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, May 5, 2020 in at 5:30 P.M., P.D.S.T. utilizing GoToMeeting.com
https://global.gotomeeting.com/join/906677325

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.elkocity.com, 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: April 28, 2020 2:00 p.m.

Posted by: Shelby Archuleta, Planning Technician
Name Title Signature

The public may contact Shelby Archuleta by phone at (775) 777-7160 or by email at sarchuleta@elkocitynv.gov to request supporting material for the meeting described herein. The agenda and supporting material is also available at Elko City Hall, 1751 College Avenue, Elko, NV, 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/906677325. You can also dial in using your phone at **+1 (571) 317-3122.** The **Access Code** for this meeting is **906-677-325.** 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 28th day of April, 2020.

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.D.S.T., TUESDAY, MAY 5, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA
GoToMeeting.com
https://global.gotomeeting.com/join/906677325

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

March 3, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Conditional Use Permit No. 1-20, filed by Bill Dupee & Amber Dupee-Johnson, which would allow for a bar to be located within the Central Business District, specifically 401 Railroad Street, and matters related thereto. **FOR POSSIBLE ACTION**

   As required by Elko City Code 3-2-10(5)(C) any new business such as a bar within the Central Business District requires a Conditional Use Permit.

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration and possible approval of Final Map No. 1-20, filed by Kelly Builders, LLC, for the development of a subdivision entitled Townhomes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 townhouse lots for residential development and 1 common lot within the R

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

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

2. Review, consideration and possible approval of Final Map No. 2-20, filed by Koinonia Development, LP, for the development of a subdivision entitled Mountain View Townhomes – Unit 1 involving the proposed division of approximately 1.00 acres of property into 12 townhouse lots for residential development and 1 common lot approximately 26,784 sq. ft. in area and 1 remainder parcel approximately 2.38 acres in size, within the CT (Commercial Transitional) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   Subject property is located on the south side of N 5th Street at the intersection of Mary Way. (APN 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075)

3. Review, consideration and possible recommendation to City Council for the 2020 City of Elko Land Inventory update. **FOR POSSIBLE ACTIO**

   City of Elko Land Inventory spreadsheet is to be updated when necessary

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, MARCH 3, 2020
ELKO CITY HALL, COUNCIL CHAMBERS,
1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

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

ROLL CALL

Present: **Evi Buell**
Giovanni Puccinelli
Gratton Miller
Jeff Dalling
Stefan Beck
Tera Hooiman

Absent: **John Anderson**

City Staff Present: **Cathy Laughlin, City Planner**
Bob Thibault, Civil Engineer
Michele Rambo, Development Manager
Matt Griego, Fire Chief
Shelby Archuleta, Planning Technician

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

APPROVAL OF MINUTES

February 4, 2020 – Regular Meeting **FOR POSSIBLE ACTION**

*****Motion: Approve the February 4, 2020 minutes.**

Moved by Evi Buell, Seconded by Tera Hooiman.

Motion passed unanimously. (6-0)

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review, consideration, and possible action on Variance No. 1-20, filed by Bailey & Associates, LLC, for a reduction of the required exterior side yard setback from 15' to 12' for the development of a duplex in an R (Single-Family and Multi-Family) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

   The subject property is located generally on the south corner of the intersection of 8th Street and Elm Street. (APN 001-066-005)

Jon Bailey, 780 W Silver Street, explained that he worked with Ms. Laughlin on the parcel, which is a difficult parcel that is challenging with the width and the additional land that was dedicated to the City for the sidewalk. In working with Ms. Laughlin, they came up with a design that would accommodate this parcel and allow it to be developed. They ended up needing a variance on the 15' setback, which is why they are making application for the variance. It is keeping with existing parcels that have 12' setback. He thought it was straightforward to be able to get a 22.5' width for the building.

Dale Coleman, 831 Elm Street, said it was nice to see someone build on the property. Although the City has adopted increased regulations to improve both Building Codes and right-of-ways. Mr. Coleman felt that the contractor was well aware of the setbacks when he bought the property. He thought the contractor should be tied, or should maintain the setbacks that the City requires. If you don't make him maintain the setbacks then where does that leave everyone else? He thought the City needed a firm stand on where the setbacks are at, so that everyone builds under the same regulations.

Robert Wines, 761 Elm Street, stated that he was adamantly opposed to putting a duplex on the lot. Number one, he didn't think anything could be built on the parcel without a Conditional Use Permit, because it doesn't meet the City Code for lot area. He didn't think a 4,000 sq. ft. lot should even be considered for a duplex. Number two this is a busy intersection. Across the street is the central office for the Elko County School District. There is a lot of traffic there first thing in the morning. It is also a main thoroughfare for access to Great Basin College, and main access for children walking to Grammar School No. 2. He thought allowing a decrease in the setback would make the visibility around the corner questionable. He attempted to look at the initial City offering for this parcel, but he could not find it. A few years ago, the City offered to sell this property to the adjacent property owner. Everyone knew this was a small lot, and that it wouldn't support building a structure, City of Elko even advertised it that way. One of the requirements that they had for the adjacent property owner was that he was going to have to merge the parcel to his own. 8th and Elm is a busy intersection. Mr. Wines thought that reducing the setback was bad, and that there needed to be a Conditional Use Permit to use the lot for any kind of structure. He mentioned that he would probably not be opposed to a single-family residence being built. He also wouldn't be opposed to a minor reduction of the setback for a single-family residence. Putting two houses on that lot didn't seem to Mr. Wines like a smart move.

Greg Staszak, 1252 7th Street, explained that he was inquiring about a variance too, and he was dissuaded due to the usage of the word hardship. He needed to prove a hardship to be able to apply for one, or to be able to potentially have the opportunity of getting it. He saw a duplex as being a monetary benefit, and didn't see where that was defined as hardship. There are already a

lot of items parked on the street at that corner. If there is a duplex there, how much more is going to be parked on the street?

Cathy Laughlin, City Planner, wanted to give a little history on the parcel. Mr. Knight, who is the adjacent property owner, came to the City and asked the City to sell that piece of land. When he purchased his home, he was told that all of the fenced in area belonged to him, which was not the case. He came to the City for a fence permit, and staff told him that was the City of Elko's parcel, but he could ask to purchase the parcel. He asked to purchase the land and staff took it to City Council. Mr. Knight gave some testimony on what he planned on doing with the property, and provided testimony that it was not a viable use to anyone other than himself. City Council was skeptical at the time, but they were convinced by Mr. Knight and they agreed to sell the property under NRS 268.061, which allows the City of Elko to sell a piece of land directly to the adjacent property owner as long as there is no viable use, or value, to anyone other than the adjacent property owner. One of the conditions on the sale was that he was to do a parcel map to combine the two parcels. Sometime went along and staff was asking Mr. Knight when he was going to start the parcel map process. He would need to get a surveyor on board to get it started. He then came back and said that he changed his mind. He wanted to be able to buy it, but be able to sell it if necessary, or do something different with it. He didn't want to combine the two parcels, so staff took it back to City Council, told them that Mr. Knight changed his mind, and didn't want to comply with the conditions, and that the property would need to be sold by public auction. We went through the process of a resolution to sell the property by public auction. It was advertised properly and auctioned at a City Council meeting. City Council opened the bids for the property and Mr. Bailey was the only bidder. Mr. Knight had backed out the day of, and decided not to bid on the property. Mr. Bailey purchased the property. After he purchased the property and the deed was recorded, staff asked Mr. Bailey for a deed of dedication for 10' of property for the curb, gutter and sidewalk to be in the City right-of-way. Ms. Laughlin then went through the City of Elko Staff Report dated February 13, 2020. Staff recommended conditional approval with the findings and conditions listed in the Staff Report. Staff was focusing on the fact that anywhere else in the tree streets the exterior side yard setback could be 12', which is what the applicant is proposing. It is just not a residence in existence today. That's what staff based their justification off. Also on the site plan, you can see the 10' that was dedicated back to the City.

Chairman Jeff Dalling said the whole project seemed pretty slick. Mr. Bailey said he worked with Ms. Laughlin on this. It looks like he hit every kind of a trick to fit everything. It's a pretty slick little under the radar project, but it doesn't fit.

Ms. Laughlin pointed out that the building would be meeting three of the four setbacks. He's not meeting the fourth one, but had this been in existence prior to 2003 he would have met it.

Chairman Dalling asked why Mr. Bailey deeded back the 10' to the City.

Ms. Laughlin explained that it was for the sidewalk to be a part of the 8th Street right-of-way.

Chairman Dalling said he didn't have to if he bought the lot.

Ms. Laughlin pointed out that it was a condition of the sale.

Chairman Dalling asked how much the sale was. This is all weird how it all fell apart.

Bob Thibault, Civil Engineer, said it was very strange and that he wanted to shed some light on it. He pulled up the property on GIS and explained that the black lines are from Assessor's office and that the property is shown as 40' wide, and they have always shown the property as being 40' wide. When it was being appraised and surveyed, they surveyor asked Mr. Thibault why the property was being shown as 40' wide. The deed says it is Lots 1 and 2, and the original lots are 25' wide. Therefore, the deed described it as 50' wide, even though the Assessor and everybody always thought it was 40' wide. The sidewalk had already been built there, because that was what the records showed. The applicant's surveyor caught the error. He asked for a document that could show that the property was 40'wide. No one could find a document, so we created that document and after the sale, the applicant dedicated it back to the City. The property was appraised as 40' wide, the applicant paid for a 40' wide property, and in the end, he ended up with a 40' wide property.

Michele Rambo, Development Manager, had no comments or concerns.

Mr. Thibault recommended approval with no additional comments or concerns.

Fire Chief Matt Griego had no concerns.

Commissioner Stefan Beck said either Mr. Wines was wrong or the City was wrong. Mr. Wines thought it was illegal that the property exceeded square footage. He thought the City was saying it was not illegal. Commissioner Beck wanted to resolve that conflict.

Mr. Wines explained that Elko City Code 3-2-5(G) sets out that the zoning requirements for a single-family residence has a minimum lot size of 6,000 sq. ft. Ms. Laughlin read some comments that there is an exception if the lot has some developmental issues, as this one does. Mr. Wines asked Ms. Laughlin to read back into the record the exception.

Commissioner Beck asked if a single-family dwelling was not the same as a duplex.

Mr. Wines said it is not. He said the exception that he heard was for building a single-family dwelling. He stated that he would not oppose the request to do a variance for the setback for a single-family residence, but he is in opposition to them building a duplex on the lot because it does not meet the requirements. When Ms. Laughlin read the language it said residential only, it did not say duplex.

Ms. Laughlin explained that single-family residence and duplex are listed as a principle permitted use in the R Zoning District.

Mr. Wines asked Ms. Laughlin again to read the exception to the Board.

Ms. Laughlin said that the exception states a single-family dwelling.

Mr. Wines said it says single-family dwelling, not duplex.

The definition for single-family dwelling from Section 3-2-2 of the Elko City Code was then read into the record, which reads:
DWELLING, SINGLE-FAMILY: A building containing only one (1) dwelling unit and which is constructed under the Building Code in accordance with title 2 of this Code, and which also includes manufactured homes developed to specific standards in accordance with subsection 3-2-3Q of this chapter.

Mr. Wines wanted to clarify something that Ms. Laughlin said. When he was searching back through the records, he found that the deed to Mr. Bailey was dated July 1, 2019, recorded as Document No. 756226 on July 2, 2019. There is a set of minutes of the meeting from two weeks earlier where the issue of this setback was discussed, and Mr. Bailey said that he would agree to the 10' setback. The Easement setback was not recorded until January of 2020. Ms. Laughlin said the deed was recorded before the discussion was made about the easement. Mr. Wines said that was incorrect. The discussion was held and the deed, which included the entire 50' parcel, was recorded, then approximately six months later a deed back from Mr. Bailey for the 10' was recorded. Mr. Wines said he didn't disagree that it happened; he was just questioning the timing and the way it all fell out.

Ms. Laughlin said that was correct. She said she should have stated that the discussion on the deed of dedication back to the City of Elko happened after the auction of the property.

Mr. Wines stated that he would not be here tonight if a single-family residential dwelling were proposed.

Commissioner Beck asked Mr. Coleman to clarify his comments.

Mr. Coleman clarified that he requested that the Commission consider that there are regulations for setbacks for a reason and it is a standard of 15'. The contractor knew very well, when he dedicated that 10' back, what the setback was. He didn't think they should allow him to have it decreased to 13', so he could put a duplex on it.

Commissioner Gratton Miller asked if Mr. Bailey could buy the 10' back from the City.

Ms. Laughlin said that was not an option.

Commissioner Tera Hooiman said her only question was in regards to the hardship. Mr. Staszak had said that he was interested in purchasing the property and he didn't present enough of a hardship. The hardship that was presented from Ms. Laughlin's explanation was that he purchased this land and he's not able to profit off his purchase.

Ms. Laughlin clarified that the hardship was listed in the application. Mr. Staszak's condition was a complete different situation; he has a 10,000 sq. ft. lot and his hardship was that he didn't want to take up some backyard space.

Commissioner Hooiman read the hardship that was listed in the application: "Narrow lot that had an additional 10' dedicated to the City." Commissioner Hooiman said that his hardship is that he purchased it and gave it back.

Chairman Dalling added that he only bought the 40' wide, and he didn't know that he purchased the extra 10' when he purchased it. He said it sounded like this property should have only been sold to Mr. Knight and combined with his property.

Mr. Thibault explained that was the initial attempted plan, but Mr. Knight didn't care to follow through with that. When Mr. Knight decided he didn't want to merge this with his other property and he stated that he'd rather be able to sell or develop the property in the future, it meant that it was no longer a remnant that the City could sell directly to him without going to public auction. There are two different processes through NRS.

Chairman Dalling still felt that it should have been merged to the other property. He was trying to find the hardship. He said the pre 2003 didn't do anything for him. It is such a small lot.

Mr. Bailey felt it was a real hardship to have 51% of the property be setbacks and trying to develop a 19' wide footprint. There are all sorts of difficulties and challenges with getting that to work. This would be a difficult property. During the process of dedicating that back, he inquired on the reality of getting a variance and he had a lot of staff support for that based on the situation, so he felt comfortable dedicating the 10' back to the City. Mr. Bailey felt that the variance was critical for this property to be developable. He went forward and purchased the property under assurances that it was going to be a developable piece of property.

Ms. Laughlin asked Mr. Bailey if he would consider building a single-family residence on that property.

Mr. Bailey didn't think the zoning was in question here; it's the footprint. He thought they needed to be allowed to build to the zoning.

Chairman Dalling said they just went over some of that Code. The language does say single-family dwelling, not zone.

Mr. Bailey asked Ms. Laughlin if she could comment on that. He didn't understand if that had been established by staff.

Ms. Laughlin explained that if the property does not meet the lot area there is an exception in 3-2-5(G) that states that it can be considered buildable for a single-family dwelling. It does not say a single-family dwelling or duplex.

Mr. Bailey asked if Ms. Laughlin was saying, the lot under the code doesn't allow for duplexes.

Ms. Laughlin clarified that under the Code a principle permitted use under the R District is a single-family dwelling, duplex, triplex, or fourplex. Anything five or more is required a CUP. With the lot not meeting the area requirement for a single-family dwelling, there is that exception. Any lot of record with the Elko County Recorder prior to December 9, 1975, which don't meet the requirements of the lot area, shall be considered a buildable lot for a single-family dwelling.

Commissioner Beck asked Mr. Bailey if someone gave him assurances that he could build a duplex on the property.

Ms. Laughlin explained that a duplex is a principle permitted use in the R Zoning District.

Mr. Bailey explained that he worked with staff through the entire process. He had been very accommodating in making sure that he did everything in alignment with what staff would support, and that is what he has proposed. He said he would expect to get the Commission's support for something that has staff support. He said this was a very frustrating thing if they are going against the staff recommendation on the property.

Ms. Laughlin mentioned if this was an existing residence and he came to the City and wanted to convert it into a duplex. A duplex is a principle permitted use in the R Zone District and it would be allowed. If it was in existence prior to 2003 it could have a 12' exterior side setback.

Chairman Dalling said it didn't meet any of these things. Chairman Dalling pointed out to Mr. Bailey that he had a full audience of people that were not happy with the project either.

Mr. Bailey said they followed all steps to prepare a well thought out building plan that would add value to the neighborhood with the structure that they are proposing to build. Taking 51% of the property in setbacks after they dedicated back 10' to the City. He felt that was a hardship they met. Staff has shown that they meet all of the conditions, and he really wanted to get support from the Planning Commission.

Mr. Wines thought, even if the Planning Commission approved the variance, that Mr. Bailey would not be able to build a duplex on the lot. It does not meet the requirements. It is unfortunate that someone misread the Code. The Code specifically says that if the lot does not meet the size requirements in an R Zone, that the only thing you can build on it is a single-family residence. Mr. Wines again stated that he would not be opposed to a variance for the setback if it were for a single-family residence. He didn't think this Board could authorize a variance without having had a conditional use permit to allow the 4,000 sq. ft. lot to have a duplex on it that violates the Code.

Mr. Thibault said he would tend to agree with Mr. Wines, to a certain degree. Maybe it is an unfortunate wording in the Code. Mr. Thibault said he was under the impression that existing lots, regardless of their size, were considered buildable. Mr. Thibault said he would still support the variance, but he didn't think Mr. Bailey would be allowed to build a duplex on the property without an additional variance, not a conditional use permit as Mr. Wines suggested, for lot area and lot width.

Commissioner Evi Buell asked what the Commissioners were thinking on this.

Chairman Dalling didn't think it fit. He said he's going to deny it and that he wasn't going to vote for it.

Commissioner Miller concurred with Chairman Dalling. It doesn't fit within the Code.

Commissioner Buell stated that she wasn't in agreement with Mr. Dalling.

Commissioner Beck said he agreed with Chairman Dalling.

Commissioner Buell said it was inherently a mess. She thought that it was unfortunate for everyone involved. They are talking about a piece of land with notable setback restrictions that are overlaid on a neighbor that was parceled out under older standards. That is where she was sympathetic to the applicant's position. Looking at the neighborhood, she felt that this was a good non-disruptive fit. Commissioner Buell felt this was a good project that fit the character and the nature of the neighborhood.

Commissioner Hooiman agreed with Commissioner Buell to a certain extent. The only part that she was hung up on was the duplex aspect. Personally, she would also be in support of a single-family dwelling, with the definition that she read. Her interpretation of that was a single-family dwelling, not a duplex. She felt like it wasn't misread, she felt like it was misinterpreted to fit the situation.

Ms. Laughlin explained to Mr. Bailey that the issue was the duplex part of it. She asked him if he would want the Commission to consider taking no action on this item, or tabling the item, and coming back with a plan for a single-family residence.

Mr. Bailey said no.

*****Motion: Deny Variance No. 1-20.**

Commissioner Hooiman's finding to support the recommendation was the testimony provided during the meeting in regards to Section 3-2-5(G) of the Elko City Code.

Moved by Tera Hooiman, seconded by Gratton Miller.

****Motion passed (5-1, Commissioner Buell voted No).***

Chairman Dalling informed Mr. Bailey that he had the right to appeal the Planning Commission's decision to the City Council.

II. REPORTS

A. Summary of City Council Actions.

Ms. Laughlin reported that at the February 11th City Council Meeting they approved the Planning Commission annual report of activities and some corrective deeds. At the February 25th City Council Meeting they approved Final Map 15-19 for Tower Hill Unit 3, along with the Performance Agreement. They also approved a Revocable Permit for a sign in the North 5th Street right-of-way for Edward Jones, they denied land sale of 8,000 sq. ft. behind Juneau Street, and they approved a Resolution for the Master Plan Amendment. They also approved Tentative Map 14-19 for Mountain View Town Homes and Tentative Map 16-19 for Ruby Mountain Peaks Subdivision. The election filings have begun for the two seats on City Council. If anyone is interested in running in the November election, they have until March 13th to file for City Council.

B. Summary of Redevelopment Agency Actions.

C. Professional articles, publications, etc.

1. Zoning Bulletin

D. Miscellaneous Elko County

E. Training

COMMENTS BY THE GENERAL PUBLIC

There were no public comments made at this time.

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ADJOURNMENT

There being no further business, the meeting was adjourned.

_____ _____

Jeff Dalling, Chairman Tera Hooiman, Secretary

Agenda Item # I.A.1

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration, and possible action on Conditional Use Permit No. 1-20, filed by Bill Dupee & Amber Dupee-Johnson, which would allow for a bar to be located within the Central Business District, specifically 401 Railroad Street, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **May 5, 2020**

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

4. Time Required: **15 Minutes**

5. Background Information: **As required by Elko City Code 3-2-10(5)(C) any new business such as a bar within the Central Business District requires a Conditional Use Permit.**

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

7. Supplemental Agenda Information: **Application, Staff Report**

8. Recommended Motion: **Move to conditionally approve Conditional Use Permit 1-20 based on the facts, findings and conditions presented in Staff Report dated April 17, 2020**

9. Findings: **See staff report dated April 17, 2020**

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

11. Agenda Distribution: **Bill Dupee & Amber Dupee-Johnson**
2428 Rodeo Ct
Elko, NV 89801

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/5

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

Title: Conditional Use Permit No. 1-20

Applicant(s): Bill Dupee + Amber Dupee-Johnson

Site Location: 401 Railroad Street

Current Zoning: C Date Received: 3/11 Date Public Notice: 4/21

COMMENT: This is to allow a bar to be located in the Central Business District.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/21/20

Recommend approval as presented by staff

SAW

Initial

City Manager: Date: 4/22/20

No comments/concerns.

Initial

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

CITY OF ELKO STAFF REPORT

DATE: April 17, 2020
PLANNING COMMISSION DATE: May 5, 2020
AGENDA ITEM NUMBER: I.A.1
APPLICATION NUMBER: Conditional Use Permit 1-20
APPLICANT: Bill Dupee & Amber Dupee-Johnson
PROJECT DESCRIPTION:

Within the CBD, any new business involving activities which are reasonably likely to discourage other businesses through light, noise, odors, types and levels of activity, or the creation of a nuisance, such as (without limitation) auto and truck service and repair facilities; mobile home, recreational vehicle and truck sales lots; gas service stations; miniwarehousing facilities; veterinary clinics; bars; and other uses determined by the city to have similar impacts, shall be required to first obtain a conditional use permit.

STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-265-018

PROPERTY SIZE: 2,500 sq. ft.

EXISTING ZONING: C –General Commercial

MASTER PLAN DESIGNATION: MU-DWTN (Mixed Use Downtown)

EXISTING LAND USE: Developed as Commercial Land Use

NEIGHBORHOOD CHARACTERISTICS:

- The property is surrounded by Commercial zoned property, developed land to the north, east and west and Central Business District parking corridor to the south.

PROPERTY CHARACTERISTICS:

- The property is currently developed.
- The property is fairly flat.
- The property is accessed from Commercial Street and 4th Street.
- The property is not in a 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 Commercial Zoning District
- 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 was filed as required under City Code 3-2-10(B)(5)(c).
- There are no other conditional uses on the property.
- The property is located in the Redevelopment Area, Central Business District.
- The land is not owned by the applicant but the applicant has permission from the property owner to apply for the Conditional Use Permit.

MASTER PLAN

Land Use

1. The Master Plan Land Use Atlas designates the area as Mixed Use Downtown.

2. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.
3. Objective 8: Encourage new development that does not negatively impact County-wide natural systems, or public/federal lands such as waterways, wetlands, drainages, floodplains etc., or pose a danger to human health and safety.

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

Transportation

1. The Master Plan identifies Railroad Street as a Commercial Industrial Collector and 4th Street is not classified in the Transportation Component.
2. The site has pedestrian access along Railroad and 4th Street.
3. 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.

CITY OF ELKO REDEVELOPMENT PLAN

1. The property is located within the Redevelopment Area and more specifically the Central Business District.
2. Redevelopment goals and objectives:
    - To promote and insure public safety and welfare; to eliminate and prevent the spread of blight and deterioration, and the conservation, rehabilitation and redevelopment of the Redevelopment Area in accord with the Master Plan, the Redevelopment Plan and local codes and ordinances
    - To promote and support a pedestrian oriented downtown; and, to achieve an environment reflecting a high level of concern for architectural, landscape, and urban design and land use principles appropriate for attainment of the objectives of the Redevelopment Plan.
    - To ensure adequate vehicular access and circulation; to retain and sustain existing businesses by means of redevelopment and rehabilitation activities, and encourage cooperation and participation of owners, businesses and public agencies in the revitalization of the Redevelopment Area.
    - To promote historic and cultural interest in the Redevelopment Area; and, encourage investment by the private sector in the development and redevelopment of the Redevelopment Area by eliminating impediments to such development and redevelopment.
    - To achieve Plan conformance and advancement through re-planning, redesign and the redevelopment of areas which are stagnant or improperly used.
3. The proposed development repurposes the existing vacant portion of a building.

The proposed Conditional Use Permit is in conformance with the Redevelopment Plan.

ELKO WELLHEAD PROTECTION PLAN

The property is located outside the 30-year capture zone for City wells.

The conditional use is in conformance with the Wellhead Protection Plan.

SECTION 3-2-3 GENERAL PROVISIONS

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

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

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

1. Section 3-2-3(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)(5).

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

SECTION 3-2-10 COMMERCIAL DISTRICTS

1. Section 3-2-10(B)(5) Within the CBD, any new business involving activities which are reasonably likely to discourage other businesses through light, noise, odors, types and levels of activity, or the creation of a nuisance, such as (without limitation) auto and truck service and repair facilities; mobile home, recreational vehicle and truck sales lots; gas service stations; miniwarehousing facilities; veterinary clinics; bars; and other uses determined by the city to have similar impacts, shall be required to first obtain a conditional use permit

2. 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.
3. The property doesn't abut a residential zone so therefore is not required to comply with screen wall requirements set forth in subsection 3-2-3(J).
4. 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 the development standards of this section of code.

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

1. All principal permitted uses occupying basement floor area, ground level or first story floor area or second story floor area, or any combination thereof, and which are situated on property located within four hundred feet (400') of the Central Business District (CBD) public parking corridor, are exempted from providing required off street parking.

The proposed use 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.

3-8 FLOOD PLAIN MANAGEMENT

The parcel is not located within a designated flood plain.

FINDINGS

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

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

3. The conditional use is in conformance with the Wellhead Protection Plan.

4. Approval of the Conditional Use Permit is required for the proposed use to be in conformance to sections 3-2-3 & 3-2-10 of the Elko city code.

5. The proposed use is in conformance with sections 3-2-4, 3-2-17, and 3-2-18 of the Elko city code.

6. The proposed use conforms to section 3-8 of Elko city code.

STAFF RECOMMENDATION:

Staff recommends **APPROVAL** of CUP 1-20 with the following conditions:

1. The permit is granted to the applicant Bill Dupee and Amber Dupee-Johnson for a brewery and/or bar establishment subject to compliance with all conditions imposed by a conditional use permit.

2. The permit shall be personal to the permittee and applicable only to the specific use (bar establishment) and to the specific property (401 Railroad Street) 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. CUP 1-20 to be recorded with the Elko County Recorder within 90 days after the business license is issued for the bar.

4. Signage will require review and comment by the Redevelopment Agency prior to approval by the City.

5. Applicant shall install and maintain exterior security lighting that illuminates both the Railroad and 4th Street frontages as well as the alleyway adjacent to the establishment. The security lighting shall be sufficient to make easily discernible the appearance and conduct of all persons and patrons in the vicinity of the front and side entrances, and shall be positioned so as not to cause excessive glare for persons located outside of the vicinity of the front and side entrances, such as pedestrians, motorists, and owners and occupants of neighboring properties.

6. Applicant shall remove all bottles, cans, trash, broken glass, debris, and bodily fluids from abutting properties upon closing on each day applicant's business is open.

7. Applicant shall maintain an active account with Elko Sanitation at all times for the collection of garbage, refuse and waste within the common collection area of the 400 block.

Police Department:

1. Communicate effectively and proactively with Elko Police Department regarding management and safety of the business, such as; provide notice as to management or supervision changes, problems with security, changes with lighting, camera systems, security, weapons polices, etc.
2. Zero tolerance of employee consumption of alcohol while they are on shift.
3. Security cameras are required and a minimum of ten days stored video footage from the security system to be maintained at all times.
4. Business hours to be determined as appropriate by the Planning Commission. Elko Police Department recommends closing time on Friday and Saturday of 2:00 a.m. (following day) and all other days of the week close time of 1:00 a.m. (following day).

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

April 28, 2020

Bill Dupee & Amber Dupee-Johnson
2428 Rodeo Ct
Elko, NV 89801
VIA EMAIL: brewery7018@yahoo.com

Re: Conditional Use Permit No. 1-20

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/906677325. You can also dial in using your phone at **+1 (571) 317-3122.** The **Access Code** for this meeting is **906-677-325**

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

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC:

Conditional Use Permit 1-20 Dupee

YPNO	assess_nam	address1	address2	mcity	mzip
001265011	ANACABE ANITA T	2000 RUBY VIEW DR		ELKO, NV	89801-
001342002	ANDRUS DALE & VICKY TR	418 COMMERCIAL ST		ELKO, NV	89801-3740
001262007	BLOHM LINA TR	495 IDAHO ST		ELKO, NV	89801-3760
001265014	BROWN PHILLIP GEORGE	PO BOX 1660		ELKO, NV	89803-1660
001265004	CUCINA INVESTMENTS LLC	3611 AUTUMN COLORS DR		ELKO, NV	89801-7800
001342004	DGS CATTLE COMPANY LLC	C/O DOROTHY B STENINGER	PO BOX 281570	LAMOILLE, NV	89828-1570
001265002	ELKO GENERAL MERCHANDISE CO INC	416 IDAHO ST		ELKO, NV	89801-3710
001262008	EMBRY VINCENT M	378 SMOKEY DR		SPRING CREEK, NV	89815-6320
001261004	FIB OF NEV NA } 1p.c.	C/O THOMSON PROPERTY TAX SERV	PO BOX 2609	CARLSBAD, CA	92018-2600
001262012	FIRST NAT BANK OF NEV } 1p.c.	C/O THOMSON PROPERTY TAX SERV	PO BOX 2609	CARLSBAD, CA	92018-2600
001265010	GOLDIE RONALD ALLEN	182 W BULLION RD UNIT 13		ELKO, NV	89801-7610
001262009	HIGLEY SHIRLEY S TR	1140 HIGHLAND DR		ELKO, NV	89801-2950
001265003	JADEN ENTERPRISES LLC	1705 SEQUOIA DR		ELKO, NV	89801-1600
001265013	JENNINGS MICHAEL R	1122 CALVADOS DR		SPARKS, NV	89434-2500
001265007	KNIGHT DAVID COOPER TR	109 FIR ST		ELKO, NV	89801-3020
001262010	LEMONS JOSEPH DONALDSUE ADELE	205 WALNUT ST		ELKO, NV	89801-2830
001265005	LIPPARELLI MATTHEW H& TERESA J	462 IDAHO ST		ELKO, NV	89801-3710
001342001	MKR PORTFOLIO LLC	C/O VEGA, JANINE	6558 ARTHUR AVE	ELKO, NV	89801-5420
001265009	NEVADA STATE BANK } 1p.c.	C/O NSB PROPERTY MANAGEMENT	PO BOX 54288	LEXINGTON, KY	40555-4280
001265008	NEVADA STATE BANK } 1p.c.	C/O NSB PROPERTY MANAGEMENT	PO BOX 54288	LEXINGTON, KY	40555-4280
001341006	NORTHERN NEVADA ASSET HOLDINGS } 1pc	340 COMMERCIAL ST		ELKO, NV	89801-3660
001264001	NORTHERN NEVADA ASSET HOLDINGS } 1pc	340 COMMERCIAL ST		ELKO, NV	89801-3660
001265015	NYE MICHAEL B	433 RAILROAD ST		ELKO, NV	89801-3710
001262011	O'CONNOR JERRY D TR	415 IDAHO ST		ELKO, NV	89801-3710
001265019	ORMAZA SERIES 400 IDAHO LLC } 1pc.	PO BOX 339		ELKO, NV	89803-0330
001265001	ORMAZA SERIES 400 IDAHO LLC } 1pc.	PO BOX 339		ELKO, NV	89803-0330
001265012	PUENTES TEODORA & EUSEBIO	451 RAILROAD ST		ELKO, NV	89801-3710
001342003	SANDERS HOLDING COMPANY LLC	PO BOX J		FILER, ID	83328-0910
001265006	SONORA LLC	PO BOX 1597		ELKO, NV	89803-1590
001261005	STAHL PROPERTIES LLC	C/O THUNDERBIRD MR KANSAGRA	345 IDAHO ST	ELKO, NV	89801-3130
001265016	WEIGHT AUTUMN D	C/O AUTUMN JOHANSEN	453 SAGE ST	ELKO, NV	89801-2820
001265017	WINES CATHERINE	421 RAILROAD ST STE 208		ELKO, NV	89801-3750
001342005	ZAZPI INVESTMENT SERIES BUILDIN	PO BOX 281367		LAMOILLE, NV	89828-1360

29

Post Marked 4/22/20

NOTICE OF PUBLIC HEARINGS
ELKO CITY PLANNING COMMISSION

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a series of public hearings on Tuesday, May 5, 2020 beginning at 5:30 P.M. P.D.S.T. , utilizing GoToMeeting.com, and that the public is invited to provide input and testimony on these matters under consideration via the virtual meeting at https://global.gotomeeting.com/join/906677325

The public can view or participate in the virtual meeting on a computer, laptop, tablet or smart phone at: https://global.gotomeeting.com/join/906677325. You can also dial in using your phone at **+1 (571) 317-3122.** The **Access Code** for this meeting is **906-677-325**
Members of the public that do not wish to use GoToMeeting may call in at (775)777-0590.
Comments can also be emailed to cityclerk@elkocitynv.gov

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

- **Conditional Use Permit No. 1-20, filed by Bill Dupee & Amber Dupee-Johnson, which would allow for a bar to be located within the Central Business District, specifically 401 Railroad Street, and matters related thereto.**

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

ELKO CITY PLANNING COMMISSION

CITY OF ELKO PLANNING DEPARTMENT
1751 College Avenue * Elko * Nevada * 89801
(775) 777-7160 phone * (775) 777-7219 fax

APPLICATION FOR CONDITIONAL USE PERMIT APPROVAL

APPLICANT(s): Bill Dupee & Amber Dupee Johnson
(Applicant must be the owner or lessee of the ***proposed*** structure or use.)
MAILING ADDRESS: 2428 Rodeo Ct Elko, NV. 89801
PHONE NO. (Home) 775-385-3148 **(Business)** 907-240-1193
NAME OF PROPERTY OWNER (If different): Cavanaugh : Cavanaugh, LLC
(Property owner's consent in writing must be provided.)
MAILING ADDRESS: 401 Railroad St. Suite 307, Elko NV 89801
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-265-018 **Address** 401 Railroad Street
Lot(s), Block(s), &Subdivision Block # 265
Or Parcel(s) & File No. Parcel # 018

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
MAR 11 2020

1. Current zoning of the property: Commercial

2. Cite the provision of the Zoning Ordinance for which the Conditional Use Permit is required:
Brewery

3. Explain in detail the type and nature of the use proposed on the property:
Proposed ~~Distillery~~ / bar on ground floor aka: bank area of building
Brewery

4. Explain how the use relates with other properties and uses in the immediate area:
There are not similar businesses in the immediate area of down town Elko.
This business will close @ 10 pm on regular nights, later during special events.
The Plan is to participate in downtown events such as Wine Walk

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:
none

6. Describe the general suitability and adequacy of the property to accommodate the proposed use:
The property has been used for similar purposes in the past - bar use.
The location is ideal for events downtown

7. Describe in detail the proposed development in terms of grading, excavation, terracing, drainage, etc.: none

8. Describe the amounts and type of traffic likely to be generated by the proposed use: Once business opens, there will likely be more foot traffic as well as more parking lot usage in the parking corridor.

9. Describe the means and adequacy of off-street parking, loading and unloading provided on the property: Loading & unloading is likely to take place on Railroad St. or 4th Street. Preferably not during peak daytime hours.

10. Describe the type, dimensions and characteristics of any sign(s) being proposed: No signs are being proposed to the exterior of Building at this time.

11. Identify any outside storage of goods, materials or equipment on the property: none

12. Identify any accessory buildings or structures associated with the proposed use on the property: none

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

By My Signature below:

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

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

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

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

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

Applicant / Agent Amber Dapee-Johnson + Bill Dapee
(Please print or type)

Mailing Address 2428 Rodeo Ct
Street Address or P.O. Box

Elko, NV 89801
City, State, Zip Code

Phone Number: 907-240-1198 / 775-385-3148

Email address: brewery7018@yahoo.com

SIGNATURE: _____

FOR OFFICE USE ONLY

File No.: 1-20 **Date Filed:** 3/11/20 **Fee Paid:** $750 CK# 2277

Henderson Bank Building
COMMERCIAL OFFICE SPACES IN DOWNTOWN ELKO

February 26, 2020

City of Elko Planning Department
1751 College Avenue
Elko, NV 89801

RE: Conditional Use Permit

Dear City of Elko,

This is to give notice that Cavanaugh & Cavanaugh, LLC, gives permission to 7018 Brewery owners, Bill and Amber Dupee to apply for the Conditional Use Permit for their business located on the first floor of the Henderson Bank Building.

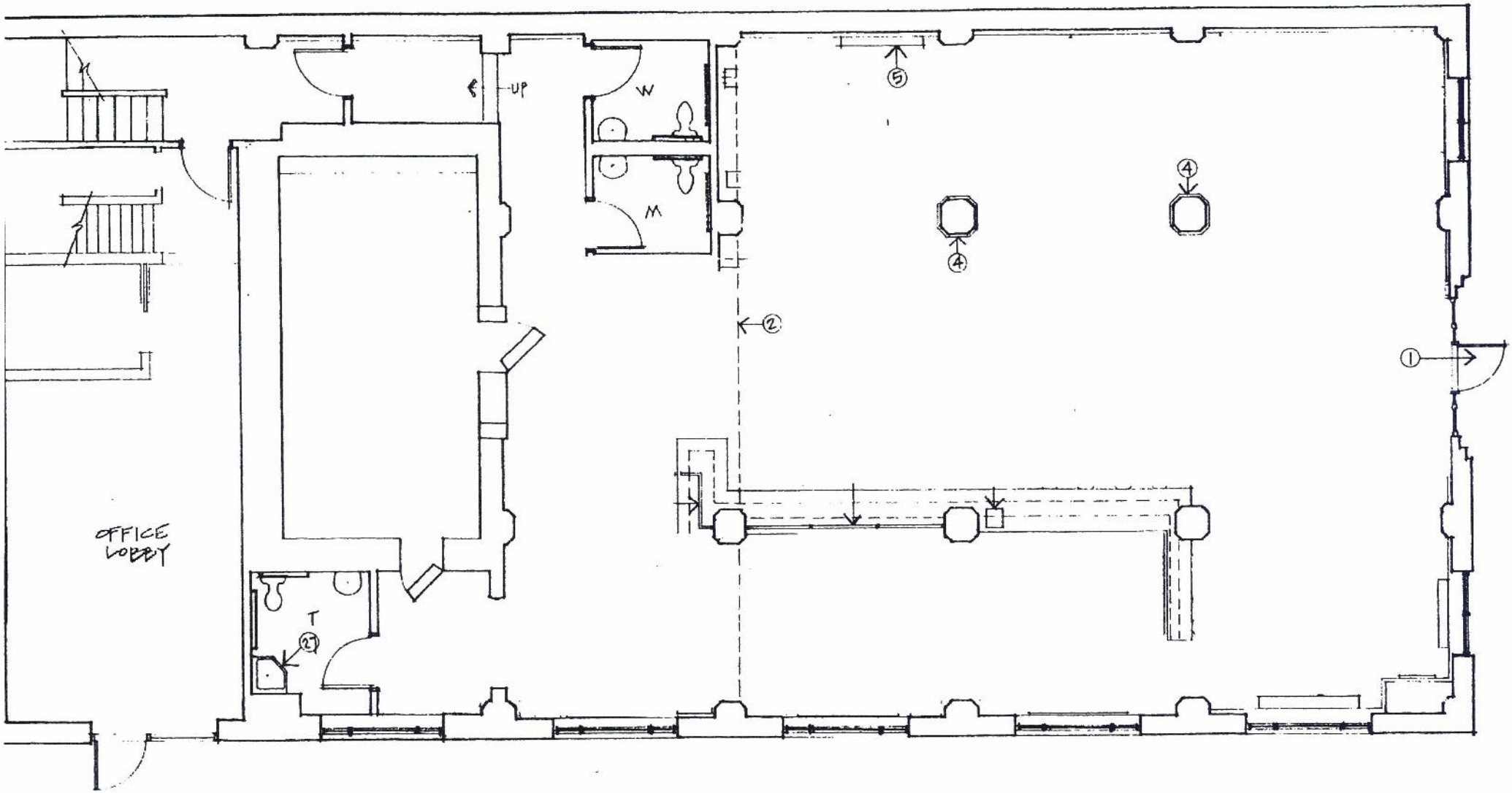
We have confidence that this business will be a responsible patron for the proposed usage and we look forward to having this business in the downtown corridor.

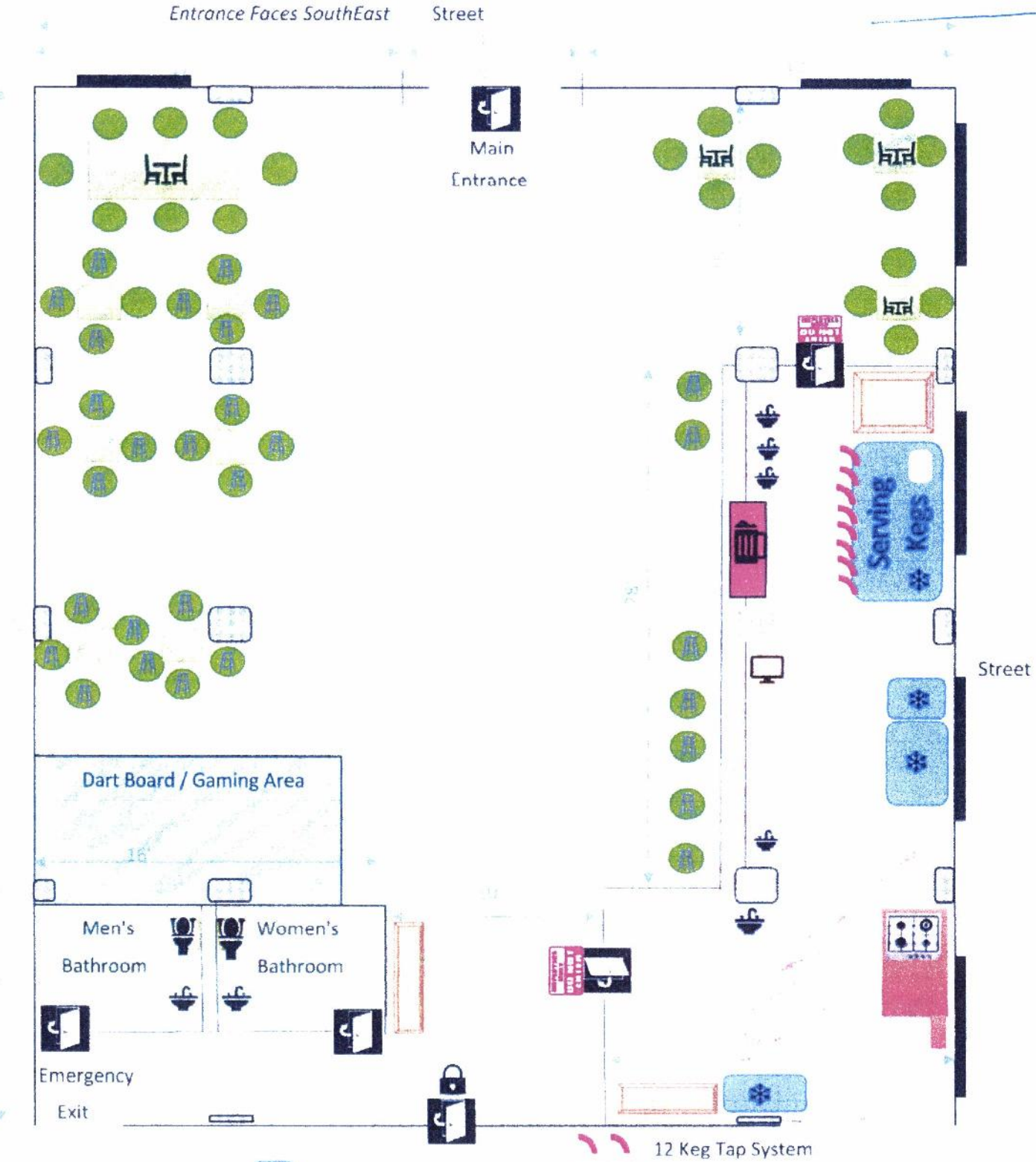
If you have any questions or concerns regarding this matter, please do not hesitate contacting us at the number below.

Sincerely,

Julie Cavanaugh-Bill, Co-Owner
The Henderson Bank Building

BAR.
12. EXISTING CHECK WRITING STAND WITH NEW RETAIL DISPLAY ON TOP.
13. NEW RETAIL DISPLAY.
14. COMMERCIAL RETAIL HUMADOR.
15. NEW LOW WALL WITH WOOD WAINSCOT TO MATCH EXISTING WAINSCOT.
16. CASH REGISTER.
17. COUNTERTOP SS HAND SINK.
18. EXISTING 3-COMPARTMENT SS BAR SINK.
19. EXISTING HAND SINK RELOCATED.





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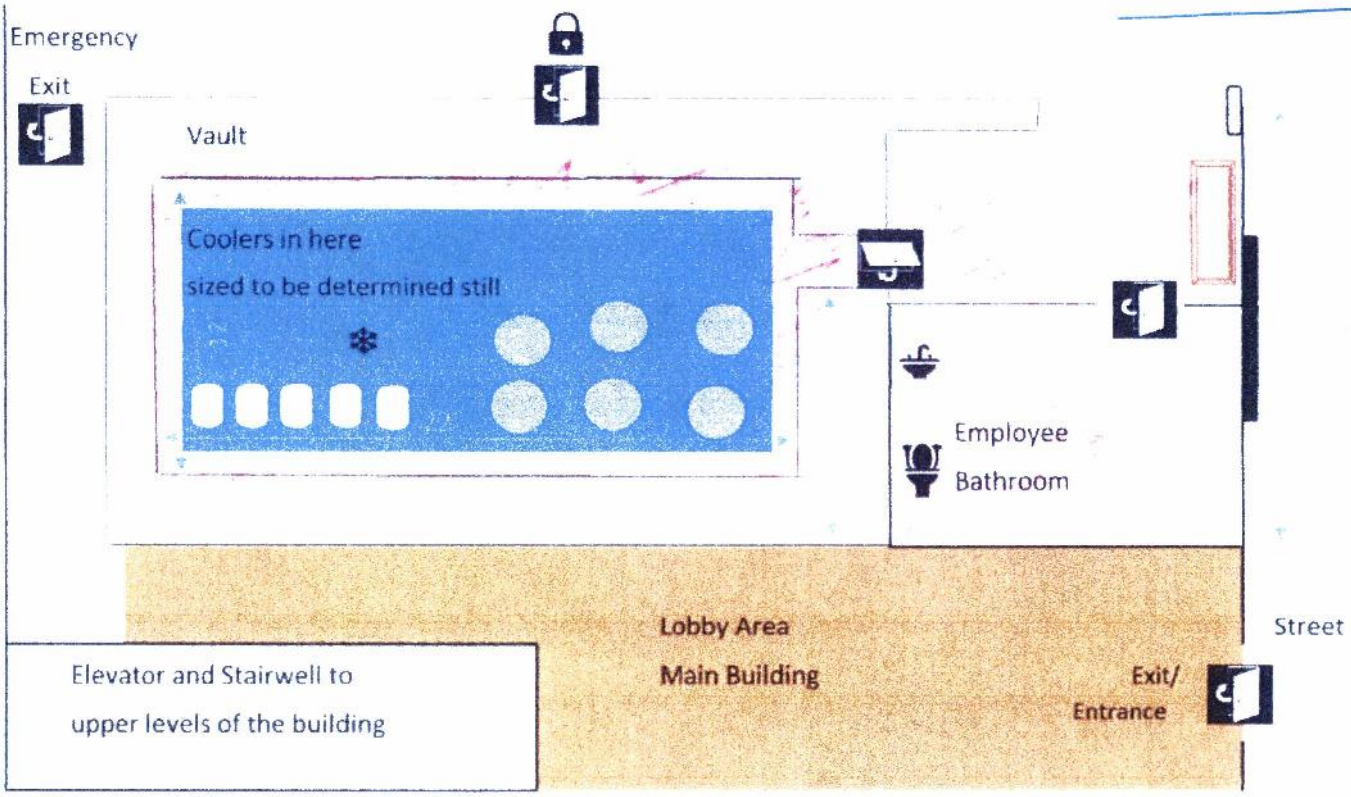
MAR 11 2020



These will be locked when the upper level businesses close for the evening

Public Area / Tax Paid Tasting Area

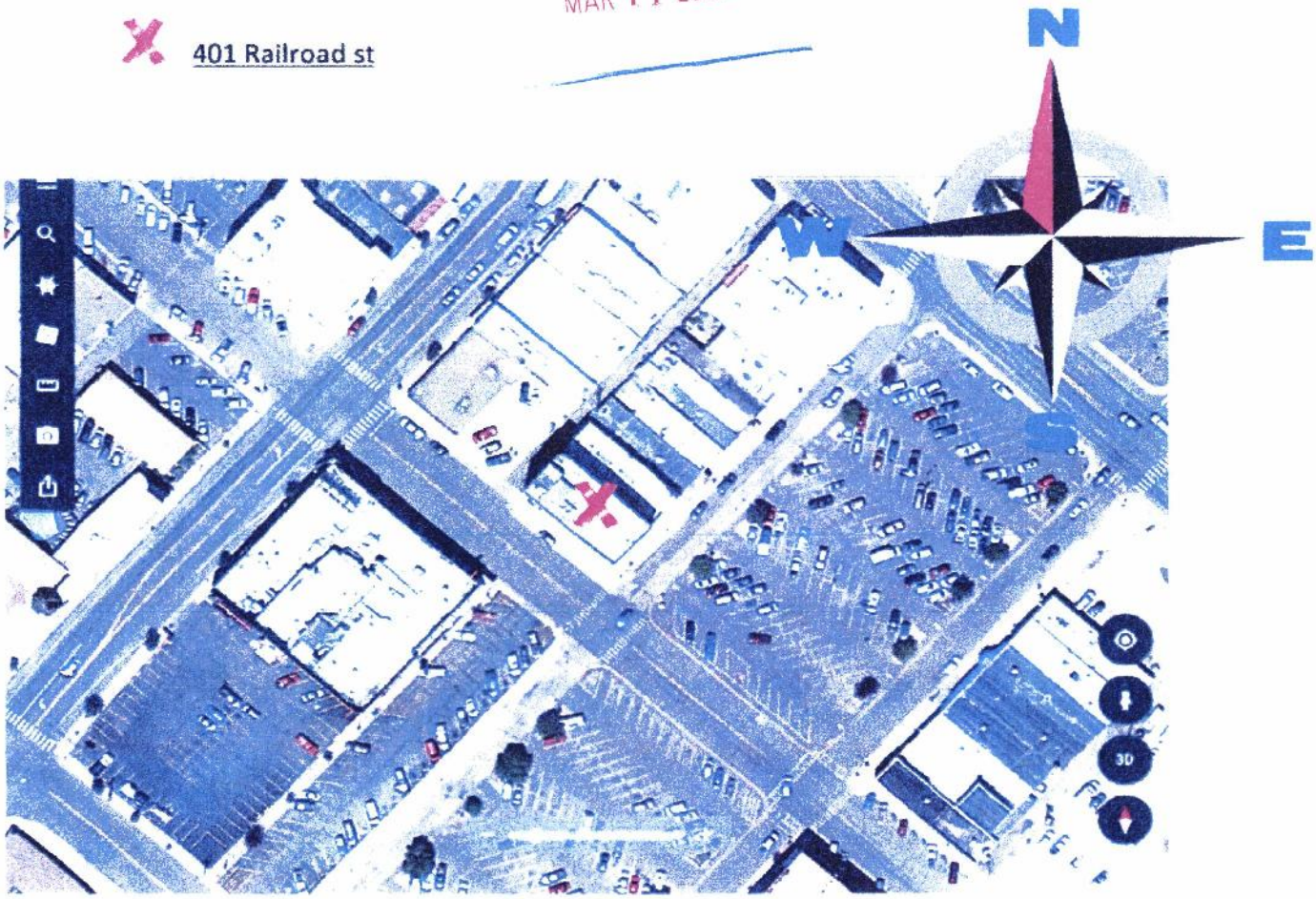
Non Public Area

NORTH CORNER

RECEIVED

MAR 11 2020

401 Railroad st



1St floor of 401 Railroad st

Elko City Planning Commission
Agenda Action Sheet

1. **Review, consideration and possible approval of Final Map No. 1-20, filed by Kelly Builders, LLC, for the development of a subdivision entitled Townhomes at Ruby View involving the proposed division of approximately 1.297 acres of property into 10 townhouse lots for residential development and 1 common lot within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **May 5, 2020**

3. Agenda Category: ***NEW BUSINESS***

4. Time Required: **15 Minutes**

5. Background Information: **Subject property is located on the south side of Indian View Heights Drive at the intersection of Griswold Drive. (APN 001-530-026)**

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

7. Supplemental Agenda Information: **Application and Staff Report**

8. Recommended Motion: **Recommend that the City Council 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 1-20 with findings and conditions listed in the Staff Report dated April 20, 2020.**

9. Findings: **See Staff Report dated April 20, 2020**

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

11. Agenda Distribution: **Kelly Builders, LLC**
209 Raptor Court
Elko, NV 89801
kellybuilders@frontiernet.net

Carter Engineering, LLC
Attn: Lana Carter
P.O. Box 794
Elko, NV 89801
lanalcarter@live.com

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/5
Do not use pencil or red pen, they do not reproduce

Title: Final Map No. 1-20 Town Homes at Ruby View
Applicant(s): Kelly Builders, LLC
Site Location: S side of Indian View Heights @ intersection of Griswold
Current Zoning: R Date Received: 2/25 Date Public Notice: N/A
COMMENT: This is for the division of ≈ 1.29 acres into 10 Lots and a common area, entitled Town Homes at Ruby View

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/21/20
Recommend approval as presented by staff

SAU
Initial

City Manager: Date: 4/22/20
No comments/concerns.

cc
Initial

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

CITY OF ELKO STAFF REPORT

REPORT DATE:	**April 20, 2020**
PLANNING COMMISSION DATE:	**May 5, 2020**
AGENDA ITEM NUMBER:	**I.B.1**
APPLICATION NUMBER:	**Final Map 1-20**
APPLICANT:	**Kelly Builders, LLC**
PROJECT DESCRIPTION:	**Townhomes at Ruby View**

A Final Map for the division of approximately 1.297 acres into 10 townhouse lots for residential development and 1 common lot within an R (Single Family and Multiple Family Residential) zoning district.

STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER: 001-530-026

PARCEL SIZE: 1.297 Acres

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

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

EXISTING LAND USE: Vacant

BACKGROUND:

1. The Final Map for Townhomes at Ruby View 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 Townhomes at Ruby View Tentative Map.
3. The City Council conditionally approved the Townhomes at Ruby View Tentative Map.
4. The subdivision is located on APN 001-530-026.
5. The proposed subdivision consists of 10 residential lots and 1 common lot.
6. The total subdivided area is approximately 1.297 acres.
7. The proposed density is 7.71 units per acre.
8. No public streets are being dedicated as part of this subdivision.
9. Drainage and utility easements are provided along all lot lines.
10. The property is located on the south side of Indian View Heights Drive at the intersection of Griswold Drive.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

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

PROPERTY CHARACTERISTICS:

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

APPLICABLE MASTER PLAN AND CITY CODE SECTIONS:

- City of Elko Master Plan – Land Use Component

- City of Elko Master Plan – Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning – Section 3-3-7 Final Map State (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 within the 20-year capture zone for several City of Elko wells. Development of the site is required to be connected to a programmed sewer system and all street drainage will be directed to a storm sewer system.

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 located adjacent to a city boundary, which is shown on the Final Map.
    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, which have been approved.
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 paving and utilities within the Indian View Heights 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 Townhomes at Ruby View 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), and 3-2-17 of City code.

12. The proposed development is in conformance with Section 3-8 of City code.

STAFF RECOMMENDATION:

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

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 Townhomes at Ruby View is approved for 10 townhouse lots and 1 common lot.

5. The Utility Department will issue a Will Serve Letter for the subdivision.

6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.

7. 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.

8. Conformance with the conditions of approval of the Tentative Map is required.

9. 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. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.

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

April 28, 2020

Kelly Builders, LLC
209 Raptor Court
Elko, NV 89801
VIA EMAIL: Kellybuilders@frontiernet.net

Re: Final Map No. 1-20

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/906677325. You can also dial in using your phone at **+1 (571) 317-3122.** The **Access Code** for this meeting is **906-677-325**

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

Sincerely,

Shelby Archuleta
Planning Technician

Enclosures

CC: Lana Carter, lanalcarter@live.com

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

March 3, 2020

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

Re: Townhomes at Ruby View – Complete Submittal (Final Map 1-20)

Dear Ms. Carter:

The City of Elko has reviewed your Final Map application materials for the Townhomes at Ruby View (submitted February 27, 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.

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

Sincerely,

Michele Rambo

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: High Desert Engineering, LLC
Attn: Bob Morley
640 Idaho Street
Elko, NV 89801

City of Elko – File

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

January 2, 2020

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

Re: Townhomes at Ruby View – Incomplete Submittal (Final Map 1-20)

Dear Ms. Carter:

The City of Elko has reviewed your Final Map application materials for the Townhomes at Ruby View (submitted February 25, 2020) and has found it to be incomplete. Please have the surveyor revise the Final Map to include the information listed below.

1. The subdivision tied to a section corner.
2. Label the western property line as City Limits.

Please resubmit the revised Final Map by March 9, 2020 to ensure sufficient time for other departments to review and comment prior to the April 7, 2020 Planning Commission meeting. Please include in your resubmittal a new PDF copy of the revised Final Map. As outlined in Section 3-3-5(C)(4), these revisions must be received within 90-days of the original filing date (February 25, 2020), or the submittal will automatically expire.

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

Sincerely,

Michele Rambo

Michele Rambo, AICP
Development Manager
mrambo@elkocitynv.gov

CC: High Desert Engineering, LLC
Attn: Bob Morley
640 Idaho Street
Elko, NV 89801

City of Elko – File

Carter Engineering, LLC
Civil Engineering
P. O. Box 794
Elko, Nevada 89803
775-397-2531

Transmittal Letter

Date: February 25, 2020

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

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

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

Description of Attachments:

1. Application
2. Fee (Check 1596 - $1,025.00)
3. Lot Closure Calculations
4. Wall Calculations
5. Hydrology Study
6. Engineer's Estimate
7. Soils Report
8. 3 Copies of the Final Map (24"x36")
9. 3 Sets of the Construction Plans (24"x36")
10. 1 Set of the Final Map and Construction Plans (8.5"x11")
11. PDF copy of the entire submittal on a jump drive.

Remarks:

Hello Cathy,

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

Thanks - Lana L Carter

Lana

Cc: Wade and Laura Kelly, Kelly Builders, LLC

CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801

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

APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s): Kelly Builders, LLC
MAILING ADDRESS: 209 Raptor Court, Elko Nevada 89801
PHONE NO (Home) _____ **(Business)** 775-777-3217
NAME OF PROPERTY OWNER (If different): _____
(Property owner consent in writing must be provided)
MAILING ADDRESS: _____
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-530-026 **Address** 1553 Indian View Heights Drive
Lot(s), Block(s), &Subdivision _____
Or Parcel(s) & File No. Parcel 1 of file No. 707194
PROJECT DESCRIPTION OR PURPOSE: 10 lot single family residential townhome developement with one remainder parcel as the common area
APPLICANT'S REPRESENTATIVE OR ENGINEER: Lana L. Carter, P.E., Carter Engineering LLC

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 ½" 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
FEB 25 2020

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
N/A	Location and description of all physical encroachments
Descriptive Data	
✓	Street Layout, location, widths, easements
N/A	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 ackowledged by a notary public
Additional Information	
N/A	Street CL, and Monuments identified
N/A	Street CL and width shown on map
✓	Location of mounuments used to determine boudaries
✓	Each city boundary line crossing or adjoing 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 WADE KELLY
(Please print or type)

Mailing Address 209 RAPTOR CT
Street Address or P.O. Box

ELKO NV 89801
City, State, Zip Code

Phone Number: 775-934-4234

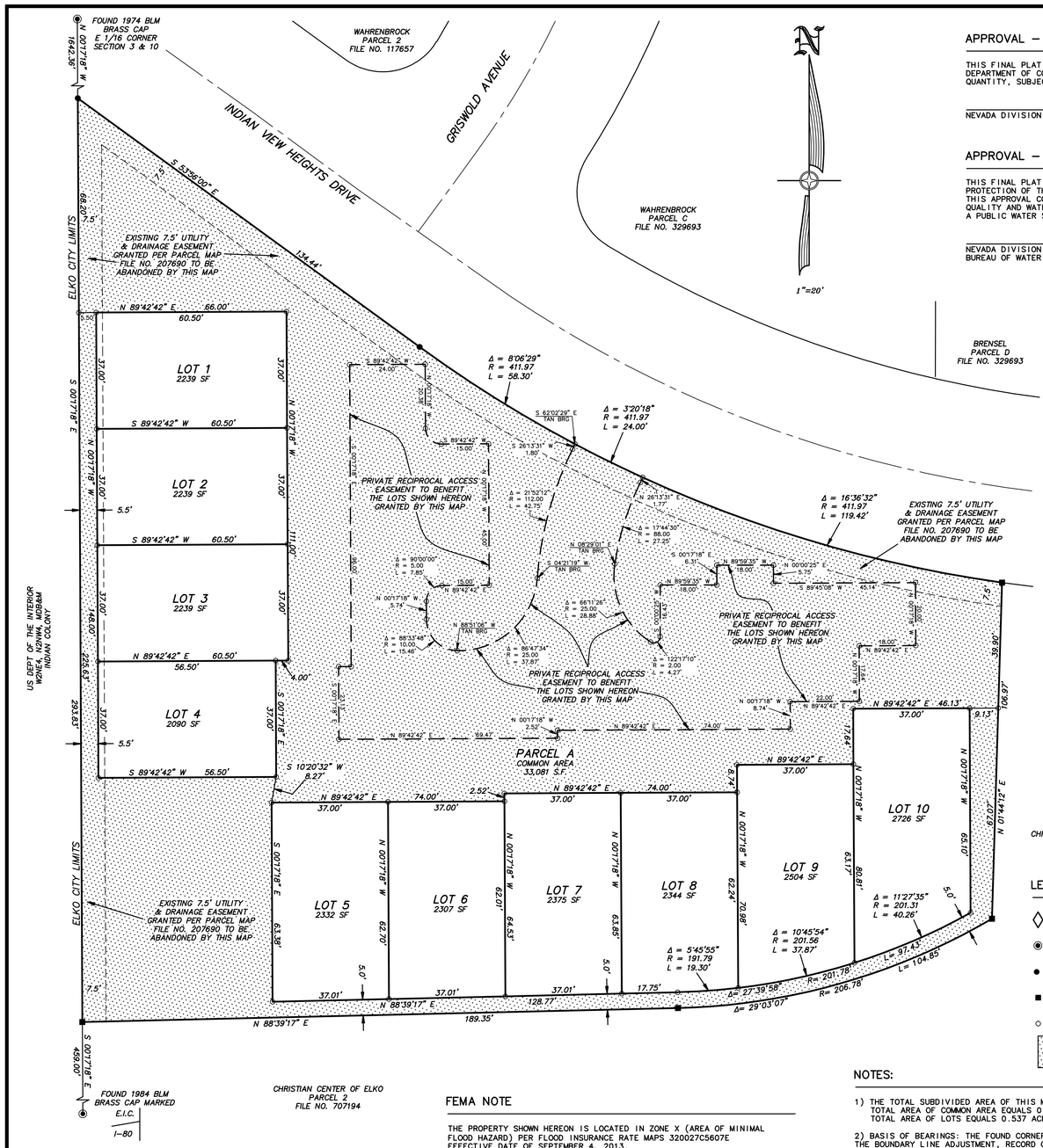
Email address: KellyBuilders@frontiernet.net

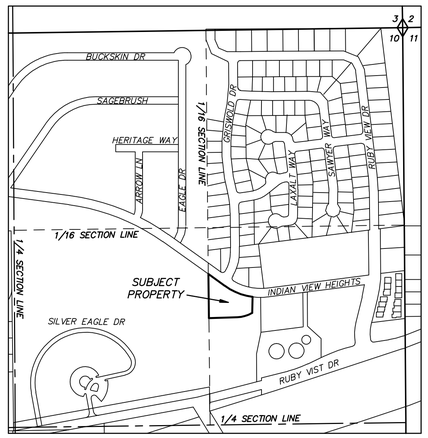
SIGNATURE: Wade Kelly

FOR OFFICE USE ONLY

(10 lots + Common Area) x $25 = $275.00
+ 750.00
$1025.00

File No.: 1-20 **Date Filed:** 2/25/20 **Fee Paid:** $1025.00 CK# 1596





VICINITY MAP
NOT TO SCALE

LEGEND

- ◇ = SECTION CORNER.
- ◉ = FOUND CORNER AS NOTED
- ● = SET 5/8" REBAR WITH CAP MARKED PLS 6203.
- ■ = FOUND 5/8" REBAR WITH CAP MARKED PLS 8658.
- ○ = CALCULATED POINT, NOTHING FOUND, NOTHING SET.
- = PARCEL A, COMMON AREA.

NOTES:

1) THE TOTAL SUBDIVIDED AREA OF THIS MAP EQUALS 1.297 ACRES, 56,476 S.F.
TOTAL AREA OF COMMON AREA EQUALS 0.760 ACRES, 33,081 S.F.
TOTAL AREA OF LOTS EQUALS 0.537 ACRES, 23,395 S.F.

2) BASIS OF BEARINGS: THE FOUND CORNERS SHOWN HEREON AND AS SHOWN ON THE BOUNDARY LINE ADJUSTMENT, RECORD OF SURVEY FOR CHRISTIAN CENTER OF ELKO, ON FILE IN THE OFFICE OF THE ELKO COUNTY RECORDER, AS FILE NO. 707194.

3) A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY 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.

4) A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO SOUTHWEST GAS CORP. WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INGRESS/EGRESS, INSTALLING, MAINTAINING, INSPECTING AND REPAIRING UTILITY FACILITIES WHICH PROVIDE SERVICE TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH ADDITIONAL UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS. RIGHTS ARE ALSO GRANTED TO USE EXISTING PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF MAINTAINING, INSTALLING, INSPECTING AND REPAIRING SAID UTILITY FACILITIES.

5) IN ADDITION TO ANY EASEMENTS SHOWN, A BLANKET PUBLIC UTILITY AND DRAINAGE EASEMENT IS GRANTED ON PARCEL A AS SHOWN HEREON.

6) THIS MAP SUBDIVIDES PARCEL 1 AS SHOWN ON THE BOUNDARY LINE ADJUSTMENT, RECORD OF SURVEY FOR CHRISTIAN CENTER OF ELKO, ON FILE IN THE OFFICE OF THE ELKO COUNTY RECORDER, AS FILE NO. 707194.

APPROVAL – NEVADA DIVISION OF WATER RESOURCES

THIS FINAL 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.

NEVADA DIVISION OF WATER RESOURCES DATE

APPROVAL – NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

THIS FINAL PLAT IS APPROVED BY THE NEVADA 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 PREDICATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMUNITY SYSTEM FOR DISPOSAL OF SEWAGE.

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION, BUREAU OF WATER POLLUTION CONTROL DATE

APPROVAL – PUBLIC UTILITIES

THE PUBLIC UTILITY EASEMENTS, AS DESIGNATED HEREON, ARE APPROVED BY THE RESPECTIVE UTILITIES EXECUTING BELOW.

FRONTIER COMMUNICATIONS DATE

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

ZITO MEDIA DATE

SOUTHWEST GAS CORPORATION DATE

FEMA NOTE

THE PROPERTY SHOWN HEREON IS LOCATED IN ZONE X (AREA OF MINIMAL FLOOD HAZARD) PER FLOOD INSURANCE RATE MAPS 320027C5607E EFFECTIVE DATE OF SEPTEMBER 4, 2013.

COUNTY ASSESSOR'S CERTIFICATE

I, KATRINKA S. RUSSELL, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBERS SHOWN ON THIS PLAT ARE CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF SAID ASSESSOR'S PARCEL NO. 001-530-026.

ELKO COUNTY TREASURER DATE

COUNTY TREASURER'S CERTIFICATE

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON PARCEL NO. 001-530-026 HAVE BEEN PAID FOR THIS FISCAL YEAR.

ELKO COUNTY TREASURER DATE

FILING DATA

FILE NO._____

FILED AT THE REQUEST OF HIGH DESERT ENGINEERING.

DATE _____, 2020

TIME _____.M.

D. MIKE SMALES
ELKO COUNTY RECORDER

OWNERS CERTIFICATE

KNOWN OF ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, KELLY BUILDERS, LLC, A NEVADA LIMITED LIABILITY COMPANY, BEING THE OWNER OF THOSE PARCELS AS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP AND OFFER FOR DEDICATION ALL OF THE RIGHTS OF WAY AND EASEMENTS FOR PUBLIC ACCESS, PUBLIC UTILITY AND DRAINAGE PURPOSES AS DESIGNATED HEREON. IN WITNESS I, SET MY HAND ON THE DATE SHOWN.

KELLY BUILDERS, LLC

BY: WADE JAMES KELLY, MANAGING MEMBER DATE

STATE OF NEVADA
COUNTY OF ELKO

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE _____ DAY OF _____, 2020, BY WADE JAMES KELLY, MANAGING MEMBER OF KELLY BUILDERS, LLC.

NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

I, ROBERT E. MORLEY, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1. THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY DIRECT SUPERVISION AT THE INSTANCE OF WADE JAMES KELLY, MANAGING MEMBER OF KELLY BUILDERS, LLC.

2. THE LANDS SURVEYED LIE WITHIN SECTION 10, T.34 N., R.55 E., MDB& M., AND THE SURVEY WAS COMPLETED ON _____.

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 ARE THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED AND ARE OF SUFFICIENT NUMBER AND DURABILITY.

PROFESSIONAL LAND SURVEYOR STATE OF NEVADA ROBERT E. MORLEY Exp.12-31-21 No. 6203

ROBERT E. MORLEY, P.L.S. 6203

CITY ENGINEER'S REPRESENTATIVE CERTIFICATE

I, _____, REPRESENTATIVE FOR THE CITY ENGINEER OF THE CITY OF ELKO, NEVADA, 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; 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; THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT; AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED.

CITY ENGINEER OR ENGINEERING REPRESENTATIVE DATE

APPROVAL – CITY OF ELKO PLANNING COMMISSION

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

CHAIRMAN, CITY OF ELKO PLANNING COMMISSION DATE

APPROVAL – CITY OF ELKO CITY COUNCIL

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, 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, AS SHOWN HEREON, WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO, NEVADA DATE

ATTEST: CITY CLERK, CITY OF ELKO, NEVADA DATE

20 0 20 40 60 80

SCALE: 1"=20'

FINAL MAP
FOR
THE TOWN HOMES AT RUBY VIEW
IN
SECTION 10, T.34 N., R.55 E., M.D.B.& M.
ELKO COUNTY, NEVADA

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

220003

Agenda Item # I.B.2

Elko City Planning Commission
Agenda Action Sheet

1. **Review, consideration and possible approval of Final Map No. 2-20, filed by Koinonia Development, LP, for the development of a subdivision entitled Mountain View Townhomes – Unit 1 involving the proposed division of approximately 1.00 acres of property into 12 townhouse lots for residential development and 1 common lot approximately 26,784 sq. ft. in area and 1 remainder parcel approximately 2.38 acres in size, within the CT (Commercial Transitional) Zoning District, and matters related thereto. FOR POSSIBLE ACTION**

2. Meeting Date: **May 5, 2020**

3. Agenda Category: ***NEW BUSINESS***

4. Time Required: **15 Minutes**

5. Background Information: **Subject property is located on the south side of N 5th Street at the intersection of Mary Way. (APN 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075)**

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 2-20 with findings and conditions listed in the Staff Report dated April 20, 2020.**

9. Findings: **See Staff Report dated April 20, 2020**

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

11. Agenda Distribution: **Koinonia Development, LP**
Attn: John Smales
207 Brookwood Drive
Elko, NV 89801
johnskoinonia@gmail.com

High Desert Engineering, LLC
Attn: Tom Ballew
tcballew@frontiernet.net

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/5
Do not use pencil or red pen, they do not reproduce

Title: Final Map No. 2-20 Mountain View Town Homes - Unit 1
Applicant(s): Koinonia Development, LP
Site Location: S side N. 5th St. across from Mary Way
Current Zoning: CT Date Received: 3/17 Date Public Notice: N/A
COMMENT: This is for the division of 1 acre into 12 lots and a common area ≈ 26,784 sq.ft in area and 1 remainder parcel ≈ 2.38 acres in size.

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/21/20
Recommend approval as presented by staff

SAL
Initial

City Manager: Date: 4/22/20
No comments/Concerns.

CC
Initial

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

CITY OF ELKO STAFF REPORT

REPORT DATE:	**April 20, 2020**
PLANNING COMMISSION DATE:	**May 5, 2020**
AGENDA ITEM NUMBER:	**I.B.2**
APPLICATION NUMBER:	**Final Map 2-20**
APPLICANT:	**Koinonia Development, LP**
PROJECT DESCRIPTION:	**Mountain View Townhomes – Unit 1**

A Final Map for the division of approximately 1.00 acre into 12 townhouse lots for residential development and 1 common lot approximately 26,784 sq. ft. in area and 1 remainder parcel approximately 2.38 acres in size, within a CT (Commercial Transitional) zoning district.

STAFF RECOMMENDATION:

RECOMMEND CONDITIONAL APPROVAL, subject to findings of fact, and conditions as stated

in this report.

PROJECT INFORMATION

PARCEL NUMBER: 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075

PARCEL SIZE: 3.24 Acres – Approved Tentative Map
1.00 Acre – Proposed Unit 1

EXISTING ZONING: (CT) Commercial Transitional

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

EXISTING LAND USE: Vacant

BACKGROUND:

1. The Final Map for Mountain View Townhomes-Unit 1has 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 Mountain View Townhomes Tentative Map.
3. The City Council conditionally approved the Mountain View Townhomes Tentative Map.
4. The subdivision is located on APNs 001-610-096, 001-610-097, 001-610-098, 001-610-099, and a portion of 001-610-075 (being purchased from the City of Elko).
5. The proposed overall subdivision consists of 44 residential lots and 1 common lot.
6. The total subdivided area is approximately 3.24 acres.
7. The proposed density is 13.58 units per acre.
8. No public streets are being dedicated as part of this subdivision.
9. Drainage and utility easements are provided along all lot lines.
10. The property is located on the south side of N 5th Street at the intersection of Mary Way.

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

- Northwest: Commercial (C) / Developed
- Northeast: Residential Mobile Home (RMH) / Developed
- Southwest: Public/Quasi-Public (PQP) / Developed
- Southeast: Commercial (C) / Developed

PROPERTY CHARACTERISTICS:

- The property is an undeveloped commercial parcel.
- The site abuts previous residential development to the northeast, commercial buildings on the northwest and southeast, and Mountain View Park on the southwest.
- The parcel is generally flat, but has some significant slope in the southwest corner, which

has been incorporated into the tentative map design.
- The property will be accessed by two driveways off of N 5th Street.

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

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 paving and utilities within the N 5thn Street 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 Mountain View Townhomes – Unit 1 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), and 3-2-17 of City code.

12. The proposed development is in conformance with Section 3-8 of City code.

STAFF RECOMMENDATION:

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

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 Mountain View Townhomes – Unit 1 is approved for 12 townhouse lots and 1 common lot.

5. The Utility Department will issue a Will Serve Letter for the subdivision.

6. Site disturbance shall not commence prior to approval of the project's construction plans by the Nevada Department of Environmental Protection.

7. 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.

8. Conformance with the conditions of approval of the Tentative Map is required.

9. 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. All right-of-way and utility improvements are to be certified by the Engineer of Record for the project.

10. Fire Department Turnaround to be constructed to 2018 IFC Appendix D 102.1 Access and Loading...*approved driving surface capable of supporting the imposed load of fire apparatus weighing up to 75,000 pounds.*

11. Fire department turn around be labeled as “FIRE DEPARTMENT TURN-AROUND ACCESS EASEMENT”.

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

April 28, 2020

Koinonia Development, LP
207 Brookwood Drive
Elko, NV 89801
VIA EMAIL: elkoluke@gmail.com

Re: Final Map No. 2-20

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/906677325. You can also dial in using your phone at **+1 (571) 317-3122.** The **Access Code** for this meeting is **906-677-325**

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

Sincerely,

Shelby Archuleta

Shelby Archuleta
Planning Technician

Enclosures

CC: High Desert Engineering, Tom Ballew, tcballew@frontiernet.net

CITY OF ELKO PLANNING DEPARTMENT
1751 College Avenue * Elko * Nevada * 89801
(775) 777-7160 * (775) 777-7119 fax

APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s): Koinonia Development, LP
MAILING ADDRESS: 207 Brookwood Drive, Elko, NV 89801
PHONE NO (Home) _____ **(Business)** (775) 303-8492
NAME OF PROPERTY OWNER (If different): same
(Property owner consent in writing must be provided)
MAILING ADDRESS: same
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
ASSESSOR'S PARCEL NO.: 001-610-096, 097, 098 & 099 **Address** N/A
Lot(s), Block(s), &Subdivision _____
Or Parcel(s) & File No. Adjusted Parcels 1,2 & 3, File 765673 & Parcel 4, File 416535
PROJECT DESCRIPTION OR PURPOSE: 12 Lot Single Family Residential Subdivision
APPLICANT'S REPRESENTATIVE OR ENGINEER: High Desert Engineering, LLC

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 ½" 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
MAR 17 2020

Final Plat Checklist 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 ackowledged 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 adjoing 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: **Koinonia Development, LP – Contact: Luke Fitzgerald**
(Please print or type)

Mailing Address: **207 Brookwood Drive**
Street Address or P.O. Box
Elko, NV 89801
City, State, Zip Code

Phone Number: **(775) 303-8492**

Email address: elkoluke@gmail.com

SIGNATURE:

FOR OFFICE USE ONLY

12 Lots + Common + Remainder = 14

File No.: 2-20 **Date Filed:** 3/17/20 **Fee Paid:** $1075 + $25 = $1,100
CK# 15580 CK# 15581

$25 × 14 = $350
$350 + 750 = $1,100

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

HIGH DESERT ENGINEERING LLC

Consulting Civil Engineering
Land Surveying
Water Rights

March 17, 2020

RECEIVED
MAR 17 2020

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

Re: Mountain View Town Homes
Unit 1

Dear Cathy,

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

- Application for Final Plat Approval.
- Ten (10) 24"x36" copies of the proposed Final Plat Map.
- Two (2) 24"x36" copies of the Site Construction Drawings
- One (1) copy of the subdivision lot calculations.
- One (1) copy of the Public Improvement Estimate
- Check in the amount of $1,075.00 for the Final Plat review fee (payee City of Elko).

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

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

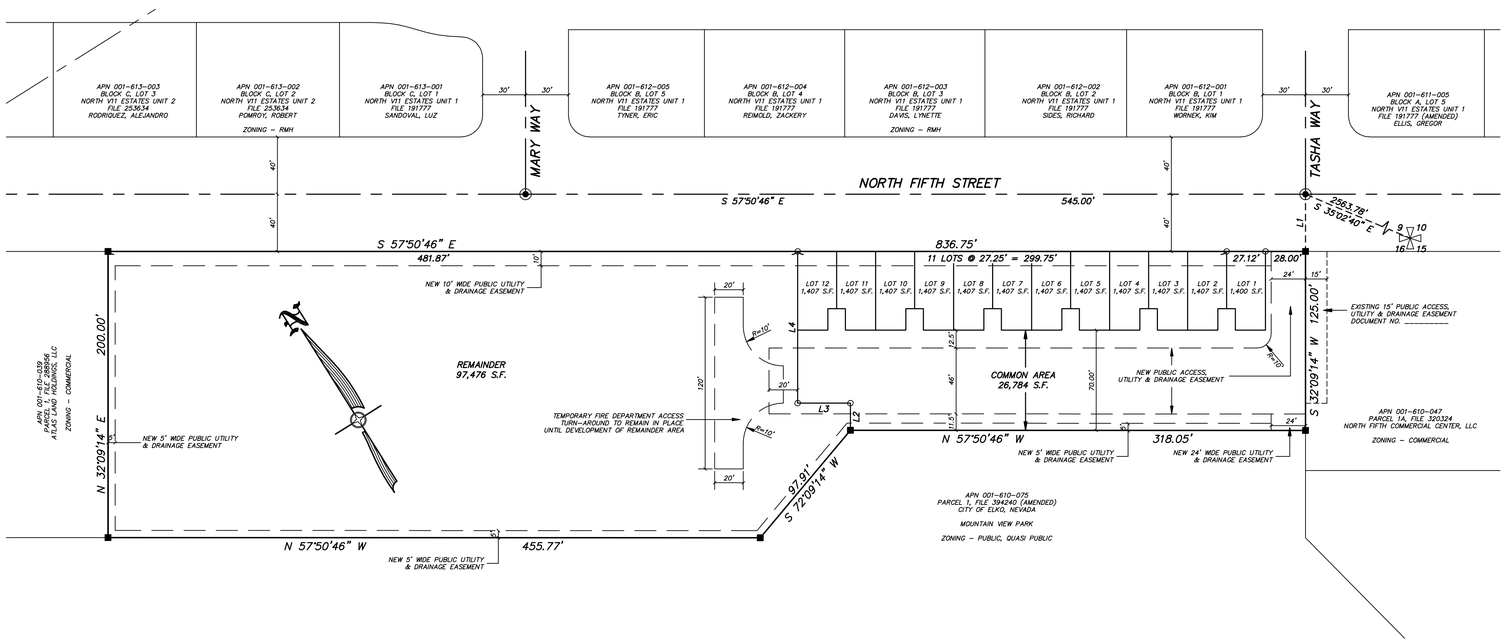
Sincerely,
HIGH DESERT Engineering, LLC

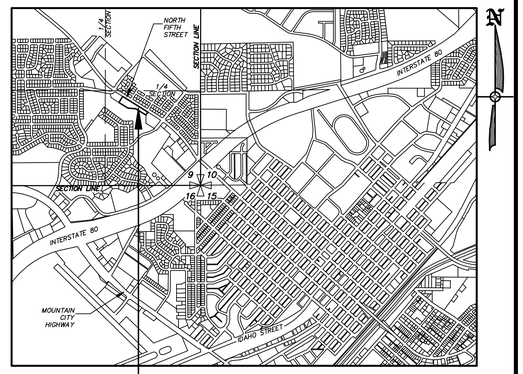
Thomas C. Ballew, P.E., P.L.S.

enclosures

cc Luke Fitzgerald, Koinonia Development, LP

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





PROJECT SITE

VICINITY MAP

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 32°09'14" W	40.00'
L2	N 32°09'14" E	19.00'
L3	N 57°50'46" W	36.82'
L4	N 32°09'14" E	106.00'

OWNER'S CERTIFICATE:

KNOWN OF ALL MEN BY THESE PRESENTS THAT KOINONIA DEVELOPMENT, LP, A NEVADA LIMITED PARTNERSHIP, BEING THE OWNER OF THOSE PARCELS AS SHOWN ON THIS MAP, DOES HEREBY CONSENT TO THE PREPARATION AND FILING OF THIS MAP AND OFFERS FOR DEDICATION ALL OF THE EASEMENTS FOR PUBLIC ACCESS, PUBLIC UTILITY AND PUBLIC DRAINAGE PURPOSES AS DESIGNATED HEREON. IN WITNESS I, LUKE FITZGERALD, PRESIDENT OF KOINONIA CONSTRUCTION, INC., GENERAL PARTNER OF KOINONIA DEVELOPMENT, LP, SET MY HAND ON THE DATE SHOWN.

KOINONIA DEVELOPMENT, LP
BY: KOINONIA CONSTRUCTION, INC., GENERAL PARTNER

BY: LUKE FITZGERALD, PRESIDENT _____ DATE

STATE OF NEVADA)
) S.S.
COUNTY OF ELKO)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON THE _____ DAY OF _____, 20____, BY LUKE FITZGERALD, PRESIDENT OF KOINONIA CONSTRUCTION, INC., GENERAL PARTNER OF KOINONIA DEVELOPMENT, LP.

NOTARY PUBLIC IN AND FOR ELKO COUNTY, NEVADA

MY COMMISSION EXPIRES: _____

APPROVAL – PUBLIC UTILITY EASEMENTS

THE PUBLIC UTILITY EASEMENTS, AS DESIGNATED HEREON, ARE APPROVED BY THE RESPECTIVE PUBLIC UTILITIES EXECUTING BELOW.

FRONTIER COMMUNICATIONS _____ DATE

SIERRA PACIFIC POWER COMPANY d/b/a NV ENERGY _____ DATE

SOUTHWEST GAS CORPORATION _____ DATE

ZITO MEDIA _____ DATE

ASSESSOR'S CERTIFICATE:

I, KATRINKA RUSSELL, CERTIFY THAT THE ASSESSOR'S PARCEL NUMBER SHOWN ON THIS PLAT IS CORRECT AND THAT THE PROPOSED PARCELS ARE A DIVISION OF SAID ASSESSOR'S PARCEL NUMBER _____.

ELKO COUNTY ASSESSOR _____ DATE

TREASURER'S CERTIFICATE:

I, CHERYL PAUL, CERTIFY THAT ALL PROPERTY TAXES ON ASSESSOR'S PARCEL NUMBER _____ HAVE BEEN PAID FOR THIS FISCAL YEAR.

ELKO COUNTY TREASURER _____ DATE

APPROVAL – NEVADA DIVISION OF WATER RESOURCES

THIS FINAL MAP 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 AT THIS OFFICE.

NEVADA DIVISION OF WATER RESOURCES _____ DATE

APPROVAL – NEVADA DIVISION OF ENVIRONMENTAL PROTECTION

THIS FINAL MAP IS APPROVED BY THE NEVADA 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 PREDICATED UPON PLANS FOR A PUBLIC WATER SUPPLY AND A COMMUNITY SYSTEM FOR DISPOSAL OF SEWAGE.

NEVADA DIVISION OF ENVIRONMENTAL PROTECTION
BUREAU OF WATER POLLUTION CONTROL _____ DATE

NOTES:

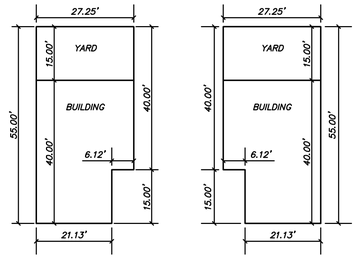
1. BASIS OF BEARINGS – NEVADA STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD83, USING THE LOCAL COMBINED SCALE FACTOR ESTABLISHED BY THE CITY OF ELKO.
2. BASIS OF ELEVATIONS – NAVD88.
3. SUBDIVISION AREAS ARE AS FOLLOWS:

TOWNHOUSE LOTS:	16,877 SF	0.387 ACRES
REMAINDER LOT:	97,476 SF	2.238 ACRES
COMMON AREA:	26,784 SF	0.615 ACRES
DEDICATED STREETS:	0 SF	0.000 ACRES
TOTAL SUBDIVISION:	141,136 SF	3.240 ACRES

4. ALL EXISTING EASEMENTS, LOCATED WITHIN THE BOUNDARIES OF THIS SUBDIVISION ARE HEREBY REMOVED AND REPLACED WITH THE EASEMENTS SHOWN AND AS DESCRIBED BELOW.
5. A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY 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.
6. A PUBLIC UTILITY EASEMENT IS HEREBY GRANTED SPECIFICALLY TO SOUTHWEST GAS CORP. WITHIN EACH PARCEL FOR THE EXCLUSIVE PURPOSE OF INGRESS/EGRESS, INSTALLING, MAINTAINING, INSPECTING AND REPAIRING UTILITY FACILITIES WHICH PROVIDE SERVICE TO THAT PARCEL, WITH THE RIGHT TO EXIT THAT PARCEL WITH ADDITIONAL UTILITY FACILITIES FOR THE PURPOSE OF SERVING ADJACENT PARCELS. RIGHTS ARE ALSO GRANTED TO USE EXISTING PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF MAINTAINING, INSTALLING, INSPECTING AND REPAIRING SAID UTILITY FACILITIES.
7. THIS MAP SUBDIVIDES ADJUSTED PARCELS NO. 1, NO. 2 AND NO. 3 AS SHOWN ON THE BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY FOR KOINONIA DEVELOPMENT, LP AND THE CITY OF ELKO, NEVADA FILED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA, AT FILE NUMBER 765673, AND PARCEL NO. 4 AS SHOWN ON THE PARCEL MAP FOR NORTH VII, A GENERAL PARTNERSHIP, FILED IN THE OFFICE OF THE ELKO COUNTY RECORDER, ELKO, NEVADA, AT FILE NUMBER 416535.
8. ACCESS TO LOTS 1–13, AS SHOWN HEREON, WILL NOT BE ALLOWED DIRECTLY FROM NORTH FIFTH STREET.

LEGEND:

- ◉ EXISTING MONUMENT IN STREET WELL
- ■ 5/8" REBAR WITH PLS 5072 PLASTIC CAP, UNLESS NOTED OTHERWISE
- ● 5/8" REBAR WITH PLS 6203 PLASTIC CAP, TO BE SET
- ○ CALCULATED POINT, NOTHING SET
- 9 10 / 16 15 SECTION CORNER AS DESCRIBED



LOT DIMENSIONS

LAND SURVEYOR'S CERTIFICATE:

I, THOMAS C. BALLEW, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF NEVADA, CERTIFY THAT:

1. THIS PLAT REPRESENTS THE RESULTS OF A SURVEY CONDUCTED UNDER MY SUPERVISION AND DIRECTION AT THE INSTANCE KOINONIA DEVELOPMENT, LP.
2. THE LANDS SURVEYED LIE WITHIN SECTION 9, TOWNSHIP 34 NORTH, RANGE 55 EAST, M.D.B.& M., AND THE SURVEY WAS COMPLETED ON THE _____ DAY OF _____, 20 _____.
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 ARE OF THE CHARACTER SHOWN, OCCUPY THE POSITIONS INDICATED HEREON AND ARE SUFFICIENT TO ENABLE THIS SURVEY TO BE RETRACED.

THOMAS C. BALLEW, P.L.S. No. 5072 _____ DATE

STATE OF NEVADA · PROFESSIONAL LAND SURVEYOR · THOMAS C. BALLEW · Exp. 12/31/20 · NO. 5072

CITY ENGINEER'S REPRESENTATIVE CERTIFICATE:

I, _____, REPRESENTATIVE FOR THE CITY ENGINEER OF THE CITY OF ELKO, NEVADA, 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; 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; THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT; AND THAT THE MONUMENTS AS SHOWN ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THE MONUMENTS HAVE NOT BEEN SET AND THAT A PROPER PERFORMANCE BOND HAS BEEN DEPOSITED GUARANTEEING THEIR SETTING ON OR BEFORE _____.

CITY OF ELKO CITY ENGINEER'S REPRESENTATIVE _____ DATE

APPROVAL – CITY OF ELKO PLANNING COMMISSION

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, PLANNING COMMISSION HELD ON THE _____ DAY OF _____, 20____, A TENTATIVE MAP OF THIS SUBDIVISION WAS DULY AND REGULARLY APPROVED PURSUANT TO N.R.S. 278.330. THIS FINAL MAP SUBSTANTIALLY COMPLIES WITH SAID TENTATIVE MAP AND ALL CONDITIONS PURSUANT THERETO HAVE BEEN MET.

CHAIRMAN, CITY OF ELKO PLANNING COMMISSION _____ DATE

APPROVAL – CITY OF ELKO CITY COUNCIL

AT A REGULAR MEETING OF THE CITY OF ELKO, NEVADA, CITY COUNCIL HELD ON THE _____ DAY OF _____, 20____, 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, AS SHOWN HEREON, WERE ACCEPTED FOR PUBLIC USE.

MAYOR, CITY OF ELKO, NEVADA _____ DATE

ATTEST: CITY CLERK, CITY OF ELKO, NEVADA _____ DATE

ELKO COUNTY RECORDER:

FILE NUMBER: _____

FILED AT THE REQUEST OF: _____

DATE: _____

TIME: _____

D. MIKE SMALES, ELKO COUNTY RECORDER

FINAL MAP
OF
MOUNTAIN VIEW TOWN HOMES
UNIT NUMBER 1

A TOWN HOUSE SUBDIVISION

LOCATED IN:
SECTION 13, T.34 N., R.55 E., M.D.B.& M.
ELKO ELKO COUNTY NEVADA

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

220012

D:\I Tom's Data\Land Projects 2009\Koinonia - N5th Town Houses\dwg\Unit 1 - Rev_00.dwg 3/15/2020 1:36:01 PM PDT

Agenda Item # I.B.3

Elko City Planning Commission
Agenda Action Sheet

1. Title: **Review, consideration and possible recommendation to City Council for the 2020 City of Elko Land Inventory update. FOR POSSIBLE ACTION**

2. Meeting Date: **May 5, 2020**

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

4. Time Required: **10 Minutes**

5. Background Information: **City of Elko Land Inventory spreadsheet is to be updated when necessary**

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

7. Supplemental Agenda Information: **Spreadsheet, Memo**

8. Recommended Motion: **Forward a recommendation to City Council to update the City of Elko Land Inventory with the presented changes**

9. Findings:

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

11. Agenda Distribution:

STAFF COMMENT FLOW SHEET
PLANNING COMMISSION AGENDA DATE: 5/5
Do not use pencil or red pen, they do not reproduce

Title: 2020 Land Inventory Update
Applicant(s): City of Elko
Site Location: N/A
Current Zoning: N/A Date Received: N/A Date Public Notice: N/A
COMMENT: This is to update the City of Elko Land Inventory with Necessary Changes

If additional space is needed please provide a separate memorandum

Assistant City Manager: Date: 4/21/20
Recommend approval

SAW
Initial

City Manager: Date: 4/22/19
No comments/Concerns.

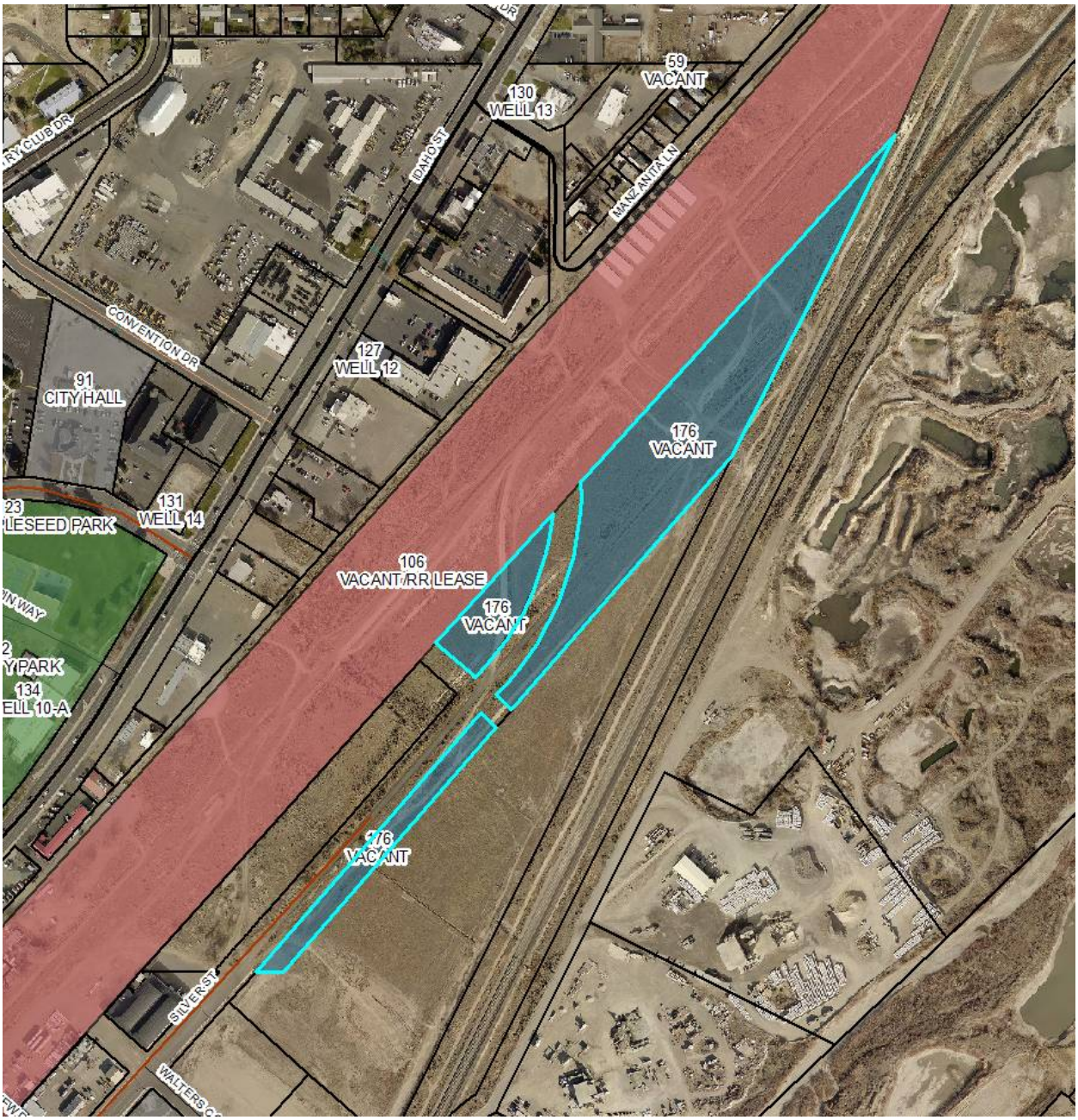
CC
Initial

2019 City Land Inventory Update

PROP_REF_NO	PROPERTY_LOCATION	APN	PROP_SIZE	ZONING	MASTER_PLAN_DESIGNATION	CURRENT_USE	PROPERTY_DETERMINATION	NOTES
1	N 5TH STREET	001-610-094	3.38	AG	RES-MD	VACANT	SELL	RETAIN AN EASMENT FOR WATER LINE
2	N 5TH STREET	001-610-095	2.5	AG	RED-MD	VACANT	SELL	
3	N OF MITTRY AND SPRUCE	001-610-103	84.076	AG	PARKS	VACANT	PARKS	OPEN SPACE,
4	500 FT NORTH OF MITTRY	001-610-104	41.887	AG	RES-MD	VACANT	SELL / RETAIN A PORTION	RESIDENTIAL / FUTURE CEMETERY
5	N OF COPPER ST, 500 FT W OF 5TH ST	001-610-092	3.8	PQP	RES-MD	STORMWATER CHANNEL/DETENTION	UTILITIES	
6	S OF CHRIS AVE, 180 FT SW OF N 5TH ST	002-610-074	19.24	PQP	PUBLIC	STORMWATER DETENTION	UTILITIES	
7	SE OF RUBY VISTA AND COLLEGE PKWY	001-620-059	1.16	PQP	PUBLIC	CADV	LEASED	CADV
8	RUBY VISTA DR, 550 FT E OF COLLEGE PKWY	001-620-060	1.3	PQP	PUBLIC	VACANT	LEASED	AMERICAN LEGION
9	S OF RUBY VISTA	001-620-021	1.69	PQP	PUBLIC	VACANT	RETAIN	
10	S OF RUBY VISTA	001-620-015	1.02	PQP	PUBLIC	VACANT	RETAIN	
11	NW OF RUBY VISTA DR	001-530-024	3.25	PQP	RES-MD	SENIOR CENTER	LEASED	SENIOR CENTER
12	W OF DELAWARE	001-860-106	5.65	AG	PUBLIC	VACANT	SELL	FOR SALE
13	ROCKY ROAD	001-01A-012	38.08	AG	RES-MD	VACANT	SELL	CEMETERY
14	S OF RUBY VISTA	001-620-061	1.24	PQP	PUBLIC	VACANT	RETAIN	
15	S OF RUBY VISTA	001-620-029	1.44	PQP	PUBLIC	VACANT	RETAIN	
16	S OF RUBY VISTA	001-530-022	0.355	PQP	GI	VACANT	RETAIN	PUBLIC USE
17	SEC 17 T 35N R 55E	006-100-030	800	ELKO COUNTY	RES-LOW	VACANT	SELL	AVAILABLE FOR SALE OR EXCHANGE
18	N OF W. IDAHO ST	006-09G-027	8.69	ELKO COUNTY LI	IBP	VACANT	AIRPORT	RETAIN FOR AIRPORT EXPANSION
19	W IDAHO ST	006-09G-031	2.55	ELKO COUNTY LI/COM	IBP	LEASED	LEASED	FUTURE AIRPORT EXPANSION
20	W IDAHO ST	006-09G-030	2.96	ELKO COUNTY LI/COM	IBP	LEASED	LEASED	FUTURE AIRPORT EXPANSION
21	W IDAHO ST	006-09G-012	13	ELKO COUNTY AG RES/COM	IBP	VACANT	AIRPORT	FUTURE EXPANSION
22	W OF HOT SPRINGS RD	001-671-001	0.45	LI	IBP	VACANT	SELL	ACCESS IS ACROSS RAILROAD SPUR
22	W OF HOT SPRINGS ROAD	001-673-003	2.61	LI	IBP	VACANT	SELL	SELL WITH 001-671-001
23	398 HOT SPRINGS ROAD	001-677-001	9.34	LI	IBP	VACANT	SELL	
24	W SAGE ST	001-660-003	7.29	PQP	PARKS OPEN SPACE	ANGEL PARK/VACANT	PARKS	
26	WATER ST	001-411-006	0.378	PQP	MIXED USE DOWNTOWN	PEDESTRIAN BRIDGE	CITY FACILITY	MAINTAIN FOR PEDESTRIAN BRIDGE
27	5551 MANZANITA LN	001-860-071	2.29	AG	GI	WELL 38	UTILITIES	RETAIN FOR UTILITIES, PUBLIC WORKS, FREEWAY ON/OFF
28	HIGHLAND DR	001-132-001	1.64	RES	MD-RES	VACANT	AIRPORT	RUNWAY PROTECTION ZONE
29	N OF HIGHLAND DR	001-142-006	1.495	RES	MD-RES	VACANT	AIRPORT	RUNWAY PROTECTION ZONE
30	MTN CITY HGWY	001-660-105	12.21	PLANNED COMMERCIAL	HIGHWAY COMMERCIAL	VACANT	AIRPORT LEASE	LEASED
31	MTN CITY HGWY & THOMAS GALLAGHER WY	000-660-126	1.373	PC	PC	LEASED	AIRPORT LEASE	ASPEN PLAZA
31	1657 MTN CITY HGWY	001-660-125	0.882	PC	PC	LEASED	AIRPORT LEASE	ASPEN PLAZA
31	1655 MTN CITY HGWY	001-660-124	3	PC	PC	LEASED	AIRPORT LEASE	ASPEN PLAZA
32	W SAGE ST	001-640-033	0.78	RES	MD-RES	VACANT	SELL	
33	W OAK STREET	001-152-002	0.59	RES	MD-RES	VACANT	SELL	PROCEEDS OF SALE GO TO HARP
34	W IDAHO ST	006-09G-009	5	ELKO COUNTY COM	IBP	VACANT	AIRPORT	FUTURE EXPANSION
35	W IDAHO STREET	006-09G-005	2.7	ELKO COUNTY COM	IBP	VACANT	AIRPORT	FUTURE EXPANSION
36	W IDAHO ST	006-09G-008	1.59	ELKO COUNTY COM	IBP	VACANT	AIRPORT	FUTURE EXPANSION
38	LAUREL DR	001-660-103	0.16	RES	MD-RES	VACANT	UTILITIES	DRAINAGE EASEMENT
40	WALNUT	001-026-003	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
41	SAGE ST	001-026-007	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
42	SAGE ST	001-061-003	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
43	ELM ST	001-061-007	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
44	ELM ST	001-064-004	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
45	MAPLE ST	001-064-007	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
46	8TH ST	001-066-005	0.092	RES	RES-MD	VACANT	SELL	
47	8TH ST	001-066-012	0.034	RES	RES-MD	VACANT	SELL	
48	MAPLE ST	001-067-003	0.057	RES	RES-MD	VACANT	RETAIN	POSSIBLE HORNBAGER LEASE
49	ASH ST	001-067-007	0.057	RES	RES-MD	VACANT	RETAIN	
50	ASH ST	001-103-003	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
51	FIR ST	001-103-006	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
52	FIR ST	001-106-003	0.057	RES	RES-MD	VACANT	RETAIN	STORM DRAIN
53	CEDAR ST	001-106-005	0.057	RES	RS-MD	VACANT	RETAIN	STORM DRAIN
54	WATER STREET	001-411-004	0.93	GI	MIXED USE DOWNTOWN	FISH BUIDING	LEASED	
55	1060 DOUGLAS ST	001-413-002	0.12	GI	GI	VACANT	CITY FACILITY	RETAIN FOR CITY SHOPS/STORAGE
56	W OF GOLF COURSE ROAD	001-620-018	0.7	PQP	PUBLIC	LDS STORAGE	LEASED	COUNTY ASSESOR SHOWS THIS AS 3.46 ACRES
57	SHARPS ACCESS	001-630-019	0.89	PQP	PUBLIC	SHARPS ACCESS ROW	DEDICATE AS ROW	
58	1415 MTN CITY HGWY	001-660-032	1.38	C	GC	LEASED	AIRPORT LEASE	SHELL GAS STATION
59	IDAHO ST AND MANZANITA LN	001-601-016	0.03	COM	GC	VACANT	RETAIN	
60	MAIN ST	001-691-009	0.07	LI	COM	VACANT	SELL	SELL AS REMNANT TO ADJACENT PROPERTY OWNER
61	S OF SILVER STREET	001-710-044	0.69	GI	IBP	VACANT	RETAIN	LANDLOCKED, DISPOSABLE TO GEOTHERMAL USERS
62	IDAHO ST	001-214-014	0.27	COM	MD-RES	VACANT	RETAIN	SLOPE EASEMENT

PROP_REF_NO	PROPERTY_LOCATION	APN	PROP_SIZE	ZONING	MASTER_PLAN_DESIGNATION	CURRENT_USE	PROPERTY_DETERMINATION	NOTES
63	W IDAHO ST	001-214-010	0.07	RES	MD-RES	VACANT	SELL	AVAILABLE FOR SALE/LANDLOCKED/SELL AS REMNANT
64	ERRECART	001-690-001	69.7	PQP	PQP	VACANT	PARKS	IDENTIFIED FOR SPORTS COMPLEX
65	BULLION ROAD	001-690-001	38.7	RES	MD-RES	VACANT	SELL	
66	BULLION ROAD	001-690-001	11.1	PQP	MD-RES	VACANT	RETAIN	POSSIBLE EXCHANGE WITH SCHOOL DISTRICT
67	ERRECART	001-690-001	4.4	PQP	PQP	VACANT	PARKS	
68	VICTORIA STREET	001-710-055	50	AG	MD-RES	VACANT	SELL	EXCHANGE
69	WASHINGTON AVE	001-730-004	11.76	AG	MD-RES	SOUTHSIDE DAM	UTILITIES	
70	ERRECART BLVD	001-770-003	45.78	PC	IBP	VACANT	SELL	
72	BULLION ROAD	001-690-018	1.27	RMH	MD-RES	VACANT	PARKS	USE FOR PARK ACCESS
73	BULLION ROAD	001-690-019	0.83	RMH	MD-RES	VACANT	PARKS	
74	BULLION ROAD	001-690-020	0.62	RES	MD-RES	VACANT	PARKS	
75	BULLION ROAD	001-690-021	0.228	RES	MD-RES	VACANT	RETAIN	
76	BULLION ROAD	001-700-040	0.039	RMH	MD-RES	VACANT	DEDICATE AS ROW	
77	S OF DOUGLAS ST	001-710-023	0.059	GI	MIXED USE DOWNTOWN	VACANT	RETAIN	
78	STITZEL ROAD	001-920-064	0.147	RES	MD-RES	VACANT	PARKS	
79	STITZEL	001-925-035	0.147	RES	MD-RES	VACANT	PARKS	
80	PINION RD	001-927-002	163.63	AG	PQP	LANDFILL/VACANT	LANDFILL	
81	SEC 6 T 33N R55E	006-080-013	186.82	ELKO COUNTY	UNKNOWN	VACANT	RETAIN, WRF	
82	SEC 32 T 34N R 55E	006-090-014	591.17	ELKO COUNTY	PUBLIC	WRF PERC PONDS	UTILITIES	
83	POWDERHOUSE ROAD	006-09E-019	25.13	ELKO COUNTY	RES-HD	LAMOILLE WATER TANK	UTILITIES	EX TANK AND FUTURE EXPANSION
86	SEC 18	001-995-001	634	AG	RES-MD	VACANT	PURCHASE	RESIDENTIAL DEVELOPMENT
87	STATICE ST	006-10C-002	112	ELKO COUNTY	IBP, PUBLIC	VACANT	PURCHASE:INDUSTRIAL DEVELOPMENT	PURCHASE FROM STATE
88	725 RAILROAD ST	001-275-007	0.23	C	MIXED USE DOWNTOWN	PARKS AND REC/FIRE STATION #2	CITY FACILITY	
89	9TH STREET	001-185-002	0.18	PQP	PQP	CEMETERY	PARKS	PORTION OF MASONS AND ODDFELLOWS CEMETERY
90	12TH STREET	001-293-001	0.12	C	COMM- GEN	12TH STREET TURN LANE	DEDICATE AS ROW	
91	1751 COLLEGE AVE	001-560-051	3	PQP	PQP	CITY HALL	CITY FACILITY	
92	1401 COLLEGE AVE	001-200-002	1.34	R	PQP	OLD ELKO POLICE DEPARTMENT	CITY FACILITY	
93	MANZANITA	001-560-040	0.5	C	COMM-GEN	LEASED TO CAL-RANCH	LEASED	LEASED BY WATER DEPT
94	MANZANITA	001-560-040	1.36	C	COMM-GEN	WELL/LAYDOWN YARD	UTILITIES	
95	IDAHO STREET	001-860-001	0.498	LI	IND-GEN	WELL 33	UTILITIES	CONSTRUCTION WATERWELL
96	FRONT STREET	001-01R-001	38.1	PQP	PARKS	HUMBOLDT RIVER	PARKS	
97	12TH STREET	001-630-021	2.16	PQP	PARKS	HUMBOLDT RIVER	PARKS	
98	12TH STREET	001-630-063	0.2	R	RES-HD	ACCESS EASEMENT	RETAIN	RIVER VIEW DRIVE
99	WALNUT	001-024-001	0.023	RES	RES-MD	VACANT	SELL	
100	FRONT STREET	001-710-024	6.77	PQP	PARKS	SOUTHSIDE PARK	PARKS	
101	HUMBOLDT RIVER	001-680-007	2.53	GI	PARKS	HUMBOLDT RIVER	PARKS	
102	875 S. 5TH ST	001-472-014	0.308	C	RES - MD	LEE ENGINE	CITY FACILITY	
103	WASHINGTON AVE	001-730-003	2	AG	PUBLIC	WATER TANK	UTILITIES	
104	301 BULLION RD	001-700-013	0.001	RMH	RES - MD	VACANT	SELL	SELL AS REMNANT
105	RUBY VIEW GOLF COURSE	001-530-001	221	PQP	PARKS	GOLF COURSE	PARKS	
106	SILVER STREET		47.58	C / GI	LI/GI	VACANT/RR LEASE	PURCHASE	e acreage of this parcel, and added to the bottom of the list.
107	AIRPORT	001-660-106	12	PQP	PUBLIC	VACANT	AIRPORT LEASE	
108	AIRPORT	001-660-106	19.7	PQP	PUBLIC	VACANT	AIRPORT LEASE	
109	AIRPORT	001-660-106	16.9	PQP	PUBLIC	VACANT	AIRPORT LEASE	
110	AIRPORT	001-660-106	3.25	PQP	IND- BS PARK	VACANT	AIRPORT LEASE	
111	AIRPORT	001-660-106	13.8	PQP	IND- BS PARK	VACANT	AIRPORT LEASE	
112	AIRPORT	001-660-106	9.9	PQP	IND- BS PARK	VACANT	AIRPORT LEASE	
113	AIRPORT	001-660-106	479	PC/C/PQP	PQP	AIRPORT	AIRPORT	
114	IDAHO STREET		27.48	C / LI	COMM-GEN	RR LEASED	PURCHASE	
115	SAGECREST DRIVE	001-01F-086	1.04	R	RES-MD	STORM DRAIN DETENTION	UTILITIES	
116	MITTRY AVE	001-620-035	2.39		RES-MD	MITTRY AVE	DEDICATE AS ROW	
117	N 5TH ST	001-610-036	2.47	AG		N 5TH ST	DEDICATE AS ROW	
118	RUBY VISTA DR	001-620-015	0.36	PQP	RES-HD	RUBY VISTA	DEDICATE AS ROW	A PORTION OF 001-620-015
119	FLAGVIEW DRIVE		2.4	PQP	PQP	FLAGPOLE LOCATION	PARKS	BALL FIELDS PARCEL 001-620-017 AND ALL OF 001-530-001
120	FAIRGROUNDS ROAD	001-620-014	35	PQP	PUBLIC	FAIRGROUNDS	LEASED	
121	GOLF COURSE ROAD	001-620-017	26.5	PQP	PARKS - OS	KUMP/WORNECK FIELDS	PARKS	
122	IDAHO STREET	001-560-001	21.2	PQP	PARKS - OS	MAIN CITY PARK	PARKS	
123	COUNTRY CLUB DRIVE	001-560-001	12.2	PQP	PARKS - OS	JOHNNY APPLESEED PARK	PARKS	
124	HAWTHORNE DR	001-61F-029	0.63	RES	RES-MD	STORM WATER DETENTION	UTILITIES	100 YR DETENTION AREA
125	N OF INDUSTRIAL		0.006			WELL 24	UTILITIES	PORTION OF 006-090-021
126	3695 MANZANITA LANE	001-860-080	0.115	LI	IND- GEN	WELL 37	UTILITIES	
126	MTN CITY HWY		0.06	PQP	PUBLIC	WELL 30	UTILITIES	PORTION OF 001-660-106

PROP_REF_NO	PROPERTY_LOCATION	APN	PROP_SIZE	ZONING	MASTER_PLAN_DESIGNATION	CURRENT_USE	PROPERTY_DETERMINATION	NOTES
127	IDAHO ST	001-590-008	0.24	C	COMM- GEN	WELL 12	UTILITIES	
128	30TH ST	001-560-081	0.014	C	COMM- GEN	WELL 25	UTILITIES	ON WILSON BATES PROPERTY
129	WALNUT & 7TH	001-028-001	0.028	R	RES-MD	WELL 18	UTILITIES	
130	IDAHO ST	001-601-012	0.12	C	COMM- GEN	WELL 13	UTILITIES	ON WENDY'S PROPERTY
131	1771 IDAHO ST	001-560-086	0.013	C		WELL 14	UTILITIES	
132	SEWELL	001-013-018	0.071	R	RES-MD	WELL 16	SELL	Remove it from Utilities and add SELL
133	E OF RAPTOR ST	001-610-074	0.096	PQP	PUBLIC	WELL 15	UTILITIES	
134	IDAHO ST, CHRIS SHERRIN	001-560-001	0.103	PQP	PARKS	WELL 10-A	UTILITIES	
135	4745 MANZANITA	001-860-001	0.264	LI	IND-GEN	WELL 31	UTILITIES	
136	5231 MANZANITA LN	001-860-012	0.23	LI	IND-GEN	WELL 27	UTILITIES	
137	RUBY VISTA DR AND STATICE ST	001-860-065	0.63	IBP	IND- BS PARK	WELL 36	UTILITIES	
138	GOLF COURSE	001-530-001	0.064	AG	PARKS	WELL 20	RETAIN	
140	1535 INDIAN VIEW HEIGHTS DRIVE	001-530-025	2.84	PQP	PUBLIC	VACANT	UTILITIES	WATER TANKS
141	EXIT 298	001-679-007	0.75	LI	IND- BS PARK	UTILITY	RETAIN	FUTURE WELL SITE
142	STP ROAD	001-670-003	77	GI	PQP	SEWER TREATMENT PLANT	UTILITIES	TREATMENT PLANT AND EXPANSION AREA
143	ALLEY BETWEEN ASH AND FIR	001-082-024	0.3	PQP	RES-MD	POCKET PARK	PARKS	
144	MOUNATIN VIEW PARK	001-610-075	24.56	PQP	PARKS - OS	PARKS	PARKS/ SELL A PORTION	SELL APPROX. 5,000 SQ. FT. AT ENTRY
145	PEACE PARK	001-620-069	8.6	PQP	PARKS -OS	PARKS	PARKS	
146	1090 DOUGLAS ST	001-413-003	0.24	GI	IND-GEN	WATER SHOP	CITY FACILITY	
147	10TH STREET	001-412-001	0.48	GI	IND-GEN	STREET DEPARTMENT	CITY FACILITY	
148	203 10TH ST	001-413-001	0.35	GI	IND-GEN	STREET DEPARTMENT	CITY FACILITY	
149	975 WATER ST	001-412-003	0.36	GI	IND-GEN	FLEET DEPARTMENT	CITY FACILITY	
150	1005 WATER ST	001-413-004	0.7	GI	IND-GEN	FACILITIES	CITY FACILITY	
151	ERRECART BLVD	001-380-006	3	PQP	IND-BS-PARK	ELKO HEAT	LEASED	LEASE TO ELKO HEAT
152	IDAHO ST	006-320-037	1.033		IND-GEN	WELL 1-96	UTILITIES	
154	HUMBOLDT RIVER -5TH TO 370' E. OF LYON	001-01R-001	12.6	PQP	PARKS-OS	HUMBOLDT RIVER	PARKS	
155	CEDAR STREET	001-620-000	11.47	PQP	PUBLIC	CEMETERY	RETAIN	CITY OF ELKO CEMETERY
156	CEDAR STREET	001-185-001	3.61	PQP	PUBLIC	CEMETERY	RETAIN	MASONS AND ODDFELLOWS CEMETERY
157	1448 SILVER STREET	001-630-086	3.066	LI	IND- GEN	POLICE DEPARTMENT	CITY FACILITY	POLICE DEPARTMENT
158	OWL RD	001-926-110	0.304	RMH	RES-MD	VACANT	RETAIN	CEDAR ESTATES STORM DRAINAGE
159	1755 5TH STREET PARK	001-620-023	2.32	PQP	PARKS -OS	PARKS	PARKS	
160	1701 5TH STREET	001-620-001	0.9	PQP	PARKS - OS	VACANT	IN PROCESS OF PURCHASING	FUTURE PARKING FOR 5TH STREET PARK
161	200 WEST RIVER	001-381-010	0.133	GI	IND-GEN	VACANT	RETAIN	EASEMENT TO TOWER AND SEWER
162	SOUTH OF I-80 NORTH OF AIRPORT RUNWAY	001-660-009	60.19	PQP	IND-BS-PARK	VACANT	CITY PURCHASE	AIRPORT MASTER PLAN DESIGNATION
163	NORTH OF GOLF COURSE - JENNINGS WAY EXTENSION	006-090-900	295	ELKO COUNTY	RES-MED	VACANT	CITY PURCHASE	
164	BUS BARN FACILITY	001-562-002	179.96	PQP	PUBLIC	ECSD BUS BARN	CITY PURCHASE	
165	SECTION 22 BLM PARCEL SOUTH OF BULLION	001-710-007	10	AG	RES- MED	VACANT	CITY PURCHASE	
166	JENNINGS WAY BY ADOBE MIDDLE SCHOOL	001-01A-016	10.97	PQP	RES-MED	VACANT	CITY PURCHASE	
167	BLM PROPERTY EAST OF HUMBOLT HILLS SUBDIVISION	006-090-900	10	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
168	SECTION 8 BLM LAND	006-090-900	51.9	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
169	SECTION 8 BLM LAND	006-090-900	135	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
170	SECTION 8 BLM LAND	006-090-900	49.3	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
171	SECTION 8 BLM LAND	006-090-900	2	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
172	SECTION 8 BLM LAND	006-090-900	9	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
173	BLM LAND MONTROSE LANE	006-090-900	9.7	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
174	SECTION 8 BLM LAND	006-090-900	2	ELKO COUNTY	RES-MD	VACANT	CITY PURCHASE	
175	PARCEL ADJACENT TO BUS BARN FACILITY	001-562-003	43.74	AG	RES-MD	VACANT	CITY PURCHASE	
176	East end of Silver Street	001-630-102	11.41	GI / C	IND-BS-PARK	VACANT	RETAIN	Added 2/6/20 BT


59
VACANT
130
WELL 13
DAHOSTST
MANZANITA LN
CONVENTION DR
127
WELL 12
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CITY HALL
131
WELL 14
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VACANT
106
VACANT/RR LEASE
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VACANT
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SILVER ST


SEWELL DR
136 WALI
126 WALNUT ST
116 WALNUT ST
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EWELL DR
132
WELL 16
113 SAGE ST
1400 SEWELL DR
105 SAGE ST
1401 SEWELL DR
W SAGE ST

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Zoning Bulletin

in this issue:

Preliminary Injunction

Plaintiffs seek to block federal and state DOTs from proceeding with highway lane expansion project

Citation: *Wise v. Department of Transportation, 943 F.3d 1161 (8th Cir. 2019)*

The Eighth U.S. Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

A lower court didn't err in refusing to grant a preliminary injunction to prevent the federal Department of Transportation (USDOT), the Arkansas Department of Transportation (ARDOT), and the Federal Highway Administration (FHWA) from approving a project to add lanes to an existing highway, the Eighth U.S. Circuit Court of Appeals ruled recently.

THE FACTS

The case arose from a push to widen Interstate Highway 630 from six to eight lanes from Baptist Hospital to University Avenue (approximately 2.5 miles) within the City of Little Rock, Arkansas (the I-630 project).

In October 2016, USDOT, ARDOT, and FHWA reported that the I-630 project qualified for "a categorical exclusion" from environmental assessment or environmental impact statement requirements mandated by the National Environmental Policy Act of 1969's (NEPA). The categorical exclusion report outlined improvements proposed along I-630, including increasing the travel lanes from six to eight and the replacement of all bridges within the project's limits. The report noted that the "[e]xisting right of way width varies, ranging from 220 to 400 feet" and explained that the project did not require any "additional permanent right of way."

ARDOT, which owned the land that would be used for the I-630 project, issued a press release on July 13, 2018, stating that the construction on the I-630 project would begin on Monday, July 16.

Days later, George Wise and others filed a request for a temporary restraining order. At a status conference, Wise characterized the demolition of the Hughes Street Overpass as the harm that would be done "between now and Monday," when the hearing on his motion for a temporary restraining order would be held. He asked the lower court to disallow demolition of the overpass and immediately enjoin the defendants from working on the I-630 project.

The lower court declined to grant Wise's request after hearing testimony from the ARDOT's program administration. She asserted that existing operational right-of-way included traffic lanes and clear zones, "which, in layman's terms, [we]re the areas] outside of the shoulder of the roadway[and] . . . in this case [was] 30 feet beyond the edge of the travel way." She also testified that the exist-

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ing operational right-of-way wasn't limited to those areas, though, because it also included "mitigation areas, drainage areas, interchange ramps, anything that we maintain or use for transportation purposes." Finally, she stated, the right-of-way for the I-630 project was clear, but that Arkansas DOT would remove any other trees, if necessary, to complete the project, and the existing operational right-of-way was "property line to property line"—that is, the 220-400 foot expanse owned by Arkansas DOT.

The court found that Wise was unlikely to succeed on the merits of his claim that the defendants had violated the NEPA. Also, he hadn't shown "that any part of the I-630 project construction would go outside of the existing operational right-of-way," so it was reasonable for the defendants to conclude that the project qualified as a categorical exclusion under NEPA regulations.

As a result of the court's denial, over the following weekend, the Hughes Street Overpass was demolished. Then, Wise appealed.

DECISION: Affirmed.

The lower court hadn't abused its discretion in failing to grant Wise's request.

"FHWA has identified certain actions that do not involve significant environmental impacts and thus qualify for categorical exclusion from NEPA's requirements," the court stated. "At issue here [wa]s the categorical exclusion for projects that take place 'entirely within the existing operational right-of-way,' " it added.

Here, Wise contended the lower court erred in finding he wouldn't succeed on the merits of the NEPA claim. In his view, the FHWA was required to complete an environmental assessment or an environmental impact statement, because the I-630 project did not take place within the "existing operational right-of-way" and, therefore, it didn't qualify for the categorical exclusion. He also asserted that the I-630 project's additional travel lanes would require expanded clear zones, which would be built in areas outside the existing operational right-of-way.

Wise further contended that the lower court based its decision on the wrong legal conclusion that " 'existing operational right-of-way' meant the entire right-of-way owned by [ARDOT]." In his view, "the term [wa]s limited to lanes of travel, shoulders, and clear zones," the Eighth Circuit explained.

But, "[t]his limitation conflict[ed] with the definition provided in the regulation, which state[d] that an '[e]xisting operational right-of-way refer[red] to right-of-way that ha[d] been disturbed for an existing transportation facility or [wa]s maintained for a transportation purpose.' " "The regulation explain[ed] that an existing operational right-of-way include[d] features like mitigation areas and landscaping."

According to Wise, "explanatory text" that went with the final rule on this matter supported his position. The text stated " 'a project within the operational right-of-way that require[d] the creation of new clear zones or extension of clear zone areas beyond what already exist[ed] would not qualify' for categorical exclusion." "To interpret this text consistently with the regulation, we conclude that the explanatory text does not apply when the new or extended clear zones are built within the 'existing operational right-of-way,' as defined by the regulation. We thus conclude that the district court properly rejected Wise's proposed limitation on the term's definition," the Eighth Circuit ruled.

THE BOTTOM LINE

The lower court had applied the regulation's "plain language" in concluding that Wise hadn't presented evidence to show that the area required for the I-630 project required expansion beyond the existing operational right-of-way. "Wise . . . offered calculations regarding the additional area required for the project's new traffic lanes and expanded clear zones, and he contend[ed] that 'basic mathematics' " discredited the plan administrator's testi-

Contributors

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mony "that the I-630 project w[ould] take place within the existing operational right-of-way." "But Wise again incorrectly limit[ed] the term's definition to travel lanes, shoulders, and clear zones, and he ha[d] not shown that the additional area previously had not been disturbed or maintained for transportation purposes," the court found. Therefore, Wise had not shown that the lower court "relied on any clearly erroneous factual findings in denying [his] motion for injunctive relief."

Case Note:

The appeals court also noted that just because the highway bridge had already been demolished didn't mean the plaintiff's appeal had become moot. Wise didn't just challenge that work, he also "sought to enjoin any further work on the I-630 project," and a contrary argument by ARDOT had been "misguided."

Equal Protection

Did village's amendment to existing zoning law deny religious institution equal protection under the law?

Citation: *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY, 945 F.3d 83 (2d Cir. 2019)*

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

Educational and religious institutions that own real estate are subject to local land use regulations generally. But they may be instances when "special treatment" with respect to such regulations is provided. And, when an educational or religious institution attempts to assert special treatment a conflict could arise involving parties who object to the proposed land uses over things like traffic volume, density, whether the municipal infrastructure could support the proposed land use, and other issues. There also may be instances when opposition might come from bias against religious practices or faith of the land developer or new residents (i.e., due to a pretext) or a mixed motive. A recently decided case out of the Second U.S. Circuit Court of Appeals involved this type of conflict.

THE FACTS

In 2004, Congregation Rabbinical College of Tartikov Inc. (TRC) bought about 100 acres of land in the Village of Pomona, New York (the village), a small suburban village of about 3,200 residents. TRC bought the parcel to build a school to educate rabbinical judges, but it never submitted a development proposal or requested any zoning or construction approvals.

In January 2007, a local group published an article stating that TRC planned to build nine large apartment buildings to house 1,000 students and their families (estimated at around 4,500 people) and a school building. Local opposition ensued, and the village board enacted two amendments to its land-use laws limiting or outright prohibiting development TRC might seek to build.

TRC, along with its faculty and future students, filed suit alleging that the amendments the village and its board of trustees enacted were unconstitutional. It also challenged two previously enacted amendments.

A bench trial took place, and the lower court found that there was a religious animus behind the amendments. Therefore, the court enjoined their enforcement, so the village appealed, arguing that the court's finding that there was a religious reason behind the amendments was erroneous.

DECISION: Affirmed in part; reversed in part.

The lower court's finding that the two new zoning amendments that came about after TRC's plans became publicly known were religiously motivated stood (so the injunction barring their enforcement also stood). But, there was not enough evidence to support a conclusion that there was a similar animus for the earlier passed zoning amendments, so that portion of the judgment was reversed.

A CLOSER LOOK

There were generally three types of equal-protection claims:

1) a facially discriminatory law;
2) a facially neutral law adopted with a discriminatory intent and applied in a discriminatory manner; and
3) a facially neutral law enforced in a discriminatory way.

In this case TRC alleged the second type of claim.

"Discriminatory purpose implie[d] that the decision-maker . . . selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group," the court explained. "Determining whether invidious discriminatory purpose was a motivating factor demand[ed] a sensitive inquiry into such circumstantial and direct evidence of intent as may be available," it added.

Such evidence could include:

- the events leading up to a land-use decision;
- the context in which that decision was made;
- whether the decision or the decision-making process went against "established norms";
- statements by the decision-making body and community members;
- the decision-making body's report(s);
- the foreseeability of a discriminatory impact; and
- whether there was a "less discriminatory" way deal with the situation.

THE PREVIOUSLY PASSED AMENDMENTS

There wasn't sufficient evidence that there was a discriminatory motive behind the passage of the previous amendments. While the timing of the amendments was "in

direct response to [a] desire to build an Orthodox yeshiva" the village's "choice to act in response to [the] informal proposal sa[id] nothing of whether that choice was motivated by a positive, negative, or neutral reaction to [the religious body], its religious character, or its project."

The Bottom Line:

Those amendments were borne out of concern over lot area requirements and setbacks, so the village took action that wouldn't restrict development at all but would limit it. Comments to this effect that were considered at the time the amendments were passed "demonstrate[d] an acceptance of [a] proposal rather than any religious animus. The only negative implication, if there was any, concerned the possibility of more intensive development in the future, regardless of its nature or the identity of any future developer."

The same conclusion could not be drawn, however, with respect to the 2007 amendments. "By [that year] the situation had changed drastically," the court explained. "There was public outcry over the TRC proposal following news reports in January 2007 noting that the rabbinical college would serve 1,000 students and the construction would include multiple apartment buildings up to six stories high to house 4,500 residents." And, three of decision makers elected to office had run "on a platform opposing the TRC project."

In the end, there was evidence suggesting that there was a discriminatory motive behind the passage of the 2007 amendments—which the court referenced as the dormitory and wetlands laws. These laws "tightened, rather than loosened, restrictions on building schools in the [v]illage," the court noted. With respect to the dormitory law, it barred "dormitories from occupying more than 20 percent of the total square footage of all buildings on a lot. And it set a maximum height of 25 feet for any dormitory building. The Wetlands Law prohibited building any structure within 100 feet of the boundary of any wetland without a permit. And it restricted the persons who could apply for a permit to those who were deprived of *all* reasonable use of their property, a sharp restriction of the trustees' previous special permit authority."

"It is clear also that the board knew what TRC intended to do with the property when it enacted the 2007 laws," the court explained. While there was "scant evidence that the public or the board knew any significant details about TRC's plans or what its rabbinical college might look like when the draft versions of the Dormitory and Wetlands Laws were discussed at a public hearing" in December 2006, "that ignorance dissolved on January 9, 2007 when [the] article describe[ed] TRC's plans for a rabbinical college that included housing for 4,500 adult students and their families in buildings up to six stories high."

"This context is crucial to understanding the board members' thinking when they enacted the laws," the court wrote. In the end, there was evidence that:

- **Some of the comments made about the TRC's plans "were susceptible to an inference of religious animus and hostility** toward the group that would be affected negatively by the 2007 Dormitory Law," and the same could be said about the 2007 Wetlands Law; and
- **there was an "absence of any studies conducted to determine the need for or most appropriate means of enacting wetlands protection."**

Case Note:

The court explained that there was "little or no direct evidence of any personal religious bias on the part of the trustees who passed these laws," but given the other factors outlined above the court saw "no clear error in the district court's findings with respect to the 2007 Dormitory and Wetlands Laws."

PRACTICALLY SPEAKING

To win on its claims, TRC had to show "by a preponderance of the evidence" that the "village acted with discriminatory intent in adopting" the amendments. With respect to the two amendments that had been previously passed, "the evidence suggest[ed] that legitimate land use concerns precipitated the passage of these laws."

Special Use Permit

Property owner says zoning board of appeals' classification of items on his property as 'junk' was wrong

Citation: *Gentlemen Gaming, LTD v. City of East Peoria, 2019 WL 7116096 (C.D. Ill. 2019)*

A federal court in Illinois has granted a city's request to dismiss a claim related to a zoning matter stemming from "junk" housed at an East Peoria, Illinois-based property.

THE FACTS

The City of East Peoria's zoning administrator, Ty Livingston, issued a Notice of Violation to Gentlemen Gaming, LTD (GG Ltd), on behalf of the city. The notice stated that a property GG Ltd owned was in violation of the zoning code because GG Ltd was "causing, permitting, or allowing a junkyard; the processing of mineral products, including stone and gravel; and the outdoor storage of materials, goods or products to exist on the [p]roperty without a special use permit."

GG Ltd appealed Livingston's decision to the East Peoria Zoning Board of Appeals (ZBA). The ZBA held a public hearing where GG Ltd's attorney argued on its behalf, presented evidence, and examined witnesses. The evidence showed photographs of several inoperable motor vehicles on the property as well as piles of tires, wood, trees, and brush, and concrete, as well as sheet metal and rusty metal objects and strips.

Based on the arguments and the evidence, the ZBA

unanimously voted to uphold the violation. The ZBA also provided a written decision on the matter.

GG Ltd sued the city, which sought dismissal for failure to state a claim.

DECISION: Request for dismissal granted.

GG Ltd failed to state a valid claim, so the city was entitled to dismissal.

GG Ltd challenged the administrative proceeding by alleging that:

1) **he wasn't afforded due process,** in violation of the Fourth, Fifth and Fourteenth Amendments of the Constitution, because Livingston hadn't cited the specific provision of the zoning code it was accused of violating; and
2) **the ZBA's decision to discuss the merits of his appeal in a closed session deprived GG Ltd of due process.**

To determine if a valid procedural due-process claim existed, the court examined:

1) **whether the plaintiff was "deprived of a protected interest"; and**
2) **what process "[wa]s due,"** the court wrote.

"[T]he procedures 'due' in zoning cases [we]re minimal, and individuals 'contending that state or local regulation of the use of land ha[d] gone overboard' " had to turn to a state court to address the matter. "This [wa]s not because the [individual] must 'exhaust' state remedies; nor does this requirement reflect the rule of [a previously decided Supreme Court case—*Parratt v. Taylor*], that a random and unauthorized departure from a state's ordinary procedures must be protested to state court," the court added. "[R]ather the idea in zoning cases [wa]s that the due process clause permit[ted] municipalities to use political methods to decide, so that the only procedural rules at stake [we]re those local law provides, and these rules must be vindicated in local courts."

The Seventh U.S. Circuit Court of Appeals, which had jurisdiction over Illinois, had previously ruled that "Illinois law and procedures provide[d] adequate process for zoning matters," the court explained. And, even if the violation notice had been defective, GG Ltd had been "afforded all the process that was due."

Here, GG Ltd got the citation and properly appealed it to the ZBA. It could have "then . . . sought administrative review of the ZBA's decision in state court," but the fact that the plaintiff didn't "avail itself of the readily available state-court review d[id] not render the procedural scheme constitutionally inadequate."

A CLOSER LOOK

GG Ltd also filed a "vagueness" claim concerning the operation of a junkyard without a special permit. "When considering whether an ordinance [wa]s unconstitutionally vague, 'a court's first task [wa]s to determine whether the enactment reaches a substantial amount of constitutionally protected conduct.' " "If the ordinance implicate[d] no constitutionally protected conduct, such as constitutionally protected speech, the vagueness challenge must be rejected unless the ordinance [wa]s 'impermissibly vague in all of its applications.' "

Also, if a plaintiff "engage[d] in some conduct that [wa]s clearly proscribed c[ould not] complain of the vagueness of the law as applied to the conduct of others," the court explained. Therefore, the court had to analyze the "complainant's conduct before analyzing other hypothetical applications of the law."

Here, GG Ltd didn't claim the right to constitutionally protected conduct had been infringed upon. It argued, instead, that the ordinance could be challenged in a way "that any property owner might so do irrespective of a particular property use or fundamental liberty." "Consequently, [GG Ltd's] argument must be rejected unless the ordinance is impermissibly vague in all of its applications," the court noted.

In this case, a property owner in East Peoria had to get a special-use permit to use land as a junkyard. Both a junkyard and junk motor vehicle were defined under the local ordinance. And, the photographs admitted into evidence at the administrative hearing showed "discarded metal waste and what appear[ed] to possibly be rusted sheet tin, piles of inoperable small, medium, and large metal machines/items, and piles of discarded wood and brush," the court explained. "The only word that comes to mind to describe the items contained in these pictures is: junk. Moreover, the strips of rusty metal also reasonably fall into the category of 'sheet material,' " it found.

PRACTICALLY SPEAKING

Since the items on GG Ltd's property "clearly br[ought] the property within the definition of junkyard as defined by the East Peoria Code of Ordinance," it couldn't claim the relevant ordinance was unconstitutionally vague.

Case Note:

Under Illinois law, parties were afforded "more process in zoning cases than [wa]s due under the U.S. Constitution," the court noted.

The case cited is *Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981) (overruled by, Daniels v. Williams, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)).*

Fair Housing

Nonprofit providing housing to disabled clients alleges FHA violation resulted from town's discriminatory motives

Citation: *Gilead Community Services, Inc. v. Town of Cromwell, 2019 WL 7037795 (D. Conn. 2019)*

A federal court in Connecticut recently addressed the is-

sue of whether a nonprofit organization had a valid claim under the Fair Housing Act (FHA) against a town due to its denial of its request to build housing for disabled clients.

THE FACTS

The plaintiffs in the case—Gilead Community Services Inc. (Gilead), Rainbow Housing Corp. (RHC), and the Connecticut Fair Housing Center Inc. (CFHC)—filed suit against the Town of Cromwell and several of its officials claiming that the town's actions with respect to Gilead's request to construct housing to its disabled clients injured its reputation, finances, and ability to aid those clients and caused the CFHC to have to divert resources to address the discrimination that took place and "frustrated" its mission to ensure equal housing for all.

WHAT HAPPENED

The case arose after a local news report outlined Gilead's residence plans for 5 Reiman Drive. The mayor of Cromwell said the proposal caught it off guard and in an email to resident stated "I'm hoping they reconsider completely and choose not to move forward with anything . . . Ideally I don't want anything in that neighborhood or in town at all."

After that, town officials requested research into whether Gilead's plans constituted a community residence and would be subject to zoning regulations. And, the mayor sent another email to a resident stating that an incident at a group home elsewhere in Connecticut "really highlight[ed] all our concerns regarding this group home."

Over the next few months, the town issued a press release expressing concern over Gilead's plan, and the town attorney corresponded with Gilead's attorney. The town attorney asserted that the town interpreted a Connecticut Department of Public Health decision to mean that the Reiman Drive residence was not a community residence entitled to zoning exemptions under the law. Therefore, the attorney wrote that the town was issuing a cease-and-desist order for operating a group facility at 5 Reiman Drive in violation of the town's zoning laws. The order stated that Gilead's "Rainbow Housing" "appear[ed] to be operating or allowing the operation of a rooming house/halfway house or similar venture at 5 Reiman Drive without first obtaining proper zoning permits," and that failure to comply with the notice would result in penalties including the accrual of fines of $150 per day.

Gilead's attorney responded with a letter stating that Gilead's intended disabled residents and staff were protected under state and federal Fair Housing Acts and requested that the order be rescinded, which served as the basis of the lawsuit.

Before the court was the defendants' request for judgment without a trial.

DECISION: Request for judgment without a trial denied.

There were genuine questions of material fact that had to be flushed out with respect to the plaintiffs' FHA claim, which precluded judgment in the defendants' favor.

The plaintiffs contended there wasn't any genuine issue of material fact as to whether the defendants had made, printed, or published discriminatory statements connected to Gilead, which "indicated an impermissible preference based on the disability of the intended residents or an actual intention to make such a preference." The defendants argued that 1) even if the statements were discriminatory, they weren't made "with respect to the sale or rental of a dwelling" and therefore didn't constitute a violation of the FHA, 2) the statements were protected under the First Amendment, and 3) did not proximately cause Gilead's decision to leave the home located at 5 Reiman Drive.

Ultimately, the court found that the statements at issue in this case should be left for a jury to examine. Those included:

- **the town's official press release;**
- **statements the mayor made in interviews with the local press;**
- **statements town officials made at a public forum** at the town hall; and
- **the mayor's emails to residents about Gilead's plans, which *"convey[ed]* a prohibited preference or discrimination to the ordinary listener."**

CASE NOTE

The court explained that previous case law indicated that judgment without a trial was appropriate when claims were based on "advertisements indicat[ing] to the ordinary reader a preference not to rent to people based on a protected characteristic, including sex and familial status."

The case cited is *Fair Housing Center of Southwest Michigan v. Hunt, 2012 WL 11789772 (W.D. Mich. 2012).*

Practically Speaking:

On the FHA claim, it would be up to the jury to determine whether the "ordinary listener standard" had been met. The court also ruled a claim against the town for violating the Americans with Disabilities Act (ADA) could proceed as well.

Zoning News from Around the Nation

CALIFORNIA

LA contemplates growth with new zoning proposals; all eyes still on SB 50

The Los Angeles Department of City Planning has released new zoning rules for the city's downtown area that contemplates increased growth in Central City, the *Los Angeles Downtown News* reported recently. The proposals, which are included in the city's *DTLA 2040*—its Downtown Community Plan—outline plans to nearly double the land on which housing may be built and to increase mobility across the area, the news outlet explained.

In addition, the proposals include the removal of parking minimums, which would provide more housing density.

According to the DTLA 2040 website, the "Downtown is home to a diverse range of industries and a patchwork of distinct neighborhoods that sit at the center of an expanding regional transportation network." Regional projections indicate that by 2040 the downtown will add:

- 125,000 people;
- 70,000 housing units; and
- 55,000 jobs.

For more information on DTLA 2040, including an interactive zoning map, draft zone components (e.g., form, frontage, development standards, use, density, and community benefits program), visit planning.lacity.org/plans-policies/community-plan-update/downtown-los-angeles-community-plan-update#about.

In other news out of the Golden State, Senate Bill 50 would permit "fourplexes" in the single-family neighborhoods, *The Mercury News* reported recently. SB 50, sponsored by Sen. Scott Wiener, would also mandate local officials to approve bigger residential buildings near transit stops, the news outlet explained.

In December 2019, the Santa Clara County Board of Supervisors issued a 4-0 endorsement vote in support of the bill, reported *Palo Alto Online. The Mercury News* reported that SB 50 was recently resurrected with some changes the bill's author, Sen. Scott Wiener of San Francisco, made in the hopes to persuade critics.

Sources: *ladowntownnews.com*; *mercurynews.com*; *paloaltoonline.com*

INDIANA

School districts seek exemptions from upcoming construction projects

The Southwest and Northwest Allen County (Indiana) school districts (SACSD and NACSD, respectively) have petitioned the county zoning board for variances related to the size of their respective schools, reported the *Journal Gazette* recently.

SACSD wants to build closer to the road for its Homestead High School expansion, and NACSD is looking to secure a variance so that new lighting on the Carroll High School's soccer and football fields can rise higher than what's permitted under the code currently permits, the news outlet noted.

As of print time, public hearings on both matters were scheduled with the Allen County Board of Zoning Appeals. In support of its request for the variance, the SACSD contends that a reduction in the front-yard setback for its high school needs to be 80—not the required 115—feet to ensure that the new building can accommodate 3,000 students. NASCD's proposal calls for the construction of a band tower on the north side of the high school football field and 30 new light poles (some 80-feet tall) for the parking lot, which those in support of the project will improve public use of the facilities and increase safety. According to the zoning ordinance, standard light-pole height is 25 feet, the news outlet reported, which NASCD officials say is too short to be effective and practical for lighting all parts of the field.

Source: *journalgazette.net*

KENTUCKY

Changes in zoning spark new lawsuit

Several church pastors and residents in Bowling Green, Kentucky, have filed suit against the city alleging recent changes to the zoning code violated state law and the city's own "Comprehensive Plan," reported WNKY.com.

The plaintiffs allege the city's board of commissioners and the city-county planning commission should not have approved a zoning change to general business from two-family residential on two city streets known for their historic homes.

Originally, the owner of the homes, an investment company, sought a change in zoning to townhouse/multi-family residential when the plan was to construct apartments, the news outlet reported. But, in August 2019, the planning boards approved the change to general business after the investment company indicated plans to construct contractor garages. The plaintiffs assert they were never notified of the amendment to the zoning-change request and that their due process rights had been violated, the news outlet reported.

The plaintiffs' lawsuit requests a judge to overturn the city's decision to grant the zoning-code change.

Source: *wnky.com*

NEW YORK

NYC's 'upzoning' push—a necessity or a travesty?

"Upzoning" is a process by which planning regulations may be relaxed to foster new construction and development by permitting greater density (number of units or floors on the lot) and height, an article in *The New York Review of Books* noted recently. Upzoning also permits "air rights" transfer to new sites from landmarked structures, it explained.

But, at what cost to the preservation of "[l]andmark skyscrapers," the article posited. In way of example, the author noted that Chase Bank recently announced plans to demolish a 52-story Modernist tower on Park Avenue and replace it with a 70-plus story tower, representing the "tallest-ever demolition" of a viable New York City- based building in history, it added.

The full article, "How New York City is Zoning Out the Human-Scale City," can be found at nybooks.com/daily/2019/12/30/how-new-york-is-zoning-out-the-human-scale-city/.

Source: *nybooks.com*

KANSAS

Overland Park's city planner says assistance programs and more inexpensive housing projects needed

An article in the *Shawnee Mission Post* explained how a local city planner and real-estate developer in Overland Park said that the city needs more affordable housing but that the current zoning code presents challenges to meeting that goal. An article by the *Kansas Star* also noted that restrictive zoning codes in the city mean that developers are having a tough time building "cottage communities,"

duplexes, four-plexes, and dwellings with shared driveways, the *Post* reported.

Source: *shawneemissionpost.com*

MASSACHUSETTS

Committee in Amherst recommends keeping public quiet during zoning and planning board application interviews

Up until recently, the public could comment when Zoning and Planning Board applicants were being interviewed in Amherst, Massachusetts. But, thanks to a recent 4-1 town council vote, the public may no longer be able to comment during that phase, reported MassLive.com recently. And, the Outreach, Communications, & Appointments Committee would also like to keep applicants' names private unless they're selected for public interviews, the news outlet added.

A memo in support of the bar on public comments during the interviews stated that the public could make disparaging comments about the individual being interviewed, and this would prevent that.

As of print time, additional discussion on the matter was scheduled.

Source: *masslive.com*

NEW HAMPSHIRE

Settlement may be near in lawsuit challenging Peterborough's No. 15 zoning amendment

Amendment No. 15 in Peterborough, New Hampshire, sought to repeal the "Traditional Neighborhood Overlay Zone II" and amend the "Traditional Neighborhood Overlay Zone I" so that larger lot sizes and more road frontage would be required, the *Monadnock Ledger Transcript* reported. The amendment got a majority but not a two-thirds vote, it added.

There was some back and forth over a protest petition related to the vote, and the issue wound up in court. The plaintiffs argued that even if the amendment passed it wouldn't be valid because it sought to address several zoning issues in a single article, the *Transcript* reported.

At the start of the year, the deputy town administrator said Peterborough submitted a consent decree to resolve the matter out of court. For the past several years, town planners, with backing from the voters, have been on board with zoning amendments to allow for more center-of-town affordable housing, the news outlet reported.

Source: *ledgertranscript.com*

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Zoning Bulletin

in this issue:

First Amendment

Business owner claims denial of requests for variances related to signs amounted to constitutional violations

Citation: *MacGowan v. Town of Castle Rock, Colorado, 2020 WL 127978 (D. Colo. 2020)*

Michael MacGowan went by the trademarked tradename of "Combolisk" for his business. The business' intent was to build a self-regulated network of "outdoor free speech structures" called Combolisks—each was a large obelisk or obelisk-like structure "designed to broadcast digital messages along thoroughfares in the tradition of the outdoor billboard." Each Combolisk would display a rotating mix of for-profit, sponsored, or commercial broadcasts with a required, minimum number of nonprofit broadcasts. Combolisk would operate as a for-profit company and use its earnings to form an overseeing nonprofit to manage future Combolisks.

In 2017, MacGowan submitted a "Sign-Permit Application" to the town of Castle Rock, Colorado. He asked for the application to be suspended toward the end of that year, and by 2018, he submitted another application to "install free standing off[-]premise billboard" at a car wash next to a major interstate highway in Castle Rock.

The town's zoning manager told MacGowan that the project would require variances based on the proposed overall size, height, and relative size of the sign given the size of the car wash lot. But she did not mention the need for a variance for the sign's off-premises use.

However, after notice was sent out about a hearing on MacGowan's application, the need for the fourth variance—for off-premises use—was noted. MacGowan's hearing was delayed to accommodate that fourth variance in his application.

Then, in May 2019, the town's board of adjustment (BOA) denied the four variance requests following a public hearing, and the decision was final.

MacGowan then filed a federal lawsuit against the town for not approving his application for the variances. The town asked for dismissal.

DECISION: Town's request granted.

MacGowan hadn't stated plausible claims for relief.

A CLOSER LOOK

MacGowan claimed the town violated his constitutional rights—namely rights under the First and the Fourteenth amendments, the right to free speech and to assembly and the right to due process and equal protection, respectively.

Fourteenth Amendment equal protection claim—MacGowan contended

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that the town and "individuals with cellphones or personal television were permitted to engage in off-premises advertising, while he is prohibited from doing so." But, he "fail[ed] to plausibly allege that either [the town] [n]or individuals with personal electronics [we]re similarly situated to him in all material respects," the court ruled.

While the town engaged "in off-premises advertising by displaying social media icons on its City Hall sign, . . . this sign d[id] not advertise for those social media companies; rather, it communicate[d] to citizens the social media platforms where they c[ould] engage with [the town]. The off-premises prohibition would not prevent [MacGowan] from putting up a sign on the car wash property indicating the social media platforms, if any, where customers could engage with the car wash. Therefore, [he] fail[ed] to plausibly state that [the town] was treated differently than [him[] in terms of the off-premises prohibition."

And, MacGowan didn't make any "plausible claim that he [wa]s similarly situated to individuals with personal electronics." He wanted "to construct a [30]-plus foot tall obelisk structure. This large, permanent structure [wa]s not materially situated to handheld cellular phones or television sets within people's homes. Taking all facts alleged as true, [he] fail[ed] to state a plausible claim [that the town] treated him differently than similarly situated individuals."

Fourteenth Amendment due process claim—MacGowan didn't have a viable claim because the town had held a public hearing on the four requested variances, including one for off-premises use, and he failed to articulate that the "hearing was insufficient." "Although the parties focus their attention on the public hearing conducted on [his] application, both fail to address what—if any—liberty or property interest is implicated in this case. A plaintiff asserting a procedural4 due process violation must show that he or she 'possesses a constitutionally *cognizable liberty or property interest*' and was deprived of that interest without due process of law," the court explained.

The Bottom Line:

MacGowan didn't show "a legitimate claim of entitlement to the asserted interest."

First amendment free speech claim—MacGowan didn't "state a coherent claim for a violation of the First Amendment," the court ruled. For instance, he "never identifie[d] what provision or provisions of [town]'s zoning code [we]re allegedly unconstitutional." He generally referenced the municipal code, the ordinance, and the "sign code," but "[w]ithout identifying exactly what [he] [wa]s challenging, the [c]ourt f[ound] it difficult to determine the legal basis of [his] argument."

First Amendment right to assembly claim—MacGowan argued that the zoning ordinance violated his First Amendment right to assembly for speech because it limited the sign size to 40 square feet. In his view, "signs compliant with the ordinance [we]re not readable by vehicles traveling on the highway and, therefore, the ordinance d[id] not allow . . . for a community of people to assemble and pass by a location to view words or pictures as speech at highway speeds. This result[ed] in [the] right to assembly being denied."

But, the court disagreed with MacGowan, finding that there wasn't any "support for [his] tacit assertion that individuals 'assemble[d],' as the term is used in the First Amendment context, as they separately travel[ed] in discrete motor vehicles along highways."

The Bottom Line:

"The freedom of expressive association protect[ed] the collective interests of a group whose members share[d] common interests or objectives. Random strangers traveling separately along a highway [we]re not coming together to pursue a shared goal or common purpose," the court noted. They passed by the same locations by chance by mere use of the same highway. "The First Amendment's rights to free assembly and free association [we]re

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not concerned with a generalized right of 'social association' that include[d] chance encounters, . . . let alone individuals who ha[d] no interaction or encounters whatsoever," so MacGowan's right to assembly claim also failed.

Environmental Justice

Did state air pollution board consider environmental effects compression station could have on residents?

Citation: *Friends of Buckingham v. State Air Pollution Control Board, 947 F.3d 68 (4th Cir. 2020)*

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

Friends of Buckingham and the Chesapeake Bay Foundation, Inc. (collectively, the petitioners) challenged the Virginia Air Pollution Control Board's (VAPCB) award of a permit to construct a compressor station on behalf of Atlantic Coast Pipeline LLC (ACP) in Union Hill, a historic town in Buckingham County, Virginia.

The compressor station was one of three stations planned to support the transmission of natural gas through the ACP's 600-mile pipeline, which was projected to stretch from West Virginia to North Carolina.

The petitioners asked the Fourth U.S. Circuit Court of Appeals to review VAPCB's decision, and side against it, as well as the Virginia Department of Environmental Quality and its director. The petitioners asserted that:

- the board erred in failing to consider electric turbines as zero-emission alternatives to gas-fired turbines in the compressor station; and
- it erred in failing to assess the compressor station's potential for disproportionate health impacts on the predominantly black community of Union Hill and to independently evaluate the suitability of that site.

DECISION: Vacated; case sent back for further proceedings.

The VAPCB didn't give enough of a reason or rational explanation for not considering electric turbines rather than gas-fired ones, and it failed to adequately evaluate health impacts and site suitability.

The VAPCB had a duty by law "to determine the character and degree of injury to the health of the Union Hill residents, and the suitability of the activity to the area.," the Fourth Circuit ruled.

The VAPCB contended that the compressor station had more stringent requirements than any other compressor stations nationwide and that Union Hill residents would be breathing in cleaner air more than other Virginia residents. "But these mantras do not carry the day. What matters is whether the Board has performed its statutory duty to determine whether *this facility* is suitable for *this site*, in light of [environmental justice] and potential health risks for the people of Union Hill. It has not."

A CLOSER LOOK

In its decision the court explained the concept of environmental justice (EJ), which was designed to ensure that a given project did not have "a disproportionately adverse effect on minority and low-income populations."

Here, the governor's Advisory Council on Environmental Justice had "recommended suspending the permitting decision for the [c]ompressor [s]tation 'pending further review of the station's impacts on the health and the lives of those living in close proximity.' "

Under state law the VACPB was "*required* to consider 'character and degree of injury to . . . health,' and 'suitability of the activity to the area.' " And, no party argued the board was excused from considering EJ as part of its analysis.

WHY THE BOARD ERRED

In finding in the petitioners' favor, the court explained how the board had erred. For instance, it had not:

- made "any findings regarding the demographics of Union Hill that would have allowed for a meaningful assessment of the likelihood of disproportionate harm"; and
- when presented with "conflicting evidence about whether and how Union Hill was a 'minority' EJ population, . . .it [didn't make any] finding as to its resolution of this conflict," the court found. "This [wa]s improper under both federal law, and Virginia administrative law," it ruled.

Under state law the VACPB was "required to consider 'character and degree of injury to . . . health,' and 'suitability of the activity to the area.' "

The court added that during the public comment period, and when public meetings took pace, a central issue in dispute was "whether the Union Hill community could be deemed a 'minority' EJ community." The board deferred a vote twice on this to get more information. "Yet in the end, it did not even bother to make a finding on this issue. Rather, at least two [b]oard members 'assumed' that Union Hill was an EJ minority community without performing further analysis on what that means."

Case Note:

When sending the case back for further review, the court noted that the VAPCB was "to make findings with regard to conflicting evidence in the record, the particular stud(ies) it relied on, and the corresponding local character and degree of injury from particulate matter and toxic substances threatened by construc-

tion and operation of the [c]ompressor [s]tation."

Preemption

Pipe line company challenges city ordinance it claims would effectively put its operations out of business

Citation: *Portland Pipe Line Corporation v. City of South Portland, 947 F.3d 11 (1st Cir. 2020)*

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

Portland Pipe Line Corp. (PPLC) and its parent company, Montreal Pipe Line Limited, operated the Portland-Montreal Pipe Line, which carried oil from South Portland, Maine, to three states and across the Canadian border.

Over the years, PPLC had received state and federal regulatory approval to unload crude oil from tanker vessels in Portland's harbor to be held in above-ground storage facilities pending transport to Canada through the pipeline.

Around 2007, demand shifted and PPLC wanted to reverse the flow of oil, so it could be loaded onto tankers in the harbor for distribution across the United States. Its request for the reversal project was granted from federal, state, and municipal agencies, but it halted the project due to the economic conditions in pace at that time.

In 2012 and 2013, PPLC resumed the project. But, also around this time environmental interest groups began lobbying for a municipal referendum that would bar a key part of the project: the transportation of Canadian oil sands via pipeline to South Portland, where PPLC planned to load the oil sands onto vessels in the city's harbor.

Initially city residents voted against the referendum. But, Portland's city council then created a committee to consider changes to city code that would "protect the public health and welfare from adverse or incompatible land uses, or adverse impacts to local air, water, aesthetic, recreational, natural, or marine resources" caused by the loading of unrefined petroleum products, like Canadian oil sands, onto ships docked in South Portland's harbor.

Then, the city passed Ordinance No. 1-14/15—the Clear Skies Ordinance—in July 21, 2014, which barred the "bulk loading of crude oil onto any marine tank vessel." This effectively put an end to PPLC's reversal project.

PPLC contended that if it could not proceed with the project, it would essentially be put out of business. It filed suit against the city and its code enforcer. PPLC claimed Maine's Coastal Conveyance Act (CCA) preempted the city's ordinance. In its view a CCA provision barring municipal activity that directly conflicted with a state Department of Environmental Protection (DEP) could not be enforced. And, since the Maine DEP had granted PPLC a renewal license authorizing the reversal project previously, the city's ordinance could not stand.

The city requested dismissal of the lawsuit, which the lower court denied. Then, the parties filed for judgment without a trial, and the lower court dismissed all but one of PPLC's claims. The court disposed of the state-law preemption claim by finding that the Maine DEP renewal license, which was entitled "Department Order," wasn't an "order" as interpreted under the CCA. Also, even if it was, the ordinance didn't directly conflict with the CCA to the extent the law left room for local zoning restrictions like the ordinance. PPLC appealed, and the First U.S. Circuit Court of Appeals determined whether to certify the following questions:

- whether the renewal of the license by DEP constituted an order with preemptive effect; and
- whether the CCA expressly or by implication preempted the ordinance.

DECISION: Questions certified.

Certification of the question of whether PPLC's oil facility license, which DEP issued, was an "order" with preemptive effect was warranted—as was a question as to whether the CCA expressly or by implication preempted the ordinance.

WAS THE LICENSE AN ORDER?

The city and the state challenged PPLC's contention that an order had been granted. They argued that nothing in the text of the DEP renewal license suggested it was an order with preemptive effect. In their view, the letterhead "Department Order" without more didn't provide a license with preemption power.

"Neither appeal to plain language wins the day in our view," the court found. "The parties' attempts to define the term 'order' by cherry-picking relevant provisions of the CCA are similarly unavailing," it added.

As a result, the court sought "clarification from the Law Court." It asked the Law Court to evaluate "whether interpreting 'order' to include MDEP licenses infringe[d] upon 'home rule' authority reserved for the state's municipalities."

WAS THE ORDINANCE EXPRESSLY OR IMPLIEDLY PREEMPTED?

That was the next question the court asked. Assuming the renewal license was an order, the appeals court was asking the Law Court whether section 556 of the CCA "expressly preempt[ed] the [o]rdinance."

Assuming the renewal license was an order, the appeals court was asking the Law Court whether section 556 of the CCA "expressly preempt[ed] the [o]rdinance."

And, even if section 556 didn't require express preemption here, a question remained as to "whether the CCA, independent of any express preemption that it effects in con-

sequence of [section] 556, impliedly preempt[ed] the [o]rdinance." "Under Maine law, ordinances [we]re preempted by implication only where 'state law [wa]s interpreted to create a comprehensive and exclusive regulatory scheme inconsistent with the local action' or where 'the municipal ordinance prevent[ed] the efficient accomplishment of a defined state purpose,' " the court explained.

The Bottom Line:

The CCA was "not . . . expressive in outlining the contours of permissible municipal action," the court noted, adding there wasn't any "clear controlling precedents," so the preemption questions required certification.

CASE NOTE

"The uniquely local policy interests at stake here also support certification," the court wrote. "This is not a case in which the policy arguments line up solely behind one solution." It added the case would "impact the day-to-day licensure procedures of a state agency, the future of a local business that ha[d] been operating in the area for the better part of [75] years, and the [c]ity's authority to protect against perceived environmental threats to its coastline." Ultimately, in the First Circuit's view, the Law Court was "better suited for the challenge of balancing these interests to the extent allowed by applicable state law preemption doctrine."

Special Land Use Permits

Lawsuit emerges over special land-use permit build a cellular tower on church property

Citation: *Municipal Communications, LLC v. Cobb County, Georgia, 2020 WL 91806 (11th Cir. 2020)*

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

Pursuant to Cobb County's zoning ordinance, before a wireless tower more than 35 feet high could be constructed, an individual had to apply for and obtain a special land-use permit. Also, the local zoning division could enlist "consultants, engineers, or other experts in the area of radio frequency engineering or other relevant fields to assist the county in analyzing the application."

After that, planning and zoning division staff would analyze the application and recommend granting or denying it. Then, the planning commission would hold a public hearing and make a recommendation to the board of commissioners.

It was up to the board of commissions to vote on whether to grant the application based on the analysis of 15 factors.

SOUTHERNLINC WIRELESS INC.'S APPLICATION

In August 2015, SouthernLINC Wireless Inc. (SouthernLINC) submitted an application for a special land-use permit with the zoning division to build a cellular tower on a site it leased from the Wildwood Baptist Church, which was surrounded by homes and a school.

While the application was pending, SouthernLINC assigned its rights, title, and interest in the lease to Municipal Communications LLC (Municipal), which then became the applicant.

The county hired CityScape Consultants (CityScape) to conduct an independent evaluation of the application. CityScape suggested and Municipal agreed to reduce the height of the tower from 190 feet to 165 feet and to camouflage it to look like a pine tree. CityScape concluded that Municipal's application met the relevant zoning ordinance requirements and recommended approval of the application.

Planning and zoning division staff determined that the application met the zoning ordinance requirements and recommended approval. But they also proposed a condition to the permit, which would require Municipal to move the tower 300 to 400 feet to the east, which would place it in a thick grove of trees near the center of the property.

In February 2016, Municipal informed the zoning department that the proposed location wasn't available because the church wouldn't lease that site. Also, it asserted that moving the tower would result in it being more visible to neighbors to the east and for those traveling along a nearby road. It also stressed that the location it proposed was farther away from the nearest neighbors than any other towers the county had previously approved.

At a public meeting to discuss Municipal's application in February 2016, Municipal's attorney voiced its objections. CityScape explained at the meeting that the tower was needed to fill a cell service coverage gap in the area. And, the zoning division manager stated that Municipal had satisfied all of the zoning ordinance requirements.

Close to 20 residents opposed the tower at the meeting based on their view that a coverage gap did not exist and their concern over the general aesthetics related to the tower, which they feared would negatively impact their property values.

Ultimately, the board unanimously voted to approve the application with the relocation condition. Then, Municipal filed a lawsuit, alleging that the board's decision was unsupported by substantial evidence, in violation of the Telecommunications Act of 1996, and was effectively a constructive denial of Municipal's application.

The parties filed for judgment without a trial, which the lower court granted to Municipal. It found the board's approval of the permit with the condition attached constituted a denial of the permit and was not supported by substantial evidence. Then, the court ordered the county to issue Municipal a special land-use permit without the relocation condition, which the county appealed.

DECISION: Affirmed.

The board's decision wasn't supported by substantial evidence.

According to the county—and pursuant to the local zon-

ing ordinance—it didn't have to grant Municipal's application as submitted because it had failed to meet its burden of producing sufficient information to show that the alternative site was unavailable. The lower court had found that the undisputed evidence showed that "Municipal [had] substantially complied with the requirements of the local zoning ordinance."

But, the county argued in its request for judgment that Municipal had failed to provide sufficient information because it did not submit documentation showing the proposed site was unavailable. "Thus, we disagree that it [wa]s undisputed that Municipal 'substantially complied,' " the court explained. "What is undisputed, however, is that Municipal repeatedly represented throughout the application process that the church would not lease the new location to it and it could not move the tower, and no County representative, Board Commissioner, or Planning Commission member or staff person, ever alleged, or even remotely suggested, that Municipal had failed to meet its burden of providing sufficient information in compliance with the County's zoning ordinance."

The Bottom Line:

The county didn't "articulate this reason as a basis for its decision until after the commencement of this action in the district court," and it couldn't " 'rely on [a] rationalization . . . constructed after the fact' and then cherry-pick from the record evidence that support[ed] it." Therefore, the county couldn't rely on Municipal's alleged failure to produce evidence concerning the unavailability of the new location as a basis for its decision.

With that issue resolved, the court moved on to whether there otherwise was substantial evidence to support the county's decision. The county contended that the lower court erred by only considering the statements of board members and not the record as a whole. "Specifically, the County maintains that when the record is considered as a whole, substantial evidence support[ed] the [b]oard's decision to attach the condition that Municipal move the tower 300 feet to the east, referring to letters submitted from neighboring residents expressing aesthetic concerns, as well as concerns that the tower would decrease property values and impact the neighborhood's safety."

The county couldn't rely on Municipal's alleged failure to produce evidence concerning the unavailability of the new location as a basis for its decision.

"The [c]ounty correctly notes that when assessing if substantial evidence supports the [b]oard's decision, we are required to look at the whole record, but we do so only in light of the locality's stated reasons for its decision," the court explained. "Here, the [c]ounty proffered a transcript of the minutes from the [b]oard hearing as the reasoning for the [b]oard's decision. The transcript reveal[ed] that the [b]oard acknowledged in passing that numerous residents had submitted letters and expressed various concerns surrounding the tower."

But, when explaining the decision, no commissioner had "indicated that they specifically relied on those letters or concerns or specified what other record evidence they found persuasive." Instead, each of them "focused on the aesthetic concerns that were a focal point of the planning commission meeting and the [b]oard hearing."

PRACTICALLY SPEAKING

While the county wanted the court to consider additional evidence that could have otherwise supported the board's decision, the court's review was "circumscribed by the applicable standard of review"—that is, the court's role was to discern whether there was substantial evidence to support the board's decision.

In this case, the board's decision wasn't supported by substantial evidence because:

- the commissioner stated the tower was needed to address the cell-coverage gap and that Municipal had to meet the applicable zoning requirements;
- while the residents' general concern over aesthetics and property value were raised, the board had "ultimately concluded that [it] could not determine one way or the other the tower's effect" on property value;
- another commissioner noted that the tower wasn't an eyesore like a cell tower on the side of a highway—it would be camouflaged and "you barely can barely see it, and it becomes almost invisible after a while"—and he "unequivocally stated that he saw no 'reason to move it 300 feet.' "

Based on the commissioner's statement, "the only reasons clearly expressed by the [b]oard that could support denying Municipal's application were generalized aesthetic concerns. While the County's local zoning laws permit it to consider aesthetic impact of the tower, we have held that blanket generalized aesthetic objections, standing alone—like those proffered here—are not enough to constitute substantial evidence," the court wrote. Thus, the board's decision wasn't supported by substantial evidence.

Zoning News from Around the Nation

Connecticut

Old Lyme's setback rules shelved; court rules on whether property owner would face undue hardship if variances denied

Old Lyme's zoning commission voted to shelve proposed amendments to a Tidal Waters Protection regulation that would have created a 100-feet setback for new construction on coastal and riverfront properties. The current set back is 50 feet, and when introducing the amendment, the commission's secretary, Jane Marsh, expressed that the

town should commission a coastal resilience study like the one neighboring Old Saybrook had conducted in 2018.

To view Old Saybrook's "2018 Coastal Resilience & Adaptation Study," visit oldsaybrookct.gov/conservation-commission/pages/coastal-resilience.

And in other news out of Connecticut, a state court has ruled that an abutting property owner's estate is out of luck in an effort to challenge a local zoning board's decision to grant other property owner variances concerning a legally non-conforming accessory structure that had been destroyed by a hurricane in 2012.

The court found there was evidence to support the lower court's decision to affirm a zoning board's decision to grant the variances on the grounds that not doing so would create an undue hardship for the property owner.

The case arose after Paul Breunich, the property owner, sought variances from various setback requirements and height restrictions under the City of Stamford's zoning regulations. He contended that the strict enforcement of the regulations would result in an undue hardship because he couldn't comply both with those regulations and with the regulations applicable to flood-prone areas, which required him to elevate the structure. The court agreed.

The case cited is *Mayer-Wittmann v. Zoning Board of Appeals of City of Stamford, 333 Conn. 624, 218 A.3d 37 (2019).*

Source: *ctexaminer.com*

Indiana

Seymour's city council votes to extend time to study impact of institutional zoning ordinance proposal

In a 5-2 vote, the Seymour City Council decided to give the planning and zoning committee more time to study the impact of proposed institutional zoning ordinance, *The Tribune* reported recently. The ordinance would place a restriction on the construction of criminal justice or rehabilitation facilities; namely, they could not be less than 600 feet from residential areas, schools, churches, and city parks, the news outlet noted.

In September 2019, the planning commission began looking into institutional zoning, and shortly thereafter, in November 2019, the proposed ordinance was drafted.

Source: *tribtown.com*

Louisiana

Should New Orleans put a plug on outdoor music? Council members vote to study how other cities regulate before voting

New Orleans is a city steeped in great musical history—from Dixieland to jazz—and its downtown's party atmosphere lends itself to outdoor music. But, in 2019, the New Orleans Department of Safety and Permits said, according to its interpretation, new businesses might not have the right to having outdoor entertainment, *Fox8Live* reported recently.

In response, the city council recently voted to study the zoning and regulation of music in other cities, and particularly land use for established businesses, including restaurants and bars (but "not second lines"). The study, which will take place over the course of nine months, will examine when the businesses began playing music, and after the study period, recommendations about how the city should handle the issue are expected to be made to the city council.

Source: *fox8live.com*

Massachusetts

Boston's zoning commission tightens short-term rental loophole

The Boston Zoning Commission, in a unanimous vote, decided that units classified as an executive suite must go through a public process concerning its occupancy applicants, *North End Waterfront* reported recently. This will result in a tightening of a loophole concerning short-term (Airbnb-type) rental regulations that recently went into effect in the city.

Often short-term rentals from Airbnb have not been registered with Boston, with the owners listing them as exempt from registration due to executive-suite status, a zoning classification originally created for corporate apartments.

The news outlet reported that many short-term rental operators, like Sonder, Stay-Alfred, and Domio, have used the executive status loophole to run "fake" hotels to avoid the approval process other hotels must go through. The hope is that by making those claiming executive status go through the process of engaging in community meetings and filing zoning variance applications that the city will better be able to preserve the purpose of its short-term rental regulations for non-owner-occupied buildings.

To read the city's ordinance on short-term rentals, visit boston.gov/sites/default/files/document-file-08-2018/short-term_rental_ordinance.pdf.

Source: *northendwaterfront.com*

New Hampshire

Town settles lawsuits concerning notice of protest petition

The town of Peterborough has settled two lawsuits alleging it hadn't provided proper notice on a protest petition concerning zoning rules, the *Union Leader* reported recently.

The news outlet reported that the town had adopted zoning rules to amend housing density rules, thereby permitted more units in Peterborough. When residents sought to overturn the rules by way of a town meeting ballot vote in May 2019, the selectmen adopted a protest petition without notice concerning Zoning Amendment 15, which repealed the town's Traditional Neighborhood Overlay Zone II and changed the Traditional Neighborhood Overlay Zone I, the news outlet reported.

As a result the downtown area allowed for the building of 16 housing units per acre, which exceeds the density in other places like Keene, Milford, and Nashua, leaving the town of Peterborough with a density map more comparable to the city of Manchester, the news outlet reported.

Through the settlement, the town will concede that the protest petition had not been legally noticed for voters, and

thus, was invalid. The practical impact is that the May vote, passed by a simple majority, has been defeated, the *Union Leader* stated.

Source: *unionleader.com*

Ohio

County commissioners board approves zoning changes; study shows zoning in Cuyahoga County leads to housing inequality

Three zoning changes have been approved by the Board of Miami County Commissioners, including a request to rezone close to eight acres to light industrial from domestic agriculture in Monroe Township, the *Troy Daily News* reported recently. The decision means that construction and excavation company Outdoor Enterprises will be able to buy the property to store equipment.

About the property, which had previously been used as a junk yard for vehicles, the owner of Outdoor Enterprises said that the rezoning is a "low impact, low-traffic solution" for the parcel. Despite his contention, a neighboring property owner contends the rezoning could have a negative impact on his property value. In his view, keeping the domestic agriculture zoning on the land would have given him a better "buffer."

Jack Evans, the board commissioner, addressed the neighbor's concern that the change amounts to "spot zoning." In his view, the property had become an eyesore, and the rezoning will preclude its use as junkyard in the future.

In other news out of the Buckeye state, the Fair Housing Center for Rights and Research (FHCRR) has concluded that the way Cuyahoga County's approach to zoning leads to racial segregation and housing inequality, reported *Idea Stream* recently.

The nonprofit advocacy group analyzed a majority of zoning ordinances across the county and found that single-family homes were more prevalent in cities with higher average incomes and larger white populations, the news outlet explained. Michael Lepley, a senior research associate at FHCRR said lower income and individuals of color are generally priced out of those areas and must rent rather than own their homes. In his view, the county's zoning is indicative of an "intentional . . . power structure." Lepley said.

In Cuyahoga County, there are 11 communities that don't permit rental housing, the news outlet reported. And, according to Lepley, close to 60% of the zoning in the county is for single-family homes, which leads to a situation where apartment complexes and multi-family dwellings are concentrated in and around Cleveland.

Sources: *tdn-net.com*; *ideastream.org*

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Zoning Bulletin

in this issue:

Condemnation

Gas company brings action against landowners for permanent and temporary easements to build pipeline on their property

Citation: *Sabal Trail Transmission, LLC v. 3.921 Acres of Land in Lake County Florida, 947 F.3d 1362 (11th Cir. 2020)*

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

Sabal Trail Transmission LLC (Sabal) was building the construction of a 500-plus mile underground pipeline to transport natural gas from Alabama to Florida. Federal Energy Regulatory Commission issued Sabal Trail a public convenience and necessity certificate authorizing the construction and operation of the pipeline.

Pursuant to the certificate, Sabal Trail could build a pipeline along a route where it held existing rights-of-way to much of the land needed for construction of the pipeline. For the remaining more than 200 miles of the route, Sabal Trail needed easements from landowners to build the pipeline across their properties.

Sabal ran into issues when it came upon Sunderman Groves (Sunderman), which Charles and Jan Sunderman owned. The Sundermans owned about 500 acres of land across Lake County, Florida, and Sabal Trail wanted to lay about 1,335 feet of pipeline diagonally across 40-acre parcel on their property.

Sabal Trail requested a permanent easement to install and maintain the underground pipeline and related equipment. The easement would permit Sabal Trail with the right to:

- **prohibit the Sunderman's and any successive owner of the property from building any structure in the permanent easement area;**
- **remove any vegetation in the permanent easement area;** and
- **enter the remainder of the parcel to access the pipeline and related equipment.**

In total, Sabal Trail sought to acquire 1.535 acres through permanent easement. It also sought a temporary easement covering more than two acres.

The Sundermans refused to sell the easements, so Sabal Trail sought to acquire the easements through eminent domain. It filed a condemnation action against Sunderman.

A jury heard evidence about the impact the pipeline had on the land values and the appropriate amount for taking the land. The jury found that Sunderman was entitled to $309,500 for the condemnation. It also awarded it $17,500 for the permanent easement, $10,000 for the temporary easement, and $282,000 for severance damages for the diminution in value of the remainder of the parcel. Total judgment included attorney's fees and costs.

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Sabal Trail sought a new trial. It argued that the court should have excluded an opinion from Jan Sunderman about the value of the land after the pipeline was built because her testimony was speculative. The court denied the request. It found a property owner generally was permitted to testify about the value of her land and that Sunderman's testimony was not speculative because it was based on her personal knowledge and experience.

Sabal Trail then filed a request for judgment challenging the court's finding that Sunderman was entitled to attorney's fees and costs. It contended that under the federal Natural Gas Act (NGA), a property owner wasn't entitled to recover the attorney's fees and litigation expenses it incurred in litigating a condemnation action.

The court denied this request, too. It found that Sabal Trail had failed to identify a manifest error of law in the court's conclusion, so it appealed.

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DECISION: Affirmed in part.

The lower court hadn't abused its discretion in allowing Jan Sunderman to offer her lay opinion as to how natural gas pipeline affected the value of subject parcel.

The Federal Rules of Evidence stated that when a lay witness could offer opinion testimony. "Rule 701 requires that lay opinion testimony be '(a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.' " "In addition, the lay witness's opinion must be derived from her personal knowledge or experience," the court explained.

Also, an advisory committee note on Federal Rule of Evidence 701 to the 2000 amendment stated that "[a]s a general rule, 'an owner of property is competent to testify regarding its value.' "

"Given this general rule, we conclude that Sunderman, as one of the two owners of Sunderman Groves, was competent to testify about the value of its property," the court ruled. Sabal Trail still argued the lower court should have kept Sunderman's testimony out about the value of the parcel after the pipeline was built because she had no prior experience selling property encumbered by a pipeline and, therefore, didn't have personal knowledge about whether the pipeline diminished the parcel's value.

Sabal Trail relied on the court's decision in *Williams v. Mosaic Fertilizer LLC*. In that case, the court ruled that the lower court hadn't abused its discretion when excluding a homeowner's testimony about the value of her house because her opinion was based solely on speculation.

This case differed from Williams "because Sunderman's testimony about the value of the parcel was based on her personal knowledge, not speculation," the court noted. "Although she had no prior experience selling property encumbered by a pipeline, her opinions about what purchasers were looking for were drawn from her experience selling 25 similar lots for rural residential development."

The Bottom Line:

"Based on her interactions with prospective purchasers, [Sunderman] understood that a purchaser who was buying a rural residential lot wanted to enjoy nature, have privacy, and be free from restrictions governing what she could do with her land. She applied this experience to opine that if she proceeded with the plan to subdivide the parcel into three lots, two of the lots would be unmarketable for residential development."

Also, Sunderman "explained that a purchaser looking to build a house in a rural area would not buy either lot given that the pipeline cut diagonally across each lot, the permanent easement restricted how the landowner could use the area covered by the permanent easement, and Sabal Trail retained the right to enter each lot to access the pipeline. Because Sunderman's opinion was based on her personal experience and knowledge, we conclude that the district court did not abuse its discretion in allowing her to testify," the court wrote.

A CLOSER LOOK AT *WILLIAMS*

In *Williams*, a homeowner sued a factory alleging that it emitted toxic chemicals and was liable under a Florida statute that created a private right of action for those damaged by a discharge of materials in violation of Florida's environmental standards. The homeowner claimed her property was damages due to the impact of the emissions on the value of her property. The court excluded the homeowner's valuation testimony on the basis that it "lacked foundation and was purely speculative."

In Williams, a homeowner sued a factory alleging that it emitted toxic chemicals and was liable under a Florida statute that created a private right of action for those damaged by a discharge of materials in violation of Florida's environmental standards.

On appeal, that decision was affirmed, where the appeals court acknowledged that as a general rule a homeowner may testify about the value of her home. "But [the court] cautioned that when an 'owner bases[d] his estimation *solely* on speculative factors,' a court [could] exclude the owner's testimony." According to the court, "the homeowner's testimony that her home had no value was speculative because she had not tried to sell her home and had not spoken to an appraiser or real estate agent about it." Also, "she knew that some buyers were willing to purchase homes near the factory because she was aware that another home on her block had recently sold. Because there was no basis for the homeowner's opinion that the value of her home was zero, [the court] concluded that her opinion was 'pure speculation' and so the district court did not err in excluding her testimony."

The case cited is *Williams v. Mosaic Fertilizer, LLC, 889 F.3d 1239, 106 Fed. R. Evid. Serv. 498 (11th Cir. 2018).*

Constitutional Violations

Rabbinical college claims zoning ordinances violated First and Fourteenth Amendment rights

Citation: *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona, NY, 945 F.3d 83, 372 Ed. Law Rep. 567 (2d Cir. 2019)*

The Second U.S. Circuit has jurisdiction over Connecticut, New York, and Vermont.

In 2004, Congregation Rabbinical College of Tartikov Inc. (TRC) bought about 100 acres of land in the Village of Pomona, New York, a small suburban village of about 3,200 people. TRC wanted to build a school on the parcel to educate rabbinical judges. It did not, however, submit any concrete development proposals or zoning/construction approvals over the next few years.

In 2007, a local group published an article revealing TRC's plan to build a school and nine large apartment buildings to house, 1,000 students and their families, which would add an estimated a 4,500 people to the local population. Local opposition ensued, and the village board enacted two amendments to its land-use laws limiting or prohibiting whatever development TRC ultimately wanted to build.

TRC and its future students and faculty filed a lawsuit against the village and its board of trustees. They wanted the amendments rendered unconstitutional and their claims alleged specifically that the village violated the First and Fourteenth Amendments, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Fair Housing Act (FHA), and state law, by limiting or prohibiting TRC, on the basis of religious motives, from building a rabbinical college on its 100-acre tract located in village.

Following a bench trial, the lower court found that the two zoning amendments—as well as two additional provisions—were enacted for religious motives, so it enjoined their enforcement, and entered an injunction.

The village challenged the decision. It asserted that the lower court's findings as to religious animus were wrong.

DECISION: Affirmed in part.

There was a discriminatory intent behind the 2007 amendments.

The Second U.S. Circuit Court of Appeals found there was evidence of a discriminatory motive behind the village's zoning amendments, which applied to dormitories and wetlands. For instance:

- **there was public outcry over the TRC's plans following the news report;**
- **villagers commented at a public hearing in 2007;**
- **there had not been any studies conducted as to the necessity or use of the 2007 wetlands law "combined with the [v]illage's knowledge that there were wetlands on the property" and the timing of the law's adoption;**
- **an exception to the wetlands law would not apply to single-family homes;**
- **the newly elected mayor had run on a campaign promise to stop TRC development;**
- **statements the mayor and board trustees made—as well as members of the community— indicated the village's "prejudice** against Tartikov and Orthodox/ Hasidic Jews";
- **the board rejected proposals to increase the maximum height of dormitories and the number of dining facilities** allowed in the 2007 dormitory law; and
- **the village behaved differently toward other proposed projects in the community.**

The Bottom Line:

The trustees knew TRC's intention for the property when the 2007 laws were enacted And, while the evidence as to the particulars of TRC's plans was "scant" "that ignorance dissolved on January 9, 2007 when" the article was published detailing the plans to build

a school and housing for 4,500 adult students and their families in buildings as high as six stories.

The board of trustees was present to hear residents objections to the plans. There was evidence many of those statements were discriminatory. And, there was also evidence that the officials relied on some of those comments when making the decision about limiting building under the amendments.

The Bottom Line:

When viewing the lower court's ruling "in a holistic manner" no clear error was detected, so its decision stood. The laws had a discriminatory effect on TRC. For instance:

- the dormitory law, which excluded multifamily dwelling units from the definition of "dormitory" and barred separate cooking and dining areas, "prohibited the types of residences TRC intended to build, which included 'kitchens in each residence so that students can diligently study . . . while also meeting their religious obligations to their families' "; and
- the dormitory law's "20 percent floor space restriction, . . . would limit dormitories to just 20,000 square feet based on TRC's planned 100,000 square feet of construction" and "[d]ormitories of that size, . . . could accommodate roughly 30 students and their families—a number far short of what TRC had planned."

PRACTICALLY SPEAKING

"There [wa]s sufficient basis in the record to conclude, as the district court did, that on campus housing of the nature Tartikov sought was important to the exercise of Tartikov's faith because it would allow students to be near their families while maintaining a diligent study schedule," the Second Circuit wrote. "Further, Pomona has presented no evidence suggesting that the [v]illage and surrounding community had sufficient housing for 1,000 students and 3,500 additional family members to live within walking or even driving distance of the TRC site without additional construction," the court wrote.

"Pomona has presented no evidence suggesting . . . sufficient housing for 1,000 students and 3,500 additional family members to live within walking or even driving distance of the TRC site without additional construction," the court wrote.

With regard to the wetlands law, two provisions "work[ed] in tandem [to] prevent . . . construction of a TRC-like project anywhere in Pomona." "[A] 10 net acre minimum lot size for educational institutions ensured that TRC's lot was the only site in Pomona large enough for the proposed college. And the required 100-foot buffer between constructed features and wetlands guaranteed TRC could not build on the property, because the only suitable location for a driveway fell within 100 feet of wetlands," the court explained. "While the 2007 Wetlands Law allowed landowners who were deprived of all reasonable use of their property to apply for a permit, the parties' stipulated to the district court that TRC did not qualify for a permit because its property could be put to reasonable use—though not the use it desired."

Ultimately, the court did not find an error in the lower court's reasoning. The village didn't meet its burden of showing a "clear error" had occurred.

Case Note:

The Second U.S. Circuit Court of Appeals declined to overturn the lower court's ruling that religious animus motivated the two zoning amendments, but it ruled there wasn't sufficient evidence to support such a finding as to the two earlier zoning amendments.

A Closer Look: TRC had the burden of showing a discriminatory effect resulted from the 2007 amendments whereas the village had the burden of showing that the lower court's ruling on that matter was a clear error. Because the village didn't meet that burden, its appeal failed on the issue of whether 2007 dormitory and wetlands laws had a discriminatory effect on TRC.

Variances

Property owner's application for seven variances to construct single family home denied

Citation: *Wolf v. Board of Zoning Appeals, 2019 WL 5957951 (Conn. Super. Ct. 2019)*

Shayna Wolf owned a property known as 350 Wippoorwill Lane, Stratford. The property, which was irregularly shaped and didn't have frontage on a public street, was located in a residential (RS-1) zone and consisted of approximately 2.2521 acres, as indicated on a tax assessor map. Access to the parcel was possible via a 20-foot right of way, which was used to access other properties that were otherwise landlocked.

Wolf acquired title to 350 Wipporwill Lane via a warranty deed dated February 26, 2016, which was recorded in the Stratford Land Records. The consideration for the conveyance was noted as $20.

In 2018, Wolf applied to the Stratford Board of Zoning Appeals (BZA) for seven variances because she wanted to construct a single-family home on the property. Her application stated she was claiming legal hardship due to the "preexisting nonconforming irregular shaped property formerly part of an old farm sporadically developed over the years to one family homes, preexisted rear lot Regulation."

Wolf asserted that the property's shape made it subject to hardship. That's because, in her view, the configuration

rendered compliance with Stratford's rear lot regulations impossible. She also asserted that a failure to grant the requested variances and to permit the construction of a single-family residence on the property would result in practical "confiscation" of the property.

Wolf faced opponents regarding the matter. Those individuals contended that Wolf knew the property was not an approved building lot when it was purchased. And, any hardship, in their opinion, was the result of Wolf's predecessor in title and did not arise from the application of zoning regulations to the property.

A public hearing took place in December 2018. The BZA voted unanimously to deny Wolf's request for the variances. The commissioner noted that the hardship had been self-created and a letter to Wolf stated that she had failed to demonstrate an adequate hardship that would allow the BZA to grant the requested variances.

Wolf appealed.

DECISION: Appeal dismissed.

Wolf didn't have a basis for assuming that multiple variances would be approved to permit development of the parcel.

HARDSHIP NOT EVIDENT

To succeed with her claim, Wolf needed to show that a hardship was evident by "substantial evidence." "[T]o grant a variance, a zoning board of appeals must find that two . . . conditions have been satisfied: 1) the variance must be shown not to affect substantially the municipal comprehensive plan, and 2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning ordinance," the court explained.

Also, "[t]he comprehensive plan consists of the zoning regulations, and the zoning map." And, "[c]ompliance with the comprehensive plan [wa]s usually met when the use allowed [wa]s consistent with other uses in the area."

Granting a variance gave a property owner authorization to use his or her property even though a zoning violation would result. But, the granting of a variance was "reserved for unusual or exceptional circumstances." And, "[p]roof of exceptional difficulty or unusual hardship [wa]s absolutely necessary, as a condition precedent to the granting of a variance."

But, hardships that were "personal to the applicant, however compelling from a human standpoint, d[id] not provide sufficient basis for the granting of a variance," the court explained. "Hardships which ar[os]se out of the voluntary act of an applicant [we]re considered to be self-inflicted, and c[ould not] provide justification for the granting of a variance."

SO, WHAT *WOULD* CONSTITUTE A HARDSHIP?

"[I]f a hardship [wa]s created by the enactment of a zoning ordinance, and a predecessor in title could have sought a variance, a subsequent owner [could] . . . seek a variance," the court wrote. "This situation [wa]s . . . distinguished from one in which a predecessor in title create[d] a nonconformity, from which the current owner s[ought] relief."

Here, Wolf wanted to build a single-family home at 350 Wippoorwill Lane, and single-family residences were permitted under the RS-1 zone. "The contemplated use of 350 Wippoorwill Lane [wa]s a permitted use in the zone," the curt noted. But "[a] showing of hardship, however, [wa]s another matter entirely."

Wolf contended that the hardship arose out of applying the Stratford Zoning Regulations to the property. She asserted that her predecessor in title could have sought a variance, and that she could, therefore, pursue the seven variances to permit the construction of a single-family home.

The BZA in rejecting the variance application concluded that Wolf failed to show a hardship and that a hardship was governed by the "purchase with knowledge" rule. "The court agrees with the Board," the court wrote.

To get a variance granted, the applicant had to show that "a hardship [arose] from conditions different in kind from those generally affecting properties in the same zoning district, and [had to] be imposed by conditions outside the control of the person or entity seeking the variance."

"350 Wippoorwill Lane, in its present configuration, was created by [Wolf's] predecessor in title. At no time did either [owner] seek to subdivide the property or seek approval for a building lot from agencies of the Town of Stratford," the court explained.

The Bottom Line:

There was ample evidence in the record that the property was "not rendered non-conforming through the adoption of a zoning ordinance by the Town of Stratford." The hardship "was created by the [Wolf's] predecessor in title, [so] the [BZA] lack[ed] authority to grant a variance, because the hardship [wa]s self-inflicted." And since the "claimed hardship ar[ose] from the applicant's act, a zoning board of appeals lack[ed] the power to grant a variance."

In the end, the court ruled the hardship was self-created because "any claimed hardship arose from the creation of the parcel itself, rather than from the enactment of any subsequent regulation or ordinance."

A CLOSER LOOK

A variance ran with the land, and it was based on property conditions. Also, "[t]he identity of the applicant [wa]s irrelevant." So, to get a variance granted, the applicant had to show that "a hardship [arose] from conditions different in kind from those generally affecting properties in the same zoning district, and [had to] be imposed by conditions outside the control of the person or entity seeking the variance." Furthermore, "[a] general hardship to the neigh-

borhood, or to the community as a whole, cannot support the approval of a zoning variance."

Practically Speaking:

"Even the fact that one or more variances have been granted to landowners near the site of a proposed variance, does not constitute proof of undue hardship," the court explained. "Disappointment in the use of property d[id] not constitute exceptional difficulty or unusual hardship," it added.

Restrictive Covenants

Buyers of vacant lots sue real estate agent after they're denied loan to build non-residential structure

Citation: *Seong Ho Hwang v. Gladden, 2020 WL 521849 (M.D. Ala. 2020)*

Seong Ho Hwang and Sin Ja Son, both doctors, bought two adjoining lots in Auburn, Alabama. They wanted to construct a chiropractic clinic on the lots, but after closing on sale of the property, they were denied a construction loan because there were restrictive covenants recorded on the land that restricted them to residential use.

The doctors sued their real estate agent, Brent Gladden, and his company, University Real Estate Group LLC (collectively, the defendants). They asserted claims of fraud, breach of contract, and negligence.

The issue for the court was whether to grant the defendants' request for judgment without a trial on the doctors' claims. The defendants argued the doctors had actual and constructive notice of the covenants prior to closing on the lots. And, according to the defendants the doctrine of "caveat emptor" and the express terms of the sales contract applied, making the doctors solely responsible for determining the suitability of the land for their intended purpose. Additionally, the defendants asserted the doctors couldn't rely on any advice or representations Gladden or any other agents involved in the sale had made.

DECISION: Judgment without a trial granted.

Neither the real estate agent nor his company were liable for not providing the doctors with notice of the zoning restrictions.

Actual or constructive notice—The doctors alleged that Gladden should have discovered and disclosed that the property was subject to restrictive covenants limiting it to residential use. "These claims all fail because [the doctors] had actual and constructive notice of the covenants," the court found.

It was undisputed that "the restrictive covenants for the Indian Hills Subdivision were properly recorded in the Lee County Probate Court in 1977 and numerous references to the covenants appear in the chain of title for Lots 41 and 42. Under Alabama law, 'the proper recordation of an instrument constitutes *conclusive notice to all the world* of everything that appears from the face of the instrument' and 'the purchasers of real estate are presumed to have examined the title records and knowledge of the contents of those records is imputed to them.' "

Further, at the closing, the doctors "received a warranty deed conveying title that explicitly state[d] that '[t]his conveyance is subject to . . . Restrictive Covenants of Indian Hills Subdivision filed for record on July 29, 1977.' " In addition, they "received a signed title insurance commitment that list[ed] the restrictive covenants among the exceptions to coverage." The doctors "chose not to read these documents, but Alabama law d[di] not allow [them] to 'close their eyes to avoid the discovery of the truth.' " Thus, the doctors had "actual and constructive knowledge of the restrictive covenants, [so] they c[ould] [not] maintain a cause of action against defendants for failing to discover and disclose them," and their claims failed as a matter of law.

Caveat emptor—The doctors' argument was foreclosed by this "let the buyer beware doctrine," which Alabama applied to the sale of unimproved land. "Under this doctrine, it [wa]s solely the buyers' responsibility to determine the condition of the property, and the seller and real estate agents involved in the transaction ha[d] no duty to disclose any defects.

Here, the undisputed evidence showed that the two lots were empty and *caveat emptor* applied because none of the three exceptions Alabama courts used would apply. Those exceptions arose when:

- "a buyer and seller ha[d] a fiduciary relationship"—in that case there was a duty to disclose known defects;
- "a seller ha[d] a duty to disclose known material defects affecting health and safety that [we]are not readily observable and [we]re unknown to the buyer"; and
- "if the buyer ma[de] a specific inquiry about a material condition concerning the property, the[n] [the] seller ha[d] a duty to disclose known defects."

But, these exceptions would not apply when the property was bought "as is" in the purchase contract.

The Bottom Line:

There wasn't case law to support the doctors' argument that Gladden had "guarantee[d] or warrant[ed] that the property purchased [wa]s suitable for [their] intended purpose." Also, the purchase contract clearly stated that they were buying the lots in their "present 'AS IS' condition." "[T]his clause effectively vitiate[d] any recognized exceptions to caveat emptor," the court found.

A CLOSER LOOK

"The clear and unequivocal terms of the contract here completely insulate[d] . . . Gladden from all of [the] claims arising from his alleged failure to discover and disclose the restrictive covenants," the court ruled. "By the clear terms of the contract, [the doctors] were solely responsible for determining whether the property was suitable for their intended purpose of building a chiropractic clinic, and they were prohibited from shifting this responsibility to defendant Gladden because he was a real estate agent covered by the contract."

The doctors "chose not to read these documents, but Alabama law d[di] not allow [them] to 'close their eyes to avoid the discovery of the truth.' "

Also, the court rejected the doctors' claims that Gladden had agreed to be bound to a requirement to obtain a covenants release from enough property owners in the Indian Hills Subdivision to remove the restrictive covenants from the lots they were buying. "Examination of the written terms of the liability release show[ed] that [the doctors] agreed to release defendants from all claims in exchange for ten dollars and 'delivering of information . . . regarding the Real Estate Transactions.' " The vague term " 'delivering of information' [wa]s simply too ambiguous, broad and uncertain to have any meaning at all as used in the liability release here." And, the term "information" couldn't "reasonably construed as meaning delivery of an effective release of the covenants as [they] urge[d], nor as delivery of however many signatures defendant Gladden managed to obtain as defendants urge."

Case Note:

"Covenants, easements, and other burdens on land that appear[ed] in the publicly-available title record [we]re simply not latent defects," the court explained.

Zoning News from Around the Nation

Connecticut

Democrat senators unhappy with municipal zoning restrictions they say price low-income families out of communities

Martin Looney, Connecticut's Senate President, announced that Democrat senators are concerned over municipal zoning restrictions that price out low-income families from affordable housing in the suburbs, the *Yankee Institute* reported.

At a press conference, Looney, a democrat from New Haven, said affordable housing is an ongoing challenge in the state. Sen. Saud Anwar (D-South Windsor) also said that the issue of affordable housing development should be approached with a carrot, not a stick. In his view, municipalities should be offered better education and school-building funding in exchange for passing zoning ordinances that address affordable housing needs.

The push among Democrat lawmakers came after articles published in the *CT Mirror* illustrated how wealthier districts may block affordable housing projects with their local zoning laws, the news outlet reported.

Source: *yankeeinstitute.org*

Florida

Changes to Bert Harris Act of 1995 could cost beachside communities millions of dollars

Florida's Bert Harris Act of 1995 is designed to protect property rights. But, amendments to the law have town officials in the beachside communities of Pinellas County worried who claim legislative changes would result in millions of dollars in liability settlements and thwart their ability to change zoning and land-use rules overall, the *Tampa Bay Times* reported recently.

Calling the bill a "nuclear bomb," an attorney for two beach communities told the Barrier Island Government Council that the proposal would impact any land-use regulations and strip away local zoning controls, the news outlet reported.

The news outlet explained that under the current act, property owners may seek compensation when resale value losses result due to zoning and land-use changes, putting municipalities on the hook for financial liability. But, under the proposed amendments found in House Bill 519, a "similarly situated" clause would be added, meaning that if compensation or a settlement under the act due to changes in zoning or land use was due, such compensation or settlement would apply to similarly situated properties.

Source: *tampabay.com*

Indiana

Gibson County discussing zoning for wind turbines

The Gibson County Advisory Planning Commission (GCAPC) is considering the issue of zoning with respect to wind turbines. There's concern that the possibility of installing wind turbines in the area could compromise a Doppler early-weather warning system, *Tristate Homepage* reported.

A physics professor who had studied a tornado that ravaged Taylorville, Illinois, said wind turbines in that area had affected weather data. And, concern has been expressed over what happens if a piece of a turbine breaks off in a weather event and flies off in a storm on a trajectory of up to a mile in some cases, the professor noted.

To view the professor's presentation to the GCAPC, *Zoning Ordinances and Wind Turbines, visit* tristatchomepage.com/wp-content/uploads/sites/92/2020/01/Gibson-Wind-Risks-Presentation-No-Videos.pdf.

Source: *tristatehomepage.com*

Massachusetts

Developer seeks to invoke states affordable housing law to bypass local zoning rules

Hemisphere Development Group LLC (Hemisphere) wants to build a multi-residential project at the J.B. Thomas site in Peabody, Massachusetts. And, it's prepared to rely on Chapter 40B, Massachusetts' affordable housing laws, to bypass local zoning regulations, Patch.com reported recently.

Chapter 40B is available when less than 10% of a municipality's residences are designated as affordable housing. The report explained that Hemisphere is working with MassHousing on plans to construct 133 housing units.

Hemisphere, which bought the property in 2017 for close

to $2 million, did not go forward with an earlier development plan due to community opposition. That plan would have focused on tenants age 55 and over, the news outlet reported.

Source: *patch.com*

New York

Height bonuses and more subdivisions may be on the horizon in Saratoga Springs

Consultants from Camiros Ltd. have proposed that Saratoga Springs, New York's unified development ordinance (UDO) permit height bonuses for downtown buildings. Under the UDO structures could be a maximum of 96 rather than 70 feet tall, reported the *Times Union. The* UDO could also lead to additional subdivisions in the city's west side.

The changes came following the implementation of a zoning plan in 2015—a controversial endeavor that included plans to convert a residential neighborhood into an area ripe for hospital expansion, the news outlet reported.

Changes to the local zoning law have been met with opposition from local residents. According to the news report, residential lot sizes in the "UR-3" neighborhoods of the city would be 5,000 to 6,600 square feet for single-family and two-family homes—down from 6,600 and 8,000 square feet, respectively.

Residents' comments on the UDO were due by February 7, 2020. Following receipt of those comments, the plan was to send the UDO to the city's Design Review Committee and city and county planning boards ahead of city council approval this spring.

Source: *timesunion.com*

Texas

Explosion at Houston-based plant raises concerns over lack of local zoning ordinances

In January 2020, an explosion rocked a Watson Grinding and Manufacturing plan in Houston. The explosion, which left two dead, could be felt by residents 20 miles away from the blast, reported *Reform Austin.*

The news outlet reported that the explosion raises a serious issue resulting from the absence of zoning restrictions to prevent residential developments from being in such close proximity to manufacturing or chemical plants.

For instance, there aren't any laws enacted to date that specify how far a plant like this must be to a residentially- or commercially designated area, the news outlet reported. The news outlet also noted that 65% of Houston is within a mile of a facility capable of toxic release.

Source: *reformaustin.org*

Wisconsin

County didn't have zoning authority over tribal lands, court rules

Bayfield County, Wisconsin didn't have the right to enforce its zoning ordinance against the Red Cliff Band of Lake Superior Chippewa (Red Cliff), a federal court has ruled. The tribe had filed suit against the county in 2018 alleging that it couldn't enforce its zoning laws on tribal members' land on the Indian reservation, *Wisconsin Public Radio* reported recently.

Red Cliff's land use ordinance has been in effect since 1993, the news outlet explained. But, in recent years, tribal members wanted to build a distillery on the reservation, and that's when the county stepped in to say that to proceed with construction it would have to comply with local zoning rules. Around this time, the county also filed suit against a tribe member for building a driveway without a permit.

As a sovereign tribal nation, Red Cliff could govern its land as it wished, the court found. The judge specifically noted that the county wasn't expressly authorized by law to apply its zoning requirements to fee-simple land the tribe or its members owned inside the reservation's boundaries.

Source: *wpr.org*

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Zoning Bulletin

in this issue:

Disability Discrimination

Did county's denial of rezoning request concerning substance abuse treatment center violate ADA?

Citation: *Kimberly Regenesis, LLC v. Lee County, 2020 WL 758099 (M.D. Fla. 2020)*

The U.S. District Court for the Middle District of Florida recently took up the issue of whether Lee County violated the Americans with Disabilities Act (ADA) by denying Kimberly Regenesis LLC's (KR) rezoning request to permit a property to be used as a substance abuse treatment center and detoxification facility.

The county claimed that "res judicata" applied and that KR's claim should be tossed out. In the county's view, the issue had already been litigated through a quasi-judicial proceeding involving the circuit court and the second district court of appeals. In its view, it wasn't fair for KR to get "an impermissible third bite at the apple."

DECISION: County's request for dismissal denied.

The county didn't meet all the elements for establishing that res judicata applied.

"Under Florida law, *res judicata* applie[d] where there [wa]s: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action; (4) identity of the quality [or capacity] of the persons for or against whom the claim [wa]s made; and (5) the original claim was disposed on the merits."

In the county's view, the issue had already been litigated through a quasi-judicial proceeding involving the circuit court and the second district court of appeals.

Here, the county didn't meet the second element concerning identity of the cause of action. This was "a question of 'whether the facts or evidence necessary to maintain the suit [we]re the same in both actions.' "

THE BOTTOM LINE:

"[T]he administrative proceedings and this case d[id] not involve the same causes of action and the claims in this case and requests for relief were not addressed by the state court's decision," the court found. Since KR "raise[d] claims and request[ed] relief that could not have been raised in the earlier proceedings and could not have been adjudicated by the state court," the county wasn't entitled to dismissal on these grounds.

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A CLOSER LOOK AT THE PREVIOUS DECISIONS

The Board of County Commissions (BOCC) was the entity that initially denied the rezoning application. KR argued that it did so based on community opposition to the proposal "in direct violation of the rights of people in recovery from drug and alcohol addiction, who [we]re a legally protected class under the [ADA]."

"The [b]oard was aware that it could not simply deny the application simply because members of the community opposed the proposed use, and took steps to instruct the public not to waste time at the hearing with comments that amounted to mere dislike at the thought of having the facility in the community," the court explained. The BOCC commissioner "specifically initiated a conversation with the County Attorney on what opponents would have to demonstrate . . . for the [b]oard to deny the application," the court added.

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THE BOTTOM LINE:

The BOCC was aware that it needed "to have a more solid reason than 'we don't want it here' if it was going to deny the application." And, evidence showed it had denied the application because:

- "it would result in the encroachment of commercial uses into an existing residential area";
- "it was incompatible with and not an acceptable transition into the current low density residential area to the south";
- "it was not consistent with the surrounding land uses";
- "it would result in a decrease in appraised property values for surrounding properties";
- "the uses requested were not similar to and did not already exist in the surrounding area";
- "it would not have a positive or neutral impact on the surrounding community"; and
- "no adequate conditions could be devised to address the potential impacts of the proposed request on the surrounding residential neighborhoods."

Thus, the board had the authority to reject a recommendation to allow the permit based on "substantial and competent evidence," the circuit court ruled.

WHY THE ADA CLAIM COULD PROCEED

The circuit court didn't have "jurisdiction to make factual findings or enter a judgment on the merits of the underlying controversy, and it [could] not enter injunctions or award damages." Its role in the initial matter had been to determine if the zoning decision should be "quash[ed]" and the matter sent back to where it came from "before the initial quasi-judicial order or decision was entered."

THE BOTTOM LINE:

The court agreed with KR "that the relief . . . request[ed] in this case would not require the [c]ourt to determine that the state court decision was wrong or to void the state court's ruling."

To bring a claim required standing. The court explained that "[t]he need for a treatment facility alone in the 'absence of facts that would suggest . . . readiness to supply that need' [wa]s not enough to show injury in fact." But, here the plaintiff did "more than just show a need for the treatment facility, it ha[d] shown a financial injury sufficient to satisfy the injury in fact element." It had:

- "concrete plans to operate the treatment facility"; and
- was "able and ready to do so."

"A plaintiff alleging that it would have opened a business absent the challenged action must point to at least some facts suggesting a likelihood that its business would have come about absent the challenged action," the court noted. Here, the rezoning applicant had taken "significant steps and expended money in making its case to the [c]ounty, and then took its case to the Circuit Court and the Second District Court of Appeals." Ultimately, the court ruled, the plaintiff "met its burden to show a likelihood that the treatment facil-

ity would have come about absent Lee County's decision to deny its rezoning application."

Appeals Process

Should challenge of zoning board decision be allowed to proceed even though deadline for filing the appeal was missed?

Citation: *Porter v. Zoning Board of Appeal of Boston, 97 Mass. App. Ct. 1102, 2020 WL 598420 (2020)*

Eric Porter filed an appeal challenging the Zoning Board of Appeal of Boston's decision to rule in favor of 30 Gibson LLC on a zoning matter. The lower court dismissed his claim as untimely.

THE TIMELINE

The board filed its decision with the building commissioner on December 15, 2017, which triggered a 20-day appeal period. That meant the last day of the appeal period was Thursday, January 4, 2018.

Porter didn't file his complaint until Monday, January 8, 2018. So, the lower court judge dismissed his complaint as untimely, noting (erroneously) that the deadline to appeal was January 2, 2018 and judgment was entered on May 29, 2018.

Porter then sought to have that judgment vacated. That request was denied, so he appealed.

DECISION: Affirmed.

There was no abuse of discretion.

The court was open on January 5, and this wasn't a case where "extraordinary circumstances" applied.

Porter "did not appeal from the judgment of dismissal, or promptly move for reconsideration. Instead, [50] days later, on July 18, 2018, he filed and served a motion to vacate the judgment," the appeals court explained. He argued that although the operative last day for filing the complaint was January 4, 2018, but that he had provided the court with notice on May 22, 2018 as to why he couldn't file within the applicable deadline. In particular, Porter cited severe inclement weather January 4 through 7 prevented him from filing his complaint.

THE BOTTOM LINE:

The court was open on January 5, and this wasn't a case where "extraordinary circumstances" applied. Porter contended that the court was not open on January 5, 2018, by equating a parking ban to a court closure. "He offered no documentation to persuade the judge that he was unable to timely file his complaint," though. "The time period for [him] to appeal from the board's decision was [20] days. Here, he waited [24] days to file his complaint, and [50] days to file his motion to vacate. We discern no abuse of discretion," the court ruled.

Practically Speaking:

This case underscores the importance of paying attention to the number of days one has to file an appeal of a zoning decision based on the applicable rules in a given jurisdiction.

Land Use

Preservation committee challenges county's adoption of ordinance concerning FLUE applicable to residential future land use designations

Citation: *Palm Beach Farms Rural Preservation Committee LLC v. Palm Beach County, Florida, State of Florida, Division of Administrative Hearings, State 2020 WL 133641 (2020)*

On October 31, 2018, Palm Beach County, Florida (the county) adopted an ordinance that amended its Comprehensive Plan to revise the Future Land Use Element (FLUE) applicable to residential future land use designations.

In November 2018, Palm Beach Farms Rural Preservation Committee, LLC (PBFRPC) filed a petition with the state's Division of Administrative Hearings (DAH) challenging the plan amendment pursuant to section 163.3184 of the local code.

The county asked for dismissal, which was granted in part.

In February 2019, PBFRPC filed an amended petition seeking a formal administrative hearing. It claimed the ordinance rendered the CP internally inconsistent and in opposition to a section of the local code. In PBFRPC's view, the ordinance did not establish meaningful and predictable standards for the use and development of land or for the content of more detailed land development and use regulations, as required by the code.

DECISION: The county was in compliance with applicable law.

DAH recommended that the state's Department of Economic Opportunity should enter a final order determining that the amendment the county adopted in 2018 was "in compliance" with the law.

PBFRPC claimed the amendment would "permit significant increases in future density, intensity and designs in a manner that w[ould] permanently and negatively alter the historic rural and unique character of [the subject] neighborhoods."

In support of its argument, PBFRPC relied on a revised table showing outlining residential future land use and zoning consistency. This table addressed:

- agricultural reserve;
- rural residential;

- western communities residential;
- low, medium, and high residential; and
- congregate living residential.

PBFRPC failed, however, in DAH's opinion to "prove, beyond fair debate, that the Comprehensive Plan Amendment failed to establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations."

PBFRPC failed . . . to "prove, beyond fair debate, that the Comprehensive Plan Amendment failed to establish meaningful and predictable standards for the use and development of land and provide meaningful guidelines for the content of more detailed land development and use regulations."

It did not show "beyond fair debate: that a footnote in the table serve[d] to increase density, or [wa]s otherwise inconsistent with new [p]olicy . . ., or with any other provision of the Comprehensive Plan."

THE BOTTOM LINE:

- The revised table didn't "change any existing future land use designations";
- there wasn't any "specific overlay created in new [policy] to support a finding of inconsistency";
- PBFRPC didn't show that the footnote applied to a particular neighborhood in question and which served as "the basis of [its] concerns";
- the county's police included "six criteria that [had to] be met before non-residential uses [we]re permitted in residential areas, including that they [could] only be located along major thoroughfares and roadways, and [had to] be consistent and compatible with surrounding residences."

Therefore, the county had "presented competent, substantial, and persuasive evidence that the Plan Amendment establishe[d] meaningful and predictable standards for the use and development of land and provide[d] meaningful guidelines for the content of more detailed land development and use regulations to promote the [c]ounty's directions, goals, objectives, and policies."

CASE NOTE

In addition to dealing with whether the amendment was "in compliance," the DAH also had to consider whether the ordinance failed to "establish meaningful and predictable standards for the use and development of land or for the content of more detailed land development and use regulations as required" under Florida law.

Practically Speaking:

The DAH ruled "[t]here was competent, substantial evidence that the subdivision process regulations must be met before any subdivision can be implemented, and that rezoning does not affect density."

DECISION CONCERNING PIPELINE COMPANY'S PERMIT APPLICATION COMES UNDER JUDICIAL SCRUTINY

Citation: *McCaffree v. City of North Bend, Land Use Board of Appeals, 2020 WL 615675 (Or Luba) (2020)*

A Land Use Compatibility Statement (LUCS) was a local government decision by which a determination was made as to whether a proposed state agency action was compatible with the local government's acknowledged comprehensive plan and land use regulations.

In December 2018, Pacific Connector Gas Pipeline, LP (PCGP) requested a LUCS related to an Oregon Department of Environmental Quality (DEQ) permit application. PCGP needed the DEQ permit so it could install a natural gas pipeline on land within city limits. Specifically, PCGP asked the city to determine if DEQ approval to install a natural gas pipeline was compatible with the city's land use regulations, *i.e.*, whether the natural gas pipeline the DEQ permit would authorize was prohibited, permitted without review, or required review.

PCGP asked the city to determine if DEQ approval to install a natural gas pipeline was compatible with the city's land use regulations, i.e., whether the natural gas pipeline the DEQ permit would authorize was prohibited, permitted without review, or required review.

Only part of the pipeline project was to be situated on property within North Bend's limits. That property was zoned Heavy Industrial (M-H). Only a portion of that property was subject to estuary and floodplain overlays: Floodplain (F-P) and Coos Bay Estuary Management Plan (CBEMP), which required specific development review and permits.

In December 2018, without public notice or a hearing, the city planner issued the LUCS. The planner determined that the portions of the pipeline project subject to the DEQ permit outside the overlay zones were allowed outright under the North Bend Zoning Ordinance (NBZO), and other portions of the pipeline project required city land use reviews—specifically, estuary, floodplain, and engineering permits "prior to start of work." The LUCS also indicated that a pre-application conference had been held, but that the LUCS decision did not approve or deny any permits or development.

After receiving notice of the planner's LUCS decision when the city responded to a public records request, Jody McCaffree tried to appeal the city's decision, but her appeal was denied. McCaffree then filed a notice of intent to appeal the LUCS to the Land Use Board of Appeals (LUBA).

DECISION: Appeal dismissed.

The LUCS wasn't a land-use decision; McCaffree didn't have standing to bring her claim; and LUBA lacked jurisdiction to review the LUCS.

Standing—McCaffree had to demonstrate harm or a likely harm on the basis of the challenged LUCS. She claimed she was adversely affected because she had "opposed the pipeline project since 2013 and 'did everything she could' to participate in the LUCS decision and oppose the compatibility finding, but the city did not allow her to participate in the LUCS decision."

In McCaffree's view, there was "a presumption that residents of the city of North Bend [we]re adversely affected . . . by the city's decision that a . . . pipeline may be sited within the city because of its explosion potential."

McCaffree's evidence was "intended to establish that [she] [wa]s a resident of the City of North Bend, that she [wa]s opposed to the pipeline project, in part, due to a perceived risk of explosion, and that she attempted to participate and was denied an opportunity to participate in the city's decision to issue the LUCS," LUBA explained.

But the fact was that:

- It was "undisputed that the challenged LUCS d[id] not apply directly to [McCaffree]";
- she did not "contend that her personal or property interests [we]re affected by the LUCS";
- McCaffree's argument she was adversely affected by the LUCS because the city failed to provide her an opportunity to argue that the pipeline was not a utility facility was "premised on a claim that she had a right to participate in the LUCS decision," but she didn't cite any authority for that claim; and
- she "elected to appeal only the LUCS and not the city's decision to deny her local appeal of the LUCS," so her "argument that she [wa]s adversely affected because the city denied her an opportunity to argue against the LUCS d[id] not provide a basis for standing in this appeal."

RISK OF EXPLOSION ARGUMENT

McCaffree contended that she was opposed to the pipeline project in part due to a perceived risk of explosion. She claimed there was a presumption that residents of the city were adversely affected by the pipeline due to a perceived risk of explosion. But, she didn't cite any authority for that point, and even if LUBA "assume[d] that the future gas pipeline project w[ould] adversely affect [her], [she] . . . failed to establish that *the challenged decision*, the LUCS, w[ould] adversely affect her."

THE BOTTOM LINE:

"The LUCS d[id] not authorize any development activity; instead, it merely determine[d] that the proposed pipeline [wa]s compatible with the city's comprehensive plan and land use regulations, subject to further permit review."

Because McCaffree didn't show that she was adversely affected by that decision, she did not have standing to bring the appeal and LUBA didn't have authority to review.

A CLOSER LOOK

McCaffree asked for the appeal to be transferred to a circuit court pursuant to state regulations in the event LUBA found the appealed decision was not subject to its jurisdiction. PCGP opposed that transfer request, arguing that transfer to the circuit court wasn't appropriate where LUBA concluded that it lacked jurisdiction because McCaffree had failed to establish an adverse effect by the decision.

A case decided in 2017 shed light on this issue. That ruling indicated that "transfer to circuit court [wa]s not appropriate where LUBA conclude[d] that it lack[ed] jurisdiction for reasons other than that the decision [wa]s not a land use decision." In that case a request to transfer was denied after a conclusion was reached that LUBA lacked jurisdiction because "[the] petitioner failed to establish that it was adversely affected by the decision under ORS 197.830(3). We see no reason why the result should differ in this case."

The case cited is MGP X Properties LLC v. Washington County, 74 Or LUBA 378 (2016).

Special Use Permit

Waste disposal company challenges newly passed ordinance

Citation: *Tri-State Disposal, Inc. v. Village of Riverdale, 2020 WL 433891 (N.D. Ill. 2020)*

In 2002, Tri-State Disposal Inc. (Tri-State) began operating a solid waste, construction, and demolition transfer station in the Village of Riverdale, Illinois. In 2012, it entered into an agreement to provide waste services in the village.

The agreement required Tri-State to pick up trash from village residents and conduct a spring clean-up. The village was required to pay Tri-State for its services within 15 days, and the agreement was expected to remain in place through July 31, 2019.

Initially, Tri-State supported the village's mayor. But, in 2017, it learned that a competing disposal business, Riverdale Materials, was trying to gain market share in the village with support from the mayor.

Riverdale Materials applied for a special land use ordinance to operate a solid waste transfer station, construction demolition station, dirt transfer station, and stone processing facility on its property in Riverdale. It later withdrew its request to operate a solid waste transfer station from its application, and the mayor assured Tri-State that Riverdale Materials would have to post security and pay royalties, as the Village had required Tri-State to do as a condition of its contract. But, when Tri-State learned the village actually wasn't planning to require Riverdale Materials to comply with those conditions, it raised concerns over what, in its view, constituted special treatment for Riverdale Materials.

The village didn't have a plan commission (PC), so the Zoning Board of Appeals (the board) was set to hold a hearing, even though no documents or records identified that the board had authority to act as the PC.

The board held hearings and Tri-State appeared for those. It submitted documents in support of its opposition to the proposed conditional use, and it criticized the hearing process and the environmental impact of Riverdale Materials' proposed facility. For instance, Tri-State voiced concerns of hazardous waste, contamination at the site, and storm water runoff and drainage. It also raised concern over the alleged special treatment Riverdale Materials was getting from the village.

At the hearings, Riverdale Materials misrepresented the environmental condition of its property, its drainage plans, and its receipt of the permits to operate the site. Members of the public opposed the conditional use permit over concerns that the proposed facility would endanger public health and cause property values to drop. In addition, they contended that the facility didn't have adequate drainage and that Riverdale did not need another transfer station and was already operating without permits and illegally dumping at the site.

The board chairperson expressed concerns over the application, and then the mayor fired that person. He appointed new board members who had political connections to him, and an attorney for the village acted as the chair without authority to do so, despite Tri-State's and the public's objections.

Ultimately, the board voted 4-2 to recommend that Riverdale Materials should be granted the conditional use permit. After that, the board passed an ordinance unanimously allowing Riverdale Materials to operate.

THE LAWSUIT

Tri-State filed suit against the village for due process violations and other claims. After that, the village didn't respond to its request to schedule the 2018 spring clean-up per the terms of the agreement and it advertised a cleanup to occur on May 5, 2018, which was conducted by another waste contractor. Then the board passed a motion directing the village's chief of staff to give Tri-State notice that the Village would decline all potential extensions provided in the contract and inform Tri-State that the contract would expire on July 19, 2019.

According to the mayor, Tri-State's representatives had harassed him and his staff. He asked Tri-State to stop all telephonic communications with the village, and around this time the village refused to pay Tri-States invoices for January through April 2018.

DECISION: Due process claims failed.

Tri-State didn't have valid procedural or substantive due process claims.

Even if the court assumed Tri-State had a property interest, its procedural and substantive due process claims failed.

Procedural due process—"Tri-State acknowledge[d] that it participated in public hearings and shared its opinion about the [o]rdinance with the [v]illage," the court wrote. It appeared at hearings on two occasions and submimtted documents in support of its position both times. "The [v]illage not only provided notice and an opportunity to be heard, but Tri-State actively participated in the process. The Village offered more process than the Due Process Clause require[d]," the court found.

Substantive due process—"[R]ational bases [could exist] for the [v]illage's actions, including that [it] could have had different priorities for waste facilities than it did when it entered the settlement agreement with Tri-State in 2002." Also, the "[v]illage could have thought the [o]rdinance would positively impact the local economy. Because there [we]re potential sound reasons for the . . . decision to pass the [o]rdinance, Tri-State's substantive due process claim" failed.

The case wasn't over, however. The court ruled that while Tri-State's due process claims failed, claims for political retaliation and breach of contract could proceed.

A CLOSER LOOK

Tri-State's facility was about a mile from Riverdale Materials' site. Riverdale Materials' site was on a former (and unremediated) landfill that had been shut down for decades because of its environmental condition. In its application for the special use ordinance, Riverdale Materials represented it would use an on-site retention pond for drainage and storm water control, but the pond wasn't located on its property, and Riverdale Materials did not have the right to use the retention pond. Who did own the retention pond that was adjacent to the Riverdale Materials site? Tri-State. Thus, runoff and other drainage from Riverdale Materials' site would adversely affect its retention pond.

Case Note:

"[P]rior to voting [the board] refused to accept written materials for the record, including materials from Tri-State. The Village passed the [o]rdinance despite the documented history of environmental contamination and the lack of any on-site storm water or drainage facility. [The mayor] strongly supported the application, and a sign at Riverdale Materials' site advertised it as another business [the mayor] brought to Riverdale."

Zoning News from Around the Nation

Illinois

Marijuana operations can set up shop in parts of McLean County

By a 16-2 vote, the county board of McLean County approved zoning guidelines under which businesses selling marijuana and operating in unincorporated areas will have to obtain special use permits, *WGLT* reported recently.

Such businesses will not be permitted to operate less than 1,000 feet from schools, public parks and playgrounds, churches, libraries, or daycare facilities, the news outlet explained. Less restrictive guidelines apply to craft growers, infusers, transporters, processors, or dispensaries, which may be located 500 feet from such locations.

WGLT reported that state licensing will go to one cannabis cultivation center in unincorporated McLean County during the first licensing round, although as of print time, a county official had told the news outlet that no formal inquiries into operating a cannabis business had been received.

Next on the county's agenda will be to formulate guidelines on the taxation of cannabis production and sales. The news report noted that dispensaries in unincorporated areas may be taxed up to 3.75%. Counties may also tax up to 3% more on all marijuana sales, it noted.

Source: *wglt.org*

New Hampshire

Unanimous denial on request for variance to operate sober house in Manchester

Manchester, New Hampshire's Zoning Board of Adjustment has denied Blueprint Recovery Center of Concord's (Blueprint) request for a variance that would allow it to operate a sober-living house in a residentially zoned neighborhood, the *Union Leader* reported recently.

At a hearing, an attorney for Blueprint's executive director told the zoning board that his client was apologetic the facility, which was already in operation at 70 Russell Street, hadn't sought a variance sooner.

Russell Street neighbors voiced opposition to granting the variance that the winter 2020 hearing, saying that forgiving Blueprint for not seeking a variance to zoning restrictions that govern residential two-family (R-2) dwellings in the area, from the outset could set a dangerous precedent where businesses seek forgiveness rather than permission through proper zoning channels, the *Leader* reported.

It's likely that Blueprint could appeal, in which case it could remain in operation until the appeal is heard. And, if the Zoning Board of Appeals denies the application again, it may opt to take the case to court.

The news outlet explained that given the R2 zoning designation of 70 Russell Street, a two-family dwelling with five bedrooms, Blueprint would need a variance to house 16 clients, which did not include on-site staff.

R2 zoning is different from "congregate housing," which according to Manchester's Zoning Ordinance (which can be found at manchesternh.gov/pcd/Regulations/ZoningOrdinance.pdf), is defined as "[m]ultifamily or other dwelling units serving individuals who require on-site services that support independent living, including at a minimum, communal dining facilities."

Source: *unionleader.com*

New York

Judge rules would-be 55-story building overlooking Lincoln Center/Central Park in NYC must remove some floors

A judge has ordered the developer of New York City's 200 Amsterdam Avenue to remove some floors from its residential tower construction project, which was expected to be completed with 55 floors, *CNN* reported recently.

According to *CNN*, it's unclear from the judge's ruling just how many floors must come down from the structure, which at the time of print had 51 floors erected. But the judge was clear that the permit should not have been issued. CNN reported that New York's Department of Buildings will make the call as to the number of floors that will need to be removed through careful examination of the New York Zoning Resolution, which was drafted in 1916.

Additional information on New York's voluminous 14 article Zoning Resolution can be found at nyc.gov/site/planning/zoning/access-text.page. There, you can also access zoning maps and zoning tools, including the city's Zoning Toolkit, covering information on:

- flood resilience zoning;
- FRESH food stores;
- inclusionary housing;
- large-scale development;
- lower density growth management;
- privately owned public spaces;
- a public realm improvement fund;
- sidewalk cafes;
- streetscape improvements;
- the Theater Subdistrict Council, LDC;
- use groups; and
- waterfront zoning.

Source: *cnn.com*

Ohio

Cleveland considers "form-based" zoning updates

"An icon of the industrial age, Cleveland is pivoting to its new future: a green city on a blue lake. This direction has been set by the Mayor Frank G. Jackson Administration with the directive to leave no neighborhood behind," a website dedicated to Cleveland's land code states. "New buildings and new residents are rejuvenating long dormant portions of the city at an ever-quickening pace. The rebuilding of these neighborhoods with modern housing, retail, office and industrial spaces have laid bare the need for new development policies and tools that support 21st century development trends. One of the development tools will be the strategic implementation of a new zoning code that fosters sustainable development patterns and addresses the challenges Cleveland faces in the 21st century," it adds.

The website, "The Land Code: Cleveland's New Form-Based Code," explains that for nearly 100 years the city's zoning code worked well for residents by "respond[ing] to the challenges of its time by protecting and separating residential areas from the ill effects of neighboring factories, managing the reality of a populace in love with the automobile and providing for greenspace in a rapidly developing city."

Some of these challenges remain, but the city has also shifted focus to other, more novel hurdles. "[T]he zoning code has become layered and cumbersome to navigate. In many ways, the zoning code is at odds with the vision of what Cleveland will be in the 21st century," it adds.

So, in response to this at-odds dilemma, the Cleveland City Planning Commission is embarking on a journey to "realign its zoning regulations with [a] new vision": a vision that relies on "form-based zoning"—also referred to as "form-based coding."

The website explained that the "goal is an entirely new zoning code that embodies the Mayor's mantra of Health, Sustainability and Equity." And, now the city is ready to pilot its form-based code in its Detroit Shoreway and Cudell neighborhoods.

To promote its efforts, the city has conducted a bike tour of the key areas in the Detroit Shoreway neighborhood, giving residents the chance to express concerns over current issues and discuss new ways to implement form-based codes. The city also recently held a "hands-on" workshop where City Planner Freddy Collier shared insight into the project and Lee Einsweiler, lead consultant on the project, told those in attendance about future land use and zoning changes and how the form-based code development for the area would be taking shape.

For more information, visit thelandcode.com.

Source: *news5cleveland.com*

Virginia

Former police officer lands new gig enforcing city's zoning laws

Former police officer Frank Hopkins has assumed a new role as the zoning administration for Winchester, Virginia, the *Winchester Star* reported recently.

It's a natural fit for Hopkins, who told the *Star*, that one of the things he enjoyed most about being a Fairfax County law enforcement officer was working on regulatory matters.

Hopkins assumed the post of Winchester's zoning administrator in December 2019 after performing a management fellowship for Loudoun County and serving as Harrisonburg's zoning inspector.

As for the connection between zoning and police work, Hopkins told the Star that it was a natural fit because code enforcement falls under zoning and enforcing codes is something police officers do in their roles, too.

Source: *winchesterstar.com*

Washington

State legislators considering bill to do away with single-family zoning

State Sen. Mona Das and other lawmakers are pushing for zoning changes that would do away with single-family zoning in cities with populations of 10,000 or more, *KATU* reported recently. This would pave the way for duplexes and four-unit dwellings to be integrated into more suburban areas of cities meeting the proposed population threshold.

Das told the news outlet that loosening zoning restrictions in residential neighborhoods will provide more affordable housing options since land costs often account for a big chuck of property value. And, with more families occupying the land, the cost can be shared among those households, she said.

SB 6536 (which can be found at lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Bills/6536-S.pdf?q=20200217134014) would require municipalities with 10,000 or more residents to make changes to their zoning laws to permit duplexes. In addition to permitting duplexes, cities with 15,000 or more residents would also need to permit up to six-unit construction, as well as stacked flats, townhouses, and courtyard apartments in single-family residential zones, *KATU* reported.

But, the bill has some opposition. For instance, at a February 2020 hearing Sen. Hans Zieger voiced his opinion that decisions as to local zoning are best left to the municipalities themselves.

This isn't the first state to consider such "upzoning" or "cottage cluster" legislation, as CityLab.com described it. In 2019, Oregon Gov. Kate Brown signed HB 2001 into law, which allows for increased density in single family neighborhoods.

For more information on Oregon's HB 2001, visit olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2001.

Sources: *katu.com; citylab.com; olis.leg.state.or.us; lawfilesext.leg.wa.gov*