CITY OF ELKO
Planning Department

Website: www.elkocitynv.gov
Email: 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, February 2, 2020 beginning at 5:30 P.M., P.S.T. utilizing GoToMeeting.com: https://global.gotomeeting.com/join/865213653

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 CITY HALL – 1751 College Avenue, Elko, NV 89801
Date/Time Posted: January 27, 2021 2:00 p.m.

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

The public may contact Shelby Knopp by phone at (775) 777-7160 or by email at sknopp@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, or on the City website at http://www.elkocity.com.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/865213653. You can also dial in using your phone at **+1 (872) 240-3212**. The **Access Code** for this meeting is **865-213-653.** Members of the public that do not wish to use GoToMeeting may call in at **(775)777-0590**. Comments can also be emailed to cityclerk@elkocitynv.gov.

Dated this 27th day of January, 2021.

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, FEBRUARY 2, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/865213653

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

January 5, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Tentative Map 12-20, filed by Jordanelle Third Mortgage, LLC for the development of a subdivision entitled Zephyr Heights involving the proposed division of approximately 25.109 acres of property into 70 lots for residential development within the R (Multiple-Family and Single-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   Subject property is located on the east side of E Jennings Way generally north of the intersection with Puccinelli Parkway. (APN 001-562-010)

2. Review, consideration and possible recommendation to City Council for Rezone No. 6-20, filed by Jordanelle Third Mortgage, LLC, for a change in zoning from R (Single Family and Multiple Family Residential) and R1 (Single Family Residential) to R (Single Family and Multiple Family Residential) Zoning District, approximately 26.607 acres of property, to allow for residential development, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located on the east side of E Jennings Way generally north of the intersection with Khoury Lane. (APN 001-562-010). The parcel currently has two zone districts.

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action on the 2020 Annual Report of Planning Commission activities. **FOR POSSIBLE ACTION**

   Pursuant to City Code Section 3-4-23, the Planning Commission is required to prepare and present an annual report of its activities to the City Council.

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, JANUARY 5, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
https://global.gotomeeting.com/join/258016149

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: **Jeff Dalling**
Tera Hooiman
John Anderson
Stefan Beck
Gratton Miller
Giovanni Puccinelli
Mercedes Mendive

City Staff Present: **Cathy Laughlin, City Planner**
Michele Rambo, Development Manager
Bob Thibault, Civil Engineer
Jamie Winrod, 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

December 1, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the minutes from the December 1, 2020 meeting as presented.**

Made by Tera Hooiman, seconded by Giovanni Puccinelli.

****Motion passed unanimously. (7-0)***

I. UNFINISHED BUSINESS

A. PUBLIC HEARING

1. Review, consideration and possible recommendation to City Council for Rezone No. 3-20, filed by Elko Institute for Academic Achievement, for a change in zoning from CT (Commercial Transitional) to PQP (Public, Quasi-Public) Zoning District, approximately 11.38 acres of property, to allow for the development of a school, and matters related thereto. **FOR POSSIBLE ACTION**

   The subject property is generally located on the northeast corner of the intersection of College Avenue and Ruby Vista Drive. (APN 001-620-058)

Lori Lynch, 1031 Railroad Street, explained that the Charter School was currently located in a warehouse facility on Railroad Street. They were under a 10 year lease, which expired as of June 2020. They had been looking at different opportunities for purchase to be able to move out of the current facility. The current facility is not conducive, or meeting the needs of the kids or the parents. They have been actively searching for an alternate location, either an existing building or a property to accommodate a new build. They have been working on it for about two years. They ended up purchasing this property last year and felt that the location, as far as the schools, school district, college, and general area, would be the perfect location to include an elementary school. Ms. Lynch explained that they are a K-8 school, with one classroom per grade. With the new location they are going to expand into two classrooms per grade. They are currently working with the USDA for financing of the facility. Charter Schools do not receive facility funds from the State, and they are not part of the pay as you go program. It is their goal to put an elementary school K-8 on the property. The facility is proposed to be approximately 30,000 square feet, which will include the playground and surrounding area. There have already been several environmental feasibility studies done on the property.

Julie Byrnes, 1213 Fairway Drive, explained that she lived in housing division located north of the property. The division has only one exit out of housing area, which is next to the Sinclair onto Ruby Vista Drive. There have been a lot of additions to the area in the last few years that include the State Offices, Flagview Intermediate School, and Adobe Middle School. The traffic for those schools goes across Ruby Vista, right by where the residents of the housing division exit. The College has grown as well, so all the traffic is going down along College Parkway. There has been no concern for traffic, or traffic control. With the addition of another school the traffic is going to grow, both automobile traffic and pedestrian traffic. The speed limit will probably be slowed to 15 MPH for the school zone. Ms. Byrnes said there would be times when she wouldn't be able to get out of her housing area. The traffic at the corner by Harbor House, there are times when you can't get across the street, and that is right where the school will be going. Ms. Byrnes asked how the City was going to manage the traffic, so that people living in this area can get in and out. There have been a lot of traffic accidents in the area, including fatalities.

Cathy Laughlin, City Planner, went through the City of Elko Staff Report dated December 21, 2020. Staff Recommended conditional approval with the findings and conditions included in the staff report. She also recommended that the Planning Commission include in their motion that they recognize that there was a minor typographical error and recommend that staff revise the legal notification prior to City Council. She clarified that College Parkway was referred to as College Avenue. Ms. Laughlin explained that Condition No. 2, regarding the Conditional Use Permit, should address Ms. Byrnes's concerns. The Conditional Use Permit Application would

be a public hearing and the surrounding neighbors would be notified of the public hearing. Planning Commission has the right to add conditions to the development to address concerns. The item tonight is to consider the zoning of the property, not the development of the property.

Michele Rambo, Development Manager, wanted to reiterate what Ms. Laughlin said. Since this is just a zone change, we don't have the exact design of the school yet, so we don't know certain development issues. When a design of the building is received, then we can calculate the trip generations. Usually it is based on either the number of students or the square footage of the building. Since we don't know that information, we can't get an exact traffic count. When we get that information if the trips per day is over 1,000, then it will trigger a traffic study. Ms. Rambo had no other comments.

Bob Thibault, Civil Engineering, had no additional concerns or comments, and recommended approval as presented.

Jamie Winrod, Fire Marshal, had no comments or concerns and recommended approval.

Ms. Laughlin stated that she would report for Mr. Wilkinson. He recommended approval as presented by staff, and had no comments/concerns.

Commissioner Gratton Miller asked how many students would be at the new facility.

Ms. Lynch explained that they were at capacity in their current facility with 198 students. The expansion, which will happen over extended period of time, would put their full capacity at around 400 students. They have a 22 student per classroom capacity, and they would not go beyond that. They would have two classrooms per grade. The plan at this time is to start with a double capacity of grades K – 2, then expand one classroom each year after that. It will take a few years to reach the full capacity.

Chairman Jeff Dalling asked if this was the same one they approved up into the Kmart.

Ms. Lynch said it was the same school, yes.

Ms. Byrnes said her biggest concern was only having one exit from the housing division. Even with putting the entrance/exit to the school on Ruby Vista Drive, there would still be times where they wouldn't be able to get in or out of the housing division. She also thought there would be times where emergency vehicles wouldn't be able to get in or out. Ms. Byrnes thought it was going to be a big traffic problem.

Chairman Dalling thought they could ask Ms. Winrod if the school would have to provide an entrance and an exit for Fire Department access.

Ms. Winrod explained that it would depend on the size of building and how much room there is around the building.

Ms. Lynch pointed out that their preliminary engineering and feasibility study showed two exits. One on College Parkway, and the other on Ruby Vista Drive. There is an entrance and exit on

both of those roads. They have been working with an engineer for the drop-off and pick-up. None of that would be on the street, it will all be internal.

Chairman Dalling asked if the main entrance was going to be on College Parkway.

Ms. Lynch explained that the way they were trying to plan for the traffic control was to have one entrance and one exit, so they wouldn't be going against traffic.

*****Motion: Recognize that there is a minor typographical error in the agenda item, recommend staff correct it before the item is considered by City Council, and forward a recommendation to City Council to adopt a resolution which conditionally approves Rezone No. 3-20 subject to the conditions found in the City of Elko Staff Report dated December 21, 2020, listed as follows:**

1. **E.I.A.A. to be actively engaged in developing the property as a school within 4 years after date of approval. Actively engaged could include but not be limited to application submitted for a building permit.**
2. **Conditional Use Permit must be approved for the establishment of a new principal permitted use and shall be governed by the conditional use permit procedure as set forth in Elko City Code 3-2-18.**
3. **If conditions 1 & 2 are not met, the City Council shall take action to revert the approved PQP zoning back to CT.**

Commissioner Puccinelli's findings to support the motion were the proposed zone district is not in conformance with the Land Use Component of the Master Plan. The proposed zone district is compatible with the Transportation Component of the Master Plan and is consistent with the future transportation infrastructure. The property is not located within the Redevelopment Area. The proposed zone district and resultant land use is in conformance with the City Wellhead Protection Plan. The proposed zone district is in conformance with Elko City Code Section 3-2-4(B). The proposed zone district is in conformance with Elko City Code Section 3-2-8. The application is in conformance with Elko City Code 3-2-21. The proposed zone district is not located in a designated Special Flood Hazard Area (SFHA). 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.

Made by Giovanni Puccinelli, seconded by Gratton Miller

****Motion passed unanimously. (7-0)***

II. NEW BUSINESS

A. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 11-20, filed by Copper Trails, LLC, for the development of a subdivision entitled Copper Trails Phase 2 Unit 2 involving the proposed division of approximately 16.96 acres of property into 10 lots for residential development and 1 remainder lot within the R (Single Family and

Multiple Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

Subject property is located north of the intersection of Copper Street and Mittry Avenue. (APN 001-610-114)

Luke Fitzgerald, 2446 Crestview Drive, said he would be available for questions.

Ms. Rambo went through the City of Elko Staff Report dated December 6, 2020. Staff recommended conditional approval with the conditions and findings listed in the staff report.

Ms. Laughlin recommended approval as presented by staff.

Mr. Thibault mentioned that he had four conditions that were included in the staff report. He recommended approval as presented.

Ms. Winrod explained that she had one condition listed in the staff report and recommended approval.

Ms. Laughlin said that the City Manager's office recommended conditional approval with all corrections and revisions to the map completed prior to City Council consideration.

Commissioner Mercedes Mendive asked what the largest and smallest square footage of the single family homes were going to be.

Mr. Fitzgerald explained that they were currently in the planning stage. He was looking at keeping smaller homes, around 1,500 to 2,000 square feet. On these lots they have built upwards of 2,900 square foot homes, and that still could be a possibility. They have not determined the largest square footage. They may have a home as small as 1,200 square feet.

Commissioner Mendive asked if it was just going to be regular residential neighborhood or if there would be a Homeowner's Association.

Mr. Fitzgerald stated that it was a regular residential neighborhood with no Homeowner's Association.

*****Motion: Recommend that the City Council accept, on behalf of the public, the parcels of land offered for dedication for public use in conformity with the terms of the offer of dedication; that the final map substantially complies with the tentative map; that the City Council approve the agreement to install improvements in accordance with the approved construction plans that satisfies the requirements of Title 2, Chapter 3, and conditionally approve Final Map 11-20 with conditions listed in the Staff Report dated December 9, 2020, listed as follows:**

<u>Community Development:</u>

1. **The Developer shall execute a Performance and Maintenance Agreement in accordance with Section 3-3-21 of City code. The Performance Agreement shall be secured in accordance with Section 3-3-22 of City code. In conformance with**

Section 3-3-21 of City code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Map approval by the City Council unless extended as stipulated in City code.

2. **The Performance and Maintenance Agreement shall be approved by the City Council.**
3. **The Developer shall enter into the Performance and Maintenance Agreement within 30 days of approval of the Final Map by the City Council.**
4. **The Final Map for Copper Trails Phase 2 Unit 2 is approved for 10 residential lots and 1 remainder lot.**
5. **The Utility Department will issue a Will Serve Letter for the subdivision upon approval of the Final Map by the City Council.**
6. **Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.**
7. **Site disturbance, including clearing and grubbing, shall not commence prior to the issuance of a grading permit by the City of Elko.**
8. **Construction shall not commence prior to Final Map approval by the City Council and issuance of a will-serve letter by the City of Elko.**
9. **Conformance with the conditions of approval of the Tentative Map is required.**
10. **The Owner/Developer is to provide the appropriate contact information for the qualified engineer and engineering firm contracted to oversee the project along with the required inspection and testing necessary to produce an As-Built for submittal to the City of Elko. The Engineer of Record is to ensure all materials meet the latest edition of the Standard Specifications for Public Works. The Engineer of Record is to certify that the project was completed in conformance with the approved plans and specifications.**

Engineering:

1. **After recordation of the Unit 1 Final Map, verify the parcel number in the Assessor's and Treasurer's certificates.**
2. **Correct the year in the Planning Commission certificate to 2018.**
3. **Update the year for most other certificates to 2021.**
4. **Create an easement for gang boxes.**

Public Works:

1. **All public improvements at time of development per Elko city code.**

Utilities:

1. **Public utility improvements at time of development per approved plans and City code.**

Fire:

1. **Turnaround area at the north end of Mittry Avenue shall be a minimum of 96 feet in diameter per IFC D103.4**

Commissioner Puccinelli's findings to support the motion were the Final Map for Copper Trails Phase 2 Unit 2 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code. The Final Map is in conformance with the Tentative Map. The proposed subdivision is in conformance with the Land Use

DRAFT

and Transportation Component of the Master Plan. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive). The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City Code. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City Code. The Subdivider has submitted plans to the City and State agencies for review to receive all required permits in accordance with the requirements of Section 3-3-19 of City Code. The Subdivider has submitted construction plans which, having been found to be in conformance with Section 3-3-20 of City Code, have been approved by City Staff. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City Code. The Subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-22 of City Code. The proposed development conforms to Sections 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), 3-2-17, and 3-8 of City Code.

Made by Giovanni Puccinelli, seconded by Mercedes Mendive.

Motion passed unanimously. (7-0)

2. Review, consideration, and possible action to develop the Calendar Year 2021 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.

Ms. Laughlin explained that it is a code requirement that we create a work program and the Planning Commission approves it, and it goes to City Council for their approval as well. Ms. Laughlin said when she started working on the Work Program this year and making revisions; she thought to herself that the Planning Commission probably thinks that we don't get anything done in a year. We get a lot done in a year. Some of these things have remained on the Work Program for several years, because some are tied up with legal and some of it is due to some very intense zoning revisions to the City Code that take a lot of time. The first thing that is on the Work Program is to repeal and replace the Sign Ordinance, which was started in February of 2019. We have started to write that Sign Ordinance. Ms. Laughlin explained that she received a scholarship to attend a Sign Ordinance Planning Workshop last year in April, but it was cancelled due to Covid-19. She was waiting to attend the workshop before she continued much further into the Sign Ordinance. The Sign Code is one of the most controversial codes, with the most court cases against zoning issues. Ms. Laughlin contracted with a legal firm that does nothing but reviews sign ordinances and represents municipalities in sign ordinance cases. The workshop has been rescheduled for April of this year. It is a really important workshop to attend before continuing much further with the Ordinance. That is still on the Program, and hoping to be completed by October 2021. Staff has reviewed the zoning for the RMH districts, and intend on revising the map. We have gone through every subdivision and how they were created. There are some areas that have soft set mobile homes next to permanent manufactured homes, and we are trying to determine what can and can't be done there. We would like to create a map that calls out the different RMH districts. Staff started revising the Planning and Zoning Applications

in October 2017. Several of those require Zoning Code amendments. A lot of them got held up with the legal counsel. Staff plans on continuing to work on those. We are doing Master Plan Amendments for miscellaneous revisions. There were several in 2020, and there will probably be several in 2021 as we come across things that need to be cleaned up. Staff started last month on a revision to Section 3-2-21, Zoning Amendments. Right now they are currently done by Resolution. We are completely changing that section, as we will be doing Zoning Amendments by Ordinance. We will also be adding in another section that will clarify when it is an amendment to the Zoning Code. The review between staff and legal determined that there are two other sections of code that need to be changed to reflect the changes being made to Section 3-2-21. We are also planning some revisions to Section 3-3, Divisions of Land. There are some clarifications that need to be done in that section. We always have the ongoing Planning Commission training. Due to 2020 and not having public meetings, we did not get the annual Open Meeting Law Training, but we will work on getting that done. It is a requirement by the State that all Planning Commissioners and City Council members have that training every year.

Chairman Dalling thought it looked good. He felt like they did get a lot done.

*****Motion: Approve the 2021 Planning Commission Work Program as presented.**

Made by Giovanni Puccinelli, seconded by Mercedes Mendive.

****Motion passed unanimously. (7-0)***

3. 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.

***Chairman Jeff Dalling nominated Tera Hooiman for Secretary; a vote was taken and passed.**

***Commissioner Tera Hooiman nominated Giovanni Puccinelli for Vice-Chairman; a vote was taken and passed.**

***Commissioner Stefan Beck nominated Jeff Dalling for Chairman; a vote was taken and passed.**

III. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that there was only one City Council meeting in December, it was on the 8th. Planning only had one item on the agenda. They approved Revocable Permit No. 4-20 for Ygoa, Ltd. It was to occupy 3 feet of right-of-way on Silver Street and 3rd Street for the footing for a canopy that will be abutting their building, but it will be projecting over the right-of-way. There were no Redevelopment meetings in December.

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

There were no public comments made at this time.

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ADJOURNMENT

There being no further business, the meeting was adjourned.

_____ _____

Jeff Dalling, Chairman Tera Hooiman, Secretary

DRAFT

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review and consideration of Tentative Map 12-20, filed by Jordanelle Third Mortgage, LLC for the development of a subdivision entitled Zephyr Heights involving the proposed division of approximately 25.109 acres of property into 70 lots for residential development within the R (Multiple-Family and Single-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **February 2, 2021**

3. Agenda Category: ***NEW BUSINESS, PUBLIC HEARINGS***

4. Time Required: **15 Minutes**

5. Background Information: **Subject property is located on the east side of E Jennings Way generally north of the intersection with Puccinelli Parkway. (APN 001-562-010)**

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 12-20 based on facts, findings, and conditions as presented in the Staff Report dated January 19, 2021.**

9. Findings: **See Staff Report dated January 19, 2021**

10. Prepared By: **Michele Rambo, AICP, Development Manager**

11. Agenda Distribution: **Jordanelle Third Mortgage, LLC**
Attn: Scott Macritchie
312 Four Mile Trail
Elko, NV 89801

High Desert Engineering
Attn: Tom Ballew
640 Idaho Street
Elko, NV 89801

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 2/2
Do not use pencil or red pen, they do not reproduce

Title: Tentative Map No. 12-20 - Zephyr Heights
Applicant(s): Jordanelle Third Mortgage, LLC
Site Location: APN 001-562-010 - E side of E. Jennings, N of Purcinelli Pkwy
Current Zoning: R+R1 Date Received: 12/22/20 Date Public Notice: 1/22/21
COMMENT: This is to divide approximately 25.09 acres into 70 lots for residential Development.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 1/25/21
Recommend approval as presented by staff

SAW
Initial

City Manager: Date: 1/27/21
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

REPORT DATE: January 19, 2021
PLANNING COMMISSION DATE: February 2, 2021
AGENDA ITEM NUMBER: I.A.1.
APPLICATION NUMBER: Tentative Map 12-20
APPLICANT: Jordanelle Third Mortgage, LLC
PROJECT DESCRIPTION: Zephyr Heights

A Tentative Map for the division of approximately 25.109 acres into 70 lots for residential development 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: 001-562-010

PARCEL SIZE: 25.109 Acres

EXISTING ZONING: (R) Single-Family and Multiple-Family Residential
(R1) Single-Family Residential

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

EXISTING LAND USE: Vacant

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

- North: Single-Family Residential (R1) / Vacant
- South: General Commercial (C) / Partially Developed
- East: Industrial Commercial (IC) / Developed
- West: Single-Family Residential (R1) / Partially Developed
  Single-Family and Multiple-Family Residential (R) / Partially Developed

PROPERTY CHARACTERISTICS:

- The property is an undeveloped residential parcel.
- The site abuts vacant residential land to the noth and west, developed residential land to the southwest, apartments and other partially developed commercial land to the south, and developed industrial commercial property to the east.
- The parcel has many slopes, but generally drains to the south. The slopes have been incorporated into the tentative map design where possible, but a large amount of grading will be required and several large manufactured slopes will be created.
- The property will be accessed by two roads off of E Jennings Way.

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 Jordanelle Mortgage, LLC.
2. The subdivision is located on APN 001-562-010.
3. The property is undeveloped.
4. The proposed subdivision consists of 70 residential lots.
5. The total subdivided area is approximately 25.109 acres.
6. The proposed density is 2.79 units per acre.
7. The subdivision is broken into 4 phases.
8. A total of 4.356 acres are dedicated roadways offered as part of the project.
9. The property is located on the east side of E Jennings Way generally north of the intersection with Puccinelli Parkway.
10. A Stage 1 meeting for the proposed subdivision was held on August 17, 2020.

<u>MASTER PLAN</u>

Land Use:

1. The land use for the parcel is shown as Residential Medium Density on the northwest portion of the parcel and Residential High Density on the southeast portion of the parcel. The proposed density for the subdivision is 2.79 units per acre, which fits the medium density category and is, therefore, in conformance.
2. Upon completion of a proposed rezone of the site, the zoning for the parcel will be Single-Family and Multiple-Family Residential (R), which is a corresponding zoning for both the medium density and high density Master Plan categories.
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 housing types 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 E Jennings Way.
2. E Jennings Way is classified as a Minor Arterial street until such time as the two ends of Jennings Way connect. Once this happens, the classification moves to a Major Arterial.
3. The interior circulation of the project will be provided by four new roads to be dedicated to the City of Elko.
4. The Master Plan requires Major Arterial streets to have 100 feet of right-of-way. However, the current design of Jennings Way only includes 80 feet of right-of-way, as required for a Minor Arterial. A Minor Arterial street includes one travel lane in each direction and a center turn lane. A Major Arterial street includes two travel lanes in each direction and a center turn lane. City staff has determined that the additional lanes required for a Major Arterial can be accommodated within the 80-foot right-of-way with some minor alterations to lane design. Staff is currently working on a Master Plan Amendment which would provide separate design criteria for Jennings Way so the transition from Minor Arterial to Major Arterial can be accomplished when the time comes.
5. E Jennings Way has 80 feet of right-of-way. No further dedications are required.
6. Upon full buildout, the proposed subdivision is expected to generate approximately 666 additional Average Daily Trips based on 9.52 trips/single-family unit (ITE Trip Generation, 10th Edition). This is below the threshold for a traffic study established in the Master Plan. However, as future subdivisions are developed in this area, the City may want to consider undertaking a traffic analysis to determine impacts of future residential growth and plan for mitigating these impacts in advance.

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 30-year capture zone for multiple 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 pubic 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 land use for the parcel is shown as Residential Medium Density on the northwest portion of the parcel and Residential High Density on the southeast portion of the parcel.
   - Upon completion of a proposed rezone of the site, the zoning for the parcel will be Single-Family and Multiple-Family Residential (R), which is a corresponding zoning for both the medium density and high density Master Plan categories. A

condition of approval has been added below requiring Rezone 6-20 be approved and in place prior to the applicant submitting the Final Map to the City.

- Residential Medium Density is intended for residential development at a density between four and eight units per acre, while Residential High Density would allow densities more than eight units per acre. The proposed density for the subdivision is 3.37 units per acre, which fits the medium density category and is, therefore, in conformance with both designations.
- The proposed subdivision is otherwise 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 666 Average Daily Trips to E Jennings Way. 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.
   - The proposed grading of the site creates some significant slopes around the property boundaries, and to a smaller extent, between some of the lots themselves. A condition of approval has been added below requiring any slopes of 3:1 or more be stabilized in accordance with the City's BMP manual.

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.
   - Any comments received from other entities and persons reviewing the Tentative Map have been incorporated either as revisions to the Map or as conditions of approval.

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.
   - Fire protection services are available throughout the community.
   - A sufficient amount of water exists in this area for use in fire containment.

- The City of Elko Fire Department has reviewed the application materials for compliance with all fire code requirements.

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.
   - The subdivider/developer is required to comply with all applicable sections of Chapters 375 and 598 of the NRS.

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 are 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 street layout is shown. All of the streets are named and proposed for dedication. The grades of the proposed streets are shown on the grading plan. The continuation of E Jennings Way along the project frontage is shown on the map.

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. Street dedications are proposed for the four new streets.
5. Single-family residential units are allowed in the Single-Family and Multiple-Family Residential zoning.

G. Proposed Deed Restrictions:
   1. No proposed CC&R's for the subdivision have been submitted.

H. Preliminary Grading Plan:
   1. A grading plan has been provided. The cut and fill amounts are shown.

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.

<u>SECTION 3-3-9 GENERAL REQUIREMENTS FOR SUBDIVISION DESIGN:</u>

A. Conformance with Master Plan: The proposed subdivision is in conformance with the Master Plan objectives for density and applicable zoning as discussed in detail above.
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.

<u>SECTION 3-3-10 STREET LOCATION AND ARRANGEMENT:</u>

A. Conformance with Plan: The proposed subdivision utilizes the extension of E Jennings Way for access.
B. Layout: Street continuation through the proposed subdivision is not required.
C. Extensions: The extension of E Jennings Way is 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: Lots 1 and Lots 48 to 61 include frontage on E Jennings Way, currently a Minor Arterial street. The subdivision has been designed so that all lots will front onto interior streets running through the site. A note is included on

the map, and a condition of approval has been added, prohibiting lots to face on or have direct access to E Jennings Way.

F. Parallel Streets: Consideration of street location is not required.
G. Topography: The proposed streets have been designated to address the topography of the area.
H. Alleys: No alleys are proposed.
I. Half-Streets: Other than the extension of E Jennings Way, there are no half-streets proposed. The other half of E Jennings Way will be completed when development occurs on the other side of the street.
J. Dead-End Streets: There are no dead-end streets proposed. The streets are designed to allow for appropriate turning movements for traffic, as well as fire trucks.
K. Intersection Design: The proposed intersections with E Jennings Way 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: E Jennings Way currently consists of the required 80 feet of right-of-way. All proposed streets are shown with the required 50 feet of right-of-way.
B. Street Grades: The proposed street grades are code compliant.
C. Vertical Curves: Any vertical curves are code compliant.
D. Horizontal Alignment: The horizontal alignment of the streets and intersections 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 with the exception of Lots 47 and 48. These lots are located on the outside curve of 90 degree turns and have short front lot widths. A modification of standards is required to make these lots conform.
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 proposed streets.
D. Accessibility: The development abuts a public street. All residents will have access to E Jennings Way.

E. Prohibitions: No units shall have direct access to E Jennings Way. All access is to be through the two proposed intersections on E Jennings Way.

The proposed subdivision is in conformance with Section 3-3-13 of City code with the needed modification of standards.

SECTION 3-3-14 EASEMENT PLANNING:

A. Utility Easements: The applicant is proposing the typical utility and drainage easements along property lines on individual parcels. 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 where needed.
C. Lots Facing Curvilinear Streets: Overhead utilities are not allowed within the subdivision.
D. Public Drainage Easement: The applicant is proposing the typical utility and drainage easements along property lines on individual parcels.
E. Easement Land Not Considered and Considered in Minimum Lot Area Calculation: All calculations appear to be correct.
F. Lots Backing Onto Arterial Streets: Lot 1 and Lots 48-61 back have frontage along E Jennings Way, currently a Minor Arterial street. A condition of approval found below requires that all lots face the interior streets and no access be allowed from these lots onto E Jennings Way.
G. Water and Sewer Lines: The utilities are shown in the existing exterior streets, within proposed side or rear easements, and in the proposed interior streets. Sanitary sewer will tie into the existing city infrastructure near the southwest corner of the property.

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

SECTION 3-3-15 STREET NAMING:

The subdivider has proposed four new street names (Incline Avenue, Tahoe Road, Virginia Lane, and Paradise Way). However, two of these (Virginia Lane and Paradise Way) have been deemed too similar to other existing street names, and will need to be given new names on the Final Map.

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 DISTRICT:

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

1. Adult care facility which serves 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). 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 lots are in conformance with the specifications stipulated for the zoning in Elko City Code 3-2-5 with the exception of Lots 47 and 48. These lots are located on the outside curve of 90 degree turns and have short front lot widths. A modification of standards is required to make these lots conform.

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

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

1. E Jennings Way is currently classified as a Minor Arterial street. The interior circulation of the project will be provided by four new roads to be dedicated to the City of Elko.
2. The proposed lots are large enough to develop the required off-street parking. Each unit will include a two-car garage within the individual lots.

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 QUALTIY 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 (required for any ground work, including clearing and grubbing).
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 both the Land Use and Transportation components of the Master Plan as previously discussed in this report.

2. The proposed subdivision and development does not conflict with the Airport Master Plan; the City of Elko Development Feasibility, Land Use, Water Infrastructure, Sanitary Sewer Infrastructure, Transportation Infrastructure, and Annexation Potential Report – November 2012; the Wellhead Protection Program; or applicable sections of the Elko City Code.

3. The proposed subdivision complies with Section 3-3-5(E)(2)(a)-(k) as discussed in this report and as required by Section 278.349(3) of the Nevada Revised Statutes.

4. The property is not located within the Redevelopment Area. Therefore, there is no conflict with the Redevelopment Plan.

STAFF RECOMMENDATION:

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

Development Department:

1. The associated Rezone 06-20 must be approved and in effect prior to submittal of the Final Map.

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 must be approved by the Nevada Department of Environmental Protection prior to submitting for Final Map approval by the City of Elko.

5. Construction plans must be approved by the Nevada Department of Environmental Protection prior to issuance of a grading permit.

6. Tentative Map approval does not constitute authorization to proceed with site improvements.

7. 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.

8. A soils report is required with Final Map submittal.

9. A hydrology report is required with Final Map submittal.

10. Final Map construction plans are to comply with Chapter 3-3 of City code.

11. The subdivision design and construction shall comply with Title 9, Chapter 8 of City code.

12. The Utility Department will issue an Intent to Serve letter upon approval of the Tentative Map by the City Council.

13. A modification from standards be approved by City Council for Lot 47 and 48 to allow for shorter-than-required front lots widths.

14. A note shall be added to the Final Map stating that no lots are allowed to face onto, or have direct access to, E Jennings Way.

15. Any slopes greater than 3:1 within the City right-of-way shall be rip-rapped.

Engineering Department:

16. Select a new name for Paradise Way. There is already a Paradise Drive in Elko. Reusing names can create confusion.

17. Please choose a new name for Virginia Lane. There is already a Virginia Way in Elko.

18. Label the Centerline Curve at the northeasterly bend in Tahoe Rd.

19. Provide bearings along lot lines of Lots: 11-37 and 62-70.

20. Label the curve on Lot 1.

21. Add a note "No Lots will be allowed direct access to East Jennings Way."

22. At the north end of East Jennings Way, extend all utilities a minimum of 10' beyond the end of the asphalt.

23. On the west side of Jennings, across from Tahoe Rd, relocate the storm drain lateral so

that it does not line up with the future ADA ramp, and a catch basin can be placed on that lateral when the other half of the road is built.

24. Relocate the mail box on Lot 17, to be closer to the street light, and away from the middle of the lot.

25. Along Incline Avenue, revise the grading along the side lot lines so the crest of the slope is at the lot line, to prevent cross lot drainage.

26. On the grading plan, label all slopes as 2:1 or 3:1, etc.

27. As part of the final design, all slopes steeper than 3:1 will require stabilization in accordance with our Best Management Practices Handbook, to include velocity dissipation devices, and stabilization practices designed to be used on steep grades.

Public Works Department:

28. All public improvements to be installed at time of development per Elko city code. See memo from Community Development. If any landscaping is proposed in the ROW, it shall be maintained by the developer.

Fire Department:

29. The temporary cul-de-sac turnaround at the end of E Jennings Way will need to be a minimum of 96' in diameter. The notes section on sheet 2 complies, however map measurements do not.

CITY OF ELKO
Planning Department

Website: www.elkocity.com
Email: planning@elkocitynv.gov

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

January 27, 2021

Jordanelle Third Mortgage, LLC
Attn: Scott MacRitchie
312 Four Mile Trail
Elko, NV 89801
Via Email: scott@macritchie.com

Re: Rezone No. 6-20 and Tentative Map No. 12-20

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.

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: https://global.gotomeeting.com/join/865213653. You can also dial in using your phone at **+1 (872) 240-3212.** The **Access Code** for this meeting is **865-213-653.**

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 Knopp
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Tom Ballew, 640 Idaho Street, Elko, NV 89801
Via Email: tcballew@frontiernet.net

Rezone 6-20 + Tentative Map 12-20 - Zephyr Heights Subd. - PC

YPNO	assess_nam	address1	address2	mcity	mzip
001568022	ALLEN ALICE A	2442 KHOURY LN		ELKO, NV	89801-4970
001566052	BLACH PATRICK J TR	131 W MAIN ST		ELKO, NV	89801-3690
001566050	CHAMBERLAIN DONALD CRAIG	2461 PUCCINELLI PKWY		ELKO, NV	89801-5030
001564010	CRMTN, LLC	PO BOX 3005		COLUMBUS, IN	47202-3000
001562019	DAGHER BASSAM T & WISSAM T	253 HICKORY HOLLOW AVE		LAS VEGAS, NV	89123-1180
001568026	DARLING REBECCA	2452 KHOURY LN		ELKO, NV	89801-4970
001568023	DEWHIRST SCOTT D & TERESA M	PO BOX 728		OVERGAARD, AZ	85933
001568019	HUNDLEY DANIEL C & TETIANA	2432 KHOURY LN		ELKO, NV	89801-4970
001568030	JOHNSTONE PETER G	2436 KHOURY LN		ELKO, NV	89801-4970
001568016	KRENZER CHARLOTTE	2426 KHOURY LN		ELKO, NV	89801-4970
001568027	LINDSTROM QUINN D	2448 KHOURY LN		ELKO, NV	89801-
001566053	LINDSTROM QUINN DON & KAYLA LAUREN		2456 PUCCINELLI PKWY	ELKO, NV	89801
001568028	LOCUSON MATTHEW CHARLES	2444 KHOURY LN		ELKO, NV	89801-4970
001566049	MARIN SYLVIA M & XAVIER T	2457 PUCCINELLI PKWY		ELKO, NV	89801-5030
001568017	OLSEN JAMES C		2428 KHOURY LANE	ELKO, NV	89801-
001568021	PFARR JERRY	2438 KHOURY LN		ELKO, NV	89801-4970
001562015	POINTE AT RUBY VIEW LLC, THE	700 IDAHO ST		ELKO, NV	89801-
001564002	RUBY VISTA APARTMENTS LLC	5560 LONGLEY LN STE 200		RENO, NV	89511-1820
001566051	SANDOVAL ADRIAN & PATRICIA	PO BOX 1305		ELKO, NV	89803-1300
001568029	SIVIA JOHN M & ERIN E	2605 WILLOUGHBY AVE		LAS VEGAS, NV	89101-2320
001566048	SMITH NEIL DANIEL	2453 PUCCINELLI PKWY		ELKO, NV	89801-5030
001564011	SOUTHWEST GAS CORPORATION	5241 SPRING MOUNTAIN RD		LAS VEGAS, NV	89150-0000
001562014	THE POINTE AT RUBY VIEW LLC	700 IDAHO ST } 1 P.C.		ELKO, NV	89801-3820
001562009	THE POINTE AT RUBY VIEW LLC	700 IDAHO ST } 1 P.C.		ELKO, NV	89801-3820
001568018	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568025	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568020	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568031	TUSCANY POINTE AT RUBY VIEW HOMEOWNERS' ASSOCIATION		1910 IDAHO ST STE 102-511	ELKO, NV	89801-
001562002	USA	C/O BLM-SUPPORT SERVICES AP	3900 E IDAHO ST	ELKO, NV	89801-4690
001568024	WARD PAUL		2450 KHOURY LANE	ELKO, NV	89801-

26

Postmarked 1/22/21

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, February 2, 2021 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: https://global.gotomeeting.com/join/865213653.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at https://global.gotomeeting.com/join/865213653.. You can also dial in using your phone. **+1 (872) 240-3212** Access Code: **865-213-653.** Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

The specific items to be considered under public hearing format are:

- Rezone No. 6-20, filed by Jordanelle Third Mortgage, LLC, for a change in zoning from R (Single-Family and Multiple-Family Residential) and R1 (Single Family Residential) to R (Single-Family and Multiple-Family Residential) Zoning District, approximately 26.607 acres of property, specifically APN 001-562-010, located generally on the east side of E. Jennings Way, across from Khoury Lane and Puccinelli Parkway, more particularly described as:

  A parcel of land located in Section 2, Township 34 North, Range 55 East, M.D.B. & M., City of Elko, Nevada, being all of Adjusted Parcel 2 and a portion of East Jennings Way as shown on the Boundary Line Adjustment Record of Survey for The Pointe at Ruby View, LLC, filed in the office of the Elko County Recorder, Elko, Nevada, at file number 775216; more particularly described as follows:

  Beginning at the center ¼ Corner of said Section 2 as shown on said Boundary Line Adjustment Record of Survey, being Corner No. 1, the True Point of Beginning;

  Thence South 42° 32' 56" West, along the easterly boundary of said Adjusted Parcel 2, a distance of 206.48 feet to Corner No. 2;

  Thence from a tangent bearing South 35° 47' 03" East, on a curve to the right with a radius of 380.00 feet, through a central angle of 89° 45' 52", along the easterly boundary of said Adjusted Parcel 2, an arc length of 595.34 feet to Corner No. 3;

  Thence South 54° 37' 53" East, along the easterly boundary of said Adjusted Parcel 2, a distance of 430.47 feet to Corner No. 4;

  Thence South 45° 30' 35" West, along the southeasterly boundary of said Adjusted Parcel 2, a distance of 1214.15 feet to Corner No. 5, a point on the easterly right-of-way of said East Jennings Way;

  Thence North 80° 11' 41" West, a distance of 40.00 feet to Corner No. 6, a point on the centerline of said East Jennings Way;

  Thence from a tangent bearing North 09° 48' 19" East, on a curve to the left with a radius of 820.00 feet, through a central angle of 15° 03' 52", along the centerline of said East Jennings Way, an arc length of 215.60 feet to Corner No. 7;

Thence North 05° 15' 33" West, along the centerline of said East Jennings Way a distance of 1071.21 feet to Corner No. 8;

Thence from a tangent bearing North 05° 15' 33" West, on a curve to the left with a radius of 510.00 feet, through a central angle of 36° 43' 28", along the centerline of said East Jennings Way, an arc length of 326.89 feet to Corner No. 9;

Thence North 48° 00' 59" East, a distance of 40.00 feet to Corner No. 10, a point on the westerly boundary of said Adjusted Parcel 2;

Thence North 37° 05' 43" East, along the northwesterly boundary of said Adjusted Parcel 2, a distance of 223.41 feet to Corner No. 11, a point on the northerly boundary of said Adjusted Parcel 2;

Thence South 89° 35' 18" East, along the northerly boundary of said Adjusted Parcel 2, a distance of 832.90 feet to Corner No. 1, the point of beginning, containing 26.607 acres, more or less.

Reference is hereby made to Exhibit "B", Zephyr Heights Subdivision Zoning Change in Section 2, T.34 N., R.55 E., M.D.B.&M., attached hereto and made a part hereof.

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

- Tentative Map No. 12-20, filed by Jordanelle Third Mortgage, LLC, for the development of a subdivision entitled Zephyr Heights, involving the proposed division of approximately 25.109 acres of property into 70 lots for residential development within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. The subject property is located on the east side of E. Jennings Way generally north of the intersection with Puccinelli Parkway. (APN 001-562-010).

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

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

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

January 12, 2021

Southwest Gas Corporation
Engineering Department
PO Box 1190
Carson City, NV 89702
nndengineering@swgas.com

SUBJECT: Tentative Map No. 12-20/Zephyr Heights Subdivision

To Whom It May Concern:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Zephyr Heights subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their February 2, 2021 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

Shelby Archuleta
Planning Technician

Enclosures

Shelby Archuleta

From: Amanda Marcucci <Amanda.Marcucci@swgas.com>
Sent: Monday, January 18, 2021 6:39 AM
To: Shelby Archuleta
Subject: RE: EXTERNAL: Subdivision Notification

Hi Shelby,

Southwest Gas does not have any objections to Tentative Map 12-20.

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 | www.swgas.com

From: Shelby Archuleta <sarchuleta@elkocitynv.gov>
Sent: Monday, January 11, 2021 10:06 AM
To: NNDEngineering <nndengineering@swgas.com>
Subject: EXTERNAL: Subdivision Notification

[WARNING] This message originated outside of Southwest Gas. **DO NOT CLICK** links or attachments unless you recognize the sender and know the content is safe.

Good Morning,
Please see attached letter and plans regarding Zephyr Heights Subdivision.
Let me know if you have any questions.

Thank you!

Shelby Archuleta
Planning Technician
City of Elko
Planning Department
Ph (775) 777-7160
FX (775) 777-7219

CITY OF ELKO
Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

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

January 12, 2021

Zito Media
Mr. Dustin Hurd
VIA Email: dustin.hurd@zitomedia.com

SUBJECT: Tentative Map No. 12-20/Zephyr Heights Subdivision

Dear Mr. Hurd:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Zephyr Heights subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their February 2, 2021 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
Email: planning@elkocitynv.gov

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

January 12, 2021

NV Energy
Attn: Katherine Perkins
6100 Neil Road
Reno, NV 89511

SUBJECT: Tentative Map No. 12-20/Zephyr Heights Subdivision

Dear Ms. Perkins:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Zephyr Heights subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their February 2, 2021 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

Shelby Archuleta
Planning Technician

Enclosures

CITY OF ELKO
Planning Department

Website: www.elkocitynv.gov
Email: planning@elkocitynv.gov

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

January 12, 2021

Frontier Communications
John Poole
1520 Church Street
Gardnerville, NV 89410

SUBJECT: Tentative Map No. 12-20/Zephyr Heights Subdivision

Dear Mr. Poole:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Zephyr Heights subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their February 2, 2021 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
Email: planning@elkocitynv.gov

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

January 12, 2021

Elko County School District
Ms. Michele Robinson
PO Box 1012
Elko, NV 89803

SUBJECT: Tentative Map No. 12-20/Zephyr Heights Subdivision

Dear Ms. Robinson:

Enclosed for your review and information is a copy of the submitted tentative map for the proposed Zephyr Heights subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their February 2, 2021 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

January 11, 2021

High Desert Engineering, LLC
Attn: Tom Ballew
640 Idaho Street
Elko, NV 89801

Re: Zephyr Heights Tentative Map – Complete Submittal

Dear Mr. Ballew:

The City of Elko has reviewed your Tentative Map application materials for Zephyr Heights (submitted January 4, 2021) 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. Barring any complications, this Tentative Map will be scheduled for Planning Commission on February 2, 2021 and City Council on February 23, 2021.

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

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: Jordanelle Third Mortgage
Attn: Scott MacRitchie
312 Four Mile Trail
Elko, NV 89801

City of Elko – File

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

December 29, 2020

High Desert Engineering, LLC
Attn: Tom Ballew
640 Idaho Street
Elko, NV 89801

Re: Zephyr Heights Tentative Map – Incomplete Submittal

Dear Mr. Ballew:

The City of Elko has reviewed your Tentative Map application materials for Zephyr Heights (submitted December 22, 2020) and has found them to be incomplete. Please address the following issues:

1. The subdivision name in the Title Block is different then what is shown in the Subdivision Information section.
2. Lots 17 and 28 are an irregular shape. Please demonstrate how a typical house would fit on these lots. (Checklist Item #4 under Proposed Conditions Data).
3. If a Homeowner's Association is proposed for this subdivision, a draft copy of CC&Rs is required to be submitted (Section 3-3-6 (G)). Additional time may be granted at the discretion of the Development Manager, but must be submitted prior to being placed on a Planning Commission agenda.

Please address these items and resubmit to continue the review process. Please include in your resubmittal a new PDF copy of the revised Tentative Map. As outlined in Section 3-3-5(C)(4), these revisions must be received within 90-days of the original filing date (December 22, 2020), or the submittal will automatically expire.

Please contact me at (775) 777-7217 if you have any questions.

Sincerely,

Michele Rambo

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: Jordanelle Third Mortgage, LLC
Attn: Scott MacRitchie
312 Four Mile Trail
Elko, NV 89801

City of Elko – File

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

HIGH DESERT ENGINEERING LLC

Consulting Civil Engineering
Land Surveying
Water Rights

December 9, 2020

RECEIVED
DEC 22 2020

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

Re: Zephyr Heights Subdivision
Tentative Map Application

Dear Cathy,

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

- Application for Tentative Map Approval.
- Three (3) copies of the proposed Tentative Map, consisting of 4 sheets each.
- One (1) copy of the Subdivision Design Report.
- One (1) copy of the Subdivision Drainage Calculations.
- One (1) copy of the Subdivision Lot Calculations.
- Check in the amount of $ 2,500.00 ($750.00 plus $25 per lot for 70 lots) for the application 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 Scott MacRitchie – Jordanelle Third Mortgage, LLC

*640 Idaho Street * Elko, Nevada, 89801 * (775) 738-4053 * Fax (775) 753-7693*
hdeng@frontiernet.net

CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

(775) 777-7160 * (775) 777-7119 fax

APPLICATION FOR TENTATIVE MAP (STAGE II) APPROVAL

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

APPLICANT(s): Jordanelle Third Mortgage, LLC
MAILING ADDRESS: 312 Four Mile Trail, Elko, NV 89801
PHONE NO (Home): _____ **(Business)** (775) 340-6005
EMAIL: scott@macritchie.com
NAME OF PROPERTY OWNER (If different): same
(Property owner consent in writing must be provided)
MAILING ADDRESS: same
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-562-010
Address Not addressed
Lot(s), Block(s), &Subdivision _____
Or Parcel(s) & File No. Adjusted Parcel 2, File 775216

APPLICANT'S REPRESENTATIVE: High Desert Engineering, LLC
MAILING ADDRESS: 640 Idaho Street, Elko, NV 89801
PHONE NO: (775) 738-4053

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 1st 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 9C) 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. Application/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

DEC 2 3 2020

PROJECT DESCRIPTION OR PURPOSE:

Development of 70 single family residential lots along East Jennings Way in Elko, Nevada.

Subdivision to be phased as dictated by marketing conditions.

(Use additional pages if necessary)

Preliminary Plat Checklist 3-3-6

Date	Name
Identification Data	
	Subdivision Name
	Location and Section, Township and Range
	Reference to a Section Corner or Quarter-Section Corner
	Name, address and phone number of subdivider
	Name, address and phone number of engineer/surveyor
	Scale, North Point and Date of Preparation
	Dates of Revisions
	Location maps
	Legal description of boundaries
Existing Conditions Data	
	2' contours on city coordinate system
	Location of Water Wells
	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
	Zoning of Adjacent Properties
	Dimensions of all tract boundaries, gross and net acreage
Proposed Conditions Data	
	Street Layout, location, widths, easements
	Traffic Impact Analysis
	Lot Layout, including dimensions of typical lots
	Corner Lot Layout
	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
	Location and boundary of all proposed zoning districts
	Draft of proposed deed restrictions
	Preliminary Grading Plan
	Conceptual cut and fill
	Estimated quality of material to be graded
Proposed Utilities	
	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

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: Jordanelle Third Mortgage, LLC
Scott MacRitchie, Managing Director
(Please print or type)

Mailing Address: 312 Four Mile Trail
(Street Address or P.O. Box)

Elko, NV 89801
(City, State, Zip Code)

Phone Number: (775) 340-6005

Email address: scott@macritchie.com

SIGNATURE: Thomas P. Ballew - For Scott MacRitchie

FOR OFFICE USE ONLY

70 lots x $25 = $1,750

$1750
+$750
$2,500

File No.: 12-20 **Date Filed:** 12/22/20 **Fee Paid:** $2,500 CK# 116151

Thomas C Ballew

From: scott <scott@macritchie.com>
Sent: Tuesday, December 22, 2020 3:23 PM
To: Tom Ballew
Subject: Zephyr

RECEIVED
DEC 2 2 2020

I authorize Tom Ballew to sign on my behalf the tentative application to the city of Elko for Zephyr Heights

Scott MacRitchie

Virus-free. www.avg.com

LOT CALCULATIONS

FOR

ZEPHYR HEIGHTS SUBDIVISION
ELKO, NEVADA

PREPARED FOR:

Jordanelle Third Mortgage, LLC
312 Four Mile Trail
Elko, Nevada 89801

Contact:
Scott MacRitchie
(775) 340-6005

PREPARED BY

HIGH DESERT Engineering
640 Idaho Street
Elko, Nevada

November, 2020

Parcel name: SUBDIVISION

```
        North: 28480439.203          East : 610180.761
Curve  Length: 226.11               Radius: 860.00
        Delta: 15-03-52            Tangent: 113.71
        Chord: 225.46               Course: N 02-16-01 E
    Course In: N 80-12-03 W     Course Out: N 84-44-05 E
    RP  North: 28480585.571          East : 609333.309
    End North: 28480664.491          East : 610189.680
Line  Course: N 05-15-55 W  Length: 1071.21
        North: 28481731.181          East : 610091.378
Curve  Length: 352.53               Radius: 550.00
        Delta: 36-43-28            Tangent: 182.56
        Chord: 346.53               Course: N 23-37-39 W
    Course In: S 84-44-05 W     Course Out: N 48-00-37 E
    RP  North: 28481680.709          East : 609543.699
    End North: 28482048.658          East : 609952.494
Line  Course: N 37-05-21 E  Length: 223.41
        North: 28482226.871          East : 610087.223
Line  Course: S 89-35-40 E  Length: 832.90
        North: 28482220.976          East : 610920.102
Line  Course: S 42-32-34 W  Length: 206.48
        North: 28482068.847          East : 610780.493
Curve  Length: 595.34               Radius: 380.00
        Delta: 89-45-52            Tangent: 378.44
        Chord: 536.30               Course: S 09-05-30 W
    Course In: S 54-12-34 W     Course Out: S 36-01-34 E
    RP  North: 28481846.614          East : 610472.252
    End North: 28481539.289          East : 610695.751
Line  Course: S 54-38-16 E  Length: 430.47
        North: 28481290.158          East : 611046.803
Line  Course: S 45-30-12 W  Length: 394.58
        North: 28481013.609          East : 610765.352
Line  Course: S 45-30-12 W  Length: 819.57
        North: 28480439.199          East : 610180.760
Line  Course: N 09-52-09 E  Length: 0.00
        North: 28480439.199          East : 610180.760

   Perimeter: 5152.61   Area: 1,093,740 S.F. 25.109 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: S 13-36-44 W
  Error North: -0.0045               East : -0.0011
Precision  1: 1,030,520.00
```

Parcel name: STREET - INCLINE AVENUE

```
        North: 28480868.182          East : 610349.770
Curve  Length: 22.64                Radius: 75.00
        Delta: 17-17-38            Tangent: 11.41
        Chord: 22.55                Course: S 76-05-16 W
    Course In: N 22-33-33 W     Course Out: S 05-15-55 E
    RP  North: 28480937.444          East : 610320.997
    End North: 28480862.760          East : 610327.880
Line  Course: S 84-44-05 W  Length: 63.31
        North: 28480856.950          East : 610264.837
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 05-15-55 W     Course Out: N 84-44-05 E
    RP  North: 28480872.385          East : 610263.414
    End North: 28480873.807          East : 610278.849
Line  Course: N 05-15-55 W  Length: 1146.68
        North: 28482015.649          East : 610173.621
Curve  Length: 10.16                Radius: 15.50
        Delta: 37-32-49            Tangent: 5.27
        Chord: 9.98                 Course: N 24-02-19 W
    Course In: S 84-44-05 W     Course Out: N 47-11-16 E
    RP  North: 28482014.226          East : 610158.187
    End North: 28482024.760          East : 610169.557
Curve  Length: 80.53                Radius: 54.50
        Delta: 84-39-33            Tangent: 49.64
        Chord: 73.40                Course: N 00-28-57 W
    Course In: N 47-11-16 E     Course Out: N 48-09-11 W
    RP  North: 28482061.798          East : 610209.538
    End North: 28482098.158          East : 610168.939
Line  Course: S 48-19-19 E  Length: 76.18
        North: 28482047.502          East : 610225.837
Curve  Length: 12.70                Radius: 15.50
        Delta: 46-56-36            Tangent: 6.73
        Chord: 12.35                Course: S 18-12-23 W
    Course In: S 48-19-19 E     Course Out: S 84-44-05 W
    RP  North: 28482037.195          East : 610237.414
    End North: 28482035.773          East : 610221.980
Line  Course: S 05-15-55 E  Length: 1159.59
        North: 28480881.076          East : 610328.392
Curve  Length: 29.03                Radius: 15.50
        Delta: 107-17-38           Tangent: 21.06
        Chord: 24.97                Course: S 58-54-44 E
    Course In: N 84-44-05 E     Course Out: S 22-33-33 E
    RP  North: 28480882.498          East : 610343.826
    End North: 28480868.184          East : 610349.773

   Perimeter: 2625.16   Area: 61,952 S.F. 1.422 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 55-06-35 E
  Error North: 0.0021                East : 0.0030
Precision  1: 656,292.50
```

Parcel name: STREET - PARADISE WAY

```
        North: 28480863.896          East : 610171.302
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 50-15-55 E
    Course In: N 84-44-05 E     Course Out: S 05-15-55 E
    RP  North: 28480865.318          East : 610186.737
    End North: 28480849.884          East : 610188.159
Line  Course: N 84-44-05 E  Length: 140.31
        North: 28480862.760          East : 610327.877
Curve  Length: 59.78                Radius: 75.00
        Delta: 45-39-57            Tangent: 31.58
        Chord: 58.21                Course: N 61-54-06 E
    Course In: N 05-15-55 W     Course Out: S 50-55-52 E
    RP  North: 28480937.443          East : 610320.995
    End North: 28480890.174          East : 610379.224
Line  Course: N 39-04-08 E  Length: 204.20
        North: 28481048.713          East : 610507.922
Curve  Length: 49.59                Radius: 275.00
        Delta: 10-19-54            Tangent: 24.86
        Chord: 49.52                Course: N 44-14-05 E
    Course In: S 50-55-52 E     Course Out: N 40-35-58 W
    RP  North: 28480875.393          East : 610721.429
    End North: 28481084.194          East : 610542.468
Line  Course: N 49-24-02 E  Length: 293.23
        North: 28481275.018          East : 610765.111
Curve  Length: 248.23               Radius: 54.50
        Delta: 260-57-32           Tangent: 63.86
        Chord: 82.91                Course: S 00-07-12 E
    Course In: S 40-35-58 E     Course Out: S 40-21-34 W
    RP  North: 28481233.638          East : 610800.578
    End North: 28481192.109          East : 610765.285
Curve  Length: 21.90                Radius: 15.50
        Delta: 80-57-32            Tangent: 13.23
        Chord: 20.12                Course: S 89-52-48 W
    Course In: S 40-21-34 W     Course Out: N 40-35-58 W
    RP  North: 28481180.298          East : 610755.247
    End North: 28481192.067          East : 610745.160
Line  Course: S 49-24-02 W  Length: 224.10
        North: 28481046.230          East : 610575.006
Curve  Length: 40.57                Radius: 225.00
        Delta: 10-19-54            Tangent: 20.34
        Chord: 40.52                Course: S 44-14-05 W
    Course In: S 40-35-58 E     Course Out: N 50-55-52 W
    RP  North: 28480875.392          East : 610721.429
    End North: 28481017.200          East : 610546.741
Line  Course: S 39-04-08 W  Length: 204.20
        North: 28480858.661          East : 610418.043
Curve  Length: 99.63                Radius: 125.00
        Delta: 45-39-57            Tangent: 52.63
        Chord: 97.01                Course: S 61-54-06 W
    Course In: N 50-55-52 W     Course Out: S 05-15-55 E
    RP  North: 28480937.443          East : 610320.995
    End North: 28480812.970          East : 610332.466
```

Parcel name: STREET - PARADISE WAY (con’t)

```
Line  Course: S 84-44-05 W  Length: 140.31
        North: 28480800.094          East : 610192.748
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 05-15-55 E     Course Out: S 84-44-05 W
    RP  North: 28480784.660          East : 610194.170
    End North: 28480783.237          East : 610178.735
Line  Course: N 05-15-55 W  Length: 81.00
        North: 28480863.896          East : 610171.302

   Perimeter: 1855.74   Area: 46,290 S.F. 1.063 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 46-03-26 W
  Error North: -0.0002               East : -0.0002
Precision  1: 1,855,750,000.00
```

Parcel name: STREET - TAHOE ROAD 1

```
        North: 28481711.347          East : 610201.660
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 50-15-55 W
    Course In: S 84-44-05 W     Course Out: N 05-15-55 W
    RP  North: 28481709.924          East : 610186.226
    End North: 28481725.359          East : 610184.803
Line  Course: S 84-44-05 W  Length: 77.00
        North: 28481718.293          East : 610108.128
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 05-15-55 E     Course Out: S 84-44-05 W
    RP  North: 28481702.858          East : 610109.551
    End North: 28481701.436          East : 610094.116
Line  Course: N 05-15-55 W  Length: 29.87
        North: 28481731.180          East : 610091.375
Curve  Length: 49.80                Radius: 550.00
        Delta: 5-11-16             Tangent: 24.92
        Chord: 49.78                Course: N 07-51-33 W
    Course In: S 84-44-05 W     Course Out: N 79-32-49 E
    RP  North: 28481680.708          East : 609543.696
    End North: 28481780.494          East : 610084.568
Curve  Length: 22.94                Radius: 15.50
        Delta: 84-48-44            Tangent: 14.16
        Chord: 20.91                Course: S 52-51-33 E
    Course In: N 79-32-49 E     Course Out: S 05-15-55 E
    RP  North: 28481783.306          East : 610099.811
    End North: 28481767.872          East : 610101.233
Line  Course: N 84-44-05 E  Length: 79.32
        North: 28481775.151          East : 610180.218
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 05-15-55 W     Course Out: N 84-44-05 E
    RP  North: 28481790.585          East : 610178.796
    End North: 28481792.008          East : 610194.231
Line  Course: S 05-15-55 E  Length: 81.00
        North: 28481711.350          East : 610201.664

   Perimeter: 412.97   Area: 5,611 S.F. 0.129 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 48-37-26 E
  Error North: 0.0029                East : 0.0033
Precision  1: 103,245.00
```

Parcel name: STREET - TAHOE ROAD 2

```
        North: 28482098.158          East : 610168.934
Curve  Length: 80.53                Radius: 54.50
        Delta: 84-39-32            Tangent: 49.64
        Chord: 73.40                Course: N 84-10-35 E
    Course In: S 48-09-11 E     Course Out: N 36-30-21 E
    RP  North: 28482061.799          East : 610209.533
    End North: 28482105.605          East : 610241.955
Curve  Length: 9.53                 Radius: 15.50
        Delta: 35-13-26            Tangent: 4.92
        Chord: 9.38                 Course: S 71-06-22 E
    Course In: N 36-30-21 E     Course Out: S 01-16-55 W
    RP  North: 28482118.064          East : 610251.176
    End North: 28482102.568          East : 610250.829
Curve  Length: 42.69                Radius: 525.00
        Delta: 4-39-31             Tangent: 21.35
        Chord: 42.67                Course: S 86-23-19 E
    Course In: S 01-16-55 W     Course Out: N 05-56-26 E
    RP  North: 28481577.700          East : 610239.084
    End North: 28482099.880          East : 610293.420
Line  Course: S 84-03-34 E  Length: 257.16
        North: 28482073.265          East : 610549.199
Curve  Length: 171.55               Radius: 125.00
        Delta: 78-38-03            Tangent: 102.37
        Chord: 158.40               Course: S 44-44-33 E
    Course In: S 05-56-26 W     Course Out: N 84-34-29 E
    RP  North: 28481948.936          East : 610536.262
    End North: 28481960.755          East : 610660.702
Line  Course: S 05-25-31 E  Length: 65.38
        North: 28481895.668          East : 610666.883
Curve  Length: 196.70               Radius: 125.00
        Delta: 90-09-36            Tangent: 125.35
        Chord: 177.02               Course: S 39-39-17 W
    Course In: S 84-34-29 W     Course Out: S 05-15-55 E
    RP  North: 28481883.849          East : 610542.443
    End North: 28481759.377          East : 610553.914
Line  Course: S 84-44-05 W  Length: 289.67
        North: 28481732.794          East : 610265.466
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 05-15-55 E     Course Out: S 84-44-05 W
    RP  North: 28481717.360          East : 610266.889
    End North: 28481715.937          East : 610251.454
Line  Course: N 05-15-55 W  Length: 81.00
        North: 28481796.596          East : 610244.021
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 50-15-55 E
    Course In: N 84-44-05 E     Course Out: S 05-15-55 E
    RP  North: 28481798.018          East : 610259.456
    End North: 28481782.584          East : 610260.878
Line  Course: N 84-44-05 E  Length: 289.67
        North: 28481809.166          East : 610549.326
```

Parcel name: STREET - TAHOE ROAD 2 (con't)

```
Curve  Length: 118.02              Radius: 75.00
        Delta: 90-09-36           Tangent: 75.21
        Chord: 106.21              Course: N 39-39-17 E
    Course In: N 05-15-55 W     Course Out: N 84-34-29 E
    RP  North: 28481883.849         East : 610542.443
    End North: 28481890.940         East : 610617.107
Line  Course: N 05-25-31 W  Length: 65.38
        North: 28481956.027         East : 610610.926
Curve  Length: 102.93              Radius: 75.00
        Delta: 78-38-03           Tangent: 61.42
        Chord: 95.04               Course: N 44-44-33 W
    Course In: S 84-34-29 W     Course Out: N 05-56-26 E
    RP  North: 28481948.936         East : 610536.262
    End North: 28482023.534         East : 610544.024
Line  Course: N 84-03-34 W  Length: 257.16
        North: 28482050.149         East : 610288.245
Curve  Length: 50.98               Radius: 475.00
        Delta: 6-08-58            Tangent: 25.51
        Chord: 50.96               Course: N 87-08-03 W
    Course In: S 05-56-26 W     Course Out: N 00-12-32 W
    RP  North: 28481577.700         East : 610239.084
    End North: 28482052.696         East : 610237.352
Curve  Length: 13.02               Radius: 15.50
        Delta: 48-06-47           Tangent: 6.92
        Chord: 12.64               Course: S 65-44-05 W
    Course In: S 00-12-32 E     Course Out: N 48-19-19 W
    RP  North: 28482037.197         East : 610237.409
    End North: 28482047.503         East : 610225.832
Line  Course: N 48-19-19 W  Length: 76.18
        North: 28482098.159         East : 610168.934
Line  Course: N 46-44-09 W  Length: 0.00
        North: 28482098.159         East : 610168.934

   Perimeter: 2216.24   Area: 51,856 S.F. 1.190 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.001               Course: N 38-32-46 W
  Error North: 0.0008               East : -0.0006
Precision  1: 2,216,250.00
```

Parcel name: STREET - VIRGINIA LANE

```
   North: 28481235.969        East : 610295.682
Line  Course: N 05-15-55 W  Length: 81.00
        North: 28481316.627          East : 610288.249
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 50-15-55 E
    Course In: N 84-44-05 E     Course Out: S 05-15-55 E
    RP  North: 28481318.050          East : 610303.684
    End North: 28481302.615          East : 610305.106
Line  Course: N 84-44-05 E  Length: 39.16
        North: 28481306.209          East : 610344.101
Curve  Length: 44.00                Radius: 75.00
        Delta: 33-36-59            Tangent: 22.66
        Chord: 43.38                Course: N 67-55-35 E
    Course In: N 05-15-55 W     Course Out: S 38-52-54 E
    RP  North: 28481380.892          East : 610337.218
    End North: 28481322.509          East : 610384.297
Line  Course: N 51-07-06 E  Length: 150.65
        North: 28481417.074          East : 610501.570
Curve  Length: 21.90                Radius: 15.50
        Delta: 80-57-32            Tangent: 13.23
        Chord: 20.12                Course: N 10-38-20 E
    Course In: N 38-52-54 W     Course Out: N 60-09-34 E
    RP  North: 28481429.140          East : 610491.840
    End North: 28481436.853          East : 610505.285
Curve  Length: 248.23               Radius: 54.50
        Delta: 260-57-32           Tangent: 63.86
        Chord: 82.91                Course: S 79-21-40 E
    Course In: N 60-09-34 E     Course Out: S 38-52-54 E
    RP  North: 28481463.971          East : 610552.559
    End North: 28481421.546          East : 610586.769
Line  Course: S 51-07-06 W  Length: 219.78
        North: 28481283.587          East : 610415.683
Curve  Length: 73.34                Radius: 125.00
        Delta: 33-36-59            Tangent: 37.76
        Chord: 72.29                Course: S 67-55-35 W
    Course In: N 38-52-54 W     Course Out: S 05-15-55 E
    RP  North: 28481380.892          East : 610337.219
    End North: 28481256.420          East : 610348.690
Line  Course: S 84-44-05 W  Length: 39.16
        North: 28481252.826          East : 610309.695
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 05-15-55 E     Course Out: S 84-44-05 W
    RP  North: 28481237.392          East : 610311.117
    End North: 28481235.969          East : 610295.683

   Perimeter: 965.91   Area: 24,044 S.F. 0.552 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: N 54-27-46 E
  Error North: 0.0002                East : 0.0003
Precision  1: 965,920,000.00
```

Parcel name: LOT 1

```
        North: 28480439.203          East : 610180.761
Curve  Length: 226.11               Radius: 860.00
        Delta: 15-03-52            Tangent: 113.71
        Chord: 225.46               Course: N 02-16-01 E
    Course In: N 80-12-03 W     Course Out: N 84-44-05 E
    RP  North: 28480585.571          East : 609333.309
    End North: 28480664.491          East : 610189.680
Line  Course: N 05-15-56 W  Length: 119.25
        North: 28480783.238          East : 610178.736
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 84-44-05 E     Course Out: N 05-15-55 W
    RP  North: 28480784.660          East : 610194.171
    End North: 28480800.095          East : 610192.748
Line  Course: N 84-44-05 E  Length: 90.50
        North: 28480808.400          East : 610282.866
Line  Course: S 05-15-55 E  Length: 247.59
        North: 28480561.854          East : 610305.587
Line  Course: S 45-30-12 W  Length: 175.00
        North: 28480439.203          East : 610180.761

   Perimeter: 882.80   Area: 32,610 S.F. 0.749 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.001                Course: S 29-40-26 W
  Error North: -0.0009               East : -0.0005
Precision  1: 882,800.00
```

Parcel name: LOT 2

```
   North: 28480808.400        East : 610282.866
Line  Course: N 84-44-05 E  Length: 49.81
        North: 28480812.971          East : 610332.466
Curve  Length: 26.89                Radius: 125.00
        Delta: 12-19-35            Tangent: 13.50
        Chord: 26.84                Course: N 78-34-17 E
    Course In: N 05-15-55 W     Course Out: S 17-35-30 E
    RP  North: 28480937.443          East : 610320.995
    End North: 28480818.289          East : 610358.774
Line  Course: S 17-35-34 E  Length: 163.31
        North: 28480662.617          East : 610408.134
Line  Course: S 45-30-12 W  Length: 143.77
        North: 28480561.853          East : 610305.584
Line  Course: N 05-15-55 W  Length: 247.59
        North: 28480808.399          East : 610282.864

   Perimeter: 631.37   Area: 19,854 S.F. 0.456 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 63-59-13 W
  Error North: -0.0011               East : -0.0023
Precision  1: 210,456.67
```

Parcel name: LOT 3

```
        North: 28480818.289          East : 610358.776
Curve  Length: 64.07                Radius: 125.00
        Delta: 29-22-09            Tangent: 32.76
        Chord: 63.37                Course: N 57-43-26 E
    Course In: N 17-35-30 W     Course Out: S 46-57-39 E
    RP  North: 28480937.444          East : 610320.997
    End North: 28480852.131          East : 610412.358
Line  Course: S 44-29-48 E  Length: 132.22
        North: 28480757.820          East : 610505.027
Line  Course: S 45-30-12 W  Length: 135.84
        North: 28480662.614          East : 610408.133
Line  Course: N 17-35-34 W  Length: 163.31
        North: 28480818.286          East : 610358.773

   Perimeter: 495.44   Area: 13,813 S.F. 0.317 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: S 42-47-31 W
  Error North: -0.0034               East : -0.0031
Precision  1: 99,088.00
```

Parcel name: LOT 4

```
        North: 28480852.131          East : 610412.358
Curve  Length: 8.66                 Radius: 125.00
        Delta: 3-58-13             Tangent: 4.33
        Chord: 8.66                 Course: N 41-03-14 E
    Course In: N 46-57-39 W     Course Out: S 50-55-52 E
    RP  North: 28480937.444          East : 610320.997
    End North: 28480858.662          East : 610418.046
Line  Course: N 39-04-08 E  Length: 73.83
        North: 28480915.983          East : 610464.577
Line  Course: S 44-29-48 E  Length: 141.17
        North: 28480815.287          East : 610563.519
Line  Course: S 45-30-12 W  Length: 82.00
        North: 28480757.816          East : 610505.029
Line  Course: N 44-29-48 W  Length: 132.22
        North: 28480852.127          East : 610412.360

   Perimeter: 437.88   Area: 11,197 S.F. 0.257 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: S 30-09-43 E
  Error North: -0.0039               East : 0.0022
Precision  1: 109,470.00
```

```
Parcel name: LOT 5

   North: 28480915.984        East : 610464.578
Line  Course: N 39-04-08 E  Length: 82.52
        North: 28480980.051          East : 610516.587
Line  Course: S 44-29-48 E  Length: 150.41
        North: 28480872.765          East : 610622.004
Line  Course: S 45-30-12 W  Length: 82.00
        North: 28480815.294          East : 610563.514
Line  Course: N 44-29-48 W  Length: 141.17
        North: 28480915.989          East : 610464.573

   Perimeter: 456.10   Area: 11,955 S.F. 0.274 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.008                Course: N 43-07-47 W
  Error North: 0.0056                East : -0.0053
Precision  1: 57,012.50

---------------------------------------------------------------------------

Parcel name: LOT 6

   North: 28480980.051        East : 610516.586
Line  Course: N 39-04-08 E  Length: 43.33
        North: 28481013.692          East : 610543.895
Curve  Length: 39.01                Radius: 275.00
        Delta: 8-07-37             Tangent: 19.54
        Chord: 38.97                Course: N 43-07-57 E
    Course In: S 50-55-52 E     Course Out: N 42-48-15 W
    RP  North: 28480840.372          East : 610757.402
    End North: 28481042.134          East : 610570.541
Line  Course: S 44-29-48 E  Length: 156.88
        North: 28480930.233          East : 610680.493
Line  Course: S 45-30-12 W  Length: 82.00
        North: 28480872.762          East : 610622.003
Line  Course: N 44-29-48 W  Length: 150.41
        North: 28480980.048          East : 610516.586

   Perimeter: 471.63   Area: 12,677 S.F. 0.291 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 08-50-13 W
  Error North: -0.0030               East : -0.0005
Precision  1: 157,210.00
```

Parcel name: LOT 7

```
        North: 28481042.136          East : 610570.543
Curve  Length: 10.58                Radius: 275.00
        Delta: 2-12-17             Tangent: 5.29
        Chord: 10.58                Course: N 48-17-54 E
    Course In: S 42-48-15 E     Course Out: N 40-35-58 W
    RP  North: 28480840.374          East : 610757.404
    End North: 28481049.175          East : 610578.443
Line  Course: N 49-24-02 E  Length: 73.10
        North: 28481096.746          East : 610633.946
Line  Course: S 44-29-48 E  Length: 151.40
        North: 28480988.754          East : 610740.058
Line  Course: S 45-30-12 W  Length: 83.50
        North: 28480930.232          East : 610680.498
Line  Course: N 44-29-48 W  Length: 156.88
        North: 28481042.133          East : 610570.546

   Perimeter: 475.46   Area: 12,878 S.F. 0.296 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: S 39-36-13 E
  Error North: -0.0033               East : 0.0028
Precision  1: 118,865.00
```

Parcel name: LOT 8

```
   North: 28481096.747        East : 610633.947
Line  Course: N 49-24-02 E  Length: 82.19
        North: 28481150.233          East : 610696.352
Line  Course: S 44-29-48 E  Length: 145.81
        North: 28481046.228          East : 610798.545
Line  Course: S 45-30-12 W  Length: 82.00
        North: 28480988.757          East : 610740.055
Line  Course: N 44-29-48 W  Length: 151.40
        North: 28481096.749          East : 610633.944

   Perimeter: 461.40   Area: 12,186 S.F. 0.280 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 45-22-28 W
  Error North: 0.0027                East : -0.0027
Precision  1: 115,350.00
```

Parcel name: LOT 9

```
   North: 28481150.233        East : 610696.352
Line  Course: N 49-24-02 E  Length: 64.29
        North: 28481192.071          East : 610745.166
Curve  Length: 21.90                Radius: 15.50
        Delta: 80-57-32            Tangent: 13.23
        Chord: 20.12                Course: N 89-52-48 E
    Course In: S 40-35-58 E     Course Out: N 40-21-34 E
    RP  North: 28481180.302          East : 610755.252
    End North: 28481192.113          East : 610765.290
Curve  Length: 80.70                Radius: 54.50
        Delta: 84-50-35            Tangent: 49.80
        Chord: 73.53                Course: N 87-56-16 E
    Course In: N 40-21-34 E     Course Out: S 44-29-01 E
    RP  North: 28481233.642          East : 610800.583
    End North: 28481194.759          East : 610838.772
Line  Course: S 44-29-48 E  Length: 77.75
        North: 28481139.300          East : 610893.264
Line  Course: S 45-30-12 W  Length: 132.79
        North: 28481046.232          East : 610798.546
Line  Course: N 44-29-48 W  Length: 145.81
        North: 28481150.237          East : 610696.353

   Perimeter: 523.24   Area: 16,042 S.F. 0.368 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 12-47-53 E
  Error North: 0.0041                East : 0.0009
Precision  1: 130,810.00
```

Parcel name: LOT 10

```
        North: 28481194.756          East : 610838.768
Curve  Length: 87.65                Radius: 54.50
        Delta: 92-08-35            Tangent: 56.58
        Chord: 78.50                Course: N 00-33-18 W
    Course In: N 44-29-01 W     Course Out: N 43-22-24 E
    RP  North: 28481233.639          East : 610800.580
    End North: 28481273.254          East : 610838.007
Line  Course: N 42-58-21 E  Length: 135.83
        North: 28481372.639          East : 610930.596
Line  Course: S 54-38-16 E  Length: 142.50
        North: 28481290.168          East : 611046.806
Line  Course: S 45-30-12 W  Length: 215.26
        North: 28481139.299          East : 610893.263
Line  Course: N 44-29-48 W  Length: 77.75
        North: 28481194.757          East : 610838.770

   Perimeter: 658.99   Area: 25,259 S.F. 0.580 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: N 51-41-54 E
  Error North: 0.0017                East : 0.0021
Precision  1: 219,663.33
```

Parcel name: LOT 11

```
        North: 28481273.254          East : 610838.007
Curve  Length: 79.88                Radius: 54.50
        Delta: 83-58-22            Tangent: 49.05
        Chord: 72.92                Course: N 88-36-47 W
    Course In: S 43-22-24 W     Course Out: N 40-35-58 W
    RP  North: 28481233.639          East : 610800.580
    End North: 28481275.019          East : 610765.113
Line  Course: N 38-52-54 W  Length: 117.98
        North: 28481366.860          East : 610691.055
Line  Course: N 51-06-29 E  Length: 148.93
        North: 28481460.366          East : 610806.972
Line  Course: S 54-38-16 E  Length: 151.59
        North: 28481372.635          East : 610930.595
Line  Course: S 42-58-21 W  Length: 135.83
        North: 28481273.250          East : 610838.007

   Perimeter: 634.21   Area: 25,083 S.F. 0.576 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: S 06-49-08 W
  Error North: -0.0040               East : -0.0005
Precision  1: 158,552.50
```

Parcel name: LOT 12

```
   North: 28481275.019        East : 610765.113
Line  Course: S 49-24-02 W  Length: 76.53
        North: 28481225.216          East : 610707.005
Line  Course: N 38-52-54 W  Length: 120.30
        North: 28481318.863          East : 610631.491
Line  Course: N 51-08-17 E  Length: 76.50
        North: 28481366.863          East : 610691.059
Line  Course: S 38-52-54 E  Length: 117.98
        North: 28481275.022          East : 610765.116

   Perimeter: 391.32   Area: 9,115 S.F. 0.209 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 56-39-29 E
  Error North: 0.0024                East : 0.0037
Precision  1: 97,827.50
```

Parcel name: LOT 13

```
   North: 28481225.213        East : 610707.002
Line  Course: S 49-24-02 W  Length: 76.53
        North: 28481175.410          East : 610648.894
Line  Course: N 38-52-54 W  Length: 122.60
        North: 28481270.847          East : 610571.937
Line  Course: N 51-07-06 E  Length: 76.50
        North: 28481318.867          East : 610631.488
Line  Course: S 38-52-54 E  Length: 120.30
        North: 28481225.221          East : 610707.002

   Perimeter: 395.94   Area: 9,291 S.F. 0.213 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.007                Course: N 02-15-01 W
  Error North: 0.0074                East : -0.0003
Precision  1: 56,561.43
```

Parcel name: LOT 14

```
   North: 28481175.407        East : 610648.891
Line  Course: S 49-24-02 W  Length: 76.53
        North: 28481125.604          East : 610590.784
Line  Course: N 38-52-54 W  Length: 124.89
        North: 28481222.824          East : 610512.388
Line  Course: N 51-07-06 E  Length: 76.50
        North: 28481270.844          East : 610571.939
Line  Course: S 38-52-54 E  Length: 122.60
        North: 28481175.407          East : 610648.897

   Perimeter: 400.53   Area: 9,467 S.F. 0.217 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.006                Course: S 85-54-03 E
  Error North: -0.0004               East : 0.0060
Precision  1: 66,753.33
```

Parcel name: LOT 15

```
   North: 28481125.601        East : 610590.780
Line  Course: S 49-24-02 W  Length: 59.10
        North: 28481087.141          East : 610545.907
Curve  Length: 17.45                Radius: 325.00
        Delta: 3-04-37             Tangent: 8.73
        Chord: 17.45                Course: S 47-51-44 W
    Course In: S 40-35-58 E     Course Out: N 43-40-35 W
    RP  North: 28480840.376          East : 610757.406
    End North: 28481075.433          East : 610532.966
Line  Course: N 38-52-54 W  Length: 127.66
        North: 28481174.809          East : 610452.832
Line  Course: N 51-07-06 E  Length: 76.50
        North: 28481222.829          East : 610512.383
Line  Course: S 38-52-54 E  Length: 124.89
        North: 28481125.609          East : 610590.778

   Perimeter: 405.61   Area: 9,645 S.F. 0.221 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.008                Course: N 13-16-20 W
  Error North: 0.0077                East : -0.0018
Precision  1: 50,700.00
```

Parcel name: LOT 16

```
        North: 28481075.430          East : 610532.964
Curve  Length: 41.15                Radius: 325.00
        Delta: 7-15-17             Tangent: 20.60
        Chord: 41.12                Course: S 42-41-46 W
    Course In: S 43-40-35 E     Course Out: N 50-55-52 W
    RP  North: 28480840.374          East : 610757.403
    End North: 28481045.206          East : 610505.077
Line  Course: S 39-04-08 W  Length: 118.77
        North: 28480952.994          East : 610430.222
Line  Course: N 05-15-55 W  Length: 190.30
        North: 28481142.492          East : 610412.759
Line  Course: N 51-07-06 E  Length: 51.48
        North: 28481174.806          East : 610452.833
Line  Course: S 38-52-54 E  Length: 127.66
        North: 28481075.430          East : 610532.967

   Perimeter: 529.36   Area: 13,918 S.F. 0.320 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 84-57-49 E
  Error North: -0.0003               East : 0.0033
Precision  1: 176,453.33
```

Parcel name: LOT 17

```
   North: 28481001.463        East : 610317.294
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481011.374          East : 610424.838
Line  Course: S 05-15-55 E  Length: 58.63
        North: 28480952.991          East : 610430.219
Line  Course: S 39-04-08 W  Length: 80.91
        North: 28480890.173          East : 610379.225
Curve  Length: 37.14                Radius: 75.00
        Delta: 28-22-19            Tangent: 18.96
        Chord: 36.76                Course: S 53-15-18 W
    Course In: N 50-55-52 W     Course Out: S 22-33-33 E
    RP  North: 28480937.443          East : 610320.996
    End North: 28480868.181          East : 610349.768
Curve  Length: 29.03                Radius: 15.50
        Delta: 107-17-38           Tangent: 21.06
        Chord: 24.97                Course: N 58-54-44 W
    Course In: N 22-33-33 W     Course Out: S 84-44-05 W
    RP  North: 28480882.495          East : 610343.822
    End North: 28480881.073          East : 610328.387
Line  Course: N 05-15-55 W  Length: 120.90
        North: 28481001.463          East : 610317.293

   Perimeter: 434.60   Area: 11,651 S.F. 0.267 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.001                Course: S 84-43-49 W
  Error North: -0.0001               East : -0.0013
Precision  1: 434,610.00
```

Parcel name: LOT 18

```
   North: 28481084.113        East : 610309.677
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481094.023          East : 610417.221
Line  Course: S 05-15-55 E  Length: 83.00
        North: 28481011.374          East : 610424.838
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481001.463          East : 610317.294
Line  Course: N 05-15-55 W  Length: 83.00
        North: 28481084.113          East : 610309.677

   Perimeter: 382.00   Area: 8,964 S.F. 0.206 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 382,000,000.00
```

```
Parcel name: LOT 19

   North: 28481166.762        East : 610302.060
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481176.673          East : 610409.605
Line  Course: S 05-15-55 E  Length: 83.00
        North: 28481094.023          East : 610417.221
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481084.113          East : 610309.677
Line  Course: N 05-15-55 W  Length: 83.00
        North: 28481166.762          East : 610302.060

   Perimeter: 382.00   Area: 8,964 S.F. 0.206 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 382,000,000.00

---------------------------------------------------------------------------

Parcel name: LOT 20

   North: 28481166.762        East : 610302.060
Line  Course: N 05-15-55 W  Length: 69.50
        North: 28481235.969          East : 610295.682
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 84-44-05 E     Course Out: N 05-15-55 W
    RP  North: 28481237.391          East : 610311.117
    End North: 28481252.826          East : 610309.695
Line  Course: N 84-44-05 E  Length: 39.16
        North: 28481256.420          East : 610348.689
Curve  Length: 55.11                Radius: 125.00
        Delta: 25-15-30            Tangent: 28.01
        Chord: 54.66                Course: N 72-06-20 E
    Course In: N 05-15-55 W     Course Out: S 30-31-25 E
    RP  North: 28481380.892          East : 610337.219
    End North: 28481273.215          East : 610400.705
Line  Course: S 05-15-55 E  Length: 96.95
        North: 28481176.674          East : 610409.602
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481166.763          East : 610302.058

   Perimeter: 393.07   Area: 9,337 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: N 75-57-44 W
  Error North: 0.0006                East : -0.0025
Precision  1: 131,023.33
```

Parcel name: LOT 21

```
        North: 28481273.215          East : 610400.707
Curve  Length: 18.23                Radius: 125.00
        Delta: 8-21-29             Tangent: 9.13
        Chord: 18.22                Course: N 55-17-50 E
    Course In: N 30-31-25 W     Course Out: S 38-52-54 E
    RP  North: 28481380.893          East : 610337.221
    End North: 28481283.587          East : 610415.685
Line  Course: N 51-07-06 E  Length: 56.78
        North: 28481319.229          East : 610459.885
Line  Course: S 38-52-54 E  Length: 108.00
        North: 28481235.157          East : 610527.678
Line  Course: S 51-07-06 W  Length: 147.63
        North: 28481142.487          East : 610412.756
Line  Course: N 05-15-55 W  Length: 131.28
        North: 28481273.213          East : 610400.709

   Perimeter: 461.92   Area: 12,075 S.F. 0.277 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 47-07-56 E
  Error North: -0.0017               East : 0.0019
Precision  1: 153,973.33
```

Parcel name: LOT 22

```
   North: 28481319.227        East : 610459.883
Line  Course: N 51-07-06 E  Length: 81.50
        North: 28481370.386          East : 610523.326
Line  Course: S 38-52-54 E  Length: 108.00
        North: 28481286.314          East : 610591.119
Line  Course: S 51-07-06 W  Length: 81.50
        North: 28481235.155          East : 610527.676
Line  Course: N 38-52-54 W  Length: 108.00
        North: 28481319.227          East : 610459.883

   Perimeter: 379.00   Area: 8,802 S.F. 0.202 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 379,000,000.00
```

Parcel name: LOT 23

```
   North: 28481370.386        East : 610523.326
Line  Course: N 51-07-06 E  Length: 81.50
        North: 28481421.545          East : 610586.769
Line  Course: S 38-52-54 E  Length: 108.00
        North: 28481337.473          East : 610654.562
Line  Course: S 51-07-06 W  Length: 81.50
        North: 28481286.314          East : 610591.119
Line  Course: N 38-52-54 W  Length: 108.00
        North: 28481370.386          East : 610523.326

   Perimeter: 379.00   Area: 8,802 S.F. 0.202 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 379,000,000.00
```

Parcel name: LOT 24

```
        North: 28481421.545          East : 610586.769
Curve  Length: 75.02                Radius: 54.50
        Delta: 78-51-49            Tangent: 44.82
        Chord: 69.23                Course: N 11-41-11 E
    Course In: N 38-52-54 W     Course Out: N 62-15-17 E
    RP  North: 28481463.970          East : 610552.559
    End North: 28481489.342          East : 610600.793
Line  Course: N 62-15-17 E  Length: 107.30
        North: 28481539.295          East : 610695.756
Line  Course: S 54-38-16 E  Length: 136.37
        North: 28481460.371          East : 610806.967
Line  Course: S 51-07-06 W  Length: 195.78
        North: 28481337.478          East : 610654.563
Line  Course: N 38-52-54 W  Length: 108.00
        North: 28481421.550          East : 610586.770

   Perimeter: 622.47   Area: 23,703 S.F. 0.544 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: N 11-27-39 E
  Error North: 0.0047                East : 0.0009
Precision  1: 124,494.00
```

Parcel name: LOT 25

```
        North: 28481489.342          East : 610600.793
Curve  Length: 64.23                Radius: 54.50
        Delta: 67-31-12            Tangent: 36.43
        Chord: 60.57                Course: N 61-30-19 W
    Course In: S 62-15-17 W     Course Out: N 05-15-55 W
    RP  North: 28481463.970          East : 610552.559
    End North: 28481518.240          East : 610547.557
Line  Course: N 05-15-55 W  Length: 131.53
        North: 28481649.215          East : 610535.487
Line  Course: N 84-44-05 E  Length: 276.78
        North: 28481674.614          East : 610811.099
Curve  Length: 179.48               Radius: 380.00
        Delta: 27-03-41            Tangent: 91.45
        Chord: 177.81               Course: S 40-26-36 W
    Course In: N 63-05-15 W     Course Out: S 36-01-34 E
    RP  North: 28481846.613          East : 610472.254
    End North: 28481539.289          East : 610695.752
Line  Course: S 62-15-17 W  Length: 107.30
        North: 28481489.336          East : 610600.789

   Perimeter: 759.32   Area: 30,594 S.F. 0.702 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.007                Course: S 31-50-28 W
  Error North: -0.0058               East : -0.0036
Precision  1: 108,474.29
```

Parcel name: LOT 26

```
        North: 28481518.240          East : 610547.557
Curve  Length: 108.98               Radius: 54.50
        Delta: 114-34-31           Tangent: 84.85
        Chord: 91.71                Course: S 27-26-49 W
    Course In: S 05-15-55 E     Course Out: S 60-09-34 W
    RP  North: 28481463.970          East : 610552.559
    End North: 28481436.851          East : 610505.284
Line  Course: N 38-52-54 W  Length: 215.22
        North: 28481604.388          East : 610370.188
Line  Course: N 05-15-55 W  Length: 29.47
        North: 28481633.734          East : 610367.484
Line  Course: N 84-44-05 E  Length: 168.72
        North: 28481649.217          East : 610535.492
Line  Course: S 05-15-55 E  Length: 131.53
        North: 28481518.242          East : 610547.562

   Perimeter: 653.93   Area: 21,002 S.F. 0.482 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: N 68-56-11 E
  Error North: 0.0017                East : 0.0045
Precision  1: 130,784.00
```

Parcel name: LOT 27

```
        North: 28481436.851          East : 610505.285
Curve  Length: 21.90                Radius: 15.50
        Delta: 80-57-32            Tangent: 13.23
        Chord: 20.12                Course: S 10-38-20 W
    Course In: S 60-09-34 W     Course Out: S 38-52-54 E
    RP  North: 28481429.139          East : 610491.840
    End North: 28481417.073          East : 610501.569
Line  Course: S 51-07-06 W  Length: 136.46
        North: 28481331.415          East : 610395.343
Line  Course: N 05-15-55 W  Length: 274.13
        North: 28481604.388          East : 610370.187
Line  Course: S 38-52-54 E  Length: 215.22
        North: 28481436.852          East : 610505.283

   Perimeter: 647.71   Area: 17,274 S.F. 0.397 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.001                Course: N 80-15-50 W
  Error North: 0.0002                East : -0.0013
Precision  1: 647,710.00
```

Parcel name: LOT 28

```
   North: 28481387.826        East : 610281.687
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481397.736          East : 610389.232
Line  Course: S 05-15-55 E  Length: 66.60
        North: 28481331.417          East : 610395.343
Line  Course: S 51-07-06 W  Length: 14.19
        North: 28481322.510          East : 610384.297
Curve  Length: 44.00                Radius: 75.00
        Delta: 33-36-59            Tangent: 22.66
        Chord: 43.38                Course: S 67-55-35 W
    Course In: N 38-52-54 W     Course Out: S 05-15-55 E
    RP  North: 28481380.893          East : 610337.219
    End North: 28481306.210          East : 610344.101
Line  Course: S 84-44-05 W  Length: 39.16
        North: 28481302.616          East : 610305.107
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 50-15-55 W
    Course In: N 05-15-55 W     Course Out: S 84-44-05 W
    RP  North: 28481318.051          East : 610303.684
    End North: 28481316.629          East : 610288.250
Line  Course: N 05-15-55 W  Length: 71.50
        North: 28481387.827          East : 610281.688

   Perimeter: 367.80   Area: 8,982 S.F. 0.206 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.001                Course: N 30-07-32 E
  Error North: 0.0013                East : 0.0007
Precision  1: 367,800.00
```

Parcel name: LOT 29

```
   North: 28481387.826        East : 610281.687
Line  Course: N 05-15-55 W  Length: 86.00
        North: 28481473.463          East : 610273.795
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481483.374          East : 610381.340
Line  Course: S 05-15-55 E  Length: 86.00
        North: 28481397.736          East : 610389.232
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481387.826          East : 610281.687

   Perimeter: 388.00   Area: 9,288 S.F. 0.213 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 388,000,000.00
```

Parcel name: LOT 30

```
   North: 28481473.463        East : 610273.795
Line  Course: N 05-15-55 W  Length: 86.00
        North: 28481559.100          East : 610265.903
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481569.011          East : 610373.448
Line  Course: S 05-15-55 E  Length: 86.00
        North: 28481483.374          East : 610381.340
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481473.463          East : 610273.795

   Perimeter: 388.00   Area: 9,288 S.F. 0.213 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 388,000,000.00
```

Parcel name: LOT 31

```
   North: 28481559.100        East : 610265.903
Line  Course: N 05-15-55 W  Length: 86.00
        North: 28481644.737          East : 610258.011
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481654.648          East : 610365.555
Line  Course: S 05-15-55 E  Length: 86.00
        North: 28481569.011          East : 610373.447
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481559.100          East : 610265.903

   Perimeter: 388.00   Area: 9,288 S.F. 0.213 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 388,000,000.00
```

```
Parcel name: LOT 32

   North: 28481644.737        East : 610258.011
Line  Course: N 05-15-55 W  Length: 71.50
        North: 28481715.935          East : 610251.450
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 84-44-05 E     Course Out: N 05-15-55 W
    RP  North: 28481717.358          East : 610266.884
    End North: 28481732.792          East : 610265.462
Line  Course: N 84-44-05 E  Length: 92.50
        North: 28481741.281          East : 610357.572
Line  Course: S 05-15-55 E  Length: 87.00
        North: 28481654.648          East : 610365.555
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481644.737          East : 610258.011

   Perimeter: 383.35   Area: 9,344 S.F. 0.215 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 383,350,000.00

-----------------------------------------------------------------------------

Parcel name: LOT 33

   North: 28481741.281        East : 610357.571
Line  Course: N 84-44-05 E  Length: 75.00
        North: 28481748.163          East : 610432.255
Line  Course: S 05-15-55 E  Length: 108.00
        North: 28481640.619          East : 610442.166
Line  Course: S 84-44-05 W  Length: 75.00
        North: 28481633.737          East : 610367.482
Line  Course: N 05-15-55 W  Length: 108.00
        North: 28481741.281          East : 610357.571

   Perimeter: 366.00   Area: 8,100 S.F. 0.186 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 366,000,000.00
```

```
Parcel name: LOT 34

   North: 28481748.164        East : 610432.255
Line  Course: N 84-44-05 E  Length: 75.00
        North: 28481755.046          East : 610506.938
Line  Course: S 05-15-55 E  Length: 108.00
        North: 28481647.502          East : 610516.849
Line  Course: S 84-44-05 W  Length: 75.00
        North: 28481640.619          East : 610442.166
Line  Course: N 05-15-55 W  Length: 108.00
        North: 28481748.164          East : 610432.255

   Perimeter: 366.00   Area: 8,100 S.F. 0.186 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 366,000,000.00

-------------------------------------------------------------------------

Parcel name: LOT 35

   North: 28481755.046        East : 610506.938
Line  Course: N 84-44-05 E  Length: 47.17
        North: 28481759.375          East : 610553.909
Curve  Length: 23.78                Radius: 125.00
        Delta: 10-54-06            Tangent: 11.93
        Chord: 23.75                Course: N 79-17-02 E
    Course In: N 05-15-55 W     Course Out: S 16-10-01 E
    RP  North: 28481883.847          East : 610542.438
    End North: 28481763.791          East : 610577.243
Line  Course: S 16-10-02 E  Length: 112.28
        North: 28481655.951          East : 610608.506
Line  Course: S 84-44-05 W  Length: 92.05
        North: 28481647.504          East : 610516.845
Line  Course: N 05-15-55 W  Length: 108.00
        North: 28481755.048          East : 610506.934

   Perimeter: 383.29   Area: 8,836 S.F. 0.203 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: N 66-41-13 W
  Error North: 0.0019                East : -0.0043
Precision  1: 76,656.00
```

Parcel name: LOT 36

```
        North: 28481763.791          East : 610577.247
Curve  Length: 63.56                Radius: 125.00
        Delta: 29-08-08            Tangent: 32.49
        Chord: 62.88                Course: N 59-15-54 E
    Course In: N 16-10-02 W     Course Out: S 45-18-10 E
    RP  North: 28481883.848          East : 610542.442
    End North: 28481795.928          East : 610631.296
Line  Course: S 45-18-10 E  Length: 179.33
        North: 28481669.794          East : 610758.770
Line  Course: S 84-44-05 W  Length: 150.89
        North: 28481655.947          East : 610608.517
Line  Course: N 16-10-02 W  Length: 112.28
        North: 28481763.787          East : 610577.253

   Perimeter: 506.07   Area: 13,606 S.F. 0.312 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.007                Course: S 56-04-39 E
  Error North: -0.0040               East : 0.0060
Precision  1: 72,294.29
```

Parcel name: LOT 37

```
        North: 28481795.928          East : 610631.296
Curve  Length: 63.56                Radius: 125.00
        Delta: 29-08-08            Tangent: 32.49
        Chord: 62.88                Course: N 30-07-46 E
    Course In: N 45-18-10 W     Course Out: S 74-26-18 E
    RP  North: 28481883.848          East : 610542.442
    End North: 28481850.313          East : 610662.860
Line  Course: S 74-26-18 E  Length: 193.42
        North: 28481798.424          East : 610849.190
Curve  Length: 130.17               Radius: 380.00
        Delta: 19-37-34            Tangent: 65.73
        Chord: 129.53               Course: S 17-05-58 W
    Course In: N 82-42-49 W     Course Out: S 63-05-15 E
    RP  North: 28481846.619          East : 610472.258
    End North: 28481674.619          East : 610811.104
Line  Course: S 84-44-05 W  Length: 52.56
        North: 28481669.796          East : 610758.766
Line  Course: N 45-18-10 W  Length: 179.33
        North: 28481795.930          East : 610631.292

   Perimeter: 619.03   Area: 23,246 S.F. 0.534 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: N 66-25-17 W
  Error North: 0.0020                East : -0.0046
Precision  1: 123,808.00
```

Parcel name: LOT 38

```
        North: 28481850.313          East : 610662.860
Curve  Length: 45.79                Radius: 125.00
        Delta: 20-59-13            Tangent: 23.15
        Chord: 45.53                Course: N 05-04-05 E
    Course In: N 74-26-18 W     Course Out: N 84-34-29 E
    RP  North: 28481883.848          East : 610542.442
    End North: 28481895.666          East : 610666.882
Line  Course: N 05-25-31 W  Length: 21.09
        North: 28481916.662          East : 610664.888
Line  Course: N 84-34-29 E  Length: 178.10
        North: 28481933.501          East : 610842.190
Curve  Length: 135.98               Radius: 380.00
        Delta: 20-30-11            Tangent: 68.73
        Chord: 135.26               Course: S 02-57-54 E
    Course In: S 76-47-00 W     Course Out: S 82-42-49 E
    RP  North: 28481846.620          East : 610472.256
    End North: 28481798.425          East : 610849.187
Line  Course: N 74-26-18 W  Length: 193.42
        North: 28481850.315          East : 610662.857

   Perimeter: 574.38   Area: 18,664 S.F. 0.428 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: N 65-55-44 W
  Error North: 0.0012                East : -0.0026
Precision  1: 191,460.00
```

Parcel name: LOT 39

```
   North: 28481916.660        East : 610664.888
Line  Course: N 05-25-31 W  Length: 44.29
        North: 28481960.752          East : 610660.701
Curve  Length: 26.19                Radius: 125.00
        Delta: 12-00-13            Tangent: 13.14
        Chord: 26.14                Course: N 11-25-37 W
    Course In: S 84-34-29 W     Course Out: N 72-34-16 E
    RP  North: 28481948.933          East : 610536.261
    End North: 28481986.373          East : 610655.522
Line  Course: N 72-34-16 E  Length: 155.10
        North: 28482032.829          East : 610803.501
Curve  Length: 106.95               Radius: 380.00
        Delta: 16-07-35            Tangent: 53.83
        Chord: 106.60               Course: S 21-16-47 E
    Course In: S 60-39-25 W     Course Out: N 76-47-00 E
    RP  North: 28481846.615          East : 610472.255
    End North: 28481933.496          East : 610842.189
Line  Course: S 84-34-29 W  Length: 178.10
        North: 28481916.657          East : 610664.887

   Perimeter: 510.64   Area: 14,703 S.F. 0.338 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 18-50-51 W
  Error North: -0.0030               East : -0.0010
Precision  1: 170,210.00
```

Parcel name: LOT 40

```
        North: 28481986.376          East : 610655.522
Curve  Length: 63.56                Radius: 125.00
        Delta: 29-08-08            Tangent: 32.49
        Chord: 62.88                Course: N 31-59-48 W
    Course In: S 72-34-16 W     Course Out: N 43-26-08 E
    RP  North: 28481948.936          East : 610536.260
    End North: 28482039.705          East : 610622.203
Line  Course: N 43-26-08 E  Length: 250.86
        North: 28482221.866          East : 610794.679
Line  Course: S 89-35-40 E  Length: 125.43
        North: 28482220.978          East : 610920.105
Line  Course: S 42-32-34 W  Length: 206.48
        North: 28482068.849          East : 610780.496
Curve  Length: 42.76                Radius: 380.00
        Delta: 6-26-51             Tangent: 21.40
        Chord: 42.74                Course: S 32-34-00 E
    Course In: S 54-12-34 W     Course Out: N 60-39-25 E
    RP  North: 28481846.616          East : 610472.255
    End North: 28482032.831          East : 610803.502
Line  Course: S 72-34-16 W  Length: 155.10
        North: 28481986.375          East : 610655.522

   Perimeter: 844.20   Area: 29,261 S.F. 0.672 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.002                Course: S 23-28-45 E
  Error North: -0.0015               East : 0.0007
Precision  1: 422,095.00
```

Parcel name: LOT 41

```
        North: 28482039.705          East : 610622.203
Curve  Length: 63.56                Radius: 125.00
        Delta: 29-08-08            Tangent: 32.49
        Chord: 62.88                Course: N 61-07-56 W
    Course In: S 43-26-08 W     Course Out: N 14-18-00 E
    RP  North: 28481948.936          East : 610536.260
    End North: 28482070.063          East : 610567.135
Line  Course: N 14-18-00 E  Length: 158.03
        North: 28482223.197          East : 610606.169
Line  Course: S 89-35-40 E  Length: 188.51
        North: 28482221.862          East : 610794.674
Line  Course: S 43-26-08 W  Length: 250.86
        North: 28482039.701          East : 610622.198

   Perimeter: 660.97   Area: 21,925 S.F. 0.503 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.006                Course: S 50-54-39 W
  Error North: -0.0038               East : -0.0047
Precision  1: 110,160.00
```

Parcel name: LOT 42

```
   North: 28482078.828        East : 610495.734
Line  Course: N 05-56-26 E  Length: 145.83
        North: 28482223.875          East : 610510.827
Line  Course: S 89-35-40 E  Length: 95.34
        North: 28482223.200          East : 610606.164
Line  Course: S 14-18-00 W  Length: 158.03
        North: 28482070.067          East : 610567.131
Curve  Length: 18.24                Radius: 125.00
        Delta: 8-21-34             Tangent: 9.13
        Chord: 18.22                Course: N 79-52-47 W
    Course In: S 14-18-00 W     Course Out: N 05-56-26 E
    RP  North: 28481948.940          East : 610536.256
    End North: 28482073.268          East : 610549.193
Line  Course: N 84-03-34 W  Length: 53.75
        North: 28482078.831          East : 610495.732

   Perimeter: 471.20   Area: 12,518 S.F. 0.287 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 30-46-48 W
  Error North: 0.0032                East : -0.0019
Precision  1: 117,797.50
```

Parcel name: LOT 43

```
   North: 28482086.591        East : 610421.137
Line  Course: N 05-56-26 E  Length: 138.56
        North: 28482224.406          East : 610435.477
Line  Course: S 89-35-40 E  Length: 75.35
        North: 28482223.873          East : 610510.825
Line  Course: S 05-56-26 W  Length: 145.83
        North: 28482078.826          East : 610495.732
Line  Course: N 84-03-34 W  Length: 75.00
        North: 28482086.588          East : 610421.135

   Perimeter: 434.74   Area: 10,665 S.F. 0.245 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 36-51-47 W
  Error North: -0.0021               East : -0.0015
Precision  1: 144,913.33
```

```
Parcel name: LOT 44

   North: 28482094.353        East : 610346.539
Line  Course: N 05-56-26 E  Length: 131.29
        North: 28482224.938          East : 610360.128
Line  Course: S 89-35-40 E  Length: 75.35
        North: 28482224.404          East : 610435.476
Line  Course: S 05-56-26 W  Length: 138.56
        North: 28482086.589          East : 610421.135
Line  Course: N 84-03-34 W  Length: 75.00
        North: 28482094.351          East : 610346.538

   Perimeter: 420.21   Area: 10,120 S.F. 0.232 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 36-51-47 W
  Error North: -0.0021               East : -0.0015
Precision  1: 140,066.67

-------------------------------------------------------------------------

Parcel name: LOT 45

   North: 28482101.673        East : 610271.896
Line  Course: N 05-56-26 E  Length: 124.47
        North: 28482225.475          East : 610284.778
Line  Course: S 89-35-40 E  Length: 75.35
        North: 28482224.941          East : 610360.127
Line  Course: S 05-56-26 W  Length: 131.29
        North: 28482094.357          East : 610346.539
Line  Course: N 84-03-34 W  Length: 53.41
        North: 28482099.884          East : 610293.415
Curve  Length: 21.60                Radius: 525.00
        Delta: 2-21-26             Tangent: 10.80
        Chord: 21.60                Course: N 85-14-17 W
    Course In: S 05-56-26 W     Course Out: N 03-35-00 E
    RP  North: 28481577.704          East : 610239.080
    End North: 28482101.677          East : 610271.892

   Perimeter: 406.12   Area: 9,578 S.F. 0.220 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.006                Course: N 45-13-43 W
  Error North: 0.0040                East : -0.0040
Precision  1: 67,686.67
```

Parcel name: LOT 46

```
   North: 28482115.882        East : 610202.804
Line  Course: N 07-05-30 W  Length: 111.12
        North: 28482226.152          East : 610189.086
Line  Course: S 89-35-40 E  Length: 95.70
        North: 28482225.474          East : 610284.784
Line  Course: S 05-56-26 W  Length: 124.47
        North: 28482101.673          East : 610271.901
Curve  Length: 21.09                Radius: 525.00
        Delta: 2-18-05             Tangent: 10.55
        Chord: 21.09                Course: N 87-34-02 W
    Course In: S 03-35-00 W     Course Out: N 01-16-55 E
    RP  North: 28481577.699          East : 610239.089
    End North: 28482102.568          East : 610250.834
Curve  Length: 9.53                 Radius: 15.50
        Delta: 35-13-26            Tangent: 4.92
        Chord: 9.38                 Course: N 71-06-22 W
    Course In: N 01-16-55 E     Course Out: S 36-30-21 W
    RP  North: 28482118.064          East : 610251.181
    End North: 28482105.605          East : 610241.960
Curve  Length: 41.47                Radius: 54.50
        Delta: 43-35-51            Tangent: 21.80
        Chord: 40.48                Course: N 75-17-35 W
    Course In: S 36-30-21 W     Course Out: N 07-05-30 W
    RP  North: 28482061.798          East : 610209.538
    End North: 28482115.881          East : 610202.809

   Perimeter: 403.37   Area: 9,642 S.F. 0.221 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.005                Course: S 82-51-12 E
  Error North: -0.0006               East : 0.0047
Precision  1: 80,676.00
```

Parcel name: LOT 47

```
        North: 28482115.882          East : 610202.804
Curve  Length: 51.62                Radius: 54.50
        Delta: 54-16-08            Tangent: 27.93
        Chord: 49.71                Course: S 55-46-26 W
    Course In: S 07-05-30 E     Course Out: N 61-21-38 W
    RP  North: 28482061.799          East : 610209.533
    End North: 28482087.920          East : 610161.701
Line  Course: N 61-21-38 W  Length: 144.78
        North: 28482157.313          East : 610034.634
Line  Course: N 37-05-21 E  Length: 87.20
        North: 28482226.872          East : 610087.221
Line  Course: S 89-35-40 E  Length: 101.87
        North: 28482226.151          East : 610189.088
Line  Course: S 07-05-30 E  Length: 111.12
        North: 28482115.881          East : 610202.807

   Perimeter: 496.59   Area: 15,551 S.F. 0.357 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.002                Course: S 74-10-27 E
  Error North: -0.0006               East : 0.0023
Precision  1: 248,295.00
```

Parcel name: LOT 48

```
        North: 28482087.920          East : 610161.701
Curve  Length: 59.42                Radius: 54.50
        Delta: 62-27-56            Tangent: 33.05
        Chord: 56.52                Course: S 02-35-36 E
    Course In: S 61-21-38 E     Course Out: S 56-10-26 W
    RP  North: 28482061.799          East : 610209.533
    End North: 28482031.460          East : 610164.258
Line  Course: S 84-44-05 W  Length: 184.25
        North: 28482014.552          East : 609980.785
Curve  Length: 44.32                Radius: 550.00
        Delta: 4-37-03             Tangent: 22.17
        Chord: 44.31                Course: N 39-40-52 W
    Course In: S 52-37-40 W     Course Out: N 48-00-37 E
    RP  North: 28481680.707          East : 609543.695
    End North: 28482048.655          East : 609952.491
Line  Course: N 37-05-21 E  Length: 136.21
        North: 28482157.310          East : 610034.634
Line  Course: S 61-21-38 E  Length: 144.78
        North: 28482087.917          East : 610161.700

   Perimeter: 568.98   Area: 18,762 S.F. 0.431 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.003                Course: S 10-12-39 W
  Error North: -0.0029               East : -0.0005
Precision  1: 189,660.00
```

Parcel name: LOT 49

```
        North: 28482031.460          East : 610164.258
Curve  Length: 8.55                 Radius: 54.50
        Delta: 8-59-10             Tangent: 4.28
        Chord: 8.54                 Course: S 38-19-09 E
    Course In: N 56-10-26 E     Course Out: S 47-11-16 W
    RP  North: 28482061.799          East : 610209.533
    End North: 28482024.760          East : 610169.553
Curve  Length: 10.16                Radius: 15.50
        Delta: 37-32-49            Tangent: 5.27
        Chord: 9.98                 Course: S 24-02-19 E
    Course In: S 47-11-16 W     Course Out: N 84-44-05 E
    RP  North: 28482014.227          East : 610158.182
    End North: 28482015.649          East : 610173.617
Line  Course: S 05-15-55 E  Length: 67.09
        North: 28481948.842          East : 610179.773
Line  Course: S 84-44-05 W  Length: 149.11
        North: 28481935.159          East : 610031.292
Curve  Length: 94.21                Radius: 550.00
        Delta: 9-48-53             Tangent: 47.22
        Chord: 94.10                Course: N 32-27-53 W
    Course In: S 62-26-33 W     Course Out: N 52-37-40 E
    RP  North: 28481680.708          East : 609543.692
    End North: 28482014.552          East : 609980.782
Line  Course: N 84-44-05 E  Length: 184.25
        North: 28482031.461          East : 610164.254

   Perimeter: 513.37   Area: 14,103 S.F. 0.324 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 79-56-11 W
  Error North: 0.0007                East : -0.0040
Precision  1: 128,342.50
```

Parcel name: LOT 50

```
   North: 28481948.840        East : 610179.773
Line  Course: S 05-15-55 E  Length: 83.00
        North: 28481866.191          East : 610187.390
Line  Course: S 84-44-05 W  Length: 122.54
        North: 28481854.945          East : 610065.367
Curve  Length: 87.24                Radius: 550.00
        Delta: 9-05-17             Tangent: 43.71
        Chord: 87.15                Course: N 23-00-48 W
    Course In: S 71-31-50 W     Course Out: N 62-26-33 E
    RP  North: 28481680.706          East : 609543.696
    End North: 28481935.157          East : 610031.297
Line  Course: N 84-44-05 E  Length: 149.11
        North: 28481948.841          East : 610179.778

   Perimeter: 441.88   Area: 11,173 S.F. 0.256 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 86-09-56 E
  Error North: 0.0003                East : 0.0044
Precision  1: 110,472.50
```

Parcel name: LOT 51

```
   North: 28481866.191        East : 610187.390
Line  Course: S 05-15-55 E  Length: 74.50
        North: 28481792.005          East : 610194.227
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 84-44-05 W     Course Out: S 05-15-55 E
    RP  North: 28481790.582          East : 610178.792
    End North: 28481775.148          East : 610180.215
Line  Course: S 84-44-05 W  Length: 79.32
        North: 28481767.869          East : 610101.229
Curve  Length: 22.94                Radius: 15.50
        Delta: 84-48-44            Tangent: 14.16
        Chord: 20.91                Course: N 52-51-33 W
    Course In: N 05-15-55 W     Course Out: S 79-32-49 W
    RP  North: 28481783.304          East : 610099.807
    End North: 28481780.491          East : 610084.564
Curve  Length: 76.95                Radius: 550.00
        Delta: 8-00-59             Tangent: 38.54
        Chord: 76.89                Course: N 14-27-40 W
    Course In: S 79-32-49 W     Course Out: N 71-31-50 E
    RP  North: 28481680.705          East : 609543.692
    End North: 28481854.944          East : 610065.363
Line  Course: N 84-44-05 E  Length: 122.54
        North: 28481866.189          East : 610187.386

   Perimeter: 400.60   Area: 10,218 S.F. 0.235 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: S 75-51-24 W
  Error North: -0.0011               East : -0.0042
Precision  1: 100,150.00
```

```
Parcel name: LOT 52

   North: 28481637.161        East : 610208.497
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481627.250          East : 610100.953
Line  Course: N 05-15-56 W  Length: 74.50
        North: 28481701.436          East : 610094.116
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 39-44-05 E
    Course In: N 84-44-05 E     Course Out: N 05-15-55 W
    RP  North: 28481702.858          East : 610109.551
    End North: 28481718.293          East : 610108.128
Line  Course: N 84-44-05 E  Length: 77.00
        North: 28481725.359          East : 610184.803
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 50-15-55 E
    Course In: S 05-15-55 E     Course Out: N 84-44-05 E
    RP  North: 28481709.924          East : 610186.226
    End North: 28481711.347          East : 610201.660
Line  Course: S 05-15-55 E  Length: 74.50
        North: 28481637.161          East : 610208.497

   Perimeter: 382.69   Area: 9,617 S.F. 0.221 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 84-44-06 W
  Error North: -0.0000               East : -0.0004
Precision  1: 382,700,000.00

---------------------------------------------------------------------------

Parcel name: LOT 53

   North: 28481637.161        East : 610208.497
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481551.026          East : 610216.435
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481541.115          East : 610108.891
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481627.250          East : 610100.953
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481637.161          East : 610208.497

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 54

```
   North: 28481551.026        East : 610216.435
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481464.891          East : 610224.373
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481454.980          East : 610116.829
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481541.115          East : 610108.891
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481551.026          East : 610216.435

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 55

```
   North: 28481464.891        East : 610224.373
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481378.756          East : 610232.311
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481368.845          East : 610124.767
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481454.980          East : 610116.829
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481464.891          East : 610224.373

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 56

```
   North: 28481378.756        East : 610232.311
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481292.621          East : 610240.249
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481282.710          East : 610132.705
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481368.845          East : 610124.767
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481378.756          East : 610232.311

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 57

```
   North: 28481292.621        East : 610240.249
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481206.486          East : 610248.187
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481196.575          East : 610140.643
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481282.710          East : 610132.705
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481292.621          East : 610240.249

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 58

```
   North: 28481206.486        East : 610248.188
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481120.351          East : 610256.125
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481110.440          East : 610148.581
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481196.575          East : 610140.643
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481206.486          East : 610248.188

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

Parcel name: LOT 59

```
   North: 28481120.351        East : 610256.126
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28481034.216          East : 610264.063
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481024.305          East : 610156.519
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481110.440          East : 610148.581
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481120.351          East : 610256.126

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00
```

```
Parcel name: LOT 60

   North: 28481034.216        East : 610264.064
Line  Course: S 05-15-55 E  Length: 86.50
        North: 28480948.081          East : 610272.001
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28480938.170          East : 610164.457
Line  Course: N 05-15-55 W  Length: 86.50
        North: 28481024.305          East : 610156.519
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481034.216          East : 610264.064

   Perimeter: 389.00   Area: 9,342 S.F. 0.214 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 389,000,000.00

---------------------------------------------------------------------------

Parcel name: LOT 61

   North: 28480948.081        East : 610272.002
Line  Course: S 05-15-55 E  Length: 74.59
        North: 28480873.806          East : 610278.847
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: S 39-44-05 W
    Course In: S 84-44-05 W     Course Out: S 05-15-55 E
    RP  North: 28480872.383          East : 610263.412
    End North: 28480856.949          East : 610264.834
Line  Course: S 84-44-05 W  Length: 77.00
        North: 28480849.883          East : 610188.159
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 50-15-55 W
    Course In: N 05-15-55 W     Course Out: S 84-44-05 W
    RP  North: 28480865.317          East : 610186.737
    End North: 28480863.895          East : 610171.302
Line  Course: N 05-15-55 W  Length: 74.59
        North: 28480938.170          East : 610164.457
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28480948.081          East : 610272.002

   Perimeter: 382.87   Area: 9,626 S.F. 0.221 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 382,880,000.00
```

```
Parcel name: LOT 62

   North: 28481868.290        East : 610237.409
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481878.200          East : 610344.953
Line  Course: S 05-15-55 E  Length: 87.50
        North: 28481791.070          East : 610352.983
Line  Course: S 84-44-05 W  Length: 92.50
        North: 28481782.581          East : 610260.873
Curve  Length: 24.35                Radius: 15.50
        Delta: 90-00-00            Tangent: 15.50
        Chord: 21.92                Course: N 50-15-55 W
    Course In: N 05-15-55 W     Course Out: S 84-44-05 W
    RP  North: 28481798.016          East : 610259.451
    End North: 28481796.593          East : 610244.016
Line  Course: N 05-15-55 W  Length: 72.00
        North: 28481868.290          East : 610237.409

   Perimeter: 384.35   Area: 9,398 S.F. 0.216 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 384,350,000.00

-----------------------------------------------------------------------------

Parcel name: LOT 63

   North: 28481868.290        East : 610237.409
Line  Course: N 05-15-55 W  Length: 80.00
        North: 28481947.952          East : 610230.067
Line  Course: N 84-44-05 E  Length: 108.00
        North: 28481957.863          East : 610337.612
Line  Course: S 05-15-55 E  Length: 80.00
        North: 28481878.200          East : 610344.953
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481868.290          East : 610237.409

   Perimeter: 376.00   Area: 8,640 S.F. 0.198 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.000                Course: S 90-00-00 E
  Error North: 0.0000                East : 0.0000
Precision  1: 376,000,000.00
```

Parcel name: LOT 64

```
   North: 28481947.952        East : 610230.067
Line  Course: N 05-15-55 W  Length: 88.19
        North: 28482035.770          East : 610221.974
Curve  Length: 25.72                Radius: 15.50
        Delta: 95-03-23            Tangent: 16.93
        Chord: 22.87                Course: N 42-15-46 E
    Course In: N 84-44-05 E     Course Out: N 00-12-32 W
    RP  North: 28482037.192          East : 610237.409
    End North: 28482052.692          East : 610237.352
Curve  Length: 50.98                Radius: 475.00
        Delta: 6-08-58             Tangent: 25.51
        Chord: 50.96                Course: S 87-08-03 E
    Course In: S 00-12-32 E     Course Out: N 05-56-26 E
    RP  North: 28481577.695          East : 610239.084
    End North: 28482050.144          East : 610288.245
Line  Course: S 84-03-34 E  Length: 41.48
        North: 28482045.851          East : 610329.502
Line  Course: S 05-15-55 E  Length: 88.37
        North: 28481957.854          East : 610337.612
Line  Course: S 84-44-05 W  Length: 108.00
        North: 28481947.943          East : 610230.067

   Perimeter: 402.74   Area: 10,526 S.F. 0.242 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.009                Course: S 01-15-41 E
  Error North: -0.0085               East : 0.0002
Precision  1: 44,748.89
```

Parcel name: LOT 65

```
   North: 28482045.856        East : 610329.502
Line  Course: S 84-03-34 E  Length: 81.55
        North: 28482037.416          East : 610410.614
Line  Course: S 05-15-55 E  Length: 121.88
        North: 28481916.050          East : 610421.799
Line  Course: S 87-53-15 W  Length: 80.12
        North: 28481913.096          East : 610341.733
Line  Course: N 05-15-55 W  Length: 133.33
        North: 28482045.864          East : 610329.498

   Perimeter: 416.89   Area: 10,208 S.F. 0.234 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.009                Course: N 27-18-07 W
  Error North: 0.0082                East : -0.0042
Precision  1: 46,320.00
```

```
Parcel name: LOT 66

   North: 28482037.415        East : 610410.619
Line  Course: S 84-03-34 E  Length: 76.46
        North: 28482029.502          East : 610486.668
Line  Course: S 05-15-55 E  Length: 111.16
        North: 28481918.811          East : 610496.869
Line  Course: S 87-53-15 W  Length: 75.11
        North: 28481916.042          East : 610421.810
Line  Course: N 05-15-55 W  Length: 121.88
        North: 28482037.408          East : 610410.626

   Perimeter: 384.61   Area: 8,739 S.F. 0.201 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.010                Course: S 42-40-04 E
  Error North: -0.0073               East : 0.0067
Precision  1: 38,461.00

-------------------------------------------------------------------------

Parcel name: LOT 67

   North: 28482029.502        East : 610486.666
Line  Course: S 84-03-34 E  Length: 57.67
        North: 28482023.533          East : 610544.026
Curve  Length: 102.93               Radius: 75.00
        Delta: 78-38-03            Tangent: 61.42
        Chord: 95.04                Course: S 44-44-33 E
    Course In: S 05-56-26 W     Course Out: N 84-34-29 E
    RP  North: 28481948.936          East : 610536.264
    End North: 28481956.027          East : 610610.928
Line  Course: S 05-25-31 E  Length: 26.59
        North: 28481929.556          East : 610613.442
Line  Course: S 84-44-05 W  Length: 117.07
        North: 28481918.813          East : 610496.866
Line  Course: N 05-15-55 W  Length: 111.16
        North: 28482029.504          East : 610486.665

   Perimeter: 415.41   Area: 10,898 S.F. 0.250 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.002                Course: N 20-01-55 W
  Error North: 0.0021                East : -0.0008
Precision  1: 207,710.00
```

Parcel name: LOT 68

```
   North: 28481805.294        East : 610507.329
Line  Course: N 05-15-55 W  Length: 114.00
        North: 28481918.813          East : 610496.867
Line  Course: N 84-44-05 E  Length: 117.07
        North: 28481929.556          East : 610613.443
Line  Course: S 40-29-41 W  Length: 163.40
        North: 28481805.296          East : 610507.335

   Perimeter: 394.47   Area: 6,673 S.F. 0.153 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.007                Course: N 71-44-26 E
  Error North: 0.0020                East : 0.0062
Precision  1: 56,352.86
```

Parcel name: LOT 69

```
   North: 28481805.294        East : 610507.329
Line  Course: S 84-44-05 W  Length: 75.00
        North: 28481798.412          East : 610432.645
Line  Course: N 05-15-55 W  Length: 118.13
        North: 28481916.043          East : 610421.805
Line  Course: N 87-53-15 E  Length: 75.11
        North: 28481918.812          East : 610496.864
Line  Course: S 05-15-55 E  Length: 114.00
        North: 28481805.293          East : 610507.325

   Perimeter: 382.25   Area: 8,705 S.F. 0.200 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: S 70-21-48 W
  Error North: -0.0013               East : -0.0036
Precision  1: 95,560.00
```

Parcel name: LOT 70

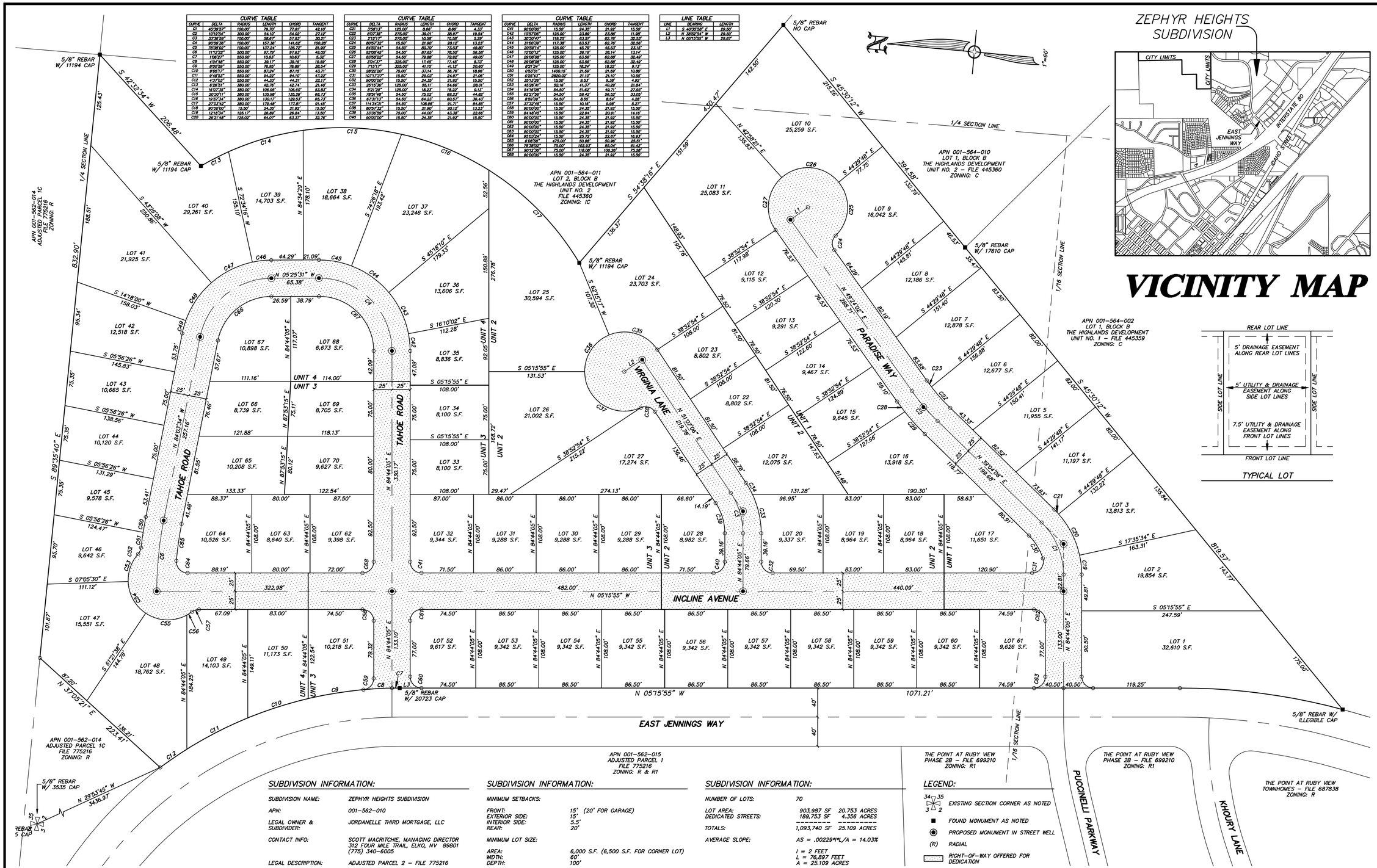
```
   North: 28481798.411        East : 610432.645
Line  Course: S 84-44-05 W  Length: 80.00
        North: 28481791.070          East : 610352.983
Line  Course: N 05-15-55 W  Length: 122.54
        North: 28481913.093          East : 610341.738
Line  Course: N 87-53-15 E  Length: 80.12
        North: 28481916.046          East : 610421.803
Line  Course: S 05-15-55 E  Length: 118.13
        North: 28481798.415          East : 610432.644

   Perimeter: 400.79   Area: 9,627 S.F. 0.221 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.004                Course: N 25-05-52 W
  Error North: 0.0034                East : -0.0016
Precision  1: 100,197.50
```

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD	TANGENT
C1	45°39'32"	100.00'	79.70'	77.61'	42.10'
C2	101°26'34"	300.00'	54.10'	54.02'	27.12'
C3	33°36'08"	100.00'	58.67'	57.83'	30.21'
C4	90°09'36"	100.00'	157.36'	141.62'	100.28'
C5	78°38'02"	100.00'	137.24'	126.72'	81.60'
C6	111°12'22"	500.00'	97.79'	97.63'	49.05'
C7	1°06'27"	550.00'	10.63'	10.63'	5.32'
C8	4°24'48"	550.00'	38.17'	38.16'	19.09'
C9	83°03'08"	550.00'	76.85'	76.89'	38.54'
C10	91°01'17"	550.00'	87.24'	87.15'	43.71'
C11	9°46'31"	550.00'	84.22'	84.10'	42.22'
C12	4°27'03"	550.00'	44.33'	44.31'	22.17'
C13	5°26'51"	380.00'	43.78'	43.74'	21.90'
C14	16°07'35"	380.00'	106.95'	106.60'	53.83'
C15	20°30'11"	380.00'	135.98'	135.26'	68.73'
C16	19°37'34"	380.00'	130.17'	129.53'	65.73'
C17	27°03'42"	380.00'	179.46'	177.81'	91.45'
C18	90°00'00"	15.50'	24.35'	21.92'	15.50'
C19	121°34'34"	125.12'	26.89'	26.84'	13.50'
C20	29°21'48"	125.02'	64.07'	63.37'	32.78'

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD	TANGENT
C21	3°58'13"	125.00'	8.66'	8.66'	4.33'
C22	8°07'36"	275.00'	39.01'	38.97'	19.54'
C23	2°12'17"	275.00'	10.58'	10.58'	5.29'
C24	80°57'39"	15.50'	21.90'	20.12'	13.33'
C25	84°50'44"	54.50'	80.70'	73.53'	49.80'
C26	92°08'45"	54.50'	87.65'	78.50'	56.58'
C27	63°56'24"	54.50'	78.88'	72.82'	44.05'
C28	33°41'37"	325.00'	17.45'	17.45'	8.72'
C29	7°13'17"	325.00'	41.15'	41.12'	20.60'
C30	28°22'20"	75.00'	37.14'	36.76'	18.96'
C31	10°11'30"	15.50'	26.07'	24.67'	21.06'
C32	90°00'00"	15.50'	24.35'	21.92'	15.50'
C33	23°13'30"	125.00'	50.11'	54.66'	28.01'
C34	83°28'	125.00'	18.23'	18.22'	9.13'
C35	78°51'48"	54.50'	75.02'	69.27'	44.82'
C36	87°11'13"	54.50'	84.23'	80.57'	36.43'
C37	114°34'31"	54.50'	108.98'	91.71'	64.88'
C38	80°57'24"	15.50'	21.90'	20.12'	13.33'
C39	33°36'39"	125.00'	44.00'	43.36'	22.66'
C40	90°00'00"	15.50'	24.35'	21.92'	15.50'

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD	TANGENT
C41	90°00'00"	15.50'	24.35'	21.92'	15.50'
C42	10°07'06"	125.00'	23.89'	23.86'	11.98'
C43	30°00'47"	118.25'	63.51'	62.78'	32.53'
C44	31°00'39"	117.38'	63.53'	62.76'	32.56'
C45	20°59'14"	125.00'	45.79'	45.53'	23.15'
C46	12°00'12"	125.00'	26.19'	26.14'	13.14'
C47	29°08'08"	125.00'	63.56'	62.88'	32.46'
C48	29°08'08"	125.00'	63.56'	62.88'	32.46'
C49	8°21'34"	125.00'	18.24'	18.22'	9.13'
C50	0°53'01"	1400.15'	21.59'	21.59'	10.80'
C51	0°25'43"	2820.02'	21.10'	21.10'	10.55'
C52	35°13'26"	15.50'	9.53'	9.38'	4.92'
C53	43°26'14"	52.10'	41.37'	40.29'	21.84'
C54	54°16'08"	54.50'	51.62'	49.71'	27.93'
C55	62°27'36"	54.50'	59.42'	56.52'	33.00'
C56	8°59'09"	54.50'	8.55'	8.54'	4.28'
C57	17°33'48"	15.50'	10.18'	9.96'	5.17'
C58	90°00'00"	15.50'	24.35'	21.92'	15.50'
C59	64°46'45"	15.50'	22.64'	20.81'	14.16'
C60	90°00'00"	15.50'	24.35'	21.92'	15.50'
C61	90°00'00"	15.50'	24.35'	21.92'	15.50'
C62	90°00'00"	15.50'	24.35'	21.92'	15.50'
C63	90°00'00"	15.50'	24.35'	21.92'	15.50'
C64	83°01'24"	15.50'	23.72'	22.07'	14.63'
C65	6°06'58"	475.00'	50.98'	50.96'	25.51'
C66	78°38'02"	75.00'	103.83'	95.04'	61.42'
C67	80°12'36"	75.00'	118.08'	106.26'	75.28'
C68	90°00'00"	15.50'	24.35'	21.92'	15.50'

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 40°35'56" E	29.50'
L2	N 38°59'54" W	28.50'
L3	N 05°15'55" W	29.87'



SUBDIVISION INFORMATION:

SUBDIVISION NAME:	ZEPHYR HEIGHTS SUBDIVISION
APN:	001-562-010
LEGAL OWNER & SUBDIVIDER:	JORDANELLE THIRD MORTGAGE, LLC
CONTACT INFO:	SCOTT MACRITCHIE, MANAGING DIRECTOR 312 FOUR MILE TRAIL, ELKO, NV 89801 (775) 340-6005
LEGAL DESCRIPTION:	ADJUSTED PARCEL 2 – FILE 775216
LOCATION:	SECTION 2, T. 34 N., R. 55 E.
VESTING DOCUMENT:	DOCUMENT NUMBER 775677
ADDRESS:	NOT ADDRESSED
ZONING:	EXISTING: R & R1 PROPOSED: R
SPECIAL FLOOD HAZARD:	NONE
COMMUNITY:	320010
MAP NUMBER:	32007C5607E & 32007C5626E
EFFECTIVE DATE:	SEPTEMBER 4, 2013

SUBDIVISION INFORMATION:

MINIMUM SETBACKS:	
FRONT:	15' (20' FOR GARAGE)
EXTERIOR SIDE:	15'
INTERIOR SIDE:	5.5'
REAR:	20'
MINIMUM LOT SIZE:	
AREA:	6,000 S.F. (6,500 S.F. FOR CORNER LOT)
WIDTH:	60'
DEPTH:	100'
MAXIMUM BUILDING HEIGHT:	45' (OR LESS PER AIRPORT MASTER PLAN)
UTILITIES:	
WATER SUPPLY:	CITY OF ELKO
SEWAGE DISPOSAL:	CITY OF ELKO
POWER:	NV ENERGY
TELEPHONE:	FRONTIER COMMUNICATION
NATURAL GAS:	SOUTHWEST GAS CORP.
TELEVISION:	ZITO MEDIA

SUBDIVISION INFORMATION:

NUMBER OF LOTS:	70	
LOT AREA:	903,987 SF	20.753 ACRES
DEDICATED STREETS:	189,753 SF	4.356 ACRES
TOTALS:	1,093,740 SF	25.109 ACRES
AVERAGE SLOPE:	AS = .00229*L/A = 14.03%	
	I = 2 FEET L = 76,897 FEET A = 25.109 ACRES	
LOCATION OF NEAREST WELL, WATERCOURSE OR LAKE:	NONE WITHIN 200 FEET	
LOCATON OF NEAREST SEPTIC SYSTEM:	NONE WITHIN 200 FEET	
BASIS OF BEARINGS:	CITY OF ELKO MODIFIED GRID	
ELEVATION BASIS:	CITY OF ELKO MODIFIED GRID	

LEGEND:

- EXISTING SECTION CORNER AS NOTED
- FOUND MONUMENT AS NOTED
- PROPOSED MONUMENT IN STREET WELL
- (R) RADIAL
- RIGHT-OF-WAY OFFERED FOR DEDICATION

NOTES:

1. SUBDIVISION TO BE DEVELOPED IN UNITS.
2. UNIT BOUNDARIES SHOWN HEREON ARE SUBJECT TO CHANGE BASED ON CUSTOMER DEMAND.
3. PRELIMINARY PHASING IS AS FOLLOW:

UNIT	NUMBER OF LOTS
1	17
2	16
3	14
4	23

REV.	DATE	DESCRIPTION	BY	APP'D

DESIGNED BY: TCB
DRAWN BY: TCB
CHECKED BY: TCB
APPROVED BY:
DATE: DECEMBER, 2020

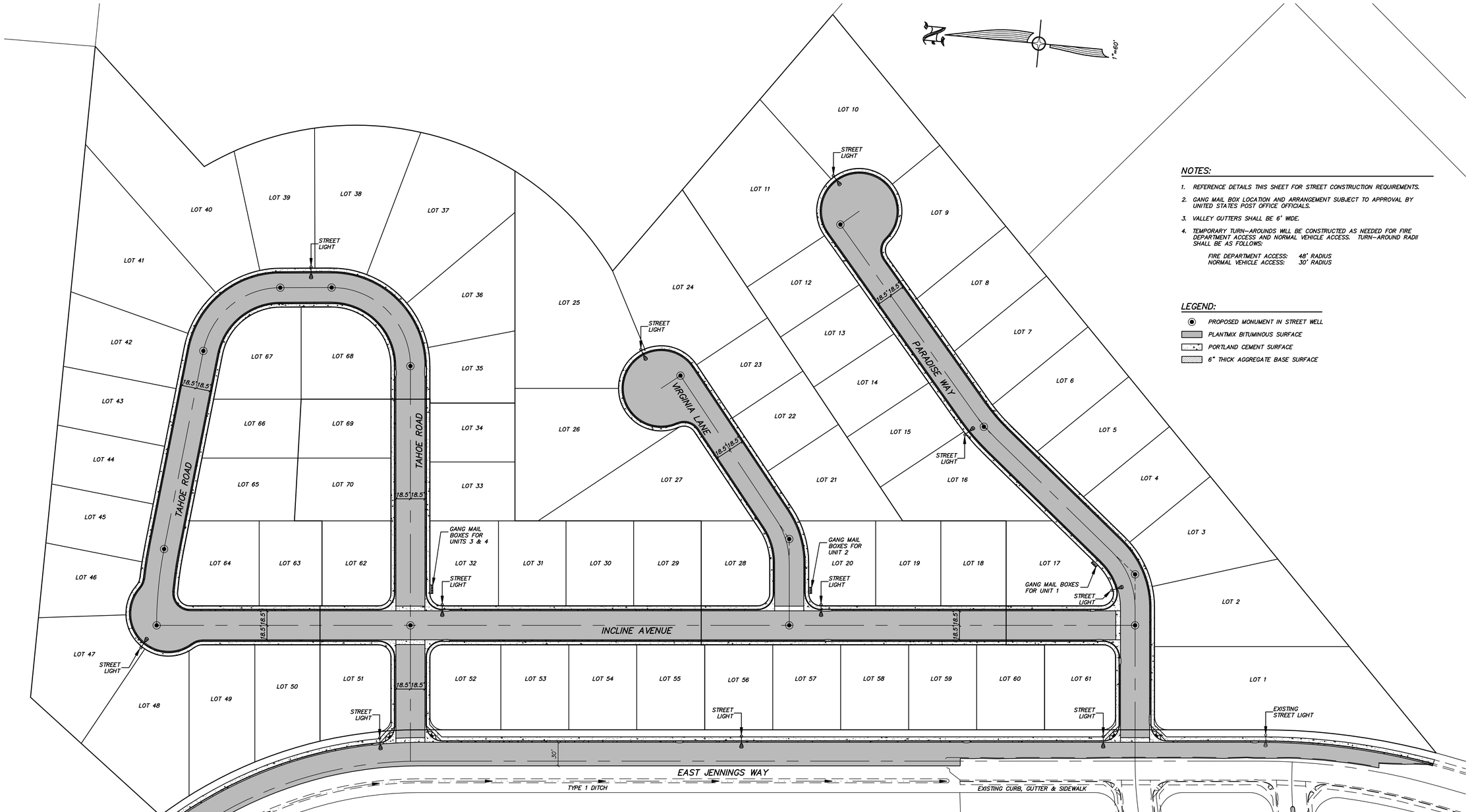
ZEPHYR HEIGHTS SUBDIVISION
TENTATIVE MAP
LOT LAYOUT
ELKO COUNTY NEVADA

SCALE: HORIZ. 1"=60' VERT.
JOB No. 5952
DWG. No.

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053
HIGH DESERT ENGINEERING LLC

REGISTERED PROFESSIONAL ENGINEER
THOMAS C. BALLEW
Exp. 12/31/22
CIVIL
NO. 5072
STATE OF NEVADA
1/4/21

SHEET 1 OF 4



NOTES:

1. REFERENCE DETAILS THIS SHEET FOR STREET CONSTRUCTION REQUIREMENTS.
2. GANG MAIL BOX LOCATION AND ARRANGEMENT SUBJECT TO APPROVAL BY UNITED STATES POST OFFICE OFFICIALS.
3. VALLEY GUTTERS SHALL BE 6' WIDE.
4. TEMPORARY TURN-AROUNDS WILL BE CONSTRUCTED AS NEEDED FOR FIRE DEPARTMENT ACCESS AND NORMAL VEHICLE ACCESS. TURN-AROUND RADII SHALL BE AS FOLLOWS:

   FIRE DEPARTMENT ACCESS: 48' RADIUS
   NORMAL VEHICLE ACCESS: 30' RADIUS

LEGEND:

- PROPOSED MONUMENT IN STREET WELL
- PLANTMIX BITUMINOUS SURFACE
- PORTLAND CEMENT SURFACE
- 6" THICK AGGREGATE BASE SURFACE

REV.	DATE	DESCRIPTION	BY	APP'D

DESIGNED BY: TCB
DRAWN BY: TCB
CHECKED BY: TCB
APPROVED BY:
DATE: DECEMBER, 2020

ZEPHYR HEIGHTS SUBDIVISION
TENTATIVE MAP
CONSTRUCTION PLAN

ELKO COUNTY NEVADA

SCALE: HORIZ. 1"=60' VERT.
JOB No. 5952
DWG. No.

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053

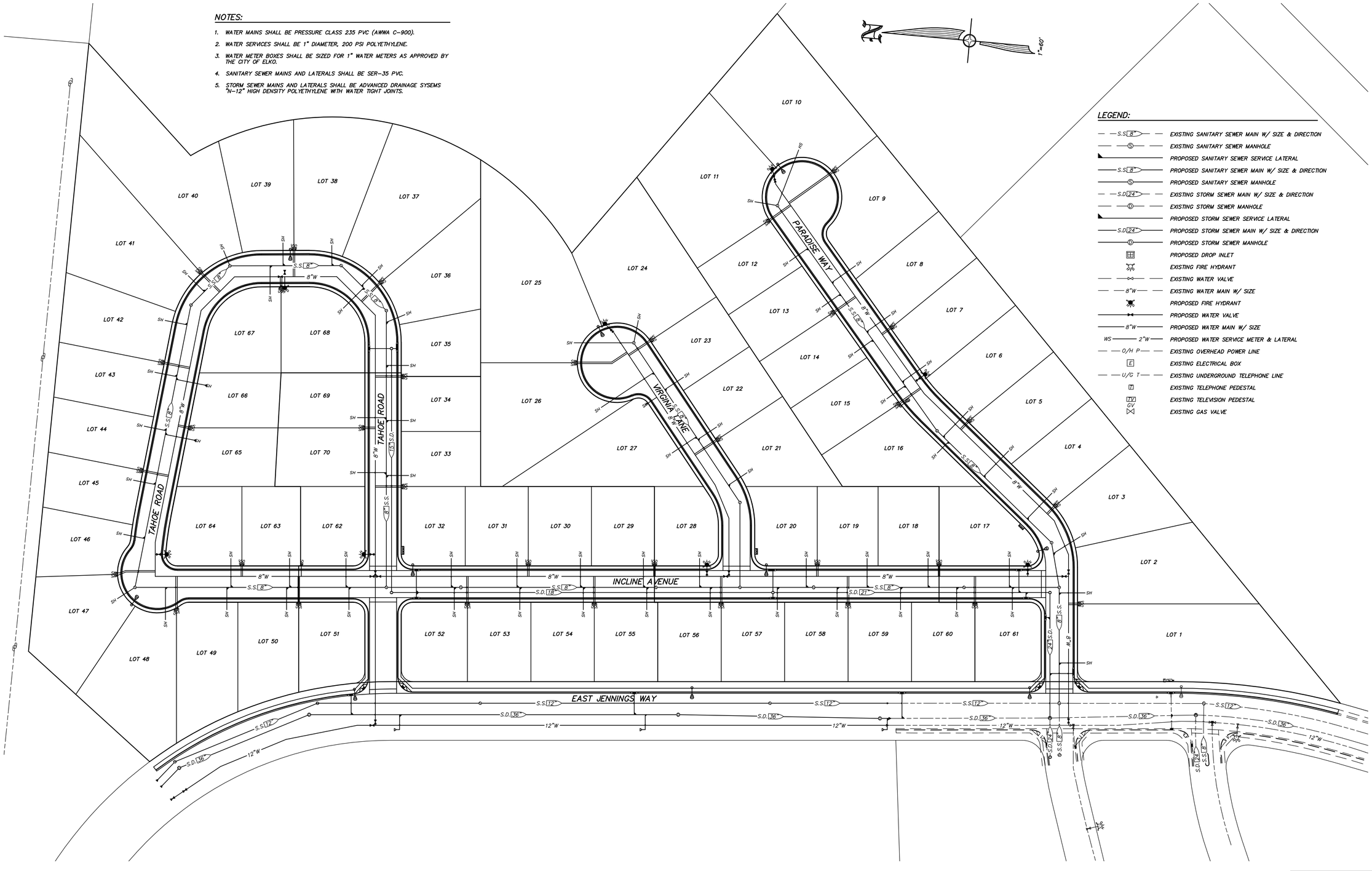
HIGH DESERT ENGINEERING LLC

REGISTERED PROFESSIONAL ENGINEER STATE OF NEVADA
THOMAS C. BALLEW
Exp. 12/31/22
CIVIL
NO. 5072
1/4/21

SHEET 2 OF 4

NOTES:

1. WATER MAINS SHALL BE PRESSURE CLASS 235 PVC (AWWA C-900).
2. WATER SERVICES SHALL BE 1" DIAMETER, 200 PSI POLYETHYLENE.
3. WATER METER BOXES SHALL BE SIZED FOR 1" WATER METERS AS APPROVED BY THE CITY OF ELKO.
4. SANITARY SEWER MAINS AND LATERALS SHALL BE SER-35 PVC.
5. STORM SEWER MAINS AND LATERALS SHALL BE ADVANCED DRAINAGE SYSEMS "N-12" HIGH DENSITY POLYETHYLENE WITH WATER TIGHT JOINTS.



LEGEND:

- EXISTING SANITARY SEWER MAIN W/ SIZE & DIRECTION
- EXISTING SANITARY SEWER MANHOLE
- PROPOSED SANITARY SEWER SERVICE LATERAL
- PROPOSED SANITARY SEWER MAIN W/ SIZE & DIRECTION
- PROPOSED SANITARY SEWER MANHOLE
- EXISTING STORM SEWER MAIN W/ SIZE & DIRECTION
- EXISTING STORM SEWER MANHOLE
- PROPOSED STORM SEWER SERVICE LATERAL
- PROPOSED STORM SEWER MAIN W/ SIZE & DIRECTION
- PROPOSED STORM SEWER MANHOLE
- PROPOSED DROP INLET
- EXISTING FIRE HYDRANT
- EXISTING WATER VALVE
- EXISTING WATER MAIN W/ SIZE
- PROPOSED FIRE HYDRANT
- PROPOSED WATER VALVE
- PROPOSED WATER MAIN W/ SIZE
- PROPOSED WATER SERVICE METER & LATERAL
- EXISTING OVERHEAD POWER LINE
- EXISTING ELECTRICAL BOX
- EXISTING UNDERGROUND TELEPHONE LINE
- EXISTING TELEPHONE PEDESTAL
- EXISTING TELEVISION PEDESTAL
- EXISTING GAS VALVE

REV.	DATE	DESCRIPTION	BY	APP'D

DESIGNED BY: TCB
DRAWN BY: TCB
CHECKED BY: TCB
APPROVED BY:
DATE: DECEMBER, 2020

ZEPHYR HEIGHTS SUBDIVISION
TENTATIVE MAP
UTILITY PLAN

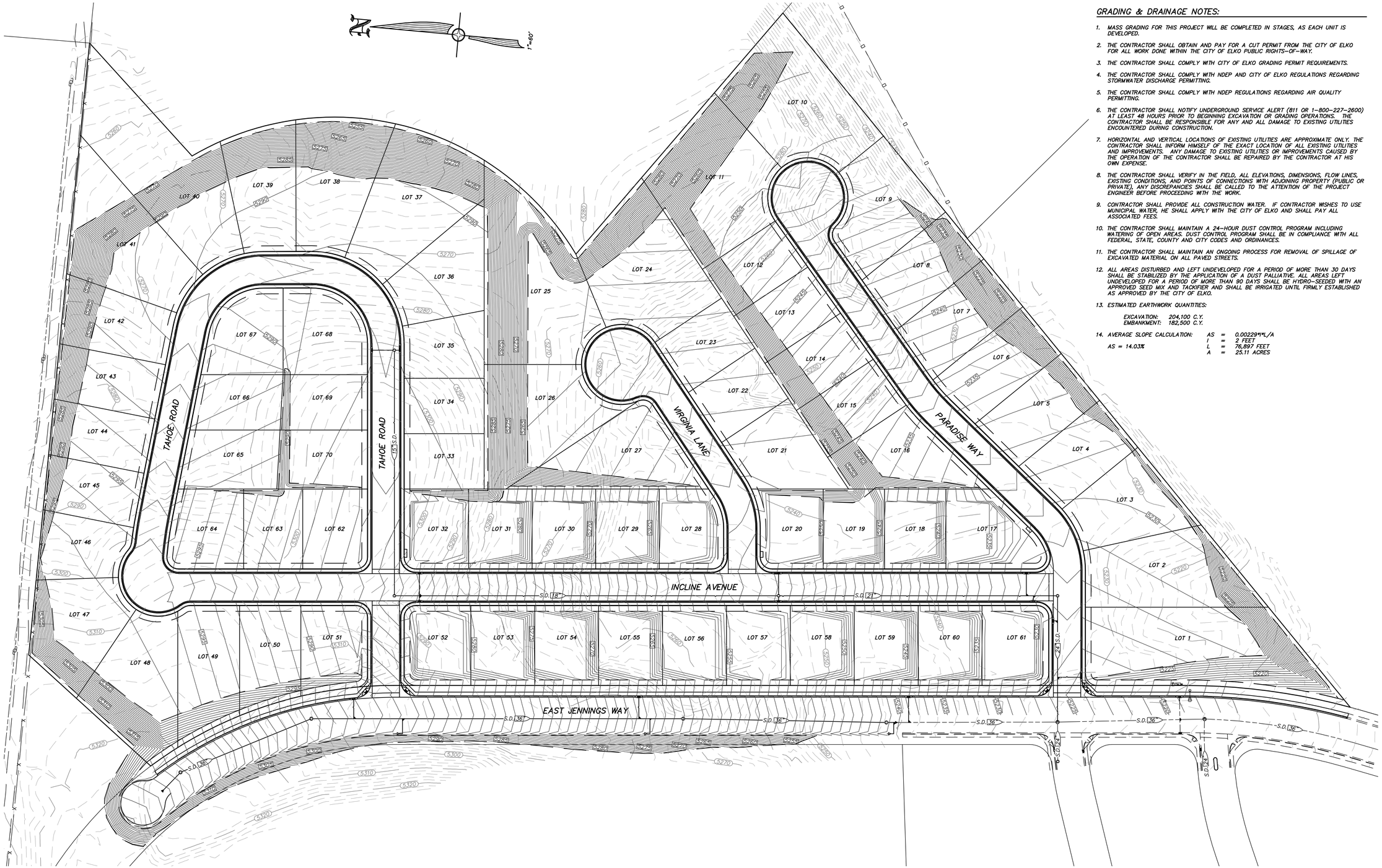
ELKO COUNTY, NEVADA

SCALE: HORIZ. 1"=60' VERT.
JOB No. 5952
DWG. No.

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053
HIGH DESERT ENGINEERING LLC

REGISTERED PROFESSIONAL ENGINEER STATE OF NEVADA
THOMAS C. BALLEW
Exp. 12/31/22
CIVIL
NO. 5072
1/4/21

SHEET 3 OF 4



GRADING & DRAINAGE NOTES:

1. MASS GRADING FOR THIS PROJECT WILL BE COMPLETED IN STAGES, AS EACH UNIT IS DEVELOPED.
2. THE CONTRACTOR SHALL OBTAIN AND PAY FOR A CUT PERMIT FROM THE CITY OF ELKO FOR ALL WORK DONE WITHIN THE CITY OF ELKO PUBLIC RIGHTS-OF-WAY.
3. THE CONTRACTOR SHALL COMPLY WITH CITY OF ELKO GRADING PERMIT REQUIREMENTS.
4. THE CONTRACTOR SHALL COMPLY WITH NDEP AND CITY OF ELKO REGULATIONS REGARDING STORMWATER DISCHARGE PERMITTING.
5. THE CONTRACTOR SHALL COMPLY WITH NDEP REGULATIONS REGARDING AIR QUALITY PERMITTING.
6. THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (811 OR 1-800-227-2600) AT LEAST 48 HOURS PRIOR TO BEGINNING EXCAVATION OR GRADING OPERATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL DAMAGE TO EXISTING UTILITIES ENCOUNTERED DURING CONSTRUCTION.
7. HORIZONTAL AND VERTICAL LOCATIONS OF EXISTING UTILITIES ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL INFORM HIMSELF OF THE EXACT LOCATION OF ALL EXISTING UTILITIES AND IMPROVEMENTS. ANY DAMAGE TO EXISTING UTILITIES OR IMPROVEMENTS CAUSED BY THE OPERATION OF THE CONTRACTOR SHALL BE REPAIRED BY THE CONTRACTOR AT HIS OWN EXPENSE.
8. THE CONTRACTOR SHALL VERIFY IN THE FIELD, ALL ELEVATIONS, DIMENSIONS, FLOW LINES, EXISTING CONDITIONS, AND POINTS OF CONNECTIONS WITH ADJOINING PROPERTY (PUBLIC OR PRIVATE), ANY DISCREPANCIES SHALL BE CALLED TO THE ATTENTION OF THE PROJECT ENGINEER BEFORE PROCEEDING WITH THE WORK.
9. CONTRACTOR SHALL PROVIDE ALL CONSTRUCTION WATER. IF CONTRACTOR WISHES TO USE MUNICIPAL WATER, HE SHALL APPLY WITH THE CITY OF ELKO AND SHALL PAY ALL ASSOCIATED FEES.
10. THE CONTRACTOR SHALL MAINTAIN A 24-HOUR DUST CONTROL PROGRAM INCLUDING WATERING OF OPEN AREAS. DUST CONTROL PROGRAM SHALL BE IN COMPLIANCE WITH ALL FEDERAL, STATE, COUNTY AND CITY CODES AND ORDINANCES.
11. THE CONTRACTOR SHALL MAINTAIN AN ONGOING PROCESS FOR REMOVAL OF SPILLAGE OF EXCAVATED MATERIAL ON ALL PAVED STREETS.
12. ALL AREAS DISTURBED AND LEFT UNDEVELOPED FOR A PERIOD OF MORE THAN 30 DAYS SHALL BE STABILIZED BY THE APPLICATION OF A DUST PALLIATIVE. ALL AREAS LEFT UNDEVELOPED FOR A PERIOD OF MORE THAN 90 DAYS SHALL BE HYDRO-SEEDED WITH AN APPROVED SEED MIX AND TACKIFIER AND SHALL BE IRRIGATED UNTIL FIRMLY ESTABLISHED AS APPROVED BY THE CITY OF ELKO.
13. ESTIMATED EARTHWORK QUANTITIES:

    EXCAVATION: 204,100 C.Y.
    EMBANKMENT: 182,500 C.Y.

14. AVERAGE SLOPE CALCULATION:

    AS = 14.03%

    AS = 0.002291*L/A
    I = 2 FEET
    L = 76,897 FEET
    A = 25.11 ACRES

REV.	DATE	DESCRIPTION	BY	APP'D

DESIGNED BY: TCB
DRAWN BY: TCB
CHECKED BY: TCB
APPROVED BY:
DATE: DECEMBER, 2020

ZEPHYR HEIGHTS SUBDIVISION
TENTATIVE MAP
GRADING PLAN

ELKO COUNTY ELKO NEVADA

SCALE: HORIZ. 1"=60' VERT.
JOB No. 5952
DWG. No.

CONSULTING ENGINEERING & SURVEYING
640 IDAHO STREET
ELKO, NEVADA 89801
(775) 738-4053
HIGH DESERT ENGINEERING LLC

PROFESSIONAL ENGINEER STATE OF NEVADA
THOMAS C. BALLEW
Exp. 12/31/22
CIVIL
NO. 5072
1/4/21

SHEET 4 OF 4

D:\! Tom's Data\Land Projects 2009\Zephyr Heights\dwg\Tentative - Rev_01.dwg 1/4/2021 10:05:56 AM PST

Elko City Planning Commission
Agenda Action Sheet

1. **Review, consideration and possible recommendation to City Council for Rezone No. 6-20, filed by Jordanelle Third Mortgage, LLC, for a change in zoning from R (Single Family and Multiple Family Residential) and R1 (Single Family Residential) to R (Single Family and Multiple Family Residential) Zoning District, approximately 26.607 acres of property, to allow for residential development, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **February 2, 2021**

3. Agenda Category: ***PUBLIC HEARINGS, NEW BUSINESS***

4. Time Required: **15 Minutes**

5. Background Information: **Subject property is located on the east side of E Jennings Way generally north of the intersection with Khoury Lane. (APN 001-562-010). The parcel currently has two zone districts.**

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. 6-20 based on facts and findings as presented in Staff Report dated January 12, 2021.**

9. Findings: **See Staff Report dated January 12, 2021**

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

11. Agenda Distribution: **Jordanelle Third Mortgage, LLC**
Attn: Scott MacRitchie
312 Four Mile Trail
Elko, NV 89801

High Desert Engineering
Attn: Tom Ballew
640 Idaho Street
Elko, NV 89801

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 2/2
Do not use pencil or red pen, they do not reproduce

Title: Rezone No. 6-20

Applicant(s): Jordanelle Third Mortgage, LLC

Site Location: APN 001-562-010 - E side of E. Jennings, N of Khoury Lane

Current Zoning: R+R1 Date Received: 12/22/20 Date Public Notice: 1/22/21

COMMENT: This is to change the zone on APN 001-562-010 from R and R1 to R (Single-Family + Multi-Family Residential).

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 1/25/21

Recommend approval

SAW

Initial

City Manager: Date: 1/27/21

No comments/concerns.

CC

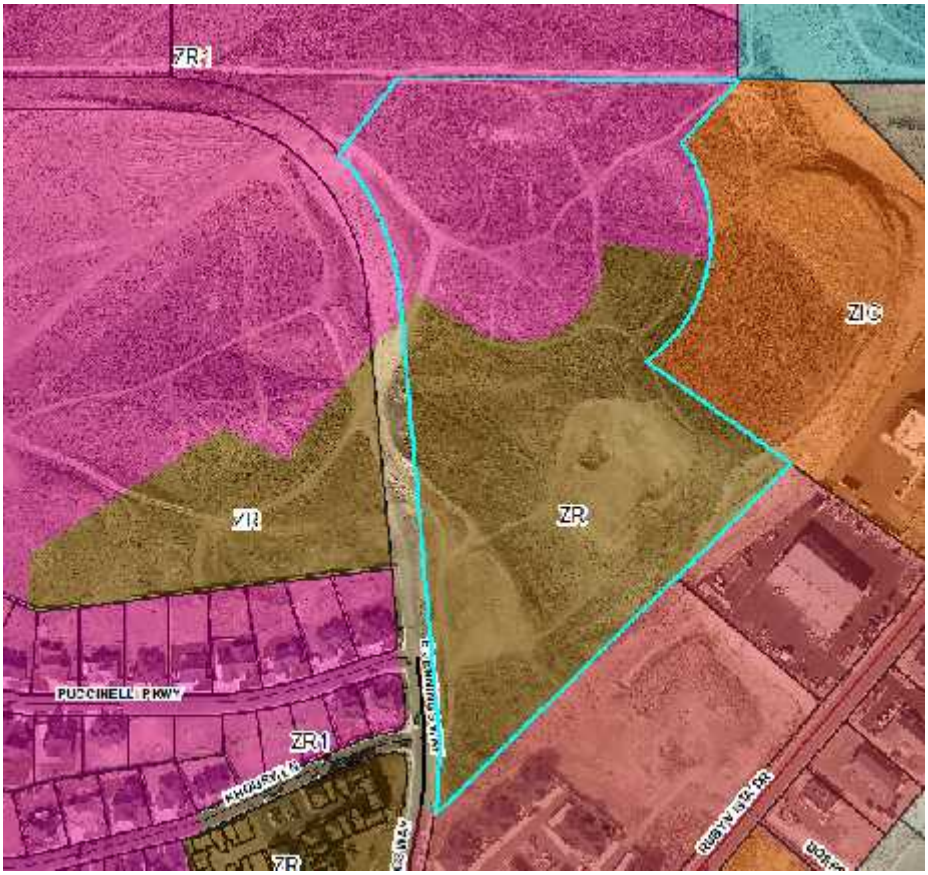
Initial

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

CITY OF ELKO STAFF REPORT

MEMO DATE: January 12, 2021
PLANNING COMMISSION DATE: February 2, 2021
APPLICATION NUMBER: REZONE 6-20
APPLICANT: Jordanelle Third Mortgage, LLC.
PROJECT DESCRIPTION:

A rezone from (R1) Single Family Residential and (R) Single Family and Multiple Family Residential to (R) Single Family and Multiple Family Residential



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-562-010

PARCEL SIZE: 25.109 acres

EXISTING ZONING: R1 Single Family Residential and R Single Family and Multiple Family Residential

MASTER PLAN DESIGNATION: (RES- HD) Residential High Density and (RES-MD) Residential Medium Density

EXISTING LAND USE: Undeveloped

NEIGHBORHOOD CHARACTERISTICS:

- The property is surrounded by:
  - North: Residential / Undeveloped
  - West: Residential / Partially developed
  - South: Commercial / Developed
  - East: Industrial Commercial / Developed

PROPERTY CHARACTERISTICS:

- The area is currently undeveloped.
- The area has moderate sloping.
- The area is accessed from East Jennings Way

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 Wellhead Protection Plan
- City of Elko Zoning – Section 3-2-4 Establishment of Zoning Districts
- City of Elko Zoning – Section 3-2-5 Residential Zoning Districts
- City of Elko Zoning – Section 3-2-21 Amendments
- City of Elko Zoning – Section 3-8 Flood Plain Management

BACKGROUND:

1. The parcel is identified as APN 001-562-010.
2. The applicant is the property owner. They purchased the property on October 19, 2020.
3. The property is east of East Jennings Way extended north of Puccinelli Parkway.
4. The area of the parcel is approximately 25.109 acres.
5. The applicant has applied for a Tentative Map (TM 12-20) for Zephyr Heights Subdivision which is proposing 70 single family residential lots.

MASTER PLAN:

Land use:

1. Master Plan Land Use is shown as High Density Residential and Medium Density Residential.
2. R- Single Family and Multiple Family Residential zoning district is listed as a corresponding zoning district for Residential Medium Density and Residential High Density.
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 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 East Jennings Way.
2. East Jennings Way is classified in the Transportation Component as a minor arterial with classification as a major arterial once the roadway in connected between west and east.
3. The extension of East Jennings Way as well as pedestrian access will be required as part of the subdivision development.

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

ELKO WELLHEAD PROTECTION PLAN:

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

The proposed zone district and proposed use for the property 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 3-2-5(E) R- Single Family and Multiple Family Residential District:

1. As the property develops, it will be required to be in conformance with all aspects of Elko City Code 3-2-5(E)

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 future transportation infrastructure.

3. The proposed zone district and resultant land use is in conformance with City Wellhead Protection Plan.

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

5. The proposed zone district is in conformance with Elko City Code Section 3-2-5.

6. The application is in conformance with Elko City Code 3-2-21.

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

8. 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 APPROVED

CITY OF ELKO
Planning Department

Website: www.elkocity.com
Email: planning@elkocitynv.gov

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

January 27, 2021

Jordanelle Third Mortgage, LLC
Attn: Scott MacRitchie
312 Four Mile Trail
Elko, NV 89801
Via Email: scott@macritchie.com

Re: Rezone No. 6-20 and Tentative Map No. 12-20

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.

To participate in the virtual meeting on a computer, laptop, tablet, or smart phone go to: https://global.gotomeeting.com/join/865213653. You can also dial in using your phone at **+1 (872) 240-3212.** The **Access Code** for this meeting is **865-213-653.**

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 Knopp
Planning Technician

Enclosures

CC: High Desert Engineering, Attn: Tom Ballew, 640 Idaho Street, Elko, NV 89801
Via Email: tcballew@frontiernet.net

Rezone 6-20 + Tentative Map 12-20 - Zephyr Heights Subd. - PC

YPNO	assess_nam	address1	address2	mcity	mzip
001568022	ALLEN ALICE A	2442 KHOURY LN		ELKO, NV	89801-4970
001566052	BLACH PATRICK J TR	131 W MAIN ST		ELKO, NV	89801-3690
001566050	CHAMBERLAIN DONALD CRAIG	2461 PUCCINELLI PKWY		ELKO, NV	89801-5030
001564010	CRMTN, LLC	PO BOX 3005		COLUMBUS, IN	47202-3000
001562019	DAGHER BASSAM T & WISSAM T	253 HICKORY HOLLOW AVE		LAS VEGAS, NV	89123-1180
001568026	DARLING REBECCA	2452 KHOURY LN		ELKO, NV	89801-4970
001568023	DEWHIRST SCOTT D & TERESA M	PO BOX 728		OVERGAARD, AZ	85933
001568019	HUNDLEY DANIEL C & TETIANA	2432 KHOURY LN		ELKO, NV	89801-4970
001568030	JOHNSTONE PETER G	2436 KHOURY LN		ELKO, NV	89801-4970
001568016	KRENZER CHARLOTTE	2426 KHOURY LN		ELKO, NV	89801-4970
001568027	LINDSTROM QUINN D	2448 KHOURY LN		ELKO, NV	89801-
001566053	LINDSTROM QUINN DON & KAYLA LAUREN		2456 PUCCINELLI PKWY	ELKO, NV	89801
001568028	LOCUSON MATTHEW CHARLES	2444 KHOURY LN		ELKO, NV	89801-4970
001566049	MARIN SYLVIA M & XAVIER T	2457 PUCCINELLI PKWY		ELKO, NV	89801-5030
001568017	OLSEN JAMES C		2428 KHOURY LANE	ELKO, NV	89801-
001568021	PFARR JERRY	2438 KHOURY LN		ELKO, NV	89801-4970
001562015	POINTE AT RUBY VIEW LLC, THE	700 IDAHO ST		ELKO, NV	89801-
001564002	RUBY VISTA APARTMENTS LLC	5560 LONGLEY LN STE 200		RENO, NV	89511-1820
001566051	SANDOVAL ADRIAN & PATRICIA	PO BOX 1305		ELKO, NV	89803-1300
001568029	SIVIA JOHN M & ERIN E	2605 WILLOUGHBY AVE		LAS VEGAS, NV	89101-2320
001566048	SMITH NEIL DANIEL	2453 PUCCINELLI PKWY		ELKO, NV	89801-5030
001564011	SOUTHWEST GAS CORPORATION	5241 SPRING MOUNTAIN RD		LAS VEGAS, NV	89150-0000
001562014	THE POINTE AT RUBY VIEW LLC	700 IDAHO ST } 1 P.C.		ELKO, NV	89801-3820
001562009	THE POINTE AT RUBY VIEW LLC	700 IDAHO ST } 1 P.C.		ELKO, NV	89801-3820
001568018	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568025	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568020	TUSCANY INVESTORS LC	16940 E TORREY PINES CR } 1 PC		DRAPER, UT	84020-
001568031	TUSCANY POINTE AT RUBY VIEW HOMEOWNERS' ASSOCIATION		1910 IDAHO ST STE 102-511	ELKO, NV	89801-
001562002	USA	C/O BLM-SUPPORT SERVICES AP	3900 E IDAHO ST	ELKO, NV	89801-4690
001568024	WARD PAUL		2450 KHOURY LANE	ELKO, NV	89801-

26

Postmarked 1/22/21

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, February 2, 2021 beginning at 5:30 P.M. P.D.S.T. utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at: https://global.gotomeeting.com/join/865213653.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at https://global.gotomeeting.com/join/865213653.. You can also dial in using your phone. **+1 (872) 240-3212** Access Code: **865-213-653.** Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590. Comments can also be emailed to cityclerk@elkocitynv.gov.

The specific items to be considered under public hearing format are:

- Rezone No. 6-20, filed by Jordanelle Third Mortgage, LLC, for a change in zoning from R (Single-Family and Multiple-Family Residential) and R1 (Single Family Residential) to R (Single-Family and Multiple-Family Residential) Zoning District, approximately 26.607 acres of property, specifically APN 001-562-010, located generally on the east side of E. Jennings Way, across from Khoury Lane and Puccinelli Parkway, more particularly described as:

  A parcel of land located in Section 2, Township 34 North, Range 55 East, M.D.B. & M., City of Elko, Nevada, being all of Adjusted Parcel 2 and a portion of East Jennings Way as shown on the Boundary Line Adjustment Record of Survey for The Pointe at Ruby View, LLC, filed in the office of the Elko County Recorder, Elko, Nevada, at file number 775216; more particularly described as follows:

  Beginning at the center ¼ Corner of said Section 2 as shown on said Boundary Line Adjustment Record of Survey, being Corner No. 1, the True Point of Beginning;

  Thence South 42° 32' 56" West, along the easterly boundary of said Adjusted Parcel 2, a distance of 206.48 feet to Corner No. 2;

  Thence from a tangent bearing South 35° 47' 03" East, on a curve to the right with a radius of 380.00 feet, through a central angle of 89° 45' 52", along the easterly boundary of said Adjusted Parcel 2, an arc length of 595.34 feet to Corner No. 3;

  Thence South 54° 37' 53" East, along the easterly boundary of said Adjusted Parcel 2, a distance of 430.47 feet to Corner No. 4;

  Thence South 45° 30' 35" West, along the southeasterly boundary of said Adjusted Parcel 2, a distance of 1214.15 feet to Corner No. 5, a point on the easterly right-of-way of said East Jennings Way;

  Thence North 80° 11' 41" West, a distance of 40.00 feet to Corner No. 6, a point on the centerline of said East Jennings Way;

  Thence from a tangent bearing North 09° 48' 19" East, on a curve to the left with a radius of 820.00 feet, through a central angle of 15° 03' 52", along the centerline of said East Jennings Way, an arc length of 215.60 feet to Corner No. 7;

Thence North 05° 15' 33" West, along the centerline of said East Jennings Way a distance of 1071.21 feet to Corner No. 8;

Thence from a tangent bearing North 05° 15' 33" West, on a curve to the left with a radius of 510.00 feet, through a central angle of 36° 43' 28", along the centerline of said East Jennings Way, an arc length of 326.89 feet to Corner No. 9;

Thence North 48° 00' 59" East, a distance of 40.00 feet to Corner No. 10, a point on the westerly boundary of said Adjusted Parcel 2;

Thence North 37° 05' 43" East, along the northwesterly boundary of said Adjusted Parcel 2, a distance of 223.41 feet to Corner No. 11, a point on the northerly boundary of said Adjusted Parcel 2;

Thence South 89° 35' 18" East, along the northerly boundary of said Adjusted Parcel 2, a distance of 832.90 feet to Corner No. 1, the point of beginning, containing 26.607 acres, more or less.

Reference is hereby made to Exhibit "B", Zephyr Heights Subdivision Zoning Change in Section 2, T.34 N., R.55 E., M.D.B.&M., attached hereto and made a part hereof.

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

- Tentative Map No. 12-20, filed by Jordanelle Third Mortgage, LLC, for the development of a subdivision entitled Zephyr Heights, involving the proposed division of approximately 25.109 acres of property into 70 lots for residential development within the R (Single-Family and Multiple-Family Residential) Zoning District, and matters related thereto. The subject property is located on the east side of E. Jennings Way generally north of the intersection with Puccinelli Parkway. (APN 001-562-010).

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): Jordanelle Third Mortgage, LLC
MAILING ADDRESS: 312 Four Mile Trail, Elko, NV 89801
PHONE NO (Home) _____ **(Business)** (775) 340-6005
NAME OF PROPERTY OWNER (If different): Jordanelle Third Mortgage, LLC
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: 312 Four Mile Trail, Elko, NV 89801
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-562-010
Address Not addressed
Lot(s), Block(s), &Subdivision _____
Or Parcel(s) & File No. Adjusted Parcel 2, File 775216

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 1st 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 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 Rezone Application.

RECEIVED
DEC 2 2 2020

1. Identify the existing zoning classification of the property: R: Single-Family and Multiple-Family residential and R1: Single Family Residential

2. Identify the zoning Classification being proposed/requested: R: Single-Family and Multiple-Family Residential

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

   The property will be developed into single family residential lots.

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

   The property is bordered on the north and on the west by residential zoning; on the east by industrial-commercial zoning; and on the south by commercial zoning.

   The property is currently zoned for residential development.

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

   The property is currently undeveloped and of varied terrain.

(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: Jordanelle Third Mortgage, LLC
Scott MacRitchie, Managing Director
(Please print or type)

Mailing Address: 312 Four Mile Trail
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: (775) 340-6005

Email address: scott@macritchie.com

SIGNATURE: Thomas C Ballew for Scott MacRitchie

FOR OFFICE USE ONLY

File No.: 6-20 **Date Filed:** 12/22/20 **Fee Paid:** $500 CK# 116150

Thomas C Ballew

From: scott <scott@macritchie.com>
Sent: Tuesday, December 22, 2020 3:23 PM
To: Tom Ballew
Subject: Zephyr

RECEIVED
DEC 22 2020

I authorize Tom Ballew to sign on my behalf the tentative application to the city of Elko for Zephyr Heights

Scott MacRitchie

Virus-free. www.avg.com

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

HIGH DESERT ENGINEERING LLC

Consulting Civil Engineering
Land Surveying
Water Rights

November 23, 2020

RECEIVED
DEC 22 2020

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

Re: Zephyr Heights Subdivision
Rezone Application

Dear Cathy,

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

- Application for Zone Change.
- Area Map
- Legal Description
- Check in the amount of $ 500.00 for the application 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.

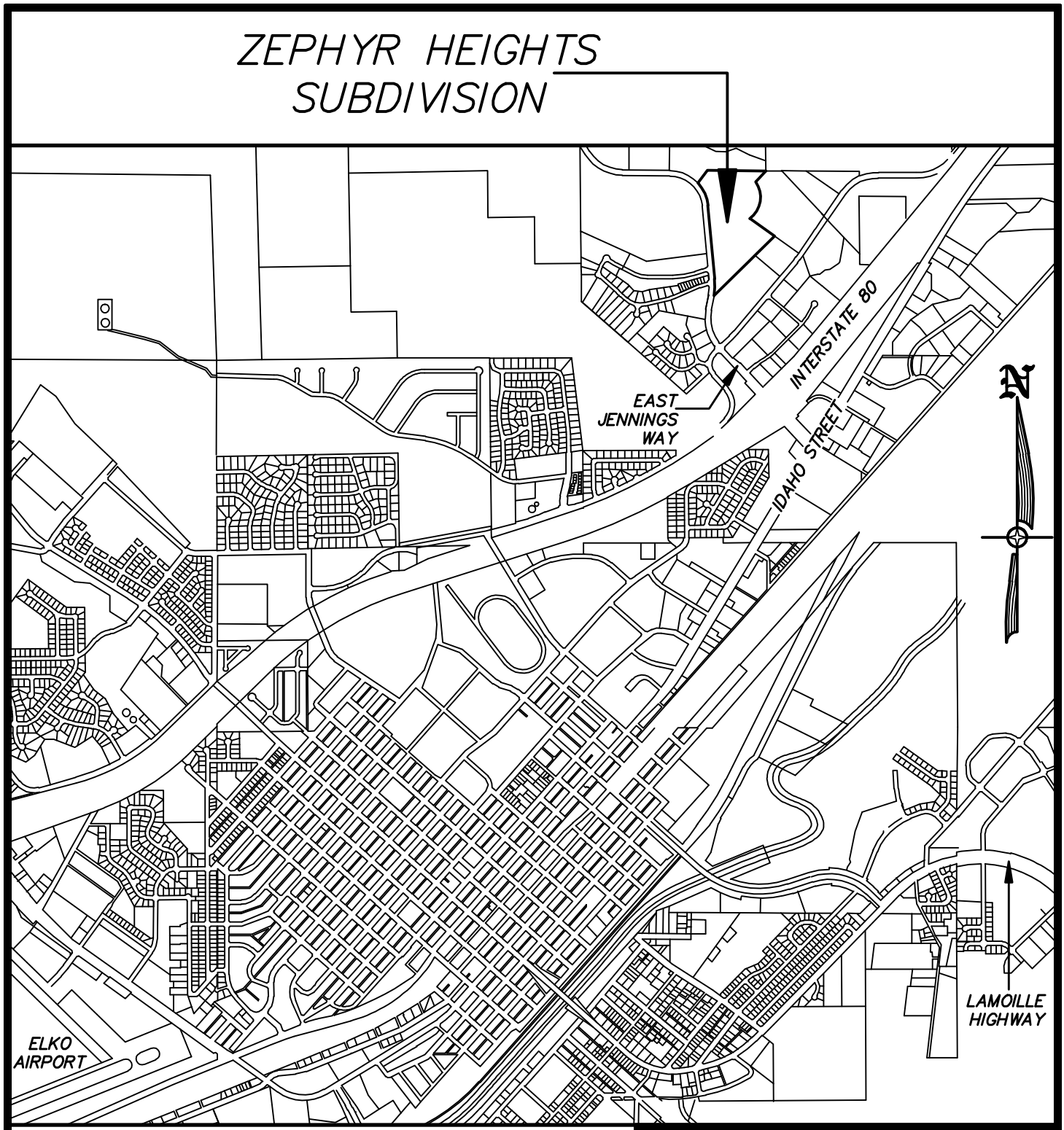
Sincerely,
HIGH DESERT Engineering, LLC

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

enclosures

cc Scott MacRitchie – Jordanelle Third Mortgage, LLC

*640 Idaho Street * Elko, Nevada, 89801 * (775) 738-4053 * Fax (775) 753-7693*
hdeng@frontiernet.net



HIGH DESERT ENGINEERING LLC

ZEPHYR HEIGHTS SUBDIVISION

AREA MAP

IN

ELKO, NEVADA

EXHIBIT "A"

Zephyr Heights Zoning Change

January 11, 2021

A parcel of land located in Section 2, Township 34 North, Range 55 East, M.D.B. & M., City of Elko, Nevada, being all of Adjusted Parcel 2 and a portion of East Jennings Way as shown on the Boundary Line Adjustment Record of Survey for The Pointe at Ruby View, LLC, filed in the office of the Elko County Recorder, Elko, Nevada, at file number 775216; more particularly described as follows:

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thence from a tangent bearing South 35° 47' 03" East, on a curve to the right with a radius of 380.00 feet, through a central angle of 89° 45' 52", along the easterly boundary of said Adjusted Parcel 2, an arc length of 595.34 feet to Corner No. 3;

thence South 54° 37' 53" East, along the easterly boundary of said Adjusted Parcel 2, a distance 430.47 feet to Corner No. 4;

thence South 45° 30' 35" West, along the southeasterly boundary of said Adjusted Parcel 2, a distance of 1214.15 feet to Corner No. 5, a point on the easterly right-of-way of said East Jennings Way;

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thence from a tangent bearing North 09° 48' 19" East, on a curve to the left with a radius of 820.00 feet, through a central angle of 15° 03' 52", along the centerline of said East Jennings Way, an arc length of 215.60 feet to Corner No. 7;

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Exhibit "A"
Zephyr Heights Zoning Change

thence North 48°00'59" East, a distance of 40.00 feet to Corner No. 10, a point on the westerly boundary of said Adjusted Parcel 2;

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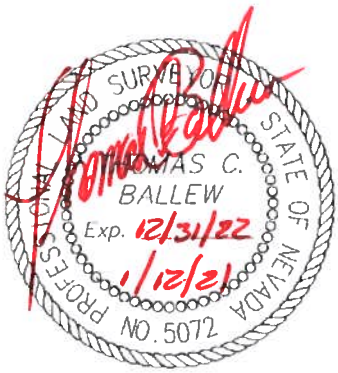
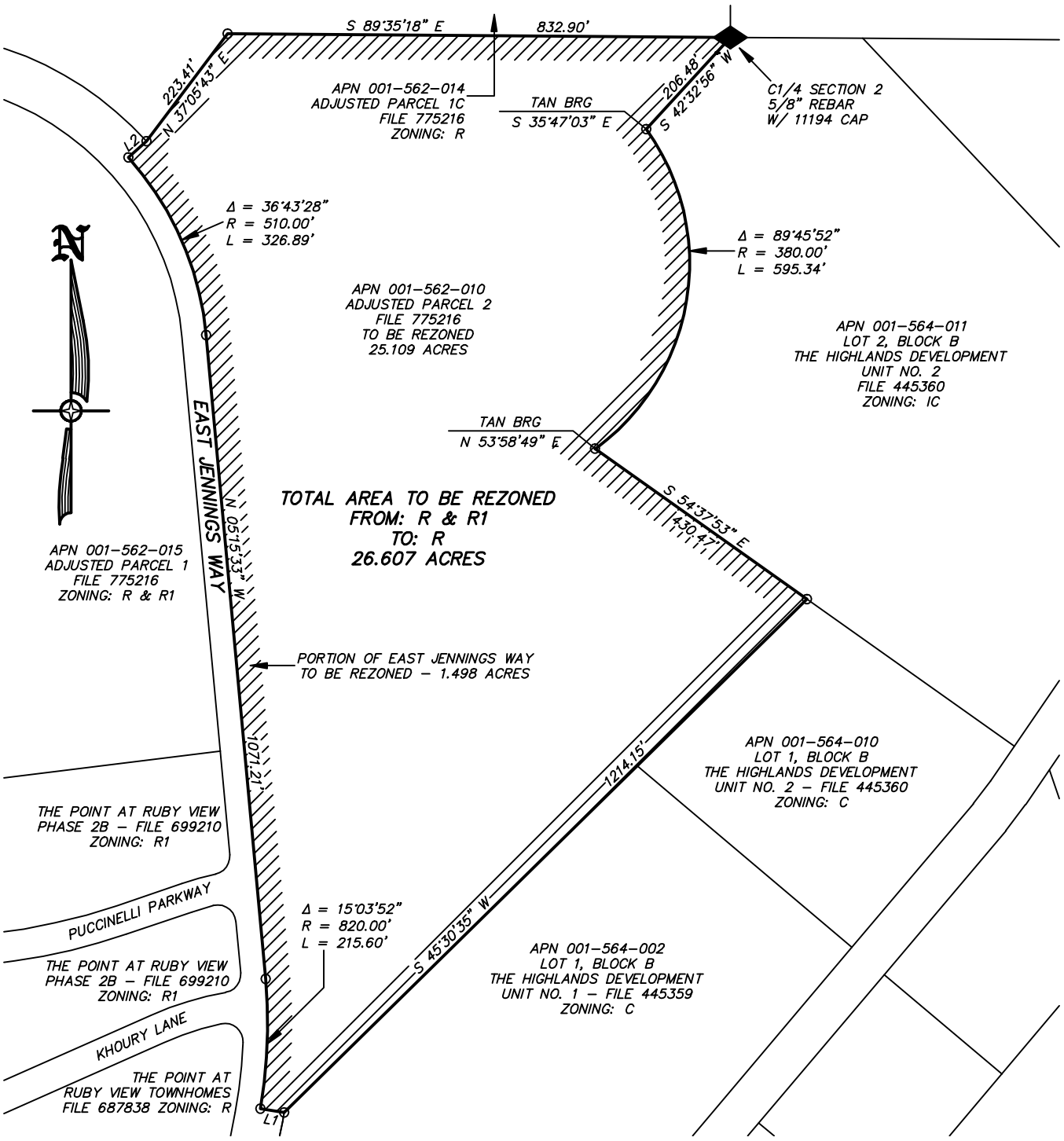




LINE TABLE		
LINE	BEARING	LENGTH
L1	N 80°11'41" W	40.00'
L2	N 48°00'59" E	40.00'

250' 0 250'

SCALE: 1"=250'

HIGH DESERT ENGINEERING LLC

EXHIBIT "B"

ZEPHYR HEIGHTS SUBDIVISION ZONING CHANGE

IN

SECTION 2, T.34 N., R.55 E., M.D.B.& M.

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on the 2020 Annual Report of Planning Commission activities. FOR POSSIBLE ACTION**

2. Meeting Date: **February 2, 2021**

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

4. Time Required: **10 Minutes**

5. Background Information: **Pursuant to City Code Section 3-4-23, the Planning Commission is required to prepare and present an annual report of its activities to the City Council.**

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

7. Supplemental Agenda Information:

8. Recommended Motion: **Move to approve the 2020 Annual Report of Planning Commission Activities as presented, and forward a recommendation to City Council to approve the report.**

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

10. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 2/2
Do not use pencil or red pen, they do not reproduce

Title: 2020 Annual Planning Commission Report
Applicant(s): City of Elko
Site Location: N/A
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A
COMMENT: This is to approve the 2020 Annual Planning Commission Report.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 1/21/21
No Comment

SAW
Initial

City Manager: Date: 1/27/21
No comments/concerns.

CW
Initial

City of Elko
Planning Commission
2020 Annual Report

Chairman Jeff Dalling
Vice-Chairman Evi Buell
Secretary Tera Hooiman
Commissioner John Anderson
Commissioner Gratton Miller
Commissioner Stefan Beck
Commissioner Giovanni Puccinelli

APPLICATIONS PROCESSED

A summary of the tasks and accomplishments of the City of Elko Planning Commission for the 2020 calendar year:

Application	2020	2019	2018
Annexations	0	1*	1
Boundary Line Adjustments (admin.)	5	6	0
Conditional Use Permits	4	13*	7*
Appeals (City Council)	1	1	0
Curb, Gutter, Sidewalk Waivers	0 (C.C.)	2 (C.C.)	2 (C.C)
Detachments	0	1*	0
Home Occupation Permits (admin.)	31	42	53*
Land Sales/Leases/Acquisitions (C.C.)	5	1	0
Parcel Maps (mostly administrative)	9	9	10
Parking Waivers	0	0	2
Reversions to Acreage (City Council)	0	0	1
Revocable Permits (mostly City Council)	4	1	5
Rezones	6	5	8
Site Plan Reviews	0	0	2
Subdivisions			
Pre-Applications, Stage 1	3	7	4
Tentative Maps	3	5	3
Final Maps	6	4	7
Temporary Sign Clearances (admin.)	2	4	2
Temporary Use Permits	1	1	2*
Vacations	4*	12*	4
Variances	4	4	13*
Appeals (City Council)	0	0	1
* see next page TOTAL	88	119	127

APPLICATIONS PROCESSED Cont.

Application	
Annexations	**1 – 2019 Annexation application withdrawn by applicant**
Conditional Use Permits	**1 – 2018 Conditional Use Permit Transfer from 2003**
	1 – 2018 Conditional Use Permit Transfer from 1986
	1 – 2019 Conditional Use Permit Transfer from 1995
Detachments	**1 – 2019 Detachment application withdrawn by applicant**
Home Occupation Permits (admin.)	**1 – 2018 application withdrawn**
Temporary Use Permits	**1 – 2018 application withdrawn**
Vacations	**8 – 2019 applications for the City of Elko NO CHARGE**
	1 – 2020 application pending
Variances	**1 – 2018 application refunded**

INTERACTION WITH and SUPPORT OF the REDEVELOPMENT AGENCY and the REDEVELOPMENT ADVISORY COUNCIL

- **Analyzed applications within the Redevelopment Area for general conformance with the Redevelopment Plan.**

- **Cathy Laughlin, as Redevelopment Manager, keeps the Planning Commission informed of redevelopment happenings in her monthly reports. In addition, Commissioner Dalling is a member of the Redevelopment Advisory Council.**

CITY OF ELKO
MASTER PLAN and other
PROJECT PLANS

- **Zoning revisions or clarification on properties throughout the City of Elko. (Ongoing)**

- **Review zoning for the RMH districts, revise map. (In progress)**

- **Master Plan Amendment No. 1-20 – Amend Atlas Map 8, Land Use Component, Transportation Component, & Atlas Maps 11 & 12**

- **Master Plan Amendment No. 2-20 – Amend Atlas Map 8 on S 5th Street & Amend Land Use Component by adding RO District to Downtown Mixed Use**

- **Master Plan Amendment No. 3-20 – Amend Atlas Map 8 on 6 parcels near W. Cedar & D Street, 1 parcel on Front Street, & 1 parcel on Ruby Vista & College Parkway.**

PLANNING DEPARTMENT FILING FEES COLLECTED

	2020	2019
Annexations	$ 0	$ 0
Boundary Line Adjustments	$ 800	$ 1,200
Conditional Use Permits	$ 3,325	$ 9,375
Curb, Gutter and Sidewalk Waivers	$ 0	$ 500
Home Occupation Permits	$ 1,550	$ 2,100
Parking Waivers	$ 0	$ 0
Parcel Maps	$ 2,275	$ 2,225
Reversions to Acreage	$ 0	$ 0
Revocable Permits	$ 1,600	$ 400
Rezones	$ 1,000	$ 2,500
Subdivisions	$ 11,450	$ 13,200
Temporary Use Permits	$ 300	$ 300
Vacations	$ 2,400	$ 2,400
Variances	$ 1,500	$ 1,750

TOTAL FEES COLLECTED FOR 2020
$26,200

2019 - $35,950 (difference of -$9,750)

Conditional Use Permits

Conditional uses are land uses that may be approved under the zoning code but only upon meeting specific conditions.[66] The conditional use permit (also called a "special use permit") allows a local agency to more closely review individual projects that could negatively affect neighboring land uses. Staff and the planning commission (or other review body) can then develop a set of conditions to minimize the impact before authorizing the development.

Common conditions on approval include limited hours of operation, road improvements, soundproofing, additional landscaping, and additional parking. The permit is granted on the land, not to the property owner, and will remain valid even if the property changes owners.[67] The original permit may provide that the agency can modify the permit terms in the future, subject to providing notice and a hearing.[68] A conditional use permit may be revoked for noncompliance or other reasons cited in the permit, subject to notice and a hearing.[69]

Variances

A variance is a limited waiver of zoning standards for a use that is already permitted within a zone.[70] Variances are considered only in extraordinary circumstances when the physical characteristics of a property, (such as size, shape, topography, location, or surroundings) or its use pose a unique hardship to the property owner.[71] A variance can only be granted in special cases where the strict application of zoning regulations deprives the owner of a use enjoyed by other property owners in the same zone.[72]

Economic hardship alone is an insufficient justification to approve a variance. A variance may not be used to permit a land use that is not otherwise allowed in a zone, such as a heavy industrial use within a residential zone. This would require a zoning change.

Floating and Overlay Zones

A zoning ordinance may include regulations for a type of zone that is not tied to any piece of property on the zoning map. This is referred to as a floating zone. The zone "floats" until such time that a property owner requests to have it applied to his or her land through rezoning. A common example is a mixed-use district. The zoning conditions associated with mixed-use development "attach" as soon as the proposal is approved.

An overlay zone, on the other hand, places additional regulations on existing zones within areas of special concern. Their boundaries are fixed and usually encompass all or part of multiple zones. Overlay zones are often used in floodplains, hillsides, near fault lines, around airports, and in other areas where additional regulations are necessary to ensure public safety. Overlay zones are also commonly applied to downtowns and historic districts to ensure a certain aesthetic character.

Planned Unit Developments

A planned unit development ("PUD") is both a zoning classification and a type of development. Also sometimes referred to as "planned communities," planned unit developments normally consist of individually owned lots with common areas for open space, recreation and street improvements. Conventional zoning standards are often set aside to permit a more imaginative use of undeveloped property, such as clustering residential uses or integrating compatible commercial and industrial uses. Any substantial alteration in the physical characteristics of the development usually requires that rezoning procedures be followed.[73]

Nonconforming Uses

There are two types of nonconforming uses: illegal and legal. Legal nonconforming uses — sometimes called grandfathered uses — are lawful uses that were in place prior to the adoption of the current zoning ordinance.[74] Such uses are generally permitted for as long as they operate lawfully.[75] However, the use typically is not allowed to expand or be replaced if voluntarily abandoned or accidentally destroyed.[76] The idea is to strike a balance between the notion of fairness (the use was lawful at the time of development) and the changed circumstances of the community (the use is no longer compatible with the character of the area).

A local agency may require that a legal nonconforming use terminate after a reasonable period of time (for example, after the investment has been amortized).[77] This allows the owner enough time to recoup the value of the investment in developing the property while also addressing the needs of the community.

On the other hand, *illegal* nonconforming uses are those that were built or started in violation of an existing zoning ordinance. Such uses are not allowed. Local agencies have the right to require that such uses be terminated immediately, regardless of the property owner's investment. Illegal nonconforming uses are usually addressed through code enforcement.

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Conditional Use Permits (2007) (www.ca-ilg.org/onepagers)

Land Use One-Pager: About Variances (2007) (www.ca-ilg.org/onepagers)

Governor's Office of Planning and Research

The Conditional Use Permit (August 1997), available at www.ca-ilg.org/opr

The Variance (July 1997), available at www.ca-ilg.org/opr

Other Resources

Government Code Section 65901 (accessible from www.leginfo.ca.gov/calaw.html)

Government Code Section 65906 (accessible from www.leginfo.ca.gov/calaw.html)

Subdivisions

A subdivision is any division of contiguous land into separate parcels for sale, lease, or financing.[78] Any land transaction that legally separates property into distinct ownership units in which long-term ownership rights can be vested is a subdivision. California's Subdivision Map Act[79] governs how local agencies oversee the subdivision of land. The process encourages orderly development and also protects against fraud by assuring that all subdivisions are recorded with the county recorder.[80]

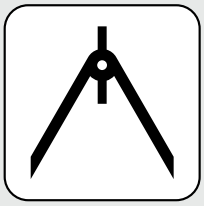
Each city, charter city, and county must adopt an ordinance that designates a local process for subdivision approval.[81] Local ordinances can be more restrictive than the Map Act so long as they are consistent with its provisions.

The Map Act contains two procedures to process subdivision applications based on project size. "Major subdivisions" — those with five or more parcels — require more formal procedures that involve filing both a tentative map and a final map for approval.[82] On the other hand, "minor subdivisions" — those that involve four or fewer parcels — require only a single parcel map (unless the local ordinance specifies that tentative maps be filed for minor subdivisions as well).[83] The reasoning for this distinction is that minor subdivisions are less likely to raise complex issues, such as traffic and infrastructure needs.

A tentative map depicts the design and improvement of the proposed subdivision and the existing conditions that surround it.[84] The local agency reviews the tentative map to see if it meets local subdivision and zoning requirements. The local agency may impose conditions of approval to ensure that the development of the project is consistent with the general plan, zoning, public works and building standards, and any environmental mitigation measures adopted for the project.[85]

COMPONENTS OF PLANNING

- The General Plan
- Zoning
- ✔ **Subdivisions**
- Design Review
- Environmental Review
- Development Agreements
- Dedications and Fees



Once the tentative map is approved, the applicant will then prepare a final map that is more technically correct and incorporates any conditions imposed by the local agency. All conditions must either be performed or guaranteed — by agreement, bond, letter of credit, or other financial security — before the final map can be approved.[86] An engineer usually reviews the final map.[87]

Approval of the final map is a ministerial act — meaning there is no discretion to reject the final map if all the conditions are met.[88] The approved final map is then recorded with the county and the applicant can proceed with the development.[89]

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pager: About Subdivisions (2007) (www.ca-ilg.org/onepagers)

Other Resources

Government Code Section 66411 and following (accessible from www.leginfo.ca.gov/calaw.html)

TYPES OF SUBDIVISION MAPS[90]

Parcel Maps

Procedures and approvals for parcel maps are left to local ordinance.[91] The primary difference between parcel maps and tentative maps is the number of conditions that can be applied. With a parcel map, a city or county can only impose requirements for the dedication of rights-of-way, easements, and the construction of reasonable off-site and on-site improvements for the parcels that are being created.[92]

Tentative Maps

Tentative maps typically illustrate the proposed design of the lots, public streets, sidewalks, parks, utilities, and other improvements. After a public hearing, the local agency may approve, conditionally approve, or deny the map. The agency may impose additional conditions that are consistent with the general plan and the zoning ordinance when approving a tentative map.[93]

Vesting Tentative Maps

Some tentative maps are filed as "vesting tentative maps."[94] This type of map confers a vested right to proceed with the development in accordance with the local ordinances, policies, and standards in effect when the local agency deemed the map application complete. Vesting tentative maps must be processed just like a standard tentative map. However, local agencies may impose additional application requirements and almost all do, which is why developers do not always use vesting tentative maps.

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Zoning Bulletin

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Visual Artist Rights Act

Did village have the right to enforce 'junk ordinance' when property owner displayed toilets as 'porcelain gardens'?

Citation: *Robar v. Village of Potsdam Board of Trustees, 2020 WL 5633824 (N.D. N.Y. 2020)*

Frederick "Hank" Robar sought injunctive relief against the Village of Postdam, New York's Board of Trustees, its mayor, deputy mayor, and individual board members, as well as Potsdam's code enforcement officer and administrator (collectively, the village). Robar claimed the village violated his First and Fourteenth Amendment rights under the Constitution by initiating an enforcement order pursuant to a local ordinance mandating the removal of "junk" from public view on his property.

TRASH OR ROBAR'S CONSTITUTIONALLY PROTECTED TREASURE?

Robar had repurposed toilets into garden displays on his property, calling them "porcelain gardens." The village saw the displays as junk, and under its ordinance, the storage of this "junk" was barred.

The village's ordinance was crafted on the notion that the outdoor storage of junk on privately owned property was detrimental to the health, safety and general welfare of the community. Therefore, junk needed to be removed or screened from public view. Violations of the ordinance were punishable by a fine of $250 and a maximum of $500 per offense.

Robar filed a lawsuit alleging constitutional violations and violations under the Visual Artist Rights Act (VARA), seeking a temporary restraining order and preliminary injunction to block the enforcement of the local code.

DECISION: Robar's request granted in part.

Robar met the elements for establishing that a preliminary injunction should be granted.

To show that a preliminary injunction should be granted, Robar had to show that:

- irreparable harm; and
- a likelihood of success on the merits or sufficiently serious questions on the merits;
- the public interest weighed in favor of granting the injunction; and
- the balance of equities tipped in his favor.

IRREPARABLE HARM

There was a presumption that First Amendment violations were irreparable. In

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Elrod v. Burns, "The Supreme Court ha[d] declared that 'the loss of First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury.' "

"Here, 'the very nature of [Robar's] allegations' establishe[d] irreparable injury," the court found. More specifically, he alleged that enforcing the junk ordinance "would abridge his First Amendment right to freedom of speech."

The village argued it wasn't calling for the complete removal of the porcelain gardens; it was only ordering them removed from public view. "But even assuming for the sake of argument that this interpretation of the Board Resolution is correct, [Robar] still establishe[d] irreparable injury," the court found because if Robar's argument was true, then "the forced removal of his porcelain gardens from public view, and not just their destruction, violate[d] the First Amendment."

The bottom line: Making Robar "relocate or somehow conceal the porcelain gardens pending the outcome of a trial on the merits would amount to a 'loss of First Amendment freedoms' for that time."

FIRST AMENDMENT VIOLATION

Robar's First Amendment claim had merit. Robar sought a "probationary" not a "mandatory" stay, so the " 'likelihood of success on the merits' standard applie[d]—nothing less and nothing more," the court wrote. He wasn't trying to get the village to "commit some positive act." Instead, he was trying to prevent the village from enforcing the ordinance against him.

Also, while Robar conceded he could likely relocate his porcelain gardens without compromising his artistic message, the village's order mandating the removal of all the gardens from public view was "likely unconstitutional."

THE BOTTOM LINE

- **artistic expression enjoyed First Amendment protection**; and
- **the question of whether artistic expression was entitled to constitutional protection turned on the expressive character (not the political significance) attributed to the work.**

The Second Circuit recognized "four traditional categories of visual art—specifically paintings, photographs, prints, and sculptures—[that were entitled to] the full and unquestioned protection of the First Amendment, as these forms of art [we]re inherently expressive."

"While the court [wa]s willing to accept . . . commonsense inferences as a justification for the removal of 'junk' from public view in general, [it could not] find, in the absence of any evidentiary support, that the removal of every porcelain garden advance[d] the asserted governmental ends more effectively than the removal or concealment of some of them." For instance, the village did not present "any particularized evidence indicating . . . that the porcelain gardens . . . ever posed a risk to any child as an attractive nuisance, or that they ha[d] contributed to falling property values, despite having recently conducted a public hearing in which these factual matters presumably were explored."

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

Robar didn't demonstrate a likelihood of success on the merits with respect to an Equal Protection claim. He alleged the ordinance was being selectively enforced against him. But, to demonstrate the validity of that claim, he had to show that when compared to similarly situated individuals the motivation to subject him to selective treatment was based on an intention to discriminate on an impermissible basis, such as race or religion, "to punish or inhibit the exercise of constitutional rights, or by a malicious or bad faith intent to injure."

Robar's Equal Protection claim was "based solely" on his assertion that the village hadn't enforced the ordinance against any other residents who publicly display repurposed

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junk art. But, he failed to identify any comparators, which was required to bring this type of claim.

VARA CLAIM

Robar's VARA claim failed. VARA provided the author of a visual work of art with the right for life to:

- "prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right"; and
- "prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right."

While Robar claimed the village threatened to destroy of his porcelain gardens, the village didn't "threaten to 'destroy' [the] porcelain gardens within the meaning of the statute." "[A]t most" the village was ordering the removal of the porcelain gardens from Robar's properties, not the destruction of them. Since Robar couldn't show the village sought to destroy—which at minimum "appeared" to mean irreparable damage, Robar couldn't demonstrate a likelihood of success with his VARA claim.

THE BOTTOM LINE

The balances of equity tipped in favor of granting Robar's request for a preliminary injunction. He faced "a significant hardship, namely, surrendering his right to political and artistic expression via his porcelain gardens," the court wrote.

But, the court also ruled Robar wasn't entitled to a declaration that his toilets weren't "junk" under the meaning of the ordinance.

The case cited is Elrod v. Burns, 427 U.S. 347, 96 S. Ct. 2673, 49 L. Ed. 2d 547, 1 I.E.R. Cas. (BNA) 60 (1976).

Case Note:

[T]he public interest and balance of the equities favor a preliminary injunction," the court ruled.

RLUIPA

Landowners claim city violated RLUIPA by denying applications to construct Buddhist meditation and retreat center

Citation: *Thai Meditation Association of Alabama, Inc. v. City of Mobile, Alabama, 980 F.3d 821 (11th Cir. 2020)*

The Eleventh U.S. Circuit has jurisdiction over Alabama, Florida, and Georgia.

After four individuals incorporated as the Thai Meditation Association of Alabama Inc. (TMAA), the organization applied for zoning permits to build a Buddhist meditation and retreat center in one of Mobile, Alabama's residential districts. There was public opposition to the proposal, and eventually the city of Mobile denied the permit applications.

A CLOSER LOOK AT THE FACTS

Mobile's zoning ordinance divided the city into 15 different types of districts, specifying for each the uses permitted "by right" and those requiring "planning approval." The ordinance stated that a "church or religious facility" was permitted by right in all business districts but needed planning approval to locate in a residential district. Therefore, before locating in a residential district, a church or religious facility had to obtain permission from Mobile's planning commission, which was responsible for determining whether the facility would be appropriate to the area, the court explained.

TMAA was associated with the Dhammakaya School of Buddhism, a sect of Theravada Buddhism headquartered in Thailand. TMAA's purpose was "teaching and research into growth and development of mind and spirit through meditation" and "expand[ing] the knowledge of Buddhism." And, those who participated in TMAA activities engaged in prayer, meditation, various religious ceremonies, and lectures.

TMAA also hosted weekly meditation classes, which included discussion of Buddhist scriptures and morality.

At first, TMAA operated out of a home in Mobile. But, a neighbor complained that a meditation center wasn't permitted by right in a residential zone, so that's when TMAA applied for planning approval.

The planning commission recommended denying TMAA's application, so it relocated in 2009 to a shopping center in a business district where it didn't need special zoning permission.

Upon moving, TMAA said it experienced several difficulties. For instance, it claimed the traffic noise from the busy street on which the shopping center was located interfered with meditation. It also contended the building was too small for classes and lectures and didn't have space for visiting monks to stay for overnight retreats.

That's when TMAA began to look for a new place to call home. It bought a 6.72 parcel of land, which contained a 5,000-square foot house, on Eloong Drive, which was residentially zoned. As a result, TMAA required city approval prior to constructing its facility, so it submitted applications for approval of:

- a 2,400-square-foot meditation building;
- a 2,000-square-foot cottage to host visiting monks;
- a 600-square-foot restroom facility; and
- parking for the facility.

Neighbors opposed the application. Most cited traffic and environmental concerns, but some spoke out about Buddhism generally. They also questioned whether TMAA's proposed use of the property was religious in nature or whether it was more akin to a commercial venture, like a yoga studio, which would have been barred from a residential district.

Ultimately, the planning commission, by unanimous vote, denied TMAA's application. It appealed to the city council, which upheld the decision.

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TMAA filed suit against the city alleging violations of the Constitution's Free Exercise and Equal Protection Clauses, the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), and state law.

The lower court rejected TMAA's claims. TMAA appealed to the Eleventh U.S. Circuity Court of Appeals.

DECISION: Affirmed in part.

The lower court didn't clearly err in concluding that TMAA had failed to show that the city intended to discrimination the basis of religion. It was unlawful for the government to "impose or implement a land use regulation that discriminate[d] against any assembly or institution on the basis of religion or religious denomination," the court explained. And, under the Constitution, no state could "deny any person within its jurisdiction the equal protection of the laws."

The lower court rejected TMAA's nondiscrimination and equal-protection claims following a bench trial. "In so doing, the court analyzed the two claims together, reasoning that the governing legal standards are 'nearly identical.' . . . [and] the . . . court concluded that [TMAA] hadn't demonstrated . . . that the [c]ity officials who had rejected their applications were motivated by discriminatory intent" based on factors outlined in the Supreme Court's ruling in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*

In Arlington Heights, the Court had provided a list of factors to consider when determining if discriminatory intent motivated an allegedly discriminatory action. These included:

- "any disproportionate 'impact' caused by the decision";
- "the decision's 'historical background' ";
- "the 'specific sequence of events leading up' to the decision";
- " 'departures from the normal' decision-making process"; and
- "any 'legislative or administrative history' in the form of contemporary statements by the decisionmakers."

Here, TMAA "emphasize[d] that there was strong community opposition to the meditation center's location in a residential district and that [c]ity officials 'respon[ded]' to that opposition by rejecting the zoning applications," the court explained. For certain, "the record [wa]s replete with evidence that could reasonably be understood as reflecting local residents' anti-Buddhist sentiment," it added, noting that there was evidence some residents said things like "[W]e don't want Buddhism" and "Oh, so you're bringing a big Buddhist congregation into the area, are you?"

But, it wasn't "enough . . . for [TMAA] to show that community members opposed their applications on prohibited grounds." It also had to "prove that the city officials who rejected [it had] acted with discriminatory intent," the court noted.

The bottom line: The "residents' purported bias to city officials absent at least some proof that the officials 'ratified' it wasn't enough to meet TMAA's burden of establishing a valid RLUIPA claim." "The closest, it seems," to support TMAA's case was a comment by the city attorney: "This is not a religious facility."

Ultimately, the court concluded that based on the evidence in the record it couldn't find that the lower court had "committed clear error in finding that [TMAA had] failed to prove that a majority of the members of either the [p]lanning [c]ommission or the [c]ity [c]Council acted with an intent to discriminate . . . on the basis of religion." For that reason, TMAA didn't have valid claims under RLUIPA's nondiscrimination provision and the Equal Protection Clause.

CASE NOTE

The Eleventh Circuit vacated a portion of the lower court's decision rejecting TMAA's claims under "RLUIPA's substantial-burden provision, the Free Exercise Clause, and the Alabama Religious Freedom Amendment."

'SUBSTANTIAL BURDEN' ANALYSIS

"RLUIPA's substantial-burden provision state[d] . . . 'No government shall impose or implement a land use regulation in a manner that imposes a *substantial burden* on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution—(A) is in furtherance of a compelling interest; and (B) is the least restrictive means of furthering that compelling governmental interest."

The Eleventh Circuit concluded it was "clear" TMAA was "engaged in 'religious exercise' within the meaning of RLUIPA," and it agreed with the lower court that TMAA's "building [of] a center with the alleged purpose of teaching Dhammakaya meditation f[ell] squarely within RLUIPA's definition of 'religious exercise.' "

But that wasn't the end of the inquiry. The key question to answer was whether the city's denial of the rezoning application imposed a "substantial burden" on TMAA's religious exercises. Maybe the denial did impose a substantial burden, the court found. "What we know for certain is that in holding that [TMAA] had *not* demonstrated a substantial burden, the [lower]t court misapplied the standard" the Eleventh Circuit had previously established in *Midrash Sephardi Inc. v. Town of Surfside*, where the court found that a zoning ordinance excluding churches and synagogues from a business district that permitted private clubs and lodges didn't violate RLUIPA's substantial-burden provision. In *Midrash*, the court ruled that "a 'substantial burden' must place more than an inconvenience on religious exercise,' that 'a 'substantial burden' [wa]s akin to significant pressure which directly coerce[d] the religious adherent to conform his or her behavior accordingly,' and that 'a substantial burden c[ould] result from pressure that tend[ed] to force adherents to forego religious precepts or from pressure that mandates religious conduct.' "

Rather than answering the underlying question, the court sent the case back to the lower court to determine the answer under the proper standard.

FREE EXERCISE CLAUSE

The court also vacated the lower court's decision reject-

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ing TMAA's Free Exercise Clause claim at the judgment-without-a-trial phase of litigation. In TMAA's view the city's denial of the zoning application violated the First Amendment's Free Exercise Clause, which applied "to states and localities through the Fourteenth Amendment [and] provide[d] that 'Congress shall make no law . . . prohibiting the free exercise [of religion].' "

"Rather . . . than independently evaluating the free-exercise issue, the [lower] court simply cross-referenced its analysis of [TMAA's] substantial-burden claim under RLUIPA, concluding (1) that 'the burdens [it] experience[d] [we]re nothing more than inconveniences incidental to [the [c]ity's] denial of the [a]pplications,' and (2) that the [c]ity's denial 'd[id] not restrict [TMAA's] current religious practice but, rather, prevent[ed] a change in [its] religious practice.' "

Because the lower court had "expressly tether[ing] its rejection of [TMAA's] claim under the Free Exercise Clause to its treatment of [its] substantial-burden claim under RLUIPA," that portion of the decision was sent back for reconsideration, too.

The cases cited are Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977); and Midrash Sephardi, Inc. v. Town of Surfside, 366 F.3d 1214 (11th Cir. 2004).

Practically Speaking:

The Eleventh Circuit ruled the lower court had "applied the wrong standard in evaluating [TMAA's] claims under RLUIPA's substantial-burden provision and the Free Exercise Clause." Thus, it sent the case back for further proceedings for the lower court to "reconsider those claims . . . under the proper standard." The lower court, however, "properly rejected the . . . claims under RLUIPA's equal-terms and nondiscrimination provisions and the Equal Protection Clause."

Rezoning

Homeowners to adjacent lot seek to block developer's request to rezone for commercial development

Citation: *Sullivan v. Village of Glenview, 2020 IL App (1st) 200142, 2020 WL 6483137 (Ill. App. Ct. 1st Dist. 2020)*

In 1988, the Village of Glenview, Illinois passed an ordinance that homeowners claimed paved the way for commercial zoning on a residential property adjacent to theirs. They grew concerned after real-estate developer GW Property Group (GW) filed an application for rezoning of the property, along with an application for commercial development of that property on May 24, 2019.

The homeowners filed suit against the village seeking declaratory judgment to invalidate the 1988 municipal ordinance.

The lower court dismissed the homeowners' complaint as time-barred, based on a 90-day limitations provision in the Municipal Code that governed challenges to municipal zoning "decisions."

The homeowners appealed.

DECISION: Reversed.

The limitations period outlined in the municipal code wasn't applicable because the 1988 ordinance wasn't a "decision" to rezone; the lawsuit, therefore, was not time barred.

"An ordinance that requires a new application for rezoning before it can take effect, and which first requires the approval of that new application by the board of trustees, is not a 'decision' to rezone under [the applicable section] of the Municipal Code," the court found. The ordinance at issue, thus, didn't fall within that limitations provision. "Whatever else may be true of this lawsuit in our light of our ruling, we can safely say it is not time-barred. The judgment of the circuit court is reversed," the court wrote.

A CLOSER LOOK AT THE PROPERTY IN DISPUTE

The property in dispute was located at 2660 Pfingsten Road in Glenview and known as the "Hart property." The Hart property was included among other parcels of contiguous property, totaling about 60 acres, that the village of Northbrook, Illinois sought to annex in early February 1988 by starting involuntary annexation proceedings.

Before the annexation was formally concluded, various owners of the parcels of disputed property asked the village of Glenview to annex the property

On February 15, 1988, Northbrook's board of trustees adopted an ordinance annexing all the disputed property.

Then, on March 1, 1988, Glenview did the same thing as Northbrook, adopting four annexation ordinances, including all of the disputed property. The properties were located at or near the intersection of Willow and Pfingsten Roads in Glenview and included two different parcels with Willow addresses (Ordinances 2849 and 2850), the northwest corner of Willow and Pfingsten Roads (Ordinance 2851) and our subject property at 2660 Pfingsten Road, which we are calling the Hart property (Ordinance 2852).

A week after Glenview annexed the four properties, Glenview's plan commission held a public hearing on the question of rezoning the four newly annexed parcels of land.

On March 15, 1988, Glenview adopted four ordinances rezoning these parcels of property. Some were rezoned as a business district; some an amended from of residential district.

At issue in this case was Ordinance 2856, which purported to rezone the Hart property from its current status of "R-1 Residential District" to "B-1 General Business District" primarily, with the southern boundary to be rezoned "R-4 Residential District."

Ordinance 2856 provided several benefits and privileges to the existing homeowners (the Hart family). Namely, it granted them the right to:

- run a water service line to the Hart property without charge;
- continued use of well water on the Hart property;
- the use of existing driveways on the property; and
- install a sewer system.

Also, the court noted, "more importantly and . . . unlike

the other three companion zoning ordinances adopted on the same day, Ordinance 2856's purported rezoning language *did not take effect immediately*. In other words, the day after Ordinance 2856 was adopted, the Hart property remained zoned as R-1 Residential District. And it remained that way for a good 31 years."

"At no time between March 15, 1988, and May 23, 2019 did the landowner file any permits or applications to rezone the Hart property or develop commercial construction, nor was Glenview's zoning map ever amended to reflect a zoning change to the Hart property," the court added.

THE BOTTOM LINE

"Ordinance 2856's rezoning language expressly conditioned rezoning of the Hart property on future action by the landowner. What, exactly, that further landowner action entailed [wa]s the subject of dispute between the parties and [wa]s the ultimate basis for our resolution of this appeal."

Here, "[n]obody tried to do anything of this nature with the Hart property for 31 years. Nobody has acted in reliance on this (non-)zoning ordinance since 1988, with the possible recent exception of GW Property Group, who apparently purchased the Hart property with the intention of commercial development," the court noted. "And as we have said, anyone paying attention to the zoning map and to the zoning ordinances, particularly Ordinance 2856, would understand that nothing *would* happen unless the owner of the Hart property submitted to the ordinary legislative municipal zoning process—a process in which they could play a part by objecting and presenting evidence and argument at the various hearings before the various boards and commissions that make up the process."

Special Use Permit

Did county board of commissioners overstep in reversing or modifying conditions zoning BOA outlined for granting SUP application?

Citation: *Montanans for Responsible Land Use v. Board of County Commissioners of Cascade County, Montana Eighth Judicial District Court, Cascade County, No. BDV-1900813 (2020)*

A Montana court has granted a group called Montanans for Responsible Land Uses (MRLU) request for judgment without a trial against Cascade County, Montana's Board of County Commissioners (BCC). The case arose after Big Sky Cheese LLC (BSC) filed a special use permit (SUP) application to Cascade County for a value-added agricultural commodity processing facility on land that Madison Food Park LLC (MFP) owned.

The county's planning board issued a staff report on the SUP application to the county's Zoning Board of Adjustments (ZBA). Following a hearing and public comment, the BOA unanimously approved the SUP application subject to 17 conditions being met.

BSC submitted a letter to the BCC appealing nine of the 17 conditions. And, MRLU sent a letter to the BCC supporting a decision to uphold the BOA's findings.

The BCC held a hearing to discuss the appeal, and no public comments were taken.

Then, the BCC issued a written decision, within which nine of the conditions were reversed or modified.

As a result, MRLU filed suit against the BCC. It contended the BCC had failed to follow the applicable standard of review. In its view, the BOA had not abused its discretion in conditioning the SUP application because its reliance on "fact and foundation" was reasonable.

BCC asserted that it had acted within its authority in modifying the conditions that the BOA had placed on the SUP application.

DECISION: MRLU's request for judgment without a trial granted.

The record showed "a factual foundation for the BOA's imposed conditions, and therefore, the Commissioners abused their discretion in re-weighing the evidence before the BOA and modifying, reversing, or remanding BOA's conditions," the court found.

The BCC's review should have been limited to determining if the BOA had abused its discretion in reaching its decision that the nine conditions were necessary in order for it to grant the SUP. Instead, the BCC had "essentially conducted [its] own de novo review, making . . . findings and exercising [its] own discretion to reach an alternative decision." The court explained.

A CLOSER LOOK

The applicable zoning rules stated that any aggrieved party could present a BOA decision to the BCC "setting forth that the decision [wa]s illegal, in whole or part, and the *specifying grounds of the illegality.*" In this case, the BOA had "followed the standards . . . [for] reviewing, approving, and placing conditions on the SUP Application."

While BSC had the right to appeal all or part of the BOA's decision, the BCC overstepped in substituting the BOA's judgment with its own where the BOA had acted in accordance with the applicable rules. In other words, unless there was an illegal determination found in the BOA's order—and thus an abuse of discretion—the BCC should have let the BOA's decision stand.

PRACTICALLY SPEAKING

With the court's ruling, the BOA's determination as to the conditions for granting the SUP were affirmed and the BCC's decision was reversed.

THE BOTTOM LINE

An abuse of discretion could be proved by showing there wasn't a "factual foundation for the conditions" the BOA imposed on BSC. If no illegality was present, the BCC did not have the power to "remand, reverse or affirm, or modify the decision of the BOA."

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Zoning News from Around the Nation

California

City council upholds decision to deny request to turn a spa into an inmate reentry facility

Upward Housing LLC (Upward) had plans to convert the Desert Rain Spa Hotel into an inmate-reentry facility. The idea was that the facility is where the inmates would finish out their sentences with the California Department of Corrections and Rehabilitation, through its Male Community Reentry Program.

But, it's unlikely those plans will come to fruition now that the Desert Hot Springs City Council has voted unanimously to stand by the planning commission's denial of the request to zone the property so it could house inmates in needs of counseling or treatment who have 15 or fewer months left on their sentences, the *KESQ* reported recently.

In the city's view, the building at issue is designed for visitors and tourists since it's within the "Visitor-Service Commercial Zone," the news outlet noted. Upward Housing is appealing the city council's decision. It contends the proposal meets the "social services facility" definition.

Source: kesq.com

Connecticut

Request to open up a package store gets green light in Bridgeport

After a six-year dispute over a city councilman's request to open up a liquor store in Bridgeport, Connecticut's North End neighborhood, a judge has ruled in favor of the necessary zoning changes to permit the business' operation at that location, *The Register Citizen* reported recently.

The city pushed back on request for a zoning variance contending that because the structure was located with 1,500 feet of churches and a day care city regulations did not generally permit this type of business there.

Source: registercitizen.com

Indiana

More on *Midwest Entertainment Ventures Inc. v. The Town of Clarksville*

In the last edition of *Zoning Law Bulletin*, we covered *Midwest Entertainment Ventures Inc. v. The Town of Clarksville*, which raised the issue of whether Clarksville, Indiana was entitled to an injunction based on alleging violations of local zoning and recently enacted sexually oriented business ordinances.

You may recall the case involved Midwest Entertainment Ventures, Inc. (MEV) engaged in business as Theatre X (MEV) at 4505 Highway 31 East in Clarksville, Indiana, and that AMW Investments, Inc. (AMW) owned the real estate at that address and leased the building to MEV.

In ruling that the lower court did not err in granting Clarksville's request for a preliminary injunction, the appeals court explained that MEV and AMW "seem[ed] to misunderstand the scope of this interlocutory appeal."

"In their notices of appeal, MEV and AMW identified the order being appealed as the order granting the preliminary injunction. However, in their briefs, MEV and AMW ask th[e] [c]ourt to vacate both the order denying their motions to dismiss and the order granting the preliminary injunction, and to strike the [t]own's counterclaims and answer and the testimony and exhibits presented during the hearing on the motions," it added.

"Here, the order granting the preliminary injunction [wa]s appealable as a matter of right under [the applicable appellate court rule], but the order denying MEV's and AMW's motions to dismiss [wa]s not an order that [wa]s appealable as matter of right," the court added. Also, the order denying their requests to dismiss hadn't been certified by the lower court for interlocutory appeal.

The practical impact was that the appeals court's review in this interlocutory appeal was limited to the order granting the preliminary injunction.

The case cited is Midwest Entertainment Ventures, Inc. v. Town of Clarksville, 2020 WL 6154301 (Ind. Ct. App. 2020).

Montana

Signs in the spotlight in Butte-Silver Bow

How many signs should be permitted? How big can those signs be? Where can they be located? Can they be lit up? These are just a few questions the county of Butte-Silver Bow seeks to answer through a comprehensive examination of a local sign ordinance, *The Montana Standard* reported recently.

The county council chief executive recently named four county officials and two commissioners to sit on the Local Sign Ordinance Committee, the news outlet reported. The committee is expected to provide recommendations on how to update rules and regulations pertaining to the section of code governing signs.

The announcement came following a dispute stemming from a Community Enforcement Officer's conclusion that a woman couldn't have an extra sign on the side of her business, the news outlet reported. The business owner of Copper City Physical Therapy appealed the county planning board's finding that she violated local zoning laws by placing an additional sign on the side of the building.

After *The Montana Standard* shared the woman's story, many members of the public weighed in with comments critical of the Zoning Board and Council of Commissioners. The news outlet reported that many people were outraged by the local government's seemingly erratic enforcement.

Source: mtstandard.com

New Hampshire

Mixed-income neighborhoods being considered in city experiencing a housing shortage

According to economic planning and real estate consultancy RKG Associates Inc., which completed a study of Nashua, New Hampshire's housing situation, the city's population is expected to grow from around 87,000 to 96,000 over the next nine years. With a projected increase of close to 10%, city officials are currently exploring ways to address the growing need for an estimated 4,700 new housing (including apartment) units, the *Union Leader* reported recently.

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One potential solution is mixed-income neighborhoods, the news outlet reported. To accomplish a goal of inclusionary housing to create affordable housing for low-to-moderate income families, would likely require new zoning policies and code updates, the news outlet reported.

RKG's study also recommended the possibility of using public land to build housing and creating an affordable housing trust. In addition, continuing the practice of integrating accessory dwelling units may make sense for the city, the news outlet noted.

Source: *unionleader.com*

New York

One step closer to learning whether Upper West Side's 200 Amsterdam must scrap several stories from skyscraper

In November 2020, judges sitting on New York's Appellate Division, First Department heard arguments in the case concerning 200 Amsterdam. The 52-story skyscraper is at the center of a controversy alleging it should be required to take down 20 stories already constructed.

The project is constructed on an abnormal zoning lot, which allows several parcels to be treated as a collective unit for purposes of calculating permissible building heights.

We'll keep you posted on the court's ruling.

In other news out of the Empire State, property owners in Saratoga, New York were unsuccessful in their case to block a city's decision giving Saratoga Hospital the right to expand with a large facility in the neighborhood of Birch Run and Morgan Streets, the *Times Union* reported recently. A state judge ruled that while a change from urban residential zoning to institutional (OMB2) was up for debate, the neighbors didn't meet their burden of overcoming a presumption that the city's determination was valid, the news outlet reported.

Sources: *law.com; timesunion.com*

Virginia

Village maps removed from one comprehensive plan draft

The Rappahannock County Board of Supervisors has decided to omit village maps from its comprehensive plan draft, the *Rappahannock News* reported recently. The board will revisit the maps at a later date.

The decision came after individuals made calls and sent emails expressing concern over the maps. Stonewall-Hawthorne's supervisor told the news outlet that removing the maps was likely the right decision to avoid a situation where something "half-baked" may be adopted.

So, by consensus, the board approved a page 48 edit to the draft plan, stating that the aerial maps there intend to show the general vicinity but don't necessarily show specific zoning or other boundaries, the news outlet reported.

Source: *rappnews.com*

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Zoning Bulletin

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Indemnification

Insurer claims no duty to defend town and its officials in lawsuit stemming from zoning issue

Citation: *Argonaut Insurance Co. v. Town of Greenburgh, New York, 2020 WL 5659469 (S.D. N.Y. 2020)*

Argonaut Insurance Co. (AIC) filed suit against the Town of Greenburgh, New York, its two board supervisor, and a town board member (collectively, the town) claiming that pursuant to the Declaratory Judgment Act (DJA) didn't have a duty to defend or indemnify the town in a federal lawsuit S&R Development Estates LLC (S&R) had filed against the town.

S&R's UNDERLYING CLAIMS STEMMED FROM ZONING MAP ISSUE

In May 2006, S&R bought a 2.3-acre parcel in the unincorporated section of town known as Edgemont. The property was located close to Central Avenue, a main road that was zoned as part of the "Central Avenue Mixed Use Impact District" (CA zone). This zoning designation allowed for the development of multi-family residential complexes, and S&R intended to develop a multi-unit residential complex on its newly acquired site.

But, S&R's plans came to a halt after the Town Department of Community Development and Conservation rezoned the property from CA to "R-20," which meant its parcel was now zoned within a "one family residence district" pursuant to the town code.

S&R's appeal to the Zoning Board of Appeals was unsuccessful, so it filed suit against the town. It contested the zoning designation under several provisions of federal and state law.

In 2008, a federal court dismissed the lawsuit. It found the federal claims S&R had asserted weren't "ripe" for review because it had not yet applied for a variance following the rezoning. The court also declined to exercise jurisdiction over the remaining state law claims.

At the time of this litigation, National Union Insurance Company of Pittsburg (National Union) insured the town. National Union paid to defend the town in the 2007 lawsuit.

But, S&R wasn't done with the town or with litigation. For instance, in 2008, it filed for a use variance to build a "four-story, 87-bedroom, multi-family, affordable rental housing development on the [p]roperty."

After the town resisted its request, it filed an "Article 78 proceeding" in state court in 2009 challenging the R-20 zoning designation. The court ruled the zoning determination was "not based on evidence and was arbitrary and capricious and based on community pressure and bad faith."

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In 2012, S&R filed an application for approval of a plan to develop "45 affordable housing units in one multi-family building." Thereafter, the town unanimously adopted a resolution instructing the Town Comprehensive Plan Steering Committee (TCPSC) to review the zoning map and make "any amendments thereto since 1980 and recommend changes to the Town Board."

The TCPSC found that the property should have been zoned as R-20 (rather than CA) and thus precluded S&R's planned development. The town then asked for a temporary restraining order to prevent the TBP from addressing S&R's site plan application, which was denied. And, several residents of a condominium complex adjoining the property sought an injunction to halt the town planning board's review of S&R's site plan for affordable multi-family housing on the neighboring property.

Also, a community activist group opposed to S&R's development plans met with the town, which stated it would be moving ahead with an attempt to change the official zoning status of the property from CA to R-20, despite the court's decision on the matter.

Then, in May 2012, the town board, during a special meeting, "directed S&R to undertake numerous time consuming and expensive tasks as a condition of continuing to review its site plan" . . . to delay and provide "ample time to effect the rezoning of the [p]roperty." A town attorney conceded that multi-family housing was an appropriate use of the property but the activist group was driving the "politics" of the town's decision.

Subsequently, the town board approved the rezoning of the property from CA to R-20, and a judge granted S&R's request to dismiss the residents request for an injunction. The judge found that the claims were barred by "collateral estoppel" and because the town's recent rezoning of the property to R-20 had been ineffective.

The town appealed that ruling, and the appellate division denied its application to stay the judge's orders in the 2009 and the other action.

S&R filed another lawsuit in 2013 against the town alleging town officials engaged in a continuous effort to block S&R's development of the property despite judicial orders, including through manipulation of the zoning map.

The town asked the U.S. District Court for the Southern District of New York to dismiss the action.

DECISION: Request for dismissal denied.

Specific language in the applicable insurance policy—as applied to claims in the underlying action that S&R filed—"would support a declaratory judgment regardless of further factual determinations." In other words, the court didn't need to "address the panoply of additional possible bases for a declaratory judgment advanced by [AIC] and hotly contested by [the town]."

A CLOSER LOOK

The town argued the lawsuit should be dismissed—or at the very least delayed as premature—because the resolution AIC sought was dependent on unresolved factual issues in S&R's underlying lawsuit against the town.

AIC asserted that the policy's inapplicability was apparent from the policy's language on its face, as well as from the complaint in S&R's lawsuit.

Under state law, an insurer had "distinct duties to indemnify and to defend its insured. The duty to defend [wa]s broader than the duty to indemnify." For example, the duty to defend was generally triggered when a lawsuit was filed, but the duty to indemnify arose once a determination as to liability had been made.

Therefore, to determine if a duty to defend had been triggered, the court would look at the allegations of the complaint in relation to the insurance policy's terms. Here, under the town's insurance policy with AIC was effective for December 31, 2015 to December 31, 2016. The policy covered:

- public risk general liability (PRGL); and

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- public officials' liability (POL).

Both categories "provide[d] coverage to the [t]own's agencies, boards and commissions, and members of the same acting in their official capacities . . . for certain categories of conduct occurring after December 31, 2012," the court explained. And, the policy stated "explicitly that coverage d[id] not 'apply to claims which arose from a wrongful act commencing before. . . 12/31/2012.' "

Further, the PRGL part of the policy indicated that AIC didn't have a duty to defend the town for any lawsuit seeking "loss" for property damage to which the insurance didn't apply.

Regarding POL coverage, AIC had a duty to pay for a loss resulting from public officials' wrongful acts for which the insurance policy applied. But, the coverage only applied to "liability for claims *first* made against [the Insured] while the coverage [wa]s in force."

Ultimately, the court found that "there [wa]s no prudential reason to delay proceedings in this case." "By its express terms, the [p]olicy exclude[d] from coverage all claims in the [u]nderlying [a]ction. The exclusion d[id] not turn on facts to be determined in" that lawsuit. "Rather, the exclusion [wa]s the inexorable result of the [p]olicy's clear language, and the relationship between the claims raised in the [u]nderlying [a]ction and those raised in S&R's previous lawsuits."

Case Note:

This lawsuit was "a paradigmatic example of a case where 'questions about insurance coverage . . . c[ould] be separated from the issues of liability and causation that are being litigated in the underlying lawsuit.' "

Variance

County digs heels in on issuing letter requested in support of waste management company's desire to operate transfer station

Citation: *Monster Trash, Inc. v. Owen County Council, 152 N.E.3d 630 (Ind. Ct. App. 2020)*

Monster Trash. Inc. (MTI) sought judgment in its favor after the Owen County (Indiana) Board of Zoning Appeals, the Owen County Council, and the Owen County Commissioners (collectively, OCC) refused to issue a document required for it to obtain a state license to operate a proposed waste transfer station on its property.

The Circuit Court of Morgan County entered judgment in the county's favor. MTI appealed.

DECISION: Reversed; case sent back for further proceedings.

The OCC erred in not issuing the requested letter necessary in support of MTI's application for the proposed transfer station—and, there were three reasons why, the Court of Appeals of Indiana concluded.

1) **The applicable zoning and subdivision control ordinance didn't bar MTI from operating the proposed transfer station on its property,** the court found, noting that the case turned on the interpretation of the applicable OCC ordinance.

"While the ordinary rules of statutory construction apply in interpreting the language of a zoning ordinance, an agency's construction of its own ordinance is entitled to deference," it explained. The "express language of the ordinance control[led] [the court's] interpretation, and [its] goal [wa]s to determine, give effect to, and implement the intent of the enacting body, . . . [and] [w]hen an ordinance [wa]s subject to different interpretations, the interpretation chosen by the administrative agency charged with the duty of enforcing the ordinance [wa]s entitled to great weight, unless that interpretation [wa]s inconsistent with the ordinance itself," it added.

Here, the applicable ordinance covered non-permitted uses in the following fashion: " All junkyards, race tracks, waste incinerators, and waste transfer stations (not licensed and approved by the State of Indiana) are non-permitted uses in the Owen County Jurisdictional Area, which prohibition cannot be removed by an appeal for a use variance to the Owen County Board of Zoning Appeals."

Here, the zoning board of appeals refused to issue the requested document because it interpreted the ordinance "as absolutely prohibiting the operation of a solid waste transfer station on the [p]roperty." "[B]ut this is simply not true," the court ruled.

For instance, subsection 3.5 of the ordinance "clearly provide[d] that such stations [we]re prohibited unless they [we]re 'licensed and approved by the State of Indiana[,]' which mean[t] that they [we]re, in fact, *not* absolutely prohibited."

Subsection 3.5 of the ordinance "clearly provide[d] that such stations [we]re prohibited unless they [we]re 'licensed and approved by the State of Indiana[,]' which mean[t] that they [we]re, in fact, not absolutely prohibited."

The OCC contended MTI could have applied for a variance to operate the transfer station on the property, but this also was not true, the court ruled. That's because Subsection 2.5 also provided that "variances allowing non-permitted uses c[ould not] be issued."

Thus, getting a state-issued license was "the only way to legally operate a waste transfer station in the Owen County Jurisdictional Area, and applying for a variance would change nothing."

2) The OCC's decision not to issue the requested document was arbitrary, capricious, and an abuse of

discretion. "In light of the fact that 'zoning requirements' [w]re not, in fact, required to operate a solid waste transfer station on the [p]roperty (and indeed, not even relevant), we have little trouble concluding that not only is the [c]ounty's refusal to issue the requested document *not* in accordance with the clear provisions of subsection 3.5, it also qualifie[d] as arbitrary, capricious, and an abuse of discretion," the court ruled.

The bottom line on this issue: The court could not conceive of any "legal justification for refusing to issue a document that d[id] nothing more than accurately state the law," so the OCC's refusal to grant the requested document was in error.

3) MTI had been prejudiced by the OCC's refusal to issue the document. The company had "clearly shown prejudice resulting from the refusal, as it [wa]s entirely possible that the [OCC's] refusal [wa]s the only thing keeping [MTI] from obtaining their [s]tate-issued license at this point," the court found.

PRACTICALLY SPEAKING

The court gave the local board of zoning appeals 30 days to issue a document to the applicable state agency and/or MTI "confirming that zoning requirements [we]re not required for the location of a solid waste transfer station on the [p]roperty."

Case Note:

The document at the root of this lawsuit stemmed from an Indiana Department of Environmental Management request for MTI to obtain a letter from the OCC indicating that no rezoning or variance would be necessary to operate the proposed waste transfer station on its property.

Conditional Use Permit

Denial of request to operate residential drug treatment facility challenged in court

Citation: *West Easton Two, LP v. Borough Council of West Easton, 2020 WL 5749945 (E.D. Pa. 2020)*

West Easton Two LP (West Easton) sought a permit to operate a residential treatment center and drafted a proposed ordinance that would permit such use for the Borough Council of West Easton to consider (Borough Council).

The Borough Council went forward with enacting an ordinance with specific criteria pertaining only to residential treatment centers. The ordinance—No. 966, which was adopted in September 2013—stated that:

- the residential treatment center could not distribute methadone to patients on an outpatient basis;
- a third party must drop off and pick up any patients entering or leaving the center; and
- any patient residing at the center must pay a $150 temporary resident fee.

Subsequently, the Borough Council denied West Easton's three conditional-use applications in 2017 following heated hearings when several residents and council members expressed concern over having a residential treatment facility in the small town.

In a lawsuit, West Easton claimed the ordinance, on its face, violated the Fourteenth Amendment's due process and equal protection clauses, the Rehabilitation Act, and the Americans with Disabilities Act (ADA).

The Borough Council asked the court for judgment without a trial.

DECISION: Request for judgment denied.

There were issues of material fact that precluded judgment at this stage of the litigation.

SUBSTANTIVE DUE PROCESS

"The analysis of the substantive due process claim first provides an overview of the standard in a substantive due process challenge, and, second, applies this standard to this case," the court explained.

For West Easton to succeed on the grounds that an ordinance on its face violated substantial due process, it had to "allege facts that would support a finding of arbitrary or irrational legislative action." Plainly put, it had to show that the enacting of the ordinance "in and of itself, violate[d] the Due Process Clause" of the Constitution.

To withstand a substantive due-process challenge, the Borough Council generally had to assert "a legitimate state interest that the legislature could rationally conclude was served by" the ordinance.

West Easton also argued it had an "as applied" substantive due process claim. This was a higher burden to meet than for establishing a facial substantive due process claim, the court explained. Specifically, it had to allege facts demonstrating misconduct that could be construed as "shock[ing] the conscience."

Ultimately, the court denied the Borough Council's request for judgment on both the facial and as-applied substantive due process claims. Here's why:

- **West Easton alleged and produced evidence in support of its position that the Borough Council had acted irrationally and in an arbitrary manner in enacting the ordinance;** and
- **it had presented evidence that the "denial of the . . . conditional use applications 'was motivated by antipathy toward' people suffering from addiction—**'conduct which may shock the conscience' " that, therefore, "create[d] a genuine issue of material fact sufficient to survive summary judgment."

'SUBSTANTIAL RISK TEST'

The court addressed the issue of the "substantial risk test," which was used to determining if an ordinance may be facially discriminatory against a particular group. It

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noted that the Borough Council had not discussed that test; rather, it explained that the ordinance wasn't discriminatory on its face "because it [wa]s 'rationally related to the Borough's legitimate state interest in promoting the health, safety, morals, and the general welfare of its citizens.' "

But, there was evidence that "as to why the [Borough Council] might perceive [West Easton's] clients to be a substantial risk," the court wrote. For instance, during a council hearing to discuss West Easton's conditional use application, "one council member worried about the fact that the Borough d[id] not have a police department yet, because a 'riot' could break out in this 'drug rehab' and there would not be anyone to call." That council member also expressed concern about building " 'this thing in our town' because he wondered '[h]ow much . . . the property value [was] going to hurt . . . taxpayers.' "

Also, at a second hearing, another council member expressed concern over West Easton's clients "getting out, walking the streets." That member stated, "We got young children going to school. Young children playing in the yards. I'm not happy with that part."

These concerns weren't sufficient to establish that there weren't issues of material fact as to whether West Easton's clients would be a substantial risk to the community. "While it is true that 'some methadone patients' might be 'inclined to criminal or otherwise dangerous behavior,' such a broad characterization does not justify forbidding all methadone patients from receiving outpatient methadone treatments and imposing on all residential treatment patients a $150 fee," which is what the ordinance the Borough Council enacted did.

As a result, the Borough Council wasn't entitled to judgment regarding the facial-discrimination claim brought under the ADA and the Rehabilitation Act.

PRACTICALLY SPEAKING

There were triable issues of materials fact as to whether the Borough Council had a "discriminatory intent in the manner in which" Ordinance 966 was implemented. For instance, "[t]he record [wa]s riddled with 'zoning official[s] . . . mak[ing] discriminatory comments about the disabled while explaining [their] basis for the contested decision,' which '[wa]s direct evidence of discrimination' because it '[wa]s evidence which, if believed, prove[d] that the decision in the case at hand was discriminatory—and d[id] so without depending on any further inference or presumption.' " And, the mayor who signed Ordinance 966 into law said "there's no reason why a druggie gets better treatment than a D. U. I. . . . person in the jail over there. As far as I'm concerned, they're no different and they're treated so loosely, it's unbelievable." These and other comments by other members of authority precluded judgment without a trial in the Borough Council's favor.

Sign Ordinance

Company challenges constitutionality of city's sign ordinance after application to erect two billboards is denied

Citation: *International Outdoor, Inc. v. City of Troy, Michigan, 974 F.3d 690 (6th Cir. 2020)*

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

International Outdoor Inc. (International Outdoor) wanted to erect two billboards in the City of Troy, Michigan. The city denied its application for a permit and then for a variance from the limitations mandated under the local sign ordinance.

International Outdoor filed suit against the city. It claimed the sign ordinance violated its First Amendment rights.

The lower court granted the city's request for judgment without a trial on the claim that the ordinance constituted an unconstitutional prior restraint. The court also dismissed a claim that the ordinance led to content-based restrictions without a compelling government interest. International Outdoor appealed.

DECISION: Vacated in part; case sent back for further proceedings.

The sign ordinance's variance scheme imposed an impermissible prior restraint on speech, and the ordinance imposed a content-based restriction, which was subjected to strict scrutiny on International Outdoor's First Amendment claim.

IMPERMISSIBLE PRIOR RESTRAINT ON SPEECH

"The First Amendment, applicable to states through the Fourteenth Amendment, protect[ed] freedom of speech from laws that would abridge it," the court wrote. "A prior restraint [wa]s any law 'forbidding certain communications when issued in advance of the time that such communications are to occur,' " it added.

Also, there was a presumption that prior restraints weren't valid. That's due to "the risk of censorship associated with the vesting of unbridled discretion in government officials and the risk of indefinitely suppressing permissible speech when a licensing law fails to provide for the prompt issuance of a license."

For prior restraint to be constitutional:

- **it had to be "content-neutral" and "narrowly tailored to serve a significant governmental interest,** and leave open ample alternatives for communication";
- **it could not "delegate overly broad licensing discretion to official decision-makers";** and
- **the decision as to whether to grant a permit had to "be made within a specified, brief period, and the status quo must be preserved pending a final judicial determination on the merits."**

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Here, the original sign ordinance "imposed a prior restraint because the right to display a sign that did not come within an exception as a flag or as a 'temporary sign' depended on obtaining either a permit from the Troy Zoning Administrator or a variance from the Troy Building Code Board of Appeals," the court explained.

Also, the standards for granting a variance included "multiple vague and undefined criteria." For example, it discussed terms like "public interest," "adversely affecting," "hardship," and "practical difficulty." And, even if a party requesting a variance met those criteria they weren't guaranteed a variance because the board had the discretion to deny such a request.

As a result, "[t]he variance scheme therefore gave unbridled discretion to the Troy Building Code Board of Appeals and did not meet the 'narrow, objective, and definite standards' required for constitutionality." From a practical standpoint, it provided the government with " 'substantial power to discriminate based on the content or viewpoint of speech by suppressing disfavored speech or disliked speakers,' allowing a facial challenge to the permitting scheme." Therefore, the sign ordinance constituted an unconstitutional prior restraint on speech.

CONTENT-BASED RESTRICTION

The lower court found that the speech at issue in this case—erecting advertising billboards—was commercial speech and wasn't subject to strict scrutiny. It ruled that the ordinance provisions should be subjected to "intermediate scrutiny"—which required the court to evaluate whether the challenged law furthered an important interest for the government and did so by means substantially related to that interest.

But, the court applied the wrong standard, the appeals court found. "[T]he [s]ign [o]rdinance imposed a content-based restriction by exempting certain types of messages from the permitting requirements, such as flags and 'temporary signs' that included on- and off-premises real-estate signs, 'garage, estate or yard sale' signs, 'non-commercial signs[,]' '[p]olitical signs[,]' 'holiday or other seasonal signs[,]' and 'constructions signs,' " the court wrote. "Thus, the ordinance regulated both commercial and non-commercial speech but treated them differently, requiring the City of Troy to consider the content of the message before deciding which treatment it should be afforded," it added.

The bottom line: "[F]or content-based restrictions on speech, strict and not intermediate scrutiny applie[d]."

Zoning News from Around the Nation

California

Report explores whether state's housing and community development department has exaggerated need for more homes

In a recently published report, the Embarcarado Institute concluded that Senate Bill 828, authored by state Sen. Scott Wiener in 2018, "has inadvertently doubled the 'Regional Housing Needs Assessment' in California."

The nonprofit, which publishes analysis giving context on local policy, posited "what if the math is wrong" with respect to the order for more than 350 cities to prepare for adding more than 2 million homes by 2030.

"Use of an incorrect vacancy rate and double counting, inspired by SB-828, caused the state's Department of Housing and Community Development (HCD) to exaggerate by more than 900,000 the units needed in SoCal, the Bay Area and the Sacramento area," the report notes.

The report also explained that to determine housing needs, lawmakers must focus on "defensible" evidence to hold cities accountable. "Inaccuracies on this scale mask the fact that cities and counties are surpassing the state's market-rate housing targets but falling far short in meeting affordable housing targets. The inaccuracies obscure the real problem and the associated solution to the housing crisis—the funding of affordable housing," the Embarcarado Institute wrote.

The report indicates that "[d]ouble counting . . . doubled the assessed housing need for the four major planning regions," and that "[t]he double count, an unintended consequence of Senate Bill 828, has exaggerated the housing need by more than 900,000 units" across four regions:

- six southern California counties;
- the greater Bay Area;
- the San Diego region; and
- greater Sacramento.

For more information on the report, *Double Counting in the Latest Housing Needs Assessment*, visit secureservercdn.net/198.71.233.65/r3g.8a0.myftpupload.com/wp-content/uploads/2020/09/Double-counting-in-the-Latest-Housing-Needs-Assessment-Sept-Update.pdf.

Source: *embarcaderoinstitute.com*

Connecticut

Darien's Planning & Zoning Commission to study state housing bills

Three state bills seek to addressing housing in Connecticut. Now, Darien's Planning & Zoning Commission (PZC) has assembled a subcommittee to study those bills—SB 110, HB 5132, and HB 5303, which relate to housing authority jurisdiction, the reorganization of the Zoning Enabling Act and the promotion of municipal compliance, and training for planning and zoning officials, respectively.

Darien Planning & Zoning Commission Chairman Steve Olvany said the goal is for the subcommittee to analyze each piece of legislation and draft a list of pros and cons for each. Once that is completed, the PZC may reach out to state representatives to give its opinion on them, *The Darien Times* reported recently.

The news outlet reported there are some concerns over some portions of these bills, such as planning and zoning commission member training and requiring administrative

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approval for accessory apartments and middle housing, which would impact small towns' individuality, Ridgefield Planning & Zoning Commission Chair Rebecca Mucchetti wrote in a letter.

Mucchetti wrote that Desegrate CT—which posits the state's land-use system is broken and requires reform to expand housing diversity, increase housing supply, and improve the development process—has proposed changes to get rid of single-family zoning and to take the decision making authority regarding affordable housing away from local zoning officials and placing that authority with regional planning bodies.

For more on Desegregate CT, visit desegregatect.org.

Source: *darientimes.com*

Michigan

One local planning commission plans to study whether zoning rule changes may be in order to accommodate solar farms

The planning commission in Watertown Township, Michigan, is studying whether changes to an existing solar ordinance may be in order, *Sanilac County News* reported. In May 2020, the township approved a solar farm-development moratorium, it added.

Currently, a developer is interested in 600 acres in Watertown as the potential site for a new solar farm, Bill Dixon, the planning commission chairman explained.

The ordinance as currently worded addresses issues like solar-panel height, landscaping, and fencing, but a lingering question concerns setbacks from occupied dwellings, Dixon told the news outlet.

In reviewing the notion of making changes to the existing ordinance, the planning commission is collecting information on how neighboring townships, such as Bridgehampton, Elmer, Delaware, Lamotte, and Verona, have addressed the issue of ensuring that existing property owners' rights are protected when solar farms move in.

Source: *sanilaccountynews.mihomepaper.com*

Minnesota

St. Paul likely to redraw residential zoning rules for first time since 1975

St. Paul's city council is reportedly going to redraw zoning rules, which haven't been amended since 1975, as they pertain to residential areas near major public-transit corridors, Twincities.com reported recently.

According to the St. Paul Planning Commission's recommended amendments to the RM Zoning Districts, "the 2030 Saint Paul Comprehensive Plan, in Strategy LU-1.3, calls for studying the RM zoning districts to determine how they can accommodate more intense residential development." "RM zoning districts could be more appropriate districts for adding residential density and transit-supportive, pedestrian-oriented form in places where the mix of commercial and residential uses permitted in [t]raditional [n]eighborhood districts are not desired," the recommended amendments noted.

Also, proposed changes to the zoning code could potentially translate into an increase in the number of triple- and four-plexes within multifamily and RM zoning districts. Impacted areas could include Grand and Selby avenues and close University Avenue's Green Line light rail area, the news outlet reported.

For more information on St. Paul's RM Zoning Study, visit stpaul.gov/departments/planning-economic-development/planning/current-activities.

Source: *twincities.com*

New York

Court throws out permit for luxury skyscraper to proceed on Manhattan's Upper West Side

A judge for a Manhattan state supreme court has voided a New York City permit authorizing a plan to build a 775-foot high luxury condominium tower on the city's Upper West Side, the *Gothamist* reported.

The court reasoned that the decision to grant the permit defied logic and zoning rules.

The ruling came following urban policy group City Club of New York's challenge to "Billionaire's Row" developer Extell's ambition to construct the tower, which would stand as the tallest building on the Upper West Side.

"This blatant jacking-up of close to 200-feet (originally set at 214-feet, with a cavernous 160-feet floor, more appropriate for a satellite transmission tower or a circus big-top) is too brazen to be called a 'subterfuge,' " Judge Arthur Engoron wrote in the decision. "[R]ather, [Extell] simply thumbed its nose at the rules." "There is no conceivable mechanical need for anything approaching this many floors, this much height, and this much empty space, and [Extell] does not claim otherwise," Judge Engoron wrote.

The news outlet reported that Extell's design was reflective of a trend concerning luxury condominiums—that is, to earmark whole floors for mechanical equipment so that developers can increase building heights and profits with higher level units offering panoramic views of the city that command high sale prices as a result. The *Gothamist* noted that mechanical void space, about midway up the tower, would have totaled close to 200 feet in height—the equivalent to 50 yards of a football field—and would qualify it for mega-skyscraper designation.

Due to outrage over what many developers were trying to do, New York's officials made zoning law changes in 2019 to limited the height of mechanical-void floors. Extell claimed it was grandfathered in, though, so could proceed with its plan, the news outlet reported. But, a neighborhood preservation group called Landmark West challenged Extell at a Board of Standards and Appeals (BSA) hearing.

After the BSA decided in Extell's favor, the City Club of New York filed suit.

With this ruling, the longstanding conflict surrounding the development at 50 West 66th Street wages on. The *Gothamist* reported that an Extell spokesperson said an appeal will follow.

To read the court's ruling, visit bit.ly/36fXvna.

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Source: *gothamist.com*

Virginia

Reston's Comprehensive Plan review marches on; Vienna to make zoning code changes; Arlington addresses zoning of 'non-conforming' duplexes

The Fairfax County's Reston Comprehensive Plan Task Force (RCPTF) recently presented an update on its progress to the Reston Association Board of Directors (BoD), *Reston Now* reported recently. The RCPTF was established in January 2020 to review the Reston Master Plan (available at fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/compplan/area3/reston.pdf#page=1), which covers land use and development, as well as infrastructure and more.

As of print time, the RCPTF had not made any decision points, so the BoD also had not weighed in on its findings, the news outlet reported. It was expected that the comprehensive plan review would take between 12 and 18 months, with task force meetings scheduled through December 2020. To access the Reston Comprehensive Plan Study, visit fairfaxcounty.gov/planning-development/plan-amendments/reston-area-study.

Elsewhere, in Vienna, "sweeping changes" are expected to the zoning code for the first time in 50 years, the *Tysons Reporter* explained recently. In September 2020, the Vienna Town Council and the town's planning commission were scheduled to take up the issue of engaging in a comprehensive overhaul to the existing zoning code. First on their agenda: assessing what's outdated within the code, which was adopted in 1956 and updated in piecemeal fashion in 1969, and what portions of the code still work, the news outlet reported.

The news outlet also reported that while the code has done a good job at maintaining the character of the town's single-family neighborhoods, there's growing concern over the issue of housing suitability for multigenerational age groups. That's because the practical impact of narrow zoning definitions has translated into housing hurdles, *Tysons Reporter* noted. There are also concerns over walkability because 1) the existing code doesn't require sidewalks for new construction and 2) the repeal of Vienna's Maple Avenue Commercial regulations mean that no assisted living facilities are currently allowed within the town's zoning districts.

Finally, in Arlington, the County Board has approved a zoning changes impacting "non-conforming" duplexes in certain zoning districts, ARLnow.com reported. Historically, the code had barred property owners from making changes to the exterior of such structures or from expanding them without the County Board of Zoning Appeals approval, the news outlet added. But, single-family dwelling owners in those districts have not been subjected to the same requirement and have had the right to make such changes without obtaining zoning variances, it reported.

To check out a recent presentation, Proposed Zoning Ordinance Amendment RA District Nonconforming Two-Family Dwellings: Enabling By-Right Expansions and Additions, visit arlington.granicus.com/MetaViewer.php?view_id=2&event_id=1484&meta_id=197197. The presentation explains that the limited scope of Arlington's amendment—which the County Board unanimously approved—is designed to:

- "[a]ddress Affordable Housing Master Plan goal to preserve and support existing affordable housing stock (2015)";
- "[a]lign with 2018 Zoning Ordinance amendment enabling expansions and additions to two-family dwellings in the R2-7 zoning district, by permitting additions to nonconforming two-family dwellings in RA zoning districts (50% cap on additions would still apply)";
- "[a]dd flexibility for two-family dwellings in RA districts in Housing Conservation District areas per County Board HCD Work Session Sept 2019"; and
- "[e]xpand flexibility to other RA districts as well."

In addition, Arlington is in the midst of conducting a Missing Middle Housing Study that will explore how "housing types could help address Arlington's shortfall in housing supply and gaps in housing choices." For more of that study, visit housing.arlingtonva.us/missingmiddle/.

Sources: *restonnow.com*; *tysonsreporter.com*; *housing.arlingtonva.us*; *arlnow.com*

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Advertisements

Proposed digital billboard in Westfield, Indiana becomes the subject of controversy in federal court

Citation: *GEFT Outdoor, L.L.C. v. City of Westfield, Hamilton County, Indiana, 2020 WL 6047910 (S.D. Ind. 2020)*

GEFT Outdoor LLC (GEFT) wanted to build a digital billboard in Westfield, Indiana. But, sign regulations in Westfield's Unified Development Ordinance (UDO) and Amended Unified Development Ordinance (AUDO) didn't permit this type of billboard.

GEFT challenged the sign regulations as being unconstitutional. The city asked for a restraining order to prevent GEFT from continuing its work at the site.

The court ordered GEFT to not continue any work on the billboard pole and digital sign until after the resolution of the case on the merits. The court permitted GEFT to proceed with a claim for compensatory damages due to the alleged infringement on its protected speech rights.

Therefore, this claim proceeded to the judgment-without-a-trial stage. Ultimately, the court ruled in GEFT's favor, enjoining the city from enforcing a sign-permit requirement and other provisions of the applicable zoning code section.

The city appealed to the Seventh U.S. Circuit Court of Appeals. It also filed a request to stay, which asked the court to stay the proceedings, including the trial date and the implementation of the injunction under the Seventh Circuit could resolve the appeal.

GEFT responded with a request for clarification. It asked the court to clarify whether the earlier preliminary injunction was still in effect.

DECISION: Request for stay denied; request for clarification granted.

The order barring GEFT from proceeding with work on the pole and digital billboard remained in effect; the city didn't meet its burden for establishing the need for the stay.

GEFT'S REQUEST FOR CLARIFICATION

GEFT wanted to confirm whether the court's order of September 28, 2018 remained in effect barring it from performing any work on the pole or digital sign until the case was resolved on the merits. In its view, the order was no longer in effect because the constitutional issues had been decided on the merits, so GEFT could construct the billboard pending results of the appeal.

GEFT asserted that the city's request for a stay noted that if GEFT prevailed

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on appeal before the Seventh Circuit, there wouldn't be any other impediments to its building of the billboard. But, the court didn't subscribe to the notion that the city's "admissions mean[t] what GEFT thinks they mean. This is because GEFT has taken Westfield's 'no other impediment' statement out of context and presented an argument on Westfield's behalf that Westfield did not make," the court found. "Westfield's statement in context state[d] 'if G[eft] prevail[ed] at the Seventh Circuit, there [we]re no other impediments to [its] building a billboard, and [it wa]s able to erect a billboard, then there w[ould] be no need for a trial on damages for the value of a billboard,' " it added.

Therefore, given the context, "Westfield [wa]s not conceding that [it] [could] now build its sign if Westfield [wa]s not granted a stay." Instead, the city was arguing that "no trial [wa]s necessary on damages if [it] prevail[ed] on appeal, if there [we]re no other impediments to construction, and if [GEFT] buil[t] its sign."

The bottom line: GEFT was still enjoined from continuing to work on the pole or digital sign until the case was resolved on the merits.

CITY'S REQUEST FOR STAY

The court found that the city hadn't "met its burden to obtain a stay of the injunction during the pendency of its appeal." More specifically, it hadn't "shown a likelihood of success on the merits or an irreparable harm in the absence of a stay," so the request for a stay of the September 2020 injunction while the case was on appeal was denied. "Westfield remains enjoined 'from enforcing Sections 6.17(c), 6.17(D), 6.17(E)(4), and 6.17(E)(5) of the UDO and Amended UDO,' " the court wrote.

A CLOSER LOOK

Westfield argued that if the stay was not granted the city and its citizens could experience "a significant and overwhelming influx of non-conforming signs, which [would] cause harm to legitimate and compelling interests of the [c]ity, particularly traffic safety and visual aesthetics."

GEFT contended that a stay would be improper because the city hadn't shown "or even attempted to show, that it ha[d] a likelihood of success on appeal, and any alleged harm to Westfield [wa]s far outweighed by the harm to GEFT in its ongoing suppression of protected speech," the court explained.

The bottom line: "Even if a handful of non-conforming signs [we]re-erected throughout Westfield while its appeal [wa]s considered, those signs would not inflict an irreparable injury upon Westfield because the signs could be removed at the expense of the sign owner if the Seventh Circuit conclude[d]s Westfield's sign standards [we]re constitutionally valid," the court wrote. There was also evidence that Westfield may have acted in an arbitrary and capricious matter by allowing a digital, off-premises sign at Westfield High School—two miles from GEFT's proposed billboard—but denying its digital, off-premise pole sign. This "undercut Westfield's argument concerning harm to its interests in traffic safety and community aesthetics," the court found.

Want More Information?

To read the text of Westfield's UDO visit westfield.in.gov/egov/documents/1525446511_39409.pdf. And for more on the AUDO, visit westfieldwashingtontwp.us/DocumentCenter/View/106/Westfield-Washington-Township-Unified-Development-Ordinance-PDF.

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Fair Housing

Builder of proposed assisted living facility challenges single-family zoning ordinance

Citation: *431 East Palisade Avenue Real Estate, LLC v. City of Englewood, 977 F.3d 277 (3d Cir. 2020)*

The Third U.S. Circuit has jurisdiction over Delaware, New Jersey, Pennsylvania, and the Virgin Islands.

431 East Palisade Avenue Real Estate LLC and 7 North Woodland Street LLC (collectively, the developers) wanted to build a 150-bed assisted living facility (ALF) on 4.96 acres in a district zoned for single-family residential dwellings in Englewood, New Jersey. The developers didn't request a variance. Instead, the developers asserted that the city's zoning ordinance discriminated against disabled individuals by not allowing ALFs in the single-family district and by explicitly allowing them in just one of the city's districts.

The city opposed the proposed development citing the fact that it would be situated in its R-AAA (one-family residence) district—one of 24 residential living districts in the city.

ALFs weren't defined under the city's ordinance, but New Jersey's code defined "assisted living" as "a coordinated array of supportive personal and health services, available 24 hours per day, to residents who have been assessed to need these services including persons who require nursing home level of care."

That Code further defines an "[a]ssisted living residence" as "a facility which is licensed . . . to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed, for four or more adult persons unrelated to the proprietor."

The city code stated that the purpose of single-family zoning was to "preserve and protect the integrity of such districts for one-family residential purposes, to establish one-family residence districts that provide[d] for a range of lot sizes, and to permit in such districts only such other uses as will be compatible with one-family residential use."

But, this didn't mean that ALFs were barred completely from the city. They were permitted in the city's Research, Industrial, Medical (RIM) District where other permitted uses included hotels, apartments and condominiums for seniors, rehabilitation centers, skilled nursing facilities, restaurants, and medical offices.

The lower court granted the developers a preliminary injunction to prevent the city from enforcing the ordinance against them. The city appealed to the Third U.S. Circuit Court of Appeals.

DECISION: Vacated; case sent back for further proceedings.

The lower court erred in granting the developers' request for a preliminary injunction.

The Third Circuit had to decide "whether [the] zoning ordinance, by failing to include 'assisted living facilities' among its permitted uses in the single-family district, but explicitly allowing them in a different district, facially discriminate[d] against the disabled in violation of the Fair Housing Amendments Act (FHAA)."

The lower court had reasoned that since the zoning ordinance treated ALFs differently from single-family homes by permitting them in one but excluding them from all others, its "different treatment and express use of the term 'assisted living facility,' constitute[d] facial discrimination in violation of the FHAA," the Third Circuit explained.

The Third Circuit disagreed. The zoning ordinance wasn't facially discriminatory and the developers weren't likely to succeed on the merits.

A CLOSER LOOK AT THE FHAA

The FHAA barred housing discrimination based on race, gender, national origin, and disabilities. But, the city's ordinance didn't discriminate "on its face" because:

1) ALFs weren't "identified on the ordinance's face in the relevant R-AAA section, the proper scope of our inquiry"; and
2) the "RIM zone's allowance of assisted living facilities as of right d[id] not render the ordinance facially discriminatory."

In the developers' view, the court should "broaden [the] focus and conclude that the zoning ordinance [wa]s facially discriminatory, because the zoning ordinance explicitly name[d] assisted living facilities elsewhere and does not permit them by right in the R-AAA zone." "We reject this approach and direct our inquiry to the 'language of the challenged regulation or policy,' which [wa]s the R-AAA zone, and not the RIM zone," the court explained.

Thus, the central question concerned "the language of the R-AAA zone that actually prohibit[d] [the] proposed development." "In the absence of any language referring to individuals with disabilities, the language of the R-AAA does not facially discriminate in violation of the FHAA," the court ruled.

The bottom line: "While we will readily allow that the explicit inclusion of 'assisted living facilities' as a permitted use in the RIM zone supports the inference that 'assisted living facilities' are not a permitted use in the R-AAA zone, it does not in itself restrict land use in the R-AAA zone. Failure to permit a land use as of right is not tantamount to an express prohibition, and indeed the terms of the RIM zone on their face do not purport to allow, restrict, or otherwise regulate 'assisted living facilities' in any other zone, including the R-AAA zone," the court stated.

CASE NOTE

Just because the ordinance wasn't found to be discriminatory on its face, that didn't mean the developers' desire to build an ALF had ended. Under state law, "developers

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of group homes for the handicapped (including the elderly) [could] apply for use variances as an 'inherently beneficial use' in any zone."

Practically Speaking:

In vacating the lower court's decision, the court ruled the zoning ordinance wasn't facially discriminatory.

Due Process

Dispute over business' desire to remove dirt and tear down buildings winds up in court

Citation: *Henderson v. Town of Greenwood, 2020 WL 5983906 (W.D. La. 2020)*

The Town of Greenwood, Louisiana changed the zoning designation for a tract of land adjacent to property Odis Henderson, Jr. and Schlandria Henderson (the residents) owned from residential to commercial. The residents claimed the change violated state law and the U.S. Constitution's Due Process Clause.

In the residents' lawsuit against the town, they added as defendants the owner of the now commercially zoned land, Fluid Disposal Specialties, Inc. (FSDI).

FDSI had the case transferred to federal court. It requested dismissal for failure to state a claim.

The residents amended their complaint at that point. They realleged the state and constitutional claims, but also sought a temporary restraining order and preliminary then permanent injunctions. In their view, an injunction was necessary because since filing their original complaint, FDSI had allegedly "begun clearing the property in question and removing the roadway from plaintiffs' property to the public road adjacent to the property and disconnecting the water lines to [their] property."

FDSI again asked the court to dismiss the residents' claims against it.

DECISION: Request for injunction denied; request for dismissal granted.

The claims against FSDI didn't stand.

In the residents' view, FDSI's action of clearing the land in question and removing the roadway from their property to the public road required an injunction. But, it wasn't clear "whether [their] request for an injunction stem[med] from FDSI's current actions on its property that [they] allege[d] [we]re disrupting their use and enjoyment of their property or whether the request stem[med] from the zoning dispute."

Ultimately, the court found it was without "supplemental jurisdiction" to rule on the residents' claims based on FDSI's alleged infringement on their use and enjoyment of their property. "The claim over which the [c]ourt ha[d] original jurisdiction [wa]s the alleged due process violation that occurred when Greenwood re-zoned a portion of FDSI's property from residential to commercial. The operative facts may include Greenwood's rationale for the zoning decision or whether Greenwood gave proper notice and a hearing prior to the decision," the court explained.

But, the claims concerning FDSI's alleged disruption of the water service and its removal of access from the residents' land to the public roadway would "be adjudicated based on facts wholly unrelated to the legitimacy of Greenwood's zoning decision."

FSDI was entitled to dismissal because the court didn't have the authority to exercise supplemental jurisdiction over claims related to how its actions on its own property "may or not be disrupting [the residents'] use and enjoyment of their land because the facts underlying that dispute [we]re unrelated to the zoning dispute which provide[d] the [c]ourt with original jurisdiction in this matter."

Equal Protection

Court considers whether town's sign ordinance violated church's rights

Citation: *Signs for Jesus v. Town of Pembroke, NH, 977 F.3d 93 (1st Cir. 2020)*

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

The Town of Pembroke, New Hampshire banned the use of electronic signs in all of its zoning districts except its commercial district (C1) and certain nearby areas.

In April 2015, Hillside Baptist Church (the church), which was located outside of these areas, applied for a permit to install an electronic sign on its property to transmit messages provided by Signs for Jesus, a nonprofit corporation.

The Pembroke Zoning Board of Adjustment (ZBA) denied the permit, citing the electronic sign provision in the Pembroke Sign Ordinance (PSO) as the grounds for denying the request.

The church filed suit alleging the ZBA, the code enforcement officer, and the town violated its right to equal protection under the U.S. Constitution and the state constitution. It asserted that the town had treated it unfairly because others had been permitted to operate electronic signs.

Specifically, the church alleged that:

- there were three electronic signs on the same road as where the church was located;
- one of the signs was at a gas station in the "LO district," which pre-dated the adoption of the PSO;
- another sign was on the property of Pembroke Academy, a public school in the town's residential district, which posted messages advertising school events; and

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- the third sign was temporary in nature and had been erected in the summer of 2015 by the New Hampshire Department of Transportation (NHDOT) to inform motorists of possible construction delays.

Both parties requested judgment without a trial. The court granted the town's request. The church appealed.

DECISION: Affirmed.

The town met its burden for judgment without a trial.

A CLOSER LOOK AT THE PSO

The PSO's purpose was to "[p]romote street safety, '[r]educe distractions and obstructions,' '[d]iscourage excessive visual competition,' and '[p]reserve or enhance town character.' " The PSO, therefore, required those who wanted to install signs to submit applications for permits with the code enforcement officer, who was authorized to grant a permit if the sign complied with the PSO's provisions. There were, however, signs that were exempt, which included political or "for sale" signs.

Even if a sign was exempt from that requirement, it would still be subject to a "Dimensional Table of Signs," which specified the types of signs that were allowed in each of Pembroke's zone. In March 2012, a change was made to the table, which banned all "electronic changing signs" from all zones, except for in the C1 zone and in certain lots "directly abutting Pembroke Street."

Also there were signs that were always allowed under the PSO:

- those required by federal, state or municipal laws; and
- "non-conforming sign[s] [that] lawfully existing at the time of adoption" and "continue[d]" unless such signs pose[d] safety problems under the PSO.

EQUAL PROTECTION

The church's equal protection claim " 'fail[ed] as a threshold matter' because the Church and Pembroke Academy [we]re not similarly situated." The NHDOT wasn't similarly situated, either. "Pembroke Academy is a subdivision of the state," the court noted. "Likewise, NHDOT is an agency of the state," it added.

The bottom line: The town didn't have the authority "to regulate either Pembroke Academy's or NHDOT's sign use absent the clearly manifested intent of the New Hampshire legislature to give the [t]own that power."

What the town had the power to do was "regulate non-governmental entities." But, this wasn't a case where the town had "treated a non-governmental religious organization differently than a non-governmental secular organization."

The bottom line: The town hadn't "treated the proposed comparators at all under its zoning laws because it lack[ed] the legal authority to impose any zoning restrictions on either Pembroke Academy or NHDOT."

CASE NOTE

The church also filed claims alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as New Hampshire zoning laws.

Points To Remember:

A governmental entity could not "be [a] comparators because [it] experienced no treatment against which to compare the [t]own's treatment of the [c]hurch," the court wrote. Even if the town had tried to restrict the Pembroke Academy or NHDOT signs, it wouldn't have had a basis for doing so with respect to those entities. Therefore, because there weren't any similarly situated comparators who had allegedly been treated more favorably, the church's equal protection claim failed.

Permits

Man files suit after village revokes home occupation permit

Citation: *Cordova v. Village of Corrales, 2020 WL 5878259 (D.N.M. 2020)*

Matthew Cordova operated a construction business out of his parents' home located in the Village of Corrales, New Mexico. In 2007, Corrales' planning and zoning administrator told Cordova that he had to apply for a home occupation permit (HOP) to lawfully operate his business on the property.

Cordova applied for and obtained the necessary HOP. He continued to operate his business, which included storing vehicles and equipment, on the property and did so without Corrales' objection until June 2018.

That's when Corrales revoked the HOP on the ground that storing business vehicles and equipment on the property violated the village's zoning ordinances. The notice sent to Cordova stated that he could appeal the decision within 10 days of the notice's date. Otherwise, the revocation of the permit would be final.

The notice failed, however, to explain how to appeal the revocation. It was printed on the Village of Corrales Planning and Zoning Department letterhead, signed by Building Official Manuel Pacheco, and copied to the village administrator.

On June 15, 2018, Cordova mailed an "Appeal Notice Against the Revocation of My Home Occupation Permit" to the village administrator. According to the Corrales Code of Ordinances, "[a] proper appeal" of a Planning and Zoning Department decision "shall stay all proceedings in the action unless [the Department] determines that a stay will cause imminent peril to life or property." Nonetheless, on June 22, 2018, Corrale issued a "First Notice of Violation" to Cordova as a result of the revocation of his HOP.

Cordova's attorney sent a letter to the village dated June 27, 2018. That letter stated that Cordova had submitted an appeal so the first notice of violation was premature. The village administrator official responded on July 2, 2018

that a formal appeal had not been filed concerning the revocation and that the time to file an appeal had passed.

A CRIMINAL COMPLAINT FOLLOWS

On July 30, 2018, Corrale filed a criminal complaint against Cordova in municipal court, alleging violations of the ordinance that governed HOPs. A municipal judge told Cordova he could resubmit his appeal to the village.

On October 12, 2018 that's just what Cordova did with a letter from his attorney to the village council along with a form application for zoning appeal. He also paid a $100 filing fee.

In response, the village administrator stated that the appeal of revocation for the HOP "must have been submitted within twenty (20) days of the revocation and [Cordova] must have paid the applicable filing fee . . . While [Cordova] submitted a written appeal of the revocation of his HOP, he failed to pay the applicable fee and in doing so, failed to perfect his appeal . . . [A]ny appeal not filed pursuant to the requirements shall not be considered by the Governing Body."

The village administrator, therefore, told the attorney that the HOP was still revoked and that there couldn't be any further appeal of the revocation.

Cordova filed suit against Corrale and the village administrator alleging they violated his Fifth and Fourteenth Amendment rights under the U.S Constitution by not providing him with accurate information concerning his right to appeal the HOP's revocation. He asked the court to reinstate the HOP and award him damages and costs.

Corrales and its administrator requested dismissal.

DECISION: Request for dismissal (without prejudice) granted.

Cordova's complaint didn't "include factual content that would allow the [c]ourt to draw the reasonable inference that either the [v]illage, as a municipality, or [administrator] as a [v]illage official sued in her official capacity, [wa]s liable for the alleged unconstitutional conduct."

The bottom line: Cordova didn't "state a facially plausible claim" of Section 1983 municipal liability against the village or its administrator so the complaint was dismissed.

MUNICIPAL LIABILITY

A municipality couldn't be held liable just because it employed a "tortfeasor," the court explained. This meant that a "respondeat superior" theory didn't apply to a municipality in this context—respondeat superior was the doctrine under which generally a party is responsible for the actions of its agents.

Instead, a municipality could be held liable for a Section 1983 violation if the action alleged to be unconstitutional was "one that 'implement[ed] or execute[d] a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers' " or "visited pursuant to governmental custom even though such a custom ha[d] not received formal approval through the body's official decision making channels."

Also, the municipality could be held liable if the "execution of a government's *policy or custom* inflict[ed] the injury."

Here:

- There wasn't any allegation "that the claimed unconstitutional conduct at issue—*i.e.*, the failure to provide [Cordova] with adequate notice of his right to appeal the revocation of his HOP—resulted from a municipal policy or custom"; and
- more specifically, the complaint didn't allege "that the claimed inadequate notice resulted from: (1) a formal regulation or policy statement; (2) a widespread practice so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decision of an employee with final policymaking authority; (4) a final policymaker's ratification of a subordinate's decision and the basis for it; or, (5) the failure to adequately train and supervise employees, where that failure resulted from deliberate indifference to the constitutional injuries that could result."

Ultimately, the court dismissed the complaint "without prejudice," writing it couldn't "say that granting [Cordova] leave to amend would be futile."

Case Note:

"At no relevant time did [Corrale] post the applicable filing fee in its offices," the court explained. And, while it had received Cordova's appeal in a timely manner, "at no time within the time permitted for appeal did [it] tell [him] that he needed to submit a filing fee."

Zoning News from Around the Nation

Colorado

Chapter 59 zoning changes to last throughout COVID-19 pandemic

The Denver City Council has granted the city's zoning administrator authority to permit the expansion of bar and restaurant patios, temporary emergency homeless shelters, and safe camping sites under Chapter 59 of the city's old zoning code, reported *Westword* recently.

A councilwoman told the news outlet that this measure is one of equity for the Mile High City.

The news outlet explained that when a new comprehensive zoning code was adopted in 2010, it contained an amendment specifying it wouldn't apply to any areas that remained zoned under the former Chapter 59 code unless the landowners authorized a full rezoning under the amendment. The exemption applied mainly to planned communities, the news outlet reported.

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While this measure would be temporary and end with the conclusion of the COVID-19 pandemic, pre-COVID-19 Denver had been addressing the issue of housing security. According to Colorado Village Collaborative (CVC), its mission is to "mak[e] a safe outdoor space a necessity for the residents of [Denver] without homes" during the COVID-19 pandemic.

According to a report by The Center for Housing and Homelessness Research (available at socialwork.du.edu/chhr), "[h]ousing security and homelessness are among our most pressing social justice imperatives, and while there is no single solution—or even a single definition of homelessness—data-driven research, policy and practice are key to addressing housing security issues and ending homelessness in America."

For information on the Barton Institute, which supports Denver's "Beloved Community Village," the city's "first tiny homes village for people experiencing homelessness," visit bartoninstitute.org/tiny-homes.

And, for more information on CVC, visit coloradovillagecollaborative.org/safe-outdoor-space.

Sources: *westword.com*; *coloradovillagecollaborative.org*; *bartoninstitute.org*; and *socialwork.du.edu*

Connecticut

Civil rights attorneys focus on Woodbridge's lack of affordable housing

In three decades, there have only been three two-unit residences issued building permits in Woodbridge, Connecticut, the *Connecticut News Project Inc.* reported recently. The news outlet reported, too, that the town, located in New Haven County, requires a 1.5-acre parcel to build a single-family dwelling and that it only has 35 housing units for low-income residents.

Now, civil rights attorneys affiliated with Open Communities Alliance, along with Yale University professors and students participating in a fair housing development clinic are taking aim at the town's planning and zoning commission. They are asking the commission to approve an application to build a four-unit residence on a 1.5-acre parcel that's zoned for single-family dwellings, the news outlet reported. The news outlet also reported that if the town denies the application, the group of attorneys is likely to appeal the decision in court.

If the issue with respect to Woodbridge's zoning goes to court, it could become the test case for other Connecticut-based towns that operate under similar zoning regulations.

The Town of Woodbridge's 2015-2025 Plan of Conservation and Development, which was prepared for the town's planning and zoning commission, can be found at woodbridgect.org/DocumentCenter/View/150/Town-Plan-of-Conservation-and-Development-PDF?bidId=.

Source: *ctmirror.org*

Indiana

Fort Wayne Plan Commission considers whether to give green light to proposed gun shop and shooting range

Midwest Shooting Center (MSC), which currently operates a gun shop and shooting range in Lima, Ohio, wants to set up shop in Fort Wayne, Indiana, WPTA21.com reported recently. In October 2020, the city's planning commission held a hearing to discuss MSC's proposed zoning code change for 4140 Coldwater Road. In addition to proposing the store and shooting range, MSC wants to offer gun-safety training at the Fort Wayne location, the news outlet reported.

MSC's proposal appears to have the backing of the Fort Wayne-Allen County Department of Planning Services, the news outlet reported. Officials for that department said MSC's request aligns with the city's comprehensive plan. For example, the proposed site, which is currently only used to sell Halloween supplies for a month or two each year, would otherwise sit vacant. By bringing a permanent business into the mix, officials cited a potential increase in property values.

The news outlet reported that the planning commission has received a letter in opposition to the proposal.

Source: *wpta21.com*

Massachusetts

Norwood's proposed zoning changes in local spotlight

Residents in Norwood, Massachusetts were recently invited to attend two virtual meetings addressing the future of proposed zoning amendments in their town, *Wicked Local* reported recently.

Norwood's planning board held the meetings to discuss the Route 1 Corridor Study and Rezoning Initiative and proposed zoning changes, the news outlet noted.

The proposals for discussion were also made available for residents to review at norwoodma.gov/. Also, zoning update summaries, as well as stakeholder presentations on the Route 1 Corridor Study and Rezoning Initiative can be found at norwoodma.gov/departments/planning_and_economic_development/route_one_-_study_and_rezoning_initiative.php.

Source: *norwood.wickedlocal.com*

Michigan

Medical marijuana zoning amendment on the table in Waterford Township

On October 13, 2020, the Waterford Township Board of Trustees (the board) introduced an amendment to the local code to address the issue of medical marijuana zoning, *The Oakland Press* reported recently.

If approved, the amendment would permit up to 10 medical marijuana facilities—ranging from shops, growers, processors, and transporters, within Waterford. The meeting to discuss the measure a little over a year after the board approved a measure barring recreational marijuana facilities in town, the news outlet reported. When that decision was reached in May 2019, the board indicated that it would consider medical marijuana at a later time.

The township's meeting agendas and minutes can be found at waterfordmi.gov/AgendaCenter.

In other news out of Michigan, a dispute has arisen between neighbors in Howell Township, WHMI.com re-

ported recently. The controversy surrounds the local zoning ordinance as it relates to private roads and a construction trailer parked in a right of way, the news outlet explained.

Specifically, Santa Rosa Drive resident Tim Boal, who was appointed to the Zoning Board of Appeals (ZBA) in February 2020, asked the ZBA to clarify its position concerning the parking and storage of the trailer. Boal wrote in a letter that finding that the road on which the trailer was parked was private constituted a willful neglect of the board's duty. In his view, the vehicle was parked on a public way subject to zoning code enforcement and by not taking action, the board was permitting a safety issue to remain, the news outlet explained.

Sources: *theoaklandpress.com*; *whmi.com*

New York

Op-ed posits there's a need to adapt zoning code to help NYC thrive post COVID-19

A recent *New York Daily News'* Editorial Board post explored the notion that New York City officials need to consider the issue of "reinventing zoning," now that, given the COVID-19 pandemic, there's been a mass exodus of once thriving businesses from certain areas within the city limits.

The author asked hypothetically whether those officials could write a new iteration of the zoning code so that the city could reinvent itself in the wake of the pandemic. The likelihood of remote work continuing may be a real thing, and thus, once bustling office buildings may sit vacant. But, the author described a situation where the city may be able to reshape its growth and prosperity by altering existing zoning regulations so that light manufacturing or apartments can take the place of office spaces left vacant.

The full opinion piece, entitled "Lines on a map: Change zoning to let post-pandemic business thrive," visit nydailynews.com/opinion/ny-edit-bringing-back-new-york-coronavirus-zoning-real-estate-laws-nyc-20201011-ieksyl536bes3dss2szksxjpvy-story.html.

Source: *nydailynews.com*

Ohio

Berkshire Township seeks residents' and business owners' input about future development

Recently, the Berkshire Township Board of Trustees, along with the economic development team for Delaware County, sought the input of several local stakeholders—from residents and employees to commuters and local business owners—on what type of development they believe would be appropriate for the area, the *Delaware Gazette* reported recently.

Anyone unable to attend the two-day meeting in September 2020 was invited to participate by taking an online survey. The survey covered questions designed to elicit information about:

- how frequently they traveled along three key routes;
- what they did while in the area, for example, did they shop or were they on their way to and from work;
- the corridor's attractiveness; and
- whether certain developments would improve the area, for example, green space, walking trails, and bike paths, housing, office and retail space, dining and family entertainment establishments; and
- whether a setback ranging from 30 to 175 feet would be preferred.

The survey went on to probe on whether development could cause concern over: several issues, including

- property values;
- crime;
- traffic congestion; and
- loss of green space.

The survey came following the board's 2017 approval of a Planned Mixed Use District (PMUD) zoning resolution. For a map detailing where the PMUD district would be, visit regionalplanning.co.delaware.oh.us/wp-content/uploads/sites/17/2018/09/berkshirezoning1117.pdf.

Source: *delgazette.com*

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Zoning Bulletin

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Conditional Use Permits

City embroiled in legal battle with immigration detainee facility over conditional use permits

Citation: *Immigrant Legal Resources Center v. City of McFarland, 827 Fed. Appx. 749 (9th Cir. 2020)*

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

The City of McFarland, California challenged a lower court's decision to grant a preliminary injunction preventing the city from executing changes to Geo Group Inc.'s (Geo) conditional use permits. Geo challenged the court's decision barring it from accepting or transferring immigration detainees into or out of two facilities in the city.

DECISION: Vacated; case sent back for further proceedings.

The lower court abused its discretion in finding that Geo had raised "serious questions" on whether the city had violated the applicable state code (California Civil Code Section 1670.9(d)).

Here's why:

The city complied with that provision in the law by holdings "at least two separate meetings open to the public." And, in actuality the city held three public meetings to consider the permit modifications before the planning commission twice and once before the city council.

"Any technical limitations and difficulties participants experienced during the virtual public meeting did not give rise to prejudice," the Ninth U.S Circuit Court of Appeals found.

The city complied with section 1670.9(d)'s requirement to give the public notice of the proposed modifications "at least 180 days before [their] execution." Here, the city council "approved the proposed modifications on April 23, 2020 but delayed their execution until July 15, 2020—180 days after the [p]lanning [c]ommission first gave public notice."

The city complied with the state law provisions requirement for it to "[s]olicit and hear public comments before approving the proposed modifications." The court noted that on April 23, 2020, the city council held a public meeting virtually due to COVID-19 to consider the proposed modifications that was open to residents "to attend and participate."

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A CLOSER LOOK

The applicable section of state law required just two public meetings from the permitting authority. And, the city's municipal code "ma[d]e it clear that the [p]lanning [c]ommission and [c]ity [c]ouncil [we]re constituent parts of the [c]ity itself and act[ed] on its behalf," so the city followed the procedural requirements related to the matter Geo raised by requesting the conditional use permits.

THE BOTTOM LINE

"Any technical limitations and difficulties participants experienced during the virtual public meeting did not give rise to prejudice," the Ninth U.S Circuit Court of Appeals found. Also, "any barriers to participation were minimal and consistent with the state's guidance for conducting public hearings during the COVID-19 pandemic."

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Practically Speaking:

The lower court abused its discretion in finding a likelihood of irreparable harm in this case. "Notably, the district court focused its irreparable harm analysis on the prospect of harm to third parties. The standard for preliminary injunctions, however, requires irreparable harm to the plaintiffs themselves," the Ninth Circuit noted.

Building Permits

Landowner sues town, zoning administrator after stop-work-order issued on construction due to site-plan issues

Citation: *Shavers v. Almont Township, Michigan, 2020 WL 6156708 (6th Cir. 2020)*

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

Raymond Shavers wanted to build a pole barn on his property located in Almont Township, Michigan.

In July 2017, Raymond Shavers entered into a verbal agreement with AJ Metals Processing Inc. (AJ) to build a pole barn on his property located in Almont Township, Michigan by the first quarter of 2018. AJ agreed to lease storage space in the barn and an adjacent building for 24 months, with the option of renewal.

But, the process didn't go smoothly for Shavers. That's because a zoning issue arose and the granting of the building permit was delayed. This led Shavers to file suit against the township.

Zoning—Shavers' property included two different parcels. One was zoned for industrial use; the other was zoned for agricultural/residential use. He asked the town to rezone his land into a single parcel that could be zoned for industrial use.

The township's planning commission unanimously recommended that the township approve Shavers' request in September 2017. In October 2017, the township's board unanimously accepted that recommendation.

Building permit—After the request was approved, the building permit process ensued. Shavers submitted a site plan review application to the township's zoning administrator, Ida Lloyd. Lloyd found the application to be complete and told Shavers he could begin construction even though he didn't yet have a building permit because it was "going to be easy-peasy and [would] . . . fly right through."

Relying on Lloyd's assertion, Shavers began early construction, which caught a planning commission member's attention. That member asked Lloyd why construction had already begun since the commission hadn't yet reviewed the site plan. Lloyd replied that "[n]o one in the building department or zoning department ha[d] authorized any construction."

Then, the township's ordinance enforcement officer issued a stop-work order. Lloyd followed this up with a call to Shavers during which she "scream[ed]" at him for starting construction.

On December 11, 2017, Shavers wrote to the planning commission and Lloyd apologizing for his "misunderstanding."

While this was going on, the townships retained two outside contractors to advise it on the construction and planning issues concerning the site plan. Those consultants raised several concerns, including the fact that the submitted site plan missed required information concerning final layout of the site. As a result, the consultants did not recommend approval of the plan.

The planning commission met to consider Shavers' site plan on December 13, 2017. At that meeting, Shavers again apologized for starting construction early. The commission asked why he didn't submit a completed site plan. He replied that weather and economic concerns drove his decision to work without a permit, he didn't mention anything about Lloyd granting him permission to start.

The planning commission denied Shavers' request to begin. Instead, based on the recommendation of the consultants, it asked Shavers to review their reports and submit a revised plan that addressed their concerns.

Site plan issues—Shavers submitted three different versions of the site plan between December 2017 and February 2018. Each submission was deficient, according to the consultants. For instance, Shavers didn't submit signed and sealed plans, and he was missing key information on drainage, grading, lighting, landscaping, screening, parking, soil conditions, utility lines, and setbacks.

The planning commission didn't approve Shavers' site plans at its January or February 2018 meetings. The consultants recommended that Shavers seek a variance with the Zoning Board of Appeals to clear up frontage issues—but it turned out there wasn't a frontage issue with respect to what Shavers wanted to do.

Shavers' property included two different parcels. One was zoned for industrial use; the other was zoned for agricultural/residential use.

By March 2018, Shavers had submitted his fourth site plan. The consultants recommended approval if Shavers addressed what he would do with the residential structure on the now-combined parcel and provided certain additional information regarding a proposed " 'pump' discharge system for the storm water detention system."

Ultimately, the planning commission voted to approve Shavers' application with a 5-1 vote, provided the consultants reviewed and concluded that the storm-water drainage system was acceptable.

In May 2018, the Almont Township Engineering Board of Appeals resolved the storm-water issue in Shavers' favor. At that point, the consultants recommended final approval of Shavers' site plan, and it was approved by a 4-1 vote in June 13. By the end of June 2018, Shavers was granted the building permits he needed to proceed with construction.

By this time, AJ had pulled out of its agreement with Shavers because he hadn't performed on the terms set forth in the agreement. Shavers filed suit against the township and Lloyd. He claimed he had been subjected to retaliation and arbitrary zoning requirements, which violated his substantive due process rights. He also claimed Lloyd had interfered with his business opportunity with AJ and was liable under Michigan law for gross negligence.

The lower court granted the township and Lloyd judgment without a trial. Shavers appealed.

DECISION: Affirmed.

Shavers could not proceed with the claims against the township.

A CLOSER LOOK

The central issue on appeal was whether the lower court had correctly granted the township judgment on Shavers' claim the planning commission acted unconstitutionally in delaying his application. In his view, this delay violated his rights under the Equal Protection Clause of the Fourteenth Amendment.

"Shavers relie[d] on the 'class of one' theory of discrimination; that is, he contend[ed] the [t]ownship 'intentionally treated [him] differently from others similarly situated' and 'there [wa]s no rational basis for the difference in treatment,' " the appeals court explained.

"We agree with the [lower] court that the similarly situated element need not be examined because Shavers cannot overcome rational basis review," it ruled.

A class-of-one claim imposed a high bar for a plaintiff to clear. That's because with such a claim there was "the potential to 'provide a federal cause of action for review of almost every executive and administrative decision made by state actors.' "

Faced with a " 'heavy burden' . . . to overcome rational basis review," Shavers failed to:

- negate "every conceivable basis [that] might support the government action"; or
- demonstrate "that the challenged government action was motivated by animus or ill-will."

Here, the "record reflect[ed] a rational basis supporting the [t]ownship's actions," the court found. This included the fact that:

- the consultants had made "multiple recommendations" for the planning commission not to immediately approve Shavers' proposals; and
- the planning commission moved forward after the consultants recommended that Shavers' fourth submission of the site plan would be acceptable if two contingencies were met.

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Shavers also couldn't show that the planning commission had an ill will toward him that motivated the delay in the approval of his site plan.

"It is logical—and laudable, even—for a government entity to rely on a subject-matter expert's recommendation when making decisions," the court noted. And, this particular court had previously ruled in two distinct cases that "relying on a professional's advice provide[d] a 'conceivable basis' to reject a class-of-one claim."

Shavers also couldn't show that the planning commission had an ill will toward him that motivated the delay in the approval of his site plan. "Opposition to the requested action [wa]s not enough, strong or otherwise; rather, a class-of-one plaintiff [had to] demonstrate that government officials directed their animus toward [him]," the court explained. In other words, Shavers had to show that the action against him was "motivated by personal malice unrelated to . . . official duties."

Ultimately, the court found that the record didn't reflect that Lloyd's conduct "had any effect" on the planning commission's vote to delay Shavers' application. Any "displeasure" the planning commission noted with respect to Shavers was attributed to him starting construction early, it didn't have to do with his first site plan submission.

Finally, since the township's actions "survive[d] rational basis scrutiny, . . . [the court ruled Shavers] [could] not establish the required 'arbitrary and capricious action' necessary for his substantive-due-process claim." And, he didn't meet a " 'proximate cause' requirement to defeat Lloyd's governmental immunity for his gross-negligence claim."

The cases cited are *Superior Communications v. City of Riverview, Michigan, 881 F.3d 432 (6th Cir. 2018)*; and *TriHealth, Inc. v. Board of Com'rs, Hamilton County, Ohio, 430 F.3d 783, 2005 FED App. 0470P (6th Cir. 2005).*

Case Note:

Shavers contended that the planning commission didn't have an official policy on following recommendations from third parties, such as the consultants it had retained to review his site plans. "But under the low standard that [wa]s rational basis review, the government 'ha[d] no obligation to produce evidence to sustain the rationality of its action; its choice [wa]s presumptively valid and may be based on rational speculation unsupported by evidence or empirical data.' "

The bottom line: "[I]t was rational for the [p]lanning [c]ommission to not approve Shavers' site plan because [the consultants] told it not to."

Variances

Did BZA err in allowing developer to construct five-story building where zoning was limited to four stories?

Citation: *Village Neighborhood Association v. Zoning Board of Adjustment of City of Jersey City, 2020 WL 6297389 (N.J. Super. Ct. App. Div. 2020)*

Brunswick JC Group LLC (Brunswick) owned an irregularly shaped.314-acre lot in Jersey City, New Jersey. The parcel had frontage on Third and Brunswick streets in the recently created R-5 Low-Rise Residential Mixed-Use zone (R-5 zone). On the property there was an abandoned funeral home, a private garage, and eight dwelling units.

Brunswick applied to the City of Jersey City's Zoning Board of Adjustment (ZBA) for permits to demolish the existing buildings and construct a mixed-use structure consisting of five stories with commercial space on the ground floor and 30 residential units. The fifth story would be setback to reduce its view from street level, and the plans included an interior parking garage.

The R-5 zone permitted four-story structures with a density of 80 units per acre. Because Brunswick asked to build a five-story structure with a density of living units greater than that permitted by the zoning ordinance, it asked for preliminary and final site-plan approval and attendant use and bulk variances in accordance with New Jersey law.

USE VARIANCE APPLICATION

Brunswick applied for use and bulk variances to permit:

- 30 units where 26 were permitted;
- construction of a 52-foot, five-story building—the current zoning allowed a 42-foot, four-story structure; and
- greater building and lot coverage and parking on a lot less than 40-feet wide.

The BZA held a hearing and ultimately approved Brunswick's application. It concluded Brunswick's application satisfied the positive and negative criteria for the requested variances under state law. But, this was a conditional approval requiring Brunswick to:

- reduce the fifth story by 1,000 square feet and adding a "green" roof;
- make the second floor an open terrace an event space for neighborhood residents; and
- consult with the planning commission concerning the color and material for the building's façade; and
- install trees and landscaping in accordance with the applicable municipal ordinance.

The Village Neighborhood Association (VNA) challenged the BZA's decision granting Brunswick the variances sought and site plan approval. The lower court

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granted the ZBA judgment without a trial, and the VNA appealed.

DECISION: Affirmed.

The lower court's decision was based on sufficient evidence in the record and that ruling was entitled to deference.

The VNA asserted that:

- the BZA's decision to permit a fifth floor "offend[ed] the purpose of the height restriction in the R-5 zone";
- the BZA and the judge's findings were arbitrary and capricious because the record did not support the BZA's finding that the proposed structure would be "consistent with the surrounding neighborhood" and a five-story project wouldn't be consistent with the surrounding neighborhood; and
- the variances compromised "the purpose and intent of the R-5 zone."

"We disagree with all of these arguments and affirm substantially for the reasons detailed in [the lower court's] well-reasoned and thorough oral decision," the appeals court concluded.

A CLOSER LOOK

The court found there wasn't a basis to disturb the lower court's factual findings in this case. Those were "well supported by the record," it added. Also, the BZA had not "made inadequate findings to support its conclusions," as the VNA alleged. "To the contrary, after clearly considering the expert testimony and other evidence presented during the hearing, the [BZA] issued a comprehensive resolution detailing the factual and legal bases for its approval of the application, including the request for variances on height, density, bulk, and parking," it added.

Also, "the height variance did not offend the purpose of the R-5 zone," the court explained. For instance, the BZA had "reviewed the legislative history of the R-5 zone and considered the testimony of its planner." And, both the BZA and the lower court had "concluded that the unique size and configuration of the building lot, and the fact that the offending fifth floor would be set back approximately sixteen feet and essentially hidden from view, effectively satisfied the purpose and goals of the R-5 zone."

In addition, the "partially hidden fifth floor would not offend the R-5 zone's four-story limit as the uniquely shaped lot and sixteen foot setback of the fifth floor caused it to 'appear to be a four-story mixed-use building' consistent with the surrounding developments," the court stated. Brunswick's planner had testified "that the proposed construction d[id] not have 'a five-story . . . façade, but it ha[d] that set back . . . that work[ed] nicely with keeping in the existing framework.' "

The court also rejected the VNA's asserted that "R-5 zone was passed in large measure to restrict five-story developments." That "fact alone [wa]s insufficient to conclude that the [BZ's] decision to grant the height variance which permitted a recessed fifth story was arbitrary and capricious," the court found.

The court also rejected the VNA's asserted that "R-5 zone was passed in large measure to restrict five-story developments."

The bottom line:

- the ZBA had "appropriately considered the impact the project would have on the neighboring properties"; and
- the lower court's findings were supported by sufficient evidence in the record.

Case Note:

The VNA alleged that the BZA's decision to grant the developer's request for use and bulk variances was arbitrary and capricious and substantially impaired the R-5 zone as a result.

Land Use

Landowners seek adverse possession of platted, unimproved alleyway

Citation: *Dulebohn v. Waynesfield, 2020-Ohio-4340, 2020 WL 5361217 (Ohio Ct. App. 3d Dist. Auglaize County 2020)*

About 100 years ago, Waynesfield, Ohio platted "The Crown Addition" for the village. The addition included a 16-foot alleyway running east to west, south of Mulberry Street. Waynesfield never improved the platted alleyway.

In 1988, Waynesfield, Ohio paved a strip of land south of and contiguous to the original platted alleyway, which was discovered during a 2018 survey. This paved section was located on a.235-acre parcel that the Michael Ridenour and Beverly Ridenour claimed to own.

When the village realized the paved alleyway was in the wrong place, its council passed a resolution to relocated it to the correct place.

On August 17, 2018, landowners Diana Dulebohn and William Dulebohn filed a complaint seeking: adverse possession; declaratory judgment; prescriptive easement; temporary, preliminary, and permanent injunctions; and damages against the village and the Ridenours, whose land abutted the platted alleyway.

The Dulebohns claimed they had adversely possessed the platted, but unimproved alleyway abutting each of their individual properties, that the village had abandoned the platted, but unimproved alleyway, and that they had adversely possessed at least a prescriptive easement over the improved alleyway. They were asking that the village council be required to conduct an open hearing on their request to vacate the platted alleyway that they had filed with the village.

The village, its city council members, and the mayor

responded that the village had not abandoned the platted, but unimproved alleyway. And, they contended that the Dulebohns couldn't claim abandonment of government land or that they had adversely possessed government land.

The Ridenours then filed an answer denying the Dulebohns' allegations. They also filed a counterclaim seeking an order quieting title to the.235-acre parcel, which they claimed they owned. They also argued they were the rightful owners of the strip of land that included the paved alleyway pursuant to a survey and that they should be declared the owners of the parcel.

In November 2019, the village filed a request for judgment without a trial, asserting that the Dulebohns couldn't proceed with an adverse possession or abandonment claim against the government or a political subdivision. In support of its position, it:

- **cited the Ohio-based case *Anderson v. Village of Alger* where the court found that an alley had not been abandoned when an active storm sewer and water line traversed the alley;**
- **attached maps and affidavits indicating that a sanitary sewer system ran north to south, bisecting the east to west platted, but unimproved alleyway in question**—in the village's view, this showed that the Dulebohns couldn't succeed with their adverse possession or abandonment claims since it exercised some control over the platted, but unimproved alleyway; and
- **argued that it was the rightful owner of the *paved* alleyway, not the Ridenours.**

The Ridenours also asked the court for judgment without a trial, too. They contended that the Dulebohns couldn't establish adverse possession and prescriptive easement against a political subdivision.

Ultimately, the lower court denied the Dulebohns' claims to vacate the platted, unimproved alleyway. They appealed.

DECISION: Affirmed.

There were no genuine issues of material fact, and Waynesfield was entitled to judgment as a matter of law regarding abandonment; a hearing wasn't necessary to rule on the sewer-line issue since the Dulebohns couldn't establish abandonment.

In *Anderson,* the appeals court had affirmed a lower court's decision that an alleyway had not been abandoned where the "storm sewer traversed the alley in a north-south direction." "Although the alleyway in *Anderson* was in poor condition, and impassible, we determined, consistent with other authority, that '[a] street or alley is not abandoned even if it is in bad condition, difficult to use, impassable at times, or if no work was done upon it, if the municipality has exercised *some* dominion over it,' " the court noted. Therefore, in *Anderson*, the court found that "the presence of an active storm sewer and water line crossing the alleyway was sufficient use and dominion by the village to show that the alleyway had not been abandoned."

In Anderson, the appeals court had affirmed a lower court's decision that an alleyway had not been abandoned where the "storm sewer traversed the alley in a north-south direction."

The appeals court determined the same rationale in *Anderson* applied here.

The bottom line: The Dulebohns' "claim the sewer line crosses under a street, the original platted, but unimproved alleyway [wa]s crossed by the sewer line regardless if it now happens to be under a different street. Thus [their] arguments regarding abandonment fail[ed] both factually and as a matter of law as [the village] ha[d] exercised *some* dominion over the alleyway through the sewer line."

"[T]he sewer line still plainly r[an] north-south across the alleyway that was platted in 1918, regardless of new roads or alleyways being built after that time," the Court of Appeals of Ohio explained. "Thus there [wa]s no showing that any hearing or evidence here would have been necessary to rule on this issue because appellants could not legally establish abandonment. Under these circumstances, we cannot find that the trial court erred in this matter," it added.

The case cited is *Anderson v. Village of Alger, 1999-Ohio-777, 1999 WL 378377 (Ohio Ct. App. 3d Dist. Hardin County 1999).*

Zoning News from Around the Nation

Arkansas

City of Bono will refocus zoning after study's findings

The Bono, Arkansas Planning and Zoning Committee, which was launched in 2010, will focus on examining the current zoning rules in place in the city in an effort to refocus on developing a new zoning map, the city's mayor told KAIT8.com. The mayor told the news outlet that the hope is to ensure there is more residential housing without increasing the number of apartments.

Any changes will not, however impact structures under construction or existing zoning, KAIT8.com reported.

Source: *kait8.com*

California

Bay Area zoning policy to increase housing advances

The Association of Bay Area Governments' (ABAG) executive board has voted to go forward with pursuing a new way for determining how many homes in Marin, Contra Costa, and Napa Counties should be required to plan between 2023 and 2031, the *Marin Independent Journal* reported recently.

According to the news outlet, this policy, if approved,

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will result in a sharp increase in the number of homes in the impacted municipalities within these counties.

The *Journal* reported that the state's Department of Housing and Community Development (DHCD) examines the amount of new housing that will be needed in California's Bay Area every eight years to account for job growth and the expected population. Once DHCD does this, ABAG determines how the number of homes will be divided among the municipalities and counties in the Bay Area. At that point, local jurisdictions may need to update zoning laws to conform with the housing mandate.

Source: *marinij.com*

Connecticut

Republican Kim Healy, proponent of Hands Off Zoning coalition, defeated by incumbent Democrat Will Haskell

A group called the Hands Off Zoning coalition recently made its case to residents in towns across Fairfield County, Connecticut on why they should vote Republican in the election that took place November 3, the *Connecticut Mirror* reported. The news outlet reported that Republican candidate Kim Healy, who opposed state Sen. Will Haskell, D-Westport, posted a map on Facebook showing where she believed single-family zoning might be impacted if Democrats were elected to the state Senate.

The issue of zoning and land-use policies became a campaign point for President Donald Trump, too, who spoke of the end of single-family zoning in a Biden Administration.

According to election results, Haskell has been reelected.

Source: *ctpost.com*

Indiana

Bloomington's new draft zoning map released, city seeks residents' input

The City of Bloomington, Indiana has released a draft of a newly proposed zoning map, which has been published to the city's website. Publishing the draft map for residents' input was the final step in the process of updating the city's Unified Development Ordinance (UDO) and Zoning Map, the city explained in a press release.

The UDO, which was approved in April 2020, "brings [Bloomington's] land use and development laws into closer alignment with [its] 2018 Comprehensive Plan to support such goals as housing equity, compact urban form, and sustainability," the press release stated.

"When adopted in April 2020, the UDO included a Conversion Map with new zoning district names, standards, and uses for existing districts without altering the location of those districts and without adding any new districts," the city explained. "In that way, the community was able to discuss the broader themes and technicalities of the UDO without simultaneously tackling the discussion of where the districts should be located. The Zoning Map update will complete the process of identifying these locations," it added.

Specifically, the public outreach draft map and text amendments will address these proposed changes:

- identifying locations for three new zoning districts found in the 2020 UDO, including parks and open space, residential urban, and mixed-use student housing;
- identifying 20 individual areas for targeted rezoning;
- rezoning "focus areas," which the city described as "locations expected to see the most immediate or anticipated development/redevelopment interest over the next decade," which included some areas near the city's downtown;
- identifying more than 100 PUDs for rezoning; and
- adding housing options—"plexes"—in all districts that currently permit residential uses.

The city explained that its website contained "the public outreach draft map and amendments to UDO standards, a proposed zoning changes story map, proposed housing diversity story map, proposed housing diversity story map, an interactive map where residents may enter their address, and information about opportunities to provide feedback over the next eight weeks."

In October 2020, the city held a video conference that featured:

- a presentation of the proposed changes; and
- a brief facilitated question-and-answer session.

The city said that over the course of the following months it would meet at least three more times to gather input from the public. It also noted residents could give feedback by participating in online surveys on the project website.

"Our land-use choices are crucial in advancing our community toward more sustainability, equity, economic viability, and an ever-improving quality of life for people from all walks of life," said Mayor John Hamilton. "These choices are complex and interconnected. I encourage residents to participate in the ongoing process of developing a new zoning map that best embodies our community's fundamental values," Hamilton added.

To view the UDO Zoning Map: Public Outreach Draft, visit bloomington.in.gov/planning/udo/map/updates. And, for more on the city's Comprehensive Plan, visit bloomington.in.gov/planning/comprehensive-plan.

Source: *bloomington.in.gov*

New Jersey

Haddonfield Burrough approves real estate brokerage's request to expand location on Kings Highway East

The Haddonfield Burrough, New Jersey has approved a request by AM Realty Advisors, a family-owned boutique real estate brokerage, to expand its operations into an office on the first floor of 6 Kings Highway East, a press release stated. The lounge-style office space is currently zoned for retail uses, and currently AM Realty Advisors works out of the second floor unit at that address.

The lounge, which will include a lounge area for clients,

along with a conference room and offices, was given the green light at an October 20, 2020 zoning board hearing.

Source: *prnewswire.com*

North Carolina

Neighbors file appeal in opposition to decision to grant Marshall asphalt project a zoning permit

In September 2020, Madison Asphalt obtained a zoning permit to erect an asphalt plant at the McCrary Stone Service quarry, the *Asheville Citizen Times* reported recently. Now residents in the vicinity of the quarry are asking an appeals court to overturn a lower court's ruling validating that zoning permit, the news outlet reported.

The neighbors allege that the lower court committed several errors in reviewing the order granting the zoning permit. For instance, the residents' attorney argued the court had overlooked the fact that the local board of adjustment had found standards hadn't been met, the news outlet reported.

Source: *citizen-times.com*

Oregon

Land inventory study provides valuable housing data for Gearhart's comprehensive plan

In 2019, Gearhart, Oregon City Council reviewed the 2018 Clatsop County Housing Study. "Concern was raised regarding the accuracy of the reports vacant land inventory and projected housing capacity for Gearhart," wrote a city staffer regarding an October 2020 meeting set to discuss the matter. "Staff and local builders reviewed the inventory and determined the data was inaccurate, having been prepared for the county as a whole at a high level overview," the letter explained.

That's when Angelo Planning Group, which prepared the county's housing study, came on board to complete a Gearhart Residential Buildable Land Inventory, the letter explained "In summary, where the earlier county study indicated the City has enough vacant land for 701 new dwellings the recently completed Gearhart Inventory actually finds capacity for 381 new dwellings. The report provides solid data to update the housing element of the Comprehensive Plan," it stated.

For more information, visit cityofgearhart.com/sites/default/files/fileattachments/city_council/meeting/packets/4431/skm_c45820100213170.pdf.

Source: *cityofgearhart.com*

Virginia

Harrisburg's survey to get a pulse on zoning and subdivision ordinances recently closed

The City of Harrisburg, Virginia closed its survey on November 2, 2020 to get feedback from its residents on updating its zoning and subdivision ordinance.

Through the "Zoning and Subdivision Ordinances Update Project," the city reviewed "[t]he existing Zoning and Subdivision Ordinances [which] were last thoroughly evaluated and comprehensively re-written in 1997 and 1996, respectively," the city's website explained.

"In the ensuing time, many changes, both major and minor, have been made to the text of the ordinances, including the addition of districts and overlays to the Zoning Ordinance. The results include ordinances containing outdated requirements, internal inconsistencies, and ordinances that can be difficult for community members to comprehend. In recent years, it has become apparent that a significant overhaul of the Zoning and Subdivision Ordinances is needed. Additionally, new ways of thinking about planning and zoning combined with new techniques and principles for implementing adopted plans offer ways to improve the efficiency and effectiveness of City planning and zoning," it added.

The goal of the survey was to garner insights into "current issues, opportunities, needs, and priorities of [the] community." The survey specifically asked for respondents to choose the most appropriate answer concerning:

- what best described them—e.g., lives, works, owns a business in Harrisburg, etc.;
- the type of neighborhood the respondents were from—with a blank form to fill in the name of their neighborhood, street address, or the street intersection they were closest to; and
- the type of housing that should be permitted in existing neighborhoods with mostly single-family detached housing (prior to asking this question, the city defined a single family resident, a duplex, a triplex/quadplex, a townhouse, a multifamily apartment, and an accessory dwelling unit.

More about the city's survey, including the project process and milestones, highlights and upcoming activities, and specifics on the Ordinance Advisory Committee, visit harrisonburgva.gov/zoning-subdivision-ordinances-update.

Source: harrisonburgva.gov

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