



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, March 2, 2021 beginning at 5:30 P.M., P.S.T. utilizing GoToMeeting.com: <https://global.gotomeeting.com/join/144050125>

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: February 24, 2021 2:00 p.m.

Posted by: Shelby Knopp, Planning Technician

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/144050125>. You can also dial in using your phone at **+1 (646) 749-3112**. The **Access Code** for this meeting is **144-050-125**. 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 24th day of February, 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, City Planner

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING AGENDA
5:30 P.M., P.S.T., TUESDAY, MARCH 2, 2021
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
<https://global.gotomeeting.com/join/144050125>

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

February 2, 2021 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Conditional Use Permit No. 1-21, filed by Elite Storage and RV, LLC, which would allow for commercial storage units, RV Storage and U-Haul services within a C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located on the northeast corner of the intersection of S. 12th Street and Opal Drive. (1500 Opal Drive - APN 001-630-056)

2. Review, consideration, and possible action on Variance No. 1-21, filed by Real Estate Pro, LLC on behalf of Elevate Properties LLC., to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the southeast side of Walnut Street, approximately 166' northeast of 4th Street. (452 Walnut Street - APN 001-025-003)

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 10-20, filed by Bailey & Associates, LLC, for the development of a subdivision entitled Ruby Mountain Peaks involving the proposed division of approximately 10 acres of property into 45 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**

The subject property is located on the east side of Jennings Way between Mountain City Highway and Bluffs Avenue. (APN 001-01A-014)

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

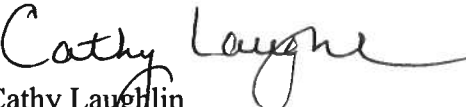
COMMENTS BY THE GENERAL PUBLIC

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

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**
 Giovanni Puccinelli
 John Anderson
 Gratton Miller
 Mercedes Mendive
 Tera Hooiman (*arrived at 5:34 pm*)

Excused: **Stefan Beck**

City Staff Present: **Scott Wilkinson, Assistant City Manager**
 Cathy Laughlin, City Planner
 Michele Rambo, Development Manager
 Bob Thibault, Civil Engineer
 Jamie Winrod, Fire Marshal
 Shelby Knopp, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

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

*****Motion: Approve the Meeting Minutes from the January 5, 2021 regular meeting.**

Made by Gratton Miller, Seconded by Giovanni Puccinelli.

**Motion passed unanimously. (5-0)*

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)

Commissioner Tera Hooiman arrived.

Scott MacRitchie, Jordanelle Third Mortgage, 1947 Amber Way, explained that this was a 70 unit project across from Jim Winer's project at The Pointe. He stated that he was available for any questions.

Michele Rambo, Development Manager, went over the City of Elko Staff Report dated January 19, 2021. Staff recommended conditional approval with the conditions and findings listed in the Staff Report. She explained that there would need to be a Modification of Standards approved for Lots 47 and 48 for the lot widths, as well as for the double frontage lots along E. Jennings Way.

Cathy Laughlin, Planning Department, recommended conditional approval as presented by staff.

Bob Thibault, Engineering Department, went over the Engineering Department Conditions that were listed in the Staff Report.

Jamie Winrod, Fire Marshal, went over the Fire Department Condition that was listed in the Staff Report. She explained that the Note section on Sheet 2 complies with the Fire Code for the radius of the turn around, but the map measurements do not.

Scott Wilkinson, Assistant City Manager, stated that he had a question on the turnaround radius. He asked if that issue would impact the lot depths. He added that the Planning Commission's motion would need to include a Modification of Standards for the double frontage lots. Ms. Rambo could add some clarification on that. Mr. Wilkinson also explained that the street naming would have to be addressed at this meeting. The Planning Commission will need to consider the street names. Mr. Wilkinson stated that all the changes to the map would have to be corrected before the City Council considers the Tentative Map. He wanted to start with the radius change. He asked if that would impact minimum lot depths.

Mr. MacRitchie explained that they wouldn't impede the lots with the turnaround.

Mr. Wilkinson thought it had to do with one of the cul-de-sacs, so he said that wouldn't apply. He stated that they would need a Modification of Standards. The Planning Commission has to determine why the double frontage lots are being approved, which would be Lots 48 through . A finding for the Planning Commission for approving those double frontage lots is that proposed

layout of the subdivision best utilizes the acreage available. If there weren't lots in that area, there would be a huge weed strip. Mr. Wilkinson thought that the Planning Commission could determine that the proposed subdivision layout makes the best use of the property and that as a result of that Lots 48 through 61 would be double frontage lots with restricted access, or no access, to Jennings Way. The Planning Commission will also need to work with the developer to determine what the street names are going to be, and have those be a part of the motion.

Mr. MacRitchie asked if they needed to have an acceptable street name tonight in order to move forward.

Mr. Wilkinson thought the Planning Commission had to consider the street names.

Mr. Thibault explained that he had an email from Tom Ballew that proposed Orovada Lane in the place of Virginia Lane and Mesquite Way in the place of Paradise Way. Mr. Thibault said he looked those up and they were acceptable and they don't conflict with any other existing names.

Mr. MacRitchie said they would have to change the map, but it was an easy change.

Mr. Wilkinson thought if Mr. Thibault was good with those street names they could be included in the consideration by the Planning Commission.

Mr. Thibault said he was good with those street names.

Ms. Laughlin pointed out that staff wanted to restrict access for Lot 1, which is a corner lot, to the new street, because it is a double frontage lot.

Ms. Rambo stated that the Staff Report listed it as Lots 1 and 48 through 61. Lots 47 and 48 need the Modification because of the width.

Chairman Jeff Dalling asked Mr. Wilkinson if he had any other concerns.

Mr. Wilkinson said no, but he was wondering if he had the most current Staff Report. As long as the double frontage lots were included in the motion, along with the street naming it should be fine.

Chairman Dalling asked Mr. MacRitchie if he was ok with everything that had been discussed.

Mr. MacRitchie said he was. He added that since Mr. Ballew wasn't present he would make sure that once the new street names were approved that the map would be updated, as well as with the other information that was requested.

*****Motion: Forward a recommendation to City Council to conditionally approve Tentative Map No. 12-20 subject to the conditions found in the City of Elko Staff Report dated January 19, 2021, listed as follows:**

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.

Commissioner Puccinelli's findings to support the recommendation were 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. 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. 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. The

proposed subdivision complies with all other relevant sections of City Code with the exception of:

- a. Lots 47 and 48 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. Planning Commission finding that it was in the best design possible considering the lot layout and street design.
- b. Lots 1 and Lots 48 to 61 are designed with double-frontage on East Jennings Way, currently designated as a Minor Arterial street. The subdivision has been designed so that all lots will front onto interior residential streets, not allowing access to East Jennings Way. Based on the shape and topography of the site, this design promotes the highest and best use of the property. A modification of standards is required to allow these double-frontage lots.

Street names approved by Planning Commission with Paradise Way to be replaced with Mesquite Way and Virginia Lane to be replaced with Orovada Lane.

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

Made by Giovanni Puccinelli, seconded by Tera Hooiman.

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

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.

Ms. Laughlin went through the City of Elko Staff Report dated January 12, 2021. Staff recommended approval with the findings listed in the Staff Report.

Ms. Rambo had no other comments or conditions.

Mr. Thibault recommended approval as presented by staff.

Ms. Winrod had no comments and recommended approval.

Mr. Wilkinson had no comments or concerns.

*****Motion: Forward a recommendation to City Council to adopt a resolution which approves Rezone No. 6-20.**

Commissioner Miller's findings to support the recommendation were the proposed zone district is 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 proposed zone district and resultant land use is in conformance with 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 3-2-5. 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 Gratton Miller, seconded by Giovanni Puccinelli.

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

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.

Ms. Laughlin went through the 2020 Annual Report of Planning Commission Activities.

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

Made by Giovanni Puccinelli, seconded by Mercedes Mendive.

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

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that at the January 12th meeting the City Council approved the annual appraiser list, the 2021 Planning Commission Work Program, Final Map 11-20 for Copper Trails and the Performance Agreement, and they approved a purchase and sale agreement for some property the City will be purchasing along the HARP Trail. The City Council also approved an amendment to the Cambridge Estates Performance Agreement, the Master Plan Amendment Resolution, and Resolution 27-20 for the Grace Baptist Church Vacation. At the January 26th meeting the City Council accepted the public improvements for Aspen Heights and they approved Resolution 3-21 for the Rezone for the Elko Institute of Academic Achievement. The City Council meeting that was scheduled for February 9th was pushed to the 11th, due to scheduling conflicts at the Convention Center.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that the RDA had a project out to bid right now, which will be awarded at the RDA Meeting on February 23rd. It is for the Block Ends Project, for 4th Street, 5th Street, and 6th Street. There will also be several other items on the RDA Agenda for the 23rd of February.

Commissioner Miller asked exactly what the Block End Project was.

Ms. Laughlin explained that there would be some landscaping and some infrastructure, such as curb, gutter, sidewalk, storm drain work, lighting, and irrigation. Each block end will also include an area that can be used to display an art piece and lighting. It is a beautification project for those three block ends of the Downtown Area.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

Ms. Laughlin pointed out that there was a training included in the packet this month. She also mentioned that with all the changes that the City of Elko has had to do through COVID, we have purchased a new program for Agenda Management. With the new program the agendas would no longer be sent to the Commissioners through the Egnyte app on their tablets. There will be a new app, but it is not compatible with the Android operating system, so the Planning Commissioners would all be receiving iPads.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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

ADJOURNMENT

There being no further business, the meeting was adjourned.

Jeff Dalling, Chairman

Tera Hooiman, Secretary

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 1-21, filed by Elite Storage and RV, LLC, which would allow for commercial storage units, RV Storage and U-Haul services within a C (General Commercial) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **March 2, 2021**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **CUP 3-17 was approved on July 18, 2017 for the development of storage units. A new CUP 3-19 was approved on March 5, 2019 for the expansion of the use to include indoor and outdoor RV storage. The property owner is now proposing an expansion of the development to include U-Haul rental services.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Conditional Use Permit 1-21 based on the facts, findings and conditions presented in Staff Report dated February 11, 2021.**
9. Findings: **See Staff report dated February 11, 2021.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Elite Storage and RV, LLC
45 Teton Drive
Lindon, Utah 82042-2272**

**Lana Carter
Carter Engineering
lanalcarter@live.com**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 3/2

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

Title: Conditional Use Permit 1-21

Applicant(s): Elite Storage + RV, LLC

Site Location: 1500 Opal Drive - APN 001-630-056

Current Zoning: C Date Received: 2/9/21 Date Public Notice: 2/19/21

COMMENT: This is to allow for Commercial Storage Units, RV Storage, and V-Haul Services within a Commercial zoning district.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: _____

Initial

City Manager: Date: 2/22/2021

No comments/concerns. Recommend approval of CUP 1-21.

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:	February 11, 2021
PLANNING COMMISSION DATE:	March 2, 2021
APPLICATION NUMBER:	Conditional Use Permit 1-21
APPLICANT:	Elite Storage and RV, LLC.
PROJECT DESCRIPTION:	Opal and 12th Street

A conditional use permit is required for every new development on a lot or parcel in the C general commercial zoning district which abuts a residential zoning district. The property owner is proposing an expansion to the existing development by adding U-haul rentals.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-630-056

PROPERTY SIZE: 6.66 acres

EXISTING ZONING: C -General Commercial,

MASTER PLAN DESIGNATION: (COMM-GEN) Commercial General

EXISTING LAND USE: Developed, currently under development of an expansion of two additional buildings

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by developed land to the south, west, and east. There is a residential subdivision being developed to the north.

PROPERTY CHARACTERISTICS:

The property is currently under construction for the storage units previously approved under CUP 3-17 and CUP 3-19.

The property is generally flat with no unusual conditions.

There is a difference in elevation at the property line along the townhomes.

The property will be accessed from Opal Drive.

The property is not in the floodway and flood zone.

APPLICABLE MASTER PLANS AND CITY CODE SECTIONS:

-) City of Elko Master Plan-Land Use Component
-) City of Elko Master Plan-Transportation Component
-) City of Elko Redevelopment Plan
-) City of Elko Wellhead Protection Plan
-) City of Elko Code 3-2-3 General Provisions
-) City of Elko Code 3-2-4 Establishment of Zoning Districts
-) City of Elko Code 3-2-10 General Commercial (C)
-) City of Elko Code 3-2-17 Traffic, Access, Parking and Loading Regulations
-) City of Elko Code 3-2-18 Conditional Use Permits
-) City of Elko Code 3-8 Flood Plain Management

Background Information

-) The application for the Conditional Use Permit (CUP) was filed as required under City Code 3-2-10 (B)8.
-) The area is currently zoned General Commercial
-) The area is located at the intersection of 12th Street and Opal Drive

-) The applicant was previously approved a CUP 3-17 on July 18, 2017 for the development of storage units and CUP 3-19 on March 5, 2019 for the expansion of two additional buildings and/or outdoor RV storage. The applicant is proposing an additional business for U-Haul rentals on the same property.
-) The property is not located in the Redevelopment Area.

MASTER PLAN

Land Use

1. The Master Plan Land Use Atlas shows the area as Commercial General.
2. C- General Commercial is listed as a corresponding zoning district for Commercial General in the Master Plan Land Use.
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 4: Consider a mixed-use pattern of development for the downtown area, and for major centers and corridors, to ensure the area’s adaptability, longevity, and overall sustainability.
5. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and that of individual neighborhoods.
6. Objective 8: 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.

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

Transportation

1. The area will be accessed from Opal Drive.
2. The site has pedestrian access along 12th Street and Opal Drive.
3. The existing property meets the goals listed in the Master Plan Transportation Document as Best Practice Objective 1; Provide a balanced transportation system that accommodates vehicle, bicycles, and pedestrians, while being sensitive to, and supporting the adjacent land uses.

The conditional use is in conformance with the Transportation Component of the Master Plan and existing transportation infrastructure.

ELKO WELLHEAD PROTECTION PLAN

-) Most of the property is located outside the 30-year capture zone for several City wells.

SECTION 3-2-3 GENERAL PROVISIONS

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

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

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

J) 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 use is required to have an approval as a conditional use to be in conformance with ECC 3-2-3 as required in ECC 3-2-10(B).

SECTION 3-2-3(J)

Required Screen Walls: Under certain conditions, the planning commission may require screen walls to separate incompatible uses; e.g., separation of abutting or industrial uses and residential uses.

The owner has installed the 8’ tall solid wall along 12th Street and Opal Drive and a screen fence with solid slats, 95% blockage along the northeast and east property lines. This was approved by Planning Commission at their March 5, 2019 meeting for CUP 3-19.

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 use is in conformance with Elko City Code 3-2-4.

SECTION 3-2-10 COMMERCIAL DISTRICTS

1. Section 3-2-10(B)(4) Commercial Storage Units are listed as a permitted conditional use.

2. Section 3-2-10(B)(8) Commercial Zone Abutting Residential Zone: A conditional use permit pursuant to section [3-2-18](#) of this chapter is required for every new development on a lot or parcel in the C general commercial zoning district which abuts a residential zoning district. All such developments are subject to the screen wall requirements set forth in subsection [3-2-3J](#) of this chapter.
3. Height Restrictions: All structures within the C general commercial zoning district must comply with the height and other requirements of the current city airport master plan, to the extent the plan applies to that location.
4. The property does abut a residential zone so therefore is subject to the screen wall requirements set forth in subsection 3-2-3(J).
5. Development of the property is required to be in conformance with City code and conditions for the CUP.

The proposed use is in conformance with Elko City Code 3-2-10.

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

-) Conformance with this section is required. The current facility is in conformance for the existing uses.
-) Off Street parking will be required for the U-Haul rentals and will not be allowed to be parked in the existing required off street parking stalls.

The proposed use with proposed conditions conforms to section 3-2-17 of Elko city code.

SECTION 3-2-18 CONDITIONAL USE PERMITS

General Regulations:

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

SECTION 3-8 FLOOD PLAIN MANAGEMENT

1. The parcel is not located within a designated flood plain.

FINDINGS

1. The proposed development is in conformance with the Land Use component of the Master Plan
2. The proposed development is in conformance with the existing transportation infrastructure and the Transportation component of the Master Plan
3. The site is suitable for the proposed use.
4. The proposed development is in conformance with the City Wellhead Protection Program.
5. The proposed use is consistent with surrounding land uses.
6. The proposed use is in conformance with City Code 3-2-10 (B) General Commercial with the approval of the Condition Use Permit
7. The proposed development is in conformance with 3-2-3, 3-2-4, 3-2-17, 3-8 and 3-2-18 of the Elko City Code.

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of CUP 1-21 with the following conditions:

1. The conditional use permit is granted to the property owner allowing for the development of U-Haul rentals along with the approved commercial storage units and RV storage.
2. The permit shall be personal to the property owner and applicable only to the specific use and to the specific property for which it is issued. However, the Planning Commission may approve the transfer of the conditional use permit to another owner. Upon issuance of an occupancy permit for the conditional use, signifying that all zoning and site development requirements imposed in connection with the permit have been satisfied, the conditional use permit shall thereafter be transferable and shall run with the land, whereupon the maintenance or special conditions imposed by the permit, as well as compliance with other provisions of the zoning district, shall be the responsibility of the property owner.
3. The conditional use permit shall automatically lapse and be of no effect one year from the date of its issue unless the permit holder is actively engaged in developing the specific property in use for which the permit was issued.
4. Conformance with conditions listed in approved CUP 3-17 & CUP 3-19.
5. The Conditional Use Permit is to be recorded with the Elko County Recorder within 90 days after the approval of the conditional use permit.
6. Parking for the U-haul rental trucks/trailers to be within the property and not allowed to be on the street nor allowed to be in the required off street parking stalls required for the office. Rental trucks/trailers are not to block any access to the existing storage units, fire lane or access to the property.
7. If washing trucks on-site, no water may enter the public right-of-way.



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

February 23, 2021

Elite Storage & RV, LLC
Attn: Dave Mitton
45 Teton Drive
Lindon, UT 82042-2272
Via Email: davemitton@yahoo.com

Re: Conditional Use Permit No. 1-21

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/144050125>. You can also dial in using your phone at **+1 (646) 749-3112**. The **Access Code** for this meeting is **144-050-125**.

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: Carter Engineering, Attn: Lana Carter
Via Email: lanacarter@live.com

Conditional Use Permit 1-21 - Elite Storage + RV, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001630091	12TH STREET ASSOCIATES LLC	C/O GASTON & WILKERSON MGT	4751 CAUGHLIN PKWY	RENO NV	89519-0924
001630094	12TH STREET ASSOCIATES LLC	C/O GASTON & WILKERSON MGT	4751 CAUGHLIN PKWY	RENO NV	89519-0924
001870033	ARMBRUSTER, JOSEPH L TR ET AL		1409 CLOVER HILLS DR	ELKO NV	89801-7931
001870004	BALES, ERICK		2271 ALBATROSS WAY	SPARKS NV	89441-5839
001870007	BARNET, GREGORY A TR		167 PLEASANT VALLEY RD UNIT 3	SPRING CREEK NV	89815-9744
001870009	BARNET, GREGORY A TR		167 PLEASANT VALLEY RD UNIT 3	SPRING CREEK NV	89815-9744
001870017	BELL, STEVEN W ET AL		1625 CLARKSON DR APT 17	ELKO NV	89801-4805
001633025	BENCH, WILLIAM R & MARTA		1703 FLAGSTONE DR	ELKO NV	89801-8818
001870036	BOWMAN, JOAN WYTCHERLEY		1625 CLARKSON DR UNIT 36	ELKO NV	89801-4803
001633020	BOYER, RODGER D & ADA D		207 MOUNTAIN CITY HWY UNIT 11	ELKO NV	89801-9514
001634E22	BRASWELL, DERRICK & KYLIE		1525 OPAL DR UNIT E202	ELKO NV	89801-3444
001870011	BROADWATER, BARRY M & LAURA		1625 CLARKSON DR APT 11	ELKO NV	89801-4804
001870031	BROADWATER, COLTON & PATRICIA		1625 CLARKSON DR UNIT 31	ELKO NV	89801-7938
001870034	BURT, TYLER B		1625 CLARKSON DR UNIT 34	ELKO NV	89801-4803
001633036	CAMACHO, BARBARA		1709 GRANITE DR	ELKO NV	89801-8849
001870039	CHAO, ELLEN TR		11879 DELAVAN CIR	RANCHO CORDOVA CA	95742-8061
001870001	CHAO, ELLEN TR		11879 DELAVAN CIR	RANCHO CORDOVA CA	95742-8061
001870026	CHAO, ELLEN TR		11879 DELAVAN CIR	RANCHO CORDOVA CA	95742-8061
001870000	CHAP ENTERPRISES, LLC		950 IDAHO ST	ELKO NV	89801-3919
001633007	CHAPPELL, RONALD & SAUNDRA L		1735 FLAGSTONE DR	ELKO NV	89801-8818
001633009	CLARK, VICKI		1738 FLAGSTONE DR	ELKO NV	89801-8818
001870030	CN&MM LLC		437 AUDRAINE DR	GLENDALE CA	91202-1101
001870029	CN&MM LLC		437 AUDRAINE DR	GLENDALE CA	91202-1101
001870032	CN&MM LLC		437 AUDRAINE DR	GLENDALE CA	91202-1101
001630047	CRL PROPERTIES LLC		1585 LAMOILLE HWY	ELKO NV	89801-4321
001630046	CRL PROPERTIES LLC		1585 LAMOILLE HWY	ELKO NV	89801-4321
001634E12	CUMMINS, JAMES S & MARY E		1525 OPAL DR UNIT E102	ELKO NV	89801-3440
001870019	DUSOLEIL, DANIEL L & MARJIE		1625 CLARKSON DR APT 19	ELKO NV	89801-4805
001870028	ELLIOTT, JOHN F & SUSAN G		3117 MIDLAND DR	ELKO NV	89801-2512

001870015	FORSYTHE, KARYN	C/O OTT, MICHEA	1625 CLARKSON DR APT 15	ELKO NV	89801-4804
001870013	FROMHERZ, DIANNA D & PETER A		1625 CLARKSON DR APT 13	ELKO NV	89801-4804
001870002	GARCIA-MARIN, LORENA		1625 CLARKSON DR APT 2	ELKO NV	89801-4804
001633010	GARLICK, MICHAEL W & KRISTEN J		1746 FLAGSTONE DR	ELKO NV	89801-8818
001633005	GONZALEZ, JESUS L & DESTINY R		1751 FLAGSTONE DR	ELKO NV	89801-8818
001870024	GOWAN, NATHAN D & CHEZLYNN A		275 3RD ST UNIT 2772	ELKO NV	89803-3231
001870003	GRAMS GIFT LLC		2910 E WILLOW BEND DR	SANDY UT	84093-2042
001870014	GRAM'S GIFT LLC		2910 E WILLOW BEND DR	SANDY UT	84093-2042
001633029	GRUNDY, RICKI & TONI		1679 OPAL DR	ELKO NV	89801-8822
001633026	GUNNELL PROPERTIES LLC		460 S 100 W	HYDE PARK UT	84318-3339
001870023	HARWARD, RUSTY TR		1625 CLARKSON DR APT 23	ELKO NV	89801-4805
001633028	HEMMERT, ANTHONY PAUL ET AL		1675 OPAL DR	ELKO NV	89801-8822
001870008	HOBBS, STUART G		1625 CLARKSON DR APT 8	ELKO NV	89801-4804
001870027	HOFFMAN, JOLENE ANN		1625 CLARKSON DR APT 27	ELKO NV	89801-4805
0016330069	IGLOO RECREATIONAL CENTER		PO BOX 2532	ELKO NV	89803-2532
001870010	JAKEMAN, KRISTINE K		1625 CLARKSON DR APT 10	ELKO NV	89801-4804
001870022	LEE, MICHAEL & LINDSAY		1625 CLARKSON DR APT 22	ELKO NV	89801-4805
001870035	LEE, MICHAEL A		1625 CLARKSON DR # 35	ELKO NV	89801-4803
001633037	LETTENGA, ZACHARY ROBERT ET AL		1717 GRANITE DR	ELKO NV	89801-8849
001633021	LIMON, PEDRO & MARITZA		1706 FLAGSTONE DR	ELKO NV	89801-8818
001870021	LMM PROPERTIES LLC		3606 VALLEY RIDGE AVE	ELKO NV	89801-8412
001633018	MAUPIN, YOLANDA TR		1730 FLAGSTONE DR	ELKO NV	89801-8818
001633003	MCCARREY, JARED		1767 FLAGSTONE DR	ELKO NV	89801-8818
001870038	NEDROW, AMBER D		1625 CLARKSON DR UNIT 38	ELKO NV	89801-4803
001870018	NICHOLAS RENTALS LLC		2731 SUNNYSIDE AVE	ELKO NV	89801-7939
001870042	NICHOLAS RENTALS LLC		2731 SUNNYSIDE AVE	ELKO NV	89801-7939
001870006	NICHOLAS RENTALS LLC		2731 SUNNYSIDE AVE	ELKO NV	89801-7939
001633023	NUNEZ, SIXTO & ELIZABETH		PO BOX 414	ELKO NV	89803-0414
0016330096	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001633040	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001633035	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001633039	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001633031	PARRADO PARTNERS LP		12257 BUSINESS PARK DR STE 1	TRUCKEE CA	96161-3334
001870040	PICKENS, MICHAEL A & ALICIA		1625 CLARKSON DR UNIT 40	ELKO NV	89801-

001633024 SONORA LLC
001633019 SQUIRES, AUSTIN GRIFFIN
001870037 STOKES, MARC
001633006 THRAN, ROBERT & BRANDOLYN
001870016 TRUJILLO, MANUEL J & SYLVIA M
001870041 VILLASENOR, CECILIA
001633027 WILLIAMS, SHELBY K

2082 IDAHO ST
1722 FLAGSTONE DR
1625 CLARKSON DR UNIT 37
1743 FLAGSTONE DR
1625 CLARKSON DR APT 16
1625 CLARKSON DR UNIT 41
1671 OPAL DR

ELKO NV
ELKO NV
ELKO NV
ELKO NV
ELKO NV
ELKO NV
ELKO NV

89801-2627
89801-8818
89801-4803
89801-8818
89801-4804
89801-4803
89801-8822

65

Postmarked 2/19/21

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, March 2, 2021 beginning at 5:30 P.M. P.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/144050125>.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at <https://global.gotomeeting.com/join/144050125>. You can also dial in using your phone. **+1 (646) 749-3112**. Access Code: **144-050-125**. 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 item to be considered under public hearing format is:

- Conditional Use Permit No. 1-21, filed by Elite Storage & RV, LLC, which would allow for commercial storage units, RV storage, and U-Haul services within a C (General Commercial) Zoning District, and matters related thereto. The subject property is located on the northeast corner of the intersection of S. 12th Street and Opal Drive. (1500 Opal Drive - APN 001-630-056)

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) 777-7119 fax

APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s): Elite Storage and RV, LLC – Dave Mitton

(Applicant must be the owner or lessee of the proposed structure or use.)

MAILING ADDRESS: 45 Teton Drive, Lindon, Utah 82042-2272

PHONE NO. (Home) _____ **(Business)** 1 (801) 372-0220

NAME OF PROPERTY OWNER (If different): Elite Storage & RV LLC

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: 45 Teton Drive, Lindon Utah, 84042-2272

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

Parcel 4 of File No 419689

ASSESSOR'S PARCEL NO.: 001-630-056 **Address** 1500 Opal Drive, Elko Nv 89801

Lot(s), Block(s), & Subdivision _____

Or Parcel(s) & File No. Parcel 4, File No. 419689

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 \$750.00 non-refundable fee.

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

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

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

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

RECEIVED

1. Current zoning of the property:
C (Commercial).
2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:
3-2-10 B. 4 Conditional Uses Permitted. The CUP is need for storage units, onsite residence and because project abuts residential development.
3. Explain in detail the type and nature of the use proposed on the property:

The proposed use of the property is an upscale storage unit facility completely secured by an 8-foot high screen wall or an 8-foot-high screen fence at the locations delineated on the Conditional Use Permit Site Plan. The 8-foot high screen wall has been approve by separate permit. The 8-foot high screen fence is to be as proposed by the attached information. The property will have an onsite office for security and rentals operations. Customers will enter and exit through two proposed security gates. The storage options offered will be enclosed storage spaces, enclosed climate controlled storage spaces, enclosed R.V. storage and open R.V. storage in the proposed gravel area. All open R.V. storage will require the vehicle to be registered, licensed, running and maintained. Phase 1 will include the development of 7 buildings and the gravel R.V. storage area to the north as shown on the Conditional Use Permit Site Plan. Rental of the outdoor RV spaces in the gravel area will continue until such time as the Phase 1 storage units are approaching full status, then at that time the construction of the Phase 2 buildings will take place. There will be approximately 550-650 storage units in Phase 1. Phase 2 will be the addition of 1 or 2 climate control storage unit buildings, insulated storage unit buildings, enclosed R.V. storage unit buildings or covered R.V. storage as the market dictates located in the Phase 1 gravel RV parking area as shown on the Conditional Use Permit Site Plan. The size of the storage unit buildings may vary from that shown on the Conditional Use Site Plan but will be of the concept shown. **Additionally, there will be on-site, in the fenced area, parking as shown in the revised CUP site plan for U-Haul moving vehicles. These vehicles will not be parked on the street or in the designated customer parking areas only to the extent that pick-up is scheduled and waiting during daytime office hours.**

4. Explain how the use relates with other properties and uses in the immediate area:

There are several residential apartments and condominiums abutting this property. The development of storage units in this area will give these residents and others an option for storage. Being sensitive to current residential developments the proposed storage unit facility will be upper scale, secure and attractive.

5. Describe any unique features or characteristics, e.g. lot configuration, storm drainage, soil conditions, erosion susceptibility, or general topography, which may affect the use of the property:

This property was removed from the FEMA flood zone with grading and the installation of the Metzler Wash storm drain. There is an easement for the portion of this storm drain that runs through this property. There is also a water line and easement that crosses this property. The buildings and foundations will be located outside of these easements as shown on the Conditional Use Site Plan.

6. Describe the general suitability and adequacy of the property to accommodate the

proposed use:

The property is adequate for the proposed use as it is large enough to accommodate the use and adequate the infrastructure for this use is available.

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

The property will be graded to drain towards Opal Drive. The design standards for City of Elko storm water management will be followed to address storm water leaving the site. The property is relatively flat and will not require mass grading or terracing.

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

The original traffic study for this property was done to include this property and The Villas at Riverside property along 12th Street. Both this property and The Villas at Riverside property were analyzed for apartments. The resulting existing improvements on Opal Drive 12th Street reflect this. The traffic generated by Storage Units will be much less than apartments. (7 average daily vehicle trips per apartment compared to .30 average daily vehicle trips per storage unit).

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

Four parking spaces are required per 3-2-17 F. This is based on 1 space per 300 square feet of office area. The proposed office is 1200 square feet. A total of 6 standard parking spaces and one van accessible parking space is shown on the Conditional Use Permit Site Plan.

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

An electronic pole sign with reader meeting the requirements of City of Elko Code Chapter 9 – Sign Regulations is proposed in the 12th street right of way. This sign is permitted in the right of way per an existing separate approval.

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

There will be an area provided for open R.V. Storage. All open R.V. storage will require the vehicle to be registered, licensed, running and maintained.

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

None. The onsite office is part of the climate control building.

☒ 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 Signature Developers LLC / Dave Mitton - Member
(Please print or type)

Mailing Address 45 Teton Drive
Street Address or P.O. Box

Lindon, UT 84042
City, State, Zip Code

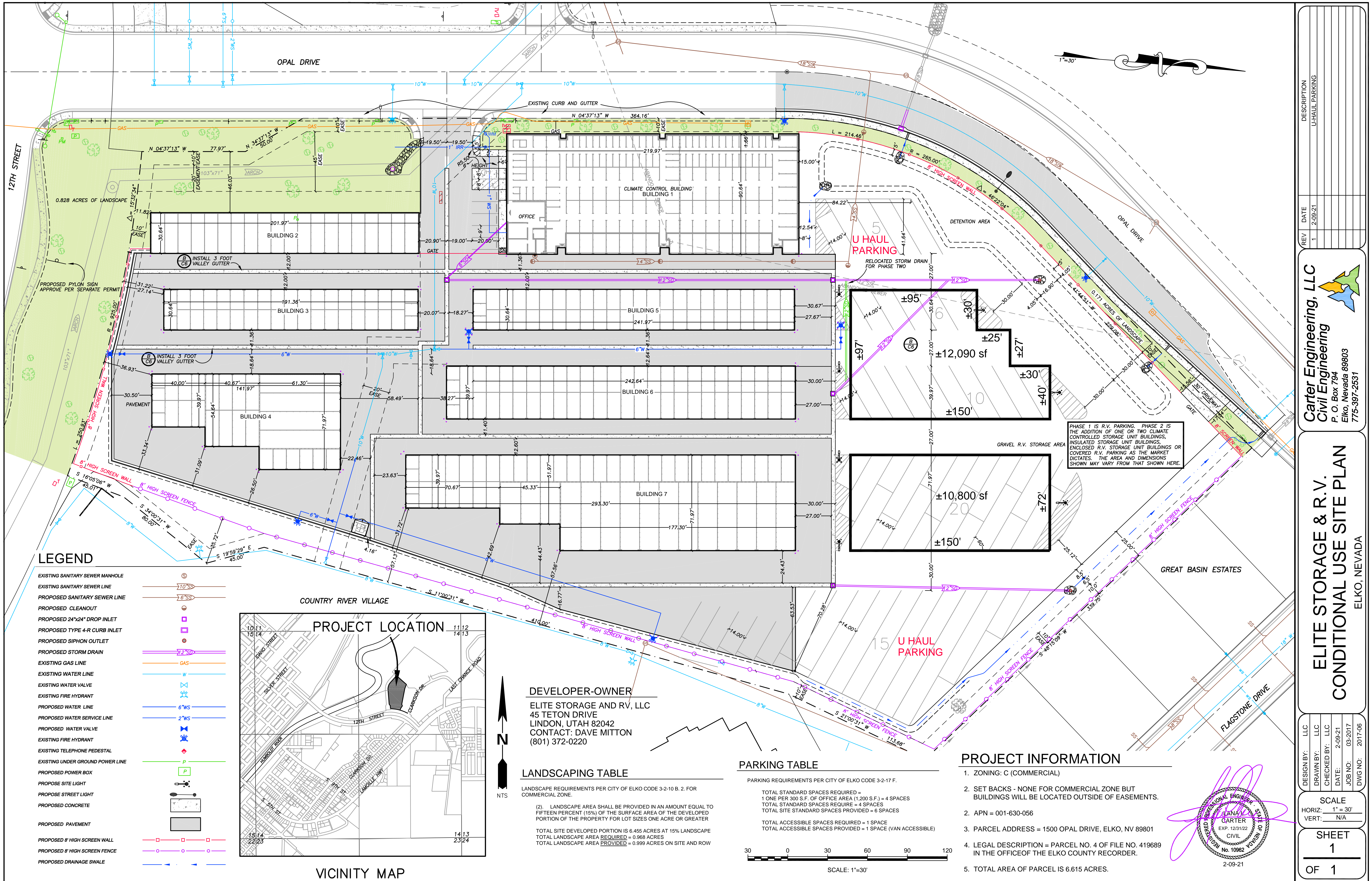
Phone Number: 801-372-022

Email address: davemitton@yahoo.com

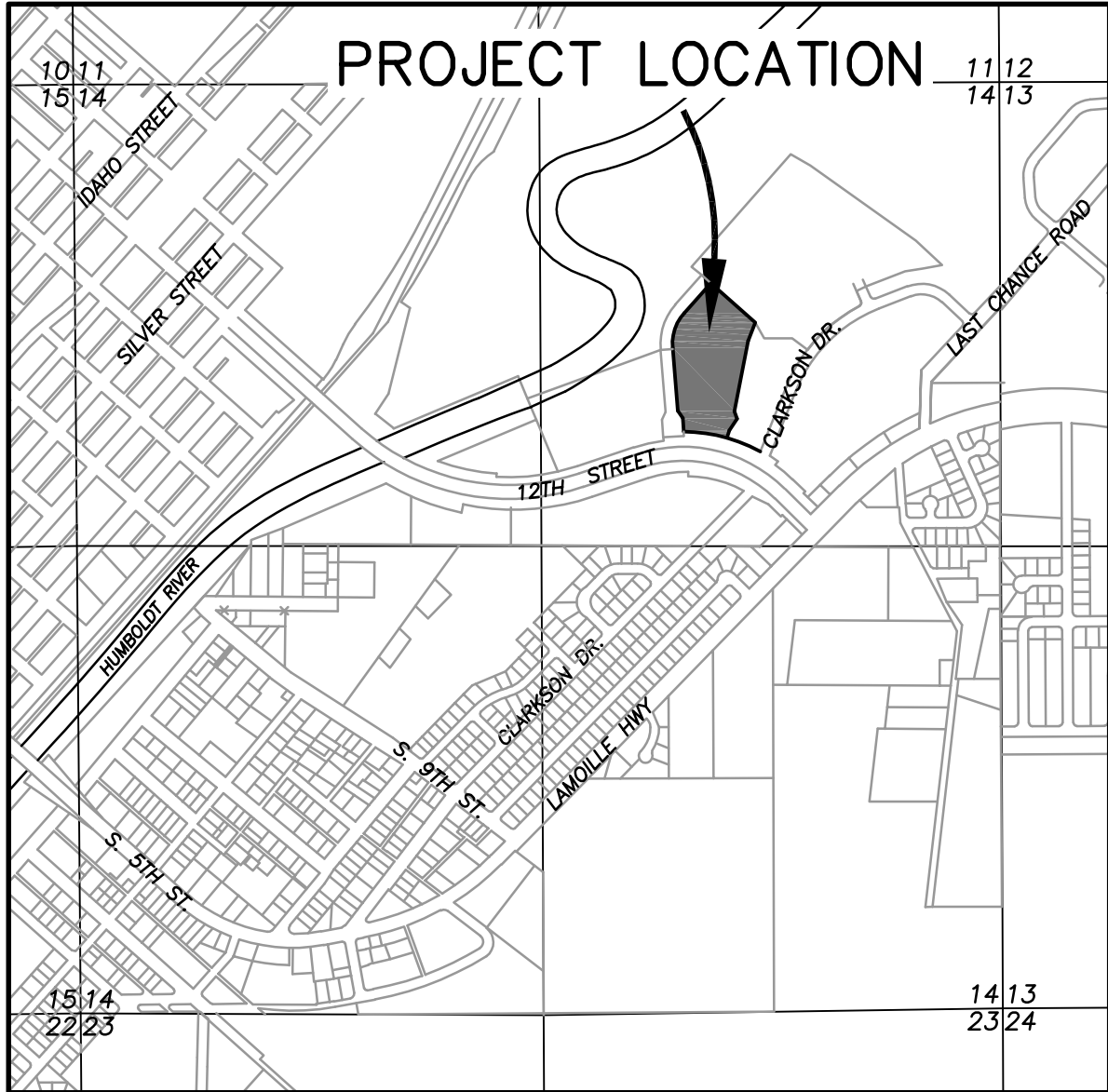
SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 1-21 **Date Filed:** 2/9/21 **Fee Paid:** \$750 **CX#** 1780



LEGEND	
EXISTING SANITARY SEWER MANHOLE	SS
EXISTING SANITARY SEWER LINE	10"SS
PROPOSED SANITARY SEWER LINE	6"SS
PROPOSED CLEANOUT	CO
PROPOSED 24"x24" DROP INLET	DI
PROPOSED TYPE 4-R CURB INLET	CI
PROPOSED SIPHON OUTLET	SO
PROPOSED STORM DRAIN	12"SD
EXISTING GAS LINE	GAS
EXISTING WATER LINE	W
EXISTING WATER VALVE	WV
EXISTING FIRE HYDRANT	FH
PROPOSED WATER LINE	6"WS
PROPOSED WATER SERVICE LINE	2"WS
PROPOSED WATER VALVE	WV
EXISTING FIRE HYDRANT	FH
EXISTING TELEPHONE PEDESTAL	P
EXISTING UNDER GROUND POWER LINE	P
PROPOSED POWER BOX	P
PROPOSED SITE LIGHT	SL
PROPOSED STREET LIGHT	SL
PROPOSED CONCRETE	CONC
PROPOSED PAVEMENT	
PROPOSED 8' HIGH SCREEN WALL	8' HW
PROPOSED 8' HIGH SCREEN FENCE	8' HF
PROPOSED DRAINAGE SWALE	SW

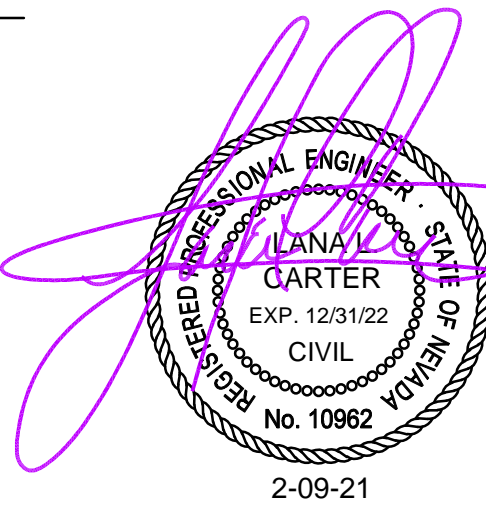


DEVELOPER-OWNER
ELITE STORAGE AND RV, LLC
45 TETON DRIVE
LONDON, UTAH 82042
CONTACT: DAVE MITTON
(801) 372-0220

LANDSCAPING TABLE	
LANDSCAPE REQUIREMENTS PER CITY OF ELKO CODE 3-2-10 B. 2. FOR COMMERCIAL ZONE.	
(2).	LANDSCAPE AREA SHALL BE PROVIDED IN AN AMOUNT EQUAL TO FIFTEEN PERCENT (15%) OF THE SURFACE AREA OF THE DEVELOPED PORTION OF THE PROPERTY FOR LOT SIZES ONE ACRE OR GREATER
TOTAL SITE DEVELOPED PORTION IS 6.455 ACRES AT 15% LANDSCAPE	
TOTAL LANDSCAPE AREA REQUIRED = 0.968 ACRES	
TOTAL LANDSCAPE AREA PROVIDED = 0.999 ACRES ON SITE AND ROW	

PARKING TABLE	
PARKING REQUIREMENTS PER CITY OF ELKO CODE 3-2-17 F.	
TOTAL STANDARD SPACES REQUIRED =	1 ONE PER 300 S.F. OF OFFICE AREA (1,200 S.F.) = 4 SPACES
TOTAL STANDARD SPACES REQUIRED =	4 SPACES
TOTAL SITE STANDARD SPACES PROVIDED =	6 SPACES
TOTAL ACCESSIBLE SPACES REQUIRED =	1 SPACE
TOTAL ACCESSIBLE SPACES PROVIDED =	1 SPACE (VAN ACCESSIBLE)

- PROJECT INFORMATION
1. ZONING: C (COMMERCIAL)
 2. SET BACKS - NONE FOR COMMERCIAL ZONE BUT BUILDINGS WILL BE LOCATED OUTSIDE OF EASEMENTS.
 2. APN = 001-630-056
 3. PARCEL ADDRESS = 1500 OPAL DRIVE, ELKO, NV 89801
 4. LEGAL DESCRIPTION = PARCEL NO. 4 OF FILE NO. 419689 IN THE OFFICE OF THE ELKO COUNTY RECORDER.
 5. TOTAL AREA OF PARCEL IS 6.615 ACRES.



DESIGN BY: LLC

DRAWN BY: LLC

CHECKED BY: LLC

DATE: 2-09-21

JOB NO: 03-2017

DWG NO: 2017-06

ELITE STORAGE & R.V.
CONDITIONAL USE SITE PLAN

ELKO, NEVADA

SCALE
HORIZ: 1" = 30'
VERT: N/A

SHEET
1
OF 1

DESCRIPTION
U-HAUL PARKING

REV
1

DATE
2-09-21

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

**Elko City Planning Commission
Agenda Action Sheet**

1. Title: **Review, consideration, and possible action on Variance No. 1-21, filed by Real Estate Pro, LLC on behalf of Elevate Properties LLC., to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**
2. Meeting Date: **March 2, 2021**
3. Agenda Category: **NEW BUSINESS, PUBLIC HEARINGS**
4. Time Required: **15 Minutes**
5. Background Information: **The property owner is proposing to build a single family dwelling on this property with parking located in the rear, adjacent to the alley. In order to accommodate the required off street parking, parking would encroach into the interior side yard setbacks.**
6. Business Impact Statement: **Not Required**
7. Supplemental Agenda Information: **Application, Staff Report**
8. Recommended Motion: **Move to conditionally approve Variance 1-21 based on the facts, findings and conditions presented in Staff Report dated February 11, 2021.**
9. Findings: **See Staff report dated February 11, 2021.**
10. Prepared By: **Cathy Laughlin, City Planner**
11. Agenda Distribution: **Real Estate Pro, LLC
Attn: Luke Fitzgerald
521 Mountain City Hwy, #4
Elko, NV 89801
elkoluke@gmail.com**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 3/2

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

Title: Variance No. 1-21

Applicant(s): Real Estate Pro, LLC

Site Location: 452 Walnut Street - APN 001-025-003

Current Zoning: R Date Received: 2/9/21 Date Public Notice: 2/19/21

COMMENT: This is to allow the required off-street parking to be located within the interior sideyard setback to within 3 1/2' of the property line for a single family residence.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: _____

Initial

City Manager: Date: 2/22/2021

No comments/concerns. Recommend conditional approval.

W

Initial



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

CITY OF ELKO STAFF REPORT

MEMO DATE: February 11, 2021
PLANNING COMMISSION DATE: March 2, 2021
APPLICATION NUMBER: Variance 1-21
APPLICANT: Real Estate Pro, LLC
PROJECT DESCRIPTION: APN 001-025-003

Variance from 3-2-17(D)(2)(a) to allow required residential off street parking to be in the interior side yard setback.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-025-003

EXISTING ZONING: R- Single Family and Multiple Family Residential

MASTER PLAN DESIGNATION: Medium Density Residential

EXISTING LAND USE: Developed, adjacent to developed residential,
Applicant states he will be demolishing the existing residence and all existing accessory structures.

BACKGROUND:

1. The applicant is not the property owner.
2. The property is developed as residential land use.
3. The lots were created by Taber & Simonsen Addition File 3502 in 25' wide lot.
4. The lot area is approximately 2,500 square feet. With the exception of 3-2-5(G)(2)(a), it meets the lot area requirements stipulated in code.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:
North: R-Residential / Developed
East: R-Residential / Developed
South: R- Residential / Developed
West: R-Residential / Developed

PROPERTY CHARACTERISTICS:

The property is currently developed with a residential use and accessory structures.
Applicant has stated that the single family residence and accessory structures will all be demolished and he is proposing to build a new residence.
The property is fairly flat.
The property has alley access in the rear.

MASTER PLAN AND CITY CODES:

Applicable Master Plans and City Code Sections are:

-) City of Elko Master Plan – Land Use Component
-) City of Elko Master Plan – Transportation Component
-) City of Elko Redevelopment Plan
-) City of Elko 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 3-2-17 Traffic, Access, Parking and Loading Regulations
-) City of Elko Zoning – Section 3-2-22 Variances
-) City of Elko Zoning – Section 3-8 Flood Plain Management

MASTER PLAN – Land Use:

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

The proposed variance is in conformance with the Master Plan Land Use Component.

MASTER PLAN - Transportation:

1. The area is accessed from Walnut Street as well as alley access.
2. Walnut Street is classified as a Residential local.
3. Public alley in the rear of the lots.
4. The property has pedestrian connectivity along Walnut Street..

The proposed variance is in conformance with the Master Plan Transportation Component.

REDEVELOPMENT PLAN

The property is not located within the redevelopment area and consideration of the plan is not required.

ELKO WELLHEAD PROTECTION PLAN:

1. The property is located outside any capture zone for any City of Elko well.

The proposed use of the property does not present a hazard to City wells.

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.
 -) 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.
 -) 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.

-) 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.
-) 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, as future development is proposed for the principal permitted use as a single family residence, conforms to Section 3-2-4 of city code.

SECTION 3-2-5(G) RESIDENTIAL ZONING DISTRICTS:

1. Minimum area stipulated for the district is five thousand five hundred (5,000) square feet for an interior lot in an existing platted subdivision characterized by twenty five foot (25') wide lots and situation within a residential zoning district.
2. Minimum lot width stipulated for the district of sixty feet (60'), see ** below
3. Minimum lot depth stipulated for the district of one hundred feet (100')
4. Minimum setbacks stipulated for the district are as follows:
Front Yard: A minimum setback of fifteen feet (15') (20') to a garage.
Rear Yard: A minimum setback of twenty feet (20')
Interior Side: For single family, a minimum setback of five feet six inches (5.5')

** A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling, provided all other requirements of this chapter are satisfied. Therefore, this variance is for setback consideration for the off street parking in the interior side yard only.

The proposed development for the principal permitted use of a single family residence, is in conformance with Elko City Code 3-2-5(G).

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

1. The proposed development is proposing two off-street parking spaces and a driveway access off the alley into the rear yard. The property is 25' wide and two parking spaces would be a total of 18' wide leaving 3'6" on each side.
2. Elko City Code 3-2-17(D)(2)(a) states that no required off street parking space shall be located in a required front yard or interior side yard.

The property does not conform to Section 3-2-17 of city code. Approval of variance 1-21 to allow parking in the interior side yard setback will be required to bring the proposed development into conformance.

SECTION 3-2-22 VARIANCES:

B. Procedure: Any person requesting a variance by the planning commission shall include:

Application Requirements

1. There are special circumstances or features, i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions applying to the property under consideration.

) Applicant states: Narrow lots

2. The special circumstance or extraordinary situation or condition results in exceptional practical difficulties or exceptional undue hardships, and where the strict application of the provision or requirement constitutes an abridgment of property right and deprives the property owner of reasonable use of property.

) Applicant states: Because of their width the lot does not allow for the required 2 space off street parking. Variance will allow the 2 required stalls to be in the interior side yard setback.

) Staff states: Because this is a legal parcel or lot created by map, File #3502, the owner has the right to develop it with a single family residence. The proposed development does have special circumstances because it is proposed on a very narrow lot. The proposed principal permitted use of a single family residence is meeting all setbacks and sections of code. The parking could only meet the requirement of being outside the interior side yard setback if it was in tandem and that would create a very small footprint allowed for the home.

3. Such special circumstances or conditions do not apply generally to other properties in the same zoning district.

Applicant states: The other properties not so narrow.

4. The granting of the variance will not result in material damage or prejudice to other properties in the vicinity, nor be detrimental to the public interest, health, safety and general welfare.

) Applicant states: The variance allows for more off street parking.

5. The granting of the variance will not substantially impair the intent or purpose of the zoning ordinance or effect a change of land use or zoning classification.

) Applicant states: Allows for compliance.

6. The granting of the variance will not substantially impair affected natural resources.

) Applicant states: Only affects parking.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

1. This parcel is not designated in a Special Flood Hazard Area (SFHA).

FINDINGS

1. The proposed variance is in conformance with the Land Use Component of the Master Plan is consistent with existing land uses in the immediate vicinity.
2. The proposed variance is consistent with the Transportation Component of the Master Plan.
3. The property is not located within the redevelopment area and consideration of the plan is not required.
4. The proposed variance is consistent with City of Elko Wellhead Protection Plan.
5. The proposed development as a single family residence conforms to Section 3-2-4 of city code.
6. A single lot or parcel of land of record in the office of the county recorder as of the effective date of the city subdivision ordinance (December 9, 1975), and which does not meet minimum requirements for lot area, lot width or lot depth shall be considered a buildable lot for one single-family dwelling. Therefore, the minimum lot width of 60' and lot area of 5,000 sq. ft. is not required based on this exception.
7. The proposed development is in conformance with Elko City Code 3-2-5(G) for the principal permitted use of a single family residence.
8. The proposed development does not conform to Section 3-2-17 of city code. A variance for the parking in the interior side yard setback would be required to be approved for the proposed development to be in conformance.
9. In accordance with Section 3-2-22, the applicant has demonstrated that the hardship is the narrow lots created by File #3502 and the required width of 18' for the 2 off street parking.
10. In accordance with section 3-2-22, the applicant has demonstrated that the property has unique circumstances based on that fact that the lots are narrow and the width of 25' minus the 18' parking required is less than the required interior side yard setbacks.
11. Granting of the variance will not result in material damage or prejudice to other properties in the vicinity. This finding is based on other similar properties within City of Elko which were built within the last 15 years.
12. Granting of the variance will not substantially impair the intent or purpose of the zoning ordinance. Single family is listed as a principal use in the underlying zone.
13. Granting of the variance will not impair natural resources.

14. The parcel is not located within a designated Special Flood Hazard Area.

STAFF RECOMMENDATION:

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

1. Variance 1-21 from Elko City Code section 3-2-17(D)(2)(a) is for approval of required off street parking in interior side yard setback with access from the alley.
2. Commencement within one year and completion within eighteen (18) months.
3. Conformance to plans approved as a part of the variance.
4. Subject to review in two (2) years if determined necessary by the planning commission.



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

February 23, 2021

Real Estate Pro, LLC
Attn: Luke Fitzgerald
521 Mountain City Hwy, #4
Elko, NV 89801
Via Email: elkoluke@gmail.com

Re: Variance No. 1-21

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/144050125>. You can also dial in using your phone at **+1 (646) 749-3112**. The **Access Code** for this meeting is **144-050-125**.

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:

Variance 1-21 Real Estate Pro, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001026010	ALBERDI, ANNA		501 SAGE ST	ELKO NV	89801-3261
001014011	ALGERIO, JEANETTE		392 WALNUT ST	ELKO NV	89801-2834
001052004	ANDERSON, AMBER D		556 ANDYS WAY	ELKO NV	89801-0913
001022009	BRADY, LEAH		1706 6TH ST	ELKO NV	89801-2508
001022013	BROWN, JAMES A & ANNA M		1575 5TH ST	ELKO NV	89801-2503
001022010	BURNETT, RAYMOND L		451 WALNUT ST	ELKO NV	89801-2835
001023002	CALVARY BAPTIST CHURCH	} 1pc	PO BOX 1225	ELKO NV	89803-1225
001023001	CALVARY BAPTIST CHURCH		PO BOX 1225	ELKO NV	89803-1225
001012013	CHINO, CHARLES E		379 WALNUT ST	ELKO NV	89801-2833
001014012	COATS, BRYCE C ET AL		399 SAGE ST	ELKO NV	89801-2823
001053001	DEL SARTO, FRED TR		1392 4TH ST	ELKO NV	89801-2808
001025008	GARCIA, AUGUSTIN & MARTA LETICI		530 E PATRIOT BLVD APT 155	RENO NV	89511-1278
001025010	HASTINGS, NEIL D		433 SAGE ST	ELKO NV	89801-2825
001022001	HERNANDEZ, RAFAEL ET AL		1592 4TH ST	ELKO NV	89801-2857
001014013	HOLVERSON, RONALD C		373 SAGE ST	ELKO NV	89801-2823
001026001	JACAWAY, GARY & ROBIN TR		524 WALNUT ST	ELKO NV	89801-2502
001025009	JOHANSEN, AUTUMN D		453 SAGE ST	ELKO NV	89801-2825
001022004	KENLEY, LLOYD L & MARY ANN		452 WILLOW ST	ELKO NV	89801-2856
		C/O TERRY LAING LTCOL USAF			
001053006	LAING, FRED TR	RET	2173 GEORGIA AVE	OMAHA NE	68147-
			207 MOUNTAIN CITY HWY		
001025011	LIPPARELLI, BARRY W & LYNN M TR		UNIT6	ELKO NV	89801-9510
001022008	PETERSON, CAROL ET AL		1705 6TH ST	ELKO NV	89801-2507
001025007	PIFFERO, THOMAS EST & EDDY		PO BOX 1642	ELKO NV	89803-1642
001014010	RACKLEY, GALEN L		378 WALNUT ST	ELKO NV	89801-2834
001022011	RIDLEY, BARBARA J ETAL	C/O SMITH, TIFFANY	16476 SALTGRASS RD	LEMOORE CA	93245-9029
001025006	RUCKDASCHEL, TAMI S		1475 5TH ST	ELKO NV	89801-3271
001012012	SCHUBERT, LOREN & CONNIE		401 PALACE PKWY	SPRING CREEK NV	89815-
001022002	SESSIONS, MICHAEL & TIFFANY	} 1pc	436 WILLOW ST	ELKO NV	89801-2856
001022003	SESSIONS, MICHAEL P & TIFFANY A		436 WILLOW ST	ELKO NV	89801-2856
001053014	SHIPP, DUSTY D	} 1pc	959 MONTROSE LN	ELKO NV	89801-2472
001025005	SHIPP, DUSTY DREW		959 MONTROSE LN	ELKO NV	89801-2472
001025002	STOLL, HERBERT & BARBARA J		430 WALNUT ST	ELKO NV	89801-2836

001025004 STRAIN, FREDRICK

001012011 VIEIRA, KELLI & MICHAEL

001053005 WHALEN, MICHAEL & WHITNEY

001025001 WOLF, RYAN C & CASSANDRA A TR

001022012 WRIGHT, DAVID S & ANN

C/O FARLEY, THEODORE &
CLAUDIA

280 ISLAND AVE APT 1702

392 WILLOW ST

472 SAGE ST

1476 4TH ST

155 FIR ST

RENO NV

ELKO NV

ELKO NV

ELKO NV

ELKO NV

89501-1806

89801-2854

89801-2826

89801-2810

89801-3023

33

Postmarked 2/19/21

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, March 2, 2021 beginning at 5:30 P.M. P.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/144050125>.

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at <https://global.gotomeeting.com/join/144050125>. You can also dial in using your phone. **+1 (646) 749-3112**. Access Code: **144-050-125**. 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 item to be considered under public hearing format is:

- Variance No. 1-21, filed by Real Estate Pro, LLC on behalf of Elevate Properties, LLC, to allow required off street parking to be located within the interior side yard setback to within 3 ½' of the property line in an R (Single-Family and Multi-Family Residential) Zoning District, and matters related thereto. The subject property is located generally on the southeast side of Walnut Street, approximately 166' northeast of 4th Street. (452 Walnut Street - APN 001-025-003)

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 * (775) 777-7219 fax

RECEIVED

FEB 09 2021

APPLICATION FOR VARIANCE

APPLICANT(s): Real Estate Pro LLC

MAILING ADDRESS: 521 Mountain City Hwy #4, Elko, NV 89801

PHONE NO (Home): 7753038492 **(Business):**

NAME OF PROPERTY OWNER (If different): Elevate Properties LLC

(Property owner's consent in writing must be provided.)

MAILING ADDRESS: 353 Oakmont Dr, Spring Creek NV 89815

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

ASSESSOR'S PARCEL NO.: 001025003 **Address:** 452 Walnut St

Lot(s), Block(s), & Subdivision: Lot18, Blk128, TABER & SIMONSEN ADDITION FILE 3502

Or Parcel(s) & File No.:

FILING REQUIREMENTS:

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

Fee: A \$500.00 non-refundable fee must be paid. If in conjunction with a Rezone Application a \$250.00 non-refundable fee must be paid.

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, parking and loading areas, driveways and other pertinent information must be provided.

Elevation Plan: Elevation profile of all proposed buildings or alterations in sufficient detail to explain the nature of the request must be provided.

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

Other Information: The applicant is encouraged to submit other information and documentation to support this Variance application.

The APPLICANT requests the following variance from the following section of the zoning ordinance:

3-2-17(D)(2)

1. The existing zoning classification of the property R

2. The applicant shall present **adequate** evidence demonstrating the following criteria which are necessary for the Planning Commission to grant a variance:

- a) Identify any special circumstances, features or conditions applying to the property under consideration. i.e., unusual shape, configuration, exceptional topographic conditions or other extraordinary situations or conditions

Narrow Lots

- b) Identify how such circumstances, features or conditions result in practical difficulty or undue hardship and deprive the property owner of reasonable use of property.

Because of its width the lot dose not allow for the required 2 space off street parking

will be tearing down Existing House + Accessory Studio
and building New single Family Home

- c) Indicate how the granting of the variance is necessary for the applicant or owner to make reasonable use of the property.

Variance will allow for there to be 2 required off street parking stalls
which encroach on the interior side yard setback

- d) Identify how such circumstances, features or conditions do not apply generally to other properties in the same Land Use District.

other lots not so narrow

- e) Indicate how the granting of the variance will not result in material damage or prejudice to other properties in the vicinity nor be detrimental to the public health, safety and general welfare.

Variance allows for more off street parking

- f) Indicate how the variance will not be in conflict with the purpose or intent of the Code.

Allows for compliance

- g) Indicate how the granting of the variance will not result in a change of land use or zoning classification.

only affects parking

- h) Indicate how granting of the variance will not substantially impair affected natural resources.

only affects parking

3. Describe your ability (i.e. sufficient funds or a loan pre-approval letter on hand) and intent to construct within one year as all variance approvals **must** commence construction within one year and complete construction within 18 months per City Code Section 3-2-22 F.1.: _____
Parking pad to be built with building permit

(Use additional pages if necessary to address questions 2a through h)

This area intentionally left blank

By My Signature below:

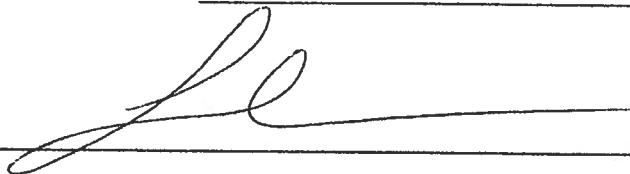
- ☒ I consent to having the City of Elko Staff enter on my property only for the sole purpose of inspecting said property as part of this application process.
- ☒ I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection will not affect 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 Luke Fitzgerald
(Please print or type)

Mailing Address 521 Mountain City Hwy #4
Street Address or P.O. Box
Elko, NV 898901
City, State, Zip Code

Phone Number: 775-303-8492

Email address: elkoluke@gmail.com

SIGNATURE: 

FOR OFFICE USE ONLY

File No.: 1-21 **Date Filed:** 2/9/21 **Fee Paid:** \$500 **CL#** 101163

Shelby Knopp

From: luke fitzgerald <elkoluke@gmail.com>
Sent: Tuesday, February 9, 2021 5:26 PM
To: Shelby Knopp; Cathy Laughlin
Subject: Fwd: Approval of Variance
Attachments: Outlook-zmxexfkk.png

----- Forwarded message -----

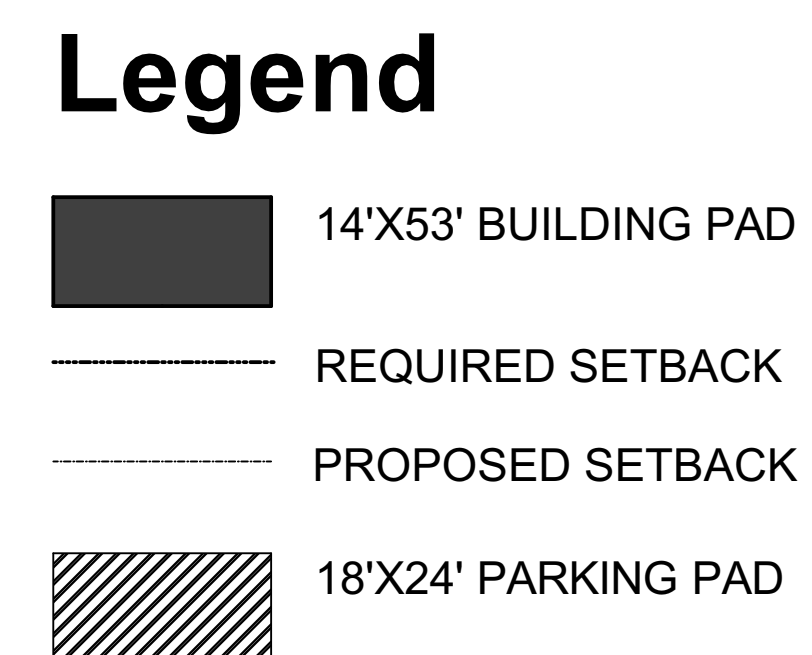
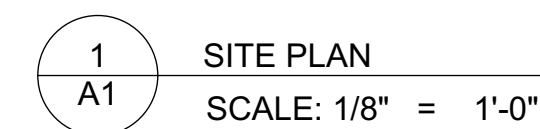
From: Jessica Larsen <jess@elevatebusiness.net>
Date: Tue, Feb 9, 2021, 5:17 PM
Subject: Approval of Variance
To: Lisa Turner <lisat.lfg@gmail.com>, ICE Fitzgerald Luke <ElkoLuke@gmail.com>
Cc: Michael Minton <ihpfoam@gmail.com>

Hi Lisa and Luke, this email is to provide authorization for Luke Fitzgerald to apply for parking setback/variance to the City of Elko for 452 Walnut St.

If you have any questions, please feel free to contact Michael or myself.

Best regards,
Jess Minton





THIS PLAN WAS PREPARED BY:
KOINONIA CONSTRUCTION
2446 CRESTVIEW DR.
ELKO, NV 89801
(775) 303-8492
N.Y. LIC. B-2 #008
LIMIT: \$3,500,000

REVISIONS

Luke Fitzgerald, President

452 WALNUT ST
ELKO NEVADA
SITE PLAN

SITE PLAN

DATE	02.09.21
JOB NO.	452 WALNUT
FILE	

A1

**Elko City Planning Commission
Agenda Action Sheet**

- 1. Review, consideration and possible approval of Final Map No. 10-20, filed by Bailey & Associates, LLC, for the development of a subdivision entitled Ruby Mountain Peaks involving the proposed division of approximately 10 acres of property into 45 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**
- 2. Meeting Date: March 2, 2021**
- 3. Agenda Category: **NEW BUSINESS****
- 4. Time Required: 15 Minutes**
- 5. Background Information: Subject property is located on the east side of Jennings Way between Mountain City Highway and Bluffs Avenue. (APN 001-01A-014)**
- 6. Business Impact Statement: Not Required**
- 7. Supplemental Agenda Information: Application and Staff Report**
- 8. Recommended 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 10-20 with findings and conditions listed in the Staff Report dated January 14, 2021.**
- 9. Findings: See Staff Report dated January 14, 2021**
- 10. Prepared By: Michele Rambo, AICP, Development Manager**
- 1. Agenda Distribution: Bailey & Associates, LLC
Attn: Doug Bailey
780 W. Silver Street, #104
Elko, NV 89801

Summit Engineering
Attn: Nitin Bhakta
1150 Lamoille Highway
Elko, NV 89801**

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 3/2

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

Title: Final Map 10-20 Ruby Mountain Peaks
Applicant(s): Bailey + Associates, LLC
Site Location: E side of Jennings Way, between Mtn City Hwy + Bluffs Ave.
Current Zoning: R Date Received: 11/17/20 Date Public Notice: N/A
COMMENT: This is for the division of \approx 10 acres into 45 lots
for residential development with 1 remainder lot.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: _____

Initial

City Manager: Date: 2/22/2021

No comments/concerns. Recommend conditional approval.

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 14, 2021
PLANNING COMMISSION DATE:	March 2, 2021
AGENDA ITEM NUMBER:	I.B.1.
APPLICATION NUMBER:	Final Map 10-20
APPLICANT:	Bailey & Associates, LLC
PROJECT DESCRIPTION:	Ruby Mountain Peaks

A Final Map for the division of approximately 10 acres into 41 lots for residential development and 1 remainder lot within an R (Single Family and Multiple Family Residential) zoning district.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-01A-014

PARCEL SIZE: 10 Acres

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

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

EXISTING LAND USE: Vacant

BACKGROUND:

1. The Final Map for Ruby Mountain Peaks has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Planning Commission reviewed and recommended a conditional approval to the City Council on the Ruby Mountain Peaks Tentative Map on February 4, 2020.
3. The City Council conditionally approved the Ruby Mountain Peaks Tentative Map on February 25, 2020.
4. The subdivision is located on APN 001-01A-014.
5. The proposed subdivision consists of 41 residential lots and a remainder lot to be dedicated to the City of Elko.
6. The total subdivided area is approximately 10 acres.
7. The proposed density is 4.5 units per acre.
8. Approximately 2.1 acres are offered for dedication for street development.
9. Drainage and utility easements are provided along all lot lines.
10. The property is located on the east side of Jennings Way between Mountain City Highway and Bluffs Avenue.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

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

PROPERTY CHARACTERISTICS:

-) The property is an undeveloped residential parcel.
-) The site abuts previous residential development to the north and northeast, commercial development to the south, mini storage units to the southeast, and vacant commercial land to the east.
-) The parcel slopes down to Mountain City Highway. The slope has been incorporated into the subdivision design.
-) The property will be accessed by Bluffs Avenue.

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 Redevelopment Plan
-) City of Elko Wellhead Protection Plan
-) City of Elko Zoning – Section 3-3-7 Final Map Stage (Stage III)
-) City of Elko Zoning – Section 3-3-8 Content and Format of Final Map Submittal
-) City of Elko Zoning – Section 3-3-9 to 3-3-16 (Inclusive) Subdivision Design Standards
-) City of Elko Zoning – Section 3-3-17 to 3-3-22 (Inclusive) Public Improvements/
Guarantees
-) City of Elko Zoning – Section 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), and 3-2-17 Zoning Code
Standards
-) City of Elko Zoning – Section 3-8 Flood Plain Management

MASTER PLAN - Land use:

Conformance with the Land Use component of the Master Plan was evaluated with review and approval of the Tentative Map. The Final Map is in conformance with the Tentative Map.

Therefore, the proposed subdivision is in conformance with the Land Use Component of the Master Plan.

MASTER PLAN - Transportation:

Conformance with the Transportation component of the Master Plan was evaluated with review and approval of the Tentative Map. The Final Map is in conformance with the Tentative Map.

Therefore, the proposed subdivision is in conformance with the Transportation Component of the Master Plan.

ELKO REDEVELOPMENT PLAN:

The property is not located within the redevelopment area.

ELKO WELLHEAD PROTECTION PLAN:

The property is located outside of any capture zone for 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.

As the project is designed, it does not present a hazard to City wells.

SECTION 3-3-7 FINAL MAP STAGE (STAGE III):

Pre-submission Requirements (C)(1) – The Final Map is in conformance with the zone requirements.

Pre-submission Requirements (C)(2) – The proposed Final Map conforms to the Tentative Map.

SECTION 3-3-8 CONTENT AND FORMAT OF FINAL MAP SUBMITTAL:

- A. Form and Content – The Final Map conforms to the required size specifications and provides the appropriate affidavits and certifications.
- B. Identification Data
 - 1. The Final Map identifies the subdivision and provides its location by section, township, range, and county.
 - 2. The Final Map was prepared by a properly licensed surveyor.
 - 3. The Final Map provides a scale, north arrow, and date of preparation.
- C. Survey Data
 - 1. The boundaries of the subdivision are fully balanced and closed.
 - 2. Any exceptions are noted on the Final Map.
 - 3. The Final Map is tied to a section corner.
 - 4. The location and description of any physical encroachments upon the boundary of the subdivision are noted on the Final Map.
- D. Descriptive Data
 - 1. The name, right-of-way lines, courses, lengths, and widths of all streets and easements are noted on the Final Map.
 - 2. All drainage ways are noted on the Final Map.
 - 3. All utility and public service easements are noted on the Final Map.
 - 4. The location and dimensions of all lots, parcels, and exceptions are shown on the Final Map.
 - 5. All residential lots are numbered consecutively on the Final Map.
 - 6. There are no sites dedicated to the public shown on the Final Map.
 - 7. The locations of adjoining subdivisions are noted on the Final Map with required information.
 - 8. There are no deed restrictions proposed.
- E. Dedication and Acknowledgment
 - 1. The owner's certificate has the required dedication information for all easements and right-of-ways.
 - 2. The execution of dedication is acknowledged with space to be certified by a notary public.
- F. Additional Information
 - 1. All centerline monuments for streets are noted as being set on the Final Map.
 - 2. The centerline and width of each right-of-way is noted on the Final Map.
 - 3. The Final Map indicates the location of monuments that will be set to determine the boundaries of the subdivision.
 - 4. The length and bearing of each lot line is identified on the Final Map.
 - 5. The Final Map is not located adjacent to a city boundary.
 - 6. The Final Map identifies the location of the section lines nearest the property.
- G. City to Check
 - 1. Closure calculations have been provided. Civil improvement plans have been approved. Drainage plans have been approved. An engineer's estimate has been provided.
 - 2. The lot closures are within the required tolerances.

H. Required Certifications

1. The Owner's Certificate is shown on the Final Map.
2. The Owner's Certificate offers for dedication all right-of-ways shown on the Final Map.
3. A Clerk Certificate is shown on the Final Map, certifying the signature of the City Council.
4. The Owner's Certificate offers for dedication all easements shown on the Final Map.
5. A Surveyor's Certificate is shown on the Final Map and provides the required language.
6. The City Engineer's Certificate is shown on the Final Map.
7. A certificate from the Nevada Division of Environmental Protection is provided with the required language.
8. The engineer of record has submitted the Tentative Map and construction plans to the state, but no written approval has been received.
9. A certificate from the Division of Water Resources is provided on the Final Map with the required language.
10. The construction plans identify the required water meters for the subdivision.

SECTION 3-3-9 THROUGH 3-3-16 (INCLUSIVE)

The proposed subdivision was evaluated for conformance to the referenced sections of code during the Tentative Map process.

The proposed development conforms with these sections of City code.

SECTION 3-3-17 RESPONSIBILITY FOR PUBLIC IMPROVEMENTS

The subdivider shall be responsible for all required improvements in conformance with this section of City code.

SECTION 3-3-18 CONSTRUCTION PLANS

The subdivider has submitted plans to the city and state agencies for review to receive all required permits in accordance with this section of City code. The plans have been approved by City staff.

SECTION 3-3-19 CONSTRUCTION AND INSPECTION

The subdivider has submitted plans to the city and state agencies for review to receive all permits in accordance with this section of City code.

SECTION 3-3-20 REQUIRED IMPROVEMENTS

The subdivider has submitted civil improvement plans which are in conformance with this section of City code.

Civil improvements include curb, gutter, and sidewalk as well as lighting, USPS gang boxes, paving, and utilities within the right-of-way.

SECTION 3-3-21 AGREEMENT TO INSTALL IMPROVEMENTS

The subdivider will be required to enter into a Performance Agreement to conform to this section of City code.

SECTION 3-3-22 PERFORMANCE AND MAINTENANCE GUARANTEES

The subdivider will be required to provide a Performance and Maintenance Guarantee as stipulated in the Performance Agreement in conformance with this section of City code.

SECTIONS 3-2-3, 3-2-4, 3-2-5(E), 3-2-5(G), AND 3-2-17

The proposed subdivision was evaluated for conformance to the referenced sections of code during the Tentative Map process.

The proposed development conforms with these sections of City code.

SECTION 3-8 FLOODPLAIN MANAGEMENT:

This parcel is not designated in a Special Flood Hazard Area (SFHA).

FINDINGS

1. The Final Map for Ruby Mountain Peaks has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
2. The Final Map is in conformance with the Tentative Map.
3. The proposed subdivision is in conformance with the Land Use and Transportation Components of the Master Plan.
4. The proposed development conforms with Sections 3-3-9 through 3-3-16 (inclusive).
5. The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-17 of City code.
6. The Subdivider has submitted construction plans in conformance with Section 3-3-18 of City code.
7. 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.
8. 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.

9. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-21 of City code.
10. 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.
11. 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.

STAFF RECOMMENDATION/CONDITIONS OF APPROVAL:

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

Community Development:

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 Ruby Mountain Peaks is approved for 41 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. Update the year on the first page to 2021 for various signatures.
2. Update the street name for the dedication offer in the owner's certificate.
3. After the transfer of ownership to the Baileys, verify that the name in the owner's certificate matches the name used to take title.
4. Update note 5 with correct Lot numbers. Confirm location of gang box easement. Civil plans show a different location.
5. Correct delta symbols that show as question marks.
6. In note 2, add mention of the easement along all street frontages.

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. Fire hydrants to be spaced per IFC 2018 Appendix C Table C192.1.



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

February 23, 2021

Bailey & Associates, LLC
Attn: Doug Bailey
780 W. Silver Street, #104
Elko, NV 89801
Via Email: doug@newhomeselko.com

Re: Final Map No. 10-20

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/144050125>. You can also dial in using your phone at **+1 (646) 749-3112**. The **Access Code** for this meeting is **144-050-125**.

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: Summit Engineering, Attn: Nitin Bhakta, 1150 Lamoille Hwy, Elko, NV 89801
Via Email: nitin@summitnv.com



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

November 30, 2020

Summit Engineering
Attn: Ryan Cook
5405 Mae Anne Avenue
Reno, NV 89523

Re: Ruby Mountain Peaks Final Map – Complete Submittal

Dear Mr. Cook:

The City of Elko has reviewed your Final Map application materials for Ruby Mountain Peaks (submitted November 17, 2020) 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 Final Map will be scheduled for Planning Commission on January 5, 2020 and City Council on January 12, 2020.

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

Sincerely,

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: Bailey & Associates
780 W. Silver Street, #104
Elko, NV 89801

City of Elko – File



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s):	Bailey & Associates LLC		
MAILING ADDRESS:	780 West Silver Street		
PHONE NO (Home)		(Business)	775-777-7773
NAME OF PROPERTY OWNER (If different):	Same as Above		
(Property owner consent in writing must be provided)			
MAILING ADDRESS:	780 West Silver Street		
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):			
ASSESSOR'S PARCEL NO.:	001-01A-014	Address	Intersection of Jennings & Bluffs Ave.
Lot(s), Block(s), & Subdivision			
Or Parcel(s) & File No.			
PROJECT DESCRIPTION OR PURPOSE:	41 unit residential subdivision		
APPLICANT'S REPRESENTATIVE OR ENGINEER:	Nitin Bhakta - Summit Engineering Corp.		

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), and must include the following:

1. One .pdf of the entire application, and ten (10) 24" x 36" copies of the final plat folded to a size not to exceed 9"x12" provided by a properly licensed surveyor, as well as one (1) set of reproducible plans 8 1/2" x 11" in size and any required supporting data, prepared in accordance with Section 3-3-8 of Elko City Code (see attached checklist).
2. Pre-Submission Requirements:
 - a. The final plat shall meet all requirements of the zoning district in which located, and any necessary zoning amendment shall have been adopted by the Elko City Council prior to filing of the final plat.
 - b. The final plat shall conform closely to the approved preliminary plat and be prepared in accordance with the provisions of the City Subdivision Ordinance.
 - c. The final plat submittal shall include a letter signifying approval of utility easements by all public utilities involved, and shall be so indicated by an affidavit on the map.
 - d. A complete set of construction plans for all public improvements associated with the final plat shall have been approved or substantially approved by the City Engineer.

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

Final Plat Checklist as per Elko City Code 3-3-8

Identification Data	
	Subdivision Name
	Location and Section, Township and Range
	Name, address and phone number of subdivider
	Name, address and phone number of engineer/surveyor
	Scale, North Point and Date of Preparation
	Location maps
Survey Data (Required)	
	Boundaries of the Tract fully balanced and closed
	Any exception within the plat boundaries
	The subdivision is to be tied to a section corner
	Location and description of all physical encroachments
Descriptive Data	
	Street Layout, location, widths, easements
	All drainageways, designated as such
	All utility and public service easements
	Location and dimensions of all lots, parcels
	Residential Lots shall be numbered consecutively
	All sites to be dedicated to the public and proposed use
	Location of all adjoining subdivisions with name date, book and page
	Any private deed restrictions to be imposed upon the plat
Dedication and Acknowledgment	
	Statement of dedication for items to be dedicated
	Execution of dedication acknowledged by a notary public
Additional Information	
	Street CL, and Monuments identified
	Street CL and width shown on map
	Location of mounuments used to determine boudaries
	Each city boundary line crossing or adjoining the subdivision
	Section lines crossing the subdivision boundaries
City Engineer to Check	
	Closure report for each of the lots
	Civil Improvement plans
	Estimate of quantities required to complete the improvements
Required Certifications	
	All parties having record title in the land to be subdivided
	Offering for dedication
	Clerk of each approving governing body
	Easements
	Surveyor's Certificate
	City Engineer
	State Health division
	State Engineer
	Division of Water Resources
	City Council

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 acknowledge that, if approved, I must provide an AutoCAD file containing the final subdivision layout on NAD 83 NV East Zone Coordinate System to the City Engineering Department when requesting final map signatures for recording.

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

Applicant / Agent

DOUGLAS W. BAILEY

(Please print or type)

Mailing Address

780 W SILVER ST #104

Street Address or P.O. Box

ELKO, NV. 89801

City, State, Zip Code

Phone Number:

775-777-7773

Email address:

doug@newhomeselko.com

SIGNATURE:

Douglas W. Bailey

FOR OFFICE USE ONLY

File No.: 10-20 Date Filed: 11/17/20 Fee Paid: \$1,800.00 CL# 35809

Shelby Archuleta

From: Linda Baxter <avocado7@hotmail.com>
Sent: Monday, December 7, 2020 11:29 AM
To: luke fitzgerald
Cc: Shelby Archuleta; Liza Baumann; Michele L. Rambo; Doug Bailey
Subject: Re: Final Map Application for the Ruby Mountain Peaks Subdivision

I Linda Baxter, as owner of APN 00101A014, authorize Bailey & Associates to make Final Map Application for the Ruby Mountain Peaks Subdivision at their own expense.
Any questions feel free to call me at 502 656 4625. Thanks..

Linda Baxter

On Dec 7, 2020, at 9:59 AM, luke fitzgerald <elkoluke@gmail.com> wrote:

kw GROUP ONE
KELLERWILLIAMS
Each office is independently owned and operated

Luke Fitzgerald
Realtor®
S.0167718

C: 775-303-8492
ElkoLuke@gmail.com
www.RootedInElko.com

461 4th Street • Elko • NV 89801

DOWNLOAD MY HOME SEARCH APP

1/27/2020

Attn: City Planner
City of Elko
1751 College Avenue
Elko, Nv 89801

Re: Development Application Ruby Mountain Peaks

Dear Cathy,

I authorize Bailey & Associates LLC to submit applications for tentative and final maps for the above referenced project for my property located at Mountain City Highway APN 001-01A-014.

Thank you,

Linda Baxter

dotloop verified
01/28/20 7:27 AM PST
E4YG-GE XD-JWAI-P5J9

Linda Baxter

OWNER / DEVELOPER

BAILEY AND ASSOCIATES LLC.
DOUG BAILEY
780 WEST SILVER STREET
ELKO, NEVADA 89801

ATTN: DOUG BAILEY
775-777-7773
DOUG@NEWHOMESSELKO.COM

CIVIL IMPROVEMENTS PLANS FOR RUBY MOUNTAIN PEAKS SUBDIVISION ELKO, NEVADA

ELKO

ELKO COUNTY

NEVADA

ENGINEER



1150 LAMOILLE HIGHWAY
ELKO, NEVADA 89801
(775) 738 - 8058

WWW.SUMMITNV.COM
NITIN@SUMMITNV.COM

Planning Department
Approved
02/10/2021



APPROVED
City of Elko Fire Department
Janae Ward
02/08/2021



APPROVED
ENGINEERING DEPARTMENT
02/08/2021
Rachael Schmitt

UTILITIES APPROVED
02/08/2021 1:21:49 PM

APPROVED
CITY OF ELKO DEVELOPMENT DEPT.
Michelle Rambo
02/10/2021

PROJECT DATA

TOTAL SUBDIVIDED AREA = 10.00 ACRES
TOTAL RIGHT-OF-WAY AREA = 2.10 ACRES (91,562 SF)
OFFERED FOR DEDICATION
NET AREA ~ (TOTAL AREA - RIGHT-OF-WAY AREA) = 7.90 ACRES

TOTAL UNITS = 41 LOTS
ESTIMATED WATER USAGE = 45.92 ACRE FEET PER YEAR
ESTIMATED SEWER CONTRIBUTIONS = 14,350 GALLONS PER DAY
THIS PROPOSED SUBDIVISION IS LOCATED IN SECTION 8, T 34 N, R 55 E. MDB&M.

THE REQUIRED FIRE FLOW FOR THIS DEVELOPMENT WILL BE
A MINIMUM OF 1,500 GPM FOR 2 HOURS, FOR RESIDENTIAL
TYPE V-B CONSTRUCTION.

BASIS OF BEARINGS

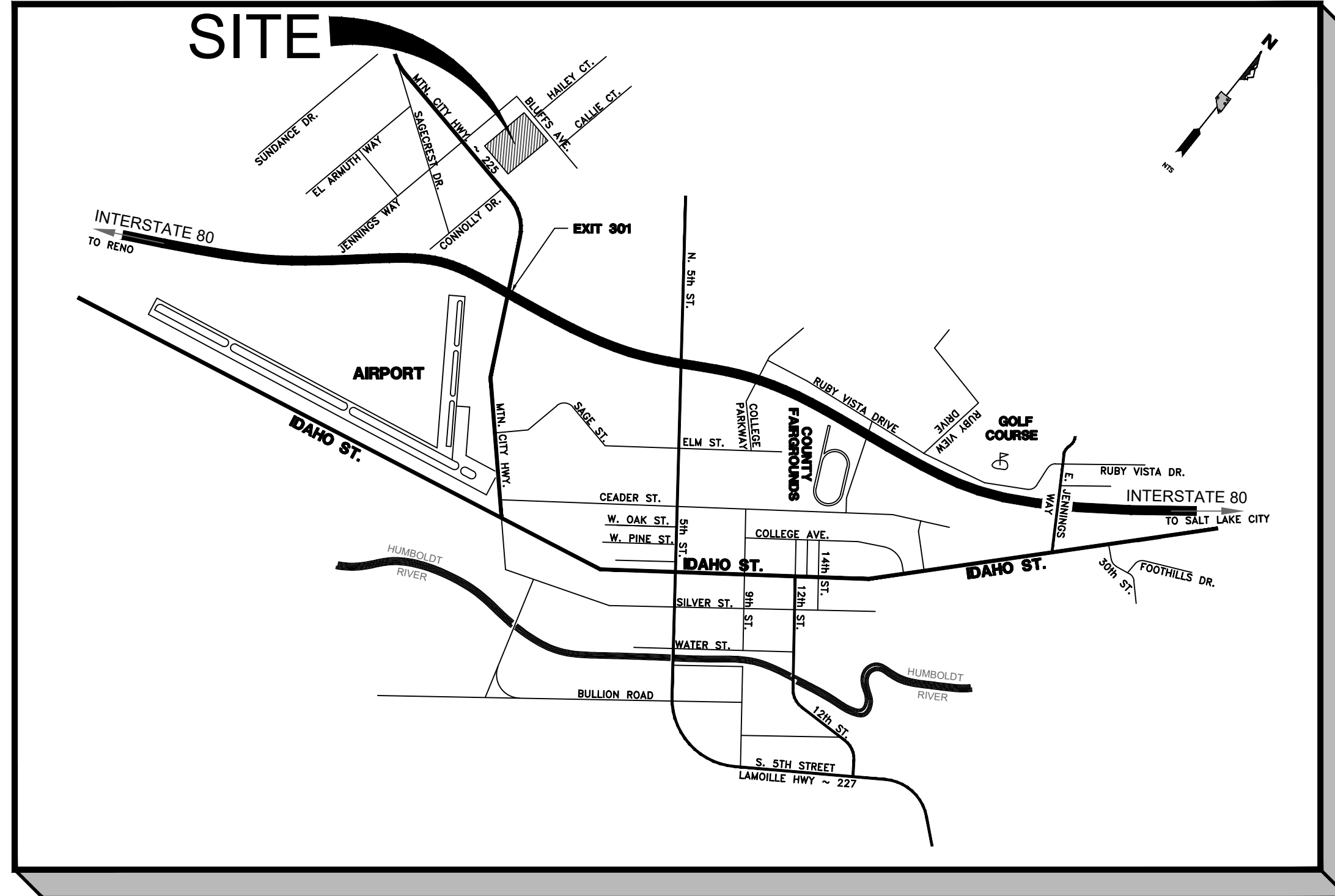
IS THE NORTH PROPERTY LINE OF SAID PARCEL IN SECTION 8
T. 34 N., R. 55 E., M.D.B. & M. TAKEN AS S 89° 56' 44" E

BASIS OF ELEVATION

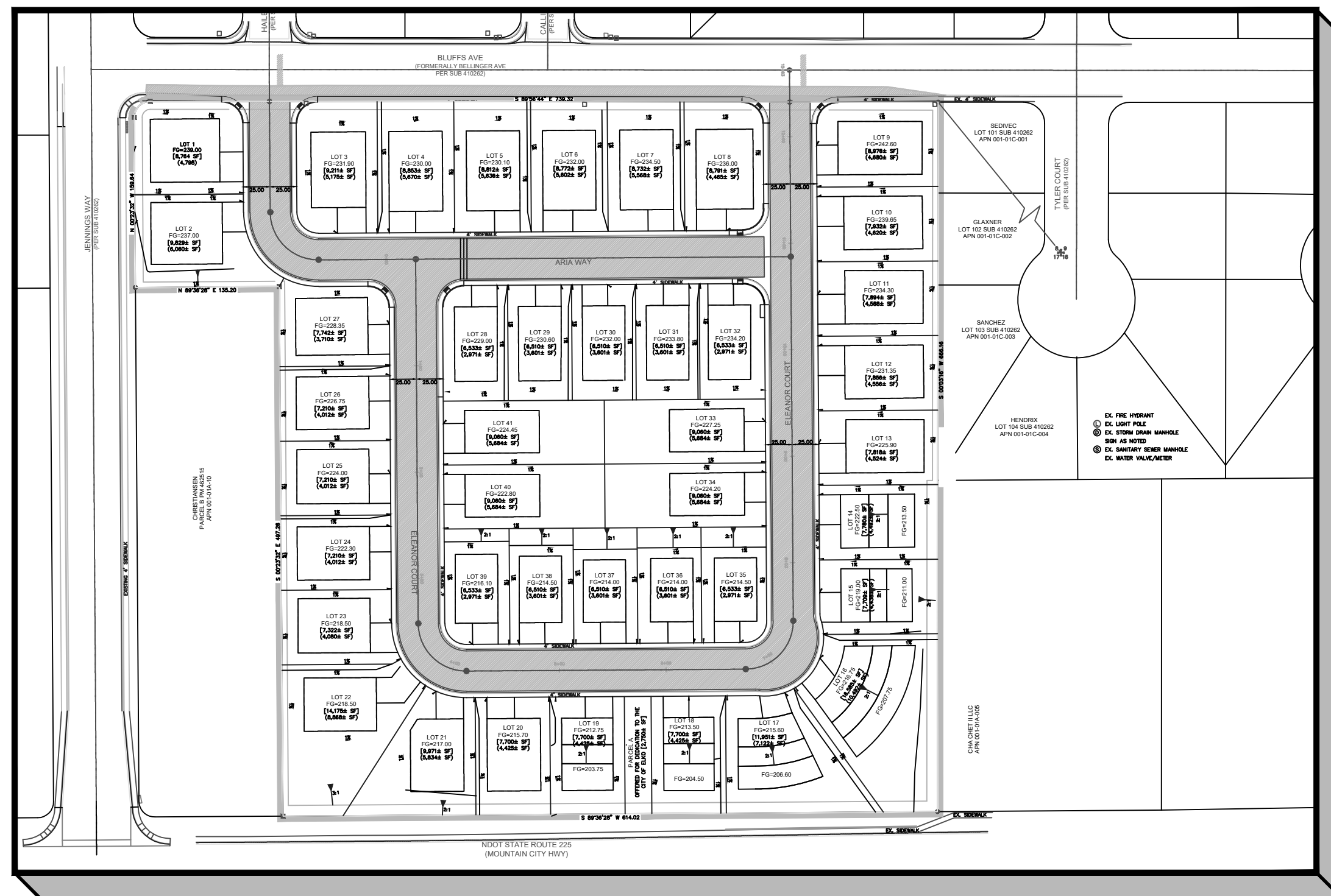
U.S.C. & G.S. BENCHMARK #S141, DATED 1929
ELVATION REPORTED AS
5183.54' ABOVE SEA LEVEL

ABBREVIATIONS

A.C.	ASPHALTIC CONCRETE	"LPS"	LIBERTY PEAK STREET
AGG.	AGGREGATE	M.D.D.	MAXIMUM DRY DENSITY
B.C.	BEGIN CURVE	M.H.	MANHOLE
B.F.	BOTTOM OF FOOTING	P.	PAD ELEVATION
B.V.C.	BEGIN VERTICAL CURVE	P.C.C.	POINT OF COMPOUND CURV.
B.W.	BACK OF SIDEWALK	PI.	POINT OF INTERSECTION
C.B.	CATCH BASIN	P.R.C.	POINT OF REVERSE CURVATURE
C.	CENTERLINE	P.V.C.	POLYVINYL CHLORIDE PIPE
CONC.	CONCRETE	P.O.	PUSH ON
CONST.	CONSTRUCT	P.U.E.	PUBLIC UTILITY EASEMENT
CLR.	CLEARANCE	PL.	PROPERTY LINE
C.P.	CONCRETE PIPE	Q10	10-YEAR STORM FLOW
C.R.	CURB RETURN	Q100	100-YEAR STORM FLOW
D.I.	DROP INLET	(R)	RADIAL
DET.	DETAIL	R	RADIUS
E.	ELECTRICAL	REF.	REFERENCE
ELEV.	ELEVATION	R.C.P.	REINFORCED CONCRETE PIPE
E.C.	END OF CURVE	R.P.	RADIUS POINT
E.V.C.	END OF VERTICAL CURVE	RT.	RIGHT
EXIST.	EXISTING	R/W	RIGHT OF WAY
(e)	EXISTING	"SLC"	SNOW LAKE CIRCLE
E.G.	EXISTING GRADE	S.G.	SUBGRADE
F.F.	FINISHED FLOOR	S.S.	SANITARY SEWER
F.F.C.	FRONT FACE OF CURB	S.W.	SIDEWALK
F.G.	FINISHED GRADE	STD.	STANDARD
F.H.	FIRE HYDRANT	SHT.	SHEET
F.L.	FLOW LINE	STA.	STATION
FLG.	FLANGE	S.D.	STORM DRAIN
G.	GAS	T	TANGENT
G.B.	GRADE BREAK	TELE.	TELEPHONE
GTV.	GATE VALVE	T.C.	TOP OF CURB
H.C.	HANDICAPPED	T.B.	THRUST BLOCK
HORIZ.	HORIZONTAL	TOE	TOE OF SLOPE
H.P.	HIGH POINT	TOP	TOP OF SLOPE
INT.	INTERSECTION	TYP.	TYPICAL
I.E.	INVERT ELEVATION	V.C.	VERTICAL CURVE
L.	LENGTH	V.P.I.	VERT. POINT OF INTERSECTION
L.F.	LINEAL FEET	W	WATER
LP.	LOW POINT	Δ	CURVE DELTA
LT.	LEFT		
L.I.P.	LIP OF GUTTER		



VICINITY MAP



SITE PLAN

SHEET INDEX

T-1	.....	TITLE SHEET
1-2	.....	TENTATIVE PLAT JURAT
2-2	.....	TENTATIVE PLAT MAP
N-1	.....	GENERAL NOTES SHEET
G-1	.....	GRADING PLAN
U-1	.....	UTILITY PLAN
PP-1	.....	PROFILE - ARIA WAY
PP-2	.....	PROFILE - ELEANOR COURT
PP-3	.....	PROFILE - ELEANOR COURT
PP-4	.....	PROFILE - OFF SITE SS & SD
S-1	.....	SITE SIGNAGE & STRIPING PLAN
D-1	.....	DETAIL SHEET
D-2	.....	DETAIL SHEET
D-3	.....	DETAIL SHEET
D-4	.....	DETAIL SHEET

LAND USE CLASSIFICATION

R1 (RESIDENTIAL SINGLE FAMILY)

EASEMENTS: ALL LOTS TO CONTAIN A 5.50' UTILITY AND DRAINAGE EASEMENT
ALONG THE SIDES AND REAR LOT LINES AND A 7.50' DRAINAGE
AND UTILITY EASEMENT ALONG THE CITY RIGHT-OF-WAY

FLOOD PLAIN: BASED ON THE FLOOD INSURANCE RATE MAP FOR THE
CITY OF ELKO, 32007C5608E, DATED SEPTEMBER 4, 2013
THE ENTIRE SITE LIES OUTSIDE THE 100 YEAR FLOOD PLAIN

SITE INFO: BASED UPON THE CITY OF ELKO AND BLM HISTORIC DATA THE
SUBJECT PROPERTY HAS BEEN EXCLUSIVELY USED AS
OPEN RANGE.

LOCATION: THIS SITE IS LOCATED WITHIN SECTION 8, TOWNSHIP 34 NORTH
RANGE 55 EAST IN ELKO, NEVADA

ADJACENT ZONING: NORTH - EXISTING R1 RESIDENTIAL SUBDIVISION LOTS
SOUTH - EXISTING COMMERCIAL PROPERTY - HOME DEPOT
EAST - NORTH HALF EXISTING R1 RESIDENTIAL SUBDIVISION LOTS
SOUTH HALF - EXISTING DEVELOPED COMMERCIAL PROPERTY - STORAGE UNITS
WEST - EXISTING UNDEVELOPED COMMERCIAL PROPERTY

UTILITIES

ELECTRIC ~ NV ENERGY
TELEVISION ~ ZITO MEDIA
TELEPHONE ~ FRONTIER COMMUNICATION
GAS ~ SOUTHWEST GAS CORPORATION

WATER ~ CITY OF ELKO
SANITARY SEWER ~ CITY OF ELKO
GARBAGE UTILITIES ~ ELKO SANITATION (CITY LANDFILL)

SPECIFICATIONS

ALL CONSTRUCTION SHALL CONFORM TO THE STANDARD SPECIFICATIONS
FOR PUBLIC WORKS CONSTRUCTION (CURRENT EDITION AND ANY APPURTENANT
SUPPLEMENTS) SPONSORED AND DISTRIBUTED BY RENO, SPARKS,
WASHOE COUNTY, AND THE RECOMMENDATIONS ESTABLISHED BY THE
SOILS INVESTIGATION FOR THIS SITE.

ENGINEER'S STATEMENT

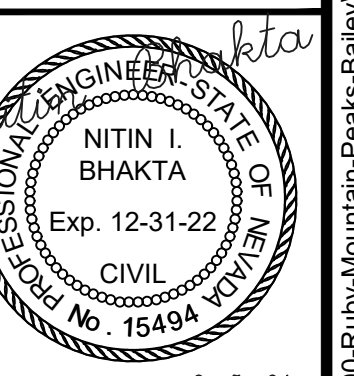
THESE PLANS (SHEETS T-1 OF 15 THROUGH D-4 OF 15) HAVE BEEN
PREPARED IN ACCORDANCE WITH ACCEPTED ENGINEERING PROCEDURES
AND GUIDELINES, AND ARE IN SUBSTANTIAL COMPLIANCE WITH
APPLICABLE STATUTES, CITY ORDINANCES, AND CODES. IN THE EVENT
OF CONFLICT BETWEEN ANY PORTION OF THESE PLANS AND CITY
CODES, THE CITY CODES SHALL PREVAIL.



BY	APPD	DESCRIPTION	DATE	REV.
NIB	NIB	CITY REVISIONS	12/20	Δ

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
TITLE SHEET
ELKO COUNTY
NEVADA
ELKO

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: NONE
VERT: NONE
JOB NO: 82500



SHEET
T-1 OF 15

OWNER'S CERTIFICATE:

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, DOUG BAILEY, MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, BEING THE OWNER OF THE PARCELS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFER FOR DEDICATION ALL OF THE EASEMENTS AND RIGHT-OF-WAYS FOR PUBLIC ACCESS, UTILITY AND DRAINAGE PURPOSES AS DESIGNATED HEREON. NEWCASTLE CIRCLE AND PARCEL A SHOWN HEREON ARE HEREBY DEDICATED TO THE CITY OF ELKO.

IN WITNESS I, DOUG BAILEY, MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, SET MY HAND THIS _____ DAY OF _____, 2021.

DOUG BAILEY _____ DATE _____
MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC.

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

ON THIS _____ DAY OF _____, 2020, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, IN SAID COUNTY, DOUG BAILEY, PERSONALLY KNOWN (OR PROVED) TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE INSTRUMENT WHO ACKNOWLEDGED THAT HE EXECUTED THE FOREGOING INSTRUMENT AS MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC.

NOTARY PUBLIC _____

COUNTY ASSESSOR'S CERTIFICATE:

I, JANET IRIBARNE, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBERS SHOWN ON THIS PLAT ARE CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF ASSESSOR'S PARCEL NO. 001-01A-014.

JANET IRIBARNE, ELKO COUNTY ASSESSOR _____ DATE _____

COUNTY TREASURER'S CERTIFICATE:

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON PARCEL NO. 001-01A-014 HAVE BEEN PAID FOR THE FISCAL YEAR 2020-2021.

CHERYL PAUL, COUNTY TREASURER _____ DATE _____

CITY ENGINEER'S CERTIFICATE:

I, ROBERT THIBAUT, ENGINEER FOR THE CITY OF ELKO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND FIND IT SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP WITH ALL APPROVED ALTERATIONS AND THAT ALL PROVISIONS OF N.R.S. 278.010 THROUGH 278.630, INCLUSIVE, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH, AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED.

ENGINEER FOR THE CITY OF ELKO _____ DATE _____

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION:

THIS FINAL MAP IS APPROVED BY THE DIVISION OF ENVIRONMENTAL PROTECTION OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES. THIS APPROVAL CONCERNS SEWAGE DISPOSAL, WATER POLLUTION, WATER QUALITY, AND WATER SUPPLY FACILITIES AND IS PRECATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMUNITY SYSTEM FOR DISPOSAL OF SEWAGE.

BUREAU OF WATER POLLUTION CONTROL _____ DATE _____

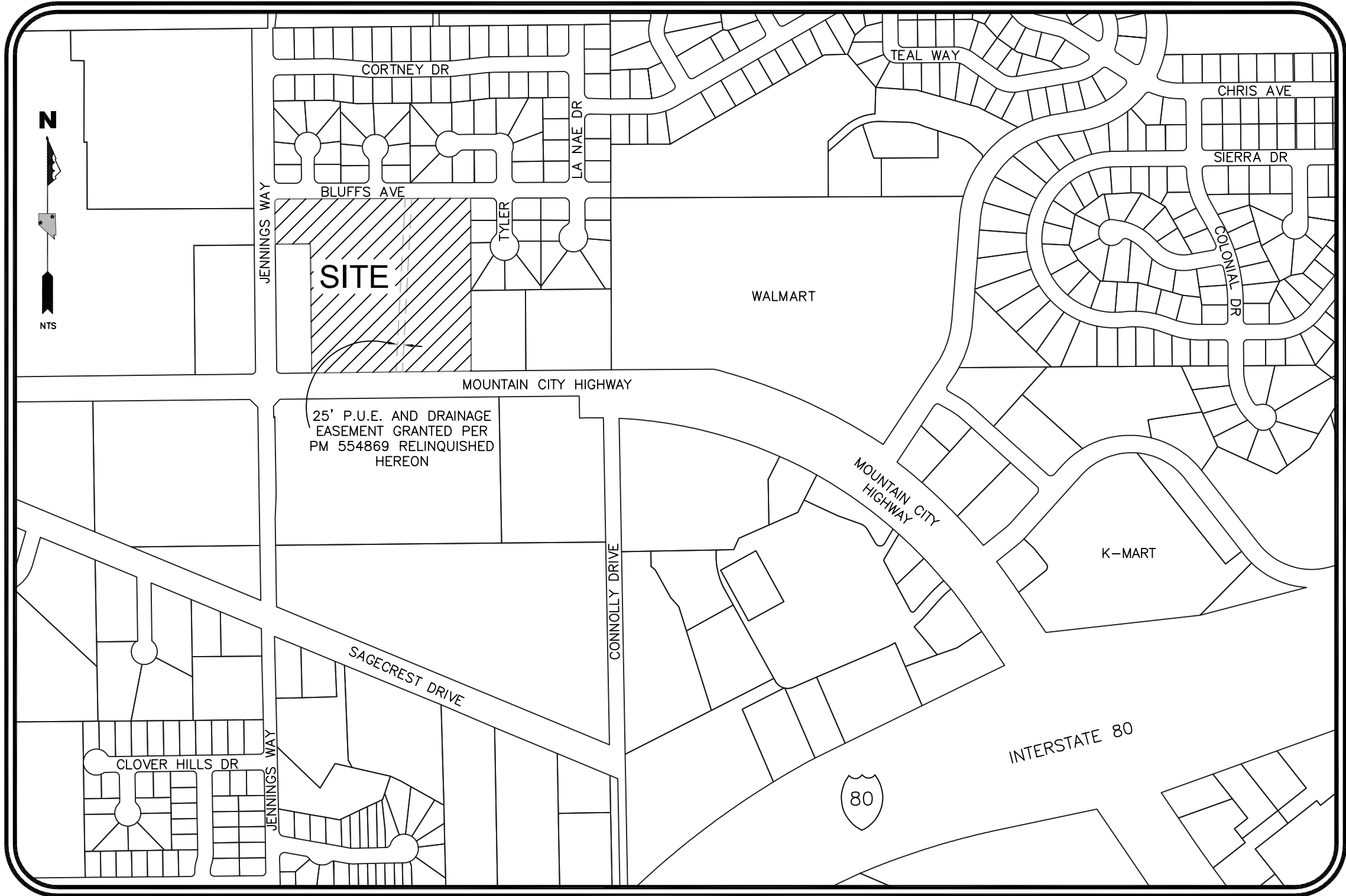
BY:

DIVISION OF WATER RESOURCES CERTIFICATE:

THIS PLAT IS APPROVED BY THE DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY, SUBJECT TO REVIEW OF APPROVAL ON FILE IN THIS OFFICE.

DIVISION OF WATER RESOURCES _____ DATE _____

FINAL MAP OF RUBY MOUNTAIN PEAKS



VICINITY MAP

SURVEYOR'S CERTIFICATE:

I, RYAN G. COOK, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1. THIS IS A TRUE AND ACCURATE REPRESENTATION OF THE LANDS SURVEYED UNDER MY SUPERVISION AT THE INSTANCE OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY.
2. THE LANDS SURVEYED LIE WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.M.
3. THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
4. THE MONUMENTS DEPICTED ON THE PLAT WILL BE OF THE CHARACTER SHOWN AND OCCUPY

THE POSITIONS INDICATED BY _____, 2021, AND APPROPRIATE FINANCIAL GUARANTEE WILL BE POSTED WITH THE GOVERNING BODY BEFORE RECORDATION TO ENSURE THE INSTALLATION OF THE MONUMENTS.



BASIS OF BEARINGS:

NATIONAL SPATIAL REFERENCE SYSTEM 2007 (NSRS2007) EPOCH 2007.00 HOLDING THE NGS APRIL, 2008 PUBLISHED LATITUDE, LONGITUDE AND ELLIPSOID HEIGHT OF N40° 51' 36.95230", W115° 45' 34.70450" FOR THE CITY OF ELKO CORN. COORDINATES ARE PROJECTED USING THE NEVADA STATE PLANE COORDINATE SYSTEM, EAST ZONE AND SCALED TO GROUND USING A COMBINED GRID-TO-GROUND FACTOR OF 1.000357. ORTHOMETRIC ELEVATIONS ABOVE MEAN SEA LEVEL ARE DERIVED USING GEOID 12.

NOTES:

1. THE TOTAL SUBDIVIDED AREA IS 10.00± ACRES.
THE TOTAL AREA OFFERED AS DEDICATED RIGHT-OF-WAY IS 2.10± ACRES.
THE TOTAL LOT AREA (41) IS 7.84± ACRES.
THE TOTAL PARCEL A AREA IS 2,750± SQUARE FEET.
2. A PUBLIC UTILITY EASEMENT IS ALSO HEREBY GRANTED WITHIN EACH LOT FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT LOT AND THE RIGHT TO EXIT THAT LOT WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING OTHER LOTS AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY. IN ADDITION, ALL SIDE PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 10 FEET IN WIDTH CENTERED ABOUT THE PROPERTY LINE. ALSO, ALL REAR PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 5 FEET IN WIDTH LOCATED WITHIN THE LOT, ADJACENT TO THE REAR PROPERTY LINE.
3. THE DEVELOPER IS BAILEY & ASSOCIATES, LLC WHOSE ADDRESS IS 780 W. SILVER #104, ELKO, NV 89801 AND WHOSE PHONE NUMBER IS 775-385-3659.
4. ALL LOTS SHALL BE RESTRICTED TO ACCESS FROM ARIA WAY & ELEANOR COURT.
5. THE NEW USPS GANG BOX EASEMENT WITHIN LOTS 32 IS GRANTED TO THE UNITED STATES POSTAL SERVICE.

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2021.

BY _____, AS _____ OF _____
FRONTIER, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

ELKO CITY PLANNING COMMISSION CERTIFICATE:

AT THE REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF ELKO, STATE OF NEVADA, HELD ON THE _____ DAY OF _____, 2021, A TENTATIVE MAP OF THIS SUBDIVISION WAS DULY AND REGULARLY APPROVED PURSUANT TO N.R.S. 278.330 AND THIS FINAL MAP SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE MAP AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

CHAIRMAN, ELKO CITY PLANNING COMMISSION _____ DATE _____

ELKO CITY COUNCIL CERTIFICATE:

AT A REGULAR MEETING OF THE ELKO CITY COUNCIL HELD ON THE _____ DAY OF _____, 2021, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. ALL OFFERS OF DEDICATION SHOWN HEREON WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO _____ DATE _____

ATTEST: CLERK, CITY OF ELKO _____ DATE _____

NV ENERGY CERTIFICATE:

A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED TO NV ENERGY WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

SIERRA PACIFIC POWER COMPANY _____ DATE _____
D/B/A/ NV ENERGY

PRINTED NAME: _____

SOUTHWEST GAS CERTIFICATE:

A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED TO SOUTHWEST GAS WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING SERVICE FACILITIES TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

SOUTHWEST GAS CORPORATION _____ DATE _____

PRINTED NAME: _____

UTILITY COMPANIES CERTIFICATE:

THE PUBLIC UTILITY EASEMENTS, ARE APPROVED BY THE RESPECTIVE PUBLIC UTILITIES EXECUTED BELOW, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

FRONTIER _____ DATE _____

BY:

ZITO MEDIA _____ DATE _____

BY:

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2021.

BY _____, AS _____ OF _____
SIERRA PACIFIC POWER COMPANY D/B/A NV ENERGY, A NEVADA CORPORATION, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2021.

BY _____, AS _____ OF _____
SOUTHWEST GAS CORPORATION, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2021.

BY _____, AS _____ OF _____
ZITO MEDIA, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

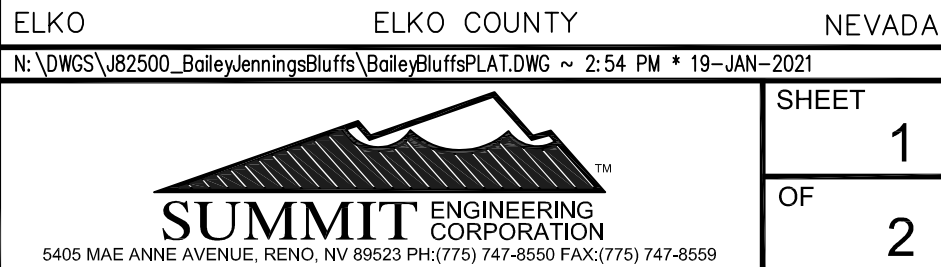
NOTARY PUBLIC _____

FILE No. _____
FILED AT THE REQUEST OF
SUMMIT ENGINEERING CORP.
DATE: _____, 2021
TIME: _____ M.

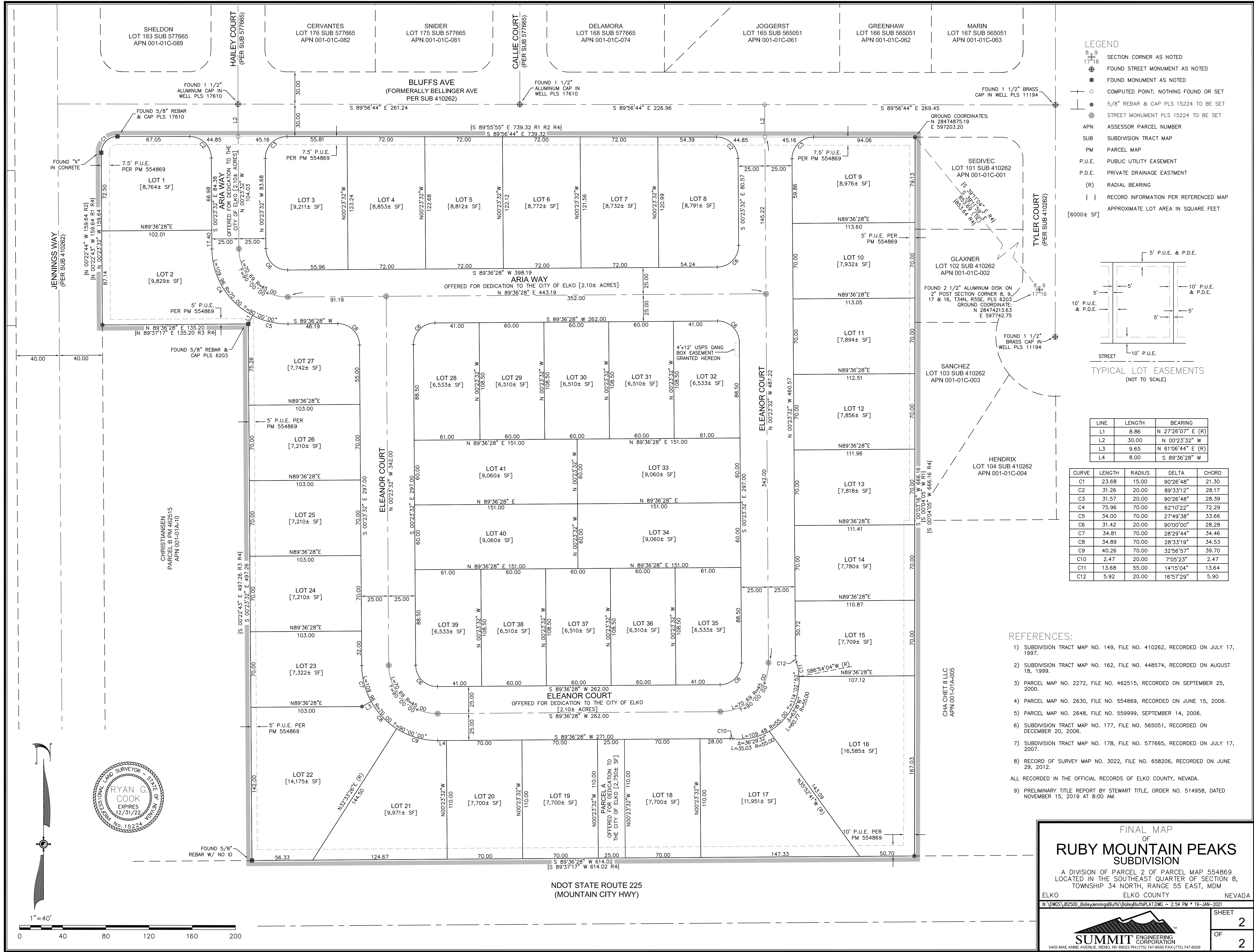
D. MIKE SMALES
ELKO COUNTY RECORDER

FINAL MAP OF RUBY MOUNTAIN PEAKS SUBDIVISION

A DIVISION OF PARCEL 2 OF PARCEL MAP 554869
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8,
TOWNSHIP 34 NORTH, RANGE 55 EAST, MDM



SHEET
1
OF
2



LEGEND

- PROPOSED STORM DRAIN / SANITARY SEWER W/SIZE & DIRECTION INDICATOR
- EXISTING STORM DRAIN/SANITARY SEWER W/SIZE & DIRECTION INDICATOR
- SEWER LATERAL
- AC PAVEMENT AREA
- CONCRETE AREA (4000 PSI)
- TYPE 2 BASE GRAVEL AREA (95% MDD)
- EXISTING AC PAVEMENT
- GRADE BREAK
- PROPOSED ELEV. @ FRONT FACE TOP OF CURB
- PROPOSED ELEV. @ GRADE BREAK
- PROPOSED ELEV. @ HIGH PT.
- PROPOSED ELEV. @ FLOW LINE
- PROPOSED ELEV. @ FINISHED GRADE
- EXISTING CONTOUR LINE
- PROPOSED CONTOUR LINE
- ACCESSIBLE RAMP
- DRAINAGE SWALE FLOW LINE
- CUT OR FILL SLOPE
- EXISTING STORM DRAIN
- EXISTING GAS
- PROPOSED FENCE
- EXISTING TELEPHONE
- EXISTING ELECTRIC OVERHEAD LINE
- EXISTING WATERLINE
- EXISTING SANITARY SEWER
- BACKFLOW PREVENTOR
- CHECK VALVE
- CHECK VALVE-DOUBLE
- FLUSH VALVE
- METER-DUAL
- METER-SINGLE
- REDUCER
- SERVICE-DUAL
- SERVICE-SINGLE
- TEE
- VALVE
- EX ELECTRIC VAULT/BOX
- EXISTING TELEPHONE PEDESTAL
- EXISTING LIGHT
- EXISTING SIGN
- PROPOSED SIGN
- PROPOSED SS CLEANOUT
- EXISTING FIRE HYDRANT
- CAP W/ THRUST BLOCK
- 11.25" ELBOW
- 22.5" ELBOW
- 45" ELBOW
- 90" ELBOW
- ELECTRIC PULL BOX
- PROPOSED FIRE HYDRANT
- PROPOSED WTR METER VAULT
- EXISTING STREET LIGHT
- TYPE 7 STREET LIGHT
- PROPOSED MONUMENT
- WATER VALVE (HOLLOW IF EXISTING)
- EXISTING GAS VALVE
- EXISTING METER PIT
- SS & SD MANHOLE (HOLLOW IF EXISTING)
- CATCH BASIN (HOLLOW IF EXISTING)
- FIRE SERVICE
- GUY WIRE
- RIPRAP EROSION CONTROL

GENERAL NOTES

1. 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.
2. THE CONTRACTOR SHALL KEEP A REDLINE SET OF AS-BUILTS PLANS ON-SITE AND WORK WITH THE PROJECT ENGINEER AT COMPLETION TO ENSURE ACCURATE AS-BUILT DRAWINGS CAN BE GENERATED AND SUBMITTED TO THE CITY OF ELKO AND THE OWNER BY THE PROJECT ENGINEER.
3. THE CONTRACTOR SHALL NOTIFY THE PROJECT ENGINEER, THE SOILS ENGINEER, THE CITY OF ELKO, AND ALL UTILITY COMPANIES 48 HOURS PRIOR TO COMMENCEMENT OF WORK.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY AND ALL DAMAGE TO THE EXISTING UTILITIES ENCOUNTERED DURING CONSTRUCTION. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO CONTACT THE UTILITY COMPANIES FOR LOCATIONS PRIOR TO CONSTRUCTION. HORIZONTAL AND VERTICAL LOCATIONS OF EXISTING UTILITIES ARE APPROXIMATE ONLY. THE CONTRACTOR SHALL CALL UNDERGROUND SERVICES ALERT AT 1.800.227.2600 AT LEAST 48 HOURS PRIOR TO EXCAVATION.
5. ALL UTILITY TRENCHES SHALL CONFORM TO SIERRA PACIFIC POWER, ZITO MEDIA, FRONTIER COMMUNICATIONS, AND SOUTHWEST GAS SPECIFICATIONS. CONTRACTOR TO COORDINATE INSTALLATION OF ALL UTILITY TRENCHES WITH LOCAL UTILITIES.
6. CONTRACTOR TO OBTAIN AND PAY FOR PERMITS FROM THE CITY OF ELKO PRIOR TO EXCAVATING WITHIN THE CITY RIGHT-OF-WAY.
7. AT ALL POINTS WHERE SEWER (SANITARY OR STORM), WATER MAINS AND LATERALS CROSS, VERTICAL AND HORIZONTAL SEPARATION SHALL BE MAINTAINED PER NAC. ENGINEER AND CONTRACTOR TO REFERENCE SECTION 445A.6715 TO SECTION 445A.6718 OF THE NEVADA ADMINISTRATIVE CODE FOR UTILITY SEPARATION AND CLEARANCES.
8. ALL SANITARY SEWER MAINS SHALL BE A MIN. OF 8" SDR 35 PVC (GREEN) PIPE. ALL RESIDENTIAL SANITARY SEWER LATERALS SHALL BE A MIN. 4" SDR 35 PVC PIPE WITH A 2% SLOPE MINIMUM UNLESS OTHERWISE SHOWN.
9. ALL WATER MAINS SHALL BE MIN. OF 8" THICK CLASS 50 OR PRESSURE CLASS 350 DUCTILE IRON PIPE WITH POLYETHYLENE ENCASEMENT WRAPPED IN (8 MIL VISQUEEN) OR DR 18 C900 PIPE UNLESS OTHERWISE SHOWN. ALL 4"/6" FIRE SPRINKLER LINES SHALL BE DIP OR DR 18 C900 PIPE.
10. ALL CONSTRUCTION SHALL CONFORM TO AWWA C-600. MINIMUM COVER OVER THE WATER MAIN SHALL BE 42" WITH TRACE WIRE AND WARNING TAPE.
11. THE CITY OF ELKO UTILITY DEPARTMENT SHALL BE CONTACTED TO PERFORM ALL TAPS ONTO CITY OF ELKO UTILITIES.
12. THE CITY OF ELKO UTILITY DEPARTMENT SHALL BE CONTACTED FOR AUTHORIZATION TO PLACE ANY NEW WATER SYSTEMS, EXTENSIONS, REPLACEMENTS IN EXISTING SYSTEMS AND VALVED SECTIONS INTO SERVICE FOR TESTING OR FINAL ACCEPTANCE.
13. ALL WATER SERVICE LINES SHALL BE 2" IRON PIPE SIZE (IPS) RATED 200 PSI POLYETHYLENE DR11 UNLESS OTHERWISE SHOWN.
14. BEFORE BEING CERTIFIED BY AN ENGINEER OR ACCEPTED BY THE CITY OF ELKO, ANY NEW WATER SYSTEMS, EXTENSIONS, REPLACEMENTS IN EXISTING SYSTEMS AND VALVED SECTIONS SHALL BE DISINFECTED IN ACCORDANCE WITH AWWA C-651, "DISINFECTING WATER MAINS".
15. BEFORE BEING CERTIFIED BY AN ENGINEER OR ACCEPTED BY THE CITY OF ELKO, ANY NEW WATER SYSTEMS, EXTENSIONS, REPLACEMENTS IN EXISTING SYSTEMS AND VALVED SECTIONS SHALL BE PRESSURE TESTED INACCORDANCE WITH NAC445A.67145.7 (a) AND (b) AND INSPECTED BY THE CITY OF ELKO.
16. GRADING AROUND BUILDINGS TO BE DONE IN A MANNER AS TO PROVIDE POSITIVE DRAINAGE AWAY FROM BUILDING IN ACCORDANCE WITH CITY OF ELKO REQUIREMENTS.
17. LAND GRADING SHALL BE DONE IN A METHOD TO PREVENT DUST FROM TRAVERSING THE PROPERTY LINE.
18. WATER METERS SHALL BE INSTALLED DURING ANY DEVELOPMENT AND PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY FOR THE PARCELS SHOWN OR SUBSEQUENT DIVISION OF THE PARCELS SHOWN. WATER AND SEWER THROUGHOUT THE DEVELOPMENT WILL BE DEDICATED TO THE CITY OF ELKO UP TO THE WATER METER LOCATIONS. A BLANKET UTILITY EASEMENT SHALL BE GRANTED THROUGHOUT THE PARKING CORRIDOR.
19. ALL EXISTING UTILITY ADJUSTMENTS SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
20. ALL EXISTING ASPHALT REMOVAL AND REPLACEMENT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR.
21. ALL LOTS SHALL BE RESTRICTED TO ACCESS OFF OF ARIA WAY & ELEANOR COURT.

STORMWATER POLLUTION PREVENTION NOTES

- 1) THE CONTRACTOR AND/OR THEIR AUTHORIZED AGENTS SHALL EACH DAY REMOVE ALL SEDIMENT, MUD, CONSTRUCTION DEBRIS, OR OTHER POTENTIAL POLLUTANTS THAT MAY HAVE BEEN DISCHARGED TO, OR ACCUMULATE IN, THE PUBLIC RIGHTS OF WAYS OF THE CITY OF ELKO AS A RESULT OF CONSTRUCTION ACTIVITIES ASSOCIATED WITH THIS SITE. DEVELOPMENT OR CONSTRUCTION PROJECT. SUCH MATERIALS SHALL BE PREVENTED FROM ENTERING THE STORM WATER SYSTEM.
- 2) ADDITIONAL CONSTRUCTION SITE DISCHARGE BEST MANAGEMENT PRACTICES (BMP) MAY BE REQUIRED OF THE OWNER AND HIS OR HER AGENTS DUE TO UNFORESEEN EROSION PROBLEMS OR IF THE SUBMITTED PLAN DOES NOT MEET THE PERFORMANCE STANDARDS SPECIFIED IN THE CITY OF ELKO CONSTRUCTION SITE BEST MANAGEMENT PRACTICES HANDBOOK.
- 3) TEMPORARY OR PERMANENT STABILIZATION PRACTICES WILL BE INSTALLED ON DISTURBED AREAS AS SOON AS PRACTICABLE AND NO LATER THAN 14 DAYS AFTER THE CONSTRUCTION ACTIVITY IN THAT PORTION OF THE SITE HAS TEMPORARILY OR PERMANENTLY CEASED. SOME EXCEPTIONS MAY APPLY; REFER TO STORM WATER GENERAL PERMIT NVS040000.
- 4) AT A MINIMUM, THE CONTRACTOR OR HIS AGENT SHALL INSPECT ALL DISTURBED AREAS, AREAS USED FOR STORAGE OF MATERIALS AND EQUIPMENT THAT ARE EXPOSED TO PRECIPITATION, VEHICLE ENTRANCE AND EXIT LOCATIONS AND ALL BMP'S WEEKLY, PRIOR TO A FORECASTED RAIN EVENT AND WITHIN 24 HOURS AFTER ANY ACTUAL RAIN EVENT. THE CONTRACTOR OR HIS AGENT SHALL UPDATE OR MODIFY THE STORMWATER POLLUTION PLAN AS NECESSARY. SOME EXCEPTIONS TO WEEKLY INSPECTIONS MAY APPLY, SUCH AS FROZEN GROUND CONDITIONS OR SUSPENSION OF LAND DISTURBANCE ACTIVITIES. REFER TO STORMWATER GENERAL PERMIT SMALL MS4 NVS040000.
- 5) ACCUMULATED SEDIMENT IN BMP'S SHALL BE REMOVED AT REGULAR INTERVALS, WITHIN SEVEN DAYS AFTER A STORMWATER RUNOFF EVENT, AND PRIOR TO THE NEXT ANTICIPATED STORM EVENT. SEDIMENT MUST BE REMOVED WHEN BMP DESIGN CAPACITY HAS BEEN REDUCED BY 50 PERCENT OR MORE.
- 6) REFER TO CITY OF ELKO CONSTRUCTION SITE BEST MANAGEMENT PRACTICES HANDBOOK (PUBLISHED BY THE CITY OF ELKO, DATED DEC. 2015) FOR DETAILS OF ALL BMP'S SHOWN ON THIS PLAN.
- 7) THE BMP'S SHOWN ON THIS PLAN ARE SCHEMATIC ONLY. FINAL BMP SELECTION AND LOCATION SHALL BE DETERMINED BY THE SITE OPERATOR OR THE OWNER'S REPRESENTATIVE.
- 8) THE CONTRACTOR SHALL SUBMIT TO THE NEVADA DEPARTMENT OF ENVIRONMENTAL PROTECTION (NDEP) FOR STORM WATER DISCHARGE PERMIT. THE CONTRACTOR SHALL SIGN THE NOTICE OF INTENT FOR THE PROPOSED PROJECT.
- 9) ALL EROSION CONTROL MEASURES SHALL CONFORM TO THE GUIDELINES OUTLINED IN THE CITY OF ELKO CONSTRUCTION SITE BEST MANAGEMENT PRACTICE HANDBOOK 2005 EDITION. A COPY OF THIS MANUAL TO BE ON-SITE AT ALL TIMES.
- 10) ALL CONSTRUCTION SHALL CONFORM TO THE 2016 EDITION OF THE "STANDARD SPECIFICATION FOR PUBLIC WORKS CONSTRUCTION." CONTRACTOR TO KEEP A COPY OF THE SPECIFICATION ON THE JOB SITE AT ALL TIMES

EROSION CONTROL NOTES

1. ALL PUBLIC RIGHT OF WAYS LOCATED ADJACENT TO THE SITE (E.G. STREETS AND SIDEWALKS) MUST BE CLEANED DAILY OF ALL SEDIMENT OR WASTES THAT ORIGINATE FROM THE SITE.
2. BMPs IN ADDITION TO THOSE INDICATED IN THE STORM WATER POLLUTION PREVENTION PLAN (SWPPP) MAY BE REQUIRED IF THEY DO NOT MEET THE CITY OF ELKO PERFORMANCE STANDARDS.
3. TEMPORARY OR PERMANENT STABILIZATION MUST BE APPLIED NO LATER THAN 14 DAYS TO ALL DISTURBED SOILS, INCLUDING STOCKPILES, WHERE CONSTRUCTION ACTIVITY HAS CEASED.
4. ALL BMPs MUST BE INSPECTED WEEKLY, PRIOR TO FORECASTED RAIN EVENTS, AND WITHIN 24 HOURS AFTER ANY EVENT THAT CREATES RUNOFF AT THE SITE.
5. ACCUMULATED SEDIMENT MUST BE REMOVED FROM BMPs WHEN THE DESIGN CAPACITY HAS BEEN REDUCED BY 50 PERCENT OR MORE. SEDIMENT MUST ALSO BE REMOVED WITHIN SEVEN DAYS AFTER A RUNOFF EVENT OR PRIOR TO THE NEXT FORECASTED EVENT, WHICHEVER IS EARLIER.
6. ALL BEST MANAGEMENT PRACTICES (BMP'S) SHALL BE IN ACCORDANCE WITH THE "CITY OF ELKO CONSTRUCTION SITE BEST MANAGEMENT PRACTICES HANDBOOK", DATED DECEMBER 2005, AND AVAILABLE THROUGH THE CITY OF ELKO.
7. PRIOR TO THE START OF CONSTRUCTION, THE CONTRACTOR SHALL HAVE IN PLACE ALL NECESSARY BEST MANAGEMENT PRACTICES THAT SHALL BE USED TO MINIMIZE DUST, PREVENT EROSION, AND PREVENT POLLUTION LADEN RUNOFF FROM ENTERING THE ADJACENT STORM DRAIN FACILITIES. THE CONTRACTOR SHALL MAINTAIN, REPAIR, REPLACE, SUBSTITUTE, OR SUPPLEMENT BMP'S AT THE CONSTRUCTION SITE AS CONDITIONS WARRANT DURING CONSTRUCTION. BMP'S MAY INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING BMP'S: (1) SILT FENCING OR STRAW WADDLES AT THE DOWNHILL LIMITS OF GRADING, (2) STABILIZED CONSTRUCTION SITE ENTRY/EXIT, (3) PERMANENT SLOPE REVEGETATION ON ALL DISTURBED AREAS, (4) INLET PROTECTION AT EXISTING CATCH BASINS, (5) STOCKPILE MANAGEMENT BMP'S, (6) DUST CONTROL BMP'S, (7) A CONCRETE WASHOUT AREA, AND (8) MEASURES TO PROTECT EXISTING NATIVE VEGETATION.

SIGNAGE & STRIPING NOTES

1. ALL SIGNAGE AND PAVEMENT MARKINGS SHALL COMPLY WITH STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, PROJECT SPECIFICATIONS, THESE PLANS, AND THE MOST CURRENT EDITION OF THE MANUAL FOR UNIFORM TRAFFIC CONTROL DEVICES (M.U.T.C.D.).
2. PARKING LOT STRIPING AND PAVEMENT MARKINGS SHALL BE INSTALLED AFTER APPLICATION AND CURING OF SLURRY SEAL. ASPHALT SURFACE SHALL BE CLEAN AND DRY PRIOR TO APPLICATION OF ANY PARKING LOT STRIPING, SYMBOLS, AND OTHER PAVEMENT MARKINGS.
3. CONTRACTOR SHALL VERIFY LOCATION OF EXISTING AND PROPOSED UTILITY LOCATIONS PRIOR TO INSTALLATION OF SIGNAGE.
4. SIGNAGE SHOWN ON THIS PLAN DOES NOT INCLUDE TRAFFIC CONTROL THAT MAY BE REQUIRED PRIOR TO AND DURING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY TRAFFIC CONTROL THAT MAY BE REQUIRED DURING CONSTRUCTION.
5. ANY ADDITIONAL SIGNAGE AND STRIPING NEEDED SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR

SLOPE STABILIZATION

- 1) ALL DISTURBED SLOPES STEEPER THAN 3:1 SHALL BE RIPRAPPED. RIPRAP SHALL BE RUN OF MINE OR UNSCREENED.
- 2) ALL SLOPES 3:1 OR LESS SHALL BE PLANTED AS FOLLOWS:

a. HAND SPREAD ENTIRE SEEDED AREA.

b. IRRIGATION IS TO MATCH THE AVAILABLE WATER HOLDING CAPACITY OF THE SOIL (AWC) FOR EACH SLOPE TAKING INTO ACCOUNT THE PLANT CONSUMPTIVE USE PLUS A FACTOR FOR IRRIGATION SYSTEM EFFICIENCY.

c. PROVIDE TEMPORARY IRRIGATION UNTIL VEGETATION IS ESTABLISHED.
- 3) PROTECT EXISTING AND PROPOSED DRAINAGE INLETS DURING CONSTRUCTION IN ACCORDANCE WITH THE FOLLOWING DETAILS:

a. STORMDRAIN INLET PROTECTION – (BMP DP-3)

b. CATCH BASIN FILTERS (BMP- DP-4)
- 4) MAINTENANCE

a. EXCLUDE FOOT TRAFFIC AS MUCH AS POSSIBLE DURING PLANT ESTABLISHMENT.

b. AREAS THAT FAIL TO RESPOND OR BECOME DAMAGED SHOULD BE TREATED AGAIN USING SAME TREATMENT INITIALLY APPLIED
- 5) RECLAMATION SEED MIX (TOTAL 60 BULK POUNDS PER ACRE):

SPECIES	BULK POUND PER ACRE
1. BIG SAGEBRUSH	4.0
2. RABBITBRUSH	4.0
3. BITTERBRUSH	4.0
4. INDIAN RICEGRASS	5.0
5. GREAT BASIN WILDRYE	5.0
6. COVER SHEEP FESCUE	10.0
7. SODAR STREAMBANK WHEATGRASS	9.0
8. ANNUAL RYEGRASS	15.0
9. PURPLE SAGE (SALVIA DORII)	1.0
10. FOUR WING SALTBRUSH	1.0
- 6) FERTILIZER

16-16-8

400/ACRE
- 7) TOPSOIL AND VEGETATIVE STRIPPINGS SHALL BE STOCKPILED FOR REAPPLICATION TO ALL DISTURBED AREAS.
- 8) PLANTING MIX (A MIXTURE OF THE FOLLOWING COMPONENTS MEASURED BY VOLUME):

a. 60% NATURAL SOIL

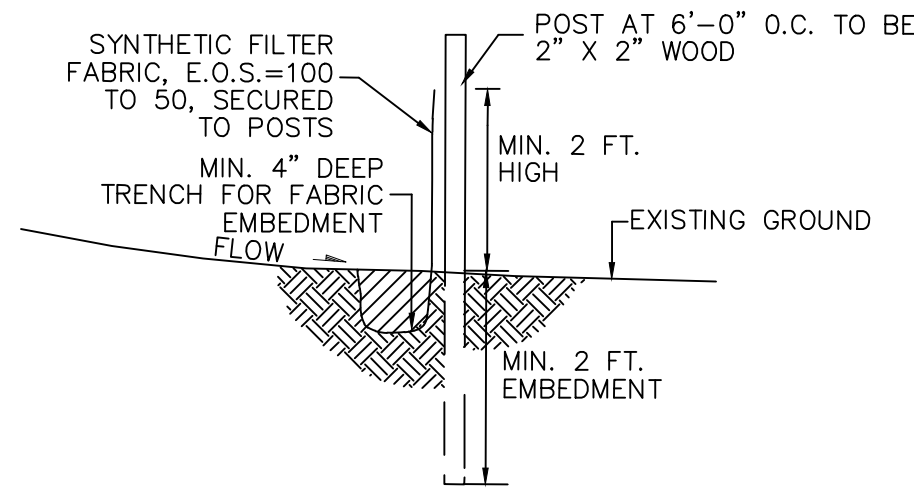
b. 30% SOIL CONDITIONER / COMPOST

c. 10% AXIS SOIL CONDITIONER

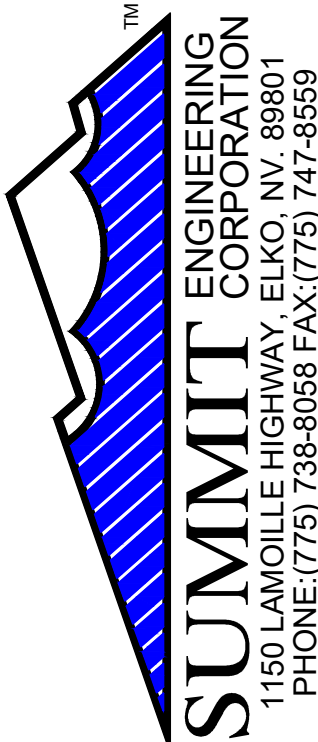
LEGEND

- AND

STORM DRAIN INLET PROTECTION (DP-3 AND DP-4)
- GRAVEL OR SAND BAG BARRIERS (BMP SC-3)
- HANDLING AND DISPOSAL OF CONCRETE AND CEMENT (BMP GM-9)
- SOLID AND DEMOLITION WASTE MANAGEMENT (BMP GM-3)
- CONSTRUCTION SITE ENTRANCE & EXIT (BMP SC-8)
- RIPRAP MECHANICAL STABILIZATION (BMP EC-7)
- FIBER ROLLS (BMP SC-1), SILT FENCE (BMP SC-5), SYNTHETIC SEDIMENT CONTROL ROLLS (BMP SC-11)
- STREET SWEEPING (BMP GM-5)
- STORM DRAIN OUTLET PROTECTION (BMP DP-2)
- REVEGETATION (BMP EC-8)
- AC PAVEMENT AREA
- TYPE 2 BASE GRAVE 95% MDD
- EXISTING CONTOUR LINE
- PROPOSED CONTOUR LINE
- BMP'S OUTLINED IN THE CITY OF ELKO CONSTRUCTION SITE BEST MANAGEMENT PRACTICE (BMP) HANDBOOK 2005 EDITION



SILT FENCE



REV.	DATE	DESCRIPTION	BY	APPD
1	1-15-21	city redline amounts		

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
GENERAL NOTES SHEET

NEVADA

ELKO COUNTY

ELKO

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500



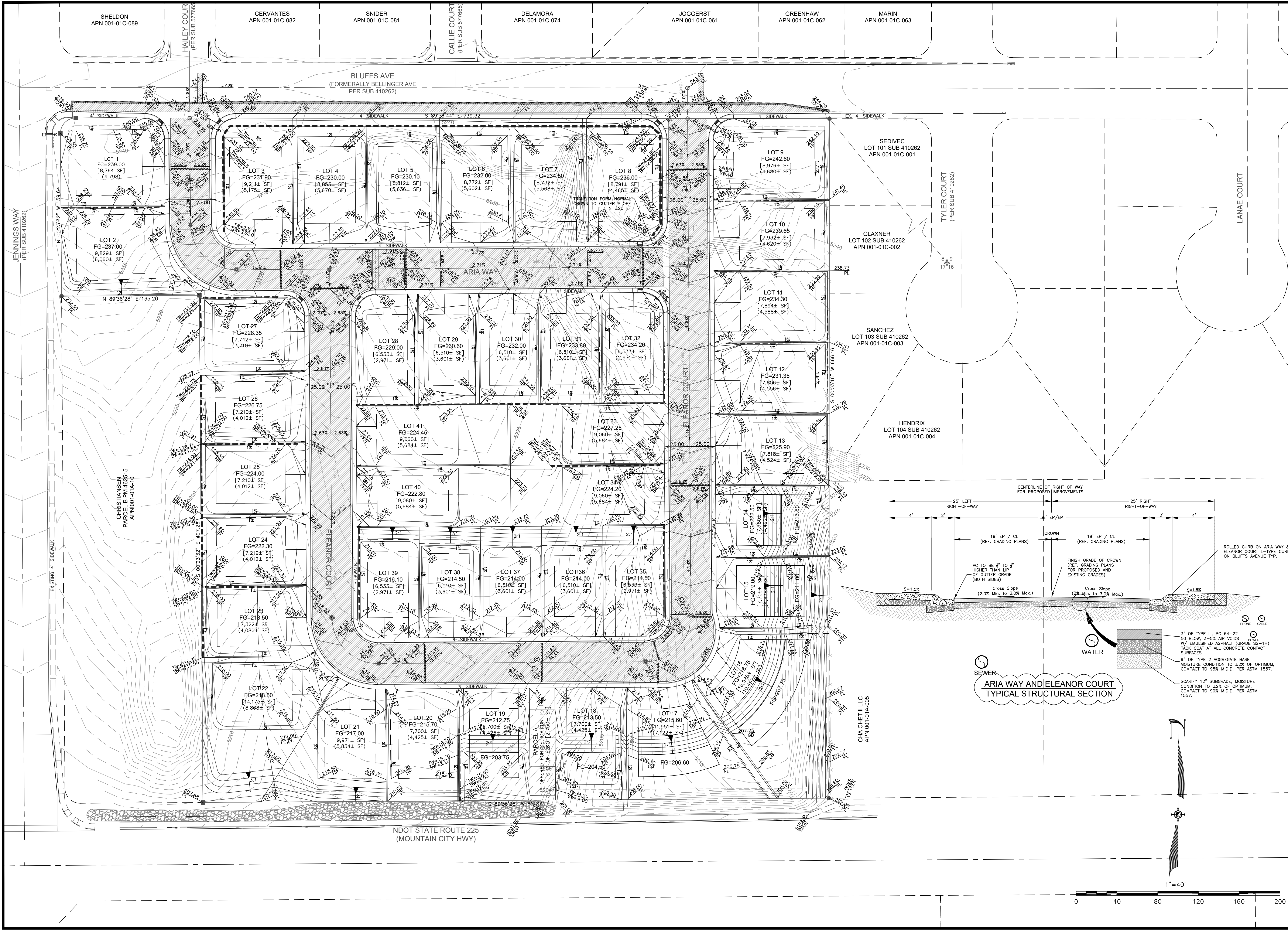
SHEET	OF
N-1	15

Avoid cutting underground utility lines. It's costly.

Call you Dig

1-800-227-2600

UNDERGROUND SERVICE (USA)

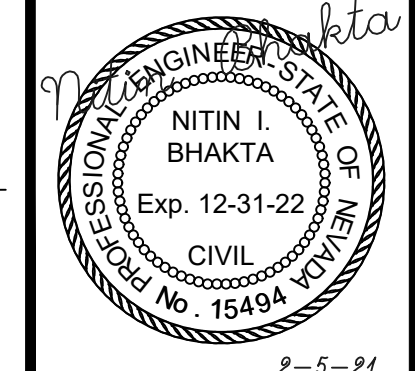


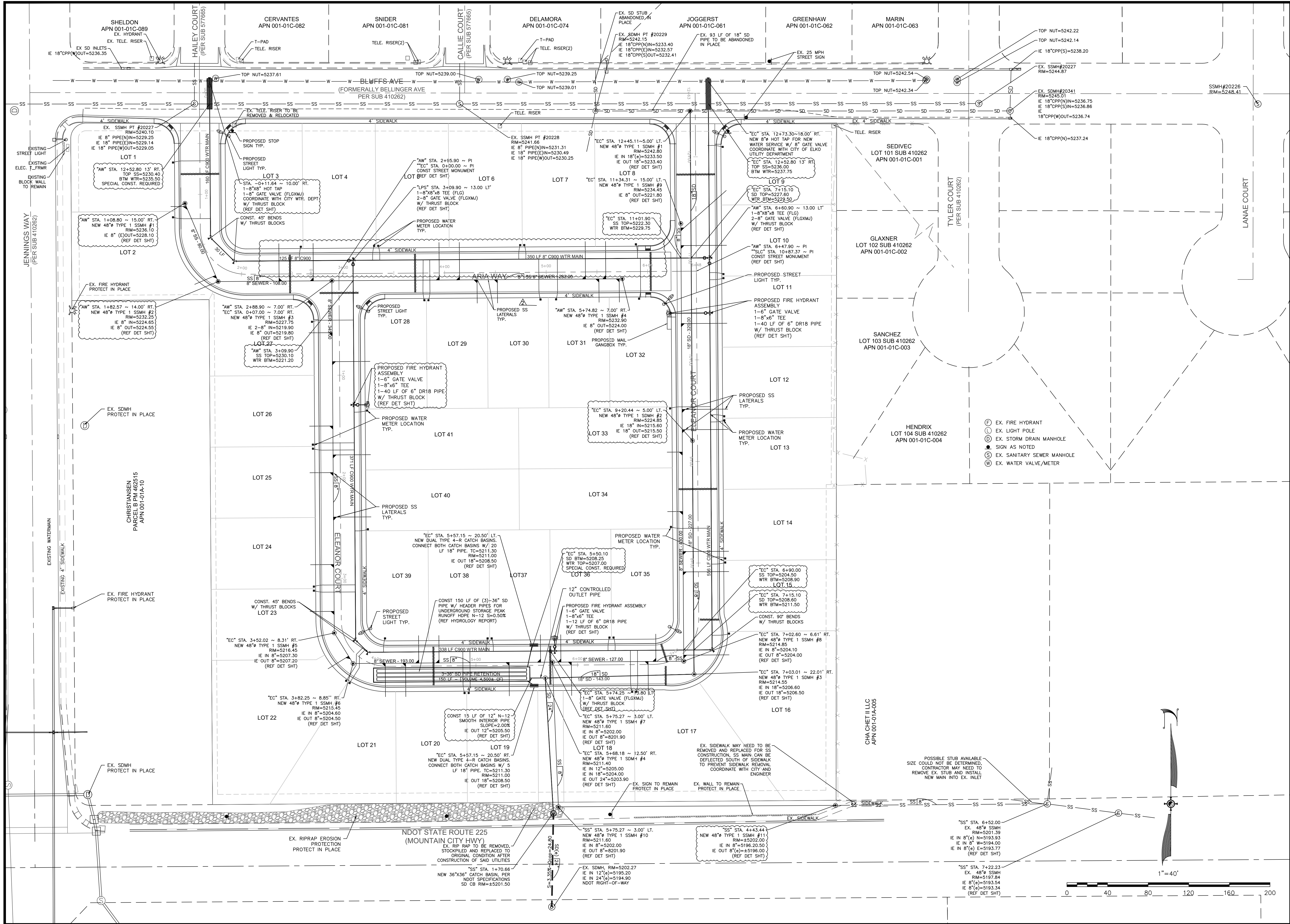
December 11, 2019

REV.	DATE	DESCRIPTION	BY	APPD
1	1-15-21	CITY REVIEW COMMENTS 12/24/19	NIB	NIB

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
GRADING PLAN

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500



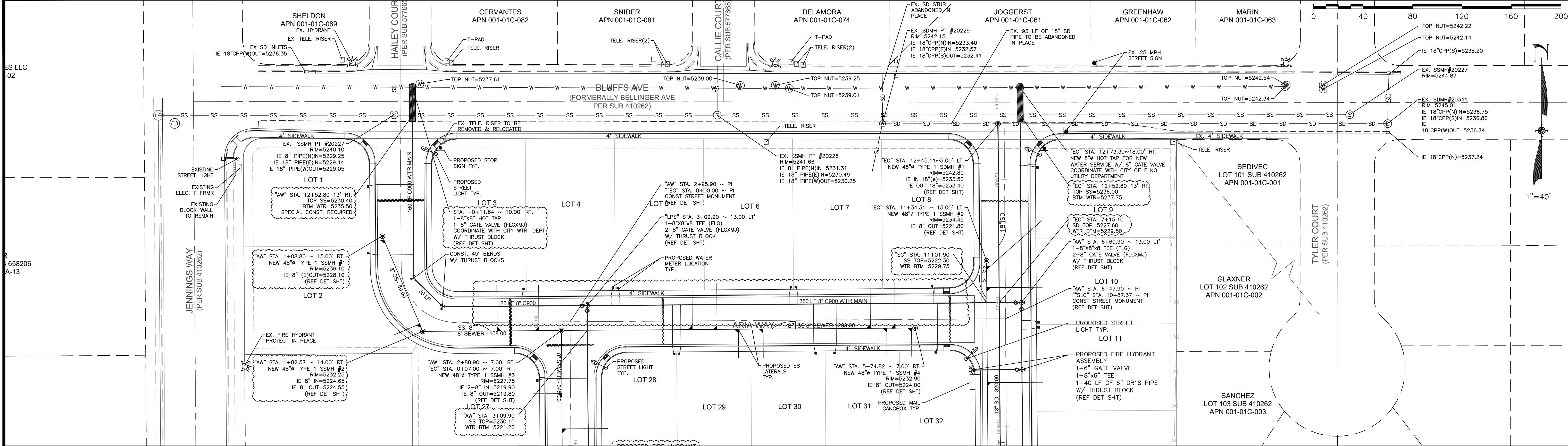


REV.	DATE	DESCRIPTION	BY	APP'D
1	1-5-21	city review comments	mb	mb

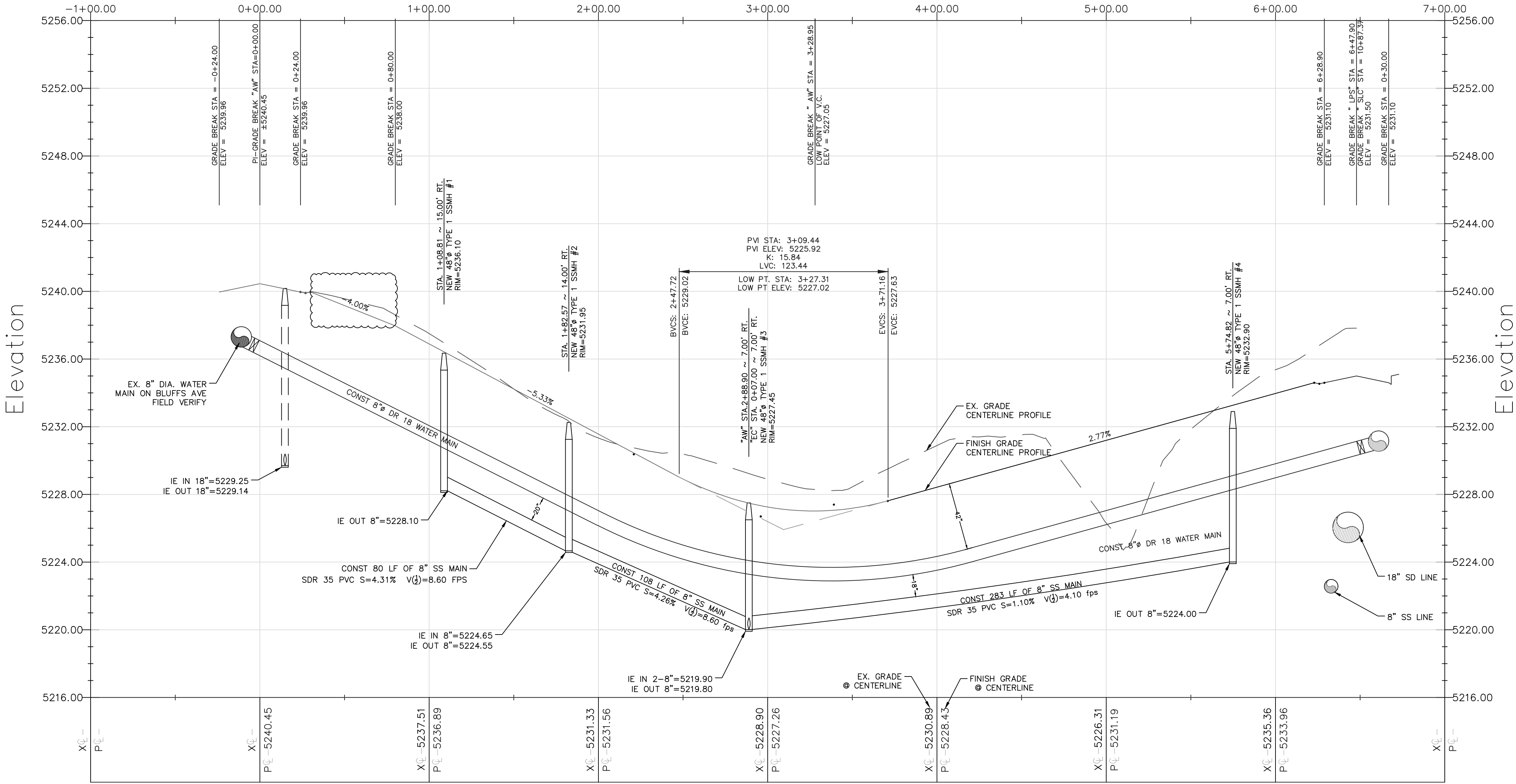
CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
UTILITY PLAN

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500





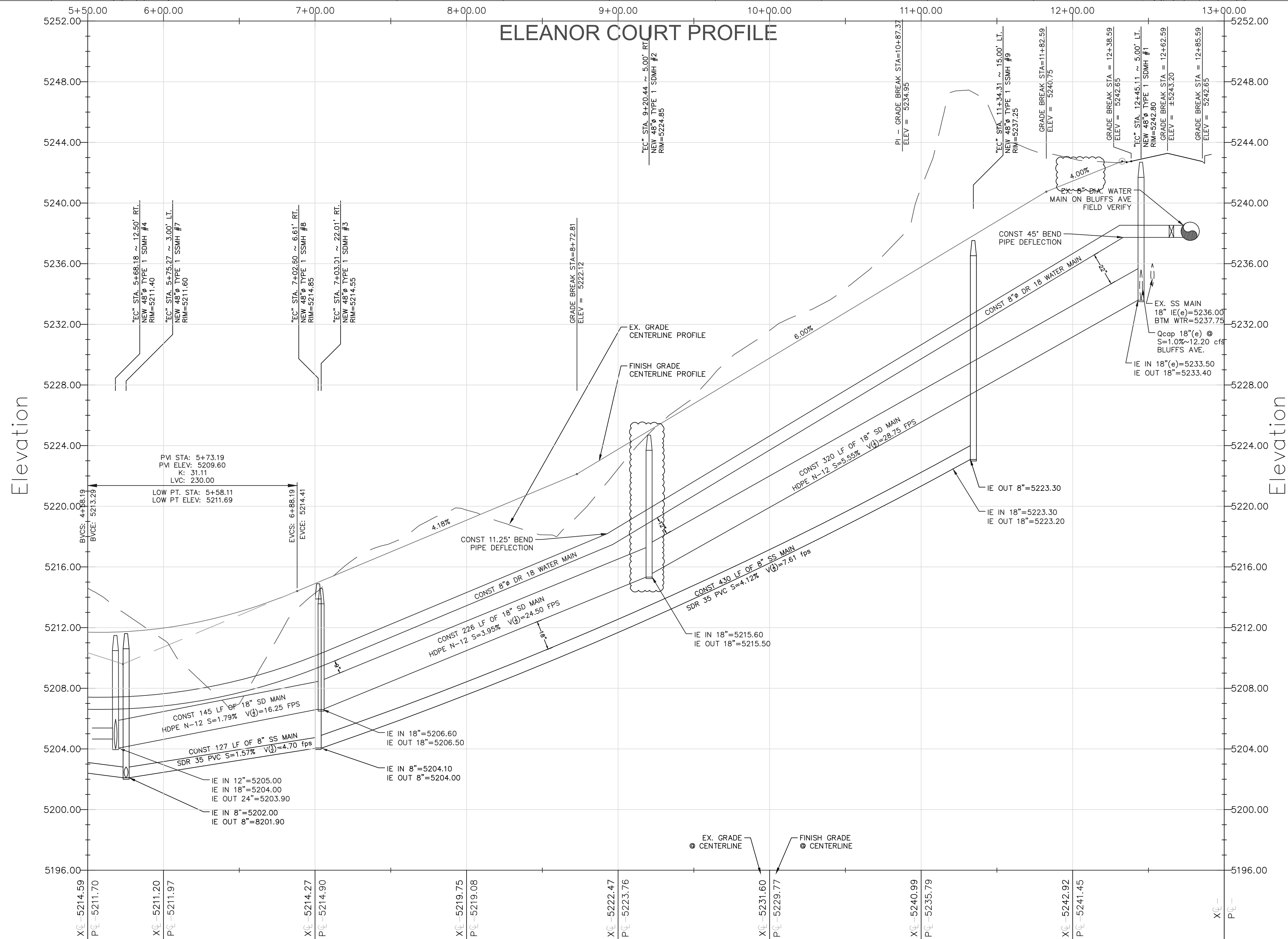
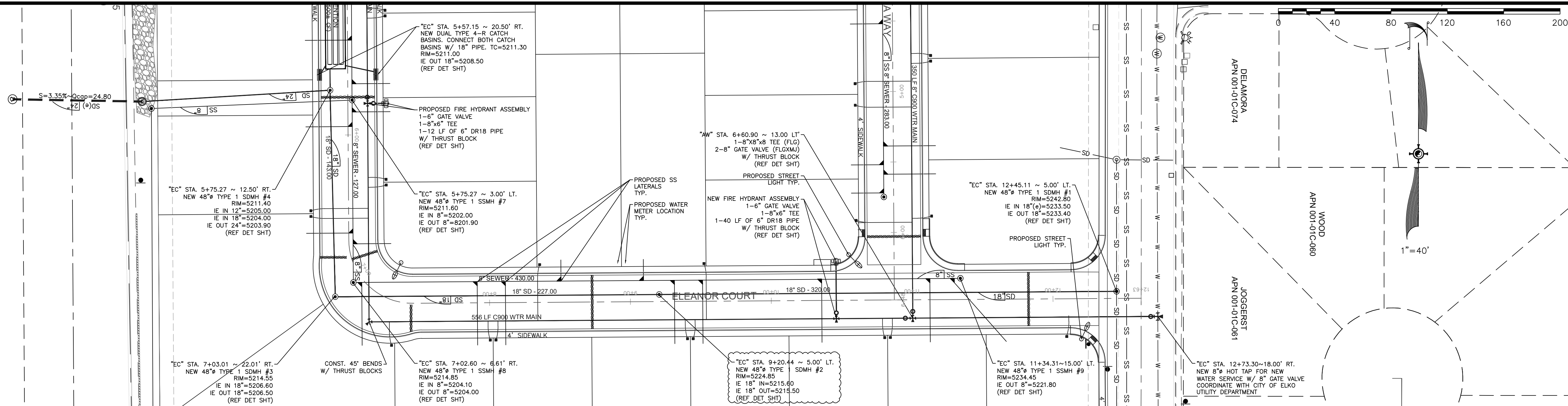
ARIA WAY PROFILE



CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
PLAN & PROFILE ~ ARIA WAY

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: 1" = 4'
JOB NO: 82500



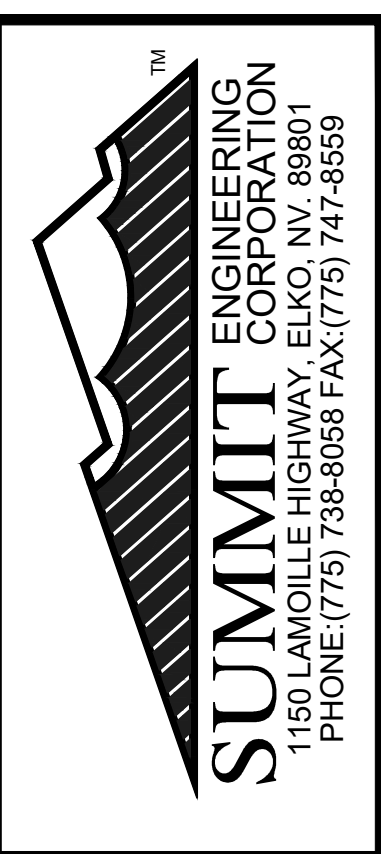


REV.	DATE	DESCRIPTION	BY	APP'D
1	1-10-20	CITY REVIEW COMMENTS	NIB	NIB

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
PLAN & PROFILE ~ ELEANOR COURT
ELKO COUNTY NEVADA
ELKO

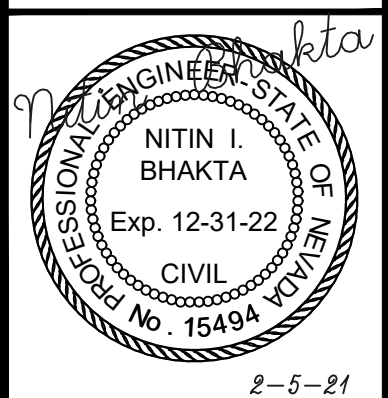
DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500
SHEET PP-3 OF 15



[illegible]

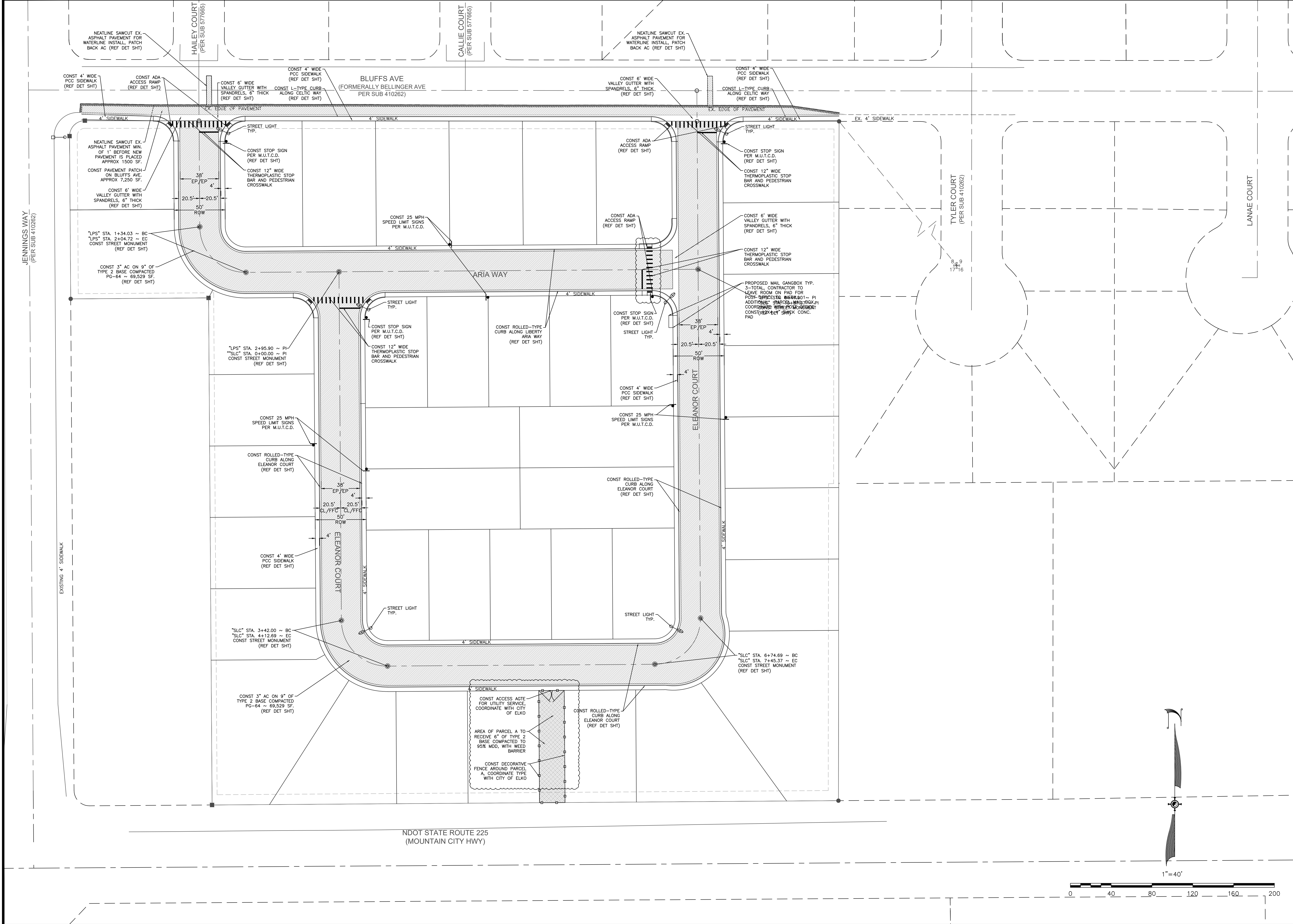
CIVIL IMPROVEMENT PLANS FOR RUBY MOUNTAIN PEAKS SUBDIVISION PLAN & PROFILE ~ OFF-SITE SS PROFILE

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500



SHEET PP-4 OF 15





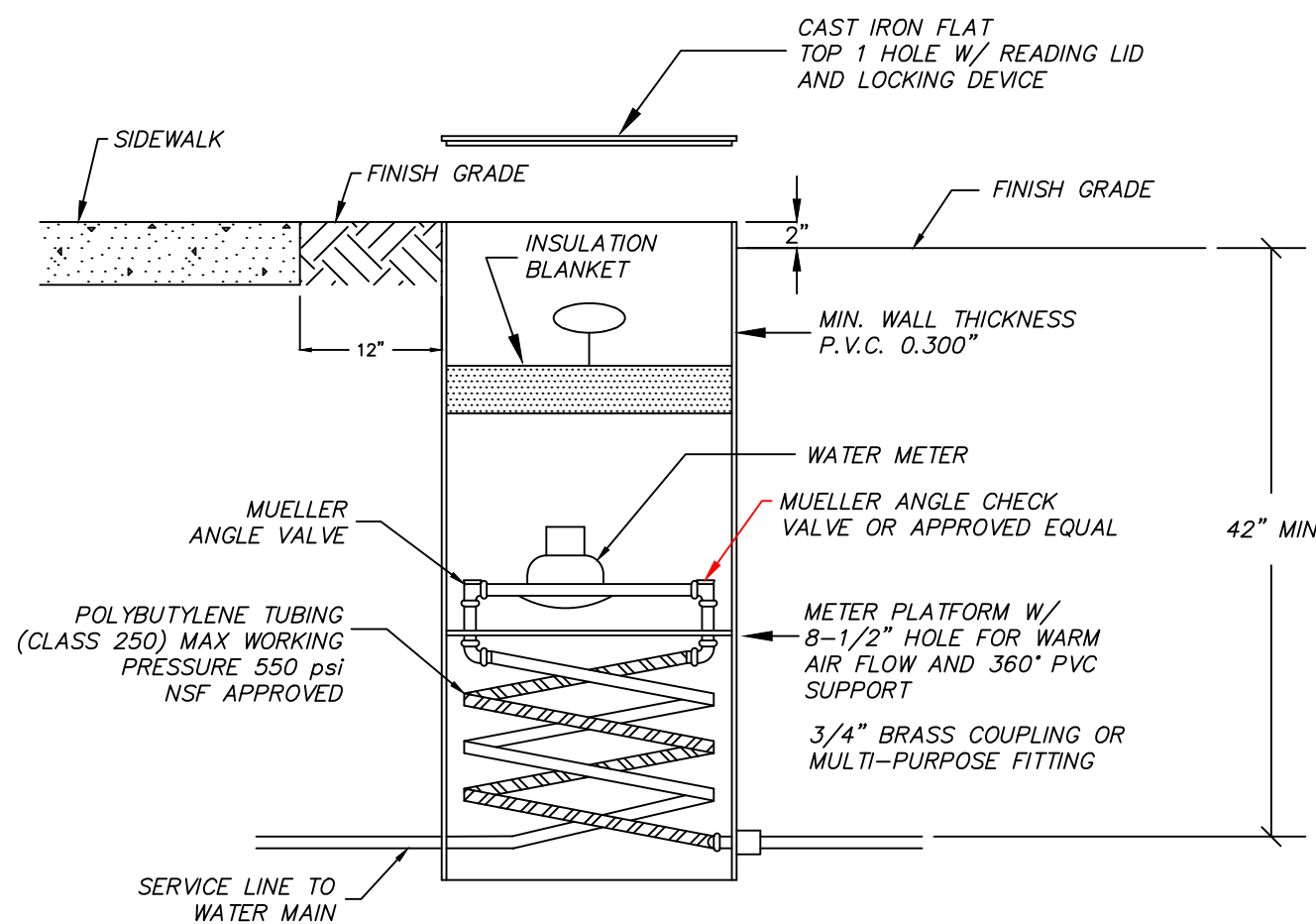
REV.	DATE	DESCRIPTION	BY	APP'D
1	1-10-20	CITY REVIEW COMMENTS	NIB	NIB

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
SIGNAGE & STRIPING PLAN

NEVADA
ELKO COUNTY
ELKO

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: 1"=40'
VERT: NONE
JOB NO: 82500

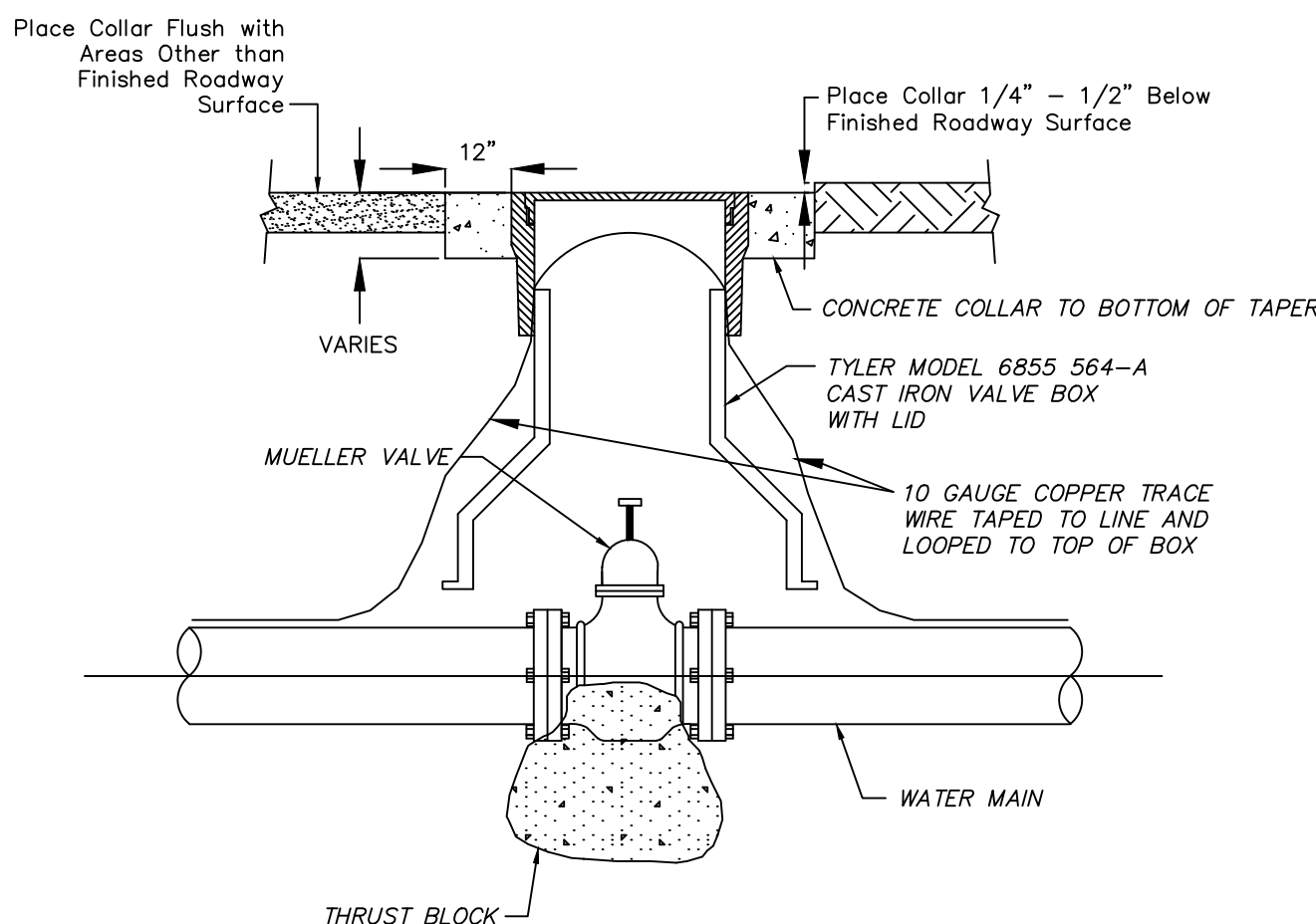




NOTES:

- 4" WATER METER BOX SHALL BE MUELLER / McCULLOUGH THERMA-COIL METER BOX.
- NO MORE THAN ONE EXTENSION ALLOWED.
- LOCATE WATER METER 1 FT. BEHIND BACK OF SIDEWALK.

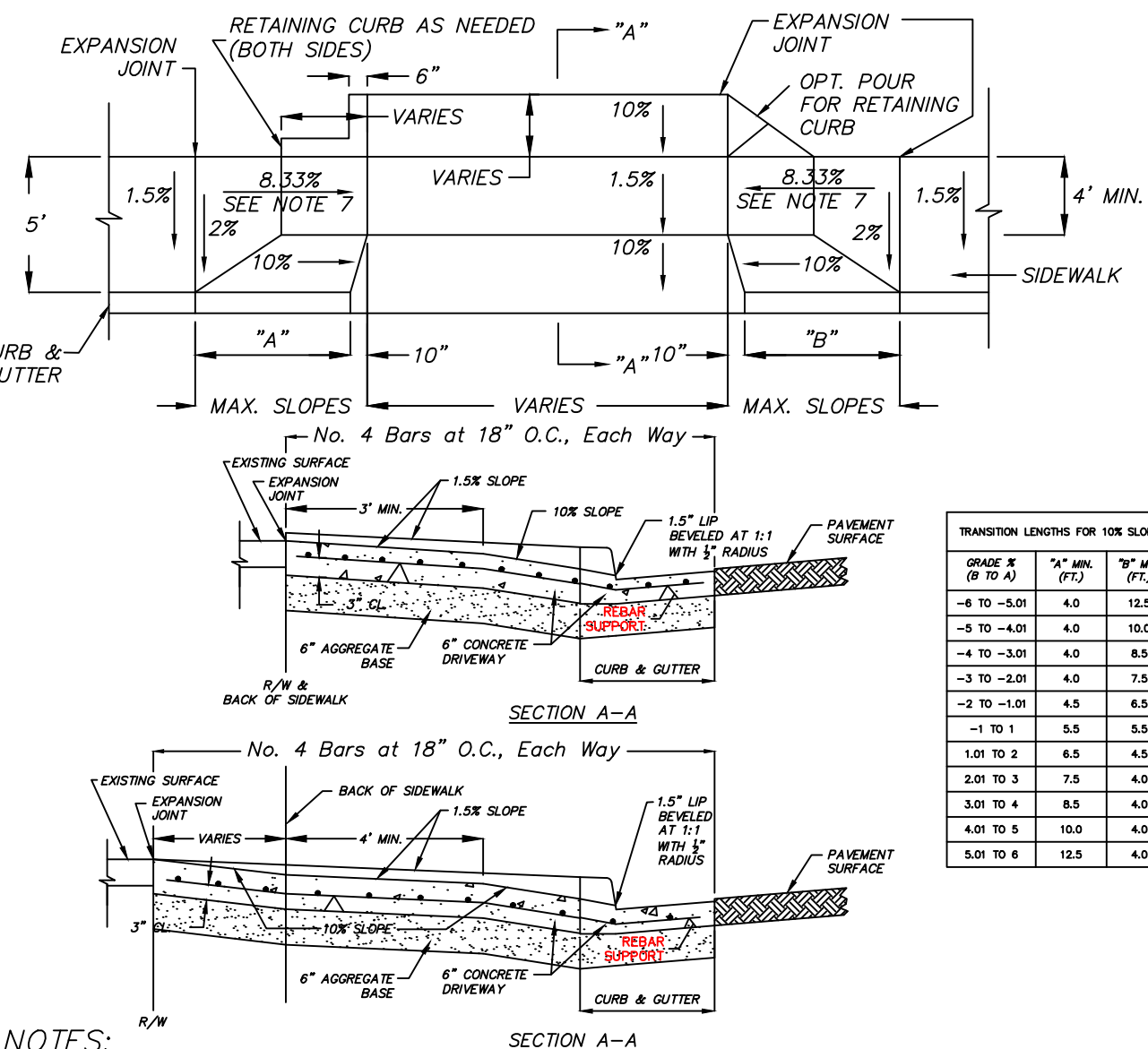
① 3/4" TO 1" WATER METER
NOT TO SCALE



NOTES:

- CONCRETE SHALL MEET THE REQUIREMENTS OF SECTION 337.10 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION, UNLESS OTHERWISE SPECIFIED.
- VALVE COLLAR SHALL BE SET 1" TO 1 1/2" BELOW FINISHED CONCRETE OR BITUMINOUS SURFACE. VALVE COLLARS IN ALL OTHER AREAS SHALL BE SET FLUSH WITH FINISHED GRADE, UNLESS OTHERWISE SPECIFIED.
- CONCRETE COLLAR REQUIRED WHEN VALVE IS NOT LOCATED IN CONCRETE OR BITUMINOUS SURFACE.

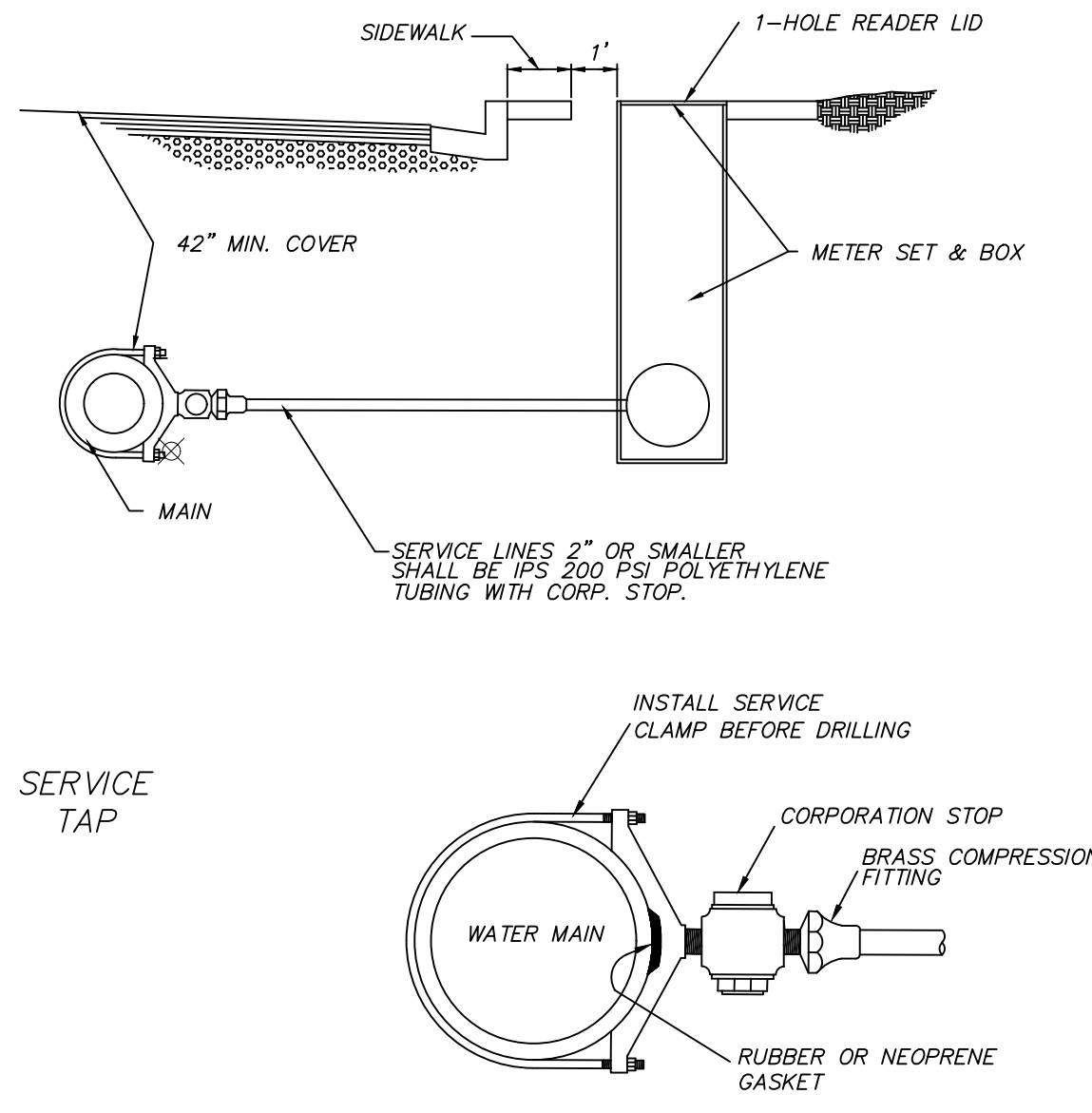
② TYP. VALVE DETAIL
NOT TO SCALE



NOTES:

- CONCRETE SHALL MEET THE REQUIREMENTS OF SECTION 337.10 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- AGGREGATE BASE MATERIAL SHALL MEET THE REQUIREMENTS OF SECTION 302 & 308 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- CONCRETE DRIVEWAY CAN BE POURED MONOLITHICALLY WITH CURB & GUTTER.
- FOR COMMERCIAL CONCRETE DRIVEWAYS, USE NO. 4 REINFORCING STEEL AT 18" O.C., EACH WAY. RESIDENTIAL CONCRETE DRIVEWAYS DO NOT REQUIRE REINFORCING STEEL. REINFORCING STEEL SHALL MEET THE REQUIREMENTS OF SECTION 326 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- CROSS SLOPE OF SIDEWALK AND 3 FEET MIN. AREA OF DRIVEWAY SHALL NOT EXCEED 2%.
- REMOVAL OF EXISTING IMPROVEMENTS SHALL MEET THE REQUIREMENTS OF SECTION 301 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- PER THE PROWAG, SECTION 304.3.2, THE RUNNING SLOPE OF A CURB RAMP SHALL BE 8.33% MAXIMUM, BUT SHALL NOT REQUIRE THE RAMP LENGTH TO EXCEED 15.0 FEET. ON STEEP STREETS OR INTERSECTIONS THE TRANSITION TO FULL HEIGHT CURB MAY HAPPEN IN THE FIRST 15' MINIMUM AND THE RESULTING SLOPE OF THE RAMP IS ALLOWED TO EXCEED 8.33%.

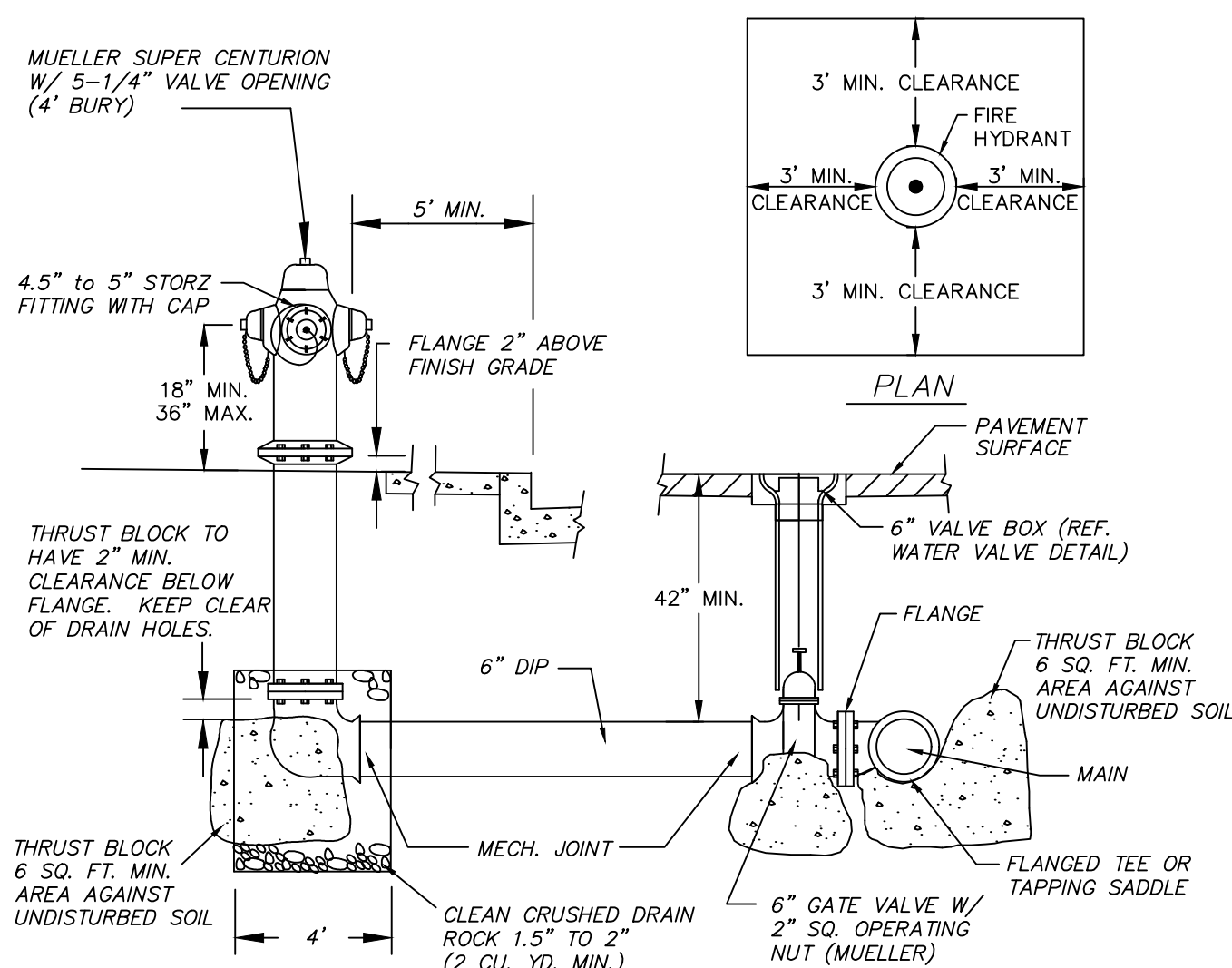
③ PCC DRIVEWAY DETAIL
NOT TO SCALE



NOTES:

- CORPORATION STOP, CURB STOP, (GATE VALVE 4" OR LARGER) AND SERVICE LINE TO BE SAME SIZE.
- SERVICE CLAMPS SHALL BE DOUBLE STRAP FOR ALL SERVICE TAP SIZES, EXCEPT WHERE SIZE OF TAP EXCEEDS MANUFACTURER'S RECOMMENDED LIMIT FOR SIZE OF MAIN.
- TAPS SHALL BE STAGGERED AND PLACED A MINIMUM OF 12" APART FOR DUCTILE IRON PIPE. TAPS SHALL BE STAGGERED AND PLACED A MINIMUM OF 18" APART FOR C900. NO TAPS SHALL BE CLOSER THAN 2 FEET FROM THE ENDS OF PIPE.
- ALL JOINT FITTINGS SHALL BE OF BRASS COMPRESSION TYPE.

④ WATER SERVICE CONNECTION
NOT TO SCALE



NOTES:

- HYDRANTS SHALL BE ENAMELED RED.
- ALL HYDRANTS SHALL HAVE (2) 2.5" PUMPER OUTLETS (MALE THREAD WITH CAP & CHAIN) AND (1) 4.5" STEAMER PUMPER OUTLET WITH 4.5" - 5" STORZ MALE CONNECT WITH CAP & CHAIN. ALL THREADS SHALL BE SPECIFIED FOR AMERICAN NATIONAL HOSE COUPLING.
- OPERATING NUT SHALL BE 1.5" PENTAGON.
- INSPECTION BY A CITY OF ELKO FIRE OR PUBLIC WORKS REPRESENTATIVE IS REQUIRED PRIOR TO BACKFILLING.
- FOR FINAL ACCEPTANCE, A FLOW, FLUSH, & HYDROSTATIC TEST SHALL BE WITNESSED BY CITY OF ELKO FIRE DEPT./UTILITY DIRECTOR OR PUBLIC WORKS REPRESENTATIVE, PER FORM 13-97, "MATERIALS & TEST CERTIFICATE FOR UNDERGROUND PIPING".
- ALL HYDRANT SHALL INCLUDE APPROVED TRAFFIC PROTECTION, 3' MINIMUM CLEARANCES, AND POSITIVE DRAINAGE AWAY FROM THE HYDRANT.

⑤ FIRE HYDRANT DETAIL
NOT TO SCALE

THRUST BLOCK BEARING AREA (SQ. FT.)						
TYPE OF FITTING	90° BEND	45° BEND	11-1/4" OR 22-1/2" BEND	TEE OR DEAD END	TEE WITH PLUG	CROSS WITH PLUG
SIZE OF PIPE	4"	2	1	1	2	2
	6"	4	4	2	4	4
	8"	7	4	2	5	7
	10"	12	6	3	8	12
	12"	16	10	5	12	16
	14"	20	12	6	14	20
	16"	27	15	8	18	27
	18"	45	25	13	32	45
	24"	65	35	18	46	65

TYPE OF FITTING	90° BEND	45° BEND	11-1/4" OR 22-1/2" BEND	TEE OR DEAD END	CROSS WITH PLUG	TEE WITH PLUG
TYPICAL INSTALLATION						

NOTES:

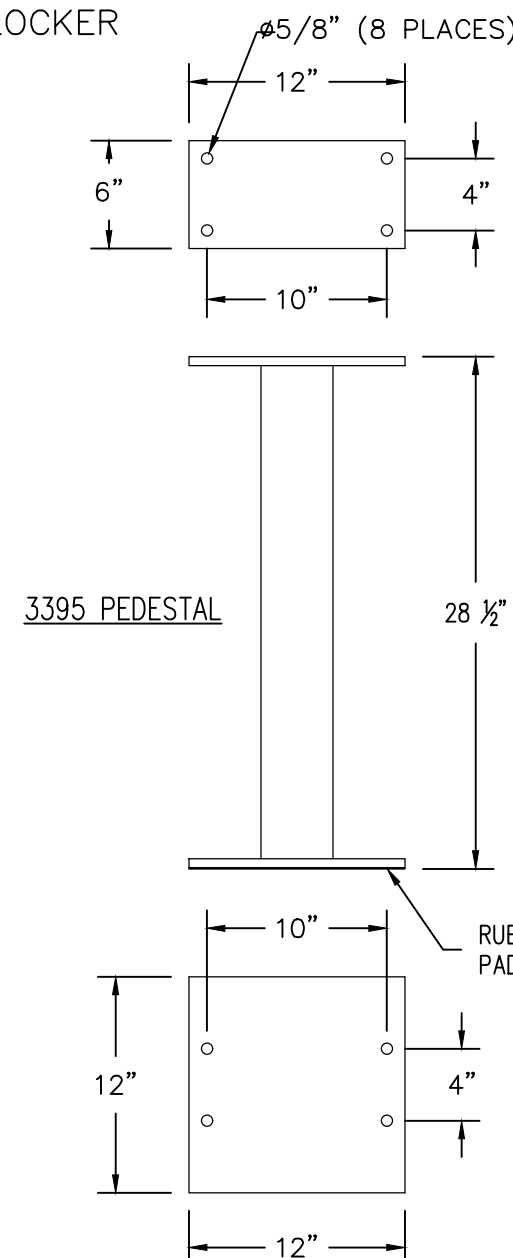
- THRUST BLOCKS TO BE CONSTRUCTED OF CLASS "C" CONCRETE.
- AREAS GIVEN ARE FOR CLASS 150 PIPE AT TEST PRESSURES OF 150 P.S.I., WITH 2000 P.S.F. BEARING CAPACITY. INSTALLATIONS USING DIFFERENT PIPE, TEST PRESSURES, AND/OR SOIL TYPES SHOULD ADJUST AREAS ACCORDINGLY, SUBJECT TO APPROVAL OF THE ENGINEER.
- THRUST BLOCKS TO BE POURED AGAINST UNDISTURBED SOIL. IF SOIL IS DISTURBED IT SHOULD BE RECOMPACTED TO 90% COMPACTION PER ASTM D1557.
- JOINTS AND FACE OF PLUGS TO BE KEPT CLEAR OF CONCRETE.

⑥ THRUST BLOCK DETAIL
NOT TO SCALE

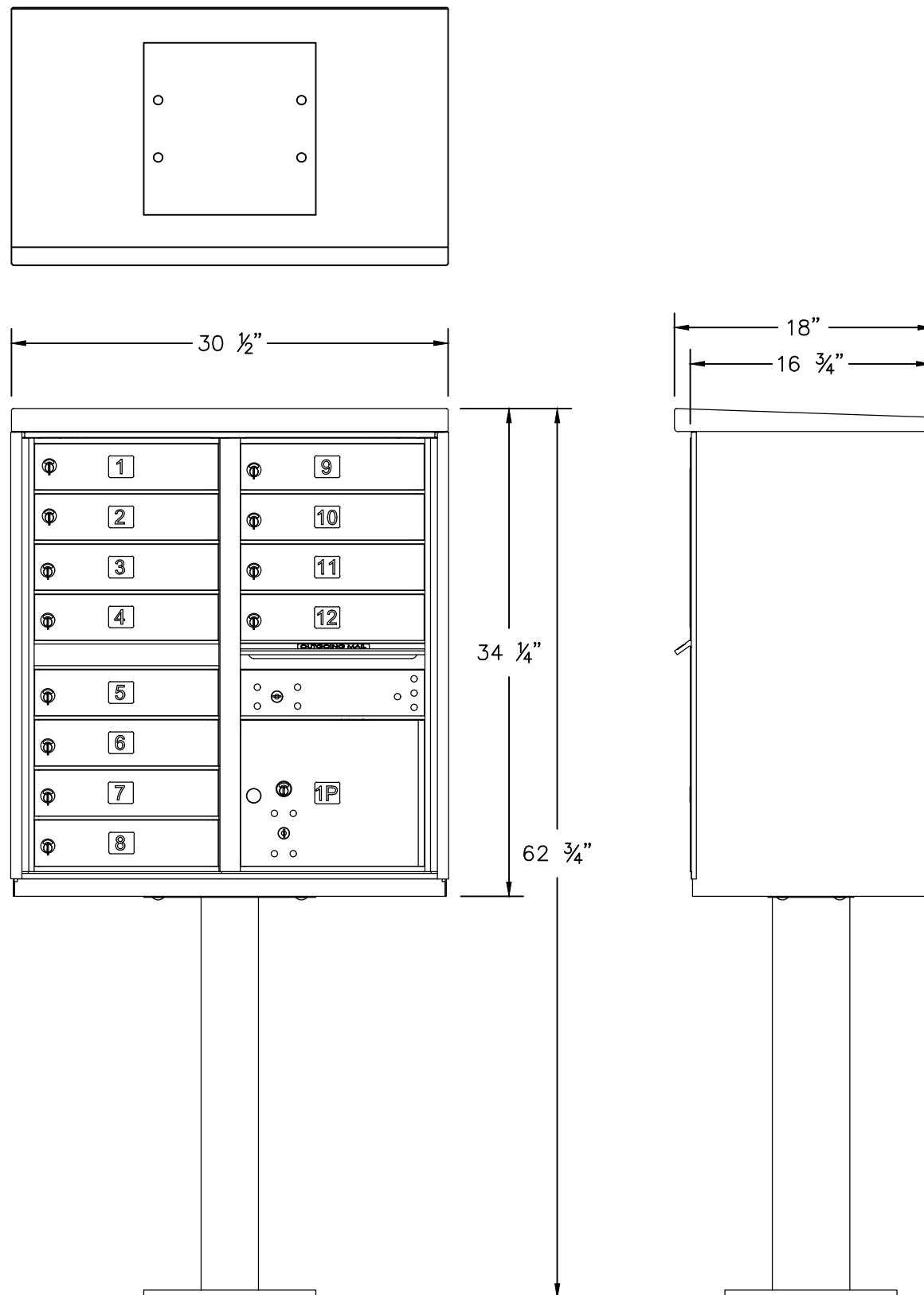


- (12) MAILBOXES
(1) OUTGOING MAIL COMPARTMENT
(1) PARCEL LOCKER

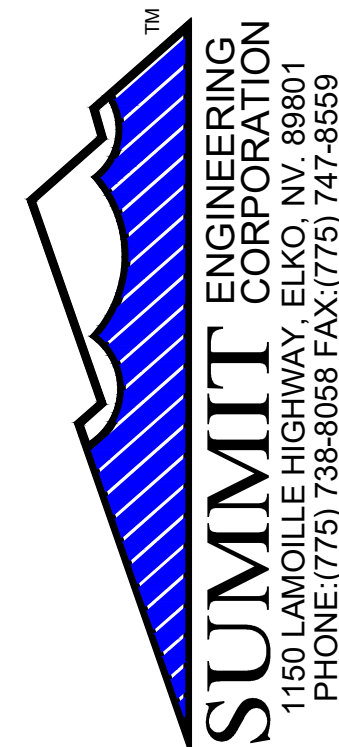
18300 Central Avenue
Carson, CA
90746-4008
Phone: (800) 624-5269
Fax: (800) 624-5299



CLUSTER BOX UNITS
3300 SERIES "F" CBU's
AVAILABLE FOR USPS ACCESS OR PRIVATE ACCESS



⑦ MAIL GANG BOX DETAIL
NOT TO SCALE



December 11, 2019

REV.	DATE	DESCRIPTION	BY	APPD

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
DETAIL SHEET

NEVADA

ELKO COUNTY

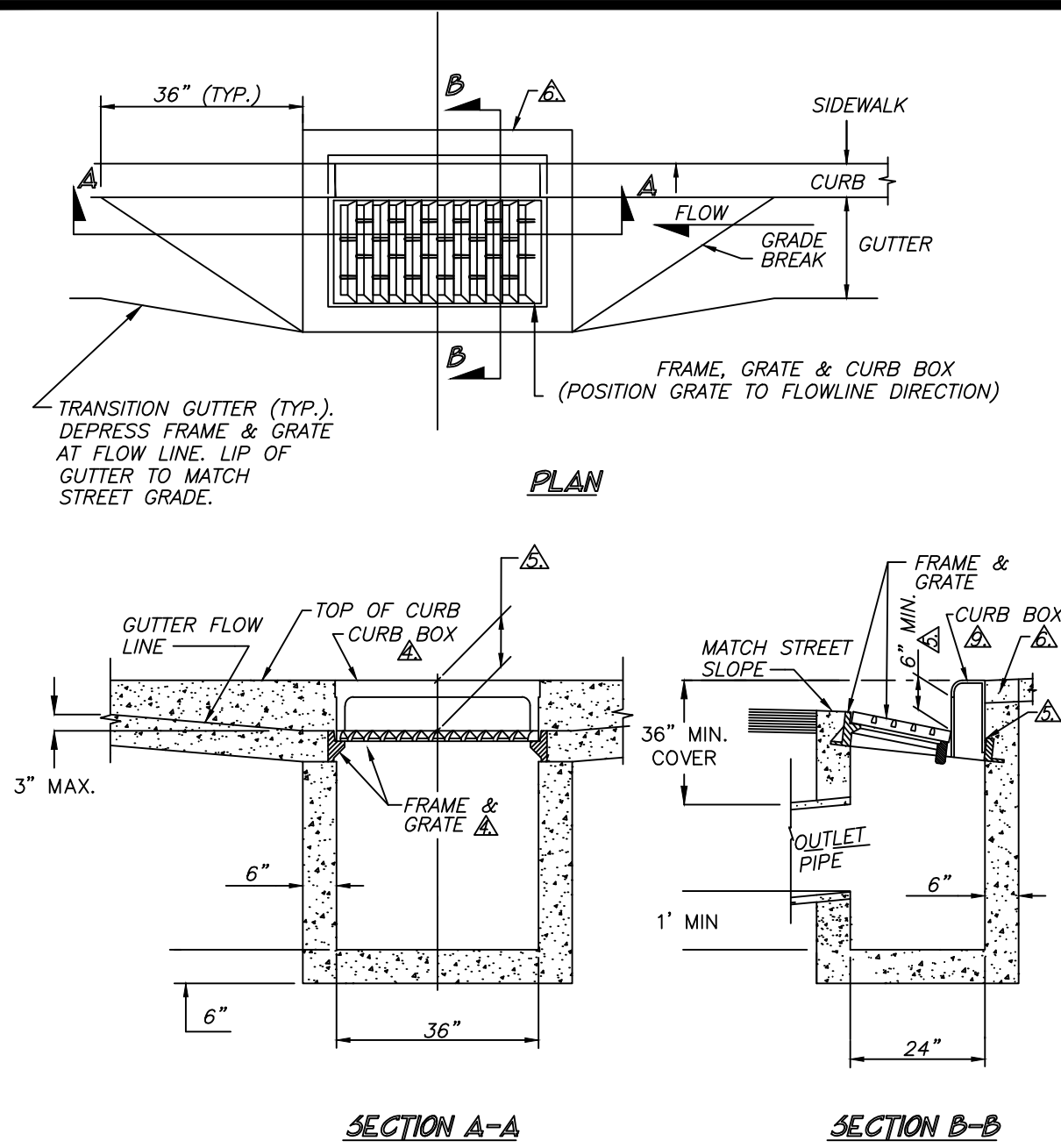
ELKO

DESIGNED BY: NIB
CHECKED BY: NIB
SCALE
HORIZ: NONE
VERT: NONE
JOB NO: 82500



SHEET
D-2 OF 15

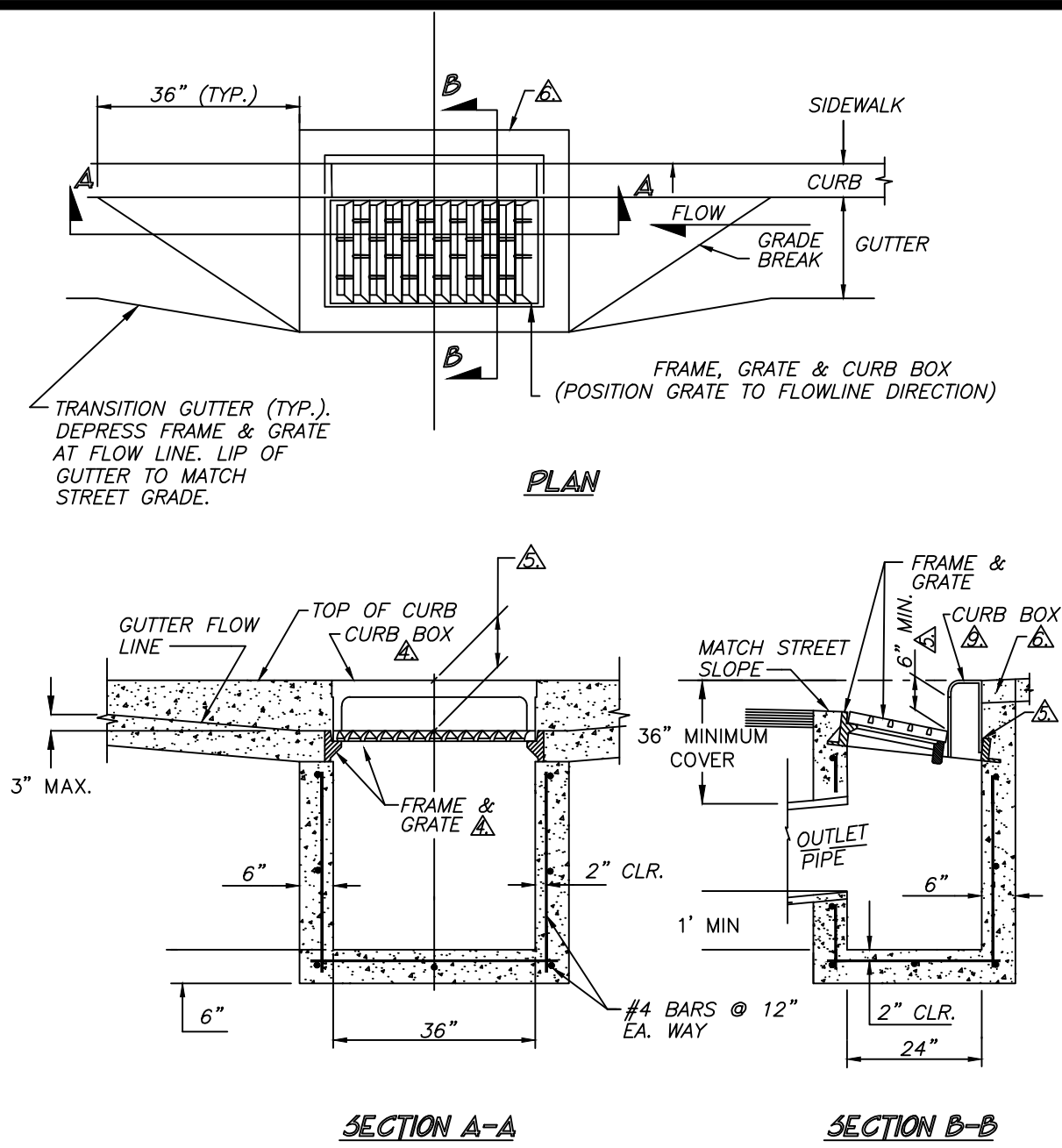
N:\Drawgs\82500-Ruby-Mountain-Peaks-Bailey\Civil\Issuemap-ruby-1.dwg



NOTES:

1. FOR ADDITIONAL NOTES, SEE DETAIL SHEET "TYPE 4R DROP INLET - NOTES".

1 TYPE 4R DROP INLET
PRE-CAST - NOT TO SCALE

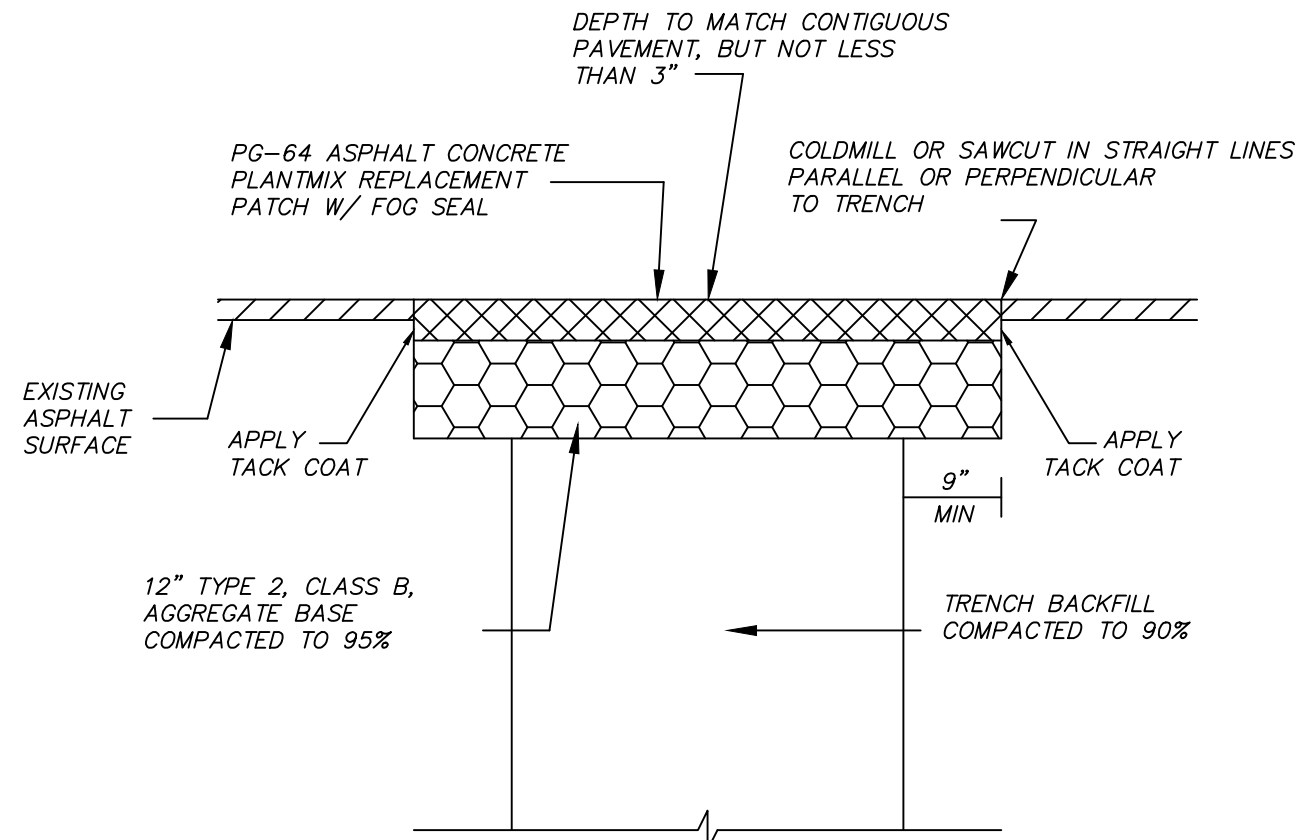


NOTES:

1. FOR ADDITIONAL NOTES, SEE DETAIL SHEET "TYPE 4R DROP INLET - NOTES".

2 TYPE 4R DROP INLET
CAST IN PLACE - NOT TO SCALE

3 TYPE 4R DROP INLET GEN. NOTES



NOTES:

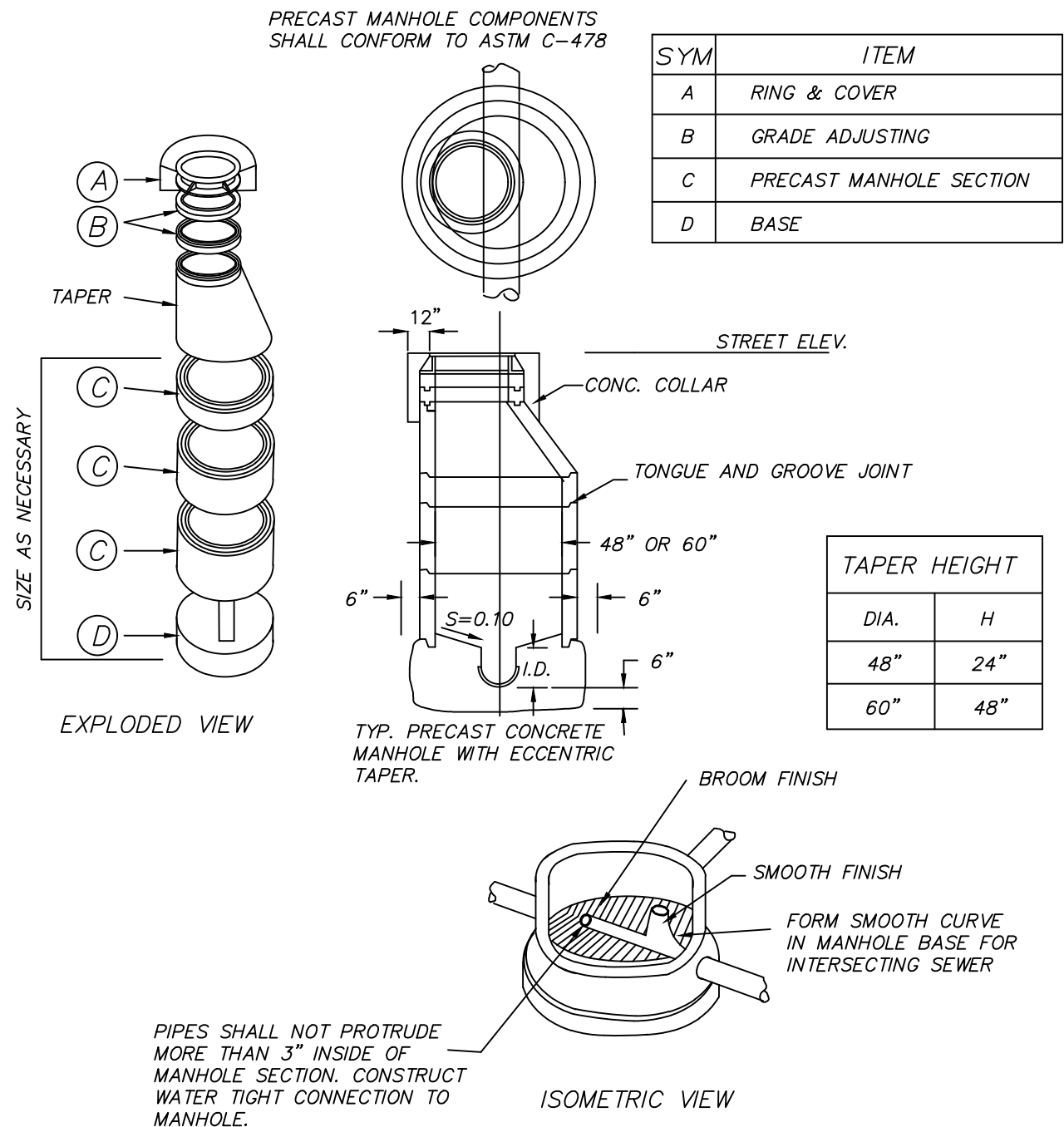
1. IF COLDMILL OR SAWCUT IS WITHIN 24" OF EDGE OF PLANTMIX PAVING, REMOVE EXISTING PAVEMENT TO THAT EDGE AND REPLACE ENTIRE SECTION.

2. USE PG-64 ASPHALT CEMENT IN ALL LIFTS OF TYPE 3 PLANTMIX BITUMINOUS SURFACES.

3. APPLY A SEAL COAT USING SS-1 EMULSIFIED ASPHALT (MIXED WITH AN EQUAL AMOUNT OF WATER). APPLY AT A RATE OF 0.10 GPM AND APPLY SAND BLOTTER AS NECESSARY.

4. FOR MULTIPLE PLANTMIX BITUMINOUS COURSES, TACK COAT SHALL BE APPLIED BETWEEN EACH PLANTMIX BITUMINOUS COURSE.

4 PAVEMENT PATCH DETAIL
NOT TO SCALE



NOTES:

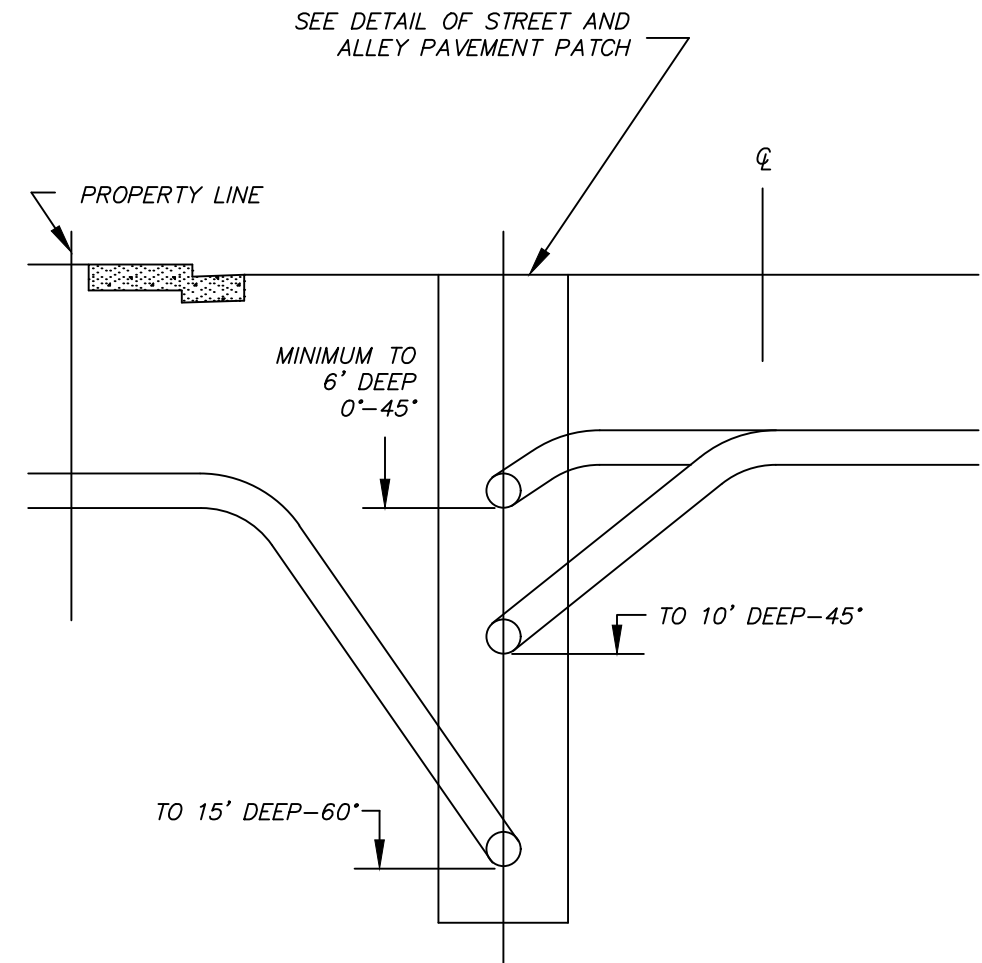
1. PIPE SECTION LENGTHS ARRANGED TO FIT DEPTH.

2. PRECAST BASE MAY BE USED IF APPROVED BY GOVERNING AGENCY.

3. MANHOLE STEPS ARE NOT REQUIRED.

4. REFER TO DETAIL SHEET (MANHOLE - GENERAL NOTES) FOR ADDITIONAL INFORMATION.

5 TYPE 1 48"Ø MANHOLE
NOT TO SCALE

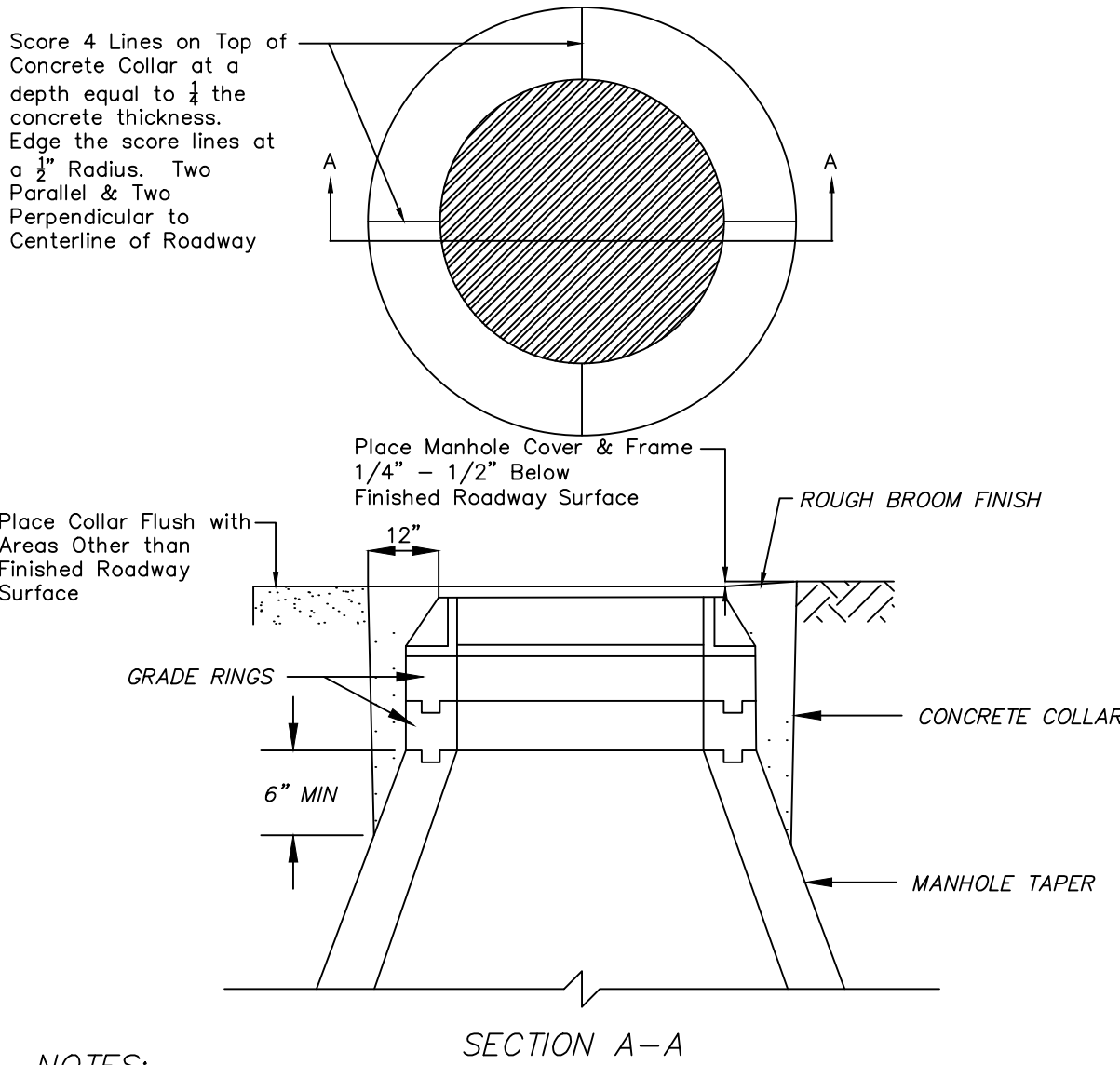


5 SEWER LATERAL CONNECTION ANGLE
NOT TO SCALE

MANHOLES - GENERAL NOTES:

- ALL MANHOLES SHALL MEET THE REQUIREMENTS OF SECTION 204 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- MANHOLE COVERS SHALL BE IDENTIFIED AS STORM DRAIN, WATER OR SEWER CLEARLY DISPLAYED ON THE COVER.
- ALL TRENCHES AND EXCAVATIONS SHALL CONFORM WITH THE LATEST EDITION OF THE O.S.H.A. REQUIREMENTS.
- PRECAST MANHOLE SECTIONS, OTHER THAN GRADE RINGS, SHALL BE JOINED WITH FLEXIBLE PLASTIC GASKET MATERIAL SUCH AS "RAM-NEK" OR EQUAL AS PER MANUFACTURER'S RECOMMENDATIONS.
- TYPE & SIZE OF MANHOLE TO BE CONSTRUCTED IN A PARTICULAR LOCATION SHALL BE DETERMINED BY THE PIPE SIZE, ALIGNMENT AND GRADE AS FOLLOWS:
TYPE 1 & 2
48" SIZE
A. ALL CASES FOR PIPE 18" AND SMALLER.
B. 24" AND SMALLER PIPE ON TANGENT LINE & GRADE.
60" SIZE
A. 27" THROUGH 36" PIPE ON TANGENT LINE AND GRADE.
B. 21" THROUGH 27" PIPE AT ANGLE POINTS AND CHANGES IN GRADE OR PIPE SIZE.
- EXCAVATABLE SLURRY BACKFILL MAY BE USED AS STRUCTURAL BACKFILL FOR MANHOLES AND MUST MEET THE REQUIREMENTS OF SECTIONS 305.16 & 337.08 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- THE TOTAL HEIGHT OF MANHOLE GRADE RINGS SHALL NOT EXCEED 12 INCHES.

6 MANHOLE GENERAL NOTES
NOT TO SCALE



NOTES:

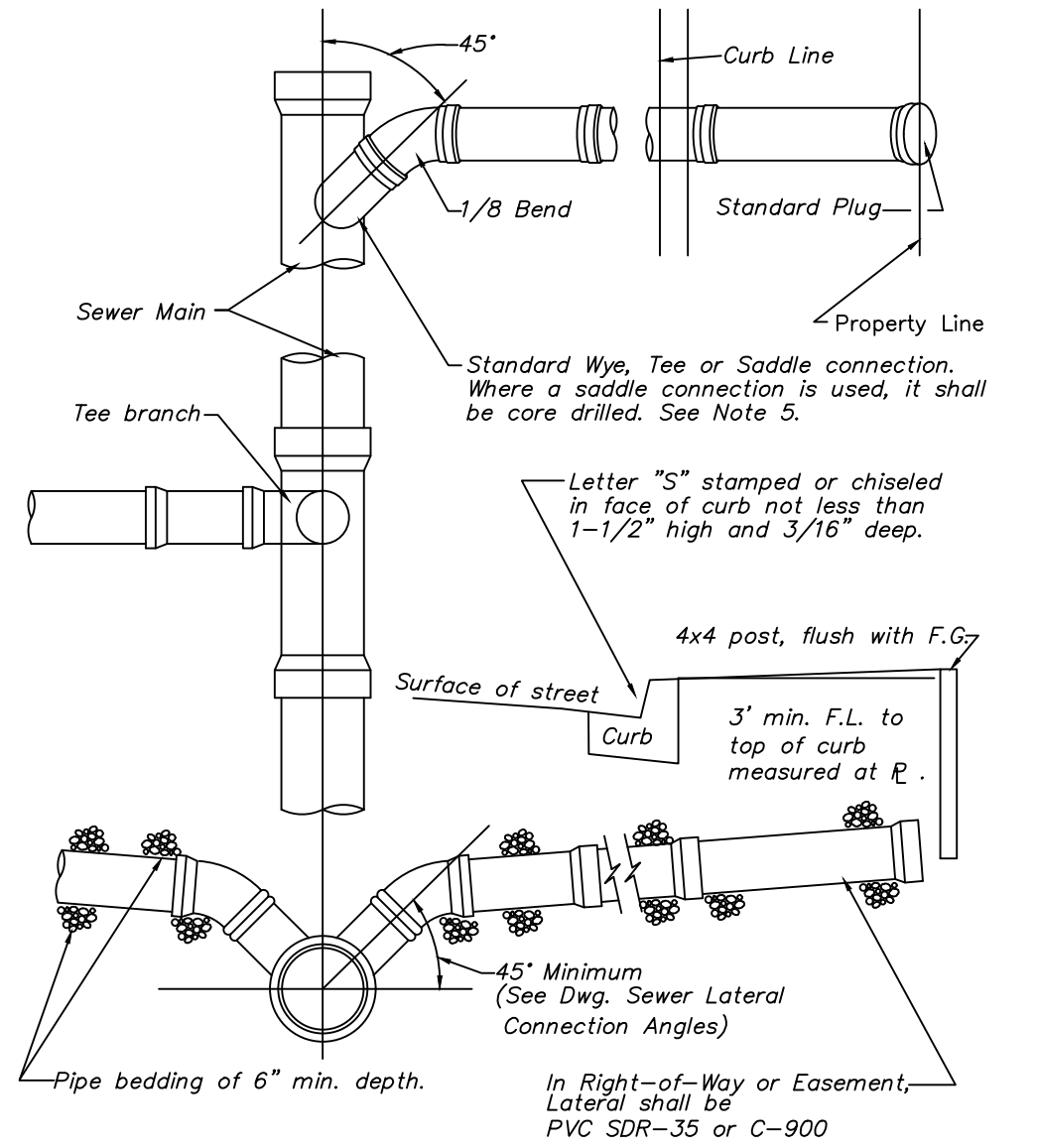
1. CONCRETE SHALL MEET THE REQUIREMENTS OF SECTION 337.10 OF THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.

2. MANHOLE COVER & FRAME SHALL BE SET 1" TO 1 1/2" BELOW FINISHED CONCRETE OR BITUMINOUS SURFACE. MANHOLE COLLARS IN ALL OTHER AREAS SHALL BE SET FLUSH WITH FINISHED GRADE, UNLESS OTHERWISE SPECIFIED.

3. CONCRETE COLLAR IS REQUIRED WHEN MANHOLE IS NOT LOCATED IN CONCRETE OR BITUMINOUS SURFACE.

4. REFER TO DETAIL SHEET (MANHOLE - GENERAL NOTES) FOR ADDITIONAL INFORMATION.

7 MANHOLE COLLAR DETAIL
NOT TO SCALE



NOTES:

1. IN NO CASE SHALL A LATERAL CONNECT TO THE SEWER MAIN DIRECTLY ON TOP OR MATCH THE FLOWLINE OF THE PIPE.

2. SEWER LATERALS SHALL HAVE A MINIMUM SLOPE OF 2%.

3. ALL JOINTS ON SEWER LATERAL PIPE WITHIN THE RIGHT-OF-WAY SHALL BE COMPRESSION TYPE.

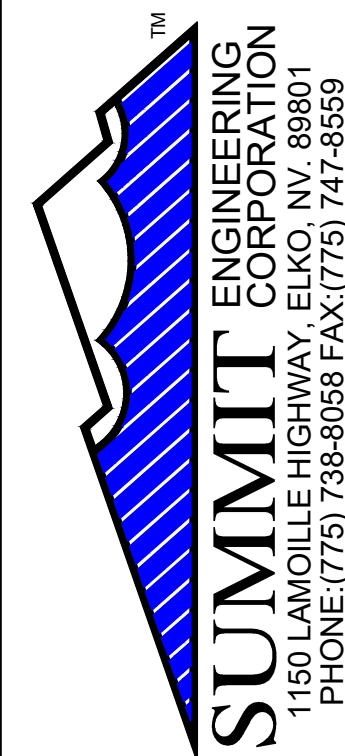
4. LATERAL SHALL EXTEND TO PROPERTY LINE UNLESS OTHERWISE SHOWN ON PLANS.

5. SADDLE CONNECTION SHALL BE PVC SADDLE WITH STAINLESS STEEL STRAPS.

6. ANY ABANDONED SEWER LATERAL IS THE RESPONSIBILITY OF THE CUSTOMER AND SHALL BE CUT AND CAPPED OR PLUGGED WITHIN 6 INCHES OF THE SEWER MAIN AND SUBJECT TO THE CITY OF ELKO'S APPROVAL.

7. SEWER MAIN/LATERAL CONNECTIONS SHALL MEET THE REQUIREMENTS OF NAC 445A.

8 SEWER LATERAL CONNECTION
NOT TO SCALE

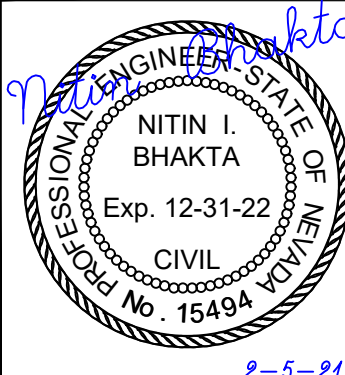


REV.	DATE	DESCRIPTION	BY	APPD

CIVIL IMPROVEMENT PLANS FOR
RUBY MOUNTAIN PEAKS SUBDIVISION
DETAIL SHEET

DESIGNED BY: NIB
CHECKED BY: NIB

SCALE
HORIZ: NONE
VERT: NONE
JOB NO: 82500



SHEET
D-3 OF 15

OWNER'S CERTIFICATE:

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, DOUG BAILEY, MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, BEING THE OWNER OF THE PARCELS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFER FOR DEDICATION ALL OF THE EASEMENTS AND RIGHT-OF-WAYS FOR PUBLIC ACCESS, UTILITY AND DRAINAGE PURPOSES AS DESIGNATED HEREON. NEWCASTLE CIRCLE AND PARCEL A SHOWN HEREON ARE HEREBY DEDICATED TO THE CITY OF ELKO.

IN WITNESS I, DOUG BAILEY, MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY, SET MY HAND THIS _____ DAY OF _____, 2020.

DOUG BAILEY _____ DATE _____
MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC.

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

ON THIS _____ DAY OF _____, 2020, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, IN SAID COUNTY, DOUG BAILEY, PERSONALLY KNOWN (OR PROVED) TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE ABOVE INSTRUMENT WHO ACKNOWLEDGED THAT HE EXECUTED THE FOREGOING INSTRUMENT AS MANAGING MEMBER OF BAILEY & ASSOCIATES, LLC.

NOTARY PUBLIC _____

COUNTY ASSESSOR'S CERTIFICATE:

I, JANET IRIBARNE, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBERS SHOWN ON THIS PLAT ARE CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF ASSESSOR'S PARCEL NO. 001-01A-014.

JANET IRIBARNE, ELKO COUNTY ASSESSOR _____ DATE _____

COUNTY TREASURER'S CERTIFICATE:

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON PARCEL NO. 001-01A-014 HAVE BEEN PAID FOR THE FISCAL YEAR 2020-2021.

CHERYL PAUL, COUNTY TREASURER _____ DATE _____

CITY ENGINEER'S CERTIFICATE:

I, ROBERT THIBAUT, ENGINEER FOR THE CITY OF ELKO, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP AND FIND IT SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP WITH ALL APPROVED ALTERATIONS AND THAT ALL PROVISIONS OF N.R.S. 278.010 THROUGH 278.630, INCLUSIVE, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH, AND THAT I AM SATISFIED THIS MAP IS TECHNICALLY CORRECT AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED.

ENGINEER FOR THE CITY OF ELKO _____ DATE _____

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION:

THIS FINAL MAP IS APPROVED BY THE DIVISION OF ENVIRONMENTAL PROTECTION OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES. THIS APPROVAL CONCERNS SEWAGE DISPOSAL, WATER POLLUTION, WATER QUALITY, AND WATER SUPPLY FACILITIES AND IS PRECATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMUNITY SYSTEM FOR DISPOSAL OF SEWAGE.

BUREAU OF WATER POLLUTION CONTROL _____ DATE _____

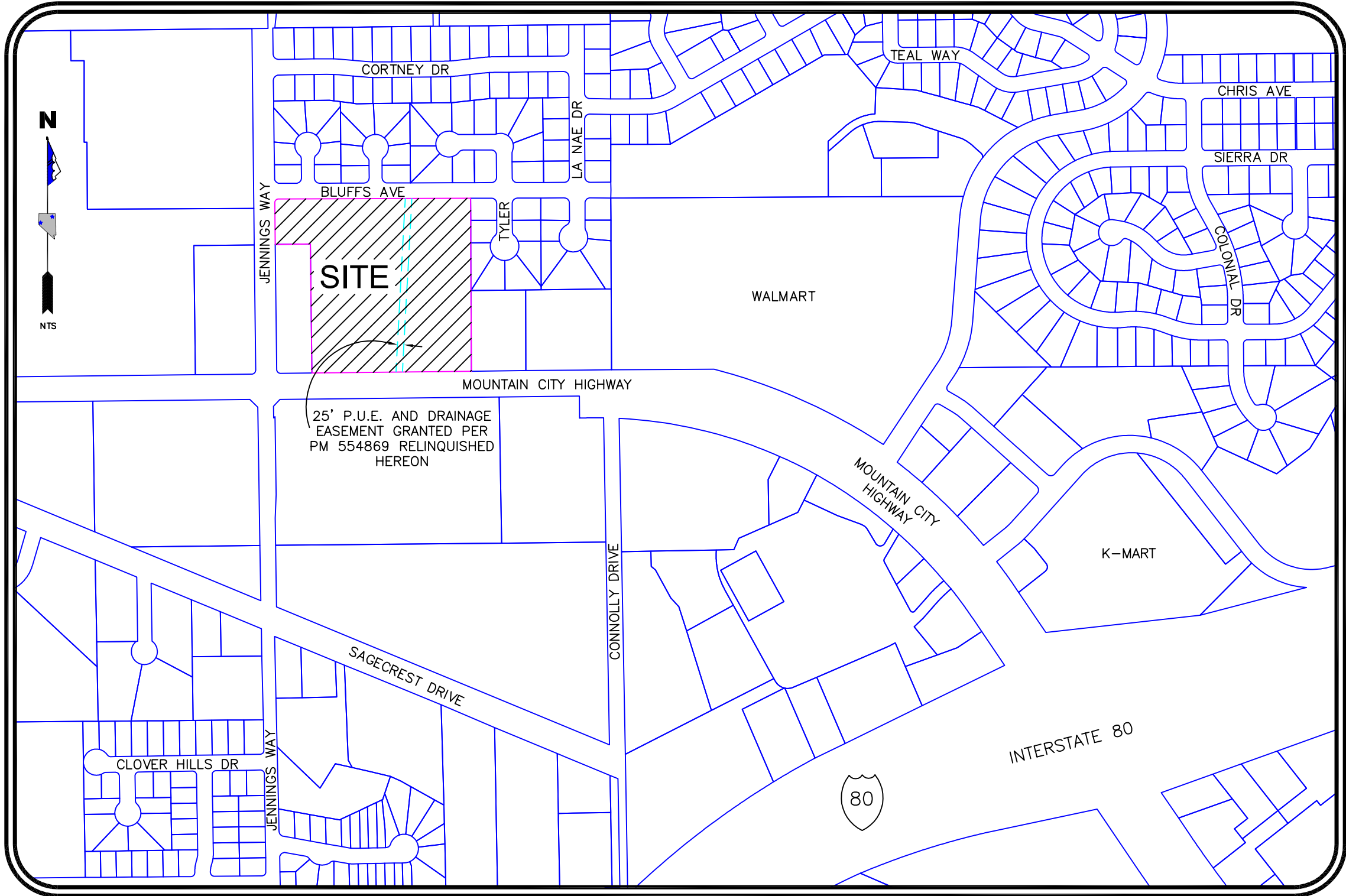
BY:

DIVISION OF WATER RESOURCES CERTIFICATE:

THIS PLAT IS APPROVED BY THE DIVISION OF WATER RESOURCES OF THE DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES CONCERNING WATER QUANTITY, SUBJECT TO REVIEW OF APPROVAL ON FILE IN THIS OFFICE.

DIVISION OF WATER RESOURCES _____ DATE _____

FINAL MAP OF
RUBY MOUNTAIN PEAKS



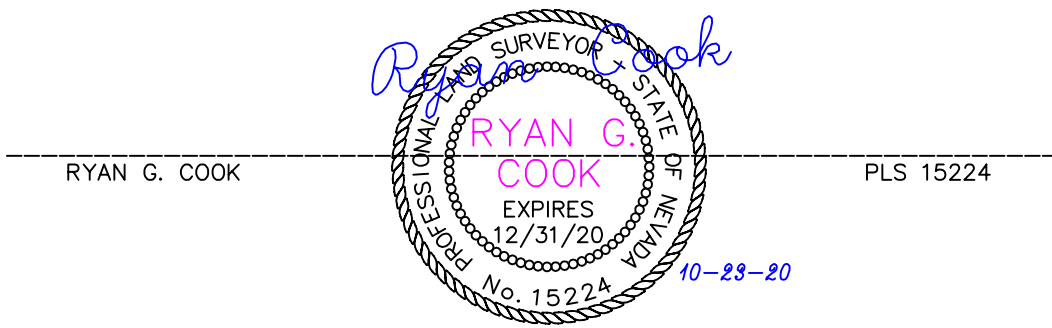
VICINITY MAP

SURVEYOR'S CERTIFICATE:

I, RYAN G. COOK, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1. THIS IS A TRUE AND ACCURATE REPRESENTATION OF THE LANDS SURVEYED UNDER MY SUPERVISION AT THE INSTANCE OF BAILEY & ASSOCIATES, LLC, A NEVADA LIMITED LIABILITY COMPANY.
2. THE LANDS SURVEYED LIE WITHIN THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.M.
3. THIS PLAT COMPLIES WITH THE APPLICABLE STATE STATUTES AND ANY LOCAL ORDINANCES IN EFFECT ON THE DATE THAT THE GOVERNING BODY GAVE ITS FINAL APPROVAL.
4. THE MONUMENTS DEPICTED ON THE PLAT WILL BE OF THE CHARACTER SHOWN AND OCCUPY

THE POSITIONS INDICATED BY _____, 2020, AND APPROPRIATE FINANCIAL GUARANTEE WILL BE POSTED WITH THE GOVERNING BODY BEFORE RECORDATION TO ENSURE THE INSTALLATION OF THE MONUMENTS.



BASIS OF BEARINGS:

NATIONAL SPATIAL REFERENCE SYSTEM 2007 (NSRS2007) EPOCH 2007.00 HOLDING THE NGS APRIL, 2008 PUBLISHED LATITUDE, LONGITUDE AND ELLIPSOID HEIGHT OF N40° 51' 36.95230", W115° 45' 34.70450" FOR THE CITY OF ELKO CORN. COORDINATES ARE PROJECTED USING THE NEVADA STATE PLANE COORDINATE SYSTEM, EAST ZONE AND SCALED TO GROUND USING A COMBINED GRID-TO-GROUND FACTOR OF 1.000357. ORTHOMETRIC ELEVATIONS ABOVE MEAN SEA LEVEL ARE DERIVED USING GEOID 12.

NOTES:

1. THE TOTAL SUBDIVIDED AREA IS 10.00± ACRES.
THE TOTAL AREA OFFERED AS DEDICATED RIGHT-OF-WAY IS 2.10± ACRES.
THE TOTAL LOT AREA (41) IS 7.84± ACRES.
THE TOTAL PARCEL A AREA IS 2,750± SQUARE FEET.
2. A PUBLIC UTILITY EASEMENT IS ALSO HEREBY GRANTED WITHIN EACH LOT FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT LOT AND THE RIGHT TO EXIT THAT LOT WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING OTHER LOTS AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY. IN ADDITION, ALL SIDE PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 10 FEET IN WIDTH CENTERED ABOUT THE PROPERTY LINE. ALSO, ALL REAR PROPERTY LINES SHALL HAVE A PUBLIC UTILITY EASEMENT AND PRIVATE DRAINAGE EASEMENT 5 FEET IN WIDTH LOCATED WITHIN THE LOT, ADJACENT TO THE REAR PROPERTY LINE.
3. THE DEVELOPER IS BAILEY & ASSOCIATES, LLC WHOSE ADDRESS IS 780 W. SILVER #104, ELKO, NV 89801 AND WHOSE PHONE NUMBER IS 775-385-3659.
4. ALL LOTS SHALL BE RESTRICTED TO ACCESS FROM ARIA WAY & ELEANOR COURT.
5. THE NEW USPS GANG BOX EASEMENT WITHIN LOTS 34 & 35 IS GRANTED TO THE UNITED STATES POSTAL SERVICE.

NV ENERGY CERTIFICATE:

A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED TO NV ENERGY WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING UTILITY SERVICE FACILITIES TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AT LOCATIONS MUTUALLY AGREED UPON BY THE OWNER OF RECORD AT THE TIME OF INSTALLATION AND THE UTILITY COMPANY, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

SIERRA PACIFIC POWER COMPANY _____ DATE _____
D/B/A/ NV ENERGY

PRINTED NAME _____

SOUTHWEST GAS CERTIFICATE:

A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED TO SOUTHWEST GAS WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INSTALLING AND MAINTAINING SERVICE FACILITIES TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH SAID UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

SOUTHWEST GAS CORPORATION _____ DATE _____

PRINTED NAME _____

UTILITY COMPANIES CERTIFICATE:

THE PUBLIC UTILITY EASEMENTS, ARE APPROVED BY THE RESPECTIVE PUBLIC UTILITIES EXECUTED BELOW, AND DO HEREBY RELINQUISH THE 25' PUBLIC UTILITY AND DRAINAGE EASEMENT GRANTED PER PARCEL MAP 554869, SHOWN AS "RELINQUISHED HEREON."

FRONTIER _____ DATE _____

BY:

ZITO MEDIA _____ DATE _____

BY:

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2020,

BY _____, AS _____ OF SIERRA PACIFIC POWER COMPANY D/B/A NV ENERGY, A NEVADA CORPORATION, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2020,

BY _____, AS _____ OF SOUTHWEST GAS CORPORATION, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2020,

BY _____, AS _____ OF ZITO MEDIA, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

NOTARY PUBLIC CERTIFICATE

STATE OF NEVADA }
COUNTY OF ELKO }SS

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THIS _____ DAY OF _____, 2020,

BY _____, AS _____ OF FRONTIER, PERSONALLY APPEARED BEFORE ME, A NOTARY PUBLIC, WHO ACKNOWLEDGED THAT THEY EXECUTED THE ABOVE INSTRUMENT.

NOTARY PUBLIC _____

ELKO CITY PLANNING COMMISSION CERTIFICATE:

AT THE REGULAR MEETING OF THE PLANNING COMMISSION OF THE CITY OF ELKO, STATE OF NEVADA, HELD ON THE _____ DAY OF _____, 2020, A TENTATIVE MAP OF THIS SUBDIVISION WAS DULY AND REGULARLY APPROVED PURSUANT TO N.R.S. 278.330 AND THIS FINAL MAP SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE MAP AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

CHAIRMAN, ELKO CITY PLANNING COMMISSION _____ DATE _____

ELKO CITY COUNCIL CERTIFICATE:

AT A REGULAR MEETING OF THE ELKO CITY COUNCIL HELD ON THE _____ DAY OF _____, 2020, THIS MAP WAS APPROVED FOR SUBDIVISION PURPOSES PURSUANT TO N.R.S. 278.461 THROUGH 278.469, INCLUSIVE, AND ALL APPLICABLE LOCAL ORDINANCES. ALL OFFERS OF DEDICATION SHOWN HEREON WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO _____ DATE _____

ATTEST: CLERK, CITY OF ELKO _____ DATE _____

FILE No. _____
FILED AT THE REQUEST OF
SUMMIT ENGINEERING CORP.
DATE: _____, 2020
TIME: _____ M.

D. MIKE SMALES
ELKO COUNTY RECORDER

Received

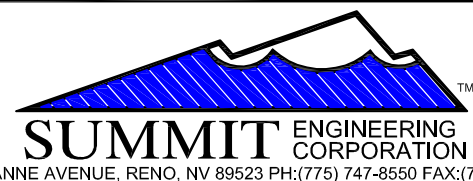
11/17/2020 2:46:51

FINAL MAP
OF
RUBY MOUNTAIN PEAKS
SUBDIVISION

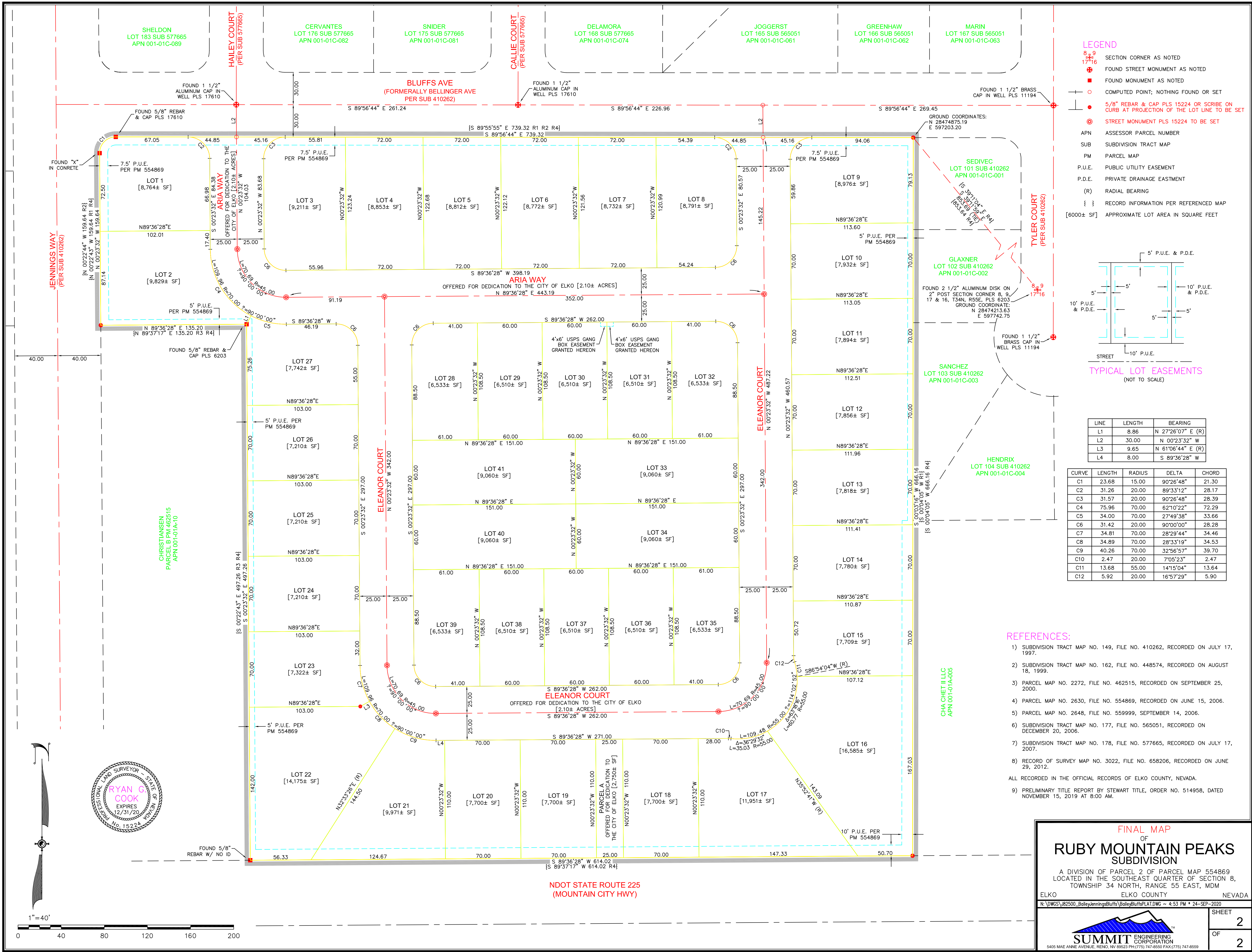
A DIVISION OF PARCEL 2 OF PARCEL MAP 554869
LOCATED IN THE SOUTHEAST QUARTER OF SECTION 8,
TOWNSHIP 34 NORTH, RANGE 55 EAST, MDM

ELKO ELKO COUNTY NEVADA

N:\DWG\82500_BaileyJenningsBluffs\BaileyBluffsPLAT.DWG ~ 4:53 PM * 24-SEP-2020



SHEET
1
OF
2



Zoning Bulletin

in this issue:

Conditional Use Permit	1
Adult Business	2
Preemption	4
Religious Discrimination	5
Zoning News from Around the Nation	7

Conditional Use Permit

County board of supervisors' decision to grant conditional use permit to build a manufactured home challenged in court

Citation: *Kinney v. Harrison County Board of Supervisors*, 2020 WL 4436419 (Miss. Ct. App. 2020)

Harry Kinney claimed that the Harrison County Board of Supervisors (HCBS) erroneously granted a landowner's request to extend a conditional use permit to place a manufactured home on the landowner's property.

The lower court affirmed the HCBS's decision, and Kinney appealed.

DECISION: Affirmed.

The HCBS didn't exceed its authority by granting the request for the conditional use permit.

The Court of Appeals of Mississippi found that:

- 1) **the HCBS didn't have to make specific factual findings with respect to each required element for the conditional use permit; and**
- 2) **there was substantial evidence to support its decision to grant the permit.**

THE BOTTOM LINE

The HCBS considered many factors before granting the conditional use permit, including whether:

- the property had water and sewer;
- there were other manufactured homes in the area—it turned out about half of the homes in the area were conventionally built and the rest were manufactured; and
- the proposed development was compatible with the character of the neighborhood.

Also, the HCBC "granted the permit under the condition that it be used exclusively for a manufactured home" based on transcripts from "the original and subsequent zoning proceedings," letters in support of the permit, photographs of the proposed site, and board members "own familiarity and common knowledge with the area."

Adult Business

Town seeks injunction alleging violations of local zoning and recently enacted sexually oriented business ordinances

Citation: *Midwest Entertainment Ventures, Inc. v. Town of Clarksville*, 2020 WL 6154301 (Ind. Ct. App. 2020)

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

In 2018, Theatre X was operating as an adult entertainment venue under an adult business license the Town of

Clarksville had issued. In October 2018, Clarksville's building commissioner issued a notice of violation (NOV) and an order of abatement to AMW, notifying AMW that there were holes in the walls between Theatre X's viewing rooms in violation of the town's Zoning Ordinance and requiring AMW to permanently close the holes.

The NOV was sent to AMW, as the property owner of the premises, at its principal place of business in Michigan and at 4505 Highway 31 East. It was also sent to AMW's registered agent. AMW did not file a written statement or appeal in response to the NOV. For instance, it could have replied asserting it wasn't the proper party in interest as the owner and/or operator of Theatre X.

In November 2018, AMW's local attorney and Theatre X's manager granted the building commissioner permission to inspect Theatre X, but the holes had not been remediated. As a result, the building commissioner sent AMW notice that its adult business license was suspended until the violations were cured or for a period of 30 days and that the town was assessing civil penalties against AMW for the violations of the zoning ordinance.

AMW did not file any written statement or appeal in response, including any claim that it was not the proper party in interest as the owner and/or operator of Theatre X. Theatre X continued operating with a suspended license.

AMW had the holes between the viewing rooms closed up, and another inspection revealed that the required remediation had been completed. The building commissioner then told AMW that the license suspension was lifted. The building commissioner then issued an amended order to AMW, notifying it that it owed \$9,100 for the Theatre X zoning violations was \$9,100—an amount AMW did not pay.

In January 2019, the town issued an adult business license to Theatre X for 2019. In February 2019, police observed Theatre X patrons engaged in indecent acts on the premises.

After that, the building commissioner sent AMW notice of intent to revoke Theatre X's adult business license on the grounds that its license had been suspended during the previous 12 months, and Theatre X had knowingly operated the business while the license was suspended. The notice also stated that Theatre X had violated the zoning ordinance by knowingly allowing sexual acts to occur in or on the premises.

MEV's attorney sent the building commissioner an email stating that the revocation notice should have been served on MEV since it was the holder of the adult business license. The building commissioner then sent an amended notice of intent to revoke license to MEV at the same addresses at which AMW was initially served.

In April 2019, the Clarksville Town Council (CTC) held a hearing on the revocation of Theatre X's adult business license.

In May 2019, the CTC issued an order revoking MEV's adult business license. It found that Theatre X had been operating in violation of the zoning ordinance because it was not configured so that every manager's station had an

Contributors

Corey E. Burnham-Howard

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400, <http://www.copyright.com> or **West's Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, copyright.west@thomsonreuters.com. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.



THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 0514-7905

©2020 Thomson Reuters

All Rights Reserved

Quinlan™ is a Thomson Reuters brand

unobstructed view, by a direct line of sight, to every area of the premises, and Theatre X management was knowingly allowing its patrons to commit indecent acts to occur on the premises.

In June 2019, MEV asked a court to reverse the revocation of its license. Also that month, the CTC adopted an ordinance to regulate sexually oriented businesses (SOB ordinance) in its municipal code. The SOB ordinance required the interior premises of adult theaters to be configured so that every manager's station has an unobstructed view, by a direct line of sight, to every area of the premises (except restrooms) where patrons are permitted. Also, the SOB ordinance required sexually oriented businesses to be closed between midnight and 6:00 a.m.

That month, the town also responded to MEV's request with the court and filed counterclaims against MEV and AMW. The town sought injunctive relief under the zoning ordinance and the SOB ordinance and against AMW for the unpaid civil penalties for the zoning ordinance violations.

In July 2019, the town filed a request for a preliminary injunction to enjoin MEV and AMW from operating Theatre X in violation of the zoning ordinance and the SOB ordinance.

MEV and AMW each filed a request to dismiss the town's counterclaims and request for preliminary injunction.

The court granted the town's request for a preliminary injunction. Then, the case went to the appeals court for interlocutory appeal where MEV and AMW argued that the lower court didn't have subject matter jurisdiction (SMJ) over the matter.

DECISION: Affirmed.

The lower court didn't err in granting the preliminary injunction.

The court had "made numerous findings of fact," including that:

- MEV operated Theatre X;
- MEV and AMW shared the same principal business address;
- AMW owned the land and the building in which Theatre X was operated;
- Both MEV and AMW were subject to the zoning and SOB ordinances;
- There was a lease agreement in place between MEV and AMW requiring that the property be used only for adult entertainment;
- AMW had "the power to correct, and prevent, violations of the [t]own's ordinances occurring at AMW's Theatre X property";
- AMW, as the owner of Theatre X, was notified in 2018 that the holes between the viewing rooms in Theatre X were in violation of the zoning ordinance;
- AMW permitted inspection of Theatre X and fixed the holes so it had demonstrated its control over Theatre X; and

- MEV and AMW "knowingly maintained the Theatre X premises in violation of, and have knowingly permitted, allowed, and failed to prevent violations of, the [zoning and SOB] [o]rdinance[s'] [direct-]line-of-sight requirements, as well as the SOB [o]rdinance[s'] hours of operation regulation."

The appeals court reviewed the lower court's order to determine if it had abused its discretion. If the findings of fact were "clearly erroneous" or there wasn't enough evidence to make reasonable inferences about the facts presented, the court might reverse an order. "A judgment [wa]s clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made," the court explained.

To succeed at obtaining an injunction for a zoning violation, the town had to prove "the existence of a valid ordinance and a violation of that ordinance."

Here, "AMW d[id] not challenge the validity of [either the zoning or SOB ordinances]," the court noted. Instead, it argued:

- 1) the town didn't show that it had violated any ordinance; and
- 2) the lower court had clearly erred in finding that AMW had the power to correct and prevent the violations—in its view, there wasn't any evidence it operated Theatre X—a requirement under the SOB ordinance.

But, "[t]his argument relate[d] only to the SOB Ordinance; AMW present[ed] no argument that the [t]own [had] failed to demonstrate that AMW, as the owner of Theatre X, violated the [z]oning [o]rdinance," the appeals court found. Therefore, even if AMW's argument had merit, it would only affect the part of the preliminary injunction involving Theatre X's business hours. "However, we are unpersuaded by AMW's argument," the court wrote.

That's because a specific section of the SOB ordinance stated "A person who operates *or causes to be operated* an adult arcade or adult motion theatre shall comply with the following requirements." Another section defined "[o]perate" to mean, "to cause to function or to put or keep in a state of doing business."

Under the applicable lease agreement, AMW required MEV to operate the premises as an adult entertainment venue, and AMW had the ultimate authority to control any changes to the building, "including those necessary to comply with applicable ordinances." And, there was evidence that AMW had participated in the 2018 zoning ordinance violations.

Practically Speaking:

The lower court did not err in granting the preliminary injunction because the town was able to show the property owner had violated the zoning ordinance.

Preemption

Did state's coastal conveyance act preempt enforcement of city ordinance concerning pipeline-related activities in harbor?

Citation: *Portland Pipe Line Corporation v. City of South Portland*, 2020 ME 125, 2020 WL 6325858 (Me. 2020)

Portland Pipe Line Corporation's (PPLC's) planned to pipe crude oil from its facility in Canada to South Portland, Maine. Once the oil arrived in the city, PPLC intended to load it onto tankers in the harbor.

But, PPLC hit a legal roadblock due to the city's "Clear Skies Ordinance." This ordinance, which was enacted in July 2014, barred "the [b]ulk loading of crude oil onto any marine vessel."

A federal court granted judgment without a trial against PPLC on a complaint alleging the ordinance was not enforceable. PPLC contended the Maine Revised Statutes (MRS) preempted enforcement.

PPLC asked the First U.S. Circuit Court of Appeals to review the matter. That court certified three questions of state law before the case was sent to the Supreme Judicial Court of Maine (SJC):

- 1) Was PPLC's license an "order" as that term was used in the applicable section of the MRS?
- 2) If the license was an order, did Maine's Coastal Conveyance Act (the Act) preempt the city's Clear Skies Ordinance?
- 3) Was there a basis for finding that the Act impliedly preempted the Clear Skies Ordinance?

DECISION: SJC answered the first and third questions but declined to answer the second.

PPLC's license wasn't a departmental "order" within the meaning of section 556 of the MRS; and the Act didn't preempt the city's ordinance.

PPLC'S LICENSE WASN'T AN 'ORDER'

"Nothing in [the Coastal Conveyance Act] may be construed to deny any municipality, by ordinance or by law, from exercising police powers under any general or special Act; provided that ordinances and bylaws in furtherance of the intent of [the Act] and promoting the general welfare, public health and public safety are valid unless in direct conflict with [the Act] or any rule or order of the board or commissioner adopted under authority of [the Act]," the SJC explained.

Thus, "[w]e conclude that it is not" an order, the court found. "[W]e also conclude that the [o]rdinance is not 'in direct conflict with' the [Maine Department of Environmental Protection (MDEP)] license granted to PPLC, even if the license were, arguendo, an 'order,'" it added.

The bottom line: The Legislature had "explicitly de-

clared its intent in enacting the Coastal Conveyance Act," the court explained. Specifically, the goal of the law was "to exercise the police power of the [s]tate through the Department of Environmental Protection by conferring upon the department the power to deal with the hazards and threats of danger and damage posed by [oil] transfers and related activities" and more. The act also outlined the powers of the MDEP and other state officials to "effect [the act's] purpose."

"Nothing in the [o]rdinance is in 'direct conflict' with the MDEP's exercise of the [s]tate's police power pursuant to the Act," the SJC ruled. "The [o]rdinance bar[red] a single activity that the MDEP's approval *allowed* but did not *require*—loading crude oil from storage tanks onto marine tank vessels in the [c]ity's harbor." "Black's Law Dictionary define[d] a 'license' as '[a] permission.'" "In contrast, an 'order' [wa]s '[a] command, direction, or instruction.'"

While "the words 'Department Order' appear[ed] in the header on the first page of the 'Renewal License' issued to PPLC in 2010, the license d[id] not 'command, direct, or instruct' PPLC to do anything other than 'fill rodent burrows and remove soil from the base of the [storage] tanks' before conducting permitted activities. . . . That the license was not an 'order' [wa]s demonstrated by the fact that PPLC, although authorized in 2010 to reverse the flow of oil in the pipeline, did not do so, but rather '[chose] instead to wait out the economic decline precipitated by the Great Recession,'" the court ruled. And, "[i]f the license were an 'order,' PPLC would not have had the option to simply set it aside."

Because the second certified question was "premised on an affirmative answer to question one" and the court answered question one in the negative, it declined to answer the second certified question.

ACT DIDN'T PREEMPT ORDINANCE

The court also ruled the Act didn't preempt the city's ordinance. The Act "unambiguously declare[d] that municipal ordinances concerning oil terminal facilities '[we]re valid' unless they directly conflict[ed] with the Act or rules or orders made pursuant to it." And, the Legislature had created "the presumption of a local ordinance's validity particularly strong by explicitly invoking constitutional municipal home rule authority at the outset of the statute: 'Nothing in [the Act] may be construed to deny any municipality, by ordinance . . . from exercising [its] police powers,'" the court explained.

"Here, far from being 'expressly prohibited,' the [c]ity's home rule authority to enact the [o]rdinance [wa]s expressly recognized and affirmed by [the] Act," the court added. "The Act also establishe[d] that the Legislature did not intend to occupy the field; to the contrary, it explicitly declare[d] that the Ordinance '[wa]s valid' except in one narrow circumstance—a 'direct conflict' with the Act or a rule or order adopted pursuant to the Act."

Also, "the MDEP anticipated local regulation when it issued a license conditioned on PPLC's fulfillment of its

obligation to ‘secure and comply with all applicable . . . local licenses [and] permits . . . prior to . . . operation.’”

Finally, the ordinance didn’t “‘frustrate the purpose of a state law’ or ‘prevent the efficient accomplishment of a defined state purpose.’” That’s “because the foundational purposes of the Act and the [o]rdinance [we]re the same.”

THE BOTTOM LINE

The purpose of the Act was to define “the highest and best uses of the seacoast of the [s]tate . . . as a source of public and private recreation and solace from the pressures of an industrialized society.” Additionally, the Act contemplated “a source of public use and private commerce in fishing, lobstering and gathering other marine life used and useful in food production and other commercial activities.”

PPLC’s desire to “transfer . . . oil, petroleum products and their by-products between vessels and vessels and onshore facilities . . . [we]re hazardous undertakings,” which could “pose threats of great danger and damage to the marine, estuarine, inland surface water and adjacent terrestrial environment of the [s]tate; to owners and users of shorefront property; to public and private recreation; to citizens of the [s]tate and other interests deriving livelihood from marine” activities.

KEY TAKEAWAYS

The “declared purpose of the [o]rdinance dovetail[d] with the stated purpose of the Act,” so it wasn’t preempted. Also, the ordinance was enacted in a manner that:

- was “consistent with the [c]ity’s traditional land use authority”;
- was designed “to protect the health and welfare of its residents and visitors and to promote future development consistent with the [c]ity’s Comprehensive Plan by prohibiting within the [c]ity the bulk loading of crude oil onto marine tank vessels, and also by prohibiting construction or installation of related facilities, structures, or equipment that would create significant new sources of air pollution, adversely impact or obstruct ocean views and scenic view-sheds”; and
- took into account situations that could “impede or adversely impact the [c]ity’s land use and planning goals.”

Practically Speaking:

The license that PPLC received may have been labeled as “Departmental Order” but it “more precisely [was] a permit that allowed PPLC to reverse the flow of oil in the pipeline at its discretion—a permit that was granted through the procedural vehicle of an MDEP-issued order. For that reason, and because the [o]rdinance [wa]s not in ‘direct conflict’ with the Act or the license, [the SJC] answer[ed] question one in the negative.”

Religious Discrimination

Federal court examines whether church had standing to challenge town’s zoning ordinance requiring special use permit

Citation: *The Word Seed Church, et al., Plaintiffs, v. Village Of Homewood, Illinois, Defendant. Additional Party Names: Civil Liberties For Urban Believers, 2020 WL 6719030 (N.D. Ill. 2020)*

A seven-person congregation of the Word Seed Church (WSC), which belonged to the Civil Liberties for Urban Believers (CLUB), an unincorporated association of churches promoting urban churches’ religious liberty, met at its pastor’s home in Markham, Illinois for more than two years. WSC wanted to buy a property in Homewood, Illinois so it could conduct religious worship and serve the community.

WSC alleged that Homewood’s zoning ordinance substantially restricted its ability to obtain a property in the town. Specifically, the ordinance didn’t provide any place for the church to meet freely as of right.

HOMEWOOD’S ZONING DISTRICTS

Homewood had four residential districts, two public land districts, four business districts, and two manufacturing districts. Its zoning ordinances specified which uses were permitted or not permitted within each zoning district. It also covered special uses.

The ordinance at issue stated “[p]laces of worship are considered special uses in all districts.” The ordinance also stated that no special use would be granted unless that special use:

- was deemed necessary for the public convenience at that location;
- wasn’t detrimental to the economic welfare of the community; and
- would be consistent with the goals and policies of the town’s comprehensive plan;
- would be designed, located, and proposed to be operated in a way that protected public health, safety, and welfare;
- was a suitable use of the property—and if the special use wasn’t granted the property would be substantially diminished in value;
- would not cause substantial injury to the value of other property in the neighborhood in which it was located;
- would be consistent with the uses and community character of the neighborhood surrounding the parcel;
- would not be injurious to the use or enjoyment of other property in the neighborhood for the purposes permitted in the zoning district;
- would not hinder the normal and orderly develop-

ment and improvement of surrounding properties for uses permitted in the zoning district;

- would provide adequate measures of ingress and egress in a manner that minimized traffic congestion in the public streets;
- was served by adequate utilities, drainage, road access, public safety and other necessary facilities; and
- would not substantially adversely affect one or more historical, archeological, cultural, natural or scenic resources located on the parcel or surrounding properties.

WSC claimed that Homewood had allowed non-religious assembly uses without the need for a special use permit to art galleries, museums, restaurants, taverns, funeral homes, schools, parks, playgrounds, and public libraries. It asked the court to enjoin Homewood from prohibiting it to locate anywhere in Homewood.

DECISION: Lawsuit dismissed; request for preliminary injunction denied.

WSC didn't have standing so its lawsuit was dismissed without prejudice and its request for a preliminary injunction, therefore, wasn't properly before the court for consideration.

Standing—Homewood contended WSC didn't have standing to file suit because it hadn't suffered an "injury-in-fact." "To show standing for injunctive relief, the [c]hurch [had to] establish: (1) it [wa]s under an actual or imminent threat of suffering a concrete and particularized injury-in-fact; (2) a causal connection between the injury and the challenged conduct; and (3) the likelihood the injury w[ould] be redressed by a favorable decision."

The fact was that WSC hadn't yet applied for a special use permit to locate in Homewood. Thus, its claim against Homewood was "speculative."

The court rejected WSC's claim that the Religious Land Use and Institutionalized Persons Act (RLUIPA) negated this rationale, which had been laid out in the Seventh U.S. Circuit Court of Appeals' decision in *Love Church v. City of Evanston*. In *Love Church*, the Seventh Circuit ruled that "the church's 'speculative claims c[ould not] constitute distinct and palpable injury for purposes of standing' because it 'relie[d] on the mere possibility that, absent the [o]rdinance, it could have more easily acquired rental property in Evanston.'"

WSC asserted that RLUIPA only required religious entities to "intend to use real property to bring a claim." In support of this argument, it pointed to RLUIPA's definition of "religious exercise." The applicable provision of RLUIPA stated "[t]he use, building, or conversion of real property for the purpose of religious exercise shall be considered to be religious exercise of the person or entity that uses or intends to use the property for that purpose."

"The definition of religious exercise, however, does not confer standing because 'Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and

purports to authorize that person to sue to vindicate that right," the court in this case ruled.

The bottom line: "The closest [WSC] c[ame] to establishing that Homewood caused these injuries is that the [c]hurch c[ould not] petition for a special use permit until it ha[d] a right of ownership in property pursuant to the Homewood ordinance."

Injunction—The court also found that WSC wasn't entitled to the preliminary injunction it sought. A party seeking a preliminary injunction had to establish a likelihood of success "on the merits, that [the party was] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [the party's] favor, and that an injunction [wa]s in the public interest."

This court's inquiry here "turn[ed] to whether the [c]hurch ha[d] established that it would suffer irreparable harm without injunctive relief because it [wa]s dispositive." The church contended it didn't need to establish irreparable harm under the circumstances. That was an erroneous argument, the court found. As a private entity seeking injunctive relief it had to meet "traditional preliminary injunction requirements."

Alternatively, WSC claimed a loss of First Amendment freedoms constituted irreparable harm. "In a general, this is an accurate statement of law," the court found. "The protections under RLUIPA and [the] First Amendment, however, are not identical, and the [c]hurch does little to explain how the ordinance affects its religious exercise. Instead, the [c]hurch makes the conclusory argument that it will lose assembly, worship, ministry opportunities, and membership if it does not move from its pastor's home. Missing from this explanation is how unpurchased (and unknown) property in Homewood is important to [its] religious mission and beliefs." Therefore, the court found WSC's "irreparable injury argument . . . unavailing."

A CLOSER LOOK

The court also explained that "irreparable harm mean[t] 'more than a mere possibility of harm.'" "More specifically, '[i]ssuing a preliminary injunction based only on a possibility of irreparable harm [wa]s inconsistent with [the court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.'" Here, Homewood hadn't yet denied WSC a special use permit, and WSC had "only offered speculation as to its irreparable harm." Without more, WSC didn't meet its burden of showing that injunctive relief was currently warranted.

Case Note:

WSC contended it was under contract to purchase a property in Homewood in the summer of 2020, but the seller had refused to include a zoning contingency in the contract for sale. "But if sellers refuse to include a zoning contingency in the contract, the [c]hurch cannot purchase property," the court noted. "This chain of causation, however, [wa]s too attenuated to confer standing because it relie[d] on the independent action of a

third-party.”

The case cited is *Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir. 1990).

Zoning News from Around the Nation

Connecticut

Meriden enters into agreement to resolve claims it violated RLUIPA by denying mosque's zoning application

The City of Meriden, Connecticut has resolved a complaint alleging it violated the rights of the Omar Islamic Center (OIC) under the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) by denying its application to establish a mosque in March 2019, the Department of Justice (DOJ) explained in a recent press release.

The DOJ alleged that the “city violated the and by maintaining a zoning code that treats religious assemblies and institutions on less than equal terms with nonreligious assemblies and institutions in nine zoning districts.” “The [RLUIPA] marked its 20th anniversary last month, and it ensures that people of all faiths can establish houses of worship. The Justice Department will continue to enforce this important law against any government that violates the right of faith communities to build gathering places for worship,” said Attorney General Eric Dreiband of the DOJ's Civil Rights Division.

The DOJ asserted that the Meriden Planning Commission's decision to deny the OSC's application to establish a mosque in Meriden “was unfair and in clear violation of RLUIPA,” explained U.S. Attorney John Durham of the District of Connecticut.

Its lawsuit also alleged the city's denial of the OSC's application to establish a mosque “imposed a substantial burden on the center's religious exercise and treated the center, a religious assembly or institution, on less than equal terms with a nonreligious assembly or institution.” “The . . . complaint also alleges that the city's zoning code treats religious assemblies or institutions on less than equal terms with nonreligious assemblies or institutions in nine zoning districts,” the DOJ stated.

The city denied the allegations, but in reaching a settlement agreement with the DOJ agreed to review and amend its zoning ordinance to comply with RLUIPA's requirements and to provide training to city officials and employees about the city's legal obligations under RLUIPA. In addition, it has agreed to notify the public of its compliance with RLUIPA in its zoning and land use actions.

Source: [justice.gov](https://www.justice.gov)

Maryland

Issue of 'statutory vesting' makes it onto Court of Special Appeals' docket

The Court of Special Appeals of Maryland recently ex-

plored a relatively new issue in land use and zoning, statutory vesting. The case arose after the Board of Appeals of Baltimore County, Maryland (BABC) approved a special exception to allow Riverwatch LLC and Two Farms Inc. (collectively, Royal Farms) to build a fuel service station, convenience store, and carry-out restaurant in Hereford, Maryland.

The Sparks-Glencoe Community Planning Council along with several individuals protested the plan (collectively, the protestants). The protestants asked a court to review the BABC's decision.

After a hearing, the court sent the case back to the BABC to consider additional evidence. Between the time when the case was sent back to the BABC and its next board meeting, the Baltimore County Council enacted Bill 56-16, which changed the zoning classification of the subject property.

Once the case was back before the BABC, the protestants requested dismissal of Royal Farms' request for a special exception on the basis that the new zoning classification applied and prohibited the fuel service station.

The BABC denied the dismissal request. It found that the former zoning classification applied because Royal Farms had obtained vested development rights by recording a plat in accordance with the provisions of Baltimore County Code (BCC).

Ultimately, the BABC affirmed its decision to grant the special exception to Royal Farms.

The protestants asked the court to review the decision. The court affirmed the BABC's decision, and the protestants asked the Court of Special Appeals of Maryland for further review.

Affirmed, the Court of Special Appeals ruled. The BABC didn't err in denying the request to dismiss Royal Farms' special exception application on the grounds that Royal Farms didn't have vested rights; and it didn't err in granting the special exception because there was substantial evidence in support of the BABC's determination that there was a “need” for what Royal Farms intended to offer.

The case cited is *Graul v. Riverwatch, LLC*, 2020 WL 6623283 (Md. Ct. Spec. App. 2020).

New York

Pleasantville zoning board to study whether code should be amended to factor in FAR for new house construction

Landowners proposed to build a home with a 4,900 square-foot footprint on Ashland Avenue in Pleasantville, New York. But, when neighbors observed a much larger footprint, they expressed concern to the local zoning board over variances that would permit the construction of a home that was too large and out of place for the neighborhood, *The Examiner* reported recently.

Now, the town is considering whether it should update the existing code, the news outlet reported. The current code doesn't include a floor area ratio (FAR) provision—FAR measures floor area as it relates to the lot or parcel's size on which the structure sits.

In November 2020, the village's zoning board voted to order a professional study to gauge whether the code should incorporate a new FAR regulation.

The study, which New York City-based planning, urban design, environmental analysis, real estate and transportation consultancy BFJ Planning will conduct, will cost around \$15,000, *The Examiner* reported.

Source: theexaminernews.com

North Carolina

Developer wants to see area rezoned so plans to build gated apartment complex can proceed in Greensboro

Koury Corp. (Koury) seeks to build a 480-apartment community on 23 wooded acres that haven't stayed undeveloped for six decades, the *News & Record* reported recently. But, Koury's plan to develop the parcel is being met with opposition, the news outlet reported.

Now, Koury, which is requesting rezoning to turn the currently single-family zoned area into multi-family zoning, will have to present its case at a hearing before the Greensboro City Council. Those opposed to the rezoning request are expected to raise concerns over traffic congestion and how the apartment community would change the fundamental character of the neighborhood, the news outlet reported.

Source: greensboro.com

South Carolina

DOJ settles case with Irmo over allegations of discrimination against disabled homeowner

The Department of Justice (DOJ) has settled a case against Irmo, South Carolina for \$25,000 on allegations the town discriminated against a disabled homeowner, in violation of the Fair Housing Act (FHA).

Specifically, the DOJ contended "the town violated the FHA by refusing to allow the Irmo homeowner to build a carport adjacent to her home to accommodate her physical disability," a recent press release stated. The case arose after the homeowner, who had fallen and injured herself outside her home several times, applied for a zoning variance to build a carport. She asserted that the structure would protect her driveway and mobility ramp in inclement weather and prevent future fall.

After the town denied the request to erect a carport, the homeowner filed a complaint with the Department of Housing and Urban Development (HUD), which conducted an investigation and referred the matter to the DOJ.

"The homeowner in this case requested a simple, straightforward, and reasonable accommodation: to build a carport adjacent to her own single-family home so she would be protected from the elements and could safely enter and exit her home. She should not have been forced to wait three years for this accommodation," said Assistant Attorney General Eric Dreiband of the DOJ's Civil Rights Division. "This settlement is a reminder that the Justice Department is committed to working tirelessly to enforce the [FHA] and protect the rights of persons with disabilities. The department's lawsuit should also serve as a warning that federal law protects the right of persons with disabilities to be secure in their homes and that the Justice Department will do whatever is necessary to protect that right," Dreiband added.

The DOJ also explained that about a year after it filed suit, Irmo adopted an ordinance allowing individuals disabilities to request reasonable accommodations in rules, policies, practices or services to afford them an equal opportunity to use or enjoy their home. And, about a year after that, the town granted this homeowner's reasonable accommodation request and allowed her to build a carport so she could live safely in her home.

Source: justice.gov

Virginia

Relocation of bus station one step closer to becoming reality in Roanoke

In November 2020, the Roanoke City Council (RCC) voted 7-0 to revise the city's downtown zoning code so that a bus station can be relocated and built by right and not by special exemption, WSLS.com reported.

The city council's vote came after the Roanoke City Board of Zoning Appeals denied the project's special exception application, the news outlet explained.

Source: wsls.com

Zoning Bulletin

in this issue:

Taking	1
First Amendment	3
Equal Protection	3
Occupancy Permit	4
Rezoning	5
Right-of-Way	6
Zoning News from Around the Nation	7

Taking

Landowner accuses town of unlawful taking under Constitution after it denies application for recognition of nonconforming use

Citation: *Vanderveer v. Zoning Board of Appeals*, 2020 WL 7042669 (E.D. N.Y. 2020)

Donald Vanderveer's family owned three parcels of land in the East Hampton, New York vicinity. One of the properties was located at 580 Three Mile Harbor Hog Creek Highway. A second one housed a Vanderveer commercial marina and a residential home. And, the third was a residentially zoned four-acre lot containing a barn.

The Vanderveers acquired that property in 1949, eight years before the enactment of the town's first zoning ordinance. Vanderveer uses the property—which he inherited from his mother—to store items, including equipment used at the marina.

Vanderveer also leased space on the property to a landscaping company for \$1,000 per month. On the tax assessor's records, the term "Storage, Warehouse" was used to describe the property.

In June 2015, the town accused Vanderveer of violating the local zoning ordinance. He contested the misdemeanor charges but was convicted on charges he had unlawfully changed the use of the property from residential to commercial.

In July 2017, Vanderveer applied to the town building inspector for a "determination that the use of the [p]roperty for indoor and outdoor storage [wa]s a legally preexisting nonconforming use." In support of the application, Vanderveer submitted tax records, a letter stating that the property's only structure was a "barn" for tax purposes, affidavits, and aerial photographs of the property.

The building inspector, after reviewing this information and considering letters some of Vanderveer's neighbors had filed opposed his applications, concluded "It is my opinion that there was no evidence of a pre-existing outdoor storage use on [the Property]. The [Property] does have evidence of a pre-existing, non-conforming barn. . . but that does not change the pre-existing residential use of the [Property]."

Vanderveer appealed to the Zoning Board of Appeals (ZBA), which found that Vanderveer hadn't provided adequate proof that the property had a nonconforming use when the zoning ordinance was adopted in 1957. And, if such a use had existed, he abandoned it by leaving the property vacant for many decades. Also, even if Vanderveer had continually used the property for commercial storage, his decision to rent space to a landscaping company terminated that use as a matter of law.

A judge upheld the ZBA's determination. The judge rejected Vanderveer's assertion that he was "denied a constitutionally sufficient opportunity to be heard . . . as he was not permitted to question adverse witnesses nor his witnesses."



Also, the judge concluded, the evidence in the record was sufficient to support the ZBA's findings, even though the judge was "bothered" by the town's failure to clearly define the term "commercial use."

Before the U.S. District Court for the Eastern District of New York was the town's request to dismiss Vanderveer's lawsuit alleging it had violated the Takings Clause by denying his application for recognition of his nonconforming use.

DECISION: Town's request for dismissal granted.

Vanderveer couldn't establish a valid claim under the Taking Clause.

Under the Fifth Amendment private property could not be taken for public use without "just compensation." Specifically, "[u]nder the Takings Clause, the government must compensate a landowner if it effects a 'permanent physical occupation' of his property, or if a regulatory ac-

tion forces him to 'sacrifice all economically beneficial uses in the name of the common good.'"

There were "rare cases" where "government action that merely 'impede[d] the use of property without depriving the owner of all beneficial use' [could] constitute a regulatory taking 'based on a complex of factors.'" These included:

- "the regulation's economic effect on the landowner";
- "the extent to which the regulation interfere[d] with reasonable investment-backed expectations"; and
- "the character of the government action."

Here, Vanderveer didn't claim the town's denial of his application resulted in a "physical occupation of his property." And he couldn't "plausibly argue that a four acre residentially zoned lot containing a barn ha[d] no 'economically beneficial use.'" Thus, he could only succeed on a Takings Claim if he showed a "non-categorical [regulatory] taking under" Supreme Court precedent established in *Penn Central Transportation Company v. City of New York*.

Economic effect on Vanderveer—He claimed the denial of his application deprived him of "the ability to store and warehouse his own chattels and property needed for his marina business. . . [and resulted in the] loss of financial compensation derived from warehousing others' chattels." These "allegations suggest[ed] that the [t]own's refusal to allow storage on the [p]roperty costs Vanderveer \$12,000 per year in rent plus an unspecified amount in costs associated with commercial storage. This is a real economic impact," the court wrote. "Nonetheless, because Vanderveer d[id] not allege that the [t]own's denial of his application 'effectively prevented [him] from making any economic use of the [Property],' this factor bears less weight in the Court's analysis than it might otherwise."

"Under the Takings Clause, the government must compensate a landowner if it effects a 'permanent physical occupation' of his property, or if a regulatory action forces him to 'sacrifice all economically beneficial uses in the name of the common good.'"

The bottom line on this point: Vanderveer could still construct a residence on the property, which was "economically significant."

"[I]nterference with reasonable, investment-backed expectations"—Vanderveer didn't allege he invested time or money into the property, and he didn't provide any "caselaw to support his claim that there [wa]s no difference between an 'inheritance backed expectation' and an 'investment-backed expectation,'" the court found. Ultimately, on this factor, the court found Vanderveer hadn't established any "investment backed expectation" related to the property, "let alone one that transform[ed] the [t]own's actions into a regulatory taking."

The "character of [the town's] action"—This factor also supported a conclusion that a taking had not occurred.

Contributors

Laura Scott

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400, <http://www.copyright.com> or **West's Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, copyright.west@thomsonreuters.com. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.



THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084

email: west.customerservice@thomsonreuters.com

ISSN 0514-7905

©2021 Thomson Reuters

All Rights Reserved

Quinlan™ is a Thomson Reuters brand

"In *Penn Central*, the Supreme Court explained that a taking 'may more readily be found when the interference with property can be characterized as a physical invasion . . . than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common-good.'" "Both Vanderveer and the [t]own agree[d] that a zoning law which eliminate[d] nonconforming uses [wa]s a public program to promote the common-good," the court explained. Therefore, the town's and ZBA's "adjudication of Vanderveer's application was part of a 'program . . . to promote the common-good,'" and its character wasn't that of a physical invasion.

Practically speaking: "[A]lthough Vanderveer plausibly allege[d] economic harm, he ha[d] not pleaded facts sufficient to establish a regulatory taking," the court ruled.

The case cited is *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, 11 Env't. Rep. Cas. (BNA) 1801, 8 Env't. L. Rep. 20528 (1978).

Case Note:

The ZBA did not decide whether the barn could be used for indoor storage.

First Amendment

Court rules on whether claim preclusion barred claim stemming from dispute over billboard

Citation: *Citizens for Free Speech, LLC v. County of Alameda*, 830 Fed. Appx. 551 (9th Cir. 2020)

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

Citizens for Free Speech and Michael Shaw (collectively, the plaintiffs) challenged the County of Alameda, California's efforts to abate billboards erected on Shaw's property in violation of the county's zoning ordinance.

The lower court granted the county's request for dismissal on the plaintiffs' First Amendment free speech. The plaintiffs appealed.

DECISION: Affirmed.

The First Amendment claim was barred by "claim preclusion," the Ninth U.S. Circuit Court of Appeals ruled.

The plaintiffs argued claim preclusion didn't apply because the county hadn't yet initiated nuisance abatement procedures under the zoning ordinance. "The nuisance abatement procedures are predicated on the same [z]oning [o]rdinance provisions challenged in [a] prior action," the court explained.

A CLOSER LOOK

This case arose after the plaintiffs entered into an agreement to construct and display three signs on Shaw's parcel of land. The signs consisted of entirely of non-commercial

messages that "challenge[d] the political ideology espoused by [c]ounty officials," The plaintiffs claimed that the signs would contain commercial messages in the future.

Shaw learned courtesy of a county official who paid him land a visit in 2014 that the signs were barred within a "Scenic Corridor Combining district."

Later that year, the county mailed Shaw a "Declaration of Public Nuisance—Notice to Abate," claiming that the signs violated two sections of its ordinances. The Notice to Abate instructed Shaw to remove the signs or face an abatement proceeding and escalating schedule of fines.

Case Note:

The plaintiffs also had filed Fourteenth Amendment due process claims, and the Ninth Circuit affirmed the lower court's decision to dismiss those claims, too.

Equal Protection

Landscaping company files suit after being bombarded by cease-and-desist orders concerning permitted use

Citation: *Servidio Landscaping, LLC v. City of Stamford*, 2020 WL 7246441 (D. Conn. 2020)

Servidio Landscaping, LLC (Servidio) filed suit against the City of Stamford, Connecticut and its zoning enforcement officer, land use bureau chief, and mayor (collectively, the defendants) for enforcing land-use regulations with respect to Servidio's property. Servidio claimed the defendants committed Equal Protection and Due Process Clause violations of the Fourteenth Amendment to the U.S. Constitution.

The defendants sought dismissal of Servidio's claims.

DECISION: Request for dismissal of the Equal Protection and Due Process claims granted.

WHAT LED TO THE LAWSUIT

Servidio, which provided construction, demolition, and excavating services in Stamford was owned by the Servidios. The Servidios jointly owned to an empty parcel of property located at 796-800 Cove Road in Stamford (the subject property) located in a Commercial Neighborhood Business Zone (C-N Zone).

Stamford issued cease-and-desist notices to the Servidios alleging their use of the subject property wasn't permitted in the C-N Zone. Then, the city took the Servidios to court seeking a permanent injunction requiring them to comply with the cease-and-desist orders and monetary compensation.

The parties entered into a "Stipulation for Judgment" but the city filed a request of contempt after the Servidios continued to use the property as a "contractor's yard" and not a garden supplies center (the permitted use set forth in the stipulation).

Following a hearing, a judge found the Servidios weren't

in contempt. But, the city's violation letters and cease-and-desist orders continued over their use of the subject property. The Servidios claimed the letters and orders were arbitrary, capricious, willful, baseless, meritless, and made in bad faith in an attempt to harass them based on personal animus many of the defendants had against them.

The Servidios also claimed the city had intentionally treated municipal permits and/or licenses submitted by Servidio or others who expressed a desire to use its services, less favorably than those submitted by other similarly situated contractors within Stamford.

EQUAL PROTECTION CLAIM

Servidio claimed an Equal Protection Clause violation occurred through the selective enforcement of zoning regulations and unfavorable permitting decisions based on alleged malice and personal animus toward the company and its owners.

"There are two 'distinct pathways for proving a non-class-based Equal Protection violation,' " the court explained, citing *Hu v. City of New York*. Under a "selective treatment theory," Servidio had to show that when compared to other similarly situated individuals was treated differently and that the selective treatment "was based on impermissible considerations such as . . . malicious or bad faith intent to injure a person," the court wrote, citing *LeClair v. Saunders*.

"Impermissible considerations include 'discrimination on the basis of a defendant's personal malice or ill will towards a plaintiff,' " the court added. And, the Supreme Court, in *Village of Willowbrook v. Olech*, "recognized successful equal protection claims brought by a 'class of one,' where the plaintiff allege[d] . . . that she has been intentionally treated differently from others similarly situated and . . . that there [wa]s no rational basis for the difference in treatment."

In this case, Servidio brought a "LeClair claim" against the defendants. "Unlike an *Olech* claim, a malice-based *LeClair* claim requires 'proof of a defendant's subjective ill will towards a plaintiff.' " A LeClair claim required "a 'reasonably close resemblance' between a plaintiff's and comparator's circumstances."

Thus, Servidio had to show being similarly situated "in all material respects" to a comparator. The issue for Servidio was that it didn't identify "a single specific comparator, individual or corporation that [was] similarly situated."

All Servidio presented was "a broad stroke [of] wholly conclusory assertions." For instance, Servidio only alleged "that other unnamed property owners within Stamford were treated more favorably." It didn't:

- "point to [any] allegations in the complaint from which an actual comparator might be gleaned, even if by inference";
- identify any specific location in Stamford "in which this alleged disparity [wa]s apparent"; or
- note "any property owners located in a C-N Zone who [had] used their property for similar purposes but did not receive cease and desist orders."

DUE PROCESS CLAIM

Servidio claimed that the defendants denied the right to due process of law by wrongfully depriving it of a protected property interest in ownership and development of the property and business. But, this claim rested on the same set of facts alleged for the equal protection claim.

Servidio claimed the defendants selectively enforced the zoning regulations and making unfavorable permitting decisions due to ill motives toward the company and its owners. To establish a substantive due process claim, Servidio had to show that it had a "constitutionally cognizable property interest is at stake" and the defendants' "alleged acts against [its] land were arbitrary, conscience-shocking, or oppressive in the constitutional sense, not merely incorrect or ill-advised."

This wasn't the case here. Servidio didn't "describe conduct by the defendants" that was "so extraordinary 'as to constitute a gross abuse of governmental authority,' " the court found.

All Servidio did was "maintain [an] ongoing disagreement with the [d]efendants' decisions regarding the permissible use of the" subject property. Could Servidio be correct that the defendants' actions were not correct or were ill advised? Yes, the court noted. But, that didn't "create a constitutional deprivation."

Practically Speaking:

"[S]ubstantive due process standards [we]re violated only by conduct that [wa]s so outrageously arbitrary as to constitute a gross abuse of governmental authority."

The cases cited are *Village of Willowbrook v. Olech*, 528 U.S. 562, 120 S. Ct. 1073, 145 L. Ed. 2d 1060, 30 Env'tl. L. Rep. 20360 (2000); *Hu v. City of New York*, 927 F.3d 81 (2d Cir. 2019); and *LeClair v. Saunders*, 627 F.2d 606 (2d Cir. 1980).

Occupancy Permit

City claims safe recovery residence violated ordinance requiring certificate of occupancy in residentially zoned district

Citation: *The Hansen Foundation, Inc. v. City of Atlantic City*, 2020 WL 7074275 (D.N.J. 2020)

Hansen House LLC (Hansen House), a subsidiary of Hansen Foundation Inc. (Hansen), a nonprofit organization providing affordable, long-term, safe recovery residences, access to treatment, community programs, and tools for leading healthy productive lives for people new to and in long-term recovery, bought a single-family home in Atlantic City, New Jersey. It wanted to turn the property into a "Serenity House" (the house), which would serve women in recovery from alcoholism and substance abuse. The house was located in the city's R-2 Zoning District.

In March 2019, the city notified Hansen House that it had violated the city ordinance requiring a certificate of occupancy before establishing a new occupation.

In May 2019, Hansen House moved residents of another of its homes to the house, which it alleged was necessary after the residential lease at the other home lapsed. By its own admission, it did not obtain a certificate of occupancy before its residents moved into the house.

In June 2019, the city's Department of Licensing & Inspections (DLI) issued a notice of violation following an inspection of the house because Hansen House had begun installation of an H.V.A.C. system without a construction permit, which was required prior to the start of the work.

In July 2019, an attorney representing Hansen House sent the city a letter laying out its position that the house was properly classified as a single-family residence and that it wasn't then a "reasonable accommodation" in the form of a waiver or modification of the city's zoning ordinances and a corresponding certificate of occupancy should be granted. The letter asserted that if the city didn't permit the house to operate as planned it would face liability under federal anti-discrimination law.

The city then filed a municipal complaint against the house for not obtaining an occupancy permit before the new occupancy occurred, which it contended violated the city code. Hansen House responded to that complaint with an application for a Certificate of Land Use Compliance (CLUC) seeking to register the house as a single family home—under the city code, a CLUC was a prerequisite for certain forms of housing to receive a certificate of occupancy.

The city also issued an order to vacate to the house. The director of DLI stated in the letter that the house had engaged in "a pattern of disregard for code requirements" and that there was an "absolute prohibition against a community residence at this specific location" under the city code.

A day later, the city's zoning officer denied the house's CLUC application. It turned out Hansen House hadn't met several procedural requirements for the CLUC form. And, a conclusion was made that the house was in violation of a "distance requirement."

Hansen House appealed the interpretation of the zoning provisions to the city's Zoning Board of Adjustment (BOA). The BOA stated it wasn't able to review its appeal based solely on procedural grounds (e.g., Hansen House hadn't paid a filing fee or attach documents with details concerning home ownership as required under state and city law.)

Hansen House took its case to court, alleging that the city had violated the Fair Housing Act (FHA), the Americans with Disabilities Act (ADA), and the Rehabilitation Act as well as state law. Then, the parties filed cross-requests for judgment without a trial.

DECISION: City's request for judgment on the FHA, ADA, and Rehabilitation Act claims granted.

Hansen House "failed to demonstrate any actions or statements [by the city] that would rise to the level of showing that a zoning variance application would be demonstrably futile," the court found.

A CLOSER LOOK

Did the city violate the FHA, ADA, and Rehabilitation

Act by failing to provide the house a reasonable accommodation? Hansen House contended it had sought an accommodation in the form of permission for the house's disabled occupants—in the event that it was classified as a "group family household"—to live in the city's R-2 zone despite the city code's restriction on such housing in that zoning district.

Generally, a court would limit review of reasonable accommodation challenges to local land-use decisions to the administrative record that had been developed in the case. A court would also assume a plaintiff bringing a reasonable accommodation claim against a municipality would "first seek redress through variance applications to the local land use authority."

There were instances when a plaintiff wouldn't have to first apply for a variance to bring an FHA reasonable accommodation claim. Generally, a city had to be given the opportunity to make the requested accommodation, but "if the variance application process was demonstrably futile" then the plaintiff's claim could be considered ripe for adjudication even if it hadn't sought a variance.

But, Hansen House didn't provide any "evidence of futility here." Its argument consisted only "of a lengthy description of [its] applications and interactions with [c]ity officials during the attempt to get approval for the Serenity House. While the Court agrees that the [c]ity officials' instructions and actions did not provide a model of clarity throughout the pre-litigation time period of this dispute," Hansen House didn't give the city a chance to fully consider its request.

Rezoning

City considers request to rezone from single- to multi-family use

Citation: *Eureka Building, Inc. v. City of Troy*, 2020 WL 6887373 (E.D. Mich. 2020)

Eureka Building Inc. (Eureka) filed two applications to rezone a vacant 1.2-acre parcel of land in the City of Troy, Michigan from a one-family residential to a one-family-attached residential zone so it could proceed with a townhouse development project. Eureka intended to build 10 townhouses on the property, which would exceed the current maximum of four.

The first application was considered a "conditional" rezoning application, which offered voluntary conditions as part of the request. The second application was deemed a "straight" or "traditional" rezoning application—it sought simple rezoning.

The applications were approved at each stage in the review process until they got to the Troy City Council. While the city's planning department and its planning consultant had recommended approval, the city council held a public hearing before denying the conditional rezoning application.

Eureka applied again several months later with a straight rezoning proposal, and city authorities again recommended approval, but the city council again voted to deny the ap-

plication after a public hearing again. The city council denied the application in response to public concerns over the townhouse development's impact on traffic congestion and a negative affect it could have on the existing neighborhood.

Believing the plan fit within the city's master plan and that the city had treated this development project differently than from other properties seeking rezoning, Eureka filed suit against the city. It asserted the city had violated its substantive due process rights and had issued a rezoning decision that was arbitrary and capricious.

The city requested dismissal of the lawsuit on the grounds that Eureka didn't have any constitutionally protected right to rezone the property because state and local laws granted broad discretion to the city for rezoning decisions. The city also asserted it had a rational basis for making its decision and that its decision wasn't the type of "egregious official conduct" that would state a claim for arbitrary and capricious conduct.

DECISION: Request for dismissal on the basis of Eureka's failure to state a claim granted.

Eureka couldn't meet the requirements to bring a substantive due process claim.

When a plaintiff alleged a substantive due process violation resulting from a zoning decision, the plaintiff had to show:

- "a constitutionally protected property or liberty interest exist[ed]"; and
- "the constitutionally protected interest ha[d] been deprived through arbitrary and capricious action."

"To establish a property interest in rezoning approval, a plaintiff must demonstrate that the government entity lacked 'discretion' to deny the proposed use of the land if the proposal 'complied with certain, minimum, mandatory requirements,'" the court explained.

Here, Eureka couldn't "plausibly allege that it had any property interest in rezoning approval because Michigan law and the Troy Zoning Ordinance grant[ed] total discretion to the [c]ity [c]ouncil to approve or reject a rezoning request," the court explained.

It was up to the local government to decide whether to approve a conditional rezoning proposal if certain conditions had been met, the court added. Here, the city's zoning ordinance "provide[d] that a conditional rezoning 'may only be approved upon a finding and determination' that five relevant factors [we]re met," the court stated. Specifically:

- "the rezoning [wa]s consistent with the city's [m]aster [p]lan";
- "the rezoning w[ould] not cause or increase any non-conformity";
- "public services and facilities w[ould] be able to accommodate the new use";
- "the rezoning w[ould] not impact public health, safety, or welfare"; and
- "the rezoning w[ould] ensure compatibility with adjacent uses of land."

The use of the term "may" in the ordinance made it "clear

that these factors [we]re necessary but not sufficient for approval, and the ultimate decision [wa]s in the city council's discretion," the court explained.

THE BOTTOM LINE

Neither state law nor the city's zoning ordinance "require[d] the city council to approve a conditional or traditional rezoning application; the decision [wa]s wholly discretionary," the court ruled. And, "Eureka hadn't identifi[ed] any state or local law that compel[led] approval of a rezoning application if the proposal 'complied with certain, minimum, mandatory requirements.'" "As a result, Eureka has not identified a constitutionally protected property interest in either rezoning decision," the court found.

A CLOSER LOOK

The court concluded that:

- Eureka hadn't tried to explain "how it could have a property interest in a rezoning decision that [wa]s wholly discretionary under state and local law";
- the city council retained discretion to vote as it did on this issue; and
- its decision to deny the requests, which came following public hearings where residents had "unanimously opposed . . . the development" and it had "evaluated the proposal's impact on public health, safety, and welfare, consistent with their authority under the city zoning ordinance" was not arbitrary or capricious.

Case Note:

The court explained that for a decision to be deemed "arbitrary and capricious" with respect to a substantive due process claim arising from a zoning decision, it had to "shock the conscience." "[A] 'shocks the conscience' claim is not available in the Sixth Circuit for rezoning claims that do not establish a constitutionally protected property interest," the court explained. "And even if a freestanding 'shocks the conscience' claim were available for a rezoning case, Eureka's complaint does not include any factual allegations to support that claim."

Right-of-Way

Developer files suit alleging constitutional violations after planning commission denies plan because of right-of-way issue

Citation: *Ogle v. Sevier County Regional Planning Commission*, 2020 WL 7238430 (6th Cir. 2020)

The Sixth U.S. Circuit has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee.

The High Bridge Development Partnership (HBDP) wanted to build a large subdivision in Sevier County, Tennessee. It submitted a concept plan to the Regional Planning Commission (RPC), which included a 40-foot right-of-

way—subdivision regulations required a 50-foot right-of-way.

The RPC denied the plan due to the right-of-way issue. HBDP presented information to solve the problem, and the subdivision plan was initially approved.

But, the approval was short lived, and HBDP filed suit against the RPC claiming it violated its constitutional rights.

The lower court granted the RPC judgment without a trial, and HBDP appealed.

DECISION: Affirmed.

HBDP couldn't prove constitutional violations had occurred.

A CLOSER LOOK AT THE DISPUTE

HBDP bought close to a 1,000-acre parcel of land in Sevier County. Its plan was to build at least 400 homes on the property.

The property bordered Miller's Creek, a smaller subdivision, to the north, and a park to the south. The only road to both Miller's Creek and the property was Scottish Highland Way, which passed through an area known as the Foothills Parkway.

The applicable regulations governed right-of-way widths. The regulations categorized Highland Way as a "Minor Collector Street," so it had to have a 50-foot right-of-way. It had a 50-foot right-of-way along most of its length, but the parties disagreed about the right-of-way's width in the Foothills Parkway stretch: HBDP claimed it remained 50 feet, but the RPC contended it narrows to 40 feet.

BACK TO THE COURT'S RULING

The stage at which HBDP was in when the RPC revoked approval—the concept plan approval stage—didn't give it "the right to build the entire 400-to-450-tract subdivision." "Even if the concept plan were approved and [it] began utility and road construction, it still had to obtain final plat approval prior to proceeding further," the court explained. This meant "[a]ny construction before final approval was explicitly at its own risk."

Since the concept plan approval didn't come at the process' final stage, the RPC could "still exercise discretion prior to design plan approval." Thus, the "concept plan approval did not create a cognizable property interest."

Also, HBDP hadn't "identified any truly similarly situated comparators who the [RPC] treated differently. Even if it had, it still has not convincingly ruled out the many rational bases for enforcing the right-of-way requirement or demonstrated animus on the [RPC's] part."

PRACTICALLY SPEAKING

The court noted that the RPC's initial approval of HBDP's concept plan didn't "confer a property interest." "The revocation of the concept plan approval (which, it bears repeating, came before the final plan approval stage) was tantamount to a realization that [it] had not 'complied with certain minimum, mandatory requirements,'" the court explained. "Because the only reason for the revocation and subsequent denials was the right-of-way, at issue [wa]s not whether the

[RPC] could deny [HBDP's] concept plan after it complied with all of the 'minimum, mandatory requirements.' [It] had not done so. Nothing in the regulations or their associated statutory provisions affirmatively suggest[ed] the circumscription of discretion to the extent that would confer a property right here."

Zoning News from Around the Nation

New Jersey

Wayne Township asks judge to reconsider ruling impact its immunity from builder's remedy lawsuits

After a judge ruled the Township of Wayne (Wayne) wasn't entitled to be insulated from builder's remedy actions, it asked the judge to reconsider, *NorthJersey.com* reported recently.

Wayne contends it hadn't breached its duty to provide affordable housing opportunities in the township. But, the judge found Wayne had delayed in fulfilling local housing demand for half a decade, the news outlet reported.

As of print time, the judge hadn't yet ruled on Wayne's request for reconsideration.

Avalon Bay Communities Inc., a real estate investment trust, had filed a builder's remedy lawsuit against Wayne. It contended the township barred "the Mount Laurel doctrine," under which a municipality cannot use land-use authority to discrimination against low-income individuals.

When builder's remedy lawsuits succeed, they effectively can deem local zoning ordinances unlawful.

Source: northjersey.com

New York

Lansing ZBA to take up issue of whether code enforcement officer correctly concluded proposed detox area a "hospital"

As of print time, the Lansing, New York's Zoning Board of Appeals was scheduled to hear the Alcohol & Drug Council of Tompkins County's (ADCTC) reasons on why a proposed 40-bed medically supervised detox and stabilization unit at a site it secured in 2019 is not a "hospital," as the local code enforcement officer has concluded, the *Lansing Star* reported recently.

The news outlet reported that ADCTC had obtained the close to 20,000-square-foot facility, which has been operating as an outpatient facility. It had plans to convert the building's second level to a 40-bed detox area for adults with substance abuse disorders ranging from mild to moderate.

Source: lansingstar.com

Pennsylvania

Winery likely in vineyard's future thanks to recent court ruling

A panel of the Commonwealth Court of Pennsylvania has ruled against the North Middleton Township Zoning Hearing Board's decision to deny authorization for a couple to convert their grape vineyard into a winery, *Pennlive.com* reported recently.

The court's ruling paves the way for the landowners to build a store and have an event space on their property, the news outlet reported.

The court's ruling upheld a judge's conclusion that the requested use of the 12-acre parcel was permitted under the Rural Resource Zone provisions because a winery constituted an agricultural use, the new outlet reported. The judge also found that having a store and event space were reasonable outgrowths of a wine-making operation.

The controversy arose after neighbors expressed concern over traffic congestion, noise, loss of privacy, and diminished property values, the news outlet reported.

Source: pennlive.com

Rhode Island

Judge rules on Fane Tower proposal in Providence

A real estate developer that proposed to build a 46-story residential tower in the state capital has the green light to proceed, now that a superior court has ruled in its favor, *GoLocalProv.com* reported recently.

Judge Brian Stern issued the ruling on the private development project, which is predicted to be the most expensive in the city since the Providence Place Mall was constructed, the news outlet reported.

The lawsuit arose after plaintiffs filed suit against the developer and the Providence City Council in an attempt to prevent the project from moving forward. The plaintiffs asserted that it didn't conform to Providence's comprehensive plan.

About the ruling, the Fane Organization stated it's clear the zoning for the area where the tower would be built complies with the comprehensive plan. According to its website, "The Fane Tower," which is also referred to as the "Hope Point Tower" would be situated in the city's Innovation District and stand as the tallest building in the Ocean State. It would include apartments and amenities "to attract residents, both from among those already living in Providence, and those attracted to the new jobs being created in the Innovation District."

In ruling the developer may proceed, Judge Stern explained that municipalities may exercise discretion in determining how local ordinances and land-use decisions conform with their respective comprehensive plans, the news outlet reported.

As of print time, it was not confirmed those opposed to the project, including the Providence Preservation Society, will appeal this ruling.

Source: golocalprov.com

Zoning Bulletin

in this issue:

RLUIPA	1
Special Use Permit	2
Taking	3
Variance	4
Short-term Vacation Rentals	6
Zoning News from Around the Nation	7

RLUIPA

Priest along with Catholic library founder claim town unfairly enforced land-use ordinance against them

Citation: *Stark v. Town of Rumford*, 2020 WL 6785935 (D. Me. 2020)

Father Phillip Stark, the president of the Rumford Free Catholic Library, and one of the library's founders (collectively, the plaintiffs) filed suit against the town of Rumford, Maine for allegedly unfairly enforcing land-use ordinances against the library. The plaintiffs claimed town officials colluded with a private real estate agent to prevent them from buying more property in Rumford, in violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

More specifically, the plaintiffs alleged the town violated their rights by enforcing the zoning ordinance against the library but not enforcing it against secular organizations. In their view, this selective enforcement amounted to religious discrimination.

The town asserted that the plaintiffs failed to state a claim and that its request for dismissal should be granted.

DECISION: Request for dismissal granted.

The plaintiffs didn't state a valid RLUIPA claim.

The plaintiffs had to assert that the government had imposed or implemented "a land use regulation in a manner that impose[d] a substantial burden on the religious exercise of a person, including a religious assembly or institution," unless imposition of the burden "[wa]s in furtherance of a compelling governmental interest" and "[wa]s the 'least restrictive means of furthering that compelling governmental interest.'"

The First U.S. Circuit Court of Appeals, which has jurisdiction over Maine where this case took place, had previously outlined "several non-exhaustive factors to determine whether a land use regulation, or its application to a religious organization, [wa]s a substantial burden on religious exercise." These included whether:

- the regulation targeted a religion "because of hostility to that religion itself";
- the regulation was imposed on the religious institution "arbitrarily, capriciously, or unlawfully"; and
- local regulators had "subjected the religious organization to a process that may appear neutral on its face but in practice [wa]s designed to reach a predetermined outcome contrary to the group's requests."

Here, the plaintiffs claimed the decision to enforce the zoning ordinance against the library was arbitrary. However, their amended complaint didn't "provide sufficient factual allegations to support this claim," the court found.

For instance, the complaint stated that in late 2017 or early 2018, a town official ordered the Library “to cease and desist . . . its use of the [property] for religious and charitable purposes unless and until a change-of-use was established.” But, the plaintiffs didn’t “identify any facts to indicate that this enforcement action was ‘arbitrary’ or inconsistent with the governing ordinances,” the court ruled.

Just because the official had enforced the ordinance against the library, “without more, [it] did not support a reasonable inference that the enforcement was arbitrary, unlawful, or based on animus.”

The bottom line: The plaintiffs “allude[d] to the presence of ‘five non-religious non-profit organizations in the same residential zone’ as the Library,” but they didn’t “state any specific facts that would demonstrate that the [town] did not enforce its ordinance consistently, such as an allegation that the non-religious organizations ha[d] received exemp-

tions from the same ordinance that was enforced against the [library].”

In addition, the plaintiffs contended they were looking for a property to establish a community garden and that the private real estate agent had “object[ed] that a garden might not be permitted by [the town official].” The plaintiffs also asserted that the real estate agent had “made ‘several statements’ that demonstrate[d] ‘collusion’ between” the town official and the agent, “but they do not identify the substance of these statements or explain how they would show a disparity in enforcement,” the court found.

CASE NOTE

The court found that the amended complaint also didn’t “state specific facts from which it could reasonably be inferred that the [plaintiffs] were ‘singled out’ for enforcement of the zoning ordinance.” Allegations that five secular organizations were present “in the same residential zone” as the library did “not demonstrate that those organizations were ‘similarly situated’ to the [plaintiffs] with regard to their compliance with the [town’s] ordinance.”

The bottom line: The town’s ordinance might not have permitted a community garden on the property in question. “Thus, disparate enforcement [wa]s not a plausible inference” and the plaintiffs’ complaint didn’t “allege facts sufficient to raise a plausible inference that the[y] were treated differently than other ‘similarly situated’ landowners,” so they didn’t state a claim under RLUIPA’s nondiscrimination provision.

Special Use Permit

Court reviews decision about installation of onsite water treatment system

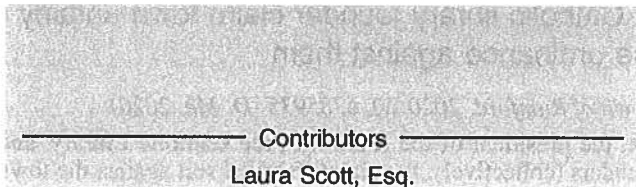
Citation: *Donatelli v. Town of South Kingstown Zoning and Planning Bd. of Review*, 2020 WL 6530880 (R.I. Super. Ct. 2020)

The Michele Donatelli Revocable Trust (the trust) owned property located at 1103 Curtis Corner Road in South Kingstown, Rhode Island. John Clark Donatelli, a co-trustee of the trust, filed an application with the Town of South Kingstown Zoning Board of Review for a special use permit in January 2019 to install an onsite water treatment system (OWTS) located within 150 feet of a wetland—and specifically, the application proposed a four-bedroom dwelling that would include an OWTS located with 120 feet of a wetland.

Under the town’s zoning ordinance, an advisory from the South Kingstown Conservation Commission (SKCC) had to be obtained prior to submitting an application for a special use permit. The SKCC held a meeting in May 2018, issued an advisory opinion, and recommended denying the special use permit unless critical changes it outlined were incorporated into the application before it was submitting to the Zoning Board of Review (ZBR).

The SKCC was concerned over some design features of the proposed OWTS and recommended that:

- the design be revised to include a pump tank so that



Contributors

Laura Scott, Esq.

For authorization to photocopy, please contact the **Copyright Clearance Center** at 222 Rosewood Drive, Danvers, MA 01923, USA (978) 750-8400, <http://www.copyright.com> or **West’s Copyright Services** at 610 Opperman Drive, Eagan, MN 55123, copyright.west@thomsonreuters.com. Please outline the specific material involved, the number of copies you wish to distribute and the purpose or format of the use.

This publication was created to provide you with accurate and authoritative information concerning the subject matter covered; however, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. The publisher is not engaged in rendering legal or other professional advice and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

Zoning Bulletin is published and copyrighted by Thomson Reuters, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526. For subscription information: call (800) 229-2084, or write to West, Credit Order Processing, 620 Opperman Drive, PO Box 64833, St. Paul, MN 55164-9753.

POSTMASTER: Send address changes to Zoning Bulletin, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526.



THOMSON REUTERS®

610 Opperman Drive
P.O. Box 64526
St. Paul, MN 55164-0526
1-800-229-2084
email: west.customerservice@thomsonreuters.com
ISSN 0514-7905

©2021 Thomson Reuters
All Rights Reserved
Quinlan™ is a Thomson Reuters brand

the functionality of the denitrification system can be evaluated based on the pumping rate and the exchange between the treatment system and the septic tank;

- the drainfield be redesigned as a pressurized shallow narrow drainfield to provide a smaller footprint—this would allow for the OWTS to be relocated closer to the driveway and garage with a greater setback from the wetland;
- a porous driveway should be considered;
- soil-erosion controls should be installed;
- clearing and grading at the site should be lowered to the greatest extent possible; and
- the applicant should maintain the OWTS maintenance contract, which the town would enforce.

In February 2019, Donatelli had a civil and environmental engineer testify about the OWTS site and installation. The ZBR certified the engineer as an expert, who discussed each of the SKCC's concerns.

Before the ZBR, a neighbor testified about concerns over the OWTS' maintenance. Specifically, he testified he was concerned that if the system was not properly maintained, the wells and wetlands located on the property would be contaminated.

Two of the ZBR members voted to approve the application, one member abstained, and ultimately the application didn't have the three votes needed to get approval to locate the OWTS within 150 feet of wetlands. The trust appealed.

DECISION: ZBR's decision quashed; case sent back to the ZBR for a new hearing.

The ZBR was created pursuant to the Rhode Island Zoning Enabling Act of 1991, which mandated "[a] zoning ordinance adopted . . . shall provide for the creation of a zoning board of review and for the appointment of members, including alternate members, and for the organization of the board." A specific section of the act also stated that the ZBR had to consist of "five (5) members, each to hold office for the term of five (5) years; provided, that the original appointments are made for terms of one (1), two (2), three (3), four (4), and five (5) years, respectively."

The ZBR also included "two (2) alternates to be designated as the first and second alternate members, their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two (2) members of the board are unable to serve at a hearing."

The act stated that "[f]ive (5) active members [we]re necessary to conduct a hearing. As soon as a conflict occur[red] for a member, that member shall recuse himself or herself, shall not sit as an active member, and shall take no part in the conduct of the hearing. Only five (5) active members [we]re entitled to vote on any issue."

The bottom line: "The unambiguous language of the [act] require[d] five (5) members of the [ZBR] to conduct and decide an application presented at a hearing," the court ruled.

In this case, while five members of the ZBR conducted the hearing, "only 4 were permitted to vote because one of

the active members recused himself before the vote was conducted," the court explained. "The competent hearing record shows that after the application was put forth for a vote, there was a discussion concerning [one of the board member's] request to abstain."

The board member claimed to be "conflicted" and wanted to recuse himself. "The resulting vote of the board after [his] statement of abstention rendered the decision of the zoning board illegal," the court found. "The vote by [this board member] after he abstained was a fatal flaw rendering a board's decision was illegal," the court added.

Practically Speaking:

The ZBR was bound to follow certain procedural requirements under state law. After this board member abstained, the decision to deny the application was rendered "illegal and based on improper procedure." "[P]roceeding to vote and rendering a decision after the abstention rendered the decision illegal."

Taking

Lawsuit follows town's denial of application to build a single-family home

Citation: *Martin v. Town of Simsbury*, 2020 WL 7230895 (D. Conn. 2020)

Timothy Martin, who wanted to build a single-family dwelling on a parcel of land in Simsbury, alleged the town of Simsbury, Connecticut and several town officials employed by the Zoning Board and the Conservation Commission (collectively, the town) thwarted his development of the land in violation of the Fifth Amendment.

On Martin's constitutional claim, the town requested judgment without a trial.

DECISION: Request for judgment without a trial granted.

Martin couldn't demonstrate that a "taking" had occurred by virtue of the denial of the application to build a single-family residence.

Regulatory taking—Martin argued the town's denial of his request to develop the land constituted a taking of the property without just compensation. "Although the 'clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use,' the Supreme Court has 'recognized that there will be instances when government actions do not encroach upon or occupy the property yet still affect and limit its use to such an extent that a taking occurs,'" the court explained.

There were two types of regulatory takings:

- **categorical**—this occurred when the taking occurred "in 'the extraordinary circumstance when *no* productive or economically beneficial use of land is permitted'"; and
- **non-categorical**—that is, "when a regulation impede[d] the use of property without depriving the

owner of all economically beneficial use,” in which case other factors were considered, namely, the economic impact on the claimant, whether the regulation “interfered with distinct investment-backed expectations,” and the “character of the governmental action.”

In the town’s view, no reasonable jury could find a categorical taking had occurred. The court agreed because Martin’s property hadn’t “been rendered valueless or deprived of all economically beneficial use.” “Despite the denial of [his] permit application and variance request, the [p]roperty still retain[ed] value—in 2019, the [p]roperty was appraised at \$26,712.00,” the court noted.

Martin alleged that a taking was effectuated “because he was denied the ability to build a single-family residence.” But “even under a non-categorical takings claim, [he could not] establish a taking ‘simply by showing that [he has] been denied the ability to exploit a property interest that [he] heretofore had believed was available for development[.]’ ”

Also, even though Martin couldn’t develop the property as a rear-lot subdivision, there were other “economically beneficial uses of the [p]roperty.” For example:

- **Martin could have sold parts or the entire property to abutting property owners or combine the property with 9 Dogwood Lane, which a construction company owned; and**
- **he could build an accessory structure, such as a swimming pool or a tennis court, on the property.**

Therefore, there was no genuine issue of material fact that the property wasn’t “deprived of all economically beneficial use, [so] no reasonable jury could find that a categorical taking occurred.”

A non-categorical taking also had not occurred. First, the “inability to build a single-family residence on the [p]roperty d[id] not, of itself, create a taking,” the court explained. There were other economically beneficial uses of the property, and while there was evidence the property’s value had decreased “significantly” (a 2019 appraisal of \$117,768 fell to \$26,712), this fact had to be balanced against the land-use regulations. Such regulations were generally designed to promote “the general welfare,” so more than a decrease “in property value, standing alone, [could not] establish a ‘taking.’ ”

Also, there weren’t any changes “in the law that resulted in the impairment of [Martin’s] property rights. Rather, it appears that [he] [wa]s simply frustrated by the [town’s] application of existing regulations to his [p]roperty when refusing to grant him a variance or approve his permit application,” the court noted.

The bottom line on this point: A frontage requirement existed, and Martin “was fully aware of th[at] frontage requirement.” He contended that a town official had initialed the relevant map and filed it with the town, which resulted in the creation of an approved building lot with the requisite frontage. But, a court previously rejected that argument, so Martin’s “expectations regarding satisfaction of the frontage requirement were not reasonable.”

Martin also argued wetlands regulations didn’t apply to the property because the town relied on a state, not a town, map to determine the property contained wetlands. Even if

Martin was correct, “he never appropriately advanced this argument . . . to the Conservation Commission,” so he couldn’t “now establish a regulatory taking because there . . . never [had] been a determination . . . that the wetlands regulations apply to his property,” the court found.

Finally, the court considered the character of the governmental action. Here, the town denied Martin’s permit application because he hadn’t submitted an application to the Conservation Commission regarding the wetlands issue. The applicable “Inland Wetlands and Watercourses Regulations, like the [t]own’s zoning regulations, s[ought] to serve the public interest—‘[t]he preservation and protection of the wetlands and watercourses from unnecessary, undesirable and unregulated uses, disturbance or destruction is in the public interest and is essential to the health, welfare and safety of the citizens of the state,’ ” the court explained.

These regulations were designed “to protect the citizens of the state by making provisions for the protection, preservation, maintenance and use of the inland wetlands and watercourses.”

Therefore, they prevented individuals “from conducting ‘a regulated activity in a regulated area of the [town] without first obtaining a permit from the Commission.’ ”

Martin was told he had to get the Conservation Commission’s approval, but “he elected not to do so.” The town didn’t “physically invade the [p]roperty. It simply required [him] to seek approval from the [c]ommission before developing the [p]roperty in an effort to serve the public’s interest regarding the protection of inland wetlands and watercourses,” the court noted. So, no reasonable jury could find a regulatory taking had occurred when the “regulations alleged to have caused the harm [we]re ‘part of a public program adjusting the benefits and burdens of public life’ and to which all landowners in the [t]own [we]re subject.” This factor, the court added, weighed against a finding that a regulatory taking had occurred.

Variance

After variance request denied, ‘household’ ordinance challenged on grounds it violated FHA

Citation: *Swanston v. City of Plano, Texas*, 2020 WL 7080817 (E.D. Tex. 2020)

The city of Plano, Texas enacted Ordinance No. 2009-6-9 in 2009, which altered its existing zoning code. Specifically, the amendment defined “household” as permitting two groups of people to make up a “domestic unit.” It stated “one or more individuals related by blood, marriage, adoption or recognized legal union or guardianship, and not more than four adult unrelated individuals, plus any minor children” and “persons residing in a household care facility.”

Households were permitted to live in single-family zoning districts as of right. The ordinance also modified the definition of “household care facility” to limit the provision of “residence and care to not more than eight persons, regardless of legal relationship.”

The only limit imposed by the zoning code on the number of people constituting a household of “one or more individuals related by blood, marriage, adoption or recognized legal union or guardianship, and not more than four adult unrelated individuals, plus any minor children,” was that of the maximum occupancy permitted by the city’s safety ordinances.

In November 2018, Women’s Elevated Sober Living LLC (Elevated), a Texas limited liability company providing support services for recovering drug and alcohol addicts, opened a sober living home at 7312 Stoney Point Drive in Plano, which was located in the SF-7 single-family residential district. Elevated operates the home under an arrangement with Constance Swanston, Elevate’s landlord who also served as a member of Elevated and worked to operate the home.

Since Elevated opened, it housed as many as 15 to 19 unrelated residents at a single time. But, several citizens complained, so the town informed Elevated that operating with 15 residents violated zoning restrictions for the neighborhood where the home was located.

Elevated applied for a reasonable accommodation in the form of a variance to allow up to 15 unrelated disabled individuals to live in the home. At a hearing before Plano’s Board of Adjustments (the board), more than 50 local homeowners expressed concern over the home’s location.

The board denied the request for a variance, Swanston and Elevated launched a lawsuit alleging Plano had violated the Fair Housing Act (FHA).

The court had to decide whether to grant Plano’s request for judgment without a trial.

DECISION: Request for judgment without a trial granted in part.

Plano’s request for judgment on Swanston’s facial challenge to the ordinance granted as to the “direct-evidence theory of the FHA claim for disparate treatment,” but judgment denied as to a “circumstantial-evidence theory” of the FHA claim for disparate treatment.

Direct-evidence theory—The FHA barred a governmental entity from “discriminating against individuals with disabilities.” Under Section 3604(f)(2) of the FHA, it was unlawful to discriminate “in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of (A) that buyer or renter[;] (B) a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or (C) any person associated with that buyer or renter.” It also barred discrimination “in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling’ on account of a handicap of (A) that person; or (B) a person residing in or intending to reside in that dwelling after it is so sold, rented, or made available; or (C) any person associated with that person.”

Further, a refusal to make a reasonable accommodation “in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling’ constitute[d] discrimination for purposes of the FHA.”

There were three ways to demonstrate liability for FHA discrimination:

- disparate treatment;
- disparate impact; and
- failure to make a reasonable accommodation.

“Disparate treatment [wa]s synonymous with intentional discrimination—which [Swanston and Elevated] allege[d] [Plano] committed in the drafting and enactment of the [o]rdinance,” the court explained. Also, intentional discrimination could be proven with “direct or circumstantial evidence.”

Direct evidence could be shown if the ordinance “on its face” “demonstrate[d] ‘an intent to discriminate’ against those with disabilities. If that was shown, no ‘additional evidence of discriminatory animus’ [wa]s needed.” And, if no direct evidence was present, a plaintiff could present circumstantial evidence under a burden-shifting analysis.

Specifically, to establish a valid claim with circumstantial evidence, a plaintiff needed to “satisfy . . . a multi-factor test from which a discriminatory motive [could] be inferred, thus creating a rebuttable presumption of intentional discrimination.” If a plaintiff succeeded at that, the burden shifted to the defendant to “articulate—but not prove—a legitimate nondiscriminatory reason for its action.” “A defendant me[t] this burden by producing admissible evidence of a reason that would be ‘legally sufficient to justify a judgment for the defendant,’ ” the court explained.

If the defendant met that burden, the plaintiff had the opportunity to demonstrate that the reason the defendant gave was a pretext for discrimination.

DID ELEVATED PROVIDE DIRECT EVIDENCE OF DISCRIMINATION?

Swanston and Elevated contended the ordinance discriminated against disabled individuals by recognizing these two types of domestic units. “Specifically, [they] posit[ed] that this regulation favors ‘family and friends’ over those in ‘group sober living’ by permitting as many ‘family and friends’ in a household as [Plano’s] safety code allow[ed] while limiting the number of residents in a ‘household care facility,’ excluding caretakers, to eight,” the court explained. “This argument is unpersuasive,” it found.

“The maximum number of unrelated people *without* disabilities that may share a domestic unit is four. By contrast, the maximum number of unrelated people *with* disabilities that may share a domestic unit is eight, not including caretakers. Just on its face, the Ordinance treats unrelated disabled persons better than unrelated non-disabled persons,” the court found.

The bottom line: Swanston and Elevated found “the occupancy limits within the SF-7 single-family residence zone facially disagreeable.” “‘But every line drawn . . . leaves some out that might well have been included,’ and the police power of municipalities to institute land-use regulations enables [the city] to draw such lines,” the court noted. Therefore, the ordinance wasn’t facially discriminatory in violation of the FHA.

Circumstantial-evidence theory—Swanston and El-

evated had to show intentional discrimination, that is, that the disparate treatment was “predicated on disability” at which point the burden shifted to Plano to assert “a legitimate, nondiscriminatory reason explaining the difference in occupancy levels depending on the type of domestic unit in a household.”

Plano contended the occupancy limits were justified because they “promot[ed] the general welfare . . . [and] ‘family values,’ and control[ed] density in a residential neighborhood.”

The “police power” provided to a municipality for purposes of zoning wasn’t unlimited. Ultimately, the court found there were genuine issues of material fact as to the reasons Plan provided for enacting the ordinance. A reasonable jury may be able to find its reasons were a pretext for discrimination, so the court denied Plano’s request for judgment on the circumstantial-evidence theory of the FHA claim for disparate treatment.

Short-term Vacation Rentals

After planning department caps number of available permits at zero, rental association files suit

Citation: *Maui Vacation Rental Association, Inc. v. Maui County Planning Department*, 2020 WL 6829753 (D. Haw. 2020)

Maui Vacation Rental Association, Inc. (MVRA) and others challenged the legality of Maui County Hawaii’s Ordinance No. 5059, which capped the number of permits for short-term rental homes on the island of Molokai at zero.

The Maui County Planning Department (MCPD), the county, and the county mayor filed a request for the court to abstain.

DECISION: Request for abstention granted.

Abstention was proper following analysis of three “*Pullman* doctrine” factors.

A CLOSER LOOK

In 2012, the county enacted Ordinance 3941, which created a new category of permitted uses of real property called short-term rental homes (STRHs) and set out various conditions and procedures that govern the issuance of permits for STRHs. Under Ordinance 3941, all owners of real property in the county who leased their homes for less than an initial term of 180 days had to get a permit to do so, with certain exceptions.

The ordinance also included a comprehensive permitting scheme and various performance-based standards designed to mitigate the effects of STRHs on neighboring properties.

Between 2016 and 2019, the county and the planning department imposed a series of ordinances and administrative rules outlining the requirements for STRH permits and the county’s enforcement mechanism for STRH-noncompliance.

MVRA claimed planning department had acted inconsistently and unpredictably when deciding whether to grant STRH permits by giving significant weight to whether the applicants’ neighbors opposed the issuance of the permits.

Then, in March 2020, the county adopted Ordinance 5059, with its zero cap. The ordinance also precluded the renewal of existing STRH permits, stating that such permits shall remain valid through December 2020.

In effect, the ordinance “shut down all” of Molokai’s STRHs as of December 31, 2020, even if there were valid permits that go beyond the end of the year, MVRA asserted.

BACK TO THE COURT’S RULING

MVRA alleged that the Hawaii Zoning Enabling Act protected nonconforming uses of property, and therefore allowed the property owners to continue using their properties as STRHs because they had obtained permits pursuant to Ordinance 3941.

MVRA also contended Ordinance 5050 violated state law, which barred the amendment of a zoning law to prohibit a lawful pre-existing use. It also argued the ordinance violated the Hawaii and U.S. Constitutional protections for non-conforming uses and vested rights.

“Whether [the] STRHs constitute[d] a nonconforming use under Hawaii and the [c]ounty’s land use laws [wa]s therefore a critical question,” the court wrote. The county contended that the “*Pullman* abstention doctrine” applied here. That doctrine “authorize[d] district courts to postpone the exercise of federal jurisdiction when a ‘federal constitutional issue . . . might be mooted or presented in a different posture by a state court determination of pertinent state law.’”

The court explained that *Pullman* abstention was proper when:

- the case “**touche[d] on a sensitive area of social policy upon which the federal courts ought not enter unless no alternative to its adjudication [wa]s open**”;
- “**constitutional adjudication plainly c[ould] be avoided if a definite ruling on the state issue would terminate the controversy**”; and
- “**the proper resolution of the possible determinative issue of state law [wa]s uncertain.**”

If these requirements weren’t met, the court would lack discretion to abstain, it added.

Here, the central issue to be decided concerned “a challenge to a municipal ordinance that substantially limit[ed] a certain use of real property—STRHs—in a geographically distinct portion of a county.” “The Ninth [U.S.] Circuit has long held that land-use planning questions ‘touch a sensitive area of social policy’ into which the federal courts should not lightly intrude,” the court explained.

Because the “short-term rental issue has been and continues to be a hot-button topic and a sensitive issue of social policy throughout the State, the first factor is met,” the court ruled.

For the second factor to apply, the “state law question” had to have “the potential of at least altering the nature of

the federal constitutional questions.” It was “sufficient if the state law issues might ‘narrow’ the federal constitutional questions.” “Courts have consistently found this requirement satisfied in land use cases ‘where a favorable decision on a state law claim would provide plaintiff with some or all of the relief he seeks,’ ” the court added.

MVRA asserted that property owners could continue operating STRHs because their existing permits made such use a nonconforming use and a vested right, and ultimately, the court found that the second *Pullman* factor was “satisfied as there [wa]s a possibility that resolution of certain state law questions would reduce if not eliminate the need to resolve federal constitutional questions.”

Finally, the court explained, the third *Pullman* factor could be satisfied in land-use cases with “ ‘a minimal showing of uncertainty’ because ‘land use claims are local in nature and involve the interpretation of various state and local land use laws[.]’ ” Here, the court concluded it couldn’t “predict with any confidence how Hawaii’s highest court would decide [the] state law challenges to Ordinance 5059.” “Indeed, the applicable land use regulatory scheme is complicated, and the state law issues are novel and sufficiently important such that they should be addressed by the state courts first. For these reasons, the [c]ourt finds that the third requirement is met,” the court ruled.

With the third and final factor satisfied, the federal court abstained pursuant to *Pullman*.

Zoning News from Around the Nation

California

Request to zone building so an inmate re-entry facility could operate denied

The Desert Hot Springs, California City Council was recently asked to examine whether a decision to deny zoning for an inmate re-entry facility should stand, *KESQ.com* reported recently. In December 2020, the City Council unanimously voted to uphold the decision, which from a practical standpoint means a formerly used spa will not be able to operate as a place for inmates to carry out their sentences, the news outlet reported.

Upward Housing claimed the facility met the “social services facility” definition under the local zoning code. Specifically, it contended the proposed facility aligned because residential facilities were covered under the phrase “social services facility.”

A councilmember stated that the facility didn’t meet the definition since the facility would serve inmates. Also, the word “residential” had been stricken from the definition in the fall of 2020, the news outlet reported. Thus, under the applicable zoning provision, social service facilities meant those providing social services-related help where no one resided.

Source: [kesq.com](https://www.kesq.com)

Illinois

Proposal to create landmark district in Chicago Southwest Side neighborhood won’t be moving forward

A Chicago city committee voted recently to block a plan

to create a landmark district in the Pilsen neighborhood of the city, which consists of close to 1,000 Baroque-style buildings, *CBSN Chicago* reported recently. Ald. Bryon Sigcho-Lopez, joined by many residents, grew concerned that the designation could increase gentrification, forcing lower-income individuals out of their properties, the news outlet reported.

In February 2019, a Preliminary Summary of Information was submitted to the Commission on Chicago Landmarks, and this can be downloaded at chicago.gov/content/dam/city/depts/zlup/Historic_Preservation/Publications/Pilsen_Historic_District_Prelim_Summ.pdf.

The zoning commission chairman told the news outlet he hopes Sigcho-Lopez can introduce other ways to preserve the character of the area in a way that doesn’t put in place a demolition moratorium.

Source: [chicagocbslocal.com](https://www.chicagocbslocal.com)

Indiana

Judge issues injunction to block enforcement of Terre Haute’s ‘adult club’ ordinance

A federal judge has granted a preliminary injunction to block the enforcement of Terre Haute, Indiana’s adult-venues zoning ordinance, the *Tribune-Star* reported recently. The judge concluded the ordinance overstepped by giving the local government unrestrained discretion to grant or deny permits.

The case arose after a lawsuit was filed against Terre Haute’s Board of Zoning Appeals. Generally, regulations are expected to be designed to be “content neutral”—not to become a vehicle to silence one point of view. Thus, by trying to suppress nude dancing, which the judge described as a form of expression, it was likely the plaintiff in this case would succeed on the merits of the claim against the city that the ordinance as applied to adult businesses is invalid on its face, the news outlet reported.

Source: [tribstar.com](https://www.tribstar.com)

Louisiana

Request to rezone acres next to a middle school rejected in Gonzales

A request to rezone more than 10 acres next to the Gonzales, Louisiana Middle School was rejected at a recent Gonzales Planning and Zoning Commission meeting, the *Gonzales Weekly Citizen* reported.

Many residents showed up to the meeting to express concern over the proposal, arguing that the rezoning would impact housing density, which in turn would have a negative impact on drainage in an already flood-prone area, the news outlet reported.

With the request to rezone denied, the commission also denied a preliminary plat and drainage impact study, Gonzales’ chief administrative officer told the news outlet.

This wasn’t the only controversial issue on the commission’s docket, either. The news outlet reported that it also took up the issue of whether to permit the proposed annexation of a tract of land near Highway 44 and State Road 941. The property owner requesting annexation contended that once the state builds a roundabout at the intersection near his parcel, no one will be able to build a home there, so he’s

looking to sell the land to someone who wants to put up an office building potentially, the news outlet reported.

The commission opted to shelve this item because it's unclear what the proposed use of the property could be in reality if annexation is granted, the news outlet reported.

Source: weeklycitizen.com

Wisconsin

Building that housed library cleared for demolition so a clinic can be erected

No historic status—that's the decision of the Milwaukee Common Council's Zoning, Neighborhoods and Development Committee, concerning a former library that will likely be demolished so a new Children's Wisconsin clinic can be built, the *Milwaukee Journal Sentinel* reported recently.

As of print time, the committee's 5-0 vote was set to go before the full council for review for final approval.

A city historic preservation planner explained to the committee that the library, which is still in good condition, had a place in launching city library branches, which in-and-of-itself a historic movement, the news outlet reported.

That planner also told the committee that the way the exposed Cor-ten steel was used to construct the midcentury modern library was not customary, making the library a standout building.

In opposition, ICAP Development and Groth Design Group, which was hired to design the clinic that may be built on the land, told the committee other library branches in the city were constructed many decades before the Forest Home Branch, thus its historic significance isn't as great as it's being made out to be, the news outlet reported.

Source: jsonline.com