict with the state law requirements, irrespective of whether a particular agricultural operation has an NMP mandating compliance with the Act.”

The court concluded that, here, the Act and its regulations preempted the Ordinance’s adverse impact requirement since the court had found that the Ordinance’s adverse impact requirement was inconsistent with the state law requirements because it imposed “additional requirements on both NMP operations subject to the state law requirements and non-NMP operations that the Legislature has deemed to be exempt from those lesser requirements.”

See also: *Com., Office of Atty. Gen. ex rel. Corbett v. Locust Tp.*, 49 A.3d 502 (Pa. Commw. Ct. 2012).

## Vacation Rentals / Commerce Clause—City ordinance prohibits vacation rentals unless primary resident remains in dwelling

City resident brings class action, arguing ordinance violates the Dormant Commerce Clause

Citation: *Rosenblatt v. City of Santa Monica*, 940 F.3d 439 (9th Cir. 2019)

*The Ninth Circuit has jurisdiction over Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon and Washington.*

NINTH CIRCUIT (CALIFORNIA) (10/3/19)—This case addressed the issue of whether a city ordinance prohibiting vacation rentals unless the primary resident remained in the dwelling violated the Dormant Commerce Clause of the United States Constitution.

**The Background/Facts:** Arlene Rosenblatt (“Rosenblatt”) is a resident and homeowner in the City of Santa Monica (the “City”). Prior to 2015, when Rosenblatt and her husband travelled, she rented her house on Airbnb for \$350 per night. In 2015, the City adopted a zoning ordinance (the “Ordinance”) that prohibited vacation rentals, but allowed “home sharing” in which residents could “host visitors in their homes, for compensation . . . , while at least one of the dwelling unit’s primary residents lives on-site, in the dwelling unit, throughout the visitors’ stay.” (City Mun. Code § 6.20.010(a).) After the City enacted the Ordinance, Rosenblatt brought a putative class action against the City. She sued “to enjoin the [O]rdinance and recover damages on behalf of herself and a class of similarly situated individuals.” She alleged that the Ordinance violated the Dormant Commerce Clause of the United States Constitution.

The Commerce Clause—Article I, Section 8, Clause 3 of the U.S. Constitution—grants Congress the power to regulate interstate commerce. The “Dormant Commerce Clause” refers to the Commerce Clause’s prohibition on states “discriminat[ing] against or burden[ing] the interstate flow of articles of commerce.” Essentially, the purpose of the Dormant Commerce Clause is “to prohibit ‘statutes that discriminate against interstate commerce’ by providing benefits to ‘in-state economic interests’ while ‘burdening out-of-state competitors.’” Ordinances validly based on the police power of the municipality that do not discriminate against interstate



commerce or operate to disrupt interstate commerce's "required uniformity," do not impermissibly burden interstate commerce in violation of the Commerce Clause. Still, an ordinance might violate the Dormant Commerce Clause if it directly regulates interstate commerce or if it has incidental effects on interstate commerce and the burden imposed on interstate commerce clearly outweighs the putative local benefits.

Here, Rosenblatt argued that the Ordinance, on its face, violated the Dormant Commerce Clause because it directly regulated interstate commerce and because it discriminated against interstate commerce. Specifically, Rosenblatt argued that the Ordinance directly regulated interstate commerce because: (a) "95% of Santa Monica vacation rentals involve an out-of-state party;" (b) the Ordinance directly regulated booking and payment transactions that may occur entirely out-of-state; and (c) the Ordinance, in preventing the advertisement of City vacation rentals, "purports to ban wholly extraterritorial communications and advertisements made over the Internet and in other jurisdictions." Rosenblatt also specifically argued that the Ordinance discriminated against interstate commerce because it favored in-state over out-of-state interests in that it: (a) attempted to "preclud[e] out-of-state travelers from accessing [residential] neighborhoods;" (b) through its effective support of local hotels, favored local interests over out-of-state interests; and (c) "contain[ed] an unconstitutional residency requirement allowing only [City] residents to engage in short-term rentals." Rosenblatt also contended that the Ordinance unduly burdened interstate commerce through its incidental effects on interstate commerce.

The district court dismissed Rosenblatt's action. The court concluded that Rosenblatt failed to allege a Commerce Clause violation as a matter of law.

Rosenblatt appealed.

**The Court's Decision: Judgment of district court affirmed.**

The United States Court of Appeals, Ninth Circuit, held that Rosenblatt failed "to plausibly allege that [the City's] [O]rdinance directly or indirectly discriminated against or burdened interstate commerce" in violation of the Dormant Commerce Clause.

The court held that Rosenblatt's complaint did not allege a *per se* (i.e., on its face) violation of the Dormant Commerce Clause because the Ordinance did not directly regulate interstate commerce, and the Ordinance did not discriminate against interstate commerce. Specifically, responding to Rosenblatt's arguments, the court held that the Ordinance did not directly regulate interstate commerce by prohibiting vacation rentals for City homes because: (a) the Ordinance penalized only conduct in the City, regardless of whether the visitors were in-state or out-of-state; (b) every out-of-state booking and payment that the Ordinance regulated nec-

essarily concerned property within the City, and the court could not characterize those transactions as activities that were separate and entirely out-of-state, but rather were part of a contractual relationship that the City "properly regulate[d] under its police power"; and (c) no evidence suggested that the Ordinance's prohibition on advertisement of City vacation rentals "was intended to have extraterritorial application." The court also held that the Ordinance did not discriminate against interstate commerce by favoring in-state over out-of-state interests because: (a) "insofar as the [O]rdinance might favor owners by allowing them to live in residential neighborhoods, it [did] not discriminate against persons outside of [the City], who stand on equal footing with [City] residents in their ability to purchase [City] property and reside there"; (b) the Ordinance "applie[d] equally to renters and property-owners from outside California, California residents outside of [the City], and [City] residents themselves"; and (c) the Ordinance did "not require the primary resident in the dwelling to be the owner of the dwelling," "applie[d] equally to owners who reside in [the City], or elsewhere in California, but a property separate from their rental property," and thus the complaint failed to allege that "the home-sharing exception obviously advantage[d] [City] residents at the expense of out-of-state homeowners."

The court also held that the complaint failed to plausibly allege that the Ordinance unduly burdened interstate commerce through its incidental effects. Specifically, the court found that Rosenblatt's complaint failed to "sufficiently allege that the [O]rdinance's effect on interstate commerce clearly outweigh[ed] the [O]rdinance's local benefits." The court found that the complaint did not plausibly allege "how any lost fraction of the vacation rental business significantly burdens commerce—let alone interstate commerce." Moreover, the court noted that "land use regulations are inherently local" and are "not a significant burden on interstate commerce merely because they disappoint would-be visitors from out of state."

See also: *Chinatown Neighborhood Ass'n v. Harris*, 794 F.3d 1136 (9th Cir. 2015).

See also: *Edgar v. MITE Corp.*, 457 U.S. 624, 102 S. Ct. 2629, 73 L. Ed. 2d 269, *Blue Sky L. Rep. (CCH)* P 71747, *Fed. Sec. L. Rep. (CCH)* P 98728 (1982).

See also: *Valley Bank of Nevada v. Plus System, Inc.*, 914 F.2d 1186 (9th Cir. 1990).

See also: *Fort Gratiot Sanitary Landfill, Inc. v. Michigan Dept. of Natural Resources*, 504 U.S. 353, 112 S. Ct. 2019, 119 L. Ed. 2d 139, 34 *Env't. Rep. Cas. (BNA)* 1728, 22 *Env't. L. Rep.* 20904 (1992).

See also: *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 98 S. Ct. 2207, 57 L. Ed. 2d 91, 1978-1 *Trade Cas. (CCH)* ¶ 62080 (1978).

See also: *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970).



## Reasonable Accommodation / Civil Rights—City refuses to exempt sober houses from state zoning ordinance requiring sprinklers in boarding houses

Sober house operator contends city's refusal is a failure to provide reasonable accommodations to disabled persons in violation of federal laws

Citation: *Summers v. City of Fitchburg*, 940 F.3d 133 (1st Cir. 2019)

*The First Circuit has jurisdiction over Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.*

FIRST CIRCUIT (MASSACHUSETTS) (10/08/19)—This case addressed the issue of whether a city's refusal to exempt sober houses from a state zoning ordinance requiring boarding house operators to install sprinklers violated the reasonable accommodation provision of the Americans with Disabilities Act and the Fair Housing Act, as amended by the Fair Housing Amendments Act.

**The Background/Facts:** Jeffrey D. Summers and his nonprofit organization, Jeffrey's House, Inc., (collectively "Jeffrey's House") operate four sober houses in the city of Fitchburg (the "City"). The sober houses "provide supportive residences for individuals recovering from alcohol and/or drug addiction." In 2013, the City found at least three of the sober houses were operating in violation of use restrictions set forth in the City's zoning ordinance. At the request of Jeffrey's House, the City granted to Jeffrey's House an accommodation under the Americans with Disabilities Act ("ADA") and the Fair Housing Act as amended by the Fair Housing Amendments Act ("FHAA") to use the sober houses despite the use restrictions. (See 42 U.S.C.A. §§ 12101-12213 and 42 U.S.C.A. §§ 3601-3631.)

In 2014, the City informed Jeffrey's House that, with regard to the three sober houses they were then operating, they were in violation of a state law requiring lodging or boarding houses with six or more unrelated

residents to install sprinkler systems (the "Sprinkler Law"). (See Mass. Gen. L. c. 148, § 26H.) When Jeffrey's House failed to comply, the City then fined them \$1,000 and began an enforcement action in the local housing court. While that was pending, Jeffrey's House sued the City. Among other things, Jeffrey's House maintained that the City's refusal to exempt the sober houses from the Sprinkler Law violated the reasonable accommodation provisions of the FHAA and the ADA.

"The FHAA bars discriminatory housing practices based on an individual's handicap." (See 42 U.S.C.A. § 3604(f).) Among other prohibitions, the FHAA prohibits discrimination "in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of an individual." (42 U.S.C.A. § 3604(f)(2)). Title II of the ADA prohibits public entities from discriminating based on disability. (See 42 U.S.C.A. § 12132.) The FHAA defines discrimination to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a handicapped individual] equal opportunity to use and enjoy a dwelling." (42 U.S.C.A. § 3604(f)(3)(B).) The ADA requires that a public entity "make reasonable modifications in policies, practices, or procedures when . . . necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity." (28 C.F.R. § 35.130(b)(7)(i).)

Here, Jeffrey's House argued that the installation of sprinklers in the sober houses would be costly, and that without exemption from the Sprinkler Law, fewer individuals would be able to benefit from the sober houses because Jeffrey's House would have to either increase prices charged for sober house residency or reduce the occupancy of the sober houses. Jeffrey's House thus argued that the City's refusal to exempt the sober houses from the Sprinkler Law would "threaten the recovery of the displaced residents and undermine the vital purpose that sober houses serve." Accordingly, Jeffrey's House contended that refusal to exempt sober house from the Sprinkler Law was the refusal of a reasonable accommodation necessary to afford recovering addicts equal opportunity to use and enjoy a dwelling, in violation of the FHAA and ADA.

Finding there were no material issues of fact in dispute, and deciding the matter based on the law alone, the district court granted summary judgment to the City. The district court concluded that Jeffrey's House failed to show that an exemption from the Sprinkler Law was "either reasonable or necessary to allow recovering addicts to live in and benefit from the sober houses."

Jeffrey's House appealed.

**The Court's Decision:** Judgment of district court affirmed.



Agreeing with the district court, the United States Court of Appeals, First Circuit, held that Jeffrey's House failed to show that their request for exemption from enforcement of the Sprinkler Law was reasonable.

The court explained that both the FHAA and ADA apply to municipal zoning and building-code decisions. The court further explained that for Jeffrey's House to prevail on its claim that the City failed to make reasonable accommodations (by exempting the sober houses from the Sprinkler Law), Jeffrey's House had to show: a qualifying handicap; the City's actual or constructive knowledge of that handicap; a request for a specific accommodation that is both reasonable and necessary to allow the handicapped individual an equal opportunity to use and enjoy the particular housing; and the City's refusal to make the requested accommodation.

The court concluded that Jeffrey's House did not meet its burden here. The court "assume[d]—solely for ease in exposition—that recovering addicts qualify as handicapped individuals [under the FHAA and ADA,] and that [the City] knew of the handicap at all relevant times . . . ." But, the court determined that Jeffrey's House failed to meet its burden of showing that its request for the sober houses exemption from the Sprinkler Law was "reasonable" to allow recovering addicts an equal opportunity to use and enjoy the sober houses. The court explained that to show such "reasonableness" required Jeffrey's House to show that the benefits to the recovering addicts would outbalance the burdens to the public that the accommodation would entail. The court concluded that exempting the sober houses from the Sprinkler Law "would not be a reasonable accommodation because such an exemption would thwart the very salutary purpose of the Sprinkler Law": preventing fires and ensuring public safety. The court found that Jeffrey's House provided "no basis for finding that the financial burden of compliance with the Sprinkler Law [was] somehow disproportionate to the public safety gains that flow from requiring them to install sprinklers."

See also: *Valencia v. City of Springfield, Illinois*, 883 F.3d 959 (7th Cir. 2018).

See also: *Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62 (1st Cir. 2010).

See also: *Scoggins v. Lee's Crossing Homeowners Ass'n*, 718 F.3d 262 (4th Cir. 2013).

#### Case Note:

*Jeffrey's House had also made what the court called a "last-ditch effort" in claiming that the Sprinkler Law discriminated against disabled individuals because it exempted certain other "group" homes—such as buildings that house six or more family members, fraternity houses and dormitories, rest homes, and licensed group homes. Essentially, Jeffrey's*

*House was arguing that enforcement of the Sprinkler Law on the sober houses resulted in disparate impact and disparate treatment against disabled individuals in violation of the FHAA and ADA. The First Circuit did not address the merits of the claim, however, finding that Jeffrey's House had waived appellate review of the claim. (See *Brockton Fire Department v. St. Mary Broad Street, LLC*, 181 F. Supp. 3d 155,157 (D. Mass. 2016) (finding application of Sprinkler Law to sober houses violative of Massachusetts Zoning Act because discriminatory against disabled individuals).*

## Permit Conditions / Municipal Liability for Unlawful Action—City conditions permit for church parsonage on church land dedication

After court finds condition was unlawful, church sues city for damages

Citation: *Church of Divine Earth v. City of Tacoma*, 449 P.3d 269 (Wash. 2019)

WASHINGTON (09/19/19)—This case addressed the issue of whether a city knew or should reasonably have known its permit condition requiring a dedication of land was unlawful, thus imposing liability for damages on the city.

**The Background/Facts:** In September 2013, the Church of the Divine Earth (the "Church") submitted to the city of Tacoma (the "City") an application to build a parsonage on property it owned in the City. The City granted the application, subject to conditions, including a requirement that the Church dedicate a 30-foot wide strip of land for right-of-way improvements to a street abutting the property. The existing street was generally 60 feet wide in most areas, but was only 30 feet wide next to the Church's property. The City stated that the purpose for imposing the dedication requirement on the Church's permit application was "to create a uniform street."

The Church challenged this permit condition, but the City kept it. The Church then appealed the City's decision to the City's hearing examiner. Finding no material issues of fact were in dispute, and deciding the matter on the law alone, the hearing examiner granted summary judgment in favor of the City.

The Church then appealed, challenging the hearing examiner's decision and seeking damages under Wash-



ington statutory law—RCW 64.40.020. That statute allows a property owner who files an application for a permit to bring an action for damages to “obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law [provided] [t]hat the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.” In other words, the statute allows a property owner to obtain damages for a municipality’s “final decision” if that decision was “made with knowledge of the unlawfulness . . . or it should reasonably have been known to have been unlawful.” (RCW 64.40.020(1).)

The trial court concluded that the City’s reason for imposition of the condition—i.e., to create a uniform street—was “insufficient to justify the requirement.” The court invalidated the condition. The court, however, denied the Church’s request for damages. The City had argued to the court that the purpose of imposing the land dedication requirement on the Church’s permit was “to address increased vehicular and pedestrian traffic and related safety impacts, and to ensure adequate visibility.” Based on that evidence, the court concluded that: (a)\*[t]he City reasonably believed that the development conditions it attached to the permit had a nexus to the project and were proportional”; and (b) the City “did not know and should not have reasonably known that its requirement for a dedication of right of way [was unlawful].”

The Church appealed.

The Court of Appeals affirmed the trial court. The Court of Appeals found that the City “reasonably believed” that it satisfied the legal requirements for permit conditions involving an uncompensated land dedication—namely that the condition was constitutional because the development would exacerbate an identified public problem and the proposed condition would solve or alleviate that public problem. The Court of Appeals held that because the City reasonably believed that the land dedication condition was lawful, “it did not know and should not have known that its action was unlawful.” Thus, the court concluded that the Church was not entitled to damages under RCW 64.40.020.

The Church petitioned for review to the Supreme Court of Washington, which granted limited review.

**The Court’s Decision: Judgment of Court of Appeals reversed, and matter remanded.**

The Supreme Court of Washington concluded that the trial court had apparently based its findings of fact and conclusions of law on “arguably improper, irrelevant evidence,” and that the Court of Appeals, “in turn, [had] applied the wrong standard in its review.”

The court explained that the Church would be entitled to damages under RCW 64.40.020 if the City “should reasonably have known” that its final decision to impose the land dedication condition on the Church’s permit was unlawful. The court further explained that both law and fact had to be involved in determining if the City should have reasonably known that its final decision was unlawful.

Here, the court found that the facts relied on were in error because the trial court had permitted the City to, in the appeal to the trial court, state additional reasons for its imposition of the condition—reasons which had not informed the City’s final decision to impose the permit condition. The City’s final decision was issued by the City’s hearing examiner, which had relied on evidence presented that the City had imposed the land dedication condition for the purpose of creating a uniform street. But on appeal, the City had listed additional reasons for the condition—including traffic, safety, and visibility concerns. Since those additional reasons had not informed the City’s final decision, the court held that the City could not use them now as justification for having imposed the condition. In other words, since those additional reasons proffered for the land dedication condition were not considered by the hearing examiner in the City’s final decision, the Supreme Court of Washington concluded that those reasons could not justify the court’s conclusion that damages were not warranted for the Church.

The Supreme Court of Washington also found the wrong legal standard was applied by the Court of Appeals in its review. Again, the Court of Appeals had held that because the City “reasonably believed” its requirement for land dedication was lawful, “it did not know and should not have known that its action was unlawful.” But the Supreme Court of Washington explained that “whether the City believed in the lawfulness of its actions [was] a subjective question and conflict[ed] with the statutory standard of RCW 64.40.020.” The proper legal standard was an objective standard, said the court: “asking whether the City’s final decision ‘should reasonably have been known to have been unlawful.’ ”

The Supreme Court of Washington remanded the matter for a new trial. In doing so, it directed the trial court to confine its review to “evidence relevant to the hearing examiner’s final decision” (i.e., that the purpose of the imposed land dedication condition was to make the street uniform). It also directed the trial court to apply the proper legal standard in determining whether damages were justified for the Church—i.e., “whether the Church proved the City knew or should reasonably have known its permit condition for a dedication of land was unlawful.”

See also: *Nollan v. California Coastal Com’n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677, 26 Env’t. Rep. Cas. (BNA) 1073, 17 Env’t. L. Rep. 20918 (1987).



See also: *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304, 38 Env't. Rep. Cas. (BNA) 1769, 24 Env't. L. Rep. 21083 (1994).

See also: *In re Forfeiture of One 1970 Chevrolet Chevelle*, 166 Wash. 2d 834, 841, 215 P.3d 166 (2009).

See also: *Cloud ex rel. Cloud v. Summers*, 98 Wash. App. 724, 731, 991 P.2d 1169, 141 Ed. Law Rep. 343 (Div. 1 1999), publication ordered, (Jan. 14, 2000).

## Zoning News from Around the Nation

### NATIONWIDE

The Drone Integration and Zoning Act was recently introduced in the United States House of Representatives. The bill would “transfer authority over low-flying drones from the federal government to states, cities and Native American tribes.” Reportedly, the bill “would create a framework for drones up to 200 feet above the ground where local authorities determine what drones do in airspace over state- or local-owned land and property owners do the same over their own land.” Under the bill, “[d]rone activity in airspace above 200 feet would remain under the authority of the Federal Aviation Administration (FAA).”

Source: *The Hill*; <https://thehill.com>

### CALIFORNIA

Governor Gavin Newsom recently signed into law several bills “aimed at increasing housing density by limiting cities’ ability to block new construction and making it easier to build so-called granny flats.” Senate Bill 330 will limit the density reduction measures that downsize the number of units that can be built in a particular space. It will also “limit cities’ ability to impose new building standards that drive up construction costs.” Other measures “make it easier for people to build so-called accessory dwelling units, or granny flats, on their property.” For example, one new law “limit[s] cities’ ability to prevent homeowners from building second and third units less than 16 feet tall provided there is enough space to build them at least 4 feet from property lines. Another will limit fees cities and counties charge people who want to build additional units.”

Source: *The Sacramento Bee*; [www.sacbee.com](http://www.sacbee.com)

A farmworker housing bill was recently signed into law by Governor Gavin Newsom. Assembly Bill 1783, the “Farmworker Housing Act of 2019,” “sets up a streamlined process for approving construction of non-

dormitory-style housing on land zoned for agricultural use.”

Source: *The Bakersfield Californian*; [www.bakersfield.com](http://www.bakersfield.com)

### ILLINOIS

The City of Aurora’s Planning Commission is recommending a zoning change that would allow recreational marijuana to be sold in parts of the city. The zoning amendment would reportedly set forth the “time, place and manner” of potential marijuana dispensary locations and other marijuana-related facilities. Under the proposed amendment, marijuana dispensaries would be permitted as special uses in certain, specified zoning districts. Among other things, the zoning amendment would also limit marijuana dispensary hours of operation from 8:00 a.m. to 10:00 p.m., and would require dispensaries be at least 500 feet from any school property line.

Source: *Chicago Tribune*; [www.chicagotribune.com](http://www.chicagotribune.com)

### MASSACHUSETTS

Recently introduced in the State House of Representatives, a new bill seeks to “create a special commission tasked with helping the state’s more than 7,000 local farms” prepare for the effects of climate change. The bill envisions that such a special commission “would be charged with investigating methods to help farmers combat climate change and increase their renewable energy production.” The bill, entitled “An Act establishing a special commission to ensure the resiliency of family farms in the 21st century,” reportedly outlines several areas the commission would review to meet its charge, including zoning bylaws. The bill is currently under review by the Joint Committee on Environmental, Natural Resources and Agriculture.

Source: *The MetroWest Daily News*; [www.metrowestdailynews.com](http://www.metrowestdailynews.com)

### PENNSYLVANIA

Allegheny County Councilors are considering a proposal to create a public registry of oil and gas leases. The proposed bill “would require landholders to report where they lease property for fracking and oil drilling.” Proponents of the bill say it would “support Allegheny County’s 130 municipal governments so [that] they may appropriately develop and revise their state-mandated comprehensive zoning plans, and also improve their zoning ordinances.” Opponents contend that such a bill would violate Pennsylvania’s Act 13 by regulating the oil and gas industry and requiring disclosure of “proprietary information.”

Source: *WESA*; [www.wesa.fm](http://www.wesa.fm)



# Zoning Bulletin

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## Nonconforming Use—Charter School seeks special exception to operate in residential zoning district

Opponents contend large parking lot at school violates intent and purpose of zoning district

Citation: *Committee of Neighbors Directly Impacted by LAMB Application v. District of Columbia Board of Zoning Adjustment*, 2019 WL 5617815 (D.C. 2019)

DISTRICT OF COLUMBIA (10/31/19)—This case addressed the issue of whether a parking lot was a legal nonconforming use.

**The Background/Facts:** Latin American Montessori Bilingual Public Charter School (“LAMB”) sought to establish a public charter school on certain property (the “Property”) in the District of Columbia. The Property was located in an R-16 zoning district. Such a zoning district allowed for “low-density residential and institutional uses.” The “purposes” of the R-16 zone were: (1) to “[p]romote the conservation, enhancement, and stability of the low-density, single dwelling unit neighborhood for housing and neighborhood-related uses”; (2) to “control the expansion of nonresidential uses and minimize adverse impacts of permitted nonresidential uses”; and (3) to “allow neighborhoods to continue to provide health and social services, and private institutions to provide cultural and religious enhancement ‘within the framework of improved public review and control over the external effects of nonresidential uses.’” In the R-16 zone, a public charter school was only allowed pursuant to a special exception.

The District of Columbia’s Board of Zoning Adjustment (“BZA”) had previously granted a special exception for a private school, Kingsbury Center (“Kingsbury”), to operate a private school on the Property. Now, LAMB sought to co-locate with Kingsbury and share the Property, with the intent to eventually become the sole occupant. LAMB submitted to the BZA a request for a special exception for it to use the Property as a public charter school. After public hearings, the BZA approved LAMB’s special exception application subject to conditions intended to “mitigate any adverse impacts of the increase in students at the school.”

Committee of Neighbors Directly Impacted by LAMB Application (the “Neighbors”) opposed LAMB’s special exception request. Following the BZA’s approval of LAMB’s special exception, the Neighbors appealed the



BZA's approval to court. Among other things, the Neighbors argued that the BZA's approval of the continued use of a 107-space parking lot violated the intent and purpose of the R-16 zone.

### **The Court's Decision: Judgment of Board of Zoning Adjustment affirmed.**

The District of Columbia Court of Appeals concluded that the BZA did not err in permitting the 107-space parking lot to remain because it was a "legal nonconforming use."

The court explained that "[a] nonconforming use is a use that does not conform to existing zoning regulations but was a lawful use at the time it was created." "In other words," said the court, "if a use was lawful under applicable zoning regulations at its inception, then that use 'may be continued' despite its nonconformity with subsequent zoning regulations, as long as there are 'no

structural alteration[s]' made, the nonconforming use is not 'enlarge[d],' and 'a new building is [not] erected.'" (D.C. Code § 6-641.06a (2018 Repl.).) The court acknowledged that the right to use a nonconforming structure may be lost under certain circumstances, such as where the owner abandons the use, or where the use is enlarged or expanded.

Here, the parking lot use had been permitted under an earlier BZA order issued for Kingsbury when the Board granted Kingsbury's special exception in 2000. Thus, the court found that the use would be allowed to continue as a legally nonconforming use since there was "no indication . . . that LAMB proposed to abandon, enlarge, or otherwise change its use as a parking lot."

See also: *George Washington University v. District of Columbia Bd. of Zoning Adjustment*, 429 A.2d 1342 (D.C. 1981).

See also: *Gorgone v. District of Columbia Bd. of Zoning Adjustment*, 973 A.2d 692 (D.C. 2009).

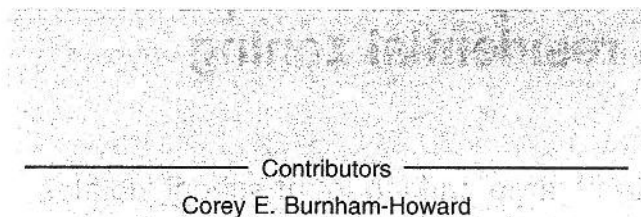
## **Nonconforming Use/ Variance—Property owner seeks to rebuild nonconforming structure after hurricane damage and asks for variances to meet flood elevation requirement**

Neighbor argues nonconforming status is lost and no hardship exists to warrant variances

Citation: *Mayer-Wittmann v. Zoning Board of Appeals of City of Stamford*, 333 Conn. 624, 2019 WL 5682694 (2019)

CONNECTICUT (11/05/19)—This case addressed the issue of whether a sea cottage's status as a legally nonconforming accessory structure terminated, pursuant to the city's zoning regulations, due to a lack of reconstruction within one year of hurricane damage. The case also addressed whether a landowner established the existence of an "unusual hardship" warranting approval of his application for variances, despite the fact that the landowner was still able to use four other dwelling units on the property.

**The Background/Facts:** Paul E. Breunich ("Breunich") owned a 0.96-acre beachfront property (the "Property") in the City of Stamford (the "City"). The Property was located in an R-10 single-family, low-density zoning



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district. Improvements to the Property included three dwelling structures with a total of five dwelling units, two sheds, and a garage. Since those structures were built before the zoning regulations were adopted, they were “legally authorized nonconforming structures” under the City’s zoning regulations. One of those structures—referred to as “the sea cottage”—was an accessory structure containing a single dwelling unit. The sea cottage was nonconforming with regard to rear and side yard setback distances, elevation requirements for flood prone areas, and height.

In October 2012, the sea cottage was severely damaged by Hurricane Sandy. Breunich wanted to rebuild the sea cottage. It was the understanding of Breunich and the City that, notwithstanding the fact that the sea cottage was a legally nonconforming structure, because the cost of repairs to the sea cottage would exceed 50% of the sea cottage’s value, the City zoning regulations required the sea cottage to conform to certain regulations governing flood prone areas, including the minimum elevation requirement. Notably, under the regulations applicable to flood prone areas, the minimum flood elevation requirement for the lowest horizontal structural member of the sea cottage was 16 feet above the base flood elevation, and the maximum height allowed in the R-10 zone for accessory structures was 15 feet. Thus, for the sea cottage to meet the minimum flood elevation requirement, it would leave only 7.7 feet of buildable vertical space if the structure were also required to conform to the building height requirements. Accordingly, Breunich sought a variance from the maximum height requirements for accessory structures. Moreover, because the soils on which the sea cottage was standing could not support the foundation that would be required to elevate the sea cottage to the minimum flood elevation, Breunich sought setback variances to allow the cottage to be moved a few feet to the north.

The City’s Planning Board recommended approval of Breunich’s variances. After a hearing, the City’s Zoning Board of Appeal (“ZBA”) granted the variances.

Thereafter, Karl Mayer-Wittmann (“Mayer-Wittmann”) appealed the ZBA’s decision. Mayer-Wittmann was the executor of the estate of Gerda Mayer-Wittmann, who owned the property adjacent to Breunich’s Property. Mayer-Wittmann asserted that Breunich was barred by the City’s zoning regulations from rebuilding the sea cottage because the sea cottage’s legally nonconforming status had terminated since Breunich had failed to rebuild within 12 months of the hurricane damage. Article IV, § 10 (C) of the City zoning regulations provided that any non-conforming building damaged by “flood . . . [or] act of God” could be reconstructed and used as before “if reconstruction is started [within] twelve . . . months of such calamity.” In other words, the zoning regulation ensured that a building rebuilt within 12 months of a “calamity” would retain its nonconforming status—without requirement to reconstruct to current regulations or to seek variances from those regulations. Mayer-Wittmann contended that

because Breunich had failed to rebuild within 12 months of Hurricane Sandy, the sea cottage lost its nonconforming status completely and could therefore no longer be rebuilt.

Mayer-Wittmann also argued, in the alternative, that the ZBA improperly granted the variances because Breunich had failed “to establish a hardship by showing that enforcement of the regulations would deprive him of all reasonable use of his property or render his lot completely unusable . . . .” In Connecticut, an applicant for a variance must show that “because of some peculiar characteristic of his property, the strict application of the zoning regulations produces an unusual hardship, as opposed to the general impact which the regulations has on other properties in the zone . . . .” Here, Mayer-Wittmann contended that, if Breunich’s variances for the sea cottage were denied, Breunich would still be able to use the four other dwelling units and various accessory structures on the property. Thus, Mayer-Wittmann argued that strict enforcement of the setback and building height requirements of the zoning regulations would “impose no unusual hardship,” with no variance therefore warranted.

The trial court concluded that the regulations applicable to flood prone areas imposed a hardship on Breunich that justified the granting of the variances. The court dismissed Mayer-Wittmann’s appeal.

Mayer-Wittmann again appealed.

#### **The Court’s Decision: Judgment of superior court affirmed.**

The Supreme Court of Connecticut first concluded that Article IV, § 10 (C) of the City zoning regulations—allowing reconstruction of nonconforming structures within one year of a calamity—“[did] not apply to the sea cottage because it would have been impossible for Breunich to reconstruct the building ‘as before’ without either conforming to the minimum elevation requirement or seeking a variance from the regulation.” Thus, the court rejected Mayer-Wittmann’s argument that the sea cottage’s nonconforming status had terminated, and that the cottage therefore could not be rebuilt. Rather, the court held that when, as here, “a legally nonconforming building subject to the regulations applicable to flood prone areas is damaged and the cost of repairs exceeds 50 percent of the value of the building, the minimum flood elevation requirement applies to the repair of the building, notwithstanding the fact that the building previously had a legally nonconforming status with respect to that requirement, and notwithstanding article IV, § 10 (C), of the regulations, which authorizes the reconstruction ‘as before’ of buildings damaged in a ‘calamity’ within twelve months of the calamity.” Accordingly, here the court concluded that the sea cottage retained its status as a legally nonconforming accessory structure.

The court also rejected Mayer-Wittmann’s argument that the ZBA had improperly issued the variances since there was no unusual hardship on the Property. Rather, the court concluded that the ZBA had “reasonably found that Breunich established the existence of an unusual



hardship warranting approval of his application for variances because the strict enforcement of the regulations would have deprived him of his constitutionally protected right to continue using the sea cottage, which is an existing, legally nonconforming accessory structure.” The court explained that without variances, Breunich would be unable to reconstruct the sea cottage, “resulting in an inverse condemnation of his existing, legally nonconforming use.” In other words, the court said that “it would result in an unusual hardship.” Since the strict enforcement of the regulations would have deprived Breunich of his constitutionally protected right to continue using the sea cottage, the court concluded that the ZBA had “reasonably found that Breunich established the existence of an unusual hardship warranting approval of his application for variances.”

See also: *Jenkintown Towing Service v. Zoning Hearing Bd. of Upper Moreland Tp.*, 67 Pa. Commw. 183, 446 A.2d 716 (1982).

See also: *Petruzzi v. Zoning Bd. of Appeals of Town of Oxford*, 176 Conn. 479, 408 A.2d 243 (1979).

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**Case Note:**

*In its decision, the court acknowledged that conforming the sea cottage to the minimum flood elevation requirement would increase its nonconformity with the regulations governing building height. However, the court emphasized that Breunich was “not seeking to ‘expand’ the nonconforming building for his own benefit or convenience” but was instead seeking the variances in order to comply with the minimum flood elevation requirement of the regulations applicable to flood prone areas. Thus, the court concluded that despite the expansion, the variances were warranted since the underlying purpose of the variances sought was not to “expand” the nonconformities of the sea cottage “but merely to allow its continued use.”*

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**Case Note:**

*Mayer-Wittmann had also argued that if Breunich was required to comply with or seek a variance from the minimum elevation requirements for flood prone areas, it necessarily followed that the sea cottage entirely lost its legally nonconforming status. In other words, he had argued that the continued existence of a legally nonconforming structure and the need for variances were mutually exclusive concepts. The court disagreed, noting the purpose of the minimum elevation requirements was not to “deprive legally nonconforming buildings entirely of their legally nonconforming status but to ensure the maximum possible compliance with regulations applicable to flood prone areas.”*

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## Fees/Limitations Period— Property owners seek from county a refund of unexpended development impact fees

County asserts that limitations period for seeking such a refund is one year

Citation: *County of El Dorado v. Superior Court of El Dorado County*, 41 Cal. App. 5th 691, 254 Cal. Rptr. 3d 456 (3d Dist. 2019)

CALIFORNIA (10/30/19)—This case addressed the issue of the limitations period for recovering development impact fees under California’s Mitigation Fee Act.

**The Background/Facts:** Thomas and Helen Austin (the “Austins”) owned property in the County of El Dorado (the “County”). In 2015, the Austins brought a legal action against the County to recover unexpended development impact fees. The Austins alleged that, as the current property owners, they were entitled to a refund of 11 different mitigation fees exacted by four special districts in which their real property was located. They alleged that they were so entitled because the County had failed to comply with its obligation under California’s Mitigation Fee Act “to make findings justifying the continued collection and retention of the mitigation fees within the prescribed period of years” (the “nexus” findings). (See Gov. Code § 66001.)

The Mitigation Fee Act (the “Act”) regulates local agency imposition of fees as a condition of approval of a development project. (Gov. Code § 66001.) Among other things, the Act requires that, every five years, the local agency make findings with respect to the portion of the fund remaining unexpended. Those findings must include a demonstration of the “reasonable relationship between the fee and the purpose for which it is charged.” (Gov. Code § 66001(B).)

The County demurred. Among other things, it asserted that a one-year limitations period for penalties and forfeitures applied.

The trial court overruled the demurrer. The court found that “each subsequent collection of a fee within the applicable limitations period—in the absence of nexus findings—was a new breach, and as a result the limitations period could not apply to the entirety of the cause of action under the ‘continuous accrual’ doctrine.”

The County appealed, again claiming that the Austins’ claims for return of fees constituted “a penalty or forfeiture,” and was therefore subject to a one-year limitations period. (See Code Civ. Proc., § 340.)

**The Court’s Decision:** Stay vacated; petition denied.



The Court of Appeal, Third District, California, agreed with the County, concluding that the Mitigation Fee Act's provision on the return of unexpended mitigation fees for failure to make nexus findings was subject to a one-year period of limitations.

The court explained that the relevant Mitigation Fee Act provision—Gov. Code § 66001—did not specify a limitations period. Addressing the County's argument, the court acknowledged that, "[u]nder well-established California law, statutes that provide for mandatory damages either in addition to actual injury or regardless of actual injury or fault are considered to be in the nature of a penalty or forfeiture subject to one-year limitations period." And, here, the court found that Gov. Code § 66001 was such a statute because it: (1) entitled the return of unexpended mitigation fees for failure to make nexus findings "regardless of whether on the merits the local agency could in fact demonstrate the basis for nexus findings existed at the time the deadline expired"; (2) entitled the current property owner to the refund of fees "regardless of whether the current owner actually paid any fees into the fund," and thus "regardless of whether actual injury exists"; and (3) imposed "liability without regard to any substantive fault on the part of the party held liable, and regardless of any actual injury," and therefore did "not represent a remedy but a focus on coercing particular conduct from the party held liable without any substantive fault."

Accordingly, the court concluded that Gov. Code § 66001 was "in the nature of a penalty or forfeiture, and as a result is subject to the one-year period of limitations." (Code Civ. Proc., § 340, subd. (a).)

See also: *San Diego County v. Milotz*, 46 Cal. 2d 761, 300 P.2d 1 (1956).

See also: *Walker v. City of San Clemente*, 239 Cal. App. 4th 1350, 192 Cal. Rptr. 3d 635 (4th Dist. 2015).

## Subdivision/Application Approval/Estoppel—Board refuses to issue an "approval not required," finding proposed lot did not meet required criteria—namely that it was on a public way

Applicant contends Board is precluded from such a denial given a 1987 court judgment establishing street as a public way

Citation: *Barry v. Planning Board of Belchertown*, 96 Mass. App. Ct. 314, 2019 WL 5559091 (2019)

MASSACHUSETTS (10/29/19)—This case addressed the issue of whether landowners were entitled to approval of an application by way of the planning board being collaterally estopped from denying that the applicants met certain necessary criteria. In other words, the case addressed whether a 1987 court judgment on a different case involving a neighboring area of land precluded the town from refusing to grant an "approval not required" for an applicant's division of real estate lots.

**The Background/Facts:** In January 2015, Richard G. Barry ("Barry") filed an application with the planning board of Belchertown (the "Board"), seeking an "approval not required" ("ANR") endorsement pursuant to Massachusetts statutory law—G.L. c. 41, § 81P. Under that statute, a plan for subdivision of property does not require planning board approval if it does not show a "subdivision," but instead is entitled to an endorsement "approval under the subdivision control law not required"—known as an "ANR" endorsement. The statute—G.L. c. 41, § 81L—specifies that a plan does not show a subdivision if after division, every proposed lot (1) has the required frontage (2) on a way that meets any one of three criteria: "(a) the way is 'a public way' or 'a way which the [town clerk] certifies is maintained and used as a public way' (clause a); or (b) the way is 'shown on a plan theretofore approved and endorsed in accordance with the subdivision control law' (clause b); or (c) the way was 'in existence when the subdivision control law became effective . . . having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic . . . and for the installation of municipal services to serve such land and the buildings . . . thereon' (clause c)." (G. L. c. 41, § 81L.)

The plan submitted with Barry's application showed



two lots—lots A and B, each with 140 feet of frontage on Munsell Street. Lot A fronted a portion of Munsell Street, which, in 1990, had been formally accepted by Belchertown as a public way. Lot B fronted a portion of Munsell Street that had not been formally accepted as a public way.

The Board denied Barry's application on the ground that the portion of Munsell Street fronting Lot B did not meet the criteria for frontage contained in G.L. c. 41, § 81L, necessary for obtaining an ANR. The Board also noted that the portion of Munsell Street that fronted Lot B had previously been dedicated to open space as a condition of approval for a neighboring subdivision.

Barry appealed the Board's decision to court. Barry did not dispute the fact that Lot B failed to meet the § 81L criteria for adequate frontage needed for an ANR. Instead, Barry argued that the Board was collaterally estopped from denying that Munsell Street met the criteria of § 81L because, in a 1987 court case involving other land on Munsell Street, a special master had concluded that Munsell Street qualified under clause b of the definition of "subdivision" set forth in c. 41, § 81L. Effectively, here Barry argued that the judge's decision in the 1987 case had concluded that Munsell Street satisfied a clause of § 81L, and that precluded Belchertown from now asserting that Lot B did not meet the criteria for frontage contained in G.L. c. 41, § 81L.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the trial court issued summary judgment in favor of Barry. The court found that the 1987 judgment had established that Munsell Street was a public way, and that the Board was thus, as Barry had argued, precluded from denying it was a public way now.

The Board appealed.

**The Court's Decision: Judgment of superior court vacated.**

Rejecting Barry's collateral estoppel argument, the Appeals Court of Massachusetts held that Barry was not entitled to an ANR because: (1) "neither the 1987 judgment nor the evidence of record established that the portion of Munsell Street [now] at issue [was] a public way"; and (2) "the 1987 judgment—which required the ANR endorsement of a plan abutting a different portion of Munsell Street—[was] not entitled to preclusive effect in this case."

Looking at the 1987 judgment, the court found that in that case the special master had "made some findings that related to whether Munsell Street was a public way," but had not concluded that Munsell Street was a public way. More specifically, the court here found that the special master then had concluded that Munsell Street "is a way shown on plans heretofore approved and endorsed by the planning board," "thereby satisfying clause b of § 81L, not clause a." The court determined that finding by the special master in the 1987 case was "incorrect" since Munsell Street did not qualify under clause b as a way.

And, in any case, the court concluded that the special master's conclusion in the 1987 case could not give rise to collateral estoppel here since the issue that was resolved against the town in that 1987 case was "not identical" to the issue now before the town since the material facts had changed: in 1990 the town had accepted only a portion of Munsell Street as a public way—not including the frontage on Barry's Lot B; and in 1990 the portion of Munsell Street fronting Lot B was designated as "open space." Those factual differences—from the 1987 judgment to Barry's 2015 application—"rendered collateral estoppel inappropriate," said the court.

See also: *Goldman v. Planning Bd. of Burlington*, 347 Mass. 320, 197 N.E.2d 789 (1964).

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#### Case Note:

*In its decision, the court noted that it found support for its conclusion "in the principle that courts have discretion to ensure that offensive collateral estoppel is applied fairly." Here the court found the result would be "unfair" where the applicant (Barry) was seeking to preclude the Board "from litigating about the adequacy of a way, based upon an incorrect finding in a thirty[-]year[-]old judgment involving litigants other than themselves." The court emphasized that "[n]ot only would such a result be unfair, but it would also undermine the public interest in ensuring that new lots have access to ways that are safe and convenient for travel."*

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## Standing—Adjacent property owners seek enforcement of town's zoning ordinances against neighbor

Neighbor argues adjacent property owners suffered no special damages and therefore lacked standing to bring the legal action

Citation: *Chapman v. Town of Redington Beach*, 2019 WL 5483400 (Fla. 2d DCA 2019)

FLORIDA (10/25/19)—This case addressed the issue of whether neighboring property owners alleged "special damages" caused by alleged zoning violations such that they had standing (i.e., the legal right to bring a judicial action) to enforce a town's zoning ordinances.

**The Background/Facts:** C. Hayward Chapman and Jacqueline Chapman (the "Chapmans") owned beach-front property in the Town of Redington Beach (the "Town"). Douglas Backman ("Backman") owned prop-



erty adjacent to the Chapmans' property. In January 2016, the Chapmans brought a legal action against the Town and Backman, alleging that several modifications made by Backman to his property violated the Town's zoning ordinance, causing the Chapmans to suffer special damages. Specifically, the Chapmans alleged the following: "Backman began a second story addition to an accessory structure, constructed a wall that created a 'hazardous traffic situation for the [Chapmans],' and erected a hedge in lieu of another wall that obstructed the Chapmans' water views, thereby reducing their property's value." The Chapmans alleged that all of Backman's zoning violations had caused the Chapmans "adjacent property [to be] specially damaged because it [was] materially less safe and materially less valuable due to these violations."

Both the Town and Backman asked the trial court to issue summary judgment in their favor, finding no material issues of fact in dispute and deciding the matter on the law alone. The Town argued that it was not a proper party to the suit because: "(1) the Chapmans were not seeking the validation or construction of an ordinance and (2) a court decree compelling the Town to enforce its zoning ordinances would violate the doctrine of separation of powers." The trial court agreed with the separation of powers argument and granted summary judgment to the Town.

Backman argued that the Chapmans lacked standing to enforce the Town's zoning ordinances because they had not suffered special damages—"a peculiar injury that differed in the type of harm, rather than merely the degree of harm, suffered by the community as a whole as a result of the ordinance violation."

Under Florida law, "[a] private citizen has standing to enforce a valid municipal zoning ordinance only when special damages are alleged and proven." In other words, to have standing to enforce the Town's zoning ordinances here, the Chapmans would have to show they suffered an injury from Backman's alleged zoning violations peculiar to them, "differing in kind as distinguished from damages differing in degree suffered by the community as a whole."

The Chapmans responded, describing how the accessory structure, the safety sight triangle, and the hedge caused them peculiar injury by reducing the value of their property and, with respect to the safety sight triangle, creating a dangerous condition.

The trial court granted summary judgment to Backman, finding that the Chapmans could not show special damages.

The Chapmans appealed.

**The Court's Decision: Judgment of circuit court affirmed in part, reversed in part, and remanded.**

The District Court of Appeal of Florida, Second District, first held that the trial court had properly granted summary judgment to the Town because a court order compelling the Town to enforce its zoning ordinances would "violate the doctrine of separation of powers."

The court next held that the allegations of special damages in the Chapmans' complaint were legally sufficient, and that therefore Backman was not entitled to summary judgment based on the issue of standing. In so holding, the court analyzed a myriad of cases, finding in them "a recognition that an owner of property which is adjacent to or nearby land upon which there is a zoning ordinance violation may, by virtue of proximity, be peculiarly affected by the violation, even if his or her injuries might at some level of generality be described as similar to those of other community members." The court further explained that "although there might be some similarity about the injuries suffered by all community members"—such as impairment of a view—only the adjacent property owner would have his or her view blocked entirely. Thus, the court emphasized: "[t]he difference is so significant as to make any similarity to the injury suffered by other landowners immaterial; it amounts to a difference in kind, and it is directly related to proximity and position with regard to the land on which the zoning violation occurred."

Applying this "lenient construction of the special damages rule" to the case at hand, the court concluded that the Chapmans' complaint sufficiently alleged that they had suffered special damages in the form of a diminution in their property value and a reduction in their safety as a consequence of Backman's alleged zoning violations. The court found the Chapmans' special damages allegations were "articulable, ultimate facts set forth in a theory of special damage that makes legal sense under the precedents [the court had] discussed . . . namely, that the Chapmans as adjoining landowners [were] uniquely injured by [ ] Backman's alleged zoning violations because those violations uniquely diminish the value of the property and uniquely affect their safety." The court explicitly found that the facts the Chapmans had alleged "sufficiently distinguish the harms they have suffered from any harms suffered by the community at-large."

See also: *Skaggs-Albertson's v. ABC Liquors, Inc.*, 363 So. 2d 1082 (Fla. 1978).

See also: *Carroll v. City of West Palm Beach*, 276 So. 2d 491 (Fla. 4th DCA 1973).

See also: *Kagan v. West*, 677 So. 2d 905 (Fla. 4th DCA 1996).

See also: *State ex rel. Gardner v. Sailboat Key, Inc.*, 306 So. 2d 616 (Fla. 3d DCA 1974).

## Zoning News from Around the Nation

### ARIZONA

Recently introduced in the state House of Representatives is a bill that seeks to repeal a 2016 law that prohibits municipalities from regulating short-term and vacation rentals. Proponents of the bill say it is aimed at tackling the state's housing shortage and increasing the quantity of affordable housing.



Source: *Arizona Daily Star*; <https://tucson.com>

## ILLINOIS

Park Ridge's Zoning and Planning Commission has recommended changes to the city's zoning laws that would ban recreational marijuana businesses in the City. Specifically, the proposed zoning law would ban "[o]p-eration of a cannabis establishment on any property or in any building within the city . . . ." It would also clarify that marijuana smoking lounges or "public consumption" businesses are also prohibited in the city. The City Council was expected to vote on the proposed amend-ments in December.

Source: *Chicago Tribune*; [www.chicagotribune.com](http://www.chicagotribune.com)

The Yorkville Planning and Zoning Commission has approved city zoning regulations for "recreational mari-juana dispensaries, groweries, cultivation centers and infuseries." The city has had a zoning ordinance for medicinal cannabis since 2014, and the new regulations are reportedly intended to address recreational cannabis businesses that are permitted under state statute effective January 1. Reportedly, the regulations would require recreational marijuana facilities be setback 500 feet from the property line of pre-existing schools, day care centers, residential care homes, public parks or religious institu-tions, and setback 250 feet of the property line of a pre-existing land zoned or used for residential purposes. The regulations would also limit the number of recreational marijuana businesses in the city. Further, the regulations would prohibit the consumption of recreational marijuana products on the premises of those types of businesses.

Source: *Kendall County Now*; [www.kendallcountynow.com](http://www.kendallcountynow.com)

## MARYLAND

The Washington County Board of Commissioners recently voted to amend the county zoning law to allow distilleries, including microbreweries and pub breweries. While the zoning amendment does not specifically define distilleries, pub breweries and microbreweries, it instead defines "alcohol production facilities" and "farm-based alcohol production facilities." The zoning amendment al-

lows such facilities in commercial or industrial zoning districts, including rural business, or by special exception in several rural and residential zoning districts.

Source: *Herald-Mail Media*; [www.heraldmillmediac.com](http://www.heraldmillmediac.com)

The Montgomery County Planning Board recently voted to support a zoning amendment that would loosen restrictions on 5G antennas. Specifically, the zoning amendment would "allow small cell antennas in residen-tially zoned neighborhoods as long as they replace an existing utility pole and stand at least 60 feet from a resi-dential building." The zoning amendment would also permit antennas within 30 feet of a residential building as a conditional use if the antenna is found to be "needed to provide service or to reduce the visual impact of a new pole."

Source: *Bethesda Magazine*; <https://bethesdamagazine.com>

## NEW YORK

New York City Council's Land Use and Governmental Operations Committee is considering four proposed bills that would "increase transparency regarding new devel-opments in the City, specifically with the transfer of development rights and testimony at the Board of Stan-dards and Appeals." Introduction 1691-2019 would "require the Department of City Planning to assign a unique identifying number to each zoning lot in the City." Introduction 1692-2019 would "require City Planning to create a publically available interactive online map which displays each zoning lot in the City and to update this map on a quarterly basis to reflect any changes to the lot." Introduction 1701-2019 would "require the City Register to notify an affected community board, Council Member, Borough President, and the Council Speaker when the City Register records a deed reflecting a transfer of development rights." It would also require the City Reg-ister to "notify the affected parties when an applicant re-cords a zoning lot description for a Buildings permit for development or enlargement of a building." Introduction 1723-2019 would "require all testimony by property owners to be given under oath."

Source: *CityLand*; [www.citylandnyc.org](http://www.citylandnyc.org)