

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, June 5, 2018 in the Council Chambers at Elko City Hall, 1751 College Avenue, Elko, Nevada, and beginning at 5:30 P.M., P.D.S.T.

Attached with this notice is the agenda for said meeting of the Commission. In accordance with NRS 241.020, the public notice and agenda were posted on the City of Elko Website at http://www.elkocitynv.gov/, the State of Nevada's Public Notice Website at https://notice.nv.gov, and in the following locations:

]			Street, Street, Elko, NV 89801	
	Date/Time Posted: _	May 30, 2018	2:10 <u>p</u> .m.	
]	ELKO COUNTY LIBRAR	Y – 720 Court Stree	et, Elko, NV 89801	
	Date/Time Posted: _	May 30, 2018	2:05 p.m.	
	ELKO POLICE DEPARTN	MENT- 1448 Silve	r Street, Elko NV 89801	
	Date/Time Posted: _	May 30, 2018	2:15 <u>p</u> .m.	
]	ELKO CITY HALL- 1751	College Avenue, F	Elko, NV 89801	
	Date/Time Posted: _	May 30, 2018	2:00 p.m.	
			Shall have the	
Posted b	y: Shelby Archuleta, Plann	ning Technician	MUMOJ JKYCIWILITOT	
	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.

Dated this 30th day of May, 2018.

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, JUNE 5, 2018 ELKO CITY HALL, COUNCIL CHAMBERS, 1751 COLLEGE AVENUE, ELKO, NEVADA

CALL TO ORDER

The Agenda for this meeting of the Elko City Planning Commission has been properly posted for this date and time in accordance with NRS requirements.

ROLL CALL

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

Pursuant to N.R.S. 241, this time is devoted to comments by the public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item on the agenda until the matter itself has been specifically included on a successive agenda and identified as an item for possible action. **ACTION WILL NOT BE TAKEN**

APPROVAL OF MINUTES

May 1, 2018 – Regular Meeting FOR POSSIBLE ACTION

I. NEW BUSINESS

A. PUBLIC HEARING

1. Review and consideration of Preliminary Plat No. 7-18, filed by DDS Properties, LLC, for the development of a subdivision entitled Humboldt Hills involving the proposed division of approximately 9.443 acres of property into 26 lots for residential development within the R1 (Single-Family Residential) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the east side of W Jennings Way, approximately 120' north of Courtney Drive. (APN 001-01H-001).

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

1. Review, consideration, and possible action and possible approval of Final Plat No. 8-18, filed by Parrado Partners, LP, for the development of a subdivision entitled Great Basin Estates Phase 2 involving the proposed division of approximately 13.907 acres divided into 19 lots and 1 remainder parcel for residential development within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION

The subject property is located generally between Opal Drive and Flagstone Drive on Granite Drive. (001-633-030).

2. Review, consideration and possible granting of Parking Waiver 1-18, filed by Charm Hospitality, LLC to waive eleven required off-street parking spaces in connection with a hotel expansion within the C (General Commercial) Zoning District, and matters related thereto. **FOR POSSIBLE ACTION**

The subject property is located generally on the north side of Idaho Street, approximately 595 feet east of E Jennings Way (3019 Idaho Street).

II. REPORTS

- A. Summary of City Council Actions.
- B. Summary of Redevelopment Agency Actions.
- C. Professional articles, publications, etc.
 - 1. Zoning Bulletin
- D. Preliminary agendas for Planning Commission meetings.
- E. Elko County Agendas and Minutes.
- F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.
- G. Staff.

COMMENTS BY THE GENERAL PUBLIC

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,

City Planner

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

CALL TO ORDER

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

ROLL CALL

Present:

David Freistroffer

Ian Montgomery John Anderson Kevin Hodur Stefan Beck Tera Hooiman

Jeff Dailing (Arrived at 5 33 p.m.)

City Staff:

Scott Wilkinson, Assistant City Manager

Jeremy Draper, Development Manager

Cathy Laughlin, City Planner Bob Thibault, Civil Engineer

Shelby Archuleta, Planning Technician

John Holmes, Fire Marshal

PLEDGE OF ALLEGIANCE

COMMENTS BY THE GENERAL PUBLIC

There were no public comments at this time.

APPROVAL OF MINUTES

April 3, 2018 - Regular Meeting FOR POSSIBLE ACTION

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

Moved by Kevin Hodur, Seconded by Tera Hooiman.

*Motion passed unanimously. (6-0)

I. NEW BUSINESS

A. PUBLIC HEARING

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Development Department:

- 1. The applicant submits an application for Final Plat within a period of four (4) years in accordance with NRS 278 360(1)(a). Approval of the Preliminary Plat will automatically lapse at that time.
- 2. The applicant shall comply with the requirements of NRS 116. The developer shall provide a copy of any notices required to be provided to the residents pursuant to this section of NRS.

Engineering Department:

1. Show existing flood zones and water way.

Fire Department:

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

Assistant City Manager:

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

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

Moved by Kevin Hodur, Seconded by Tera Hooiman.

*Motion passed unanimously. (7-0)

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

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

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

Mr. Wilkinson recommended approval as presented.

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

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

Moved by Kevin Hodur, Seconded by Jeff Dailing.

*Motion passed unanimously. (7-0)

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

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

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

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

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

Mr. Thibault stated the Engineering Department recommended approval.

Mr. Holmes recommended approval.

Mr. Wilkinson recommended approval as presented.

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

Planning and Development Department:

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

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

Moved by Kevin Hodur, Seconded by Ian Montgomery.

*Motion passed unanimously. (7-0)

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

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

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

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

Mr. Draper recommended conditional approval of the proposed rezone.

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

Mr. Holmes recommended approval.

Mr. Wilkinson recommended approval as presented.

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

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

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

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

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

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

Planning Department:

1. Annexation 1-18 is of record.

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

Moved by Kevin Hodur, Seconded by Tera Hooiman.

*Motion passed unanimously. (7-0)

B. MISCELLANEOUS ITEMS, PETITIONS, AND COMMUNICATIONS

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

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

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

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

Chairman Preistroffer asked for clarification on the phasing.

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

work in the City right-of-way, it gives an unfair a lyantage to certain developments over others, and it is the appropriate way to go so we get the work and the complete street done at the time of construction. In Another area, Mr. Wilkinson was recommending putting pedestrian ways, or sidewalks, on both sides of a street, not just one side. That would lead to complaints on why the pathway was on the other side of the road rather than in front of a property owners house. It is articulated in the Code under 3-2-5, where those type of roads, under what type of subdivisions those roads are allowed, and where they are prohibited. That needs to be clarified in this section. Under the Wellhead Protection Program it talks about one of the Best Practices is to not encourage infiltration from road drainage into the capture areas. So we should not allow Rural Roads within those Wellhead Protection Plan areas. Construction and inspection, under 3-3-42, it talks about construction shall not commence until the sub livi ler has entered into a performance agreement. He went over a few more small changes throughout the end of Chapter 3. Under Parcel Maps staff was trying to articulate what public improvements were required with parcel maps, and when the public improvements are required. Also, trying to get people to understand that the parcel map process is not a process that is use 1 to get out of doing public improvements. The proposed changes aren't a whole lot different than what is already in there. We alled a section of prohibition of parcels. Proposed parcels that are determined undevelopable by the City. Staff is still reviewing this section and making comments, it will need to go out to the attorney. His expectation was that this might need to be initiated again at the next meeting, depending on the comments from the Planning Commission tonight.

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

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

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

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

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

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

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

Mr. Holmes had no comments.

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

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

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

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

Commissioner Beck left at 6:50 p.m.

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

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

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

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

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

Mr. Wilkinson explained that this was just to initiate a possible change, we're not adopting any changes tonight. He wanted to address a couple comments from Mr. Shipp. All of Brookwood was done on Letters of Credit. So, they put up the full bond amount and they did that with Bank of Utah. We had performance agreements for all of Brookwood. It wasn't a problem to put up the full amount with Brookwood. How this works, typically the premium for a Surety Bond is 2 ½ points. So, if you have \$1 million project, you don't have to put up \$1 Million and then go pay the contractor a million dollars. You can go get a Surety Bond for 2½ points, you can get a Letter of Credit from a bank, or deposit cash with the City of Elko. The Code allows for a variety of circumstances based on an individual developer's needs. It works, and it works well, for the City of Elko to have these performance agreements in place. The other issue we have is equal protection. It is impossible to draft Code that might envision different circumstances.

Chairman Freistroffer summarized the process involved in amending the code.

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

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

Mr. Wilkinson said we would be doing that.

Chairman Freistroffer explained some possible actions for them to take.

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

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

Moved by Kevin Hodur, Seconded by Tera Hooiman.

*Motion passed unanimously. (7-0)

II. REPORTS

A. Summary of City Council Actions.

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

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

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

B. Summary of Redevelopment Agency Actions.

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

- C. Professional articles, publications, etc.
 - 1. Zoning Bulletin
- D. Preliminary agendas for Planning Commission meetings.
- E. Elko County Agendas and Minutes.
- F. Planning Commission evaluation. General discussion pertaining to motions, findings, and other items related to meeting procedures.
- G. Staff.

COMMENTS BY THE GENERAL PUBLIC

There were no public comments at this time.

ADJOURNMENT

There being no further business, the meet	ing was adjourned.
David Freistroffer, Chairman	Tera Hooiman, Secretary

Elko City Planning Commission Agenda Action Sheet

- 1. Review, consideration and possible approval of Preliminary Plat No. 7-18, filed by DDS Properties LLC., for the development of a subdivision entitled Humboldt Hills involving the proposed division of approximately 9.443 acres of property into 26 lots for residential development within the R1 (Single Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: June 5, 2018
- 3. Agenda Category: PUBLIC HEARINGS, NEW BUSINESS
- 4. Time Required: 15 Minutes
- 5. Background Information: Subject property is located east of Jennings Way approximately 120' north of Cortney Drive. (APN 001-01H-001)
- 6. Business Impact Statement: Not Required
- 7. Supplemental Agenda Information: Application, Staff Memo
- 8. Recommended Motion: Table Preliminary Plat 7-18.
- 9. Findings:
- 10. Prepared By: Cathy Laughlin, City Planner
- 11. Agenda Distribution: DDS Properties, LLC 930 Idaho Street

Elko, NV 89801

Carter Engineering

P.O. Box 794 Elko, NV 89803

STAFF COMMENT FLOW SHEET PLANNING COMMISSION AGENDA DATE: 65 **Do not use pencil or red pen, they do not reproduce**

Title: Preliminary Plat 7-18 Humboldt Hills
Applicant(s): DDS Properties, LLC
Site Location: <u>East of Jannings Woy</u> . Current Zoning: <u>R1</u> Date Received: <u>4/10</u> Date Public Notice: <u>5-22</u>
COMMENT: This is for 9.443 acres to be divided into 26 Lots.
If additional space is needed please provide a separate memorandum
Assistant City Manager: Date: 5/29/18
Recommend this teem be tabeled. A vacation
Assistant City Manager: Date: 5/29/18 Recommend this I fem be tabeled. A vacation of right-of way is required for possible as spoud of the proposed subdition. A petition for Vacation has not been filed
of the proposed subdition. A petition for
Vacation has not been tiled
SAW
Initial
City Manager: Date: 5/29/18
R-OW has not been vacated to accomodate Subdivision.
w
Initial



Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751CollegeAvenue · Elko, Nevada89801 · (775)777-7160 · Fax(775)777-7119

May 30, 2018

DDS Properties, LLC 930 Idaho Street Elko, NV 89801

Re: Preliminary Plat No. 7-18

Dear Applicant/Agent:

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

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

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

Sincerely,

Shelby Archuletal Planning Technician

Enclosures

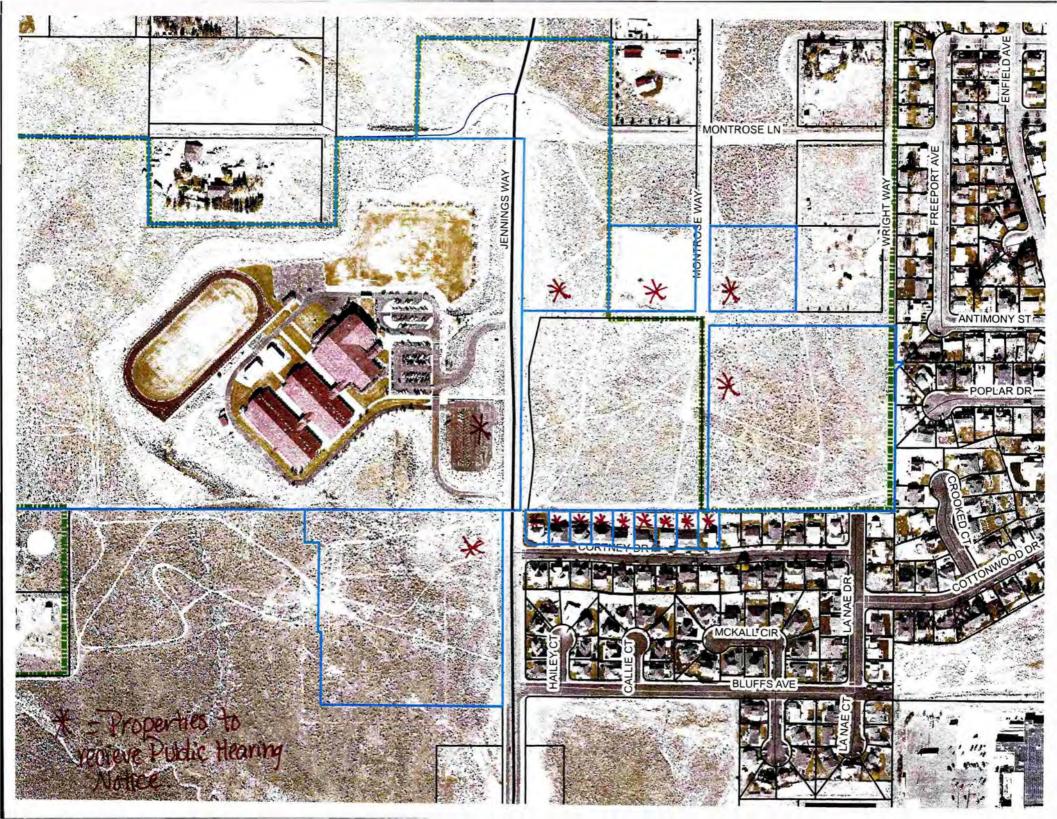
CC: Carter Engineering, PO Box 794, Elko, NV 89803

PP7-18 Humboldt Hills

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
00101C045	ANDERSON, RICHARD D & MELISSA		638 CORTNEY DR	ELKO NV	89801-2440
00101C065	CHRISTENSEN, RAY L II ET AL		416 BOSSIER RD	BARKSDALE AFB LA	71110-2044
00101C064	DAMIAN, RICHARD ALLAN		20403 93RD PL S UNIT 4	KENT WA	98031-0011
00101A017	ELKO COUNTY SCHOOL DISTRICT		PO BOX 1012	ELKO NV.	89803-1012
00101A002	ELKO JENNINGS PARTNERS LLC		725 2ND ST	ELKO NV	89801-3009
00101C068	ENGELMEIER, KEVIN D & DULCY C		658 CORTNEY DR	ELKO NV	89801-2457
00101C043	KNOTTS, RICHARD JOHN ET AL		634 CORTNEY DR	ELKO NV	89801-2440
00101C039	LIEBSACK, NATHAN JET AL		626 CORTNEY DR	ELKO NV	89801-2440
00609J027	LIEVANOS, ISAAC		3345 ARGENT AVE	ELKO NV	89801-4415
00101C067	MILLER, MATTHEW T		654 CORTNEY DR	ELKO NV	89801-2457
00609J028	ROBERSON, DAVE		746 MONTROSE LN	ELKO NV	89801-2467
00101C041	SINGH, TOCHI ET AL		630 COURTNEY DR	ELKO NV	89801
00101C066	SYNKOV, VASILIY		650 CORTNEY DR	ELKO NV	89801-2457
006090900	USA	C/O BLM-SUPPORT SERVICES AP	3900 E IDAHO ST	ELKO NV	89801-4692
00101A016	USA) 4 P.C.	C/O BLM-SUPPORT SERVICES AP	3900 E IDAHO ST	ELKO NV	89801-4692



Mailed 5/24/18



NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a public hearing on Tuesday, June 5, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on this matter under consideration in person, by writing, or by representative.

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

Preliminary Plat No. 7-18, filed by DDS
Properties, LLC, for the development of a
subdivision entitled Humboldt Hills involving the
proposed division of approximately 9.443 acres of
property into 26 lots for residential development
within the R1 (Single-Family Residential) Zoning
District, and matters related thereto. The subject
property is located generally on the east side of W
Jennings Way, approximately 150' north of
Courtney Drive. (APN 001-01H-001).

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

ELKO CITY PLANNING COMMISSION



Planning Department

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

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

May 17, 2018

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

SUBJECT: Preliminary Plat No. 7-18/Humboldt Hills

Dear Mr. Lino:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Humboldt Hills subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their June 5, 2018 meeting.

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

Thank you for your attention to this matter.

Montraultto

Sincerely,

Shelby Archuleta Planning Technician



Planning Department

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

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

May 17, 2018

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

SUBJECT: Preliminary Plat No. 7-18/Humboldt Hills

To Whom It May Concern:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Humboldt Hills subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their June 5, 2018 meeting.

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

Thank you for your attention to this matter.

Melloy Archible

Sincerely,

Shelby Archuleta Planning Technician



Planning Department

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

1751CollegeAvenue · Elko, Nevada89801 · (775)777-7160 · Fax(775)777-7219

May 17, 2018

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

SUBJECT: Preliminary Plat No. 7-18/Humboldt Hills

Dear Mr. Halliwell:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Humboldt Hills subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their June 5, 2018 meeting.

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

Thank you for your attention to this matter.

Mellay Archilletas

Sincerely,

Shelby Archuleta Planning Technician



Planning Department

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

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

May 17, 2018

Frontier Communications Mr. William Whitaker 111 W. Front Street Elko, NV 89801

SUBJECT: Preliminary Plat No. 7-18/ Humboldt Hills

Dear Mr. Whitaker:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Humboldt Hills subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their June 5, 2018 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta Planning Technician



Planning Department

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

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

May 17, 2018

Elko County School District Mr. Jeff Zander PO Box 1012 Elko, NV 89803

SUBJECT: Preliminary Plat No. 7-18/Humboldt Hills

Dear Mr. Zander:

Enclosed for your review and information is a copy of the submitted preliminary plat for the proposed Humboldt Hills subdivision, which is tentatively scheduled for consideration by the Elko City Planning Commission at their June 5, 2018 meeting.

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

Thank you for your attention to this matter.

Sincerely,

Shelby Archuleta Planning Technician

Department of Conservation & Natural Resources

Buan Sandoval, Governor

Brian Sandoval, Convernor Bradley Convell, Director Greg Lovato, Administrator

April 30, 2018

Ryan Limberg Utilities Director 1751 College Avenue Elko, NV 89801

Re: Tentative Map - Humboldt Hills

26 lots in the City of Elko

Dear Mr. Limberg:

The Nevada Division of Environmental Protection (NDEP) has reviewed the above referenced subdivision and recommends denial of said subdivision with respect to water pollution and sewage disposal.

Further review of the Tentative Map requires submittal of the following:

• To further process this submittal the NDEP requires an intent to serve or will serve letter from the municipal sewer service provider.

If you have any questions regarding this letter please contact me at (775) 687-9546, or rfahey@ndep.nv.gov.

Sincerely,

Ryan Fahey, Staff Engineer

Technical Services Branch

Bureau of Water Pollution Control

cc:

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

Engineer: Carter Engineering, LLC, P.O. Box 794, Elko, NV 89803 Developer: DDS Properties, LLC, 930 Idaho Street, Elko, NV 89801

Contrd No. 11804

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

April 18, 2018

RECEIVED

Cathy Laughlin, City Planner City of Elko 1751 College Avenue Elko, Nevada 89801 APR 1 8 2018

Subject: Humboldt Hills Subdivision - 26 lots

Dear Cathy,

Please accept this letter as supplemental information for the Preliminary Plat for Humboldt Hills subdivision.

On Thursday March 12th, 2018 a Stage 1 meeting for this development took place. The schematic plan presented by my client Dusty Shipp and I showed 29 lots. The area of the parcel is 9.443 acres for a density of 3.07 units per acre. We were given support to move forward to the Preliminary Plat stage.

After the Stage 1 meeting we started working on the Preliminary Plat, refining grading and layout. Street grades approaching 9% in the Stage 1 schematic were reduced to 7%. Three lots were removed, two in the middle and one along the easterly boundary. This was done to improve the buildability and livability of the remaining lots. This also gives flexibility to the type of home that can be built.

Because of the reduction in lots staff required a second Stage 1 meeting on April 17th, 2018. It is understood from the second Stage 1 meeting that this subdivision does not meet the requirements of the Master Plan for Residential Medium Density of 4-8 units per acre. With the 26 lot layout the density is now 2.75 units per acre, less that the density of 3.07 units per acre with the 29 lot layout.

The 29 lot layout had a buildable area of approximately 3.22 acres. The 26 lot layout has a buildable area of approximately 3.71 acres. The buildable area is the area left after lot line setbacks, slope, slope setbacks and rear drainage swales are considered. Not included is any area lost due to side lot line slopes.

This property has some challenges regarding grading and elevation that make it difficult to meet this requirement for Residential Medium Density of 4-8 units per acre.

Cathy Laughlin, City Planner Supplemental information for Humboldt Hills Preliminary Plat Page 2

This property has an Average Slope (AS) as defined by City Code 3-2-28 B of 12.85%. This is under the requirement of 15% to be considered a Hillside Area but it does demonstrate the steepness of the property.

In addition, the property must be graded to provide an elevation at the street of less than 5316 as required by the Utilities Department to have adequate pressure for City of Elko water service. The elevation at the north easterly corner of the property is 5360 and therefore considerable area is lost to the slope to meet this requirement. The buildable area lost to slope is 1.33 acres without including building code requirements for setbacks from slopes. This includes the slope along the northerly and easterly boundary as well as the interior slope at the back of lots 21-23. An additional 0.26 acres is lost due to building code requirements shown in Figure R403.1.7.1 for foundation clearance from slopes. The total lost due to slopes and setbacks for the slopes is 1.59 acres.

If this unusable area was not considered, then the density of the remaining area is 9.443 acres - 1.59 acres= 7.85 acres. At 26 lots the density is 3.31 for the remaining portion.

I appreciate the opportunity to provide this additional information to you. Please feel free to contact me should you have any questions.

Carter Engineering

Sincerely

Lana L. Carter, P.E.

Professional Engineer - Owner

Copy: Dusty Shipp, DDS Properties, LLC Jeremy Draper, P.E., City of Elko

Scott Wilkinson, City of Elko



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801 (775) 777-7160 * (775) 777-7219 fax

APPLICATION FOR PRELIMINARY PLAT (STAGE II) APPROVAL

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

APPLICANT(s):DDS PROPERTIES, LLC		
MAILING ADDRESS: 930 Idaho Street, Elko, Nevada 89801		
PHONE NO (Home)	(Business) (775)777-2949	
NAME OF PROPERTY OWNER (If different) Same a so	Owner	
(Property owner consent in writing must be provided)		
MAILING ADDRESS:		
LEGAL DESCRIPTION AND LOCATION OF PROPE	RTY INVOLVED (Attach if necessary):	
ASSESSOR'S PARCEL NO.: 001-01H-001	Address Not addressed	
Lot(s), Block(s),&Subd_iv_is_i_o_n_		
Or Parcel(s) & File No. Parcel 1 of File No. 727682		
APPLICANT'S REPRESENTATIVE UR ENGINEER:	Lana L. Eaner - Carler Engineering, TUC - D	

FILING REQUIREMENTS:

<u>Complete Application Form</u>: 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 preliminary 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 3-3-7 of the Elko City Code (see attached checklist).
- 2. A Development Master Plan when, in the opinion of the Planning Commission, the proposed subdivision is sufficiently large enough to comprise a major part of a future neighborhood or the tract initially proposed for platting is only a part of a larger land area.
- 3. A preliminary grading plan for subdivisions involving property characterized by an average slope greater than ten percent (10%).

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

APR **1 0** 2018 Page 1

P.	vice	d 1	124	/12

PROJECT DESCRIPTION OR PURPOSE: The purpose of this project is to create a 26 lot
single family residential subdivision from vacant land off of West Jennings Way. There will be one entrance
into the project by Eagle Ridge Loop. Utility main extensions will come into the project at this location. None of the lots will
have access directly onto West Jennings Way. None of the utility services will be connected to the main lines in West
Jennings Way. Lots 1-6 have proposed grading to accommodate walk out basements. This subdivision has an
average slope as defined by 3-2-28 B of 12.85% which is under 15% and is therefore not defined as a Hillside Area.
This project is located in Zone X (areas of minimal flood hazard). The pubic improvements along the West Jennings
Way frontage will be installed as part of this project.

(Use additional pages if necessary)

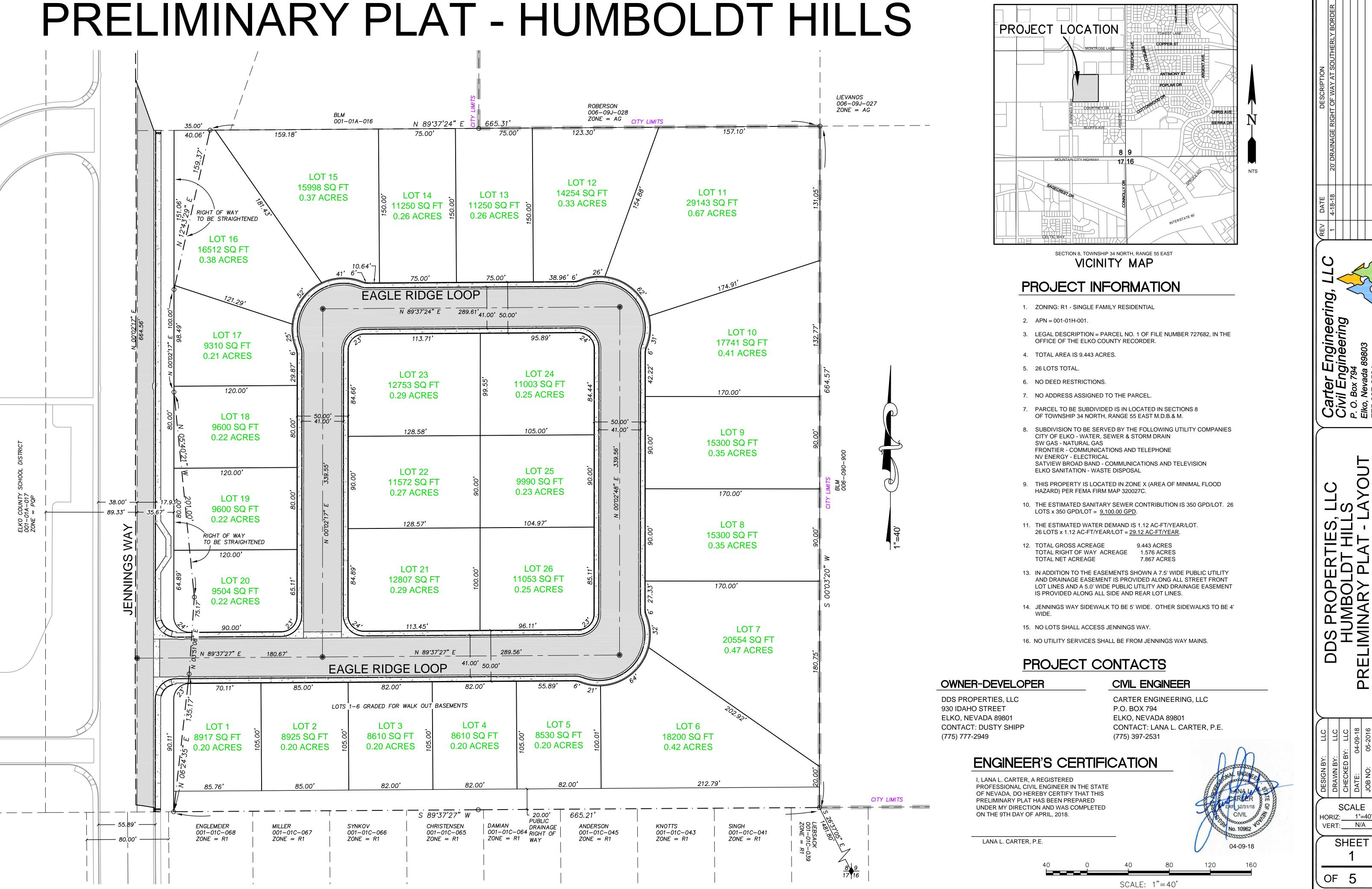
Revised 1/24/18 Page 2

Preliminary Plat Checklist 3-3-7

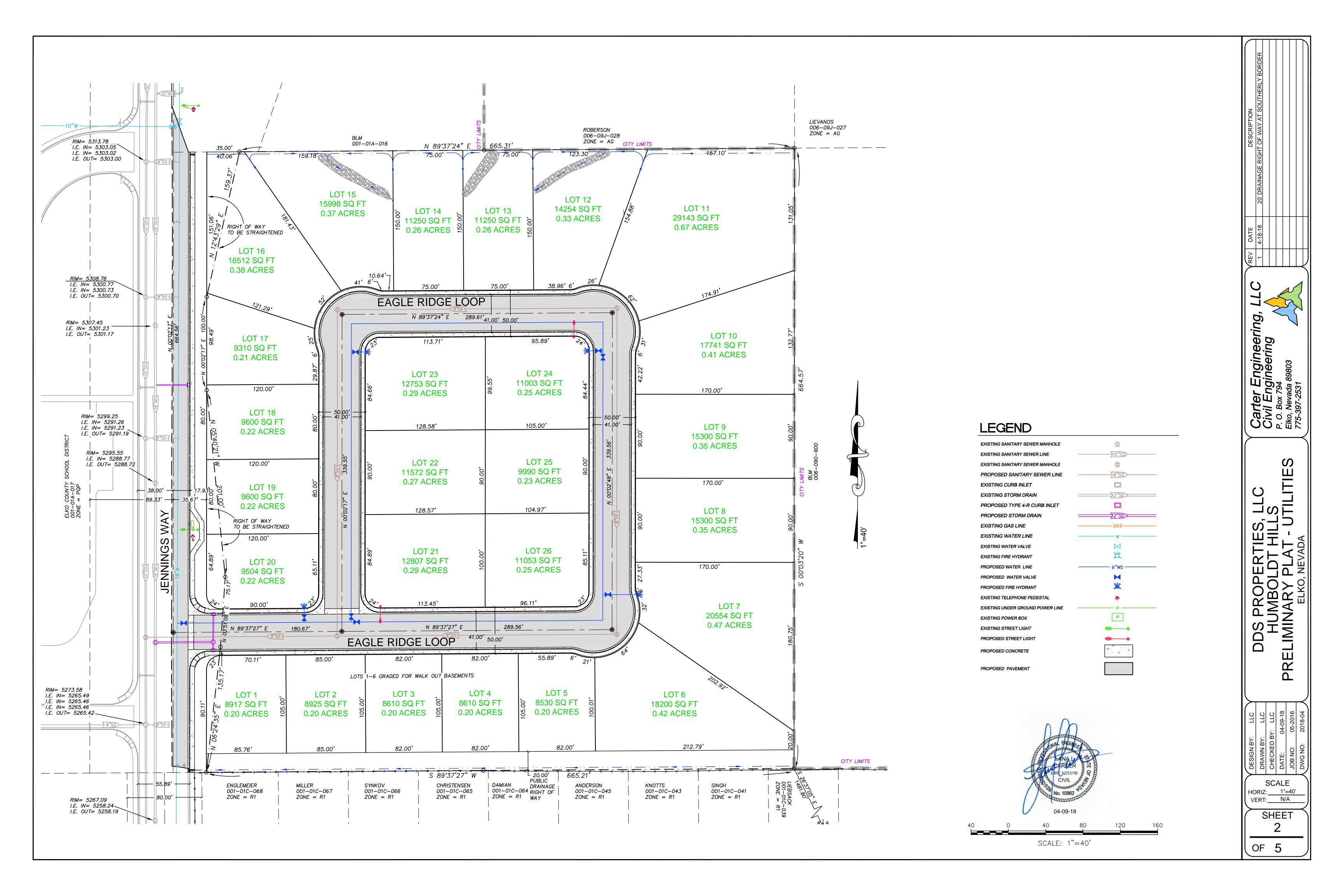
Date	Name		
dentifica	tion Data		
V	Subdivision Name		
V	Location and Section, Township and Range		
~	Reference to a Section Corner or Quarter-Section Corner		
V	Name, address and phone number of subdivider		
~	Name, address and phone number of engineer/surveyor		
V	Scale, North Point and Date of Preparation		
V	Dates of Revisions		
V	Location maps		
V	Legal description of boundaries		
Existing C	onditions Data		
V	2' contours on city coordinate system		
NIA	Location of Water Wells NONE IN THE HEOR		
ーレ	Location of Streams, private ditches, washes and other features		
レ	Location of Designated flood zones		
<u></u>	The Location, widths and Names of all platted Streets, ROW		
L	Municipal Corporation Lines		
-	Name, book and page numbers of all recorded plats		
<u></u>	Existing Zoning Classifications		
- L	Zoning of Adjacent Properties		
1/	Dimensions of all tract boundaries, gross and net acreage		
	Conditions Data		
~	Street Layout, location, widths, easements		
NIA	Traffic Impact Analysis NOT REQUIRED		
L	Lot Layout, including dimensions of typical lots		
L	Corner Lot Layout		
-	Lot layout on Street Curves		
L	Each lot numbered consecutively		
<u></u>	Total number of lots		
-	Location, Width and proposed use of easements		
·	Location, extent and proposed use of all land to be dedicated		
CIKI	Location and boundary of all proposed zoning districts ALLEADL ZONE		
NIA	Draft of proposed deed restrictions NO Deel Restertions		
<u></u>	Preliminary Grading Plan		
	Conceptual cut and fill		
-	Conceptual cut and in		
<u>ـ</u>			
	Estimated quality of material to be graded		
-	Estimated quality of material to be graded SWPPP		
	Estimated quality of material to be graded SWPPP Utilties		
-	Estimated quality of material to be graded SWPPP Utilties Sewage Disposal, design for sewage disposal		
Proposed	Estimated quality of material to be graded SWPPP Utilties Sewage Disposal, design for sewage disposal Water Supply, Evidence of adequate volume and quality		
Proposed	Estimated quality of material to be graded SWPPP Utilties Sewage Disposal, design for sewage disposal		

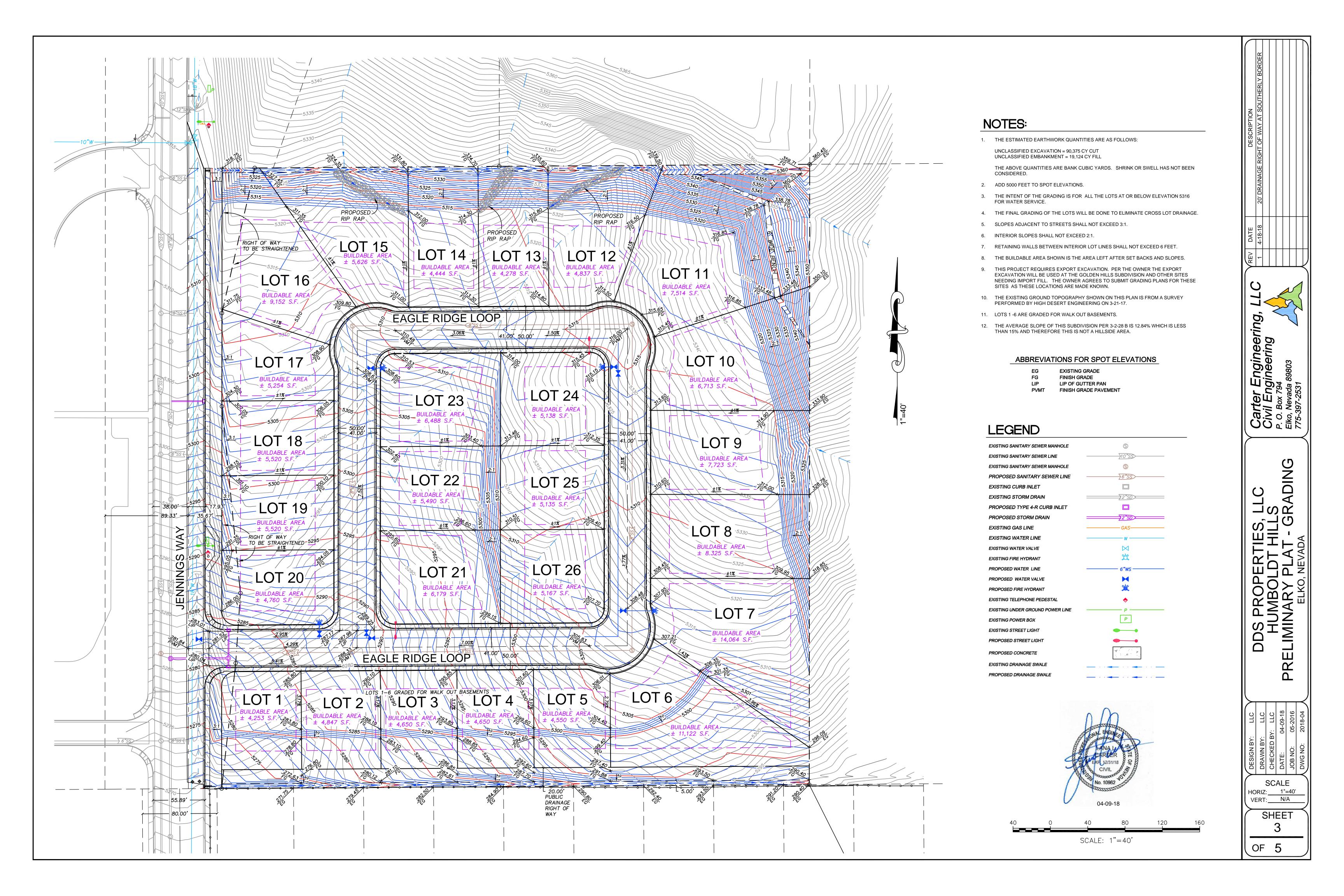
Revised 1/24/18 Page 3

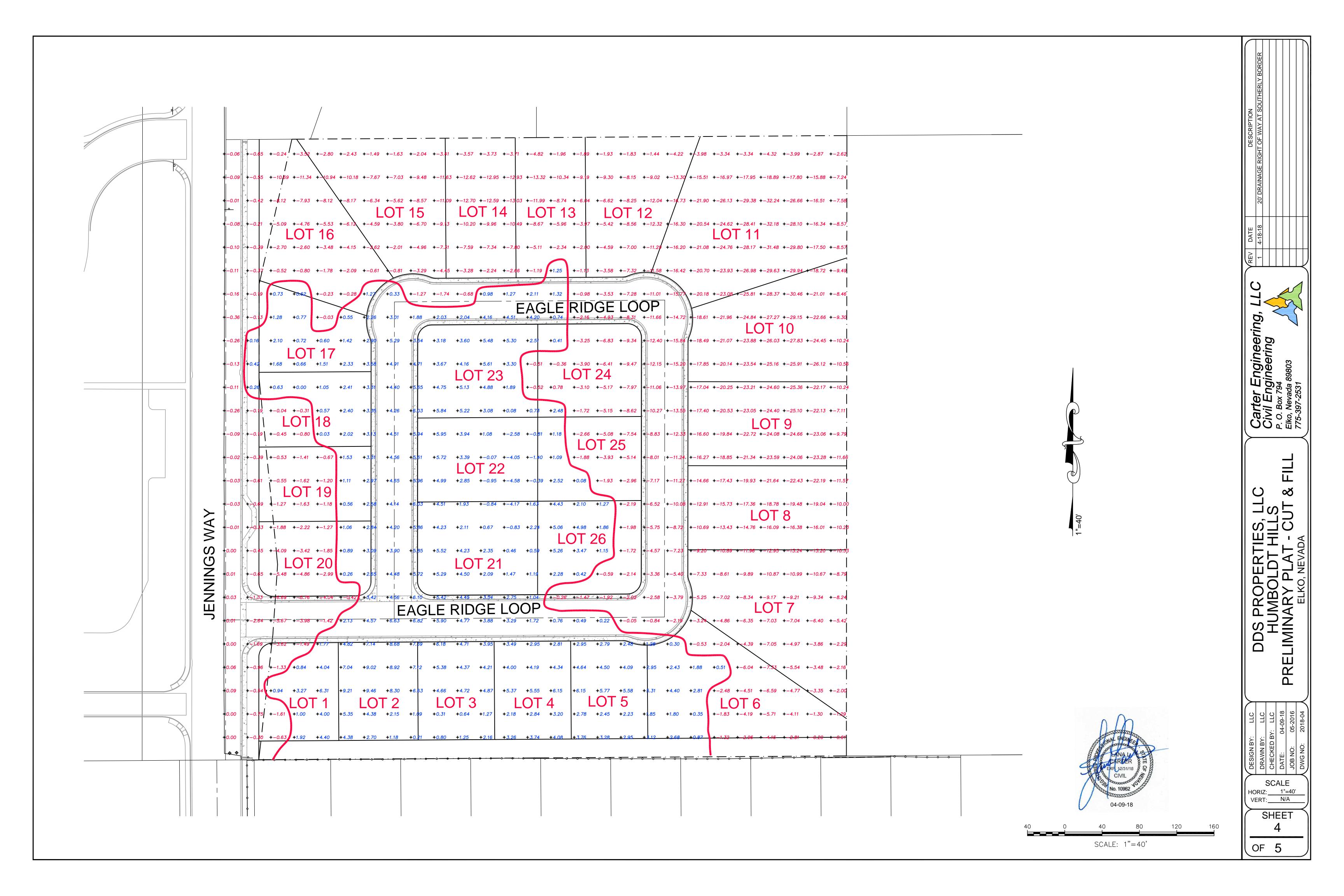
	By My Signature below:	
	I consent to having the City of Elko Staffenter on my property for the sole purpose of inspection of said property as part of this application process.	
	I object to having the City of Elko Staff enter onto my property as a part of their review of this application. (Your objection 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 Dusty Shipp (Please print or type)	
Mailing Address 930 Idaho Street		
	Street Address or P.O. Box	
	Elko, Nevada 89801	
	City, State, Zip Code	
	Phone Number: 775-777-2949	
	Email address: dustyshipp@gmail.com	
	SIGNATURE:	
	FOR OFFICE USE ONLY 26 Lots × 25= 650 + 750	
F	ile No.: 7-18 Date Filed: 4/10/18 Fee Paid: \$1400 CV# 2079	

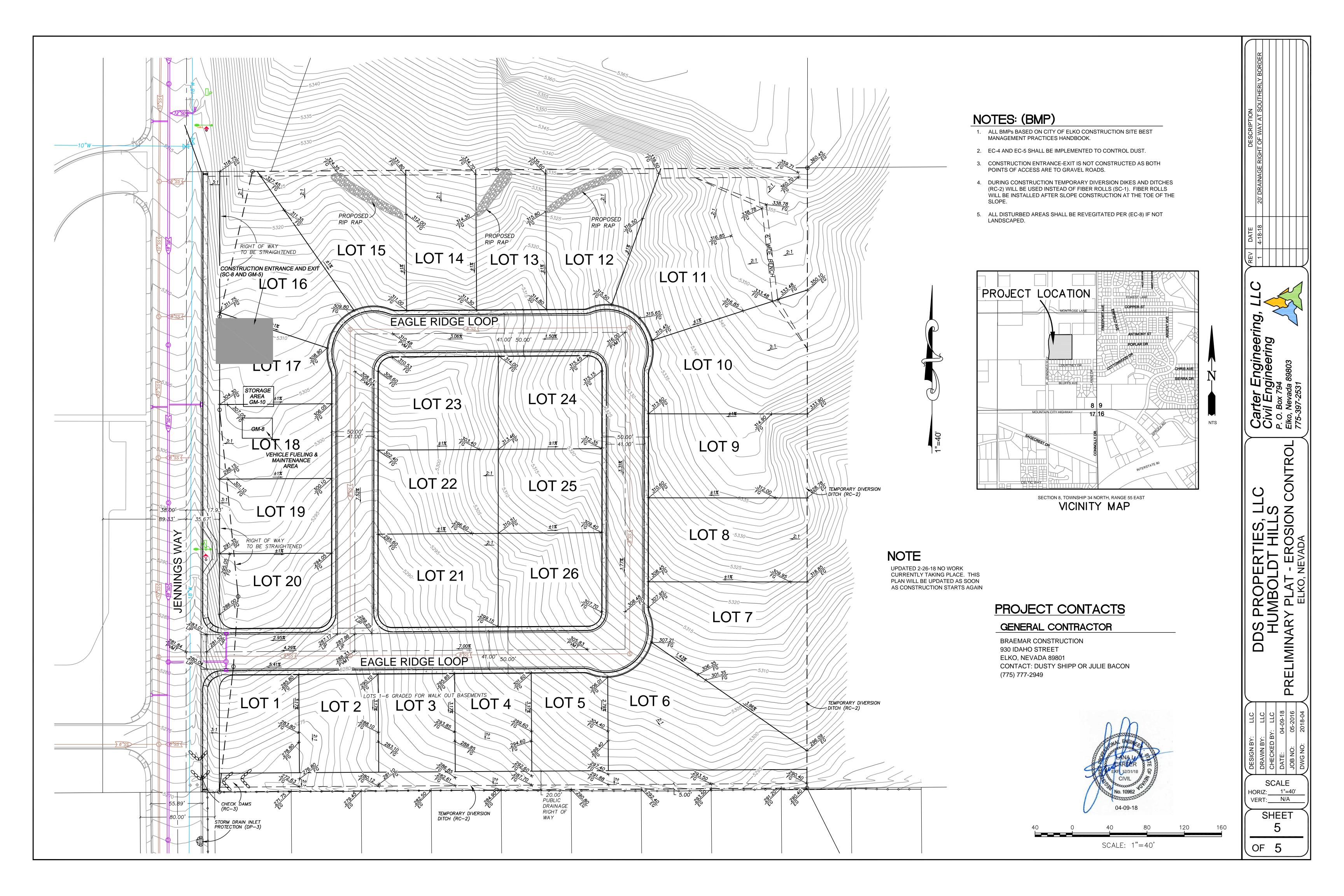


SCALE









Elko City Planning Commission Agenda Action Sheet

- 1. Review, consideration and possible approval of Final Plat No. 8-18, filed by Parrado Partners LP., for the development of a subdivision entitled Great Basin Estates, Phase 2 involving the proposed division of approximately 13.907 acres of property into 19 lots for residential development and 1 remaining lot within the R (Single Family and Multiple Family Residential) Zoning District, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: June 5, 2018
- 3. Agenda Category: PUBLIC HEARINGS, NEW BUSINESS
- 4. Time Required: 15 Minutes
- 5. Background Information: Subject property is located generally northeast of Flagstone Drive between Opal Drive and Clarkson Drive (APN 001-633-030). Preliminary Plat was recommended to City Council to conditionally approve by Planning Commission May 3, 2016 and conditionally approved by City Council May 24, 2016.
- 6. Business Impact Statement: Not Required
- 7. Supplemental Agenda Information: Application, Staff Report
- 8. Recommended Motion: Recommend to City Council to conditionally approve Final Plat 8-18 based on the findings of fact and conditions in the Staff Report dated May 29,2018
- 9. Findings:
 - The Final Plat for Great Basin Estates Phase 2 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City Code.
 - The Final Plat is in conformance with the Preliminary Plat.
 - The proposed subdivision is in conformance with the Land Use Component of the Master Plat
 - The proposed subdivision is in conformance with the Transportation Component of the Master Plan.
 - Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms to Sections 3-3-20 through 3-3-27 (inclusive).
 - The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-40 of City Code.
 - The Subdivider has submitted civil improvement plans in conformance with Section 3-3-41 of City Code. The plans have been approved by staff.

- 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 3-3-42 of City Code.
- The Subdivider has submitted civil improvement plans, which are in conformance with Section 3-3-43 of City Code.
- The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-44 of City Code.
- The Subdivider will be required to provide a Performance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-45 of City Code.
- Based on the modification of standards for lot dimensions granted under the preliminary plat application, 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.
- The proposed development is in conformance with Section 3-8 of City Code.
- The subdivision is in conformance with 3-8 Floodplain Management.
- 10. Prepared By: Cathy Laughlin, City Planner
- 11. Agenda Distribution: Parrado Partners, LP
 12257 Business Park Drive #1
 Truckee, CA 96161

STAFF COMMENT FLOW SHEET PLANNING COMMISSION AGENDA DATE: ________5 **Do not use pencil or red pen, they do not reproduce**

Title: Final Plait 8-18 Great Basin Estates Phase 2	
Applicant(s): Parrado Partners, LP	
Site Location: Granite Drive between Opai Dr + FlagStone Drive	
Site Location: Granite Prince between Opal Dr + FlagStone Drive Current Zoning: R Date Received: 5/14/18 Date Public Notice: N/A	
COMMENT: This is for 13,907 acres to be divided into 19 Lot	
and a remainder Parcel.	
If additional space is needed please provide a separate memorandum	
Assistant City Manager: Date: 5/29/18 Recommend approval as presented by 5 taff	
Staff	_
	AW
	Initial
City Manager: Date: 5/29/18	
No communits/ concerns. Recommend approval.	
	4
In	nitial



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

CITY OF ELKO STAFF REPORT

DATE: May 29, 2018
PLANNING COMMISSION DATE: June 5, 2018

AGENDA ITEM NUMBER: I.B.1

APPLICATION NUMBER: Final Plat 8-18

APPLICANT: Parrado Partners, LP

PROJECT DESCRIPTION: Great Basin Estates, Phase 2

A Final Map for the division of approximately 13.907 acres into 19 lots for single family residential development within an R (Single Family and Multiple Family Residential) Zoning District and one remaining lot.



STAFF RECOMMENDATION:

RECOMMEND to APPROVE this item subject to findings of fact and conditions.

PROJECT INFORMATION

PARCEL NUMBERS: 001-633-030

13.907 acres for this Phase 2 of the subdivision PARCEL SIZE:

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

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

EXISTING LAND USE: Vacant

NEIGHBORHOOD CHARACTERISTICS:

The property is surrounded by:

• Northwest: River corridor / Undeveloped

Northeast: RMH- Residential Mobile Home / Developed

• Southwest: Single Family Residential (R) / Developed

• Southeast: Single Family Residential (R) and (RMH) / Developed

PROPERTY CHARACTERISTICS:

• The property is an undeveloped residential parcel.

• The area abuts the first phase the Great Basin Estates Subdivision.

• The parcel is generally flat.

MASTER PLAN, COORDINATING PLANS, and CITY CODE SECTIONS:

Applicable Master Plan Sections, Coordinating Plans, and City Code Sections are:

- City of Elko Master Plan Land Use Component
- City of Elko Master Plan Transportation Component
- City of Elko Redevelopment Plan
- City of Elko Wellhead Protection Plan
- City of Elko Zoning Chapter 3 Subdivisions City of Elko Zoning Section 3-2-3 General Provisions
- City of Elko Zoning Section 3-2-4 Zoning Districts
- City of Elko Zoning Section 3-2-5(E) Single-Family Residential District
- City of Elko Zoning Section 3-2-5(G) Residential Zoning Districts Area, Setback And Height Schedule For Principal Buildings
- City of Elko Zoning—Section 3-2-17 Traffic, Access, Parking and Loading Regulations
- City of Elko Zoning Section 3-8 Flood Plain Management

BACKGROUND INFORMATION

- 1. The Final Plat for Great Basin Estates Phase 1B was recorded on June 29, 2017.
- 2. The Final Plat for Great Basin Estates Phase 2 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
- 3. The Planning Commission reviewed and recommended a conditional approval to the City Council on the Preliminary Plat on May 3, 2016.
- 4. The City Council conditionally approved the Preliminary Plat at its meeting on May 24,
- 5. Phasing was shown on the preliminary plat.

- 6. Under the conditional approval for the preliminary plat, a modification of standards was granted for all lot dimensions.
- 7. The subdivision is located on APN 001-633-030, shown as parcel D on map 727522 recorded at the Elko County Recorder's Office.
- 8. The proposed subdivision consists of 19 lots with one remainder for future phases.
- 9. The total subdivided area is approximately 13.907 acres in size.
- 10. Approximately 3.262 acres will be divided into 19 lots with 1 remaining lot 9.650 acres in size.
- 11. The proposed density is 4.46 units per acre.
- 12. Approximately 0.995 acres are offered for dedication for street development.
- 13. The area proposed for subdivision has been removed from the FEMA Special Flood Hazard Area by a Letter of Map Revision submitted to and approved by FEMA as Case No. 16-09-0367P with an effective date of April 3, 2017.
- 14. The property is located off Opal Drive.

MASTER PLAN:

Land Use

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

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

Transportation

2. Conformance with the Transportation component of the Master Plan was evaluated with review and approval of the Preliminary Plat. The Final Plat is in conformance with the Preliminary Plat.

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

ELKO REDEVELOPMENT PLAN:

1. The property is not located within the Redevelopment Area.

ELKO WELLHEAD PROTECTION PLAN:

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

The proposed subdivision is in conformance with the Wellhead Protection Program. The sanitary sewer will be connected to a programed sewer system and all street drainage will report to a storm sewer system.

SECTION 3-3-6 FINAL PLAT STAGE (STAGE III)

<u>Pre-submission Requirements (A)(1)</u> – The Final Plat is in conformance with the zone requirements. A modification of standards for the lot dimensions was granted with the conditional approval of the Preliminary Plat.

<u>Pre-submission Requirements</u> (A)(2) – The proposed final plat conforms to the preliminary plat.

Pre-submission Requirements (A)(3) – The Title Sheet includes an affidavit for public utilities and no objections were received from public utilities upon notification for the Preliminary Plat.

SECTION 3-3-8 INFORMATION REQUIRED FOR FINAL PLAT SUBMITTAL

- A. Form and Content-The final plat conforms to the required size specifications and provides the appropriate affidavits and certifications.
- B. Identification Data
 - 1. The subdivision map identified the subdivision, and provides its location by section, township, range and county.
 - 2. The subdivision map was prepared by a properly licensed surveyor.
 - 3. The subdivision map provides a scale, north point, and date of preparation.

C. Survey Data

- 1. The boundaries of the tract are fully balanced and closed.
- 2. All exceptions are noted on the plat.
- 3. The location and description of cardinal points are tied to a section corner.
- 4. The location and description of any physical encroachments upon the boundary of the tract are noted on the plat.

D. Descriptive Data

- 1. The name, right of way lines, courses, lengths and widths of all streets and easements are noted on the plat.
- 2. All drainage ways are noted on the plan.
- 3. All utility and public service easements are noted on the plat.
- 4. The location and dimensions of all lots, parcels and exceptions are shown on the plat.
- 5. All residential lots are numbered consecutively on the plat.
- 6. There are no sites dedicated to the public shown on the plat.
- 7. The location of adjoining subdivisions are noted on the plat 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 and certified by a notary public.

F. Additional Information

- 1. All centerline monuments for streets are noted as being set on the plat.
- The centerline and width of each right of way is noted on the plat.
 The plat 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 plat.5. The city boundary adjoining the subdivision is not identified on the plat, as the plat is not adjoining a boundary.
- 6. The plat identifies the location of the section lines, and 1/16th section line adjoining the subdivision boundaries.

G. City Engineer to Check

- 1. The Engineer shall check the final map for accuracy of dimensions, placement of monuments, the establishment of survey records, and conformance with the preliminary map.
 - a) Closure calculations have been provided.
 - b) Civil improvement plans have been provided, previous civil improvement plans have been approved for this subdivision.
 - c) Civil improvement plans for drainage have been submitted.

- d) An engineer's estimate has **not** been provided.
- 2. It appears the lot closures are within the required tolerances.
- H. Required certifications
 - 1. The Owner's Certificate is shown on the final plat.
 - 2. The Owner's Certificate offers for dedication all right of ways shown on the plat.
 - 3. A Clerk Certificate is shown on the final plat, certifying the signature of the City Council.
 - 4. The Owner's Certificate offers for dedication all easements shown on the plat.
 - 5. A Surveyor's Certificate is shown on the plat and provides the required language.
 - 6. The City Engineer's Certificate is listed on the plat.
 - 7. A certificate from the Nevada Division of Environmental Protection is provided with the required language.
 - 8. A copy of review by the state engineer is not available at this time.
 - 9. A certificate from the Division of Water Resources is provided on the plat with the required language.
 - 10. The civil improvement plans identify the required water meters for the subdivision.

SECTIONS 3-3-20 through 3-3-27 (inclusive)

1. The proposed subdivision was evaluated for conformance to the referenced sections of code during the preliminary plat process. A modification of standards for lot dimensions was approved during that process.

Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms Sections 3-3-20 through 3-3-27 (inclusive).

SECTION 3-3-40-RESPONSIBILITY FOR IMPROVEMENTS

The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-40 of city code.

SECTION 3-3-41-ENGINEERING PLANS

The Subdivider has submitted civil improvement plans in conformance with section 3-3-41 of City code. The plans have been approved by city staff.

SECTION 3-3-42-CONSTRUCTION AND INSPECTION

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 3-3-42 of city code.

SECTION 3-3-43-REQUIRED IMPROVEMENTS

The Subdivider has submitted civil improvement plans which are in conformance with Section 3-3-43 of city code.

Civil improvements include curb, gutter and sidewalk, paving and utilities within the Granite Drive and Opal Drive right of ways.

SECTION 3-3-44-AGREEMENT TO INSTALL IMPROVEMENTS

The Subdivider will be required to enter into a Performance Agreement to address to conform to Section 3-3-44 of city code.

SECTION 3-3-45-PERFORMANCE GUARANTEE

The Subdivider will be required to provide a Performance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-45 of city code.

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

1. The proposed subdivision was evaluated for conformance to the referenced sections of code during the preliminary plat process. A modification of standards for lot dimensions was approved during that process.

Based on the modification of standards for lot dimensions granted under the preliminary plat application, 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.

SECTION 3-8-FLOODPLAIN MANAGEMENT

1. The proposed subdivision has been removed from the FEMA Special Flood Hazard Area by a Letter of Map Revision submitted to and approved by FEMA as Case No. 16-09-0367P with an effective date of April 3, 2017.

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

FINDINGS

- 1. The Final Plat for Great Basin Estates Phase 2 has been presented before expiration of the subdivision proceedings in accordance with NRS 278.360(1)(a)(2) and City code.
- 2. The Final Plat is in conformance with the Preliminary Plat.
- 3. The proposed subdivision is in conformance with the Land Use Component of the Master Plan.
- 4. The proposed subdivision is in conformance with Transportation Component of the Master Plan.
- 5. Based on the modification of standards for lot dimensions granted under the preliminary plat application, the proposed development conforms Sections 3-3-20 through 3-3-27 (inclusive).
- 6. The Subdivider shall be responsible for all required improvements in conformance with Section 3-3-40 of city code.
- 7. The Subdivider has submitted civil improvement plans in conformance with section 3-3-41 of City code. The plans have been approved by city staff.
- 8. 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 3-3-42 of city code.

- 9. The Subdivider has submitted civil improvement plans which are in conformance with Section 3-3-43 of city code.
- 10. The Subdivider will be required to enter into a Performance Agreement to conform to Section 3-3-44 of city code.
- 11. The Subdivider will be required to provide a Performance Guarantee as stipulated in the Performance Agreement in conformance with Section 3-3-45 of city code.
- 12. Based on the modification of standards for lot dimensions granted under the preliminary plat application, 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.
- 13. The proposed development is in conformance with Section 3-8 of city code.
- 14. The subdivision is in conformance with 3-8 Floodplain Management.

RECOMMENDATION

Staff recommends approval of the subdivision based on the following conditions:

Development Department

- 1. The Developer shall execute a Performance Agreement in accordance with Section 3-3-44 of city code. The Performance Agreement shall be secured in accordance with Section 3-3-45 of city code. In conformance with Section 3-3-44 of city code, the public improvements shall be completed within a time of no later than two (2) years of the date of Final Plat approval by the City Council unless extended as stipulated in city code.
- 2. The Performance Agreement shall be approved by the City Council.
- 3. The Developer shall enter into the Performance Agreement within 30 days of approval of the Final Plat by the City Council.
- 4. The Final Plat is approved for 19 single family residential lots and 1 remainder lot.
- 5. The Utility Department will issue a Will Serve Letter for the subdivision.
- 6. State approval of the subdivision is required.
- 7. Conformance with Preliminary Plat conditions is required.
- 8. Civil improvements are to comply with Chapter 3-3 of City code.
- 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 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. An engineer's estimate for the public improvements shall be provided prior to the final plat being presented to the City Council to allow for finalization of the required Performance Agreement.

Fire Department

1. Follow the 2012 International Fire Code Appendix D, Section D106 regarding Access Roads within Residential Developments.



CITY OF ELKO

Planning Department

Website: www.elkocity.com Email: planning@ci.elko.nv.us

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7119

May 30, 2018

Parrado Partners, LP 12257 Business Park Drive #1 Truckee, CA 96161

Re: Final Plat No. 8-18

Dear Applicant/Agent:

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

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

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

Sincerely,

Shel by Archuleta Planning Technician

Enclosures

CC:



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue * Elko * Nevada * 89801 (775) 777-7160 * (775) 777-7219 FRECEIVED

MAY 1 4 2018

APPLICATION FOR FINAL PLAT APPROVAL

APPLICANT(s):	Parrado Partners, LP #/			
MAILING ADDRE	ESS: 12257 Business Park Drive 🚧, Truckee, CA 96161			
PHONE NO (Hon	me) (Business) (530) 587-0740			
NAME OF PROPERTY OWNER (If different):				
(Property owne <u>r consent in writing must be provided)</u>				
MAILING ADDRESS:				
LEGAL DESCRIPTION AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):				
ASSESSOR'S PA	ARCEL NO.: 001-633-030 Address Flagstone Dr/Granite Dr			
Lot(s), Block(s), &Subdivision Lot D, Great Basin Estates Subdivision, Phase 1B				
Or Parcel(s) & File No. 727522				
PROJECT DESCRIPTION OR PURPOSE: Subdivide a portion of Lot D, File No. 727522				
APPLICANT'S REPRESENTATIVE OR ENGINEER: High Desert Engineering, LLC				

FILING REQUIREMENTS:

<u>Complete Application Form</u>: 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.

<u>Other Information</u>: The applicant is encouraged to submit other information and documentation to support the request.

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

Identification	Data
	Subdivision Name
	Location and Section, Township and Range
	Name, address and phone number of subdivider
	Name, address and phone number of engineer/surveyor
	Scale, North Point and Date of Preparation
	Location maps
Survey Data (Required)
	Boundaries of the Tract fully balanced and closed
	Any exception within the plat boundaries
	The subdivision is to be tied to a section corner
	Location and description of all physical encroachments
Descriptive Da	ata
	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 an	d Acknowledgment
	Statement of dedication for items to be dedicated
	Execution of dedication ackowledged by a notary public
Additional Inf	ormation
	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
7	Civil Improvement plans
	Estimate of quantities required to complete the improvements
Required Cert	
	All parties having record title in the land to be subdivided
	Offering for dedication
	Clerk of each approving governing body
	Easements
	Surveyor's Certificate
y	City Engineer
	State Health division
	State Engineer
	Division of Water Resources
	Printed of trade field and co

By My Signature below:
I consent to having the City of Elko Staff enter on my property for the sole purpose of in spection 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 flot Grant President (Please print or type)
Mailing Address 1910 Idaho St. 102-1603 Street Address or P.O. Box
City, State, Zip Code
Email address: Koboder ppse Cappshines con:
SIGNATURE: Most Confirmation
FOR OFFICE USE ONLY 19 Lots 1 1 remainder = 20 Lot

RECEIVED

MAY 1 8 2018

Phase 2.txt

Parcel name: Granite	
North: 28473343.5398	4.5655
Line Course: N 41-44-51 E Length: 254.40	
	612243.9575
Line Course: S 48-15-09 E Length: 30.00	
	612266.3401
Line Course: S 48-15-09 E Length: 30.00	
	612288.7227
Line Course: S 41-44-51 W Length: 9.55	
	612282.3638
Line Course: S 41-44-51 W Length: 85.00	
	612225.7666
Curve Length: 23.56 Radius:	
Delta: 90-00-00 Tangent:	
Chord: 21.21 Course: Course In: S 48-15-09 E Course Out:	
	612236.9579
End North: 28473401.6718 East	
Line Course: S 48-15-09 E Length: 354.99	012220.5702
	612491.8234
	125.00
Delta: 1-50-34 Tangent:	
	s 47-19-52 E
	N 43-35-25 E
	612408.5923
End North: 28473162.5773 East :	612494.7794
Curve Length: 60.57 Radius:	125.00
Delta: 27-45-47 Tangent:	
	S 32-31-41 E
	N 71-21-12 E
	612408.5923
	612527.0308
	125.00
Delta: 27-31-14 Tangent:	
	S 04-53-11 E
	S 81-07-34 E 612408.5923
	612406.3923
	125.00
Delta: 11-19-44 Tangent:	
	s 14-32-18 W
Course In: N 81-07-34 W Course Out:	
	612408.5923
	612525.9018
Line Course: S 20-12-10 W Length: 35.34	
	612513.6974
Line Course: N 69-47-50 W Length: 25.00	
North: 28473004.3410 East:	612490.2355
Page 1	

Phase 2.txt Line Course: N 69-47-50 W Length: 25.00 North: 28473012.9746 East: 612466.7736 Course: N 20-12-10 E Length: 35.34 North: 28473046.1404 East : 612478.9780 Curve Length: 89.61 Radius: 75.00 Tangent: 51.02 Delta: 68-27-19 Course: N 14-01-29 W Chord: 84.37 Course Out: N 41-44-51 E Course In: N 69-47-50 W RP North: 28473072.0412 East: 612408.5923 End North: 28473127.9977 East: 612458.5310 Line Course: N 48-15-09 W Length: 354.99 North: 28473364.3674 East: 612193.6777 Curve Length: 23.56 Radius: 15.00 Delta: 90-00-00 Tangent: 15.00 Course: S 86-44-51 W Chord: 21.21 Course In: S 41-44-51 W Course Out: N 48-15-09 W RP North: 28473353.1761 East : 612183.6900 East: 612172.4987 End North: 28473363.1639

Line Course: S 41-44-51 W Length: 79.85

North: 28473303.5889 East: 612119.3307

Line Course: N 48-15-09 W Length: 30.00

North: 28473323.5643 East: 612096.9481

Course: N 48-15-09 W Length: 30.00 Line

> North: 28473343.5398 East: 612074.5655

Line Course: N 14-02-10 E Length: 0.00

> North: 28473343.5398 East: 612074.5655

Area: 41,601 S.F. 0.955 ACRES Perimeter: 1665.53

Mapcheck Closure - (Uses listed courses, radii, and deltas) Course: S 90-00-00 E Error Closure: 0.0000

Error North: 0.00000 East : 0.00000

Precision 1: 1,665,540,000.00

Parcel name: Lot 25

North: 28473417.4492 East: 611991.7500

Course: S 48-15-09 E Length: 111.00 Line

North: 28473343.5399 East: 612074.5656

Line Course: N 41-44-51 E Length: 63.60

> North: 28473390.9910 East: 612116.9136

Course: N 48-15-09 W Length: 111.00 Line

> North: 28473464.9003 East: 612034.0980

Line Course: S 41-44-51 W Length: 63.60

> North: 28473417.4492 East: 611991.7500

Line Course: S 50-37-50 E Length: 0.00

North: 28473417.4492 East: 611991.7500

Perimeter: 349.20 Area: 7,060 S.F. 0.162 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East: 0.00000

Precision 1: 349,200,000.00

Parcel name: Lot 26

Line Course: N 41-44-51 E Length: 63.60

North: 28473512.3513 East : 612076.4460

Line Course: S 48-15-09 E Length: 111.00

East : 612159.2616 North: 28473438.4421

Line Course: S 41-44-51 W Length: 63.60

North: 28473390.9910 East : 612116.9136

Course: N 48-15-09 W Length: 111.00 Line

> North: 28473464.9002 East: 612034.0980

Line Course: N 90-00-00 W Length: 0.00

North: 28473464.9002 East : 612034.0980

Perimeter: 349.20 Area: 7,060 S.F. 0.162 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Course: S 90-00-00 E Error Closure: 0.0000

Error North: 0.00000 East: 0.00000

Precision 1: 349,200,000.00

Parcel name: Lot 27

Line Course: N 41-44-51 E Length: 63.60

North: 28473559.8024 East : 612118.7941

Line Course: S 48-15-09 E Length: 111.00

North: 28473485.8931 East : 612201.6097

Line Course: S 41-44-51 W Length: 63.60

North: 28473438.4420 East : 612159.2617

Line Course: N 48-15-09 W Length: 111.00

North: 28473512.3513 East : 612076.4461

Line Course: N 39-05-38 W Length: 0.00

North: 28473512.3513 East : 612076.4461

Perimeter: 349.20 Area: 7,060 S.F. 0.162 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East: 0.00000

Precision 1: 349,200,000.00

Parcel name: Lot 28

North: 28473559.8023 East : 612118.7942

Line Course: N 41-44-51 E Length: 63.60

North: 28473607.2534 East: 612161.1422

Line Course: S 48-15-09 E Length: 111.00

North: 28473533.3441 East: 612243.9578

Line Course: S 41-44-51 W Length: 63.60

North: 28473485.8931 East : 612201.6098

Line Course: N 48-15-09 W Length: 111.00

North: 28473559.8023 East : 612118.7942

Line Course: N 20-33-22 W Length: 0.00

North: 28473559.8023 East: 612118.7942

Perimeter: 349.20 Area: 7,060 S.F. 0.162 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East : 0.00000

Precision 1: 349,200,000.00

Parcel name: Lot 29

North: 28473299.7491 East: 612115.9038

Line Course: S 48-15-09 E Length: 74.00

North: 28473250.4763 East : 612171.1142

Line Course: N 41-44-51 E Length: 100.00

North: 28473325.0849 East : 612237.6991

Line Course: N 48-15-09 W Length: 59.00

North: 28473364.3700 East: 612193.6800
Length: 23.56 Radius: 15.00
Delta: 90-00-00 Tangent: 15.00
Chord: 21.21 Course: S 86-44-51 Curve Length: 23.56

Chord: 21.21 Course: S 86-44-51 W

Course In: S 41-44-51 W Course Out: N 48-15-09 W East : 612183.6923

RP North: 28473353.1787 End North: 28473363.1665 East : 612172.5010

Line Course: S 41-44-51 W Length: 79.85

North: 28473303.5915 East: 612119.3330

Line Course: S 41-44-51 W Length: 5.15

North: 28473299.7491 East : 612115.9038

Line Course: N 46-44-09 W Length: 0.00

North: 28473299.7491 East : 612115.9038

Perimeter: 341.56 Area: 7,352 S.F. 0.169 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas) Error Closure: 0.0000 Course: N 00-00-00 E

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Error North: 0.00000 East : 0.00000

Precision 1: 341,560,000.00

Parcel name: Lot 30

North: 28473250.4762 East : 612171.1142

Line Course: S 48-15-09 E Length: 65.00

North: 28473207.1960 East : 612219.6098

Line Course: N 41-44-51 E Length: 100.00

North: 28473281.8047 East : 612286.1947

Line Course: N 48-15-09 W Length: 65.00

North: 28473325.0848 East : 612237.6991

Line Course: S 41-44-51 W Length: 100.00

North: 28473250.4762 East: 612171.1142

Line Course: S 08-00-17 W Length: 0.00

North: 28473250.4762 East: 612171.1142

Perimeter: 330.00 Area: 6,500 S.F. 0.149 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East : 0.00000

Precision 1: 330,000,000.00

Parcel name: Lot 31

North: 28473207.1960 East: 612219.6097

Line Course: N 41-44-51 E Length: 100.00

North: 28473281.8046 East : 612286.1947

Line Course: S 48-15-09 E Length: 65.00

North: 28473238.5244 East : 612334.6903

Line Course: S 41-44-51 W Length: 100.00

North: 28473163.9158 East: 612268.1054

Line Course: N 48-15-09 W Length: 65.00

North: 28473207.1960 East : 612219.6097

Line Course: N 30-41-59 E Length: 0.00

North: 28473207.1960 East: 612219.6097

Perimeter: 330.00 Area: 6,500 S.F. 0.149 ACRES

Error North: 0.00000

Eccision 1 Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000

Precision 1: 330,000,000.00

Parcel name: Lot 32

North: 28473163.9157 East: 612268.1053

Line Course: N 41-44-51 E Length: 100.00

North: 28473238.5243 East : 612334.6902

Line Course: S 48-15-09 E Length: 65.00

North: 28473195.2442 East : 612383.1858

Line Course: S 41-44-51 W Length: 100.00

North: 28473120.6355 East: 612316.6009

Line Course: N 48-15-09 W Length: 65.00

North: 28473163.9157 East : 612268.1053

Line Course: N 52-21-53 E Length: 0.00

North: 28473163.9157 East : 612268.1053

Perimeter: 330.00 Area: 6,500 S.F. 0.149 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

course: S 90-00-00 E Error Closure: 0.0000

East: 0.00000 Error North: 0.00000

Precision 1: 330,000,000.00

Parcel name: Lot 33

North: 28473195.2440 East: 612383.1859

Line Course: S 41-44-51 W Length: 100.00

North: 28473120.6354 East : 612316.6010

Line Course: S 48-15-09 E Length: 65.00

North: 28473077.3552 East : 612365.0966

Line Course: N 41-44-51 E Length: 100.00

North: 28473151.9638 East : 612431.6815

Line Course: N 48-15-09 W Length: 65.00

North: 28473195.2440 East : 612383.1859

Course: N 21-20-13 E Length: 0.00 Line

North: 28473195.2440 East: 612383.1859

Perimeter: 330.00 Area: 6,500 S.F. 0.149 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas) Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East : 0.00000

Precision 1: 330,000,000.00

Parcel name: Lot 34

Line Course: N 41-44-51 E Length: 100.00

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North: 28473151.9638 East: 612431.6813

Line Course: S 48-15-09 E Length: 35.99

North: 28473127.9999 East: 612458.5330

Curve Length: 89.61 Radius: 75.00

Delta: 68-27-19 Tangent: 51.02

Chord: 84.37 Course: S 14-01-29 E
Course In: S 41-44-51 W Course Out: S 69-47-50 E
RP North: 28473072.0434 East: 612408.5943

End North: 28473046.1427 East: 612478.9800

Line Course: S 20-12-10 W Length: 35.34

North: 28473012.9769 East: 612466.7756

Line Course: S 20-12-10 W Length: 21.15

North: 28472993.1281 East: 612459.4716

Line Course: N 48-15-09 W Length: 126.49

North: 28473077.3514 East: 612365.0991

Line Course: N 32-25-57 E Length: 0.00

North: 28473077.3514 East: 612365.0991

Perimeter: 408.58 Area: 10,209 S.F. 0.234 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0046 Course: S 35-01-44 E

Error North: -0.00380 East: 0.00266

Precision 1: 88,821.74

Parcel name: Lot 35

North: 28472995.7130 East: 612513.7006

Line Course: N 20-12-10 E Length: 35.34

Curve Length: 24.72 Radius: 125.00 Delta: 11-19-44 Tangent: 12.40

Chord: 24.68 Course: N 14-32-18 E
Course In: N 69-47-50 W Course Out: S 81-07-34 E
RP North: 28473072.0467 East: 612408.5955

Line Course: S 79-49-47 E Length: 191.34

North: 28473018.9785 East: 612720.4328

Line Course: S 53-39-25 W Length: 56.43

North: 28472985.5371 East: 612674.9794

Line Course: S 50-57-08 W Length: 53.68

North: 28472951.7204 East: 612633.2904

Line Course: N 69-48-07 W Length: 127.42

North: 28472995.7142 East: 612513.7061

Line Course: N 01-47-24 E Length: 0.00

North: 28472995.7142 East: 612513.7061

Perimeter: 488.93 Area: 11,497 S.F. 0.264 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)
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Error Closure: 0.0057 Course: N 78-02-46 E Error North: 0.00117 East: 0.00553

Precision 1: 85,777.19

Parcel name: Lot 36

Chord: 59.46 Course: N 04-53-11 W
Course In: N 81-07-34 W Course Out: N 71-21-12 E
RP North: 28473072.0437 East : 612408.5943
End North: 28473112.0101 East : 612527.0329

Line Course: N 78-38-03 E Length: 120.89

North: 28473135.8342 East: 612645.5521

Line Course: S 32-39-03 E Length: 138.79

North: 28473018.9766 East: 612720.4318

Line Course: N 79-49-47 W Length: 191.34

North: 28473052.7623 East: 612532.0983

Perimeter: 511.06 Area: 13,168 S.F. 0.302 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas) Error Closure: 0.0012 Course: N 06-23-56 E

Error North: 0.00116 East: 0.00013

Precision 1: 425,883.33

Parcel name: Lot 37

Delta: 27-45-47 Tangent: 30.89

Chord: 59.98 Course: N 32-31-41 W
Course In: S 71-21-12 W Course Out: N 43-35-25 E
RP North: 28473072.0432 East: 612408.5944
End North: 28473162.5793 East: 612494.7815

Line Course: N 55-48-13 E Length: 103.15

Line Course: S 37-41-16 E Length: 107.06

North: 28473135.8304 East: 612645.5505

Line Course: S 78-38-03 W Length: 120.89

North: 28473112.0063 East: 612527.0313

Line Course: S 90-00-00 E Length: 0.00

North: 28473112.0063 East: 612527.0313

Perimeter: 391.67 Area: 8,746 S.F. 0.201 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0036 Course: S 26-48-35 W Error North: -0.00324 East: -0.00164

Precision 1: 108,797.22

Parcel name: Lot 38

North: 28473165.3041 East: 612491.8256

Curve Length: 4.02 Radius: 125.00 Delta: 1-50-34 Tangent: 2.01

Chord: 4.02 Course: S 47-19-52 E
Course In: S 41-44-51 W Course Out: N 43-35-25 E
RP North: 28473072.0433 East : 612408.5944
End North: 28473162.5794 East : 612494.7815

Line Course: N 55-48-13 E Length: 103.15

North: 28473220.5529 East: 612580.0985

Line Course: N 48-15-09 W Length: 85.06

North: 28473277.1900 East: 612516.6364

Line Course: S 41-44-51 W Length: 100.00

North: 28473202.5814 East: 612450.0515

Line Course: S 48-15-09 E Length: 55.99

Line Course: S 20-33-22 W Length: 0.00

North: 28473165.3005 East: 612491.8249

Perimeter: 348.23 Area: 7,254 S.F. 0.167 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Precision 1: 96,727.78

Parcel name: Lot 39

North: 28473202.5850 East: 612450.0522

Line Course: N 48-15-09 W Length: 60.00

North: 28473242.5360 East: 612405.2870

Line Course: N 41-44-51 E Length: 100.00

North: 28473317.1446 East: 612471.8720

Line Course: S 48-15-09 E Length: 60.00

North: 28473277.1937 East: 612516.6371

Line Course: S 41-44-51 W Length: 100.00

North: 28473202.5850 East: 612450.0522

Line Course: S 37-59-55 W Length: 0.00

North: 28473202.5850 East: 612450.0522

Perimeter: 320.00 Area: 6,000 S.F. 0.138 ACRES

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Mapcheck Closure - (Uses listed courses, radii, and deltas)

Course: S 90-00-00 E Error Closure: 0.0000

Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

Parcel name: Lot 40

North: 28473282.4870 East: 612360.5220

Line Course: S 48-15-09 E Length: 60.00

East : 612405.2871 North: 28473242.5361

Line Course: N 41-44-51 E Length: 100.00

> North: 28473317.1447 East : 612471.8721

Line Course: N 48-15-09 W Length: 60.00

East: 612427.1069 North: 28473357.0957

Course: S 41-44-51 W Length: 100.00 Line

North: 28473282.4870 East: 612360.5220

Course: S 25-50-40 W Length: 0.00 Line

North: 28473282.4870 East: 612360.5220

Perimeter: 320.00 Area: 6,000 S.F. 0.138 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas) Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East: 0.00000

Precision 1: 320,000,000.00

Parcel name: Lot 41

North: 28473282.4870 East: 612360.5220

Line Course: N 48-15-09 W Length: 60.00

North: 28473322.4380 East: 612315.7568

Line Course: N 41-44-51 E Length: 100.00

North: 28473397.0466 East: 612382.3417

Course: S 48-15-09 E Length: 60.00 Line

> North: 28473357.0957 East: 612427.1069

Line Course: S 41-44-51 W Length: 100.00

> North: 28473282.4870 East: 612360.5220

Course: S 25-50-40 W Length: 0.00 Line

> North: 28473282.4870 East : 612360.5220

Perimeter: 320.00 Area: 6,000 S.F. 0.138 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas) Error Closure: 0.0000 Course: S 90-00-00 E

East: 0.00000 Error North: 0.00000

Precision 1: 320,000,000.00

Parcel name: Lot 42

North: 28473362.3890 East: 612270.9917

Line Course: S 48-15-09 E Length: 60.00

Line Course: N 41-44-51 E Length: 100.00

Line Course: N 48-15-09 W Length: 60.00

Line Course: S 41-44-51 W Length: 100.00

North: 28473362.3890 East: 612270.9917

Line Course: N 66-53-37 E Length: 0.00

North: 28473362.3890 East: 612270.9917

Perimeter: 320.00 Area: 6,000 S.F. 0.138 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East : 0.00000

Precision 1: 320,000,000.00

Parcel name: Lot 43

Line Course: N 48-15-09 W Length: 59.00

North: 28473401.6741 East: 612226.9726

Curve Length: 23.56 Radius: 15.00 Delta: 90-00-00 Tangent: 15.00

Chord: 21.21 Course: N 03-15-09 W
Course In: N 41-44-51 E Course Out: N 48-15-09 W
RP North: 28473412.8654 East : 612236.9603
End North: 28473422.8532 East : 612225.7690

Line Course: N 41-44-51 E Length: 85.00

North: 28473486.2705 East: 612282.3662

Line Course: S 48-15-09 E Length: 74.00

North: 28473436.9977 East: 612337.5766

Line Course: S 41-44-51 W Length: 100.00

North: 28473362.3890 East: 612270.9917

Line Course: N 66-53-37 E Length: 0.00

Perimeter: 341.56 Area: 7,352 S.F. 0.169 ACRES

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0000 Course: S 90-00-00 E

Error North: 0.00000 East: 0.00000

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Precision 1: 341,560,000.00

Parcel name: Lot E

```
North: 28473607.2533
                             East: 612161.1422
     Course: N 41-44-51 E Length: 381.60
Line
        North: 28473891.9599
                                     East: 612415.2302
      Course: S 48-15-09 E Length: 185.00
Line
        North: 28473768.7778
                                    East: 612553.2562
      Course: S 54-33-09 E
                           Length: 751.56
Line
        North: 28473332.9056
                                    East: 613165.5125
     Course: S 46-55-41 E Length: 204.73
Line
        North: 28473193.0921
                                     East: 613315.0671
      Course: S 80-27-31 W Length: 217.18
Line
        North: 28473157.0924
                                     East: 613100.8916
Line
     Course: S 68-46-47 W Length: 243.33
        North: 28473069.0180
                                    East: 612874.0604
Line
     Course: S 65-39-51 W Length: 5.00
        North: 28473066.9576
                                    East: 612869.5047
     Course: S 65-39-51 W Length: 50.00
Line
                                    East: 612823.9474
       North: 28473046.3533
     Course: N 24-20-09 W Length: 2.61
Line
        North: 28473048.7314
                                    East : 612822.8718
Curve Length: 37.39
                                   Radius: 775.00
        Delta: 2-45-52
                                  Tangent: 18.70
        Chord: 37.39
                                   Course: N 25-43-05 W
                                Course Out: N 62-53-59 E
    Course In: S 65-39-51 W
    RP North: 28472729.3661
                                    East: 612116.7339
    End North: 28473082.4168
                                    East: 612806.6471
Line
     Course: S 53-39-25 W Length: 107.04
        North: 28473018.9829
                                     East: 612720.4282
Line
      Course: N 32-39-03 W Length: 138.79
       North: 28473135.8404
                                    East: 612645.5485
Line
     Course: N 37-41-16 W Length: 107.06
       North: 28473220.5628
                                    East: 612580.0965
Line
     Course: N 48-15-09 W Length: 399.06
       North: 28473486.2765
                                    East: 612282.3632
Line
     Course: N 41-44-51 E Length: 9.55
       North: 28473493.4017
                                    East: 612288.7221
     Course: N 48-15-09 W Length: 30.00
Line
       North: 28473513.3771
                                    East: 612266.3395
     Course: N 48-15-09 W Length: 30.00
Line
       North: 28473533.3526
                                    East : 612243.9569
Line
     Course: N 48-15-09 W Length: 111.00
       North: 28473607.2619
                                    East: 612161.1413
      Course: N 18-58-13 W Length: 0.00
Line
       North: 28473607.2619
                                    East: 612161.1413
```

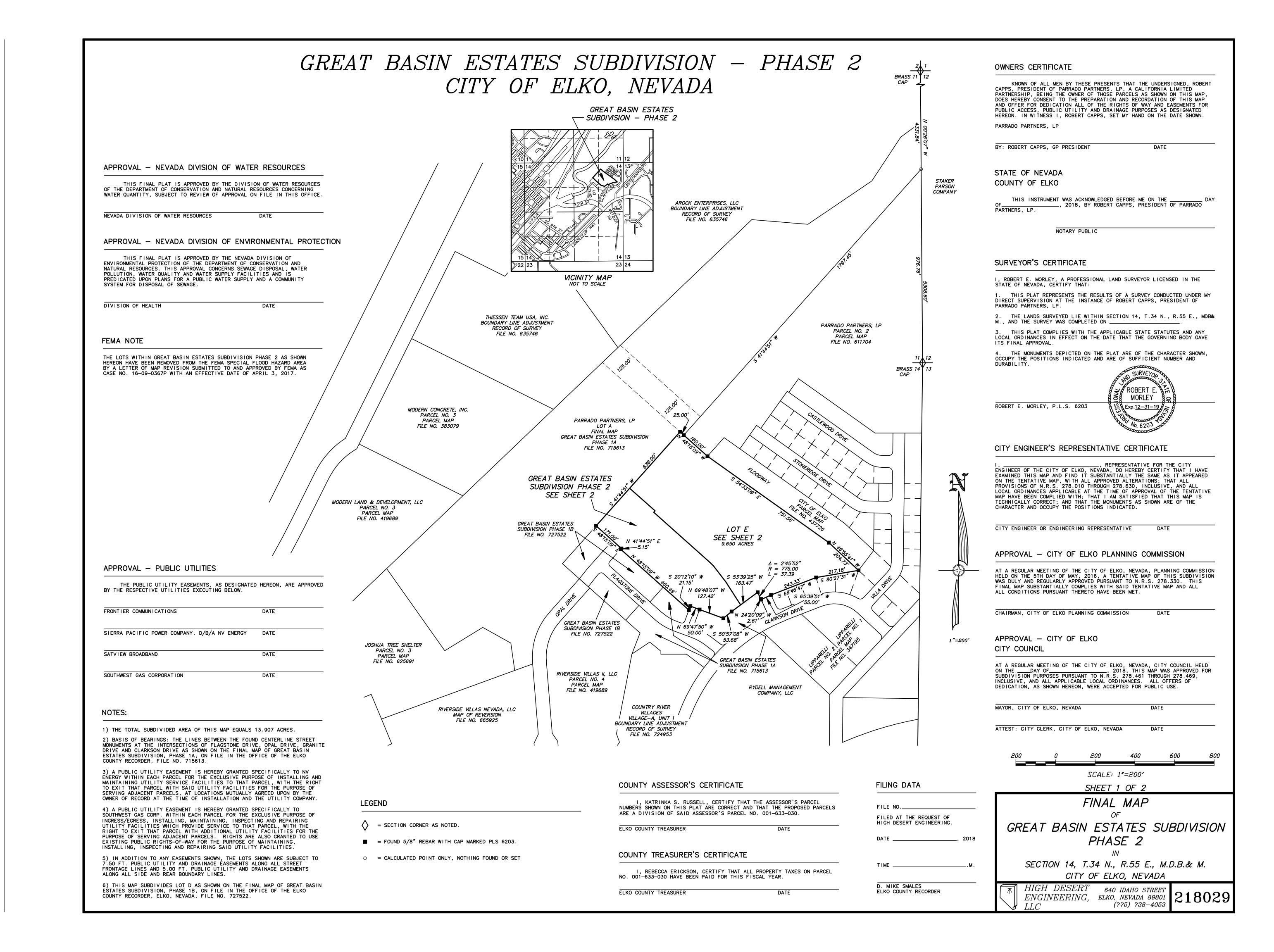
Perimeter: 3010.90 Area: 420,362 S.F. 9.650 ACRES

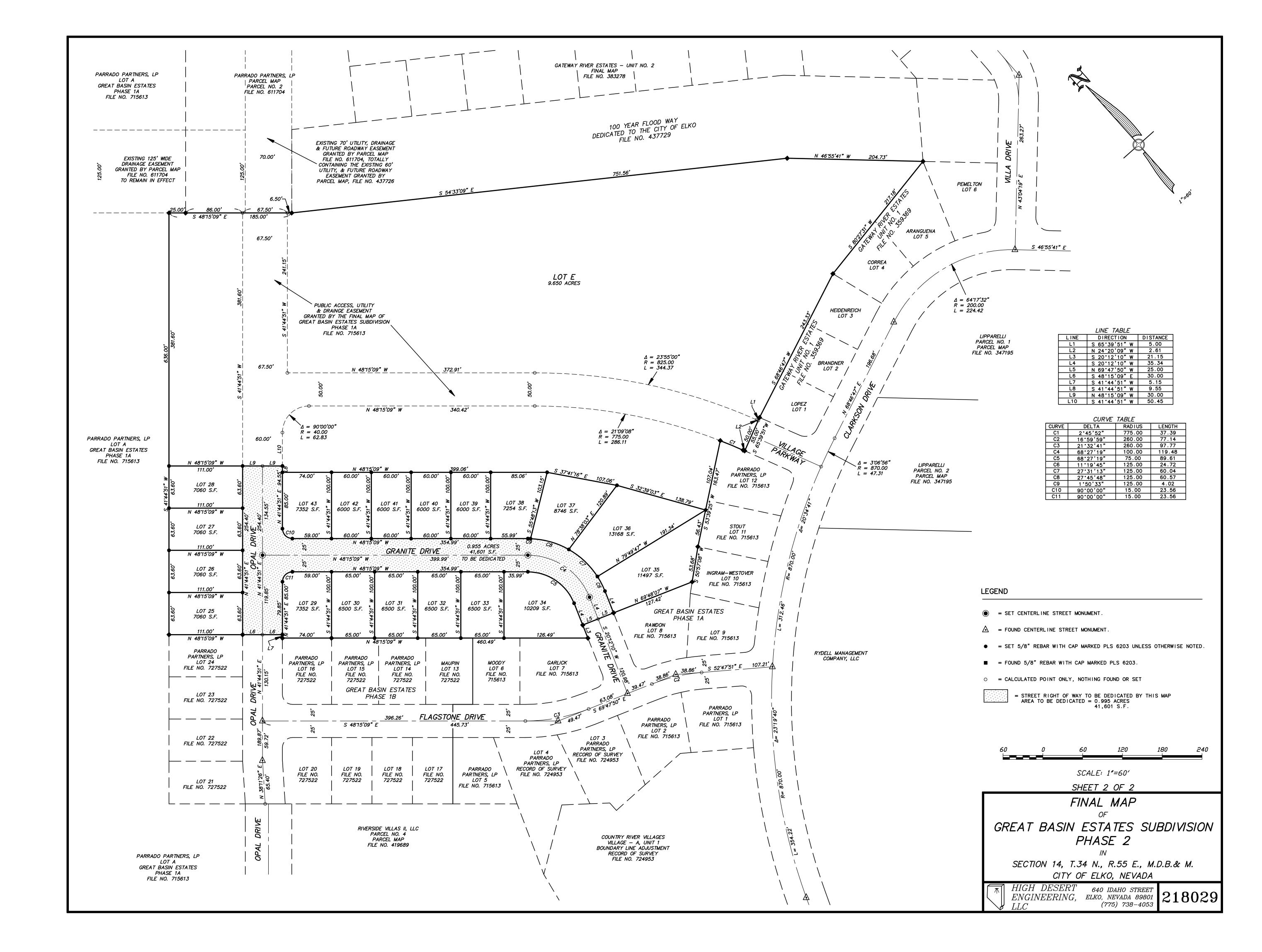
Mapcheck Closure - (Uses listed courses, radii, and deltas)
Page 1

Lot E.txt

Course: N 06-12-57 W East : -0.00093

Error Closure: 0.0086 Error North: 0.00852 Precision 1: 350,104.65





Elko City Planning Commission Agenda Action Sheet

- 1. Review, consideration and possible granting of Parking Waiver 1-18, filed by Charm Hospitality, LLC to waive eleven required off-street parking spaces in connection with a hotel expansion within the C (General Commercial) Zoning District, and matters related thereto. FOR POSSIBLE ACTION
- 2. Meeting Date: June 5, 2018
- 3. Agenda Category: MISC. ITEMS, PETITIONS and COMMUNICATIONS
- 4. Time Required: 15 Minutes
- 5. Background Information: Subject property is located at 3019 Idaho Street. (APN 001-560-089)
- 6. Business Impact Statement: Not Required
- 7. Supplemental Agenda Information: Application, Staff Memo
- 8. Recommended Motion: Move to grant Parking Waiver 1-18 subject to findings of fact in the Staff Report dated May 29, 2018.
- 9. Findings:
- The existing use and proposed expansion are in conformance with the Land Use Component of the Master Plan.
- The existing and proposed use is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.
- The property is not located in the Redevelopment Area.
- The existing use and proposed us is in conformance with the Wellhead Protection Plan.
- The existing use and proposed use is in conformance with Section 3-2-10 of City Code.
- The proposed expansion includes amenities that are typically associated with the existing use and is not expected to generate additional traffic resulting in traffic deficit.
- 10. Prepared By: Cathy Laughlin, City Planner

11. Agenda Distribution: Charm Hospitality

3019 Idaho Street Elko, NV 89801

STAFF COMMENT FLOW SHEET

Title: Parking Waiver 1-18	
Applicant(s): Charm Hospitality, LLC	
Site Location: 3019 Idaho Street	
Current Zoning: C Date Received: 5/15 Date Public Notice: //A	
COMMENT: This is for a waiver for 11 required off-Street	
Parking Spaces.	_
If additional space is needed please provide a separate memorandum	
Assistant City Manager: Date: 5/29 /18 Recommend approval as presented by Staff	_
5/	Au
City Manager: Date: 5/29/18 No comments/concerns. Recommend approval.	nitial
Inie	iol



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

CITY OF ELKO STAFF REPORT

DATE: May 29, 2018
PLANNING COMMISSION DATE: June 5, 2018
APPLICATION NUMBER: PKG 1-18

AGENDA ITEM: 1.B.2

APPLICANT: Charm Hospitality, LLC PROJECT DESCRIPTION: Parking Waiver 1-18

An application for a parking waiver reducing to 110 parking spaces (existing) from the required 121 spaces associated with a proposed expansion of the existing use.



STAFF RECOMMENDATION:

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

PROJECT INFORMATION

PARCEL NUMBER:

001-560-089

PARCEL SIZE:

1.954 acres

EXISTING ZONING:

C- General Commercial

MASTER PLAN DESIGNATION:

(COMM-HWY) Commercial Highway

EXISTING LAND USE:

Developed as a Hotel

NEIGHBORHOOD CHARACTERISTICS:

• The property is surrounded by:

• North: General Commercial (C) / Developed

• West: I-80 Corridor

• South: General Commercial (C) / Developed

• East: General Commercial (C) / Developed

PROPERTY CHARACTERISTICS:

• The area is currently developed with a commercial land use.

• The area is generally flat with steep grade change from back of existing building to the I-80 right-of-way

• The area is accessed from Idaho Street.

MASTER PLAN AND CITY CODE SECTIONS:

Applicable Master Plans and City Code Sections are:

• City of Elko Master Plan – Land Use Component

• City of Elko Master Plan – Transportation Component

• City of Elko Redevelopment Plan

• City of Wellhead Protection Plan

• City of Elko Zoning – Section 3-2-10 PC, C Commercial Districts

• City of Elko Zoning – Section 3-2-17 Traffic, Access, Parking and Loading Regulations

BACKGROUND:

1. The applicant is the property owner.

2. The applicant has submitted a set of plans for an expansion to the existing building to the

City of Elko Building Department.

3. The proposed addition will result in approximately 4,306 sq. ft. added to the structure. The proposed addition includes a swimming pool, meeting room, fitness center and a small kitchen to serve an existing dining area, typical amenities for the existing use.

MASTER PLAN:

Land use:

1. The Master Plan Land Use Atlas shows the area as Commercial Highway.

2. C- General Commercial zoning district is listed as a corresponding zoning district for Commercial Highway.

- 3. Objective 6: Encourage multiple scales of commercial development to serve the needs of the region, the community, and individual neighborhoods.
- 4. The existing facility as well as the proposed addition meet Objective 6 of the Land Use document.

The existing use and proposed expansion are in conformance with the Land use Component of the Master Plan.

Transportation:

- 1. The area will be accessed from Idaho Street.
- 2. West Idaho Street is classified as a Major Arterial.

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

ELKO REDEVELOPMENT PLAN:

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

ELKO WELLHEAD PROTECTION PLAN:

1. The parcel is within a 2 year capture zone. The existing and proposed use does not pose a hazard to the City wells.

The existing use and proposed use is in conformance with the Wellhead Protection Plan.

SECTION 3-2-10(B) - General Commercial District-C:

- 1. The existing development meets the requirements under 3-2-10 for minimum area, minimum lot width, front and rear yard setbacks, side yard setback and maximum building height.
- 2. The existing development is consistent with the listed principal uses permitted.
- 3. The existing development does not abut a residential zoning district therefore; a conditional use permit is not required.

The existing use and proposed use is in conformance with Section 3-2-10 of city code.

SECTION 3-2-17:

- 1. The intent of 3-2-17 is to secure optimum coordination and interaction between land use and transportation facilities. Preservation and improvement of the traffic function of abutting streets, and of the major street system as a whole, are essential considerations in the project planning stage of land development. It is the purpose of this section to establish the regulations necessary to assure that every land use will be so located and planned as to minimize traffic congestion, hazards and vehicular pedestrian conflicts. It is the further purpose to place upon the property owner the primary responsibility for relieving public streets of the burden of on street parking and to provide the regulations and minimum standards essential to the planning and development of adequate off street parking.
- 2. Section 3-2-17(C): In all zoning districts, off street parking facilities must be provided in accordance with the provisions of this section for: 1) buildings, establishments or uses of land established after the effective date of this amendment, i.e., June 12, 2002; and 2)

- existing buildings, establishments or uses of land which are extended, enlarged or altered after the effective date of this amendment.
- 3. The applicant has provided a parking analysis stating for the hotel at 1 per guestroom = 77, 1 per 2 employees for hotel = 2, restaurant 1 per 100 sq. ft. of dining = 8, 1 per each 2 employees = 2, meeting space 1 per 24 sq. ft. of unfixed seating space = 32 for a total required of 121.

4. Section 3-2-17(E) describes the methods for compliance with off street parking.

5. Section 3-2-17(E)(4) allows for the Planning Commission to waive all or a portion of the required off street parking provided the waiver does not conflict with the intent of the code. The waiver application also requires notification of adjacent properties and provides for an appeal of the Planning Commission decision to the City Council.

6. Some amenities may be utilized by others outside the use of the facility.

- 7. The applicant has stated that the peak hours for the meeting rooms are during the day and hotel is evening through the night so there is not a conflict with the principal use which is the hotel.
- 8. The applicant has stated that the full service restaurant is generally an amenity to the hotel guests although it will be open to the public.
- 9. The existing development appears to meet all other requirements in 3-2-17 for landscaping, site lighting and trash enclosure.

The proposed expansion includes amenities that are typically associated with the existing use and is not expected to generate additional traffic resulting in a parking deficit.

FINDINGS:

- 1. The existing use and proposed expansion are in conformance with the Land use Component of the Master Plan.
- 2. The existing use and proposed use is compatible with the Transportation Component of the Master Plan and is consistent with the existing transportation infrastructure.
- 3. The property is not located in the Redevelopment Area.
- 4. The existing use and proposed use is in conformance with the Wellhead Protection Plan.
- 5. The existing use and proposed use is in conformance with Section 3-2-10 of city code.
- 6. The proposed expansion includes amenities that are typically associated with the existing use and is not expected to generate additional traffic resulting in a parking deficit.

STAFF RECOMMENDATION:

Staff recommends the parking waiver be granted.



CITY OF ELKO

Planning Department

Website: www.elkocity.com
Email: planning@ci.elko.nv.us

1751 College Avenue · Elko, Nevada 89801 · (775) 777-7160 · Fax (775) 777-7119

May 30, 2018

Charm Hospitality 3019 Idaho Street Elko, NV 89801

Re: Parking Waiver No. 1-18

Dear Applicant/Agent:

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

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

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

Sincerely,

Shelby Archuleta Planning Technician

Enclosures

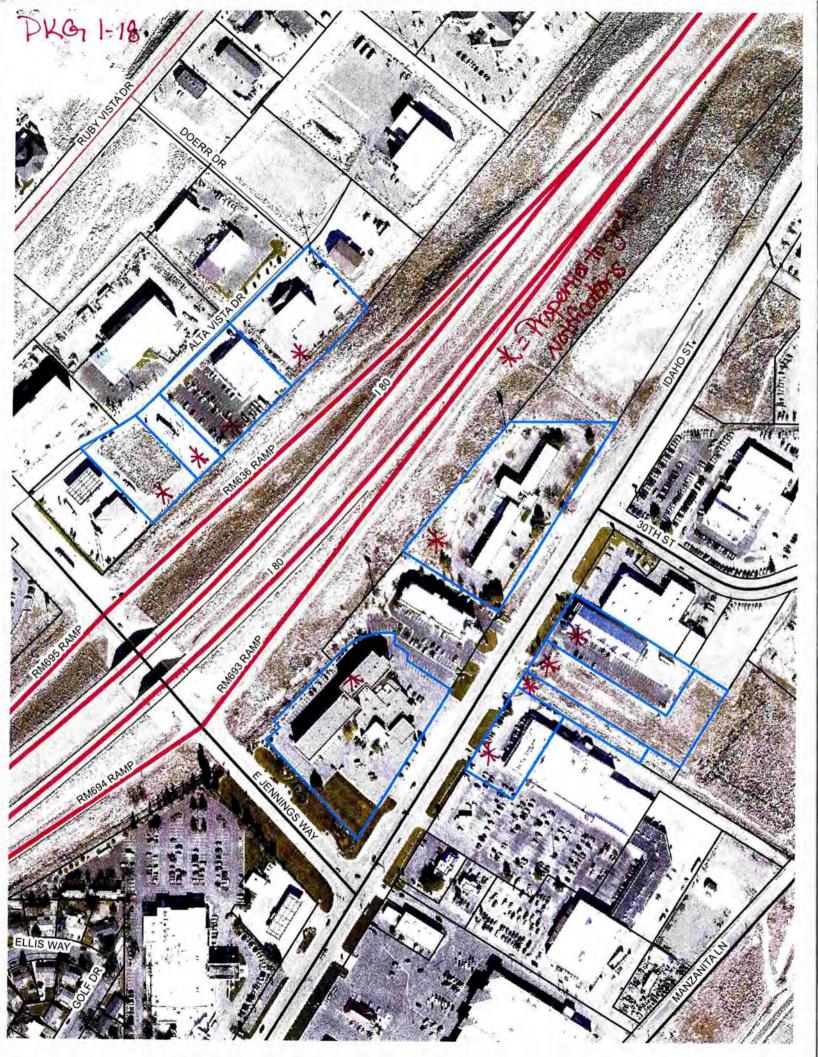
CC:

PKG 1-18 Charm Hospitality, LLC

YPNO	PANAME	PMADD1	PMADD2	PMCTST	PZIP
001560058	ABS NV-O LLC	C/O ALBERTSONS LLC	PO BOX 990	MINNEAPOLIS MN	55440-0990
001560083	BJCR LLC		736 IDAHO ST	ELKO NV	89801-3824
001560076	CASARINO INVESTMENTS LTD PARTNE		1490 HILLCREST RD	HOLLISTER CA	95023-5137
001560084	EL NEVA MOTEL PARTNERSHIP		736 IDAHO ST	ELKO NV	89801-3824
001560088	ELKO ACQUISITIONS LLC		2065 IDAHO ST	ELKO NV	89801-2628
0018600BF	G6 HOSPITALITY PROPERTY LLC	ATTN TAX DEPARTMENT	PO BOX 117508	CARROLLTON TX	75011-7508
001560080	MOORES, KENNETH R & LINDA J		371 BERRY CREEK PL	SPRING CREEK NV	89815-6507
001564017	SPEC ELKO HOLDINGS LLC		PO BOX 70166	TUCSON AZ	85737-0029
001560077	TJOA PROPERTIES LLC		2570 ALTA VISTA DR	ELKO NV	89801-4614
001560033	Y & Y INVESTMENTS	ATTN: PERRY YOUNG	601 W MOANA LN STE 5	RENO NV	89509-4959



Mailed 5/24/18



NOTICE OF PUBLIC HEARINGS

NOTICE IS HEREBY GIVEN that the Elko City Planning Commission will conduct a hearing on Tuesday, June 5, 2018 beginning at 5:30 P.M. P.D.S.T. at Elko City Hall, 1751 College Avenue, Elko, Nevada, and that the public is invited to provide input and testimony on these matters under consideration in person, by writing, or by representative.

The specific item to be considered under hearing is:

Parking Waiver 1-18, filed by Charm Hospitality, LLC to waive eleven required off-street parking spaces in connection with a hotel expansion within the C (General Commercial) Zoning District, and matters related thereto.

The subject property is located generally on the north side of Idaho Street, approximately 595 feet east of E Jennings Way (3019 Idaho Street).

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

ELKO CITY PLANNING COMMISSION



CITY OF ELKO PLANNING DEPARTMENT

1751 College Avenue* Elko* Nevada* 89801 (775) 777-7160 * (775) 777-7219 fax

APPLICATION FOR PARKING WAIVER

APPLICANT(s): CHARM HOSPITALITY, LLC

MAILING ADDRESS: 3019 IDAHO STREET, ELKO, NV 89801

PHONE NO. (Home) 775-385-1455 (Business) 775-777-0990

NAME OF PROPERTY OWNER (If different): PARAM J. KAUR

(Property owner consent in writing must be provided.)

MAILING ADDRESS: 3019 IDAHO STREET, ELKO, NV 89801

ADDRESS AND LOCATION OF PROPERTY INVOLVED (Attach if necessary):
3019 Idaho Street, Elko NV 89801

North of E Jennings Way (Shown on Site Plan Vicinity Map)

ASSESSOR PARCEL NO(S): 001-560-089

APPLICANT'S REPRESENTATIVE OR ENGINEER: MICHELLI LEDDY

FILING REQUIREMENTS

<u>Complete Application Form</u>: 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 \$50.00 non-refundable fee.

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

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.

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

RECEIVED

MAY 1 5 2018

Revised 1/24/15

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 be 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 PARAM J. KAUR (Please print or type) 3019 IDAHO STREET				
Street Address or P.O. Box ELKO, NV 89801				
City, State, Zip Code 775-777-0990 PhoneNumber paramjkaur251@yahoo.com Email address:				
SIGNATURE: Parmyit Kaur				
FOR OFFICE USE ONLY				
File No.: 1-18 Date Filed: 5/15/18 Fee Paid: \$50 C1 # 1710				

Print | Close Window

Subject: 3019 Idaho Street, Permit 18-015

From: Cathy Laughlin <claughlin@elkocitynv.gov>

Date: Wed, Apr 25, 2018 1:57 pm

To: "tony@continentaldc.com" <tony@continentaldc.com>

"Scott A. Wilkinson" <sawilkinson@elkocitynv.gov>, Jeremy Draper <jdraper@elkocitynv.gov>, Shelby

Cc: Archuleta <sarchuleta@elkocitynv.gov>, "Jeff Ford" <jford@elkocitynv.gov>, Corina Tibbitts

<ctibbitts@elkocitynv.gov>

Attach: Application - PARKING.pdf

Tonv.

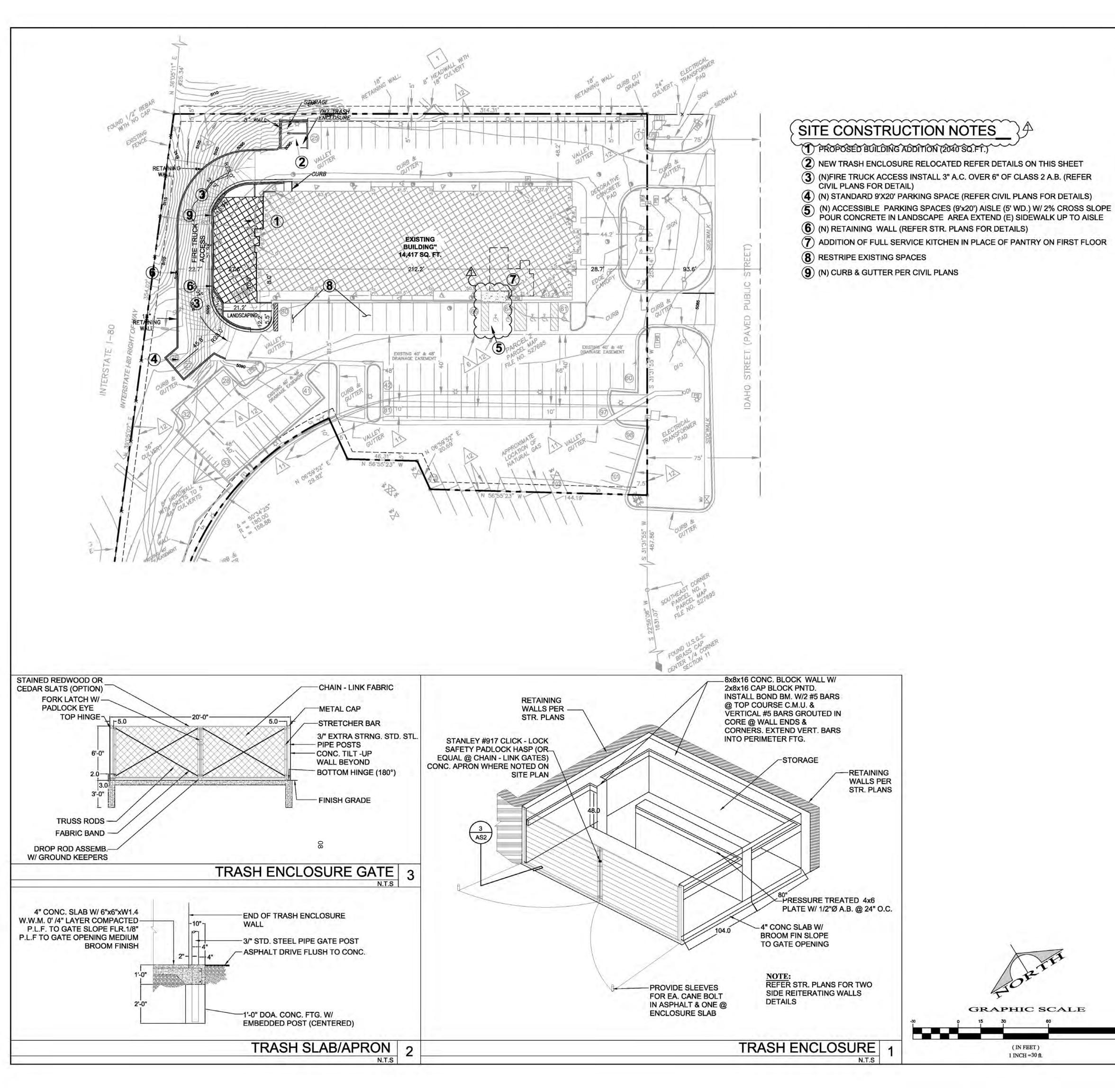
In reviewing the revised submittal for the building permit for the addition to the Four Points By Sheraton, City of Elko staff doesn't have the authority to deviate from code and allow the parking reduction based on the letter you submitted. However, you may apply for a parking waiver (difference of 121 required to 110 provided = 11 spaces) to the Planning Commission and use the justification you have stated in the letter. I do question the restaurant calculation, if the space is simply an amenity of the hotel and not open to the public, than it would not be required to be a part of the calculation. I have attached the parking waiver application and our deadline to be on the June Planning Commission meeting agenda is May 15th. I will go ahead and conditionally approve the plans so you can start construction based on the parking waiver approval within the next 90 days or if the parking waiver is denied, you will be required to provide the additional parking. Please let me know if you have any questions.

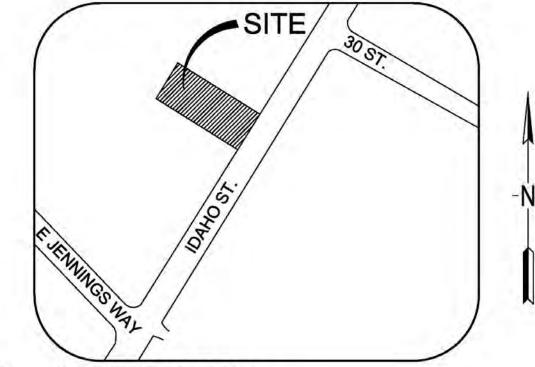
Cathy Laughlin City Planner

(775)777-7160 ph (775)777-7219 fax claughlin@elkocitynv.gov

City of Elko 1751 College Avenue Elko, NV 89801

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VICINITY MAP N.T.S.

LEGEND:

PROPERTY LINE **PARKING STRIPS** CENTER LINE EASMENT PROPOSED LOT LINE DRAINAGE EASEMENT PIPELINE EASEMENT (E) BUILDING BUILDING ADDITION (2040 SQ.FT.) (N) RETAINING WALL NO PARKING ACCESSIBLE PARKING ACCESSIBLE PARKING COMPACT PARKING SPACE REINFORCED CONCRETE PIPE SEWER PIPE

DISTURBED AREA DETAIL

FENCE LINE

WATER LINE

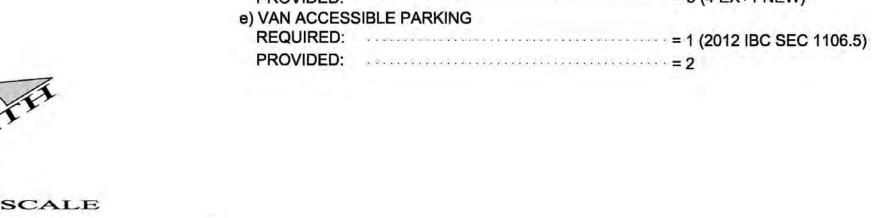
IMPERVIOUS AREA	EXISTING (%age)	PROPOSED (%age)
BUILDING	15,399 SQ.FT. (18.08%)	17,439 SQ.FT. (20.48%)
ASPHALT PARKING	41,830 SQ.FT. (49.12%)	45,366 SQ.FT. (53.27%)
CONCRETE	3,036 SQ.FT. (3.56%)	3,846 SQ.FT. (4.51%)
PERVIOUS AREA		
LANDSCAPING	8,050 SQ.FT. (9.45%)	8375 SQ.FT. (9.83%)
UNDEVELOPED AREA	16,850 SQ.FT. (19.79%)	10,143 SQ.FT. (11.91%)
TOTAL	85,165 SQ.FT. (1.95 ACRE APPROX.)	85,165 SQ.FT.

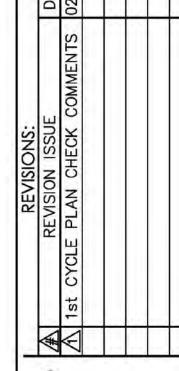
PARKING ANALYSIS

HOTEL 1 PER GUESTROOM

a. REQUIRED SPACES (ZONING CODE SECTION 3-2-17(F))

1 PER EACH 2 EMPLOYEE ON LARGEST	SHIFT
FOR MAX OF EMPLOYEES PER SHIFT	= 02
RESTAURANT	
1 PER 100 SQ.FT OF RESTAURANT DINN	IING = 02
(USABLE FLOOR AREA 786 SQ.FT)	
1 PER EACH 2 EMPLOYEE ON LARGEST	SHIFT = 02
FOR MAX. OF 4 EMPLOYEE PER SHIFT	
MEETING (PUBLIC ASSEMBLY)	10.2
1 PER 24 SQ.FT OF UNFIXED SITTING SE	PACE= 32
(752 SQ.FT)	
TOTAL SPACES REQUIRED	=121
b) PROVIDED:	= 110
c) NOTES FOR 11 ADDITIONAL REQUIRE	
	LY) PEAK USE HOURS ARE DURING DAY TIME HOTEL GUESTS) WITH NIGHT TIME PEAK
 OWNERSHIP CONSENT IN COMPLIA (3) TO BE SUBMITTED TO BUILDING 	ANCE WITH ZONING CODE SECTION 3-2-17 (E DEPARTMENT.
d) ACCESSIBLE PARKING	- 5 (2012 IBC TABLE 1106 1)
	= 5 (2012 IBC TABLE 1106.1)
PROVIDED:	= 5 (4 EX+1 NEW)
e) VAN ACCESSIBLE PARKING	
REQUIRED:	= 1 (2012 IBC SEC 1106.5)



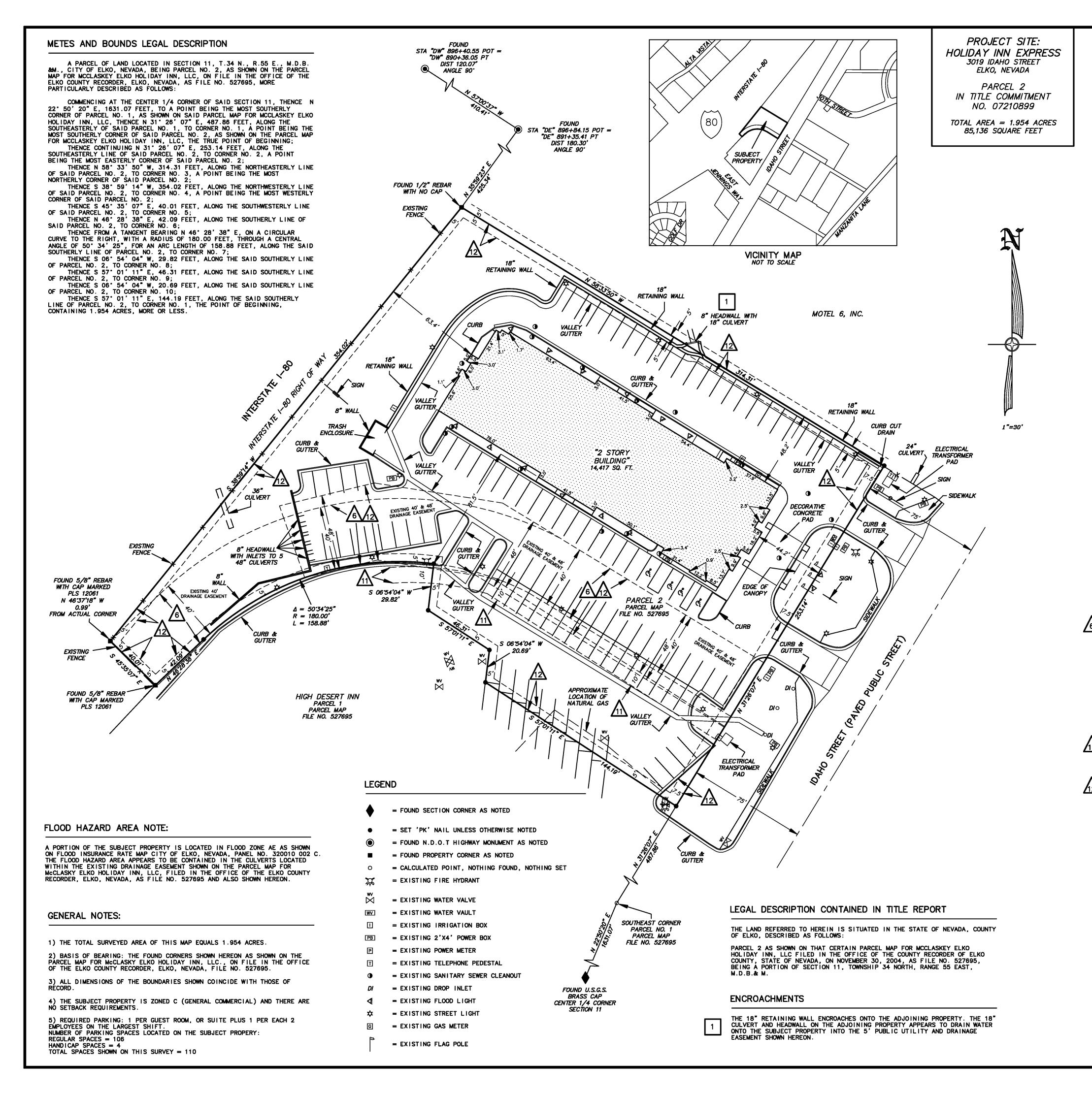


Continental Development Consultants,



DATE: 03/14/2018 JOB: JSD-EK-01 DWG BY: KS CHK BY: SPK

AS2



SURVEYOR'S CERTIFICATION:

TO COLUMN FINANCIAL, INC., ITS SUCCESSORS OR ASSIGNS, STEWART TITLE OF NEVADA, NORTHEAST DIVISION AND DHILLON PROPERTIES LLC, A NEVADA LIMITED LIABILTY COMPANY:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS IN 2005; AND INCLUDES ITEMS 1, 2, 3, 4, 6, 7(A), 7(B)(1), 8, 9, 10, 11(A), 13 AND 14 OF TABLE A THEREOF.
PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA AND NSPS AND IN EFFECT ON THE DATE OF THIS CERTIFICATION, UNDERSIGNED FURTHER CERTIFIES THAT IN MY PROFFESIONAL OPINION, AS A LAND SURVEYOR REGISTERED IN THE STATE OF NEVADA, THE RELATIVE POSITIONAL ACCURACY OF THIS SURVEY DOES NOT EXCEED THAT WHICH IS SPECIFIED THEREIN. IN ADDITION, THE UNDERSIGNED HEREBY CERTIFIES:

THE SURVEY WAS MADE ON THE GROUND ON MAY 23, 2007, BY ME OR UNDER MY SUPERVISION AND CORRECTLY SHOWS THE METES AND BOUNDS DESCRIPTION AND THE LAND AREA OF THE SUBJECT PROPERTY, THE LOCATION AND TYPE OF ALL BUILDINGS, STRUCTURES AND OTHER IMPROVEMENTS (INCLUDING SIDEWALKS, CURBS, PARKING AREAS AND SPACES AND FENCES) SITUATED ON THE SUBJECT PROPERTY, AND ANY OTHER MATTERS SITUATED ON THE SUBJECT PROPERTY.

EXCEPT AS SHOWN ON THIS SURVEY, THERE ARE NO VISIBLE EASEMENTS OR RIGHTS OF WAY OF WHICH THE UNDERSIGNED HAS BEEN ADVISED.

EXCEPT AS SHOWN ON THIS SURVEY, THERE ARE NO PARTY WALLS AND NO OBSERVABLE, ABOVE GROUND ENCROACHMENTS (A) BY THE IMPROVEMENTS ON THE SUBJECT PROPERTY UPON ADJOINING PROPERTIES, STREETS, ALLEYS, EASEMENTS, OR RIGHTS OF WAY, OR (B) BY THE IMPROVEMENTS ON ANY ADJOINING PROPERTIES, STREETS OR ALLEYS UPON THE SUBJECT PROPERTY.

THE LOCATION OF EACH EASEMENT, RIGHT OF WAY, SERVITUDE AND OTHER MATTERS (ABOVE OF BELOW GROUND) AFFECTING THE SUBJECT PROPERTY AND LISTED IN THE TITLE INSURANCE COMMITMENT NO. 07210899. ISSUED BY STEWART TITLE OF NEVADA. NORTHEAST DIVISION, WITH RESPECT TO THE SUBJECT PROPERTY, HAS BEEN SHOWN ON THE SURVEY, TOGETHER WITH APPROPRIATE RECORDING REFERENCES, TO THE EXTENT THAT SUCH MATTERS CAN BE LOCATED. THE PROPERTY SHOWN ON THE SURVEY IS THE PROPERTY DESCRIBED IN THAT TITLE COMMITMENT. THE LOCATION OF ALL IMPROVEMENTS ON THE SUBJECT PROPERTY IS IN ACCORD WITH MINIMUM SETBACK, SIDEYARD AND REAR YARD LINES, PROVISIONS AND RESTRICTIONS OF RECORD FOR THE SUBJECT PROPERTY REFERENCED IN SUCH TITLE COMMITMENT.

THE SUBJECT PROPERTY HAS DIRECT ACCESS TO AND FROM A DULY DEDICATED AND ACCEPTED PUBLIC STREET OR HIGHWAY KNOWN AS IDAHO STREET.

EXCEPT AS SHOWN ON THE SURVEY, THE SUBJECT PROPERTY DOES NOT SERVE ANY ADJOINING PROPERTY FOR DRAINAGE, UTILITIES, STRUCTURAL SUPPORT OR INGRESS OR EGRESS.

THE RECORD DESCRIPTION OF THE SUBJECT PROPERTY FORMS A MATHEMATICALLY CLOSED FIGURE.

EXCEPT AS SHOWN ON THE SURVEY, NO PORTION OF THE PROPERTY SHOWN ON THE SURVEY LIES WITHIN A SPECIAL HAZARD AREA, AS DESCRIBED ON THE FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH THE SUBJECT PROPERTY IS LOCATED. THE SURVEY CORRECTLY INDICATES THE ZONE DESIGNATION OF ANY AREA SHOWN AS BEING IN A SPECIAL HAZARD AREA.

THE PARTIES LISTED ABOVE AND THEIR SUCCESSORS AND ASSIGNS ARE ENTITLED TO RELY ON THE SURVEY AND THIS CERTIFICATIONAS BEING TRUE AND ACCURATE.

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

EXCEPTIONS AS LISTED IN SCHEDULE B, OF TITLE COMMITMENT NO. 07210899, WITH OBSERVATIONS

(NUMBERS REFER TO NUMBERED EXCEPTIONS IN TITLE COMMITMENT)

3. AN EASEMENT AFFECTING A PORTION OF SAID LAND FOR THE PURPOSES STATED HEREIN. TOGETHER WITH INCIDENTAL RIGHTS THERETO. GRANTED TO THE STATE OF NEVADA, FOR A FLATBOTTOMED DITCH AND DIKE, RECORDED SEPTEMBER 9, 1965, IN BOOK 60, PAGE 52 OF OFFICIAL OF ELKO COUNTY, NEVADA IS SHOWN HEREON.

8. AN EASEMENT AFFECTING A PORTION OF SAID LAND FOR THE PURPOSES STATED HEREIN, TOGETHER WITH INCIDENTAL RIGHTS THERETO, GRANTED TO NEVADA POWER CO.. FOR ELECTRIC AND TELEPHONE LINES, RECORDED IN BOOK 185, PAGE 414 OF OFFICIAL RECORDS OF ELKO COUNTY, NEVADA, DOES NOT AFFECT THE SUBJECT PROPERTY AND THEREFORE IS NOT SHOWN HEREON.

10. AN EASEMENT AFFECTING A PORTION OF SAID LAND FOR THE PURPOSES STATED HEREIN, TOGETHER WITH INCIDENTAL RIGHTS THERETO, GRANTED TO SIERRA PACIFIC POWER COMPANY AND CP NATIONAL, FOR ELECTRIC DISTRIBUTION AND COMMUNICATION FACILITIES, RECORDED AUGUST 9, 1989, IN BOOK 691, PAGE 580 OF OFFICIAL OF ELKO COUNTY, NEVADA DOES NOT AFFECT

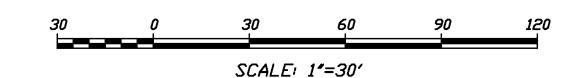
11. AN EASEMENT AFFECTING A PORTION OF SAID LAND FOR THE PURPOSES STATED HEREIN, TOGETHER WITH INCIDENTAL RIGHTS THERETO, GRANTED TO SIERRA PACIFIC POWER COMPANY AND CP NATIONAL, FOR ELECTRIC

THE SUBJECT PROPERTY AND THEREFORE IS NOT SHOWN HEREON.

DISTRIBUTION AND COMMUNICATION FACILITIES, RECORDED AUGUST 9, 1989, IN BOOK 691, PAGE 582 OF OFFICIAL OF ELKO COUNTY, NEVADA IS SHOWN HEREON.

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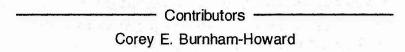
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Fair Housing—City rejects zoning application for family care residence for disabled individuals

Residents sue, arguing city's failure to reasonably accommodate disabled individuals violates Fair Housing Act



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Citation: Valencia v. City of Springfield, Illinois, 2018 WL 1095954 (7th Cir. 2018)

The Seventh Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

SEVENTH CIRCUIT (ILLINOIS) (03/01/18)—This case addressed the issue of whether residents and operators of a "family care residence," which housed disabled individuals, showed a "reasonable likelihood of success" on their claim that the city, in denying their requested conditional permitted use to operate the family care residence within 600 feet of another such facility, failed to make a reasonable accommodation for the disabled residents in violation of the federal Fair Housing Act.

The Background/Facts: Christine and Robyn Hovey (the "Hoveys") owned a single-family dwelling in a residential district in the City of Springfield (the "City"). Beginning in March 2014, the Hoveys began renting their home to three disabled individuals, who were all clients of Individual Advocacy Group, Inc. ("IAG"), a non-profit organization that provided residential services to adults with disabilities.

Under the City's zoning code (the "Code"), the residential district in which the Hoveys' home was located allowed both single-family detached residences and family care residences. The Code defined "family care residences" as a single-family dwelling unit occupied "in a family-like environment by a group of no more than six unrelated persons with disabilities, plus paid professional support staff provided by a sponsoring agency . . . , and compli[ant] with the zoning regulations for the district in which the site is located." The Code restricted family care residences to a zoning lot located "more than 600 feet from the property line of any other such facility." However, the Code allowed non-compliant family care residences to qualify for a Conditional Permitted Use ("CPU") if the family care residence: (1) would not have any adverse impact upon residents of nearby facilities; and (2) would not have any detrimental effect upon "privacy, light, or environment" of surrounding residences.

In August 2016, the City notified the Hoveys that their home was located within 600 feet of another family care residence. The Hoveys had previously been unaware that a family care residence had been operating across the street—and within 157 feet—of their home for approximately 12 years. The City informed the Hoveys that the residents of their home would be evicted unless the Hoveys applied for and received a CPU.

In October 2016, the Hoveys and IAG submitted a joint applica-

tion for a CPU. Ultimately, the City Zoning and Planning Commission denied the CPU. The City Council later affirmed that denial.

A resident of the Hoveys' house and IAG (collectively, the "Plaintiffs") then sued the City. They alleged that the City discriminated against the Hovey home residents on the basis of their disabilities in violation of the Fair Housing Act ("FHA") (42 U.S.C.A. §§ 3601-31), Americans with Disabilities Act ("ADA") (42 U.S.C.A. §§ 12101-213), and § 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794(a)).

Pursuant to the Fair Housing Amendment Act of 1988 ("FHAA"), the FHA makes it unlawful "[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap." (42 U.S.C.A. § 3604(f)(1).) Similarly, Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C.A. § 12132.) And, under the Rehabilitation Act, "[n]o otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (29 U.S.C.A. § 794(a).) Pursuant to case law, all three statutes apply to municipal zoning decision, and a plaintiff may prove a violation of the FHA, ADA, or Rehabilitation Act by showing: (1) disparate treatment; (2) disparate impact; or (3) a refusal to make a reasonable accommodation.

Here, the Plaintiffs claimed that: (1) the City Code facially discriminated against disabled individuals because it imposed a 600-foot spacing requirement on unrelated disabled persons living in family care residences, but not on unrelated non-disabled persons living in single-family dwellings; (2) even if the 600-foot spacing requirement was facially neutral, it had a disparate impact on persons with disabilities; and (3) by refusing to grant the Hovey's home a CPU, the City failed to make a reasonable accommodation. The Plaintiffs sought monetary damages and an order directing the City to grant their requested CPU and permanently refrain from treating the Hovey home as a non-conforming use under the Code.

In January 2017, the Plaintiffs moved for a preliminary injunction to enjoin the City from instituting eviction proceedings against the Hovey home residents during the pendency of the case. They limited the bases of their motion to their theories of disparate treatment and reasonable accommodation.

The City contended that the Plaintiffs' injunction should be denied because the Plaintiffs had failed to demonstrate a reasonable likelihood of success on the merits. A court will only grant a preliminary injunction after a two-party analysis, involving a threshold phase and then a balancing phase. To survive the threshold phase, a party seeking a preliminary injunction must satisfy three requirements, one of which requires a showing that "its claim has some likelihood of succeeding on the merits."

Here, the district court rejected the City's argument that the Plaintiffs failed to make such a showing. The court granted the Plaintiffs' motion for a preliminary injunction, finding that the Plaintiffs possessed a reasonable likelihood of success under both a theory of disparate treatment and a theory of reasonable accommodation.

The City appealed.

DECISION: Judgment of district court affirmed.

Focusing on the Plaintiffs' reasonable accommodation claim, the United States Court of Appeals, Seventh Circuit, held that the Plaintiffs had shown a "better than negligible" likelihood of success on the merits of their reasonable accommodation theory, and therefore were entitled to a grant of a preliminary injunction, to enjoin the City from instituting eviction proceedings against the Hovey home residents during the pendency of the case.

In so holding, the court explained that the FHA applies to municipal zoning decisions, and the FHAA "requires public entities to reasonably accommodate a disabled person by making changes in rules, policies, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled." More specifically, noted the court, "[t]he FHAA requires accommodation if such accommodation (1) is reasonable, and (2) necessary, (3) to afford a handicapped person the equal opportunity to use and enjoy a dwelling." The court explained that "[a]n accommodation is reasonable if it is both efficacious and proportional to the costs to implement it," but is unreasonable if it "imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program."

Here, the court found that the CPU sought by the Plaintiffs would afford the Hovey home residents an equal opportunity to establish a residential home. Since a community-based residential facility is often the "only means by which disabled persons can live in a residential neighborhood," the court said that "[w]hen a zoning authority refuses to reasonably accommodate these small group living fa-

cilities, it denies disabled persons an equal opportunity to live in the community of their choice." Regarding "reasonableness and necessity," the court found that the Hovey home was: "necessary to fulfill 'IAG's mission to provide residential services to disabled adults in a community-based setting' "; and "reasonable" in that "it would plainly effectuate that mission," and "would further advance the integration of disabled individuals into the [City] community." Moreover, the court found those benefits "likely outweigh[ed] the potential costs of implementation," as the court found that the financial and administrative burden on the City was "negligible" and there was insufficient evidence of intangible costs to the neighborhood.

See also: Oconomowoc Residential Programs v. City of Milwaukee, 300 F.3d 775, 13 A.D. Cas. (BNA) 681 (7th Cir. 2002).

Special Exception—Lessee of land applies for special exception to construct wireless communications tower

Opponents of tower argue that lessee is not a "landowner" and thus cannot be a zoning "applicant"

Citation: SBA Towers IX, LLC v. Unity Township Zoning Hearing Board, 2018 WL 910842 (Pa. Commw. Ct. 2018)

PENNSYLVANIA (02/16/18)—Among other things, this case addressed the issue of whether a holder of an option agreement was a "landowner" such that the entity had standing to file an application for a special exception.

The Background/Facts: Columbus Home Association ("Columbus") owned an 8.9-acre parcel of land (the "Property") in an R-1 zoning district in Unity Township (the "Township"). SBA Towers IX, LLC ("SBA Towers") entered into an Option and Land Lease Agreement ("Option Agreement") with Columbus for the lease of a 100-foot by 100-foot section of the Property, which would be used for the construction, support, and operation of a wireless com-

munications tower facility. The Township Zoning Ordinance (the "Ordinance") permitted communications towers in an R-1 zoning district by special exception, as long as the special exception applicant established criteria set forth in the Ordinance.

In January 2016, SBA Towers and Pittsburgh SMSA Limited Partnership d/b/a Verizon Wireless ("Verizon")) filed an application for a special exception to construct a 150-foot monopole communications tower on the Property. Ultimately, the Township's Zoning Hearing Board (the "ZHB") denied the special exception application.

SBA Towers appealed the ZHB's decision to the Court of Common Pleas. The Court of Common Pleas reversed the ZHB's decision, concluding that substantial evidence did not support the ZHB's findings on various issues.

Thereafter, Dr. Chris and Jill Bellicini, James and Megan McIntosh, Edward and Kathy Sobota, and Christopher and Lynn Schmauch (collectively, the "Appellants") appealed the Court of Common Pleas' order. Among other things, the Appellants argued that SBA Towers lacked standing to file the special exception application with the ZHB. Specifically, the Appellants argued that SBA Towers was not a "landowner," as defined under Section 107 of the Pennsylvania Municipalities Planning Code ("MPC"), and thus did not have standing to file zoning applications for the Property.

Section 107 of the MPC defines "applicant" as "a landowner or developer... who has filed an application for development." It defines "landowner" as "the legal or beneficial owner or owners of land including the holder of an option or contract to purchase[,]... a lessee if he is authorized under the lease to exercise the rights of the landowner, or other person having a proprietary interest in land."

In response, SBA Towers (and Verizon, which had been allowed to intervene in the appeal) argued that SBA Towers was an "applicant" under Section 107 of the MPC that had standing to file the special exception application because it was the holder of an option contract that was authorized to exercise the rights of the landowner (here, Columbus). SBA Towers and Verizon argued further that the Option Agreement in this case "explicitly grant[ed] [SBA Towers] permission to exercise the rights of the landowner" because SBA Towers was authorized to obtain the necessary governmental approvals for the construction of the proposed communications tower.

DECISION: Judgment of Court of Common Pleas reversed (on other grounds).

The Commonwealth Court of Pennsylvania concluded that SBA

Towers was "a landowner and a proper applicant under Section 107 of the MPC and, thus, had standing to file the [special exception] [a]pplication with the ZHB."

The court so concluded upon analysis of the language of the lease option agreement between SBA Towers and Columbus. The court found that, "[w]hile the Option Agreement in this case [did] not specifically provide SBA Towers with an 'exclusive easement,' the Option Agreement [did] grant SBA Towers 'the right to enter the [Property] to conduct tests and studies . . . to determine the suitability of the [Property] for [SBA Towers'] intended use.' "The court also found that the Option Agreement here required SBA Towers to "obtain any necessary governmental licenses or authorizations required for the construction and use of" the proposed communications tower. The court concluded that such language made it "clear that SBA Towers [was] more than just a potential leaseholder." Rather, the court found that the Option Agreement specifically authorized SBA Towers to exercise Columbus' rights as the owner of the Property.

The court, however, went on to determine that evidence was insufficient to establish that SBA Towers was licensed by the Federal Communications Commission ("FCC"), or that the proposed communications tower would be in compliance with FCC standards. As such, the court reversed the Court of Common Pleas' reversal of the ZHB's decision to deny SBA Towers' special exception application.

See also: Tioga Preservation Group v. Tioga County Planning Com'n, 970A.2d 1200 (Pa. Commw. Ct. 2009).

Religious Rights—Religious youth camp challenges grant of special exception to neighbor dairy operation

Camp contends grant of special exception violates its religious rights under federal and state law

Citation: House of Prayer Ministries, Inc. v. Rush County Board of Zoning Appeals, 2018 WL 414862 (Ind. Ct. App. 2018)

INDIANA (01/16/18)—This case addressed the issue of whether a

special exception to zoning ordinances was proper. Among other things, the case addressed whether a zoning board's grant of a special exception violated a religious summer youth camp's religious rights under federal and state law.

The Background/Facts: In Rush County (the "County"), Milco Dairy Farm, LLC ("Milco") sought to construct and operate a concentrated animal feeding operation ("CAFO"), which was to consist of a dairy operation maintaining 1,400 head of cattle. In furtherance of those plans, Milco filed with the County's Board of Zoning Appeals ("BZA") a petition for a special exception from the County's zoning ordinances. The BZA ultimately granted Milco's special exception, subject to various conditions of approval.

House of Prayer Ministries, Inc., d/b/a Harvest Christian Camp ("House of Prayer") owned property one-half mile downwind from Milco's proposed CAFO. On its property, House of Prayer operated a religious summer youth camp. House of Prayer objected to Milco's special exception request. House of Prayer argued that the 17.4 million gallons of waste produced by the CAFO, which was to be stored on Milco's property in open-air lagoons, would be "dangerous to attendees at House of Prayer's events and that the prevailing winds in the area would make the CAFO both a nuisance to House of Prayer and a risk to its attendees." House of Prayer also asserted that the construction of the CAFO would diminish the property value of House of Prayer's property.

House of Prayer appealed the BZA's decision that granted the special exception to Milco. House of Prayer alleged that the BZA, in issuing the special exception, failed to properly: evaluate the public interest; consider the impact on surrounding properties; and consider setback requirements. House of Prayer also alleged that the BZA's decision to grant the special exception to Milco violated House of Prayer's religious rights under the federal Religious Land Use and Institutionalized Persons Act ("RLUIPA") (42 U.S.C.A. §§ 2000cc to 2000cc-5), Indiana's Religious Freedom Restoration Act ("RFRA") (Ind. Code§§ 34-13-9-1 to -11), and/or Article 1, Sections 2 and 3 of the Indiana Constitution.

The circuit court denied House of Prayer's petition for judicial review and request for declaratory judgment.

House of Prayer appealed.

DECISION: Judgment of Circuit Court affirmed.

The Court of Appeals of Indiana held that the BZA had properly issued the special exception to Milco, and, in doing so, had not violated House of Prayer's religious rights under federal or state law.

Pursuant to the County's zoning ordinance, the BZA, when determining whether to issue the special exception, was required to, among other things: (1) conclude that the special exception would not adversely affect the public interest; (2) consider the impact on other property owners; and (3) properly consider setback requirements, including a one-mile setback of CAFO's from schools. Contrary to House of Prayer's assertions, the appellate court determined that the BZA had properly applied those considerations when it issued the special exception to Milco. Specifically, the court concluded that: (1) the BZA had properly considered the affect of the CAFO on the public interest, and had applied conditions on the special exception approval to ensure that the CAFO would not adversely affect the public interest; (2) the BZA had properly considered the impact on other property owners, and had determined that the CAFO use was compatible with the adjacent properties in the agricultural zoning district; and (3) the BZA did not err when it permitted Milco's CAFO to be located one-half mile, rather than one full mile, from House of Prayer's property because the BZA's determination that the House of Prayer's youth summer camp was not a "school" within the ordinance was not an interpretation that was inconsistent with or contrary to the ordinance itself.

In rejecting House of Prayer's claims that the BZA's grant of the special exception violated House of Prayer's religious rights under federal and state laws, the appellate court addressed each of those laws in turn.

The court explained that the federal RLUIPA provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden" is both "in furtherance of a compelling government interest" and "the least restrictive means of furthering that compelling government interest." (42 U.S.C.A. § 2000cc(a)(1).) RLUIPA further provides that "[n]o government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." (42 U.S.C.A. § 2000cc(b)(1).) RLUIPA defines a "land use regulation" in relevant part as "a zoning . . . law, or the application of such a law, that limits or restricts a claimant's use . . . of land . . . , if the claimant has . . . [a] property interest in the regulated land " (42 U.S.C.A. § 2000cc-5(5).)

House of Prayer had asserted that the BZA's decision to grant the special exception to Milco was a "substantial burden" on House of

Prayer's religious exercise in violation of RLUIPA because it "imperiled the health of the children" at House of Prayer's religious youth summer camp. The court disagreed. It held that RLUIPA did not apply to House of Prayer here because House of Prayer did not have "a property interest in the regulated land." The court noted that RLUIPA applies to land use regulations imposed by a government directly on religious groups, and explained that the land regulated by special exception here was wholly owned by Milco. Since House of Prayer had no property interest in the land being regulated, it could not rely on RLUIPA held the court.

House of Prayer had asserted that "regulated land" in RLUIPA meant any land that was "affected" by a regulation, even if the regulation was specifically direct to land in which the claimant (such as House of Prayer, here) has no interest. As a matter of first impression (i.e., the first time Indiana courts ruled on the issue), the court rejected such an interpretation that RLUIPA was "available to any property owner whose interests might be affected by a given regulation," concluding instead that RLUIPA is only available to claimants who have a property interest in the land that is being regulated.

Further, the court explained that, similar to RLUIPA, Indiana's RFRA (Ind. Code §§ 34-13-9-1 to -11), as well as Article 1, Sections 2 and 3 of the Indiana Constitution, prohibited a governmental entity from substantially burdening religious exercise. The court found that, here, substantial evidence supported the BZA's conclusion that the House of Prayer would not be substantially burdened in the exercise of its religion by the grant of the special exception. Accordingly, the court concluded that House of Prayer's claims under RFRA and the Indiana Constitution failed.

Zoning News from Around the Nation

MARYLAND

Montgomery County is considering amendment zoning laws to support community solar installations. The proposed zoning text amendment would allow community solar energy installations with a capacity of up to 2 Megawatts. Currently, Montgomery County's zoning code restricts solar projects to a limited use in nearly all zones and limits solar energy production to 120% of on-site energy consumption.

Source: Solar Industry; https://solarindustrymag.com

MASSACHUSETTS

Worcester City Manager Edward M. Augustus Jr. reportedly "wants to ban recreational marijuana retail stores, cultivators, manufacturers and related establishments from all residential-zoned areas and preclude them from being located within 500 feet of schools, public parks, playgrounds, licensed day care centers and public libraries." Augustus has proposed zoning amendments that would allow recreational marijuana establishments only by special permit in areas zoned for manufacturing and business uses, as well as in Institutional-Hospital zones and in the Airport zone. Municipalities are moving forward on marijuana-related zoning regulations as Massachusetts' Cannabis Control Commission is scheduled to begin accepting applications for recreational marijuana establishments on April 1.

Source: Worcester Telegram; www.telegram.com

NEW JERSEY

The City of Woodbury's City Council has "unanimously approved" making permanent what had been a two-year pilot program, allowing property owners to keep chickens. Under the new ordinance, property owners must pay a \$10 annual license fee and can keep up to 12 hens. The ordinance also continues a Chicken Advisory Board to ensure chicken owners comply with the ordinance.

Source: NJ.com; www.nj.com



Zoning Bulletin

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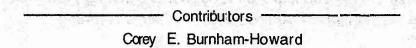
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Variance—Board of zoning appeals denies variance request for wind turbines

Variance applicant argues board erred when determining variance eligibility

Citation: Dan's Mountain Wind Force, LLC v. Allegany County Board of Zoning Appeals, 2018 WL 774760 (Md. Ct. Spec. App. 2018)



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MARYLAND (02/05/18)—This case addressed the issue of whether a board of zoning appeals properly applied the uniqueness test or the practical hardship test in determining an applicant's eligibility for a variance.

The Background/Facts: Dan's Mountain Wind Force, LLC ("Wind Force") sought to construct 17 wind turbines and an electrical substation on leased property on "Dan's Mountain" in Allegany County (the "County"). The County Code permitted wind turbines as a special exception in the zoning district in which the project was proposed. However, because the proposed sites of some of the turbines were within code-specified setback or separation distances, or both, Wind Force sought variances. Wind Force enlisted the support of the neighboring property owners, who joined Wind Force as co-applicants. In total, the County Board of Zoning Appeals (the "BZA") would have had to review and grant 26 separate variances "to get the wind turbine project in line with the existing zoning code."

Under Maryland law, a variance should be granted if: (1) "the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property;" and (2) practical difficulty or unnecessary hardship would result "from the disproportionate impact of the ordinance caused by the property's uniqueness."

Here, Wind Force maintained that there were many factors that limited the specific locations on which the turbines could be placed, including: topography; property boundaries; proximity of other dwellings; stream channels; wildlife habitats; wetlands; prior strip mining activity; communication beam paths passing over and through properties; and technical specifications of wind turbines. Wind Force contended that due to these various constraints, the wind turbines had to be placed in specific locations, necessitating variances from the County Code's minimum distance and setback requirements.

The BZA disagreed, and denied the variance requests. The BZA found that Wind Force had "failed to establish that the subject properties were sufficiently unique as to each other as to warrant a variance," and "failed to demonstrate that the multiple number of variances requested were in harmony with the spirit and intent of the zoning regulations."

Wind Force appealed (consolidating its appeals into a single petition for judicial review).

The circuit court affirmed, and Wind Force again appealed. On appeal, Wind Force argued that the BZA did not properly apply the uniqueness test or the practical hardship test when determining Wind Force's eligibility for a variance.

DECISION: Judgment of circuit court reversed, and matter remanded.

The Court of Special Appeals of Maryland agreed with Wind Force and held that the BZA did not properly apply the uniqueness test or the practical hardship test when determining Wind Force's eligibility for a variance.

In finding that the BZA used the "incorrect uniqueness analysis," the court noted that the BZA had "found that all of the co-applicant properties were similar to each other, and thus, not unique." The court stated that a proper uniqueness analysis "examines the unusual characteristics of a specific property in relation to the other properties in the area, and the nexus between those unusual characteristics and the application of the aspect of the zoning law from which relief is sought." The court emphasized that the purpose of the uniqueness test was to determine whether a "zoning law's effect on a property is particularized to that given property." Thus, the proper uniqueness analysis determines "whether the property is unique in the way that this particular aspect of the zoning code applies to it," said the court.

Here, the court found that the Board erred in its analysis because it: (1) failed to properly identify each applicant property's unusual characteristics, and then only compared co-applicant properties to each other and not surrounding properties; (2) failed to look at the nexus component and how the zoning law affected the subject property; and (3) addressed all of the co-applicant properties collectively, generalizing the properties in such a way as to negate the purpose of the uniqueness analysis.

In remanding the analysis back to the BZA, the court directed the proper analysis, saying that the BZA must "for each property, each factor, and each application": (1) first, determine "whether the unusual factors identified by the applicant are indeed, features of that particular property"; (2) then determine "whether those factors have a nexus with the aspect of the zoning law from which a variance is sought"; and (3) then "look at the ways in which those factors, together, affect the property, and whether that effect is unique as compared to similarly situated properties."

With regard to the "practical hardship" test of the variance analysis, the court found that the BZA had applied the wrong standard. The court explained that the second step of the variance test examines whether the "disproportionate effect of the ordinance, caused by the uniqueness of the property, creates practical difficulty for or unnecessary hardship on the owner of the property." The court further explained that there are two different standards that can be applied when determining hardship: (1) "a more lenient 'practical difficulty' test," which applies to area variances; or (2) "a more stringent 'unnecessary hardship' test,"

which applies to use variances. The court found that the BZA had incorrectly applied the more stringent "unnecessary hardship" test. Since Wind Force was requesting area variances, the BZA should have reviewed the requests under the more lenient "practical difficulty" standard, said the court.

See also: Cromwell v. Ward, 102 Md. App. 691, 651 A.2d 424 (1995).

See also: Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore County, 407 Md. 53, 962 A.2d 404 (2008).

See also: Montgomery County v. Rotwein, 169 Md. App. 716, 906 A.2d 959 (2006).

Case Note:

In its decision, the appellate court found it "clear that Wind Force adduced evidence of several features of each of the co-applicant properties that suggest[ed] that the separation and setback requirements operate differently on each of those properties than they operated on other surrounding properties." The court, however, declined to rule on the merits, instead remanding the task for the BZA.

Preemption/Pipeline—Opponents say pipeline construction in residential districts in township violate township's zoning ordinance

Pipeline developer argues Pennsylvania's Public Utility Code preempts township's zoning ordinance

Citation: Delaware Riverkeeper Network v. Sunoco Pipeline L.P., 2018 WL 943041 (Pa. Commw. Ct. 2018)

PENNSYLVANIA (02/20/18)—This case addressed the issue of whether a municipal zoning ordinance that prohibited natural gas pipeline construction in residential districts was preempted by Pennsylvania's Public Utility Code.

The Background/Facts: In 2012, Sunoco Pipeline, L.P. ("Sunoco") announced its intent to develop an integrated pipeline system for

transporting petroleum products and natural gas liquids ("NGLs") such as propane, ethane, and butane from the Marcellus and Utica Shales in Pennsylvania, West Virginia, and Ohio to the Marcus Hook Industrial Complex ("MHIC") and points in between. Sunoco's goal for this project—known as the Mariner East Project—was "to move NGLs from the Marcellus and Utica Shales through and within the Commonwealth, and to provide take away capacity for the Marcellus and Utica Shale plays and the flexibility to reach various commercial markets, using pipeline and terminal infrastructure within the Commonwealth."

Sunoco's Mariner East Project had two phases. The first phase, referred to as Mariner East 1 ("ME1") was completed and utilized Sunoco's existing pipeline infrastructure, plus a 51-mile extension. It shipped 70,000 barrels per day of NGLs from the Marcellus Shale basin to the MHIC. After Marcellus and Utica Shale producers and shippers expressed a "need for additional capacity to transport more than the 70,000 barrels of NGLs per day being transported by ME1," Sunoco undertook to expand the Mariner East Project capacity and developed phase two of the Mariner East Project, known as Mariner East 2 ("ME2"). ME2 required construction of a new 351-mile pipeline, which would largely trace the ME1 pipeline route, and which would be, with a few exceptions, primarily below ground level.

For the Mariner East Project, Sunoco sought and obtained from the Pennsylvania Public Utility Commission ("PUC") the approval to provide intrastate service on the ME1 and ME2 pipelines. PUC confirmed that Sunoco was a public utility corporation subject to PUC regulation, and PUC recognized the service provided by the ME1 and ME2 pipelines as a "public utility service." Pursuant to PUC orders, Sunoco obtained Certificates of Public Convenience ("CPCs") that authorized Sunoco "as a public utility to transport, as a public utility service, petroleum and refined petroleum products both east to west and west to east in the following Pennsylvania counties through which the Mariner East Project [was] located: Allegheny, Westmoreland, Indiana, Cambria, Blair, Huntingdon, Juniata, Perry, Cumberland, York, Dauphin, Lebanon, Lancaster, Berks, Chester, and Delaware." Sunoco's CPCs applied to both ME1 service and to ME2 service, as the ME2 service was an authorized expansion of the same service.

In 2014, the West Goshen Township (the "Township") enacted a zoning ordinance (the "2014 Ordinance"), regulating the location and setbacks for gas and liquid pipeline facilities. Among other things, the 2014 Ordinance prohibited gas and liquid pipeline facilities in residential zoning districts, and allowed such facilities only in certain industrial zones by conditional use and subject to several enumerated standards.

In May 2017, the Delaware Riverkeeper Network, Maya van Rossum, the Delaware Riverkeeper, and residential landowners Thomas

Casey and Eric Grote (collectively, the "Opponents") filed a complaint in trial court, which alleged that Sunoco's proposed ME2 pipeline, which was planned to run through the Township, including through residential zoning districts, violated the Township's 2014 Ordinance.

Sunoco responded, arguing that the PUC had exclusive jurisdiction over the regulation of public utilities and public utility service—such as Sunoco's ME2 pipeline, here, and that Pennsylvania's Public Utility Code preempted the Township's 2014 Ordinance.

Agreeing with Sunoco, the trial court held that the Township's power to regulate the location of the ME2 pipeline was preempted by the PUC's authority under the Public Utility Code.

The Opponents appealed. Among other things, the Opponents argued that there was no conflict between the Township's 2014 Ordinance and the Public Utility Code because the PUC did not have any regulations governing pipeline location.

DECISION: Judgment of Court of Common Pleas affirmed.

The Commonwealth Court of Pennsylvania held that the PUC's authority under the Public Utility Code preempted and precluded the Township's 2014 Ordinance from prohibiting the ME2 pipeline in the Township's residential districts.

In so holding, the court explained that there are "three generally recognized forms of preemption: (1) express or explicit preemption, where the statute includes a preemption clause, the language of which specifically bars local authorities from acting on a specific subject matter; (2) conflict preemption, where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute; and (3) field preemption, where analysis of the entire statute reveals the General Assembly's implicit intent to occupy the field completely and to permit no local enactments".

Here, the court found there was no express preemption provision in the Public Utility Code. However, upon "careful review" of the Public Utility Code, the court concluded that Pennsylvania's General Assembly "intended the PUC to occupy the field of public utility regulation, in the absence of an express grant of authority to the contrary." (See 66 Pa. C.S. §§ 309, 315, 331, 504, 505, 506, 701, 1501, 1504, 1505).

Despite concluding there was field preemption here, the court also went on to conclude that "conflict preemption also support[ed] the trial court's decision as to preemption [of the Township 2014 Ordinance] by the Public Utility Code." The court explained how conflict preemption may be applicable, including that "a local ordinance will be invalidated if it stands as an obstacle to the execution of the full purposes and objectives of a statutory enactment of the General Assembly."

Here, the court found that the Township's 2014 Ordinance was such an obstacle to the execution of the full purpose of the Public Utility Code. The court explained that the policy purpose of state-wide regulation under the Public Utility Code was "to commit the regulation of public utility facilities to a state-wide commission, the PUC, because the rendition of efficient service to the public transcends the legitimate objectives of any one of the political subdivisions of the Commonwealth." In addition to the policy conflict of state-wide regulation versus local regulation of public utility services and facilities, the court noted that there was a "practical conflict" here as well: the 2014 Ordinance, prohibiting pipelines in residential zones, including the proposed ME2 pipeline, which paralleled and was mostly within the existing right of way of the ME1 pipeline, thus conflicted with full use of a pre-existing pipeline right of way.

In reaching its conclusion as to conflict preemption of the Township 2014 Ordinance, the court rejected the Opponents' argument that there was no conflict since the PUC did not have any regulations governing pipeline location. The court found it "irrelevant" that the PUC had no regulations covering pipeline siting. Rather, the court found that the PUC also exercised its authority in orders, such as those orders it had issued that governed the ME2 pipeline. Moreover, the court noted that the PUC regulates the intrastate shipment of natural gas and petroleum products through pipelines, though not the actual physical pipelines conveying those liquids. In regulating such pipeline transportation services, the court found that the PUC determined whether Sunoco's service and facilities were "unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of the Public Utility Code. 66 Pa. C.S. §§ 701 (entitled 'Complaints'), 1505(a) (entitled 'Proper service and facilities established on complaint')."

See also: Duquesne Light Co. v. Borough of Monroeville, 449 Pa. 573, 298 A.2d 252, 98 Pub. Util. Rep. 3d (PUR) 97 (1972).

Case Note:

The Opponents had also alleged that the Township's duties to protect the public natural resources, as embodied under the Environmental Rights Amendment ("ERA") to the Pennsylvania Constitution, defeated preemption of the Township's 2014 Ordinance. The court rejected that argument, noting that it failed to address how the 2014 Ordinance impacted laws involving the regulation of public utilities or how the 2014 Ordinance furthered Township duties under the ERA or how the 2014 Ordinance related to conserving public natural resources, especially when the ME2 pipeline would be placed in or near the pre-existing ME1 pipeline right of way.

Case Note:

The Opponents had further alleged that Sunoco's violation of the 2014 Ordinance was a violation of the Opponents' substantive due process rights because it rendered the zoning districts "irrational" and "unconstitutional." The court rejected this argument as "not viable" since the Opponents were not challenging a legislative enactment but rather Sunoco's decision not to comply with the 2014 Ordinance.

Standing—Homeowners' Associations challenge rezoning ordinance

City argues Associations lack standing to bring legal action because such action was not properly authorized under the Associations' corporate bylaws

Citation: Willowmere Community Association, Inc. v. City of Charlotte, 809 S.E.2d 558 (N.C. 2018)

NORTH CAROLINA (03/02/18)—This case addressed the issue of whether homeowners' associations had standing to bring an action challenging the rezoning of abutting properties. More specifically it addressed, as a matter of first impression (i.e., the first time North Carolina courts addressed the issue), whether homeowners' associations that failed to strictly comply with their corporate bylaws in deciding to initiate legal actions therefore lacked standing to bring the legal challenges.

The Background/Facts: Willowmere Community Association, Inc. ("Willowmere") and Nottingham Owners Association, Inc. ("Nottingham") (collectively, the "Associations") are non-profit corporations that represent homeowners in residential communities in the City of Charlotte (the "City"). In March 2014, the Associations instituted a legal action, challenging a City zoning ordinance that rezoned parcels of land to allow multifamily housing. The rezoned land abutted property owned by the Associations.

In response to the Associations' legal action, the City argued that the Associations lacked standing (i.e., the legal right to bring the action) because each association had failed to comply with various provisions in their corporate bylaws when their respective boards decided to initi-

ate the litigation. The City pointed to evidence that neither Willowmere nor Nottingham explicitly authorized filing the legal action during a meeting with a quorum of directors present, either in person or by telephone.

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the trial court granted summary judgment in favor of the City. The trial court agreed with the City that the Associations lacked standing because each had failed to comply with their corporate bylaws when bringing the lawsuit.

The Associations appealed, and the Court of Appeals affirmed.

The Associations again appealed.

DECISION: Judgment of Court of Appeals reversed, and matter remanded.

The Supreme Court of North Carolina held that the homeowners' Associations had standing to bring the legal action, which challenged a City ordinance that rezoned parcels abutting land owned by the Associations. As a matter of first impression (i.e., the first time addressing the legal issue), the court held that the Associations were not, in order to have standing, required to affirmatively plead, or prove, their compliance with their corporate bylaws and internal rules relating to their decision to initiate the action.

In so holding the court explained that the North Carolina Constitution confers standing on those who suffer an injury in their "lands, goods, person, or reputation." The court also explained that legal entities other than natural persons—such as associations—may also have standing if the association or one of its members suffers some immediate or threatened injury. Specifically, associations must meet certain elements to having standing: (1) "its members would otherwise have standing to sue in their own right"; (2) "the interests it seeks to protect are germane to the organization's purpose"; and (3) "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

Here, the court found that there was no dispute as to whether the Associations had met the elements of associational standing. Instead, the City had contended that by failing to follow their corporate bylaws, the Associations' boards of directors "had no authority to act on behalf of [the Associations] in filing and prosecuting this lawsuit."

The Supreme Court of North Carolina rejected the idea that a stranger to the Associations (i.e., here, the City) could assert that the Associations' failures to abide by their own bylaws necessitated dismissal of the Associations' legal complaint for lack of standing. Moreover, the court found no evidence that any member of either association opposed the association's prosecution of the lawsuit. Even if a

member of one of the Associations disagreed with the decision to file suit, "the proper vehicle to challenge the association's failure to comply with its respective bylaws in making that decision [would be] a suit against the nonprofit corporation brought by the aggrieved member or members of the association or, in certain circumstances, a derivative action," said the court. Otherwise, held the court, there was no requirement to standing that the Associations affirmatively plead, or prove, their compliance with their corporate bylaws to bring the legal action.

Accordingly, the court concluded that "despite [the Associations'] failure to strictly comply with their respective bylaws and internal governance procedures in their decision to initiate this suit, they none-theless "possess a 'sufficient stake in an otherwise justiciable controversy' to confer jurisdiction on the trial court to adjudicate this legal dispute."

See also: Peninsula Property Owners Ass'n, Inc. v. Crescent Resources, LLC, 171 N.C. App. 89, 95-97, 614 S.E.2d 351 (2005).

See also: Lake Forest Master Community Ass'n, Inc. v. Orlando Lake Forest Joint Venture, 10 So. 3d 1187 (Fla. 5th DCA 2009) (concluding that a specific Florida statute requiring the approval of a majority of members of a homeowners' association entitled to vote before initiating any litigation involving amounts in controversy over \$100,000 was for the protection of members and could not be asserted as an affirmative defense to suit by a non-member defendant), Orlando Lake Forest Joint Venture v. Lake Forest Master Community Ass'n, Inc., 23 So. 3d 1182 (Fla. 2009); Little Canada Charity Bingo Hall Ass'n v. Movers Warehouse, Inc., 498 N.W.2d 22, 24 (Minn. Ct. App. 1993) ("[A] third party has no power to challenge corporate action based on [a violation of the entity's bylaws].")

Zoning News from Around the Nation

CALIFORNIA

State Senator Scott Wiener has introduced a bill—SB 827—which would "override city zoning restrictions to encourage housing development near transit hubs." Wiener and proponents of the bill maintain that it will "mitigate California's housing crisis and offset sprawl." Those opposed to the bill are concerned it will "relinquish local zoning authority to the state."

Source: KQED; www.kqed.org

HAWAII

The Hawaii County Council has failed to advance a bill that would have amended the zoning code to provide a 75-foot buffer zone between rooster farms and neighboring properties. Opponents of the bill reportedly argued that it would have infringed on rural lifestyles. Supporters of the bill were neighbors of large rooster farms who claimed their life and health were being impacted by the noise of the rooster farms.

Source: US News; www.usnews.com

OHIO

New Philadelphia is considering a proposed ordinance that would regulate wind turbines, including, among other things, by requiring a "one and half times the height setback" for wind turbines. The ordinance is reportedly aimed at protecting the public safety.

Source: WKSU; http://wksu.org



Zoning Bulletin

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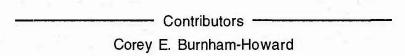
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Preemption/Marijuana—County ordinance bans the retail sale of marijuana

Marijuana retail license holder claims ordinance is preempted by state law legalizing and licensing marijuana sales

Citation: Emerald Enterprises, LLC v. Clark County, 413 P.3d 92 (Wash. Ct. App. Div. 2 2018)



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WASHINGTON (03/13/18)—This case addressed the issue of whether a Washington municipality could lawfully ban the retail sale of marijuana, or whether such a ban was preempted by Washington law legalizing the sale of recreational marijuana and creating a regulatory state marijuana retail licensing system.

The Background/Facts: In November 2012, Washington voters approved an initiative legalizing recreational marijuana. In 2014, the state Legislature codified that initiative within Washington's Uniform Controlled Substances Act ("UCSA"). As amended, the UCSA "legalized the limited production, processing, and sale of recreational marijuana to persons twenty-one years and older." It also created a regulatory state licensing system through the Washington State Liquor and Cannabis Board (the "Board"). (See Former RCW 69.50.325-.369 (2014).) The Board then adopted rules governing marijuana sales and establishing the application requirements for marijuana retailer licenses. (See Former WAC 314-55-015 to - 050, -079, -081 (2014).)

In May 2014, Clark County (the "County") passed an ordinance (the "Ordinance"), which banned the retail sale of recreational marijuana within unincorporated Clark County.

Notwithstanding the Ordinance, Emerald Enterprises, LLC ("Emerald") applied to the Board for a retail license to sell marijuana in the unincorporated area of Clark County. The Board issued Emerald's license for retail sale of recreational marijuana. A year later, Emerald applied to the County for a building permit for "[g]eneral retail," and the County issued the building permit to Emerald. In December 2015, Emerald began selling marijuana in the County. When the County became aware of Emerald's activities, it ordered Emerald to cease all sales of marijuana and marijuana products as such activities were in violation of the Ordinance. The County also revoked Emerald's building permit.

Emerald appealed the County's enforcement actions to the County Hearing Examiner (the "Examiner"). The Examiner ruled in favor of the County, finding that Emerald sold marijuana in violation of the Ordinance, and had obtained its building permit based on misrepresentation.

Emerald appealed to the Superior Court, which affirmed the Examiner.

Emerald again appealed. On appeal, Emerald argued that the Ordinance violated article XI, Section 11 of the Washington Constitution because it "irreconcilably conflict[ed] with the UCSA." Article XI, section 11 provides: "Any county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." In addition, Emerald contended that the Ordinance was either expressly or impliedly preempted by the UCSA.

DECISION: Judgment of Superior Court affirmed.

The Court of Appeals of Washington, Division 2, held that the County Ordinance was not preempted by the UCSA, and that the County retained its zoning authority to ban retail marijuana sales within unincorporated areas of Clark County.

In so holding, the court explained that, under article XI, section 11 of the Washington Constitution, counties could "make and enforce all regulations that do not conflict with state law." Thus, the court presumed that the County had the regulatory authority to enact the Ordinance, and that Ordinance was valid unless preempted. The court explained that the Ordinance would be preempted by the UCSA, and inconsistent with article XI, section 11, if the Ordinance either: "prohibit[ed] what the state law permit[ed]"; "thwart[ed] the legislative purpose of the statutory scheme"; or "exercise[d] power that the statutory scheme did not confer on local governments." The court found that the Ordinance did not conflict with the UCSA under any of those reasons.

The court found that the Ordinance did not prohibit what the UCSA permitted. The UCSA permitted the retail sale of marijuana, but did not grant retailers an affirmative right to sell marijuana, said the court. Moreover, the court found that nothing in the UCSA stated that a county could not prohibit retail recreational marijuana sales. The court further found that while the UCSA authorized the Board to designate the maximum number of retail marijuana sales licenses in each county, the UCSA did not set a minimum number. Moreover, the court noted that the Board's regulations explicitly provided that a marijuana retail license shall not be construed as "a license for, or an approval of, any violations . . . of zoning ordinances." (WAC 314-55-020(15).) In short, the court concluded that the UCSA did not create a right to engage in retail marijuana sales in the County (which was the activity prohibited by the Ordinance).

The Court also found that the Ordinance did not "thwart the legislative purpose" of the UCSA. The court found that the purpose of the UCSA was to "allow[] and regulate[] the sale of marijuana." Since there was no mandate under the UCSA to "maximize or encourage sales," the Ordinance's ban on marijuana sales did not frustrate such a mandate, concluded the court.

Moreover, the court found that subsequent amendments to the UCSA "strongly indicate[d] that the legislature intended to preserve the right of local governments to ban retail [marijuana] stores." Such amendments recognized that local jurisdictions might ban the retail sales of marijuana, and encouraged local governments to allow marijuana sales by providing a share of marijuana excise tax revenues to those local governments that allowed retail sales of marijuana. Thus the court found that, "[b]y expressly contemplating that local jurisdictions can 'prohibit

the siting of any state licensed marijuana . . . retailer," the UCSA "acknowledge[d] that local governments retain zoning authority over retail locations."

In finding that, with the Ordinance, the County did not exercise unauthorized power, the court concluded that the UCSA did not specifically remove the County's exclusionary zoning authority. The court found that the regulatory powers the UCSA delegated to the Board did not include nor preclude local governments' zoning authority. Thus, the court concluded that "the Ordinance [did] not conflict with state marijuana laws by exercising authority delegated to the Board."

Finally, the court also concluded that the UCSA did not expressly or impliedly preempt the Ordinance. The court found that the only express preemption provided in the UCSA applied to criminal violations of the UCSA. Further, the court found that Emerald "fail[ed] to show that the UCSA impliedly strips the County of its ability to exercise police power through zoning regulation." Moreover, the court found that while the UCSA empowered the Board to "influence the location of marijuana retail outlets" through determining the maximum number of retail locations in a jurisdiction and having the "final say" in retail licensing, the UCSA did not give the Board authority to determine where a store could be located within a given jurisdiction. In sum, the court held that because state law did not explicitly or impliedly occupy the entire field of retail marijuana sales, the County retained its zoning authority.

See also: Lawson v. City of Pasco, 168 Wash. 2d 675, 230 P.3d 1038 (2010) (finding a city ordinance was not preempted by Washington's Mobile Home Landlord Tenant Act).

See also: Weden v. San Juan County, 135 Wash. 2d 678, 958 P.2d 273 (1998) (finding a local ordinance prohibiting the operation of personal watercraft on all marine waters was not preempted by state vessel registration laws).

Nonconforming Use/Marijuana— City orders medical marijuana collective operation to cease as a use not permitted under city code

Collective argues its use is permitted as an allowed "medical office" under the code

Citation: J. Arthur Properties, II, LLC v. City of San Jose, 230 Cal. Rptr. 3d 365 (Cal. App. 6th Dist. 2018)

CALIFORNIA (03/19/18)—This case addressed the issue of whether a medical marijuana collective was a "medical office" as permitted in the relevant zoning district by the municipal zoning ordinance.

The Background/Facts: J. Arthur Properties, II, LLC owned property in a Commercial Office zoning district in the City of San Jose (the "City"). SV Care leased that property, and since 2010 operated a medical marijuana collective at the property. In 2010, the City's Municipal Code (the "Code") did not list medical marijuana collective or any other marijuana-specific uses in the table of permitted uses in the Commercial Office zone. "Medical offices," however, were on the list of permitted uses in the Commercial Office zone. Starting in 2014, "medical marijuana collective" was allowed as a restricted use in certain industrial zoning areas in the City, however, it still was not permitted in the Commercial Office zone.

In 2014, J. Arthur Properties, II, LLC, and SV Care (collectively, the "Plaintiffs") received from the City a compliance order stating that their medical marijuana collective was never allowed in the Commercial Office zone and was in violation of the Code. The Plaintiffs disputed the compliance order to a City hearing officer. They argued that their medical marijuana collective was a legal nonconforming use because it met the definition of "medical office," which was a permissible use when the collective opened.

The hearing officer upheld the compliance order.

The Plaintiffs then appealed to the City's Appeals Hearing Board, which also upheld the compliance order.

The Plaintiffs then petitioned the trial court. Again, they argued that the medical marijuana collective was a legal nonconforming use because it met the definition of a "medical office," which, under the Code, was permitted in the Commercial Office zone at the time the col-

lective opened. They also argued that, in any case, the City should be estopped from enforcing the Code against them because the City had collected a marijuana business tax from the Plaintiffs.

The trial court denied the Plaintiffs' petition.

The Plaintiffs appealed.

DECISION: Judgment of Superior Court affirmed.

The Court of Appeal, Sixth District, California, upheld the City's compliance order against the Plaintiffs, concluding that the Plaintiffs' medical marijuana collective was not a "medical office" as permitted by the Code in the Commercial Office zone and was thus not a permitted use in the Commercial Zone. The court also concluded that the City was not estopped from enforcing the Code against the Plaintiffs.

In determining whether the medical marijuana collective qualified as a "medical office," as the Plaintiffs had argued, the court looked to the language of the City Code. The Code defined a medical office as "offices of doctors, dentists, chiropractors, physical therapists, acupuncturists, optometrists and other similar health related occupations, where patients visit on a daily basis." The Plaintiffs had argued that a medical marijuana collective was a "medical office" because it was a "health-related occupation," and because "medical marijuana collectives provide a medical and health-related service." The City, on the other hand, had argued that, unlike the specifically enumerated professions in the Code's definition of "medical office," a medical marijuana collective had neither physicians nor patients.

Acknowledging that the definition of "medical office" was "reasonably susceptible of both proffered interpretations," the court agreed with the City that a medical marijuana collective is not a "medical office" under the Municipal Code. The court found that a medical marijuana collective did not fall within any of the specifically listed occupations in the Code's definition of "medical office." The court also concluded that a medical marijuana collective was not a "similar health related occupation" to qualify as a "medical office" under the Code given that medical marijuana collectives do not have doctors or similar health care professionals on site treating patients as did all the examples of "medical offices" listed in the Code. Moreover, the court noted that none of the listed occupations in the Code's "medical office" definition provided a good or service that was illegal under federal law—as was medical marijuana collectives. (See 21 U.S.C.A. §§ 812(b)-(c), 841-844.) Further, noting its inclination to give deference to the City on its interpretation of its Code, the court found that the City "consistently interpreted the medical office category to exclude medical marijuana collectives." Thus, the court concluded that because the Plaintiffs' medical marijuana collective was not a permitted ("medical office") use when it opened, it could not be a legal nonconforming use now.

Also addressing the Plaintiffs' equitable estoppel argument, the court explained that to trigger the doctrine of equitable estoppel, the Plaintiffs had to show: "(1) the City knew that medical marijuana collectives were an impermissible use; (2) the City intended, by delaying enforcement and collecting marijuana business taxes, to induce [the P]laintiffs into operating a medical marijuana collective (or acted in a manner entitling [the P]laintiffs to perceive such an intent); (3) [the P]laintiffs did not know that medical marijuana collectives were unauthorized; (4) [the P]laintiffs detrimentally relied on the City's conduct; and (5) the injustice that would result from a failure to estop the City [was] so great that it outweigh[ed] the effect the estoppel would have on public policy or the public interest."

Here, the court found that the Plaintiffs failed to make such a showing. First, the court concluded that the Plaintiffs' reliance on delayed enforcement and on payment of taxes was not reasonable. The court found that the Plaintiffs had been on notice from a City inspector since 2010 that their medical marijuana collective might not be a permissible land use. The fact that it took the City multiple years to enforce the law, did not estop the City from subsequently enforcing it, said the court. Moreover, the court concluded that in light of express disclaimers in the Municipal Code and on the medical marijuana business tax certificate, the Plaintiffs' reliance on paying required business taxes as authorization to operate a medical marijuana collective was "unreasonable as a matter of law." Finally, the court found that enforcement of the Code against the Plaintiffs—resulting in an inability to operate a medical marijuana collective at the property in the Commercial Office zone—would only result in "minimal" economic hardships of relocating the collective and reletting the property. Such "minimal hardship" was outweighed by the public policy interests of eliminating nonconforming uses and of maintaining City control over the location of medical marijuana collectives, and thus equitable estoppel was not warranted, concluded the court.

See also: Feduniak v. California Coastal Com'n, 148 Cal. App. 4th 1346, 56 Cal. Rptr. 3d 591 (6th Dist. 2007).

See also: Schafer v. City of Los Angeles, 237 Cal. App. 4th 1250, 188 Cal. Rptr. 3d 655 (2d Dist. 2015).

Nonconforming Use—City claims addition of structures and expansion of homes within mobile home park amounts to an illegal expansion of a nonconforming use

Park owner argues nature and character of use have not changed and thus his vested right in the nonconforming use remains

Citation: Cityof Des Moines v. Ogden, 2018WL1357471 (Iowa 2018)

IOWA (03/16/18)—This case addressed the issue of whether intensification of a mobile home park use, through addition of structures or expansion of homes within the park, amounted to an illegal expansion of an authorized nonconforming use.

The Background/Facts: Mark Ogden owned property (the "Property") in Des Moines (the "City") on which he operated a mobile home park known as Oak Hill Mobile Home Park ("Oak Hill"). The history of the use of the Property was unclear, but from approximately 1941 to 1947, the Property was used as a tourist camp. Between 1947 and 1955, the Property became Oak Hill Mobile Home Park. In 1955, a prior owner of Oak Hill obtained from the City a certificate of occupancy that allowed for the operation of the mobile home park as a nonconforming use. From 1955 until 2014, the City took no zoning action against Oak Hill. However, in 2014, a City zoning administrator informed Ogden of "numerous violations of municipal zoning codes" on the Property. Among other things, the zoning administrator cited numerous setback violations, lot size violations, and failure to maintain an unobstructed driveway and a specific feet of clearance between trailers.

After receiving the enforcement notice, Ogden failed to respond to the City's directive that he bring the Property "into compliance or enter into a compliance plan." Thereafter, the City brought a legal action against Ogden. The City asked the court to order Ogden to cease use of the Property as a mobile home park.

Ultimately, the district court held that discontinuance of the mobile home park nonconforming use was "necessary for the safety of life or property" and that "the changes to the [P]roperty were unlawful expansions of the existing nonconforming use." In so holding, the court referred to a 1963 aerial photograph of Oak Hill, and noted it was now far more congested, with less open space, and filled with "the detritus of life." The court cited the 1955 occupancy permit, which stated that discontinuance of the permit was allowed "if the safety of life or property is threatened." And, the court noted that the "current use of the [P]roperty as a mobile home park 'has intensified beyond acceptable limitations' because the conditions 'pose a real threat in the event of an emergency." The district court issued an order enjoining the continued nonconforming use of the Property as a mobile home park.

Ogden appealed. The court of appeals affirmed the district court's order, and concluded that "the current status of the mobile home park exceeded the legal nonconforming use as it existed in 1955 and that it posed a threat to the safety of people or property at the mobile home park."

Ogden again appealed.

DECISION: Judgment of Court of Appeals vacated, reversed, and matter remanded.

Vacating and reversing the lower court holdings, the Supreme Court of Iowa held: (1) that the City had failed to show that the discontinuance of the nonconforming use under the 1955 certificate of occupancy was necessary for the safety of life or property; and (2) as a matter of first impression (i.e., the first time the court had addressed the specific issue), that intensification of a mobile home park use due to the addition of structures or the expansion of homes within the park did not amount to an illegal expansion of the authorized nonconforming use.

In so holding, the court first explained the law on nonconforming use. The court said that a nonconforming use is one "that lawfully existed prior to the time a zoning ordinance was enacted or changed, and continues after the enactment of the ordinance even though the use fails to comply with the restrictions of the ordinance." A lawfully existing prior use of the property creates a vested right in the continuation of the nonconforming use "unless the nonconforming use is legally abandoned, enlarged, or extended," explained the court. The court noted that the City's Municipal Code specifically provided for discontinuation of a nonconforming use if "necessary for the safety of life or property."

Here, the court could not conclude that the City had shown that the discontinuance of the nonconforming use under the 1955 certificate of occupancy was necessary for the safety of life or property. The court found no evidence in the record that demonstrated the existence of a significant safety issue. Oak Hill had not been cited for any fire safety code violations or for any zoning violations until the 2014 notice.

The court also found that the City had failed to meet its burden of proving that Ogden had so substantially changed the character and intensity of the mobile home park so as to have lost his vested right to

the legal nonconforming use. The City had argued that Ogden had exceeded the established nonconforming use of the Property because the use of the mobile home park had intensified in terms of the numbers and location of structures attached to mobile homes. The court disagreed. The court explained that "intensification of a nonconforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used." Here, the court found that the City failed to present evidence demonstrating that the zoning violations at Oak Hill had been "expanded to the point where the established nonconforming use is 'substantially or entirely different from the original use." "The court observed that Oak Hill had not changed in size or in its form of use as a mobile home park. The court found that the number and location of the mobile homes was roughly the same in 2014, as it was in 1963 (which was the date of the first aerial photograph of the Property on record). Further, the court found that the additions to the structures of the mobile homes, as well as the "detritus of life" noted by the district court, had "not substantially changed the nature and character of Ogden's use of the [P]roperty as a mobile home park." Rather, the court found that "steady increase in the additions to the mobile home structures and other objects found on the [P]roperty represents a marginal change that falls within the degree of latitude that the law affords to property owners in their nonconforming use." "Ultimately," concluded the court, "Oak Hill [was] being used as a mobile home park in a manner that [was] not "'substantially or entirely different' from its original use" as a mobile home park when the City issued the 1955 certificate of occupancy allowing for its nonconforming use. Accordingly, the court concluded that "the City did not prove that Ogden had lost the vested right he had in the operation of Oak Hill Mobile Home Park as a legal nonconforming use."

See also: City of Central City v. Knowlton, 265 N.W.2d 749 (Iowa 1978).

See also: Worthington v. Everson, 10 Ohio App. 2d 125, 39 Ohio Op. 2d 234, 226 N.E.2d 570 (9th Dist. Medina County 1967).

Case Note:

In his appeal, Ogden had also claimed that the actions of the City amounted to an unconstitutional regulatory taking. The Supreme Court of Iowa held that Ogden had waived his unconstitutional takings claim by failing to preserve it.

Case Note:

In its decision, the court cited case law from other jurisdictions that had held that replacing existing mobile homes with larger mobile homes results in an unlaw ful expansion of a nonconforming use. However, the court distinguished

this case from those cases, noting that, in those cases, the local zoning officers and regulations treated each mobile home within the mobile home park as a separate structure with separate compliance issues, while in this case the City had argued that Oak Hill in its entirety as a mobile home park had exceeded its nonconforming use and did not distinguish between the mobile home park in its entirety and each individual mobile home for enforcement purposes. (See e.g., Wiltzius v. Zoning Bd. of Appeals of Town of New Milford, 106 Conn. App. 1, 940 A.2d 892, 910 (2008); Kosciusko County Bd. of Zoning Appeals v. Smith, 724 N.E.2d 279, 281 (Ind. Ct. App. 2000).)

Zoning News from Around the Nation

MASSACHUSETTS

In early March, the Massachusetts Cannabis Control Commission finalized state regulations governing retail, recreational marijuana. Recreational marijuana stores will already be able to start applying for retail licenses starting April 1, and licensed venues will be able to open starting July 1.

Source: MassLive.com; www.masslive.com

In early March, the Northampton City Council gave final approval to zoning legislation related to retail marijuana. Among other things, the zoning ordinances: prohibit marijuana retailers from within 200 feet of a pre-existing public or private K-12 school; sanction outdoor cultivation of marijuana with site plan approval; provide distinctions in the city's code between medical and recreational marijuana and marijuana production; specifies limitations on where retail dispensaries can be located.

Source: MassLive.com; www.masslive.com

OHIO

Some residents of the City of Hillsboro are reportedly concerned about proposed zoning legislation, which would limit the number of pets per household. The proposed legislation would specifically limit each household to "no more than four dogs or four cats, or a combination of dogs and cats as not to total more than four " The zoning legislation would also limit households to "a maximum of four chicken hens or four rabbits, or a combination of both not total more than four" on each parcel of property.

Source: The Highland County Press; http://highlandcountypress.com