

CITY OF ELKO
PLANNING COMMISSION
REGULAR MEETING MINUTES
5:30 P.M., P.D.S.T., TUESDAY, MAY 1, 2018
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

Present: **David Freistroffer**
 Ian Montgomery
 John Anderson
 Kevin Hodur
 Stefan Beck
 Tera Hooiman
 Jeff Dalling (*Arrived at 5:33 p.m.*)

City Staff: **Scott Wilkinson, Assistant City Manager**
 Jeremy Draper, Development Manager
 Cathy Laughlin, City Planner
 Bob Thibault, Civil Engineer
 Shelby Archuleta, Planning Technician
 John Holmes, Fire Marshal

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments at this time.

APPROVAL OF MINUTES

April 3, 2018 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the meeting minutes from April 3, 2018.**

Moved by Kevin Hodur, Seconded by Tera Hooiman.

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

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Preliminary Plat No. 3-18, filed by Robert E. Morley on behalf of Riverside Villas Nevada, LLC, for the development of a subdivision entitled Riverside Villas a Condominium Development involving the proposed division of approximately 7.872 acres of property into 97 lots and a common area for residential development within the C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the northwest corner of the intersection of S. 12 Street and Opal Drive (APN 001-630-077).

Commissioner Jeff Dalling arrived at 5:33 p.m.

Branson Brinton, 1319 E Iron Boberg Circle, Draper, UT, explained that the project was Riverside Villas apartment complex. He pointed out Phase 1 of the project, which consisted of 96 three bedroom units, and Phase 2 would consist of 60 one and two bedroom units. Phase 1 was originally built, and approved, as condominiums, but then it was reverted to acreage and since 2009 has been rented. Now they would like to convert again to condominiums and sell them. They would like to first offer the units to the individuals who are currently living in them, to give them the opportunity first, and then go out to the general public to find people. The noticing is an important component of this. NRS requires anyone they offer the unit to have 60 days to respond. There is also a 120 day notice to vacate too. If they provided the offer to purchase along with a notice to vacate, someone who is not in a lease, then they would be able to decide whether they want to buy the unit, and if not they would have an additional 60 days to move elsewhere. They are not allowed to offer the same unit to someone else for 240 days at terms better than what they offer to the tenant. They have been in the rental market for a while, and it had been a challenge with occupancy. Among most of their comparable properties, some were in the 80 to 85% range, most with multi-family projects they want to see it in the 95% range. They feel that doing the conversion would provide a product to buyers in the Elko market, which doesn't currently exist, and it would also remove some of the rentals units from the market and improve the overall rental picture.

Cathy Laughlin, City Planner, went over City of Elko Staff Report dated April, 23 2018. She also explained that an amendment to the CC&R's was handed out, as well as an email that those would be an amendment to the CC&R's. Staff recommended approval with the conditions listed in the Staff Report.

Jeremy Draper, Development Manager, explained that this was unique because it was a conversion of an apartment complex to condominiums. He looked at the NRS regarding this project. NRS 116 deals with these types of units, common owned spaces, and in that section there is specific language for conversion on units from multi-family rental unit to an ownership unit. Mr. Brinton is aware of that. He has done some research on that and that's why he spoke about the notifications. Mr. Draper appreciated that Mr. Brinton outlined some of that process as that was one of the City's concerns. The Development Department reviewed this application. Conditional Use Permit 2-15 was for multi-family housing, so staff believed that as it was stated in that manner, and not as an apartment complex, the Condition Use Permit is still applicable as a condominium, because it is still considered multi-family housing per the Elko City Code. Going through Section 3-3-5, which is the Preliminary Plat stages, he found that the Preliminary Plat

was in conformance with the requirements of the Section in Code, and 3-3-7 as well. He did not find any errors or emissions. With NRS 116, Common Interest Ownership, the developer shall comply with this section of NRS. Also, the developer shall provide a copy of notices given to residents for the conversion of the buildings per NRS 116. Staff wants the notices on file so as we go through this process we expect to get phone calls from the residents. He had two conditions, which were listed in the staff report. He said he also reviewed the CC&R's, which staff felt was a requirement because they have a homeowner's association for the complex. Staff reviews the CC&R's, but they aren't something that is enforced by the City. Staff wanted to review them to make sure they were in compliance with the Code. In this particular case, because there is a CUP associated with the project, staff wanted to make sure that items within the Conditional Use Permit were being addressed within the CC&R's. Staff sent them a list of four questions, and they responded to that today. Staff has reviewed the items that they modified and believe that they are meeting the intent of the Conditional Use Permit, and that the CC&Rs are strong enough that the Conditional Use Permit will be satisfied moving forward. He thought there was still some Legal Review on some things. Staff asked for a Legal opinion in meeting some of the obligations, which has not been received by City Legal Counsel.

Ms. Laughlin added that in the four questions staff asked Mr. Brinton, on Question No. 3 in relation to the First Amendment for the Reciprocal Easement Agreement. The First Amendment was addressing the leasing office between the two properties. It is a revocable agreement between the two properties, that the leasing office would be in complex number 1 and that complex number 2 could use the leasing office. Staff requested from the owners some clarification on that. Currently, they are working the leasing office out of one of the apartments, which will now be converted into a condo. Staff doesn't want a situation where they revoke the property owner of property number 2's rights to use the leasing office. That was one clarification that will need to see from the property owner. As well as the legal opinion that Mr. Draper referred to. Staff just wants to make sure there is a high level of security for the Conditional Use Permit.

Bob Thibault, Civil Engineer, recommended approval, with one condition that they show the existing flood zone and water way of the Humboldt River on the map.

John Holmes, Fire Marshal, recommended approval with the Fire Department conditions listed in the Staff Report.

Scott Wilkinson, Assistant City Manager, thought the biggest concern was that there were two different properties that needed to function as one project. There are two different ownerships on both properties. Staff has seen a lot of revisions, not to the use of the property, but from condos to apartments, multiple revisions on Conditional Use Permits. An important part of this functioning as one complex is the adherence to the CUP and the sharing of amenities. He asked the applicant where the lease office would be for the apartments if all the units are sold. He asked how that would be managed. It is important that the City understands the legal structure of agreements that are on record with the County, versus CC&R's, verses Bylaws. He thought CC&R's could be changed with 85% of the vote of the homeowners. As the owner of all the units you could amend the CC&R's and relieve the homeowners of some obligations under the CUP. The City needs to have absolute certainty that whatever is of record, that cannot occur. That's why staff is asking for a legal opinion. The applicant needs to hire an attorney that clearly shows the legal status of all the agreements that are of record, how those relate to the proposed

condos, and then the City attorney will review that to concur with the legal opinion and make sure the City is protected going forward. With that he recommended conditional approval subject to the verification that he just talked about, the applicant submitting the legal opinion, the City being able to verify it, and have all that completed before the City Council considers the Preliminary Plat.

Chairman David Freistroffer said it was his understanding that there was a reciprocal easement as well.

Ms. Laughlin explained that it was a reciprocal easement agreement, it was in the packet. It's the agreement between the two property owners for amenities and access.

Chairman Freistroffer said they needed to know how that easement interfaces with the CUP.

Ms. Laughlin explained that the email that was provided, question no. 1 the answer was yes. That's what we asked for clarification from their Legal Counsel, is that that is the umbrella agreement. The new CC&R's would be under that agreement.

Mr. Wilkinson said the agreement that is currently recorded cannot be revised, or amended, by the parties without the City's consent. There is some protection there. Question No. 3 in the email, they talk about the leasing office will remain where it is during the condo sale process, but where does the leasing office for the apartments go to if all the units are sold as condos. He assumed they would want to use one of the apartments, but wasn't sure if they could do that. That needed to be clarified. Mr. Wilkinson had some concern that their agreement is currently structured, that is on record, allows for the use of the leasing office under a revocable permit. So, they could revoke it at some point. We will need to get certainty on all these questions before we move forward with the Preliminary Plat consideration by the City Council.

Mr. Draper said one other point of clarification was that they met with the developer during the Stage 1 Meeting. A lot of these issues were brought up to them at that time. They had extensive discussions with them about the transition process, making sure amenities were still in place for future renters, if it did remain as half condos and half rentals. Staff has been working with developer on this since the first meeting with them. We want to make sure we have this is correct and that there is some protection in place, not only for the City with the Conditional Use Permit, but also for the renters and those that may purchase the units.

Mr. Wilkinson asked if there was a tot lot in Phase 2.

Mr. Draper said no, it was in Phase 1. He didn't think they had that as a condition of Phase 2.

Mr. Wilkinson said there's a pool, tot lot, leasing office, clubhouse, and weight room, in addition to some right-of-way landscaping. All of that has to be preserved, going forward, so that this functions as one complex, and we don't get the responsibility for the right-of-way landscaping placed on the apartments, or we don't get the loss of use of the amenities taken away from the apartments.

Chairman Freistroffer asked if there was an opinion from City Staff on if they were ready to approve the application, but have it wait to go to City Council until the legal opinion has been satisfied, or if staff would recommend tabling.

Mr. Wilkinson recommended conditional approval subject to a legal opinion.

Commissioner Stefan Beck said it looked like everything was covered. He hoped that as the timeline went on and that as the applicant made the changes that the tenants are well treated and have enough time to make the arrangements they needed to make.

Mr. Brinton said they expected to have the letter back on Friday from the attorney. Everything was drafted by their in house attorney, who has a Nevada License, but it's not active. They have gotten the Nevada Council to provide the letter and review everything that they have done to make sure they have all the ducks in a row. With regard to the leasing office, they plan to continue to have it in the same place and have it be a leasing office and a sales office. Once the condominiums are sold, they don't anticipate having a full time property manager for the 60 unit apartment. They don't typically have one at that size. The same property management company that will be managing the 60 units of Phase 2 will be administering the HOA. It will be a unified process. They anticipate selling one unit per month, conservatively. It will take some time. They expect the office to remain in the same place.

*****Motion: Forward a recommendation to City Council to conditionally approve Preliminary Plat No. 3-18 with the conditions and findings listed in the City of Elko Staff Report dated April 23, 2018, with an additional condition from the Assistant City Manager, listed as follows:**

Development Department:

1. The applicant submits an application for Final Plat within a period of four (4) years in accordance with NRS 278.360(1)(a). Approval of the Preliminary Plat will automatically lapse at that time.
2. The applicant shall comply with the requirements of NRS 116. The developer shall provide a copy of any notices required to be provided to the residents pursuant to this section of NRS.

Engineering Department:

1. Show existing flood zones and water way.

Fire Department:

1. D103.6 Signs: Where required by the fire code official, fire apparatus access roads shall be marked with permanent NO PARKING-FIRE LANE signs. Signs shall have minimum dimensions of 12 inches wide by 18 inches high and have red letters on a white reflective background. Signs shall be posted on one or both side of the fire apparatus road as required by Section D103.6.1 or D103.6.2.
2. Red Fire Lane Curbs will also need to be painted.

Assistant City Manager:

1. Riverside Villas Nevada, LLC is obligated under the proposed CC&R's and ByLaws to meet conditions of CUP 2-15, verification is required prior to City Council consideration of the application, and a legal opinion subject to City review is required.

Commissioner Hodur's findings to support his recommendation are the proposed subdivision is in conformance with the Land Use Component of the Master Plan. The proposed subdivision is in conformance with the Transportation Component of the Master Plan. The subdivision is in conformance with the Elko City Code Section 3-2-3. Multiple family residential developments, which contain five (5) or more units, are a permitted conditional use provided for in the Commercial Zoning District. The development has an approved Conditional Use Permit 2-15. The subdivision is in conformance with Elko City Code 3-2-4. The subdivision is in conformance with Elko City Code 3-2-5(E) and (G). The subdivision is in conformance with Elko City Code 3-2-17 for off street parking requirements. The subdivision is in conformance with Elko City Code 3-2-10(B) with the approved Conditional Use Permit 2-15. The Redevelopment Plan does not apply to the proposed subdivision. The existing development is in conformance with the City Wellhead Protection Program. The subdivision will not result in undue water or air pollution. The proposed development will not cause unreasonable soil erosion or the reduction in the capacity of the land to hold water resulting in dangerous or unhealthy conditions. The proposed subdivision will not create an unreasonable burden on the existing water supply. The existing development is currently served with existing utilities. The proposed development is not expected to have a negative impact on available public services. The requirement for a traffic study has been satisfied.

Moved by Kevin Hodur, Seconded by Tera Hooiman.

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

2. Review, consideration, and possible action on Zoning Ordinance Amendment 1-18, Ordinance No. 829, an amendment to the City Zoning Ordinance, specifically Section 3-2-11 IBP, IC Industrial Districts and matters related thereto. **FOR POSSIBLE ACTION**

Ms. Laughlin explained that the Planning Commission initiated this Zoning Ordinance Amendment in March. It's a small change to the development standards of the IC district. Previously, in the IC District, if a development was developing as a Commercial type use, then they would follow the development standards under the Commercial Zoning District. If they were developing as a Light Industrial type use, then they would follow the Light Industrial development standards. Staff realized that that was not going to work for Elko. There were a couple buildings that were zoned IC that had a Light Industrial and a Commercial use within the same building. If it could be developed at this point twenty years from now how will we know that it was developed towards the Light Industrial development standards? Staff felt that they needed to clear it up. It is a housekeeping item. Under the IC Zoning District, no matter what, the setbacks will be five feet.

Mr. Draper, Mr. Thibault, and Mr. Holmes had no additional comments.

Mr. Wilkinson recommended approval as presented.

Chairman Freistroffer thought this was a good compromise between the Industrial and Commercial setbacks.

*****Motion: Forward a recommendation to City Council to adopt an Ordinance, which approves Zoning Ordinance Amendment 1-18 of the Elko City Code, specifically Section 3-2-11.**

Moved by Kevin Hodur, Seconded by Jeff Dalling.

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

3. Review, consideration, and possible recommendation to City Council for Rezone No. 3-18, filed by Gary & Bernice Kimber, for a change in zoning from PQP (Public, Quasi-Public) to R (Single-Family and Multiple-Family Residential), approximately .22 acres of property, to zone the property one zone in conjunction with a parcel map to combine the parcels, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the north side of Chris Avenue approximately 160' east of Sierra Drive. (309 Chris Ave, APN 001-610-083 & Portion of 001-610-031).

Gary Kimber, 309 Chris Avenue, explained that they have lived on the property for 25 years. The City sold them some of the park property and it was zoned PQP. They are asking the Planning Commission to allow them change the zone to Residential to make it easier for taxes. They already have money invested in a fence and a nicely landscaped yard. There would be nothing else built, it's just to make it easier for taxes and if they ever wish to sell the property.

Ms. Laughlin went through City Staff Report dated April, 11 2018. Staff recommended approval of the Rezone with the condition listed in the Staff Report.

Mr. Draper said the Development Department agreed with the presentation from the Planning Department, and also had the same condition.

Mr. Thibault stated the Engineering Department recommended approval.

Mr. Holmes recommended approval.

Mr. Wilkinson recommended approval as presented.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Rezone No. 3-18 with the condition and findings listed in the City of Elko Staff Report dated April 11, 2018, listed as follows:**

Planning and Development Department:

1. Parcel Map 2-18 merging the two parcels is recorded prior to the mayor signing the resolution for the rezone.

Commissioner Hodur's findings to support his recommendation are the proposed rezone is in conformance with the Master Plan Land Use Component. The proposed rezone is consistent with the Transportation Component of the Master Plan. The proposed zone district and existing use will not create any significant cumulative issues on the existing transportation system. The proposed rezone is consistent with the City of Elko Wellhead Protection Plan. The proposed use of the property and allowed uses under the proposed district do not present a hazard to City wells. The proposed rezone is in conformance with Section 3-2-4 of City Code for lot area, lot width and depth, and setback requirements. The proposed rezone is in conformance with Section 3-2-5(R) Single Family and Multiple Family Residential. The property as developed is in conformance with City Code 3-2-17 for the principal permitted use as a single-family residence. The parcel is not located within a designated Special Flood Hazard Area. Development under the proposed rezone 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. The proposed rezone is consistent with surrounding land uses.

Moved by Kevin Hodur, Seconded by Ian Montgomery.

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

4. Review, consideration, and possible recommendation to City Council for Rezone No. 4-18, filed by Lonny Reed of Legend Engineering, on behalf of JoyGlobal Surface Mining, Inc. and Ed and Sharon Netherton, for a change in zoning from AG (General Agriculture) to LI (Light Industrial), approximately 31.16 acres of property, to allow for development, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the north and south side of P&H Drive. (APNs 006-09N-004, 006-09N-007, 006-09N-009 & 001-679-005).

Lonny Reed, Legend Engineering, 52 W 100 N, Heber City, UT, explained that this was part of the annexation and future development of these parcels for a future building for Kamatsu. The rezone is to get it into the proper zone when it is annexed.

Ms. Laughlin thanked the applicants for coming to all of the meetings. She then went over the City of Elko Staff Report dated April 23, 2018. Staff recommended approval with the condition listed in the Staff Report.

Mr. Draper recommended conditional approval of the proposed rezone.

Mr. Thibault recommended approval. His initial comments had been addressed.

Mr. Holmes recommended approval.

Mr. Wilkinson recommended approval as presented.

Commissioner Hodur asked if they were ok with the County island.

Mr. Draper said they were. The Planning Department and the Assistant City Manager reviewed that, because the City does not have a Certified Annexation Plan we can allow the islands.

Mr. Wilkinson said in addition, Mr. Draper reached out to the property owner, as well as Mr. Wilkinson himself. All of this acreage fell under the agreement where the City of Elko relinquished some water rights, allowed for a well to be constructed, allowed for this development to occur, with the intent that once services were extended into the area the properties, at the request of the City, would annex into the City and the water rights would be relinquished back.

Chairman Freistroffer asked if the island had a portion of water rights.

Mr. Wilkinson said no, the agreement was with JoyGlobal only.

*****Motion: Forward a recommendation to City Council to adopt a resolution, which conditionally approves Rezone No. 4-18 with the condition and findings in the City of Elko Staff Report dated April 23, 2018, listed as follows:**

Planning Department:

1. Annexation 1-18 is of record.

Commissioner Hodur's findings to support his recommendation are the proposed rezone is in conformance with the Master Plan Land Use Component including the Airport Master Plan. The proposed rezone is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure. The properties are not located in the Redevelopment Area. The proposed rezone is consistent with the City of Elko Wellhead Protection Plan. The proposed rezone is in conformance with City Code Section 3-2-4(B)(C) and (D). The proposed rezone is in conformance with Section 3-2-12(A) LI, GI Industrial Districts. Existing Development meets the requirements under 3-2-17 or will be considered a legal non-conforming use upon annexation and zoning of the properties. The proposed zone district is consistent with surrounding land uses. The proposed zone district provides an opportunity for expanded Light Industrial uses. 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.

Moved by Kevin Hodur, Seconded by Tera Hooiman.

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

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action to initiate an amendment to the City Zoning Ordinance, specifically Sections 3-3 Subdivisions, and matters related thereto. **FOR POSSIBLE ACTION**

Mr. Wilkinson wanted to start with a little background. The overall objective is to take a look at the Code, in particular a couple provisions, and working with the City Attorney to address any ambiguity in the Code. As staff went through the process they have identified some changes in different provisions, or sections, of the Code that needed to be addressed. He thought it would be best to really take a look at a comprehensive revision to this Chapter, beginning with definitions. Staff has begun that process. The track changes and the comments you see are related to staff reviews to date, and an initial review by the City Attorney. We haven't had a final review with the attorney. A lot of the changes are geared toward clarification, trying to eliminate any ambiguity, not making wholesale changes, and not revising the intent except in a couple sections, which Mr. Wilkinson would go over. He thought, under the approval process for Preliminary Plats and Final Plat Subdivisions, they want to talk about, and articulate clearly, what the approval allows for a developer to do. For instance if there is a preliminary approval, that doesn't allow for construction of the subdivision. Times of approvals also need to be articulated. We are going to intend to tie those approvals of plats to the timing of performance agreements, which are required under code. We will take a look at other communities and see what they do, and how they handle that. We've had occasions where agreements have not been entered into in a timely manner. The reason we have a requirement for a performance agreement is to address inspection and testing, quality of work, and more importantly time for completion. If we divide, or subdivide, property and those projects don't move forward anything behind those projects would not be able to move forward. A really important consideration, if we don't get maps recorded, and we don't have right-of-way of record, if someone wanted to leap frog beyond that, they wouldn't be able to install utilities or construct a roadway, because there would be no legal means for them to do that across a piece of property. There's a whole host of reasons why a performance agreement is required. Time of completions is an important one.

Chairman Freistroffer asked if there was a way to make the performance agreements flexible enough to work with different phasing.

Mr. Wilkinson said the performance agreements did go by phasing.

Chairman Freistroffer asked for clarification on the phasing.

Mr. Wilkinson explained that the preliminary plat is for the whole, and then final plats are for phases. The Performance Agreement is only for the Final Plat that is submitted. Typically developers identify their proposed phasing in their Preliminary Plat. Sometime that changes, but as long as they are working with staff, going to the Planning Commission and City Council, and it makes sense, when they change the phasing of the project. That is legal under the NRS and it's appropriate. If someone proposed phasing and clearly intended to not complete some public improvements on frontage, staff would oppose that. Staff wants to make sure that that doesn't happen. We've seen that happen in the City of Elko, where people have proposed phasing, they've stayed away from some of their more significant costs. In the end we've not had agreements, or proper security, and they've been able to put that back on the City. There's a lot of comments on the Agreements Section of the Code. We need to clean up a little on the required improvements, street locations and arrangements, and street design. Mr. Wilkinson said one area that he would focus on was for Rural Roads. All the infrastructure associated with a Rural Road should be constructed at the time they do the road. They shouldn't be able to leave behind all the culverts. Any other street is required to put in the full improvements. That needs to be clearly articulated in the Rural Roads. There are a couple reasons for that. You don't want unlicensed

work in the City right-of-way, it gives an unfair advantage to certain developments over others, and it is the appropriate way to go so we get the work and the complete street done at the time of construction. In Another area, Mr. Wilkinson was recommending putting pedestrian ways, or sidewalks, on both sides of a street, not just one side. That would lead to complaints on why the pathway was on the other side of the road rather than in front of a property owners house. It is articulated in the Code under 3-2-5, where those type of roads, under what type of subdivisions those roads are allowed, and where they are prohibited. That needs to be clarified in this section. Under the Wellhead Protection Program it talks about one of the Best Practices is to not encourage infiltration from road drainage into the capture areas. So we should not allow Rural Roads within those Wellhead Protection Plan areas. Construction and inspection, under 3-3-42, it talks about construction shall not commence until the subdivider has entered into a performance agreement. He went over a few more small changes throughout the end of Chapter 3. Under Parcel Maps staff was trying to articulate what public improvements were required with parcel maps, and when the public improvements are required. Also, trying to get people to understand that the parcel map process is not a process that is used to get out of doing public improvements. The proposed changes aren't a whole lot different than what is already in there. We added a section of prohibition of parcels. Proposed parcels that are determined undevelopable by the City. Staff is still reviewing this section and making comments, it will need to go out to the attorney. His expectation was that this might need to be initiated again at the next meeting, depending on the comments from the Planning Commission tonight.

Ms. Laughlin stated that she had no comments, but she was still going through her review of the section.

Mr. Draper said it was a process to get through this, trying to clean up the Code and make sure it's matching sections of NRS where appropriate. He was still making his comments well.

Mr. Thibault added that one other section that Mr. Wilkinson didn't mention that staff is considering adding to this Chapter a section for division of large parcels.

Mr. Wilkinson explained that Large Parcels were similar to Parcel Maps. Large parcels could be done under a parcel map, but it's better to try to be consistent with the NRS and have a section that deals with large parcels. Carson City separates large parcel mapping from their parcel map process. They will take a look at that with Mr. Thibault and see if that will fit into the Code.

Mr. Thibault explained that it was a completely different mapping process allowed for by NRS. It is a preliminary plat and final plat process, like subdivision mapping. Staff can set some different requirements, reduce some requirements.

Chairman Freistroffer asked if they could reduce improvement requirements, so it wasn't like the parcel map, which could have more requirements.

Mr. Thibault said if they were large parcels, which could be further subdivided later before develop, NRS requires the parcels be at least 40 acres in size. City Council could, by ordinance, allow this type of mapping to apply to parcels 10 acres or larger. They are still significantly sized parcels. There are some different requirements that can be allowed. It is another type of mapping allowed by NRS and it is not mentioned at all in the City Code.

Mr. Holmes had no comments.

Mr. Wilkinson said he was looking for feedback from the Planning Commission that would help provide direction to staff as they consider revisions. He thought they needed to have this on the next agenda in June. Right now he was looking for feedback and comments from the board with regard to any proposed changes.

Commissioner Tera Hooiman thought it was important to reach out to people that are investing. Reaching out to the people that are building the subdivisions and see what we need to do to make the process work for the developers and the City.

Chairman Freistroffer asked if there was a requirement for an economic, or a business impact study when there was a change to a performance agreement.

Mr. Wilkinson explained that they were not intending to make the performance agreement any stricter than what's already in the code. There are a lot of subdivisions that put up a full bond amount. We revised the Code, because it used to be a surety bond or cash, to allow for people to use letter of credit. So that created more flexibility on how to bond. There are many subdivisions that started out with a timely execution on a Performance Agreement, they put up their full amount, and they executed on their projects, and sold their lots. Communities do this across Nevada. Winnemucca's Code is verbatim of what the City of Elko has, and Sparks is the same. Carson City and Reno require performance agreements for all development, not just subdivisions. What is needed is a timely execution of performance agreements. The way we are going to address that is we will have the performance agreements heard by the City Council with the final plat. We are also going to require that the performance agreements are executed at the time of the final plat approval, or within 30 days of the final plat approval. For quite some time we have had conditions that developers enter into these performance agreements within 30 days of the final plat approval, and they don't do it, then they start doing their work. We've had some difficulty with that, so we're going to address that under the performance agreement, and clarify any ambiguity under those provisions. It will be very clear that there will be a performance agreement entered into with the City of Elko. Under the code the developer has 24 months to complete their project. If there is an agreement fully executed the developer can ask for an extension of 12 months, if it's warranted. Other than that, developers have 24 months to finish their projects, which is a reasonable amount of time for projects in Elko. The maps can also be recorded, then the right-of-ways are created. If for some reason the developer fails, the City has the security where they can cause the work to be completed. Then the next guy down the line can continue to develop areas of the City. If it's not done like that, then an area of the community may not be able to be developed. The Code is ordinary and consistent with what other communities do in Nevada. The City has had some issues getting the agreements executed in a timely manner.

Commissioner Beck left at 6:50 p.m.

Chairman Freistroffer mentioned that since he has been on the Commission they've had trouble in phasing in multifamily with the more expensive amenities. They are getting changed to different phases, and clubhouses are getting built in a different phase, or not at all. He asked if that was something that could be addressed in these types of agreements.

Mr. Wilkinson explained that apartments aren't subdivision. That has to be addressed under the Conditional Use Permit. This is just purely land division. If this were a condo project, then you could go in under those conditions, and add a special condition. The Code right now works, if you can get it enforced. The way we see trying to get that enforced is to have these issues presented to the City Council, rather than attempt to do them administratively. He added that he was looking for feedback from the Planning Commission either tonight, or as everyone has a chance to review it.

Chairman Freistroffer welcomed the developers to participate in the public comment period.

Dusty Shipp, realtor and developer, with Braemar Construction, 959 Montrose Lane, thought Tera brought up a good point, that working with the developers and people that are doing work in the town is important. He didn't think any developers knew this meeting was happening. The fact that they are considering making a bunch of changes to what they have been used to, it would be good for them to know that. He thought that would be helpful. The developers are the ones out there trying to make things happen and improve the City. He thought that was critical to get the developer's input. A week ago there was a City Council Meeting full of people frustrated with some of the things that have gone on and the clarification that is now going on in the code. They have been used to doing things a certain way. He thought it was important to clarify, so everyone knows what is going on. But, with that being said, he also thought that there needed to be some merit given to how things were done in the past, and that it worked very well. There were some hiccups from guys that didn't follow through, or didn't follow the rules, but overall it has worked well for a lot of developments. He thought there were a few things, but he didn't have much time to go through the proposed changes. There was a part that talked about how the performance agreement would be based on prevailing wage. Developers don't pay prevailing wage when they develop a subdivision. If they are putting up a performance agreement based on that that would be tough. Just so the Planning Commission knew how things worked in the past, Mr. Shipp explained that the developer would come in to look at a future development of a subdivision, get their approvals, and then they go through the process and build it out. Out of their pocket they put out the streets, sidewalks, and all the utilities, and then they come in for final approval and get that recorded. Until they do that the property is still one parcel, with no easements in place, or none of the stuff that would affect the next phase. He explained that he was working on a subdivision preapproval on Jennings Way, over by Adobe Middle School. It doesn't have connections to any other parcels, so he wouldn't be hindering the next guy if he got his approvals and never did anything. The street is a loop, so it doesn't hold anyone else up. With Elko's market, it goes up and down. Sometimes there is a down turn that can last longer than the two year period that is allowed in the Code. For a developer to come in and put up the bond for a \$2 Million subdivision, then build the project and there is a down turn. They would be out \$4 Million and have to sit there until it comes back around. He explained that they developed in Utah, in multiple jurisdictions, and they've developed over there very successfully. They allow it, and have another portion of the performance agreement to be allowed that the developer can pay out of pocket for all the infrastructure costs, and not put up additional cash or performance bond agreement. Those are very expensive, and hard to get right now. There are a lot of hoops to go through. A lot of their options are to put up cash. He thought it should be explored the option to allow another option to the Code, to where it would allow what other cities allow. The developer could do some work and lower the performance amount that would be required.

Greg Martin, 1349 Primrose Lane, with Coldwell Banker, thought this was a great opportunity for the City of Elko to create an opportunity to bring in the people that are most affected by this contemplated change in the code, and moving forward how to better position that code so that it benefits everybody in the game. He said he didn't pretend to know a lot about development, but he did know a lot about the back end of it, which is selling. Too many times people come into town to look to develop properties and it's not long before they turn around and walk away, because it has become so onerous in how we create those opportunities. As we move forward in this process, he invited everyone to read the Vision Statement and the Mission Statement. Let's come out with something that is going to benefit everyone in the community.

Mr. Wilkinson explained that this was just to initiate a possible change, we're not adopting any changes tonight. He wanted to address a couple comments from Mr. Shipp. All of Brookwood was done on Letters of Credit. So, they put up the full bond amount and they did that with Bank of Utah. We had performance agreements for all of Brookwood. It wasn't a problem to put up the full amount with Brookwood. How this works, typically the premium for a Surety Bond is 2 ½ points. So, if you have \$1 million project, you don't have to put up \$1 Million and then go pay the contractor a million dollars. You can go get a Surety Bond for 2 ½ points, you can get a Letter of Credit from a bank, or deposit cash with the City of Elko. The Code allows for a variety of circumstances based on an individual developer's needs. It works, and it works well, for the City of Elko to have these performance agreements in place. The other issue we have is equal protection. It is impossible to draft Code that might envision different circumstances.

Chairman Freistroffer summarized the process involved in amending the code.

Mr. Wilkinson said to be clear, today the Code requires a performance agreement supported with the full Engineer's estimate being secured.

Commissioner Hooiman felt like some of the developers and the City had the same vision for growth and expansion. This could be a huge opportunity for the City to have open communications with the people that are writing the checks, and to see what they think. It's not just what the City has to say, there can be some major communication happening.

Mr. Wilkinson said we would be doing that.

Chairman Freistroffer explained some possible actions for them to take.

Commissioner Ian Montgomery said staff still had to look through it as well. He felt it would be best to see it a few more times to make sure everyone had a chance to look at it.

*****Motion: Initiate an amendment to the City Zoning Ordinance, specifically Section 3-3 Subdivisions.**

Moved by Kevin Hodur, Seconded by Tera Hooiman.

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

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that Rezone No. 1-18 was approved for rezoning the parcel to PQP. The first reading of Annexation Ordinance 830 was held, which was for JoyGlobal and Netherton properties. They approved the Final Plat for Tower Hills.

Chairman Freistroffer asked if the timeline and sequencing was going ok for the JoyGlobal properties.

Ms. Laughlin explained that the 2nd reading would be held on May 8th, and then the annexation would be complete. With the Planning Commission's approval and recommendation to City Council, the Rezone will be on the May 22nd City Council meeting. It's all falling into place.

B. Summary of Redevelopment Agency Actions.

Ms. Laughlin reported that there would be an RDA meeting on May 8, 2018.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Preliminary agendas for Planning Commission meetings.

E. Elko County Agendas and Minutes.

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

G. Staff.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments at this time.

ADJOURNMENT

There being no further business, the meeting was adjourned.



David Freistroffer, Chairman



Tera Hooiman, Secretary